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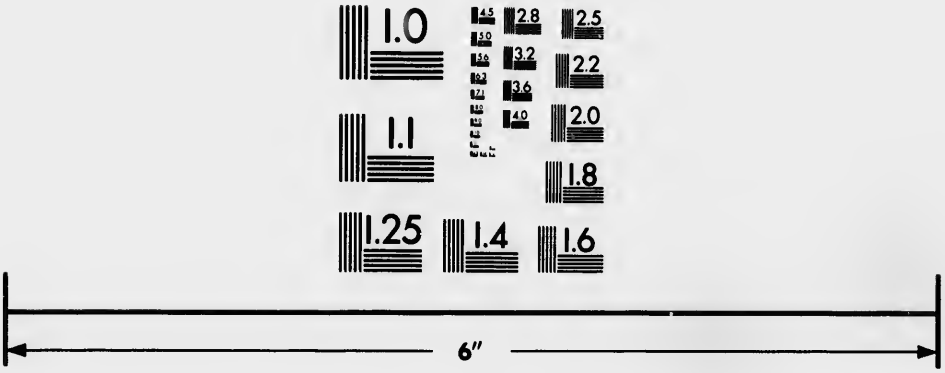

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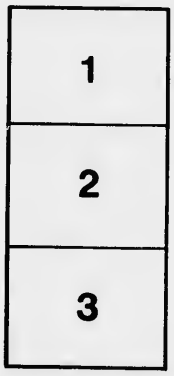

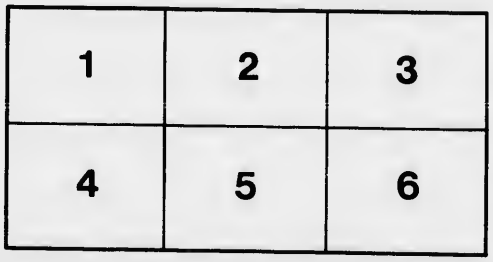

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THE MUNICIPAL MANUAL

(PART I.)

CONTAINING

"The Municipal Act" (R.S.O. c. 223) and the amending Acts of 1898, 1899 and 1900, viz.—61 V. c 23: 62 V. (1st Session), cc. 2 and 5: 62 V. (2nd Session) cc. 26 and 30: and 63 V. cc. 9, 33, 35, 36 and 37,

WITH NOTES OF CASES BEARING THEREON.

ELEVENTH EDITION,

Being the Sixth Edition of "Harrison's Municipal Manual."

Revised and Rewritten by

C. R. W. BIGGAR, M.A.,

One of Her Majesty's Counsel.

"Municipal institutions are to Liberty what primary schools are to Science; they bring it within the people's reach; they teach men how to use and enjoy it."

DE TOCQUEVILLE—"Democracy in America," Vol. 1, c. 5.

TORONTO:
THE CARSWELL CO., (LIMITED).
1900.

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Entered according to Act of the Parliament of Canada, in the year one thousand nine hundred by C. R. W. Biggar, M.A., Q.C., at the Department of Agriculture.

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68 & 70 FRONT ST. WEST,
TORONTO.

TO THE HONOURABLE

ARTHUR STURGIS HARDY, Q.C., LL.D.,

SOMETIME ATTORNEY-GENERAL AND PREMIER
OF THE PROVINCE OF ONTARIO,

THESE NOTES

UPON A STATUTE WHICH HE HAS DONE SO MUCH TO ADAPT
TO THE NEEDS OF A RAPIDLY DEVELOPING PROVINCE

ARE WITH HIS PERMISSION

RESPECTFULLY DEDICATED

BY THE EDITOR.

TABLE OF CONTENTS.

PAGE.

Preface ..... vii.

Abbreviations ..... ix.

Cases Cited ..... xii.

Comparative Table, shewing corresponding or analogous sections in the Municipal Acts or Ordinances of—

The Province of British Columbia ..... xxxvii.

" Manitoba ..... xxxix.

" Quebec ..... xli.

The Northwest Territories ..... xliii.

Prefatory (Historical) Note 1

THE MUNICIPAL ACT, (R.S.O., 1897, c. 223) 31

The Municipal Amendment Act, 1898 (61 V. c. 23) 985

An Act to correct certain clerical and typographical errors in the Revised Statutes of Ontario, 1897 (62 V. 1st Session, c. 2) 986

An Act to amend "The Municipal Act" (62 V. 1st Session, c. 5) 987

An Act to amend the Statute Law (62 V. 2nd Session, c. 11, s. 22) 987

The Municipal Amendment Act, 1899 (62 V. 2nd Session, c. 26) 988

An Act to amend "The Ontario Tree Planting Act" (62 V. 2nd Session, c. 30) 992

An Act respecting Provincial Aid towards the establishment of Municipal Cold Storage Buildings (63 V. c. 9) 993

The Municipal Amendment Act, 1900 (63 V. c. 33) 994

An Act respecting the enforcement of certain contracts entered into with Municipal Corporations (63 V. c. 35) 1011

An Act authorizing Municipal and other grants for the benefit of Canadians on military service in South Africa (63 V. c. 36) 1012

An Act to permit Municipalities to use Voting Machines (63 V. c. 37),—*not printed* 1012

Addenda et Corrigenda 1013

GENERAL INDEX 1020

PAGE.
.... vii.
.... ix.
.... xii.
cipal
... xxxvii.
....xxxix.
.... xli.
.... xliii.
.... 1
.... 31
.... 985
es of
... 986
... 987
.... 987
.... 988
... 992
Stor-
.... 993
.... 994
cipal
.... 1011
s on
... 1012
ted . 1012
.... 1013
... 1020

PREFACE.

I have to apologize for some delay in the issue of this new edition of the MUNICIPAL MANUAL—a delay arising from various causes, but chiefly from the magnitude of the task and the difficulty of preparing a law book which shall be at the same time suitable for the use of laymen. I trust that my professional brethren will bear this in mind should they be tempted to consider some of my notes as too elementary, while, on the other hand, if any municipal officer thinks that too much space is taken up by the citation and analysis of decided cases, I beg him to remember that the interpretation of the Municipal Act, like that of other Statutes, must ultimately devolve upon Judges and lawyers, and that it demands a large and rapidly increasing share of their time and attention. Of this every diligent student of our Reports must be aware. Two facts afford an illustration. In the last preceding Edition of this Manual—issued in 1889—there are cited less than 1,200 Canadian cases on the Municipal Act. This gives an average of thirty cases per annum for each of the forty years which had then elapsed since the passing of the original Municipal Act in 1849. The number of Canadian decisions cited in the present Edition is 2229,—an increase of more than 1000,—representing an average in each of the past eleven years of *nearly one hundred reported decisions per annum* upon the Municipal Act alone, irrespective of cases on the Assessment Act, the Municipal Drainage Act and cognate Statutes.

The task of consolidation and annotation has been rendered more difficult, not only by the (apparently unnecessary) amendments which are made to the Act every Session of the Legislature (*a*), but also because of the mysterious and algebraic forms in which many of these amendments are made,—viz., by cutting one or more words out of the middle of a section, or by sandwiching into it a few meaningless parts of speech, so that, until these *disjecta membra* are united by diligent annotation, it is impossible to determine the effect of the alteration (*b*). In order to embody some of the more important of these amendments, especially those relating to municipal elections, it has been found necessary to reprint thirty-two pages of the MANUAL, and to substitute these for the pages originally printed. Other amendments—which it was impossible to include without reprinting the entire book—will be found on pages 1013-1019.

(*a*) See pp. 987-1012, *post*. During the two and a-half years which have passed since the Revised Statutes came into force (December 31, 1897) no less than *fifty-two pages* of the Ontario Statutes have been taken up by amendments to the Municipal Act alone.

(*b*) See for example 62 V. (2) c. 26, ss. 1, 2, 3, 5, 6, 7, 8, 9, 10, etc., *post*, p. 988. 63 V. c. 33, ss. 1, 4 (1), 6, 7, 12, 13, 14, 15, *post*, pp. 994-999. 63 V. c. 33, s. 47, *post*, pp. 1006-7. affords a striking instance of this "crazy-quilt" method of amendment.

Part II of the MANUAL—containing the Assessment Act, the Municipal Drainage Act and many other important Statutes relating to municipal matters, with notes, forms, etc.—is already in preparation, and will be issued as soon as possible after the next Session of the Legislature.

It remains only to thank many friends to whom I am greatly indebted for counsel and assistance in the preparation of this book. Among them I should especially mention the Honourable Judge DILLON, of New York, Sir JOHN BOURINOT, of Ottawa, and PH. BADOUIN, Esq., of Montreal, who kindly authorized me to make extracts from their valuable works (*c*). His Honour Judge MACDONALD, of Brockville, who revised the note on the Statutes relating to payment of the expenses of Administration of Justice in Ontario, (*d*) ALEX. BRUCE, M.A., Q.C., of Hamilton, and Z. A. LASH, Q.C., of Toronto, who revised the forms of Debenture By-laws (*e*), and ALLAN M. DYMOND, Esq., Law Clerk of the Legislative Assembly, who has read the proof sheets of the entire work and prepared the General Index (*f*).

C. R. W. BIGGAR.

June 19th, 1900.

(*c*) "Commentaries on the Law of Municipal Corporations," by John F. Dillon, LL.D., formerly Chief Justice of the Supreme Court of Iowa, etc.; "A Canadian Manual on the Procedure at Meetings of Municipal Councils," etc., by Sir John George Bourinot, K.C.M.G., LL.D., D.C.L., etc., Clerk of the House of Commons, and "An Index to Private and Local Law affecting Incorporated Bodies," by Ph. Badouin, N.P., Montreal.

(*d*) Pp. 565-576. (*e*) Pp. 395-409. (*f*) Printed on p. 1020 *et seq.*

TABLE OF ABBREVIATIONS.

A. & E.	Adolphus & Ellis, (K.B.), 1834-40.
A. C.	Appeal Cases (English Law Reports), 1891—
A. R.	Ontario Appeal Reports, 1876—
Acc.	Accordant; to the same effect.
Allen	Allen, (Massachusetts Supreme Court), 1861-67.
Am. & Eng. Encyc.	The American and English Encyclopædia of Law (1st Ed., 1892).
Am. Law Reg.	American Law Register, 1852—
Am. Rep.	American Reports, 1868—
App. Cas.	Appeal Cases, (English House of Lords and Privy Council), 1865-75.
Ark.	Arkansas Supreme Court, 1837—
B. & A. / B. & Al.	Barnewall & Alderson, (K.B.), 1817-22.
B. & Ad.	Barnewall & Adolphus, (K.B.), 1830-34.
B. & B.	Broderip & Bingham, (C.P.), 1819-22.
B. & C.	Barnewall & Cresswell, (K.B.), 1822-30.
B. & P.	Bosanquet & Puller, (C.P.), 1796-1807.
B. & S.	Best & Smith, (Q.B.), 1861-1870.
B. C. R.	British Columbia Reports, 1882—
Bac. Abr.	Bacon's Abridgment.
Beav.	Beaven, (Rolls Court), 1838-66.
Bing.	Bingham, (C.P.), 1822-34.
Bing. N. C.	Bingham's New Cases, (C.P.), 1834-40.
Bl. Com.	Blackstone's Commentaries.
Bradf.	Bradford, (New York Surrogate Court), 1849-57.
Brownl.	Brownlow & Goldsborough, (C.P.,) 1651-75.
Burr.	Burrows, (K.B.), 1757-71.
C. & J.	Crompton & Jervis, (Exch.) 1830-2.
C. & K.	Carrington & Kirwan, (Nisi Prius), 1843-50.
C. & M.	Crompton & Meeson, (Exch.), 1832-4.
C. & P.	Carrington & Payne, (Nisi Prius), 1823-41.
C. B.	Common Bench (Manning, Granger & Scott), 1845-56.
C. B. N. S.	Common Bench, New Series, (Scott), 1856-65.
C. L. Ch.	Common Law Chamber Reports (U.C.), 1851-52.
C. L. J. N. S.	Canada Law Journal, New Series, 1865—
C. L. T.	Canadian Law Times, (Occasional Notes of Cases) 1881—
C. M. & R.	Crompton, Meeson & Roscoe, (Exch.), 1835-6.
C. S. C.	Consolidated Statutes of Canada, (1859).
C. S. U. C.	Consolidated Statutes of Upper Canada, (1859).
C. P.	Upper Canada Common Pleas, 1850-81.
C. P. D.	Common Pleas Division (English Law Reports), 1875-80.
Ca. & Ell.	Cababe & Ellis, Nisi Prius Cases, 1882-85.
Cal.	California Supreme Court, 1850—
Camp.	Campbell, (Nisi Prius), 1808-16.
Car. & M.	Carrington & Marshman, (Nisi Prius), 1841-2.
Cart.	Cartwright's Cases on the British North America Act.
Carthew.	Carthew, (K.B.). 1686-1701.
Ch.	Chancery Division (English Law Reports), 1891—
Ch. Chamb.	Chancery Chambers Reports (Grant), 1852-71.
Ch. D.	Chancery Division (English Law Reports), 1875-90.
Chit.	Chitty's Reports, (Bail Court), 1819-20.
Cf.	*Confero*=compare.
Cl. & F.	Clarke & Finnelly, (House of Lords), 1831-46.
Co. / Co. Rep.	Coke's Reports, (K.B.), 1572-1616.
Co. Litt.	Coke on Littleton, (1 Inst.)
Coll.	Collyer (Chy.) 1844-5.
Com.	Comyn, (K.B. and C.P.), 1695-1741.
Com. Dig.	Comyn's Digest.
Conn.	Connecticut (Supreme Court of Errors), 1814—
Cowp.	Cowper, (K.B.), 1774-78.
Cox.	Cox's Reports, (Chancery), 1783-96.
Cox C. C.	Cox's Criminal Cases, 1843—
Cr. & J.	Crompton & Jervis, (Exch.), 1830-32.
Cranch	Cranch, (U.S. Supreme Court), 1876-81.
Cro. Eliz.; Cro. Car.; Cro. Jac.	Croke, (K.B. & C.P.,) *temp.* Elizabeth, James I. and Charles I.
D. & L.	Dowling & Lowndes, (Bail Court), 1846-49.
D. & R.	Dowling & Rylands, (K.B.), 1821-7.
De G., M. & G.	De Gex, Macnaghten & Gordon, (Chancery), 1851-7.
Dart, V. & P.	Dart's Vendors & Purchasers of Real Estate, (6th Ed.), 1888.
Dears. & Bell.	Dearsley & Bell, (Crown Cases), 1856-8.
De G. & J.	De Gex & Jones, (Chancery), 1857-9.
De G. J. & S.	De Gex, Jones & Smith, (Chancery), 1862-6.
Dillon.	Dillon on Municipal Corporations (4th Ed.), 1890.
Doug.	Douglas, (K.B.), 1778-84.
Dowl.	Dowling's Practice Cases, (Bail Court), 1830-40.

2*

Dowl. N. S.	Dowling's Practice Cases, New Series, 1841-2.
Dr. & Sm.	Drewry & Smale, (Chancery), 1860-65.
Dutch.	Dutcher, (N. J. Supreme Court), 1855-62.
Dyer	Dyer's Reports, 1513-82.
E. & B.	Ellis & Blackburn, (Q.B.), 1852-8.
E. & E.	Ellis & Ellis, (Q.B.), 1858-60.
E., B. & E.	Ellis, Blackburn & Ellis, (Q.B.), 1858.
East	East's Reports (K.B.), 1801-1812.
Esp.	Espinasse, (Nisi Prius), 1793-1807.
Exch.	Exchequer Reports (Welsby, Hurlstone & Gordon), 1849-56.
Ex. C. R.	Exchequer Court of Canada, 1891
Ex. D.	Exchequer Division (English Law Reports), 1875-80.
F. & F.	Foster & Finlason, (Nisi Prius), 1858-65.
Fed. Rep.	(U. S. Circuit Cts., of Appeal and U. S. Dist. Cts.), 1880—.
G. & D.	Gale & Davison, (K.B.), 1841-3.
Giff.	Gifford's Reports, (Chancery), 1857-65.
Gr.	Grant, (U. C. Ch.), 1849-84.
Grant	
Gray	Gray, (Mass. Supreme Ct.), 1854-60.
H. & C.	Hurlstone & Coltman, (Exch.), 1862-66.
H. & M.	Harris & McHenry's Reports (Maryland), 1700-1799.
H. & N.	Hurlstone & Norman, (Exch.), 1856-61.
H. E. C.	Hodgins' Election Cases, 1883.
H. L. Cas.	House of Lords Cases, 1847-66.
Har. & M.	Harris & McHenry's Reports (Maryland), 1700-1799.
Hem. & M.	Hemming & Miller, (Ch., V. C. Wood), 1862-65.
Hawk. P. C.	Hawkins's Pleas of the Crown.
Holt	Holt's Reports (K.B.), 1688-1711.
How.	Howard, (U.S. Supreme Court), 1843-60.
Hun	Hun, (N.Y. Supreme Court), 1871-1885. Now usually cited as Vols. 8-14 N.Y.
Inst.	Coke's Institutes.
Iowa	Iowa Supreme Court, 1839—
Ir. C. L. R.	Irish Common Law Reports, 1866-76.
Jac. & W.	Jacob & Walker, Chancery, 1824-25.
Johns.	Johnson, (New York Supreme Court and Court of Errors), 1806-23.
Johns (V. Ch. Cas.)	Johnson's Cases in Vice-Chancellor Wood's Court, 1859-61.
Jur.	The Jurist, 1837-54.
Jur. N. S.	The Jurist, New Series, 1855-63.
Kan.	Kansas Supreme Court, 1862—
Kent Com.	Kent's Commentaries on the Law of the United States (14th Ed.), 1896.
L. C. Jur.	The Lower Canadian Jurist, 1857—
L. J. C. P.	The Law Journal, Common Pleas Cases, 1832—
L. J. Ch.	" " Chancery Cases, 1832—
L. J. Ex.	" " Exchequer Cases, 1832—
L. J. M. C.	" " Magistrate's Cases, 1832—
L. J. Q. B.	" " Queen's Bench, 1832—
L. R. C. C.	The Law Reports, Crown Cases Reserved, 1865-75.
L. R. C. P.	" " Common Pleas Cases, 1865-75.
L. R. Ch.	" " Chancery Appeal Cases, 1865-75.
L. R. Eq.	" " Equity Cases, 1865-75.
L. R. Ex.	" " Exchequer Cases, 1865-75.
L. R. H. L.	" " English and Irish Appeal Cases, (House of Lords), 1865-75.
L. R. Pr.	" " Ireland, 1878-1890.
L. R. P. & D.	" " Probate and Divorce Cases, 1865-75.
L. R. P. C.	" " Privy Council Cases, 1865-75.
L. R. Q. B.	" " Queen's Bench Cases, 1865-75.
L. R. Sc. App.	" " Scotch Appeal Cases, 1865-75.
L. T. N. S.	The Law Times, New Series, 1853—
La. An.	Louisiana Annual Supreme Court Reports, 1846-55.
Ld. Raym.	Lord Raymond, (K. B.), 1694-1734.
Legal News	The Legal News, (Quebec), 1878-
Lev.	Levinz's Reports (K. B.), 1660-97.
M. & C.	Mylne & Craig, (Chancery), 1836-48.
M. & G.	Macnaghten & Gordon, (Chancery), 1849-52.
M. & Gr.	Manning & Granger, (C. P.), 1840-50.
M. & M.	Moody & Malkin, (Nisi Prius), 1826-30.
M. & R.	Manning & Rylands, (K. B.), 1827-30.
M. & S.	Maule & Selwyn, (K. B.), 1813-17.
M. & W.	Meeson & Welsby, (Exchequer), 1836-47.
M. L. R., Q. B.	Montreal Law Reports, Queen's Bench, 1884—
M. L. R., S. C.	" " " Superior Court, 1884—
McC. & Y.	McCleland & Younge, Exchequer, 1824-5.
Mackey	(Supreme Court, Dist. Columbia, U.S.A.), 1880-1892.
Maine	Maine Reports, 1836—
Man. R.	Manitoba Reports, 1884—
Mass.	Massachusetts Supreme Court Reports, 1764—
Mich.	Michigan Supreme Court Reports, 1847—
Mo.	Missouri Supreme Court Reports, 1821—
Mod.	Modern Reports, 1669-1732.
Moo. & R.	Moore & Robinson (Nisi Prius), 1836-44.
Moo. P. C. C.	Moore's Privy Council Cases, 1836-61.
Moore	Moore's Common Pleas Reports, 1817-27.

N. B. Rep.	New Brunswick Reports, 1825—
N. H.	New Hampshire Superior Court, 1816—
N. J. Eq.	New Jersey Chancery etc. Reports, 1830—
N. J. Law	New Jersey Supreme Court Reports, 1790—
N. Y.	New York Court of Appeals, 1847
Nova Sc. R.	Nova Scotia Reports, 1834
N. W. Terr.	North West Territories (Supreme Court) Reports, 1894—

O'M. & H.	O'Malley & Hardcastle (Election Cases) 1869-80.
O. R.	The Ontario Reports, 1881—
O. S.	Old Series, (Upper Canada K. B. & Q. B.), 1834-44.
Ohio St.	Ohio Supreme Court Reports, 1852—
Ont.	Ontario Reports, 1881—
Ont. El. Cas.	Ontario Election Cases, 1884-8.

[ ] P.	Probate Division, (English Law Reports), 1891
P. & K.	Perry & Knapp, (Election Cases), 1833.
P. C.	Hawkins' Pleas of the Crown.
P. D.	Probate Division, (English Law Reports), 1875-90.
P. R.	Ontario Practice Reports, 1851—
P. R. & D.	Power, Rodwell & Dew's Election Cases, 1847-50.
Pa. St.	Pennsylvania Supreme Court Reports, 1844—
Peake	Peake, (Nisi Prius), 1790-1812.
Per. & K.	Perry & Knapp, (Election Cases), 1833—
Pick.	Pickering, (Massachusetts Supreme Court), 1822-1840.
Popham	Popham, (K. B.), 1592-1627.
Pugs.	Pugsley, (New Brunswick Reports, 1872-6. Now cited as 14-16 N. B. Rep.).

Q. B.	Adolphus & Ellis (New Series), 1834-1840.
[ ] Q. B.	Queen's Bench Division (English Law Reports), 1891—
Q. B. D.	" " " 1875-1890.
Q. L. R.	Quebec Law Reports, 1875—
Q. R. Q. B.	Quebec Reports, Queen's Bench, 1875—
Q. R. S. C.	" " Superior Court, 1875—

R. & J. Dig.	Robinson & Joseph's Digest, (Ont.), 1889.
R. S. B. C.	Revised Statutes of British Columbia, 1897.
R. S. Ca.	Revised Statutes of Canada, 1887.
R. S. Man.	Revised Statutes of Manitoba, 1892.
R. S. O.	Revised Statutes of Ontario, 1897.*
Rep.	Coke's Reports.
Rev. de Jur.	Revue Critique de Legislation et de Jurisprudence, etc., (Quebec), 1871-73.
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U. C. C. P.	" " Common Pleas Reports, 1850-81.
U. C. L. J.	" " Law Journal, Old Series, 1855-64.

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Ves. Jun.	Vesey, Jun. (Chy.), 1789-1817.
Vin. Abr.	Viner's Abridgment, 1743-53.
Vroom	Vroom, (N. J. Supreme Court), 1864-82.

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W. R.	The Weekly Reporter, 1853—
Wall.	Wallace, (U. S. Supreme Court), 1863-75.
Wend.	Wendell, (N. Y. Supreme Court), 1828-41.
Wheat.	Wheaton, (U. S. Supreme Court), 1816-27.
Wils.	Wilson, (K. B.), 1742-74.
Wis.	Wisconsin Supreme Court, 1853—

Zabr.	Zabriskie, (N. J. Supreme Court, etc.), 1847-55.

*Earlier Revisions are indicated by their dates.

TABLE OF CASES.

[The pages printed in *italics* are those at which the case is most fully referred to.]

A.

PAGE.

Abbott v. Macfie, 2 H. & C. 744 834
Abrahams v. London, L. R. 6 Eq. 62 459
Acer v. DeMontigny, M. L. R. 5 S. C. 117 329
Ackroyd v. Barrick, 11 T. L. R. 115 673
Acton L. R. v. Batten, 28 Ch. D. 283 649
Adair v. Kingston, 25 C. P. 126 828
Adam v. British, etc., S. S. Co., [1898] 2 Q.B. 430 326
Adams v. Bromley L. B. 37 J. P. 662 647
—— and East Whitby, Re, 2 O. R. 473 ..... 332, 857
—— v. National, etc., Co., 3 B. C. R. 199 596
—— v. Toronto, 12 O. R. 243 ..... 457, 462, *806*
Adamson v. Etobicoke, 22 O. R. 341 ..... 306, 960
Adey v. Hill, 4 C. B. 40 149
Adjala v. McElroy, 9 O. R. 580 ..... *208*, 290 300
Agnew v. Jobson, 13 Cox C. C. 625 534
Albemarle and Eastnor, Re, 45 U. C. R. 133; 46 U. C. R. 183 ..... 70, 71, *490*, 490
Albert Cheese Co. v. Leeming, 31 C. P. 272 41
Alderich v. Humphrey, 29 O. R. 427 ..... 513, 535
Aldis v. Chatham, 28 O. R. 525 840
Aldred's Case, 9 Co. Rep. 58 758
Aldwell v. Toronto, Ex p., 7 C. P. 194 694
Alexander v. Howard, 14 O. P. 22 ..... 46, 332, 379, 511
—— v. Huntsville, 24 O. R. 605 ..... 333, 338, 375, 380, 431
Allen v. Tunbridge, L. R. 6 C. P. 481 528
—— v. Fulham, [1899] 1 Q. B. 681 893
—— v. Ormond, 8 East 4 807
—— v. Smith, 12 C. B. N. S. 638 108
—— v. Wright, 8 C. & P. 522 533
Allinson v. Gen. Med. Council, [1894] 1 Q. B. 75 908
Alston's Estate, Re, 5 W.R. 189; 28 L.T.N.S. 337 458
Alton v. Hamilton & Toronto R. W. Co., 13 U. C. R. 595 465
A. M. C. Med. Co. v. Montreal, O. R. 15 S. C 594 1017
Amey v. Allegheny, 24 How. (U.S.) 364 423
Amherst v. Fillimore, 34 C. L. J. N. S. 41 599
Amherstburgh v. Caldwell, not yet rep 919
Ancaster v. Durrand, 32 C. P. 563 872
Anderson v. Cotton, 2 P. R. 100 491
—— v. Galbraith, 16 U. C. R. 57 635
—— v. Jellett, 27 Grant 411; 7 A. R. 341; 9 S. C. R. 1 ..... *326*
—— v. Wallace, 3 Ch. & F. 26 ..... *490*
Andrews v. Ryde, L. R. 9 Ex. 302 42
Anglin v. Kingston, 16 U. C. R. 121 449
—— v. Nickle, 30 C. P. 72 491
Anning v. Hartley 3 H. & N. 920 491
Annis and Mariposa, Re, 26 C. P. 133 ..... 332, 380
Anon, 1 Salk. 44 117
—— 1 Camp. 517n 678
Appleyard v. Lambeth, 13 T. L. R. 289 649
Archer v. Willingrice, 4 Esp. 186 737
Arkell and St. Thomas, Re, 38 U. C. R. 594 ..... 328, 331, *343*, 638, *732*, 750
Armstrong, Re, 12 O. R. 457 ..... 410, 600
—— v. Auger, 21 O. R. 98 ..... 104, 409, *945*
—— v. Darling, 22 C.L.J.N.S. 149; 6 C.L.T. 214 507
—— and Toronto, Re, 17 O. R. 766 ..... 46, 331, 352, 380, *391*, 392, 397
Arnold v. Blaker, L. R. 6 Q. B. 433 811
—— v. Poole, 4 M. & G. 860 321
Arnott v. Bradley, 23 C. P. 1 535
Arran v. Amabel, 15 Grant 701; 17 Grant 103 ..... 70, *71*
Arthur v. G. T. R. W. Co., 25 O. R. 37; 22 A. R. 89 ..... 640, 653
—— School Trustees v. Arthur, 21 O. R. 60 51
Artley v. Curry, 29 Grant 243 579
Askew v. Manning, 38 U. C. R. 345 234
Askin v. London Dist. Council., 1 U. C. R. 292 329
Aslatt v. Southampton, 16 Ch. D. 143 ..... *225*, 234
Aspholel and Sargant, Re, 17 U.C.R. 593 ..... *229*, 230, 319
—— &c., Trustees S. S. No. 5, 24 O. R. 682 380
Atchison v. Portage la Prairie, 9 Man. R. 192 465

A.

PAGE.

Athenaeum Life Ins. Co. v. Pooley, 1 Giff. 102; 3 DeG. & J. 294 447
Athlone El. Case, 3 O'M. & H. 57; 8 Ir. C. L. R. 240 ..... 185, 214
Atkin v. Hamilton, 24 A. R. 389 835
Atkins v. Kilby, 11 A. & E. 777 558
—— v. Ptolemy, 5 O. R. 366 216
Atkinson v. Chatham, 29 O. R. 518; 26 A. R. 521 ..... 668, 669, 826, 828, 835, 836, *845*
—— v. Newcastle, &c., W. W. Co., L. R. 6 Ex. 404; 2 Ex. D. 441 832
Atty.-Gen. v. Acton L. R., 22 Ch.D. 221 763
—— v. Birmingham, 4 K. & J. 528 757
—— v. Bradford Canal, L. R. 2 Eq. 71 759
—— v. Brighton, etc., Co-op. Ass'n. [1900] 1 Ch. 276 1017
—— v. Bytown, &c., Rd. Co., 2 Grant 626 874
—— v. Cambridge, L. R. 6 H. L. 303 458
—— v. Campbell, 19 Grant 299 ..... 332, 379, *600*
—— v. Church, 2 Hem. & M. 697 422
—— v. Clerkenwell, [1891] 3 Ch. 527 ..... *763*
—— v. Cockermouth L. B., L. R. 18 Eq. 172 763
—— v. Colney Hatch Asylum, L. R. 4 Ch. 146 757
—— v. Dorking, 20 Ch. D. 595 753
—— v. Doughty, 2 Ves. Sen. 453 756
—— v. Ewen, 3 B. C. R. 468 679
—— v. Forbes, 2 M. & C. 123 761
—— v. Goderich, 5 Grant 402 ..... *584*
—— v. Hackney Local Bd., L. R. 20 Eq. 626 650
—— v. Hanwell District Council [1900] 1 Ch. 51 708
—— v. Harrison, 12 Grant 466 679
—— v. Horner, 11 App. Cas. 66 811
—— v. Johnson, 2 Wils. C. C. 102 759
—— v. Johnston, 2 Wils. C. C. 8 761
—— v. Leeds, L. R. 5 Ch. 583 759
—— v. Lichfield, 11 Beav. 120 422
—— v. Logan, [1891] 2 Q. B. 100 763
—— v. London & N. W. R. W. Co., [1899] 1 Q.B. 72; [1900] 1 Q. B. 78 ..... 761, 763
—— v. Lonsdale, L. R. 7 Eq. 377 ..... *679*, 761
—— v. Luton Bd. of Health, 2 Jur. N. S. 180 757
—— v. Manchester, [1893] 2 Ch. 87 ..... 761, 766
—— v. Mylchreest, 4 App. Cas. 508 883
—— v. Niagara Falls International Bridge Co. 20 Grant 34 ..... 41, 679
—— v. Norwich, 2 M. & C. 406 599
—— v. Preston, 13 T. L. R. 14 758
—— v. Rufford, [1899] 1 Ch. 537 893
—— v. Sheffield Gas Co., 3 DeG. M. & G. 304 759
—— v. Shrewsbury &c. Bridge Co., 21 Ch. D. 752 ..... 457, 761, 763
—— v. Terry, L. R. 9 Ch. 423 ..... 678, *679*
—— v. Tod-Heatly, [1897] 1 Ch. 560; 13 T. L. R. 229 ..... 621, 760, 761, 763
—— v. Tongue, 12 Price 51 741
—— v. Toronto, 10 Gr. 436 708
—— v. —— St. R. W. Co., 14 Gr. 673 ..... *831*
—— v. United, &c. Tel. Co., 36 Beav. 287 761
—— v. Weston, &c. Road Co., 4. Gr. 211 ..... 763, *831*
—— v. Wigan, 18 Jur 299 422
—— v. Woodhouse, 12 Price 65 741
—— for Canada v. Atty.-Gen. for Ontario, etc., 26 S. C. R. 444; [1898] A. C. 700 675
——— v. Ewen, 3 B. C. R. 468 679
——— v. Toronto, 20 O. R. 19; 18 A. R. 622; 23 S. C. R. 514; 29 C. L. J. N. S. 601 ..... *692*
—— for Isle of Man v. Mylchreest, 4 App. Cas. 508 883
—— of Ontario v. Niagara Falls Intern. Bridge Co., 20 Grant 34 ..... 41, 679
Auckland v. Westminster L. B., L. R. 7 Ch. 597 619
Augusta and Leeds, &c., Re, 12 U. C. R. 532 848
Austin v. Bethnal Green, L. R. 5 C. P. 91 47
Ayers v. Windsor, 14 O. R. 682 ..... 457, 807
Ayre v. Toronto, 20 C. P. 225 835

[The pages printed in *italics* are those at which the case is most fully referred to.]

B.

PAGE.

Babcock v. Bedford, 8 C. P. 527 375
Baby v. Baby, 8 U. C. R. 76 298
Bache v. Billingham, [1894] 1 Q. B. 107 480
Badams v. Toronto, 24 A. R. 8 ..... 825, 828, 829
Badgely v. Bender, 3 O. S. 221 ..... 812, 813
Badley v. Cuckfield Union, [1895] 43 W. R. 663 .. *611*
Bagnall v. L. & N. W. R. W. Co., 7 H. & N. 423 466
Bagot, Re, 10 W. R. 707 475
Bailey v. Jamieson, 1 C. P. D. 329 806
—— v. Vancouver, 4 B. C. R. 433; 25 S. C. R. 62 32
Baird and Almonte, Re, 41 U. C. R. 415 ..... *113, 275*, 277, 372, 380
—— v. Tunbridge Wells, [1894] 2 Q. B. 867 647
—— v. Wilson, 22 C. P. 491 ..... *761*
Baker v. Paris, 10 U. C. R. 621 ..... 9, 330, *332, 383*
—— v. Portsmouth, 3 Ex. D. 4, 157 ..... 33, 610
—— and Saltfleet, Re, 31 U. C. R. 386 860
Ball v. Ray, L. R. 8 Ch. 467 765
—— v. Ward, 33 L. T. N. S. 170 658
Ballinger v. Ferris, 1 M. & W. 628 535
Balzer v. Gosfield South, 17 O. R. 700 ... 830, 844, 847
Banbury L. B. v. Page, 8 Q. B. D. 97 ... 757, 707, 769
Banff El. Case, 19 C. L. T. 119 948
Bank of Columbia v. Patterson, 7 Cranch (U.S.) 299 42
—— of London v. Guarantee Co. of N. A. 12 P. R. 499 516
—— of Montreal v. Fox, 6 P. R. 217 ..... 409, 410
Bann v. Brockville, 19 O. R. 409 . 377, 37 1, 380
Bannan v. Toronto, 22 O. R. 274 ..... 47, 392, 341, 379, 5... 5, 755
Banque Ville Marie v. Morrison, 25 S. C. R. 289 *924*
Barber and Ottawa, Re, 39 U. C. R. 406 .... 427, 434
—— v. Penley, [1893] 2 Ch. 447 ..... 659, 772
—— and Darlington, Re, 11 U. C. R. 470 .... 9, 37, 382
—— 12 U. C. R. 86, 9, 328, 330, *334, 342*, 344
—— v. ——, 5 C. P. 432 379
Baring Bros. v. Doulton, 31 L. J. Q. B. 704 504
Baring-Gould v. Sharpington, [1898] 2 Ch. 633 .. 486
Barker v. Braham, 2 W. Bl. 866, 3 Wils. 368 595
Barlow v. Kensington, 27 Ch. D. 362; 11 App. Cas. 257 610
—— v. Terrett, [1891] 2 Q. B. 107 640
Barnes v. Ackroyd, L. R. 7 Q. B. 474 ..... *768*
Barons v. Luscombe, 3 A. & E. 589 535
Barraclough v. Johnson, 8 A. & E. 99 809
Barrie v. Gillies, 20 C. P. 369; 21 C. P. 213 872
—— v. Weaymouth, 15 P. R. 95 1013
—— Pub. School Bd. v. Barrie, 19 P. R. 32 1013
Barrow v. Buckmaster, 12 C. B. 664 105
Barrowman v. Fader, 31 Nova Scotia Rep. 29 .. 428
Barry v. Parry, [1895] 2 Q. B. 110 893
Bartlett v. Amherstburg, 14 U. C. R. 152 42
Barton v. Hamilton, 18 O. R. 199; 17 A. R. 346; 20 S. C. R. 173 ..... 326, 650, 654, 707
Barwell v. Brooks, 1 L.T.N.S. 454 761
Barwick v. English Jt. Stock Bank, L. R. 2 Ex. 259 595
Baskerville v. Canada, &c., R. W. Co. 20 A. R. 108 ..... 457, 465
—— v. Ottawa, 20 A. R. 108 ..... 462, 844
Bate and Ottawa, Re, 23 C. P. 32 ..... 332, 957
Bateman v. Bluck, 18 Q. B. 870 ..... 799, 806
—— v. Hamilton, 33 U. C. R. 244 ..... 651, 835
—— and Parker's Contract, [1898] 1 Ch. 599 .... *878*
—— v. Poplar, &c., 33 Ch. D. 360 649
Baten's Case, 9 Co. Rep. 54a 769
Bathurst v. Macpherson, 4 App. Cas. 256 .. 39, 651, 833
Battersby v. O'Dell, 23 U. C. R. 482 635
Bauenwall v. Furness, [1893] A. C. 8 596
Baxter v. Kerr, 23 Grant 307 47
Bayley v. M. S. R. W. Co., L. R. 7 C. P. 413; L. R. 8 C. P. 148 596
Baylis v. Jiggins, [1898] 2 Q. B. 316 1017
Beal v. South Devon R. W. Co., 3 H. & C. 337 .. 839
Beasley v. Hamilton, 9 O. R. 112 826
Beaton v. Springer, 24 A. R. 297 617
Beaty and Toronto, Re, 13 P. R. 316 ..... *492*
Beauvage v. Deschambault, 14 Rev. Leg. 655 .. 826
Beaufort v. Coatlecook, 32 L. C. Jur. 118 839
Beautiful Plains, Re, 10 Man. R. 130; 14 C. L. T. 226 261
Becher v. Woods, 16 C. P. 29 583
Beck and Jackson, Re, 1 C.B.N.S. 605 491

B.

PAGE.

Beckett v. Midland R. W. Co., L. R. 1 C. P. 241; L. R. 3 C. P. 82 462
—— and Toronto, Re, 10 O. R. 106 ..... *575*
Beddow v. Beddow, 9 Ch. D. 89 504
Beckman St., Re, 4 Bradf. Appx. 502 ..... *636*
Beemer and Grimsby, Re, 8 O. R. 98; 13 A. R. 225 ..... 863, *878*
Beer v. Stroud, 19 O. R. 10 ..... 649, 653
Begg v. Southwold, 6 O. R. 184 ..... 379, 381
Belanger v. Montreal, Q. R. 15 S. C. 43 ..... 915, 937
Belford v. Haynes, 7 U. C. R. 464 807
Bell and Black, Re, 1 O. R. 125 41
—— v. Hull & S. R. W. Co., 2 Rwy. Cas. 279 ... 462
—— v. McLean, 18 C. P. 416 427
—— v. Manvers, Re, 2 C. P. 507; 3 C. P. 390 ..... 9, 119, 252, 331, 380, 599
—— v. Quebec, 5 App. Cas. 84 679
—— v. State, 18 Tex. App. 53; 51 Am. Rep. 293 529
—— v. Westmount, Q. R. 15 S. C. 580 ..... 695, 697
Bellamy v. Wells, 39 W. R. 158 659
Belleville v. Judd, 16 C. P. 397 ..... 39, 583, 584
Bellrose v. Chillewack, 3 B. C. R. 115 377
Bell Tel. Co. v. Belleville, &c., Co., 12 O. R. 571 607
—— v. Montreal R. W. Co., Q. R. 10 S. C. 162; Q. R. 6 Q. B. 223 ..... 667, 719
Bendelow v. Wortley Union, 57 L. T. N. S. 849 .. 768
Benjamin v. Storr, L. R. 9 C. P. 400 ..... 656, 701
Bennett v. York, 43 U. C. R. 542 825
Bent v. Wakefield, &c., Bank, 4 C. P. D. 1 803
Bentham v. Hoyle, 3 Q.B.D. 289 375
Beresford-Hope v. Lady Sandhurst, 23 Q.B.D. 79 112
Berlin v. Grange, 5 C. P. 211 9
Bermondsey v. Brown, 35 Beav. 226; L. R. 1 Eq. 204 ..... 764, 811
Bernard v. Brillon, M. L. R. 1 S. C. 121 219
Bernardin v. North Dufferin, 19 S. C. R. 581 ... 42
Bernina, The, 12 P. D. 58; 13 App. Cas. 1 .. 836, 837
Berryman v. Port Burwell, &c., Co., 24 U.C.R. 34 676
Berthier El. Case, 9 S. C. R. 102 259
Berwick El. Case, 3 O'M. & H 193, 194
Bessey and Grantham, Re, 11 U. C. R. 156 383
Beveridge v. Creelman, 42 U. C. R. 29 .. 811, 862, 865
Beverley v. Barlow, 10 C. P. 178 ..... 37, 298
Bew v. Harston, 3 Q. B. D. 454 633
Bewdley El. Case, 1 O'M. & H. 19; 18 L. T. N. S. 676 ..... 259, 260
Bhear v. Harradine, 7 Ex. 260 497
Bickett v. Morris, L. R. 1 Sc. App. 47 ..... *679*
Bickford v. Chatham, 10 O. R. 257; 14 A. R. 32; 6 S. C. R. 235 ..... 419, 957
Biddulph v. St. George's, &c., 3 DeG. J. & S. 493; 8 L. T. N. S. 558 ..... *656*
Bigaonette v. North Shore R. W. Co., 17 S. C. R. 363 462
Biggar, Re, 3 U. C. R. 141 234
Biggins v. Montreal, 29 L. C. Jur. 26 825
Biggs v. Mitchell, 2 B. & S. 523 618
Billings and Gloucester, Re, 10 U.C.R. 273 .. 46, *384*, 391
Binks v. South York, &c., R.W. Co., 3 B. & S. 244 621
Birdsall and Asphodel, Re, 45 U. C. R. 149 ..... 332, 377, 860, 861
Birdey and Toronto A. & B.R.W.Co., Re, 28 O. R. 468 ..... 461, 464, 466, 467
Birkenhead v. L. & N. W. R. W. Co., 15 Q. B. D. 572 460
Birmingham v. Baker, 17 Ch. D. 782 410
Bishop v. Balkis Consolidated Co., 25 Q. B. D. 77, 512 41
—— Auckland L. B. v. Bishop Auckland, &c., Co., 10 Q. B. D. 138 ..... 757, 767
Black v. Christ Church, &c., Co., [1894] A. C. 48 ..... 595, 617
—— v. Smith, Peake, 121 514
Blackburn El. Case, 1 O'M. & H. 203 265
Blacklock v. Millikan, 3 C. P. 34 621
Blackmore v. London & S. W. R. W. Co., 19 L. T. N. S. 5; L. R. 4 H. L. 610 49
—— v. Mile End, 9 Q. B. D. 451 832
Blackpool L. B. v. Bennett, 4 H. & N. 138 333
Blackie and Hamilton, Re, 25 U. C. R. 469 .... 331, *599*
—— v. Staples, 13 Grant 67 ..... *599*
Blaker v. Tillstone, [1894] 1 Q. B. 345 640
Blanchard v. Sun Fire Office, 6 Times L. R. 365. *504*
Blashill v. Chambers, 14 Q. B. D. 479 32

[The pages printed in *italics* are those at which the case is most fully referred to.]

B.

PAGE.

Bleakley v. Prescott, 7 O. R. 261; 12 A. R. 637 ... 825, 837, 838
Bliss v. Bocckh, 8 O. R. 451 ... 665, 836
—— v. Lilley, 3 B. & S. 128 ... 618, *777*
Blodgett v. Boston, 8 Allen (Mass.) 237 ... 835
Blow v. Russell, 1 C. & P. 365 ... 512
Board of Police, Brockville, Re, 3 O. S. 173 ... 234
Bodmin El. Case, 1 O'M. & H. 124 ... 258
Bogart v. Belleville, 6 C. P. 425 ... 375, 378, *677*, 680
—— v. Seymour, 10 O. R. 322 ... 379
Boley v. McLean, 41 U. C. R. 260 ... 570
Bollander v. Ottawa, 30 O. P. 7 ... *720*, 731, 732, 734, 735, 739, 745, 746, 747, 748, 750, 752
Bolton El. Case, 2 O'M. & H. 138 ... 260
Bond v. Commee, 16 A. R. 398 ... 1014
Bonin v. Montreal, Q. R. 15 S. C. 492 ... 838
Bonn v. Bell Tel. Co., 30 O. R. 696 ... *668*, 828, 863
Boom Co. v. Patterson, 98 U. S. 403 ... 464
Boord v. African Consol. Land Co. [1898] 1 Ch. 596 ... 295
Booth v. Howell, 53 J. P. 678 ... *771*
—— v. Moffatt, 11 Man. R. 25 ... 617
—— v. Ratte, 15 App. Cas. 188 ... 679, *680*
—— v. Sutherland, 10 C. L. J. N. S. 287 ... 260
Bootle Overseers, Re, 7 T. L. R. 219 ... 422
Borthwick and Ottawa, Re, 9 O. R. 114 ... 32, 328, 376, 382, 717, 719
Bostock v. North Staffordshire R.W. Co., 5 DeG. & Sm. 584 ... 772
Boston v. Lelievre, L. R. 3 P. C. 157 ... 33
—— v. Shaw, 42 Mass 130 ... 915
Boswell v. Yarmouth, 4 A. R. 333 ... 825, 829, 872
Bosworth v. Hearne, Stra. 1085 ... 739
Bothwell El. Case, 8 S.C.R. 626 ... 186, 192, 194, 195, 196
Boulton v. Blake, 12 O. R. 532 ... 922
—— v. Peterborough, 16 U. C. R. 380 ... 46, *357*, 375, 376, 377
Bourget v. The Queen, 2 Ex. C. R. 1 ... 807
Bourke v. Davis, 44 Ch. D. 110 ... 806
Bouverie v. Miles, 1 B. & Ad. 38 ... 660
Bouvier v. Chagnon, M. L. R. 4 S. C. 381 ... *702*
Bowen v. Canada S. R. W. Co., 14 A. R. 1 ... 462
—— v. Owen, 11 Q. B. 136 ... 544
Bower v. Peats, 1 Q. B. D. 321 ... 595
Boylan and Toronto, Re, 15 O. R. 13 ... *326*, 331, 381
Boyle v. Dundas, 25 C. P. 420; 27 C. P. 129 ... 825, 826, 827, 828
—— v. Sherborne Loc. Bd., 46 J. P. 675 ... 1017
Brace v. Union Forwarding Co., 32 U. C. R. 13 ... 678
Bradford El. Case, 1 O'M. & H. 37 ... 262
Bradley v. London & N. W. R.W. Co., 5 Ex. 799 ... *780*
Brainerd L.B. v. Boxton, 52 L.T.N.S. 99 ... 764, 765, *766*
Braithwaite v. Watson, 5 T. L. R. 331 ... 661
Bramston v. Colchester, 6 E. & B. 246 ... 32
Brand v. Metro. Stock Exch., Q. R. 16 S. C. 523; Q.R. 11 S. C. 303 ... 634
Brant v. Waterloo, 19 U. C. R. 450 ... 850
Brantford v. Grand River Navig. Co., 8 Grant 246 ... 39
Brash *q. t.* v. Taggart, 16 C. P. 415 ... 137
Brault v. Quebec, 16 Q. L. R. 291 ... 828
Breese v. Jerdein, 4 Q. B. 385 ... 512
Brett v. Rogers, [1897] 1 Q. B. 525 ... 644
Brewer, Re, 1 Ch. D. 409 ... 459
Bricklayers and Plasterers, Re, 2 Roll. Rep. 391 ... 339
Bridges v. North London R. W. Co., L. R. 6 Q.B. 377 ... 837
Bridgewater El. Case, 1 O'M. & H. 115 ... 260
Briggs v. Adams, Skinner 350 ... 327
Bright and Toronto, Re, 12 C. P. 433 ... 311, *314*, 745, 755
Brighton v. Auston, 19 A. R. 305 ... 902
Brine v. Great Western R. W. Co., 31 L. J. Q. B. 101; 2 B. & S. 402 ... 465
Brisette v. Pillsbury, 7 Rev. de Jur. 243 ... 457
Bristow v. Cornwall, 36 U. C. R. 225 ... 445
British Cast Plate Mfrs. v. Meredith, 4 T. R. 794 ... 614
British India, &c., Nav. Co. v. Commrs. of Inland Revenue, 7 Q. B. D. 165 ... 447
Brittain v. Kinnaird, 1 Br. & Bing. 432 ... 657
Britton v. Cummington, 107 Mass. 347 ... 833
Brontdway, &c., Church v. McAtee, 8 Bush. (Ky.) 508 ... 915
Brock v. Bowen, 7 U. C. R. 471 ... 37
—— and Toronto, Re, 45 U. C. R. 53 ... 32

B.

PAGE.

Brock v. Toronto, &c., R. W. Co., 17 Grant 425 ... 276, 347, *447*, 457, 957
—— v. Toronto, &c., R. W. Co., 37 U. C. R. 372 ... 873
Brockville El. Case, H. E. C. 126 ... 118, 119
—— Bd. of Police, Re, 3 O. S. 173 ... 234
—— Sch. Trustees and Brockville, 9 U.C.R. 302 ... 536, 777
Broder v. Saillard, 2 Ch. D. 692 ... 757, 765
Brodie and Bowmanville, Re, 38 U. C. R. 580 ... 330, 331, *333*, 343, *344*, 375, 382, *631*, 634, 638
Brogdin v. Bank of U. C., 13 Grant 544 ... 47
Bronte Harbour Co. v. White, 23 C. P. 164 ... *677*
Brook v. Jenny, 2 Q. B. 265; 6 Q. B. 323 ... 705
Brooke v. McLean, 5 O. R. 209 ... 613
—— v. Mitchell, 6 M. & W. 473 ... 486
Brooklyn Park Commrs. v. Armstrong, 45 N. Y. 234 ... 708
Brooks and Haldimand, Re 41 U. C. R. 381; 3 A. R. 73 ... 45, 849
Brophy and Gananoque, Re, 26 C. P. 290 ... 37, 331, 352, 377, 381
Broughton v. Brantford, 19 C. P. 434 ... *322*
—— v. Grey & Elma, 26 O. R. 604; 23 A. R. 601; 27 S. C. R. 495 ... 332
Brousseau v. Bourdon, Q. R. 13 S. C. 46 ... 665
Brown v. Belleville, 30 U. C. R. 373 ... 42
—— v. Bushey, 25 O. R. 642 ... 876
Brown v. Eastern, &c., R. W. Co., 22 Q. B. D. 391 ... 760
—— v. Edmonton, 23 S. C. R. 308 ... *811*
—— v. Lindsay, 35 U. C. R. 509 ... 42, 115
—— v. McNab, 20 Grant 179 ... 39, 441, 583, *584*
—— v. Mallett, 5 C. B. 599 ... 680
—— v. Sarnia, 11 U. C. R. 87 ... 650
—— v. Shevill, 2 A. & E. 138 ... 727
—— v. Vawser, 4 East 584 ... 486
—— and York, Re, 8 U. C. R. 596 ... 328, 865
Bruce v. Bruce, 2 B. & P. 229, *note* ... 309
—— v. Cromar, 22 U. C. R. 321 ... 37
Brumfit v. Bremner, 9 C. B. N. S. 1 ... 296
Brunet v. St. Joachim, Q. R. 14 S. C. 278 ... 825
Brunker v. Mariposa, 22 O. R. 120 ... *352*, 355, 381
Brussels v. Ronald, 4 O. R. 1; 11 A. R. 605 ... 962
Bryant v. Lefever, 4 C. P. D. 172 ... 756
—— and Pittsburg, Re, 13 U. C. R. 347 ... 46, 412, 698
Bryce v. Louth, 21 A. R. 199 ... 478, 650, 651
Buccleuch (Duke of) v. Metro. Bd. of Works, L. R. 5 H. L. 418 ... 462, 464
Buchanan v. Galt, 12 C. P. 73 ... 835, 866
—— v. Young, 23 C. P. 101 ... 617
Buchart v. Brant *et al*, Re, 6 C. P. 159 ... 383
Buckrose El. Case, 4 O'M. & H. 116 ... 193, 194, 195, 196
Buckton v. Higgs, 4 Ex. D. 174 ... 516
Budd v. Marshall, 5 C. P. D. 481 ... 644
Buffalo v. Webster, 10 Wend. (N. Y.) 100 ... 721
Buist v. McCombe, 8 A. R. 598 ... 621
Burford and Chambers, Re, 25 O. R. 603 ... *701*
Burgess v. Gray, 1 C. B. 578 ... 595
Burleigh v. Campbell, 8 C. P. 457 ... 873
—— v. Hales, 27 U. C. R. 72 ... 873
Burnard v. Wainwright, 19 L. J. Q. B. 423 ... 498
Burnett v. Berry, [1896] 1 Q. B. 641 ... *447*
—— and Durham, Re, 31 O. R. 262 ... 1016
Burns v. Atchison, 2 Kansas 454 ... 423
—— v. Toronto, 42 U. C. R. 560 ... 825, 826, 827, 835, 837, *838*, 839
Burr v. Gamble, 4 Grant 426 ... *701*
Burritt and Marlborough, Re, 29 U. C. R. 119 ... 456, *878*
Burton and Arthur, Re, 16 P. R. 160 ... 384
—— v. The Queen, 1 Ex. C. R. 87 ... 464
Bush v. Martin, 2 H. & C. 311 ... 423
—— v. Seabury, 8 Johns. (N. Y.) 418 ... 721
—— v. Trowbridge W. W. Co., L. R. 10 Ch. 459 ... 650
Butchers' Co. v. Bullock, 2 B. & P. 434 ... 964
—— v. Morey, 1 H. Bl. 370 ... 339
Butt v. Imperial Gas Co., L. R. 2 Ch. 158 ... 756
Butterfield v. Forrester, 11 East 60 ... 836
Buttrick v. Lowell, 1 Allen 172 ... 597, 598
Butz v. Muscatine, 8 Wall. (U.S.) 575 ... 423
Byrnes v. Bown, 8 U. C. R. 181 ... 817

C.

Cadieux v. Montreal Gas Co., 28 S. C. R. 382; [1899] A. C. 589 ... 694
Cadman v. Lubbock, 2 D. & R. 289 ... 514

[The pages printed in *italics* are those at which the case is most fully referred to.]

C.

PAGE.
Caesar v. Cartwright, 12 U. C. R. 441 375
Cahalane v. North Metrop. R. W. Co., 12 Times L. R. 611 506
Cahill v. Campbell, 105 Mass. 40 108
Caldwell and Galt, Re, 30 O. R. 378; 27 A. R. — 386, *389*, *392*, *394*, 783 1016
—— v. McLaren, 5 A. R. 363; 8 S. C. R. 435; 9 App. Cas. 392 ..... 627, 682
—— v. Tilsonburg, 13 A. R. 233 793
Caledon v. Caledon, 12 C. P. 301 777
Caledonian R. W. Co. v. Lockhart, 1 Macq. 808 491
—— v. Ogilby, 2 Macq. 229 461
—— v. Walke's Trustees, 7 App. Cas. 259 ..... 461, 462
Calgary and Steen, Re, 18 C. L. T. 282 32
Cambridge v. Herring, 1 Lutw. 405 327
Cameron and East Nissouri, Re, 13 U. C. R. 190 ..... 32, 328, 334, 380, 394
—— and Lanark, Re, 20 A. R. 372 ..... *793*
—— v. Moncton, 29 N. B. Rep. 372 ..... 826, 832
—— v. Wait, 27 C. P. 475; 3 A. R. 175 ..... 44, 876, 877
—— v. Wigle, 24 Grant 8 472
Campbell v. East London W.W. Co., 26 L. T. N. S. 475 694
—— v. Elma, 13 C. P. 296 331
—— and Lanark, Re, 20 A. R. 372 ..... 367, 957
—— and Kingston, Re, 14 C. P. 285 ..... 330, 331, 332, *334*, 380, *877*, 727, 872
—— and Southampton, Re, 34 C. L. J. N. S. 197; 18 C. L. T. 119 ..... 380, 860
—— v. York & Peel, 26 U. C. R. 625; 27 U. C. R. 138 ..... *86*
Canada Atlantic R. W. Co. v. Cambridge, 11 O. R. 392; 14 A. R. 299; 15 S. C. R. 219 ..... 44, 46, 332, *358*, 366, 372, *374*, 956, 957
—— Atlantic R. W. Co. and ——, Re, 3 O. R. 291 957
—— v. Ottawa, 8 O. R. 183, 201; 12 A. R. 234; 12 S. C. R. 365 ..... 44, 46, 332 ..*358*, 347, 352, *354*, *372*, 386, *389*, 956, 957 1015
—— Central R. W. Co. and Brown, Re, 35 U. C. R. 390 ..... 45, 327
—— Co. v. Middlesex, 19 U. C. R. 93 ..... 46, 391, *394*
—— Co. v. Oxford, 9 U. C. R. 567 46
—— Permt. L. & S. Co. v. Denore, 11 Man. Rep. 120 ..... 37, *86*
—— Southern R.W. Co., and Norvall, Re, 41 U. C. R. 195 ..... 468, 471, 499
Canadian Loan Co. v. Dysart, 9 O. R. 495; 12 A. R. 80 46
Canadian Pacific R. W. Co. v. Chatham, 25 O. R. 465; 22 A.R. 330; 25 S. C.R 698 41, 42, 423
—— v. Notre Dame, &c., Q. R. 7 Q. B. 121; [1899] A. C. 367 666
—— v. Parke, 6 B. C. R. 6; [1899] A. C. 575 759
—— v. Quebec, Q. R. 8 Q. B. 246; 30 S. C. R. 74 1015
—— and Toronto, Re, 23 A. R. 250; 26 S. C. R. 682 ..... 332, *915*, *927*
—— v. Vancouver, 2 B. C. R. 206 811
Cannon v. Toronto Corn Exchange, 27 Grant 23 276
Canterbury El. Case, Knapp & Ombler's Election Cases, 131 23
Capon v. Toronto, 26 O. R. 178 ..... 460, *945*
Carey v. Toronto, 11 A. R. 416; 14 S. C. R. 172. 807
Cardwell v. Newquay L. B., 39 J. P. 742 766
Cardiff Manure Co. v. Cardiff, 54 J.P. 66 ..... 764, 765, *766*
Carleton v. Ottawa, 25 C. P. 137 775
—— and Ottawa, Re, 24 A. R. 400; 28 S. C. R. 606 ..... 65, 545, *552*, *556*, 557
Carlill v. Carbolic, &c., Co., [1892] 2 Q. B. 484 .. 803
Carlisle v. Blanire, 8 East 487 37
Carpenter and Barton, Re, 15 O.R. 55 ..... 33, 331, 380, *412*
Carrick v. Johnson, 26 U. C. R. 69 814
Carriers Co. v. Corbett, 2 Dr. & Sm. 355 42
Carroll v. Perth, 10 Grant 64 ..... 376, 378
—— v. Plympton, 9 C. P. 345 595
Carstairs v. Taylor, L. R. 6 Ex. 217 ..... 616, 643
Carter v. Sullivan, 4 C. P. 298 82
Cartwright v. Gray, 12 Grant 399 ..... *765*
Carty v. London, 18 O. R. 122 ..... 828, 830
Carus-Wilson v. Greene, 18 Q. B. D. 7 502
Cashel El. Case, 1 O.M. & H. 288 200
Cassidy v. Belleville (not reported) 544
Cassils v. Montreal, Q. R. 14 S. C. 269 1016
Casterton Estate, Re, 3 Times L. R. 22 502

C.

PAGE.
Caston v. Consol. Plate Glass Co., 26 A. R. 63; 29 S. C. R. 621 595
Castor v. Uxbridge, 39 U. C. R. 113 ..... 826, 828, 829, 835, 837
Caswell v. St. Mary's, &c., Road Co., 28 U. C. R. 247 ..... 825, 826, 839
Centre Wellington El. Case, H. E. C. 579 261
Chamberlain and Stormont, &c., Re, 42 U. C. R. 279; 45 U. C. R. 20 ..... 378, 781, *782*, 784
—— v. Turner, 31 C. P. 469 ..... 379, *428*
—— v. West End of L. R. W. Co., 2 B. & S. 617 466
Chambers and Burford, Re, 25 O. R. 276 ..... 328, 860, 861, 865
Chaplin v. Woodstock Sch. Bd., 16 O. R. 728 ..... 226, 228, 234
Chapman v. Cripps, 2 F. & F. 864 810
Charles v. Finchley L. B., 23 Ch. D. 767 ..... 757, 763
—— v. Lewis, Re, 2 C.L. Chamb. 171 ..... 121, *125*, 237, 252
Charleston v. Goldsmith, 12 Rich. (S. C.) 470 526
Charlesworth v. Ward, 31 U. C. R. 94 32
Charlevoix El. Case, 1 S. C. R. 145 265
Chase v. London Co. Council, 14 T. L. R. 772
Chastey v. Ackland, [1895] 2 Ch. 389 756
Chatham v. Houston, 27 U. C. R. 550 47
Chauntler v. Robinson, 4 Ex. 163 643
Chaz v. Les Cisterciens, &c., 12 Man. R. 330 617
Cheetham v. Manchester, L. R. 10 C. P. 249 610
Chelsea v. Stoddard, 43 J. P. 782 811
Cheltenham El. Case, 1 O.M. & H. 64 ..... 261, 265
Cheminant v. Thornton, 2 C. & P. 51 514
Cheney v. Cameron, 6 Grant 623 807
Chicago v. Keefe, 114 Ill. 222 834
Chicester v. Lethbridge, Willes 71 760
Chief Superintendent of Education. See under names of applicants.
Chisholm v. Doulton, 22 Q. B. D. 736 ..... 761, *768*
—— v. Potter, 11 C. P. 165 453
Christie v. Davey, [1893] 1 Ch. 316 ..... 756, *758*, 765, 770, 772
—— v. St. John, 20 N. B. Rep. 211; 21 S. C. R. 1 ..... *512*, 513
—— and Toronto Jcn., Re, 24 O. R. 443; 22 A. R. 21; 25 S. C. R. 551 ..... *467*, 493, *498*, *499*, 501
Christmas v. Eicke, 6 B. & L. 156 245
Christopher v. Croll, 16 Q. B. D. 66 420
Choate and Hope, Re, 16 U. C. R 424 ..... 809, 868
Church q. t. v. Richards, 6 U. C. R. 562 ..... *743*
Cirencester El. Case, 4 O.M. & H. 194 ..... 186, 193, 194, 195, 196, 210
City of Glasgow U. R. W. Co. v. Hunter, L. R. 2 H. L. Sc. 78 466
——Toronto Leader Lane Arbitration, Re, 13 P. R. 166 ..... *502*
Clacton L. B. v. Young, [1895] 1 Q. B. 395 893
Clapp v. Haight, 19 U. C. R. 94 876
—— v. Thurlow, 16 C. P. 533 ..... 46, 331, 380
Claridge v. Union S. S. Co., [1894] A. C. 185 505
Clark v. Davenport, 14 Iowa 494 422
—— v. Denton, 1 B. & Ad. 92 339
—— v. Hoggins, 11 C. B. N. S. 545 ..... *770*
—— and Howard, Re, 14 O.R. 576; 16 A.R. 72 ..... 332, 380
—— v. LeCren, 9 B. & C. 52 339
—— and Palmerston, Re, 6 O. R. 616 ..... 45, 392
—— v. Stanford, L. R. 6 Q. B. 357 528
—— v. St. Catharines, 10 P. R. 205 47
Clarke v. Cuckfield Union, 21 L. J. Q. B. 349 42
—— v. Garrett, 28 C. P. 75 206
—— v. Imperial Gas Co., 4 B. & Ad. 315 323
—— v. Palmerston, 6 O. R. 616 422
—— v. Searle, 1 Esp. 25 737
Clayards v. Dethick, 12 Q. B. 439 837
Claydon v. Green, L. R. 3 C. P. 511 33
Cleaver v. Bacon, 4 T. L. R. 27 766
Clement and Dixon, Re, 17 P. R. 455 ..... 487, 503
—— v. Wentworth, Ex rel., 22 C. P. 300 ..... 332, 380, 957
Clementson v. Mason, L. R. 10 C. P. 209 ..... 191, 198
Clensford v. Demorest, 7 Gray (Mass.) 1 298
Clendenan v. Blatchford, 15 O. R. 285 811
Clendenning v. Turner, 9 O. R. 34 679
Cleveland v. Bangor, 87 Maine 259 669
Cline v. Cornwall, 21 Grant 120 656
Close v. Woodstock, 23 O. R. 93 650
Clothier v. Webster, 12 C. B. N. S. 790; 31 L. J. C. P. 310 465

[The pages printed in *italics* are those at which the case is most fully referred to.]

C.

PAGE.

Cloutier, Re, 11 Man. Rep. 229 .....*328*, 329, 377, *379*
Clowes v. Staffordshire, &c., W. W. Co., L. R. 8 Ch. 125 .....458, 759
Cochrane v. Hislop, 3 C. P. 440 9
Cockermouth El. Case, 2 P. R. & D. 166 265
Coe and Pickering, Re, 24 U. C. R. 439.. 331, 353, 378
Coggins v. Bennett, 2 C. P. D. 568 .....645, 659
Cozhlan v. Ottawa, 1 A. R. 54 651
Cogswell v. Lexington, 4 Cush. 30 825
Colbeck v. Brantford, 21 U. C. R. 276... 598, 826, 830
Colborne, Ex p., L. R. 11 Eq. 478 447
—— and Niagara Falls, Re, 9 O. R. 168 ..... 45, 378, 381, *698*
Colchester v. Brooke, 7 Q. B. 339 .....678, 769
Cole v. Green, 6 M. & G. 872 296
Coleman, Re, 9 C. P. 146 382
—— v. Kerr, Re, 27 U. C. R. 5 .....536, 777
Coll v. Toronto R. W. Co., 25 A. R. 55 596
Collingwood Sch. Tr. v. Collingwood, 17 U.C.R. 133 777
Collins v. Collins, 28 L. J. Ch. 184 ..... *502*
—— and Ottawa Water Commrs, 42 U. C. R. 378 490
—— v. Swindle, 6 Grant 282 .....109, *115*
Colmutt and Colchester North, Re, 13 P. R. 253 376
Colquhoun and Berlin, Re, 44 U. C. R. 631 ..... 486, *594*, 499
Commrs. of Inland Revenue v. Glasgow & S. W. R. W. Co., 12 App. Cas. 315 463
Commonwealth v. Arrison, 15 Serg. & Rawle (Pa.) 130 276
—— v. Curtis, 9 Allen (Mass.) 266 673
—— v. Passmore, 1 Serg. & Rawle, 217 656
—— v. Pittsburg, 34 Pa. St. 496 423
Compagnie de Pulpe, &c. v. Agnes, (Village of) Q. R. 7 Q.B. 339 457
Conger and Peterborough, Re, 8 U. C. R. 349 ..... 9, *375*, 382
Connee v. Canadian P. R. W. Co., 16 O. R. 639 504
Connell v. Prescott, 20 A. R. 49; 22 S. C. R. 147 39
Connor v. MacPherson, 18 Grant 607 428
—— v. McCormack, 23 C. P. 271 490
—— v. Middagh, 16 A. R. 356 ..... 46, 374, 379, *510*, 511, 513, 598, 704
Cook v. Bath, L. R. 6 Eq. 177 761
—— v. Ipswich L. B., L. R. 6 Q. B. 431 893
Cooke and Norwich, Re, 18 O. R. 72...46, 331, 380, *386*
Coombs v. Middlesex, 15 U. C. R. 367.....548, *549*, 553
Cooper v. Marshall, 1 Burr. 259 766
—— v. Metro. Bd. of Wks., 25 Ch. D. 472 463
—— v. Slade, 6 H. L. Cas. 746 .....259, 262
—— v. Wandsworth Rd. of Wks., 14 C. B. N. S. 180 .....610, 660
—— v. Wellbanks, 14 C. P. 364 579
—— v. Woolley, L. R. 2 Ex. 88 769
Copeland v. Blenheim, 9 O. R. 19 .....826, 828, 837
Corbett v. Taylor, 23 U. C. R. 454 427
Cornford v. Carlton Bank, [1899] 1 Q.B. 392..511, 1013
Cornwall El. Case, H. E. C. 547; 10 C. L. J. N. S. 313 .....259, 260 261
——, H. E. C. 647; 11 C. L. J. N. S. 81 259
——, H. E. C. 803 258
—— and Cornwall W. W. Co., Re, 29 O. R. 350 ..... *459*, 476, 691
—— W. W. Co. v. Cornwall, 26 O. R. 605 691
———, 30 O. R. 81; 27 A. R. 691
Cornwallis v. Canadian Pacific R. W. Co., 19 S. C. R. 702 85
Cortis v. Kent W. W. Co., 7 B. & C. 314 422
Coteau Landing v. Filiatrault, Q. R. 9 S. C. 497 *373*
Cotter v. Darlington, 11 C. P. 265 378
Cotton v. Hamilton, &c. R. W Co., 14 U. C. R. 87 457
—— v. Kadwell, 2 Nev. & M. 399 535
Coughlan v. Victoria, 3 B. C. R. 57 .....*109*, 234
Coupland v. Nottawasaga, 15 Grant 339 781
Coventry (El. Case), 15 Com. Jour. 276 222
—— (No. 2), 20 Com. Jour. 63 222
——, 1 O'M & H. 97 ..... 258, 261
Coverdale v. Charlton, 4 Q. B. D. 104 .....818, *822*
Cowans v. Marshall, 28 S. C. R. 161 835
Cowley v. Newmarket L. B., (1892) A. C. 345 ...39, 833
Cowper-Essex v. Acton, 14 App. Cas. 153 464
Cox v. Ambrose, 7 Times L. R. 59 109
—— v. Anderson, 60 L. J. Q. B. 114 112

C.

PAGE.

Cox v. Davis, [1898] 2 Q. B. 202 159
—— v. Hamilton, &c., Co., 14 O. R. 300 512
Coyne and Dunwich, Re, 9 U. C. R. 309 382
Craig v. Rankin, 10 C. P. 186 332
Crampton v. Ridley, 20 O. R. D. 48 508
Crandell v. Mooney, 23 C. P. 212 .....678, 679
Crawford v. Beattie, 39 U. C. R. 13 557
—— v. Cobourg, 21 U. C. R. 113 ..... *759*
—— v. People, 82 Ill. 557 960
Credit Foncier v. Loranger, Q. R. 13 S. C. 353 474
—— and Toronto, Re, not reported (1897) 468, 560
Credit Valley R. W. Co. v. Sprague, 24 Grant 231 468
Crewson v. G. T. R. W. Co., 27 U. C. R. 68 653
Cribbin and Toronto, Re, 21 O. R. 325 ..... *378*, 330, 381, 709
Crossdill v. Radcliffe, 5 L. T. N. S. 834 662
Crott v. Alison, 4 R. & M. 590 596
—— and Brooke, Re, 17 S. C. R. 269 347
—— v. London & N. W. R. W. Co., 3 B. & S. 436 466
—— v. Peterborough, 5 C. P. 35, 141 ..... 334, 460, *866*, 867, 868
—— and Peterborough, Re, 17 O.R. 522; 17 A.R. 21 .....221, 223, 380, 713
Crook v. Seaford, L. R. 6 Ch. 551 42
Crooks v. Williams, 39 U. C. R. 430 508
Croome and Brantford, Re, 6 O. R. 188 .....
Cross, Re, 1 Sim. N. S. 260 ..... 41, 328, 331, 334, 381
—— v. Ottawa, 23 U. C. R. 288 475
Crossley v. Lightowler, L. R. 3 Eq. 279; L. R. 2 Ch. 478 757
Crouch v. Credit Foncier, L. R. 8 Q. B. 374 447
Croukhite v. Somerville, 3 U. C. R. 129 513
Crowder v. Tinkler, 19 Ves. 617 618
Crowe v. Steeper, 46 U. C. R. 87 .....327, 620
Crowhurst v. Amersham, &c., 4 Ex. D. 5 705
Crozier v. Cundey, 6 B. & C. 232 535
Cruickshank and Corby, Re, 30 C. P. 466 489
Crump v. Lambert, L. R. 3 Eq. 409; 17 L. T. N. S. 133 .....757, 768
Cubitt v. Maxse, L. R. 8 C. P. 704 812
Cuckfield Burial Board, Re, 19 Beav. 153 472
Cudden v. Eastwick, 6 Mod. 124 .....327, 671
Cullerton v. Miller, 26 O. R. 36 679
Cumberland v. Kearns, 18 O. R. 151; 17 A. R. 281 .....104, 400, *945*
——Tel. Co. v. United Electric Co., 42 Fed. Rep. 273 758
Cummings and Carleton, Re, 25 O. R. 607; 26 O. R. 1 .....402, 478, *483*, 485, 847, *850*
Cundy v. LeCocq, 13 Q. B. D. 207 217
Cunningham and Almonte, Re, 21 C. P. 459 .....85, 332, 338
Curran v. North Norfolk, 8 Man. Rep. 256 321

D.

Danaher v. Peters, 17 S. C. R. 44 ..... *109*
Danard v. Chatham, 24 C. P. 590.....45, *651*, *681*
Danford v. Taylor, 20 L. T. N. S. 483 633
Danger v. London St. R. W. Co., 30 O. R. 403... 837
Daniels v. Burford, 10 U. C. R. 478 ..... 330, 331, 334, 375, 378, 381, 599
—— v. Potter, 4 C. & P. 262 664
Danks, Ex p., Re Farley, 2 Deg. M. & G. 934.. 514
Dansey v. Richardson, 3 E. & B. 144 108
Darby v. Crowland, 38 U. C. R. 338...334, 598, 651, 653
—— v. Toronto, 17 O. R. 554 .....44, 45, 351
Dare Valley R. W. Co., Re, L. R. 4 Ch. 554 503
Dargan v. Mobile, 31 Ala. 469 597
Darlington, etc., Co. v. Harding, 7 Times L. R. 160 ..... *548*, 549
Dartmouth v. The Queen, 14 S. C. R. 45 505
——College v. Woodward, 4 Wheat. 636 423
Daubney v. Cooper, 10 B. & C. 237 ..... 38, 43
Davenant v. Hurdis, Moore 584 274
Davidson v. Montreal, Q. R. 7 Q. B. 1; 28 S. C. R. 421 ..... 43, 339
—— v. The Queen, 6 Ex. C. R. 51 .....059, 719
Davies and Clifton, Re, not reported 466
—— v. Lord Kensington, L. R. 9 C. P. 723....221, *223*
—— v. Mann, 10 M. & W. 546 666
—— v. Morgan, 2 C. & J. 237 836
—— v. Morgan, 2 C. & J. 237 245

[The pages printed in *italics* are those at which the case is most fully referred to.]

D.

PAGE.
Davies v. Stephens, 7 C. & P. 570 ..... 810, 811
—— v. Toronto, 15 O. R. 354 45
—— v. William, 16 Q. B. 546 760
Davignon v. Stanbridge, Q. R. 14 S. C. 116 .....
Davis v. Birdsall, 2 U. C. R. 199 ..... 828, 836, *840*
—— and Clifton, Re, 8 C. P. 236. 331, 336, 380, *757*, 759
—— v. Commercial Bank, &c., 32 Nova Sc. R. 366 489
—— v. Greenwich, [1895] 2 Q. B. 217 621
—— v. Hewitt, 9 O. R. 435 895
—— v. Montreal, 27 S. C. R. 539 635
—— and Toronto, Re, 21 O. R. 243 .. 34, 378, 381, 459
—— v. Toronto 15 O. R. 33 322
—— v. Whitney, &c., D. C., 15 Times L. R. 275 351
Davison v. Gill, 1 East 64 486
Daw v. Ackerill, 25 A. R. 37 61
—— v. Metropolitan Bd. of Works, 31 L. J. C. P. 223; 12 C. B. N. S. 161 423
Dawdy, Re, 15 Q. B. D. 426 ..... 32, 581, 582
Dawes v. Hawkins, 8 C. B. N. S. 848 ..... 502, 504
Dawson v. Sadler, 1 Sm. & Stu. 537 ..... 809, 810, 812
—— v. Sault Ste. Marie, 18 O. R. 556 .... *780*, *783*, 784
Day and Storrington, Re, 38 U. C. R. 528 .. 331, 378, 380
Deadman v. Ewen, 27 U. C. R. 176 269
Dean q. t. v. King, 4 B. & Al. 517 741
—— v. McCarty, 2 U. C. R. 448 617
Dearden v. Townsend, L. R. 1 Q. B. 10 328
Defoe v. Toronto, 29 O. R. 459; 26 A. R. 315 .. *624*, *632*
De La Chevrotiere v. Montreal, 12 App. Cas. 149 822
De La Haye and Gore of Toronto, Re, 2 C. P. 317, 3 C. P. 23 ..... 46, *375*, 380, 776, 778
Dempsey v. Doughertv, 7 U. C. R. 313 512
—— v. Toronto, 6 U. C. R. 1 322
Denne and Peterborough, Re, 10 O. R. 767 ..... 332, 380, 431
Dennis v. Hughes, 8 U. C. R. 444 .... 328, 377, 858, 865
Denton v. Strong, 9 Q. B. 117 503
Derby v. Bury, &c., Commrs., L. R. 4 Ex. 222 619
—— and S. Plantagenet Bd. of Health, Re, 19 O. R. 51 45
Derbyshire v. Derby, [1896] 2 Q. B. 297 762
Derbyshire v. Leigh, [1896] 1 Q. B. 551 502
Derinzy v. Ottawa, 15 A. R. 712 650
Derochie v. Cornwall, 23 O.R. 355; 21 A.R. 279; 24 S. C. R. 301 ..... 826, 827, 830
Despatie, Ex p., 9 Legal News 387 636
DeTeyron v. Waring, 1 T. L. R. 414 661
Deutsche Springstoff v. Briscoe, 20 Q.B.D. 177 .. 479
Devanney v. Dorr, 4 O. R. 206 428
Devlin and Hamilton & L. E. R. W. Co., Re., 40 U. C. R. 160 ..... 469, 461, 406
Dewey v. White, M. & M. 56 614
Dickinson v. Shee, 4 Esp. 68 514
Dickson and Galt, Re, 9 U. C. R. 257 ..... 331, 380
—— v. Kearney, 20 Nova Sc. R. 95; 14 S.C.R. 743 815
Dillon v. O'Brien, L. R. 20 Ir. C. L. 300 534
Dimes v. Petley, 15 Q. B. 276 760
Dinham v. Bradford, L. R. 5 Ch. 519 502
Dinn v. Blake, L. R. 10 C. P. 388 ..... 490, *498*
Direct Cable Co. v. Dominion Teleg. Co., 28 Grant 648; 8 A. R. 416 ..... 485, 504
Dixon v. Baltimore & P. R. W. Co., 1 Mackey 78 459
—— v. Birch, L. R. 8 Ex. 135 108
—— v. Metrop. Bd. of Works, 7 Q. B. D. 418 .. 758
Doak, Exp., 19 C. L. T. 405 968
Dobson v. Blackmore, 9 Q. B. 991 679
—— v. Groves, 6 Q. B. 637 490
Dodwell v. Oxford, 2 Vent. 33 333
Doe v. Benham, 7 Q. B. 979 32
—— v. Bramwell, 3 Q. B. 307 517
Doe d. Anderson v. Todd, 2 U. C. R. 82 ..... 533, 790
—— Hay v. Hunt, 11 U.C.R. 367 118
—— Hutchinson v. Manchester &c., R. W. Co., 14 M. & W. 687 457
—— McGill v. Langton, 9 U. C. R. 91 ..... 9, 424
—— Marr v. Marr, 3 C. P. 36 525
—— Patterson v. Davis, 5 O. R. 491 118
—— Robinson v. Clarke, 1 U. C. R. 37 118
—— Vancott v. Read, 3 U. C. R. 244 583
Doggerell v. Pokes, Moore (K.B.) 411 341
Doherty and Toronto, Re, 25 U. C. R. 409 .. 331, 776
Dolsen, Re, 13 P. R. 84 ..... 472, *473*
Donaldson v. S. Shields, [1898] W. N. 176; [1899] W. N. 6 ..... *869*

D.

PAGE.
Donkin v. Leeds Canal Co., 9 Times L. R. 192 503
Donley v. Holmwood, 4 A. R. 555 33
Donnelly and Clarke, Re., 38 U. C. R. 599 331
—— v. Graham, 24 L. R. Ir. 127 121
Donoho v. Vulcan, &c., Co., 7 Mo. App. 447; 75 Mo. Sup. Ct. 401 834
Donovan v. Laing, [1893] 1 Q. B. 629 595
Dore v. Pecorini, 31 Sol. Jour. 727 757
Douglas, Re, 3 Q. B. 825 764
——, The, 7 P. D. 151 680
—— v. Fox, 31 C. P. 140 ..... *764*
—— v. Patrick, 3 T. R. 683 514
Douglass v. Maher, 11 Q. L. R. 294 826
Dover v. Twombly, 42 N. H. 59 298
Down El. Case, 3 O'M. & H. 122 265
Downing v. Capel, L. R. 2 C. P. 461 ..... 532, 533
Doyle v. Dufferin, 8 Man. Rep. 286 ..... *85*
Drake v. Sault Ste. Marie, &c., 25 A. R. 254 .. 678, 679
Drennan v. Kingston, 23 A. R. 406; 27 S. C. R. 46 ..... 826, *827*, 838, 839
Drew v. Drew, Patterson's Appeals (H. L. 1855) 443 490
Dreyfus and Paul, Re, 9 Times L. R. 2 S. 37 Sol. Jour. 357 596
Drinkwater v. Deakin, L. R. 9 C. P. 626 112
Driscoll v. St. John, 29 N. B. Rep. 150 839
Drogheda (Election Case), 1 O'M. & H. 252 153
——, 2 O'M. & H. 201 152
Drope and Hamilton, Re, 25 U. C. R. 363 ... 378, 800
Druce's Case, 22 J. P. 319 741
Drummond R. W. Co. v. Olliver, Q. R. 7 Q. B. 41 465
Drury v. The Queen, 6 Ex. C. R. 204 406
Duck v. Toronto, 5 O. R. 295 ..... 651, 828
Duclos v. Ely, 5 Rev. de. Jur. 177 828
Dudley, Re, 8 Q. B. D. 86 650
Dufresne v. McCrea, 13 Rev. Leg. 606 828
Dumfries v. Murphy, 11 Ct. of Sess. Cas. (4th Ser.) 694 ..... *769*
Duncan v. C. P. R. W. Co., 21 O. R. 355 621
Dundas El. Case, H. E. C. 205 ..... 258, 261
Dungarvan El. Case, 2 P. R. & D. 324 259
Dunlop v. Canada Central R. W. Co., 45 U.C.R. 74 ..... *473*
—— and Douro, Re, 18 U. C. R. 227 332
—— v. York, 16 Grant 216 ..... *475*, 810, 876
Dunn v. Birmingham Canal Co., L. R. 8 Q.B. 42 759
Dunston v. Imperial Gas Light Co., 3 B. & Ad. 125 334
Dwyer v. Portland, 20 N. B. Rep. 423 833
Dwyre v. Ottawa, 25 A. R. 121 ..... *445*
Dyer v. Munday, [1895] 1 Q. B. 742 596
Dyson v. Mason, 16 Cox C. C. 575; 22 Q. B. D. 351 633

E

Eads v. Williams, 24 L. J. Ch. 531 491
Eagle v. Charing Cross R. W. Co., L. R. 2 C. P. 638 ..... 463, 468, 486
Earls v. Victoria, 2 B. C. R. 156 ..... 39, *544*
East Clare El. Case, 4 O'M. & H. 163 .... 152, 190, 199
Eastern Counties R. W. Co. v. Dorling, 5 C. B. N. S. 821 679
East Middlesex El. Case, 1 Ont. El. Cas. 250 258
—— Nissouri v. Horseman, 16 U. C. R. 556; 18 U. C. R. 31 ..... 47, 441, *445*
—— —— v. ——, 16 U. C. R. 576; 9 C.P. 189 ..... 30, 47, 70, 301, 331, 338, 509
—— Northumberland El. Case, 11 C. L. J. N. S. 328; H. E. C. 387 ..... 260, *265*
——, H. E. C. 577; 1 Ont. El. Cas. 434 260
Easton v. Richmond, &c., L. R. 7 Q. B. 69 660
East Peterborough El. Case, H. E. C. 245 260
—— Saginaw Mfg. Co. v. East Saginaw, 2 Am. Rep. 82 431
—— Simcoe El. Case, 1 Ont. El. Cas. 291 260
—— Toronto v. York, 16 O. R. 566 ..... *70*
—— —— El. Case, H. E. C. 70 ..... 261, *262*, 266
—— York El. Case, 32 C. L. J. N. S. 481 .. 192, 194, 195
—— Zorra v. Douglas, 17 Grant 462 ..... *299*, 301
Eckersley v. Mersey Docks, etc. Bd., [1894] 2 Q.B. 667 503
Eckstein v. Reynolds, 7 A. & E. 80 ..... 514, 515
Eddlestone v. Barnes, 1 Ex. D. 67 961

[The pages printed in *italics* are those at which the case is most fully referred to.]

E.

PAGE.
Edgar v. Macee, 1 O. R. 287 296
Edinburgh Life Ass. Co. v. St. Catharines, 10 Grant 379 ..... 376, 411, *512*
Edwards v. L. & N. W. R. W. Co., L. R. 5 C. P. 545 596
—— v. Midland R. W. Co., 6 Q. B. D. 287 .. 511, 596, 1013
—— v. Whitehurst, 5 H. & N. 531 235
Egerly's Case, 3 Salk. 183 670
Elderslie v. Palsley, 8 O. R. 270 423
Eldon and Ferguson, Re, 3 U. C. L. J. 207 .. 444, 445, 479
Elias v. Nightingale, 8 E. & B. 608 767
Elizabethtown v. Brockville, 10 O. R. 372 ... 46, 1018
Elkins v. Bruce, 30 U. C. R. 48 86
Elliott, Re, 11 Man. Rep. 358; 16 C. L. T. 234 . 329, 332
—— v. Melendie, L. R. 7 Q. B. 429 618
—— v. S. Devon R. W. Co., 2 Ex. 729 49
Ellis v. Hiles, 23 S. C. R. 429 ..... 650, 898
—— v. Nott-Bower, 13 T. L. R. 35 658
—— v. Sheffield Gas Co., 22 Q. B. 767 595
Ellis and v. Bray, 9 L. T. N. S. 739 491
Ellwood v. Bullock, 6 Q. B. 28 ..... 328, 333, 811
Elsevir Sch. Trustees v. Elzevir, 12 C. P. 548 .. 777
Emerson v. Secy. for War, 9 Times L. R. 470 .. 504
Employers' Liab. Corpn. v. Taylor, 29 S. C. R. 104 840
England v. Davidson, 11 A. & E. 856 803
Englehart v. Farrant, [1897] 1 Q. B. 240 ..... 836, 836
Erdman v. Walkerton, 15 P. R. 12 844
Erlington v. Metropolitan Dist. R. W. Co., 19 Ch. D. 510 ..... 34, 650
Erskine v. Adeane, L. R. 8 Ch. 756 620
Erwin v. Townsend, 21 C. P. 330 ..... 358, 366
Espley v. Wilkes, L. R. 7 Ex. 298 807
Essex, v. Park, 11 C. P. 473 298
—— and Rochester, Re, 42 U. C. R. 523 482
—— v. Strong, 8 U. C. L. J. 15; 21 U. C. R. 149 297
Ethier v. Ewing, Q. R. 12 S. C. 134; 29 S. C. R. 446 503
Euld v. Kemp, 3 O. S. 374 813
Evans v. Judkins, 4 Camp. 156 514
—— v. Trenton, 4 Zabr. (N. S.) 766 323
Everett v. Council Bluffs, 46 Iowa 66 657
—— v. Grapes, 3 L. T. N. S. 609 792
Ewing v. Toronto, 29 O. R. 197 ..... 826, 829
—— v. ——, 18 P. R. 137 844
Exeter v. Starre, 2 Show. 158; 3 Lev. 116 315

F.

Fairbairn and Sandwich East, Rs., 32 U. C. R. 582 ..... 375, 579
Fairbanks v. Douglas, 5 Man. Rep. 41 234
—— v. Yarmouth, 24 A. R. 273 ..... 826, 829, 839
Fairclough v. Whitmore, [1895] W. N. 52 633
Falconer v. The Queen, 2 Ex. C. R. 82 665
Falle v. Tilsonburg, 23 C. P. 167 857
Fanagan v. Kernan, 8 L. R. Ir. 44 108
Fanshaw v. London, &c., Dairy Co., 4 T. L. R. 694 822
Fareham L. B. v. Smith, 7 T. L. R. 443 ..... 758, 765
Farlinger and Morrisburg, Re, 16 O. R. 722 ..... 46, 381, 416, 417
Farlow v. Stevenson, 15 T. L. R. 249; [1899] W. N. 39 [2], 233; [1900] 1 ch. 128 ..... 644, 1017
Farquhar v. Hamilton, 20 A. R. 86 503
—— v. Toronto, 10 C. P. 379 ..... 331, *375*, 380, *723*
Farquharson v. Imperial Oil Co., 29 O. R. 206; 30 S. C. R. 188 ..... 627, *682*
Farrell v. London, 12 U. C. R. 343 ..... 40, 595, 651
Fazakerley v. Wiltshire, 1 Stra. 462 ..... 50, 333
Fearnley v. Ormsby, 4 C. P. D. 136 215
Featherston v. Lachine, Q. R. 9 S. C. 37 838
Fenelon Falls v. Victoria R. W. Co., 29 Gr. 4 39, 819
Fenna v. Clare, [1895] 1 Q. B. 199 ..... *622*
Fennell and Guelph, Re, 24 U. C. R. 238 ..... 331, 333
..... *343*, 344, *723*, *726*, 728, 964, 968
Fenton and Simcoe, Re, 10 O. R. 27 .. 50, 51, *375*, 377, 380
—— and York Board of Audit, 31 C. P. 31, .. 566, 572
Ferguson, Ex p., L. R. 6 Q. B. 280 33
—— v. Roblin, 17 O. R. 107 596
—— v. Southwold, 27 O. R. 66 ..... 657, 664, 705, 838
—— and Howick, Re, 44 U. C. R. 41 ..... 377, 380
Fernandez, Ex p., 10 C. B. N. S. 3 525
Ferrier v. Trepannier, 24 S. C. R. 86 664
Ferris and Eyre, Re, 13 O. R. 395 490

F.

PAGE.
Featherston v. Cooper, 9 Ves. 67 790
Fetterly v. Russell & Cambridge, 14 U. C. R. 433. 42
Field v. Newport, &c., R. W. Co., 3 H. & N. 409. 511
Fielding v. Rhyl, &c., Comurs., 3 C. P. D. 272 .. *606*, *611*
Fillley v. Combe, 2 M. & W. 677 613
Filliter v. Phippard, 11 Q. B. 347 617
Finlay v. Miscampbell, 26 O. R. 29 832
Fisher v. Prowse, 2 B. & S. 770 811
—— v. Vaughan, 10 U. C. R. 492 .. 37, 334, *383*, 839, 803
—— v. ——, 12 U. C. R. 55 761
Fitzgerald v. Molsons Bank, 29 O. R. 105 ..... *574*
Flannagan, Ex p., 34 N. B. Rep. 326 521
Flatt and Prescott & Russell, Re, 18 A. R. 1 50
Fleet v. Metrop. Asylum Board., 1 T. L. R. 89; 2 T. L. R. 361 766
Fleming v. Hislop, 11 App. Cas. 686 758
—— v. McNaughton, 16 U. C. R. 94 ..... *81*
—— v. Toronto, 20 O. R. 547; 19 A. R. 318 ..... 47, 332, 906, 907, 938
Fletcher v. Euphrasia, 13 U. C. R. 129 ..... 393, 435
—— v. Hudson, 7 Q. B. D. 611 109
—— v. Rylands, L. R. 1 Ex. 265; L. R. 3 H. L. 330 ..... 616, 758, 829
—— v. Wilkins, 6 East 283 511
Flewellyn v. Webster, 6 O. S. 585 37
Florence v. Paddington, [1895] W. N. 113 (9) . 649
Flower v. Adams, 2 Taunt. 314 836
Flynn v. Robertson, L. R. 4 C. P. 324 490
Foley v. East Flamborough, 29 O. R. 139; 26 A. R. 43 ..... 826, 827, 828, 836
—— v. Montreal, Q. R. 2 S. C. 346 826
Foli v. Devonshire Club, 3 T. L. R. 706 756
Follett v. Toronto St. R. W. Co., 15 A. R. 346 .. 836
Foord v. Noll, 5 Dowl. N. S. 617 514
Forbes v. Lee Conservancy, 4 Ex. D. 116 677
Ford and McArthur, Re, 37 U. C. R. 542 741
Ford v. Proudfoot, 19 Grant 478 ..... 427, 428
—— v. Metropolitan R. W. Co., 17 Q. B. D. 12 . 469, 462
Foreman v. Canterbury, L. R. 6 Q. B. 214 832
Forester and Ross, Re, 24 U. C. R. 588 ..... 45, 381
Forget v. Ostizny, [1895] A. C. 318 634
Forster v. Hamilton, not yet rep. 643
Forsyth v. Cunniff, 20 O. R. 478 597
Fortier v. Lauzier, Q. R. 14 S. C. 359 836
Forward v. Toronto, 15 O. R. 370 411
Fosdick v. Perrysburg, 14 Ohio St. 472 ..... 826, 838
Foster v. Cameron, 19 U. C. R. 224 423
—— v. Fraser, [1893] 3 Ch. 158 ..... 643, 644
—— v. Hintonburg, 28 O. R. 221 ..... *677*
—— v. Lansdowne, 12 Man. R. 616 424
—— v. Moore, 4 L. R. (Ir.) C. L. 670 465
Frank v. Barwich, 18 O. R. 344 327
Frankenburg and Land Security Co., Re, 10 T. L. R. 393 ..... 806, 810
Franklin Co. Commrs. v. Lathrop, 9 Kan. 209 . 504
Fraser v. Ehrensperger, 12 Q. B. D. 310 708
—— v. North Oxford, &c., Rd. Co., 15 U. C. R. 291 ..... *479*
Fredericton v. York, 1 N. B. Eq. 556; 34 C. L. J. N. S. 763 825
Fredericksburgh S. S. No. 6 and Fredericksburgh, Re, 37 U. C. R. 534 ..... 719, 811
Freeman v. Dickenson, See 24 A. R. 32 ..... *777*
—— v. Line, 2 Chit. 673 846
—— v. Ontario & Q. R. W. Co., 6 O. R. 413 512
—— v. Read, 4 B. & S. 184 491
Freemantle v. Silk Throws ers' Co., 1 Lev. 229 .. 238, 512
Frewin v. Lewis, 4 M. & C. 235 339
Frith v. Donegal, 2 Dowl. 527 759
Fritz v. Hobson, 14 Ch. D. 542 245
Frontenac v. Breden, 17 Grant 645 656
—— v. Kingston, 20 C. P. 49 ..... *200*
—— v. ——, 30 U. C. R. 581; 32 U. C. R. 348 .. *146*
Fuller v. Fenwick, 3 C. B. 705 423
Fulton v. Grand Trunk R. W. Co., 17 U. C. R. 428 490
—— v. James, 5 C. P. 182 515
Funder, Re, *27* L. T. N. S. 637 ..... *657*
Funston and Tilbury East, Re, 11 O. R. 74 490
..... 332, 376, 380
Furlong v. Carrol, 7 A. R. 145 617
Furman St., Re, 17 Wend. 649 915
Furness R. W. Co. v. Cumberland Bldg. Soc., 52 L. T. N. S. 144 402

[The pages printed in *italics* are those at which the case is most fully referred to.]

G

PAGE.

Gabriel v. St. James, &c., 53 J. P. 372 660
Gadbois v. Montreal, M. L. R. 5 S. C. 43 597
Gagnon v. Montreal, 34 L. C. J. 242 597
Gallerno and Rochester, Re, 46 U. C. R. 279 .....
Gallop and Central Queensland Co., Re, 25 Q. B. D. 230 ..... 40, 381, 860, 1015
Galloway v. London, L. R. 4 Eq. 90; L. R. 1 H. L. 34 420
Galt v. Erie, &c., R. W. Co., 19 C. P. 357 ..... 321, 458, 809
—— Sch. Trustees and Galt, Re, 13 U. C. R. 511 457
Galway El. Case, 1 O'M. & H. 303, 2 O'M. & H. 196 ..... 536, 777
Gananoque v. Stunden, 1 O. R. 1 265
Gandy v. Jubber, 5 B. & S. 78, 485 300
Garant v. Carrier, Q. R. 15 S. C. 601 643
Garfield v. Toronto, 22 A. R. 128 1013
Garland Mfg. Co. v. Northumberland Paper, etc., Co., 31 O. R. 40 651
Garforth v. Cairns, 9 C. L. J. N. S. 212 1013
Garnett v. Adams, 3 App. Cas. 950 ..... 514, 515
Gaskell v. Bayley, 30 L. T. N. S. 516 32
Gaslight, &c., Co. v. St. George's, &c., 3 T. L. R. 581 ..... 757, 768
——— v. St. Mary, &c., 15 Q. B. D. 1; 1 Ca. & Ell. 368 832
Gaudet v. Chester W., 1 Rev. Leg. 75 ..... 759, 818, 832
Gaunt v. Finney, L. R. 8 Ch. 8 826
Gay v. Cadby, 2 C. P. D. 391 765
Gebhardt v. Saunders, [1892] 2 Q. B. 452 613
Geddes v. Proprs. Bann Reservoir, 3 App. Cas. 430 ..... *644*
Gee v. Metrop. R. W. Co., L. R. 8 Q. B. 161 465
Geneva v. Brush Electric Co., 50 Hun. (N.Y.) 581 836
George, Re, [1892] 2 Q. B. 136 669
Georgetown and Stimson, Re, 23 O. R. 33 503
Gery v. Black Lion, &c., 55 J. P. 711 ..... *419*
Gibb and Moore, Re, 27 U. C. R. 150 ..... *611*
Gibbs v. Liverpool Docks &c., 3 H. & N. 164; L. R. 1 H. L. 93 381
Giblin v. McMullen, L. R. 2 P. C. 317 676
Gibraltar, &c., Commrs. v. Orfila, 15 App. Cas. 411 839
Gibson and Bruce, Re, 20 C. P. 398 833
—— v. East India Co., 5 Bing. N. C. 262 ..... 46, 381
—— and Huron & Bruce, Re, 20 U. C. R. 111 323
—— v. Preston, L. R. 5 Q. B. 218 ..... 328, 334, 381
Gifford and Barry, Re, 20 Q. B. D. 368 833
—— and Darlington, Re, 35 U. C. R. 285 ..... *579*
Gilchrist v. Carden, 26 C. P. 1 331
——and Sullivan, Re, 44 U. C. R. 587 ..... 596, 598, 657, 664, 816
Giles v. Campbell, 19 Grant 226 ..... 378, 391, *395*
Gillespie and Toronto, Re, 19 A. R. 713 679
—— and Wellington, Re, 30 O. R. 610 ..... 332, 377, 968, 917, 924, *927*
—— v. Westbourne, 10 Man. Rep. 656 1013
—— v. Wright, 14 U. C. R. 52 ..... 86, *455*
Gilligan v. Montreal, Q. R. 2 S. C. 405 512
Gilles v. Wood, 13 U. C. R. 257 826
Gilmore v. St. John, 28 N. B. Rep. 325 776
Gilson v. North Grey R. W. Co., 33 U. C. R. 128; 35 U. C. R. 475 837
Gimbert v. Coyney, McCl. & Y. 469 617
Glasgow v. Farie, 13 App. Cas. 657 512
Glass v. Wigmore, 21 U. C. R. 37 883
Glasscott v. Day, 5 Esp. 48 530
Glengarry El. Case, H. E. C. 8 514
Glick v. Davidson, 15 U. C. R. 591 258
Gliddon v. Woodstock, 33 N. B. Rep. 388 ..... *81*
Glossop v. Heston, &c., L.B., 12 Ch. D. 102 828
Gloucester El. Case, 2 O'M. & H. 63 ..... 763, 832
Godson and Toronto, Re, 16 O. R. 275; 16 A. R. 552; 18 S. C. R. 36 ..... 214, *265*
Godwin v. Walker, 40 Sol. Jour. 481 325
Goff v. G. N. R. W. Co., 3 E. & B. 672 ..... *347*
Goggs v. Huntingtower, 1 D. & L. 599 596
Goldberg v. Liverpool, 16 T. L. R. 320 245
Goldie v. Johns, 10 A. R. 129 1018
Goldsmid v. Tunbridge Wells, &c., L. R. 1 Eq. 161; L. R. 1 Ch. 349 428
Goldsmith v. London, 11 O. R. 26; 16 S.C.R. 231 757
Goler v. Rawson, 58 L. T. N. S. 24 826

G.

PAGE.

Gonty and Manchester, &c., R. W. Co., Re, [1896] 2 Q. B. 439 670
Good v. Toronto, H. & B.R.W.Co., 62 A. R. 133; 30 S. C. R. 111 509
Gooderham v. Toronto, 21 O. R. 120; 19 A. R. 641; 25 S. C. R. 246 ..... 504, 1016
Goodman v. Sayers, 2 Jac. & W. 249 ..... 39, 334, 808
Goodwin v. Chevely, 4 H. & N. 631 491
—— and Ottawa & Prescott R. W. Co., Re, 13 C. P. 254 671
Gordon v. Belleville, 15 O. R. 26 37
—— v. Cheltenham R. W. Co., 5 Beav. 229 ..... 826, 837
—— v. Denison, 24 O. R. 570; 22 A. R. 315 761
—— v. Victoria, 5 B. C. R. 553 534
Gort v. Clark, 18 L. T. N. S. 343 ..... 828, 835
Gorton v. Smart, 1 Sim. & Stu. 66 765
Gosling v. Veley, 7 Q. B. 406 766
Gough v. Liverpool, 36 Sol. Jour. 270 ..... 112, 327
Goulden and Ottawa, Re, 28 O. R. 387 509
Goutard v. Carr, 13 Q. B. D. 598 n. 331, 380
Grafham v. Turnbull, 44 L. J. Ch. 538 516
Graham v. Boston, 156 Mass. 75 490
Grand and Guelph, Re, 27 U. C. R. 46 834
—— Hotel Co. v. Cross, 44 U. C. R. 153 881
—— Junctn. Canal Co. v. Petty, 21 Q.B.D. 273 765
—— Jctn. Canal Co. v. Shugar, L. R. 6 Ch. 483 811
Grand Rapids v. Hughes, 16 Mich. 54 457
—— Trunk R. W. Co. v. Anderson, 27 O. R. 441; 24 A. R. 672; 28 S. C. R. 547 658
—— ——— v. Coupal, 28 S. C. R. 531 544
——— and Peterborough, Re, 8 S.C.R. 76 ..... 490, 499
Grant and Eastwood, Re, 22 Grant 563 557
—— and Puslinch, Re, 27 U.C.R. 154 490
—— and Toronto, Re, 12 C. P. 357 ..... 46, 377, 379, 381
Grassick v. Toronto, 39 U. C. R. 306 378
Graves v. Shattuck, 35 N. H. 257 ..... 40, 595, 651
Gravesend v. Edmunds, 2 Brownl. 182 659
Gray and Houstead, Re, 8 Times L. R. 703 327
—— v. Dundas, 11 O. R. 317; 13 A. R. 588 509
Gray v. Pullen, 5 B. & S. 970 ..... 650, 763
Graydon and Hammill, Re, 20 O. R. 199 595
Graystock v. Otonabee, Re, 12 U. C. R. 458 ..... 104, 409, *945*
Great Central Gas Co. v. Clark, 13 C. B. N. S. 840 9
—— Western R. W. Co. v. Bishop, L. R. 7 Q. B. 550 32
——— v. N. Cayuga, 23 C. P. 28 757
Green v. Citizens' Ins. Co., 18 S. C. R. 338 ..... 328, 431
—— v. Orford, 15 O. R. 506; 16 A. R. 4 490
Greenland v. Chaplin, 5 Ex. 243 ..... 42, 916
Greenwood v. Browning, 44 L. T. N. S. 47 837
Gregg v. Smith, L. R. 8 Q. B. 302 490
Gregory v. Piper, 9 B. & C. 591 ..... *741*
Gregson and Armstrong, Re, 70 L. T. N. S. 106 596
Gretton v. Mees, 7 Ch. D. 839 480
Greystock and Otonabee, Re, 12 U. C. R. 458 516
Grier v. Plunkett, 15 Grant 152 ..... 330, 333, *342*, 344
—— v. St. Vincent, 12 Grant 236; 13 Grant 512 447
Grierson v. Ontario, 9 U. C. R. 623 ..... 376, 378, *436*
Griffin v. Hamilton, 37 U. C. R. 519 ..... 9, 46, 377, 380, 424
Griffith v. Taylor, 2 C. P. D. 461 549
Griffiths v. Portland, 23 N. B. Rep. 550; 11 S. C. R. 323 532
—— v. Ystradyfodwg Sch. Bd., 24 Q. B. D. 307 ..... *834*
Grimshaw v. G. T. R. Co., 16 U. C. R. 493 515
Grisdale v. Boulton, 1 U. C. R. 407 457
Groves v. Lord Wimborne, [1898] 2 Q. B. 402 489
Gnaglieni v. Matthews, 34 L. J. M. C. 116 832
Guelph v. Canada Co., 4 Grant 632 753
Guilford v. Clark, 2 Vent. 247 39
Gully v. Smith, 12 Q. B. D. 121 333
Gunmaker's Co. v. Fell, Willes 390 ..... 621, 661
Gwinnell v. Eames, L. R. 10 C.P. 658 ..... 333, 730
Gwyn v. Hardwicke, 25 L. J. M. C. 97 835
Gwynne v. Rees, 2 P. R. 282 806

H

Haacke v. Markham, 17 U. C. R. 562 37
—— v. Marr, 8 C. P. 441 59
Hacking v. Perth, 35 U. C. R. 400 776
Hackney El. Case, 2 O'M. & H. 77 ..... *848*, 221, 223

[The pages printed in *italics* are those at which the case is most fully referred to.]

H.

PAGE.
Hadley v. Taylor, L. R. 1 C. P. 53 621
Hafford v. New Bedford, 16 Gray 297 596
Hagaman and Owen Sound, Re, 20 U. C. R. 583 ..... 380, *677*
Haggarty v. Britton, 30 U. C. R. 321 814
—— v. Pryor, 5 Nova Sc. R. 532 841
Haggarty v. Victoria, 1 B. C. R. 163 45
Haigh v. London & N. W. R. W. Co., [1896] 1 Q. B. 649 504
Haldimand El. Case, 1 Ont. El. Cas. 520; 15 S. C. R. 495 ..... 127, 193, 261
———, 1 Ont. El. Cas. 572; 17 S. C. R. 170 ..... 258, 260, 261
Haldimand v. Hamilton, &c., R. W. Co., 27 C. P. 228 957
Halifax v. Lordly, 20 S. C. R. 505 ..... 828, 832
—— v. Reeves, 23 S. C. R. 340 661
Hall v. Bootle, 44 L. T. N. S. 873 ..... *809*
—— v. Ewart, 33 U. C. R. 491 ..... *678*
—— v. Ferguson, 4 O. S. 392 400
—— and Hinds, Re, Q. M. & G. 817 490
—— v. Nixon, L. R. 10 Q. B. 152 ..... *629*, 606, 610
—— v. S. Norfolk, 8 Man. Rep. 430 ..... *575*
Hallett's Estate, Re, 13 Ch. D. 696 437
Hallock v. Wilson, 7 U. P. 28 583
Halton El. Case, H. E. C. 283 ..... *189*, 265
———, H. E. C. 736 ..... 261, 262, 264
—— v. G. T. R. W. Co., 19 A. R. 252; 21 S. C. R. 716 957
Hamby v. Fuller, 22 C. P. 141 583
Hamilton v. Dennis, 12 Grant 325 41
—— v. Massie, 18 O. R. 585 534
—— v. Morrison, 18 C. P. 228 ..... 584, *812*
—— & N. W. R. W. Co. and Boys, Re, 44 U. C. R. 626 499
Hammersmith R. W. Co. v. Brand, L. R. 4 H. L. 171 ..... 461, 466, 758
Hammett v. Philadelphia, 65 Pa. St. 146 615
Hammond v. St. Paneras, L. R. 9 C. P. 316 643
—— v. Westerton, 62 L. T. N. S. 808 502
Hampshire v. Franklin, 16 Mass. 75 69
Hanns v. Johnston, 3 O. R. 100 231
Hanway v. Boultbee, 1 M. & R. 15 532
Harcourt v. Ramsbottom, 1 J. A. C. & W. 505 489
Hardaker v. Idle D. C., [1896] 1 Q. B. 335 595
Harding v. Cardiff, 29 Grant 308; 2 O. R. 320 ..... 386, 465, 875
—— v. Davis, 2 C. & P. 77 514
Hardwick v. Brown, L. R. 8 C. P. 406 ..... 226, 228
Hare v. Osborne, 34 L. T. N. S. 394 633
Hargreaves v. Taylor, 3 B. & S. 613 646
Harland v. Newcastle, L. R. 5 Q. B. 47 493
Harling v. Mayville, 21 C. P. 499 777
Harmond v. Pearson, 1 Camp. 515 680
Harpel v. Portland, 17 U. C. R. 455 ..... 479, 498
Harper v. Paterson, 14 C. P. 538 515
Harris v. Baker, 4 M. & S. 27 832
—— and Hamilton, Re, 44 U. C. R. 641 ..... *328*, 331, 333, 381, 719, 722, *724*, *725*, 1015
—— v. James, 45 L. J. Q. B. 545 643
—— v. Mobbs, 3 Ex. D. 268 658
Harris v. Northamptonhire, 41 Sol. J. 608 820
Harrison v. Brega, 20 U. C. R. 324 70
—— v. Bridgeton, 16 Mass. 16 513
—— v. Rutland, 0 T. L. R. 115 ..... *835*
—— v. Southwark, &c. Co., [1891] 2 Ch. 409 758
—— v. Williams, 3 H. & C. 162 295
Harrold v. Simcoe, 16 C. P. 43; 18 C. P. 9 ..... 513, 833, 847, 855, 856
Hart v. Vespra, &c., 16 U. C. R. 32 ..... 46, 776
Hartford Bridge v. East Hartford, 16 Conn. 149; 10 How. (U. S.) 511 69
Hartley and Emily, Re, 25 U. C. R. 12 ..... 146, 331, 380
—— v. Mare, 19 C. B. N. S. 85 423
Hartnell v. Ryde Commrs., 4 B. & S. 361 ..... 423, 833
Harvey and Parkdale, Re, 16 O.R. 372; 16 A.R. 468 ..... 464, 470, *494*
Harwich El. Case, 3 O'M. & H. 69; 44 L. T. N. S. 189 259
—— and Raleigh, Re, 26 O. R. 154 482
Haslem v. Schnarr, 30 O. R. 89 ..... 525, 910
Hastings El. Case, 1 O'M. & H. 218 258
—— v. St. Catharines, 43 U. C. R. 134 807
—— v. Summerfeldt, 30 O. R. 577 1014

H.

PAGE.
Hastings v. Thorley, 8 C. & P. 573 511
Hatch v. L. & N. W. R. W. Co., 15 Times L. R. 246 596
Hathaway v. Doig, 28 Grant 461 765
Hattersley v. Burr, 4 H. & C. 523 ..... *429*
Hatton v. Treesby, [1897] 2 Q. B. 452; 13 T. L. R. 556 ..... 605, 673
Hawk and Ballard, Re, 3 C. P. 241 ..... 9, 272, 315
Hawke and Wellesley, Re, 13 U. C. R. 636 ..... 45, 46, 391, *394*, 584
Hawken v. Shearer, 56 L. J. Q. B. 284 621
Hawkeshaw v. Dalhousie, 7 U. C. R. 590 ..... *544*
Hawkins and Huron, Perth & Bruce, Re, 2 C. P. 72 ..... 9, 37
Hay and Listowel, Re, 28 O. R. 332. 331, 380, 391, *695*
Hayes v. Armstrong, 7 O. R. 621 216
—— and Toronto, Ex p., 7 C. P. 255 ..... 46, 331, *394*
Hayman v. Rugby School, L. R. 18 Eq. 28 322
Haynes v. Copeland, 18 C. P. 150 ..... 41, 379, 423, 511
Hazard's Case, 2 Roll. 11 228
Healy v. Batley, L. R. 19 Eq. 375 810
Heap v. Burnley, 12 Q. B. D. 617 770
Helmbrick v. Edmonton, 28 S. C. R. 501 ..... *870*, 814
Hellems v. St. Catharines, 25 O. R. 583 322
Helliwell v. Taylor, 16 U. C. R. 279 598
Helm v. Port Hope, 22 Grant 273 ..... 45, 47, 351, 376
Helps v. Robim, 6 C. P. 52 491
Henderson and Toronto, Re, 29 O. R. 669 ..... 46, 862
Hendrie v. Toronto H. & B. R. W. Co., 26 O. R. 667; 27 O. R. 46 ..... 457, 465
Henry v. Armitage, 12 Q. B. D. 257 ..... 150, 161
Henwood v. Oliver, 1 Q. B. 469 514
Hercules Ins. Co., Re, L. R. 19 Eq. 302 447
Hereford El. Case, 1 O'M. & H. 104; 21 L. T. N. S. 118 ..... 260, 261, 262
Herring and Napanee, &c., R. W. Co., 5 O. R. 349 ..... 489, *562*
Hervey v. French, P. & J. Dig. 4037 ..... *659*
Hesketh v. Braddock, 3 Burr. 1847 339
—— v. Toronto, 25 A. R. 440 ..... 39, 597
Hewlson v. Pembroke, 6 O.R. 170..276, 333, 376, 808, 885
Hewitt v. Heise, 41 P. R. 47 844
Hexham El. Case, Day's El. Cas. 68 214
Hext v. Gill, L. R. 7 Ch. 699 883
Hickey v. Fitzgerald, 41 U. C. R. 303 535
—— v. Renfrew, 20 C. P. 429 322
Hickman v. Lawson, 8 Grant 380 489
—— v. Maisey, [1900] W. N. 72; 16 T. L. R. 274 1018
Higgins v. Whitby, 20 U. C. R. 296 957
Hildreth v. Adamson, 8 C. B. N. S. 587 811
Hill v. Middagh, 16 A. R. 356 ..... 40, 374, 379, *519*, 511, 513, 598, 704
—— v. Tecumseth, 6 C. P. 297 378
—— and Walsingham, Re, 9 U. C. R. 310..46, 377, 412
Hillyard v. G. T. R. W. Co., 8 O. R. 583 ..... *622*
Hilton v. Ankesson, 27 L. T. N. S. 519 620
Hinton v. Dibbin, 2 Q. B. 647 839
Hirons v. Amherstburgh, 11 U. C. R. 458 240
Hislop v. McGillivray, 22 O. R. 749; 15 A. R. 687; 17 S. C. R. 479 ..... 45, 819, 825, 831, 864
Hoare v. Kearley, 1 T. L. R. 426 661
Hobbs v. Dance, L. R. 9 C. P. 30 ..... 609, *677*
Hoboken v. Harrison, 1 Vroom (N. J.) 73 298
Hodge v. Burgess, 3 H. & N. 293 490
—— v. The Queen, 9 App. Cas. 117 ..... 50, 51, *345*, 667, 732
Hodgins v. Huron & Bruce, 3 E. & A. 169 513
—— v. Toronto, 19 A. R. 537 ..... 40, 596, *700*, 705, 706
—— and ——, Re, 26 O. R. 480, 23 A. R. 80 ..... 332, 350, 908, 915, 927, *947*, 951
Hodgkinson v. Fernie, 3 C. B. N. S. 289 490
Hodgson and Bosanquet, Re, 11 O. R. 589 ..... 468, 490
—— v. York, etc., 33 U. C. R. 268 ..... 377, 378, *865*
—— v. Whitby, 17 U. C. R. 230 498
Holborn, &c. v. St. Leonards, &c., 2 Q. B. D. 145 ..... 613, 832
Holden and Belleville, Re, 29 U. C. R. 88 382
Holder v. Soulby, 8 C. B. N. S. 254 108
Holdsworth v. Dartmouth, 11 A. & E. 490 454
Hole v. Sittingbourne, &c. R. W. Co., 6 H. & N. 488 595
Hollester v. Montreal, 29 S. C. R. 402 ..... 471, 496
Holliday v. National Tel. Co., [1899] 1 Q. B. 221; [1899] 2 Q. B. 392 ..... 595, 596

[The pages printed in *italics* are those at which the case is most fully referred to.]

H.

PAGE.

Holman v. Green, 6 S. C. R. 707 675
Holmes v. Wilson, 10 A. & E. 503 764
Holt v. Gas L. & C. Co., L. R. 7 Q. B. 728 ....459, 463
—— v. Medonte, 22 O. R. 392 ..... 47, 379, 511
Homer, Re, 3 DeG. & Sm. 483 475
Hood v. Toronto Harbour Commrs. 34 U. C. R. 87; 37 U. C. R. 72.. ..... 677, 680
Hooper v. Kenshole, 36 L. T. N. S. 111 741
Hopkins v. Owen Sound, 27 O. R. 43 .....665, 826
—— v. Smethwick L. B., 54 J. P. 693; 24 Q.B.D. 712 610
—— v. Swansea, 4 M. & W. 621 327
Hopper, Re, L. R. 2 Q. B. 367 491
Horley v. Rogers, 2 E. & E. 674 532
Hornby v. New Westminster, etc., R. W. Co., 6 N. C. R. 588 1017
Hornor v. Cadman, 54 L. T. N. S. 421 659
Hornsey L. B. v. Monarch, &c., Society, 23 Q. B. D. 149; 24 Q. B. D. 1 410
Horrold v. Watney, [1898] 2 Q. B. 320 660
Hotchkiss v. Hall, 7 C. L. J. N. S. 320 504
Houck v. Whitby, 14 Grant 671 42
Hough v. May, 4 A. & E. 954 514
Houghton v. Butler, 4 T. R. 364 760
—— v. Freeland, 26 Grant 500 ..... *591*
Houldershaw v. Martin, 49 J. P. 179 .....757, 765, 767
Hounsell v. Smyth, 7 C. B. N. S. 731 621
Howard v. St. Thomas, 19 O. R. 719 .....659, 828
Howarth v. McGugan, 23 O. R. 396..828, 832, 835, 837
Howlen v. Lake Simcoe Ice Co., 21 A. R. 414..820, 829
Howell v. Listowel, &c., Co. 13 O. R. 476 ...514, 515
Howes v. Inland Rev. Bd., 1 Ex. D. 385 ..... *757*
Howick and Wroxeter, Re, 12 C. L. J. N. S. 61 ..70, 499
Howland v. Dover Harb. Bd. 14 T. L. R. 355 .. 865
Hoye v. Bush, 1 M. & G. 775 535
Hubbard and Union, &c., Ins. Co., Re, 44 U.C.R. 391 491
Hubert v. Graves, 1 Esp. 148 761
—— v. Yarmouth, 18 O. R. 458 .....*817*, 841
Hudson v. Baynes, 18 Rev. Leg. 81 661
Hudson v. Roberts, 6 Ex. 697 671
—— v. Russell, 18 Rev. Leg. 134 664
Huffman v. Bayham, 26 A. R. 514 828
Hughes v. Macfie, 2 H. & C. 744 835
—— v. Newcastle, &c. Ins. Co., 9 U. C. R. 387 585
—— v. Percival, 8 App. Cas. 443 595
Hull Electric Co. v. Ottawa Electric Co., Q. R. 14 S. C. 124 .....667, *695*
Humberstone v. Dinner, 2 N. W. T. 561; 26 S. C. R. 252 737
Humphries v. Cousins, 2 C. P. D. 239 ..... 643, 757
Hunnings v. Williamson, 11 Q. B. D. 533 100
Hunt v. Hibbs, 5 H. & N. 126 .....295, 296
—— v. Wilson, Q. R. 15 S. C. 355 836
—— v. Wimbledon L. B., 4 C. P. D. 48 ..... 41, 43
Hunter v. Montreal, 12 Legal News. 87 838
Hunter v. Shooter, 55 J. P. 325 ..... *741*
Hurdman v. N. E. R. W. Co., 3 C. P. D. 168 .. 757
Huron & Bruce v. Macdonald, 7 C. P. 278..78, 546, 547
—— D. C. v. London D. C., 4 U. C. R. 302 39
—— v. Huron D. C., 5 U. C. R. 574 .....9, 45, 543
Huson and South Norwich, Re, 10 A. R. 343; 21 S. C. R. 669 .....358, 377
Hutchison v. Shepperton, 13 Q. B. 955 490
Hutton v. Windsor, 34 U. C. R. 487 ..... 825, 829, 827, 828, 837
Huxham v. Smith, 2 Camp. 21 514
Huyck v. Wilson, 18 P. R. 44 .....480, 501
Hyde v. Bank of England, 46 L. T. N. S. 919.. 47

I.

Ianson and Reach, Re, 19 U. C. R. 591 .....377, 869
Illinois, &c., R. W. Co. v. Buckner, 28 Ill. 299.. 837
Imperial Bank v. Metcalfe, 11 O. R. 467 613
—— Gas Co. v. Broadbent, 4 DeG. M. & G. 459; 7 H. L. Cas. 600 759
—— Land Co. &c., Re, L. R. 11 Eq. 478 447
Inchbald v. Robinson, L. R. 4 Ch. 388 .....758, 772
Ind, Cooper & Co. v. Hamblin, [1900] W.N. 24.. 1019
Indian Zoedone Co., Re, 26 Ch. D. 76 276
Ingersoll and Carroll, Re, 1 O. R. 488 .....*328*, 875
—— v. Chadwick, 19 U. C. R. 278, 286 .....297, 301

I.

PAGE.

Ingles v. Halifax, &c., Tram Co., 32 Nova Sc. R. 117 836
Innes v. Newman, [1804] 2 Q. B. 292 772
Innis v. East India Co., 17 C. B. 351 323
Irwin v. Bradford, 22 C. P. 18, 421 .....825, 857
—— v. Mariposa, 22 C. P. 397 .....40, 336
Ives v. Hitchcock, Draper's Rep. 259 621
—— v. Willans, [1894] 2 Ch. 478 503

J.

Jack v. Ontario, &c., R. W. Co., 11 U.C. R. 328..327, 620
Jacklin v. Fytche, 14 M. & W. 381 512
Jackson v. Barry R. W. Co., [1893] 1 Ch. 238. 503, 504
Jackson v. Jacob, 2 Bing. N. C. 869 514
James v. Clement, 13 O. R. 115 613
—— v. Hayward, Cro. Car. 184 709
—— v. Jones, [1894] 1 Q. B. 394 641
—— v. Ontario & Quebec R.W. Co., 12 O. R. 624 ..... 466, 468
Jamieson and Lanark, Re, 38 U. C. R. 347 819
Jannette v. Great Western R. W. Co., 4 C. P. 488 457
Jarvis v. Dean, 3 Bing. 447 ..... *809*
—— v. Fleming, 27 O. R. 369 .....47, 331
—— v. Great Western R. W. Co., 8 C. P. 280 321
—— v. ——, 8 C. P. 115 761
Jekyll v. Wade, 8 Grant 323 491
Jenison and Kakakeka Falls L. & E. Co., Re, 25 A. R. 361 509
Jenkins v. Elgin, 21 C. P. 325 366
—— and Enniskillen, Re, 25 O. R. 399 380
Jenks v. Turpin, 13 Q. B. D. 505 .....633, 634
Jenning's Case, 12 Mod. 402 228
Jersey (Earl of) v. Neath, &c., Union, 22 Q. B. D. 555 883
Jewett, Re, 35 C. L. J. N. S. 85 507
Jewhurst v. Syracuse, 108 N. Y. 303 825
Jewson v. Gatti, 1 T. L. R. 645; 2 T. L. R. 381, 441 835
Jodoin v. Montreal, 11 Rev. Leg. 431 825
Joel v. Morrison, 6 C. & P. 503 596
Johnson v. Allen, 26 O. R. 550 .....*715*, 253
—— v. Croydon, 16 Q. B. D. 708.....*757*, 760, 764, *771*
—— v. S. S. Howard No. 1, 26 Grant 204 .....712, 774
—— v. Lambton, Re, 40 U. C. R. 297 .....*152*, 331
—— and Montreal, &c., R. W. Co., 40 Re, U. C. R. 359 489
—— v. Ontario S. & H. R.W. Co., 11 U.C.R. 246 459
Johnston v. Boyle, 8 U. C. R. 142 810
—— v. Consumers' Gas Co., 27 O. R. 9; 23 A. R 566; 17 P.R. 297; [1898] A. C. 447.....651, 1011
—— and Gloucester, Re, 12 U. C. R. 335 ..... *489*
—— and Harwich Sch. Trustees, Re, 30 C. C. R. 264 423
—— and London, Re, 39 O. R. 583 1015
—— v. Nelson, 17 A. R. 16 823
—— v. Reesor, 10 U. C. R. 101 868
—— v. Toronto, 25 O. R. 312 652
Johnstone v. Crompton, [1899] 2 Ch. 194 883
Jolliffe v. Wallasey L. B., L. R. 9 C. P. 62 832
Jonas v. Gilbert, 5 S. C. R. 356 .....*339*, 341, 370
Jones v. Arthur, 8 Dowl. 442 514
—— v. Bird, 5 B. & Al. 837 512
—— v. Carmarthen, 8 M. & W. 605 320
—— v. Cook, L. R. 6 Q. B. 505 33
—— v. Festiniog R. W. Co., L. R. 3 Q. B. 733.. 750
—— v. Johnson, 5 Ex. 862; 7 Ex. 452 ..... *508*
—— v. Liverpool, 12 Q. B. D. 899 422
—— v. Port Arthur, 16 O. R. 474 595
—— v. Reid, 1 P. R. 247 .....47, 331, 377, 379, *583*, 869
—— v. Scullard, [1898] 2 Q. B. 565 491
—— v. Stansted R. W. Co., L. R. 4 P. C. 98... 595
—— v. Williams, 11 M. & W. 176 463
Jordan v. McDonald, 34 C. L. J. N. S. 425 760
Jordeson v. Sutton, &c., Co., [1898] 2 Ch. 614; [1899] 2 Ch. 217 ..... *533*
Jubb v. Hull Dock Co., 9 Q. B. 443 759
Judson v. Toronto, 27 C. L. J. N. S. 602; 11 C. L. T. 355 463
Julius v. Bishop of Oxford, 5 App. Cas. 214 830
Jupp v. Grayson, 1 C. M. & R. 523 44

[The pages printed in *italics* are those at which the case is most fully referred

K

PAGE.
Kaiser v. East Whitby, Division Court, not rep.. 790
Kane v. Kaslo, 4 B. C. R. 486 ..... 374, *386*
Keachie v. Toronto, 22 A. R. 371 ..... 826, 837
Keane v. Reynolds, 2 E. & B. 748 660
Keating v. Simcoe, 1 U. C. R. 28 ..... 78, 543
Keep v. St. Mary, &c., [1894] 2 Q. B. 524 659
Keighley, &c., and Durant, Re, [1893] 1 Q.B. 405 548
Keith v. Lynch, 10 Grant 497 260
Kelleway v. Macdougal, 45 J. P. 267 753
Kelly v. Archibald, 26 O. R. 608 ; 22 A. R. 522
..... 40, 533, 597, *598*, 966
—— v. Barton, 26 O. R. 608 ; 22 A. R. 522.....
..... 40, 533, 597, *598*, 966
—— and Hedges, Re, 12 U. C. R. 531..... 776
—— and Macarow, Re, 14 C. P. 457 .....234, 236, 239
—— v. Macklem, 14 Grant 29..... 428
—— v. Quebec, 3 Q. L. R. 379.....826, 835
—— and Toronto, Re, 23 U. C. R. 425.....
..... 381, 719, *723*, 720
—— v. Winnepeg, 34 C. L. J. N. S. 177, 208.... 45
Kelsey v. Dodd, 52 L. J. Ch. 34.. 761
Kendall v King, 11 C. B. 483..... 423
Kennedy v. Beal, 29 O. R. 590.....189, 509
—— v. Portage la Prairie, 12 Man. Rep. 634.... 1018
—— v. Toronto, 12 O. R. 211..... 708
Kenny v. Caldwell, 21 A. R. 110 ; 24 S. C. R. 699 814
—— v. Mackenzie, 12 A. R. 346 613
Kent v. Sandgate, 61 Sol. J. 637 828
Kenworthy v. Queen Ins. Co., 9 Times L. R. 181 *504*
Kerfoot v. Watford, 24 O. R. 235..379, *414*, 511, *653*, 654
Kerr and Lambton, Re, 27 O. R. 334 ....377, 381, *602*
—— v. Preston, 6 Ch. D. 463 610
Kershaw v. Taylor, [1895] 2 Q. B. 203, 471..... 649
Kervin v. Canadian, &c., Cotton Co., 28 O. R. 73 ; 25 A. R. 36 835
Kiddermister v. Hardwick, L. R. 9 Ex. 13 ... 41, 43
Kiely, Re, 13 O. R. 451 ....329, 380, *527*, 528, 612, 754
Kinghorn and Kingston, Re, 26 U. C. R. 130
.... 331, 343, 375, 380, *383*, *722*, 723
Kingsbury v. Dedham, 13 Allen (Mass.) 186 829
Kingston El. Case, H. E. C. 625..... 259
—— v. Day, 1 P. R. 142 490
—— v. Drennan, 23 A. R. 406 ; 27 S. C. R. 46 ..
.....826, 827, 838, 839
—— v. Kingston El. R. W. Co., 28 O. R. 399 ; 25 A. R. 362 .....960, 1013
Kinloss v. Stauffer, 15 U. C. R. 414 584
Kinnealy v. St. John, 39 N. B. Rep. 46 839
Kinnear v. Haldimand, 30 U. C. R 308 849
Kinson, &c., Co. v. Poole, [1899] 2 Q. B. 41 832
Kirk v. Nowill, 1 T. R. 118..... 341
Kirkheaton L. B. v. Ainley, [1892] 2 Q. B. 274.. 762
Kirkleatham and Stockton, Re, [1893] 1 Q. B... 375 509
Knight v. Medora, &c., Re, 11 O. R. 138 ; 14 A. R. 112 .....318, 821, 825, 830, 855
—— v. Pursell, 11 Ch. D. 412 613
—— and Tabernacle, &c., Society, Re, [1892] 2 Q. B. 613 ; [1892] A. C. 298 .....503, 505, 509
Knill v. Towse, 24 Q. B. D. 180, 607..... 177
Knock v. Metropolitan R. W. Co., L. R. 4 C. P. 131 464
Kraus v. Arnold, 7 Moore 50 514
Kronshien v. Gage, 10 Grant 573 818
Kruse v. Johnson, [1898] 2 Q. B. 91 ; 14 Times L. R. 416 .. 328, 329, 330, 332, 333, *337*, 343, 548
Kynaston v. Shrewsbury, 2 Stra. 1951..... 272

L

Lafferty v. Stock, 3 C. P. 9 .....9, 860, 865
—— v. Wentworth, 8 U. C. R. 232....377, 381, *712*, 860
Lake v. Biggar, 11 C. P. 170. 515
—— and Prince Edward, Re, 26 C. P. 173 ....378, 381
Lamacraft v. St. Thomas, 42 L. T. N. S. 305.... 650
Lamarre v. Woods, Q. R. 13 S. C. 466 596
Lambton v. Mellish, [1894] 3 Ch. 163.....758, 772
—— v. Poussett, 21 U. C. R. 472 566
Landreville v. Gouin, 6 O. R. 455..... *663*
Landry v. Ottawa, 11 P. R. 442..... 376
Lane v. Capsey, [1891] 3 Ch. 411 760
Langdon and Arthur, Re, 45 U. C. R. 47 .... 44, 372
Langford v. Kirkpatrick, 2 A. R. 513 ..... *513*
Langrish v. Archer, 10 Q. B. D. 44 1017

L

PAGE.
Langstaff v. McRae, 22 O. R. 78 627
Laplante and Peterborough, Re, 5 O. R. 634....
..... 332, 377, 380, 481, 488, 857, 860
Latreille v. St. Jean Baptiste, 20 Rev. Leg. 351 597
Launceston El. Case, L. R. 9 C. P. 626 142
Laviolette v. Thomas, M. L. R. 1 S. C. 350 597
Lavoie v. Beaudoin, Q. R. 14 S. C. 252 838
Lavy v. London C. C., [1895] 1 Q. B. 915 ; 2 Q. B. 577 .... *611*
Law v. Dodd, 1 Ex. 845.... 613
—— v. Niagara Falls, 6 O. R. 467 650
Lawrence v. Great Western R. W. Co. 16 Q. B. 643 465
—— v. Jenkins, L. R. 8 Q. B. 274..... 624
—— v. Lucknow, 13 O. R. 424 42
—— and Thurlow, Re, 33 U. C. R. 223 ..... *875*
Lawrie v. Rathbun, 38 U. C. R. 155..... 33
Lawson v. Alliston, 19 O. R. 655..... .. .. 830, 832
—— and Hutchison, Re, 19 Grant 84 490
Lazarus v. Toronto, 19 U. C. R. 9 ....39, *54*, *663*
Leak and Toronto, Re, 29 O. R. 685 ; 26 A. R. 551 467
Learned v. Burlington, 2 Am. Law Reg. N. S. 394 423
Leatherdale v. Sweepstone, 3 C. & P. 342 514
Leavenworth v. Norton, 1 Kansas, 432 423
Leclerc v. Montreal, Q. R. 15 S. C. 205 839
Leddingham and Bentinck, Re, 29 U. C. R. 206 378
Lee v. Hobbs, 75 L. T. N. S. 687 45
—— v. Wallis, 1 Ken. 295 333
Lees v. Carleton, 33 U. C. R. 400 549
Leeson v. Dufferin License Commrs., 19 O. R. 67 525
Leete v. Harte, L. R. 3 C. P. 322 .....532, 533
Lefebvre v. The Queen, 1 Ex. C. R. 121 .....461, 464
LeFeuvre v. Lankester, 3 E. & B. 530... 109
Legault v. Cote St. Paul, Q. R. 12 S. C. 470 ..828, 835
Leicester, &c., v. Holland, 57 L. J. M. C. 75.... 657
Leisk v. Galloway, 12 Ct. of Sess. Cas. (4th Ser.), (J. C.) 5 661
Leith v. Gibb, 9 Ct. of Sess. Cas. (4th Ser.) 627.. *918*
Leizert v. Matilda, 29 O. R. 98 ; 26 A. R. 1 .....
..... 824, 830, 840
Lemay v. McRae, 16 A. R. 348 ; 18 S. C. R. 280 490
Lemire v. Duclos, Q. R. 13 S. C. 82..... 533
Lemmon v. Webb, [1894] 3 Ch. 1 ; [1895] A. C. 1
.... 705, 760
Lemoine v. Montreal, 23 S. C. R. 390 499
Le Sieve v. Mile End, &c., 8 E. & B. 1054 ....660, 811
Lennox El. Case, 1 Ont. El. Cas. 41.....260, *262*
Leonard v. Black, 4 U. C. L. J. 260 209
L'Esperance v. G. W. R. W. Co., 14 U. C. R. 173 652
Lester v. Torrens, 2 Q. B. D. 403 636
Lethbridge v. Winter, 1 Camp. 263 *note* 810, 811
Levick v. Epsom R. W. Co., 1 L. T. N. S. 60 ... 1016
Lewis El. Case, 11 S. C. R. 133..... 258, 264
Lewis, Ex p., 21 Q. B. D. 191 650
—— v. Alexander, 21 A. R. 613..... 651
—— v. Brady, 17 O. R. 377..... 317
—— v. Carr, 1 Ex. D. 484 .....109, 111
—— v. Great Western R. W. Co., 3 Q. B. D. 195 215
—— v. Rochester, 9 C. B. N. S. 401..... 423
—— v. Toronto, 39 U. C. R. 343.....40, 394, 596, 866
Lichfield El. Case, 1 O'M. & H. 25 260
———, 3 O'M. & H. 136 265
Lighthound v. Higher Bebbington, 16 Q.B.D. 577 918
Limerick El. Case, P. & K. 373 152
Limpus v. London, &c., Co., 1 H. & C. 526 596
Lincoln El. Case, H. E. C. 391 259
—— H. E. C. 489..... 258
—— H. E. C. 500..... .. 118
—— v. Thompson, 8 U. C. R. 615..... 86, 299
—— Sheriff, etc., of, Re, 34 U. C. R. 1.....313, 566
Lindberg v. Halifax, 31 Nova Sc. R. 154 694
Lindell v. Victoria, 3 B. C. R. 400... 829
Line v. Warren, 14 Q. B. D. 548..... 247
Lisburn El. Case, W. & Br. 227 265
Lister v. Ham, 1 C. L. J. N. S. 208 489
Little v. Dublin & D. R. W. Co., 7 Ir. C. L. R. 82 462
—— v. Ince, 3 C. P. 528 ; 4 C. P. 95.... 627
—— v. Wallaceburg, 23 Grant 540 .....45, 584, 783
—— Bob River, Re, 23 A. R. 177 627
Liverpool, &c., Co. v. Hodson, L. R. 2 Q. B. 131 767
Llado v. Morgan, 23 C. P. 517..... .. 514, 515
Llandudno D. C. v. Wood, [1899] W. N. 135 ; [1899] 2 Ch. 705 ..... *758*

(The pages printed in *italics* are those at which the case is most fully referred to.)

L

PAGE.

Lloyd, Ex p., 1 Sim. N. S. 218 931
—— and Eldersle, Re, 44 U. C. R. 235 ..377, 378, 381, *385*
Local Option Act, Re, 18 A. R. 572 904
Locke King v. Woking D. C., 77 L. T. N. S. 790 669
Lockhart v. Barnard, 14 M. & W. 674 597
—— v. St. John, 30 N. B. Rep. 445 863
Lockridge v. Lacey, 30 U. C. R. 491 ..... *841*
Logan v. McKillop, 25 A. R. 498 ; 29 S. C. R. 702 ..... 514, 515
Lomer v. Waters, [1898] 2 Q. B. 326 39
London El. Case, 21 C. P. 434; H. E. C. 560 ; 10 C. L. J. N. S. 281 515
———H. E. C. 214 ..... *263*
—— v. Barnardiston, 1 Lev. 16 ..... 258, 260
—— v. Gold-smith, 16 S. C. R. 231 327
—— v. Tubbs, Re, [1891] 3 Ch. 524 829
—— v. Vamere, 1 Salk. 142 215
—— Assoc., etc., v. London, etc., Committee, [1892] 3 Ch. 242 319
—— Board of Police v. Talbot, 3 U. C. R. 311 327
—— Brighton, &c., R. W. Co. v. Trueman, 29 Ch. D. 89 ; 11 App. Cas. 45 718
—— Chatham, &c., R. W. Co. v. Bull, 47 L. T. N. S. 413 ..... 465, 758
—— Co. Cncl. v. Dixon, [1899] 1 Q. B. 496 761
—— —— v. Humphreys; [1894] 2 Q. B. 755 893
—— —— v. Pierce, [1892] 2 Q. B. 109 611
—— —— v. Worley, [1894] 2 Q. B. 826 611
—— & Can., etc., Co. v. Morris, 9 Man. Rep. 431 610
Londonderry El. Case, 21 L. T. N. S. 712 ..... *301*
London Life Ass. Co. v. Wright, 29 C. P. 221 ; 5 A. R. 218 ; 5 S. C. R. 466 260
London & S. W. R. W. Co. v. Blackmore, 19 L. T. N. S. 5 ; L. R. 4 H. L. 610 42
———— v. Webb, 15 C. B. N. S. 450 49
—— West v. Bartram, 26 O. R. 161 760
Long v. Long, 17 Grant 251 ..... 41, 323
Longbottom v. Toronto, 27 O. R. 198 515
Longueuil Nav. Co. v. Montreal, M. L. R. 3 Q. B. 172 ; 15 S. C. R. 566 840
Longford El. Case, 2 O'M. & H. 12 737
Lou Kai Long, Ex p., Q. R. 6 Q. B. 301 295
Lord v. Lee, L. R. 3 Q. B. 404 332
—— and Lord, Re, 5 E. & B. 404 503
Loucks v. Russell, 7 C. P. 388 481
Louth R. D. C. v. West, 12 T. L. R. 477 331
Lovering v. Dawson, L. R. 10 C. P. 711 ..... 661, 700, 820
—— v. ——, L. R. 10 C. P. 726 251
Lowestoft and Great Eastern R. W. Co., Re, 24 Ch. D. 253 259
Lowry v. Pitt, 13 C. L. J. N. S. 112 458
Lucas v. Moore, 43 U. C. R. 334 ; 3 A. R. 602 626
Ludlow v. Charlton, 6 M. & W. 815 ..... 826, 827, 828
Luff v. Leaper, 36 J. P. 54 41
Lulham v. Montreal, 29 L. C. Jur. 18 633
Lunenberg v. Att.-Gen. of Nova Scotia, 20 S. C. R. 506 ..... 826, 839
Luther v. Wood, 19 Grant 349 ..... 78, 513
Lutz v. Williamson, 1 P. R. 94 957
Lyme Regis Case, 10 Rep. 120 242
Lyndon v. Standbridge, 2 H. & N. 45 37
Lyon v. Fishmongers' Co., 1 App. Cas. 662 ..... 325, 613

M.

McAlpine and Euphemia, Re, 45 U. C. R. 199 378
McArthur v. Campbell, 5 B. & Ad. 518 501
—— v. Collingwood, 9 O. R. 368 ..... 465, 651
—— v. Port Arthur, 9 Man. Rep. 588 ..... *56*
—— and Southwold, Re, 29 C. P. 216 ; 3 A. R. 295 ..... 380, 857, 858
McAvoy and Sarnia, Re, 12 U.C.R. 99, 9, 46, 332, 366, 380
McBride and York, Re, 31 U. C. R. 355 ..... 847, 850
McBryan v. C. P. R. W. Co., 6 B. C. R. 136 ; 29 S. C. R. 359 652
McCallum v. Hutchison, 7 C. P. 508 643
McCann v. Toronto, 28 O. R. 650 ..... 39, *544*
McCarthy v. Metrop. Bd. of Wks., L. R. 7 C. P. 508 ; L.R. 8 C.P. 181 ; L.R. 7 H.L. 243 ..460, 462
—— v. Oshawa, 10 U. C. R. 245 825
—— v. Vespra, 16 P. R. 416 513
McCauley v. Toronto, 18 O. R. 416 463
McClean v. Marcus, 6 T. L. R. 355 490

M

PAGE.

McCluny and Motley, Re, 6 U. C. L. J. 92 ..480, 491, 492
McColl and Toronto, Re, 21 A. R. 256 ..*33*, 471, 496
McConkey v. Brockville, 11 O. R. 322 651
McConnell v. Oakley, 17 U. C. R. 345 895
McCormack v. Pelee, 20 O. R. 288 ..... 828, 864
McCormick and Colchester S., Re, 46 U. C. R. 650 776
—— and Howard, Re, 18 O. R. 260 ..... 46, 381
McCoy, Ex p., 33 N. B. Rep. 605 521
McCracken v. San Francisco, 16 Cal. 591 423
McCrea v. Waterloo Ins. Co., 26 C. P. 431 231
McCulloch, Re, 35 U. C. R. 452 119
—— v. Caledonia, 25 A. R. 417 ..... 458, 511
McCutcheon and Toronto, Re, 22 U. C. R. 613 ..... 32, 325, 332, 410, 660, 661, *664*, 659, 964, 965
McDiarmid v. Hughes, 16 O. R. 570 ..... 41, 583
McDonald v. Dickenson, 25 O. R. 45 ; 21 A. R. 485 ; 24 A. R. 31 ..... 829, 846
—— v. Lochrane, 51 J. P. 629 ..... *537*
—— v. McDonald, 7 U. C. L. J. 297 490
—— and Present, Re, 16 U. C. R. 84 ..... 480, 491
McDougall and Lobo, Re, 21 U. C. R. 80 ..... 45, 740
—— v. U. C. Mining Co., 15 Grant 179 42
McEdward v. Gordon, 12 Grant 333 490
McFarlane v. Lister, 37 Ch. D. 88 493
McGarry v. Loomis, 63 N. Y. 108 1018
McGarvey v. Strathroy, 16 A. R. 631 465
McGill v. Brantford, 21 O. R. 605 370
McGillivray v. Millin, 27 U. C. R. 62 653
McGonigle v. Allegheny City, 44 Pa. St. 118 960
McGregor v. Harwich, 29 S. C. R. 443 ..... 508, 895
—— v. State, 4 Tex. App. 599 529
McGingan v. Southwold S. S. No. 7, 17 O. R. 428 775
McHardy v. Ellice, 1 A. R. 628 682
McHanes v. Charlottetown, 33 C. L. J. N. S. 297 829
McIntosh v. Romfard L. R., 61 L. T. N. S. 185 729
McIntyre and Bosanquet, Re, 11 U.C.R. 460 ..328, 865
McKay v. Brown, 5 U. C. L. J. 91 512
—— v. Cummings, 6 O. R. 400 108
—— v. Nicol, 28 Nova Sc. R. 43 533
McKee v. Huron D. C., 1 U. C. R. 368 488
McKeen and S. Gower, Re, 12 P. R. 553 54
McKelvin v. London, 22 O. R. 70 ..... *508*
McKenzie v. Campbell, 1 U. C. R. 241 ..... 828, 844
McKillop v. Smith, 24 Grant 278 603
McKinnon and Caledonia, Re, 33 U. C. R. 562 819
McKnight v. McKnight, 12 Grant 363 ..... 377, 379, 381, *384*
—— v. Toronto, 3 O. R. 284 490
McLaren v. Buck, 26 C. P. 539 ..... 331, 382
—— v. Canada Central R. W. Co., 8 A. R. 564 627
McLay v. Bruce, 14 O. R. 398 758
McLean v. Brantford, 16 U. C. R. 347 ..... *40*
—— and Cornwall, Re, 31 U. C. R. 314 42
—— and Farrell, Re, 21 U. C. R. 441 ..... *292*, 331, 380
—— v. G. W. R. W. Co., 33 U. C. R. 198 776
—— and Ops, Re, 45 U. C. R. 325 457
—— v. Ottawa, not reported 46, 276, 381
—— and St. Catharines, Re, 27 U. C. R. 603 ..... 825, 829, 839
McLellan v. Assiniboia, 5 Man. R. 127 ..... 331, 380, 382, *726*
—— and Chingnacousy, Re, 18 P. R. 246 ; C. A. not yet reported *378*
—— v. McKinnon, 1 O. R. 219 ..... 493, *478*, 500, 501, 1016
McLeod and Kincardine, Re, 38 U. C. R. 617 ..... 379, 630
McLevy v. Vandecar, 6 O. S. 481 ..... 332, 677, 680
McMaster v. Newmarket, 11 C. P. 598 490
McMichael and Townsend, Re, 33 U.C.R. 158 ..381, 865
McMillan v. Portage la Prairie, 11 Man. R. 216 ..333, *670*
—— v. Rankin, 19 U. C. R. 356 332
—— v. South West Boom Co., 2 Curt. 542 ..... *627*
—— and Cayley, Re, 2 U. C. R. 175 ..381, *865*
McNab v. Dysart, 22 A. R. 508 489
McNamee v. Toronto, 24 O. R. 313 ..... 40, 334, 595
McNish v. McDiarmid, 34 C. L. J. N. S. 461 ; 18 C. L. T. 249 503
McNulty v. Johson, 2 P. R. 119 195
McPherson and Beeman, Re, 17 U. C. L. 90 489
—— v. Farwell, 4 C. P. 161 ..... 234, *305*
—— v. St. John, 32 N. B. Rep. 423 83

[The pages printed in *italics* are those at which the case is most fully referred to.]

M

PAGE.

M[illegible]rson v. The Queen, 1 Ex. C. R. 53 401
M[illegible]illan v. St. Mary's, 36 U. L. J. N. S. 65 810
McBlae v. Corbett, 6 Man. Rep. 426 57
— v. Lemay, 16 A. R. 318; 18 S. C. R. 240 490
M[illegible] v. Villeneuve, Q. R. 5 S. C. 164 ..... 193, 194, 195
M[illegible] St. John, 6 S. C. R. 531 ..... 40, 505, 506, 507
McW[illegible] v. Corbett, 23 A. R. 792; [1898] A. C. 249 81
Macdonald, Re, 10 Man. Rep. 204, [illegible] 276, 325, 445
— v. Farwell, 5 C. P. 101 83
— v. Hamilton, &c., Road Co., 3 C. P. 402 825
— v. Lake Simcoe Ice Co., 29 O. R. 247; 26 A. R. 414 678
— v. South Dorchester, 29 C. P. 240 828
— v. Toronto, 17 C. L. T. 405 305
— v. Yarmouth, 29 O. R. 259 ..... 826, 829
Macdonell v. Purcell, 23 S. C. R. 101 583
Mace and Frontenac, Re, 12 P. C. R. 70 ..... 331, 352, 353, 378, 381
Macey v. Metro. Bd. of Wks., 33 L. J. Ch. 377 462
Macfie and Hutchinson, Re, 12 P. R. 467 597
Machell v. Nevinson, 2 Ld. Raym. 1355 276
Mackenzie and Brantford, Re, 4 O. R. 382 ..... 320, 381, 634
— v. Clark, [1898] 2 Q. B. 251 476
— v. West Flamborough, 26 A. R. 202 654
Mackey v. Sherman, 8 O. R. 28 627
Macon v. Petty, 57 Miss. 378 915
Macpherson and Toronto, Re, 26 O. R. 558 ..... 404, 466, 499
Madden v. Nelson, &c., R. W. Co., 5 B. C. R. 511, 670; [1899] A. C. 626 ..... 666, 1017
Madden v. Shewer, 2 U. C. R. 115 513
Magann v. Ferguson, 18 P. R. 201 515
Magee v. London & P. S. R. W. Co., 6 Gr. 170 761
Main v. St. Stephen, 26 N. B. Rep. 390 ..... 596, 597
Malcolm v. Malcolm, 15 Grant 73 781
— v. Perth Mutual Fire Ins. Co., 29 O. R. 466, 717 531
Mallet v. Martineau, Q. R. 13 S. C. 510 665
Malling v. Chalkin, 3 M. & S. 502 299
Mallinson v. Carr, [1891] 1 Q. B. 48 640
Malloch v. Anderson, 4 U. C. R. 481 807
Mallon v. Toronto, Re, not reported 493
Mallough v. Ashfield, Re, 6 C. P. 158 257
Malmesbury R. W. Co. v. Budd, 2 Ch. D. 113 504
Malott v. Mersea, 9 O. R. 611 ..... 379, 465, 511, 650
Malton Bd. of Health v. Malton, &c., Co., 4 Ex. D. 302 ..... 757, 767
Manchester v. Chapman, 18 L. T. N. S. 640 918
— &c., R. W. Co. v. Anderson, [1898] 2 Ch. 394 457
Manners (Lord) v. Johnson, 1 Ch. D. 673 611
Manning v. Lunn, 2 C. & K. 13 514
Manson v. Forrest, 14 Ct. of Sess. Cas. (4th Ser.) 802 769
— v. Hope, 2 B. & S. 498 740
Mantle v. Jordan, 13 Times L. R. 121 337
March v. Court of Wards, L. R. 4 P. C. 419 931
Marchant v. Lee Conservancy Board, L. R. 8 Ex. 299 323
Marcotte v. Henault, Q. R. 13 S. C. 453 643
— v. Perras, Q. R. 6 Q. B. 400 634
Margate Pier Co. v. Hannam, 3 B. & Al. 266 317
Marks v. Benjamin, 5 M. & W. 565 737
— v. Ford, 45 J. P. 157 809
Marr v. Vienna, 10 U. C. L. J. 275 121
Marsden v. Goode, 2 C. & K. 133 515
Marsh v. Bulteel, 5 B. & Al. 507 479
— v. Huron College, 27 Grant 605 276
Marshall, Re, 5 B. C. R. 747
— v. Queensborough, 1 Sim. & St. 520 42
— v. Smith, L. R. 8 C. P. 416 ..... 640, 645, 659
Martin v. Kergan, 2 P. R. 379 ..... 489, 491
— v. London C. & D. R. W. Co., L. R. 1 Ch 501 459
— v. Pridgeon, 1 E. & E. 778 636
Mason v. K[illegible]ing, 1 Ld. Raym. 608 603
— v. M[illegible], 24 U. C. R. 238 620
Mason v. Sc[illegible] Norfolk R.W.Co., 19 O. R. 132 ..... 457, 465
— v. Wa[illegible] [illegible] J. Notes of Cases (1899) [illegible] 646
Masters v. [illegible], 9 C. [illegible] 677 610
Mather v. [illegible] P. L. [illegible] 150
Matheson v. [illegible] 511 515

PAGE.

Mauleverer v. Spink, 1 Dyer 305 614
Maw v. King, 8 A. R. 248 852
Maxmillian v. New York, 62 N. Y. 160 597
Maxwell v. Clarke, 4 A. R. 460 ..... 826, 828
May v. Harcourt, 13 Q. B. D. 688 503
— and, Re, 74 N. Y. 216 915
— v. Etobicoke, 18 O. R. 438 ..... 828, 830
Meadows v. Taylor, 24 Q. B. D. 717 609
Meaford v. Lang, 20 O. R. 541 ..... 298, 300
Mearns v. Petrolea, 28 Grant 98 ..... 40, 226, 234, 275
Medland and Toronto, Re, 31 O. R. 245 649
Megantic El. Case, 9 S. C. R. 279 258
Mellish v. Brantford, 2 C. P. 35 ..... 41, 422, 518
Mercer v. Hewston, 9 C. P. 349 583
— v. Woodgate, L. R. 5 Q. B. 26 811
Meridin Britannia Co. v. Bladen, 17 P. R. 77 1017
Merritt v. Toronto, 25 O. R. 250; 22 A. R. 205 ..... 352, 340, 341, 720, 731, [illegible]
Mersey Docks, &c., v. Gibbs, 3 H. & N. 164; L. R. 1 H. L. 93 670
Metropolitan Asylum, &c., v. Hill, 6 App. Cas. 193 ..... 759, 766
— Bd. of Wks, v. Howard, 5 T. L. R. 732 402
— v. McCarthy, L. R. 7 H. L. 243 ..... 400, 401
—, &c., R. W. Co. v. Fulham, [1895] 2 Q. B. 449 893
Meyers v. Brantford St. R. W. Co., not yet rep. 836
Michaud, Ex p., 34 N. B. Rep. 123 521
Michie and Toronto, Re, 14 U. C. P. 379 ..... 46, 377, 389, 921, 922
Middlesex and London, Re, 14 U. C. R. 334 555
Middleton v. Simpson, 5 C. P. D. 183 102
Midland R. W. Co. v. Ambergate, &c., R. W. Co., 10 Hare 359 32
— Counties R. W. Co. v. Oswin, 1 Coll. 74 475
Milburn v. Milburn, 4 U. C. R. 179 ..... 514, 515
Mile End v. Whitechapel, 7 Q. B. D. 680 893
Miles and Richmond, Re, 28 U. C. R. 333 ..... 41, 331, 352, 353, 377
Miller v. Hamilton Police Benefit Fund, 28 S. C. R. 475 800
— v. N. Fredericksburg, 25 U. C. R. 31 ..... 828, 838
Milligan v. Wedge, 12 A. & E. 737 595
Milloy and Onondaga, Re, 6 O. R. 573 ..... 331, 377, 381, 386
Mills Trusts, Re, 40 Ch. D. 14 239
— v. Bowyers Society, 3 Kay & J. 66 490
Mills v. Ste. Antoine, Q. R. 2 S. C. 262 826
Milnes v. Huddersfield, 10 Q. B. D. 124, 12 Q. B. D. 443; 11 App. Cas. 511 634
Milton-next-Sittingbourne v. Faversham, 10 B. & S. 548 49
Milwaukee v. Milwaukee, 12 Wis. 93 ..... 69, 70
Minet v. Leman, 20 Beav. 269 32
Miscner and Wainfleet, Re, 46 U. C. R. 457 ..... 332, 377, 380, 918
Mitchell v. Crassweller, 13 C. B. 237 596
— v. Foster, 9 Dowl. 527 149
— v. King, 3 C. & P. 237 514
— v. Pembroke, 31 O. R. 318 1017
— v. Reynolds, 10 Mod. 130 339
Moffatt v. Carleton Place, 5 A. R. 197 775
Mogg v. Clark, 16 Q. B. D. 79 422
Molson's Bank v. Brockville, 31 C. P. 174 ..... 40, 299
Monongahela City v. Fischer, 111 Penn St. 9 837
Monck El. Case, H. E. C. 725; 12 C. L. J. N. S. 115 ..... [illegible], 194, 196
—, 32 U. C. R. 147 ..... [illegible]
—, H. E. C. 154 ..... [illegible]
Money v. Leach, 3 Burr. 1742 635
Mongenais v. Rigaud, Q. R. 11 S. C. 348 ..... [illegible]
Monkhouse v. G. T. R. W. Co., 8 A. R. 637 666
Montague and Aldborough, Re, 12 P. R. 141 508
Montcalm El. Case, 9 S. C. R. 93 258
Montgomery v. Graham, 31 U. C. R. 57 118
— and Lieberthal, 78 L. T. N. S. 406 ..... 498, 503
— and Raleigh, Re, 21 C. P. 381 ..... 350, 381
Montreal v. Brown, 2 App. Cas. 168 464
— v. Doolan, 1 Rev. Leg. 84; 3 Rev. Leg. 433 597
— v. Drummond, 1 App. Cas. 384 ..... 457, 460, 462, 463
— v. Gauthier, Q. R. 7 Q. B. 100 ..... 471, 496
— v. Mulvair, 28 S. C. R. 458 ..... 459, 596, 833
— v. Walker, M. L. R. 1 Q. B. 469 ..... 349, 344, 526, 746
Moore v. Bradley, 5 Man. Rep. 49 37

[The pages printed in *italics* are those at which the case is most fully referred to.]

M

PAGE.
Moore v. Carlsbrooke, 12 C. B. 661 ... 105
—— v. Darley, 1 C. B. 415 ... 501
Moore v. Esquesing, 21 C.P. 277 ... 382, 807, 809, 816, 857
—— v. Gridley, 32 U. C. R. 233 ... 513
—— v. Hynes, 22 U. C. R. 107 ... 409, 410, *599*, 601
—— v. Metropolitan R. W. Co., L. R. 8 Q. B. 36 ... 596
—— v. Toronto, 26 O. R. 590 ... 39, 544
—— v. Woodstock, &c., Co., 29 S. C. R. 627 ... 812
Morant v. Chamberlain, 6 H. & N. 541 ... 811
Mordue v. Palmer, L. R. 6 Ch. 22 ... 503
Morell and Toronto, Re, 22 C. P. 323 ... 334, 350, 381, 910
Morgan v. Parry, 17 C. B. 334 ... 296
Morley v. Pincombe, 2 Ex. 101 ... 727
Morrice v. Baker, 3 Bulstr. 196 ... 700
Morris v. Burdett, 2 M. & S. 217 ... 235
—— v. Huron, 26 O. R. 689; 27 O. R. 341 ... 39
—— v. Montreal, Q. R. 3 S. C. 342 ... 837
Morrisburgh Bd. of Educ. and Winchester, Re, 8 A. R. 169 ... 782, 784
Morrison v. McAra, 23 Rettie 564 ... 1018
Morrow v. C. P. R. W. Co., 21 A. R. 149 ... 837
—— v. Connor, 11 P. R. 423 ... 47
Morton and St. Thomas, Re, 6 A. R. 323 ... 333, 380, 807, 808
Mosely v. Simpson, L. R. 16 Eq. 226 ... 504
Motion v. Mills, 13 T. L. R. 427 ... 705
Mott v. Milne, 31 Nova Sc. R. 372 ... 513
—— v. Shoolbred, L. R. 20 Eq. 22 ... 658
Mottashed and Prince Edward, Re, 30 U. C. R. 74 ... 347, 381, *383*
Mould v. Williams, 5 Q. B. 469 ... 657
Moulton and Haldimand, Re, 12 A. R. 503 ... 45, 831, 847, *859*
Mount Forest Sch. Trustees and Mount Forest, Re, 29 U. C. R. 422 ... 530, 777
Mountjoy v. The Queen, 1 E. & A. 429 ... 814
Mouse's Case, 12 Co. Rep. 63 ... 611
Muir v. Keay, L. R. 10 Q. B. 506 ... *753*
Mullins v. Collins, L. R. 9 Q. B. 292 ... 217
Munday v. Stubbs, 10 C. B. 432 ... 535
Munro v. Watson, 51 J. P. 660 ... 329, *337*
Munson v. Collingwood, 9 C. P. 497 ... 301, 776
Muntz v. Sturge, 8 M. & W. 302 ... 235
Murphy v. Climie, 46 U. C. R. 264 ... 336, *342*
—— v. Dalton, 5 O. R. 541 ... 617
—— v. Ottawa, 13 O. R. 334 ... 40, 505
Murray v. Currie, L. R. 6 C. P. 24 ... 505
Musgrave v. Nexinson, 1 Strs. 584 ... 272
Muskoka El. Cas., H. E. C. 458 ... 205
—— and Gravenhurst, Re, 6 O. R. 352 ... 487, 488, 494
—— and Parry Sound El. Case, 1 Ont. El. Cas. 197 ... 259, 260, 264
Mytton v. Duck, 26 U. C. R. 61 ... 810, 818

N.

Nael v. Mutter, 31 L. J. C. P. 350 ... 120
Nanton v. Villeneuve, 10 Man. Rep. 213 ... 41
Nash v. Glover, 24 Grant 219 ... 812
—— and McCracken, Re, 33 U. C. R. 181 ... 329, *344*, 612
Nasmith and Toronto, Re, 2 O. R. 192 ... 381
National Dwellings Society v. Sykes, [1894] 3 Ch. 159 ... 151
—— Provincial Bank v. Jackson, 33 Ch. D. 1 ... 41
—— Telephone Co. v. Barker, [1893] 2 Ch. 186 ... 616, 617, 758
Neil v. Longbottom, [1894] 1 Q. B. 767 ... 109, 111
Neilly and Owen Sound, Re, 37 U. C. R. 289 ... *341*, *732*, *733*
Neilson v. Jarvis, 13 C. P. 176 ... 431
Nevill v. Ross, 22 C. P. 487 ... 40, 334, 595, 598
Newark v. Stockton, 42 N. J. Eq. 531; 44 N. J. Eq. 179 ... 708, 710
Newbury v. Stephens, 16 U. C. R. 65 ... 776
New Glasgow, Re, 33 C. L. J. N. S. 543 ... 45
New Hamburg v. Waterloo, 22 O. R. 193; 20 A. R. 1; 22 S. C. R. 296 ... 39, 847
Newhaven v. Newhaven, 30 Ch. D. 350 ... 610
Newman v. Niagara, &c., Ins. Co., 25 U.C.R. 435 ... 490
Newport v. Graham, 9 Q. B. D. 183 ... 918
Newsome v. Oxford, 28 O. R. 442 ... 540
Newton v. Monckton, 58 L. T. N. S. 231 ... 649
New Westminster v. Brighouse, 20 S. C. R. 520 ... 465, 863

N

PAGE.
New York, &c., R. W. Co., Re, 42 Hun. (N. Y.) 621; 107 N. Y. 42 ... 807
Niagara Sch. Bd. v. Niagara, 37 U. C. R. 529; 39 U. C. R. 362; 1 A. R. 298 ... *782*
Nichol and Alnwick, Re, 41 U. C. R. 577 ... 16, 380, *389*, 448, 860
Nicholl v. Epping D. C., [1899] 1 Ch. 811 ... 616
Nicholson v. Fields, 7 H. & N. 810 ... 105
Nickle v. Douglas, 35 U. C. R. 127 ... 596
—— and Walkerton, Re, 11 O. R. 433 ... 465, 650
Nicol v. L. & N. W. R. W. Co., L. R. 10 Ex. 4 ... 652
Niven v. Geaves, 54 J. P. 648 ... 708
Noble v. Toronto, 46 U. C. R. 519 ... 651
Noel v. Montreal, 19 Rev. Leg. 704 ... 597
Nordheimer v. Alexander, M. L. R. 6 Q. B. 402; M. L. R. 3 S. C. 283; 19 S. C. R. 248 ... 661
Norris v. Smith, 10 A. & E. 188 ... *574*
—— v. Stops, Re, Hob. 210; 5 Co. 63 ... 335
North v. Smith, 10 C. B. N. S. 572 ... 596
Northbourne El. Case, 1 O.M. & H. 168 ... *265*
Northcote v. Pulsford, L. R. 10 C. P. 476 ... *162*
North Dorchester v. Middlesex, 16 O. R. 658 ... 682
—— Dumfries v. Waterloo, Re, 12 U. C. R. 567 ... 54
—— Durham El. Case, 2 O.M. & H. 159 ... 265
—— Grey El. Case, H. E. C. 362 ... 260
—— Gwillimbury v. Moore, 15 C. P. 445 ... 448
—— Hempstead v. Hempstead, 2 Wend. 109 ... 69
—— London R. W. Co. v. Metro. Bd. of Wks. 1 Johns. N. Ch. Cas. 405 ... 158
—— Meath El. Case, 4 O.M. & H. 130, 185 ... 265
—— Middlesex El. Case, H. E. C. 376 ... 267
—— Norfolk El. Case, 1 O.M. & H. 211 ... 265
—— Norwich and Norwich, Re, 44 U. C. R. 34 ... 70
—— Ontario El. Case, H. E. C. 304 (1875) ... 258, 260, 265
———, H. E. C. 785; 4 S. C. R. 430 (1879) ... 260, 261, 262, 264, 265, 267
———, 1 Ont. El. Cas. 1 (1884) ... 258, 260
—— Renfrew El. Case, H. E. C. 710 ... 261
—— Shore R. W. Co. v. Plon, 14 App. Cas. 612 ... 460, 462
Northumberland v. Bowman, 56 L. T. N. S. 773 ... 701
—— & Durham and Cobourg, Re, 20 U. C. R. 283 ... 65, 70, 492, 494
North Victoria El. Case, H. E. C. 252 ... 258, 261
———, H. E. C. 584, 612 ... 258, 264
———, H. E. C. 671; 11 C. L. J. N. S. 163 ... 125, 186, 193, 194, 195
—— Wentworth El. Case, H. E. C. 343 ... 260
Northwood v. Raleigh, 3 O. R. 347 ... 465, 650
North Yarmouth v. Skillings, 45 Maine 133 ... 70
—— West Electric Co. v. Walsh, 29 S. C. R. 33 ... 931
——— Nav. Co. v. Walker, 3 Man. R. 25; 4 Man. R. 406; 5 Man. R. 37 ... 678
Norton v. Salisbury, 4 C. B. 37 ... 140
Norvall v. Canada Southern R. W. Co, 28 U.P. 309 ... 457
—— v. ——, 5 A. R. 13 ... 498
Norvell v. Canada Southern R. W. Co, 9 A. R. 310 ... 491
Norwich El. Case, 1 O.M. & H. 10 ... 250
———, 4 O.M. & H. 85 ... 265
Nott v. Nott, 5 O. R. 283 ... 491
Nottawasaga v. Hamilton, &c., R. W. Co., 16 A. R. 52 ... 657
Nottingham El. Case, 1 O.M. & H. 245 ... 153
—— v. Manchester, &c., R. W. Co., 71 L. T. N. S. 430 ... 824
Noverre v. Toronto, 27 O.R. 651; 24 A.R. 109 ... 825, 829
Nowell v. Worcester, 9 Ex. 457 ... 454
Nuneaton L. B. v. General Sewage Co., L. R. 20 Eq. 127 ... 757, 763
Nuttall v. Manchester, 8 Times L. R. 513 ... 503
Nutter v. Accrington L. B., 4 Q. B. D. 375 ... 33
Nutton v. Wilson, 22 Q. B. D. 744 ... 109, 111

O.

Oakes and Halifax, Re, 4 S. C. R. 640 ... 487
Oakland v. Proper, 1 O. R. 330 ... *299*
Oakwood High School Case,—See next case.
Oakwood School Board and Mariposa, Re, 15 O. R. 686; 16 A. R. 87 ... *783*, 784
O'Brien v. Trenton, 6 C. P. 359 ... 807
O'Connor v. Otonabee, 35 U.C.R. 73 ... 826, 847, 885, 887

[The pages printed in *italics* are those at which the case is most fully referred to.]

O

PAGE.
O'Dea v. Crowhurst, 15 T. L. R. 320 ..... *741*
O'Flaherty v. McDowell, 6 H. L. Cas. 142 32
Oldham El. Case, 1 O'M. & H. 153 164
Oliver v. Horsham L. B., [1894] 1 Q. B. 332 ....30, 833
Olver and Ottawa, Re, 20 A. R. 529 .....46, 375, 411
O'Meara and Ottawa, Re, 11 O. R. 603; 15 A. R. 75; 14 S. C. R. 742 .....32, 330, 381, 729
O'Neil v. Attorney-General of Canada, 26 S.C.R. 122 634
—— v. Hobbs, 20 O. R. 487 515
—— and Oxford, Re, 41 U. C. R. 170 331
—— v. Windham, 24 A. R. 341 ..665, 826, 828, 829, 835
—— and York & Peel, Re, 15 C. P. 240 415
Ontario v. Paxton, 27 C. P. 104 ..... *78*
—— Natural Gas Co., and Gosfield South, Re, 19 O. R. 591; 18 A. R. 626 .....333, 731, 883
—— Natural Gas Co. v. Smart, 19 O. R. 591; 18 A. R. 626 .....333, 731, 883
—— & Quebec R. W. Co. and Taylor, Re, 6 O. R. 338 ..... *464*, 468
—— Salt Co. v. Merchants' Salt Co., 18 Grant 551; 540 ..... *41*, 725
Orford v. Bailey, 12 Grant 276 ...39, 441, *583*, 584, 655
Organ v. Toronto, 24 O. R. 318 .....665, 826, 830
Original, &c., Collieries Co. v. Gibb, 5 Ch. D. 713 .....656, *678*
Orr Ewing v. Colquhoun, 2 App. Cas. 839 686
Orser v. Mountenay, 9 U. C. R. 382 453
Osborne v. Kingston, 23 O. R. 382 34
—— v. L. & N. W. R. W. Co., 21 Q. B. D. 220 .. 837
Ostrom v. Sills, 24 A. R. 526; 28 S. C. R. 485 .652, 653
—— and Sydney, Re, 15 O. R. 43; 15 A. R. 372 .....332, 333, 377, 381, *858*, 860
Ottawa El. Case, 34 C. L. J. N. S. 634 416
—— Municipal Election, Re, 26 O. R. 166 ..... *199*, *209*, 222
—— v. Lowe, 6 O. S. 546 30
Ovenden v. Raymond, 34 L. T. N. S. 698 633
Oviatt v. Bell, 1 U. C. R. 18 ..... *740*
Owens v. Burgess, 11 Man. R. 75 617
Owston v. Grand Trunk R. W. Co., 28 Grant 482 472
Oxford v. Crow, [1893] 3 Ch. 585 43
——, &c., R. W. Co., Re, Ex p. Melward, 27 Beav. 571 463

P

Paffard and Lincoln, Re, 24 U. C. R. 16 ....274, 351, 378, 381, *395*
Page v. Kettering Waterworks, 8 T. L. R. 228 .. ..503, 506, 650
Paint v. The Queen, 2 Ex. C. R. 149; 18 S. C. R. 718 464
Palgrave Gold, &c., Co. and McMillan, Re, [1892] A. C. 460 .....*482*, 485
Pallister v. Gravesend, 9 C. B. 774 .....423, 454, 458
Palmatier v. McKibbon, 21 A. R. 441 ..... *815*
Palmer and Hoskein, Re, [1898] 1 Q. B. 131 ...503, 505
Papineau v. Longueuil, Q. R. 11 S. C. 98 651
Paradis v. The Queen, 1 Ex. C. R. 191 ...461, 463, 464
Pardee v. Lloyd, 26 Grant 374; 5 A. R. 1..489, 501, 504
Park v. White, 23 O. R. 611 644
Parkdale v. West, 12 App. Cas. 602 867
Parker v. Alder, [1899] 1 Q. B. 26 746
—— v. Inge, 17 Q. B. D. 584 762
—— v. Pittsburgh, 3 C. P. 517 .....381, 866
Parkyn v. Staples, 19 C. P. 240 513
Parkyns v. Preist, 7 Q. B. D. 313 .....*665*, *670*
Parsons v. St. Matthew's, &c., L. R. 3 C. P. 56.. 833
Parton v. Williams, 3 B. & Al 535
Partridge v. Great Western R. W. Co., 8 C. P. 97 459
Passey v. Oxford L. B., 43 J. P. 622 .....*766*, 767
Patten v. Rhymer, 3 E. & E. 1 633
Patterson v. Bowes, 4 Grant 170 .....47, 115
—— v. Brown, 11 Man. R. 612 256
—— v. Buffalo, &c., R. W. Co., 17 Grant 521 .. 42
—— v. Central, &c., Loan Co., 29 O. R. 134 626
—— and Grey, Re, 18 U. C. R. 189 ..... 331, 381
—— and Hope, Re, 31 U. C. R. 360 378
—— v. Victoria, 5 B. C. R. 628; [1899] A. C. 615 .....825, 828, 835
Pattullo and Orangeville, Re, 31 O. R. 192 ....712, 735, 910, 1016
Paxton v. Great Northern R. W. Co., 8 Q. B. 638 501

P

PAGE.
Payne v. Brecon, 3 H. & N. 572 .....423, 454
—— v. Campbell, 24 A. R. 556 872
Pearson v. York, 41 U. C. R. 378 .....828, 832, 837
Pease v. Lowden, [1899] 1 Q. B. 386 1015
Peck and Amelisburg, Re, 12 P. R. 664 376
—— and ——, Re, 17 O. R. 54 ....40, 331, 380, *392*, *799*
—— and Galt, Re, 46 U. C. R. 211.. 333, 375, 380, *708*
—— and Peterborough, Re, 34 U. C. R. 129 45
Peek v. Waterloo, &c., L. B., 2 H. & C. 709 644
Peers v. Allen, 19 Grant 98 .....514, 515
—— v. Oxford, 17 Grant 472 .....209, *300*
Pells v. Boswell, 8 O. R. 680 333
Pembroke v. Canada Central R. W. Co., 3 O. R. 503 .....42, *334*, 780, 950
Penny v. Wimbledon, [1898] 2 Q. B. 212; [1899] 2 Q. B. 72 .....505, 1017
Penruddock's Case, 5 Co. Rep. 101 760
People v. Metrop. Tel. Co., 31 Hun. (N. Y.) 506 669
—— ex rel. Cunningham v. Roper, 35 N. Y. 629 431
People's Milling Co. and Meaford, Re, 16 O. R. 465 .....322, 381, *431*
Peppercorn v. Hofman, 9 M. & W. 618 535
Perdue v. Chinguacousy, 25 U. C. R. 61 ...40, 650, 866
Pering v. Keymer, 3 A. & E. 245 401
Perlet v. Perlet, 15 U. C. R. 165 480
Perley v. Georgetown, 7 Gray 464 598
Perrimao v. Steggall, 9 Bing. 670 490
Perry v. Fitzhowe, 8 Q. B. 757 670
—— v. Ottawa, 23 U. C. R. 301 42
—— v. Whitby, 13 U. C. R. 564 .....46, 376, 391
Perth Bd. of Educ. and Perth, 39 U. C. R. 34. 781, *782*
Pescod v. Pescod, 58 L. T. N. S. 76 481
Peterborough v. Burnham, 12 C. P. 103 .....111, 114
—— v. Hatton, 30 C. P. 455 .....317, 321, *522*
—— v. Smith, 26 U. C. R. 10 579
Peters v. London Board of Police, 2 U. C. R. 543 .....46, 330, 336, *723*
Peterson v. Fredericks, 15 P. R. 301 814
Petman v. Toronto, 24 A. R. 53 ..... 47, 332, 377, 379, 511, 908, 917
Pettamberdas v. Thackoorseydas, 7 Moo. P. C. C. 239 725
Peuchen v. Lamb, 25 C. P. 588 489
Phillips v. Goff, 17 Q. B. D. 805 .....186, 193, 194, 195
Philpott v. St. George's Hospital, 6 H. L. Case 338 32
Pickering v. James, L. R. 8 C. P. 489 .....182, 187, 253
Pickett and Wainfleet Re, 28 O. R. 464 ...332, *353*, 380
Picton v. Geldert, [1893] A. C. 524 .....30, 651, 833
Pierce v. Bartram, Cowp. 469 ..... *539*
Pigeon v. Montreal, 17 S. C. R. 405 ..341, *344*, 718, 746
Pile v. Pile, 3 Ch. D. 36 450
Pilkington v. Riley, 3 Ex. 739 512
Pillow v. Montreal, 30 L. C. J. 1 630
Pim v. Ontario, 9 C. P. 302, 304 .....*42*, *78*, *543*
Pion v. North Shore R. W. Co., 14 App. Cas. 612 679
Piper v. Chappell, 8 M. & W. 624 964
Pirie and Dundas, Re, 29 U. C. R. 401 ...*330*, 380, *490*
Platt v. Toronto, Re, 33 U.C.R. 53..377, 379, 382, *910*, *958*
Plewes v. Hall, 29 U. C. R. 472 627
Plews v. Middleton, 6 Q. B. 845 490
Pocket v. Poole, 11 Man. R. 275 533
Pocock v. Toronto, 27 O. R. 635 .....*334*, 512
Point Edward and Sarnia, Re, 44 U. C. R. 461.. *70*
Pointon v. Hill, 12 Q. B. D. 306 .....635, *773*
Polglass v. Oliver, 2 Cr. & G. 15 .....514, 515
Pollock and Toronto, Re, 15 P. R. 355 ..... *508*
Pontefract Mun. El., 15 T. L. R. 147 1015
Ponting v. Noakes, [1894] 2 Q. B. 281 705
Poole v. Huskinson, 11 M. & W. 827 .....810, 811
Poplar Board of Works v. Knight, E. B. & E. 408; 5 Jur. N. S. 196 649
Port Arthur School Board v. Fort William, 25 A. R. 522 .....780, 785, 1015
Port Hope School Trustees v. Port Hope, 4 C.P. 418 .....536, 777
Portland v. Griffiths, 23 N. B. Rep. 559; 11 S. C. R. 333 .....825, 827, 828, 834, 837
Port Rowan High School v. Walsingham, 23 C. P. 11 .....37, 536, *782*
Postlethwaite v. Gibson, 3 Esp. 226 535
Potts v. Dunnville, 38 U. C. R. 96 .....41, 411, 422
Pouliot v. The Queen, 1 Ex. C. R. 313 502
Poulterer's Co. v. Phillips, 6 Bing. N. C. 314 ... 328

[The pages printed in *italics* are those at which the case is most fully referred to.]

P

PAGE.
Poulton v. L. & S. W. R. W. Co., L. R. 2 Q. B. 534 590
Pound v. Plumstead Bd., L. R. 7 Q. B. 183 33
Pounder and Winchester, Re, 19 A. R. 684 ..... 221, 233, 713
Poussett and Lambton, Re, 22 U. C. R. 80 ..... 566, 573
Powell v. Apollo Candle Co., 10 App. Cas. 282 51
Powell v. Guest, 18 C. B. N. S. 72 121
—— v. Toronto H. & B. R. W. Co., 25 A. R. 209 ..... 461, 462
Powney v. Blomberg, 14 Sim. 179 515
Pratt v. Charbonneau, M. L. R. 7 Q. B. 24 507
—— v. Stratford, 14 O. R. 209; 16 A. R. 5. 457, 462, *867*
Prebble, Re, [1892] 2 Q. B. 602 565
Prescott Case, 1 Ont. El. Cas. 88 ..... 189, 266
Prestidge v. Woodman, 1 B. & C. 12 535
Preston v. Camden, 14 A. R. 85 457
—— and Klotz, Re, 16 P. R. 318 492
—— and Manvers, Re, 21 U. C. R. 626 ..... 276, *348*
Prevost v. Montreal, Q. B. 15 S. C. 39 668
Price v. Catarraqui, etc., Co., 35 U. C. R. 314 836
Prickett v. Gratrex, 8 Q. B. 1020 512
Prince and Toronto, Re, 25 U. C. R. 175 ..... 15, 330, *536*
Pringle and Macdonald, Re, 19 U. C. R. 254 320
Pritchard v. Bangor, 13 App. Cas. 241 ..... 151, 292
Prittie and Toronto, Re, 19 A. R. 503 ..... 459, 466, 499
Proctor v. Williams, 1 L. T. N. S. 372 491
Prouse v. Glenny, 13 C. P. 560 816
Provincial Fisheries, Re, 26 S. C. R. 444; [1898] A. C. 700 675
Pryce and Toronto, Re, 16 O. R. 720; 26 A. R. 16 ..... 468, 808, 915, 910
Pudsey Gas Co. v. Bradford, L. R. 15 Eq. 167 42
Pulpe (Cle. de) v. Agnes, Q. R. 7 Q. B. 339 457
Purdy v. Farley, 10 U. C. R. 545 ..... 815, 877

Q

Quaintance v. Howard, 18 O. R. 95 42
Quarman v. Burnett, 6 M. & W. 499 505
Quebec v. Howe, 13 Q. L. R. 315 838
—— v. Pickard, Q. R. 14 S. C. 94 836
Queddy River, &c., Co. v. Davidson, 10 S. C. R. 222 627
Queen's Counsel, Re, 23 A. R. 702; [1898] A. C. 247 81
—— County El. Case, 7 S. C. R. 247 ..... 192, 193, 194, 195
Quillman v. Canada Southern R. W. Co., 9 O. R. 567 465
Quin v. O'Keefe, 1 Ir. C. L. R. 393 32
Quincy Horse Co. v. Cruse, 38 Ill. 223 1018
Quinn v. Orillia, 28 O. R. 435 ..... 379, 511, 606
Quinton v. Bristol, L. R. 7 Eq. 524 458

R

Race v. Anderson, 14 A. R. 213 489
Radclyffe v. Bartholomew, [1892] 1 Q. B. 161 231
Radenhurst v. Coate, 6 Grant 139 757
Radley v. L. & N. W. R. W. Co., L. R. 9 Ex. 71; L. R. 10 Ex. 100; 1 App. Cas. 754 836
Rae v. Trim, 27 Grant 374 ..... 811, 865
Railway Sleepers Supply Co., Re, 39 Ch. D. 264 149
Rainnie v. St. John, 31 N. B. Rep. 582 837
Rainville v. G. T. R. W. Co., 25 A. R. 212 617
Raleigh v. Williams, 21 S. C. R. 103; [1893] A. C. 540 ..... 457, 495
Ramsay v. Western District Council, 4 U. C. R. 374 ..... 9, 41, 203
Ramsden v. Manchester, &c., R. W. Co., 1 Ex. 723 457
Rancour v. Hunt, Q. R. 1 S. C. 74 664
Rankin v. G. W. R. W. Co., 1 C. P. 463 457
Rapier v. London Tramways Co., [1893] 2 Ch. 588 ..... *759*
Rapley v. Smart, [1894] W. N. 2 706
Rapson v. Cubitt, 9 M. & W. 760 595
Rasconi v. Montreal, Q. R. 16 S. C. 278 ..... *330*
Ratte v. Booth, 10 O. R. 351; 11 O. R. 491; 14 A. R. 419; 15 App. Cas. 188 ..... 679, *680*
Rawdon v. Ward, 27 U. C. R. 609 301
Ray v. Petrolea, 24 C. P. 73 ..... 825, 826, 827, 829
Raynor v. Mitchell, 2 C. P. D. 357 596
Read v. Edwards, 17 C. B. N. S. 245 603

R

PAGE.
Read v. Goldring, 2 M. & S. 86 514
—— v. Perrett, 1 Ex. D. 349 ..... *660*, 661
Redgate v. Haynes, 1 Q. B. D. 89 633
Redick v. Skelton, 18 O. R. 100 501
Reedie v. L. & N. W. R. W. Co., 4 Ex. 244 595
Reeves v. Toronto, 21 U. C. R. 457 ..... 595, *645*, 651
R. v. Alexander, 17 O. R. 458 967
—— v. Allen, 3 O. S. 90 813
—— v. Anderson, 11 A. & E. 3 247
—— v. Appelbe, 30 O. R. 623 ..... *751*
—— v. Ashall, 12 East 22 338
—— v. Ashby Folville, L. R. 1 Q. B. 213 833
—— v. Ashton, 1 E. & B. 286 633
—— v. Babb, 3 T. R. 570 295
—— v. Backhouse, 12 L. T. N. S. 579 146
—— v. Banks, 2 N. W. T. 77; 1 Can. Crim. Cas. 370 ..... *751*, 967, 971
—— v. Barnwell, 5 W. R. 557 265
—— v. Barry, 2 Ex. C. R. 333 402
—— v. Bassett, 42 O. R. 51 ..... 379, *743*
—— v. ——, 10 P. R. 386 635
—— v. Beardsall, 1 Q. B. D. 453 208
—— v. Bell, 25 O. R. 272 ..... *631*, 966
—— v. Bellringer, 4 T. R. 810 275
—— v. Belmont, 35 U. C. R. 298 ..... 330, *342*, 343, 379
—— v. Berger, [1894] 1 Q. B. 823 814
—— v. Bird, 13 East 379 338
—— v. Blakeley, 6 P. R. 244 636
—— v. Blizard, L. R. 2 Q. B. 55 ..... 108, 228, 256
—— v. Boardman, 30 U. C. R. 553 214
—— v. Boulton, 12 Cox C. C. 95 534
—— v. ——, 15 U. C. R. 272 807
—— v. Bower, 1 B. & C. 585 319
—— v. Boyd, 18 O. R. 485 ..... *528*
—— v. Boyle, 4 P. R. 256 519
—— v. Bradley, 3 E. & E. 634 150
—— v. ——, 63 L. J. M. C. 183 657
—— v. Brady, Q. R. 10 S. C. 539 634
—— v. Bridgeman, 2 Stra. 1203 295
—— v. Brittain, 4 Nova Sc. R. 614 820
—— v. Brown, 1 C. & M. 314 533
—— v. ——, 13 C. P. 356 ..... 821, 825, 849
—— v. ——, L. R. 2 Q. B. 630 ..... 463, 464
—— v. ——, 16 O. R. 41 521
—— v. Bruce, 11 C. P. 575 ..... 45, 543
—— v. Bruttle, L. R. 1 C. C. 248 279
—— v. Buckingham, 4 Camp. 189 819
—— v. Buffalo & L. H. R. W. Co., 23 U. C. R. 268 462
—— v. Bumstead, 2 B. & Ad. 765 333
—— v. Burah, 3 App. Cas. 98 50
—— v. Burder, 4 T. R. 778 319
—— v. Burke, 33 C. L. J. N. S. 84 234
—— v. Burness, 31 L. T. N. S. 828 806
—— v. Burnett, 4 M. & S. 272 750
—— v. Burrell, 12 A. & E. 460 ..... 229, 232, 319
—— v. Bush, 15 O. R. 398 ..... *80*
—— v. Butler, 22 O. R. 462 ..... 332, 528
—— v. Callaway, 3 Man. Rep. 297 ..... *558*
—— v. Cambridgeshire, 7 A. & E. 491 32
—— v. Carleton, 1 O. R. 277 849
—— v. Carlile, 6 C. & P. 636 ..... *656*, 659
—— v. Carlisle, 1 Stra. 385 276
—— v. Caton, 16 O. R. 11 ..... 379, *750*, 979
—— v. Chapman, 1 O. R. 582 ..... 370, 521, *731*
—— v. Charlesworth, 16 Q. B. 1012 697
—— v. Chayter, 11 O. R. 217 ..... 379, *743*
—— v. Chester (Archdeacon), 1 A. & E. 342 151
—— v. Chittenden, 15 Cox. C. C. 725 ..... 658, 670
—— v. Chitty, 5 A. & E. 609 102
—— v. Chorley, 12 Q. B. 515 ..... 764, 807
—— v. Clarke, 5 Ex. C. R. 54 460
—— v. ——, 20 O. R. 642 967
—— v. Cleworth, 9 L. T. N. S. 682 325
—— v. Clouthier, 12 Man. Rep. 183 532
—— v. Coaks, 3 E. & B. 249 319
—— v. Collins, 14 O. R. 613 967
—— v. Cooper, L. R. 5 Q. B. 457 151
—— v. ——, 40 U. C. R. 294 820
—— v. Copp, 17 O. R. 738 ..... 332, 379, 609, 613
—— v. Cornwall, 25 U. C. R. 293 ..... 226, 227
—— v. Cottle, 16 Q. B. 412 49
—— v. Coulsin, L. R. 8 Q. B. 216 239
—— v. Coutts, 5 O. R. 644 ..... 379, *742*, 744

[The pages printed in *italics* are those at which the case is most fully referred to.]

R

PAGE.

R. v. Cowan, 24 U. C. R. 606 102
—— v. Coward, 16 A. & E. 818 150
—— v. Crawford, 1860 744
—— v. Crawley, 3 F. & F. 160 640
—— v. Critchlow, 26 W. R. 681 657
—— v. Croke, Cowp. 29 37
—— v. Cross, 3 Camp. 224 ..... 656, 666
—— v. Crunden, 2 Camp. 89 637
—— v. Cumberlege, 36 L. T. N. S. 300 320
—— v. Curran, 3 C. & P. 397 532
—— v. Cushing, 26 A. R. 248 ..... *728*
—— v. Cuthbert, 45 U. C. R. 10 ..... 379, 657, *750*
—— v. Daly, 12 P. R. 411 ..... *636*
—— v. Darlington L. B., 33 L. J. Q. B. 365 457
—— v. Davey, 1900 820
—— v. Davidson, 8 Man. R. 325 635
—— v. Davie, 6 A. & E. 374 36
—— v. Davis, 24 C. P. 575 658
—— v. ——, 35 U. C. R. 107 ..... 820, 825
—— v. Dawes, 4 Burr. 2277 249
—— v. Dennis, [1894] 2 Q. B. 458 640
—— v. Devsnap, 16 East 194 749
—— v. Dillon, L. P. R. 352 635
—— v. Dixon, 10 Mod. 336 633
—— v. Dodsworth, 3 Moo. & R. 72; 8 C. & P. 218 143
—— v. Donaldson, 24 C. P. 148 810
—— v. Doncaster, 2 Burr. 738 272
—— v. Downes, 1 Q. B. D. 25 230
—— v. Downshire (Marquis of), 4 A. & E. 698 806
—— v. —— (Marchioness of), 4 A. & E. 232 812
—— v. Dowslay, 19 O. R. 622 ..... *358*, 967
—— v. Duke of Richmond, 6 T. R. 560 ..... 121, 360
—— v. Eastern Counties R. W. Co., 2 Q. B. D. 347 462
—— v. East Mark, 11 Q. B. 877 809
—— v. Eccles-field, 1 B. & Al. 348 833
—— v. Edgar, 17 O. R. 188 967
—— v. Eli, 19 O. R. 727 521
—— v. Ellis, Car. & M. 564 143
—— v. Epsom Union, 8 L. T. N. S. 383 ..... 826, 828
—— v. Essex, 4 T. R. 591 599
—— v. Farrel, 9 Cox C. C. 446 636
—— v. Faversham, 8 T. R. 352 ..... 272, 333
—— v. Fermanagh, 14 L. R. Ir. 50 661
—— v. Fisher, 8 C. & P. 612 49
—— v. ——, 2 Ex. C. R. 365 679
—— v. Fitzgerald, 30 U. C. R. 207 820
—— v. Fleming, 27 O. R. 122 521
—— v. Flintshire, 5 B. & Al. 761 422
—— v. Flory, 17 O. R. 715 ..... *336*, 379
—— v. Fox, 16 Cox C. C. 166 ..... *274*
—— v. France, Q. R. 7 Q. B. 83 ..... *632*, 634
—— v. Francis, 18 Q. B. 526 110
—— v. Gaisford, [1892] 1 Q. B. 381 968
—— v. Garvey, 16 Cox C. C. 252 214
—— v. Gavin, 1 Can. C. C. 59 666
—— v. Giles, 26 O. R. 586 624
—— v. Gloucester, Holt 450 228
—— v. Goodcheap, 6 T. R. 159 422
—— v. Gore District Council, 5 U. C. R. 357 ..... 9, 45
—— v. Goulais, 14 O. R. 613 967
—— v. Graham, *et al*, 4 Times L. R. 212 659
—— v. Grand Trunk R. W. Co., 17 U. C. R. 165 820
—— v. Grant, 18 O. R. 169 ..... 379, 966, 969, 971
—— v. Gravelle, 10 O. R. 735 ..... 331, 379, *728*, 966
—— v. Great Broughton, 5 Burr. 2706 833
—— v. Great Western R. W. Co., 21 U. C. R. 555 814
—— v. ——, 32 U. C. R. 560 875
—— v. Grey, 4 F. & F. 73 637
—— v. Grimes, 5 Burr. 2601 272
—— v. Grosvenor, 2 Strn. 1103 319
—— v. Grover, 23 O. R. 92 820
—— v. Gulley, 21 O. R. 219 519
—— v. Gurr, 21 O. R. 490 ..... *527*, 528
—— v. Hague, 9 Cox C. C. 412; 4 B. & S. 713 ..... *274*
—— v. Haldimand, 20 U. C. R. 574 849
—— v. ——, 38 U. C. R. 396 849
—— v. Hall, 17 C. P. 282 ..... *816*
—— v. ——, 12 P. R. 142 967
—— v. Hammond, 26 O. R. 211 574
—— v. Harrald, L. R. 7 Q. B. 361 117
—— v. Harris, 1 B. & Ad. 936 278
—— v. ——, L. R. 1 C. C. 282; 11 Cox C. C. 659 ..... *637*

R. v. Harshman, 14 N. B. Rep. 346 657
—— v. Hart, 29 O. R. 611 ..... 743, 966, 972
—— v. Haworth, 12 East 556 422
—— v. Hazen, 23 O. R. 387; 26 A. R. 633 ..964, 966, 967
—— v. Heffernan, 13 O. R. 616 967
—— v. Henderson, 18 O. R. 1444 ..... 379, *744*
—— v. Herman, 8 Man. R. 330 ..... 635, 968
—— v. Hertfordshire, 1 Chitty 700 317
—— v. Higginson, 2 Burr. 473 631
—— v. Hill, 4 B. & C. 441 272
—— v. Hiscox, 44 U. C. R. 214 ..... 37, 379, *537*
—— v. Hodge, 46 U. C. R. 141; 7 A. R. 246; 9 App. Cas. 117 ..... 50, 51, *343*, 667, 732, *733*, 1017
—— v. Hodges, Moo. & M. 341 378
—— v. Hodgkinson, 10 B. & C. 74 741
—— v. Hollister, 8 O. R. 756 ..... *724*, 726, 966, 970
—— v. Holmes, 3 C. & K. 360; 6 Cox C. C. 216 ..... *637*
—— v. Howard, 4 O. R. 377 ..... 332, 379, *669*
—— v. Howarth, 33 U. C. R. 537 657
—— v. Huber, 15 U. C. R. 589 ..... 645, *659*, 820
—— v. Hudson, 2 Strn. 909 819
—— v. Hughes, 4 Q. B. D. 614 967
—— v. ——, 5 B. & C. 886 228
—— v. Hull Dock Co., 2 Rwy. Cas. 795 463
—— v. Hulme, L. R. 5 Q. B. 384 269
—— v. Hungerford, 11 Mod. 142 319
—— v. Hunt, 16 C. P. 145; 17 C. P. 443 ..... *874*
—— v. Huntingdon, 4 Q. B. D. 522 ..... *521*, 603
—— v. Huron (Bishop of), 8 C. P. 253 814
—— v. Incledon, 13 East 104 820
—— v. Ingall, 2 Q. B. D. 190 296
—— v. Jackson, 40 U. C. R. 290 820
—— v. Jarvis, 3 F. & F. 108 640
—— v. Jim Sing, 4 B. C. R. 338 ..... 328, 329, 333, *341*
—— v. Johnson, 38 U. C. R. 549 ..330, 341, *344*, 526, 613
—— v. Jones, 3 Camp. 230 ..... 656, 658, 659
—— v. Justin, 24 O. R. 327 658
—— v. Kent, 49 J. P. 404 761
—— v. Kershaw, 6 E. & B. 1007 33
—— v. King, 18 O. R. 566 ..... 535, 558
—— v. Kingston-on-Hull, 2 E. & B. 182 320
—— v. Kirk, 24 N. S. Rep. 168 110
—— v. Klemp, 10 O. R. 143 521
—— v. Lancaster, 16 Cox C. C. 737 258
—— v. Lane, 2 Ld. Rayd. 1304 228
—— v. Langford, 15 O. R. 52 521
—— v. Langhorn, 4 A. & E. 538 272
—— v. Langley, 1899 751
—— v. Larwood, Carthew 306 315
—— v. Latham, 34 O. R. 616 ..... 328, 332, 379, *528*
—— v. Leake, 5 B. & Ad. 469 ..... 811, 833
—— v. Ledgard, 8 A. & E. 535 202
—— v. Lee, 15 O. R. 353 519
—— v. Leeds, 7 A. & E. 963 220
—— v. Lees, 29 U. C. R. 221 ..... 814, 829
—— v. Levecque, 30 U. C. R. 509 632
—— v. Levy, 30 O. R. 405 ..... *526*, 1015
—— v. Lewis, 72 L. T. N. S. 117 756
—— v. Leyland, 3 M. & S. 186 319
—— v. Lichfield, 4 Q. B. 893 422
—— v. Lister, Dears. & B. C. C. 209 756
—— v. Little, 1 Burr. 609 ..... *740*
—— v. Liverpool, 2 Burr. 731 ..... 272, 276
—— v. Livingstone, 6 P. R. 17 ..... *636*
—— v. Llewellyn, 13 Q. B. D. 681 761
—— v. Lloyd, 4 Esp. 200 757
—— v. ——, 1 Camp. 260 ..... 806, 809
—— v. Lofthouse, L. R. 1 Q. B. 433 236
—— v. Long, 59 L. T. N. S. 33 659
—— v. Longton Gas Co., 2 E. & E. 651 656
—— v. Lord, 60 J. P. 620 741
—— v. Lordsmere, 15 Q. B. 689 810
—— v. Louth, 13 C. P. 615 ..... 821, 825, 887
—— v. Lucas, 10 East 235 295
—— v. Luellin, 12 Mod. 445 108
—— v. Lundie, 8 Jur. N. S. 640 333
—— v. Lynn, 2 T. R. 733 625
—— v. McCurdy, 2 Ex. C. R. 311 459
—— v. McDonald, 12 O. R. 381 ..... 657, 968
—— v. —— (E.), 19 Nova Sc. R. 336 657
—— v. McGregor, 19 C. P. 69 579
—— v. McKnight, 10 B. & C. 734 ..... *740*, 742
—— v. McLean, 22 U. C. R. 443 820
—— v. ——, 35 C. L. J. N. S. 241 519

[The pages printed in *italics* are those at which the case is most fully referred to.]

R

PAGE.

R. v. McFarlane, 33 C. L. J. N. S. 119; 17 C. L. T. 29 ..... *742*, 970
—— v. McMillan, 28 O. R. 172 ..... *328*, 329, 379
—— v. McNicol, 11 O. R. 659 ..... 379, *743*
—— v. Macnamara, 20 O. R. 480 ..... 631, 633
—— v. Maidenhead, 9 Q. B. D. 494 422
—— v. Malcolm, 2 Ex. C. R. 357 462
—— v. ——, 2 O. R. 511 ..... 657, 968
—— v. Mallow Union, 12 Ir. C. L. R. 35 32
—— v. Manchester, etc., Co., 1 B. & C. 630 325
—— v. Marshall, 2 Chitty 370 249
—— v. Marshall, 12 O. R. 55 ..... 379, *743*, 744
—— v. Martin, 12 O. R. 800 ..... 328, *771*, 966
—— v. ——, 21 A. R. 145 ..... 342, *343*
—— v. Mashinter ..... not yet rep. 970
—— v. Mashiter, 6 A. & E. 153 ..... 36, 50
—— v. Matheson, 4 O. R. 559 ..... *633*
—— v. Mathias, 2 F. & F. 570 658
—— v. May, 20 L. J. Q. B. 268 319
—— v. ——, 5 Burr. 2682 272
—— v. Mellor, 1 B. & Ad. 32 810
—— v. Metro. Bd. of Wks., L. R. 4 Q. B. 358 462
—— v. Meyers, 3 C. P. 305 679
—— v. Miller, 6 T. R. 268 275
—— v. Mines, 25 O. R. 577 ..... 967, 970
—— v. Miskin Higher, [1893] 1 Q. B. 275 631
—— v. Mitchell, 10 East 511 ..... 36, 309
—— v. Moore, 3 B. & Ad. 184 ..... 659, *772*
—— v. Morley, 8 Q. B. D. 571 230
—— v. Morris, 1 B. & Ad. 441 607
—— v. Morton, [1892] 1 Q. B. 30 108
—— v. ——, 4 Q. B. 146 228
—— v. Mosier, 4 P. R. 64 519
—— v. Mosley, 2 B. & C. 226 325
—— v. Moss, 5 Ex. C. R. 30 463
—— v. Monroe, 24 U. C. R. 44 ..... *633*
—— v. Murphy, 17 O. R. 201 634
—— v. Murray, 5 Ex. C. R. 60 ..... *466*, 468
—— v. Mussett, 26 L. T. N. S. 429 657
—— v. Nasmith, 2 O. R. 192 ..... *730*
—— v. Neath, L. R. 6 Q. B. 707 325
—— v. Negus, L. R. 2 C. C. 34 595
—— v. Neil, 2 C. & P. 485 757
—— v. Newcastle, 2 Strn. 1223 295
—— v. North Curry, 4 B. & C. 953 ..... 120, 309
—— v. Northampton, 2 M. & S. 262 810
—— v. North Midland R. W. Co., 2 Rwy. Cas. 1 462
—— v. Norwich, 1 B. & Ad. 310 296
—— v. Norwood, L. R. 2 Q. B. 459 121
—— v. Nunn, 10 P. R. 395 ..... 379, *770*
—— v. Nurse, 2 Can. C. C. 57; 35 C. L. J. N. S. 35 972
—— v. Orchard, 3 Cox C. C. 248 ..... *637*
—— v. Orde, 8 A. & E. 420, *note* 247
—— v. Organ, 11 P. R. 497 635
—— v. Osborne, 27 O. R. 185 634
—— v. Osler, 32 U. C. R. 324 ..... 327, 379, *642*, *653*, 671, 927
—— v. Ottawa, &c., Road Co., 42 U. C. R. 478 825
—— v. Ouellette, 15 C. P. 260 810
—— v. Owens, 2 E. & E. 86 108
—— v. Oxford, 6 A. & E. 340 226
—— v. Oxfordshire, 4 B. & C. 194 833
—— v. Paget, 3 F. & F. 29 820
—— v. Pappineau, 2 Strn. 686 820
—— v. Paramore, 10 A. & E. 280 47
—— v. Paris, 12 C. P. 445 ..... 821, 825
—— v. Parker, 59 J. P. 793 673
—— v. Patteson, 4 B. & Ad. 9 228
—— v. Payne, 2 Chitty 367 228
—— v. Pearce, 5 Q. B. D. 386 32
—— v. Pease, 4 B. & Ad. 30 758
—— v. Perth, 14 U. C. R. 156 ..... 469, 481, 806
—— v. ——, 6 O. R. 181 42
—— v. Petersky, 4 B. C. R. 385 ..... 330, 331
—— v. ——, 5 B. C. R. 549; 1 Can. C. C. 91 ..... 969, 1015
—— v. Petrie, 4 E. & B. 737 809
—— v. Pipe, 1 O. R. 43 ..... *330*, 379, *671*, 672
—— v. Pitt, 3 Burr. 1338 258
—— v. Plenty, L. R. 4 Q. B. 346 150
—— v. Plummer, 30 U. C. R. 41 ..... 658, 659
—— v. Plunkett, 21 U. C. R. 536 ..... 811, 812, 816
—— v. Poulin, 5 Legal News 357 636
—— v. Poulter, 26 Q. B. D. 132 465

PAGE.

R. v. Powell, 51 L. T. N. S. 366 777
—— v. Pratt, 4 E. & B. 860 835
—— v. Preece, 5 Q. B. 94 319
—— v. Price, 22 L. T. N. S. 12 260
—— v. Purdy, 10 U. C. R. 545 812
—— v. Purnell, 1 Wils. 242 295
—— v. Quayle, 9 Dowl. 548 240
—— v. Ramsgate, 23 Q. B. D. 66 109
—— v. Rankin, 16 U. C. R. 304 ..... *816*, 864
—— v. Rawson, 22 O. R. 467 ..... *731*, 740
—— v. Reed, 11 O. R. 242 ..... 379, *778*
—— v. Reeves, 1 O. R. 400 528
—— v. Rehe, Q. R. 6 Q. B. 74 ..... *633*
—— v. Reid, 28 O. R. 173 *note* 328, 379
—— v. ——, 12 Cox C. C. 1 637
—— v. Rice, L. R. 1 C. C. R. 21 ..... *631*
—— v. Richmond, 6 T. R. 560 ..... 121, 309
—— v. Riley, 12 P. R. 98 519
—— v. ——, Q. R. 7 Q. B. 198 635
—— v. Rippon, 1 Ld. Raym. 563 228
—— v. Robertson, 6 S. C. R. 52 627
—— v. Robinson, 17 Q. B. 46 333
—— v. ——, 8 Cox C. C. 115 603
—— v. ——, 2 Burr. 800 764
—— v. Roddy, 41 U. C. R. 291 260
—— v. Roe, 16 O. R. 1 519
—— v. Rogier, 1 B. & C. 272; 2 D. & R. 431 ..... 629, 633
—— v. Rollett, L. R. 10 Q. B. 469 833
—— v. Rose, 27 O. R. 195 ..... 214, 266
—— v. ——, 24 L. J. M. C. 130; 1 Jur. N. S. 803 ..... 629, *664*
—— v. Ross, R. & J. Dig. col. 1979 379
—— v. Rutlidge, 25 U. C. R. 290 807
—— v. Russell, 6 East 427 ..... *656*, 658
—— v. ——, 6 B. & C. 566 ..... 678, 679
—— v. ——, 3 E. & B. 942 764
—— v. Rymer, 13 Cox C. C. 378 108
—— v. Saddler's Co., 3 E. & E. 42; 10 H. L. Cas. 404 693
—— v. Sadler, 4 C. & P. 218 328
—— v. Sanderson, 3 O. S. 103 764
—— v. Sandwich, 5 Q. B. 895; 10 Q. B. 563 ..... 815, 865
—— v. Sargent, 5 T. R. 436 323
—— v. Saunders, 1 Q. B. D. 15; 13 Cox C. C. 116 309
—— v. Scard, 10 T. L. R. 545 637
—— v. Selby, &c., Commrs., [1892] 1 Q. B. 348 463
—— v. Sharpe, 7 Cox C. C. 214 465
—— v. Shaw, 7 Man. R. 518 625
—— v. Sheffield, L. R. 6 Q. B. 652 ..... *640*, 633
—— v. ——, 2 T. R. 106 599
—— v. Shelley, 3 T. R. 142 833
—— v. Sherlock, L. R. 1 C. C. 20 295
—— v. Sheward, 5 Q. B. D. 179; 9 Q. B. D. 741 553
—— v. Shropshire, 8 A. & E. 173 404
—— v. Smiley, 22 O. R. 686 149
—— v. Smith, 4 U. C. R. 322 635
—— v. ——, 4 O. R. 401 ..... 227, 297
—— v. ——, 5 M. & S. 133 ..... 336, 379, *724*, 726, 727
—— v. ——, 35 U. C. R. 518 618
—— v. ——, 31 O. R. 224 ..... *632*
—— v. Spalding, Car. & M. 568 ..... 742, 970
—— v. Spence, 11 U. C. R. 31 ..... 143, 180
—— v. ——, 12 U. C. R. 519 ..... 806, 807, 809
—— v. Spencer, 3 Burr. 1827 820
—— v. Stafford, 1 Can. C. C. 239 335
—— v. St. Clair, 20 C. L. T. 204 ..... *664*
—— v. Stead, 8 T. R. 142 ..... 968, 1019
—— v. Steele, 26 O. R. 540 820
—— v. Stephens, L. R. 1 Q. B. 702 521
—— v. Stevenson, 3 F. & F. 106 ..... *764*, 769
—— v. St. John, Bedwardine, 5 B. & Ad. 169 640
—— v. St. Luke's, Chelsea, L. R. 6 Q. B. 572; L. R. 7 Q. B. 148 529
—— v. Stone, 23 O. R. 46 462
—— v. St. Pancras, 24 Q. B. D. 371 5210
—— v. St. Paul's, Covent Garden, 7 Q. B. 232 91
—— v. Swalwell, 12 O. R. 391 41
—— v. Swyer, 10 B. & C. 486 ..... 379, 527, *754*
—— v. Taylor, 2 Str. 1167 315
—— v. ——, 59 J. P. 303 618
—— v. ——, 8 U. C. R. 257 534
—— v. T. Eaton Co., 29 O. R. 591 657
—— v. Tewkesbury, L. R. 3 Q. B. 629 ..... 40, 108, 112

[The pages printed in *italics* are those at which the case is most fully referred to.]

R.

PAGE.

R. v. Thallman, 9 Cox C. C. 388; 9 L. T. N. S. 425 637
—— v. Theodorick, 8 East 543 272
—— v. Thirlwin, 10 Jur. N. S. 206; 9 L. T. N. S. 731 235
—— v. Thompson, 2 Moo. & R. 355 143
—— v. Tidderley, 1 Sid. 14 228
—— v. Toronto, not reported *565*
—— v. —— R. W. Co., 30 O. R. 214; 26 A. R. 491 ..... 40, 698, *867*
—— v. ——, 35 C. L. J. N. S. 422 ..... *698*
—— v. Tower Hamlets, 1 B. & Ad. 232 590
—— v. Train, 2 B. & S. 640 ..... *697*
—— v. Tucker, 2 Q. B. D. 417 ..... 735, *747*
—— v. Turner, 4 B. & A. 510 ..... *741*
—— v. United Kingdom, &c., Co., 31 L. J. M. C. 166; 9 Cox C. C. 174 ..... 668, 669, 810, 812, 825
—— v. Urquhart, Dec. '99 ..... 657, 968
—— v. Vantadillo, 4 M. & S. 73 756
—— v. Vasani, 30 J. P. 758 ..... 733, 748
—— v. Verral, 18 O. R. 117 ..... 379, 527, *748*
—— v. Waddington, 1 East 143 725
—— v. Walker, 23 C. L. J. N. S. 123 532
—— v. Wallace, 6 Ex. C. R. 264 ..... *477*
—— v. Wallasey Local Bd., L. R. 4 Q. B. 351 462
—— v. Walsh, 29 Nova Sc. R. 521 657
—— v. Ward, L. R. 8 Q. B. 210 ..... *232*
—— v. Waterhouse, L. R. 7 Q. B. 545 ..... *768*, 964
—— v. Watson, 2 Cox C. C. 376 636
—— v. Watts, 2 Es 675, 680
—— v. Wadell, Doug. 116 422
—— v. Webb, 3 Cox C. C. 183 636
—— v. Webster, 16 O. R. 187 ..... 329, 379, *613*, 700, 764
—— v. Wellard, 14 Q. B. D. 63 1017
—— v. Wellington, 39 U. C. R. 194 ..... *849*
—— v. Westwood, 4 B. & C. 781; 7 Bing. 1 335
—— v. Wettman, 25 O. R. 459 634
—— v. Wheatley, 16 Q. B. D. 34 761
—— v. Whitaker, 24 O. R. 437 ..... *735*, 740
—— v. White, L. R. 2 Q. B. 557 ..... 108, 305
—— v. ——, 1 Burr. 333 ..... 757, 769
—— v. ——, 14 Q. B. D. 358 509
—— v. Whitwell, 5 T. R. 85 319
—— v. Wigg, Salk. 460 769
—— v. Wilkinson, 10 L. T. N. S. 370 752
—— v. Williams, 1 Burr. 402 276
—— v. ——, 1 Russ. 321 618
—— v. ——, 9 App. Cas. 418 ..... 677, 832
—— v. Wilson, 20 C. L. T. 144 1018
—— v. Winchester, 7 A. & E. 215 315
—— v. Wismer, 6 U. C. R. 293 811
—— v. Wood, 5 E. & B. 40 ..... 629, *663*
—— v. Woodrow, 2 T. R. 731 319
—— v. Worcester, 7 Dowl. P. C. 879 226
—— v. York, 2 Q. B. 847 47
—— v. Yorkville, 22 C. P. 431 ..... *841*
—— v. Young, 52 L. J. M. C. 55 657
—— v. —— [1897] 2 Q. B. 468 968
Reg. ex rel. Acheson v. Donoghue, 15 U. C. R. 454 ..... *248*, 253
—— Adamson v. Boyd, 4 P. R. 204. *102*, 111, 112, 128, 252
—— Allemaing v. Zuegzer, 1 P. R. 219 ..... 130, 133, 252
—— Anon v. Flynn, 8 P. C. L. J. 76 ..... 119, 126, 153, 176
—— Armor v. Coste, 8 U. C. L. J. 290 ..... 110, 252
—— Arnott v. Marchant, 2 C. L. Chamb. 189 ..... 107, 108, *253*
—— —— v. ——, 2 C. L. Chamb. 167 ..... 245, 248
—— Bartliffe v. O'Reilly, 8 U. C. R. 617 235
—— Beaty v. O'Donoghue, 3 U. C. L. J. 75 234
—— Bender v. Preston, 7 U. C. L. J. 100 106
—— Blakeley v. Canavan, 1 C. L. J. N. S. 188 104
—— Bland v. Figg, 6 U. C. L. J. 44 ..... 110, 240, 241
—— Blaisdell v. Rochester, 12 U. C. R. 630 ..... 240, *245*
—— Blasdell v. ——, 7 U. C. L. J. 101 ..... *104*, 319
—— Bole v. McLean, 6 P. R. 249 ..... 104, 315
—— Booth v. Sutherland, 10 C. L. J. N. S. 287 ..... 111, 112
—— Boyes v. Detlor, 4 P. R. 105 ..... *108*, *252*
—— Brine v. Booth, 3 O. R. 144 ..... *108*
—— —— v. ——, 9 P. R. 452 ..... *237*, 252, 315
—— Bugg v. Bell, 4 P. R. 226 ..... 234, 236
—— —— v. Smith, 1 C. L. J. N. S. 129 ..... *110*
—— Bulger v. Smith, 4 U. C. L. J. 18 202
—— Campbell v. O'Malley, 10 C. L. J. N. S. 250 249

R.

PAGE.

R. ex rel. Carrol v. Beckwith, 1 P. R. 278 ..... 103, 104, 118, 128, *239*, *240*, 252
—— Cavanagh v. Smith, 26 O. R. 632 ..... 251, 427, *436*
—— Chambers v. Allson, 1 C. L. J. N. S. 244, 104, 110
—— Chauncey v. Billings, 12 P. R. 404 ..... *235*, *239*
—— Chick v. Smith, 22 O. R. 279 105
—— Clancy v. Conway, 46 U. C. R. 85 ..... 108, *315*
—— —— v. McIntosh, 46 U. C. R. 98 ..... 102, *103*, 238
—— —— v. St. Jean, 46 U. C. R. 77 ..... 234, *238*, *315*
—— Clark v. McMullen, 9 U. C. R. 467 ..... 111, 112, 244
—— Clint v. Upham, 7 U. C. L. J. 69 237
—— Coleman v. O'Hare, 2 P. R. 18 ..... 110, 111, 234, 236, *244*
—— Corbett v. Jull, 4 P. R. 41 ..... 136, 145, *150*, 235, 252, 253
—— Coupland v. Webster, 6 U. C. L. J. 89 ..... 253, *257*
—— Coyne v. Chisholm, 5 P. R. 328 ..... 153, 235, 252
—— Crozier v. Taylor, 6 U. C. L. J. 60 ..... 108, 252
—— Davis v. Carruthers, 1 P. R. 114 ..... 110, 111, 252
—— —— v. Wilson, 3 U. C. L. J. 165 ..... 153, 252
—— Dexter v. Gowan, 1 P. R. 104 ..... 105, 112, 252
—— Dillon v. McNeil, 5 C. P. 137 ..... 143, 252
—— Doran v. Haggert, 1 C. L. J. N. S. 74 *97*, 108, 225
—— Dougherty v. McClay, 13 P. R. 56 242
—— Duncan v. Laughlin, 2 Man. R. 75 ..... 151, 202
—— Dundas v. Niles, 1 C. L. Chamb. 198 174
—— Evans v. Starratt, 7 C. P. 478 ..... *275*
—— Featherston v. McMonies, 2 C. L. Ch. 137 ..... *357*
—— Felitz v. Howland, 11 P. R. 264 ..... 102, 237, 238
—— Ferris v. Her, 15 C. L. J. N. S. 158 110
—— —— v. Speck, 28 O. R. 486 ..... *104*
—— Flater v. Van Velsor, 5 P. R. 310 104
—— Flanagan v. McMahon, 7 U. C. L. J. 155 ..... 108, 111
—— Fleming v. Smith, 7 U. C. L. J. 66 101
—— Flnett v. Gauthier, 5 P. R. 24 ..... *110*
—— —— v. Semandie, 5 P. R. 19 ..... 102, 103, 104
—— Ford v. Cottingham, 1 C. L. J. N. S. 214 ..... 104, 119
—— —— v. McRae, 5 P. R. 309 ..... 102, 110, 298
—— Forsyth v. Dobson, 7 U. C. L. J. 71 319
—— Forward v. Bartels, 7 C. P. 533 ..... 117, 121
—— —— v. Detlor, 4 P. R. 197 ..... 111, 112, 247, 251
—— Francis v. Young, 33 C. L. J. N. S. 459 ..... 118, 236
—— Freeman v. Jones, 1 P. R. 306 255
—— Gibb v. White, 5 P. R. 315 118
—— Gibbs v. Branigan, 3 U. C. L. J. 127 ..... 153, 252
—— Gordanier v. Perry, 3 U. C. L. J. 90 ..... 143, 251
—— Grant v. Coleman, 8 P. R. 497, 46 U. C. R. 175, 7 A. R. 619 ..... 241, *242*, 254
—— Grayson v. Bell, 1 C. L. J. N. S. 139 *236*, 239, *315*
—— Hall v. Gowanlock, 29 O. R. 435 ..... *247*
—— —— v. Grey, 15 U. C. R. 257 ..... *125*
—— Halstead v. Ferris, 5 P. R. 241, 6 C. L. N. S. 266 ..... *239*, *315*
—— Haner v. Roberts, 7 P. R. 315 ..... 110, 252
—— Hannah v. Paul, 9 C. L. J. N. S. 238 256
—— Harding v. Bennett, 27 O. R. 314. 102, *115*, *128*, 431
—— Harris v. Bradburn, 6 P. R. 308 ..... 161, 223, 235, 236
—— Hartney v. Dickey, 1 C. L. J. N. S. 190 ..... *104*
—— Hart v. Lindsay, 18 U. C. R. 51 ..... 227, *234*
—— Harvey v. Scott, 2 C. L. Ch. 88 249
—— Harwood v. Fournier, 14 P. R. 463 n. 241
—— Hawke v. Hall, 2 C. L. Ch. 182 ..... 252, 257
—— Heenan v. Murray, 1 C. L. J. N. S. 104 271
—— Helliwell v. Stephenson, 1 C. L. Chamb. 270 ..... *125*, 239
—— Hill v. Betts, 4 P. R. 113 110
—— Horne v. Clarke, 6 U. C. L. J. 114 238
—— Hudgin v. Rose, 33 C. L. J. N. S. 398 242
—— —— v. —— 33 C. L. J. N. S. 602 104
—— Hume v. Lutz, 7 U. C. L. J. 103 273
—— Hyde v. Barnhardt, 7 U. C. L. J. 126 272
—— Joanisse v. Mason, 28 O. R. 495 ..... 105, 128
—— Johns v. Stewart, 16 O. R. 5, 583 ..... 234, *262*, *263*
—— Johnson v. Murney, 5 U. C. L. J. 87. *252*, *253*, 256
—— Kelly v. Ion, 8 P. R. 431 ..... 104, 315
—— Kirke v. Asselstine, 1 U. C. L. J. 49 ..... 153, 252
—— Lachford v. Frizell, 6 P.R. 12; 9 C. L. J. N. S. 27 102
—— Lawrence v. Woodruff, 8 U. C. R. 336 246
—— Lee v. Gilmour, 8 P. R. 514 ..... 110, 114, 252
—— Linton v. Jackson, 2 C. L. Ch. 26 238
—— Loyall v. Ponton, 2 P. R. 18 ..... *236*
—— Lutz v. Hopkins, 7 U. C. L. J, 154 119

[The pages printed in *italics* are those at which the case is most fully referred to.]

R.

PAGE.

R. ex rel. Lutz v. Williamson, 1 P. R. 94..110, 242, 252
—— Mack v. Manning, 4 P. R. 73.....110, 113
—— McDonald v. Anderson, 8 P. R. 241..235, 242, 257
—— McGonverin v. Lawlor, 5 P. R. 208..... 227
—— McGregor v. Ker, 7 U. C. L. J. 67....*103*, 128, 249
—— McGuire v. Birkett, 21 O. R. 162.....110, 112, 252
—— McKean v. Hogg, 15 U. C. R. 140 ....254, 258
—— McKenzie v. Dupuis, 17 C. L. T. 285. 102
—— —— v. Martin, 28 O. R. 523..... 104, 127
—— McLanghlin v. Hicks, 5 U. C. L. J. 89 236
—— McLean v. Watson, 1 C.L.J.N.S. 71.....110, *247*
—— McManus v. Ferguson, 2 C. L. J. N. S. 10 244, 252, 318
—— McMullen v. DeLisle, 8 C. C. L. J. 291...110, *237*, 252.
—— McVean v. Graham, 7 U. C. L. J. 125....118, *253*
—— Mangan v. Fleming, 14 P. R. 458 ..... 241, *244*
—— Masson v. Butier, 17 P. R. 382; 17 C. L. T. 148; 33 C. L. J. N. S. 288 249
—— Metcalfe v. Smart, 10 U. C. R. 89; 2 C. L. Chamb. 114 .....103, 104, 111, *238*, 252
—— Mitchell v. Adams. 1 C. L. Ch. 203..... 235
—— —— v. Davidson, 8 P. R. 434..... *256*
—— —— v. Rankin, 2 C. L. Ch. 161..... *253*
—— Moore v. Miller, 11 U. C. R. 465 110
—— —— v. Nagle, 26 O. R. 249..... 234
—— Northwood v. Askin, 7 U. C. L. J. 130 ... 104
—— O'Dwyer v. Lewis, 32 C. P. 104..... 242
—— O'Reilly v. Charlton, 5 P. R. 254..... *236*
—— Padwell v. Stewart, 2 P. R. 18..... 113
—— Patterson v. Clarke, 5 P. R. 337..... *110*, 113
—— —— v. Vance, 5 P. R. 334 247
—— Percy v. Worth, 23 O. R. 688 .....236, *256*
—— Philbrick v. Smart, 5 P. R. 323 104
—— Piddington v. Riddell, 4 P. R. 80....*109*, 248, 252
—— Pilon v. Lalonde, 33 C.L.J.N.S. 242; 17 C. L. T. 120 235
—— Pollard v. Prosser, 2 P. R. 330..... 252, 273
—— Pomeroy v. Watson, 1 U. C. L. J. 48.....235, 236
—— Preston v. Preston, 2 C. L. Chamb. 178..... *153*
—— —— v. Touchburn, 6 P. R. 344..*169*, 188, 222, 223
—— Ranton v. Counter, 1 U. C. L. J. 68 113
—— Regis v. Cusac, 6 P. R. 303 236
—— Richmond v. Tegart, 7 U. C. L. J. 128.... 108, 111, 252
—— Ritson v. Perry, 1 P. R. 237 ..... *125*
—— Rollo v. Beard, 1 C. L. J. N. S. 126; 3 P. R. 357 .....102, 110, 252
—— Rose v. Beach, not reported 275
—— Rosebush v. Parker, 2 C. P. 15 .....236, 238
—— Ross v. Rastal, 2 C. L. J. N. S. 160..110, 235, 252
—— Scarlett v. Wicks, 33 C. L. J. N. S. 466; 18 C. L. T. 287 .....*163*, 104
—— Shaw v. Mackenzie, 2 C. L. Chamb. 36 235
—— Smith v. Bronse, 1 P. R. 180 ..... *152*, 252, 253
—— Stevenson v. Blanchard, 2 Man. R. 78....151, 202
—— Stewart v. Standish, 6 O. R. 463 234
—— St. Louis v. Reaume, 26 O. R. 460 ..... 104, 127, 221, *222*, 246
—— Stock v. Davis, 3 U. C. L. J. 128..103, 110, 113, 120
—— Stonehouse v. Hill, 9 C. L. T. 170 252
—— Swan v. Rowat, 13 U. C. R. 340 251
—— Taverner v. Wilson, 12 P. R. 546 ...102, 128, 231
—— Taylor v. Cæsar, 11 U. C. R. 461 121
—— Telfer v. Allan, 1 P. R. 214.....102, 103, *239*
—— Thompson v. Medcalf, 11 C. L. J. N. S. 248 *240*
—— Thornton v. Dewar, 26 O. R. 512.....*187*, 259
—— Tilt v. Cheyne, 7 U. C. L. J. 99..... *103*
—— Tinning v. Edgar, 4 P. R. 36....111, 112, 244, 252
—— Totten v. Benn, 4 U. C. L. J. 262.. ..... *253*
—— Walker v. Biggar, 4 U. C. R. 262 273
—— —— v. Hall, 6 U. C. L. J. 138.. ....248, 252
—— —— v. Mitchell, 4 P. R. 218.....153, *161*, 223, 252
—— Watterworth v. Buchanan, 28 O. R. 352 .. 136, *222*, 223
—— White v. McClay, 13 P. R. 96 .....*237*, 248, 267
—— —— v. Roach, 18 U. C. R. 226...234, 235, 238, 239
—— Wilson v. Duncan, 11 P. R. 370..... *237*
—— Reid v. Hamilton, 5 C. P. 269 .....260, 866, 868
Renaud, Re, Q. R. 14 S.C.452..... 1013
—— Reuhottom and Northumberland, Re, 42 U. C. R. 358 381
Revell and Oxford, Re, 42 U. C. R. 338.....877, 380
Reynolds v. Allan, 10 U. C. R. 350.....514, 515

R.

PAGE.

Reynolds v. Ontario, 20 C. P. 488; 30 C. P. 14 . 313
—— v. Presteign, &c., [1896] 1 Q. B. 604..... 603
—— v. Shreveport, 13 La. An. 326..... *443*
—— v. Toronto, 15 C. P. 276.....659, 718, 719
Rhodes v. Airedale Commrs., 1 C. P. D. 402.... 509
Rice v. Whitby, 25 O. R. 508; 25 A. R. 191 ..... 659, 829, 835
Rich v. Basterfield, 4 C. B. 783 643
Richard v. Ste. Anne de Beaupre, Q. R. 14 S. C. 432 741
Richardson v. Brown, 49 J. P. 661..... 611
—— v. Jackson, 8 M. & W. 298 514
—— v. Methley Sch. Bd., [1893] 3 Ch. 510..... *226*
—— and Toronto, Re., 17 O.R. 491.....468, 898, 916
—— and Toronto License Commrs., Re., 38 U.C. R. 621..... 378
Richelieu Valley R. W. Co. v. Menard, 4 Rev. de Jur. 109 503
Richmond Gas Co., Re, [1893] 1 Q.B. 56.. 509
—— v. From of Leeds and Lansdowne, Re., 8 U. C. R. 567 .....9, 336, 603
—— v. North London R. W. Co., L. R. 3 Ch. 679 458
Rieket v. Metropolitan R. W. Co., 5 B. & S. 149, 156; L. R. 2 H. L. 175 .....460, 461, 462, 463
Rieketts v. Markdale, 31 O. R. 180..... *834*
Ridgeway v. Toronto, 28 C. P. 579..... 828
Ridley v. Lamb, 10 U. C. R. 354..... 658
Ridout v. Ketchum, 5 C. P. 50 9
Ringland v. Toronto, 23 C. P. 93.825, 826, 827, 838, 839
Rintoul v. Falconer, [1899] W. N. 174..... 948
Rio, &c. Co. and De Morgan, Re, 8 T. L. R. 108, 202..... 509
Ripley v. Great Northern R. W. Co., L. R. 10 Ch. 435 .....463, 464
Roach v. Hamilton, 8 U. C. R. 229 9
Robarts v. Kerr, 1 Camp. 262..... 810
Robbins v. Jones, 15 C. B. N. S. 221 811
Roberts v. Climie, 46 U. C. R. 264 .....330, *342*, 379
—— v. Mitchell, 21 A. R. 433.....544, 601, *603*, 818
—— v. Orchard, 2 H. & C. 769..... 532
Roberts v. Rose, L. R. 1 Ex. 82..... 760
Robertson and Chatham, Re, 30 O. R. 158; 26 A. R. 554.....899, 906, 908, *913*, 929, 935, 937
—— and North Easthope, Re, 15 O. R. 423; 16 A. R. 214 .....332, *350*, 377, 381, 918, 921
Robins v. Brockton, 7 O. R. 481..... 42
—— v. Dominion Coal Co., Q. R. 16 S. C. 195.756, 757
Robinson, Exp., 16 N. B. 389.....130, 145
—— v. Barton L. B., 8 App. Cas. 798 33
—— v. Cowpen L. B., 62 L. J. Q. B. 619; 63 L. J. Q. B. 235..... 810
—— v. Kilvert, 41 Ch. D. 88..... 758
Robinson v. St. Thomas, 23 O. R. 489..... 345
—— v. Sunderland, [1899] 1 Q. B. 751 1017
—— v. The Queen, 4 Ex. C. R. 439; 25 S. C. R. 692..... 462
Rochdale Canal Co. v. King, 2 Sim. N. S. 89.... 701
Roche v. Ryan, 22 O. R. 107.....806, 818, 819, 822
Rochester and Mersea, Re, 26 A. R. 474..... 916
Roden and Toronto, Re, 25 A. R. 12..... 469, 494
Roderick v. Aston L. B., 5 Ch. D. 328 .....*649*, 650
Roe v. Lucknow, 21 A. R. 1.....39, 830
Rogers v. Great Northern R. W. Co., 53 J. P. 484 811
—— v. Toronto Sch. Board, 23 A. R. 597; 27 S. C. R. 448 295
Rolland v. Cassidy, 13 App. Cas. 770..... 39, 544
Romford Canal Co., Re, 24 Ch. D. 85 ..... *490*
Romney and Mersea, Re, 11 A. R. 712. . 332, 333, 380
—— and Tilbury West, Re, 18 A. R. 477..... 918, 921
Rose v. Groves, 5 M. & G. 613 482
—— v. Miles, 4 M. & S. 101..... 679
—— and Stormont, &c., Re, 22 U. C. R. 531 679
—— v. W. Wawanosh, 19 O. R. 204..... 380, 887
Roskell v. Whitworth, 19 W. R. 804..... 47, 379, *380*, 511 512, *875*
Ross v. Farewell, 5 C. P. 101 758
—— v. Fedden, L. R. 7 Q. B. 661..... 83
—— v. Hunter, 7 S. C. R. 289 .....616, 543
—— and Stormont, etc., Re, 22 U. C. R. 531... 613
—— and York and Peel, Re. 14 C. P. 171...333, 336, *343*, *638*

[The pages printed in *italics* are those at which the case is most fully referred to.]

R.

PAGE.
Rosein v. Walker, 6 Grant 619 807
Rounds v. Stratford, 26 C. P. 11 ..... 828, 829, 836
Rourke v. White Moss, &c., Co., 2 C. P. D. 205 595
Rousseau v. Levis, 11 Q. L. R. 376 597
Rowan v. Toronto R. W. Co., 29 S. C. R. 717 837
Rowe v. Leeds, 13 C. P. 515 ..... 832, 837
—— v. Rochester, 29 U. C. R. 590; 22 C. P. 319 ..... 40, 650
—— v. Sinclair, 26 C. P. 233 ..... 807, 814
Roy v. St. Louis, Q. R. 10 S. C. 503 650
Ruck v. Williams, 3 H. & N. 308 651
Rugby v. Merryweather, 11 East 375 *note* 806, 809
Rushbrook and Starr, Re, 46 U. C. R. 73 502
Russell v. Men of Devon, 2 T. R. 667 833
—— v. Shenton, 3 Q. B. 449 643
—— v. The Queen, 7 App. Cas. 829 732
Rutter v. Accrington L. B., 4 Q. B. D. 373 33
Ryan v. Canada Southern R. W. Co., 10 O. R. 745 837
Ryder v. Lord Townsend, 7 D. & R. 119 514

S.

Sadler v. Henlock, 4 E. S. & B. 570 595
Salkeld v. Johnson, 2 Ex. 256 392
Salmon v. Duncombe, 11 App. Cas. 634 32
Salt Union v. Harvey, 61 J. P. 375 822
Sams v. Toronto, Re, 9 U. C. R. 181 149
Sandilands, Re, L. R. 6 C. P. 411 41
Sandwich (School Trustees) v. Sandwich, 23 U. C. R. 639 ..... 348, *384*, 777
Sangster v. Eaton, 25 O. R. 78; 21 A. R. 624; 24 S. C. R. 708 837
Sanson v. Northern R.W. Co., 29 Grant 459 761
Sarnia (Town) v. Great Western R.W. Co., 21 U. C. R. 59 ..... 818, 819, 822
—— (Township) v. —— 17 U. C. R. 65 819
Sarnia and Sarnia, Re, 1 O. R. 411 87
Saunders, Exp., 11 Q. B. D. 191 761
—— v. Toronto, 29 O. R. 273; rev. 26 A. R. 265 ..... 39, 40, 595
Sawers and Stevenson, Re, 5 U. C. L. J. 42 .. 107, 238
Scadding v. Lorrant, 3 H. L. Cas. 418 278
Scarborough v. Scarborough, 1 Ex. D. 344 ..... 757, 760
Scarlett v. York, 14 C. P. 161 ..... 378, 712
Scally v. McCallum, 9 Grant 434 447
Schenley v. Commonwealth, 36 Pa. St. 29 900
Schmidt v. Berlin, 26 O. R. 54 ..... 39, *544*
Schwinge v. Dowell, 2 F. & F. 845 810
Scott v. S. S. No. Burgess, 19 U. C. R. 28 775
—— v. ——, 21 C. P. 268 36
Scott v. Firth, 4 F. & F. 340 758
—— v. Frith, 10 L. T. N. S. 240 765
—— v. Glasgow, 36 Scot. Law Rep. 453; [1899] A. C. 470 ..... *730*
—— and Harvey, Re, 26 U. C. R. 32 ..... 41, *383*, 579
—— and Ottawa, Re, 13 U. C. R. 346 ..... 776, *777*, 783
—— v. Peterborough, 19 U. C. R. 469 ..... 41, 411, 422, 423
—— and ——, Re, 25 U.C. R. 453; 26 U. C. R. 36 579
—— and Tilsonburg, Re, 10 O. R. 119; 13 A. R. 293 ..... 332, 333, 380, *431*, 957
—— v. Uxbridge, R. W. Co., L. R. 1 C. P. 596 514
—— v. Winnipeg, 11 Man. R. 84 479
Scottish American Investment Co. v. Elora, 6 A. R. 628 ..... 207, 448, 449, 563, 962
—— Ontario, &c. Co. v. Toronto, 24 A.R. 208 513
—— v. ——, 1895, not reported 646
—— v. ——, 20 O. R. 459; 26 A. R. 345 ..... *652*, *653*
Scroggie v. Guelph, 36 U. C. R. 534 651
Scary v. Saxton, 28 Nova Scotia R. 278 533
Secord and Lincoln, Re, 24 U. C. R. 142 ..... 46, 377, 381
Seiple v. Elizabeth, 3 Dutch. (N.J.) 407 298
Selkirk El. Case, 4 S. C.R. 494 ..... 258, 264
Sellors v. Matlock Bath L.B., 14 Q. B. D. 928 ..... 646, 647
Sells and St. Thomas, Re, 3 C. P. 286 ..... 9, 389
Senior v. Metrop. R. W. Co., 2 H. & C. 258; 33 L. J. Ex. 225 463
Severs v. Cosgrave, 2 C. L. J. N. S. 11 496
Sexsmith v. Montgomery, 9 Man. Rep. 173 227
Seymour v. Brecon, 20 L. J. Ex. 243 301
—— v. Greenwood, 7 H. & N. 355 596
Shanklin L. B. v. Miller, 5 C. P. D. 272 893

S.

PAGE.
Shannon v. Montreal P. & I. R. W. Co., 28 S. C. R. 374 485
Sharpe v. Dawes, 2 Q. B. D. 26 345
—— v. Powell, L. R. 7 C. P. 253 665
Shaw v. Poynter, 2 A. & E. 302 339
—— and St. Thomas, Re, 18 P. R. 454 ..... 386, 420, 421
—— v. Thompson, 3 Ch. D. 233 223
Sheffield v. Fulham, 1 Ex. D. 395 918
Sheldon v. Law, 3 O. S. 85 635
—— v. Western Union, &c., Co., 51 Hun 591; 121 U. S. 697 669
Shelley and Windsor, Re, 23 U. C. R. 569 378
Sherbon v. Colebach, 2 Vent. 175 633
Sherborne L. B. v. Bogle, 46 J. P. 675 646
Sherbrooke v. Dufort, 34 L. C. Jur. 76 838
Sherborne L. B. v. Bogle, 46 J. P. 675 826
—— v. Short, 15 Rev. Leg. 283 .....
—— v. Tel. Assoc. v. Sherbrooke, 12 Leg. News 354; M. L. R. 6 Q. B. 100 ..... *667*, 669
Sheriff of Lincoln, Re, 34 U. C. R. 1 ..... 313, 566
Sherwood v. Balch, 36 O. R. 1 ..... *504*
—— v. Coleman, 6 U. C. R. 614 453
—— v. Hamilton, 37 U. C. R. 410 ..... 828, 836
Shillito v. Thompson, 1 Q. B. D. 12 640
Shipley v. Fifty Associates, 101 Mass. 251 663
Shorey and Thrasher, Re, 36 U. C. R. 504 59
Shrewsbury v. Scott, 6 C. B. N. S. 1 931
Shutt v. Lewis, 5 Esp. 128 773
Sills v. Lennox & Addington, 36 C. L. J. N. S. 159 1017
Silsby v. Dunnville, 31 C. P. 301; 8 A. R. 524 ..... 42, 43, 543, 619
Simcoe v. Burton, 25 A. R. 478 ..... *298*, 300
Simmons and Chatham, Re, 21 U. C. R. 75 ..... 59, 377
—— v. Malling D. C., 13 Times L. R. 447 ..... 330, 647
Simonean v. The Queen, 2 Ex. C. R. 391 466
Simpson v. Huntsville, 13 O. R. 101 ..... 826, 835
—— v. Lincoln, 13 C. P. 48 ..... 46, 352, 378, 380
—— v. Ready, 12 M. & W. 736 869
—— v. Wells, L. R. 7 Q. B. 214 ..... 657, 811
Sims v. Estate Co., 14 L. T. N. S. 55 613
Singleton v. Eastern, &c., R. W. Co., 7 C. B. N. S. 287 834
—— v. Ellison, [1895] 1 Q. B. 607 ..... *632*
Skelton v. Thompson, 3 O. R. 11 ..... *663*, 665
Skinner v. Usher, L. R. 7 Q. B. 423 ..... *578*
Sklitzsky v. Cranston, 22 O. R. 590 807
Slack v. McRathrow, 3 U. C. R. 184 479
Slattery v. Naylor, 13 App. Cas. 446 ..... 329, 375, *648*
Slaughter v. Sunderland, 65 L. T. N. S. 250 ..... *611*
Slavin and Orillia, Re, 36 U. C. R. 159 381
Sligo El. Case, 1 O.M. & H. 301 ..... 260, 261
Small v. Lyon, 10 P. R. 223 516
Smalley v. Blackburn R. W. Co. 2 H. & N. 158 457
Smith v. Ancaster, 27 O. R. 276; 23 A. R. 596 ..... 47, 332, 379, 511, *856*
—— v. Collingwood, 19 U. C. R. 259 ..... 297, 298, 303
—— and Euphemia, Re, 8 U. C. R. 222 ..... 328, *865*
—— v. Fletcher, L. R. 7 Ex. 305 616
—— v. Hayes, 29 O. R. 283 658
—— v. London, 13 C. L. T. 90 ..... 47, 379, 511
—— v. Moore, 1 C. B. 438 803
—— v. North Metrop. R. W. Co., 7 T. L. R. 459 596
—— and Oakland, Re, 24 C. P. 295 414
—— v. Petersville, 28 Grant 599 ..... 46, 234, *256*
—— v. Plympton, 12 O. R. 20 ..... 33, 479, 480, 482, 484, 485, 486, 487, 489
—— v. Prescott & Russell, 10 U. C. R. 282 542
—— v. Raleigh, 3 O. R. 405 ..... 46, *439*
—— v. Robinson, [1893] 2 Q. B. 53 ..... *644*
—— v. Rooney, 12 U. C. R. 661 395
—— and Toronto, Re, 10 C. P. 225 ..... 328, 331, 341, 377, 380, 381, 745, 755
—— ——, Re, 13 P. R. 479 ..... 489, 493
—— v. Vancouver, 5 B. C. R. 491 ..... 826, 829
—— v. Waghorn, 27 J. P. 744 757
—— v. Wentworth, 26 O. R. 209 872
—— v. West Derby L. B., 3 C. P. D. 423 512
—— v. Darley, 2 H. L. Cas. 789 ..... 272, 276
Snark, The [1899] P. 73; [1900] P. 605 ..... 595, 680, 1017
Snell and Belleville, Re, 30 U. C. R. 81 ..... 330, 331, 332
333, *336*, *344*, 375, 382, *719*, *723*, *726*, 728, 964
Soltau v. De Held, 2 Sim. N. S. 133 ..... 757, 761, 772
Sombra v. Chatham, 18 A. R. 252; 21 S. C. R. 305 ..... 39, 405, 512, 910, 1013
—— v. Chatham, 28 S. C. R. 1 332

[The pages printed in *italics* are those at which the case is most fully referred to.]

S.

PAGE.

Sombra v. Moore, 19 A. R. 144 ... *845*
Souch v. East London R. W. Co., L. R. 16 Eq. 108 ... 806
Soulanges El. Case, 10 S. C. R. 652 ... 265
Soule v. G. T. R. W. Co., 21 C. P. 308 ... 657, 828
South Grey El. Case, H. E. C. 52 ... 259, 261, 263
—— of Ireland Colliery Co. v. Waddle, L. R. 3 C. P. 463; L. R. 4 C. P. 617 ... 41
—— Meath El. Case, 4 O'M. & H. 131 ... 205
—— Norfolk El. Case, H. E. C. 660 ... 258
—— Ontario El. Case, 18 C. L. T. 321 ... 230
—————— H. E. C. 751 ... 258, 261
—————— H. E. C. 420 ... 260, 261
—— Perth El. Case, 34 C. L. J. N. S. 465; 18 C. L. T. 255 ... 210
—— Staffordshire Tramways Co. v. Sickness, etc., Association, [1891] 1 Q. B. 402 ... 206
—— Wentworth, H. E. C. 531 ... *126*, 185, 194, *195*
Spafford v. Hubbell, R. & J. Dig. 1517 ... 621
Spalding v. Rogers, 1. U. C. R. 209 ... 814
Spaulding v. Lowell, 23 Pick. (Mass.) 71 ... 43
Spellers and Leatham, [1897] 1 Q. B. 312 ... 509
Spicer v. Margate, 24 Sol. Jour. 821 ... 640
Sprague v. Allen, 15 T. L. R. 150 ... 498
Sprung v. Anderson, 23 C. P. 152 ... 513
Sproule v. Stratford, 1 O. R. 335 ... 613
Squire v. Oliver, 24 Grant 141 ... 410
Stafford El. Case, 1 O'M. H. 229 ... *153*, 222
Stafford v. Bell, 31 C. P. 77; 6 A. R. 273 ... 39
—— v. Coyney, 7 B. & C. 257 ... 811
Staleybridge El. Case, 1 O'M. & H. 66; 20 L. T. N. S. 75 ... 269, 201, 205
Stalker v. Dunwich, 15 O. R. 342 ... 596, *598*, 650
Stalworth v. Innes, 13 M. & W. 466 ... 491
Stamford v. Niagara Falls, 34 C. L. J. N. S. 785; 18 C. L. T. 404 ... *853*, 873, *875*
Standley v. Perry, 3 S. C. R. 356 ... 46
—— v. Vespra and Sunnidale, 17 U. C. R. 69 ... 377, 378, 381
Staniland v. Hopkins, 9 M. & W. 178 ... 228
Stanley v. Farndale, 12 J. P. 709 ... *772*
Stannanought v. Hazeldine, 4 C. P. D. 191 ... *518*
Stanton and Elgin Board of Audit, Re, 3 O. R. 86 ... 572
Stark v. Montague, 14 U. C. R. 473 ... 776
State v. Bayonne, 34 Atlantic R. 1080 ... 669
—— v. Freeman, 38 N. H. 426 ... 736
—— v. Hall, 32 N. J. 158 ... 736
—— v. Hauss, 3 Am. 384 ... 228
—— v. Hay, 29 Me. 457 ... 736
—— v. Laverack, 34 N. J. Law, 201 ... *779*
—— v. Newark, 35 N. J. Law, 157 ... 915
St. Catharines v. Gardner, 20 C. P. 107; 21 C.P. 199 ... 821
—— and Lincoln, Re, 46 U. C. R. 425 ... *64*, 557
—— R. W. Co. v. Norris, 17 O. R. 667 ... 461, *564*
St. Cesaire v. McFarlane, M. L. R. 2 Q. B. 160; 14 S. C. R. 738 ... 446, 957
St. John's, Hackney v. Hutton, [1897] 1 Q. B. 210 ... 1017
Stebbing v. Metropolitan Board of Works, L. R. 6 Q. B. 37 ... 464
Steel v. Dartford L. B., 60 L. J. Q. B. 256 ... 833
Steele v. York, 15 A. R. 666 ... 829
Steers v. Manton, 57 J. P. 584 ... *779*
Stefani v. Monbleau, M. L. R. 5 Q. B. 23 ... 276
Steinhoff v. Kent, 14 A. R. 12 ... 836
Stephen v. Thurso Police Commr's., 3 Ct. of Sess. Cas. (4th Ser.) 535 ... 595
Stephens v. Hurteau, M. L. R. 6 S. C. 148 ... 109
—— and Moore, Re, 25 O. R. 600 ... 581
—— and Sunnidale, Re, May 28th, 1898, not reported ... 499
Stephenson v. Higginson, 3 H. L. Cas. 638 ... 32
Stepney v. El. Case, 4 O'M. & H. 34 ... 192, 193, 195, *214*, *265*
Stevenson v. Kingston, 31 C. P. 333 ... 321
Steves v. S. Vancouver, 6 B. C. R. 17 ... 1017
Stewart, Re, 1 Sm. & G. 132 ... 475
—— v. Ottawa & N.Y.R.W. Co., 36 O.R. 509. 458, 459 427 ... 825, 838
St. George's, &c., v. Grey, 21 U. C. R. 205 ... 808
—— v. Sparrow, 16 C. B. N. S. 209 ... *611*
St. Helen's v. Kirkham, 16 Q. B. D. 403 ... 644
——, &c., Co. v. Tipping, 4 B. & S. 608; 11 H. L. C. 642 ... 758

S.

PAGE.

St. Henri v. Coursl, Q. R. 13 S. C. 222 ... 424
—— v. St. Laurent, 26 S. C. R. 176 ... 828
Stickney v. Salem, 85 Mass. (6 Allen) 374 ... 835
Stillway v. Toronto, 20 O. R. 98 ... 826, *84*
Stinson v. Browning, L. R. 1 C. P. 321 ... 693
—— v. Gardiner, 42 Me. 248 ... 835
St. James, &c., v. Feary, 24 Q. B. D. 703 ... 646
St. John v. Campbell, 26 S. C. R. 1 ... 39, 651, 833
—— v. Christie, 29 N. B. Rep. 211; 21 S. C. R. 1 ... *512*, 513, 826, 840
—— v. Macdonald, 14 S. C. R. 1 ... 39
St. Louis v. Connecticut, &c., Co., 17 S.W. Rep. 637 ... 665
—— Hospital v. Williams, 19 Mo. 609 ... 37
St. Luke's v. Lewis, 1 B. & S. 865 ... 646
St. Margaret's, &c., v. Stephens, 29 O. R. 185 ... *758*
St. Martin's v. Gordon, 62 L. T. N. S. 836; [1891] 1 Q. B. 61 ... 649
St. Mary's (Islington) v. Goodman, 23 Q. B. D. 154 ... 613
—— (Newington) v. Jacobs, L. R. 7 Q. B. 47 ... *610*, 660
—— (Battersea) v. London, &c., Co., [1899] 1 Ch. 474 ... *658*, 670, 811
Stockport Schools, Re, [1898] 1 Ch. 610; 2 Ch. 687 ... 818, 822
—— &c., R. W. Co., Re, 33 L. J. Q. B. 251 ... 32, 325
Stoddart and Willerforce, Re, 15 U. C. R. 163 ... 464
Stone v. Jackson, 15 C. B. 199 ... 381
Stoneburgh v. Brighton, 5 U. C. L. J. 38 ... 810
Stonehouse v. Enniskillen, 32 U.C.R. 562 ... 41
—— and Plympton, Re, 27 O. R. 541 ... 465, 650, 875
Stormont El. Case, H. E. C. 21 ... 380
Storms and Ernestown, Re, 39 U. C. R. 353 ... 118, 119
Story v. Ashton, L. R. 4 Q. B. 476 ... 381
Strachan and Frontenac, Re, 41 U. C. R. 175 ... 596
Stratford v. Wilson, 8 O. R. 104 ... 331, *886*
—— &c., Assoc. v. Fitch, 28 O. R. 579 ... *321*, 540
—— R. W. Co. and Perth, Re, 38 U. C. R. 112 ... 635
Stratton v. Metro. Bd. of Works, L. R. 10 C. P. 76 ... 957
—— v. Toronto, 23 C. L. J. N. S. 130; 7 C. L. T. 192 ... 423
Strickland v. Hayes, [1896] 1 Q. B. 290 ... 596
Strong v. Harvey, 3 Bing. 304 ... 332, 337, 631
Stroud El. Case, 2 O'M & H. 183 ... 514
Strutt v. Southwark W. W. Co., 5 T. L. R. 638 ... 201
St. Thomas v. Credit V. R. W. Co., 12 A. R. 273 ... 661
—— v. —— 15 O. R. 673 ... 957
Stuart v. Montreal, Q. R. 6 Q. B. 555 ... 957
Sturges v. Bridgeman, 11 Ch. D. 852 ... 431
St. Vincent v. Greenfield, 12 O. R. 297; 15 A. R. 567 ... 757, 765
—— v. Grier, 13 Grant 173 ... 39, 328, 810, 816, 817, 819, 805
Sullivan v. Barrie, 45 U. C. R. 12 ... 331, 599
Summerfeldt v. Worts, Re, 12 O. R. 48 ... 651, 832, 837
Summers v. Holborn Board of Works, [1893] 1 Q. B. 612 ... 633
Suskey and Romney, Re, 22 O. R. 664 ... 650
Sussex Peerage Case, 11 Cl. & F. 85 ... 381, 916
Sutherland v. East Nissouri, 10 U. C. R. 626 ... 32
—— v. Thompson, 3 Ct. of Sess. Cas. (4th Ser.) 46, *275*, 376
—— Innes Co. v. Romney, 34 C. L. J. N. S. 605; 25 A. R. 495 ... 835, 811
Sutton v. Hawkins, 8 C. & P. 259 ... *449*, 1015
—— v. Norwich, 31 L. T. N. S. 389 ... 514
—— v. Sutton, 22 Ch. D. 511 ... 649
Swanston v. Twickenham L. B., 11 Ch. D. 838 ... 33
Sweeny v. Port Burwell, &c., Co., 17 C. P. 574; 19 C. P. 376 ... 650, 912
—— v. Smith's Falls, 22 A. R. 420 ... 676
Sweet v. Seager, 2 C. B. N. S. 119 ... 47, 332, 379, 416, 419, 511, 908, 917, 933
Sweetman and Gosfield, Re, 13 P. R. 203 ... 614
—— v. Metropolitan R. W. Co., 10 L. T. N. S. 256 ... 370, 383, 420
Sweny v. Smith, L. R. 7 Eq. 324 ... 459
Sydney v. Bourke, [1895] A. C. 433 ... 514
Syers v. Metropolitan Board of Works, 36 L. T. N. S. 277 ... 39, 833
... 45)

[The pages printed in *italics* are those at which the case is most fully referred to.]

T.

PAGE.
Taber and Scarborough, Re, 20 U. C. R. 549 ..... 377, 378, 776
Tabernacle, &c., Society v. Knight, [1892] A. C. 298 ..... 503, 509
Tanner v. Bissell, 21 U. C. R. 553 579
Tapling v. Jones, 11 H. L. Cas. 290 756
Tarry v. Ashton, 1 Q. B. D. 314 ..... 595, 661
Taunton El. Case, 1 O'M. & H. 182 ..... 259, 261
—— 2 O'M. & H. 74 260
Taylor's Case, Popham 133 228
Taylor v. Goodwin, 4 Q. B. D. 228 ..... 605, *675*
—— v. Oldham, 4 Ch. D. 395 32
—— v. Oram, 1 H. & C. 370 ..... *753*
—— v. Palmer, 31 Cal. 240 915
Taylor v. Vernlam, 21 C. P. 154 864
—— and West Williams, Re, 30 U. C. R. 337. 378, 381
—— and Winnipeg, Re, 11 Man. R. 420; 12 Man. R. 18 ..... 329, 332, 340, 344, 746
—— v. ——, 12 Man. R. 479 818
Teale v. Harris, 13 T. L. R. 15 ..... *337*, 772
Templeman and Reed, Re, 9 Dowl. 962 491
Tendring Union v. Dowton, 45 Ch. D. 583 410
Terry v. Haldimand, 15 U. C. R. 380 378
Tessier v. Desnoyers, Q. R. 12 S. C. 35 ..... *521*
Thackery and Raleigh, Re, 25 A. R. 226 ..... 898, 916
Thames Conservators v. London, [1894] 1 Q. B. 647 760
Thatcher v. England, 3 C. B. 254 803
Thetford, Re, 12 Vin. Abr. 96 348
Thibault v. Montreal, Q. R. 5 S. C. 45 ..... *664*
Thomas v. Annapolis, 28 Nova Sc. R. 551 826
—— v. Devonport, [1900] 1 Q. B. 16 1015
Thomas v. Evans, 13 East 101 514
—— v. Swansea, 2 Dowl. N. S. 470; 12 L. J. Ex. 73 320
—— v. Turner, 20 C. L. J. N. S. 64 ..... *742*
—— v. Western, &c., Co., 59 J. P. 232 761
—— v. Wilson, 20 U. C. R. 331 47
Thompson and Bedford, Re, 21 U. C. R. 545 ..... 328, *383*, 865
—— v. Brantford Electric, &c., Co., 25 A. R. 340 41
—— v. Brighton, [1894] 1 Q. B. 332 39
—— v. Gibson, 7 M. & W. 456 764
—— v. Lacy, 3 B. & A. 283 108
—— v. McLean, 17 U. C. R. 495 ..... *90*
—— and Toronto, Re, 19 C. L. T. 320; 35 C. L. J. N. S. 612 ..... *919*
—— v. Toronto, not reported 1017
——, &c., Co. v. Hawes, 73 L. T. N. S. 369 ..... *644*
Thomson v. Hamilton, 5 O. S. 111 ..... 514, 515
—— v. Quirk, 18 S. C. R. 695 206
Thornbury El. Case, 16 Q. B. D. 739 .. 186, 187, 192, 210
—— and Grey, Re, 15 P. R. 192 597
Thorpe v. Adams, L. R. 6 C. P. 135 32
—— v. Brumfitt, L. R. 8 Ch. 650 656
—— v. Burgess, 8 Dowl. 603 514
Threfall v. Borwick, L. R. 7 Q. B. 711 108
Thurlow v. Bogart, 15 C. P. 6, 601 627
—— v. Sidney, 29 Grant 497 487
Thurston and Verulam, 25 C. P. 594 ..... 857, 858
Tidswell v. Whitworth, L. R. 2 C. P. 326 644
Tighe v. Lowell, 119 Mass. 473 835
Tillett v. Ward, 10 Q. B. D. 17 671
Tilt and Toronto, Re, 13 U. C. R. 447 ..... 331, 380
Tinkler v. Aylesbury Dairy Co., 5 T. L. R. 52 765
—— v. Wadsworth, &c., 2 De G. & J. 261 ..... *676*
Tipperary El. Case, 2 O'M. & H. 31 265
Tobin v. McGillis, 12 P. R. 60, *note* 516
Todd v. Flight, 9 C. B. N. S. 377 643
—— v. Perry, 20 U. C. R. 649 208
Toder v. Sansam, 1 Brown. Parl. Cas. 468 117
Tomkins v. Jolliffe, 51 J. P. 247 109
Tompkins v. Brockville Rink Co., 31 O. R. 124 ..... *611*, 832, 963, 964
Toms v. Whitby, 35 U. C. R. 195; 37 U. C. R. 100 ..... 826, 828, 836
Tong St. L. B. v. Seed, 39 J. P. 278 770
Toronto v. Bowes, 4 Gr. 489; 6 Gr. 1; 11 Moo. P. C. C. 463 ..... 47, 109, *115*
—— v. C. P. R. W. Co., 23 A. R. 250; 26 S. C. R. 682 ..... *915*, 927
—— and Leak, Re, 23 U. C. R. 223 ..... 489, 491, 492
—— v. Lorsch, 24 O. R. 227 ..... 39, 819
—— v. McBride, 29 U. C. R. 13 775

T.

PAGE.
Toronto v. McGill, 7 Grant 462 ..... *708*
—— v. Ontario, &c., R. W. Co., 22 O. R. 344 957
—— and Scott, Re, 8 P. R. 318 ..... *486*
—— v. Toronto R. W. Co., 24 S. C. R. 589 839
—— v. Virgo—see Virgo v. Toronto
—— v. York, 21 C. P. 95; 22 C. P. 514 39
—— Junction and Christie, Re, 24 O. R. 443; 22 A. R. 21; 25 S. C. R. 551 ..... *467*
—— School Trustees and Toronto, Re, 23 U. C. R. 203 531
—— Street R. W. Co. v. Dollery, 12 A. R. 679 659
Tottenham D. C. v. Williamson, [1896] 2 Q. B. 353 763
Towsey v. White, 5 B. & C. 125 109
Traversey v. Gloucester, 15 O. R. 214 824
—— v. Nelson, 7 B. C. R. 48 1010
Travis v. Uttley, [1894] 1 Q. B. 233 649
Trebilock v. Walsh, 21 A. R. 55; 23 S. C. R. 695 ..... 258, 635
Trent, etc., Road Co. v. Marshall, 10 C. P. 336 37
—— Valley Canal Co., Re, 11 O. R. 687 818
Trenton School Trustees v. Trenton, 26 U. C. R. 353 777
Tremblay v. North Shore, &c., Trustees, Q. R. 13 S. C. 329 678
Triggs v. Lester, L. R. 1 Q. B. 259 ..... *671*
Trotter v. Toronto, 28 C. P. 574; 29 C. P. 365 513
Truesdale v. McDonald, Tay. 121 769
Trust & Loan Co. v. Hamilton, 7 C. P. 98 ..... *447*
Trustees School Section No. 5 Asphodel, &c., 24 O. R. 682 380
Tuck v. Victoria, 2 B. C. R. 179 ..... *322*, 590
Tucker v. Axbridge, &c., Bd., 53 J. P. 87 ..... 760, 832
—— v. Rees, 7 Jur. N. S. 629 ..... *647*
Tuff v. Warman, 2 C. B. N. S. 740; 5 C. B. N. S. 573 836
Tulles v. Jacson, [1892] 3 Ch. 441 504
Tunbridge Wells v. Baird [1896] A. C. 434 ..... 818, 819, 822
Tushey v. Great Southern and W. R. W. Co. Co., 10 Ir. C. L. R. (N. S.) 98 462
Turner v. Brantford, 13 C. P. 109 837
Turner v. Ringwood, &c., L. R. 9 Eq. 418 ..... 669, 704, 812, 825
—— v. Sheffield & R. R. W. Co., 10 M. & W. 425 486
—— v. Walker, 6 B. & S. 871; L. R. 1 Q. B. 641; L. R. 2 Q. B. 301 803
Turquand, Ex p. 14 Q. B. D. 636 549
Twycross v. Grant, 2 C. P. D. 469 217
Tylee v. Waterloo, 9 U. C. R. 572 ..... 9, 46
—— v. —— 9 U. C. R. 588 ..... 334, 380, 394
Tynmouth v. Att.-Gen., 15 T. L. R. 370 445
Tyrrell and York, Re, 35 U. C. R. 247 784

U.

Uckfield Rural Council v. Crowboro' Dist. Water Co. [1899] 2 Q. B. 664 1013
Umfreville v. London County Council, 13 T. L. R. 109 769
Underwood and Bedford & C. R. W. Co., Re, 11 C. B. N. S. 442 492
Union Hotel Case, not reported 468
—— S. S. Co. v. Melbourne, &c., Commrs., 9 App. Cas. 365 512
Unwin v. Hanson, [1891] 2 Q. B. 115 ..... *705*
Uttley v. Todmorden L. B., 31 L. T. N. S. 445 650

V.

Vale v. Moorgate St., &c., Ltd., [1899] W. N. 52 878
Vanacker's Case, 1 Ld. Raym. 496 319
Vancouver v. Bayley, 4 B. C. R. 433; 25 S. C. R. 62 32
Vandecar v. East Oxford, 3 A. R. 131 ..... 376, 378, 386, 857
Van Egmond v. Seaforth, 6 O. R. 599 ..... 465, 650
Vankoughnet v. Denison, 11 A. R. 699 581
Vars v. G. T. R. W. Co., 23 C. P. 143 ..... 658, 665
Vashon and East Hawkesbury, Re, 30 C. P. 194 ..... 276, 333, 380, *383*, 858, 860
Vaughan v. Taff Vale R. W. Co., 5 H. & N. 679 758
Veitch v. Russell, 3 Q. B. 928 508
Vennard v. Bruce, 35 C. L. J. N. S. 290; 19 C. L. T. 87 ..... 828, 840

[The pages printed in *italics* are those at which the case is most fully referred to.]

V.

PAGE.
Venour, Re,—Venour v. Selon, 2 Ch. D. 522 33
Verco v. Morris, 26 Sol. J. 126 765
Verdun v. Grand Trunk Boating Club, Q. R. 7 Q. B. 185 476
Vernon v. Smith's Falls, 21 O. R. 331 .... 47, *322*, 323
—— v. St. James', &c., 16 Ch. D. 449 .... 646, 650, 806
Verratt v. Macaulay, 5 O. R. 313 513
Vezina v. The Queen, 2 Ex. C. R. 11 464
Vian v. Montreal, 17 Rev. Leg. 511 597
Vickers v. Shumiah, 22 Grant 410 956
—— v. Vickers, L. R. 4 Eq. 529 502
Victoria v. Lang, 5 B. C. R. 628; [1899] A. C. 615 856
—— v. Patterson, Ibid. 856
—— v. Peterborough, 15 O. R. 446; 15 A. R. 617 .... 850, 852
Vineburg v. Guardian F. & L. Ass. Co., 19 A. R. 293 504
Viney, Ex p., 4 Ch. D. 794 420
Vintner v. Hind, 10 Q. B. D. 63 640
Vintner's Co. v. Passey, 1 Burr. 239 319
Virgo and Toronto, Re, 20 A. R. 435; 22 S. C. R. 447; [1896] A. C. 88 .. 332, 339, 340, *341*, 527, 726, *728*, *730*, 754
Vivian v. Mersey, &c., Bd., L. R. 5 C. P. 19 680

W.

Wade v. Dowling, 4 E. & B. 44 491
—— v. Hamilton, 1900, not yet rep. 826
Wadham and North Eastern R. W. Co., Re, 14 Q. B. D. 747; 16 Q. B. D. 227 .... *462*
Waite v. Garston L. B., L. R. 2 Q. B. 5 329
Wakefield v. Lee, 1 Ex. D. 336 .... *918*
Wakelin v. L. & S. W. R. W. Co., 12 App. Cas. 41 .... 835, 837
Waldie and Burlington, Re, 7 O. R. 192, 13 A. R. 104 .... 332, 380, 807
Walker v. Baildon L. B., 37 Sol. Jour. 217 611
—— v. Brewster, L. R. 5 Eq. 25 .... 659, 772
—— v. Burford, Re, 15 U. C. R. 82 570
—— v. Crystal Palace Gas Co., [1891] 2 Q. B. 309 140
—— v. Horner, 1 Q. B. D. 4 1015
—— v. McMillan, 6 S. C. R. 241 .... 661, 705
—— v. Montreal, M. L. R. 1 Q. B. 65 613
—— v. Stretton, 12 Times L. R. 363 .... 340, 344, 526, 746
Wallace v. Assiniboia, 4 Man. R. 189 .... 330, *337*, 343
—— v. G. W. R. W. Co., 3 A. R. 44 833
—— v. S. S. No. 9, Lobo, 11 O. R. 648 957
—— v. Orangeville, 5 O. R. 37 774
Wallasey L. B. v. Gracey, 36 Ch. D. 593 .... 47, 351
Wallingford El. Case, 1 O'M. & H. 60 763
Walsh v. Cascapediac, Q. R. 7 Q. B. 290 262
—— v. Montreal, Q. R. 5 S. C. 208 457
—— v. Trebilcock, 21 A. R. 55; 23 S. C. R. 695 .... 826, 829
Walshaw v. Brighouse, 15 Times L. R. 403 .... 258, 635
Walter v. Selfe, 4 De G. & Sm. 315 486
Walton v. Asjohn, 5 O. R. 65 758
—— v. N. Monaghan, 13 C. P. 401 .... *215*, 253
—— v. York, 30 C. P. 217; 6 A. R. 181 .. 378, 381
Wanamaker v. Green, 10 O. R. 457 .... 826, 828, 847
Wandsworth, &c., v. United Tel. Co., 13 Q. B. D. 328, 332, *860*, *868*, 876
Wanstead L. B. v. Hill, 13 C. B. N. S. 479 .... 818, 822
—— v. Wooster, 55 L. T. N. S. 81 .... *765*
Wapels v. Ball, 29 C. P. 403 .... *770*
Ward v. London, &c., Co., 42 L. J. C. P. 265 428
—— v. McAlpine, 25 C. P. 119 596
—— v. Welland, 31 O. R. 303; 26 C. L. T. 9 489
Warden v. Tye, 2 C. P. D. 74 .... *948*
Warner v. Wandsworth, &c., 53 J. P. 471 636
Warren v. Phillips, 68 L. T. N. S. 246 650
—— v. Van Norman, 20 O. R. 84, 508 641
Washington v. G. T. R. W. Co., 24 A. R. 183; [1899] A. C. 604 811
—— Avenue, Re, 69 Pa. St. 352 666
Waterhouse v. Keen, 4 B. & C. 200 915
Waterloo and Brant, Re, 23 U. C. R. 537 511
Waterpark v. Fennell, 7 H. L. Cas. 650 853
Waterous Engine Co. v. Palmerston, 20 O. R. 411; 19 A. R. 47; 21 S. C. R. 556 .... 41, 42, 619

W.

PAGE.
Waters v. Daly, 2 P. R. 202 490
Watson v. Ellis, 1 T. L. R. 317 661
—— v. Gas Co., 5 U. C. R. 262 759
—— v. Maze, Q. R. 15 S. C. 268 .... *978*
—— v. Sarnia, &c., Rd. Co., 16 U. C. R. 228 825
—— v. Toronto Gas Light, &c., Co., 4 U. C. R. 158 .... 679, 760
Webb v. Barker, [1881] W. N. 158 .... *765*
—— v. Bird, 10 C. B. N. S. 268; 13 C. B. N. S. 841 756
—— v. Herne Bay, L. R. 5 Q. B. 642 .... *449*
—— v. Port Bruce, &c., Co., 19 U.C.R. 615, 623 676
Webley v. Woolley, L. R. 7 Q. B. 61 618
Webster v. Haggart, 9 O. R. 27 471
—— and West Flamborough, Re, 25 U.C.R. 590 878
Weeks v. King, 53 L. T. N. S. 51 769
Weir v. C. P. R. W. Co., 16 A. R. 100 837
Welland El. Case, H. E. C. 47 260
——, H. E. C. 187; 1 Ont. El. Cas. 383 .... 260, 261, 265
——, 20 S. C. R. 376 201
Welland v. Buffalo, &c., R. W. Co., 30 U. C. R. 147; 31 U. C. R. 530 457
Wellington v. Waterloo, 8 C. P. 358 .... 39, 54
—— v. Wilmot, 17 U. C. R. 71, 82 .... 39, 54, 71
—— v. Wilson, 14 C. P. 299; 16 C. P. 124 .. *820*, 833, 847
—— v. London, &c., R. W. Co., 5 Ch. D. 126 456
Wentworth v. Hamilton, 34 U. C. R. 585 651
West v. Parkdale, 15 O. R. 319; 12 App. Cas. 602 .... 30, 41, 42, *65*, 411, 556
Westbury El. Case, 1 O'M. & H. 56 .... 157, 463, 465
Westcott and Peterborough, Re, 33 U.C.R. 280 265
West Elgin El. Case, 18 C. L. T. 240; 34 C. L. J. N.S. 461 849
—— End, &c., R. W. Co., 1 Sim. N. S. 248 .... 186, 101, 193, 194, 195, 196
—— Gwillimbury v. Hamilton, &c., R. W. Co., 23 Grant 383 931
—— Gwillimbury v. Simcoe, 20 Grant 211 .... 115, 957
—— Huron El. Case, 18 C. L. T. 247; 34 C. L. J. N. S. 461 270
—— Middlesex El. Case, 1 Ont. El. Cas. 465 .... 192, 195, 196, 210
Westminster El. Case, 20 Com. Jour. 53; 1 O'M. & H. 95 204
—— v. Fox, 19 U. C. R. 263 .... 222, 259, 260
West Nissouri v. N. Dorchester, 14 O. R. 394 .. 332, 379
—— Northumberland El. Case, 1 Ont. El. Cas. 32; 16 S. C. R. 635 448
Weston v. Arnold, L. R. 8 Ch. 1084 .... 258, 260
—— v. Cannon, 15 O. R. 595 613
—— Sch. Tr. v. York, 13 C. P. 423 .... 267, *298*
West Peterborough El. Case, H. E. C. 274 .... 261, 265
—— Riding York, Re, 50 J. P. 213 .... *782*
—— Simcoe El. Case, 1 Ont. El. Cas. 128, 170 .. 259, 260
—— Toronto El. Case, 31 U. C. R. 409; H. E. C. 97 .... 220, 258, 259, *262*, 264
—— Wellington El. Case, 11 Jour. Leg. Ass. Ont. 10 280
Wetzlar v. R. & O. Nav. Co., Q. R. 13 S. C. 336 544
Wexford El. Case, L. R. 3 Ir. C. L.R. 612 151
Whalley v. Lancashire & N. R. W. Co., 13 Q. B. D. 131 653
Whatman v. Pearson, L. R. 3 C. P. 422 596
Wheatcroft v. Matlock L. B., 52 L. T. N. S. 356 650
Wheeler v. United Tel. Co., 13 Q. B. D. 597 816
Whelan v. McLachlan, 10 C. P. 102 627
Whitaker and Mason, Re, 18 O. R. 63 45
Whitam and Wrexham R. W. Co., Re, 39 Sol. Jour. 692 .... *505*
Whitby v. Flint, 9 C. P. 449 298
—— v. Harrison, 18 U. C. R. 603 .... 37, 298
—— v. Lisconbe, 22 Gr. 203; 23 Gr. 1 583
Whitchurch, Ex p., 6 Q. B. D. 545 .... 646, 761
—— v. Fulham, L. R. 1 Q. B. 233 893
White v. Collingwood, 13 U. C. R. 134 .... *425*
—— v. Commrs. of Works, 22 L. T. N. S. 191 463
—— v. Feast, L. R. 7 Q. B. 351 657
—— v. Garston L. B., &c., L. R. 3 Q. B. 5 .... *329*
—— v. Gosfield, 2 O. R. 287; 10 A. R. 555 .... 45, 651
—— v. Hindley L. B., L. R. 10 Q. B. 219 832
—— v. Louise, 7 Man. R. 231 .... 377, 857, 858, 861
—— v. Montreal, Q. R. 2 S. C. 342 839
—— v. Phillips, 15 C. B. N. S. 245 679

[The pages printed in *italics* are those at which the case is most fully referred to.

W.

PAGE.
White v. Redfern, 5 Q. B. D. 15 640
—— and Sandwich East, Re, 1 O. R. 530 .....
..... 46, 381, 860, 908
Whitely v. Bailey, 21 Q. B. D. 154 109
—— v. McMahon, 32 C. P. 453 489
Whithorn v. Thomas, 7 M. & G. 1 369
Whitley v. Chappell, 11 Cox C. C. 307 274
Whitmarsh v. G. T. R. W. Co., 7 C. P. 373 825
Whittaker v. Derby, 50 J. P. 357 761
Wicksteed and Ottawa, Re, not rep. 45
Widder v. Buffalo & L. H. R. W. Co., 24 U.C.R.
520; 27 U.C.R. 125; 29 U.C.R. 154 .... 471, 498
Wigan El. Case, 1 O'M. & H. 191 259
Wigle v. Kingsville, 28 O. R. 378 ..... 41, 42, 334, 347
Wigtown El. Case, 2 O'M. & H. 1 ..... 194, 195
Wilcock v. Sands, 32 J. P. 292 768
Wilde v. Bowen, 37 U. C. R. 504 216
Wilkes v. Gzowski, 13 U. C. R. 308 457
—— Estate, Re, 16 Ch. D. 597 405
Wilkie v. Clinton, 18 Grant 557. 47, 376, 422, 435, 436
Wilkins v. Day, 12 Q. B. D. 110 658
—— v. Rowe, 15 C. P. 325 617
Willis v. Wakely, 7 T. L. R. 604 508
William, &c., St. N. V., Re, 19 Wend. 678 915
—— Symington, The, 10 P. D. 1 510
Williams v. Adams, 2 B. & S. 312 657
—— v. Carwardine, 4 B. & Ad. 621 803
—— v. City Electric St. R. W. Co., 41 Fed. Rep.
556 697
—— v. Jones, 3 H. & C. 256, 602 506
—— v. Manchester, 13 T. L. R. 292 295
—— v. Plympton, S. S. No. 8, 7 U. P. 559 ..... 774, 775
—— v. Port Hope, 27 C. P. 548 603
—— v. Portland, 29 N. B. Rep. 1; 19 S.C. R. 159 837
—— v. Raleigh, 21 S. C. R. 103; [1893] A. C. 540 548
—— v. Richards, 23 O. R. 651 ..... 649, 653
—— v. Roblin, 2 P. R. 231 489
—— v. Squair, 10 U. C. R. 24 491
—— v. Wallasey L. B., 16 Q. B. D. 718 609
Willoughby v. Willoughby, 9 Q. B. 923 ..... 232, 485
Willson v. York, 46 U. C. R. 280 ..... 322, 481
Wilson v. Brett, 11 M. & W. 113 839
—— v. Cameron, 22 C. P. 198 453
—— v. Greene, 18 Q. B. D. 7 502
—— v. Groves, 17 U. C. R. 419 872
—— and Ingersoll, Re, 25 O. R. 439 ..... 46, 335, 380
—— v. King, 2 C. M. 689 490
—— v. Manes, 28 O. R. 419; 26 A. R. 398 .....
..... 153, 180, 215, 253
—— v. Manitoba, &c., R. W. Co., 4 Man. R. 220 621
—— v. Middlesex, 18 U. C. R. 348 ..... 379, 511, 872
—— v. Port Hope, 2 Grant 370 ..... 46, 712
—— v. ——, 10 U. C. R. 105 479
—— and St. Catharines, Re, 21 C. P. 402 ..... 331, 726
—— v. Tunman, 6 M. & G. 236 595
—— v. Wainfleet, Re, 10 P. R. 147 ..... 45, 819, 864
—— and Winnipeg, 4 Man. R. 193 ..... 40, 598
Wilton v. Murray, 12 Man. R. 35 649
Wiltshire v. Surrey, 2 B. C. R. 79 40
Winch v. Thames Conservancy, L. R. 7 C. P. 458 676
Winder, Ex p., 6 Ch. D. 696 458
Windham v. Portland, 4 Mass. 384 69
Windsor El. Case, 2 O'M. & H. 91 265
—— —— 19 L. T. N. S. 613 260
—— Water Commrs. v. Canada Southern R. W.
Co., 20 A. R. 388 ..... 85, 431
Winnipeg v. Canadian Pacific R. W. Co., 34 C.
L. J. N. S. 706; 18 C. L. T. 370 .... 714, 428, 431
—— Street R. W. Co. v. Winnipeg Electric R.
W. Co., 9 Man. R. 219; [1894] A. C. 615 .. 697
Winnsboro' v. Smart, 11 Rich. (S.C.) Law 51 721
Winslow v. Dalling, 1 N. B. Eq. 608 812
—— v. Gallagher, 27 N. B. Rep. 25 ..... 37, 629

W.

PAGE.
Winter v. Baker, 3 T. L. R. 569 772
—— v. Keown, 22 U. C. R. 341 ..... 860, 877
Winterbottom v. Lord Derby, L. R. 2 Ex. 316 .. 761
Winyard v. Marks, 15 L. T. N. S. 591 511
Wishart v. Brandon, 4 Man. Rep. 453 597
Withington L. B. v. Manchester, [1893] 2 Ch. 19 766
Withorn v. Thomas, 7 M. & G. 1 121
Wolfe v. Erie Telegraph Co., 33 Fed. R. 320 669
Wolverton and North, &c., Grimsby, Re, 3 O.R.
293 784
Wood, Re, 26 U. C. R. 513 226
—— v. Esson, 9 S. C. R. 239 679
—— v. Folliott, 3 B. & P. 552 n. 513
—— v. Gold, 3 B. C. R. 281 489
—— v. Hurl, 28 Gr. 146 33
—— v. Leake, 12 Ves. 412 489
—— v. Veal, 5 B. & Ad. 454 811
—— v. Wand, 3 Ex. 748 643
—— v. Widnes, [1898] 1 Q. B. 463; 13 T. L. R.
537; 14 T. L. R. 192 646
Woodburn v. The Queen, 6 Ex. C. R. 12; 29 S.
C. R. 412 1013
Woodruff v. Peterborough, 22 U. C. R. 274 957
Woods v. Reed, 2 M & W. 777 422
Woodward v. Sarsons, L. R. 10 C. P. 733 181, 185, 186
..... 193, 194, 195, 199, 221, 293
Woodyer v. Hadden, 5 Taunt. 124 805
Woolley v. Kay, 1 H. & N. 307 ..... 110, 111
Workman and Lindsay, Re, 7 O. R. 425 .. 382, 639, 645
Worley v. St. Mary Abbotts, [1892] 2 Ch. 404 .. 616
Worsley v. South Devon R. W. Co., 16 Q. B. 539 .. 33
Wren v. Pollock, 32 L. T. N. S. 697 603
Wright v. Boston, 63 Mass. 233 915
—— and Cornwall, Re, 9 U. C. R. 442 9, 331, 380, 500
—— v. Court, 4 B. & C. 596 534
—— v. Graham, 3 Ex. 131 491
—— v. Gray, 12 C. P. 179 ..... 41, 411, 422
—— v. Huron (Synod of), 29 Grant 348; 11 S. C.
R. 95 ..... 338, 431
—— v. Sun Mutual Ins. Co., 29 C. P. 221; 5 A.
R. 218; 5 S. C. R. 466 42
Wyatt v. Gens, [1893] 2 Q. B. 225 660
Wycott v. Ernestown, 38 U. C. R. 582 ..... 378, 381
Wyoming v. Bell, 24 Grant 564 ..... 708, 775

Y.

Yabbicom v. King, [1899] 1 Q. B. 444 609
Yeadon L. B. and Yeadon W. W. Co., Re, 41 Ch.
D. 52 487
Yeomans and Wellington, Re, 43 U. C. R. 522;
4 A. R. 301 ..... 460, 462, 866
York v. Toronto, 21 C. P. 95 556
—— Sanitary Authority, Re, 59 J. P. 213 762
Young, Ex p., Re Kitchen, 17 Ch. D. 668 844
—— and Binbrook, Re, 31 O. R. 108 ..... 713, 1015
—— v. Bulman, 13 C. R. 623 491
—— v. Cuthbertson, 1 Macq. 456 806
—— v. Davis, 7 H. & N. 700 832
—— v. Erie & Huron R. W. Co., 27 O. R. 530 .. 1017
—— v. Higgon, 6 M. & W. 49 512
—— v. Leamington, 8 App. Cas. 517 ..... 41, 42, 43
—— v. Midland R. W. Co., 16 O. R. 738; 19 A.
265; 22 S. C. R. 190 ..... 472, 474
—— v. Walter, 9 Ves. 364 490
—— and Harston's Contract, Re, 31 Ch. D. 163 215

Z.

Zelma, &c., Co. and Hoskins, Re, [1895] A. C.
100 516
Zimmerman v. Kemp, 30 O. R. 165 844
Zumstein v. Shrumm, 22 A. R. 262 ..... 830, 836

COMPARATIVE TABLE

Of sections in the Municipal Acts or Ordinances of other Provinces in Canada with their corresponding or cognate sections in the Ontario Municipal Act.

1. BRITISH COLUMBIA.

R.S.B.C. 1897, c. 144. Section.	Ont. Mun. Act, R. S. O. c. 223. Section.
1	1
2	2
3	1
"	5
1	128, 279
1a (a)	321
14	76
16	73
17	76
18	76
19	80-83
21	83
23	280,538
24	101-103
25	10
27	259
28	265
29	311
31	270
32	267
35	270, 274
40	272, 273
41	216
42	284
46	320 (3)
48	312, 323
49	325
50 (1)	411
(2)	694, 699
(3)	700
(4)	694 (1)
(5)	591 (5)
(6)	591 (8), 694
(9)	694-696
(9a)	695
(11)	564, 566
(12)	566, 569
(13)	570 (3)
(15)	366-389
(17)	429
(18)	587
(19)	588
(20)	591 (1), (3), 538 (6)
(21)	588
(22)	579 (9), 580 (3)
(23)	540 (4)
(24)	540, 540 (1), (2),(3)
(25)	592
(26)	549 (8)
(28)	542
(30), (31)	542, 554 (2)
(32)	554 (3)
(33)	577 (1)
(34)	553 (3)
(35)	542 (4)
(36)	566
(37)	559 (4)
(38)	326
(39)	542 (9)
(40)	554 (1)
(41)	97
(42), (43)	702
(44)	542 (11)

R.S.B.C. 1897, c. 144. Section.	Ont. Mun. Act, R.S.O. c. 223. Section.
50 (45)	583 (8)
(46)	402 *et al.*
(47), (48)	545 (2)
(49), (50)	538 (6)
(51)	542 (13)
(52)	542 (12)
(53)	592 (2)
(54)	542
(55)	542 (17)
(56)	542 (3)
(57a)	539 (5)
(58)	542 (2)
(59)	542 (4), (5), (6)
(60)	542 (8)
(61), (62), (63)	550
(64), (65)	550 (4)
(67)	553
(68)	553 (2)
(69)	553 (1)
(70)	c. 248, s. 70
(71)	13 (3)
(72)	82
(73)	90
(74)	92
(77)	c. 223, s. 549 (5), 559 (7), (8)
(78)	583 (14)
(79)	583 (30)
(80)	549 (1)
(81)	549 (2)
(82)	520
(83)	286
(84)	539
(85)	583 (17)
(86)	534
(87)	531
(89)	534
(90)	c. 245
(92)	682
(95)	583 (38)
(94)	580
(95)	549
(96)	533 (3)
(97)	586
(98)	551 (1)
(99)	c. 248, s. 65; c. 223, s. 557 (6)
(100)	c. 248, s. 69
(101)	c. 223, s. 537
(102)	576
(103)	488, 548
(104)	402; c. 224, s. 6
(107)	c. 223, s. 598
(108)	c. 224, s. 97
(109)	c. 223, s. 583 (4), (34)
(110)	c. 245
(111)	c. 223, s. 587 (10)
(112)	" 554 (1)
(114)	" 551, 623 (4)
(115)	" 539 (2)
(116), (117)	" 551 (1)

R.S.B.C. 1897, c. 144. Section.	Ont. Mun. Act. R.S.O. c. 223. Section.
50 (119)	c. 223, s. 574
(120)-(122)	676, 677, 678
(123)	544
(125)	547 (5)
(126)	586 (3)
(127)	637
(128), (129)	630, 631
(130)	637
(131)	532 (2), 554 (3)
(131a)	640 (1)
(132)	668 *et seq.*
(133)	559 (1), 686 (4)
(134)	557 (1)
(135)	c. 224, s. 177
(136)	" 152
(137), (138), (139)	" 178
(140)	c. 223, s. 559 (7),(8)
(141)	" 569
(142)	" 547 (3)
(143)	c. 224, s. 178
(144)	c. 223, s. 583 (14)
(145)	" 551, 562 (8) (11)
(146)	c. 223, s. 547 (2)
(147)	" 562
(149)	" 540 (1)
(150)	" 534 (1)
(151)	" 591 (4)
(152)	" 637 (1)
(153)	" 435
(154)	" 583 (25)
(156)	" 622
(157)	" 539 (2)
(159)	" 540 (7)
(160)	" 586 (7)
(161)	" 554 (1)
(162)	" 548 (2)
(163)	c. 259, s. 21
(165)	62 V, c. 53, s. 3
(167)	c. 246, s. 1
51	c. 223, s. 703
53	c. 248, s. 104
54	c. 223, s. 591 (4)
55	588 (1),(a)
56	c. 248, s. 104
58	c. 223, s. 534 (1)
59	591 (7)
60	542
61	609
62	304 (6)
64	330
65 (a)	588
(b)	591 (1)
(c)	588
(d)	534
(e)	577 (1)
(f)	326
66	588 (1)
67, 68	384
72	418
73, 74	417, 424
75	338, 389

BRITISH COLUMBIA—*Continued.*

R.S.B.C. 1897, c. 144. Section.	Ont. Mun. Act, R. S. O. c. 223. Section.
76	c. 223, s. 353-4
77	669 (2)
79	366
81 (1)	704
(2)	705-6
(3)	708
83	373
84	333
87	334
88, 89, 90	378 *et seq*
91	468
92	290
93	428, c. 220
100	c. 223, s. 429 (1)
101	434
103	434
105	429 (3)
106	431
107	432
108	384, 386
110	664 (2)
111	c. 224, s. 149
112	c. 223, ss. 420-1, 417
113	c. 224, s. 13
116	31
117	51-2
118	55
119	56
120	c. 223, s. 295
121	c. 224, s. 68
122	67
123	71
124	71 (5)
127	64
128	65
129	68
130	69
131	79
132	73 (17)
133	87
134	72
135	75, 73 (6)
136	c. 223, s. 671 (5)
137	402 (1)
139	402
140	409
141	c. 224, s. 129
142	133
143	134
144	144, 146
145	147
146	148
147	145-6
148	60
149	169, 170
150	60
151	193
152	200
153	201
154	203
155	142
157	97
161	107
163	97-106
164	98
165	127
167	107
168	7
169	149
171	c. 223, s. 329, &c., 245
171 (5)	583 (35)
(6)	c. 245
(7)	c. 223, 583 (4)
(8)	(10)
(12)	(14)
(16)	(37)
(17)	(38)
(18)	(37)
(23)	(2)

R.S.B.C. 1897, c. 144. Section.	Ont. Mun. Act, R. S. O. c. 223. Section.
171 (24)	c. 223 s. 583 (8)
(28)	(8)
177 to 202	c. 245
203	c. 87, s. 1
204	6
205	27
206	15
207	30
208	7
209	31
210	32
211	33
212	34
213	36
214	38
215	c. 223, s. 480
216	c. 87, s. 7
217	8
218	c. 223, s. 473
219	475
220	479
222	489
223	481
225	482 *et seq*
226	485, 540 (1), 581, 583
227	486
228	488
229	490
230	491
231	492
233, 234, 235	708
236	508-9
237	640 (10)
239	437
240	447
243, 244	606 *et seq*
245 (1)	664 (1)
(a)	667
(2)	664 (2)
(3)	664 (3)
(4)	(4)
(5)	(5)
(6)	666
(7)	665 (1)
(8)	(2)
(9), (10), (11), (12)	673 (1)(3)
(13)	(2)
(14)	(4)
(15)	(6)
(16)	674
(17)	672 (1)
(18)	665 (2)
(19)	675
(20)	674 (2)
(21)	669 (2)
(22)	669 (3)
247	665 (3)
248	c. 226, s. 77
252	c. 223, ss. 668 (1); 621-642 (1)
253	s. 670
255	671 (7)
256	671
257	431
258	665 (2)
259	431
260	664 (3)
261 (2)	666
262	555
264	437
267	576 (6)
268	541 (2)(3)
269, 270	c. 263
271	c. 233
272	c. 223, s. 576 (1)
273	c. 233, s. 11
275	c. 223, s. 332

R.S.B.C. 1897, c. 144. Section.	Ont. Mun. Act, R. S. O. c. 223. Section.
276, 277, 278	c. 139
279	c. 223, s. 466
280	464
281	446 (1
282 to 290	471
291	428
292	437
293	c. 97
294	c. 177, s. 19
295	c. 101
R.S.B.C., c. 143,	
2	c. 223, 2
3 (a)	11
(b)	12
9	9
10	24
13	16-18
15	11
16	19
R.S., B.C., c. 68.	
2	c. 223, s. 2
3	c. 1, s. 8 (16)
4	c. 223, s. 90
5	89
6	86
7	35 *et seq*
9, 10	c. 7, s. 7 (16)
11	13
12	11
13	13 (5)
14	6
15	7 (10)
16	c. 223, ss. 95, 96
17	97
18	109, 110, 164, 167, 177
19	184, 185
20	109
21, 22	110
23	109
24	173
25, 26, 27	109
29	127
31	128
34	129 (2)
35	128 (3)
37	129 (1)
40	95 128 (4)
41	129 (4)
40	138
47	139
48	140, 62 V. c. 26, s. 11
49	164
50	136
51	162
52	163
53	112 *et seq*
54	165 (4)
55	147
56	169
57	171
59	172
60	165 (3)
61	174
65, 66	174
68	173
70, 71	174
73, 74, 75	174 (4)
76	179
77, 78	178
79	103
80	311-2
81	95
82	130
83	131
84, 85	206-216
86	219-237
92, 93	245
94	246
98	249

2. MANITOBA.

Man. Mun. Act, R.S.M. 1891, c. 100. Section.	Ont. Mun. Act, R.S.O. c. 223. Section.
1	c. 223, s. 1
2	2
3	5
4	6
5	7, 8
6	9
7	10
8	9
9, 10, 11	11
12	12 (1)
15	16
16, 17, 18	21
19	12
20	24
21	12 (4)
22	20
23	21
24	21 (1)
25	21 (2)
26	22
27	12
28	23
29	18
30	18 (4)
31	103 (1)
32, 33, 34, 35	10
36	55
37	56
38, 39, 40	57, 61
41	62
42	63-4-5
43	101
44	70
45, 46, 47	71
48	72
49	73
50	74
51	76, 79
52, 61 V. c. 31, s. 2	80 (1)
53	80 (2)
54	83
55	84
56	86 (2)
57, 58, 59, 60	86 (1)
62	87
63	89
64	90
65	91
66	92
67, 68	93
70	95
74	107, 157
75, 76	106 (1)
77	107
78	157
79	108
80	108 (3)
81	109
82	110
83	118
84	127
85	120
86	128 (1)
87	128 (2)
88	128(3)(4)
89	129 (1)
90	138 (1)
91	(2)
92	(3)
93	(4)
94	(5)
95	(6)
97	139 (1)
98	(2)
99	140
100	141
101	142 (1)
102	145
103	146 (1)
104	147
105	149
106	c. 223, s. 148, 149
107	150 (1)
108	(2)
109	157
110	158
111	161
112	162 (1)
113	(3)
114	163 (1)
115	(2)
116	(3)
117	112
118	78
119	117
120	136
121	173
122	164
123	165
124	(8)
125	166
126	167
127	168
128	169
129	170
130	171
131	172
132	174
133	175
134	176
135	177 (1)
136	(2)
137	Sch. G.
138	177 (3)
139	(5)
140	(6)
141	178
142	179 (1)
143	184
144	185
145	178
146	198 (1)
147	(2)
148	(3)
149	(4)
150	(5)
151	(6)
152	199
153	200
154	188
155	189 (1)
156	(2)
157	(3)
159	(4)
160	(5)
161	(6)
162	(7)
163	(8)
164	190 (1)
165	(2)
166	(3)
167	193 (1)
169	(2)
170	(3)
171	194
172	201
173	202
174	204
175	205
176	207
177	208
178	210
179	212
180	216
181	215
182	213
183	214
184	218
185	234
186	219
192-196	220 (1)
197	(2)
198, 199	
200	c. 223, s. 223 (2)
201	221 (1)
206	225
211	233
212	252
214	224
215	241
216	232
217, 218	254
221, 222	255
228	231
238	237
242	244
245	233
247	238
248	239
249	240
250	242
252	243
253	245
254	246
255	247
256	248
257	249
258	250
259	251
260	252
261	253
262	256
263	257
264	258
265	264
266	268
267	267
268	259
269	260
270	265
272	270
277	274
278	62 V. c. 26, s. 19
284	c. 223, s. 270
285	271
290	278
292	279
293	282
294	283
295	284
296, 297	285
298	288
299	290
301	289
302	294
304	295
305	299
306	304 (1)
307	(2)
308	(6)
309	c. 228
310	c. 223, s. 311
311	312
312	315
313	316
314	317
315	318
316	319
317-320	538
321	280
323	320 (1)
324	(2)
325	(3)
327	321
328	323
329	325
330	326
331	327
333	329
334	330
335	332
336	333
337	334
339	335

MANITOBA—*Continued.*

Man. Mun. Act, R.S.M. 1891, c. 100. Section.	Ont. Mun. Act, R.S.O. c. 223. Section.
341	c. 223, s. 336
342	337
343	338
344	339
345	340
346	341
347	342
348	343
349	344
350	345
351	346
352	347 (1)
353	(2)
354	(3)
355	348
356	349
357	350
358	351
359	352
360	353 (1)
361	(2)
362, 363	356
364	359
365	360
366	361
367	362
368	364
369	365
370	367 (1)
371	(2)
372	(3)
373	(4)
374	(5)
375	(6)
376	368
377	369
378	370
379	371
380	372
381	373
382	374
383	375-6
384	377
385	378
386	379
387	380
388	381
389	382 (1)
390	(2)
391	383
392	468
393	469
394	435
395	384
397	388
398	384 (2), (5), (8), (9)
399	384 (10)
400	385
401	386 (1)
402	(2)
406	391
407	392
408	410
410	393
411	404
412	402
413	406
414	407
415	408
416	402 (1)
417	403
418	387
420	417
421	418 (1)
422	419 (1)
423	420 (1)
424	(3)
425	421
426	422
427	423

Man. Mun. Act, R.S.M. 1891, c. 100. Section.	Ont. Mun. Act, R.S.O. c. 223. Section.
428	c. 323, s. 424
429	425
430	427
431	428 (1)
432	(2)
433	429 (1)
434	431
435	434 (1)
436	(2)
437	(3)
438	433
440	411
446	316
450	400, 439
451	431
480	c. 226, s. 3, 19
481	8
485	53-55
486	20
487	24
488	32
489	33
490	41
491	39
493	52
494	21
495	22
496	66 (1)
497	68
501	c. 223, ss. 504, 560
502	664
503	673
504	665 (1)
505	(2)
506	666
507	667
508	668 (1)
509, 510	669 (1)
511	669 (2)
512	(3)
513	(4)
514	671 (5)
515	(1)
516	(2)
518	(4)
519	(3)
520	(6)
521	674 (2)
523	673 (4)
524	(6)
525	(7)
526	(1)
528	554 (1) 555 (1)
529	673 (2)
530	(3)
531	676
532, 533	675
534	685 (1)
535	(2)
536	429
537	385 (1)
538	672 (1)
539	(2)
540	669
541	672 (3)
542	288
543	289
544	291 (5)
545	288 *et seq*
546, 547	290
550	291
552	305
556	417 *et seq*
558	420 (3)
563	433 (2)
566	435 (2)
567, 568	296
571	576-7
590	c. 275
591 (a)	c. 223, s. 534 (1)

Man. Mun. Act, R.S.M. 1891, c. 100. Section.	Ont. Mun. Act, R.S.O. c. 223. Section.
(b)	c. 223, s. 537 (1)
(c)	320 537 (2)
(a)	533
(d)	701
592 (a)	704
(b)	705
(c)	706
593 (a)	553 (2)
(b)	588 (1)
(d)	551 (1)
(e)	586 (3)
(f)	550 (2)
(g)	(1)
(h)	c. 248, s. 95
(i)	c. 223, s. 586 (1)
(j)	541
(k)	557 (2)
(l)	562
(m)	557 (1)
(n)	557 (6)
(o)	559 (8) 549 (5)
(p)	566 (2)
(q)	574 (1)
(r)	547 (3)
	c. 242, s. 582 (1)
(s)	58-59 V. c. 33, s. 3
(t)	c. 223, 583 (23)
(u)	586 (4)
594 (a)	549 (1)
(b)	(2)
(c)	(3)
(d)	(4)
(e)	(6)
(f)	(7)
(g)	(8)
595 (a)	542 (16)
(c)	(4)
(d)	(17)
(e)	538 (6)
(f)	592 (2)
(g)	542 (2)
(h)	(3)
(i)	(6)
(j)	(7)
(k)	(8)
(l)	(9)
(m)	(10)
(n)	(11)
(o)	(12)
(p)	(13)
(q)	(5)
(r) (t)	559 (4)
596 (a) (b)	550 (5)
597 (a) (b) (c)	554 (1) 545 (6) 539 (2)
597 (a)	545 (2)
(e)	(3)
(f)	(4)
(g)	640 (2)
598 (a)	547 (2)
(b)	591 (1)
599 (a)	583 (14) (30-33)
(b)	(4)
(c)	584 (34)
(d)	583(8)(9)
(e)	580 (1)
(f)	(10) (11)
(g)	583(2)(3)
(h)	(15)
(i)	559 (4) 583 (8) (30)
(j)	583 (22)
(jj)	c. 188
(k)	c. 223, s. 583 (6, 7)
(l)	547 (5)
600	578 (1)

MANITOBA—*Continued.*

Man. Mun. Act, R.S.M. 1891, c. 100. Section.	Ont. Mun. Act. R.S.O. c. 223. Section.
601 (a)	c. 290
(b)	c. 274
(c)	c. 223, s. 546 (3)
(d)	546 (1); c. 272
(e)	546 (2)
(f)	(4)
(l)	(2)
(q) 56 V. c. 23, s. 16, c. 272	
602 (a)	c. 223, s. 577 (1)
(b)	(2)
(c)	547
603 (a)	538 (7)
(b)	555 (1)
(c)	534 (2)
(d)	639 (10)
604 (a)	545 (1)
(b)	533 (3)
(c)	(4)
(d)	532 (2)
(e)	554 (4)
(f)	(3)
605 (b)	559 (1)
(c)	557 (2)
(d)	545 (4)
(e)	559 (4)
(f)	c. 208, s. 11
(g)	c. 223, s. 559 (2)
(h)	568
(i)	559 (7)
(j)	(5)
(k)	560
(l)	c. 236, s. 0
(m)	c. 223, s. 559 (3)
(n)	586 (10)
(o)	(8)
(p)	(9)
(q)	584 (27)
(r)	540 (7)
(rr)	640 (1)
(s)	560 (9)
(u)	540 (4)
606 (a)	551 (2)
(b)	(4)
(c)	(3)
607 (a)	542 (1)
(aa)	(14)
(b)	541 (4)
(c)	540 (5)
(d)	550 (1)
(e)	(2)
(f)	583 (23) & c. 252
(g)	586 (4) & c. 250
608 (a)	580 (1)
(b)	(2)
(c)	583 (14)
(d)	580 (7)
(e)	(8)

Man. Mun. Act, R.S.M. 1891, c. 100. Section.	Ont. Mun. Act. R.S.O. c. 223. Section.
608 (f)	c. 223, s. 580 (9)
(g)	(10)
(h)	(4)
(i)	(13)
(k)	580 (2)
(m)	579
(n)	580 (12)
(o)	584 (37, 38)
(q)	583 (17-21)
(r)	(28-29)
(s)	484 (4)
(t)	583 (25)
(u)	(26)
(v)	580 (5), 581
(w)	580 (4)
608 (a)	591 (4)
609	581 (7)
610	598
612	630-1
613	599
614	600
615	601
617	557, 637 (3)
618	606
619	607
620	622
621	624, 648
622	623
623	624
626	635 (1)
627	(2)
628 to 638	c. 236
639	c. 243, s. 318
640, 641	c. 223, s. 574
642	547 (3), 663 (3)
643	547
644 (a)	637 (1)
(b)	641 (2)
(c)	(7)
(d)	(11)
(e)	660 (3)
(f), (ff)	644
(h)	583 (12)
(i)	658 (1)
645	632
646	629
647	641 (11)
649	532 (2)
650	633 (1)
651	(2)
652	332, 583 (12), c. 139
658, 660	645
661	83
662	469, 470
663	471 (1)
664	(2)

Man. Mun. Act, R.S.M. 1891, c. 100. Section.	Ont. Mun. Act, R.S.O. c. 223. Section.
665	c. 223, s. 437
666	447
667	444 (1)
668	(2)
669	(3)
670	445
671	448
672	449
673	450 (1)
674	(2)
675	(4)
676	(3)
677	451
678	453
679	452
681	457
682	458
683	459
684	460
685	461
686	456
687	464
688	462
689	463 (1)
690	(2)
691	(3)
693 to 718	c. 227
719	c. 223, s. 503
720	324 (1)
721	(2)
725	547 (5)
726	704
727	705
728	706
729	708
730	711
731	472
732	712
733	707
734	473
735	474
736	475
737	476
738	477-8
739	479
740	480
741	c. 87
742	c. 223, ss. 472, 476
743	520 (1)
744	(2)
745	281
746	493
747	495
748	496
749	498
750	499
751, 752	481

3. QUEBEC MUNICIPAL CODE.

Que. Mun. Code. Art.	Ont. Mun. Act. Section.
1	c. 223, s. 1
2	5
3	7-9
4	c. 1, s. 8 (25)
(1)	c. 223, s. 534 (1)
5	6
6	316
7	472
11	c. 224, s. 275
16	c. 223, s. 431
19	2
26	5
32	c. 223, s. 37
34	7, 8
36	c. 3, s. 13; c. 223, s. 20

Que. Mun. Code. Art.	Ont. Mun. Act. Section.
39	c. 223, s. 33, 34
41	c. 3, s. 15; c. 223, s. 29
45	c. 225, s. 64 (4); c. 223, s. 31
51	11
52	20, 553 (1)
68	21
72	22-26
74	26
78	57
79	60
81	32, 46, 48
86, 87	32-50
93	10
94	7

Que. Mun. Code. Art.	Ont. Mun. Act. Section.
95	c. 223, s. 325
96	326
100	378
106	266
108	311, 312
110	317
111	312
112	319
113	538
114, 115	80, 537 (1a)
116	215
117, 118	319
119	207
121, 122	279, 429
125	473
126	270 (1)

QUEBEC MUNICIPAL CODE.—*Continued.*

Que. Mun. Code. Art.	Ont. Mun. Act. Section.
128	c. 223, s. 259
130	267
131	273
133, 134	274
137	62 V. c. 26, s. 19 (2)
138	c. 223, s. 275
142, 143	282
144	312
146, 147, 148, 149	288
155a	323
156	291
157	282
158	334
159, 160	290
162	290
164	291 (2)
165	284
166	292
168, 168a, 168b, 169	293
172	471 (2)
173	299
174	304
175	304
176	304
182	537 (1)
186	319
187	317
189	537 (1)
201	319
202	76
203, 204, 205	80 (1)
207	207
208	208
209	84
246	66
247, 248	261, 278
249	211
253	219
254	319
256	259
257	c. 3, s. 13
258	c. 223, s. 264
259	268
260	265
261	66
276-281	72, 73
283	76
287	259
288	265
289	268
291	85
292	118 (1)
293	96
294	97, 127
296	118 (4)
297	98
298	118 (4)
299	179
300	109
301	110
303, 304	177
305	108 (2)
307	123
308, 309	128 (1)
310	128 (2)
311, 312	128 (3)
313	165 (2)
314	168 (2)
315	112-116
316	162
317	171
319	165(3-5)
320	176
321	179 (1)
325	311
330	261
334	319
337	207, 208
338, 339, 340, 341	212, 213, 218
342	207, 208
343	c. 323, s. 216
346, 347, 348, 349	219, 220
350	222
351	220 (1)
352, 353	220 (2)
354, 355	232
356	229
357	233
358	237
361	233 (1)
362, 363	235 (1)
365	295, 310, 537 (1, 2)
366	310
367a	319
371, 373	c. 224, s. 152
376	c. 223, s. 537 (3)
382	537 (3)
386-393	557, 662 (12)
394, 395	437, 637, 640 (10)
415	557 (6)
420-448	546, c. 272
452	10
457	333
464, 465, 466	326
470	702
472	537 (2)
475	554 (1), 543 (8)
476a	545 (3, 4)
477	644, 647 (1)
479	645, 591 (8) 699
479 (5)	599
(7)	62 V. c. 26, s. 25, c. 208
480	62 V. c. 26, s. 25
481	366, 366a
484	591 (1), 597, 587 (12)
484 (a)	588
485	603, 562
486	554 (4), 534
488	534
490	664
492	414, 435
493, 494	384
498	427
499	420 (3)
501	408
503	410 (2), 417
504	533 (1)
505	592 (1)
506	593
507	542 (11)
508	702 *et seq*
513	500-517
514, 515	c. 136, s. 9
519	c. 223, s. 636
520	639 (4)
520a	559 (5)
521	559 (6), 658 (4), c. 237
522	640 (8)
522a, 523	54 (16)
524	538
526, 527	637
530	632
531	606
535	648 *et seq*
542	640
543	576
547	574, c. 243
548	c. 223, s. 559 (7, 8)
549	583 (12), c. 139
552	332
554	532 (2)
558	c. 243
560	c. 223, 546
561	c. 245
561a	c. 223, 549 (9), c. 247
568	c. 245, s. 20
573, 578	c. 223, 542 (7)
579	550 (4), 580 (10), (11) 583 (1)
580	580 (9)
581	580 (11), 550 (2)
582 (2)	583 (37), 584
584	561 (2)
587	588 (1)
588, 589, 590	592 (2)
591	588 (3)
592	551 (2), 586 (7), c. 248, s. 76
593	557 (1, 6)
594	586 (9)
595	540 (1-3)
596	586 (3,4), c. 250
597	547 (1)
598	549 (3, 4)
599	583 (8, 9)
600	c. 245, s. 54
601	c. 223, s. 549 (5)
603	549 (2)
604	549 (1)
605	549 (8)
606	549 (9)
607	c. 248, s. 48
608	c. 223, s. 551 (2)
608a	550 (5)
609	518
610	538 (6)
612	545(1, 2)
613	577 (1)
615a	566 (1)
615b	566 (3)
615c	411
617	102, 103
625-628	580
629	580 (8)
631, 632	578, 579
633	580 (12)
634	580 (8)
635	580 (5)
636	*Cf.* s. 580 (11)
637	564, 566 (1)
637a	566 (4)
637b	591 (5)
638	s. 566 (2), c. 234, *et seq.*
640	566 (3)
641	557 (2)
642	542 (1e)
643	542 (6)
644	559 (1)
645	557 (1-3)
646	551 (1-3)
647	542 (1b)
648, 649	586 (1, 2-5)
651	551
653	542 (4, 5)
654	542 (10) (5)
655, 656, 657	542 (2)
659	542 (5)
660	542 (17)
662	542 (6)
663	544
664	542 (13)
665	542 (12)

3. QUEBEC MUNICIPAL CODE.—*Continued.*

Que. Mun. Code. Art.	Ont. Mun. Act. Section.
666	c. 223, s. 542 (13)
667	542 (7)
668	481, 492 (1)
669	531 (2)
670	686
671,672,673,674	338 (1)
675	338 (2)
676-680	338-374
691 *et seq.*	375
698, 699	378
700	378 (3)
701	378 (2)
703	378 (1)
705	380
708	377, 380
709, 710	c. 224, s. 6, 7
711	41
712 (1)	7 (1)
(2)	7 (9)
(3)	7 (3, 4)
(4)	7 (3)
(6)	7 (4)
(7)	7 (11)
714	7 (2)
715	150
716	56, 58
718	13
719	2 (9)
720	48
721	49
722	50
723	22
725	c. 223, s. 55 (3)
726	56
727	249
735	71
736	c. 224, s. 71 (7)
737	(14)
738	(14-15)
742	c. 223, s. 3
743	c. 224, s. 47
748	c. 223, s. 598-601
751	627-8
751 (2)	600
752	c. 223, s. 599
753	641 (1)
755	647 (3)
757	647 (2), 622
768	630
772	554 (1)
774	545 (2,8)
778	c. 279, s. 8
781	c. 224, s. 162
788	c. 223, s. 606
792	c. 243, s. 6, 7
793	c. 223, s. 605, 606
794 to 799	664 *et seq*
809 (a)	666, 62 V. c. 26, s. 41
815	671 (1-2)
821	665 (1)
831-837	561 (8), c. 237
850	613
851	604
854	606, 616
855	664 (2)
859	559 (7)
860	583 (12-14), 332
867-879	554, 552 (11, 12) c. 226, c. 285
882	c. 285
884	c. 226
902	c. 223, s. 437, 439
907	437
909	457
912	459
913	464
914	465
920	445
921	446
937	c. 224, s. 6
941	152
942a	8
943	c. 223, s. 411
946	c. 224, s. 149, 246
947	169
948	135
949	143
951	c. 224, s. 142
952	c. 292, ss. 26, 28
954-959	c. 224, ss. 129, 130
960	c. 224, s. 134 (2)
961	(1)
962	135
963	135 (4)
964	138
968	139
972	c. 223, s. 429
981	433
985	436
987	434
990	396 (1)
992	(2)
993	(4)
994	(5)
995	(6)
997	430, 431
998	c. 224, s. 157, 173
999	177
1000	181
1001	184
1001a	181, 196
1002	191
1003	183
1004	193
1005	188 (3)
1008	201
1009	203
1010	204 (1)
1011	201
1013	208
1014	212 (1)
1015	209
1022, 1023	200
1024	195
1025	212 (1)
1029, 1030	471 (1)
1032	471 (2)
1042	704
1048	708
1049	704

4. NORTHWEST TERRITORIES.

N. W. T. Ord. No. 8, 1897. Section.	Ont. Mun. Act, R. S. O. c. 223. Section.
2	c. 223, s. 2
3	5, 9
4	6
5, 6	7, 8
7	71
8	73
9-11	76-79
12	80
13 (1)	106
13 (2)	86, 87
14	156
15	88
16	199
18, 19	127, 128
21	129
22	128 (4)
24	161, 162
25	113-115
27	136
28	139-141
29, 30	138
31	144, 146
32	152
33	145
34	164
35	163, 165-173
36	174-177
37	178, 179
38	177 (4)
39	c. 223, s. 188
40	157
41	189 (1)(2)
42	206
57	245, 246
58	247
59	249
60	250
61	251
62	252
63	253
64	254
65	256
66	219 (1)
67	220
68	221
69	225
70	227
71	21
72	223
73	230
74	231
75	232
76	233
77	234
78	238
79	239
80	240
81	241
82	c. 223, s. 242
83	243
84	237
85	244
86	259
87	268, 269
88	600
90	608
91	332
92	326
93	538
94	321
95	320 (2)
96	288
98 (1)	402, 435
(2)	546 (4)
(3)	591 (1)
(4)	547 (2)
(5)	588, 589
(6)	548
(9)	574
(10)	533 (1)
(11)	537
(12)	637 (1, 2), 437
(13)	637 (3)
(14)	534 (3)
(15), (16)	586, 582
(17)	570 (1)(2)
(18)	556 (5)

4. NORTHWEST TERRITORIES.—*Concluded.*

N. W. T. Ord. No. 8, 1897. Section.	Ont. Mun. Act, R. S. O. c. 223. Section.
(19)	c. 223, s. 541 (2)
(20)	554 (1), 559 (9), 560, 559 (1)
(21)	566 (3)
(22)	543
(23)	557 (6), 551 (1), 586 (1, 3)
(24)	557 (1)
(25, 28)	559 (7, 8)
(26)	542 (17-17d)
(27)	547 (4)
(29)	583 (4)
(30)	(8)
(31)	(10)
(32)	(14)
(33)	(17-20), 30
(34)	484, 583 (23, 37, 38)
(35)	540 (1-3)
(36)	550 (4)
(38-39)	411
(40)	366, 366a
(42)	537 (6)
(43)	544
(44)	542 (12, 13)
(45, 46)	542 (1, 5)
(49)	547 (2)
(51)	326
(52)	420
(53)	586 (9)
(54)	R.S.O. c. 259, s. 21
(57)	c. 223, s. 553 (3)
(58)	566 (4), 567, 570, 591 (5)
(59)	583 (22), 484 (1)
(60)	547 (5), 583 (6)
(61)	557 (2)
(62, 63)	697, and see R. S. O. c. 207, s. 29; c. 208, s. 13; c. 209, s. 27

N. W. T. Ord. No. 8, 1897. Section.	Ont. Mun. Act, R. S. O. c. 223, Section.
(64)	550 (1, 2), and see R. S. O. c. 250
(65)	568
(66)	537 (1), 559 (4), 549 (9, 11)
(67)	555
(68)	532 (2, 3)
(70)	576 (3)
(71)	(4)
(72)	(5)
(73)	694 (1), 699
(74)	See R. S. O. c. 257
100	c. 223, s. 829
102	703
103	333
104	334
105	375-377
106	279
107	270
108	274
109	272
110, 111	207, 215
112-115	282-293
118-135	See R. S. O. c. 224
136	c. 223, s. 418 (2, 3)
137-141	299-309
142-216	See R. S. O. c. 224
217	c. 223, s. 384
218	389
219	366a
220	384 (4)
221	(10)
222	429, 430
223-225	338
226	350, 351
227	340
228	341
229	342
230	353, 354
231	356-358
232	364
233	373
235	378

N. W. T. Ord. No. 8, 1897. Section.	Ont. Mun. Act, R. S. O. c. 223, Section.
236	c. 223, s. 379
237	381
238	382
239	383
240	468
241	469
243-252, 254	664-672
253	385 (1)
255, 256	471
257	437
258-260	444
261	445
262	447
264	450 (1)
265	449, 450 (2)
266	450 (4)
267	(3)
268	451
269	453
270	459
271	456
272	457
273	458
274	See R. S. O. c. 62, s. 9 (1)
275	c. 223, s. 461
276	460, and R. S. O. c. 62, ss. 19, 20
277	462 (1)
278, 279	464
280	311
281	312
282	314
283	199
284	315
285	138 (5)
286	193
287	198 (6)
288	195
289	704
291	702
292	699
293	470

PREFATORY NOTE

ON THE

HISTORY OF THE DEVELOPMENT OF MUNICIPAL INSTITUTIONS

IN THIS PROVINCE.

Three years before the passing of the Constitutional Act of 1791 (*a*) the Province of Upper Canada had been divided into four Districts by a Proclamation (*b*) issued on July 24th, 1788, from "our castle of Saint Lewis in our City of Quebec" by GUY, Lord DORCHESTER (better known to us in Canada as Sir GUY CARLETON (*c*)) "Captain General and Governor-in-chief of our said Province of Quebec."

The Districts thus constituted were :—

I. LUNEBURG (*d*) "bounded on the east by the eastern limit of a tract lately called or known by the name of Lancaster, protracted northerly and southerly as far as our said Province extends, and westerly by a north and south line intersecting the mouth of the River Gananoque (now called the Thames) above the rifts of the River St. Lawrence ; and extending southerly and northerly to the limits of our said Province, therein comprehending the several towns or tracts called or known by the names of Lancaster, Charlottenburg, Cornwall, Osnabruck, Williamsburg, Matilda, Edwardsburg, Augusta and Elizabethtown" (*e*).

II. MECKLENBURG (*f*) extending from the western limits of Luneburg to a north and south line intersecting the mouth of the River Trent at its discharge "into the head of the Bay of Quinty" (Quinte) "and therein comprehending the several towns or tracts called or known by the names of

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(*a*) 31 Geo. III., c. 31. See Thomson & Macfarlane's Collection of the Statutes of the Province of U. C. (Kingston, 1831), page 12.

(*b*) See Thomson & Macfarlane's Statutes of U. C. (1831), p. 23.

(*c*) Col. Sir Guy Carleton,—who was a friend of Gen. James Wolfe, and who afterwards became one of the best of our Canadian Governors,—came to Canada with Wolfe in 1759 as Quarter-Master General, and was one of the principal engineer officers in charge of the operations against Quebec. He led a successful expedition against Pointe aux Trembles on July 21st, 1759; but apparently was not present at the engagement of Sept. 13th, when Quebec was captured. In April, 1760, he was one of the British force which, under General Murray, successfully resisted De Levis' desperate attempt to re-capture the city. Having returned to Canada in 1766, he was its Governor thenceforward till 1788, and during this period was the successful defender of Quebec against the attack of General Montgomery and Benedict Arnold in December, 1775. In 1782 he succeeded Sir Henry Clinton as Commander-in-chief of His Majesty's forces in America. In 1786, he became Lord Dorchester and was again sent to Canada as its Governor-General, an office which he held till 1796. His family name is borne by one of our Counties (Carleton) ; and two townships,—North and South Dorchester, the one in Middlesex, the other in Elgin,—recall his title. See PARKMAN—"Montcalm and Wolfe," Vol. II., p. 190, 224 ; KINGSFORD—"History of Canada," Vol. IV., p. 224, 229 ; Vol. V, c. 5 ; Vol. VI., c. 1.

(*d*) This is the original and correct spelling. The name is taken from that of the principality of Brunswick-Luneburg, which had become in 1705, under the Elector George Lewis—afterwards our George I.—a part of the kingdom of Hanover. In 32 Geo. III, c. 8, s. 2, the name is (incorrectly) spelled "Lunenburgh."

(*e*) It would seem that these townships (which still bear the names here given them) must have received these names between November, 1786 (the date of McNiff's map, which is referred to in note (**b**) to s. 598 of "*The Municipal Act*," *post*, and July, 1788, the date of this Proclamation. "The township of Lancaster" is mentioned in an Ordinance of April, 1788 (c. 3, s. 8), "For promoting Inland Navigation," but the Editor has not been able to discover by whom or when any of the above names were given ; and His Honour Judge PRINGLE, of Cornwall, who has made the early history of these townships a special study, says :—"It is not known when these townships,—(which were designated by numbers in McNiff's map)—got their names."—"Lunenburgh, or the Old Eastern District, its Settlement and Early Progress," (Cornwall, 1890), Chap. VIII., p. 46. Charlottenburg may have been so called after George III's Queen, Charlotte Sophia of Mecklenburg-Strelitz, or, perhaps, after the Prussian town which bears the same name. Osnabruck (Osnaburg) is a town in Hanover, the birthplace of George I.

(*f*) As to the reason for this name, see the preceding note.

Pittsburg, Kingstown (*sic*), Ernestown, Fredericksburg, Adolphustown, Marysburg, Sophiasburg, Ameliasburg, Sydney (*sic*), Thurlow, Richmond and Camden."

III. NASSAU (*g*), extending westerly from Mecklenburg "to a north and south line intersecting the extreme projection of Long Point into the Lake Erie," and

IV. HESSE (*g*), comprehending "all the residue of our said Province in the western or inland parts thereof; of the entire breadth thereof from the southerly to the northerly boundary of the same."

The westerly boundary of the Province was at this time the middle of the Detroit and St. Clair Rivers and of Lake Huron (*h*).

For the purpose of Parliamentary representation, and also for militia purposes, (*i*) these Districts were afterwards divided by a Proclamation (*j*) of Governor Simcoe, dated July 16th, 1792, into the nineteen original Counties (*k*) of Upper Canada, viz., Glengary (*l*), Stormont, Dundas, Grenvill (*l*), Leeds, Frontenac, Ontario (consisting of "Isle Tonti," or Amherst Island, "Isle au Foret," or Gage (now Simcoe) Island, Grand (or Wolfe) Island, and "Isle Cauchois," (or Howe Island)—Addington, Lenox (*l*), Prince Edward, Hastings, Northumberland, Durham, York, Lincoln, Norfolk, Suffolk (*m*), Essex and Kent. It was not, however, until 1849 (more than fifty years later) that the County succeeded the District as a division for municipal and judicial purposes (*n*).

The four original Districts,—re-named at the opening Session of the First Parliament of Upper Canada by 32 Geo. III., c. 8, the "Eastern," "Midland," "Home," and "Western" Districts,—had, by Jan. 1st, 1800, been increased by sub-divisions (consequent upon their growth in population and the accretion of new territory) to eight, the Johnstown, Niagara, London and Newcastle Districts having been thus formed (*o*). In 1816, the Ottawa District was set apart by 56 Geo. III., c. 2, out of the Counties of Prescott and Russell. In 1849, when the County first became the unit of division for municipal and judicial, as well as for parliamentary purposes, there were twenty Districts in Upper Canada, viz.:—the *Eastern District* (which included the Counties of Stormont, Dundas and Glengarry); the *Ottawa District*, (Prescott and Russell); the *District of Dalhousie*, (Carleton County); the *Johnstown District*, (Leeds and Grenville); the *Bathurst*, (Lanark and Renfrew); *Midland*, (Frontenac, Lennox and Addington); *Victoria*, (Hastings); *Prince Edward*, (Prince Edward); *Newcastle*, (Northumberland and Durham); *Colborne*, (Peterborough—then including Victoria); *Home*, (York—then including Ontario and Peel); *Simcoe*, (which corresponded with the County of Simcoe—Muskoka not being yet organized); *Gore*, (including Wentworth, Halton and part of Brant); the *Niagara District*, (Lincoln, Haldimand and part of Welland);

(*g*) Among the ancestresses of Geo. III. were a Countess of Nassau and a Duchess of Hesse-Darmstadt. Count William of Hesse-Hanau was Geo. III.'s cousin; and regiments raised in Hesse-Hanau and Hesse-Cassel were among the (paid) allies of His Majesty in his war with the revolted American colonists for the possession of this country. KINGSFORD.—"History of Canada," Vol. VI., pp. 87-95.

(*h*) Treaty of Paris, 1783. See HOUSTON.—"Documents Illustrative of the Canadian Constitution," p. 267.

(*i*) DE LA ROCHEFOUCAULD-LIANCOURT.—"Voyage dans les Etats Unis et le Haut Canada, (1795-1797)." Vol. I., p. 234.

(*j*) Thomson & Macfarlane's Statutes of U. C. (1831), p. 24.

(*k*) "County Lieutenants," answering to the Lords Lieutenant of English counties, were appointed by Governor Simcoe in and for each of the nineteen Counties established by this Proclamation. To them was committed the organization and command of the militia of the County, and the magistrates thereof were appointed on their recommendation. A list of the first County Lieutenants thus appointed is given at p. 142 of a most interesting history of the Western District, entitled "Harrison Hall and its Associations," by His Honour Judge WOODS, of Chatham, Ont.

(*l*) This is the original spelling.

(*m*) Suffolk appears to have included the territory which now forms the Counties of Middlesex and Elgin.

(*n*) See 12 V., c. 78, entitled "*An Act for abolishing the Territorial Division of Upper Canada into Districts*," etc.

(*o*) See 38 Geo. III., c. 5, ss. 10, 25, 32, 37 and the Proclamation of Jan. 1st, 1800, recited in 42 Geo. III., c. 2. An interesting map of the organized part of Upper Canada in 1798, prepared by D. W. SMITH, Esq., then the Acting Surveyor General, is republished in the Report for 1891 of DOUGLAS BRYMNER, Esq., Dominion Archivist. An undated but apparently earlier and even more interesting map is in the possession of JAMES BAIN, Jr., Chief Librarian of the Toronto Public Library.

the *Talbot District*, (Norfolk, and the remainder of Haldimand); the *Western District*, (Essex, Kent and Lambton); the *London District*, (Elgin and a portion of Middlesex); the *Brock District*, (Oxford, including part of Brant); the *Wellington District*, (Waterloo, Wellington, Grey and part of Perth), and, lastly, the *Huron District*, which included part of Middlesex and all the then organized portions of the present County of Huron *(p)*.

GOVERNMENT BY COURTS OF QUARTER SESSIONS (1788-1841).

From the formation of these Districts by the Proclamation of 1788 down to the passing of "*The District Councils Act*" in 1841, *(q)* the management of local affairs in each District, including much of the work afterwards entrusted to municipal councils,—was committed to the several District Courts of General Quarter Sessions of the Peace, composed of magistrates appointed by the Governor or Lieutenant-Governor in Council.

In 1793, and for some years thereafter, the Court of General Quarter Sessions for the Eastern District held its meetings twice a year at New Johnstown (now a mere hamlet in the Township of Edwardsburgh, three miles east of Prescott) and twice a year at Cornwall *(r)*; the Court for the Midland District, in like manner, at Kingston and Adolphustown alternately; the Home District Court quarterly at Newark (Niagara-on-the-Lake), and the Court for the Western District quarterly "in the Town of Detroit," with an additional (special) annual Session at Michilimackinac, (now "the British Landing" on Mackinac Island,) in that part of the then Province of Upper Canada which is at present included within the boundaries of the State of Michigan *(s)*.

The powers of these Courts of General Quarter Sessions included *(inter alia)* the erection and management of court-houses, gaols and asylums; the laying out and improvement of the highways; the making of assessments therefor, and also "to pay the wages of Members of the House of Assembly" *(t)*; of regulations to prevent accidental fires *(u)*; the appointment of district and township constables *(v)*; fixing the fees of gaolers *(w)*, of town or parish clerks *(x)*, and of pound keepers *(y)*; the appointment of street and highway surveyors *(z)*, and inspectors of weights and measures *(a)*; the regulation of ferries *(b)*; the establishment and regulation of markets in various towns—*e.g.* Kingston in 1801 *(c)*, York in 1814 *(d)*, Niagara in 1817 *(e)*, Cornwall in 1818 *(f)*, Perth in 1822 *(g)*; the granting of certificates to applicants for licenses to sell liquor *(h)*, and to ministers or clergymen of "dissenting" congregations, authorizing them to solemnize marriages *(i)*, etc.

THE "PARISH AND TOWN OFFICERS ACT," (1793).

The germ of our democratic system of municipal institutions—which has now so completely superseded the former oligarchic method of government through nominees of the Crown—may be found so far back as 1793 in the Statute 33 Geo. III., c. 2, entitled "*An Act to provide for the Nomination and Appointment of Parish and Town Officers within the Province.*" This Statute enabled any two of His Majesty's Justices of the Peace by their warrants to authorize the constable of any "parish, township, reputed township or place" to assemble, on the first Monday in March (afterwards changed to the first Monday in January)—in each year, the inhabitant [ratepaying] householders of the parish, township, etc., "in the parish church or chapel, or in some convenient place

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(p) The above list is taken from Schedule B to the Act 12 V., c. 78 (1849). The County of Bruce was still unorganized; and its northern townships (Albemarle, Eastnor, Lindsay and St. Edmunds) were an Indian Reserve. The limits of the various Districts are shewn upon a small lithographed map of the Province which is prefixed to the "Canadian Almanac" for 1848, (Toronto, Scobie & Balfour, 1847).

(q) 4-5 V. c. 10. See *post* p.

(r) It had previously met in the township of Osnabruck (probably near Dickinson's Landing) in 1789, 1790 and 1791, at Cornwall in April, 1792, and at Edwardsburgh (New Johnstown?) in Oct., 1792. PRINGLE,—"Lunenburgh, etc." Chap. VIII., pp. 47-55.

(s) 33 Geo. III., c. 2 (1793). *Vide* 36 Geo. III., c. 4 (1796), known as the "Exodus Act"; 41 Geo. III., c. 6. See also "Harrison Hall and its Associations," pp. 36-38.

(t) 34 Geo. III., c. 6; 36 Geo. III., c. 7; 47 Geo. III., c. 7. *(u)* 32 Geo. III., c. 5.

(v) 33 Geo. III., c. 2, s. 10. *(w)* 32 Geo. III., c. 8, s. 17.

(x) 33 Geo. III., c. 2, s. 13. *(y)* *Ibid* and 34 Geo. III., c. 8, s. 3.

(z) 50 Geo. III., c. 1, s. 2; 4 Geo. IV., c. 9, s. 4. *(a)* 4 Geo. IV., c. 16, s. 4.

(b) 37 Geo. III., c. 10. *(c)* 41 Geo. III., c. 3. *(d)* 51 Geo. III., c. 15.

(e) 57 Geo. III., c. 4. *(f)* 59 Geo. III. (1st Session), c. 4. *(g)* 2 Geo. IV., c. 15.

(h) 34 Geo. III., c. 12. *(i)* 38 Geo. III., c. 4, ss. 1 and 2; 1 Wm. IV., c. 1.

within the parish," etc., to choose, for the ensuing year, a parish, town or township clerk, two assessors, a collector, a number—(repeatedly increased)—of overseers of highways and fence viewers, a pound-keeper and two "town-wardens." If there was a parish church with a duly appointed minister, he appointed one warden, and the "town-meeting" (*j*) elected the other, the two being in that case styled "church-wardens."

Beyond simply electing these officers to carry out the laws made by Parliament, the meeting had no legislative power except to determine the height of lawful fences, (and by a later Act (*k*)) "to ascertain and determine in what manner and for what periods horned cattle, horses, sheep and swine, or any of them, shall be allowed to run at large, or to resolve that they or any of them shall be restrained from so doing." (*l*) For extracts from the minutes of some of these "town-meetings" see CANNIFF'S "History of Ontario," pp. 454, 471, 481, 492. The earliest meeting which he records is one held at Adolphustown, the date of which, as given by CANNIFF, is 6th March, 1793, though the Act did not come into force till July 9th of that year.

The two wardens thus elected (or elected and appointed) became "as a corporation to represent the whole inhabitants of the township or parish," with power to sue, prosecute and defend on behalf of the said inhabitants; but (except as aforesaid) they were without any legislative powers.

The Justices of the Peace for the District, in their Quarter Sessions assembled, retained, as above indicated, all the authority. In case of non-election by the ratepayers they appointed the Town Officers, and in every case they filled any vacancies occurring during the year by death or removal. (*m*)

MUNICIPAL GOVERNMENT IN CITIES AND TOWNS.

As towns arose, and markets were established therein, the Quarter Sessions of the District were further empowered to make for these towns "such prudential rules and regulations as they might deem expedient" relative to watching, paving, lighting, keeping in repair, cleansing and improving the streets, regulating the assize of bread, slaughter houses and nuisances, firemen and fire companies; and also for enforcing the laws relative to the inspection of weights and measures, and to horses, swine or cattle running at large in the town (*n*).

Gradually, however, the power to regulate these matters in towns was transferred to representative bodies annually elected by the resident [male] householders under the name of "Boards of Police." To these, from the very first, were granted additional powers, *e.g.*, to appoint the town clerk, treasurer and street surveyor, assessors, collectors and bailiffs and to fix their remuner-

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(*j*) "The town-meeting of New England played a most important part in the education of the people in self government. There all the qualified male inhabitants met together, and discussed and decided a wide range of matters of local concern. Why was this system not introduced in its entirety into Canada? It is frequently supposed that the reason was that the British Government—taught by the experience of the revolted colonies—feared the town-meeting as a school of independence. It is true that town-meetings were suppressed in Nova Scotia in 1770, the very year that Boston town-meeting, under the guidance of Samuel Adams, was leading all the other "towns" of Massachusetts, in opposition to the government of King George. This may accordingly have been one of the reasons why the local government established in Upper Canada took the shape it did. But there is another and still more important reason, that has hitherto been overlooked. It is that it was not the example of New England that was directly before the eyes of the first settlers in Upper Canada, but the example of the neighbouring State of New York. It was from thence that most of the U. E. Loyalists came. Indeed an old settler writing in 1818, expressly describes [CANNIFF,—"History of Ontario" p. 159], the system of government established in 1791, and the years immediately following, as 'a constitution similar to that which they (the old settlers) had lost during the Rebellion in the Province of New York.'"—Prof. ASHLEY'S Introduction to "The Ontario Township," by J. M. McEVOY—Toronto University Studies in Political Science, 1st Series, No. 1.

(*k*) 34 Geo. III., c. 8.

(*l*) "'What shall be a lawful fence?' and 'What animals shall be free commoners in the township for the year?' were the only questions concerning which town-meetings might really legislate; but they might and did discuss far weightier matters. Public sentiment on the largest public questions was here fostered. This, however, was not so important or valuable as the quality of mind which was developed. Little as was their law-making power, it was enough to show every man present the real necessity for laws, how laws were made, that laws were simply rules which ought to be the most advantageous that could be devised for the community and that the community had an undoubted right to change these laws if they saw that a change would be an improvement. *It was the conception of law that was fostered in the men of Ontario by their town-meetings which led in a large measure to the establishment of Responsible Government in this Province.*"—McEVOY—"The Ontario Township," p. 20.

(*m*) See 46 Geo. III., c. 5: 48 Geo. IV., c. 14, s. 4.

(*n*) 57 Geo. III., c. 3; 59 Geo. III., c. 5; 4 Geo. IV., c. 30. And see 7 Geo. IV., c. 12 (Kingston).

ation; to make assessments for purchasing real estate for the use of the town, and for procuring fire engines, aqueducts, and a supply of pure and wholesome water; for lighting, paving and repairing the streets; to regulate and license victualling houses and public exhibitions of showmen and mountebanks; to regulate carts and carmen, wharves and quays, the weighing of hay and the measuring of wood; to prevent riding or driving on sidewalks or at an immoderate pace, the firing of guns and pistols, squibs and fire-balls, injury to shade trees, the pulling down or defacing of sign boards, indecent inscriptions on buildings, walls and fences, encroachments, on streets, etc., and "generally, to prevent vice and preserve good order in the town," and "to make such rules and regulations therefor as they might deem expedient,"—with power to enforce these by inflicting a penalty of one pound ten shillings for violation of any by-law or ordinance of the corporation. (*o*)

Still larger powers were granted by the Acts incorporating certain cities and towns: *e.g.*, to Toronto in 1834 (*p*), Kingston in 1838 (*q*), Cornwall in 1846 (*r*), Bytown, Dundas, London and Brantford in 1847 (*s*): and their municipal government was vested in a Mayor and Common Council, the Mayor being chosen by (but not in every case from) the Council.

In 1847 was passed a general Act (*t*) enabling the inhabitant householders of any town or village not specially incorporated to elect "Police Trustees" who were empowered to enforce within the town or village the regulations now contained in s. 747 of the present Municipal Act,—regulations which (*mirabile dictu*) have remained on our statute books unamended for more than fifty years!

IN RURAL MUNICIPALITIES.

Municipal affairs in rural localities, however, still continued to be managed by the General Quarter Sessions for the District, acting through the officers appointed under "*The Parish and Town Officers Act*" (*u*) and the amendments thereto, as consolidated and re-enacted by "*The Township Officers Act*" of 1837, (1 Vict., c. 21).

The contrast—thus becoming continually more marked—between the measure of local self-government accorded to the urban as compared with the rural elector, was one which could not fail to produce in the latter a feeling of profound dissatisfaction,—which indeed was not wholly without cause. Mr. McEvoy, in his interesting paper on "The Ontario Township," says: (pp. 20-22).

> "A full and careful study of the 'orders' of the different District Courts of Quarter Sessions would, I believe, do very much to explain and justify the irritation which was so prevalent during the time that these Courts exercised their taxing and regulating authority. The Court of Quarter Sessions was composed of the magistrates of the District. The London District consisted of some thirty-two townships, which may be roughly described as those now constituting the Counties of Middlesex, Oxford, Huron, Elgin, Brant and Norfolk. At some of the sessions of this Court . . . twenty-three magistrates were present; but the usual number was from six to eleven. . . . All the public funds available for the building of roads and bridges in six Counties were in the hands of these eight or ten men appointed for life by the Government. In the matter of roads and bridges they were indifferent and incompetent; they neither knew the needs of the District nor were sufficiently anxious to supply them to make them at all fitted to open up a new country. In the matter of gaols and other public works these Courts were invested with large authority. They

(*o*) See 2 Wm. IV., c. 17 (Brockville); 3 Wm. IV., c. 16 (Hamilton); 4 Wm. IV., c. 25 (Cornwall); c. 26 (Port Hope); c. 27 (Prescott); 6 Wm. IV., c. 14 (Belleville); 7 Wm. IV., c. 42 (Cobourg); c. 44 (Picton). In later Statutes the list of powers entrusted to these Boards of Police is much more extensive. *Cf.* 8 Vict. c. 62 (Niagara); c. 63 (St. Catharines); 9 Vict., c. 71 (Cobourg).

(*p*) 7 Wm. IV., c. 39. (*q*) 1 Vict., c. 37. (*r*) 9 Vict., c. 72.

(*s*) 10-11 Vict., c.c. 43, 45, 48, 49.

(*t*) 10-11 Vict., c. 42, entitled "*An Act to confer limited Corporate Powers on the Towns and Villages of Canada West not specially incorporated.*"

(*u*) 33 Geo. III., c. 2, already referred to *supra* at p. 3.

procured plans and estimates for the building of gaols and court houses of whatever dimensions they deemed fit, erected these buildings and ordered the people to pay the expense thus incurred. Their Worships also ordered what fare the prisoners should get, and contracted for the supply of provisions; they ordered what fees the District Officers should receive; they had control of public charity, and occasionally they voted a pittance for the relief of an unfortunate pauper. They exercised the right of granting or withholding authority to solemnize marriage,—ministers of any but the English Church being allowed to perform this ceremony only after much trouble and annoyance. Besides this large statutory authority, they might venture upon almost any stretch of power; and no one was willing or able to make question of their actions. A body of public officers with such large and unrestricted powers would now be considered . . . somewhat dangerous, even if its members were annually subject to popular election. But the magistrates who exercised these enormous powers in Quarter Sessions were life-appointees of the Government, and often had very meagre qualifications for public office. Many of them were old army officers, and most of them men of sufficient income to render them indifferent to the hardships and wants of the average hard-working settler."

"THE DISTRICT COUNCILS ACT" (1841).

The first long step in the direction of popular government in the rural Districts of the Province was the passing, in 1841 (the year of the Union of Upper and Lower Canada), of "*The District Councils Act*" (*v*). By this Statute the inhabitants of each District were, from January 1st, 1842, constituted a municipal corporation; and the persons qualified to vote for township officers under "*The Township Officers Act*" (*w*) were empowered also to elect representatives to a "District Council" in which was vested (*x*) the power to pass by-laws relative to roads, bridges, public buildings, schools, and the expense of administration of justice, to determine the remuneration of all District and township officers, and (for these purposes) to levy taxes upon real and personal property within the District. To these elective Councils were now transferred (*y*) all the powers theretofore vested in the Courts of Quarter Sessions relative to highways and bridges or works connected therewith, the appointment of road surveyors and other road officers, and the right to levy taxes for any purpose connected with the subjects over which the District Council was thenceforward to have jurisdiction.

This important Act, "which established the municipal system in Upper Canada," was introduced during the first Session after the Union by the Honourable S. B. HARRISON, then Provincial Secretary for Upper Canada (*z*).

(*v*) 4-5 Vict., c. 10. (*w*) 1 V., c. 21; see *ante*, p. 5.

(*x*) See s. 39 of 4-5 V., c. 10. (*y*) *Ibid.*, s. 51.

(*z*) A very interesting sketch of the public life of the Hon. S. B. Harrison is given by His Honor Judge WOODS, in "Harrison Hall and Its Associations" (pp. 12-13, 29-30). From it, from Rev. Dr. SCADDING'S "Toronto of Old," and from DENT ("The Last Forty Years") we learn that before coming to Canada in 1837 he had taken his degree at Cambridge and had already attained some distinction at the English Bar. His edition of "Woodfall on Landlord and Tenant" was well and favourably known to the profession both here and at home; and he was also the originator and compiler of an "Analytical Digest of all the Reported Cases determined in the House of Lords, the several Courts of the Common Law in Banc and at Nisi Prius, etc., from M.T. 1756 to E.T. 1843, including Crown Cases reserved; in Four Volumes;" the precursor, in fact, of our beloved "Fisher's Digest." In 1839 he became Private Secretary to the Lieutenant-Governor of Upper Canada, Sir George Arthur, and in 1841 Provincial Secretary for Upper Canada in Lord Sydenham's Cabinet, and member for Kingston in the First Parliament of United Canada. Besides "*The District Councils Bill*" referred to in the text, he introduced the first general School Bill for U. C., and moved the celebrated Resolutions of Sept. 3rd, 1841, respecting Responsible Government in Canada, which "constitute, in fact, the articles of agreement upon that momentous question between the executive authority of the Crown and the Canadian people" (TODD'S "Parliamentary Government," p. 56.) In 1844 he was elected to the Second Parliament of Canada as member for Kent (which, as well as Hamilton, had rejected him in 1841); but he resigned his seat before the first Session of that Parliament, on account of the decision of the Administration of which he was a member to transfer the seat of Government from Kingston to Montreal. He was thereupon appointed Judge of the Surrogate Court, and (later) District Judge for the Home District (including Toronto) where he died in 1867. "Conscientious scruples as to the infliction of capital punishment prevented him from accepting a seat on the Superior Court Bench, but upon the County Court he conferred a new dignity by becoming one of its Judges." Dr. SCADDING says: "The memory of Judge Harrison as an English gentleman, genial, frank and straightforward, is still cherished among his surviving contemporaries."

The late Sir FRANCIS HINCKS, then member for Oxford, tells us in his "Reminiscences of my Public Life," that the Governor (Lord SYDENHAM) had strongly recommended that municipal institutions should be established in Canada by the Union Act, (Imp. Stat. 3 & 4 Vict. c. 35). (a)

He says (p. 63):

> "Clauses with this object were included in the Bill sent by him to England (b); but during the discussion in the House of Commons they were withdrawn, as being more properly a subject for local legislation. Lord SYDENHAM thereupon introduced into the Special Council an Ordinance for their establishment in Lower Canada, and framed it so as to secure, (as far as that was in his power) that this Ordinance should not become a dead letter. The Municipal Bill introduced into the Assembly during the first Session of the first Union Parliament, was substantially the same as the Lower Canadian Ordinance; and it soon became apparent that there would be formidable opposition to it. The Conservatives of Upper Canada, led by Sir ALLAN MACNAB, were strongly opposed to the extension of popular control over the local affairs of the people. The Lower Canadians were prejudiced against the Ordinance of the Special Council and had no desire to support any measure emanating from a Government to which they were in strong opposition. The Hon. ROBERT BALDWIN [then one of the members for Hastings] grounded his opposition to the Bill on the provision for the appointment of the warden, treasurer and clerk, by the Crown instead of by the municipal bodies; and I believe I am correct in stating that his opinions were shared by the Reformers generally. At an early stage of the proceedings, the Lower Canadian Ordinance was referred to the Committee of the Whole on the Upper Canada Bill, with the view to having them made alike in all essential points. This rendered it impossible for the Government to yield to the Upper Canadians on points that were deemed essential for Lower Canada, and it was soon formally announced that that if any important amendments were made in the Government Bill it would be withdrawn."

Some of the divisions upon the Bill were exceedingly close; and the clause providing that wardens should be appointed by the Crown was only carried by the casting vote of the chairman of the committee (c).

Speaking in support of the third reading, Mr. HINCKS said:

> "The honourable and gallant knight from Hamilton [Sir ALLAN MACNAB,] and the honorable and learned member for Lennox and Addington [Mr. J. S. CARTWRIGHT], say this Bill is republican and democratic in principle; and that if it be adopted the people will have almost uncontrolled power. At the same time we are assured by the honourable and learned member for Hastings [Mr. BALDWIN] that it is 'an abominable bill,' 'a monstrous abortion,' 'that he views it with detestation.'" ("Reminiscences," p. 66.)

(a) The following passage from Lord DURHAM'S famous "Report" of Jan. 31st, 1839, shows that in so recommending, Lord Sydenham was only following in the footsteps of his illustrious predecessor:—

> "Instead of confiding the whole collection and distribution of all the revenues raised in any country for general and local purposes to a single representative body, the power of local government and the application of the funds arising therefrom should be entrusted to local management. *The establishment of municipal institutions for the whole country should be made a part of every colonial constitution.*" . . . The Provinces would have a right to complain if the powers of local management and of distributing funds for local purposes were taken from the Provincial Assemblies only to be placed in the yet more objectionable hands of a general Legislature. . . . I should prefer that the Provincial Assemblies should be retained with merely municipal powers. *But it would be far better, in point both of efficiency and economy, that this power should be entrusted to the municipal bodies of much smaller districts*; and *the formation of such bodies would, in my opinion, be an essential part of any durable and complete Union.*"

"Papers printed by order of the Commons' House of Assembly, by Robert Stanton, as an Appendix to the Journals of the Legislative Assembly."—(Toronto, 1839), (pp. 92, 103).

(b) The Bill was drafted chiefly by the Hon. JAMES STUART, then Chief Justice of the Court of Queen's Bench for Lower Canada, who, for his services to Lord DURHAM and Lord SYDENHAM, was afterwards created a Baronet of the United Kingdom. DENT.—"The Last Forty Years," Vol. I., pp. 422.

(c) DENT, "The Last Forty Years," Vol. I., p. 147.

But as Sir JOHN BOURINOT has most justly observed; (d)

> "Imperfect as was the Act of 1841, it marks the commencement of a new era in the municipal government of Canada. In the course of a few years it was amended; and the people at last obtained full control of the election of their own municipal officers."

THE BALDWIN MUNICIPAL ACT, (1849).

In 1843 the Honorable ROBERT BALDWIN (e) then Attorney General for Upper Canada, introduced a General Municipal "*Act to provide for the incorporation of Townships, Towns, Counties and Cities in Upper Canada.*" The Bill passed its third reading in the Legislative Assembly, and was sent up to the Legislative Council, from the seclusion of which it never emerged; and a fortnight before the close of the Session the Baldwin-Lafontaine Government (all but Mr. DOMINICK DALY) resigned office on account of their differences with Sir CHARLES METCALFE over the then burning question of Responsible Government (f).

It was not until March, 1848, —during a Session which ended on March 23rd, that the second Baldwin-Lafontaine Government was formed. Early in the following Session (1849) Mr. BALDWIN re-introduced (with some amendments suggested by the experience of the preceding six years) the Bill which the Legislative Council had killed in 1843; and it speedily passed into law as 12 V. c. 81, entitled "*An Act to provide by one general law for the erection of Municipal Councils and the establishment and regulation of Police in and for the several Counties, Cities, Towns and Townships and Villages in Upper Canada.*"

Another Statute (g), passed in the same Session after reciting that by reason of the subdivision of the Districts of Upper Canada their boundaries had in many cases become identical with the boundaries of Counties, that there was no longer any sufficient reason for their continuance, and that it was therefore expedient to abolish the territorial division of the Province into Districts, and, "following in this respect the example of the mother country," to retain only the name of "County" as a territorial division for judicial as well as for other (including municipal) purposes provided that the District Gaols, Court-houses, Grammar-schools and District Officers should thenceforth belong to the Counties and Unions of Counties (20 in number) mentioned in the Schedule to the Act (h); and by c. 80 of the same Session, all previous (local) Acts of incorporation were repealed, as well as most of "*The Townships Officers Act*" (i); "*The District Councils Act*" (j); and "*The Police Trustees Act*" (k), with the amendments thereto respectively.

These Statutes, however, were only ancillary to the principal Act viz., the General Municipal Act (12 V. c. 81) which not only incorporated all the most valuable provisions of the Acts thus repealed, but also with a prescience which shows it to have been the work of a master mind sketched, in outline at least, the frame-work of the municipal system of Canada as it has since continued to this day.

It would not be too much to apply to the comprehensive and statesmanlike enactment known as "The Baldwin Municipal Act of 1849," the words applied to the (English) "*Municipal Corporations Act, 1835*" (l) by the learned editors of the last edition of Mr. Arnold's treatise thereon, and to say that "it may be regarded as the Magna Charta of municipal government" in Canada

To how large an extent it forms the basis of our present municipal law will appear from the notes to many sections throughout this volume.

Although it has been amended at every Session of Parliament from 1849 till now—though it has been seven times consolidated, and on each occasion to some extent re-cast the changes made in it during the past half-century have

(d) "Local Government in Canada," p. 70.

(e) The best extant sketch of the Honourable Robert Baldwin is that by the late JOHN CHARLES DENT ("The Last Forty Years," pp. 71-82 *et seq.*). The complete history of Mr. Baldwin's life still remains to be written. It would be a record of that most eventful and interesting period of Canadian History during which the battle for Responsible Government in this Province was fought and won under the leadership of a high-minded gentleman, who emphatically deserves the title of "a Christian politician."

(f) DENT,—"The Last Forty Years," *ut.* 13-16. (g) 12 V. c. 78.

(h) See these Counties enumerated, *supra* p. 2. (i) 1 Vict. c. 21.

(j) 4 & 5 Vict., c. 10. (k) 10 & 11 Vict., c. 12. (l) Imp. Stat., 15-16 V. c. 50

been chiefly in the direction of amplification and detail. Never has the principle of local self-government been more fully carried out than in the Act of 1849; and if, during these fifty years, the powers of municipal councils have been extended to many subjects not at first foreseen and therefore not provided for, they have, in respect of other matters, been since then curtailed. Especially since Confederation there has been a tendency to transfer to officials appointed by the Executive Government and to bodies such as Boards of Health, License Commissioners and Police Commissioners—of a less directly representative and popular character than are our municipal councils—certain of the powers which were formerly exercised by these councils or by their officers.

Furthermore, the Baldwin Act and its lineal descendants have in their turn become the progenitors and paradigms of the Municipal Institutions Acts in force to-day in nearly every Province of the Dominion. This will appear more fully upon a careful examination of the various Provincial Acts, and especially of the corresponding or cognate sections of these Acts which are noted and referred to in the Comparative Table printed on a previous page of this Manual.

POPULAR MUNICIPAL GOVERNMENT (1849-1858).

Notwithstanding the forebodings of many who regarded the Acts of 1841 and 1849 as the first steps in a downward career which must end in handing over the government of the Province to demagogues and rebels, the municipal history of Canada from 1849 onwards does not indicate that these successive gifts of self-government to the common people produced any such result. It is true that the limits within which the newly constituted municipal corporations might legislate, the mode in which they could legally contract, the procedure at elections, and the extent to which the corporate body was bound by the acts of its officers and of the members of its municipal council, required—as, indeed, such matters still sometimes require—to be defined and explained by judicial decision (*m*). Also, it must at first have been difficult for those who, —as members of the Courts of Quarter Sessions—had so long been accustomed to consider themselves *ex officio* the governing class, to realize that in this altered condition of affairs men chosen by and from the people were entrusted with discretionary powers in regard to matters which His Majesty's Justices of the Peace had formerly determined, sometimes, (it may have been thought) with but scant regard to the popular will.(*n*) Nevertheless, the municipal machine seems to have run with less friction than under a *regime* which had denied to the ratepayers any direct control over the disposal of the taxes which they contributed for local purposes; and the Legislature, in the Sessions following that of 1849, found it expedient to extend, instead of curtailing the powers entrusted to the municipal corporations.(*o*) In one instance,

(*m*) See *Ramsay* v. *Western District Council*, 4 U.C.R. 374 (1847); *Reg.* v. *District Council of Gore*, 5 U.C.R. 357 (1848); *Roach* v. *Municipal Council of Hamilton*, 8 U.C.R. 229 (1851); *Re Hawkins* v. *Municipal Council of Huron, Perth and Bruce*, 2 C.P. 72 (1851); *Re Conger & Peterborough Municipal Council*, 8 U.C.R. 349 (1852); *Doe d. McGill* v. *Langton*, 9 U.C.R. 91 (1852); *Re Wright & Municipal Council of Township of Cornwall*, 9 U.C.R. 442 (1852); *Tyler* v. *Municipal Council of County of Waterloo*, 9 U.C.R. 572 (1852); *Re Bell* v. *Municipality of Township of Maucers*, 2 C.P. 507; 3 C.P. 399, 400 (1852); *Lafferty* v. *Stock*, 3 C.P. 1 (1852); *Re Hawk & Ballard*, 3 C.P. 241 (1852); *Re Sells and Village of St. Thomas*, 3 C.P. 286 (1852); *Cochrane* v. *Hislop*, 3 C.P. 440 (1852); *Re Richmond* v. *Municipality of Township of Front of Leeds & Lansdowne*, 4 U.C.R. 567 (1853); *Grierson* v. *Provisional Municipal Council of Ontario*, 9 U.C.R. 623 (1853); *Baker* v. *Municipal Council of Paris*, 10 U.C.R. 623 (1854); *Re Barclay & Municipal Council of Darlington*, 11 U.C.R. 470 (1853); 12 U.C.R. 86 (1855); *Re Ketchum*, 5 C.P. 50 (1854); *Re Gibstock* v. *Municipality of Otonabee*, 12 U.C.R. 458 (1854); *McAvoy* v. *Municipality of Sarnia*, 12 U.C.R. 99 (1855); *Municipality of Berlin* v. *Grange*, 5 C.P. 211 (1855), etc.

(*n*) See *Justices of District of Huron* v. *Huron District Council*, 5 U.C.R. 574 (1849).

(*o*) See 13-14 V., c. 15 (1850),—Roads, etc., in cities and towns vested in municipal corporations thereof; (*cf.* R.S.O. c. 223, ss. 600, 601); 14-15 V., c. 57 (1851),—Municipal Councils empowered to acquire government roads, harbors, bridges and public buildings; 14-15 V., c. 124 (1851),—"*An Act to enable Municipal Corporations in Upper Canada to contract debts to the Crown in the purchase of public works, without imposing a special rate or tax for payment of the same*"; 16 V., c. 4 (1852),—Municipal Councils acquiring macadamized or plank roads to have compulsory powers of taking materials or for keeping them in repair; 16 V., c. 181 (1853),—"*An Act to amend the Municipal Act of Upper Canada.*" See especially s. 9, Powers of Townships extended [*N.B.* This section and s. 14 contain the germ of that "Local Improvement System" which has since expanded into ss. 664-693 of "*The Municipal Act*" and is applied also in "*The Municipal Drainage Act*," R.S.O., c. 226]; s. 35,—Compulsory powers granted to cities, towns and villages to take land necessary for the construction of sewers; 18 V., c. 133 (1855),—"*An Act to require that all By-laws of City, Town, Village or Township corporations shall be approved by a majority vote of the Municipal Electors before they come into force*"; 20 V., c. 69 (1857),—Townships and counties empowered to stop up and sell original road allowances; (*cf.* R.S.O. c. 223, ss. 629, 632, 637.)

however, this democratic idea was carried too far. The introduction into the sphere of municipal politics,—by the 13-14 V., c. 65 (1850),—of a share in the regulation and control of the traffic by retail in intoxicating liquors was a mistake. It exposed the members and officers of local councils to influences which were, in very many cases, of an undesirable character; and it tended on the whole—especially in urban municipalities—to deteriorate the *morale* and lower the status of these representative bodies. Yet it was not until 1862 (*p*) in the case of cities, nor until 1876 (*q*) in the case of other municipalities, that the last vestige of jurisdiction relative to the granting of certificates for liquor licenses was transferred from the municipalities to independent Boards:—in the first case (cities) to the Commissioners of Police, and in the second (all municipalities) to License Commissioners appointed by and responsible to the Executive Government of the Province.

THE CONSOLIDATED MUNICIPAL ACT OF 1858.

The Consolidation of the Statutes in 1858-1859 is the next landmark in the history of the development of our municipal institutions. There had been, indeed, four prior collections of the Provincial Statutes, viz.: those of 1818 (*r*), 1831 (*s*), 1840-1843 (*t*) and 1842-1845 (*u*); but "*The Consolidated Statutes of Canada*" and "*The Consolidated Statutes of Upper Canada*," which were brought into force on December 5th, 1859, by Proclamation dated November 9th in that year (*v*), embodied the results of a more complete and thorough revision than up to that time had been attempted. The body of Provincial law therein contained had been carefully winnowed—out of more than three thousand Acts of Parliament passed since 1792—by a Commission composed of men all eminent in the legal profession (*w*), and having at their head the Honourable J. B. Macaulay, who had been a member of the Statute Commission of 1840-1843, and had but recently retired from the office of Chief Justice of the Court of Common Pleas.

In the exercise of their powers to alter and improve the form and language of the Statutes which they consolidated, the Commissioners seem to have approved and acted upon the principles expressed in a Report of the Commissioners who had shortly before this been appointed in England for the Consolidation of the Imperial Statute law:

> "Brevity and perspicuity are to be attained in Acts of Parliament—as in all other compositions—only by observing the rules of grammar and logic. . . . All that is wanted is that those who draft these Statutes should be firmly resolved to use a plain and proper style, to choose with care the proper words to express their meaning, and never to use a word that is not wanted. Above all, it should be assumed that they are writing for persons of ordinary candour and intelligence; and it should not (as is now the practice) be thought necessary to provide in terms against every foolish and unworthy quibble which unfair or unreasonable critics may possibly suggest."

With their first report—dated April 19th, 1858—the Canadian Commissioners submitted a new Municipal Bill, which, during the following Session, passed both Houses of the Provincial Parliament, received the Royal Assent on August 16th, 1858, and came into force on December 1st of that year. This Statute (22 V., 1st Session, c. 99), which is entitled "*An Act respecting the Municipal Institutions of Upper Canada*," will frequently be referred to in the following pages as "The Act of 1858." With reference to it the Commissioners report (*x*) that they "have therein attempted a more concise mode of expression than the one theretofore in use." "The Statutes at large," they

(*p*) 25 V., c. 63. (*q*) 39 V., c. 26. (*r*) See R.S.O. (1897), Vol. 2, p. 3792.

(*s*) Do. Thomson & Macfarlane's collection of the Statutes of U.C. (Kingston, 1831)

(*t*) Do. The Commission was composed of the Honourable John Beverley Robinson, the Honourable J. B. Macaulay, the Honourable W. H. Draper and J. H. Cameron, Esq., Q.C. Their Consolidation of the Provincial Acts from 1792 to 1840, inclusive, was published at Toronto in 1843, by Robert Stanton, in two volumes, the first containing Public Acts, the second, Local and Private Acts arranged in the alphabetical order of their subjects.

(*u*) Do. The Commission consisted of Messrs. A. Buchanan, H. Heney and G. W. Wicksteed.

(*v*) Prefixed to the C. S., Ca. (1859), and to the C.S. U.C. (1859).

(*w*) Do. Of the Upper Canadian members of this Commission who are still with us, one (Sir Oliver Mowat) is Lieutenant-Governor of this Province, one (Sir Henry Strong) is Chief Justice of the Supreme Court of Canada, and the third, the Honourable James Robert Gowan, is a Senator of the Dominion.

(*x*) Sessional Papers (1859), Appendix No. 9.

observe, "exhibit two peculiarities which many have considered to be defects, viz.: (1) long sections with numerous provisoes and redundancy of words (*g*) and (2) language used in the future instead of the present tense—even when the latter would be more appropriate. The suggested remedy for the first is distinctness of subjects, short clauses and sentences and the avoidance of tautology in words or in ideas. . . . The remedy for the second is the adoption of the present instead of the future tense, . . . a mode of expression which prevents the frequent use of the auxiliary verb 'shall,'—sometimes for the purpose of placing a verb in the future tense, and, at other times—(even in the same sentence and still more frequently in the same Act)—for the purpose of expressing obligation or command."

Facility of reference and clearness of arrangement were further secured in the new Municipal Bill by breaking up the unwieldy sections of the earlier Acts into short, numbered paragraphs, and by the liberal use of head-lines and side notes (*z*); and in order that "*The Municipal Act*" might form a sort of compendium of the provincial statute law on the subject of municipal institutions, certain provisions theretofore scattered throughout other Acts were now for the first time included therein (*a*).

But, though in all these respects the new Statute was vastly superior to its predecessors, the Commissioners made one change in its form which ultimately proved to have been a decided alteration for the worse.

The sections of Mr. Baldwin's Act relating to the several classes of municipalities;—townships, counties, police villages, incorporated villages, towns and cities—followed one another in this their natural and logical sequence, and the enumeration of the powers of these several classes of municipalities took somewhat the form of an arithmetical progression. The thirty-first section of the Act of 1849 specified the matters in respect to which by-laws might be passed by township councils. By sections 59 and 60 it was provided that a village council should have all these, together with certain (enumerated) additional powers. Next came the town, which was to have all the legislative authority already conferred upon the village, and also jurisdiction in respect to certain other subjects with which a village municipality would have no need (and had accordingly no authority) to deal (*b*). Next came the city, with all the powers of the township, the village and the town, and also with certain other powers peculiar to itself (*c*).

The concluding portion of the Statute, (Division vi., ss. 108-211), contained certain miscellaneous provisions, most of which were applicable to all classes of municipalities.

An arrangement so simple and so perspicuous might fairly have been adopted without alteration; but the draftsman of the Act of 1858,—attempting to improve upon Mr. Baldwin's arrangement,—succeeded only in impairing its excellence. A zeal for brevity (in itself most commendable) may possibly have

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(*g*) "In respect of form, a conventional language, both verbose and obscure, had, by long practice, come to be considered almost essential in composing Acts of Parliament; so that the persons engaged in drawing up Bills have felt themselves debarred from the use of a plain and concise style. In respect of matter, the legislator is frequently not aware of, or is indifferent to, the extent to which his proposed measure will affect other branches of the law, or he is not aware of the exact state of the law with which he proposes to deal, or he omits to state distinctly to what extent the new measure is intended to repeal or supersede the existing law. Again, when an evil is felt, the remedy is usually applied only to the particular case in which the inconvenience has been perceived, instead of amending generally the error or defect which has produced the result complained of. Perhaps, however, the chief cause of confusion is the way in which hasty and inconsistent amendments, ill-assorting with the rest of the measure, are made while the Bill is going through Committee. The proposers of these amendments have often only their own objects in view, and do not consider how far they will affect other parts of the measure itself. The promoter of the Bill too often assents to alterations and changes of which he does not approve, merely for the sake of averting a protracted opposition; and thus the Bill often comes out of Committee in such a form as to justify the expression of Lord TENTERDEN that though the Legislature cannot be deemed *inops consilii*, yet we may lament to find it *magnas inter opes inops*."—Second Report of Her Majesty's Commissioners for Consolidating the Statute Law of England, dated March 5th, 1856.

(*z*) Compare (for example) section 146 of the Act of 1849, as amended by 13-14 V., c. 64, Schedule A (23), with the corresponding section (128) of the Act of 1858.

(*a*) *Ex. gr.* 50 Geo. III., c. 1, relating to Highways; (see now s. 598 of "*The Municipal Act*"); 50 Geo. III., c. 5, relating to Houses of Correction; (see now s. 528); 7 Wm. IV., c. 24, relating to Houses of Industry; (see now ss. 524-526); 10-11 V., c. 41, relating to Lock-up Houses; (see now ss. 518-523). "*The Act respecting Line Fences and Water Courses*," (8 V., c. 20); "*The Assessment Act*," (16 V. c. 182), and "*The Act to regulate travelling on the Highways*," (18 V., c. 138), were not embodied in "*The Consolidated Municipal Act of 1858*."

(*b*) 12 V., ss. 61, 67, 80, 81. (*c*) 12 V., ss. 82, 106, 107.

obscured his perception of the fact that lucidity is at least equally essential—at all events in an Act of Parliament the practical working out of which must be entrusted chiefly to men destitute of such professional training as might enable them quickly to grasp and clearly to comprehend the effect of its numerous provisions. In consequence of this ill-judged rearrangement, those portions of the Municipal Act relating to the "General Powers of Municipal Corporations" have, in every Consolidation from 1858 to 1892, been repeated, re-enacted, amended and multiplied according to the form which was inaugurated in and by the Consolidated Statute, until they became at last the despair of municipal councillors and even of lawyers,—"a mighty maze and all without a plan." The attempt,—however imperfect—made by the present Editor in the last revision of "*The Municipal Act*" (R. S. O. 1897, c. 223) to reduce to some semblance of orderly arrangement this chaotic conglomeration of heterogeneous clauses, may, it is hoped, be considered to have been at all events a step in the right direction.

LATER MUNICIPAL LEGISLATION AND CONSOLIDATIONS.

To discuss at any length the subsequent Consolidations of the Municipal Act (*d*) would be to tax unreasonably the time and patience of the reader and the space at the disposal of the Editor. But it may be observed, in passing, that judges and lawyers (at all events) should be grateful to the draftsman of "*The Consolidated Municipal Act of 1873*" (*e*) for having introduced the practice (since then uniformly adopted) of inserting at the end of each section in a consolidating Act, references to the original Statutes and sections from which it is taken or made up, and of adding a Schedule in tabular form, showing what disposition has been made of the various sections of the Statutes consolidated, superseded or repealed.

The history of the Consolidations of 1877, 1887 and 1897 is recorded at pages 3794-3796 of the R.S.O. (1897); and the intervening Consolidations of 1882 and 1883 require no special comment. The following may, however, be noted among the more important Municipal Statutes of the past forty years:—

The Local Improvement System,—foreshadowed in 1853 in an Act which related only to the construction of sewers in cities, towns and villages (*f*)—was, in 1859 (*g*), made applicable in cities to "the opening, widening, prolonging or altering, macadamizing, grading, levelling, paving or planking of any street, lane or alley, public way or place or of any sidewalk therein on a petition of at least two-thirds in number and one-half in value of the owners of the real property to be immediately benefitted thereby." But it was not till 1882 (*h*) that power was conferred upon municipalities to make "local improvements" upon the initiative of the Council or its officials, without any petition from the ratepayers to be assessed therefor.

In 1872 (*i*) was passed "*An Act for the prevention of Corrupt Practices at Municipal Elections*," copied almost *verbatim* from the Imperial Statute of 17-18 V., c. 102, and now embodied, with but little alteration, in ss. 245-256 and ss. 381-383 of "*The Municipal Act*."

Voting by ballot at Municipal Elections was introduced in 1874 (*j*). In 1876 the same system was applied to the voting upon Debenture By-laws (*k*); and in 1877 (*l*) the provisions of "*The Voters' Lists Act*," passed during the preceding Session (*m*), were made applicable (with certain amendments) to the preparation of lists for the municipal as well as to those for Provincial elections.

The culture of "fancy franchises" began in 1874 with the creation of the Income Voter (*n*): produced in 1877 "*An Act to give the right of voting to Farmers' Sons in certain cases*," (*o*) and finally(?) in 1884 (*p*) evolved—as one of the great moral forces of the day—the Female Elector.

A growing and dangerous tendency on the part of municipal councils towards the granting of bonuses out of public funds received a necessary and wholesome check in 1880 by ss. 16 and 17 of the Act 43 V., c. 27, which required—in order

(*d*) 29-30 V., c. 51 (1866); 36 V., c. 48 (1873); R.S.O. (1877), c. 174; 46 V., c. 18, (1883); R.S.O. 1887), c. 184; 55 V., c. 42 (1892).

(*e*) The draftsman of this Act is understood to have been J. G. Scott, Esq., Q.C., now Master of Titles at Osgoode Hall.

(*f*) 16 V., c. 181, s. 35. And see the Act of 1858, s. 324 (1) (2).

(*g*) 22 V., 2nd Session, c. 40. (*h*) 45 V., c. 23, s. 4.

(*i*) 35 V., c. 36. (*j*) 38 V., c. 28. (*k*) 39 V., c. 35. (*l*) 40 V., c. 35. (*m*) 39 V., c. 11.

(*n*) 37 V., c. 3, s. 3. (*o*) 40 V., c. 9. (*p*) 47 V., c. 32, s. 3.

to the validity of any municipal by-law for granting a bonus in aid of a railway or for promoting any manufacture—the assent of the majority of all the ratepayers entitled to vote on the by-law (*q*).

The Act 45 V. c. 24 (1882), marks the end of a long battle over the subject of market fees; and another important Statute of the same Session is c. 29, "*An Act to establish a Provincial Board of Health and to give increased powers to Local Boards of Health.*"

"*The Ontario Tree Planting Act*" was passed in 1883 (*r*); and, finally, the law empowering the council of any local municipality to prohibit the sale therein of liquor by retail was re-enacted in 1890 (*s*), having, however, been in force prior to Confederation as part of the Municipal Acts of 1853 (*t*) 1858 (*u*) 1859 (*v*) and 1866 (*w*).

THE PRESENT MUNICIPAL DIVISIONS OF ONTARIO.

An article on the development of municipal institutions in Ontario may fitly conclude with a list of its present municipal divisions (*x*).

The "*Act respecting the Territorial Division of Ontario for Municipal and Judicial Purposes,*" (R.S.O. c. 3), enumerates, as the forty-two counties which already possess a complete municipal organization, the following:—

I.—Brant (*a*).

Consisting of the townships of—(1) Brantford (*b*), (2) Burford (*c*), (3) Dumfries South (*d*), (4) Oakland, (5) Onondaga (*e*), (6) Tuscarora; the city of Brantford (*f*) and the town of Paris (*g*).

For municipal purposes the city of Brantford is separated from the County.

The County Council Divisions of the County of Brant, as arranged and defined by the Commissioners appointed under "*The County Councils Act, 1896,*" (59 V. c. 52, ss. 28-35) are as follows:—

Div. I. Tp. of South Dumfries, and the North Ward and King's Ward of the Town of Paris.

II. Tp. of Brantford and that part of Brantford Tp. east of the Grand River.

III. Oakland, Brantford Tp. west of the Grand River, and the Queen's Ward and South Ward of Paris.

IV. Burford Tp.

II.—Bruce (*a*).

Consisting of the townships of—(1) Arran, (2) Albemarle, (3) Amabel (*a*), (4) Brant, (5) Bruce, (6) St. Edmunds, (7) Carrick, (8) Culross (*b*), (9) Eastnor, (10) Elderslie, (11) Greenock, (12) Huron (*c*), (13) Kincardine (*d*), (14) Kinloss (*e*), (15) Lindsay, and (16) Saugeen, together with all of the peninsular tract

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(*q*) See now ss. 366 (p. 366) and s. 366*a* (p. 996) and the note to s. 591 (p. 792) referring to the earlier statutory provisions relative to the subject of municipal bonuses.

(*r*) 46 V. c. 26. (*s*) 53 V. c. 56, s. 18, and see 54 V. c. 46. (*t*) 16 V. c. 184, ss. 3, 4.

(*u*) 22 V. c. 99, s. 245 (6). (*v*) C.S.U.C. c. 54, s. 246 (6). (*w*) 29-30 V. c. 51, s. 249 (9).

(*x*) The local municipalities enumerated under the name of each county are those territorially situate therein; but the cities and towns separated (for municipal purposes) from the counties in which they are territorially situated are severally specified. Appended to the names of the various municipalities is a list of the Statutes and proclamations under which they have been incorporated, their municipal boundaries altered, their municipal *status* raised, etc., or by which they have been otherwise affected. In the preparation of this list the Editor has received much assistance from the valuable "Index to Private and Local Law affecting Incorporated Bodies," prepared by Philibert Baudouin, Esq., (Montreal, Beauchemin et Ellis, 1897.) Mr. Herbert F. Gardiner of Hamilton, Ont., has lately published a very interesting volume ("Nothing but Names") giving the origin and history on the origin of the names of most of the counties and townships of Ontario.

(*a*) 14 Vic. c. 5; (County Town,) Proc. 28 Feb., '52, Can. Gazette, p. 1[illegible]; 16 Vic. c. 81; Proc. 22 Jan., '53, Can. Gazette, p. 111.

(*b*) 20 Vic. c. 109; limits changed by Proc. 30 June, '91, Ont. Gaz.: 34 Vic. c. 81.

(*c*) 24 Vic. c. 66. (*d*) 14 Vic. c. 5. (*e*) 19 Vic. c. 109.

(*f*) Can. 56-57 Vic. c. 62; Ont. 34 Vic. cc. 55-57; 38 Vic. c. 71; Proc. 26 May, '77; Proc. 30 June, '91, Ont. Gaz.; 40 Vic. c. 34; 42 Vic. c. 55; 43 Vic. c. 38; 49 Vic. c. 53; 51 Vic. c. 45; 53 Vic. c. 82; 56 Vic. cc. 59, 60; 58 Vic. c. 61.

(*g*) 18 Vic. c. 148; 48 Vic. c. 67; *ante* (Village), Proc. 29 Sept. '54, Can. Gaz. p. 1751.

(*a*) 12 Vic. c. 96; 14 Vic. c. 5; 16 Vic. c. 31; 19-20 Vic. c. 19; 20 Vic. cc. 77, 78, 88; 22 Vic. c. 111; 22 Vic. (2nd Sess.) c. 75; 27-28 Vic. c. 77; 29 Vic. c. 66; 29-30 Vic. c. 72; 41 Vic. c. 31; Procs. 8 Nov. '60; 23 Nov. '66; Can. Gaz. '60, p. 3362; '66, p. 4514. (*a*) 61 V. c. 37.

(*b*) (*c*) (*d*) (*e*) 41 V. c. 31.

sular tract of land formerly known as the Indian Reserve except the Tps. of Keppel and Sarawak and the islands in Lake Huron and the Georgian Bay contiguous thereto except White Cloud Island, which is part of the Tp. of Keppel (see *post*, p. 17 under "GREY"), the towns of (1) Kincardine (*f*), (2) Walkerton (*g*), and (3) Wiarton (*gf*), and the villages of—(1) Chesley (*h*), (2) Lucknow (*i*), (3) Paisley, (4) Port Elgin (*j*), (5) Southampton (*k*), (6) Tara, (7) Teeswater (*l*), and (8) Tiverton (*m*).

The County Council Divisions of Bruce are :—

I. Wiarton, Albemarle, Eastnor, Lindsay, St. Edmunds, and polling sub-division 5 of the Tp. of Amabel.

II. Arran Tp., Tara Village, and the rest of Amabel Tp. (except polling sub-division 5).

III. Chesley, Paisley, Elderslie and polling sub-division 5 of the Tp. of Greenock.

IV. Walkerton and Brant Tp.

V. Carrick and polling sub-division No. 3 of Culross.

VI. Teeswater, Greenock Tp. (except 5), Culross Tp. (except 3).

VII. Lucknow, Huron and Kinloss.

VIII. Kincardine (Town and Tp.), Tiverton.

IX. Port Elgin, Southampton, Bruce and Saugeen.

III.—CARLETON (*n*).

Consisting of the townships of—(1) Fitzroy (*o*), (2) Gloucester (*p*), (3) Goulbourn, (4) Gower North, (5) Huntley (*q*), (6) March, (7) Marlborough (8) Nepean, (9) Osgoode (*r*), (10) Tarbolton; the city of Ottawa (*s*), and the villages of—(1) Hintonburg, (2) Ottawa East, and (3) Richmond (*t*).

For municipal purposes the city of Ottawa is separated from the county of Carleton.

The County Council Divisions of Carleton are :—

I. Gloucester.

II. Richmond (Village), Marlborough and Goulbourn Tps.

III. Fitzroy, Huntley and Tarbolton.

IV. March and Nepean Tps. (except polling sub-divisions 8 and 9 of Nepean).

V. Hintonburg, Ottawa East and polling sub-divisions 8 and 9 of Nepean.

IV.—DUFFERIN (*a*).

Consisting of the Townships of—(1) Amaranth (*b*), (2) Garafraxa East (*c*), (3) Luther East (*d*), (4) Melanethon (*e*), (5) Mono (*f*), (6) Mulmur (*g*); the town of Orangeville (*h*), and the village of Shelburne (*i*).

The County Council Divisions of Dufferin are :—

I. Orangeville and polling sub-divisions 1, 2, 4 and 5 of Mono.

II. Amaranth and polling sub-division 3 of Garafraxa East.

III. Luther East and polling sub-divisions 1 and 2 of Garafraxa East.

IV. Shelburne and the Tp. of Melanethon.

V. Mulmur and polling sub-divisions 3 and 6 of Mono.

(*f*) Proc. 16 July, '74, Ont. Gaz.; 41 V. c. 31; *ante* (Village), Proc. 26 Nov. '57, Can. Gaz. p. 2768; 63 V. c. 72.

(*g*) Can. Gaz. '57, p. 1516; 22 V. c. 111; Can. Gaz. '60, p. 3362; 27-28 V. c. 77; 29 V. c. 66; 34 V. c. 69; 42 V. c. 44; 53 V. c. 107; 59 V. c. 98; 61 V. c. 59. (*gl*) See 63 V. c. 107

(*h*) 43 V. c. 89. (*i*) Proc. 11 June, '74, Ont. Gaz. (*j*) 40 V. c. 36; 60 V. c. 78.

(*k*) 22 V. c. 42; 37 V. c. 80; 45 V. c. 42. (*l*) 41 V. c. 31; 58 V. c. 88. (*m*) 42 V. c. 43.

(*n*) 4 Geo. IV. c. 5; 8 V. cc. 7, 46; 14 V. c. 5; 26 V. c. 9; 53 V. c. 15; 57 V. c. 30.

(*o*) 26 V. c. 14. (*p*) 8 V. c. 65; 9 V. c. 49; 26 V. c. 9. (*q*) 34 V. c. 61.

(*r*) 8 V. c. 54; 13 V. c. 86; 26 V. c. 9.

(*s*) (Bytown), 10 V. c. 43; 12 V. cc. 81, 80; 13 V. c. 82; (Ottawa), 17 V. c. 23; 20 V. c. 85; 21 V. cc. 57, 58, 59; 34 V. c. 66; 35 V. cc. 67, 80; 36 V. c. 104; 37 V. c. 76; 38 V. c. 39; 39 V. c. 56; 40 V. c. 37; 41 V. c. 37; 42 V. c. 78; 50 V. c. 50; 51 V. c. 53; 52 V. 67; 53 V. cc. 96, 97; 54 V. c. 77; 55 V. c. 80; 56 V. c. 74, 75, 76; 57 V. cc. 75, 76; 59 V. cc. 88, 89; 60 Vic. c. 71, 72; 63 V. c. 80, 81, 82, 83; (New Edinburgh annexed,) Proc. 5 Nov., '86, Ont. Gaz.

(*t*) 12 V. c. 81; 37 V. c. 12.

(*a*) 38 V. c. 31; 43 V. c. 37; 44 V. c. 9; 45 V. c. 38.

(*b*) 38 V. c. 31; limits altered by Proc. 26 Apr., '84, Ont. Gaz.

(*c*) 33 V. c. 13; 38 V. c. 31.

(*d*) 25 V. c. 41; 43 V. c. 41; 45 V. c. 38.

(*e*) 33 V. c. 67; 38 V. c. 31; limits altered by Proc. 26 Apr., '84, Ont. Gaz.

(*f*) (*g*) 38 V. c. 31.

(*h*) 36 V. c. 55; 38 V. c. 31; 47 V. c. 54; 49 V. c. 61; 57 V. c. 74.

(*i*) Proc. 22 Mar., '79; limits altered by Proc. 26 Apr., '84, Ont. Gaz., '79, '84; 38 V. c. 31; 43 V. c. 37.

V.—Dundas (*j*).

Consisting of the townships of—(1) Matilda (*k*), (2) Mountain, (3) Williamsburgh, and (4) Winchester (*l*), and the villages of—(1) Chesterville, (2) Iroquois, (3) Morrisburgh, and (4) Winchester (*m*).

The County Council Divisions of Dundas are:

I. Morrisburgh and Williamsburgh.

II. Chesterville, Winchester (village and township).

III. Mountain and polling sub-divisions 5 and 6 of Matilda.

IV. Iroquois and polling sub-divisions 1 to 4 of Matilda.

The members elected from these Divisions sit in the Council of "The United Counties of Stormont, Dundas and Glengarry." See R.S.O. c. 3, s. 3.

VI.—Durham (*n*).

Consisting of the townships of—(1) Cartwright (*o*), (2) Cavan (*p*), (3) Clarke (*q*), (4) Darlington (*r*), (5) Hope (*s*) and (6) Manvers; the towns of—(1) Bowmanville (*t*) and (2) Port Hope (*u*); and the villages of—(1) Millbrook and (2) Newcastle (*v*).

The County Council Divisions of Durham are:

I. Port Hope and polling sub-divisions 1, 2 and 3 of the Tp. of Hope.

II. Millbrook, the rest of Hope, and polling sub-divisions 1, 2 and 3 of Cavan.

III. Manvers and the rest of Cavan.

IV. Newcastle and the Tp. of Clarke.

V. Bowmanville and polling sub-divisions 4, 3 and 6 of Darlington.

VI. Cartwright and the rest of Darlington.

The members elected from these Divisions sit in the Council of "The United Counties of Northumberland and Durham." See R.S.O. c. 3, s. 3.

VII.—Elgin (*w*).

Consisting of the townships of—(1) Aldborough (*x*), (2) Bayham (*y*), (3) Dorcheste, South (*z*), (4) Dunwich, (5) Malahide (*a*), (6) Southwold and (7) Yarmouth (*b*); the city of St. Thomas (*c*), the town of Aylmer (*d*), and the villages of—(1) Dutton, (2) Port Stanley (*e*), (3) Springfield, (4) and Vienna (*f*).

For municipal purposes the city of St. Thomas is separated from the county of Elgin.

The County Council Divisions of Elgin are:

I. Aldborough.

II. Dutton and Dunwich.

III. Port Stanley and Southwold.

IV. Yarmouth.

V. Aylmer, Vienna, polling sub-divisions 1 and 2 of Bayham, and Malahide (except polling sub-division 5.)

VI. Springfield, South Dorchester, Malahide (division 5), and Bayham (except divisions 1 and 2).

(*j*) 8 V. c. 7; 14 V. c. 5. (*k*) 19 V. c. 51; 40 V. c. 48. (*l*) 18 V. c. 155; 53 V. c. 112. (*m*) 53 V. c. 111.

(*n*) 8 V. c. 7; 14 V. c. 5; 23 V. c. 98; 39 V. c. 54. (*o*) 14 V. c. 5; 23 V. c. 98. (*p*) 23 V. c. 98.

(*q*) 10 V. c. 116; 23 V. c. 98. (*r*) 19 V. c. 67; 23 V. c. 98. (*s*) 21 V. c. 60; 23 V. c. 98.

(*t*) 20 V. c. 89; 23 V. cc. 90-98; 27 V. c. 73; 37 V. c. 71; 49 V. c. 52; 51 V. c. 44; 56 V c. 58; *ante*, (Village) Procs. 15 April, '52; 20 Sept. '56, Can. Gaz. '52, p. 12395; '56 p. 1841.

(*u*) 4 Wm. IV. c. 26; 12 V. cc. 81, 80; 13 V. c. 64; Proc. 28 Dec., '61; Can. Gaz., p. 3588; 24 V. c. 62; 25 V. c. 33; 28 V. c. 29; 32 V. c. 71; 37 V. c. 77; 39 V. c. 59; 45 V. c. 41; 49 V. c. 64; 56 V cc. 74, 75; 57 V. c. 79.

(*v*) 19 V. c. 119; see Procs. 28 Oct., '51, 20 Sep., '56; Can. Gaz. '51 p. 11579, '56 p. 1842; 23 V. c. 98.

(*w*) 14 V. c. 5; Proc. 28 Feb., '52, Can. Gaz., p. 12060; 21 V. c., 120; 26 V. c. 49.

(*x*) 16 V. c. 225. (*y*) 31 V. c. 50; 58 V. c. 113. (*z*) 14 V. c. 5.

(*a*) 26 V. c. 12; Proc. Ont. Gaz., 24 Sep., '87; 58 V. c. 113.

(*b*) See Proc. Ont. Gaz., 16 June, '75; 12 May, '91.

(*c*) 44 V. c. 46; 48 V. c. 69; 53 V. c. 102; 54 V. c. 79; 55 V. c. 43; 56 V. c. 69; 57 V. c. 76 (Ca.); 61 V. c. 51; *ante*, (Town), 23 V. c. 89; 27 V. c. 74; 34 V. c. 59; Proc. 28 Dec. 61, Can. Gaz. p. 3587; (limits) Proc. 11 June, 75, Ont. Gaz.; *ante*, (Village) Proc. 12 Sept. 51, Can. Gaz.; Co. Town, Proc. 12 Feb. 52, Can. Gaz. '51, p. 11302, '52 p. 12060.

(*d*) Proc. 20 Sep., '86; limits altered by Proc. 24 Sep., '87, Ont. Gaz.; 53 V. c. 79.

(*e*) Proc. Ont. Gaz., 12 May, '91.

(*f*) Proc. 9 Aug. '52, Can. Gaz., p. 13236; 58 V. c. 113.

VII.—Essex. (a)

Consisting of the townships of—(1) Anderdon, (2) Colchester North (b), (3) South (c), (4) Gosfield North (d), (5) Gosfield South, (6) Maidstone (e), (7) Malden, (8) Mersea (f), (9) Pelée (g), (10) Rochester (h), (11) Sandwich, East (i), (12) Sandwich West (j), (13) Sandwich South (k), (14) Tilbury West (l), and (15) Tilbury North (m); the City of Windsor (n); the towns of (1) Amherstburg (o), (2) Essex (p), (3) Leamington (q), (4) Sandwich (r), and (5) Walkerville (s), and the villages of—(1) Belle River and (2) Kingsville.

For municipal purposes the city of Windsor, the town of Walkerville and the township of Pelee are separate from the county of Essex.

The County Council Divisions of Essex are:—

I. Amherstburg, Anderdon and Malden.
II. Essex, Colchester North and Colchester South.
III. Kingsville, Gosfield North and Gosfield South.
IV. Leamington and Mersea.
V. Rochester, Tilbury North and Tilbury West.
VI. Belle River, Maidstone and Sandwich South.
VII. Sandwich (Town), Sandwich East and West (Tps).

IX.—Frontenac. (t)

Consisting of the townships of—(1) Barrie, (2) Bedford (tt) (3) North and (4) South Canonto (u), (5) Clarendon, (6) Hinchinbrooke, (7) Howe Island (v), (8) Kennebec (w), (9) Kingston (x), (10) Loughborough, (11) Miller (y), (12) Olden, (13) Oso, (14) Palmerston, (15) Pittsburgh (z), 16) Portland (a), (17) Storrington (b) and (18) Wolfe Island (including Simcoe Island, Horse-shoe Island and Mud Island) (c); the city of Kingston (d), and the villages of—(1) Garden Island and (2) Portsmouth (e).

For municipal purposes the city of Kingston is separate from the county of Frontenac.

The County Council Divisions of Frontenac are

I. Pittsburg and Storrington.
II. Garden Island, Portsmouth and the Tps. of Howe Island and Wolfe Island.
III. Kingston Tp.
IV. Loughborough and Portland.
V. Bedford, Hinchinbrooke, Olden and Oso.
VI. Barrie, Clarendon and Miller, Kennebec and the United Townships of Palmerston and North and South Canonto.

(a) 41 Geo. III., c. 10; 48 Geo. III., c. 12; 7 V. c. 13; 8 V. c. 7; 14 V. c. 94; Separn. Proc. 31 Dec '50, 13 Jan. '51, 30 Sept, '53, Can. Gaz., '51, pp. 9963, 10043, '53, p. 1456; 34 V. c. 27.

(b) 36 V. c. 61; 42 V. c. 45; 50 V. c. 47; Ont. Gaz. 4 June, '87.

(c) 47 V. c. 48. (d) 50 V. c. 51. (e) Ont. Gaz. 4 June, '87. (f) Ont. Gaz. 19 Sept., '89.

(g) Ont. Gaz. 26 Dec., '68; 31 V. c. 51: 52 V. c. 68. (h) 46 V. c. 40.

(i) 23 V. c. 96; 37 V. c. 81: 55 V. c. 85.

(j) 37 V. c. 82: 51 V. c. 59; Ont. Gaz. 5 Oct., '88. (k) 55 V c. 85.

(l) 10 V. c. 39; 16 V. c. 34; 32 V. c. 68; 54 V. c. 81; 60 V. c. 40. (m) 54 V. c. 81.

(n) 55 V. c. 92; 57 V. c. 87; 61 V. c. 58, Proc. 1 Mar., '93, Ont. Gaz.; *ante*, (Town), 20 V. c. 97; 21 V.c. 48; 37 V. c. 79; 40 V. c. 42; 44 V. c. 48; Can. Gaz. '65, p. 3342; Ont. Gaz. 18 Dec. '80, 22 July, '85; 15 Oct. '88; *ante*, (Village) Can. Gaz. '53, p. 1455; 60 V. c. 83.

(o) Ont. Gaz. 10 Mar., '77; 52 V. c. 55; *ante*, 57 Geo. III. c. 2: 1 Wm. IV. c. 3; 12 V. c. 80 Can. Gaz. 50, p. 9458: 16 V. c. 97.

(p) Ont. Gaz. 12 Dec. '89: 54 V. c. 67; *ante*, (Essex Centre, Village) Ont. Gaz. 4 June, '87; 48 V. c. 57.

(q) Ont. Gaz. 19 Sept., '89.

(r) 20 V. c. 94; 51 V. c. 59; *ante*, 57 Geo. III, c. 2; 3 V. c. 41; 12 V. cc. 80, 81; 13 V. c. 64; Can. Gaz. '59, p. 9458.

(s) 53 V. c. 108.

(t) 8 V. c. 7; 14 V. c. 5; Can. Gaz. '63, p. 2403; '64, p. 2846; 23 V. c. 39; 28 V. c. 25; 35 V. c. 57; 41 V. c. 33; 44 V. c. 36.

(tt) 17 V. c. 25; 27 V. c. 80. (u) 23 V. c. 39. (v) 14 V. c. 5. (w) 53 V. c. 86.

(x) 14 V. c. 5; (16 V. c. 222, 223); 44 V. c. 38. (y) 23 V. c. 39. (z) 16 V. cc. 222, 223.

(a) 28 V. c. 31; 34 V. c. 63. (b) 8 V. c. 7. (c) 18 V.c. 152.

(d) 9 Vic. c. 75; 10 V. c. 46; 12 V. cc. 81, 80; 16 V. c. 32; 32 V. c. 15; 35 V. cc. 57, 74; 38 V. c. 44; 39 V. c. 1; 44 V. c. 37; 45 V. c. 37; 47 V. c. 50; 50 V. c. 56; 52 V. cc. 62, 63; 56 V. cc. 67, 68, 22; 57 V. c. 69; 52 V. c. 77 (Ca.); *ante*, (Town) 1 V. c. 27; 2 V. cc. 36-37; 8 V. c. 61.

(e) 44 V. c. 38.

X.—Glengarry (*f*)

Consisting of the townships of—(1) Charlottenburgh, (2) Kenyon (*g*), (3) Lancaster (*h*), (4) Lochiel, and the villages of—(1) Alexandria, (2) Lancaster, (3) Maxville.

The County Council Divisions of Glengarry are :—

I. Charlottenburgh.

II. Lancaster (Village and Tp.).

III. Alexandria and the Tp. of Lochiel.

IV. Maxville and the Tp. of Kenyon.

The members elected from these Divisions sit in the Council of "The United Counties of Stormont, Dundas and Glengarry." See R. S. O., c. 3, s. 3.

XI.—Grenville (*a*)

Consisting of the townships of—(1) Augusta, (2) Edwardsburg (*b*), (3) Gower, South, (4) Oxford (on Rideau), and (5) Wolford (*c*); the town of Prescott (*d*) and the villages of (1) Cardinal (2) Kemptville (*e*) and (3) Merrickville (*f*).

For municipal purposes the Town of Prescott is separated from the county of Grenville.

The County Council Divisions of Grenville are :—

I. Augusta.

II. Merrickville and Wolford Tp.

III. Kemptville, Gower South and Oxford.

IV. Cardinal and Edwardsburg.

The members elected from these Divisions sit in the Council of "The United Counties of Leeds and Grenville." See R. S. O., c. 3, s. 3.

XII.—Grey (*g*).

Consisting of the townships of—(1) Artemesia, (2) Bentinck (3) Collingwood (*h*), (4) Derby (*i*), (5) Egremont, (6) Euphrasia, (7) Glenelg, (8) Holland, (9) Keppel (including White Cloud Island), (10) Normanby, (11) Osprey, (12) Proton, (13) Saint Vincent (*j*), (14) Sarawak, (15) Sullivan and (16) Sydenham, the towns of—(1) Durham (*k*), (2) Meaford (*l*), (3) Owen Sound (*m*) and (4) Thornbury (*n*), and the villages of—(1) Dundalk, (2) Hanover and (3) Markdale (*o*).

N.B.—The long note on p. 3 of the R.S.O. 1897, under "Grey," beginning "together with (but exclusive of the townships of Keppel and Sarawak)" is incorrect. Except these two townships, Keppel and Sarawak (see *supra*), the whole of "the peninsular tract of land (formerly) known as the Indian Reserve" forms part of the County of Bruce. See *ante*, pp. 13, 14 under "Bruce."

The County Council Divisions of Grey are :—

I. Owen Sound and Sarawak.

II. Derby, Keppel and Sullivan.

III. Durham, Hanover, Bentinck and Glenelg.

IV. Egremont and Normanby.

V. Dundalk, Markdale, Artemesia and Proton.

VI. Thornbury and the Tps. of Collingwood and Osprey.

VII. Meaford, Euphrasia and St. Vincent.

VIII. Holland and Sydenham.

(*f*) 59 Geo. III, c. 3; 8 V. c. 7; 14 V. c. 5. (*g*) 25 V. c. 43; 32 V. c. 72.

(*h*) 10 Geo. IV., c. 13.

(*a*) 8 V. cc. 7, 46; 14 V. c. 5; 41 V. c. 34. (*b*) 13 V. c. 85.

(*c*) 5 Wm. IV. c. 21; 34 V. c. 56; Ont. Gaz., 9 Sep. '86.

(*d*) 4 Wm. IV. c. 27; 10 V. c. 47; 12 V. cc. 81, 89; 13 V. c. 64; 22 V. c. 86; 58 V. c. 75: Ont Gaz., 3 Dec. '68; 17 Aug. '83; 63 V. c. 89.

(*e*) 19 V. c. 99; 20 V. c. 99; 21 V. c. 44; 60 V. c. 66. (*f*) 23 V. c. 91.

(*g*) 14 V. c. 5; Can. Gaz., 28 Feb. '52, p. 12061; 22 Jan. '53; 30 Dec. '53, p. 112; '54 p. 52; 24 V. c. 52.

(*h*) 32 V. c. 64; 33 V. c. 45; 56 V. c. 61. (*i*) 50 V. c. 48; Ont. Gaz. 14 July, '69.

(*j*) 26 V. c. 51; 29 V. c. 78; 32 V. c. 69. (*k*) 35 V. c. 42; 48 V. c. 56; 63 V. c. 67.

(*l*) 37 V. c. 68; 39 V. c. 43; 63 V. c. 77.

(*m*) 19 V. c. 18; 24 V. c. 63; 41 V. c. 28; 43 V. c. 42; 45 V. c. 39; 48 V. c. 66; 50 V. c. 48; 55 V. c. 81; Ont. Gaz. 6 Sep. 89.

(*n*) 50 V. c. 63; 56 V. c. 61. (*o*) 51 V. c. 52.

XIII.—Haldimand (p).

Consisting of the townships of—(1) Canborough, (2) Cayuga North and (3) Cayuga South (q), (4) Dunn, (5) Moulton, (6) Oneida, (7) Rainham (r), (8) Seneca, (9) Sherbrooke (s), (10) and Walpole (t), the town of Dunnville (u), and the villages of—(1) Caledonia (v), (2) Cayuga (w) and (3) Hagarsville.

The County Council Divisions of Haldimand are :—

I. Walpole.
II. Caledonia, Hagarsville and Oneida.
III. Cayuga and the Tps. of Cayuga North and Seneca.
IV. Cayuga South, Dunn, Rainham and Sherbrooke.
V. Dunnville, Canborough and Moulton.

XIV.—Halton. (a)

Consisting of the townships of—(1) Esquesing, (2) Nassagaweya, (3) Nelson, (4) Trafalgar (b) ; the towns of—(1) Milton (c) and (2) Oakville (d), and the villages of—(1) Acton, (2) Burlington (e) and (3) Georgetown.

The County Council Divisions of Halton are :—

I. Burlington and the Tp. of Nelson.
II. Oakville and the Tp. of Trafalgar.
III. Georgetown and the Tp. of Esquesing.
IV. Milton, Acton and the Tp. of Nassagaweya.

XV.—Hastings. (f)

Consisting of the townships of—(1) Bangor (g), (2) Carlow (h), (3) Cashel (i), (4) Dungannon (j), (5) Elzevir, (6) Faraday (k), (7) Grimsthorpe, (8) Herschel (l), (9) Hungerford (m), (10) Huntingdon, (11) Lake, (12) Limerick (n), (13) Madoc (o), (14) Marmora, (15) Mayo (p), (16) McClure (q), (17) Monteagle (r), (18) Rawdon, (19) Sidney (s), (20) Thurlow (t), (21) Tudor (u), (22) Tyendinaga, (23) Wicklow (v) and (24) Wollaston (w) ; the city of Belleville (x) : the towns of—(1) Deseronto (y), and (2) Trenton (z), and the villages of—(1) Madoc, (2) Stirling and (3) Tweed (a).

(p) 50 Geo. III. c. 12 ; 8 V. c. 7 ; 14 V. c. 5 ; Can. Gaz. 31 Dec. 50, p. 9964.
(q) 12 V. c. 98. (r) 7 Geo. IV, c. 13. (s) Can. Gaz. 1865, p. 1529.
(t) 7 Geo. IV. c. 13 ; 12 V. c. 101 ; 13 V. c. 89.
(u) (Town.) Proc. 8th Dec. '99. See also 63 V. c. 66.
(v) Can. Gaz. 27 May, '52, p. 12610 ; 23 V. c. 106 ; c. 26 V. 16 ; c. 27 V. c. 75 ; 39 V. c. 48.
(w) 14 V. c. 54 ; 14 V. c. 31 ; 27 V. c. 39.
(a) 8 V. c. 7 ; 14 V., cc. 5, 138 ; Can. Gaz. '53 p. 111, '54 p. 2226; 16 V. c. 218 ; 18 V. c. 69 ; 20 V. c. 75 ; 57 V. c. 67.
(b) 21 V. c. 50. (c) 20 V. c. 92 ; 21 V. c. 50 ; 54 V. c. 74 ; 63 V. c. 78.
(d) 20 V. c. 93. (e) 56 V. c. 89.
(f) 8 V. c. 7 ; 9 V. c. 12 ; 10 V. c. 38 ; 12 V. c. 97 ; 14 V. c. 5 ; 21 V. c. 14 ; 25 V. c. 31 ; 28 V. c. 24 ; 31 V. c. 46 ; 42 V. c. 50.
(g) 21 V. c. 14. (h) 21 V. c. 14 ; Ont. Gaz. 11 Dec., '69.
(i) 21 V. c. 14 ; 38 V. c. 38.
(j) 21 V. c. 14 ; Ont. Gaz. 10 June, '70.
(k) 21 V. c. 14 ; Ont. Gaz. 10 June, '70.
(l) 21 V. c. 14.
(m) 43 V. c. 50.
(n) 21 V. c. 14 ; 38 V. c. 38.
(o) 38 V. c. 38.
(p) 21 V. c. 14 ; Ont. Gaz. 11 Dec., '69.
(q) 21 V. c. 14.
(r) 21 V. c. 14.
(s) Ont. Gaz. 17 May, '73. Originally spelled "Sydney." See *ante*, p. 2.
(t) 31 V. c. 46. (u) 38 V. c. 38 (v) 21 V. c. 14. (w) 21 V. c. 14 ; 38 V. c. 38.
(x) 40 V. c. 33 ; 53 V. c. 89 ; *ante*, 4 Wm. IV., c. 24 ; 6 Wm. IV. c. 14 ; 12 V. cc. 81, 80 ; 13 V. c. 64 ; 14 V. c. 140 ; Can. Gaz. '60 p. 3023 ; 31 V. c. 49 ; 39 V. c. 50 ; Ont. Gaz., 4 Sep., '74.
(y) Ont. Gaz. 29 Sept. '88 ; 44 V. c. 42.
(z) Ont. Gaz. 24 Sept., '80 ; 45 V. c. 45 ; 47 V. c. 60 ; 48 V. c. 74 ; 50 V. c. 73 ; 52 V. c 106 ; 56 V. c. 111 ; 57 V. c. 85 ; 61 V. c. 56 ; *ante*, (Village), Ont. Gaz. 18 May '72, 17 May '73 ; 31 V. c. 46; 38 V. cc. 58-80.
(a) 43 V. c. 50.

For municipal purposes the city of Belleville and the town of Trenton are separate from the county of Hastings.

The County Council Divisions of Hastings are :—

I. Sidney.

II. Thurlow.

III. Deseronto and the Tp. of Tyendinaga.

IV. Stirling and the Tps. of Lake, Marmora, Rawdon and Wollaston.

V. Tweed, Hungerford and Huntingdon.

VI. Madoc (Village) and the Tps. of Cashel, Elzevir, Grimsthorpe, Limerick, Madoc and Tudor.

VII. Bangor, Carlow, Dungannon, Faraday, Herschel, Mayo, McClure, Monteagle and Wicklow.

XVI.—Huron, (*h*)

Consisting of the townships of—(1) Ashfield, (2) Colborne (*c*), (3) Goderich (*d*), (4) Grey (*dI*), (5) Hay, (6) Howick (*e*), (7) Hullett, (8) McKillop (*eI*), (9) Morris, (10) Stanley (*f*), (11) Stephen (*g*), (12) Tuckersmith, (13) Turnberry, (14) Usborne, (15) Wawanosh East and (16) Wawanosh West (*h*); the towns of—(1) Clinton (*i*), (2) Goderich (*j*), (3) Seaforth (*k*), and (4) Wingham (*l*), and the villages of—(1) Bayfield (*m*), (2) Blythe, (3) Brussels (*n*), (4) Exeter (*o*) and (5) Wroxeter (*p*).

The County Council Divisions of Huron are :—

I. Goderich (Town), and the Tps. of Ashfield and Colborne.

II. Clinton and the Tps. of Goderich and Hullett.

III. Bayfield and the Tps. of Hay and Stanley.

IV. Exeter and the Tps. of Stephen and Usborne.

V. Seaforth and the Tps. of McKillop and Tuckersmith.

VI. Brussels and the Tps. of Grey and Morris.

VII. Wingham, Blyth and the Tps. of East and West Wawanosh.

VIII. Wroxeter and the Tps of Howick and Turnberry.

XVII.—Kent (*a*).

Consisting of the townships of—(1) Camden (*b*), (2) Chatham (*c*), (3) Dover, East, (4) Dover, West, (5) Harwich, (6) Howard (*d*), (7) Orford, (8) Raleigh (*e*), (9) Romney (*f*), (10) Tilbury, East (*g*), (11) Zone (*h*), the city of Chatham (*i*), the towns of—(1) Blenheim (*j*), (2) Bothwell (*k*), (3) Dresden (*l*), (4) Ridgetown (*m*) and (5) Wallaceburg (*n*), and the villages of—(1) Thamesville and (2) Tilbury (*o*).

(*b*) 8 V. c. 7; 12 V. c. 96; 14 V. c. 5; 16 V. c. 31; 19 V. c. 49; 20 V. c. 77, 80; 22 V. c. 75; 25 V. c. 28; 29 V. c. 66; 29-30 V. c. 72; Can. Gaz. 66 p. 4514; 37 V. c. 83; 39 V. c. 49.

(*c*) 23 V. c. 98. (*d*) 24 V. c. 60. (*dI*) 61 V. c. 42.

(*e*) 50 V. c. 54. (*eI*) 61 V. c. 42. (*f*) 20 V. c. 110.

(*g*) 35 V. c. 102; 36 V. c. 125. (*h*) 29-30 V. c. 82.

(*i*) Ont. Gaz. 21 Nov., '74; 38 V. c. 37; 54 V. c. 64; 28 V. c. 100.

(*j*) 12 V. c. 81; Can. Gaz. 25 Sept., '52, p. 13285; 20 V. cc. 87, 88; 55 V. c. 71; 61 V. c. 41.

(*k*) Ont. Gaz. 2 Oct., '74.

(*l*) Ont. Gaz. 5 Oct., '78; 43 V. c. 47; 45 V. c. 47; 51 V. c. 64; ante, 37 V. c. 70.

(*m*) 39 V. c. 40. (*n*) 50 V. c. 46; 51 V. c. 46. (*o*) 36 V. c. 54; 56 V. c. 62.

(*p*) 38 V. c. 35; Ont. Gaz. 25 Sept., 1877.

(*a*) 48 Geo. III., c. 12; 7 V. c. 13; 8 V. c. 7; 10 V. c. 39; 12 V. c. 79; Can Gaz. 1851, pp. 9963, 10043; 14 V. c. 5; 15 V. c. 94; 22 V. c. 80; 42 V. c. 61; 44 V. c. 62, s. 2.

(*b*) 7 Wm. IV., c. 58; 12 V. c. 79; 21 V. c. 115; 22 V. c. 80; Ont. Gaz. 21 July, '74.

(*c*) 7 Wm. IV., c. 58; 12 V. c. 79; 22 V. c. 80.

(*d*) 22 V. c. 83. (*e*) 41 V. c. 40.

(*f*) (16 V. c. 34; 30 V. c. 58.) 38 V. c. 43; 41 V. c. 40.

(*g*) 38 V. c. 43; 41 V. c. 40; 56 V. c. 83. (*h*) 12 V. c. 79.

(*i*) 58 V. c. 65; ante, 10 V. c. 39 s. 2; 12 V. c. 81; 13 V. c. 87; Can. Gaz. '50 p. 9458, '54 p. 1754; 19 V. c. 61; 32 V. cc. 65, 66; Ont. Gaz. 18 Dec. '79, 10 Sep. '81; 21 Apr. 83; 55 V. c. 65.

(*j*) Ont. Gaz. 6 June, '84.

(*k*) 29-30 V. c. 80; Ont. Gaz. 26 Nov., '69.

(*l*) Ont. Gaz. 26 Feb., 1881; ante, Ont. Gaz. 21 July '74, 8 July, '79.

(*m*) 51 V. c. 58.

(*n*) Ont. Gaz. 9 Dec., '95; 58 V. c. 91.

(*o*) 450 V. c. 79; 53 V. c. 103; 59 V. c. 94, s. 16.

For municipal purposes the city of Chatham is separate from the county of Kent.

The County Council Divisions of Kent are :-

I. Bothwell and the Tps. of Orford and Zone.
II. Dresden, Thamesville and the Tp. of Camden.
III. Wallaceburg and the Tp. of Chatham.
IV. Ridgetown and Tps. of Howard.
V. Blenheim and the Tp. of Harwich.
VI. Dover and Raleigh.
VII. Tilbury and the Tps. of Romney and Tilbury East.

XVIII.—Lambton (*p*).

Consisting of the townships of—(1) Bosanquet (*q*), (2) Brooke, (3) Dawn (*r*), (4) Euphemia (*s*), (5) Enniskillen, (6) Moore, (7) Plympton, (8) Sarnia (*t*), (9) Sombra, including Walpole Island, St. Anne's Island, and the other islands at the mouth of the River St. Clair (*u*) and (10) Warwick; the towns of—(1) Forest (*v*), (2) Petrolea (*w*) and (3) Sarnia (*x*), and the villages of—(1) Alvinston (*y*), (2) Arkona, (3) Oil Springs (*z*), (4) Point Edward, (5) Thedford, (6) Watford, (7) Wyoming (*a*).

The County Council Divisions of Lambton are :—

I. Sarnia and Point Edward.
II. The Tps. of Moore and Sarnia.
III. Dawn and Sombra.
IV. Petrolea (Town), Oil Springs (Village) and the Tp. of Enniskillen.
V. Forest (Town), Wyoming (Village) and the Tp. of Plympton.
VI. Arkona, Thedford, Watford and the Tp. of Bosanquet and Warwick.
VII. Alvinston and the Tps. of Brooke and Euphemia.

XIX.—Lanark (*b*).

Consisting of the townships of—(1) Bathurst, (2) Beckwith, (3) Burgess, North (*c*), (4) Dalhousie, (5) Darling, (6) Drummond, (7) Elmsley, North (*d*), (8) Lanark, (9) Lavant, (10) Montague (*e*), (11) Pakenham, (12) Ramsay (*f*), (13) Sherbrooke North and (14) Sherbrooke South (*g*); the towns of—(1) Almonte (*h*), (2) Carleton Place (*i*), (3) Perth (*j*) and (4) Smith's Falls (*k*), and the village of Lanark (*l*).

For municipal purposes the town of Perth is separate from the county of Lanark.

The County Council Divisions of Lanark are :—

I. Lanark (Village) and the Tps. of Darling, Lanark, Lavant and Pakenham.
II. Almonte (Town) and the Tp. of Ramsay.
III. Carleton Place and the Tp. of Beckwith.
IV. Smith's Falls (Town) and Montague Tp.
V. Burgess, North Drummond and Elmsley North.
VI. Bathurst, Dalhousie, Sherbrooke North and Sherbrooke South.

(*p*) 12 V. c. 79 ; 14 V. c. 5 ; Can. Gaz., 1851, pp. 9063, 10043 ; '52, p. 12060 ; '53, p. 1456 ; 22 V. c. 80 ; 39 V. c. 60.

(*q*) 35 V. c. 102 ; 36 V. c. 125 ; 40 V. c. 47. (*r*) 12 V. c. 79 ; 21 V. c. 115 ; 22 V. c. 80.

(*s*) 21 V. c. 115. (*t*) 20 V. c. 115 ; 22 V. c. 77 ; 58 V. c. 81.

(*u*) 12 V. c. 79 ; 22 V. c. 80 ; 49 V. c. 10 ; 57 V. c. 81.

(*v*) Ont. Gaz., 29 Sep., '88. (*w*) Ont. Gaz., 17 Sep., '73 ; 11 Sep., '86.

(*x*) 10 V. c. 67 ; 26 V. c. 36 ; 39 V. c. 60 ; Ont. Gaz., 9 Apr. '81 ; 44 V. c. 56 ; 46 V. c. 41 ; 48 V. c. 70 ; 49 V. c. 65 ; 50 V. c. 63 ; 56 V. c. 80 ; Can. Gaz., 52, p. 12060 ; 61 V. c. 53 ; Limits extended by Proc. May 4, '98, Ont. Gaz., p. 532.

(*y*) 56 V. c. 57. (*z*) 58 V. c. 71.

(*a*) 52 V. c. 76.

(*b*) 8 V. c. 7 ; 14 V. c. 5 ; Can Gaz., '53, p. 1457, ('61, p. 1356) ; '66, p. 3034 ; 24 V. c. 51 ; 29 V. c. 65 ; 32 V. c. 62.

(*c*) 8 V. c. 7. (*d*) 8 V. c. 7 ; 10 V. c. 53 ; 12 V. c. 102.

(*e*) 10. V. c. 53 ; 12 V. c. 102 ; Ont. Gaz., 19 Apr., '72 ; 9 Sep., '86.

(*f*) Ont. Gaz., 11 May, '82 ; 7 Nov., '90. (*g*) Can. Gaz., '65, p. 1529.

(*h*) Ont. Gaz., 24 Sep., '80 ; 11 May, '82 ; 7 Nov., '90 ; 51 V. c. 41.

(*i*) Ont. Gaz., 6 Dec., '89 ; 57 V. c. 62 ; 58 V. c. 64.

(*j*) 12 V. cc. 80, 81 ; 13 V. c. 64 ; 25 V. c. 35 ; Can. Gaz., '50, p. 9458 ; '53, p. 1323 ; Ont. Gaz., 23 July, '70 ; 32 V. c. 62 ; O. 39 V. c. 57 ; 2 Geo. IV. c. 15.

(*k*) Ont. Gaz., 25 Apr., '82 ; 9 Sep., '86 ; Can. Gaz., '53, p. 1457 ; Ont. Gaz., 19 Apr., '72.

(*l*) 25 V. c. 36 ; 28 V. c. 30.

XX. Leeds (*a*).

Consisting of the townships of—(1) Bastard, (2) Burgess South, (3) Crosby North, (4) Crosby South (*b*), (5) Elizabethtown, (6) Elmsley South, (*c*) (7) Front of Escott (*d*), (8) Kitley, (9) Front of Leeds and Lansdowne (*e*), (10) Rear of Leeds and Lansdowne (*e*), (11) Front of Yonge (*f*), (12) Rear of Yonge and Escott (*f*); the towns of—(1) Brockville (*g*), and (2) Gananoque (*h*), and the villages of—(1) Athens, and (2) Newboro'. For municipal purposes the town of Brockville is separated from the county of Leeds.

The County Council Divisions of Leeds are:—

I. Gananoque (Town) and the Tp. of Front of Leeds and Lansdowne.
II. Front of Escott, Front of Yonge, and Divisions 1-5 of the Tp. of Elizabethtown.
III. Athens, Rear of Yonge and Escott and Divisions 6-9 of Elizabethtown.
IV. Elmsley South, Kitley and Divisions 1, 2 and 4 of Bastard and Burgess South.
V. Rear of Leeds and Lansdowne and Divisions 3, 5 of Bastard and Burgess South.
VI. Newboro, Crosby North and Crosby South.

XXI. Lennox and Addington (*i*).

Consisting of the townships of—(1) Abinger (*j*), (2) Adolphustown, (3) Amherst Island, (4) Anglesea, (5) Ashby (*k*), (6) Camden (*l*), (7) Denbigh (*m*), (8) Effingham (*n*), (9) Ernestown (*nn*), (10) Fredericksburgh North (*o*), (11) Fredericksburgh South, (12) Kaladar, (13) Richmond (*p*), (14) Sheffield; the town of Napanee (*q*), and the villages of—(1) Bath, and (2) Newburgh (*r*).

The County Council Division of Lennox and Addington are:—

I. Abinger, Angelsea, Ashby, Denbigh, Effingham, Kaladar and Sheffield.
II. Newburgh and the Tp. of Camden.
III. Bath and the Tps. of Amherst Island and Ernestown.
IV. Adolphustown, Fredericksburg North and Fredericksburg South.
V. Napanee and the Township of Richmond.

XXII. Lincoln (*s*).

Consisting of the townships of—(1) Caistor (*t*), (2) Clinton (*u*), (3) Gainsborough (*v*), (4) Grantham (*w*), (5) Grimsby North (*x*), (6) Grimsby South (7), Louth (*y*), (8) Niagara (*z*); the city of St. Catharines (*a*), the Town of Niagara (*b*), and the villages of—(1) Beamsville, (2) Grimsby (*c*), (3) Merritton, and (4) Dalhousie. For municipal purposes the city of St. Catharines is separated from the county of Lincoln.

The County Council Divisions of Lincoln are:—

I. Niagara (Town), Niagara Tp. and that part of the Tp. of Grantham east of the old Welland Canal.

(*a*) 8 V. c. 7; 14 V. c. 5; 41 V. c. 34. (*b*) Can. Gaz., 17 Apr., '65, p. 1373.
(*c*) Ont. Gaz., 9 Sep., '85. (*d*) 8 V. c. 7; 16 V. c. 226; 22 V. c. 82; 51 V. c. 48. (*e*) 12 V. c. 99.
(*f*) 16 V. c. 226; 22 V. c. 82.
(*g*) 2 Wm. IV. c. 17; 3 Wm. IV. c. 40; 6 Wm. IV. c. 13; 9 V. c. 77; 10 V. c. 44; 12 V. cc. 81, 80; Can. Gaz., '59, p. 2866; Ont. Gaz., 21 Aug., '75; 41 V. c. 30; 52 V. c. 58; 55 V. c. 64.
(*h*) Ont. Gaz., 28 Nov., '89; 54 V. c. 68; 57 V. c. 66; 58 V. c. 66.
(*i*) 8 V. c. 7; 14 V. c. 5; 23 V. c. 39; 28 V. cc. 24, 25; 54 V. c. 39; Can. Gaz., '63, p. 2401; '64, p. 2846; 42 V. c. 50. (*j*) (*k*) 23 V. c. 39.
(*l*) 7 Wm. IV. c. 58; 12 V. c. 79; 21 V. c. 115; 22 V. c. 80; Ont. Gaz., 21 July, '74.
(*m*) (*n*) 23 V. c. 39. (*nn*) 10 Geo. IV. c. 6; 4 Wm. IV. c. 20.
(*o*) 7 Geo. IV. c. 16; 20 V. c. 114. (*p*) 21 V. c. 48.
(*q*) Can. Gaz., '54, p. 1753; 27 V. c. 78; 28 V. c. 27; 46 V. c. 55; 48 V. c. 64.
(*r*) Can. Gaz., '58, p. 3420.
(*s*) 8 V. c. 7; 14 V. c. 5; Can. Gaz., '51, p. 9964; '56, p. 889; '66, p. 2902; 19 V. c. 6; 25 V. cc. 20, 30; 26 V. cc. 13, 47; 29-30 V. c. 70.
(*t*) 22 V. c. 85; 26 V. c. 17. (*u*) 26 V. c. 13. (*v*) 26 V. c. 13.
(*w*) 26 V. c. 13; Ont. Gaz., 29 Sep., '75. (*x*) 23 V. c. 99; 26 V. c. 13; 45 V. c. 33.
(*y*) 4 Wm. IV., c. 21; 26 V. c. 13. (*z*) 2 Wm. c. 19; 18 V. c. 156; 26 V. c. 13.
(*a*) Incorp. by 39 V. c. 46; 39 V. c. 47; 41 V. c. 39; 42 V. c. 79; 43 V. c. 45; 52 V. c. 70; 56 V. c. 79; 58 V. cc. 78, 79; Ont. Gaz., 6 July, '94; 59 V. c. 91; *ante* (Town.) 8 V. c. 63; 12 V. cc. 80, 81; 13 V. c. 64; 19 V. c. 108; 20 V. cc. 99, 91; 26 V. c. 47; 29-30 V. c. 70; Can. Gaz., 54, p. 477; '66, p. 2902; Ont. Gaz., 22 Oct., '68; 16 Mar., '72; 20 Sep., '75; 25 Nov., '76.
(*b*) 56 Geo. III. c. 14; 57 Geo. III. c. 4; 59 Geo. III. cc. 5, 11; 4 Geo. IV. c. 34; 2 V. c. 46; 8 V. c. 62; 9 V. c. 51; 12 V. cc. 80, 81; 25 V. c. 32; 26 V. cc. 13, 47; 29-30 V. c. 70; Can. Gaz., '69, p. 1419. (*c*) 39 V. c. 41.

II. Merriton, Port Dalhousie, the Tp. of Louth and that part of Grantham west of the old Welland Canal.

III. Beamsville and the Tps. of Clinton and Gainsborough.

IV. Grimsby (Village) and the Tps. of Caistor, Grimsby North and Grimsby South.

XXIII.—Middlesex (*a*).

Consisting of the townships of—(1) Adelaide (*b*) (2) Biddulph (*c*), (3) Caradoc, (4) Delaware, (5) Dorchester North (*d*), (6) Ekfrid, (7) Lobo (*e*), (8) London, (9) McGillivray (*f*), (10) Metcalfe (*g*), (11) Mosa, (12) Nissouri West (*h*), (13) Westminster (*i*), (14) Williams East (*j*), (15) Williams West (*k*); the city of London (*l*), the towns of—(1) Parkhill (*m*), and (2) Strathroy, and the villages of—(1) Ailsa Craig (*n*), (2) Glencoe, (3) Lucan, (4) Newbury, (5) London West (*o*), and (6) Wardsville. For municipal purposes the city of London is separated from the county of Middlesex.

The County Council Divisions of Middlesex are:—

I. Lucan, Biddulph and McGillivray.

II. Parkhill, Ailsa Craig and the Townships of Williams East and Williams West.

III. London Tp.

IV. Dorchester North and Nissouri West.

V. The Village of London West and the Tps. of Delaware and Westminster.

VI. Caradoc and Lobo.

VII. Glencoe, Newbury, Wardsville and the Tps. of Ekfrid and Mosa.

VIII. Strathroy and the Tps. of Adelaide and Metcalfe.

XXIV.—Norfolk (*p*).

Consisting of the townships of—(1) Charlotteville, (2) Houghton (*q*), (3) Middleton, (4) Townsend (*r*), (5) Walsingham South (including Long Point) (*s*), (6) Walsingham North (*t*), (7) Windham and (8) Woodhouse (*u*); the town of Simcoe (*v*), and the villages of—(1) Delhi, (2) Port Dover, (3) Port Rowan (*w*), and (4) Waterford.

The County Council Divisions of Norfolk are:—

I. Waterford and Townsend Tp.

II. Delhi and Windham Tp.

III. Houghton, Middleton and Walsingham North.

IV. Port Rowan and the Tps. of Charlotteville and Walsingham South.

V. Simcoe, Port Dover and the Tp. of Woodhouse.

XXV.—Northumberland (*x*).

Consisting of the townships of—(1) Alnwick, (2) Brighton (*y*), (3) Cramahe (*z*), (4) Haldimand (*a*), (5) Hamilton (*b*), (6) Monaghan South (*c*) (7) Murray (*d*),

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(*a*) 6 V. c. 21; 8 V. c. 7; 14 V. c. 5; 19 V. c. 10; 23 V. c. 9; 25 V. c. 28; 42 V. c. 74; 47 V. c. 52; 53 V. c. 90; Ont. Gaz., '97, p. 871.

(*b*) 40 V. c. 46. (*c*) 25 V. c. 28; 34 V. c. 65. (*d*) 14 V. c. 5; 26 V. c. 50. (*e*) 25 V. c. 38.

(*f*) 20 V. c. 112; 25 V. c. 28; 34 V. c. 65; 35 V. c. 102; 36 V. c. 125; 40 V. c. 47.

(*g*) 8 V. c. 7. (*h*) 14 V. c. 5. (*i*) 53 V. c. 89; Ont. Gaz., 3 May, '90. (*j*) 22 V. c. 81.

(*k*) 22 V. c. 81.

(*l*) (Town,) 7 Geo. IV. c. 13; 3 V. c. 31; 6 V. c. 21; 10 V. c. 48; 12 V. cc. 81, 80; 16 V. cc. 227, 229; (City,) See Can. Gaz., 1854, p. 1752; 19 V. c. 97; 20 V. c. 82; 21 V. c. 120; 27 V. c. 40; 32 V. c. 73; 34 V. c. 64; 35 V. cc. 50, 75; 36 V. cc. 63, 102; 41 V. c. 27; 44 V. cc. 40, 41; 46 V. c. 37; 48 V. cc. 62, 63; 49 V. c. 57; 50 V. c. 57; 51 V. c. 50; 52 V. c. 65; 53 V. c. 89; 54 V. c. 72; 55 V. c. 74; 56 V. c. 69; 57 V. c. 71; 58 V. c. 69; 60 V. c. 67; 59 V. cc. 82, 105; Ont. Gaz., 9 May, '82; Ont. Gaz., 3 May, '90; 45 V. c. 43 (Ca.); 47 V. c. 76 (Ca.).

(*m*) 49 V. c. 62. (*n*) 38 V. c. 32 (*o*) 44 V. c. 45; 49 V. c. 58; 51 V. c. 51; 57 V. cc. 72, 89. Annexed to City of London by Proc. Sep. 2, '97, Ont. Gaz., p. 12770.

(*p*) 8 V. c. 7; 14 V. c. 5. (*q*) 58 V. c. 113. (*r*) 7 Geo. IV. c. 15. (*s*) 51 V. c. 63.

(*t*) 51 V. c. 63. (*u*) 12 V. c. 101; 13 V. c. 89.

(*v*) 12 V. c. 81; 13 V. c. 64; Can. Gaz., 1850, p. 9458; Ont. Gaz., 21 July, '77.

(*w*) 53 V. c. 100.

(*x*) 10 Geo. IV. c. 8; 8 V. c. 7; 14 V. c. 5; 23 V. c. 98; 37 V. c. 67; 39 V. c. 54.

(*y*) 14 V. c. 5; Can. Gaz., '52, p. 13587; 23 V. c. 98; 56 V. c. 88.

(*z*) 4 Geo. IV. 35; 23 V. c. 98; 56 V. c. 88. (*a*) 56 V. c. 88.

(*b*) 18 V. c. 172; 21 V. c. 77; 29 V. c. 72; 56 V. c. 88.

(*c*) 8 V. c. 7; 16 V. c. 228; 18 V. c. 154.

(*d*) 8 V. c. 7; 14 V. c. 5; 23 V. c. 98; Ont. Gaz., 17 May, '73.

(8) Percy (*e*), (9) Seymour (*f*); the town of Cobourg (*g*), and the villages of—(1) Brighton (*h*), (2) Campbellford (*i*), (3) Colborne and (4) Hastings (*j*).

The County Council Divisions of Northumberland are:

I. Brighton (Village), Murray and polling sub-divisions 1 and 2 of Brighton Tp.

II. Campbellford and Tp. of Seymour.

III. Colborne, Cramahe and polling sub-divisions 3-5 of Brighton Tp.

IV. Hastings and the Tps. of Alnwick and Percy.

V. Polling sub-divisions 1 and 2 of the Town of Cobourg, the Tp. of Haldimand and polling sub-divisions 1, 4 and 7 of the Tp. of Hamilton.

VI. Polling sub-divisions 3-6 of the Town of Cobourg, the Tp. of Monaghan South and polling sub-divisions 2, 3, 5, 6, 8 and 9 of the Tp. of Hamilton.

The members chosen from these Divisions sit in the County Council of "The United Counties of Northumberland and Durham." (See R.S.O. c. 3, s. 3.)

XXVI.—Ontario (*a*).

Consisting of the townships of—(1) Brock, (2) Mara, (3) Pickering, (4) Rama, (5) Reach (*b*), (6) Scott, (7) Scugog (*c*), (8) Thorah (including Camse Island) (*d*), (9) Uxbridge, (10) Whitby (*e*), and (11) Whitby East (*e*); the towns of—(1) Oshawa, (2) Uxbridge (*f*), and (3) Whitby (*g*); and the villages of—(1) Beaverton, (2) Cannington and (3) Port Perry (*gf*).

The County Council Divisions of the County of Ontario are:

I. Pickering.

II. Whitby (Town and Tp.)

III. Oshawa and the Tp. of Whitby East.

IV. Port Perry and the Tps. of Reach and Scugog.

V. Uxbridge (Town and Tp.) and the Tp. of Scott.

VI. Cannington and the Tp. of Brock.

VII. Beaverton and the Tp. of Mara, Rama and Thorah.

XXVII.—Oxford (*h*).

Consisting of the townships of—(1) Blandford, (2) Blenheim, (3) Dereham (*i*), (4) Nissouri East (*j*), (5) Norwich North (*k*), (6) Norwich South (*k*), (7) Oxford North (*l*), (8) Oxford East (*l*), (9) Oxford West (*l*), (10) Zorra East (*m*), (11) Zorra West (*m*); the towns of—(1) Ingersoll (*n*), (2) Tilsonburg (*o*), and (3) Woodstock (*ol*); and the villages of—(1) Embro (*p*) and (2) Norwich (*q*).

The County Council Divisions of Oxford are:

I. Woodstock.

II. Ingersoll and the Tps. of Oxford North and Oxford West.

III. Embro and the Tps. of Nissouri East and Zorra West.

IV. Blandford and Blenheim.

V. Tilsonburg and Dereham.

VI. Norwich (Village) and the Tps. of Norwich North and Norwich South.

VII. Oxford East and Zorra East.

(*c*) 23 V. c. 98; 56 V. c. 88.

(*f*) 14 V. c. 5; 32 V. c. 10; 34 V. c. 48; 55 V. c. 86; 56 V. cc. 81, 88.

(*g*) 7 Wm. IV. c. 42; 9 V. c. 71; 12 V. cc. 81, 80; 13 V. cc. 64, 83; 21 V. c. 15; 22 V. c. 72; Can. Gaz., 1890, p. 502; 26 V. c. 48; 30 V. cc. 51, 52; 40 V. c. 44; Ont. Gaz., 24 Apr., '80; 52 V. c. 59; 55 V. c. 67; 56 V. c. 88; 61 V. c. 39; 49 V. c. 33 (Ca.); 52 V. c. 6 (Ca.)

(*h*) Can. Gaz., '58, p. 3419; 23 V. c. 98. (*ol*) 53 V. c. 84; 56 V. c. 88.

(*j*) 37 V. c. 67.

(*a*) 14 V. c. 5; Can. Gaz., '52, p. 12144, '54, p. 1; 16 V. c. 96; 20 V. c. 79; 56 V. c. 72; Ont. Gaz., '96, p. 359.

(*b*) 14 V. c. 5; 25 V. c. 40; 29-30 V. c. 83. (*c*) 14 V. c. 5. (*d*) 51 V. c. 62.

(*e*) 20 V. c. 113; 36 V. c. 59; 58 V. c. 109. (*f*) Ont. Gaz. 16 Sept. '85.

(*g*) 17 V. c. 28; 48 V. c. 75; 58 V. c. 92; Can. Gaz. '52, p. 12144. (*gl*) 59 V. c. 90.

(*h*) 8 V. c. 7; 14 V. c. 5; 37 V. c. 72; 41 V. c. 36; 46 V. c. 38; 57 V. c. 77.

(*i*) 24 V. c. 65; 27 V. c. 37. (*j*) 14 V. c. 5; 20 V. c. 111.

(*k*) 5 Wm. IV. c. 26; 18 V. c. 171; 41 V. c. 50.

(*l*) 10 Geo. IV. c. 14; 14 V. c. 5; 34 V. c. 62. (*m*) 8 V. c. 7; 20 V. c. 111.

(*n*) 21 V. c. 49; 23 V. c. 88; 24 V. c. 65; 28 V. c. 28; 36 V. c. 62; 42 V. c. 46; 48 V. c. 60; 49 V. c. 56; 56 V. c. 66; 61 V. c. 45; Can. Gaz. '51 p. 11394, '64, p. 2205.

(*o*) 34 V. c. 41; 50 V. c. 81; 58 V. c. 113.

(*ol*) 19 V. c. 98; 28 V. c. 26; 36 V. c. 66; 43 V. c. 48; 44 V. c. 89; 46 V. c. 47; 47 V. c. 61; 51 V. c. 65; 54 V. c. 84; 58 V. c. 93; Ont. Gaz., 30 Sep., '87; *Ante* (village), 4-5 V. c. 70; 12 V. c. 81; 13 V. c. 64; Can. Gaz., 50, p. 9458. (*p*) 21 V. c. 45. (*q*) 53 V. c. 94.

XXVIII.—Peel (r).

Consisting of the townships of—(1) Albion (s), (2) Caledon (t), (3) Chinguacousy, (4) Toronto (u), and (5) Toronto Gore (v); the town of Brampton (x), and the villages of—(1) Bolton and (2) Streetsville (w).

The County Council Divisions of Peel are:

I. Caledon.

II. Bolton (Village) and the Tps. of Albion and Toronto Gore.

III. Brampton and Polling Sub-Division 7 of the Tp. of Chinguacousy.

IV. Chinguacousy (except Division 7).

V. Streetsville and Toronto Tp.

XXIX.—Perth (x).

Consisting of the townships of—(1) Blanchard, (2) Downie (including the Gore of Downie), (3) Easthope North, (4) Easthope South, (5) Ellice, (6) Elma (y), (7) Fullarton, (8) Hibbert, (9) Logan (z), (10) Mornington (z1) and (11) Wallace (a); the city of Stratford (b); the towns of—(1) Listowel (c), (2) Mitchell (d), and (3) St. Mary's (e), and the village of Milverton (f).

For municipal purposes the city of Stratford and the town of St. Mary's are separated from the county of Perth.

I. The County Council Divisions of Perth are:—

I. Listowel and the Tp. of Wallace.

II. Elma and Logan.

III. Mitchell and the Tps. of Fullarton and Hibbert.

IV. Blanchard and Downie.

V. Easthope South and Easthope North.

VI. Milverton and the Tps. of Ellice and Mornington.

XXX.—Peterborough (a).

Consisting of the townships of—(1) Anstruther (b), (2) Asphodel, (3) Belmont, (4) Burleigh (c), (5) Cavendish (d), (6) Chandos (e), (7) Douro (f), (8) Dummer, (9) Ennismore, (10) Galway (g), (11) Harvey (h), (12) Methuen, (13) Monaghan North (i), (14) Otonabee (j), (15) Smith (k); the town of Peterborough (l), and the villages of—(1) Ashburnham (m), (2) Havelock, (3) Lakefield, and (4) Norwood. For municipal purposes the town of Peterborough is separated from the remainder of the county.

The County Council Divisions of Peterborough are:—

I. Ashburnham and the Tp. of Otonabee.

II. Ennismore, Monaghan North and Smith.

III. Anstruther, Burleigh, Cavendish, Chandos, Galway and Harvey.

IV. Havelock, Norwood and the Tps. of Asphodel, Belmont and Methuen.

V. Lakefield and the Tps. of Douro and Dummer.

(r) 14 V. c. 5; Can. Gaz. '54, p. 1, '66, p. 4698; 19 V. c. 66; 20 V. c. 75; 23 V. c. 95; 24 V. c. 53; 25 V. cc. 24, 25, 27; 29 V. c. 69; 29-30 V. c. 71.

(s) 22 V. c. 59; 34 V. c. 60. (t) 41 V. c. 32. (u) 21 V. c. 59; 22 V. c. 79.

(v) 26 V. cc. 51, 52; 53 V. c. 81; *Ante*, (Village), Can. Gaz. '52, p. 13286.

(w) Can. Gaz. '57, p. 2708; 21 V. c. 47; 22 V. c. 79.

(x) 12 V. c. 96; 14 V. c. 5; 16 V. cc. 31, 81; 37 V. c. 58; 51 V. c. 55; 56 V. c. 77.

(y) 35 V. c. 65; 55 V. c. 69; 59 V. c. 79. (z) 35 V. c. 65. (z1) 59 V. c. 84.

(a) 35 V. c. 65; 53 V. c. 109.

(b) 48 V. c. 72; 50 V. c. 66; 58 V. cc. 84, 85; *Ante*, (Town), 21 V. c. 41; 29-30 V. c. 77; *Ante*, (Village), Can. Gaz. '53, p. 1454; 12 V. c. 96.

(c) Ont. Gaz. 4 Nov., '71; 28 May, '86; 38 V. c. 36; 53 V. c. 87; 57 V. c. 70.

(d) 20 V. c. 108; 29 V. c. 71; 60 V. c. 69; Ont. Gaz. 24 Sept., '73; 56 V. c. 71.

(e) Can. Gaz '63, p. 2898, '64, p. 4044; 20 V. c. 70; 58 V. c. 80; *Ante*, (Village), Can. Gaz. '54, p. 1705. (f) 60 V. c. 68.

(g) 8 V. c. 7; 14 V. cc. 5, 31; 16 V. cc. 31, 81; 19 V. c. 95; 20 V. c. 76; 21 V. c. 14; 22 V. c. 78; 23 V. c. 97; 24 V. c. 50; 26 V. c. 10; Can. Gaz. '63, p. 63; 39 V. c. 73.

(h) 20 V. c. 76; 58 V. c. 63. (i) 58 V. c. 63. (j) 20 V. c. 76. (k) 21 V. c. 14.

(l) Ont. Gaz. 27 April, '72. (m) 20 V. c. 76. (n) 42 V. c. 47; 45 V. c. 35; 55 V. c. 73.

(o) 8 V. c. 7; 16 V. c. 228; 18 V. c. 154; Ont. Gaz. 27 April, '72. (p) 17 V. c. 26.

(q) 18 V. c. 154; 50 V. c. 65; Ont. Gaz. 27 Apr. '72, 13 Dec. '93.

(r) 12 V. c. 81; 24 V. c. 61; 27 V. c. 60; 31 V. c. 48; 32 V. c. 70; 35 V. c. 71; 36 V. c. 57; 37 V. c. 78; 38 V. cc. 40, 49; 39 V. cc. 58, 73; 41 V. c. 38; 42 V. c. 67; 49 V. c. 63; 50 V. c. 65; 51 V. c. 56; 53 V. c. 99; 57 V. c. 78; 59 V. c. 88; Ont. Gaz. 27 April, 72, 13 [illegible] '93.

(s) Can. Gaz. '58, p. 2009; 36 V. c. 57.

XXXI.—Prescott (*a*).

Consisting of the townships of —(1) Alfred (*o*), (2) Caledonia, (3) Hawkesbury East (*p*), (4) Hawkesbury West (*p*), (5) Longueuil, (6) Plantagenet North (*q*) and (7) Plantagenet South (*q*); the towns of —(1) Hawkesbury (*r*), and (2) Vankleek Hill (*s*), and the village of —(*t*) L'Orignal (*s*). For municipal purposes the town of Prescott is separated from the remainder of the county.

The County Council Divisions of Prescott are :—

I. Hawkesbury East.

II. The Village of Hawkesbury and the Tp. of Hawkesbury West.

III. Caledonia and Plantagenet South.

IV. Plantagenet North.

V. L'Orignal and the Tps. of Alfred and Longueuil.

The members elected from these Divisions sit in the Council of "the United Counties of Prescott and Russell."—See R.S.O. c. 3. s. 3.

XXXII.—Prince Edward (*t*).

Consisting of the townships of —(1) Ameliasburgh (*u*), (2) Athol (*v*), (3) Hallowell (*w*), (4) Hillier (*x*), (5) Marysburgh North (*y*), (6) Marysburgh South (*y*), (7) Sophiasburgh (*z*); the town of Picton (*aa*), and the village of Wellington.

The County Council Divisions of Prince Edward are :—

I. Ameliasburgh and Hillier.

II. Athol, Marysburgh North and Marysburgh South.

III. Wellington and the Tp. of Hallowell.

IV. Picton and the Tp. of Sophiasburgh.

XXXIII.—Renfrew (*a*).

Consisting of the townships of —(1) Admaston (*b*), (2) Algona North, (3) Algona South, (4) Alice (*c*), (5) Bagot, (6) Blythfield; (7) Bromley, (8) Brougham, (9) Brudenell (*d*), (10) Buchanan, (11) Burns (*e*), (12) Clara (*f*), (13) Fraser, (14) Grattan (*g*), (15) Griffith, (16) Hagarty (*h*), (17) Head (*i*), (18) Horton (*j*), (19) Jones (*k*), (20) Lyndoch (*l*), (21) Maria (*m*), (22) Matawatchan, (23) McKay, (24) McNab, (25) Pembroke, (26) Petawawa, (27) Radcliffe (*n*), (28) Raglan (*o*), (29) Richards (*p*), (30) Rolph, (31) Ross (*q*), (32) Sebastopol, (33) Sherwood (*r*), (34) Stafford, (35) Westmeath (*s*), (36) Wilberforce (*t*), and (37) Wylie; the towns of—(1) Arnprior (*u*), (2) Pembroke (*v*), and (3) Renfrew (*w*), and the village of Eganville (*x*).

The County Council Divisions of Renfrew are :—

I. Pembroke (Town) and the Tps. of Buchanan, Clara, Head, Maria, McKay, Petawawa, Rolph and Wylie.

II. Eganville and the Tps. of Algona North, Alice, Fraser, Stafford, and Wilberforce.

III. Arnprior and the Tp. of McNab.

(*a*) 8 V. c. 7; 14 V. c. 5. (*o*) Can. Gaz. '67, p. 1126; Ont. Gaz. 19 July, '89.
(*p*) 7 V. c. 39. (*q*) 10 V. c. 52. (*r*) Can. Gaz. '58, p. 3418; Ont. Gaz. 9 Dec., '95.
(*s*) 60 V. c. 82; 12 V. c. 81; 13 V. c. 64; Can. Gaz. '50, p. 9458; (*st*) 39 V. c. 42.
(*t*) 37 Geo. III. c. 17; 1. Wm. IV. c. 6; 2 Wm. IV. c. 16; 8 V. c. 7; 14 V. c. 5; 43 V. c. 44.
(*u*) 4 Geo. IV. c. 38; 13 V. c. 88; 18 V. c. 151. (*v*) 3 V. c. 39.
(*w*) 3 V. c. 39; 12 V. c. 100. (*x*) 13 V. c. 88; 18 V. c. 151. (*y*) 32 V. c. 63.
(*z*) 4 Wm. IV. c. 19; 12 V. c. 100.
(*aa*) 7 Wm. IV. c. 44; 12 V. cc. 81, 80; Ont. Gaz. 21 Dec. '76.
(*a*) 8 V. c. 7; 14 V. c. 5; Can. Gaz. '61, p. 1356, '66, p. 3634; 24 V. c. 51; 26 V. c. 11; 29 V. c. 65; 35 V. c. 57; 47 V. c. 3.
(*b*) 36 V. c. 98. (*c*) 35 V. c. 21; 37 V. c. 22. (*d*) 23 V. c. 39.
(*e*) Ont. Gaz. 2 June, '77. (*f*) Ont. Gaz. 10 May, '77. (*g*) 35 V. c. 21; 37 V. c. 22.
(*h*) Ont. Gaz. 2 June, '77. (*i*) Can. Gaz. '61, p. 2449.
(*j*) 36 V. c. 98. (*k*) Ont. Gaz. 2 June, '77. (*l*) 23 V. c. 39.
(*m*) Ont. Gaz. 10 May, '77. (*n*) 23 V. c. 39. (*o*) 23 V. c. 39.
(*p*) Ont. Gaz. 2 June, '77. (*q*) 38 V. c. 42. (*r*) Ont. Gaz 2 June, '77.
(*s*) 38 V. c. 42. (*t*) 35 V. c. 21; 37 V. c. 22 (*u*) Ont. Gaz. 10 Dec. '92; 25 V. c. 37.
(*v*) 21 V. c. 43; Can. Gaz. '61, p. 2005, '64, p. 2846; 35 V. c. 57; Ont. Gaz. 18 Aug. '76.
(*w*) 21 V. c. 13; 36 V. c. 98; 46 V. c. 39; 55 V. c. 84; Ont. Gaz. 11 Dec., '94.
(*x*) 49 V. c. 16.

IV. The Tps. of Pembroke, Ross and Westmeath.

V. Renfrew and the Tps. of Bagot, Blythefield, Brougham, Griffith, Horton and Matawatchan.

VI. Admaston, Bromley and Grattan.

VII. Algona South, Bendenell, Burns, Hagarty, Jones, Lyndoch, Raglan, Radcliffe, Richards, Sebastopol and Sherwood.

XXXIV.—Russell (*y*).

Consisting of the townships of—(1) Cambridge (*z*), (2) Clarence, (3) Cumberland (*aa*), (4) Russell, and the villages of—(1) Casselman (*bb*), (2) Rockland.

The County Council Divisions of Russell are:

I. Rockland and the Tp. of Clarence.

II. Casselman and the Tp. of Cambridge.

III. The Tp. of Russell.

IV. The Tp. of Cumberland.

The members elected from these Divisions sit in the Council of "The United Counties of Prescott and Russell." See R.S.O., c. 3, s. 3.

XXXV.—Simcoe (*c*).

Consisting of the townships of—(1) Adjala, (2) Essa, (3) Flos (*d*), (4) Gwillimbury West (*e*), (5) Innisfil, (6) Matchedash, (7) Medonte (*f*), (8) Nottawasaga, (9) Orillia North (*g*), (10) Orillia South, (11) Oro, (12) Sunnidale (*h*), (13) Tay, (14) Tecumseth, (15) Tiny (*i*), (16) Tosorontio, and (17) Vespra; the towns of—(1) Alliston (*j*), (2) Barrie (*k*), (3) Collingwood (*l*), (4) Midland (*m*), (5) Orillia (*n*), (6) Penetanguishene (*o*), and (7) Stayner (*p*), and the villages of—(1) Beeton (*q*), (2) Bradford (*r*), (3) Creemore, and (4) Tottenham.

The County Council Divisions of Simcoe are:—

I. Barrie (Town), Allandale and the Tp. of Oro.

II. Bradford and the Tps. of Gwillimbury West and Innisfil.

III. Beeton, Tottenham and the Tps. of Adjala and Tecumseth.

IV. Alliston and the Tps. of Essa and Tosorontio.

V. Collingwood and polling sub-divisions 5-10 of Nottawasaga Tp.

VI. Stayner, Creemore, Sunnidale, Vespra and polling sub-divisions 1-4 of Nottawasaga.

VII. Penetanguishene and the Tps. of Flos and Tiny.

VIII. Midland and the Tps. of Medonte and Tay.

IX. Orillia (Town and Tp.) and the Tp. of Matchedash.

XXXVI.—Stormont. (*a*)

Consisting of the townships of—(1) Cornwall (*b*), (2) Finch, (3) Osnabruck (*c*) and (4) Roxborough, and the town of Cornwall (*d*).

The County Council Divisions of Stormont are:—

I. Cornwall (Town).

II. Cornwall Tp.

III. Roxborough.

IV. Finch.

V. Osnabruck.

The members elected from these Divisions sit in the Council of "The United Counties of Stormont, Dundas and Glengarry." See R.S.O. c. 3, s. 3.

(*y*) 8 V. c. 7; 14 V. c. 5; 23 V. c. 101. (*z*) Ont. Gaz. 18 Mar., '85.

(*aa*) 23 V. c. 101. (*bb*) 54 V. c. 63.

(*c*) 7 Wm. IV. c. 32; 1 V. c. 39; 4-5 V. c. 78; 8 V. c. 7; 14 V. c. 5; 31 V. c. 47; 40 V. c. 41; 43 V. c. 43; 44 V. c. 47; 61 V. c. 58.

(*d*) 57 V. c. 65. (*e*) 3 Wm. IV. c. 38; 6 Wm. IV. c. 28; 4-5 V. c. 73; 14 V. c. 5.

(*f*) 50 V. c. 70. (*g*) 14 V. c. 5. (*h*) 50 V. c. 67. (*i*) 57 V. c. 82.

(*j*) Ont. Gaz. 4 Dec., '90; 54 V. c. 61; 59 V. c. 76; *ante* (Village), 48 V. c. 54.

(*k*) *Ante* (Village), Can. Gaz. '50, p. 9458; 27 V. c. 55; Ont. Gaz. 6 Aug., '70; 46 V. c. 31; 52 V. c. 56; 57 V. c. 61; Allandale annexed to Barrie by Proc. dated 21 April, '96, Ont. Gaz., p. 419.

(*l*) 20 V. c. 96; 21 V. c. 113; 36 V. c. 53; 46 V. c. 32; 47 V. c. 49; 54 V. c. 65; Ont. Gaz. 3 May, '84; 60 V. c. 61; 61 V. c. 40. (*m*) Ont. Gaz. 7 June, '89; 54 V. c. 73; 61 V. c. 47.

(*n*) Ont. Gaz. 14 Sept., '74, 1 June, '77; 35 V. c. 66; 40 V. c. 35; 43 V. c. 43; 53 V. c. 95; 54 V. c. 76. (*o*) 45 V. c. 40; Ont. Gaz. 6 Oct., '77; 60 V. c. 73;

(*p*) 54 V. c. 61; *Ante* (Village), Ont. Gaz. 4 Oct., '79, (*q*) 49 V. c. 51. (*r*) 20 V. c. 98.

(*a*) 8 V. c. 7; 14 V. c. 5.

(*b*) 11 Geo. IV., c. 15; 7 V. c. 42; 13 V. c. 84; 19 V. c. 100; Ont. Gaz., 9 Mar., '72.

(*c*) 2 Geo. IV. c. 14.

(*d*) 4 Wm. IV. c. 25; 9 V. c. 72; 12 V. cc. 81, 80; 17 V. c. 29; 19 V. c. 60; Ont. Gaz., 9 Mar. '72; 36 V. c. 67; 47 V. c. 50; 54 V. c. 66; 57 V. c. 63.

XXXVII.—Victoria. (*e*)

Consisting of the townships of—(1) Bexley (*f*), (2) Carden (*g*), (3) Dalton (*h*), (4) Digby (*i*), (5) Eldon (*j*), (6) Emily (*k*), (7) Fenelon, (8) Laxton (*l*), (9) Longford (*m*), (10) Mariposa (*n*), (11) Ops, (12) Somerville (*o*), and (13) Verulam; the town of Lindsay (*p*), and the villages of—(1) Bobcaygeon, (2) Fenelon Falls, (3) Omemee, and (4) Woodville (*q*).

The County Council Divisions of Victoria are :—

I. Mariposa.

II. Lindsay, and that part of the Tp. of Ops west of the river Scugog (polling sub-divisions 1 and 2).

III. Omemee, Emily and polling sub-divisions 3-6 of Ops.

IV. Bobcaygeon and the Tps. of Somerville and Verulam.

V. Fenelon Falls and the Tps. of Bexley, Digby, Fenelon, Laxton and Longford.

VI. Woodville and the Tps. of Carden, Eldon and Dalton.

XXXVIII.—Waterloo. (*r*)

Consisting of the townships of—(1) North Dumfries (*s*), (2) Waterloo (*t*), (3) Wellesley (*u*), (4) Wilmot (*v*), (5) Woolwich (*w*); the towns of—(1) Berlin (*x*), (2) Galt (*y*), and (3) Waterloo (*z*), and the villages of—(1) Ayr, (2) Elmira (*a*), (3) Hespeler (*b*), (4) New Hamburg (*c*), and (5) Preston (*d*).

The County Council Divisions of Waterloo are :—

I. Berlin.

II. Galt.

III. Hespeler and the Tp. of Waterloo.

IV. Ayr, Preston and North Dum...ies.

V. New Hamburg (Village) and Tp. of Wilmot.

VI. Waterloo (Town) and Wellesley (Tp.).

VII. Elmira and the Tp. of Woolwich.

XXXIX.—Welland (*a*).

Consisting of the townships of—(1) Bertie, (2) Crowland (*b*), (3) Humberstone, (4) Pelham, (5) Stamford (*c*), (6) Thorold, (7) Wainfleet and (8) Willoughby; the towns of—(1) Niagara Falls (*d*), (2) Thorold (*e*), (3) Welland (*f*), and the villages of—(1) Bridgeburg (*g*), (2) Chippewa (*h*), (3) Fort Erie (*i*), (4) Niagara Falls (South) (*j*) and (5) Port Colborne. For municipal purposes the town of Niagara Falls is separate from the county of Welland.

(*e*) 14 V. c. 5; 10 V. c. 95; 21 V. c. 14; 22 V. c. 78; 23 V. c. 97; 24 V. c. 59; 26 V. c. 10; 28 V. c. 24; 29 V. c. 67; Can. Gaz., '63, p. 63.

(*f*) 51 V. c. 43. (*g*) 21 V. c. 14. (*h*) 21 V. c. 14. (*i*) 21 V. c. 14; 52 V. c. 64.

(*j*) 38 V. c. 41; 50 V. c. 50. (*k*) 36 V. c. 60. (*l*) 21 V. c. 14; 52 V. c. 64.

(*m*) 21 V. c. 14; 52 V. c. 64. (*n*) 14 V. c. 5. (*o*) 52 V. c. 71.

(*p*) 19 V. c. 95; 20 V. c. 95; 25 V. c. 34; Can. Gaz., '62, p. 1356; Ont. Gaz., 9 Dec., '71; 39 V. c. 99; 46 V. c. 36, 48 V. c. 61; 51 V. c. 49; 54 V. c. 71.

(*q*) 47 V. c. 62.

(*r*) 8 V. c. 7; 14 V. c. 5; Can. Gaz., '52, p. 12144; '53, p. 112; 16 V. c. 81; 23 V. c. 40; 27 V. c. 35.

(*s*) 14 V. c. 5; Ont. Gaz., 5 Oct., '88. (*t*) 22 V. c. 76; 23 V. c. 40.

(*u*) 22 V. c. 76; 23 V. c. 40. (*v*) 22 V. c. 76. (*w*) 14 V. c. 5; 22 V. c. 76; 23 V. c. 40.

(*x*) Can. Gaz., '52, p. 12144; '53, p. 1485; 21 V. c. 114; 22 V. c. 76; Ont Gaz., 20 May, '70; 51 V. c. 42; Ont. Gaz., '97, p. 907.

(*y*) 12 V. c. 81; 61 V. c. 38; Proc. 19 May, 1897, Ont. Gaz. p. 907; 19 V. c. 17; 22 V. c. 73; 35 V. cc. 63; Ont. Gaz. 5, Oct., '88; 52 V. c. 60; 35 V. c. 62 (Ca.).

(*z*) 20 V. c. 103; 22 V. c. 76; 23 V. c. 40; 39 V. c. 45; 51 V. c. 42.

(*a*) 56 V. c. 89. (*b*) Can. Gaz., '58, p. 1597; 22 V. c. 76.

(*c*) 20 V. c. 105; 23 V. c. 92; 60 V. c. 70. (*d*) 60 V. c. 77.

(*a*) 8 V. c. 7; 14 V. c. 5; Can. Gaz., '51, p. 9964; '52, p. 13491; '56, p. 889; 14 V. c. 139; 16 V. c. 221; 18 V. c. 149; 19 V. c. 6.

(*b*) 25 V. c. 42. (*c*) 16 V. c. 35; 19 V. c. 62; 53 V. c. 5.

(*d*) 19 V. c. 63; 21 V. c. 81; 36 V. c. 56; 44 V. c. 35; 48 V. c. 65; 53 V. c. 5; Ont. Gaz., 25 Sep., '91; Can. Gaz., '57, p. 2709.

(*e*) 38 V. c. 34; 12 V. c. 81; Can. Gaz., '49, p. 7051; '56, p. 1843; 60 V. c. 79.

(*f*) Ont. Gaz., 25 Sep., '77; 21 V. c. 46. (*g*) 58 V. c. 62.

(*h*) 12 V. c. 81; Can. Gaz., '49, p. 7051. (*i*) 20 V. c. 104. (*j*) 55 V. c. 77.

The County Council Divisions of Welland are :—

I. Chippewa, Niagara Falls South and the Tps. of Stamford and Willoughby.
II. Bridgeburg, Fort Erie and the Tp. of Bertie.
III. Port Colborne, Crowland and Humberstone.
IV. Pelham and Wainfleet.
V. Thorold (Town and Tp.) and Welland.

XL.—Wellington (*k*).

Consisting of the townships of—(1) Arthur (*l*), (2) Eramosa, (3) Erin, (4) Garafraxa West (*m*), (5) Guelph, (6) Luther West (*n*), (7) Maryborough, (8) Minto, (9) Nichol (*o*), (10) Peel, (11) Pilkington (*p*) and (12) Puslinch (*q*), the city of Guelph (*r*); the towns of—(1) Harriston (*s*), (2) Mount Forest (*t*) and (3) Palmerston (*u*), and the villages of—(1) Arthur (*v*), (2) Clifford (*w*), (3) Drayton (*x*), (4) Elora (*y*), (5) Erin and (6) Fergus (*z*). For municipal purposes the city of Guelph is separate from the county of Wellington.

The County Council Divisions of Wellington are :—

I. The Tps. of Guelph and Puslinch.
II. Erin (Village and Tp.) and Eramosa,
III. Elora and the Tps. of Nichol and Pilkington.
IV. Arthur (Village), Fergus and the Tp. of Garafraxa West.
V. Drayton and the Tps. of Maryborough and Peel.
VI. Mount Forest and the Tps. of Arthur and Luther West.
VII. Harriston, Palmerston, Clifford and the Tp. of Minto.

XLI.—Wentworth (*a*).

Consisting of the townships of—(1) Ancaster (*b*), (2) Barton (*c*), (3) Beverly (*d*), (4) Binbrook (*e*), (5) Flamborough East, (6) Flamborough West (*e1*), (7) Glanford, and (8) Saltfleet (*f*); the city of Hamilton (*g*); the town of Dundas (*h*), and the village of Waterdown. For municipal purposes the city of Hamilton is separated from the county of Wentworth.

The County Council Divisions of Wentworth are :—

I. Beverly.
II. Ancaster.
III. Waterdown, the Tp. of Flamborough East and that part of the Tp. of Flamborough West north of a line drawn between the north and south halves of lots 1 to 21, inclusive, in the 4th Concession, and comprising also the south halves of lots 6 and 7 in said Concession 4.
IV. Dundas and the rest of the Tp. of Flamborough West.
V. Barton and Glanford.
VI. Binbrook and Saltfleet.

(*k*) 14 V. c. 5 ; Can. Gaz., '53, p. 112 ; '54, p. 2 ; '65, p. 4430 ; 22 V. cc. 76, 107 ; 45 V. cc. 38, 46.

(*l*) 25 V. c. 41. (*m*) 32 V. c. 13. (*n*) 25 V. c. 41 ; 43 V. c. 41.

(*o*) 14 V. c. 5. (*p*) 14 V. c. 5. (*q*) 52 V. c. 92.

(*r*) 42 V. c. 41 ; 42 V. c. 77 ; 43 V. c. 40 ; 45 V. c. 34 ; 48 V. c. 58 ; 50 V. c. 53 ; 56 V. c. 64 ; 58 V. c. 98 ; *ante* (Town) 42 V. c. 81 ; C. 13 V. c. 64 ; 23 V. c. 93 ; Can. Gaz., '50, p. 9458 ; '54, p. 1755 ; '55, p. 1959 ; '57, p. 1995 ; Ont. Gaz., 23 Mar., '78.

(*s*) 41 V. c. 35 ; 57 V. c. 68. (*t*) 42 V. c. 42 ; 49 V. c. 59 ; Can. Gaz., '65, p. 4430.

(*u*) 38 V. c. 33 ; 47 V. c. 55 ; 53 V. c. 98 ; 58 V. c. 72. (*v*) 30 V. c. 39.

(*w*) 37 V. c. 66. (*x*) 60 V. c. 62.

(*y*) Can. Gaz., '52, p. 12306 ; 20 V. c. 107 ; 32 V. c. 60 ; 46 V. c. 33. (*z*) 20 V. c. 106.

(*a*) 8 V. c. 7 ; 14 V. cc. 5, 138 ; Can. Gaz., '53, p. 111 ; '54, p. 2226 ; 16 V. c. 218 ; 18 V. c. 69 ; 22 V. c. 107 ; 25 V. c. 29 ; 50 V. c. 99.

(*b*) 6 Geo. IV. c. 5. (*c*) Ont. Gaz., 2 July, '91.

(*d*) 16 V. c. 230 ; 18 V. c. 173 ; 23 V. c. 100 ; 24 V. c. 137.

(*e*) 1 Wm. IV. c. 8 ; 7 Wm. IV. c. 59.

(*e1*) 1 Wm. IV. c. 8 ; 7 Wm. IV. c. 59. (*f*) 6 Geo. IV. c. 5.

(*g*) 3 Wm. IV. c. 16 ; 2 V. c. 45 ; 9 V. c. 73 and c. 48 ; 12 V. cc. 81, 80 ; 16 V. [illegible] c. 147 ; 19 V. c. 64 ; 20 V. cc. 83, 84 ; 21 V. c. 112 ; 23 V. cc. 87, 106 ; 24 V. cc. 55 [illegible] 16 ; 27 V. c. 72 ; 29 V. c. 72 ; 29-30 V. c. 74 ; 32 V. c. 14 ; 35 V. c. 68 ; 40 V. c. [illegible] 34, 35 ; 48 V. c. 59 ; 54 V. c. 70 ; 56 V. cc. 60, 65 ; 58 V. cc. 67, 68 ; 59 V. cc. 80, 1[illegible]3, 112 ; [illegible] V. c. 43 ; 58 V. c. 66 (Can.) ; Ont. Gaz., 5 May, '74 ; 2 July, '91.

(*h*) 10 V. c. 45 ; 11 V. c. 12 ; 12 V. cc. 81, 80 ; 16 V. c. 54 ; 18 V. c. 150 ; 22 V. c. 74 ; 23 V. c. 94 ; 35 V. cc. 69, 70 ; 40 V. c. 45 ; 41 V. c. 72 ; 61 V. c. 60.

XLII.—York. (*a*)

Consisting of the townships of—(1) Etobicoke (*b*), (2) Georgina (*c*), (3) Gwillimbury East (*d*), (4) Gwillimbury North (*d*), (5) King (*e*), (6) Markham, (7) Scarboro (*f*), (8) Vaughan (*g*), (9) Whitchurch (*h*) and (10) York (*i*); the city of Toronto (*j*); the towns of—(1) Aurora (*k*), (2) Newmarket (*l*), (3) North Toronto (*m*) and (4) Toronto Junction (*n*), and the villages of—(1) East Toronto (*o*), (2) Holland Landing, (3) Markham (*o1*), (4) Richmond Hill (*p*), (5) Stouffville, (6) Sutton, (7) Weston and (8) Woodbridge. For municipal purposes the city of Toronto and the town of Toronto Junction are separate from the county of York.

The County Council Divisions of York are:

I. East Toronto (Village), the Tp. of Scarborough and all that part of the Tp. of York lying north of Eglinton Avenue and west of Yonge street.

II. North Toronto (Town) and all that part of the Tp. of York lying south of Eglinton avenue.

III. Weston (Village), Etobicoke and all that part of the Tp. of York lying north of Eglinton avenue and west of Yonge Street.

IV. Richmond Hill, Woodbridge and the Tp. of Vaughan.

V. Markham (Village and Tp.)

VI. King Tp.

VII. Aurora, Stouffville and the Tp. of Whitchurch.

VIII. Newmarket, Holland Landing and the Tp. of Gwillimbury East.

IX. Sutton (Village) and the Tps. of Georgina and Gwillimbury North.

The foregoing are the municipalities to which the provisions of "*The Municipal Act*" are directly applicable.

The Provisional County of Haliburton (*q*).

The municipalities comprising the Provisional County of Haliburton (the constitution and government of which is regulated by R. S. O. c. 4) are the following:—(1) Anson (*r*), (2) Bruton (*s*), (3) Cardiff (*t*), (4) Clyde, (5) Dudley (*u*), (6) Dysart (*v*), (7) Eyre, (8) Glamorgan (*w*), (9) Guilford (*x*), (10) Harburn (*y*), (11) Harcourt (*z*), (12) Havelock, (13) Hindon (*a*), (14) Lawrence, (15) Livingstone, (16) Lutterworth (*b*), (17) McClintock, (18) Minden (*c*), (19) Monmouth (*d*), (20) Nightingale, (21) Sherborne, (22) Snowdon (*e*), (23) Stanhope (*f*). For judicial purposes (so far as not otherwise provided in R. S. O. c. 4) the said Provisional County is united to and forms part of the County of Victoria.

(*a*) 8 V. c. 7; 13 V. c. 91; 14 V. cc. 5, 15; 16 V. c. 96; 19 V. c. 66; 20 V. c. 95; 23 V. c. 95; 24 V. c. 53; 25 V. cc. 24, 25, 27; 29 V. c. 69; 29-30 V. c. 71; Can. Gaz. '54, p. 1, '66, p. 4698; 37 V. c. 12 (Can.); 36 V. c. 65; 40 V. c. 19; 54 V. c. 5; 56 V. cc. 19, 85, 94, 102; 57 V. c. 19.

(*b*) 21 V. c. 59; 57 V. c. 64. (*c*) 16 V. c.

(*d*) 3 Wm. IV. c. 37; 6 Wm. IV. c. 28; 4-5 V. c. 73; 14 V. c. 5.

(*e*) 5 Wm. IV. c. 20; 22 V. c. 59; 27 V. c. 38, s. 2; 27-28 V. c. 89; 34 V. c. 60.

(*f*) 24 V. c. 64; 25 V. c. 38; 56 V. c. 102. (*g*) 23 V. c. 102. (*h*) 27 V. c. 38, s. 2.

(*i*) Ont. Gaz. 22 Sept., '86, 24 Sept., '87, 29 Sept., '88, 28 Dec., '89, 3 Oct., '89, 30 Dec., '90; 56 V. cc. 87, 102; 58 V. c. 94; 60 V. c. 84.

(*j*) 35 V. cc. 76, 77, 79; 36 V. cc. 64, 65; 37 V. cc. 74, 75; 39 V. cc. 62, 63, 64; 40 V. cc. 39, 40, 85, 88; 41 V. c. 41; 42 V. c. 75; 46 V. cc. 43, 44, 45, 46; 47 V. c. 59; 48 V. c. 73; 49 V. c. 60; 50 V. cc. 71, 72; 52 V. cc. 53, 73, 74; 53 V. c. 105; 54 V. c. 82; 55 V. cc. 90, 99; 56 V. cc. 19, 83; 57 V. c. 83; 58 V. c. 89; Ont. Gaz. 22 Dec., '88, 22 Sept., '86, 24 Sept., '87, 3 Oct., '89, 17 Sept., '73, 17 July, '75, 22 June, '86, 24 Sept., '91; 55 V. cc. 7, 61; 56 V. c. 46; 57 V. c. 83; 58 V. c. 89; 59 V. c. 96; 60 V. c. 81; 61 V. c. 54; *Ante* (Cities), 4 Wm. IV. c. 23; 7 Wm. IV. cc. 39, 41; 3 V. c. 47; 9 V. c. 90; 12 V. cc. 81, 80; 13 V. c. 81; Can. Gaz., 52, p. 13588; 16 V. c. 5; 16 V. c. 219; 18 V. c. 145; 19 V. c. 96; 20 V. cc. 80, 81; 21 V. c. 110; 22 V. c. 71; 23 V. c. 86; 24 V. cc. 53, 54; 25 V. cc. 24, 25, 26; 28 V. c. 34; 29 V. c. 68; 29-30 V. c. 73; *Ante* ("Town of York") 54 Geo. III. c. 15; 57 Geo. III. c. 2; 7 Geo. IV. c. 21; 3 Wm. IV. c. 37.

(*k*) Ont. Gaz., 27 Sept., '87. (*l*) Ont. Gaz., 7 Aug. '80; 57 V. c. 73.

(*m*) 53 V. c. 93; 55 V. c. 78.

(*n*) 52 V. c. 75; Ont. Gaz. 22 July, '90, 30 Dec., '90; 53 V. c. 110; 54 V. c. 83; 55 V. c. 91; 56 V. c. 86; 57 V. c. 84; 57 V. c. 84; 58 V. c. 90; 61 V. c. 55.

(*o*) 51 V. c. 47; 56 V. c. 102; 59 V. c. 78; 60 V. c. 64. (*o1*) 59 V. c. 83.

(*p*) 12 V. c. 81; 37 V. c. 12.

(*q*) Ont. Gaz. 6 June, '74; 37 V. c. 65; 40 V. c. 24; 49 V. c. 2. (*r*) 21 V. c. 14.

(*s*) 21 V. c. 14. (*t*) 21 V. c. 14. (*u*) 21 V. c. 14. (*v*) 21 V. c. 14; 60 V. c. 63.

(*w*) 21 V. c. 14. (*x*) 21 V. c. 14. (*y*) 21 V. c. 14. (*z*) 21 V. c. 14.

(*a1*) 21 V. c. 14. (*b1*) 21 V. c. 14. (*c1*) 21 V. c. 14; 35 V. c. 21; 37 V. c. 22.

(*d1*) 21 V. c. 14. (*e1*) 21 V. c. 14. (*f1*) 21 V. c. 14.

In the notes to the "*Act respecting the Establishment of Municipal Institutions in Territorial Districts*" (R. S. O. c. 226)—which follows "*The Municipal Act*" in the present volume—will be found a list of the municipalities included within the limits of the Territorial Districts of Algoma, Thunder Bay, Manitoulin, Muskoka, Parry Sound, Rainy River and Nipissing; but many of these, although designated as townships, have as yet no municipal organization. See also R. S. O. c. 5, entitled "*An Act for the Establishment of Provisional Counties in Muskoka and Parry Sound.*"

As to the boundaries of those townships which border upon the greater lakes and rivers, ss. 7-11 of "*The Territorial Divisions Act*" (R. S. O. c. 3), provide that:—

> "7. The limits of all the townships lying on the River St. Lawrence, Lake Ontario, the River Niagara, Lake Erie, the River Detroit, Lake St. Clair, the River St. Clair, Lake Huron, the River St. Mary's and Lake Superior shall extend to the boundary of the Province in such lake or river, in prolongation of the outlines of each township respectively; and unless herein otherwise provided, such townships shall also include all the islands, the whole or the greater part of which are comprised within the said outlines so prolonged.
>
> 8. The limits of the townships lying on the River Ottawa shall in like manner extend to the boundary between the Provinces of Ontario and Quebec.
>
> 9. The limits of the townships in the County of Glengarry shall in like manner extend to the middle of Lake St. Francis, and to the middle of the main channel of the River St. Lawrence, and (unless herein otherwise provided) shall also include all the islands, the whole or the greater part of which are comprised within the outlines of the said townships so prolonged.
>
> 10. The limits of the townships on the Bay of Quinte, the River Trent and its lakes, Lake Simcoe, the River Severn, the River Rideau and its lakes, the River Thames, the Grand River, and any other rivers, lakes and bays not hereinbefore mentioned, shall in like manner extend to the middle of the said lakes and bays, and to the middle of the main channels of the said rivers respectively, and unless herein otherwise provided, shall also include all the islands, the whole or the greater part of which are comprised within the outlines of the said townships so prolonged.
>
> 11. The last preceding four sections shall not extend to any islands or part of islands which are townships by themselves, or which have been expressly included in other townships in the original surveys and plans thereof remaining of record in the office of the Commissioner of Crown Lands, or by Statute, but the same shall remain parts of such townships respectively."

Chapter 223

OF THE REVISED STATUTES OF ONTARIO, 1897.

An Act respecting Municipal Institutions.

Brought into force on Dec. 31st, 1897, by Proclamation dated Dec. 24th, 1897, See R. S. O. Vol. I., p. XIX.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

SHORT TITLE.

Short title.

1. This Act may be cited as "*The Municipal Act.*" 55 V. c. 42, s. 1.

Taken from R. S. O. 1877, c. 174, s. 1.

(a) The practice of giving short titles to Acts of Parliament has been common in England for many years (a). It began in Ontario immediately after Confederation, the first Statutes thus designated being "*The Law Reform Act of 1868*" (b), "*The Dower Act of Ontario*" (c), "*The Election Law of 1868*" (d), "*The Tavern and Shop License Act of 1868*" (e), "*The Assessment Act of 1869*" (f), "*The Ontario Medical Act*" (g), "*The Agricultural and Arts Act*" (h), etc.

It is declared by s. 2 of "*The Interpretation Act*" and by s. 15 of 60 V. c. 3, entitled, "*An Act to provide for the Consolidation of the Statutes of Ontario,*" that:—

> "Any chapter of the Revised Statutes may be cited and referred to either by its title as an Act, or by its short title, or by using the expression "*The Act* (or *The Revised Statute*) *respecting* . . ." (adding the remainder of the title given at the beginning of the particular chapter), or by using the expression "*The Revised Statutes, 1897,*" or "*The Revised Statutes of Ontario, 1897,* . . ." with the number of the particular chapter in the copies printed by the Queen's Printer."

INTERPRETATION.

Interpretation of words.

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

(a) *Ex. gr.* "*The Lands Clauses Consolidation Act, 1845,*" (see Imp. Stat. 8 V. c. 18, s. 4;) "*The Public Health Act, 1848,*" (see Imp. Stat. 11 & 12 V. c. 63, s. 3;) "*The Public Health Act, 1858,*" (see Imp. Stat. 21 & 22 V. c. 97, s. 9), etc. "*The Highway Act, 1835,*" (Imp. Stat. 5 & 6 Wm. IV. c. 50) received its short title in 1864 (see Imp. Stat. 27 & 28 V. c. 101, s. 1). (b) See 32 V. c. 6.

(c) See 32 V. c. 7, s. 44. (d) See 32 V. c. 21, s. 82.

(e) See 32 V. c. 32, s. 41. (f) See 32 V. c. 36, s. 1.

(g) See 32 V. c. 45, s. 5. (h) See 32 V. c. 47, s. 13.

Sec. 2.

Note (a).

(a) Object and Effect of an Interpretation Clause. "*The Interpretation Act*" declares (s. 7) that the provisions which it contains shall be applicable to the Revised Statutes and to any subsequent Act passed by the Legislature of Ontario "except in so far as these provisions may be inconsistent with the intent and object of such Act, or as the interpretation which such provisions would give to any word, expression or clause is inconsistent with the context, and except in so far as any provision thereof is in any such Act declared not applicable thereto." The general object of an interpretation clause is not to restrain (*i*) or to take away the natural or ordinary meaning of the words interpreted, or strictly to define what *must be* the meaning of a word under all circumstances, but rather as declaring what *may be* comprehended within the term when the circumstances so require (*j*), and defining the meaning of the words interpreted in cases where there is nothing in the Act opposed to or inconsistent with that meaning. (*k*) If the words are themselves precise and unambiguous, then no more can be necessary than to expound them in their natural and ordinary sense (*l*); for "an interpretation clause should be used for the purpose of interpreting words which are ambiguous or equivocal; not so as to disturb the meaning of such as are plain." (*m*) Each word must be interpreted according to its legal meaning, unless the context shows that the Legislature has used it in a popular or more enlarged sense. (*n*) Where the intention of the Legislature can be collected from the Act itself, words may be modified, altered, or supplied, so as to obviate any repugnancy to or inconsistency with such intention. (*o*) It is the most natural and genuine exposition of an Act to construe one part by another. (*p*) The general words of a Statute are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be put upon the words consistently with the intention of preserving the existing policy untouched. (*q*) *Prima facie*, the proper mode of construction is to apply the same interpretation to terms used in a by-law which is applied to the same terms in the Statute under the powers of which the by-law is framed. (*r*) And the Court, in construing a by-law, will look at the whole of it, and construe one part with another or other parts, so as, if possible, to give effect to the whole. (*s*) The rule of statutory construction that a special Act of Parliament is not to be construed as repealed by a subsequent general Act is subject to the exception that where the two Statutes are absolutely repugnant and inconsistent the Courts have no alternative but to consider the special enactment as repealed by the subsequent general Act. (*t*)

(*i*) *Doe* v. *Benham*, 7 Q.B. 979.

(*j*) *Reg.* v. *Cambridgeshire*, 7 A. & E. 491.

(*k*) *Midland R. W. Co* v. *Ambergate, Nottingham, etc., R. W. Co.*, 10 Hare 359; *Taylor* v. *Corpn. of Oldham*, 4 Ch. D. 395.

(*l*) *Sussex Peerage Case*, 11 Cl. & F. 85.

(*m*) Per LUSH, J., *Reg.* v. *Pearce*, 5 Q.B.D. 386, at p. 389.

(*n*) *Stephenson* v. *Higginson*, 3 H. L. Cas. 638. See also *Phillpott* v. *St. George's Hospital*, 6 H. L. Cas. 338.

(*o*) *Quin* v. *O'Keefe*, 10 Ir. C. L. R. 393; see also *Charlesworth* v. *Ward*, 31 U. C. R. 94; *Salmon* v. *Duncombe*, 11 App. Cas. 634, quoted by HAGARTY, C.J.O., in *Re O'Meara* and *City of Ottawa*, 15 A. R. 75, at p. 77.

(*p*) *Reg.* v. *Mallow Union*, 12 Ir. C. L. R. 35.

(*q*) *Minet* v. *Leman*, 20 Beav. 269. See also *O'Flaherty* v. *McDowell*, 6 H. L. Cas. 142.

(*r*) *Blashill* v. *Chambers*, 14 Q. B. D. 479; *Re McCutchon* and *City of Toronto*, 22 U. C. R. 613.

(*s*) *Re Cameron and Tp. of East Nissouri*, 13 U. C. R. 190; *Re Borthwick and City of Ottawa*, 9 O. R. 114. See also *Re Stockport Schools*, [1898] 1 Ch. 610, as to the rule respecting words *ejusdem generis*.

(*t*) See Dillon, s. 87; Maxwell, p. 242; *Thorpe* v. *Adams*, L. R. 6 C. P. 135; *Branston* v. *Colchester*, 6 E. & B. 246; *Great Central Gas Co.* v. *Clark*, 13 C. B. N. S. 840; *Daw* v. *Metropolitan Board*, 31 L. J. C. P. 223; *Garnett* v. *Adams*, 3 App. Cas. 950; *Re Brock* and *City of Toronto*, 45 U. C. R. 53; *Re City of Calgary* and *Steen*, 18 C. L. T. 282; *Bailey* v. *City of Vancouver*, 4 B. C. R. 433; *s. c. sub. nom. City of Vancouver* v. *Bailey*, 25 S. C. R. 62 (1895).

Sec. 9 of "*The Interpretation Act*" provides that the interpretation section of "*The Municipal Act*," so far as the terms therein defined can be applied, shall extend to any Act which applies to municipalities. And conversely, the interpretation section (s. 2) of "*The Assessment Act*," and the other Acts relating to municipal matters, may be referred to in construing this Act, they being Statutes *in pari materia* therewith (*a*).

And this is especially the case when (as now) these Acts are simply chapters of one general Consolidation, for "the Consolidated Statutes may be treated as one great Act, and . . . it would not be wrong to take the several chapters thereof as enactments which are to be construed collectively and with reference to one another, just as if they had been sections of one Statute instead of being separate Acts." (*c*)

The "*Act respecting the Consolidation of the Statutes of Ontario*," (60 V. c. 3), provides (s. 9 (4)) that

> "The marginal notes or headings in the body of the said Revised Statutes and references to former enactments and sections printed in bourgeois type which may appear thereon shall be held to form no part of the said Statutes, but to be inserted for convenience of reference only."

Until 1887, (50 V. c. 2, s. 5), there was no such statutory declaration respecting the headings in the body of an Act, and they have often been referred to by Judges as a help to its interpretation. (*e*)

1. "Council," shall mean a municipal council or provisional municipal council, as the case may be. 55 V. c. 42, s. 2 (3). "Council."

Taken from 22 V. c. 99, s. 402 (2), "the Act of 1858."

(b) **"Shall mean." "Shall include."** There is an important difference between the meaning of the phrases, "shall include" and "shall mean." "Shall include" or "shall extend to" is more properly used in the sense of extension, not of definition. "Shall mean" has rather the sense of exclusive definition or exhaustive enumeration (*e*).

(c) **"Council."** This includes a County Council, and also the Council of a Union of Counties, *e.g.*, Stormont, Dundas and Glengarry. See *infra* note (**d**) and R. S. O., c. 3, s. 3, also the notes to the lists of County Council Divisions in the Counties of Dundas, Durham, Glengarry, Grenville, Leeds, Northumberland, Prescott, Russell and Stormont, *ante*, pp. 15-26.

2. "Councillor" or "Municipal Councillor" shall not include a county councillor unless so expressed. 60 V. c. 15, *Sched.* C (1). "Councillor."

3. "County," shall mean county, union of counties, or united counties, or provisional county, as the case may be. 55 V. c. 42, s. 2 (4). "County."

Taken from the Act of 1858, 22 V. c. 99, s. 402 (3). *Cf.* 16 V. c. 181, s. 40.

(*a*) *Cf.* sub-s. 8 of this section with sub-s. 9 of R. S. O. c. 224, s. 4.

(*c*) *Per* Lord WESTBURY at p. 162 of *Boston* v. *Lelievre*, L. R. 3 P. C. 157.

(*e*) See *Wood* v. *Hurd*, 28 Gr. 146, and the cases there cited: *Lawrie* v. *Rathbun*, 38 U. C. R. 155; *Donly* v. *Holmwood*, 4 A. R. 555; *Smith* v. *Township of Plympton*, 12 O.R. 20, by CAMERON, C. J., at p. 35; *Re Carpenter and Township of Burton*, 15 O. R. 55, by ROSE, J., at pp. 62, 63; *Re McColl* v. *City of Toronto*, 21 A. R. 256; *Re Venour, Venour* v. *Sellon*, 2 Ch. D. 522, 525, but see *Claydon* v. *Green*, L. R. 3 C. P. 511; *Sutton* v. *Sutton*, 22 Ch. D. 511.

(*e*) *Reg.* v. *Kershaw*, 6 E. & B. 1007, *per* ERLE, J. See further as to the effect of the words "shall include" when used in an interpretation clause *Worsley* v. *South Devon R. W. Co.*, 16 Q. B. 539; *Ex p. Ferguson*, L. R. 6 Q. B. 280, 291; *Jones* v. *Cook, Bird*, 505; *Pound* v. *Plumstead Bd. of Works*, L. R. 7 Q. B. 183, 194; *Baker* v. *Portsmouth (Mayor of)*, 3 Ex. D. 4, 157; *Nutter* v. *Accrington Local Board*, 4 Q. B. D. 375; *Robinson* v. *Burton (Local Board)*, 8 App. Cas. 798.

Sec. 2.
Sub-secs. 4-12.
Note (d).

(d) Section 8 (12) of "*The Interpretation Act*" declares that

"12. The [illegible] shall include two or more counties united for [illegible] the enactment relates."

"County Town."

4. "County Town" shall mean the city, town or village in which the assizes for the county are held. 55 V. c. 42, s. 2 (6).

Taken from 10 V. c. 8, s. 46 (1877).

"Electors."

5. "Electors" shall mean the persons entitled for the time being to vote at any municipal election, or in respect of any by-law, (as the case may be) in the municipality, ward, polling sub-division, or police village, as the case may be. 55 V. c. 42, s. 2 (9); 60 V. c. 15, *Sched.* C (1).

Taken from 22 V. c. 99, s. 102 (5). The words "or in respect of any by-law" were added by the Act of 1873, (36 V. c. 48, s. 1 (5)); the words "as the case may be" (in line 3) by 60 V. c. 15, Sched. C (1) (1897).

"Highway." "Road." "Bridge."

6. "Highway," "Road," or "Bridge" shall mean a public highway, road or bridge, respectively. 55 V. c. 42, s. 2 (8).

Taken from 22 V. c. 99, s. 102 (6).

"Householder."

7. "Householder" shall mean a resident of the municipality whose name appears as a tenant on the last revised assessment roll thereof. 60 V. c. 15, *Sched.* C (1).

"Land." "Real estate." "Real property."

8. "Land," "Lands," "Real Estate," "Real Property," shall include lands, tenements and hereditaments, and any interest or estate therein, or right or easement affecting the same. 55 V. c. 42, s. 2 (7); c. 43, s. 1.

Taken from 22 V. c. 99, s. 102 (5), the words "and any interest or estate therein or right or easement affecting the same" having been substituted for the words of the original section by 55 V. c. 43, s. 1 (1892), in consequence of the decision in *Re Davis and City of Toronto*, 21 O. R. 243. See the definition of the words: "land," "real property," and "real estate" in "*The Assessment Act*," (R. S. O. c. 224, s. 1 (6)); also *Errington* v. *Metropn. District R. W. Co.*, 19 Ch. D. 559; *Osborne* v. *City of Kingston*, 23 O. R. 382.

"Local municipality."

9. "Local Municipality," shall mean a city, town, township or incorporated village. 55 V. c. 42, s. 2 (2).

Taken from R. S. O. 1877, c. 174, s. 2 (2).

"Municipality."

10. "Municipality," shall mean any locality the inhabitants of which are incorporated or are continued, or become so under this Act. 55 V. c. 42, s. 2 (1).

Taken from the Act of 1873, (36 V. c. 48, s. 1 (1)). *Cf.* 22 V. c. 99, s. 102 (1); 29-30 V. c. 51, s. 422 (1). The earlier Act provided that the word "municipality" should not include a police village. Since 1873 this provision has been omitted as unnecessary, a "police village" not being an "incorporated village," to which alone ss. 9 and 10 apply. See clause 15 of this section, *infra*.

"Next day."

11. The words "next day" shall not apply to, or include Sunday or statutory holidays. 55 V. c. 42, s. 2 (11).

Taken from 22 V. c. 99, s. 102 (9).

"Reeve."

12. "Reeve," shall include the deputy-reeve or deputy-reeves, where there is a deputy-reeve for the municipality, except in so far as respects the office of a Justice of the Peace. 55 V. c. 42, s. 2 (10).

Taken from 12 V. c. 79, s. 5, and 22 V. c. 99, s. 105 (5), except the final clause, which was added in 1866 by 29-30 V. c. 51, s. 422 (8).

(e) Since the Revised Statutes came into force the office of deputy-reeve has been practically abolished by 61 V. c. 23, ss. 3, 4. See ss. 72 and 73 of this Act and the notes thereto.

Secs. 3. 4.
Sub secs. 13-15.
Notes (e)-(j).

13. "Separated town" shall mean a town separated for municipal purposes from the county in which it is situated. 60 V. c. 15, *Sched.* C (1). "Separated town."

(f) The "separated towns" are Brockville, Niagara Falls, Perth, Peterborough, Prescott, St. Mary's, Toronto Junction, Trenton and Walkerville. See *infra*, pp. 13-29.

14. "Township" shall mean township, union of townships or united townships, as the case may be. 55 V. c. 42, s. 2 (5). "Township."

Taken from 22 V. c. 99, s. 402 (4). *Cf.* 16 V. c. 181, s. 40.

15. "Village" shall mean an incorporated village, unless otherwise expressed. 60 V. c. 15, *Sched.* C. (1). "Village."

(g) Interpretation clauses which apply only to particular sections or groups of sections in "*The Municipal Act*," are the definitions of "electors" in s. 19 (*1a*), of "leasehold" in s. 76 (5), of "election," "farm," "farmer's son," "father," "owner," and "vote" in s. 86 (3), of "hawkers" in s. 583 (14*a*), "transient traders" in s. 583 (34*b*), and "owner" in s. 668 (2). See also note (a) *supra*, as to the effect of the "interpretation sections" which have been inserted in Statutes *in pari materia* with "*The Municipal Act*."

3. For the purposes of this Act an assessment roll shall be understood to be finally revised when it has been so revised by the Court of Revision for the municipality, or by the Judge of the County Court in case of an appeal as provided in *The Assessment Act*, or when the time within which the appeal may be made has elapsed. 60 V. c. 15, *Sched.* C. (1). Finally revised Assessment Roll.

Taken from 40 V. c. 13, s. 12 (4), (1877). *Cf.* 55 V. c. 42, s. 125 (1). Transferred to this place and applied to the whole Act by 60 V. c. 15, Sched. C. (1).

4. Whenever any power is conferred upon, or any provision of law relates to cities having a specified population, such population shall, for the purposes aforesaid, be ascertained (unless otherwise provided) by the census of the city last taken, whether under an Act of the Parliament of Canada or under a municipal by-law. *See* 60 V. c. 45, s. 59; c. 3. s. 3. Ascertainment of population of cities having a certain population.

(h) The Commissioners named in the "*Act to provide for the Consolidation of the Statutes of Ontario*," (60 V. c. 3) were empowered (by s. 3 thereof) to make such alterations in the language of the Statutes to be consolidated as are requisite to preserve a uniform mode of expression, and also to make such minor amendments as are necessary to bring out more clearly what they may deem to have been the true intention of the Legislature. That power was exercised in regard to the present section, as will appear by comparing the wording with that of the original section in the Statute from which it is taken.

(i) "**Where any power has been conferred upon, or any provision of law relates to, cities having a specified population.**" For examples, see ss. 103, 276, 277, 529, 536 (13), 539 (2), 540 (1) (7), 559 (2) (8), 574 (4), 581, 583 (2) (4) (6) (8) (10) (12) (14) (17) (23) (25) (28) (30) (34) (35), 585, 596 and 631 of this Act, and ss. 59 and 62 (2) of "*The Assessment Act*."

(j) "**Whether under an Act of the Parliament of Canada or under a municipal by-law.**" A census can be taken only under one or the other of these authorities. See "*The B. N. A. Act*," 91 (6), and ss. 20 and 533 (1) of this Act.

PART I.

MUNICIPAL ORGANIZATION.

TITLE I.—INCORPORATION.
TITLE II.—FORMATION AND ALTERATION OF CORPORATIONS.

TITLE I.—INCORPORATION.—*Secs.* 5-10.

Existing municipal corporations continued.

5. The inhabitants of every county, city, town, village, township, union of counties and union of townships incorporated at the time this Act takes effect shall continue to be a body corporate, with the municipal boundaries of every such corporation respectively then established. 55 V. c. 42, s. 3.

Taken from the Act of 1858, 22 V. c. 99, s. 2.

(a) **"The inhabitants."** It is not the municipal council which constitutes the corporation, nor is it the ratepayers of a place nor the electors of a municipality who are thus incorporated. The "inhabitants" of a municipality are the corporators, not only under this Statute, but also under "*The Municipal Corporations Act, 1882*," (*a*), and the incorporation Acts of the cities of Toronto (*b*) and Kingston (*c*). Similar language was used in "*The District Councils Act*" (*d*) and in *The Municipal Act of 1849* (*e*). An "inhabitant" of a place speaking generally is one who has his permanent home there. See *Rex* v. *Mitchell*, 10 East 511. But the word has not *per se* any definite legal meaning, and it must be explained, in each case, extrinsically, by reference to the context and to the objects of the document in which it occurs. (*f*)

(b) **"A body corporate."** See the effect of these words discussed in note (a) to s. 49 *infra*.

(c) **"With the municipal boundaries of every such corporation respectively then established."** The Statute, Proclamation or by-law, which creates a municipal corporation, must define its municipal boundaries. See *infra*, ss. 11 (1), 16, 18 (2), 21 (1), 24, 25. Within these boundaries the by-laws of the corporation have the same force as Acts of Parliament; and all persons, whether resident or not, must obey them (*g*). Beyond these limits such by-laws have, as a rule (*h*), no force whatever. The councils of townships, cities, towns and villages may pass by-laws for ascertaining and establishing the boundary lines of their respective municipalities (*i*).

(*a*) Imp. Stat. 45 & 46 V. c. 50, s. 7. (*b*) 4 Wm. IV. c. 23, s. 14.

(*c*) 6 V. c. 27, s. 9. (*d*) 4 & 5 V. c. 10, s. 1.

(*e*) 12 V. c. 81, s. 2 (townships), s. 32 (counties), s. 52 (villages), ss. 61 and 203 (towns), and s. 82 (cities).

(*f*) See *Rex* v. *Mashiter*, 6 A. & E. 153; *Rex* v. *Davis*, *Ibid.* 374; Maxwell, p. 77; Stroud's Judicial Dict. *sub verb.*

(*g*) See this question more fully discussed in note (d) to s. 325, *post*.

(*h*) See notes (a) and (b) to s. 325, *post*.

(*i*) See s. 532 (1) of this Act and ss. 14 *et seq.* of "*The Surveys Act*," (R.S.O. c. 181), referred to in note (a) to s. 531, *post*.

Secs. 6. 7.

Notes (a)-(a) (b).

6. The head and members of the council, and the officers, by-laws, contracts, property, assets and liabilities of every municipal corporation, when this Act takes effect, shall be deemed the head and members of the council, and the officers, by-laws, contracts, property, assets and liabilities of the corporation, as continued under and subject to the provisions of this Act. 55 V. c. 42, s. 4.

Heads, officers, by-laws, contracts, etc., continued.

Taken from the Act of 1858, 22 V. c. 99, s. 405. Cf. 12 V. c. 81, s. 20-63.

(a) **"Existing by-laws continued."** Section 8 of the Act of 60 V. c. 3 (above referred to) provides that the repeal of former Acts by the Revised Statutes from the time when the latter shall come into force is not to affect (a) any penalty, forfeiture or liability, etc.; nor (b) any action, etc.; nor (c) any deed, right, title, interest, *by-law*, rule, regulation, contract, etc., nor (d) any office, appointment, commission, salary, allowance, security, duty, etc.; nor (f) any other matter or thing completed, existing or pending at the time of such repeal. But it seems to have been also considered necessary in each successive re-enactment or consolidation of "*The Municipal Act*" to insert a section expressly continuing existing by-laws (*j*).

7. The name of every body corporate (not being a provisional corporation), continued or erected under this Act, shall be "*The Corporation of the County, City, Town, Village, Township*, or *United Counties*, or *United Townships*, (as the case may be), *of* " (naming the same). 55 V. c. 42, s 5.

Names of municipal corporations.

Taken from the Act of 1858, 22 V. c. 99, s. 4.

(a) **"A body corporate."** See note (a) to s. 9, *infra*.

(b) **Use of corporate name.** The proper corporate name of a municipal corporation ought to be used on all occasions and in all places. But slight variations in the use of corporate names, where substantially correct, have been held immaterial (*k*) even in matters of contract (*l*). A by-law of a municipal council is valid if it appear on the face of it to have been enacted by a municipal body having authority to make the by-law under the municipal laws (*m*). The general rule is, that a variation from the precise name of the corporation, when the true name is necessarily to be collected from the instrument or is shewn by proper averments, will not invalidate a grant by or to a corporation or a contract with it, and the modern cases shew an increased liberality on this subject (*n*).

(*j*) See 22 V. c. 99, s. 405; 29-30 V. c. 51, s. 3; 36 V. c. 48, s. 3; R. S. O. 1877 c. 174, s. 4; 46 V. c. 18, s. 4; R. S. O., 1887, c. 184, s. 4; 53 V. c. 50, s. 5; 55 V. c. 42, ss. 4 and 671*a*; *Reg.* v. *Hiscox*, 44 U.C.R. 214; *Winslow* v. *Gallagher*, 27 N.B. Rep. 25.

(*k*) *Trustees of Port Rowan High School* v. *Tp. of Walsingham*, 23 C. P. 11.

(*l*) *Brock District* v. *Bowen*, 7 U. C. R. 471; *Trent and Frankford Road Co.* v. *Marshall*, 10 C. P. 336; *Town of Whitby* v. *Harrison*, 18 U. C. R. 603; *County of Bruce* v. *Cromar*, 22 U. C. R. 321. See also *Mayor and Burgesses of Lynn Regis*, 10 Rep. 120, 122; *Mayor of Carlisle* v. *Blamire*, 8 East, 487; *Rex* v. *Croke*, Cowp. 29; *Tp. of Beverley* v. *Barlow*, 10 C. P. 178; *In re Goodwin and Ottawa & Prescott R. W. Co.*, 13 C. P. 254.; *Canada Perm. L. & S. Co.* v. *Donore*, 11 Man. Rep. 120 (1896).

(*m*) *Flewellyn* v. *Webster*, 6 O. S. 586; *In re Hawkins* v. *United Counties of Huron, Perth and Bruce*, 2 C.P. 72; *Fisher* v. *Tp. of Vaughan*, 10 U.C.R. 492; *In re Barclay and Tp. of Darlington*, 11 U. C. R. 470; *Re Brophy and Ganaoque*, 26 C. P. 290; see also *Gwynne* v. *Rees*, 2 P. R. 282.

(*n*) *Per* Chancellor KENT, in 2 Kent's Com. 292; approved in *St. Louis Hospital* v. *Williams*, 19 Mo. 609. See further, Dillon, s. 179; Tiedeman, s. 49; *Mouce* v. *Protestant School District of Bradley*, 5 Man. Rep. 49 (1887).

Secs. 8, 9.

Notes (a) (b)-(a).

Names of provisional corporations.

8. The inhabitants of every junior county, upon a provisional council being or having being appointed for the county, shall be a body corporate under the name of "*The Provisional Corporation of the County of* " (naming it.) 55 V. c. 42, s. 6.

Taken from the Act of 1858, 22 V. c. 99, s. 5. *See* s. 38 (1) *post*.

(a) The formation of a Provisional Council for a Junior County is provided for by s. 41, *post*.

(b) **"The inhabitants" . . shall be a body corporate.** See note (a) to s. 5, and the notes to s. 9, *infra*.

Inhabitants of counties, townships, etc., and of cities, towns, etc., to be corporations.

9. The inhabitants of every county, or union of counties erected by proclamation into an independent county or union of counties, and of every township or union of townships, erected into an independent township or union of townships and of every locality erected into a city, town, or village, and of every county or township separated from any incorporated union of counties or townships, and of every county or township, or of the counties or townships, (if more than one), remaining of the union after the separation, being so erected or separated after this Act takes effect, shall be a body corporate under this Act. 55 V. c. 42, s. 7.

Taken from the Act of 1858, 22 V. c. 99, s. 8.

(a) **"The inhabitants . . shall be a body corporate."** *i.e.*, they shall constitute a corporation. Yet all the inhabitants of a locality taken together do not form a corporation, as a regiment is formed of soldiers or a brigade of battalions. Even if we saw them all together, we should not see the legal body called "the corporation," for it is "an artificial being invisible, intangible, and existing only in contemplation of the law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence" (*o*).

GENERAL POWERS OF CORPORATIONS.

The Interpretation Act (*p*) provides that:—

> "Words making any association or number of persons a corporation or body * * * corporate, shall vest in such corporation power to sue and be sued, contract and be contracted with, by their corporate name, to have a common seal, and to alter or change the same at their pleasure, and to have perpetual succession, and power to acquire and hold personal property or moveables for the purposes for which the corporation is constituted, and to alienate the same at pleasure; and shall also vest in any majority of the members of the corporation the power to bind the others by their acts; and shall exempt the individual members of the corporation from personal liability for its debts, obligations or acts, provided they do not contravene the provisions of the Act incorporating them."

It may be useful to consider each of these powers and incidents, especially with reference to the corporations which are created and continued by this Act.

(*o*) *Per* MARSHALL, C. J., in *Dartmouth College* v. *Woodward*, 4 Wheat. 636.

(*p*) R. S. O. c. 1, s. 8 (25).

Sec. 9.

Note (aa).

Actions by and against municipal corporations.

(aa) "To sue and be sued." A municipal corporation, like an individual, may resort to the Courts to enforce rights and redress wrongs (*q*). So one municipality may sue another (*r*).

The case of *Town of Guelph* v. *Canada Company* (*s*) affords an example of an action brought by a municipal corporation to restrain the sale of land in the municipality, which had been dedicated for public purposes. See also the cases collected in note (g) to section 576, *post*, and note (a) to section 601.

So a municipal corporation may have a receiver appointed to collect the tolls payable to a company indebted to the municipality (*t*); may foreclose a mortgage (*u*); may sue a surveyor employed by them for negligence in the making of a survey (*v*); may obtain an injunction to restrain the closing or obstruction of a public highway (*w*); or may have it declared as against a private person whether or not certain land is part of a highway (*x*).

And as a municipal corporation may be a plaintiff so also may it be a defendant. It is liable to be sued either

(A) Upon its contracts—(as to which see more fully note (bb) *infra*,) or

(B) For damages occasioned by acts or defaults of the corporation or of some person for whom it must, according to the doctrine of *respondeat superior*, be held to be responsible.

Many examples, under the latter head, of actions against municipal corporations for nonfeasance, *i.e.*, neglect to perform or in the performance of their statutory duties, or to manage with due care corporation works or property will be found collected in note (f) to s. 437, note (a) to s. 500, *post* (which requires County Councils to keep gaols, court houses, etc., in repair), note (h) to s. 554 (drains and sewers), note (d) to s. 562 (public harbours) and note (a) to s. 606 (non-repair of highways) (*y*).

(*q*) *Ottawa District Council* v. *Lowe*, 6 O. S. 546.

(*r*) *Huron District Council* v. *Lambton District Council*, 4 U. C. R. 302; *County of Wellington* v. *Township of Waterloo*, 8 C. P. 358; *County of Wellington* v. *Township of Wilmot*, 17 U. C. R. 82; *City of Toronto* v. *County of York*, 21 C. P. 95; 22 C. P. 514; *County of Wentworth* v. *City of Hamilton*, 34 U. C. R. 585; *Village of New Hamburg* v. *County of Waterloo*, 22 O. R. 193; 20 A. R. 1; 22 S. C. R. 296; *Township of Morris* v. *County of Huron*, 26 O. R. 689; 27 O. R. 341; *Township of Sombra* v. *Township of Chatham*, 21 S. C. R. 305; *Township of Lagan* v. *Township of McKillop*, 25 A. R.—(not yet reported). (*s*) 4 Grant, 632 (1854).

(*t*) *Town of Brantford* v. *Grand River Navigation Company*, 8 Grant, 246 (1860).

(*u*) *Township of Oxford* v. *Bailey*, 12 Grant, 276 (1886). But see note (a) to s. 534, *post*, and the cases of *Town of Belleville* v. *Judd*, 16 C. P. 397 (1866), and *Brown* v. *McNab*, 20 Grant, 479 (1873), therein referred to.

(*v*) *Tp. of Stafford* v. *Byg*, 31 C.P. 77 (1880); 6 A.R. 273 (1881).

(*w*) *Village of Fenelon Falls* v. *Victoria R. W. Co.* 29 Grant 4 (1881); *Tp. of St. Vincent* v. *Greenfield*, 12 O.R. 297 (1886); 15 A.R. 567 (1887); and see *Goodeham* v. *City of Toronto*, 21 O.R. 120 (1890); 19 A.R. 641 (1892); 25 S.C.R. 246 (1894-5). (*x*) *City of Toronto* v. *Lorsch*, 24 O.R. 227 (1893).

(*y*) And see *Lazarus* v. *City of Toronto*, 19 U.C.R. 9, (public building); *City of St. John* v. *Macdonald*, 14 S.C.R. 1, (corporation ferry); *Connell* v. *Town of Prescott*, 20 A.R. 49; 22 S.C.R. 147, (blasting during corporation work); *Roe* v. *Village of Lucknow*, 21 A.R. 1, (waterworks steam engine); *Schmidt* v. *Town of Berlin*, 26 O.R. 4, (public park and building therein); *Moore* v. *City of Toronto*, 26 O.R. 59, *note*, (public park); *Rogers* v. *Toronto Public School Board*, 23 A.R. 597; 27 S.C.R. 448, (school building); *McCann* v. *City of Toronto*, 28 O.R. 650, (fire hall); *Saunders* v. *City of Toronto*, 29 O.R. 273, (scavenger cart); *Hesketh* v. *City of Toronto*, 25 A. R.—not yet reported (fire engine); *Earls* v. *City of Victoria*, 2 B.C.R. 156, (wire forming part of a fire alarm system); *Macpherson* v. *City of St. John*, 32 N.B. Rep. 423, (hose cart). And see *Bathurst (Borough of)* v. *Macpherson*, 4 Appeal Cases 256; *Cowley* v. *Newmarket Local Board*, [1892] A.C. 345; *Picton (Municipality of)* v. *Geldert*, [1893] A.C. 524; *Oliver* v. *Horsham Local Board*, [1894] 1 Q.B. 332; *Thompson* v. *Brighton (Corporation of)*, *Ibid*; *Sydney (Municipal Council of)* v. *Bourke*, [1895] A.C. 433; *St. John (City of)* v. *Campbell*, 26 S.C.R. 1.

Sec. 9.

Note (bb).

Examples of actions against municipal corporations for acts of misfeasance (positive wrong) are: *Farrell* v. *City of London*, 12 U.C.R. 343; *Perdue* v. *Tp. of Chingucousy*, 25 U.C.R. 61; *Rowe* v. *Tp. of Rochester*, 29 U.C.R. 590; 22 C.P. 319; *Nevill* v. *Tp. of Ross*, 22 C.P. 487; *Molson's Bank* v. *Town of Brockville*, 31 C.P. 174; *Grassick* v. *City of Toronto*, 39 U.C.R. 306; *Lewis* v. *City of Toronto*, 39 U.C.R. 343; *McSorley* v. *City of St. John*, 6 S.C.R. 531; *McLay* v. *County of Bruce*, 14 O.R. 398; *Connor* v. *Middagh*, 16 A.R. 356; *Hill* v. *Middagh*, Ibid; *Hodgins* v. *City of Toronto*, 19 A.R. 537; *McNab* v. *Tp. of Dysart*, 22 A.R. 508; *Wilson* v. *City of Winnipeg*, 4 Man. L. Rep. 193.*

In *McLay* v. *County of Bruce*, 14 O.R. 398 (1887), the libel of which the plaintiff complained was the act of the municipal council; but the corporation may equally be held liable for the tort of an agent who had authority in regard to the subject matter, *e.g.*, their street commissioner (*c*); a tax receiver (*a*); a park superintendent (*b*), or even a contractor acting under the superintendence and control of the municipality (*c*). So the corporation may become liable for the act of an agent for whom they would not otherwise have been liable if that act has been authorized, or is afterwards ratified by the municipal council (*d*), or if (the action being occasioned by the perpetration of a fraud), the benefit of that fraud has been received by the municipality (*e*).

Beyond these limits, however, the corporation will not be held liable for the torts of its agents or employees (*f*); and even where a municipal corporation had by by-law agreed to indemnify an officer against liability for *lawful* acts done by him in his official capacity, this was held not to extend to an unlawful act though done *colore officii* (*g*).

There is also a well marked distinction between the responsibility of a municipal corporation for acts done by the council or its appointees in the discharge of public (*i.e.*, governmental and legislative) duties, and those done in the management of property or the exercise of rights or powers enjoyed by the municipality for its own immediate profit or advantage, even though such exercise may ultimately enure to the benefit of the public.

See this subject fully discussed in Note "**A**" to s. 537, *post*, on the "Liability of Municipal Corporations for acts or defaults of Agents or Officers."

As to when a municipal corporation is entitled to notice of action, see note (c) to s. 468, *post*.

As to whether it is liable to be proceeded against summarily before a magistrate, see *Reg.* v. *The T. Eaton Company*, 29 O. R. 591 (1898); *Reg.* v. *Toronto Railway Co.*, *coram* Rose, J., Nov. 17th, 1898, (not yet reported).

Contracts with municipal corporations.

(bb) **"To contract and be contracted with."** Provided the object sought is not illegal, a private person may contract concerning any matter, and subject to the provisions of certain Statutes may make an agreement even by word of mouth. But the power of a corporation to contract is not thus unlimited. The contract must be one which the corporation is authorized to make, or at all events, one which is not forbidden by the terms of the charter or by necessary inference therefrom. Contracts *ultra vires* (beyond the powers) of the

(*c*) *Lewis* v. *City of Toronto*, 39 U.C.R. 342.

(*a*) *McSorley* v. *City of St. John*, 6 S.C.R. 531.

(*b*) *Hodgins* v. *City of Toronto*, 19 A.R. 537.

(*c*) *Farrell* v. *City of London*, 12 U.C.R. 343; *Grassick* v. *City of Toronto*, 39 U.C.R. 306; *Saunders* v. *City of Toronto*, 29 O.R. 273.

(*d*) *Perdue* v. *Tp. of Chingucousy*, 25 U.C.R. 51; *Rowe* v. *Tp. of Rochester*, 29 U.C.R. 590, 22 C.P. 319; *Nevill* v. *Tp. of Ross*, 22 C.P. 487; *Connor* v. *Middagh*; *Hill* v. *Middagh*, 16 A.R. 356; *McNab* v. *Tp. of Dysart*, 22 A.R. 508. And see *Kelly* v. *Barton*, *Kelly* v. *Archibald*, 26 O.R. 608, 22 A.R. 522.

(*e*) *Molson's Bank* v. *Town of Brockville*, 31 C.P. 174.

(*f*) *Murphy* v. *City of Ottawa*, 13 O. R. 334.

(*g*) *Irwin* v. *Tp. of Mariposa*, 22 C. P. 367.

* In *Wilson* v. *City of Winnipeg*, 4 Man. Reports 193 (1887), the mayor of the city of Winnipeg, assuming to act as an officer of the corporation, laid an information against the plaintiff. A firm of solicitors, assuming to act for the city, advised him (the mayor) in the matter, prepared the information and attended on its return on behalf of the prosecution. The solicitors reported the matter to the council, who paid them for the services thus rendered. *Held*, that the city was liable for the action taken by the mayor.

corporation are void, (*h*) or at least voidable, (*i*), and persons dealing with a municipal or any other corporation are bound at their peril to take notice of the limits within which, and of the manner in which, the corporation has power to contract. (*j*)

Sec. 9.

Note (cc).

(cc) **"To have a common seal and to alter and change the same at pleasure."** Being itself an intangible, invisible creation of the law, and therefore unable to manifest its intentions by any personal act or oral discourse, a corporation must have some tangible and visible method of declaring its will in a by-law or its assent to a contract. This is usually done by affixing thereto the corporate seal. "It is a great mistake to speak of the necessity of the seal as a relic of ignorant times. It is no such thing; either a seal, or some substitute for a seal, which by law shall be taken as conclusively evidencing the sense of the whole body, is a necessity inherent in the very nature of a corporation. (*k*) "It is idle to say there is no magic in a wafer." (*l*)

Necessity for corporate seal.

A corporation may adopt any seal. (*m*) In 1886 the name of a rural municipality in Manitoba was altered from "The Municipality of Kildonan" to "The Rural Municipality of Kildonan." A deed executed in 1887 under the old seal which continued to be used with the knowledge and consent of the council was held to be sufficiently executed. (*n*) A mere impression is a good seal (*o*). In *Ontario Salt Co.* v. *Merchants' Salt Co.*, 18 Grant 551 (1868), a deed made between two trading corporations was sealed with common wafers; *Held*, sufficient in the absence of evidence showing these not to be the proper corporate seals of the contracting corporations. Where the proper corporate seal is wrongfully detained, another seal may be used *pro hac vice*. (*p*)

As to the necessity for the use of a seal in the case of the by-laws of a corporation, see s. 333, *post*, in appointments to office, see s. 321 note (a), s. 325 note (e), and s. 537 note (a).

But the absence of a seal will be excused in,—

(1) Matters of trivial moment.

(2) Such contracts by trading corporations as are of ordinary occurrence in that trade (*b*); and where a municipal corporation acts as a trading body, it

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(*h*) *Attorney-General* v. *Niagara Falls International Bridge Co.*, 20 Grant 34.

(*i*) *McDiarmid* v. *Hughes*, 16 O. R. 570.

(*j*) Dillon, ss. 442 *et seq.*; *Stonehargh* v. *Township of Brighton*, 5 U. C. L. J. 38; *Ramsay* v. *Western District Council*, 4 U. C. R. 374; *Mellish* v. *Town of Brampton*, 2 C. P. 35; *Scott* v. *Town of Peterborough*, 19 U. C. R. 469; *Wright* v. *County of Grey*, 12 C. P. 479; *Cross* v. *City of Ottawa*, 23 U. C. R. 288; *Haynes* v. *Copland*, 18 C. P. 150; *County of Wentworth* v. *City of Hamilton*, 34 U. C. R. 585, 601; *Potts* v. *Village of Dunnville*, 38 U. C. R. 96; *Waterous Engine Co.* v. *Town of Palmerston*, 20 O. R. 411; 19 A. R. 47; 21 S. C. R. 556; *Canadian Pacific R. W. Co.* v. *Town of Chatham*, 25 O. R. 465; 22 A. R. 330; 25 S. C. R. 608; *Wigle* v. *Village of Kingsville*, 28 O. R. 378. And see *per* BRAMWELL, B., in *Hunt* v. *Wimbledon Local Board*, 4 C. P. D. 48 at p. 55. And see also the next note (cc).

(*k*) *Per* ROLFE, B. in *Mayor etc. of Ludlow* v. *Charlton*, 6 M & W. 815, approved by POLLOCK, B. in *Mayor etc. of Kidderminster* v. *Hardwick*, L. R. 9 Ex. 24.

(*l*) *Per* Lord BRAMWELL in *Young* v. *Leamington*, 8 App. Cas. 517, at p. 528.

(*m*) Dillon, s 190; Tiedeman, s. 51.

(*n*) *McRae* v. *Cockett*, 6 Man. Rep. 426 (1890). Acc. *Nanton* v. *Villeneuve*, 10 Man. Rep. 213 (1893).

(*o*) *Reg.* v. *St. Paul's, Covent Garden*, 7 Q. B. 232; *Re Miles and Township of Richmond*, 28 U. C. R. 333 (1869); *Re Corsonne and City of Brantford*, 6 O. R. 188 (1884).

(*p*) *Township of London West* v. *Bartram*, 26 O. R. 161. And see *Re Scott and Township of Harvey*, 26 U. C. R. 32; *Re Bell and Black*, 1 O. R. 125; *Hamilton* v. *Dennis*, 12 Grant, 325; *Re Sandilands*, L. R. 6 C. P. 411; *National Provincial Bank* v. *Jackson*, 33 Ch. D. 1; *Bishop* v. *Balkis Consolidated Co.*, 25 Q. B. D. 77, 512.

(*q*) *Albert Cheese Co.* v. *Leeming*, 31 C. P. 272; *Thompson* v. *Brantford Electric, etc., Co.*, 25 A. R. 340; *South of Ireland Colliery Co.* v. *Waddle*, L. R. 3, C. P. 463; L. R. 4 C. P. 617.

Sec. 9. Note (cc).

becomes subject to the same rule (c). So, also, it is presumed that this rule would be applied to a municipal corporation operating a street railway, supplying water, or manufacturing or supplying gas or electric light or heat, etc.

(3) Contracts (not *ultra vires* of the corporation,) made by agents who have authority to bind the corporation. "Wherever a corporation is acting within the scope of the legitimate purposes of its institution, all parol contracts made by its authorized agents are express promises of the corporation" (d). *Exempt.*, the corporation would be bound by the undertaking of its attorney in an action (e).

(4) Cases where, according to the rules adopted by the Courts of Equity (which now govern Courts of Law also), it would be improper to allow the corporation to set up the want of its seal as a defence to an action (f).

(5) Executed contracts. By a long and uninterrupted line of decisions it has been held to be the law that where work has been done or goods supplied for corporate purposes of which a municipal corporation has received or adopted the benefit, the law will imply the promise to pay, and that no seal, or even writing, is necessary (g). But there must be evidence of acceptance by the corporation, not simply by some of the members of the municipal council (h).

And an *unsealed* contract, even though in writing and under the corporate seal of a municipality may not bind the corporation if the contract was made and the seal affixed without the proper statutory formalities having been observed in regard thereto (i).

Subject to the above exceptions, a seal is necessary to bind the corporation (j).

(c) *Webb* v. *Mayor, etc., of Kingston-upon-Hull*, L. R. 10 C. P. 402 (dock owners); *Pudsey Gas Co.* v. *Bradford*, L. R. 15 Eq. 167 (gas works); *Brown* v. *Town of Belleville*, 30 U. C. R. 373 (harbour works).

(d) *Per* STORY, J., in *Bank of Columbia* v. *Patterson*, 7 Cranch (U. S.) 299, 306.

(e) Dillon, ss. 490-492, 450.

(f) *Marshall* v. *Corporation of Queenborough*, 1 Sim & Stuart 520; *Carriers Co.* v. *Corbett*, 2 Dr. & Sm. 355; *McDougall* v. *U. C. Mining Co.*, 15 Grant, 179; *Patterson* v. *Buffalo and Lake Huron R. W. Co.*, 17 Grant 521; *Wright* v. *Sun Mutual Ins. Co.*, 29 C. P. 221, 5 A. R. 218, s. c. *sub nom. Low Life Assurance Co.* v. *Wright*, 5 S. C. R. 466; *Crook* v. *Corporation of Seaford*, L. R. 6 Chy 551; *Township of Pembroke* v. *Canada Central R. W. Co.*, 3 O. P. 503; *Regina* v. *County of Perth*, 6 O. R. 181.

(g) *Bartlett* v. *Town of Amherstburg*, 14 U. C. R. 152; *Fetterly* v. *Townships of Russell and Cambridge*, 14 U. C. R. 433; *Pim* v. *County of Ontario*, 9 C. P. 302, 304; *Perry* v. *City of Ottawa*, 23 U. C. R. 391; *Brown* v. *Town of Belleville*, 30 U. C. R. 373; *County of Wentworth* v. *City of Hamilton*, 34 U. C. R., 585; *Robins* v. *Town of Brockton*, 7 O. R. 481; *Lawrence* v. *Village of Lucknow*, 13 O. R. 421; *Quintance* v. *Township of Howard*, 18 O. R. 95; *Bernardin* v. *North Dufferin*, 19 S. C. R. 581; *Canadian Pacific R. W. Co.* v. *Tp. of Chatham*, 25 O. R. 465, 22 A. R. 330, 25 S. C. R. 608; *Andrews* v. *Ryde*, L. R. 9 Ex. 302; *Clark* v. *Cuckfield Union*, 21 L. J. Q. B. 349, and the other cases cited *arguendo* in *Young* v. *Leamington Spa (Mayor of)*, 8 App. Cas. 517, by Sir Horace Davey, Q. C., at p. 518-519. See also an article on "The contracts of Municipal Corporations" in 18 C. L. T. at pp. 145 *et seq.*

(h) *Brown* v. *Town of Lindsay*, 35 U. C. R. 509; *Silsby* v. *Village of Dunnville*, 31 C. P. 301, 8 A. R. 524. In the last case the Court doubted whether the defendants would be liable even where the benefit had been actually received and enjoyed by them, unless the thing ordered was actually and urgently required, or unless it was "work which, if the corporation had not ordered, they would not have done their duty." And see *Green* v. *Township of Oxford*, 15 O. R. 506; 16 A. R. 4.

(i) *Waterous Engine Co.* v. *Town of Palmerston*, 29 O. R. 411, 19 A. R. 17, 21 S. C. R. 556, distinguishing *Bernardin* v. *North Dufferin*, *supra*. And see *High* v. *Village of Kingsville*, 28 O. R. 378.

(j) *Bartlett* v. *Town of Amherstburg*, 14 U. C. R. 152; *McLean* v. *Town of Brantford*, 16 U. C. R. 347; *Hanck* v. *Town of Whitby*, 14 Grant, 671;

(dd) "To have perpetual succession." "Among the most important properties of corporations are immortality (in the legal sense) and (if the expression may be allowed) individuality—properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs and to hold property without the perplexing intricacies, the hazardous and endless necessity of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men in succession with these qualities and capacities that corporations were invented and are in use. By these means a perpetual succession of individuals are capable of acting for the promotion of a particular object, like one immortal being" (*d*).

(ee) "Power to acquire and hold personal property or moveables for the purposes for which the corporation is constituted, and to alienate the same at pleasure." A corporation not expressly restricted therefrom may acquire, hold, and deal with personal property required for corporate purposes like an ordinary individual. Brice on Ultra Vires (2nd Ed.), p. 5; Grant on Corporations, 98. But owing to the provisions of the Statutes of Mortmain, a corporation, although it may purchase, cannot hold lands without the authority of Parliament or due license for that purpose. Sugden, V. & P. (14th Ed.) 685; Dart V. & P. (6th Ed.) 24; and see more fully in note (a) to s. 534 (1), *post*.

Power to acquire and hold personalty.

(ff) "Shall vest in any majority of the members of the corporation the power to bind the others by their acts." "In aggregate corporations, as a rule, the act and will of the majority is deemed in law the act and will of the whole or as the act of one corporate body. The consequence is that a minority may be bound not only without, but against, their consent" (*m*).

Majority binds minority.

(gg) "Shall exempt the individual members of the corporation from personal obligation for its debts, obligations, and acts, provided they do not contravene the provisione of the Act of incorporation."

But where these provisions are disregarded members of municipal councils may involve themselves in personal liability (*n*).

Corporations not personally liable.

(b) In addition to those general powers, which belong to them in common with all other corporate bodies, municipal corporations in this Province have been entrusted with special powers of the most extensive and multifarious character. These are enumerated in detail in the various Statutes annotated in this and the second volume of "THE MUNICIPAL MANUAL," but it may here be shortly stated that such corporations have not only (1) such powers as have been granted to them by the express language of these Statutes, but also (2) such as are necessary or fairly incident thereto, and (3) such as are essential (*i.e.*, not merely convenient, but indispensable) to the carrying out of the objects for which these corporations have been created. Some of the powers thus expressly conferred upon municipalities do not differ in their nature from those which might be exercised by private corporations (*e.g.*, the erection and maintenance of buildings, bridges, wharfs, ferries, etc., the acquisition and management of roads, parks and cemeteries, the supplying of light, heat, water, and electricity, the construction and operation of street railways, or of a telephone service, etc.; others relate more particularly to the business of the municipality itself; but there is a third class consisting of powers exerciseable by the municipality, not for its own, but for the public benefit and as part of the machinery of government, *e.g.*, to regulate trade, to

Special powers of Municipal Corporations.

Silsby v. *Village of Dunnville*, 31 C. P. 301; 8 A. R. 524; *Mayor, etc., of Kidderminster* v. *Hardwick*, L. R. 9 Ex. 13; *Austin* v. *Bethnal Green*, L. R. 9 C. P. 91; *Mayor, etc., of Oxford* v. *Crow*, [1893] 3 Ch. 585; *Hue* v. *Wimbledon Local Board*, 4 C. P. D. 48; *Young* v. *Leamington*, 8 App. Cas. 517. But as to the last two cases it is to be noted that s. 174 of "*The Public Health Act, 1875*" (Imp. Stat. 38-39 V. c. 55), expressly requires that every contract for more than £50 signed by an urban authority under the Act "shall be in writing and sealed with the common seal of such authority."

(*d*) *Per* MARSHALL, C. J., in *Dartmouth College* v. *Woodward*, 4 Wheat. 636.

(*m*) *Per* SHAW, C. J., in *Spaulding* v. *Lowell*, 23 Pick. (Mass.), 71; and see *per* Lord COKE, *arguendo*, in *Dacomat* v. *Hardis*, Moore, 584.

(*n*) See ss. 193-198, 215-240, 248-255, 299, 367, 393, 396 (1), 418, 425, 435 (2), 446, and note (b) to s. 10 *ante*.

Secs. 9, 10.

Notes (b)-(a).

protect life, health, and property, to share in the administration of justice, to prevent and punish crime, vice, and immorality, to promote education, to provide for the poor, to take lands for public purposes, etc.

A municipal corporation has, therefore, a dual character; and while in some respects it resembles an ordinary trading corporation, and in regard to some of its functions may be subject to the same legal liabilities, as to others it enjoys that exemption which belongs to a branch of the government. And this distinction becomes, in many instances, one of great importance. See Jones on Negligence of Municipal Corporations, s. 24; note (a) to s. 10, and note (A) to s. 537, "Liability of Municipal Corporations for acts or defaults of Officers and Agents."

Corporate powers to be exercised by council.

10. The powers of every body corporate under this Act shall be exercised by the council thereof. 55 V. c. 42, s. 8.

Taken from the Act of 1858, 22 V. c. 99, s. 6.

(a) **"Shall be exercised by the Council."** See also s. 325, which provides that these powers shall, as a rule, be exercised by by-law. "*The Interpretation Act*," R. S. O., c. 1, s. 8 (2) provides that the word "shall," shall be construed as imperative and the word "may" as permissive, unless this interpretation is inconsistent with the intent and object of the Act or would give to any word, expression or clause a meaning inconsistent with the context.

It is quite clear that the word "shall" in the above section is not meant to be imperative, and the language would be more clear if it read, "the powers of every body corporate under this Act shall be *exercisable* by the Council."

Municipal corporations being wholly the creatures of statute law, the language of the Acts under which they are constituted and by which their various powers are conferred must be looked at in every case, so as neither to deprive them of any jurisdiction which the Legislature intended to grant, nor to confer any power which it did not intend that they should be at liberty to exercise. It is, therefore, a cardinal inquiry in regard to every subject in respect of which power is conferred upon a municipal council, whether the exercise of such power by the council is discretionary or imperative. In the latter case the imperative word "shall" is generally used in the Statutes (o).

"Shall" not always imperative.

But the use of the word "shall" does not in every case create an imperative duty. *Ex. gr*, in s. 373 it is said that "A by-law which is duly carried by the vote of the qualified electors *shall* within six weeks thereafter be passed by the Council;" yet in *Canada Atlantic Railway Company* v. *City of Ottawa*, 12 S. C. R. 365, GWYNNE, J., says, (page 375):—

"I cannot think that the Council were divested of their legislative, deliberative character and . . . . had no power to express an opinion upon a matter which the Legislature said that they should take into their consideration, or that the vote of the ratepayers converted their office from being one of a deliberative and legislative character into one purely ministerial."

And in *Canada Atlantic R. W. Company* v. *Tp. of Cambridge*, 14 A. R. 299, OSLER, J. A., says, (page 302),

"This section . . . does not cast upon them (the Council) an imperative duty."

See also *Re Langdon and Arthur Junction R. W. Company and Tp. of Arthur*, 45 U. C. R. 47.

"May" not always permissive.

And the language may be held to be mandatory even where it is said that the council "may" or that it "shall be lawful" for them to exercise the power in question. If, for example the Legislature, in declaring that a certain power "may" be exercised, specifically points out the persons for whose benefit this is to be done and defines the circumstances under which they are entitled to call for its exercise, "may" is to be read as equivalent to "shall," (p) and the

(o) See ss. 11, 14, 15, 26 (4) 33, 43, 59, 106, 282, 288, 289, 295, 299, 484 (3) (4) 487, 492, 532 (4), 536 (3) (4), etc., of "*The Municipal Act*."

(p) *Julius* v. *Bishop of Oxford*, 5 App. Cas. 214, 225, 232; *Cameron* v. *Wait*, 3 A. R. 175 *per* HARRISON, C. J. O., p. 193; *Darby* v. *City of Toronto*, 17 O. R. 551, *per* OSLER, J. A., at p. 557; Dillon, s. 98; Tiedeman, s 362.

persons entitled to call for the exercise of the power—viz., those interested in the performance of the duty—may, in default of other effectual legal remedy, enforce by mandamus the requirements of the Statute (*q*).

The same rule applies where a duty is imposed by by-law upon a municipal officer. (*r*)

Discretionary powers.

But where the power is conferred in general terms, unaccompanied by any definition of the circumstances under which or the mode in which it must be exercised, the council has a discretion to determine whether it shall be exercised at all, and, (if this question is decided in the affirmative), then further to determine the manner in which and the extent to which they consider it advisable to make use of the authority conferred upon them. In this case, they act as a branch of the Government of the country, and are not compellable by mandamus (*s*), to exercise the power which they possess, nor are they liable to an action for failure to do so (*t*).

If, however, they consider it expedient to avail themselves of their statutory jurisdiction, the further determination of the extent to which and the manner in which this shall be exercised is wholly a matter for their own decision; and (provided they act in good faith and keep within the limits of their statutory powers), their judgment on these points will not be controlled or interfered with by the Courts. (*u*)

Statutory requirements.

But where it is provided that a power shall be exercised in a certain manner, or after certain conditions have been complied with, it becomes necessary to determine whether any, and if any, which of these limitations may be transgressed without entailing the nullification of an act done otherwise than in the prescribed manner or without the prescribed preliminaries. If, in order to

(*q*) *Reg.* v. *Gore District Council*, 5 U. C. R. 357; *Reg.* v. *County of Bruce*, 11 C. P. 575; *Re Peck and County of Peterborough*, 34 U. C. R. 129; *White* v. *Tp. of Gosfield*, 2 O. R. 287; *Clark* v. *Tp. of Palmerston*, 6 O. R. 646; *Re Whitaker and Mason*, 18 O. R. 63; *Re Derby and Local Board of Health of South Plantagenet*, 19 O. R. 51; *Re Tps. of Moulton, Canborough and County of Haldimand*, 12 A. R. 503.

(*r*) *Re Canada Central R. W. Company and Brown*, 35 U. C. R. 391.

(*s*) See *Justices of District of Huron* v. *Huron District Council*, 5 U. C. R. 574.

(*t*) See note (**j**) to s. 554; Jones on Municipal Negligence, c. 4; Dillon, s. 95; *Dannard* v. *Tp. of Chatham*, 24 C. P. 590 (referred to in note (**i**) to s. 562, *post*).

(*u*) See the cases collected in notes (**e**) to s. 551, (**a**) to s. 552, (**d**) to s. 554 and (**h**) to s. 554, and the cases of *Re Hawke and Tp. of Wellesley*, 13 U. C. R. 636; *Re McDougall and Tp. of Lobo*, 21 U. C. R. 80; *Re Forester and Tp. of Ross*, 24 U. C. R. 588; *Re Prince and City of Toronto*, 25 U. C. R. 175, *per* DRAPER, C. J., at page 176; *Little* v. *Village of Wallaceburgh*, 23 Grant 540; *Re Brooks and County of Haldimand*, 41 U. C. R. 381, 3 A. R. 73; *Re Wilson and Tp. of Waingfleet*, 10 P. R. 147; *Colborne* v. *Town of Niagara Falls*, 9 O. R. 168; *Hislop* v. *Tp. of McGillivray*, 12 O. R. 749, 15 A. R. 687, 17 S. C. R. 479; *Darby* v. *City of Toronto*, 17 O. R. 554; *Re Wicksteed and City of Ottawa*, *coram* Falconbridge, J., 27 Jan., 1898*; *Re New Glasgow*, 33 C. L. J. N. S. 513; *Kelly* v. *City of Winnipeg*, 34 C. L. J., N. S. 177, 208; *Haggarty* v. *City of Victoria*, 4 B. C. L. R. 163. See as to the delegation by a municipal council of discretionary powers, note (**d**) to s. 325, (under the sub-head, "Certainty") and (as to referring questions to a vote of rate-payers), *Helm* v. *Tp. of Port Hope*, 22 Grant 273; *Davies* v. *City of Toronto*, 15 O. R. 354. But a purely ministerial duty may be thus delegated; *Lee* v. *Hobbs*, 75 L. T. N. S. 687.

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* This case has not been reported. The following note of it appeared in the newspapers at the time:

Re Wicksteed and City of Ottawa.—Judgment on motion by Richard John Wicksteed heard at Ottawa in December for a mandamus to the municipal corporation of the City of Ottawa commanding them to order the City Solicitor to collect in the civil courts from Hilaire Lauzon and Onesime Sauve the expenses incurred and paid by the city in connection with the Victoria Ward bye-election held in the City of Ottawa in the month of August, 1897, and to indict Lauzon and Sauve and one Godfrey Masson in the criminal courts for conspiracy to defraud the public. *Held*, that mandamus does not lie to enforce the exercise of the discretionary powers of the Council. Motion refused with costs.

Sec. 10.

Note (a).

carry out the essential purpose of the Legislature, strict compliance with the requirements of the Statute appears to be a necessary condition precedent to the exercise of the power, non-observance thereof will be fatal. (*v*)

And the fact that debentures have been issued and sold, or rights acquired under a by-law passed without necessary statutory formalities is not a conclusive answer to a motion to quash such a by-law (*w*). But where the the public interest would suffer if the act were declared to be void, and the essential purpose of the Legislature would not be furthered by insisting upon a strict compliance with the requirements of the Statute, this will generally be excused. (*x*)

Ultra Vires proceedings.

If, however, the municipal council does (or attempts to do) any act which is in excess of its statutory powers, the corporation may be restrained by an action brought by the Attorney-General of the Province, acting on behalf of the public, or by any private individual or corporation to whom this occasions any special legal injury (*a*).

(*v*) *Peters* v. *Board of Police of London*, 2 U. C. R. 543; *Re Nichol and Tp. of Alnwick*, 4 U. C. R. 577; *Canada Co.* v. *County of Oxford*, 9 U. C. R. 567; *Tyler* v. *County of Waterloo*, 9 U. C. R. 572; *Canada Co.* v. *County of Middlesex*, 10 U. C. R. 93; *Billings* v. *Township of Gloucester*, 10 U. C. R. 273; *Re McLeay and Township of Sarnia*, 12 U. C. R. 99; *Re Bryant and Township of Pittsburgh*, 13 U. C. R. 347; *Perry* v. *Town of Whitby*, 13 U. C. R. 564; *Re De La Haye and Township of Gore of Toronto*, 2 C. P. 317; *Re Hawks and Township of Wellesley*, 13 U. C. R. 636; *Hart* v. *Township of Vespra and Sunnidale*, 16 U. C. R. 32; *Ex. p. Hayes and City of Toronto*, 7 C. P. 255; *Clapp* v. *Township of Thurlow*, 10 C. P. 533. *Simpson* v. *County of Lincoln*, 13 C. P. 48; *McIntyre* v. *Township of Etherdie*, 27 C. P. 58; *Canada Atlantic R. W. Co.* v. *City of Ottawa*, 12 A. R. 234, 12 S. C. R. 365; *Grant* v. *Township of Puslinch*, 27 U. C. R. 154; *Gibson* v. *County of Bruce*, 20 C. P. 398; *Re McLean and Township of Ops*, 45 U. C. R. 325; *Re Gallerno and Township of Rochester*, 46 U. C. R. 279; *Re White and Township of Sandwich East*, 1 O. R. 530; *Re Farlinger and Village of Morrisburg*, 16 O. R. 722; *Canada Atlantic R. W. Co.* v. *Township of Cambridge*, 14 A. R. 299; 15 S. C. R. 249; *Re Peck and Township of Amelisburgh*, 17 O. R. 54; *Re Armstrong and Township of Toronto*, 17 O. R. 766; *Re Cooke and Village of Norwich*, 18 O. R. 72; *Re McCormick and Township of Howard*, 18 O. R. 260; *Re Oliver and City of Ottawa*, 20 A. R. 519; *Wilson* v. *Town of Ingersoll*, 25 O. R. 439; and the cases collected in note (a) to s. 632, *post*.

(*w*) *Wiltshire* v. *Township of Surrey*, 2 B. C. R. 79; *McArthur* v. *Town of Port Arthur*, 9 Man. Rep. 588*; *Re Henderson and City of Toronto*, 29 O. R. 669.

(*x*) *Sells* v. *Village of St. Thomas*, 2 C. P. 35; *Re Hill and Township of Walsingham*, 9 U. C. R. 310; *Grierson* v. *Provisional County of Ontario*, 9 U. C. R. 623; *Sutherland* v. *Township of East Nissouri*, 10 U. C. R. 626; *Boulton* v. *Town of Peterborough*, 16 U. C. R. 380; *Re Michie and City of Toronto*, 11 C. P. 379; *Secord* v. *County of Lincoln*, 24 U. C. R. 142, and see the cases collected in note (g) to s. 378, *post*.

(*a*) See *per* STRONG, J., in *Standly* v. *Perry*, 3 S.C.R. 356, at p. 373; *Wilson* v. *Town of Port Hope*, 2 Grant 370; *Mearns* v. *Town of Petrolia*, 28 Grant, 98; *Smith* v. *Village of Peterseille*, 28 Grant, 599; *Smith* v. *Township of Raleigh*, 3 O.R. 405; *Canadian Loan, etc., Company* v. *Tp. of Dysart*, 9 O. R. 495; 12 A R. 80; *Tp. of Elizabethtown* v. *Town of Brockville*, 10 O.R. 372; *Mere-*

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* In *McArthur* v. *Town of Port Arthur*, 9 Man. Rep. 588 (1893), a town in Manitoba had been incorporated under "*The* (Provincial) *Towns Corporation Act*," (C. S. Man. c. 10), s. 377 of which provided that town loans, whether by the issue of debentures or otherwise, should only be made on a by-law of the corporation to that effect. The defendants being indebted to the Ontario Bank (which was pressing for payment), the council passed a resolution referring the matter to the Finance Committee with power to act. As the plaintiffs held in their hands a large amount of the debentures of the town, the Committee arranged to give the Bank an order on the plaintiffs for the amount of the debt. The order was accordingly prepared, signed by the Mayor and Secretary-Treasurer, sealed with the seal of the corporation and sent to the Bank Manager. The action of the Committee was duly reported to the town council and the report was adopted by them. The plaintiffs afterwards accepted the order and paid the amount to the Bank. They then brought this action to recover the amount of the order from the defendants: *Held*, that the transfer was in the nature of a loan of money, and that the plaintiffs could not recover, the loan not having been authorized as required by s. 377, and there being no proof that the requirements of C. S. Man. c. 10, ss. 208, 211, 213 (relating to by-laws and the mode of passing them) had been complied with.

Sec. 10.

Notes (a) (b).

Any municipal ratepayer whose pecuniary or proprietary interest would be affected by an unlawful act on the part of the council may maintain such an action, which (strictly speaking), should be brought on behalf of himself and of all the other ratepayers similarly affected (*b*).

As to setting aside illegal by-laws and resolutions, see s. 378 and the notes thereto.

(b) "**The council.**" "The municipal council is not to be confounded with the corporation. It is the governing body acting on behalf of the corporation for the year. It is moreover a fluctuating body, the council for one year not being identical with the council of another year, even if it should be composed of the same persons." (*c*) Its acts, when they exceed the limit of its statutory powers, do not bind the corporation (*d*).

The council and its members.

Municipal councillors are trustees (*e*). As such, they cannot contract with their *cestuis que trust at* (*f*); and they will be personally liable for corporation funds retained or misapplied (*g*); for profits made by a breach of trust in relation to municipal funds (*h*); for the price of goods ordered for purposes *ultra vires* of the corporation (*i*); for extra expenses occasioned to the municipality by obstructing an inquiry held under s. 428 of "*The Municipal Act*," (*j*)

But when they act with ordinary care and good faith, attempting to serve no interest but the general good of the municipality which they represent, and receiving no personal benefit from moneys illegally paid or invested, they will not be held personally liable therefor when there has been long delay in calling them to account (*k*).

under v. *Township of Howard*, 14 O.R. 22; *Ross* v. *Township of West Wawanosh*, 19 O.R. 294; *Bonnett* v. *City of Toronto*, 22 O.R. 274; *Holt* v. *Tp. of Medonte*, 24 O.R. 302; *Sweeny* v. *Town of Smith's Falls*, 22 A.R. 429; *Smith* v. *City of London*, 13 C.L.T. 90; *Smith* v. *Tp. of Ancaster*, 27 O.R. 276, 23 A.R. 596; *Pitman* v. *City of Toronto*, 28 A.R. 53.

(*b*) In addition to the cases cited in the foregoing note, see *Broglin* v. *Bank of Upper Canada*, 13 Grant, 544; *Wilkie* v. *Village of Clinton*, 18 Grant, 557; *Helm* v. *Town of Port Hope*, 22 Grant, 273; *Wallace* v. *Town of Orangeville*, 5 O.R. 37; *Clark* v. *City of St. Catharines*, 10 P.R. 205; *Jones* v. *Town of Port Arthur*, 16 O.R. 474; *Fleming* v. *City of Toronto*, 20 O.R. 549, 19 A.R. 318; *Jarvis* v. *Fleming*, 27 O.R. 309.

(*c*) *Per* Sir John Robinson, C.J., in *Township of East Nissouri* v. *Horseman*, 16 U.C.R. at p. 583. See also *Reg.* v. *Parentour*, 10 A. & E. 286, *per* Patteson, J., *per* Lord Denman, C.J., in *Reg.* v. *York*, 2 Q.B. 847, and *Hyde (Corp'n. of)* v. *Bank of England*, 46 L.T.N.S. 910. But see now s. 327 of this Act.

(*d*) *Vernon* v. *Town of Smith's Falls*, 21 O.R. 331, *per* Meredith, J. at p. 333.

(*e*) *Morrow* v. *Connor*, 11 P.R. 423.

(*f*) See ss. 80, 83 and the cases there cited.

(*g*) *Patterson* v. *Bowes*, 4 Grant 170; *East Nissouri* v. *Horseman*, 16 U.C.R. 588, *per* Burns, J.; *Township of Chatham* v. *Houston*, 27 U.C.R. 550; and see ss. 418 and 427 of the present Act as to the personal liability of councillors who take part in the illegal application or investment of certain corporate funds and note (a) to s. 538 as to money illegally received by way of remuneration for services.

(*h*) *City of Toronto* v. *Bowes*, 4 Grant 489, 6 Grant 1, 11 Moore P. C. C. 463.

(*i*) *Thomas* v. *Wilson*, 20 U.C.R. 331.

(*j*) *Tp. of East Nissouri* v. *Horseman*, 16 U.C.R. 586.

(*k*) *Barter* v. *Kerr*, 23 Grant 367.

TITLE II.—FORMATION AND ALTERATION OF CORPORATIONS.

DIV. I.—VILLAGES, TOWNS AND CITIES (ss. 11-28).
DIV. II.—TOWNSHIPS (ss. 29-37).
DIV. III.—COUNTIES (ss. 38-40).
DIV. IV.—PROVISIONAL COUNTY CORPORATIONS (ss. 41-54).
DIV. V.—MATTERS CONSEQUENT UPON THE FORMATION OR ALTERATION OF CORPORATIONS (ss. 55-65).

Synopsis. The sections comprising this Title are ill-arranged as compared with those of the Act of 1849. See *ante* at p. 11. Instead of commencing (as might naturally have been expected) with the township municipality, and explaining how it is formed, the sections relating to townships only begin at s. 29 (Div. II.), and even then the prior existence of the corporation is assumed and no account whatever is given of the mode of its creation. Sections 29, 33-36 relate to the formation of unions of townships, ss. 31 and 32 to the dissolution of such unions; s. 37 provides for the formation of a "hamlet"—a nondescript creation, originally, perhaps, designed to permit township councils to exercise within the municipality certain powers as to "local improvements" which, when the section was enacted in 1885, belonged only to cities, towns and villages.

Section 11 provides for the incorporation of a village by by-law of the county council, and s. 13 for the adjustment of assets and liabilities between the new corporation and the original municipality or municipalities of which it had formerly been a part. Sections 12, 16, 17, 18, 22, 24 and 25 relate to the area of village, town and city corporations, and to the procedure for increasing or diminishing such area; ss. 14, 15, 16, 17, 18, 24 and 25 to the new municipal arrangements rendered necessary by any of the proceedings aforesaid.

The "unincorporation" of a village is provided for by ss. 15 (4) and 19; the erection of a village into a town or of a town into a city by s. 21, and the annexation of adjacent villages or towns to a town or city by s. 26. Section 27 prescribes the steps necessary for the separation of a town from the county in which it is territorially situate, and s. 28 for its re-union thereto.

Sections 38-40 (Div. III.) relate to the formation of counties and unions of counties and, (in the latter case) to the relative status of the counties forming such a union.

Sections 41-54 (Div. IV.) provide for the separation of counties previously united; and the remainder of the Title (ss. 55-65, forming Div. V.) makes such provisions for the adjustment, etc., of assets and liabilities, the continuance in force (temporarily or otherwise), of by-laws, offices, bonds of security, etc., and the completion of pending works and improvements, as may have been rendered necessary by any of the changes of municipal status or relation above referred to.

DIVISION I.—VILLAGES, TOWNS AND CITIES.

(ss. 11-28.)

When and How a Village may be Incorporated.

When population 750 county council may incorporate as a village, and name the place and returning officer for first election.

11.—(1) When the census returns of an unincorporated village, with its immediate neighbourhood, taken under the direction of the council or councils of the county or counties in which the village and its neighbourhood are situate, shew that the same contain over 750 inhabitants, and when the residences of the said inhabitants are sufficiently near to form an incorporated village, then, on petition by not less than 100 resident freeholders and tenants of the village and neighbourhood of the age of twenty-one years and over, of whom not fewer than one-half shall be freeholders, the council or councils of the county or counties in which the village and neighbourhood are situate shall, by by-law, erect the village and neighbourhood into an incorporated village, apart from

the township or townships in which the same are situate, by a name, and with boundaries to be respectively declared in the by-law; and shall name in the by-law the place for holding the first election, and the returning officer who is to hold the same. 55 V. c. 42, s. 9 (1); 60 V. c. 15, *Sched.* C. (2).

Sec. 11. Notes (a) (b).

In *The Municipal Act of 1849* (12 V. c. 81, s. 58) from which the provisions of this section were originally taken, the words used are "any police or other village, hamlet, or place not incorporated by name under this Act." The number of inhabitants then required before a village could be incorporated was 1,000. This was reduced to 750 by 20 V. c. 67 (1856), and under that Act as well as under the former one, the village was incorporated by Proclamation of the Governor-in-Council. *The Municipal Act of 1858*, 22 V. c. 99, s. 10, first transferred the power of incorporation to the county council, in whom it has ever since been vested. "*The Public Schools Act*," (R. S. O. c. 292) s. 49, provides that the incorporation of part of one or more school sections in a city, town or village shall not *per se* alter the boundaries of such school sections.

(a) **"Census returns."** By s. 533 (1) every county, city, town, village or township council is authorized to pass by-laws for taking a census of the inhabitants or of the resident male freeholders and tenants in the municipality. There is no express authority for taking the census of part only of the municipality over which the council has jurisdiction. Municipal census.

(b) **"Unincorporated village."** The words "unincorporated village," employed here and in ss. 37, 661 and 714, may be looked upon as the equivalent of the word "town," or "village," used in several English Acts of Parliament to indicate a collection of houses. It is a matter of some difficulty to give a definition of "town" or "village," when not incorporated, so as to cover all cases. In Coke's time "village" and "town" seem to have been synonymous, and in Co. Litt. it is said that "a place cannot be a town in law unless it hath, or in times past hath had a church, and celebration of Divine service, sacraments and burials." (115 B.) In *Reg.* v. *Fisher*, 8 C. & P. 612, PATTESON, J., says: "It is very difficult to define what is a 'town' in ordinary meaning. It varies from day to day by the erection of new houses." In *Elliott* v. *South Devon R. W. Co.*, 2 Ex. 729, PARKE, B., says: "It would appear that the word 'town' is not to be understood in its strict legal interpretation as a township having a church or a constable, but rather as a place containing a number of houses congregated together—an inhabited spot where the occupation is continuous," and, *inter* ALDERSON, B., in the same case) "What the walls of towns were in ancient times (*i.e.*, a boundary)—continuous buildings are now. By continuous buildings I do not mean buildings that touch each other, but buildings so reasonably near that the inhabitants may be considered as dwelling together. Within the ambit surrounded by such houses is 'town,' and where the railway passes through that ambit it passes through town." *Ib.* 730, 731. In *Regina* v. *Cotth*, 16 Q. B. 412, 416, the Recorder, (RUSSELL GURNEY, Esq.,) charged the jury that a town is generally a congregation of houses, and that the jury were to say whether the spot in question was surrounded by houses so reasonably near" that the inhabitants might be fairly said to dwell together." Referring to this charge, Lord CAMPBELL, C. J. (in the same case at p. 420), said that the learned Recorder had, with much felicity, comprised in a few words all that was material in the language of the Barons of the Exchequer in *Elliott* v. *South Devon R. W. Co.* as to the definition of the word "town." His definition was also approved in *Milton and Sittingbourne Commissioners* v. *Faversham*, 10 B. & S. 548; and in *London & South Western R. W. Co.* v. *Blackmore*, L. R. 4 H. L. 610. In the last-mentioned case lands situated close to a railway station, (near Teddington,) but not continuously built upon, were held not to be within the town. "Where there is such an amount of continuous occupancy of the ground by houses that persons may be said to be living in as it were the same town or place, continuously, then—for the purposes of the Railway Acts, and according to the popular sense of the word, and not the legal sense of the word, which would not give at all a sensible definition—the place may be said to be a town" (*a*). In the same case (*b*) Vice-Chancellor STUART said: "Four or five surveyors and the solicitor of the company appear to have sworn that they consider Teddington a town; but none of them state anything in support of that opinion except that there are in Teddington a number

"Village" and "Town," meaning of.

(*a*) *Per* Lord HATHERLEY, L. R. 4 H. L. at p. 615.

(*b*) *Blackmore* v. *London and South Western R. W. Co.*, 19 L. T. N. S. 5.

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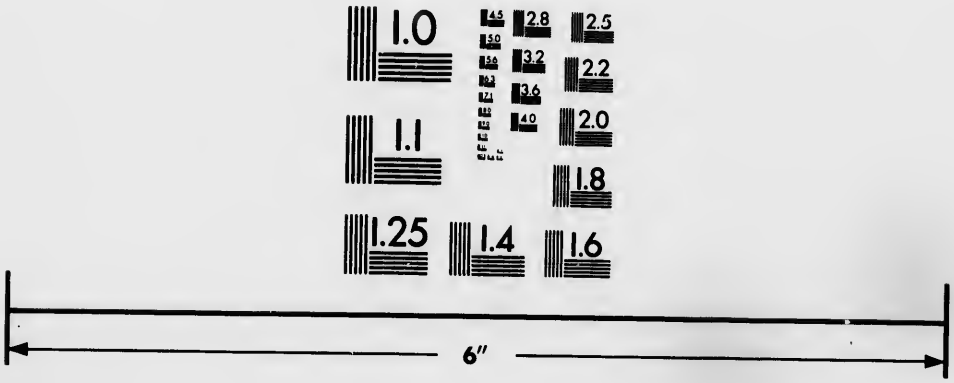

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Sec. 11. Notes (b)-(l).

of shops, such as milliners', grocers', bakers', butchers', and the like and from such reasoning they arrive at the conclusion that Teddington is a town. The fallacy of this conclusion, however, is made quite apparent from the maps and plans which have been referred to in the case; and from which no man of ordinary sense and discernment can fail to see that Teddington is not anything more than what is *usually and properly called a village.*"

The meaning of the word "village" was much discussed by the House of Lords in *Waterpark* v. *Fennell*, 7 H. L. Cas. 650, where BRAMWELL, B., says, (p. 661): "Its primary meaning is to include the houses, gardens, streets, village-green, and similar premises only, but not to include 1,700 acres of waste land."

Census, how to be taken.

(c) **"Under the direction of the council of the county."** It seems that a by-law incorporating a village is not necessarily illegal merely by reason of the fact that the census was in reality taken before the passing by the county council of the by law authorizing the enumeration; but where the census was shewn to be wholly unreliable and untrue in fact, effect was given to this objection (*e*).

"Inhabitants."

(d) **"Inhabitants."** The word "inhabitants" has no definite legal meaning, its signification varying according to the subject matter (*d*).

Area of village.

(e) **"Sufficiently near."** See s. 12.

Freeholders.

(f) **"Freeholders."** By "freeholder" is meant a person actually seised of an estate of freehold, legal or equitable. The term does not include persons in possession of land under contracts for the acquisition of the freehold upon the fulfilment of certain conditions (*e*).

Householders.

(g) **"Resident tenants."** The word "tenants" was substituted for "householders" by 60 V. c. 15, Sched. C. (2). It is presumed that the qualification of the petitioners should be evidenced by the last revised assessment roll. (See sub-sec. 2.)

Mandamus to County Council.

(h) **"The council shall."** The word "shall" is here imperative; and, this being a public duty, and there being no other means of compelling its performance, it would no doubt be enforced by mandamus, after a formal demand and an absolute refusal, or after a notification to the council that, if they refuse to pass a by-law, an application will be made for a mandamus (*f*), and neglect on the part of the council to pass the by-law within a reasonable time thereafter.

Power to create a corporation.

(i) **"An incorporated village."** It has been sometimes said that only the Crown can create a corporation; but this is not correct (*g*). In *Hodge* v. *Regina*, 9 App. Cas., 117, it was contended by the appellant (on the authority of *Reg.* v. *Burah*, 3 App. Cas., 98) that a Provincial Legislature could not create a new legislative power, and the maxim, "*Delegatus non potest delegare*," was relied on. But the Privy Council, in giving judgment, said:

> "It appears to their Lordships that the objection thus raised by the appellants is founded on an entire misconception of the true character and position of the Provincial Legislatures. They are in no sense delegates of, or acting under any mandate from, the Imperial Parliament. When "*The British North America Act*" enacted that there should be a Legislature for Ontario, and that its Legislative Assembly should have exclusive authority to make laws for the Province and for provincial purposes in relation to the matters enumerated in s. 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parlia-

(*e*) *Re Fenton and County of Simcoe*, 10 O. R. 27.

(*d*) *Rex* v. *Mashiter*, 6 A. and E., 153, *per* LITTLEDALE, J., at p. 165; Maxwell, p. 77. See *ante*, s. 5, note (a).

(*e*) *Re Flatt and Counties of Prescott & Russell*, 18 A. R. 1.

(*f*) See note (a) to s. 10.

(*g*) See *Fazakey* v. *Wiltshire*, 1 Stra., 462; also Imp. Stat. 35-36 V. c. 24, empowering Charity Commissioners by certificate to incorporate the trustees of any public charity.

ment, but authority as plenary and as ample, within the limits described by s. 92, as the Imperial Parliament in the plenitude of its power possessed and could bestow. Within these limits of subject and area, the Local Legislature is supreme, and has the same authority as the Imperial Parliament or the Parliament of the Dominion would have had, under like circumstances, to confide to a municipal institution or body of its own creation, authority to make by-laws or resolutions as to subjects specified in the enactment, and with the object of carrying the enactment into operation and effect (*h*)."

But the procedure laid down in the Statute should be strictly adhered to, for "the erection of corporations is a prerogative act and . . . . the method prescribed by the Legislature should be substantially followed. In such cases, form is of the substance, and blunder in form means invalidity (*i*)."

(j) **"By by-law."** The by-law may be in the following form:

Form of by-law.

"Whereas the census returns of the unincorporated village of ..... with its immediate neighbourhood, taken under the direction of this council, show that the same contains over 750 inhabitants, and that the residences of such inhabitants are sufficiently near to form an incorporated village;

And whereas ..... resident freeholders and tenants of the said village and neighbourhood, of the age of 21 years and over, of whom ....are freeholders, have petitioned for the erection of the said village and neighbourhood into an incorporated village, and it is expedient to grant the prayer of the said petition:

Therefore the municipal council of the county (*or* united counties) of ..... enacts as follows:

1. From and after the ..... day of ..... 19.., the unincorporated village of ..... with its immediate neighbourhood, shall be an incorporated village apart from the township (*or* townships) of ..... by the name of the village of ....and with the following boundaries, (*Here define the proposed boundaries*).

2. The first election for a reeve and four councillors for the said village shall be held on the last Monday of December next (*j*) and (in case of a poll) on the first Monday of January following at ..... and A. B., of the township of ....., (*occupation*) shall be the returning officer to hold the same."

Motion to quash.

On a motion to quash, inquiry may be had on affidavits as to the existence of the facts constituting the statutory conditions precedent to the passing of the by-law—(*i.e.*, as to the truth of the above recitals)—and as to any illegality in the manner of passing it. (*k*)

Incorporation of village within one mile of city of 100,000 population or over.

(2) In case the territory sought to be incorporated, or any part thereof lies within one mile of the limits of a city having a population of 100,000 or more, the petition shall be signed by not less than two thirds of the freeholders and resident tenants within the district sought to be incorporated, of the age of twenty-one years and over, whose names appear on the last revised assessment roll, and who have been resident within the territory sought to be incorporated for at least four

(*h*) *Per* Sir BARNES PEACOCK, 9 App. Cas. at p. 132. See also *Powell* v. *Apollo Candle Co.*, 10 App. Cas. 282.

(*i*) *Per* BOYD, C., in *Trustees Roman Catholic School Section No. 10, Arthur* v. *Township of Arthur*, 21 O.R. 69, 70, 71.

(*j*) See ss. 95, 96, 119. But if this is Christmas Day then the preceding Friday must be named (s. 124.)

(*k*) *Re Fenton and County of Simcoe*, 10 O. R. 27, and *see post*, section 378 note (**g**). See also *Trustees R. C. Separate School Sec. No. 10, Arthur* v. *Township of Arthur*, 21 O. R. 60.

Sec. 11.
Sub sec. 2 4 2 4.
Notes (j) (k).

months immediately prior to the signing of said petition, and of whom not fewer than one-half shall be freeholders. 55 V. c. 42, s. 9 (2); 60 V. c. 15, *Sched.* C (3); c. 45, s. 59.

Form of petition.

(3) If the district sought to be incorporated or any part thereof has been laid out in lots on a registered plan, each petitioner shall state the number of the lot on said plan owned or occupied by him, and shall further set out whether he is a freeholder or a resident tenant. 55 V. c. 42, s. 9 (3); 60 V. c. 15, *Sched.* C (4).

By-law and notice of petition.

(4) No by-law shall be passed under this section unless the petition therefor has been lodged with the clerk of the county at least one month before the meeting of the council at which the same is to be considered, nor unless public notice has, within two months previous to the meeting of the council at which the same is to be considered, been published at least once a week for two successive weeks in some newspaper at or nearest to the locality sought to be incorporated; and such notice shall set forth a description of the area intended to be embraced in the village. 55 V. c. 42, s. 9 (4).

These subsections (2) (4) were added to the original section in 1891 by 54 V. c. 42, s. 2, in consequence of an application made to the county council of the County of York to incorporate a village (Chester) adjacent to the City of Toronto.

(k) "Last revised assessment roll." See section 3.

Area of town or village limited.

12.—(1) No town or village incorporated after the passing of this Act, the population of which does not exceed 1,000 souls, shall extend over or occupy within the limits of the incorporation an area of more than 500 acres of land.

Regulations as to addition to area.

(2) No town or village already or hereafter incorporated, and containing a population exceeding 1,000 souls shall make any further addition to its limits or area, except in the proportion of not more than 200 acres for each additional 1,000 souls, subsequent to the first 1,000.

Existing towns or villages, area of which exceeds proportionate limit, not to be enlarged.

(3) In the case of towns or villages now incorporated, wherever the area thereof exceeds the proportionate limit above prescribed, to wit, in all cases where the area exceeds the proportion of 500 acres for the first 1,000 souls, and 200 acres for every subsequent additional 1,000, the said towns or villages shall not be permitted to make any further addition to their limits until their population has reached such a proportion to their present area.

How population and area may be reckoned.

(4) But in all cases, the persons then actually inhabiting the land about to be included within the limits of the town or village, may, for the purpose of such extension, be held and reckoned as among the inhabitants of such town or village; and the land occupied by streets or public squares may be excluded in estimating the area of the town or village. 55 V. c. 42, s. 10.

Taken from the Act of 1866, 29-30 V., c. 51, s. 10.

Secs. 13, 14, (1, 2)

Notes (a) (b) (a) (b) (a).

(a) A village municipality in the Province of Quebec must contain at least forty inhabited houses within an area not exceeding sixty superficial arpents, (Quebec Mun. Code, s. 51). In Nova Scotia a town must contain 700 inhabitants within an area of 500 acres, (54 V. c. 39, s. 1 (N. S.)) In Manitoba a village must contain 500 inhabitants within a square mile; but if the population exceeds 1,000, 160 acres may be added for each additional 1,000 inhabitants, (R. S. Man. (1891) c. 100, ss. 9, 12); towns must contain 1,500 inhabitants for the first square mile; but if the population exceeds 2,000, 160 acres may be added for each additional 1,000 inhabitants. In British Columbia a city or town must contain 100 adult male inhabitants within an area not exceeding 2,000 acres, (R. S. B. C. (1897) c. 113, s. 3.)

(b) **"The land occupied by streets or public squares may be excluded ... ."**

These words were added to the section in 1873 by 36 V. c. 48, s. 8.

Disposition of property and payment of debts when a village is separated from a township.

13. In cases where a village is separated from the township or townships in which it is situate, or where the area of a village is reduced under section 18, the provisions of this Act for the disposition of the property, and the payment of debts, upon the dissolution of a union of townships, shall be applicable as if the localities separated had been two townships; and the councils of the village and of the township or townships shall respectively perform the like duties as by such provisions devolve upon the councils of separated townships, the said village being considered as the junior township. 55 V. c. 42, s. 11; 60 V. c. 15, *Sched.* C (5).

Taken from 24 V. c. 39, s. 1, and 29-30 V. c. 51, ss. 60 (1) and 61 (1).

(a) **"The provisions of this Act for the disposition of property and the payment of debts."** The provisions referred to are those of s. 32 as to the disposition of property, and of ss. 58 to 61 inclusive, as to the payment of debts.

(b) **"The councils shall respectively perform."** See note (h) to s. 11.

Where the village lies within two or more counties, it shall be annexed to one of them by the county councils or, in case of difference, by the Lieutenant-Governor.

14.—(1) Where the newly incorporated village lies within two or more counties, the council of the counties shall, by by-law, annex the village to one of the counties; and if within six months after the petitions for the incorporation of the village are presented, the councils do not agree to which county the village shall be annexed, the wardens of the counties shall memorialize the Lieutenant-Governor in Council setting forth the grounds of difference between the councils; and thereupon the Lieutenant Governor may, by proclamation, annex the village to one of the counties.

In case of failure of councils to act, freeholders, etc., may petition Lieutenant-Governor.

(2) In case the wardens do not, within one month next after the expiration of the six months memorialize the Lieutenant-Governor in Council as aforesaid, then 100 of the freeholders and resident tenants on the census list may petition the Lieutenant-Governor in Council to settle the matter, and thereupon the Lieutenant-Governor may, by proclamation, annex the incorporated village to one of the counties. 55 V. c. 42, s. 12; 60 V. c 15, *Sched.* C (6): c. 3, s. 3.

Taken from the Act of 1858, 22 V. c. 99, s. 11.

(a) **"The councils of the counties shall by by-law annex."** See note (h) to s. 11.

Sec. 15.
Sub secs. 1-4.
Notes (a)-(c).

Liability of territory detached from one county and annexed to another.

15—(1) In case a locality is, under section 14 of this Act, detached from one county and annexed to another, the council of the county to which the locality is annexed and the council of the village shall agree with the council of the county from which the locality is detached, as to the amount (if any) of the county liabilities which should be borne by the locality so detached and the times of payment thereof.

In case councils do not agree.

(2) If the councils do not, within three months of the separation, agree in respect of the said matter, the same shall be determined by arbitration under this Act; and the amount (if any) so agreed or determined shall become a debt of the county to which the locality is attached, and the said locality shall continue subject to all rates which had been, prior to the separation, imposed for the payment of county debts or for the payment of bonuses or aids granted by sections of the county to railways, or for the payment of local improvement debts, until the amount thereof has been paid by the proceeds of such rates.

Rates for old debts.

(3) The council of the county or of the village, as the case may require, shall pass such by-laws and take such proceedings as are necessary for levying the said rates; and shall, unless the said council has previously paid the amount to the municipality so liable, pay over the same when collected, to the municipality which is liable for the debt on account of which the rates were imposed.

Annulment of incorporation.

(4) Where the councils do not agree as aforesaid, the Lieutenant Governor in Council before proclamation has been made, upon a petition of a majority of the resident freeholders and resident tenants of the village, and with the assent of at least two of the councils of the townships in which the village is situate, annul the incorporation of the village and restore the same to its former position as an unincorporated village; and the same shall thereupon be reinstated in its former position to the same extent as if no proceedings for incorporation had ever been taken. 55 V. c. 42, s. 13; 60 V. c. 15, *Sched.* C (7).

Taken from 37 V. c. 16, s. 1 (1874).

Local liabilities.

(a) Locality, under our system of municipal government, is a basis for taxation. Each part of a county should therefore bear its proper proportion of the taxation of the whole county; and where a locality is detached from one county to another, some mode of adjustment of existing liabilities becomes indispensable. (a).

Expenses under Registry Act.

(b) "**County liabilities.**" No provision is made for the expenses rendered necessary by the transfer of territory from one Registry Division to another. It is presumed that it would be the duty of the county receiving additional territory to pay these expenses. See "*The Registry Act*," (R.S.O. c. 136), s. 32.

(c) "**By arbitration under this Act.**" See ss. 449, 450, 457-467.

(a) See Dillon, s. 185. *McKee v. Huron District Council*, 1 U.C.R. 368; *Re North Dumfries v. County of Waterloo*, 12 U.C.R. 507; *County of Wellington v. Tp. of Waterloo*, 8 C.P. 358; *County of Wellington v. Township of Wilmot*, 17 U.C.R. 82.

(d) "**Bonuses or aids granted by sections of the county to railways.**" Many of the railway charters granted by the Province of Ontario immediately after Confederation contained provisions empowering a majority of the assessed freeholders in any portion of a local municipality, (or in the case of a county municipality the reeves and deputy-reeves for those townships which might be desirous of granting a bonus) to petition the council to pass a by-law aiding the railway and if such a by-law was approved by the electors, the aid so petitioned for was granted by the issue of debentures of the municipality, and the petitioning sections thereof were assessed for the amount necessary to repay the debt. (*b*).

(e) "**Local Improvement debts.**" See ss. 664-690, and also "*The Municipal Drainage Act*," (R. S. O. c. 226.) *post*, Vol. II.

16. In case the council of any village petitions the Lieutenant-Governor to add to the boundaries thereof, the Lieutenant-Governor may, (subject to the provisions of section 12 of this Act), by proclamation, add to the village any part of the localities adjacent, which, from the proximity of the streets or buildings therein, or the probable future exigencies of the village, it seems desirable to add thereto; and in case the territory so added belonged to another county, it shall thenceforward, for all purposes, cease to belong to such other county, and shall belong to the same county as the rest of the village. 55 V. c. 42, s. 14. Addition to villages by Lieutenant-Governor.

The first part of this section is taken from the Act of 1883, 42 V. c. 81, s. 115. The words "and in case the territory so added," etc., to the end of the section were added by 40 V. c. 7, S-Sect. A. (167) (a) As to the procedure at the first municipal election after the proclamation see s. 36.

(a). "**The boundaries thereof.**" The original boundaries of the village must have been declared in the by-law creating it. See *ante*, s. 5, note (c): and *post*, s. 532 (1). "*The Public School Act*" (R. S. O. c. 292, s. 49), provides that the incorporation into a city, town or village of portions of one or more rural school sections shall not alter the boundaries of such school section or sections.

17. Upon the application of the council of any city, town or village and of the owners of any lands therein wholly used for farming purposes, the Lieutenant-Governor in Council may by proclamation, exclude and detach such lands from the said city, town or village and annex the same to some adjoining municipality, upon such terms as have been agreed upon between the council of such adjoining municipality and that of the said city, town or village and the owners of the said lands, or upon such terms as may have been determined by arbitration in case they cannot agree upon the terms. 57 V. c. 50, s. 1. Separation of farm lands from cities, towns or village.

(a) This section applies to every case of a proposed reduction of the area of a city, town or village, whereas s. 18 applies only to certain villages and towns. The application under this section to the Lieutenant-Governor must be made by both the municipal council and the owners of the farm lands proposed to be detached from the municipality: and the terms upon which the detached municipality is to be annexed to another municipality, must, prior to the application, have been settled by agreement or by arbitration under ss. 150 *et seq.*

(*b*) See 31 V. c. 42, s. 17, (Port Whitby and Port Perry R.W. Co.): 32 V. c. 66, s. 21, (Kingston and Frontenac R.W. Co.): 33 V. c. 30, s. 7, (Toronto, Simcoe and Muskoka Junction R.W. Co.): 33 V. c. 31, s. 1, (Port Hope, Lindsay and Beaverton R.W. Co.): 33 V. c. 34, s. 7 (Canada Western Air Line R.W. Co.): 33 V. c. 37, s. 21, (Kingston and Madoc R.W. Co.): 33 V. c. 41, s. 5, (Toronto, Grey and Bruce R.W. Co.): 33 V. c. 42, s. 13, (Toronto and Nipissing R.W. Co.): 34 V. c. 37, s. 8 (Wellington, Grey and Bruce R.W. Co.): 34 V. c. 38, s. 20, (Credit Valley R.W. Co.), etc.

Notes 18. 19.
Sub secs. 2-4.
Notes (a)-(c)-(a).

Reducing the area of villages or towns.

18.—(1) The county council of any county or union of counties, upon the application, by petition, of the corporation of any village or of any town not withdrawn from the county, having a population, as ascertained by the last municipal enumeration, not exceeding 2,000, and whose outstanding obligations and debts do not exceed double the net amount of the yearly rate then last levied and collected therein, may, in their discretion, by by-law in that behalf, reduce the area of the village or town by excluding from it lands used wholly for farming purposes: and the lands so excluded shall form part of such township or townships as may be designated in the by-law. 55 V. c. 42, s. 15: 60 V. c. 15, *Sched.* C. (8).

New limits to be defined.

(2) The by-law shall define, by metes and bounds, the new limits intended for the village or town.

Population not to be reduced below 750.

(3) No village or town shall, by such change of boundaries, be reduced in population below the number of 750 souls.

Municipal rights of village or town not to be interfered with.

(4) The municipal privileges and rights of the village or town shall not be thereby diminished, or otherwise interfered with as respects the remaining area thereof. 55 V. c. 42, s. 15, (2-4).

Taken from the Act of 1886 (49-50 V. c. 51, s. 10 (5) which applied only to villages; extended by 45 V. c. 23, s. 2, (1882), to towns not separated from the county and having a population not exceeding 2,000. The words "and the land so excluded" etc. at the end of subsection 1 were added in 1897, by 60 V. c. 15, Sched. C. (8).

(a) "**Last municipal enumeration.**" This probably refers to a census taken under ss. 20 and 533 (1) See *ante* s. 4, note (j) and *post*, s. 21 note (a).

(b) "**Not exceeding 2,000.**" The minimum population of every town incorporated since 1873. See *post*, s. 21, and note (c) thereto.

(c) "**The municipal privileges and rights of the . . . town shall not thereby be diminished.**" This provision, by which a municipality, though it may contain only 750 inhabitants, the minimum population of a village (s. 9)—may still retain the status and rights of a town, was probably not intended to have that effect by the draftsman of the Statute 45 V. c. 23, in which the enactment first occurs.

A village may become unincorporated and may be annexed to an adjoining municipality.

19.—(1) In case the council of a village, by a two-thirds vote of the members thereof, passes a resolution declaring that it is expedient that the village should become unincorporated, and the resolution is approved by the electors in the manner required for by-laws creating debts: and in case the council of an adjoining municipality passes, or the councils of two or more of the adjoining municipalities pass a resolution or resolutions approving of the territory comprised in the village being annexed to such municipality or municipalities, the Lieutenant-Governor in Council may issue a proclamation annulling the incorporation of the village, and annexing the territory included therein to such municipality or municipalities. 55 V. c. 42, s. 16 (1).

Taken, except subsection 1 (a) from "*The Consolidated Municipal Act, 1883*" (46 V. c. 18, s. 16.)

(a) "**A two-thirds vote of the members thereof.**" Since a village council consists of five members, (s. 72), four of these must vote for the resolution.

(b) "**In the manner required for by-laws creating debts.**" See ss. 384-395.

(c) "**The council of an adjoining municipality.**" The *electors* of the adjoining municipality are not required to vote upon the resolution.

"Electors" meaning of.

(*a*) The term "electors" in the preceding subsection shall include all freeholders and all leaseholders whose leases extend over a period of not less than five years from the date when the said vote is taken, provided the names of such freeholders and leaseholders are entered in the last revised assessment roll of the said municipality.

This subsection was added in 1889 by 52 V. c. 36, s. 2.

(d) "**Provided the names of such freeholders and leaseholders.**" It did not clearly appear from the words of the original section, 52 V. c. 36, s. 2 (= 55 V. c. 42, s. 16 (*bb*)) whether this requirement applied to the names of freeholders as well as to those of householders. The altered form of expression removes this ambiguity. See note (h) to s. 2, *ante*.

Adjustment of assets and debts.

(2) If the said territory is annexed to one municipality, such municipality shall be liable for the debts of the village, and shall be entitled to its assets, but, if the territory is annexed to two or more municipalities, the councils of such municipalities shall, before the proclamation issues, agree between themselves, or determine by arbitration, as to the proportion of the debt of the village to be borne by them respectively, and as to the assets, or proportion of the assets, of the said village which the municipalities shall respectively receive; and the municipalities shall respectively be liable each for its proportion of such indebtedness as determined by the agreement or award.

May be by a proportion.

(3) If the agreement or award, instead of stating the proportion of the debt to be borne as aforesaid, states the shares so to be borne in sums of money, then the fraction which is formed by taking the sum named as the amount to be borne by any municipality as the numerator, and the aggregate of the sums named as the amounts to be borne by the said municipalities as the denominator, shall be the proportion of the entire debt to be borne by such municipality, whether or not the debt is accurately stated in the agreement or award.

Special rate may be imposed.

(4) It may be part of the arrangement between the village and the municipality or municipalities that the village shall, for a time, be charged with a special rate, or that it shall be relieved of any rate, or part of a rate, imposed upon the rest of the municipality with which the village, or part of it, is to be united.

If municipalities are in different counties.

(5) In case the municipalities proposing to receive parts of the territory comprised in the village are in different counties, the provisions of this section may be acted upon with the assent (declared by resolution) of the councils of such counties, and unless such councils have previously agreed, or within three months from the issue of a proclamation under this

Secs. 19-21. Sub-secs. 5, 6 1. Notes (e)-(a) (a) (c).

section agree as to the proportions in which the share of the county debt which is referable to such village is to be borne by the several counties, the same shall be determined by arbitration under this Act,

(e) "**Share of the county debt referable to such village.**" It is presumed that this would include any expenses rendered necessary by the transfer of territory from one Registry Division to another. See *ante*, s. 15, note (b).

If one of them a city or town.

(6) Where part of the village is to be attached to a city or separated town, the city or separated town shall be deemed a county within the meaning of the next preceding subsection. 55 V. c. 42, s. 16; 60 V. c. 3, s. 3.

Census of towns and villages.

20. A census of any town or village may at any time be taken under the authority of a by-law of the council thereof. 55 V. c. 42, s. 18.

(a) The power of taking a census of the inhabitants or of the resident male freeholders and tenants in the municipality is also conferred by s. 533 (1) and see *ante*, s. 4, note (h), *post*, s. 21, note (a).

Town containing over 15,000 inhabitants may be erected into a city; and village containing over 2,000 into a town.

21. In case it appears by the census return taken under such by-law, or under any statute, that a town contains over 15,000 inhabitants, the town may be erected into a city; and in case it appears by such return that a village contains over 2,000 inhabitants, the village may be erected into a town; but the change shall be made by means of and subject to the following proceedings and conditions:

Taken (in substance) from the Act of 1858 (22 V. c. 99), s. 15; "2,000" (in line 5) having been substituted for "3,000" in 1873 see note (c), *supra*.

Notice to be given.

1. The council of the town or village shall, for three months after the census return, insert a notice in some newspaper published in the town or village—or, if no newspaper is published therein, then the council shall, for three months, post up a notice in four of the most public places in the town or village, and insert the same in a newspaper published in the county town of the county in which the town or village is situate, or if there is no such newspaper, then in the newspaper published nearest to the said town or village—setting forth in the notice the intention of the council to apply for the erection of the town into a city, or of the village into a town, and stating the limits intended to be included therein;

Statutory census.

(a) "**Or under any Statute.**" "The census and statistics" forms one of the classes of subjects within the exclusive legislative authority of the Parliament of Canada. "*B. N. A. Act*," s. 91 (6). "*The Census Act*" (R. S. Ca. c. 58,) s. 3, provides that a census shall be taken in 1891 and in every tenth year thereafter. See also note (j) to s. 4, *ante*, and ss. 20 and 533 (1).

Minimum population of a city.

(b) "**15,000 inhabitants.**" This was the minimum population originally required for a city by the Act of 1849, (12 V. c. 81), s. 84. It was reduced to 10,000 in 1853 by 16 V. c. 181, s. 19, but by the Act of 1858 was again increased to 15,000, at which figure it has ever since remained.

Of a town.

(c) "**2,000.**" The population necessary to constitute a town was fixed at 3,000 by the Act of 1849, (12 V. c. 81), s. 79, and so continued up to 1873, when it was reduced to 2,000 by 36 V. c. 48, s. 15.

(d) "**A notice.**" This may be in the following form:

"Take notice that whereas it appears by the census returns taken under by-law No. ..... of the village (*or* town) of ..... passed on the ..... day of ....., 19 ..... (*or* under "*The Census Act*,"), that the said village (*or* town) contains over 2,000 (*or* over 15,000) inhabitants.

It is the intention of the council of the said village (*or* town) after three months from the date of this notice to apply to His Honour the Lieutenant-Governor in Council for the erection of the said village (*or* town) into a town (*or* city).

And further take notice that the limits intended to be included in the said town (*or* city) are as follows: (*Here define the proposed limits*).

And that the proposed name of the said town (*or* city) is....."

(e) "**For three months.**" All the requirements of the section should be strictly observed (*a*). The notices posted up in the town or village should be kept posted during the whole three months. The newspaper notice should be inserted at least weekly during the same period. Notice.

(f) "**The limits intended to be included therein.**" In view of the importance of an accurate definition of municipal boundaries, the proposed limits should be clearly defined (*b*). Limits.

2. The council of the town or village shall cause the census return to be certified to the Lieutenant-Governor in Council, under the signature of the head of the corporation, and under the corporate seal, and shall also cause the publication aforesaid to be proved to the Lieutenant-Governor in Council; then, in the case of a village, the Lieutenant-Governor may, by proclamation, erect the village into a town by a name to be given thereto in the proclamation: Census returns to be certified, and publication of notice proved. Village may be made a town by proclamation.

(g) Two things are here made necessary. First, that the census return should be certified to the Lieutenant-Governor in Council; secondly, that proof of the publication of the notice referred to in note (d), *supra*, should be adduced to the Lieutenant-Governor in Council. The certificate as to the census return must not only be under the seal of the corporation, but also under the signature of the head of the corporation. No provision is made as to the mode of proving the due publication of the required notice, or whether it shall be done by certificate or affidavit; this is left entirely to the discretion of the Lieutenant-Governor in Council.

3. In case the application is for the erection of a town into a city, the town shall also pay to the county of which it forms a part, such portion, if any, of the debts of the county as is just; or the council of the town shall agree with the council of the county as to the amount to be so paid, with interest from the time of the erection of the new city, and as to the periods of payment; or, in case of disagreement, the same shall be determined by arbitration under this Act; and upon the council proving to the Lieutenant-Governor in Council the payment, agreement or arbitration, the Lieutenant-Governor may, by proclamation, erect the town into a city, by a name to be given thereto in the proclamation. 55 V. c. 42, s. 19. Existing debts to be adjusted in case of a town to be made a city. Town may be made a city by proclamation.

(*a*) See note (a) to s. 10, *ante*, and note (a) to s. 632, *post*.

(*b*) See s. 5 (note (c) and s. 532 (1); *Hracks v. Township of Markham*, 17 U. C. R. 562; in *Re Simmons and Town of Chatham*, 21 U. C. R. 75; *The Chief Superintendent of Education; Re Shorey and Thresher*, 30 U. C. R. 504, and the cases referred to in note (d) to s. 587 (1) *post*.

Secs. 21-24.
Sub sec. 1.
Notes (h)-(l) (a).

(h) "**Such portion . . . of the debts of the county as may be just.**" A city becomes for municipal purposes a county in itself (c). Hence the necessity for the adjustment of the county debt before a separation takes place.

(i) "**By arbitration under this Act.**" See ss. 449, 450, 457-467.

(j) "**Upon the council proving,** etc. Substantially the same provisions were contained in 14-15 V. c. 109, s. 21 (1851).

Name of new corporation.

(k) "**By a name to be given . . . in the proclamation.**" The power is here conferred, not only to create a new corporation, but to give it a name. The name can only be changed by the Legislature. See note (b) to s. 7.

First election.

(l) Section 96 of the Act provides that the first election under the proclamation creating the new town or city shall take place on the first Monday in the January following the date of the proclamation, but the nomination of candidates and the election of such as are unopposed shall be proceeded with on the last Monday in December, or in case that is Christmas Day, then on the previous Friday (s. 124).

Limits of such new town or city.

22. The Lieutenant-Governor may include in the new town or city such portions of any township or townships adjacent thereto, and within the limits mentioned in the aforesaid notice, as, from the proximity of streets or buildings, or the probable future exigencies of the new town or city, the Lieutenant-Governor may consider it desirable to attach thereto. 55 V. c. 42, s. 20.

Wards, number of population of.

23. The Lieutenant-Governor may divide the new town or city into wards, with appropriate names and boundaries, but no town shall have less than three wards, and no ward in such town or city less than 500 inhabitants. 55 V. c. 42, s. 21.

These sections (22 and 23) are taken from the Act of 1849, 12 V., c. 81, ss. 79 & 84.

Extension of city or town.

24.—(1) In case two-thirds of the members of the council of a city or town do, in council, before the 15th day of July in any year, pass a resolution affirming the expediency of any addition being made to the limits of the city or town, the Lieutenant-Governor may, by proclamation, and on such terms and conditions, as to taxation, assessment, improvements or otherwise, as the Lieutenant-Governor in Council sees fit and the council of the city or town may consent to, add to the city or town any part of the adjacent township or townships which the Lieutenant-Governor in Council, on the grounds aforesaid, considers it desirable to attach thereto. And the Lieutenant-Governor in Council may also by such proclamation provide that the territory so added or to be added to the city or town shall, for the purposes of elections to the Legislative Assembly continue for a period of time to be mentioned in the proclamation, to form part of the electoral division of which it had theretofore formed a part. 55 V. c. 42, s. 22 (1); 59 V. c. 51, s. 1.

Taken from the Act of 1858, 22 V., c. 99, s. 12. *Cf.* the Act of 1849, 12 V., c. 81, ss. 84 & 115, as amended by 16 V. c. 181, ss. 19 & 23. The words "assessment, improvements" (in line 6), and the whole of the last sentence of the section were added in 1896 by 59 V., c. 51, s. 1.

(a) Until the present Consolidation this section embraced two distinct subjects, namely, the addition of territory to a city or town by proclamation, and the re-division of the city or town into wards with or without an addition to its

(c) R. S. O. c. 3, s. 3, and see *ante*, s. 19 (6).

territory. The portions of the section relating to the re-division of the city or town into wards, a matter relating wholly to municipal elections, has now been transferred to ss. 102, 103. As to the date of the first election after the enlargement of the city or town, and as to the nominations therefor see sec. 196, *post*.

(b) **"Two-thirds of the members of the Council,"** *i. e.*, two-thirds of the whole council, not two-thirds of the members present at the meeting.

(c) **"Of a city or town."** The Statute makes no provision for ascertaining the opinion of the inhabitants of the territory proposed to be annexed; but evidence of their assent to the annexation would doubtless be also required.

(d) **"Before the fifteenth day of July."** Until the Act of 1858 (22 V., c. 99, s. 19) the time fixed for passing the resolution was the month of February. The present date allows more time for consideration by a council elected in the month of January. It is apprehended that a resolution passed after July 15th would be a nullity. (a)

(e) **"Pass a resolution."** This is one of the few cases in which the powers of the council may be exercised otherwise than by by-law. See note (e) to s. 325.

(f) **"Or otherwise."** As to the procedure in case the annexation of part of a township municipality to a city or town under this section involves the division of a school section, see "*The Public Schools Act*," (R.S.O. c. 292), ss. 49, 50 (1) (2).

25. In case any tract of land so attached to the city or town belonged to another county, the same shall thenceforward, for all purposes, cease to belong to such other county, and shall belong to the same county as the rest of the city or town. 55 V. c. 42, s. 23.

Where land attached to city or town, etc., belonged to another county.

Taken from the Act of 1858, 22 V. c. 99, s. 18.

26.—(1) In case the council of any village or town pass a resolution affirming the expediency of the annexation of the village or town to an adjacent village, town or city, and the municipal council of such last mentioned village, town or city, pass a similar resolution, and in case a majority of the electors of the first-mentioned village or town as defined by clause (*a*) of subsection 1 of section 19 of this Act, by vote approve of the resolution affirming the expediency of such annexation, the Lieutenant-Governor in Council may, by proclamation, annex the one municipality to the other, upon such terms as have been agreed upon by the councils, or as have been determined by arbitration, in case the councils resolve to have the terms settled by arbitration, and the Lieutenant-Governor in Council may also by such proclamation provide that the said first mentioned village or town so annexed or to be annexed shall, for the purpose of elections to the Legislative Assembly, continue, for such period of time as may be mentioned in the proclamation, to form part of the electoral district of which it had theretofore formed a part. 55 V. c. 42, s. 24 (1); 60 V. c. 15, *Sched.* C. (10); 60 V. c. 45, s. 26.

Annexation of villages or towns to adjacent villages, towns or cities.

Subsections 1-4 are taken from "*The Consol. Mun. Act of 1883*," (46 V., c. 18), s. 23, as amended by 60 V., c. 15, Sched. C (10) (1897). They provide for annexation at the instance of the municipal council of the village or town which takes the initiative. Subsections 4-7 were added in 1888 by 51 V., c. 28, s. 2, and apparently provide for cases in which the municipal electors of the village or town initiate the proceedings toward annexation. In the first case a simple resolution is sufficient, in the second a by-law is required.

(a) *Durison v. Gill*, East, 64.

Sec. 26. Sub-secs. 1-4. Notes (a)-(d).

(a) "*The Public Schools Act*," (R.S.O. c. 292), s. 50 (3), provides that in case two municipalities are united by proclamation or by an Act of the Legislature, the assets and liabilities of each school corporation therein shall be assumed by the school corporation of the united municipality.

(b) "**Pass a resolution.**" See note (e) to s. 325.

(c) "**Adjacent.**" Here apparently used as meaning "adjoining" or "contiguous." See Imp. Dict. *ad verb.*

(d) "**Electors of the first mentioned village or town.**" As in the case provided for by s. 18, the assent is not required of the electors of the municipality to which the annexation is to be made, but only of the council thereof.

(e) "**Approve of the resolution.**" Until the amendment of this sub-section in 1897 by 60 V. c. 15, Sched. C (10) the procedure was more cumbrous. After the council of the village or town seeking annexation had passed a resolution affirming the expediency of annexation, they had also to prepare and submit to the electors a by-law for the same purpose, with all the formalities required by s. 338 *et seq.* Under the amended section, a simple vote of the electors duly qualified under s. 19 (1*a*) upon the resolution approving or disapproving of annexation, is sufficient.

Secs. 16, 24 and 25 to apply.

(2) Subject to any variations made by the terms agreed upon or settled in manner aforesaid, the municipality annexed to the other shall be subject to the provisions of this Act having regard to the annexation of territory to a village, town or city. 55 V. c. 42, s. 24 (2).

(f) "**Provisions of this Act having regard to the annexation of territory . . .**" etc. See ss. 16, 24, 25, 96, 150.

Village or town may be erected into a town or city and re-divided into wards.

(3) In case the population admits thereof, the Lieutenant-Governor may, by the same proclamation, erect the village or town to which the addition is made, into a town or city, by a name to be given thereto in the proclamation, and may divide or re-divide the city, town or village into wards. 55 V. c. 42, s. 24 (3).

(g) "**By a name.**" See note (b) to s. 7 *ante*.

By law to be submitted in case of a petition therefor.

(4) In case a petition signed by one hundred and fifty qualified municipal electors of any town or village is presented to the council of such town or village asking that a by-law be submitted for the annexation of such town or village to an adjacent village, town or city, either unconditionally or upon such terms as may be set out in said petition, it shall be the duty of such council to submit to the vote of the municipal electors of the said town or village, a by-law for the annexation of the said village or town; and the said council shall forthwith prepare a by-law in accordance with the prayer of the petition, and shall submit the same to the said municipal electors for approval or otherwise within four weeks after the receipt of the petition by the said council. 55 V. c. 42, s. 24 (4); 60 V. c. 3, s. 3.

(h) "**Qualified municipal electors.**" See ss. 2 (5) and 86-93. It would appear that the "electors" here meant are the same as those referred to in the next note.

Who may vote on a by-law for annexation.

(i) "**To the vote of the municipal electors.**" Secs. 353 and 354 define the persons who are entitled to vote on by-laws which require the assent of the electors. The words in s. 354, "provided the lease extends for the period of time within which the debt to be contracted or the money to be raised by the by-law is made payable," do not apply to this vote.

(j) "**It shall be the duty.**" See note (a) to s. 10.

(k) "**To submit a by-law.**" As to the proper procedure see ss. 338-365, *post*.

Secs. 26, 27, Sub-sec. 5, 7. Notes (j)-(o) (a).

(5) A by-law which is duly carried, under the provisions of the last preceding sub-section, by the vote of the municipal electors of said town or village shall, within a reasonable time, but not exceeding one month thereafter, be adopted by said council. 55 V. c. 42, s. 24 (5).

Council to pass by-law within one month.

(l) "**Shall within a reasonable time be adopted by said council.**" It is doubtful whether the decisions referred to *ante* in note (a) to s. 10 upon the meaning of the word "shall" in s. 373 would apply here (*a*). In the case of debenture by-laws, the Statute, in prescribing (*b*) the form of notice to be published with a copy of the proposed by-law, has indicated its intention that, even after the vote of the electors, the council shall have an opportunity of considering whether the debt authorized by the by-law shall or shall not be incurred. There is no such provision in this section; and (although the point has not yet been determined by judicial decision) the language used in the Statute from which these sub-sections (4-7) are taken (*c*) seems to indicate that the council is intended to have no option in the matter, but must adopt the by-law if it has been carried by the votes of a majority of the electors.

Is this imperative?

(m) "**Within a reasonable time.**" The ordinary p[illegible] allowed to the council for passing a by-law duly carried by vote of the e[illegible]ors is six weeks. See s. 373.

Time allowed.

(6) Thereupon the council of such adjacent village, town or city may, by resolution, assent to the annexation of such town or village aforesaid. 55 V. c. 42, s. 24 (6).

Assent of adjacent municipality.

(n) "**By resolution.**" See note (e) to s. 325.

(7) In the event of the annexation of any such town or village as aforesaid having been approved of and assented to in manner hereinbefore provided, the same may be carried into effect by proclamation of the Lieutenant-Governor in Council on a day to be named in the said proclamation, or in any subsequent proclamation. 55 V. c. 42, s. 24 (7).

Proclamation.

(o) "**By proclamation.**" The Statute confers no express power upon the Lieutenant-Governor to give a new name to the enlarged municipality. Sec. 96 (*post*) specifies how and when the first municipal elections shall be held in and for the enlarged municipality.

Contents of.

27. The council of any town may pass a by-law to withdraw the town from the jurisdiction of the council of the county within which the town is situated, upon obtaining the assent of the electors of the town to the by-law in manner provided by this Act, subject to the following provisions and conditions:

Town may be withdrawn from jurisdiction of county by by-law on certain conditions.

Taken from the Act of 1858, 22 V. c. 99, s. 26. By 14 & 15 V. c. 109, s. 21, (1851) somewhat similiar provisions were made for agreement or arbitration upon the erection of a town into a city.

(a) "**Assent of the electors of the town to the by-law.**" As to procedure and the persons entitled to vote, see notes (j) and (k) to s. 26, sub-s. 4.

Procedure.

(*a*) That section provides that "A by-law which is duly carried by the vote of the qualified electors shall, within six weeks thereafter, be passed by the council."

(*b*) Sec. 338 (3).

(*c*) 51 V. c. 28, s. 2.

Sec. 27.
Sub-sec. 1.
Notes (b)-(f).

Amount to be paid by town to county to be settled by agreement or arbitration.

1. After the final passing of the by-law, the amount which the town is to pay to the county for the expenses of the administration of justice, the use of the gaol, and the erection and repairs of the registry office, and for providing books for the same, and for services for which the county is liable under the provisions of any Act respecting the registration of instruments relating to lands, as well as for the then existing debt of the county, if not mutually agreed upon, shall be ascertained by arbitration under this Act; and the agreement or award shall distinguish the amount to be annually paid for the said expenses, and for the then debt of the county, and the number of years during which the payments for the debt are to be continued.

(b) "**Final passing of the by-law.**" *i.e.*, by the council of the town under s. 373.

(c) "**Expenses of the administration of justice, the use of the gaol.**" etc. See ss. 509-517 and note (b) under s. 530.

(d) "**Erection and repairs of the Registry Office . . relating to lands.**" This clause was added by 31 V. c. 30, s. 2. There is nothing in the Act requiring the town to pay the county for the use of the Registry Office.(a)

Agreement must be in writing.

(e) "**Mutually agreed upon.**" In *County of Wentworth* v. *City of Hamilton*, 34 U.C.R. 585, the action was by the county against the city under s. 403 of 29-30 V. c. 31, (= s. 516 of this Act) for compensation for the expense of the care and maintenance of prisoners in the county gaol, alleging an agreement by the city to pay a certain proportion thereof. The defendants pleaded that the alleged agreement was not under their corporate seal. Held, a bad plea.

A. Wilson, J., says (p. 599): "I think it would be far better if the agreement were by deed, or by a by-law under seal; but I must say, from the legal decisions, it was not absolutely necessary it should have been so. The 'mutually agreeing' upon the compensation, by section 403, does not properly mean a by-law, for the two councils could not so agree by the same by-law, although each of them might agree by their own by-law. The Statute appears to refer to some other mode of agreeing than by a by-law. If that be got over, the difficulty is seriously diminished. In my opinion the action may be maintained by the general law without a deed in a case like the present, and I think also without a by-law. A by-law is not a deed merely because it is under seal."

In the present case, however, the agreement must be in writing, since a copy of it, duly verified by affidavit, is required by subs. 3 to be transmitted to the Lieutenant Governor.

Basis of apportionment.

(f) "**Ascertained by arbitration.**" In *Re City of St. Catharines* v. *County of Lincoln*, 46 U. C. R. 425, in dismissing a motion to set aside an award made between a city and a county under a Statute which in effect incorporated the provisions of this section, Osler, J. A. says: (pp. 430 and 431).

"The point chiefly insisted upon by the county before the arbitrators and on the present motion was, that the assessment rolls of the two municipalities formed the proper, and indeed the only basis on which the proportion of the expenses to be borne by the city should be ascertained. The city contended that population was a safer guide. The Act does not lay down any principle or rule by which the arbitrators are to be governed in ascertaining the proportion . . The whole question therefore rests largely in the reasonable discretion of the arbitrators . . It seems to me that as to all such expenses as must be incurred by the county in any event, such, *e.g.*, as the use, maintenance, and repair of the court house, and gaol, and registry office, official salaries, etc., population is, as a general rule, a very fair basis. So also as to the expenses of the administration of justice; in all cases, however, subject to any special circumstances (which do not exist in the present

(a) *Per* Osler, J.A., in *Re City of St. Catharines and County of Lincoln*, 46 U.C.R. 425, at p. 432.

case), showing that a larger proportion of any particular item of expense should be borne by one corporation rather than the other. To adopt the comparative assessments of the city and county as a basis, would, owing to the practical difference in assessing city and county property, be entirely illusory and unjust; and an attempt to correct it by equalizing the assessment is at best but a rule-of-thumb expedient when the different elements which constitute city and county assessment are considered." See also the observations of the same learned Judge in *Re County of Carleton and City of Ottawa*, 24 A. R. 109, quoted in note (d) to s. 516.

(g) "**The award shall distinguish the amount to be annually paid for the then debt of the county,**" etc. But the arbitrators may find that the town should pay nothing on account of such debt, *e. g.* where the whole debt had been incurred in making roads which were of no benefit to the town. (*b*)

(h) Until 1873, (36 V. c. 48, s. 291 = s. 460 of this Act), the arbitrators had no power to make any award as to costs (*c*). Sections 449, 450, 455-467 now apply to awards under this section. See the notes to those sections.

Matters to be considered by arbitrators.

2. In adjusting their award, the arbitrators shall take into consideration, among other things, the amount previously paid by the town, or which the town is then liable to pay, for the construction of roads or bridges by the county without the limits of the town: and also what the county has paid, or is liable to pay, for the construction of roads or bridges within the town; and they shall also ascertain, and allow to the town, the value of its interest in all county property, except roads and bridges within the town.

(i) "**Roads and bridges.**" See the case of *United Counties of Northumberland and Durham and Town of Cobourg*, referred to in the foot notes, *infra*.

Copy of agreement or award to be sent to the Lieutenant-Governor. Proclamation.

3. When the agreement or award has been made, a copy of the same and of the by-law, duly verified by affidavit, shall be transmitted to the Lieutenant-Governor, who may thereupon issue his proclamation, withdrawing the town from the jurisdiction of the council of the county.

Effect of proclamation.

4. After the proclamation has been issued, the offices of reeve and deputy-reeve or deputy-reeves of the town shall cease; and no by-law of the council of the county thereafter made shall have any force in the town, except so far as relates to the care of the court house and gaol, and other county property in the town; and the town shall not thereafter be liable to the county for, or be obliged to pay to the county, any money for county debts or other purposes, except the sums agreed upon or awarded as aforesaid.

(j) "**The offices of reeve, deputy-reeve, etc., shall cease.**" Until the passing of "*The County Councils Act, 1896*," (59 V. c. 52), the reeves and deputy-reeves of towns not separated from their counties represented these towns in the County Council, and therefore the reason for the existence of these offices ceased upon the separation of the town from the county. The office of deputy-reeve was (practically) abolished in 1898 by 61 V. c. 23, ss. 3, 4. As to the amounts payable by a city or separated town to the county in the cases referred to in ss. 510-512, see the notes to those sections.

(b) *Re United Counties of Northumberland and Durham and Town of Cobourg*, 20 U.C.R. 283.

(c) *Re United Counties of Northumberland and Durham and Town of Cobourg, supra.*

Sec. 27 (5-6).
Sec. 28 (1-3).
Notes (k)-(a).

New agreement or award after five years, etc.

5. After the lapse of five years from the time of the agreement or award, or of such shorter time as may be stated in the agreement or award, a new agreement or a new award may be made, to ascertain the amount to be paid by the town to the county for expenses of the administration of justice, use of the gaol, erection and repairs of the registry office or offices, providing books for the same, and for services for which the county is liable, as required by and under the provisions of any Act respecting the registration of instruments relating to lands.

(k) Most of the services mentioned are county services, in which the town, though withdrawn from the county, must be continuously interested. But the nature and value of the services may vary from year to year; hence provision is made for a settlement every five years, unless a shorter time is stated in the agreement or award last made.

Property after withdrawal.

6. After the withdrawal of a town from the county, all property theretofore owned by the county, except roads and bridges within the town, shall remain the property of the county. 55 V. c. 42, s. 25; 60 V. c. 3, s. 3.

Town may after five years from withdrawal pass by-law for re-union with county.

28.—(1) The council of a town which has withdrawn from a county may, after the expiration of five years from the withdrawal, pass a by-law (to be assented to by the electors in manner provided for by this Act in respect of by-laws for creating debts) to re-unite with such county.

By-law to have no effect until ratified by council of county, etc.

(2) The by-law shall have no effect unless ratified and confirmed within six months after the passing thereof by the council of the county or union of counties from which the said town had previously withdrawn, and unless the terms and conditions which the town is to pay, perform, or be subject to, have been previously agreed upon or settled in manner following, that is to say:

Before by-law ratified, the accounts of the debts of town and county respectively to be determined.

(3) Before the by-law is confirmed by the council of the county, the councils of the town and county shall determine by agreement the amounts of the debts of the town and county respectively which are to be paid or borne by the county after the re-union, or what amount is to be payable by a special rate to be imposed upon the ratepayers of the town, over and above all other county rates, and all other matters relating to property, assets, or advantages consequent upon the re-union, and affecting the county or town respectively; and such other terms or conditions as appear just shall be settled by such agreement: and in default of such agreement being come to within three months after the passing of the by-law by the council of the town, the said matters shall be settled by arbitration, as provided by this Act. 55 V. c. 42, s. 26.

Taken from the Act of 1873, (36 V. c. 48), s. 21.

(a) "**Pass a by-law.**" The procedure here outlined cannot well be strictly followed, as it would place the town at a disadvantage in making its financial arrangements with the county council. According to the wording of the

Secs. 28, 29, (1-3).

Notes (a) (b); (a)

section, the method to be pursued is: (1) the town council passes the first reading of a by-law providing simply for a reunion with the county; (2) the electors of the town vote thereon, after advertisement, etc. as provided in ss. 338-365; (3) the town council passes the by-law (s. 373). Then negotiations begin with the county council; and, failing an agreement within three months as to terms and conditions, there is an arbitration, after which the county council has still the option of ratifying the basis of settlement fixed by the arbitrators, though the town council has no such option.

It is suggested as desirable, though not strictly in accordance with the language of the statute, that before any by-law for re-union with the county is submitted to the electors of the town, the matters referred to in subs. 3 shall have been agreed upon between the two councils, subject to approval by the electors of the town and subsequent ratification by by-laws of the two councils respectively, and that this provisional agreement should be set out in the by-law submitted by the town council to the electors under subs. 1.

(b) "*The Registry Act*," (R.S.O. c. 136) s. 86 (3) provides that

> "All by-laws, proclamations, Orders-in-Council and other instruments of a public, or *quasi* public nature whereby a village, town or city becomes incorporated, or the boundaries of any municipality are enlarged, diminished or in any way altered, shall be registered in the proper registry office by the municipality passing or procuring the same, and a copy of a by-law certified by the seal of the corporation and the signature of the chief officer and the Clerk thereof, and a copy of a proclamation, Order-in-Council or other instrument certified by the chief officer of the department from which the same is issued shall be sufficient proof for registration purposes under this section."

DIVISION II.—TOWNSHIPS (SECS. 29-37).

New township in territory not part of incorporated county may be attached to a county by proclamation.

29. In case a township is laid out by the Crown in territory forming no part of an incorporated county, the Lieutenant-Governor may, by proclamation, annex the township, or two or more of such townships lying adjacent to one another, to any adjacent incorporated county, and may erect the same into an incorporated union of townships with some other township of such county. 55 V. c. 42, s. 27.

Taken from the Act of 1858, 22 V. c. 99, s. 27: the last clause added in 1873 by 36 V. c. 48, s. 22.

(a) Formation of townships.—Section 13 of R. S. O. c. 3, entitled "*An Act respecting the Territorial Division of Ontario for Municipal and Judicial purposes*," provides that

> "Subject to the provisions of "*The Municipal Act*," the Lieutenant-Governor may, by Order in Council, issue a proclamation under the Great Seal of the Province, to have force of law from a day to be named therein, and thereby constitute Townships and Counties, and Unions of Townships and Counties in those parts of Ontario in which Townships and Counties, or Unions thereof, have not been constituted, and may fix the metes and boundaries thereof."

The provisions of this section as to the formation of unions of counties and townships are still applicable throughout the Province of Ontario, but as regards the creation of new townships they seem to be obsolete. The formation of new counties in the Districts of Muskoka and Parry Sound is regulated by R. S. O. c. 5. Sections 1-16 of R. S. O. c. 225, entitled "*An Act respecting the establishment of Municipal Institutions in Territorial Districts*," provide for the municipal organization of townships in the above Districts and also in Nipissing, Algoma, Manitoulin, Thunder Bay and Rainy River, and s. 64 for the union of two or more adjacent municipalities (either with or without additional area) and also for the annexation to any municipality of territory adjacent thereto.

Secs. 29-31 (1).

Notes (a) (b) (a)-(d); (a)-(c).

The first step, however, towards constituting a township after it has been laid out on a map by the Crown Lands Department is its survey by a Government surveyor, who returns to the Department his plan and field-notes. A name is then given to the township by the Commissioner of Crown Lands, and it is entered upon the list of townships which are territorially part of the District. See the list of such townships in the Districts of Algoma, Manitoulin, Thunder Bay, Muskoka, Parry Sound, Rainy River and Nipissing, *post*, in the notes to R. S. O. c. 225. See also *ante* p. 30.

(b) "**In case a township is laid out by the Crown.**" i.e., surveyed under the authority of the Commissioner of Crown Lands. See the preceding note. The procedure towards municipal organization is as therein set forth; but the provisions of this section may, perhaps, be still applicable, since, though suffered to lapse into "innocuous desuetude" they have never been repealed.

Junior township containing 100 freeholders, etc., may be separated from union.

30. When a junior township of an incorporated union of townships has 100 resident freeholders and tenants on the assessment roll as last finally revised and passed, such township shall, upon the 1st day of January next after the passing by the county council of the proper by-law in that behalf, become separated from the union. 55 V. c. 42, s. 28; 60 V. c. 15, *Sched.* C (11), *See sec.* 98.

Taken from the Act of 1878, 22 V. c. 99, s. 28. Compare 12 V. c. 81, s. 12, and 13-14 V. c. 84, s. 16.

(a) "**Junior township.**" The order of the seniority of united townships is determined by the proclamation or by-law forming the union, (s. 35).

(b) "**Assessment roll as finally revised.**" See s. 3.

(c) "**Upon the first day of January.**" But for the purpose of municipal nominations, etc., the separation takes place on the last Monday in the preceding December. See s. 96.

(d) "**Proper by-law.**" Sec. 98 makes it the duty of the county council to pass this by-law before October 31st. The by-law should name the returning officer who is to hold, and the place for holding the first election for the separated township (*a*). The date of the election is fixed by s. 96.

In what cases junior township containing 50 freeholders, etc., but less than 100, may be separated from union.

31.—(1) In case a junior township has at least 50, but less than 100 resident freeholders and tenants on the last revised assessment roll, and two-thirds of the resident freeholders and tenants of the township petition the council of the county to separate the township from the union to which it belongs: and in case the council considers the township to be so situated, with reference to streams or other natural obstructions that its inhabitants cannot conveniently be united with the inhabitants of an adjoining township for municipal purposes, the council may, by by-law, separate the same from the union; and the by-law shall name the returning officer who is to hold, and the place for holding, the first election.

Taken from 16 V. c. 181, s. 11.

(a) "**Last revised assessment roll.**" See s. 3.

(b) "**Two-thirds of the resident freeholders and tenants.**" It is probably intended that the last revised assessment roll should be the evidence as to the number and qualification of the petitioners.

(c) "**Cannot conveniently continue to be.**" The section only applies where the township already forms part of a union.

(*a*) Secs. 31 (1), 98.

Secs. 31 (2), 32 (1, 2).

Notes (d)-(h); (a), (b).

(d) "**The council may.**" The question whether a junior township having less than 100 resident freeholders and householders on its last revised assessment roll shall or shall not be separated from a union of townships is left entirely to the discretion of the county council. With this discretion, if exercised *bonâ fide*, the Courts will not interfere. See note (a) to s. 40 *ante*.

(e) "**Shall name the returning officer who is to hold and the place for holding the first election.**" As to the date of the election, etc., see s. 96.

And attached to an adjoining municipality.

(2) In case two-thirds of the resident freeholders and tenants of one or more junior townships petition the council of the county to be separated from the union to which they belong, and to be attached to some other adjoining municipality, and in case the council consider that the interest and convenience of the inhabitants of the township or townships would be promoted thereby, they may, by by-law, separate the township or townships from the union, and attach the same to some other adjoining municipality. 55 V. c. 42, s. 29; 60 V. c. 15, *Sched.* C. (11).

Taken from 31 V. c. 30, s. 4.

(f) "**Two-thirds of the resident freeholders and tenants.**" See note (b) to the last subsection.

(g) "**They may....separate.**" See note (d) to the preceding subsection.

(h) "**Attach the same.**" Being junior townships, they have not yet the necessary number (s. 30) of resident freeholders and tenants to be formed into independent municipalities.

Disposition of property upon dissolution of union.

32. After the dissolution of a union of townships, the following shall be the disposition of the property of the union:

Taken from the Act of 1858, 22 V. c. 99, s. 60.

1. The real property of the union situate in the junior township, shall become the property of the junior township;

(a) By s. 13 the provisions of this section are also made applicable to the cases where a village is separated from a township, or where the area of a village is reduced under s. 18.

2. The real property of the union situate in the remaining township or townships of the union shall be the property of the remaining township or townships;

(b) "**The real property of the union.**"

Real property.

The situation of the real property is made to govern its ownership. If in the junior township, it becomes the property of the junior township; if in the remaining township or townships, it becomes the property of such township or townships. This is the rule which was held by the Supreme Court of New York to apply to the division of a municipality in the absence of express provision to the contrary (*a*). As between municipalities, in the event of a dissolution of the union formerly existing, the *situs* of real property in general determines its ownership; but, as regards property other than real property, a different rule usually prevails.(*b*)

(*a*) *North Hempstead* v. *Hempstead*, 2 Wend. 109. See further *Milwaukee* v. *Milwaukee*, 12 Wis. 93.

(*b*) See *Windham* v. *Portland*, 4 Mass. 384; *Hartford Bridge* v. *East Hartford*, 16 Conn. 149; s. c. 10 How. (U. S.) 511; *Hampshire* v. *Franklin*, 16 Mass. 75.

Sec. 32, Sub-secs. 3, 4. Notes (c)-(e).

Other assets.

3. The two corporations shall be jointly interested in the other assets of the union, and the same shall be retained by the one, or shall be divided between both, or shall be otherwise disposed of, as they may agree.

(c) "**The other assets of the union.**" The disposition of the real property is provided for in the preceding clauses. Its *situs* determines its ownership. But, as regards other assets, the disposition is necessarily made to depend on the agreement of the townships, unless clothed with a trust of some kind.(*e*)

Taxes and other expenses paid by a township during the union over and above its proper share may be taken into account in the arbitration.(*d*) So with regard to any unappropriated moneys received under the "*Act respecting the Municipal Loan Fund Debts*" (36 V. c. 47) on account of the moneys distributed under that Statute (*e*); and (probably) any money paid by the Crown to the union under "*The Crown Timber Act*" (R.S.O. c. 32), ss. 10-13, on account of dues collected in respect of timber or saw logs cut since April 30th, 1881, within either of the townships.

On the erection of two village municipalities out of a township, *Held*, that the moneys derived from "The Ontario Municipalities Fund," which had some years previously been appropriated by by-law to the school purposes of the township, were assets properly divisible between the township and the new village municipalities. "*Re Township of Albemarle*, etc., 45 U.C.R. 133, distinguished. (*f*)

Arrangement as to property and debts.

4. The one shall pay or allow to the other, in respect of the said disposition of the real and personal property of the union, and in respect to the debts of the union, such sum or sums of money as may be just;

(d) "**The debts of the union.**" In the case of the separation of part of a township and its erection into an incorporated village, the liability to assessment in respect of drainage, which had been done under "*The Municipal Drainage Aid Act*"(*g*), on the application of the township, but for which the assessment had not been completed, was held not a matter to be arbitrated upon as being a debt of the township to which the village ought to contribute, each corporation being bound by the Act to raise the amount assessed in respect of such drainage upon the land locally situated within it.(*h*) A by-law of the county of Oxford had granted a bonus of $50,000 to the Port Dover and L. H. R. W. Co., and authorized debentures of the county to be issued therefor, to be provided for by a rate levied on the town of Woodstock and the township of North Norwich. By 37 V. c. 57, s. 26, it was provided that the company should indemnify the township to the extent of $10,000 against any excess above two-fifths of the said debentures, and should give a bond securing such indemnity; which bond had been given. On the separation of the village of Norwich from the township of North Norwich, it was held that the liability of the township under this by-law was a debt of the township, and within the powers of the arbitrators under this section.(*i*)

(e) "**As may be just.**" This has reference to more than a mere equalization of the assessment between the different municipalities.(*j*) So long as the town-

(c) See *North Yarmouth* v. *Skillings*, 45 Maine, 133; *Harrison* v. *Bridgeton*, 16 Mass. 16; *Milwaukee* v. *Milwaukee*, 12 Wis. 93.

(*d*) *Township of Arran* v. *Township of Amabel*, 15 Grant 701; 17 Grant 163.

(*e*) See note (a) to s. 426; *Re Township of Albemarle*, etc., 45 U.C.R. 133.

(*f*) *Village of East Toronto* v. *Township of York*, 16 O. R. 566.

(*g*) R. S. O. (1877), c. 33; R. S. O. c. 40.

(*h*) *Re Village of Point Edward and Township of Sarnia*, 44 U. C. R. 461.

(*i*) *Re Township of North Norwich and Village of Norwich*, 44 U. C. R. 34.

(*j*) *Re Township of Howick and Village of Wroxeter*, 12 C. L. J. N. S. 64; *Re United Counties of Northumberland and Durham and Town of Cobourg*, 20 U. C. R. 283; *Township of East Nissouri* v. *Horseman*, 9 C. P. 189; *Re Township of Albemarle*, etc., 45 U. C. R. 133.

ships remain united, they constitute one municipality, as much as the various wards of a city; but when united townships separate, there are matters which require adjustment, according to what is right and fair, between the parties. The division of the property and the settlement of liabilities are in the first instance, if possible, to be determined by mutual agreement. On the separation of three townships into two municipalities, the two corporations executed an instrument whereby one agreed to pay to the other a certain sum as soon as certain non resident rates theretofore imposed should become available. It was subsequently discovered that these rates had been illegally imposed, and that the fund would never be available. Its supposed existence had been an element in determining the amount to be paid. It was *Held*, that the corporation to which the money was made payable was not entitled to have the agreement reformed so as to make the money payable by the other absolutely.(*k*)

How to be determined in case of disagreement.

5. In case the councils of the townships do not, within three months after the first meeting of the council of the junior township, agree as to the disposition of the personal property of the union, or as to the sum to be paid by the one to the other, or as to the times of payment thereof, the matters in dispute shall be settled by arbitration under this Act;

Taken from 16 V. c. 181, s. 4.

Arbitration.

(f) "**In case the councils . . do not . . agree.**" So far as the Act directs a distribution of property, its requirements must be strictly fulfilled. The corporations cannot of themselves make an arrangement contrary to the Act, but where the Act is silent as to the particular division of property or adjustment of assets, it is in the power of the corporation, by amicable arrangement, or through the medium of an arbitration, to adjust the same.(*l*) The duty of the arbitrators is to ascertain the assets of the union, real and personal; to dispose of the personal property as may be just; to make proper allowance for real estate to the township deprived of it by the separation, and for the personal property assigned to either municipality in excess of its share; and to ascertain and apportion th liabilities of the united townships. They should consider the value of the real property of the union in each township as an asset, and what allowance, if any, should be made by the township retaining it to the separating township.(*m*)

Amount settled to bear interest.

6. The amount so agreed upon or settled shall bear interest from the day on which the union was dissolved: and shall be provided for by the council of the indebted township like other debts. 55 V. c. 42, s. 30.

(g) "**Shall bear interest.**" In the absence of an agreement to the contrary, the rate of interest would be six per cent. per annum. See sec. 2 of R. S. Ca. c. 127, entitled "*An Act respecting Interest.*" This is also the rate of interest to be paid when a balance is found to be due from one county to another after a separation. See s. 48.

New townships, etc., to be united to adjacent townships, and how.

33. In case a township is laid out by the Crown in an incorporated county or union of counties, or in case there is any township therein not incorporated and not belonging to an incorporated union of townships, the council of the county or united counties shall, by by-law, unite such township, for

(*k*) *Township of Arran* v. *Township of Amabel*, 17 Grant, 163, reversing s. c. 15 Grant, 701; and see notes (**f**) and (**g**) to s. 27.

(*l*) *County of Wellington* v. *Township of Wilmot*, 17 U. C. R. 71.

(*m*) *Re Township of Albemarle and United Townships of Eastnor, Lindsay and St. Edmunds*, 45 U. C. R. 133.

Secs. 33-37 (1). Notes (a)-(a).

municipal purposes, to some adjacent incorporated township or union of townships in the same county or union of counties. 55 V. c. 42, s. 31.

Taken from the Act of 1849, 12 V. c. 81, s. 3.

(a) The provisions of this section seem now to be obsolete. See note (a) to s. 29.

Townships not incorporated or united may be formed into unions.

34. In case of there being at any time in an incorporated county or union of counties two or more adjacent townships not incorporated, and not belonging to an incorporated union of townships, and in case such adjacent townships have together not less than 100 resident freeholders and tenants within the same, the council of the county or union of counties may, by by-law, form such townships into an independent union of townships. 55 V. c. 42, s. 32; 60 V. c. 15, *Sched.* C. (11).

Taken *verbatim* from the Act of 1850; 13-14 V. c. 64, s. 8. The reference to 60 V. c. 15, Sched. C. (11) is a mistake. The provisions contained in the section are apparently obsolete.

Seniority of united townships, how regulated.

35. Every proclamation or by-law forming a union of townships shall designate the order of seniority of the townships so united; and the townships of the union shall be classed in the by-law according to the relative number of freeholders and tenants on the last revised assessment roll; or if there is no such revised assessment roll for any of such townships, then the order of seniority shall be determined by the proclamation or by-law, as the Lieutenant-Governor or the county council may think fit. 55 V. c. 42, s. 33; 60 V. c. 15, *Sched.* C. (11).

Taken from 13-14 V. c. 64, s. 8, (1850). Last clause ("or if there is no such revised assessment roll," etc.) added by 40 V. c. 8, s. 47 (1877).

Effect of dissolution of union of counties on united townships in different counties.

36. In case the united townships are in different counties the by-law shall cease to be in force whenever the union of the counties is dissolved. 55 V. c. 42, s. 34.

Taken from the Act of 1858, 22 V. c. 99, s. 3.

(a) The case contemplated by this section can arise only when the council of a union of counties has united two or more townships situated in different counties of the union. When this has been done, and the counties afterwards separate, provision is made for the separation of the united townships. The fact that the by-law is in such an event to "cease to be in force" restores the townships to the situation (as nearly as may be) in which they were before the by-law was passed.

Setting Apart Hamlets.

Setting apart unincorporated village and neighbourhood as a hamlet.

37.—(1) When any unincorporated village or settlement and its immediate neighbourhood lie wholly within the limits of a township, and when the residences of the inhabitants are, in the opinion of the council of the township, sufficiently near to each other to render the same desirable, the council of the township may, by by-law, upon the petition of a majority of the ratepayers within the area to be set off, one-half of whom shall be resident freeholders, set the unincorporated village or settlement and neighbourhood apart from the remaining por-

tion of the township in which the same are situate as a hamlet, and with boundaries to be respectively defined and declared in the by-law, for the purposes hereinafter mentioned. 55 V. c. 42, s. 17 (1); 60 V. c. 15, *Sched.* C. (9)

Sec. 37 (1-3). Notes (a) (b).

(2) Except so far as may be inconsistent with the enactments of this section, all the powers given by this Act to the council of every township shall remain in force as respects the hamlet so set apart, and are hereby continued and extended to the council of the township wherein the hamlet so set apart is situate. 55 V. c. 42, s. 17 (2).

Jurisdiction of township council continued.

(a) This singular section was introduced in 1885 by 48 V. c. 39, s. 39. Under it a township council may apparently without any restriction as to population as in s. 11, or any prescribed proportion between population and area as in s. 12 create within its limits a sort of *quasi*-municipality or *urbem in ruri*, in respect of which it shall have "all the rights and powers conferred by this Act upon the councils of cities, towns and villages." The powers as to statute labour apparently conferred upon township councils by this section were, in reality, already exercisable (as to the entire township) under "*The Consolidated Municipal Act, 1884*," (46 V. c. 18, s. 521 (1-6), taken originally from the Act of 1858 (see note (d), *infra*). As to local improvements see note (e), *infra*. At present the only effect of the section is to authorize a township council to set apart an area within the municipality and to pass by-laws which shall be applicable solely thereto.

(b) "**As a hamlet.**" The word "hamlet" is used also in 12 V. c. 81, s. 58, in 13-14 V. c. 64, s. 9 and in ss. 661 and 662 of this Act. It means "a little village (*Cowel*), "a cluster of houses in the country" (*Imperial Dictionary*).

(3) In addition to the powers given to the council of every township by this Act, the council of every township wherein a hamlet has been set apart under the provisions of this Act, shall, as respects such hamlet, have all the rights and powers conferred by this Act upon the councils of cities, towns and villages; (including the power to pass by-laws which shall apply exclusively and only to the hamlet so set apart) for the following purposes:—

Additional powers of township councils.

(*a*) To compel all persons (resident or non-resident) liable to statute labour within such hamlet, to compound for such labour at any sum not exceeding $1 for each day's labour, and to provide that such sum shall be paid in commutation of such statute labour, and to enforce the payment of such commutation in money in lieu of such statute labour; and for the purpose of enforcing such payment the like remedies may be had, and proceedings taken against the person in default, as are provided by sub-section 1 of section 107 of *The Assessment Act*, in cases of neglect or refusal to pay any sum for statute labour commuted under section 103 of *The Assessment Act*. 55 V. c. 42, s. 17 (3); 58 V. c. 42, s. 1; 60 V. c. 15, *Sched.* C. (9): c. 3, s. 3.

Rev. Stat. c. 224.

(*b*) For all the purposes specified in sections 664 to 687 both inclusive of this Act.

Secs. 37 (4), 38.

Notes (c) (d)

(c) **"All the rights and powers conferred by this Act upon the councils of cities towns and villages."**

In "*The Consolidated Municipal Act*, 1892," (55 V. c. 42) these rights and powers were grouped together under Div. VI. of Title 1, Part 7, (ss. 490-504). They are now set out in ss. 532 (2), (4) 533 (2); 537 (6); 539 (2); 540 (5) (6); 541 (6); 542 (1-13); 545 (11); 548 (2) 549 (10); 553 (1), (3); 554 (2-4); 557 (1), (2); 559 (1), (3-5), (9); 562 (10); 566 (2); 574 (4); 575; 580; 581; 583 (1) (27) (28) and 586 (6) (10).

(d) **"And may, for the following purposes, pass by-laws," etc.** These are substantially the same powers in regard to the hamlet as the council already possessed in regard to the entire township under the Act of 1858, (22 V. c. 90), s. 317 (1-5), and now possess under s. 561 of this Act and ss. 103, 104 and 107 of "*The Assessment Act.*" See *supra*, note (a).

(e) **Clause 3 (b).** This clause might have been omitted. It is now wholly unnecessary; the powers referred to in these sections which formerly belonged only to cities (*b*), towns (*c*) and villages (*d*), having been extended in 1887 to township councils (*e*).

Uniting hamlets.

(4) Wherever in a township two or more hamlets which adjoin, or lie contiguous to each other, are so set apart as aforesaid, the council of the township shall have power to pass a by-law uniting such separate hamlets, so previously set apart, into one hamlet, whereupon the council shall have the same powers over, and relating to the united hamlets, as if the whole area embraced within the limits of the several hamlets so united had originally been set apart in one parcel under the provisions of this Act. 55 V. c. 42, s. 17 (4); 60 V. c. 15, *Sched.* C. (9).

DIVISION III—COUNTIES, (SECS. 38-40).

[*As to the formation of new counties, see also R. S. O. c. 3, s. 13, quoted in note* (a) *to s. 29, ante.*]

New counties, how formed by proclamation, and how annexed or united.

38. The Lieutenant-Governor may, by proclamation, form into a new county any new townships not within the limits of an incorporated county, and may include in the new county one or more unincorporated townships or other adjacent unorganized territory (defining the limits thereof) not being within an incorporated county, and may annex the new county to any adjacent incorporated county; or in case there is no adjacent incorporated county; or in case the Lieutenant-Governor in Council considers the new county, or any number of such new counties lying adjacent to one another, and not belonging to any incorporated union, to be so situated that the inhabitants cannot conveniently be united with the inhabitants of an adjoining incorporated county for municipal purposes, the Lieutenant-Governor may, by the proclamation, erect the new

(*b*) 54 V. c. 32 (2nd Session).
(*c*) 54 V. c. 39, s. 35.
(*d*) 54 V. c. 39, s. 40.
(*e*) 50 V. c. 29, s. 48.

county, or new adjacent counties, into an independent county or union of counties for the said purposes, and the proclamation shall name the new county or counties. 55 V. c. 42, s. 35.

Secs. 38-41 (1).

Notes (a)-(a).

Taken from the Act of 1858, 22 V. c. 99, s. 35.

(a) As to "townships not within the limits of an incorporated county," the powers conferred upon the Lieutenant-Governor by this section and by R. S. O. c. 3, s. 13, appear never to have been exercised. The only counties incorporated since these sections became law are the Provisional County of Haliburton (formed in 1874 by proclamation under 37 V. c. 65, out of townships formerly within the limits of the incorporated counties of Peterborough and Victoria) (a), and the County of Dufferin (b), (formed by proclamation under 38 V. c. 31, out of townships previously within the limits of the counties of Grey, Simcoe and Wellington).

39. In every union of counties, the county in which the county court house and gaol are situate shall be the senior county; and the other county or counties of the union shall be the junior county or counties thereof. 55 V. c. 42, s. 36.

Seniority of united counties, how regulated.

Taken from the Act of 1849, 12 V. c. 78, s. 9.

(a) The seniority of united townships depends upon the relative number of assessed freeholders and tenants, (s. 35), that of united counties is determined by the situation of the court house and gaol.

40. During the union of counties, all laws applicable to counties (except as to representation in Parliament or the Legislative Assembly, and the registration of titles) shall apply to the union as if the same formed but one county. 55 V. c. 42, s. 37.

Laws applicable to union of counties.

Taken from the Act of 1849, 12 V. c. 78, (s. 8). Now apparently unnecessary, being covered by clause 3 of s. 2.

Division IV—PROVISIONAL COUNTY CORPORATIONS.

(Secs. 41-54.)

41.—(1) Where the census returns, taken under a statute, or under the authority of a by-law of the council of any united counties, shew that the junior county of the union contains 25,000 inhabitants or more, then if a majority of the members of the county council representing those county council divisions which constitute such junior county (including any county council division which takes in the larger part of any municipality in such junior county), do in the month of February, pass a resolution affirming the expediency of the junior county being separated from the union; and if, in the month of February following the next election of members of the county council, a majority of the said members of the county council representing those county council divisions which constitute such junior county (including any county council divi-

Separation of united counties.

(a) See *ante* p. 29 note (g).

(b) See *ante* p. 14 note (a).

Sec. 41.
Sub-sec. 1.
Notes (a)-(h).

sion which takes in the larger part of any municipality in such junior county), transmit to the Lieutenant-Governor in Council a petition for the separation; and if the Lieutenant-Governor deems the circumstances of the junior county such as to call for a separate establishment of Courts and other county institutions, he may by proclamation setting forth the facts, constitute the members of the county council representing those county council divisions which constitute such junior county (including any county council division which takes in the larger part of any municipality in such junior county), and the persons to be elected as hereinafter mentioned by the council of any separated town in the said county, a provisional council, and may in the proclamation appoint a time and place for the first meeting of the council, and may therein name one of its members to preside at the meeting, and may also therein determine the place for and the name of the county town. 55 V. c. 42, s. 38; 56 V. c. 35, s. 1: 59 V. c. 52, ss. 3, 5; 60 V. c. 15, *Sched.* C (12).

Appointment by proclamation of provisional council in junior county.

First meeting thereof.

County town.

Taken originally from the Act of 1849, (12 V. c. 78), s. 10. See 22 V. c. 99, s. 39.

(a) "**Census returns.**" See s. 533 (1) and *ante*, s. 4, note (j) and s. 11, note (a).

(b) "**Under a statute.**" See note (a) to s. 21.

(c) "**Inhabitants.**" See note (a) to s. 5.

(d) "**25,000.**" These figures were inserted in 1893 by 56 V. c. 35, s. 1. Originally the number of inhabitants required was 15,000 (12 V. c. 78, s. 10). It was increased to 17,000 by the Act of 1858, (22 V. c. 99), s. 39.

(e) "**A majority of the county council representing.**" etc. These words were inserted in 1897 by 60 V. c. 15, Sched C. (12), instead of the words "a majority of the reeves and deputy-reeves of such county." Prior to 1896 (59 V. c. 52) county councils consisted of the reeves and deputy-reeves of the local municipalities situated in the county. See note (a) to s. 66.

(f) "**In the month of February of the following year.**" The earlier Acts, 12 V. c. 78, s. 10, and 22 V. c. 99, s. 39, required that the resolution in favour of separation should be adopted by the representatives of the junior county in two successive years, and that the petition should be presented in the third year. This was altered by 29-30 V. c. 51, s. 39, so as to require that the resolution should be adopted in one year, and the petition presented in the next year. The Act in its present form secures the desired result—namely, the approval of the electors of the local municipalities proposed to be set off as an independent county by requiring that the petition shall be presented in the month of February following the next election of members of the county council.

(g) "**And the persons to be elected . . . in the said county.**" These words (and also subs. 2 and 3) were added by 56 V. c. 35, s. 1 and 2.

(h) "**In the proclamation appoint.**" etc. The 14-15 V. c. 64, s. 16 (1852), provided that:—

> "In case any such proclamation shall not contain any such appointment of time or place, or of a person to preside at such first meeting, and in all cases of the erection of such provisional municipal council by Act of Parliament, such time and place and such presiding officer as aforesaid shall and may be appointed by the High Sheriff of the united counties of which such junior county shall be one, by a warrant under his hand and seal directed to such town reeves and deputy-town reeves by their name of office, and published in the Official Gazette of this Province."

(2) In case the returns mentioned in the preceding subsection show that the junior county contains less than 25,000, but more than 17,000 inhabitants, then two-thirds in number of the members of the county council representing those county council divisions which constitute such junior county (including any county council division which takes in the larger part of any municipality in such junior county), may take the same proceedings for a separation from the union as a bare majority is empowered to take in cases provided for under the said preceding subsection. 56 V. c. 35, s. 2; 60 V. c. 15, *Sched.* C (12).

Where the junior county has less than 25,000 but more than 17,000 inhabitants.

(3) The council of every separated town situate in the said junior county, shall, at a meeting duly called for that purpose after the issue of the said proclamation and before the time therein appointed for holding the first meeting of the provisional council, elect from among their members two representatives to the said provisional council; and the persons so elected shall, until the final dissolution of the union by proclamation as hereinafter provided, be members of the provisional council in the same manner and to the same extent as any other members thereof. 56 V. c. 35, ss. 2, 3; 59 V. c. 52, s. 5.

Representation of separated towns in provisional council.

Sub-secs. 2 and 3 were added by 56 V. c. 35, s. 2 (1893). As to the amendment made by 60 V. c. 15, Sched. C. (15) see note (c) *supra*. The reference to 59 V. c. 52, s. 5, is a mistake.

(d) "**Two representatives to the said provisional council.**" The reason for allowing the separated town to be represented in the provisional council until the junior county is finally set off, is apparently because the provisional council is to provide for the new county court house and gaol, in which the separated town will thenceforward be interested. See ss. 502, 509, 514-517.

42. The member appointed by proclamation as in the preceding section provided, shall preside in the provisional council until a provisional warden has been elected by the council from among the members thereof. 55 V. c. 42, s. 39.

Who to preside.

Taken from 13-14 V. c. 64, s. 16 (1850).

(a) It is presumed that the procedure prescribed by ss. 261 and 263 of this Act upon the election of a warden will apply to this election. Sec. 262 cannot, of course, be applicable.

43. Every provisional council shall from time to time by by-law, appoint a provisional warden, a provisional treasurer, and such other provisional officers for the county as the council deem necessary. The provisional warden shall hold office for the municipal year for which he is elected, and the treasurer and other officers so appointed shall hold office until removed by the council. 55 V. c. 42, s. 40.

Appointment of provisional warden and other officers.

Terms of office.

Taken from the Act of 1849, (12 V. c. 78) s. 12.

(a) "**By by-law.**" These words were added in the revision of 1877 (R. S. O. (1877) c. 174, s. 37) apparently ignoring the fact that the provisional warden holds office by virtue of his election; and that, in his case at least, a by-law is unnecessary.

(b) "**Provisional treasurer.**" By virtue of this section and of s. 51, the provisional treasurer, unless removed by by-law of the council, becomes treasurer

Secs. 43, 44.

Notes (b); (a)-(e).

of the junior county after separation. The 12 V. c. 78, which provided for the separation of a junior county from a union of counties, also provided for the formation of provisional councils in the junior county until the separation should be perfected, and empowered the provisional council to raise money for certain purposes, (viz., the erection of a court house and gaol,) and to appoint a provisional treasurer whose duties were limited to the levying, collecting, and paying over of such moneys. By 13-14 V., c. 64, s. 12 (1850), it was provided that on the dissolution being perfected, and the new county formed, all the provisional officers were to continue officers of the new county until their successors were appointed, and all the by-laws were to remain in force until altered, amended or repealed. Under the first named Act, a provisional corporation passed a by-law appointing one P. treasurer, and the defendants became his sureties for the faithful execution of his office. On the formation of the new county, a by-law was passed repealing the by-law of the provisional corporation under which P. had been appointed treasurer, and they afterwards appointed him treasurer of the new county.

Provisional treasurer.

Held, that the defendants were not liable for P's acts as treasurer under such last-mentioned appointment.

Quære, whether, if the by-law had not been repealed, and P. had continued treasurer of the new county, defendants would have been liable (*a*).

Provisional council may acquire land, and erect thereon gaol and court house.

44. Every provisional council may acquire the necessary property at the county town of the junior county on which to erect a court house and gaol, and may erect a court house and gaol thereon, adapted to the wants of the county, and in conformity with any statutory or other rules and regulations respecting such buildings, and may pass by-laws for such purposes. 55 V. c. 42, s. 41.

Taken from the Act of 1858, 122 V. c. 99, s. 44. *Cf.* 12 V. c. 78, s. 11-15.

(a) The erection of the court house and gaol and the settlement of the joint assets and liabilities between the junior and senior counties are the sole functions committed to the provisional council (*b*).

(b) "**Acquire.**" *i.e.*, by by-law. See s. 325. The power is limited to property "necessary" for the purpose. See also s. 266 and the note thereto.

(c) "**At the county town.**" The provisional council has no power to erect the court house and gaol elsewhere than at the place fixed as the county town by the proclamation under s. 41 (1) last clause (*c*).

(d) "**May erect.**" There should be a by-law of the provisional council authorizing the erection of the court house and gaol (*d*). See s. 500.

(e) "**Statutory or other rules and regulations respecting such buildings.**" "*The Prison and Asylum Inspection Act*," (R. S. O. c. 321), s. 22, provides that:—

> "Every gaol erected in this Province shall be constructed and built according to a plan to be approved of by the inspector, and as sanctioned by the Lieutenant-Governor; and no gaol built after the 6th day of March, 1868, in any county in Ontario, otherwise than according to a plan approved and sanctioned as aforesaid, or that does not, after its completion, receive the approval of the inspector, shall be deemed to be in law the gaol of such county."

(*a*) *County of Ontario* v. *Paxton et al.*, 27 C. P. 104.

(*b*) See *per* DRAPER, C. J., in *Municipal Council of Huron and Bruce* v. *Macdonald*, 7 C. P. 278, 280.

(*c*) *Municipality of Lunenburg* v. *Atty. Gen. of Nova Scotia*, 20 S. C. R. 596.

(*d*) In *Keating* v. *District Council of Simcoe*, 1 U. C. R. 28, and *Pim* v. *County of Ontario*, 9 C. P. 304, the defendants were held liable for the cost of building a court house and gaol although there had been no by-law authorizing the work, nor any contract under seal. But see now the cases referred to in note (**cc**) to s. 10 ("Executed Contracts") and note (**b**) to s. 500.

And s. 26 provides that :

"The provisions of this Act as to the inspection, construction, and repairing of gaols shall, so far as may be, apply to court houses."

Notes (e) (f); (a); (a) (b); (a).

(f) No provision is made by this section for the erection of a separate Registry Office. This is required only when counties are separated for judicial as well as for municipal purposes (e).

45. The powers of a provisional council shall not interfere with the powers of the council of the union, and any money raised by the provisional council in the junior county shall be independent of the money raised therein by the council of the union. 55 V. c. 42, s. 42.

Respective powers of provisional council and council of union.

Taken from the Territorial Divisions Act of 1849, (12 V. c. 78), s. 11.

(a) "**Money raised by the provisional council.**" See note (a) to s. 44. Power to pass a by-law for acquiring land and for erecting buildings thereon necessarily involves power to raise money for these purposes. As to the manner in which the money so raised is to be collected and paid to the provisional treasurer, see s. 297.

46. After a provisional council has procured the necessary property, and has erected thereon the proper buildings for a court house and gaol, such council, and the council of the senior or remaining counties, may enter into an agreement for the settlement of their joint liabilities and the disposition of their joint assets (other than real estate), and for determining the balance or amount due by the one county to the other, and the times of payment thereof, and in determining the balance the senior or remaining counties shall assume the debts of the union, and the junior county shall be charged with such part thereof as may be just; and the value of the real estate, which upon the separation, becomes the property of the senior or junior county respectively, and any improvement effected by the union, of which either county gets the exclusive benefit, shall also be taken into account. 55 V. c. 42, s. 43.

Agreement upon dissolution as to joint liabilities and joint assets.

Senior county to assume debts of union.

Junior county to be charged with just proportion.

Taken from "*The Con. Municipal Act of 1853*," (36 V. c. 48) s. 9. *Cf.* 12 V. c. 78, s. 15; 22 V. c. 99, s. 46; 29 & 30 V. c. 51, s. 46.

(a) "**May enter into an agreement.**" These matters must be determined by arbitration if the councils do not agree. See s. 48.

(b) "**Other than real estate.**" The disposition of real estate is determined, as in the case of separated townships (s. 32), by its *situs*. See s. 50.

47. No member of the provisional council shall vote or take part in the councils of the union on any question affecting such agreement, or the negotiation therefor. 55 V. c 42, s 44.

When provisional councillors shall not vote.

Taken from the Territorial Divisions Act of 1849, (12 V. c. 78), s. 15.

(a) The reason for this prohibition is plain. Though the members of the provisional council are also members of the council of the union, yet in this negotiation the matter lies between the provisional council on the one hand, and the council of the union on the other. The provisional council being for this purpose an independent and interested body, it follows that the interest of the union, which is virtually the interest of the senior or remaining county or counties, should be protected by the councillors of the senior or remaining county or counties. See *ante*, note (b) to s. 10.

(e) R. S. O. c. 136, s. 3.

Secs. 48, 49.

Notes (a)-(c); (a).

In case of disagreement, disputes to be determined by arbitration.

Payment of amounts found due.

48. In case the councils, within one month after the time mentioned in section 46, are unable to determine by agreement the several matters hereinbefore mentioned with respect to their debts, assets and property, such matters shall be settled between them by arbitration under this Act: and the county found liable shall pay the other county the balance or amount agreed or settled to be due by such county: and such amount shall bear interest at six per centum per annum from the day on which the union was dissolved, and shall be provided for, like other debts, by the council of the county liable therefor after separation. 55 V. c. 42, s. 45.

Taken from the Act of 1858, 22 V. c. 99, s. 48.

(a) "**Within one month.**" This limitation was added in 1873 by 36 V. c. 48, s. 41.

(b) "**By arbitration under this Act.**" See ss. 449 *et seq.*

(c) "**Shall be provided for like other debts.**" Namely, by annual estimates (s. 404), and assessments (s. 402).

Appointment of sheriff and other officials.

49. After the sum, if any, to be paid by the junior county to the senior county or remaining counties has been paid or ascertained by agreement or arbitration, a Judge may be appointed as provided by *The British North America Act, 1867*: and the Lieutenant-Governor or Lieutenant-Governor in Council, as the case may be, may appoint a sheriff, one or more coroners, a clerk of the peace, a clerk of the County Court, a registrar, and at least twelve Justices of the Peace, and may provide in the commission or commissions, that the appointments are to take effect on the day the counties become separate. 55 V. c. 42, s. 46: 60 V. c. 3, s. 3.

Taken from the Act of 1858, 22 V. c. 99, s. 49.

(a) "**A Judge may be appointed.**" Section 96 of "*The B. N. A. Act, 1867*," provides for the appointment of Judges by the Governor-General. The other officers mentioned in this section are all appointed by the Provincial Government(*a*).

In *Reg.* v. *Bush* (*b*) on a motion to quash a conviction under "*The Canada Temperance Act, 1878*," by a Police Magistrate appointed by the Lieutenant-Governor of Ontario, it was contended that such an appointment could only be made by the Crown as represented by the Governor-General. But the Court unanimously refused to quash the conviction, holding that, although the Crown has the prerogative right to appoint J. P's within the Dominion of Canada, and each of its Provinces, it has derogated from that right by assenting to the B. N. A. Act, and that by s. 92 thereof (which provides that in each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say: 14. "The administration of justice in the Province, including the constitution, maintenance, and organization of Provincial Courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts)" the whole machinery of the administration of justice within the Province was placed within the exclusive jurisdiction of the Provincial Legislature, except (1) the appointment of judges, (reserved by s. 96 to the Governor-General),

(*a*) See R. S. O. c. 17, s. 1 (sheriffs); c. 55, s. 5 (clerks of the County Court); c. 56, s. 11 (clerks of the peace); c. 86, s. 3 (justices of the peace); c. 97, s. 1 (coroners); c. 136, s. 11 (registrars).

(*b*) 15 O. R. 398.

(2) the power to provide for the constitution, etc., of a general Court of Appeal for Canada, and for the establishment of any additional Courts for the better administration of the laws of Canada (s. 101), and (3) procedure in criminal matters. (s. 91 (2)) (c)

Secs. 49, 50.

Notes (a); (a) (b).

50. After such appointments are made, the Lieutenant-Governor may, by proclamation, separate the junior county from the senior county or remaining counties, and shall declare such separation to take effect on a day to be named in the said proclamation; and on that day the Courts and officers of the union (including Justices of the Peace) shall cease to have any jurisdiction in the junior county; and the real property of the corporation of the union situate in the junior county shall become the property of the corporation of the junior county, and the real property situate in the remaining county or united counties shall be the property of the corporation of the remaining county or united counties; and the other assets belonging to the corporation of the union, shall belong to and be the property of the senior or junior county or union of counties respectively, as agreed upon at the separation; and if not otherwise disposed of by agreement or arbitration, they shall belong to and be the property of the senior county or union of counties 55 V. c. 42, s. 47; 60 V. c. 15, *Sched. C.* (13): c. 3, s. 3.

Final separation of united counties by proclamation

Property, how divided.

Taken from the Act of 1849, 12 V. c. 78, s. 18.

(a) "**On a day to be named in the proclamation.**" Until 1897 (d) the words were "On the first day of January next after the end of three months from the date of the proclamation."

(b) "**The Courts and officers of the union, including Justices of the Peace, shall cease to have any jurisdiction in the junior county.**" The Act of 1849, (12 V., c. 78), s. 18, contained a provision almost identical, omitting, however, the words "including Justices of the Peace." Section 37 of the same Act provides that J. P.'s holding commissions in the different Districts of Upper Canada, from which judicial and other proceedings were by that Act transferred to the counties and unions of counties set forth in the Schedule should continue to hold, enjoy, and exercise the like commissions, office, authority, power and jurisdiction within the counties, or unions of counties to which such judicial and other proceedings were transferred, as if their respective commissions were expressed to be for such counties or unions of counties respectively.

Owing to the conflict between these two sections it was decided in *McWhirter v. Corbett* (e); that where the commission was granted for the Midland District, which included the county of Prince Edward and the united counties of Frontenac, Lennox, and Addington, the commissioner, resident in Frontenac, Lennox, and Addington, after the separation of Prince Edward, had authority to administer affidavits as in the united counties; in *Glick v. Davidson* (f), that a commissioner for taking affidavits in the District of Wellington might act under his commission in the County of Waterloo where he was living, it being part of the old district of Wellington, and being a junior county, disunited from the union of Wellington, Waterloo, and Grey; and in *Fleming v. McNaughton*, (g) that a commissioner for the district of Gore and Wellington might take affidavits in Galt, which was formerly in the Gore District.

(c) And see *Re Queen's Counsel*, 23 A. R. 792: (1898), A. C. 247.

(d) 60 V. c. 15, Sched. C (13).

(e) 4 C. P. 203.

(f) 15 U. C. R. 591. (g) 16 U. C. R. 94.

Secs. 50-52 (1).

Notes (b)-(d); (a)-(c).

On the other hand, it was held in *Carson v. Sullivan*, (*b*) that a commission granted to a person to take recognizances of bail within the Gore District did not empower him to take recognizances of bail in the county of Brant after its separation from the Gore District. The words "including justices of the peace," were added in 1873 by 36 V. c. 48, s. 43.

(c) The sale of lands in a junior county for taxes in arrear before the separation of a union of counties is provided for by "*The Assessment Act*" (R. S. O. c. 224), s. 177 (2). See the notes to that section.

(d) "**And the other assets.**" The remainder of this section was added in 1869 by 32 Vict., c. 43, s. 18.

The clause of that section relating to the ownership of *choses in action* is omitted in the present Revision, having been superseded in 1872 by 35 V. c. 12, ss. 1, 2, now in its turn superseded by s. 58 (5) of "*The Judicature Act*," (R. S. O. c. 51).

Officers and property, etc., continued.

51.—(1) When a junior county is separated from a union of counties, the head and members of the provisional council of the junior county, (except the members of the provisional council elected by the council of any town separated from the county for municipal purposes), and the officers by-laws, contracts, property, assets and liabilities of the provisional corporation, shall be the head and members of the council, and the officers, by-laws, contracts, property, assets and liabilities of the new corporation. 55 V. c. 42, s. 48 (1); 56 V. c. 35, s. 3.

Taken from the Act of 1858, 22 V., c. 99, s. 58. Amended in 1893 (56 V. c. 35, s. 3) by adding the words in parentheses.

(a) After the duties of the provisional council under s. 41 have been fulfilled the representatives of separated towns are no longer to have any share in the government of the county: see note (a) to s. 41 (3).

Book of tax arrears to be delivered to treasurer.

(2) The treasurer of the senior county shall, upon being requested so to do, deliver to the treasurer of the new county the books relating to the municipalities within the new county required to be kept under section 164 of *The Assessment Act*. 55 V. c. 42, s. 48 (2).

Added in 1888 by 51 V. c. 28, s. 3. The books referred to are those containing the records of the lands in each township and village on which the taxes are in arrear.

Registered instruments and registry books.

(3) If a separate Registry Office is established for the junior county, *i.e.*, if it is set off for judicial as well as for municipal purposes, (*a*) provision is made (*b*) for the delivery to the Registrar of the new county of the deeds, conveyances, wills, maps, registry books, and indexes relating exclusively to the separated county.

Execution and service of process in hands of sheriff at time of separation.

52.—(1) The dissolution of a union of counties shall not prevent the sheriff of any senior county from proceeding upon and completing the execution or service within the junior county of any writ of mesne or final process in his hands at the time of such separation, or of any renewal thereof, or of any subsequent or supplementary writ in the same cause, or, in the case of executions against lands, from executing all necessary deeds and conveyances relating to the same; and the

(*b*) 4 C. P. 298.

(*a*) See "*The Registry Act*," (R. S. O., c. 136,) s. 3.

(*b*) R. S. O., c. 136, s. 32.

acts of all such sheriffs in that behalf shall be and be held and construed to be legal and valid in the same manner and to the same extent as if no separation had taken place, but no further.

This sub-section was passed in 1864, (27-28 V., c. 37, s. 1) apparently to prevent such difficulties as had presented themselves in *Ross* v. *Farewell*, *McPherson* v. *Farewell*, and *MacDonald* v. *Farewell*, 5 C. P., p. 101. See R. S. O. 1887, c. 16, s. 41.

Execution of writs.

(2) This section shall not be held to authorize the sheriff of the senior county to execute within the new county any writ which is not in his hands at the time when the dissolution takes effect, unless such writ depends for its priority upon a former writ executed by such sheriff or in his hands at the said time.

Pending actions.

(3) All actions and proceedings in any Court which are pending at the date the establishment of the new county takes effect, may be prosecuted, continued and completed, and all writs of execution, and other process, and all acts and proceedings subsequent thereto, may (subject to any order to the contrary being made), be taken, issued, and had in the county in which such actions and proceedings were originally commenced, as fully and effectually as if the junior county had not been separated from the senior county; and (subject to the provisions of the next subsection), no writ or other process or proceeding shall lose its priority by reason of no entry thereof appearing or being in the proper office in that behalf in the new county; and all officers who would have had power or authority to execute such writ, process or proceedings, if the new county had not been formed, shall, for the purpose of all pending suits, actions and proceedings, have the same power and authority in respect of the same as if the dissolution had not taken place. 55 V. c. 42, s. 49 (1-3); R. S. O. 1887 c. 16, s. 44.

Continuation of writs in hands of sheriff at time of dissolution.

(4) No unsatisfied writ against lands or goods in the hands of the sheriff of the union on the day when the dissolution takes effect shall bind lands or goods situate within the limits of the new county, or have any effect upon such lands or goods after one year from the said day, unless the person entitled to the benefit of such unsatisfied writ, before the expiration of the said year, and before the expiry of the writ in the hands of the sheriff of the union as aforesaid, has placed a writ against lands or goods (as the case may require) in the hands of the sheriff of the new county, indorsed with a notice that priority is claimed by virtue of this Act; in which case so long as such last mentioned writ is in force he shall retain any priority which he then had by virtue of the writ in the hands of the sheriff of the union on the day of the dissolution thereof; and he shall, if so required by the sheriff of the new county, deliver to him a certificate under the hand of the sheriff of the union, showing the date of the delivery to him of such writ; which certificate the said sheriff of the union shall give upon request and on payment of his proper fees therefor. 55 V. c. 42, s. 49 (4); 60 V. c. 15, *Sched.* C (14).

Secs. 52 (5)-55.

Note (a).

Division Courts.

Rev. Stat., c. 60.

(5) The Lieutenant-Governor may, in the proclamation establishing the new county, or in a subsequent proclamation, to take effect from a day to be named, fix and determine the number, limits and extent of the Division Courts of the new county, subject to be thereafter altered under the provisions of *The Division Courts Act*, and may by such proclamation direct that suits and proceedings which at the said day are pending or being in any Division Court therein specified, shall become suits or proceedings of any other Division Court therein specified, and thereupon such suits or proceedings may be continued in such last mentioned Court as if they had been commenced therein. 55 V. c. 42, s. 49 (5).

These subsections were added in 1888 by 51 V. c. 28, s. 4; but the provisions of subsection 4 have since then been further modified by 60 V. c. 15, Sched. C (14), so as to obviate the necessity of keeping alive two writs of *fi. fa.*, the simpler procedure here prescribed being based upon that first suggested by s. 13 (2) of the Act 57 V. c. 33, by which Nipissing was erected into a Provisional Judicial District.

(a) **Subsection 5.** See ss. 15, 21 of "*The Division Courts Act.*" (R. S. O. c. 60.)

Change of place of trial in actions, etc., after separation.

53. (1) If, upon a dissolution of a union of counties, there is pending an action, or other civil proceeding in which the county town of the union has been named as the place of trial, the Court in which the action or proceeding is pending, or any Judge who has authority to make orders therein, may, by consent of parties, or, on hearing the parties upon affidavit, order the place of trial to be changed, and all records and papers in the action of proceeding to be transmitted to the proper officers of the new county. 55 V. c. 42, s, 50.

If no order made, where proceedings to be carried on.

(2) In case no such change is directed, all such actions and proceedings shall be carried on and tried in the senior county 55 V. c 42, s. 52.

Taken from the Territorial Divisions Act of 1849, 12., c. 78, s. s. 21 and 22.

Place for holding courts in junior county

54. All Courts of the junior county required to be held at a place certain, shall be held in the county town of the junior county. 55 V. c. 42, s. 51.

Taken from the Territorial Divisions Act of 1849, 12 V. c. 78, s. 23.

Division V.—MATTERS CONSEQUENT UPON THE FORMATION OF NEW CORPORATIONS, (Secs. 55-65).

By-laws.

By-laws in force prior to formation of new corporation to continue in force until altered by council of new corporation.

55. In case a village is incorporated, or a village or town (with or without additional area) is erected into a town or city, or a township or county becomes separated, the by-laws in force therein respectively shall continue in force until repealed or altered by the council of the new corporation; but no such by law shall be repealed or altered unless it could have been legally repealed or altered by the council which passed the same. 55 V. c. 42, s. 53.

Taken from the Act of 1858, (22 V., c. 99,) ss. 21 and 59. Cf. 14-15 V., c. 109, ss. 23, 24.

Secs. 55, 56. Notes (a) (b); (a).

(a) "**Until repealed or altered by the council of the new corporation.**" The municipality of D. was made to include six townships formerly belonging to the municipality of N. D. which had passed a local option by-law. The enlarged municipality of D. repealed this by-law. *Held*, that they had power so to do, and that the two years which by R. S. Man. 1891, c. 99, s. 71 must elapse before a local option by-law can be repealed, must be counted from the time when it was made to apply to the territory affected by it (*a*)

When municipal boundaries altered.

(b) "**But no such by-law shall be repealed or altered . . etc.**" Power to pass by-laws includes the power to alter or revoke them and to make others, (*b*) "it being the very *raison d'être* of a continuous legislative body that it should be able, by timely changes in the rules which it prescribes, to meet the exigency of each occasion which may arise." (*c*) In certain cases the assent of the Lieutenant-Governor (*d*) and in others that of the municipal electors, or some of them, (*e*) is required before a by-law can be passed by the Council. In such cases it is reasonable that the power to alter or repeal the by-law should be vested in the same authority by which alone it could be passed.

What by-laws council alone cannot repeal.

Under 29-30 V., c. 51, s. 249 (9), (*f*) the township of R. had, with the approval of the municipal electors thereof, passed a by-law totally prohibiting the sale of intoxicating liquors in shops and places other than houses of public entertainment within the township. While this by-law was in force the village of A. was incorporated and separated from the township of R. The village council—without submitting the same to a vote of the municipal electors—passed a by-law repealing the township by-law in so far as it affected the village municipality. The Court of C. P. quashed the village by-law, holding that 32 V., c. 32, s. 10 (substantially identical with R. S. O., c. 245, s. 42 (3)) was "sufficient to extend to every such by-law which, in order to give it validity, must be submitted to and approved by the electors." (*g*)

56. In case an addition is made to the limits of any municipality, the by-laws of the municipality shall extend to the additional limits, and the by-laws of the municipality from which the same has been detached shall cease to apply to the addition, except only by-laws relating to roads and streets, and these shall remain in force until repealed by by-laws of the municipality to which the addition has been made. 55 V. c. 42, s. 54.

What by-laws in force in extended limits of a municipality.

Taken *verbatim* from the Act of 1858, (22 V., c. 99,) s. 22.

(a) "**Shall cease to apply to the addition.**" Lands of the Canada Southern R. W. Co. in the township of Sandwich West were, by a by-law of that township passed in 1882, exempted from any municipal assessment or tax for ten years; and the by law was confirmed by 47 V., c. 64. By proclamation of 5th Oct., 1888, issued by the Lieutenant-Governor under s. 22, (*a*) of "*The Municipal Act*," part of the township of Sandwich West was annexed to the town of Windsor. Held by the Court of Appeal (distinguishing *Municipality of Cornwallis* v. *Canadian Pacific R. W. Co.* 19 S. C. R. 702)—that assuming a water rate imposed by the Town of Windsor under 37 V., c. 79, to be a species of tax, the township by-law had ceased to apply to the lands annexed to the town, and their exemption from taxation was therefore at an end. (*b*) The rights of creditors are, however, protected by the provisions of the next two sections *q. v.*

Tax exemption by-laws.

(*a*) *Doyle* v. *Dufferin*, 8 Man. Rep., 286, 1896.

(*b*) See "*The Interpretation Act*," (R. S. O. c. 1,), s. 8 (36).

(*c*) See s. 325 and notes thereon. (*d*) ss. 391, 413, 415, 569 (5).

(*e*) ss. 19 (1), 26 (1), 27, 28, 338, 366, 389, 682; R. S. O., c. 232, s. 4; R. S. O., c. 233, s. 2; R. S. O., c. 245, ss. 42 and 141.

(*f*) Now R. S. O. c. 245, s. 141 (1).

(*g*) *Re Cunningham and Village of Almonte*, 21 C.P. 459 (1871).

(*a*) Now s. 24.

(*b*) *Water Commissioners of City of Windsor* v. *The Canada Southern R. W. Co.*, 20 A. R. 388.

Secs. 56-58 (1).

Notes (b); (a).

Highway by-laws.

(b) "Except only by-laws relating to roads and streets." By-laws establishing public highways should of course remain in force; and probably this is what the draftsman of the section had chiefly in mind. The wording of the section as it stands, is however, wide enough to include not only by-laws under ss. 637, 638, 639, 640 (1) (4) (5) (7) (8), 647, (3) 657, 660 (2) (4), 664—690, but also by-laws passed under ss. 557 (1 4) and 559 (1) (3) (5) (7) (8) (9); and the section may possibly require amendment.

Debts and Liabilities.

Liability for debts existing at the time of dissolution.

57. In case of the erection of a locality into a village, or of a village into a town, or of a town into a city, the village, town or city shall remain subject to the debts and liabilities to which the locality was previously liable, in like manner as if the same had been contracted or incurred by the new municipality; and, after the separation of a county or township from a union, each of the counties or townships which formed the union shall remain subject to the debts and liabilities of the union, as if the same had been contracted or incurred by the respective counties or townships of the union after the dissolution thereof. 55 V. c. 42, s. 55.

Taken from the Act of 1858, (22 V., c. 99), ss. 23 & 61. *Cf.* 14 & 15 V., c. 109, ss. 18, 19 and 22. The 24 V., c. 39, which extended the provisions of ss. 57, 59, 60 & 61 to all cases where an incorporated village separates from the township in which it is situated, was repealed in the Consolidation of 1877. See R. S. O. 1877, Vol. II, Sched. A, p. 2277.

Examples.

(a) The united counties of York and Peel, notwithstanding their separation, were held to be jointly liable to the registrar of Peel for services rendered by him under secs. 26 and 32 of the Registry Act. *(a)*

In such case the action cannot properly be brought against one or two united counties without joining the other. *(b)*

A suit properly brought against three united counties was held to be properly continued against the three, notwithstanding a dissolution of the union. *(c)*

The same rule applies to school corporations. *(d)*

So in a Manitoba case where, after debentures had been issued by a school district in Manitoba, and while they were still outstanding, the boundaries of the district were several times altered until only a fraction of the original territory was left. The name of the district was also changed from "The Protestant School District of Donore" to the "School District of Donore No. 18, under the Public School Act of 1890." It was held that notwithstanding these changes the District was still liable upon the debentures. *(e)*

Adjustment of debts when limits extended.

58.—(1) After an addition has been made to a village, town or city by the annexation of an adjoining village or town, or of an adjoining portion of a township, the city, town or village whose limits have been so extended, shall pay to the township or county from which the additional territory has been taken, such part, if any, of the debts of the township or county as may be just, and shall be entitled to receive from and be paid by the said township or county the value of the

(a) Campbell v. *Corpn. of York and Peel*, 26 U. C. R. 635, 27 U. C. R. 138.

(b) Ekins v. *County of Bruce*, 30 U. C. R. 48.

(c) Mun. Council of Lincoln, Welland and Haldimand v. *Thompson*, 8 U. C. R. 615.

(d) Scott v. *Union S. S. No. 1, Burgess & No. 2, Bathurst*, 21 C. P. 398.

(e) Canada Permanent L. & S. Co. v. *Donore*, 11 Man. Rep. 120 (1896). Acc. *Gillespie* v. *Mun. of Westbourne*, 10 Man. Rep. 656 (1895).

Sec. 58.
Sub-secs. 1, 3.
Notes (a) (b).

interest which, at the time of making such addition, the added territory had in the property and assets of the township or county; and in case the councils do not, within three months after the first meeting of the council of the municipality to which the addition has been made, agree as to the sum to be paid or received as aforesaid, or as to the time of payment, the matter shall be settled by arbitration under this Act.

Taken from the Act of 1858, 22 V., c. 99, s. 34, which, however, contained no provision for any payment by the township or county from which the territory was taken, to the village, town, or city to which the annexation was made. See *Re Township of Sarnia and Town of Sarnia*, 1 O. R. 113. This omission was corrected, and the section recast in 1885 by 48 V., c. 39, s. 2, which inserted the words "and shall be entitled to receive from and be paid by the township the value of the interest," etc.

(a) "**As may be just.**" See note (c) to s. 27 (1) and note (e) to s. 32, clause 4.

(b) "**By arbitration under this Act.**" See ss. 449, 450, 457—467.

Powers to proceed with local improvements upon lands subsequently annexed to another municipality.

(2) Where any improvement, work or service coming under the provisions of *The Municipal Drainage Act* or of sections 664 to 687, 689 and 690, both inclusive, of this Act is undertaken by any municipal corporation, and, after such corporation has become liable for the carrying out of the same, the land to be specially benefited by any such improvement, work or service, or any part thereof, becomes and forms part of another municipality by incorporation, annexation, or otherwise under the provisions of this Act or of any special Act, the municipal corporation from which such land or any part thereof is taken shall have full power and authority, by themselves, their servants, workmen and agents, to proceed with any such improvement, work or service, to the completion thereof, and for such purpose to enter upon take and use any land lying within the limits of such new municipality, or within the limits of the territory added to such adjoining municipality, which is necessary to enable them to complete any such improvement, work or service; and they may take all such proceeidngs, pass all such by-laws, make all such special and other assessments, impose all special and other rates, issue and sell all such debentures, borrow all such moneys, and do all such other matters and things as are necessary to complete any such improvement, work or service, and to provide for the cost thereof in the same manner as if no such new municipality had been formed, or no such annexation of territory had been made. 55 V. c. 42 s. 56 (1-2).

Subs. 2-5 were added in 1880 by 53 V., c. 50, s. 3. The germ of subs. 2 may, however, be found in 14-15 V., c. 109, s. 20 (1851).

Municipality to which territory annexed to indemnify municipality under taking the work.

(3) Any municipality from which territory is taken to form a new municipality, or to make an addition to an adjoining municipality, shall be indemnified by the new municipality or by the municipality to which the addition is made, as the case may be, from and against all debts and liabilities incurred by it prior to the formation of the new municipality, or the making of such addition, for or in respect of any improvement, work or service, undertaken and carried out, or to be carried out by it, under the provisions of *The Municipal Drainage Act* or R.S.O. c. 226.

Sec. 58. Sub secs. 3-5.

of sections 664 to 687, 689 and 690, both inclusive, of this Act to the extent to which the lands specially assessed therefor and lying within the territory taken from it, and included within the new municipality or added to the adjoining municipality, as the case may be, were specially assessed for the cost of the said improvement, work or service: and all debts incurred by a municipality for its share of the cost of any such improvement, work or service, shall be taken into account when taking and adjusting the accounts between it and the other municipality arising out of the formation of the new municipality or the addition of territory to such adjoining municipality. 55 V. c. 42, s. 56 (3); 60 V. c. 15, *Sched. C* (15).

Where lands benefited afterwards become part of another municipality, latter to collect and pay whole debt.

(4) In any case where the lands specially assessed for the local improvement, work or service lie wholly within the new municipality when formed, or within the limits of the territory added to such adjoining municipality, the new municipality or the adjoining municipality, as the case may be, shall assume the entire debt created by any local improvement by-law passed by the council of the municipality to which such territory formerly belonged, and shall, (on being furnished by the clerk of the municipality which passed the by-law with a certified copy of the by-law, and of the special assessments in each year during the currency of the debentures issued pursuant to such by-law) collect the special rates imposed by such by-law as aforesaid, at the same time as all other taxes of said municipality are collected: and the treasurer thereof shall pay the interest on such debentures when and as the same falls due, and shall from time to time, as directed by resolution of the council of such new municipality or of the municipality to which such territory has been added, invest the sum set aside by said by-law for the purpose of paying said debentures at maturity thereof.

Where part only, each municipality in which lands situate to collect proportion of cost.

(5) Where part only of the lands specially benefited by and assessed for any such local improvement, work or service lie within the limits of the new municipalty, when formed, or within the limits of the addition made to any such adjoining municipality, the clerk of the municipality from which such lands have been taken shall furnish to the clerk of the new municipality or of the municipality to which the addition has been made, as the case may be, a certified copy of the by-law and of the special assessment: and from and after the receipt thereof, the corporation of the new municipality, or the municipality to which such addition has been made, as the case may be, shall, during each and every year during the currency of the debentures issued under such by-law, collect the special rates imposed by such by-law upon lands lying within their limits: and the treasurer thereof shall, as and so soon as the same are collected, pay over the amount thereof to the treasurer of the municipality to which such lands formerly belonged. 55 V. c. 42, s. 56 (4, 5).

Debentures to be issued for old debts, and to bind the old and new municipalities.

59. After the formation of a new corporation by the dissolution of a union of counties or townships, the council of the senior or remaining county or township shall issue its debentures or other obligations for any part of any debt contracted by the union for which debentures or other obligations might have been, but had not been, issued before the dissolution; and the debentures or obligations shall recite or state the liability of the junior county or township therefor under this Act; and the junior county or township shall be liable therefor as if the same had been issued by the union before the dissolution. 55 V. c. 42, s. 57.

Taken from the Act of 1858, 22 V., c. 99, s. 62. *Cf.* 14 & 15 V., c. 109, s. 18.

Assessments for year preceding dissolution.

60 All assessments imposed by the council of the then corporation for the year next before the year in which the new corporation is formed by separation therefrom, shall belong to the then corporation, and shall be collected and paid over accordingly: and after the separation all special rates for the payment of debts, theretofore imposed upon the locality by any by-law of the former corporation, shall continue to be levied by the new corporation: and the treasurer of the new corporation shall pay over the amount as received to the treasurer of the senior or remaining municipality: and the latter shall apply the money so received in the same manner as the money raised under the same by-law in the senior or remaining municipality. 55 V. c. 42, s. 58.

Taken from the Act of 1858, 22 V., c. 99, s. 63. *Cf.* 14 & 15 V., c. 109, s. 20.

Special rates for debts continued and to be paid over by treasurer of the junior county.

If the sum paid over exceeds the just amount, the excess may be recovered.

61. In case the amount paid over as in the last preceding section provided, or paid to any creditor of the senior or remaining municipality, in respect of a liability of the former corporation, exceeds the sum which, by the agreement or award between the councils, the new corporation ought to pay, the excess may be recovered from the senior or remaining municipality as a debt due to the new municipality and bearing interest from the time of such payment. 55 V. c. 42, s. 59; 60 V. c. 15, *Sched.* C (16).

Taken from the Act of 1858, 22 V., c. 99, s. 64. *Cf.* 14 & 15 V., c. 109, s. 19 & 20, last clause. The words "and bearing interest from the time of such payment" were added to the section by 60 V., c. 15, Sched. C. (16)

OFFICIALS AND THEIR SURETIES.

Former councils and officers to exercise jurisdiction over new municipalities, etc., until new councils are organized.

62. In case a village is incorporated, or a village or town is erected into a town or city, or a township or county becomes separated, the council and the members thereof having authority in the locality or municipality immediately previous to the incorporation, erection or separation shall, until the council of the corporation is organized, continue to have the same powers as before; and all other officers and servants of the locality or municipality shall, until dismissed, or until their successors

Secs. 62-65.
Note (a).

(if any) are appointed, continue in their respective offices, with the same powers, duties and liabilities as before. 55 V. c. 42, s. 60.

Taken from "*The Consol. Mun. Act, 1883*," 36 V., c. 48, s. 58. *Cf.* 13 & 14 V., c. 64, s. 12 22 V., c. 99, s. 25, and see note (b) to S. 43.

(a) The necessity for such a provision as this is shewn by *Thompson v. McLean*, 17 U. C. R. 495, where it was held that without such a provision the sureties of the sheriff of a union of counties were relieved from liability by reason of his becoming sheriff of one only of the (provisionally) united counties.

Effect of separation upon public officers and their sureties.

63. The separation of a junior county or township from a union of counties or townships shall not in any case or in any manner whatever affect the office, duty, power or responsibility of any public officer of the union who continues a public officer of the senior county or township or remaining counties or townships after such separation, or of the sureties of such officer or their liability, further than by limiting such office, duty, power, responsibility, suretyship and liability to the senior county or township, or to the remaining counties or townships. 55 V. c. 42, s. 61.

Taken from the Act of 1866, 29 & 30 V., c. 51, s. 61 (1).

Further provisions as to officers and their sureties.

64. All such public officers shall, after the separation, be the officers of the senior county or township, or remaining counties or townships, as if they had respectively been originally appointed public officers for such senior county or township or for such remaining counties or townships only. 55 V. c. 42, s. 62.

Taken from 29 & 30 V., c. 51, s. 61 (2).

Liability of sureties for public officers.

65. All sureties for such public officers shall be and remain liable, as if they had become the sureties for such public officers in respect only of such senior county or township, or of such remaining counties or townships; and all securities which have been given, shall after the separation, be read and construed as if they had been given only for the senior or remaining county or counties, or township or townships; but nothing herein contained shall affect the right to require new securities to be given by any sheriff or by any clerk, bailiff, or other public officer, under any statute, or otherwise howsoever. 55 V. c. 42, s. 63.

Right to require new securities not affected.

Taken from 29 & 30 V., c. 51, s. 61 (3) (4)

PART II.

MUNICIPAL COUNCILS, HOW COMPOSED.

TITLE I.—THE MEMBERS.

DIV. I.—IN COUNTIES, (SECS. 66-69).
DIV. II.—IN CITIES, (SEC. 70).
DIV. III.—IN TOWNS, (SEC. 71).
DIV. IV.—IN VILLAGES, (SEC. 72).
DIV. V.—IN TOWNSHIPS, (SECS. 73, 74).
DIV. VI.—IN PROVISIONAL COUNTIES, (SEC. 75).

TITLE II.—QUALIFICATION, DISQUALIFICATION, AND EXEMPTIONS.

DIV. I.—QUALIFICATION (SECS. 76-79).
DIV. II.—DISQUALIFICATION (SECS. 80-83).
DIV. III.—EXEMPTIONS (SEC. 84).

Synopsis:—This part of "*The Municipal Act*," declares who may and who may not be members of municipal councils in this Province. The arrangement of its sections is all that could be desired.

In Title I, county councils are first dealt with; then (in successive order) the councils of cities, towns, villages, townships and (lastly) those of provisional counties.

Division I, of Title II, declares what are the qualifications for membership in local and in county councils respectively; Division II, who are disqualified for, and Division III, who are exempt from service in these councils.

Municipal Councils in the Provinces of Canada. (*a*). Ontario.—In the Province of Ontario there are five classes of municipal councils, viz.—(I) *County Councils*, including under this name the councils of united counties, and those of provisional counties, (see s. 2, (1), (3), and ss. 5, 7, 8, 9); (II) *City Councils*; (III) *Town Councils*; (IV) *Village Councils*, and (V) *Township Councils*, including under this name the councils of unions of townships, (ss. 2 (14), 5, 9). The composition of the council in each of these cases is discussed in the notes to sections 67 and 70-75.

Quebec.—In the Province of Quebec the municipal councils are:—(I) *County Councils*, composed of the mayors of all the local municipalities in the county (*b*) and (II) *Local Municipal Councils*, classified as (A) country or rural, (B) village, and (C) town councils. (*c*) Each local municipal council consists of seven members elected annually (or appointed by the Lieutenant-Governor in case the usual annual election has not taken place) and holding their office for three years. Two councillors retire annually in each of two years and three in third year (*d*).

(*a*) See also a paper prepared by the present Editor on "Municipal Institutions in Canada," in the "Handbook of Canada," published for the use of members of the British Association for the Advancement of Science at its meeting in Toronto in 1897.

(*b*) Quebec Mun. Code, s. 246. (*c*) Quebec Mun. Code, s. 3.

(*d*) Quebec Mun. Code, ss. 276-280.

Nova Scotia. In the Province of Nova Scotia, *County* (or *District*) *Councils* consist of one member elected from each polling district "as laid off for the election of members to serve in the General Assembly." (*e*) The composition of the councils of the cities and larger towns depends in most cases upon their special Statutes of incorporation (*e.g.* in the City of Halifax the municipal council consists of a mayor annually elected by general vote and eighteen aldermen elected for three years, six of them retiring annually. (*f*) Towns incorporated under 51 V. c. 1, (now consolidated by 58 V. c. 4, as "*The Towns Incorporation Act*"), are governed by a town council consisting of a mayor and six councillors, annually elected by general vote, the mayor for one and the councillors for two years, but three of the six councillors retiring annually. (*g*) There are no village or township councils.

New Brunswick. In the Province of New Brunswick there are no local municipal councils, the municipal affairs of each county being entrusted to a *County Council* composed of two councillors elected annually from each parish (*h*) - (a term which includes a city or town as well as a rural municipality) - except in the parishes of St. Stephen (which elects five county councillors) (*i*), Moncton (which elects three) (*j*), and St. John, where the council of the united city and county consists of twenty-six councillors, of whom ten represent the city of St. John, and six the town of Portland. (*k*)

P. E. Island. Prince Edward Island has no municipal organization except in the cities of Charlottetown and Summerside, which are incorporated by special statutes. (*l*)

Manitoba. Municipal corporations in Manitoba are: (1) *Cities* (2) *Towns*, (3) *Villages*, (4) *Rural Municipalities*. The council of a city consists of a mayor, annually elected, and two aldermen for each ward, elected for two years, one of whom retires annually. (*m*) Town councils consist of a mayor, and two councillors for each ward, annually elected, except in St. Boniface, where they are elected for two years, one of them retiring annually. (*n*) Village councils are annually elected, and consist of a mayor and four councillors, (*o*) and the councils of rural municipalities (also annually elected) of a reeve and such number of councillors as may be determined by by-law, not being less than four nor more than six in any rural municipality. (*p*) (*q*)

N. W. Territories. In the North-West Territories the councils of all municipalities are elected annually, and hold office for a single year. The council of a city consists of a mayor and ten aldermen (*r*); town councils of a mayor and six councillors, but if the population exceeds 3,000, the number of councillors may be increased to eight. (*s*) The council of each rural municipality consists of a reeve and four councillors. (*t*) There are no village councils.

British Columbia. In British Columbia there are two classes of municipalities. (1) *Cities or Towns*, which must contain at least 100 adult male British subjects resident within an area not exceeding 2,000 acres (*u*), and (2) *Township or District municipalities*, containing at least thirty adult male British subjects who have resided within the municipality for at least six months. (*v*) The councils of all municipalities are elected annually. Those of cities consist of a mayor and not less than five nor more than nine aldermen (*w*); those of township or district municipalities of a reeve and not less than four nor more than seven councillors. (*x*)

(*e*) Rev. Stat. (N.S) c. 56, s. 8. (*f*) 54 V. (N.S.) c. 58, ss. 7, 8.

(*g*) 51 V. (N.S.) c. 1, ss. 17, 24. (*h*) Con. Stat. N.B. (1877), c. 99, s. 6.

(*i*) Con. Stat. N.B. (1877), c. 99, s. 9. (*j*) Con. Stat. N.B. (1877), c. 99, s. 8.

(*k*) Con. Stat. N.B. (1877), c. 99, s. 7; 42 V. c. 18.

(*l*) 51 V. c. 12, (Charlottetown); 49 V. c. 11, (Summerside).

(*m*) R.S.Man. (1891), c. 100, ss. 44, 70.

(*n*) R.S.Man. (1891), c. 100, ss. 45; 58 & 59 V. c. 32, s. 2.

(*o*) R.S.Man. (1891), c. 100, s. 48. (*p*) R.S.Man. (1891), c. 100, s. 49.

(*q*) The council of any town may, upon the petition of fifty municipal electors, pass a by-law reducing the number of councillors for each ward to one; but after two municipal elections and on the petition of seventy-five municipal electors, may revert to the present plan (R.S.Man. (1891), c. 100, ss. 46, 47) and see s. 50 as to rural municipalities. (*r*) Ordinances of 1894, No. 3, Part 2, s. 1.

(*s*) *Ibid*, s. 2. (*t*) Ordinances of 1895, No. 12, s. 2.

(*u*) R.S.B.C. (1897), c. 147, s. 2. (*v*) R.S.B.C. (1897), c. 143, s. 3.

(*w*) R.S.B.C. (1897), c. 144, s. 13, 14. (*x*) R.S.B.C. (1897), c. 144, s. 16.

PART II.—MUNICIPAL COUNCILS, HOW COMPOSED.

DIVISION I.—IN COUNTIES, (SECS. 66-69.)

66. (1) County councils shall be composed as follows:—

(*a*) If the population of the county is 25,000 or less, of not less than 8 members nor more than 10 members.

County councils, how composed.

(*b*) If the population is more than 25,000 but less than 40,000, of not less than 10 members nor more than 12 members.

(*c*) If the population is 40,000 or more but less than 60,000, of not less than 12 members nor more than 14 members.

(*d*) If the population is 60,000 or more, of not less than 16 members nor more than 18 members. 59 V. c. 52, s. 2.

(2) The population of any county shall, for the purposes of this section, be ascertained by reference to the population of the local municipalities as shown by the last decennial census of the Dominion of Canada. 59 V. c. 52 s. 38.

Ascertaining population.

(3) Cities, towns and other municipalities separated from the county shall not be included in the computation of the population, nor shall the population of Indian reserves which are not organized as municipalities under this Act be so included. 59 V. c. 52, s. 4.

Separated municipalities and Indian reserves not to be included in computing population.

Taken from "*The County Councils Act, 1896*," 59 V., c. 52, ss. 2, 4, 38.

(a) The composition of County Councils. The changes effected by the Act of 1896 in the composition of county councils in Ontario were of a most extensive and important character. As has been already pointed out in the prefatory note on the "Development of Municipal Institutions in this Province," *ante*, p. 8, county councils were substituted by the Municipal Act of 1849 for the District Councils which had been established in 1841 by "*The District Councils Act*" (4 & 5 V. c. 10). The members of these District Councils had been chosen directly by and from the people, the ratepayers of each "township or reputed township" being entitled every year to elect to this council one representative or two, if the township had more than 300 inhabitant freeholders and householders on its last assessment roll. As to the powers of District Councils, see *ante*, p. 6.

The earlier legislation respecting county councils.

The Municipal Act of 1849 (s. 33) provided that each of the county councils thereby established should consist of "the town-reeves and deputy town-reeves of each of the several townships, villages and towns within the county," every town, village and township being entitled to be therein represented by its reeve, and the towns by a deputy-reeve also, if and when they had the names of 500 resident freeholders on the collector's roll.

The Act of 1858, (22 V., c. 99), s. 66 (3) (4), extended this last provision to townships and villages also, thus largely increasing the membership of the county councils; and a still longer step in the same direction was taken by the Act of 1866, (29 & 30 V., c. 51), s. 66 of which gave to every town, village, and township an additional deputy-reeve for each additional 500 electors on its roll. The result of this legislation, coupled with the multiplication in number of these municipalities throughout Ontario during the thirty years between 1866 and 1896, was, notwithstanding the separation for municipal purposes of some of the larger towns from the counties in which they were territorially

Secs. 66, 67 (1).

Note (a).

"*The County Councils Act, 1896.*"

situate—to give to several of our county councils a membership even greater than that allowed to the Legislative Assemblies in some of the other Provinces. In the County of Simcoe, for example, the county council consisted of 58 members, in the United Counties of Northumberland and Durham, of 52,—in York, of 47,—in Middlesex, of 46,—in the United Counties of Stormont, Dundas and Glengarry of 43,—and in Hastings, of 39,—a representation involving an annual burden of expenditure for travelling expenses, printing, etc. which was rapidly becoming a serious factor in municipal finance.

The local and sectional character of the representation was, moreover, felt to be a distinct disadvantage, and there were complaints, not only that its basis was unequal, but also that in some county councils the members from rural municipalities were unfairly outnumbered by those representing villages and towns. Accordingly, in 1892 a bill was introduced by the Hon. Mr. HARDY to reduce the number of county councillors and to secure their election by a larger constituency, but—public opinion having proved unripe for such a measure—it was withdrawn. In 1896 it was re-introduced, with some amendments suggested during the intervening period, and passed into law as 59 V. c. 52. In this measure we have reverted to the original principle of "*The District Councils Act*" of 1841, viz., the election of county councillors directly by and from among the ratepayers. The right of minorities to a share in representation has been recognized, if not secured, by a provision that while each county council division shall be represented by two members (s. 67 (3)) and every elector shall have two votes, he may, if he chooses, give both of them to one of the candidates.(*a*) With a view to secure as candidates the best available men, to guarantee their independence, and to lessen the tendency to narrow sectionalism, the term of office of a county councillor has been lengthened to two years,(*b*) a complete separation has been effected between the local and county councils,(*c*) and the area and population of the constituency represented by each member of a county council have been much increased.(*d*) The list of County Council Divisions(*e*) shows how great a reduction has taken place in the membership of the county councils, at all events in the cases above referred to.

The determination, under ss. 28-35 of the Act, of the limits of the various County Council Divisions, which were, in each county, to be as nearly as possible equal, having regard to population, extent of territories, assessed value, and the boundaries of existing local municipalities (*f*), was—in order to eliminate so far as possible all danger of unfairness—entrusted in every case to a Commission selected from among the County Judges of other Counties; and provision was made for the re-adjustment, by an independent Board, of the boundaries of such Divisions as may be affected by the erection of new villages or the separation of towns from their existing relations to the county.

The result of the change seems, thus far, to have proved, on the whole, satisfactory.

(b) "**The last decennial census,**" etc. See note (a) to s. 21.

(c) "**Other municipalities separated from the county.**" *Ex. gr.*, the Township of Pelee, which is separated for municipal purposes from the County of Essex (*g*).

(d) "**Indian reserves,**" etc. See "*The Indian Act,*" (R. S. Ca. c. 43) ss. 11-19, etc., and *ante*, pp. 13, (Bruce), 17, (Grey).

County Council Divisions.

67.—(1) For the purposes of representation in the county council, each county shall be divided into divisions (which shall be known as "County Council Divisions,") as follows:—

(*a*) If the population of the county is 25,000 or less, into not less than 4 and not more than 5 divisions.

(*a*) Sec. 168 (2). (*b*) Sec. 67 (3). (*c*) Secs. 81, 82.
(*d*) Sec. 67 (1). (*e*) *Ante*, pp. 13-29. (*f*) 59 V. c. 52, s. 31.
(*g*) See *ante*, p. 16.

Secs. 67 (1) 68.

Notes (a) (b).

County council Divisions.

(*b*) If the population is more than 25,000 but less than 40,000, into not less than 5 and not more than 6 divisions.

(*c*) If the population is 40,000 or more, but less than 60,000, into not less than 6 nor more than 7 divisions.

(*d*) And if the population is 60,000 or more, into not less than 8 nor more than 9 divisions. 59 V. c. 52, s. 3.

(2) The divisions established by the report of the Commissioners, appointed under the provisions of *The County Councils Act. 1896*, filed with the Provincial Secretary and with the several county clerks, pursuant to sections 32 and 33 of the said Act, shall constitute such county council divisions. *See* 59 V. c. 52, s. 33; 60 V. c. 45, s. 65.

59 V. c. 52.

Taken from 59 V. c. 52, s. 33, and 60 V. c. 45, s. 65—the latter of which simply validates and confirms the division of the county of Lennox and Addington made by County Judges Dean and Benson under a commission which (by error) specified the County of Lennox only.

(a) "**The divisions established by the report of the Commissioners,**" etc, are shown in the list of the County Council Divisions of Ontario, which appears *ante* in the Prefatory Note at pp. 13 to 29, inclusive.

Two members for each division.

(3) Each division shall be designated and distinguished by its number (as, for example, the "First County Council Division,") and shall be represented in the county council by two members, who shall hold office for the term of two years, and until their successors are elected and sworn into office and the new county council is organized. 59 V. c. 52, s. 5, *part*; 60 V. c. 15, *Sched.* C (1?2).

Term of office.

(b) "**Shall be designated . . . the 'First County Council Division,'**" etc. There seems to be no authority for designating the County Council Divisions by fancy names such as "Highlands Division," "Simcoe Division," etc.

(c) "**Until their successors are elected and sworn into office.**" The same provision is made in the case of local municipal councils, by s. 95.

Board to rearrange divisions.

68. The Judge of the County Court of the county, the Warden thereof and the Clerk of the Peace shall constitute a Board, whose duty it shall be, where a new village is erected, or a town is separated from the county or is erected into a city, or where a separated town is reunited to a county, and the arrangement into county council divisions is thereby disturbed, by their order to attach such village to some convenient county council division, or to rearrange the county council divisions affected, and, if necessary, the adjoining division or divisions; but in so doing the Board shall make only such changes as the altered circumstances require; or the said Board may (with the consent of the councils of the county and separated town) form the separated town (about to be reunited) into a division of the county council in addition to the present divisions, to be represented in proportion to population, one member being added for such town when the population thereof is less than any of the county council divisions, and two members being added for such town when the population is equal to that of any of the existing county council divisions. This arrangement shall continue only until a redistribution of the county council divisions shall take place by reason of

Forming town united to county into a separate county council division.

Secs. 69-71. Note (a).

increase of population or otherwise. 59 V. c. 52, s. 36; 62 V. (2nd Session) c. 26, s. 2; 63 V. c. 33, s. 3.

Taken from "*The County Councils Act, 1896*" (59 V. c. 52) s. 36, except the words (in lines 5 and 6) "or where a separated town is reunited to a county" which were inserted in 1899 (*vide supra*), and the last 11 lines, which were added in 1900 by 63 V. c. 33, s. 3. See *post*, p. 994.

Not to apply to Haliburton.

69. Sections 66 to 68 inclusive shall not apply to the Provisional County of Haliburton. 59 V. c. 52, s. 39.

See R. S. O. c. 4, entitled "*An Act respecting the Provisional County of Haliburton.*"

DIVISION II.—IN CITIES, (SEC. 70.)

City Councils.

70. The council of every city shall consist of the mayor, who shall be the head thereof, and three aldermen for every ward, to be elected in accordance with the provisions of this Act. 55 V. c. 42, s. 68.

(a) In the Prefatory Note, *ante*, p. 5, will be found some reference to the composition of the councils of the cities incorporated in this Province prior to 1849. Under s. 62 of the Act (12 V. c. 81) passed in that year, a city council consisted of one alderman and two councillors for each ward, a less property qualification being required in the case of a councillor than in that of an alderman. The mayor was chosen by the city council "from among the aldermen thereof." In the following year, (1850), a second alderman for each ward was added by 13-14 V. c. 64, Sched. A (15). The Act of 1858 (22 V. c. 99, s. 102), left the composition of city councils unaltered, but transferred to the municipal electors the right of electing the mayor. The Act of 1866 (29 & 30 V. c. 51, s. 66) abolished the office of councillor, increased the number of aldermen to three for each ward, and restored (s. 105) to the council the right of choosing its own mayor. In the note appended to that section in the second Edition of this MANUAL (1867), the then Editor, Mr. R. A. (afterwards Chief Justice) HARRISON, says:

> "The return to the old system has become expedient in consequence of the deterioration of aldermen and mayors, since mayors became elective by the people at large from among the people at large. Not only did the old system in most cases fail to secure as good a man as formerly for the office of mayor, but leaving the election of mayors to the general body of electors destroyed the ambition of those who went into the council with the hope or the chance of becoming mayor, which had a dwarfing effect upon the whole body of aldermen. Now that any alderman is eligible to be elected mayor, and must be elected from among the aldermen and by the aldermen, it is believed that the general standing of city councils will be improved."

Mr. HARRISON's expectation that the general standing of city councils would be improved by the change in the law does not appear to have been realized, for in 1873—by 36 V. c. 48, s. 102—the privilege of electing the chief magistrate was once more taken away from the city councils and given to the general body of electors, in whom it has ever since been vested. In the case of the City of Toronto, under a special Act of 1891 (*a*) the council is composed of a mayor elected by general vote and four aldermen elected by and from each of the six city wards. (See small-print note to s. 103.)

DIVISION III.—IN TOWNS, (SECS. 71, 71*a*.)

Town Councils.

71.—(1) Subject to the provisions of section 71*a*, the council of every town shall consist of the mayor, who shall be the head thereof, and three councillors for each ward where there are less than five wards, or two councillors for each ward where there are five or more wards: provided always that the council of every town, where there are less than five wards, may, upon a petition of not less than 100 municipal electors, pass a by-law reducing the number of councillors for each ward to two; but such by-law, before the final passing thereof, shall receive the assent of the electors of the municipality in the manner provided for in section 338 and following sections of this Act. 55 V. c. 42, s. 69 (1); 62 V. (2nd Session) c. 26, s. 3.

Reduction of number of councillors.

(*a*) 54 V. c. 82, s. 9.

Secs. 71 (2), 71 a.

Note (a).

When and how by-law reducing number of town councillors may be repealed.

(2) At any time after two annual municipal elections have been held under a by-law passed under this section, the council of the municipality, upon the presentation to them of a petition of not less than 100 resident municipal electors, asking the council to submit to a vote of the electors, in accordance with section 338 of this Act a by-law for the repeal of the by-law so passed, shall, without unnecessary delay, submit such repealing by-law to a vote of the electors of the municipality. The proceedings in regard to the submission of any such by-law, both as to its enactment and repeal, shall be as provided in this Act in regard to by-laws requiring the assent of the electors. 55 V. c. 42, s. 69.

(a) The composition of Town Councils in Ontario.—The ideal constitution of town councils has been even more frequently than that of city councils the subject of legislative experiment. Under the Act of 1849 (*b*) a town council consisted of three councillors from each ward, who at their first meeting elected from among themselves the mayor (s. 66), the reeve, and also (if there were 500 resident freeholders and householders on the collector's roll) a deputy-reeve (s. 77). By the Act of 1858 (*c*) the election of the mayor was taken from the council and entrusted to the rate-payers. In 1866 (*d*) the number of town councillors was reduced to two for each ward in towns having five wards, but was left at three for each ward in towns of less than five wards, and it was provided that but one councillor should retire annually in each ward; the representation of the town in the county council was increased by the addition of a deputy-reeve for every 500 persons appearing by the last revised assessment roll as having the same property qualification as voters,—viz., $800 freehold or $1,600 leasehold;—but the right to elect the reeve and deputy-reeves was transferred from the council to the ratepayers, and the right to elect the mayor from the ratepayers back to the council.

Earlier legislation as to Town Councils.

In the first Session after Confederation (1867) the number of councillors for each ward was increased to three in all cases, the proviso that only one of these should retire annually being retained (*e*); but this proviso was struck out two years later (*f*); and in 1871 (*g*) the number of councillors was reduced to two for each ward in towns having five or more wards. In 1873 (*h*) the right of electing the mayor was again taken from the town council and given back to the municipal electors, in whom it has ever since been vested. In 1880 (*i*) were added the proviso to subsection 1, and also subsection 2 of this section, which have been retained *verbatim* in the Consolidations of 1883, 1887, 1892, and 1897.

The change in the constitution of the county councils effected by the Act of 1896, (59 V. c. 52), made the titles of reeve and deputy-reeve merely titles of honour, and the Municipal Amendment Act of 1899 (62 V. (2), c. 26, s. 9), practically put an end to the office of deputy-reeve. See *post*, pp. 145-148, 988.

Councils in towns of 5,000 or less, how constituted.

71*a*.—(1) The council of every town having a population of not more than 5,000 by the last Canadian census shall consist of a mayor, who shall be the head thereof, and of six councillors to be elected by a general vote.

Division of town into wards.

(2) At any time after two annual elections have been held under the provisions of this section, the council of the town may, and upon the petition of twenty per cent. of the electors shall, at the time of holding an annual election, submit a by-law providing for the division of the town into wards. If the said by-law shall receive the assent of the majority of the electors voting thereon, one councillor shall thereafter, and so

(*b*) 12 V. c. 81, s. 62.
(*c*) 22 V. c. 99, s. 102.
(*d*) 29-30 V. c. 51, ss. 66, 88, and c. 52, s. 2.
(*e*) 31 V. c. 30, s. 6.
(*f*) 33 V. c. 26, s. 2.
(*g*) 34 V. c. 30, s. 1.
(*h*) 36 V. c. 48, s. 102.
(*i*) 43 V. c. 24, s. 2.

Sec. 71 a. Sub-secs. 2, 3.

long as the said by-law shall remain in force, be annually elected by the electors of each ward, and the remaining councillors, to complete the full number of six, shall be elected as in sub-section 1 of this section is provided. The proceedings in regard to the submission of any such by-law, both as to its enactment and repeal, shall be as provided in this Act in regard to by-laws requiring the assent of the electors.

Abolition of wards.

(3) The council of any town having a population of more than 5,000 and the council of any city having a population of 15,000 or less may by by-law provide that the council of such town or city shall be composed of a mayor and one alderman for each 1,000 of population, to be elected by general vote, or of a mayor and six aldermen when the population is less than 6,000; but such by-law shall not come into force unless and until it has been first submitted to a vote of the electors according to the provisions in this Act in regard to by-laws requiring the assent of the electors. For purposes of this section, the population of any city or town shall be determined by the last census of the Dominion of Canada. The persons entitled to vote upon such by-law shall be those who are entitled to vote at municipal elections.

(4) This section shall apply to towns and cities above mentioned notwithstanding anything contained in any Act of incorporation or other Act. 61 V. c. 23, s. 2; 63 V. c. 33, s. 4 (1).

Part of s. 4 (1) of 63 V. c. 33 is merely temporary. It will be found *post* at p. 995.

Aldermen in cities of more than 15,000 may be elected by general vote, or where over 40,000 by general vote in two electoral divisions.

(4*a*) In any city having a population of more than 15,000, the council may by by-law provide that the aldermen shall be elected by a general vote of the municipal electors, and either by general vote or in two electoral divisions where the population exceeds 40,000, one-half the number to be elected by each division; but such by-law shall not come into force unless and until it has been first submitted to a vote of the electors according to the provisions of this Act with regard to by-laws requiring the assent of the electors. For the purposes of this section the population of any city shall be determined by the then last census of the Dominion of Canada. The persons entitled to vote upon such by-law shall be those who are entitled to vote at municipal elections, and if the submission of such by-law be desired by petition of at least 400 of such electors, it shall be submitted at the then next annual municipal election. If such by-law be carried by the votes of a majority of the municipal electors voting thereon, it shall come into effect at the next annual municipal election. Such by-law may be repealed by a by-law to be submitted to the electors at any annual municipal election held not later than five years after the passing of such first mentioned by-law, the repealing by-law to be submitted to the vote of the municipal electors if petitioned for by at least 400 of such electors. 63 V. c. 33, s. 4 (2).

Sub-s. (4*b*)—which is merely temporary—is printed *post*, at p. 995.

DIVISION IV.—IN VILLAGES, (SEC. 72).

72. The council of every village shall consist of one reeve, who shall be the head thereof, and four councillors, who shall be elected by a general vote. 55 V. c. 42, s. 70: 61 V. c. 23, s. 3. Village Councils.

(a) This section is here reprinted as amended in 1898 by 61 V. c. 23, s. 3. In "*The Municipal Act*," as printed in "*The Revised Statutes, 1897*," it read as follows:

> "72. The council of every village shall consist of one reeve, who shall be the head thereof, and four councillors; and if the village had, on the last revised voters' list, the names of 500 persons entitled to vote at municipal elections, then of a reeve, deputy-reeve and three councillors, and for every additional 500 names on such last revised voters' list, there shall be elected an additional deputy-reeve instead of a councillor."

The reasons for doing away with the office of deputy-reeve have already been given, *ante*, in note (a) to s. 66.

(b) "**A reeve and four councillors.**" Ever since the Act of 1849, village councils have consisted of five members annually elected. Under that Act (*a*) the council elected its own reeve. The right to a deputy-reeve was granted by 22 V. c. 99, s. 66 (3) to every village having the names of 500 resident freeholders and householders on its last revised assessment roll; and by s. 135, this officer was (like the reeve,) to be chosen by the council. The Act of 1866 (*b*) gave an additional deputy-reeve for every additional 500 names on such roll of persons possessing the same property qualification as voters (viz. $600 worth of freehold or $1200 of leasehold); but it provided (s. 93) that the reeve and deputy-reeve as well as the councillors should be elected by general vote. See. s. 100 and note (a) thereto. As to the abolition of the office of "deputy-reeve" see note (a) to section 66.

DIVISION V.—IN TOWNSHIPS, (SECS. 73, 74).

73. The council of every township shall consist of a reeve, who shall be the head thereof, and four councillors who shall be elected by a general vote. 55 V. c. 42, s. 71; 61 V. c. 23, s. 4. Township Councils.

(a) This section is here reprinted as amended in 1898 by 61 V. c. 23, s. 4. In "*The Municipal Act*" as printed in "*The Revised Statutes, 1897*," it read as follows:—

> "73. The council of every township shall consist of a reeve, who shall be the head thereof, and four councillors, one councillor being elected for each ward where the township is divided into wards, and the reeve to be elected by a general vote; but if the township had, on the last revised voters' list, the names of 500 persons entitled to vote at municipal elections, then the council shall consist of a reeve, deputy-reeve, and three councillors, and for every 500 additional names on such last revised voters' list there shall be elected an additional deputy-reeve instead of a councillor."

(b) "**A reeve . . . and four councillors.**" A township, like a village, council, has ever since 1849 (*c*) consisted of five members annually elected. At first the council chose its own reeve (*d*) and after 1858, (*e*) a deputy-reeve also, if the

(*a*) 12 V. c. 81, s. 53. (*b*) 29 & 30 V. c. 51, s. 66 (4).
(*c*) 12 V. c. 81, s. 24. (*d*) 12 V. c. 81, s. 24. (*e*) 22 V. c. 99, s. 66 (4).

Secs. 73-75.

Notes (b)-(a).

Township councils.

township was entitled thereto by having 500 freeholders and house-holders on the last revised assessment roll; but since the passing of the Act of 1866 (*d*) these officers—as well as the additional deputy-reeves authorized by s. 66 (5) of that Act—have been elected by the rate-payers. Under the Act of 1849, if the township was divided into wards, one member was elected from each ward, (*e*) the Act requiring that there should be five wards. (*f*) This was continued by the Act of 1858, (*g*) but altered by the Act of 1860 (*h*) which provided that the election of reeve, deputy-reeves, and councillors should in all cases be by general vote, "the intention being", says MR. HARRISON, (*i*) "to destroy that sectional strife about the expenditure of money which often arises where each councillor looks upon himself as the representative of a particular ward and not of the whole township." The election of the reeve by general vote has continued ever since; but the system of electing the other four members of the council by wards was restored in 1873, (*j*) the number of township wards (in case of a division) being fixed at four in all cases (*k*); but in the Act of 1898 (*l*) we have reverted to the method of electing councillors by a general vote, which was abandoned in 1873 after a seven years' trial.

How number of voters to be estimated.

74. In counting the names of voters referred to in section 71 the name of the same person shall not be counted more than once in any municipality, whether the name appears upon the voters' list only once or more than once. 55 V. c. 42, s. 65 (2); 61 V. c. 23, s. 5.

Taken from "*The Municipal Amendment Act, 1888*," 51 V. c. 28) s. 5 (2), as amended by 61 V. c. 23, s. 5 (reference to s. 73 struck out).

DIVISION VI.—IN PROVISIONAL COUNTIES, (SEC. 75)

Provisional County Councils.

75. The county councillors who represent the county council divisions constituting a junior county (including any county council division which takes in the larger part of any municipality in such junior county), shall, *ex-officio*, be the members of the provisional council of such junior county. 55 V. c. 42, s. 72; 60 V. c. 15, *Sched.* C (17).

Taken from 60 V. c. 15, Sched. C. (17). *Cf.* 13-14 V. c. 64, s. 12.

(a) This section, in its present form, is inconsistent with s. 41, *supra*, by which it is provided that the provisional council of a junior county upon its separation from a union of counties shall be constituted by a proclamation of the Lieutenant-Governor, and that it shall consist not only of the county councillors who represent the County Council Divisions which make up the junior county, but also of two representatives to be elected under s. 41 (3) by the council of each separated town situate within the junior county. The inconsistency would be removed if the word "the" at the end of the fourth line were struck out.

(*d*) 29 & 30 V. c. 51, s. 93. (*e*) 12 V. c. 81, s. 5. (*f*) 12 V. c. 81, s. 15.
(*g*) 22 V. c. 99, s. 66 (4). (*h*) 29-30 V. c. 51, s. 93.
(*i*) MUNICIPAL MANUAL, (2nd Ed.) p. 69. (*j*) 36 V. c. 48, s. 69.
(*k*) 36 V. c. 48, s. 91 = s. 101 of this Act. (*l*) 61 V. c. 23, s. 4.

TITLE II.—QUALIFICATION, DISQUALIFICATION, AND EXEMPTIONS.

DIVISION I.—QUALIFICATION, (SECS. 76-79).

Qualification of mayors, aldermen, etc.

76.—(1) Except in the Districts of Muskoka, Parry Sound, Nipissing, Algoma, Thunder Bay, Manitoulin, Rainy River, and the Provisional County of Haliburton, no person shall be qualified to be elected a mayor, alderman, reeve, deputy-reeve, or councillor of any local municipality unless such person resides within the municipality, or within two miles thereof, and is a natural born or naturalized subject of Her Majesty, and a male of the full age of twenty-one years, and is not disqualified under this Act, and unless such person has, or his wife has, at the time of the election, as owner or tenant, a legal or equitable freehold or leasehold, or an estate partly freehold and partly leasehold, or partly legal and partly equitable, which is rated in his own name, or in the name of his wife, on the last revised assessment roll of the municipality, t at least the value following, over and above all charges, liens, and incumbrances affecting the same,

(*a*) In villages—Freehold to $200, or leasehold to $400;

(*b*) In towns—Freehold to $600, or leasehold to $1,200;

(*c*) In cities—Freehold to $1,000, or leasehold to $2,000;

(*d*) In townships—Freehold to $400, or leasehold to $800;

and in the said Districts and Provisional County,

(*e*) In townships and villages—Freehold to $100, or leasehold to $200;

(*f*) In towns—Freehold to $400, or leasehold to $800;

and so in the same proportions in all municipalities, in case the property is partly freehold and partly leasehold;

For the sources from which the various portions of this section have been drawn, see the notes, *infra*.

(a) **"Except in the Districts of Muskoka, etc."** Taken from "*The Municipal Amendment Act, 1892*," (55 V., c. 43, s. 2. As to the qualification for municipal office in these Districts and in Haliburton, see *post*, in the notes to R. S. O., c. 225.

Residents.

(b) **"Residents within the municipality or within two miles thereof."** Taken from the Act of 1866 (29-30 V., c. 51), s. 70. The Act of 1858, (22 V., c. 99), s. 70, required that candidates for municipal office should be "residents of the county in which the municipality is situated"; but it was nevertheless held (*a*) that a person rated on the assessment roll of the city of Ottawa, but resident in the adjoining township of Nepean, was ineligible for election as an alderman of the city of Ottawa, although both municipalities are territorially in the same county. As to what constitutes "residence" see note (d) to s. 86.

(*a*) By BURNS, J., in *Reg. ex rel. Blasdell* v. *Rochester*, 7 U. C. L. J. 101 (1860). A similar decision was arrived at by DRAPER, C. J. in *Reg. ex rel. Fleming* v. *Smith*, 7 U. C. L. J. 66 (1861). See C. S. U. C. c. 3, s. 2 R. S. O. c. 3, s. 3.

Sec. 76. Sub-sec. 1. Notes (c)-(d).

(c) "**Is a . . subject of Her Majesty . . of the full age of 21 years.**" Taken from 12 V., c. 81, s. 121. See note (c) to s. 86.

(d) "**A male.**" First expressed in "*The Consolidated Municipal Act, 1873*," (36 V., c. 48) s. 71, but clearly implied in all the previous Municipal Acts. See note (a) to s. 86.

(e) "**Is not disqualified under this Act.**" See s. 80 and the notes thereto. Sec. 207 specifies certain events which, (if they occur after the election,) may have the effect of vacating a seat in the council, but they are not causes of disqualification under this section (*b*).

(f) "**Has**, *or his wife has.*" The words in italics were added in 1886 (*c*) in consequence of the decision in *Reg. ex rel. Feltz* v. *Howland*, 11 P. R. 264. It is necessary that the candidate, or his wife, should "have," *i. e.*, should actually possess the freehold or leasehold estate at the time of the nomination, and also at the date of the polling (*d*).

(g) "**At the time of the election.**" (*e*) Municipal elections begin with the nomination, and the disqualification of candidates has reference to that time (*f*). The qualification must exist not only at the time of the nomination, but also at the time of the polling (*g*).

(h) "**As owner or tenant**" (*h*). There can be no qualification on pure personalty, nor can the assessment on realty be supplemented by the assessment on personalty (*i*).

B. and A. were partners, occupying premises as co-tenants under a yearly tenancy on the terms of an expired lease. Before the nomination day they dissolved partnership, B. withdrawing from the business and premises and leaving A. in possession. A. shortly afterwards went into partnership with S. The new firm then took a fresh lease of the premises: *Held*, that B. was not at the time of the election, co-tenant of A., so as to entitle him to become a candidate for alderman (*j*). An Indian agent having the mere possession, determinable at any moment, of land held by the Crown in trust for the Indians, was held not to have such an interest in the land either as proprietor or tenant, as enabled him to qualify under this section (*k*). Nor the locatee of an unpatented lot (*l*).

(i) "**A legal or equitable freehold or leasehold** (*m*), **or an estate partly freehold and partly leasehold** (*m*) **or partly legal or partly equitable**" (*o*). Where

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(*b*) *Rex* v. *Chitty*, 5 A. & E. 609. (*c*) 49 V., c. 37, s. 2.

(*d*) See *Middleton* v. *Simpson*, 5 C. P. D. 183, and note (g) *infra*.

(*e*) Taken from 12 V., c. 81, s. 121.

(*f*) *Per* WILSON, J., in *Reg. ex rel. Adamson* v. *Boyd*, 4 P. R. 204, (1868). Acc. *Reg.* v. *Corwin*, 24 U. C. R. 606; *Reg. ex rel. Rollo* v. *Beard*, 1 C. L. J. N. S. 126, (1865); *Reg. ex rel. Ford* v. *McRae*, 5 P. R. 309, (1870); *Reg. ex rel. Clancy* v. *McIntosh*, 46 U. C. R. 98, 105-6. See *Bourcier* v. *Chapman*, M. L. R., 4 S. C. 381. In the last case the cause of disqualification, viz., non-payment of taxes having been removed one hour after the nomination, the Court refused to set aside the election. (*g*) *Reg. ex rel. Turner* v. *Wilson*, 12 P. R. 546, (1888).

(*h*) Taken from the Act of 1858, (22 V., c. 99,) s. 70; the word "owner" having been substituted for "proprietor" by the Revisers of 1897, under the authority of 60 V., c. 3, s. 3. See note (h) to s. 4, *ante*. (*Cf.* 12 V., c. 81, ss. 22, 57, 65, 83. (*i*) *Reg. ex rel. Flatt* v. *Somerville*, 5 P. R. 19 (1869).

(*j*) *Reg. ex rel. Adamson* v. *Boyd*, 4 P. R. 204, (1868). See *Reg. ex rel MacKenzie* v. *Duross*, 17 C. L. T. 285, and *Reg. ex rel Harding* v. *Bennett*, 27 O. R. 314, cited in note (m) to s. 80.

(*k*) *Reg. ex rel. Lachford* v. *Frizell*, 6 P. R. 12, 9 C. L. J. N. S. 27 (1872).

(*l*) *Reg. ex rel. Telfer* v. *Allan*, 1 P. R. 214 (1853).

(*m*) Taken from 29-30 V., c. 51, s. 70. (*Cf.* 12 V., c. 81, ss. 22, 57, 65, 83; 22 V., c. 99, s. 70. As to the meaning of "leasehold" here, see subsection 5, *infra*. (*n*) Taken from R. S. O. 1877, c. 174, s. 70.

(*o*) First inserted here in 1873 (36 V., c. 48, s. 71); but it had been the law long before. See 22 V., c. 99, s. 70, now forming part of s. 76 (5).

defendant had, in November, 1858, conveyed the estate, which formed the subject matter of his qualification, to his father, for a consideration of £300, for which he took notes, and had in February, 1860, re-purchased the property, returning all the notes, though the father did not re-convey the property till the 3rd October, 1860, the son was held to have had at the time of the assessment an equitable estate within the meaning of the Act (*p*). See the preceding note (h).

(j) "**Rated.**" (*q*) Property owned by the candidate, but not rated on the assessment roll cannot be made available (*r*) The fact that property is rated upon the assessment roll as freehold when it is not so in reality will not qualify a candidate, "The provisions of this section are wholly negative, *i.e.*, '*No person*' can be elected '*who is not*' on the roll . . . It does not make the fact of being on the roll as freeholder &c., to a certain amount a conclusive qualification without regard to the truth of the case (*s*)."

(k) "**In his own name.**" The rating should be by name on the roll. (*t*) Where on the assessment roll, under the general heading, "Names of taxable parties," were entered the names of "Ker, William and Henry," for two separate parcels of land, and in the proper columns were the letters "F." and "H.," and in the column headed "Owners and address," was entered opposite to the parcels of land, "Wm. Ker & Bros.;" *Held*, that William Ker and Henry Ker, were the persons in whose names the properties were rated, and that they were sufficiently rated. (*u*) An administrator, though rated in his own name for real estate belonging to the deceased, is not entitled to qualify upon such real estate (*v*).

(l) "**In the name of his wife.**" Added by 43 V., c. 37, s. 2. See note (f) *supra*.

(m) "**Last revised assessment roll.**" See s. 3, *ante*.

The defendant was not assessed for the year 1880 [illegible] in that year was assessed, on the 3rd of September, for the year [illegible] By by-law of the city of Ottawa this assessment was revised before [illegible] Nov. and returned before 31st Dec. as and for the assessment roll for 1881. No appeal was had therefrom. The nomination took place on the 27th December, 1880, and the defendant was elected Mayor of Ottawa on 4th January, 1881; *Held*, that the election commenced on the nomination day, and the assessment roll mentioned, which was to take effect in 1881, and not before, was not the last revised assessment roll at that time within the meaning of the by-law and of R.S.O. c. 180, sec. 44 (now Rev. Stat. c. 223, s. 76) and that the defendant could not qualify. (*w*)

(*p*) *Reg. ex rel. Tilt* v. *Chegne*, 7 U. C. L. J. 99 (1861).

(*q*) Taken from 12 V. c. 81, [illegible] 57 and 14 & 15, V. c. 109, Sched. A. (12).

(*r*) *Rex. ex rel. Metcalfe* v. *Smart*, 10 U. C. R. 89 (1853); *Reg. ex rel. Carroll* v. *Beckwith*, 1 P. R. 278 (1854); *Reg. ex rel. Flatt* v. *Scottdale*, 5 P.R. 19 (1869).

(*s*) *Per* Robinson, C.J., *Reg. ex rel. Telfer* v. *Allan*, 1 P. R. 214 (1853).

(*t*) *Reg. ex rel. Metcalfe* v. *Smart*, 2 C. L. Chamb. 114 (1852.)

(*u*) *Reg. ex rel. McGregor* v. *Ker*, 7 U. C. L. J. 67 (1861).

(*v*) *Reg. ex rel. Stack* v. *Davis*, 3 U. C. L. J. 128 (1857).

(*w*) *Reg. ex rel. Clancy* v. *McIntosh*, 46 U.C.R., 98. In *Reg. ex rel. Scarlett* v. *Wicks*, 33 C.L.J.N.S. 466; 18 C.L.T. 287 (1897), the respondent, who had been elected in January, 1897 an alderman of the city of G., was unseated in February for want of sufficient property qualification, and was re-elected in March, his assessment having in November, 1896, been increased to the necessary amount; but the assessment roll then made up not having been adopted by the city council under (what is now) s. 58 (1) of "*The Assessment Act*" until after the second election. *Held* (by Mr. Cartwright, Official Referee, sitting for the Master in Chambers), that the by-law adopting the new roll was not retrospective, and that the roll of November, 1896 was not "the last revised assessment roll" at the time of the respondent's election in March, 1897. But see now s. 53, *ante*.

Sec. 76, Sub-sec. 1. Notes (m)-(o).

Judges are in general disposed to go as far as the facts will allow for the purpose of reconciling the mode of rating with the facts, if the person elected has really a legal qualification. (*b*) Where a person elected as alderman of a city made a declaration of office, inadvertently qualifying upon property in respect of which he was not entitled to qualify, but was qualified in respect of other property, his election was sustained (*c*).

(m) "Over and above all charges, liens and incumbrances affecting the same." These words were added in 1880 by 43 V. c. 24, s. 2. Prior to the Statute of 1877 (*d*), by which the voters' list instead of the assessment roll (*e*) was made the criterion of the right to vote or to be a candidate at municipal elections (*f*) it had been held under the Acts of 1849, 1858, 1859 (*g*), 1866 and 1873, that the assessment roll was conclusive as to rating and qualification (*h*) that the existence of incumbrances affecting the value of the property appearing therein could not be considered, (*i*). In *Reg. ex rel. Blakeley* v. *Cameron*, 1 C.L.J.N.S. 188 (1865), MORRISON J. held (1) that the (assessed) property need not be free from incumbrances, but (2) that even if the existence of incumbrances could be considered, it was enough, if after deducting their gross amount from the assessed value of the property there remained a value sufficient to qualify the candidate. Nor, on the other hand, could any inquiry be had as to whether the candidate (a voter) was possessed of other assessable property in respect of which he might be held to be qualified (*j*).

And, since the above words were inserted in the section, it has been held that the assessment roll is still conclusive evidence as to value, and that the amount of the incumbrances (if there is any) must be deducted from the assessed, not from the actual value of the property (*k*).

In *Reg. ex rel. Scarlett* v. *Wicks* (1897), referred to in foot note (*w*) to the preceding note, it was held by Mr. Cartwright, Official Referee (sitting for the Master in Chambers), that unpaid local improvement rates, though not yet due, are "charges, liens, or incumbrances" within the meaning of the clause, under the authority of *Cumberland* v. *Kearns*, 18 O.R. 181; 17 A.R. 28 (1890); *Re Graydon and Hammill*, 20 O.R. 199 (1890); *Armstrong* v. *Anger*, 21 O.R. 98 (1891), and (what is now) s. 387 of "*The Municipal Act*." 54 V. c. 42, s. 35 (now s. 681 of "*The Municipal Act*") was not referred to, but it seems to apply only to questions between vendor and purchaser. See *post*, note (**a**) to s. 387.

(o) "Affecting the same." In *Reg. ex rel. Ferris* v. *Speck* (*l*) the respondent had been elected as a councillor for the village of Niagara Falls. He was duly rated upon the proper assessment roll as tenant of land thereon assessed for $800, which land with other land owned by the same landlord, (which it was admitted was of the value of at least $1,100) was incumbered by a mortgage of $800, having priority to the respondent's lease. *Quo warranto* proceedings having been taken in the County Court of Welland to unseat him for want of sufficient property qualification, the County Court Judge was of opinion that the mortgage should not be taken into account in ascertaining the value of the respondent's leasehold, as it was not a charge, lien, or incumbrance

(*b*) *Reg. ex rel. Northwood* v. *Askin*, 7 U.C.L.J. 130 (1861); *Reg. ex rel. Ford* v. *Cottingham*, 1 C.L.J.N.S. 244 (1865); *Reg. ex rel. Chambers* v. *Allison*, Ib. 244 (1861); *Oldham*, 1 O.M. & H. 153. See further note (**d**) to s. 86.

(*c*) *Reg. ex rel. Hartney* v. *Dickey*, 1 C. L. J. N. S. 190 (1865).

(*d*) 40 V. c. 12, entitled "*An Act to extend the Voters' Lists Act of 1876 to Municipal Elections*," etc. (*e*) 29 & 30 V c. 51, ss. 70, 75.

(*f*) See *post*, note (**a**) to s. 89, citing *St. Louis* v. *Beaume*, 46 U.C.R. 460, 462 (1895), and *Reg. ex rel. McKenzie* v. *Martin*, 28 O.R. 523 (1898.)

(*g*) C. S. U. C. 54.

(*h*) *Reg. ex rel. Metcalfe* v. *Smart*, 10 U.C.R. 89 (1852); *Reg. ex rel. Ford* v. *Cottingham* 1. C.L.J.N.S. 244 (1865); *Reg. ex rel. Chambers* v. *Allison*, 1 C.L. J.N.S. 244 (1865).

(*i*) *Reg. ex rel. Flatt* v. *Van Velsor*, 5 P.R. 319 (1870); *Reg. ex rel. Philbrick* v. *Smart*, 5 P. R. 323 (1871); *Reg. ex rel. Bole* v. *McLean*, 6 P. R. 249 (1875).

(*j*) *Reg. ex rel. Carroll* v. *Beckwith*, 1 P.R. 278 (1854); *Reg. ex rel. Flatt* v. *Semandie*, 5 P.R. 19 (1869).

(*k*) *Reg. ex rel. Kelly* v. *Iau*, 8 P.R. 431 (1881). And see *Reg. ex rel. Hudgins* v. *Ross*, 33 C.L.J.N.S. 692 (1897). (*l*) 28 O.R. 486 (1897).

affecting it, within the meaning of the above words. *Per* MEREDITH, C. J.: "I am unable to say that this view is not the correct one . . . What was meant was that the leasehold interest itself should be the subject of the incumbrance, where the qualifying property is a leasehold interest, that is to say, an incumbrance created by the owner of the leasehold interest, that is to say, an it *qua* leasehold . . . The mortgage debt should be apportioned according to the respective values of the two properties included in it. In either case the respondent would be sufficiently qualified, even if the incumbrance be one within the provisions of this section; see *Moore* v. *Overseers of Parish of Carisbrooke* 12 C. B., 661; *Barrow* v. *Backmaster*, 12 C. B. 664. The appeal must be dismissed and with costs."

(p) "**And so in the same proportions.**" *i. e.* enough to make up the required amount, counting every $1 of freehold as equivalent to $2 of leasehold. Different properties may be added together to make up the required amount *(a)*.

But, if any such person is at time of election in actual occupation of any such freehold, rated in his own name or in the name of his wife on the last revised assessment roll of the municipality, he shall be entitled to be elected, if the value at which such freehold is actually rated in such assessment roll amounts to not less than $2,000; and for that purpose the said value shall not be affected or reduced by any lien, incumbrance or charge existing on or affecting such freehold. 55 V. c. 42, 73 (1): c. 43, s. 2; 60 V. c. 3, s. 3; 60 V. c. 45, s. 76.

This provision first became law as to townships in 1883, 46 V. c. 18, s. 73, *part*; was extended to villages in 1885 by 48 V. c. 39, s. 3, and to all municipalities in 1887 by 50 V. c. 29, s. 2.

(q) "**Actual occupation.**" This does not necessarily mean exclusive occupation. When partners are in occupation of partnership property each is to be deemed to be in actual occupation of his interest therein. *(a)*

When alienation of property rated not to disqualify.

(2) No person who has, or whose wife has property duly rated on the last revised assessment roll, sufficient to qualify him, as in the preceding sub-section required, shall be deemed to be disqualified by the alienation by sale or otherwise of the said property, or by the expiration or surrender of the demised term between the date of the return of the assessment roll and the time of his election, if at the time of his election he is resident within the municipality and has, or his wife has, as owner or tenant, a legal or equitable freehold or leasehold, or a partly freehold and partly leasehold, or a partly legal and partly equitable estate of sufficient assessed value to qualify him for election under the preceding subsection.

Declaration of qualification in such cases.

(3) In case of the election of a person qualified under the preceding sub-section, the declaration of qualification under subsection 2 of section 311 of this Act may be taken, striking out all the words thereof after the word "occupation" in the thirteenth line of the said sub-section, and inserting in lieu thereof the words

"And I had such an estate actually rated on the last revised assessment roll of this municipality (*naming it*) at an amount not less than $2,000."

Subsecs. 2 and 3 were added in 1888 by 51 V., c. 28, s. 9. The words "or by the expiration or surrender of the demised term," in lines 5 and 6 of sub-s. 2, being inserted in 1892 by 55 V. c. 43, s. 3, in order to make clearer what had already been declared by BOYD, C. in *Reg. ex rel. Chick* v. *Smith*, 22 O.R. 279 (March, 1892) to be the intention of the subsection.

(a) *Reg. ex rel. Dexter* v. *Gowan*, 1 P. R. 104 (1854).

(a) *Reg. ex rel Jouvisse* v. *Mason*, 28 O. R. 495, and see s. 93 and note (a) thereon.

Secs. 76 (4, 5)-79.

Notes (r); (a).

Qualification of members of council where new territory added to village, town or city.

(4) Where territory has been added to a village, town or city, before a revised assessment roll of the municipality has been made which includes such added territory, it shall be sufficient if the required rating or part thereof is in respect of land or premises situate within the newly added territory on the last revised assessment roll of the municipality of which such added territory had before the addition formed part. 55 V. c. 42, s. 73 (2-4); c. 43, s. 3.

Added in 1890 by 53 V. c. 50, s. 4. See in s. 91 a somewhat similar provision as to the qualification of electors.

"Leasehold" defined.

(5) The term "leasehold" in this section shall not include a term less than a tenancy for a year, or from year to year: and

Nature of estate.

the qualification of any person, where a qualification is required under this Act, may be of an estate either legal or equitable, or may be composed partly of each. 55 V. c. 42, s. 74.

The first part of this subsection is taken from the Act of 1858, (22 V. c. 99, s. 70, the latter part from the Act of 1866, (29 & 30 V. c. 51) s. 70.

(r) **"The qualification of any person . . . under this Act."** As to municipal electors this provision is (perhaps unnecessarily) again expressed in s. 86. See note (i) to that section.

Qualification of County Councillors.

Members of county councils.

77. Every member of a county council shall possess the same property qualification as the reeve of a town is required to possess, and shall also be a resident of the county council division for which he is a county councillor. 59 V. c. 52, s. 5, *part*; s. 14, *part*.

Taken from "*The County Councils Act, 1896*," (59 V. c. 52), ss. 5 and 14. As to what constitutes residence, see note (1) to s. 86.

New Townships.

In new township not having assessment roll.

78. In the case of a new township erected by proclamation, and for which there has been no assessment roll, every person who, at the time of the first election, has such an interest in real property, and to such an amount as is mentioned in section 76 of this Act, shall be deemed to be possessed of a sufficient property qualification. 55 V. c. 42, s. 75.

Taken from the Act of 1858, 22 V. c. 99, s. 71. When the person elected makes the declaration required by s. 311 (1), *post*, he must thereby put a value upon the property.

If only one person qualified for each seat in the council.

79. In case in any municipality there are not at least two persons qualified to be elected for each seat in the council, no qualification beyond the qualification of an elector shall be necessary in the persons to be elected. 55 V. c. 42, s. 76.

Taken from 22 V. c. 99, s. 72. *Cf.* 14-15 V. c. 109, s. 17.

(a) **"Qualified to be elected."** Does this apply simply to qualification in respect of property, or does it include every other statutory qualification? It is apprehended that the words "must be construed in the larger sense, *i.e.*, for the benefit and advantage of the whole body of electors; for if it should happen that all those who might be qualified as respects property were disqualified as respects interest or otherwise, the municipality could have no council if the inhabitants could not resort to the general body of electors for councillors." (*a*).

(*a*) *Per* BURNS, J., in *Reg. ex rel. Bender* v. *Preston*, 7 U. C. L. J. 100 (1861).

DIVISION II.—DISQUALIFICATION (SECS. 80-83).

Persons disqualified from being members of councils.

80.—(1) No Judge of any Court of civil jurisdiction, no gaoler or keeper of a house of correction, no sheriff, deputy sheriff, sheriff's bailiff, high bailiff or chief constable of any city or town, no assessor, collector, treasurer, or clerk of any municipality, no bailiff of any Division Court, no county Crown attorney, no registrar, no deputy clerk of the Crown, no clerk of the County Court, no clerk of the peace, no High School trustee, no innkeeper or saloonkeeper, or shopkeeper licensed to sell spirituous liquors by retail, no license commissioner or inspector of licenses, no police magistrate, and no person having by himself or his partner an interest in any contract with or on behalf of the corporation, or 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, or which is subject to the control or supervision of the council or of an officer thereof on behalf of the council, or who has an unsatisfied claim for such goods or materials, and no person who either by himself or with or through another, has any claim, action or proceeding against the municipality, and no person who is counsel or solicitor either by himself or with or through another in the prosecution of any claim, action or proceeding against a municipality, shall be qualified to be a member of the council of any municipal corporation. 55 V. c. 42, s. 77 (1); 58 V. c. 42, s. 2.

Founded upon s. 132 of the Act of 1849 (12 V. c. 81). See note (a) *infra*. Cf s. 73 of the Act of 1858, and s. 73 of the Acts of 1866, 29-30 V. cc. 51 and 52 the latter of which disqualified all the persons enumerated in lines 1-5 inclusive and also every innkeeper, saloonkeeper, or person having by himself or his partner an interest in any contract with or on behalf of the corporation. County Crown Attorneys and the other officers mentioned in lines 6 and 7 were added in 1867 by 31 V. c. 30, s. 8. License Commissioners, Inspectors of Licenses and Police Magistrates in 1879 by 42 V. c. 31, s. 2, and High School Trustees in 1889 by 52 V. 36, s. 4. See note (f) *infra* as to the further amendment of the subsection made in 1895 by 58 V. c. 42, s. 2.

(a) The Act of 1849 (12 V., c. 81, s. 132), disqualified only (1) Judges of any Court of civil jurisdiction, (2) naval and military officers on full pay, (a) (3) Any person receiving any allowance from the municipality, except in the capacity of councillor or in capacities incidental thereto, and (4) Any person having by himself or partner any interest or share in any contract with or on behalf of the municipality.

Under this Act a Local Superintendent of Schools, appointed and paid by the county council, was held eligible for election as a township councillor (b). BURNS, J. says (p. 192):

> "The 132nd section of 12 V., c. 81, in saying 'no person receiving any allowance from the municipality' must be read *reddendo singula singulis*; it must be a direct receipt from the township, not so remote as receiving from the county treasury."

The Act of 1858 (c) added the words "no officer of any municipality," under which the mayor for the year still current was held not to be included. (d)

(a) Commissioned officers in the army on full pay are prohibited by s. 146 of "*The Army Act*," (Imp. Stat. 44 & 45 V. c. 58), from serving in any corporate office.

(b) *Reg. ex rel. Arnott* v. *Merchant*, 2 C. L. Chamb. 189 (1852).

(c) 22 V., c. 99, s. 73.

(d) *Re Sawers and Stevenson*, 5 U. C. L. J. 42 (1859).

Sec. 80.
Sub-sec. 1.
Notes (a)-(d).

though in s. 278 he is called "the chief executive officer" of the corporation (*e*). Under the same words, however, an overseer of highways was held to be disqualified (*f*). Insolvency at the time of the election does not seem to be a disqualification. See s. 207 and note (**e**) to s. 76.

(b) **"Clerk of *any* municipality."** The disqualification applies to all municipal clerks,—thus differing from the words used in s. 73 of the Act of 1849, "receiving any allowance from *the* municipality" (*g*). Under the Act of 1896, (in which the language was the same as here), the county clerk of Lennox and Addington was held disqualified to sit as mayor of the town of Napanee (*h*). In the case of the clerk of the particular municipality, the reason for this disqualification is obvious (*i*). No one can exercise the functions of a returning officer and be at the same time a candidate in the election (*j*).

(c) **"High School Trustee."** "*The High Schools Act*" (*k*) provides that High School Trustees "shall hold office until their successors are appointed and the new Board is organized."

(d) **"Inn-keeper or saloon-keeper or shop-keeper licensed to sell spirituous liquors by retail."** An "innkeeper" is the owner of a house who holds out that he will receive all travellers and sojourners who are willing to pay a price adequate to the accommodation required (*a*). The disqualification under this section is not, however restricted to innkeepers. It extends to all saloon-keepers (*b*) and to shopkeepers who are licensed to sell spirituous liquors by retail (*c*). A man may be an innkeeper under this section, though without a license (*d*) or though he has taken out the license in the name of another (*e*) but an unlicensed person who, under colour of a license to his son, sells liquor by retail is not disqualified under this section (*f*). If a man, being an innkeeper, in good faith transfers his license, he ceases to be disqualified under the Act (*g*). The respondent and his brother, who were carrying on business as Booth Bros., had a license in the name of the firm to sell intoxicating liquors. Before the nomination, the defendant, with the consent of the license commissioners, transferred his interest in the license to his brother, but the business continued as before: *Held*, that a license cannot lawfully be transferred except in the cases mentioned in R. S. O. (1877) c. 194, s. 37, (*h*); that the consent of the commissioners did not validate the transfer, and therefore, that the defendant, who retained his interest in the license, was not qualified to be a councillor (*i*).

(*e*) See note (**a**) to s. 71, citing *Reg. ex rel. Doran* v. *Haggart*, 1 C. L. J. N. S. 74 (1865).

(*f*) *Reg. ex rel. Richmond* v. *Tegart*, 7 U. C. L. J. 128 (1861).

(*g*) See *Reg. ex rel. Arnott* v. *Marchant*, 2 U. L. Chamb. 191 (1852), cited in *supra* note (**a**). (*h*) *Reg. ex rel. Boyes* v. *Dillor*, 4 P. R. 195 (1868).

(*i*) See ss. 106 (2), 107, 118 (4), 121 (1), 126, 127, 128 (2) (3), 129 (1) (3) (4), 131, 138, 139, 144, 146, 151, 152, 155, 156, 157, 179 (1), *etc.*, *etc.*

(*j*) *Reg.* v; *Blizard*, L. R. 2 Q. B. 55, *per* COCKBURN, C. J., at p. 58; *Reg.* v. *Owens*, 2 E. & E. 86, cited by BLACKBURN, J., in *Reg.* v. *White*, L. R. 2 Q. B. at p. 561-562. See also *Reg.* v. *Morton*, [1892] 1 Q. B. 39, *per* A. L. SMITH, J., at p. 42; *Reg.* v. *Tewkesbury* (*Mayor of*), L. R. 3 Q. B. 629; *Fanagan* v. *Kernan*, 8 L. R. Ir. 44.

(*k*) R. S. O., c. 293, s. 3 (2). See also ss. 12, 13.

(*a*) See *Rex* v. *Luellin*, 12 Mod. 445; *Thomson* v. *Lacy*, 3 B & A. 283; *Dansey* v. *Richardson*, 3 E. & B. 144; *Holder* v. *Southy*, 8 C. B. N. S. 254; *Allen* v. *Smith*, 12 C. B. N. S. 638; *Threfall* v. *Borwick*, L. R. 7 Q. B. 711.

(*b*) See *Cahill* v. *Campbell*, 105 Mass. 40.

(*c*) See *Reg.* v. *Rymer*, 13 Cox C. C. 378.

(*d*) *Reg. ex rel. Flanagan* v. *McMahon*, 7 U. C. L. J. 155 (1861).

(*e*) *McKay* v. *Brown*, 5 U. C. L. J. 91 (1859).

(*f*) *Reg. ex rel. Clancy* v. *Conway*, 46 U. C. R. 85.

(*g*) *Reg. ex rel. Crozier* v. *Taylor*, 6 U. C. L. J. 60 (1860); and see further *Dixon* v. *Birch*, L. R. 8 Ex. 135.

(*h*) See now R. S. O. c. 245, s. 37.

(*i*) *Reg. ex rel. Brine* v. *Booth*, 3 O. R. 144.

(e) The New Brunswick Liquor License Act (*j*) provided that in case of an application for a license, the petition must have endorsed upon it a certificate signed by one-third of the ratepayers in the polling subdivision in which the premises sought to be licensed are situate, and that no holder of a license in any municipality could be a member of the municipal council, a teacher in the public schools or a Justice of the Peace. *Held*, that these conditions could properly be imposed; and that they were not *ultra vires* of the Local Legislature as being prohibitory measures, by reason of the ratepayers being able to prevent any licenses being issued, nor any other measures in restraint of trade by affixing a stigma to the business of selling liquor (*k*).

(f) "**Or having a contract for the supply of goods or materials to a contractor . . . and no person who . . . has any claim, action or proceeding against the municipality.**"

As to the latter portion of this clause see also the next note (**g**).

These words were added to the section in 1895 (*a*) in consequence of the facts elicited upon an investigation held by the Judge of the County Court of the County of York (*b*) into charges against certain aldermen of the City of Toronto. Prior thereto the clause in question had read, "And no person having by himself or his partner an interest in any contract with or on behalf of the corporation."(*c*) Under these words (used in the Act of 1866 (*d*)), it had been held that a baker, who for some time prior to his election had supplied bread to a city corporation for its gaol, was not disqualified from being elected as an alderman by reason of the fact that at the time of his election the contract for the supply of bread to the gaol was in the name of C. (theretofore an employee of the respondent), and that the bread, baked at the respondent's bakery, was delivered by him at the gaol free of any expense for conveyance. (*e*) Such cases will in future be clearly within the purview of this disqualifying clause.*

(**f**) Under the corresponding words in the English Municipal Corporations Acts (Imp. Stats. 5 & 6 Wm. IV. c. 76, s. 28; 45 & 46 V. c. 56, s. 12), "any share or interest in any contract or employment with, by, or on behalf of the council" it was decided that the mayor of a town was not disqualified by reason of his firm having supplied materials to the Local Board of Health (which consisted of the mayor, aldermen, and burgesses) (*a*).

But *Le Feuvre* v. *Lankester* can no longer be relied upon as a correct statement of the law under the English Act (*b*), later cases having given a much wider scope to the words above quoted; and the leaning of the Courts appears to be towards a strict interpretation of the subsection.(*c*).

A contract in which the defendant has a real interest, though it may be in the name of another, has always been within the scope of the Act (*d*), and, *semble*, it is not necessary that the contract should be one binding upon the corporation—as *e.g.*, where the corporate seal was necessary and the contract

(*j*) 50 V., c. 4, s. 10. (*k*) *Danaher* v. *Peters*, 17 S. C. R. 44.

(*a*) 58 V. c. 42, s. 2.

(*b*) Under (what is now) s. 324 of "*The Municipal Act*."

(*c*) *Cf.* the similar language of s. 132 of the Act of 1849, quoted in note (**a**). *supra*. (*d*) 29 & 30 V. c. 51, s. 73.

(*e*) *Reg. ex. rel. Piddington* v. *Riddell*, 4 P. R. 80 (1867).

(*a*) *Le Feuvre* v. *Lankester*, 3 E. & B. 530.

(*b*) See Arnold's Law of Municipal Corporations (4th Ed.) 27.

(*c*) Arnold, *ubi supra*. See *Tomkins* v. *Jolliffe*, 51 J. P. 247; *Cox* v. *Ambrose*, 7 Times L.R. 59; *Lewis* v. *Carr*, 1 Ex. D. 484; *Neil* v. *Longbottom*, [1894] 1 Q.B. 767, referred to in note (**g**) *infra*; and (as to the effect of similar provisions in other Acts); *Towsey* v. *White*, 5 B. & C. 125; *Nicholson* v. *Fields*, 7 H. & N. 810; *Fletcher* v. *Hudson*, 7 Q.B.D. 611; *Hunnings* v. *Williamson*, 11 Q.B.D. 533; *Whiteley* v. *Bailey*, 21 Q.B.D. 154; *Nutton* v. *Wilson*, 22 Q.B.D. 744; *Reg.* v. *Ramsgate (Mayor, etc. of)*, 23 Q.B.D. 66.

(*d*) *Collins* v. *Swindle*, 6 Grant, 282; *City of Toronto* v. *Bowes*, 4 Grant 289, 6 Grant 1; *Stephens* v. *Hurteau*, M.L.R. 6 S.C. 148; *Simpson* v. *Ready*, 12 M. & W. 736.

In *Coughlan* v. *City of Victoria*, 3 Brit. Col. L. R. 57 (1893) under "*The British Columbia Municipal Act, 1892*," s. 30 (10) of which disqualifies any member of the council who has "an interest in a contract with or for the municipality either directly or indirectly"—an alderman was held to be disqualified who had contracted to supply material to a contractor with the municipality. As to see now the R. S. B. C. (1897) c. 144. s. 19 (10).

Sec. 80, Sub-sec. 1. Notes (f)-(g).

was not under seal (e). So a surety to the municipality has been held to be disqualified (f); a mortgagor to the municipality (g); the part owner of a mill exempted from taxation by a by-law of the town (h); also a corporation lessor who retains any interest in the reversion (i), and a lessee from the corporation (j). But see, as to a lease of 21 years and upwards, the exception created by subsec. 2 (a) and the cases noted thereon. The Imp. Stat. 15 V. c. 5, s. 1 (1852) provided that the possession of a share or interest in a newspaper in which borough advertisements were inserted should not be a cause of disqualification, but there is no similar provision in Ontario, except so far as the case may come within the first of the exceptions named in subsec. 2.

Under a local Act (k) which provided that no person should be capable of acting as a commissioner, etc., who shall be interested in any contract for furnishing, supplying or selling any article, matter or thing to be employed or made use of for the purposes of the Act, it was *Held*, that a person who had contracted with former commissioners to sell a plot of land to be used for the purposes of the Act was not disqualified to be a commissioner, although the conveyance had still to be executed and the price paid (l).

(g) "Any claim . . . action or proceeding against the municipality." Under these words a person who had furnished, (for the erection of a school-house bricks which were to be paid for by setting off their price against yearly taxes) (a), and one who, in consideration of being allowed to build a dam and bridge across a river, had promised to keep it in repair for forty years (b) were held to be disqualified. So, if at the time of the election, there be a dispute between the candidate and the municipality arising out of a matter of contract (c) even if all the work was done and nothing remained but payment, (d)

A *bona fide* and complete assignment before the election, of all interest in or under the contract will remove the disqualification (e) but such transfer will not avail if any interest still remains in the candidate (f) nor, *semble*, a withdrawal therefrom not assented to by the corporation (g). But where the contract is really at an end and nothing remains to be done except the execution of a formal release, there is no disqualification (e); and it is apparently not enough to disqualify a person that he is the agent of a company which has a contract with the corporation. Thus, the agent of an insurance company, paid by salary or commission, who, both before and after the election, had, on behalf of his company, effected insurance on several public buildings, the property of the corporation, was held not to be disqualified. (i)

(e) *Reg.* v. *Francis*, 18 Q.B. 526; *Reg. ex rel. Moore* v. *Miller*, 11 U.C.R. 465 [1854]; *Reg. ex rel. Stock* v. *Davis*, 3 U.C.L.J. 128 [1857]; *Reg. ex rel. Flnett* v. *Gauthier*, 5 P.R. 24 [1869].

(f) *Reg. ex rel. Coleman* v. *O'Hare*, 2 P.R. 18 [1855]; *Reg. ex rel. McLean* v. *Watson*, 1 C.L.J.N.S. 71 (1864); *Reg. ex rel. Hauer* v. *Roberts*, 7 P.R. 315 (1878); *Reg* v. *Kirk*, 24 N.S. Rep. 168 (1892).

(g) *Reg. ex rel. Lutz* v. *Williamson*, 1 P.R. 94 (1854).

(h) *Reg. ex rel. Lee* v. *Gilmour*, 8 P.R. 514 (1881).

(i) *Reg. ex rel. Ross* v. *Rastal*, 2 U.C.L.J.N.S. 160 (1866).

(j) *Reg. ex rel Stock* v. *Davis*, 3 U.C.L.J. 128 (1857).

(k) 7 & 8 Geo. IV. c. 77, s. 2. (l) *Woodley* v. *Kay*, 1 H. & N. 307.

(a) *Reg. ex rel. Flnett* v. *Gauthier*, 5 P. R. 24, (1869).

(b) *Reg. ex rel. Patterson* v. *Clarke*, 5 P. R. 337 (1869).

(c) *Reg. ex rel. Bland* v. *Figg*, 6 U. C. L. J. 44 (1860); *Reg. ex rel. McMullen* v. *DeLisle*, 8 U. C. L. J. 291 (1862).

(d) *Reg. ex rel. Davis* v. *Carruthers*, 1 P. R., 114, (1854); *Reg. ex rel. Moore* v. *Miller*, 11 U. C. R. 465, (1854); *Reg. ex. rel. Rollo* v. *Beard*, 2 C. L. J. N. S. 126 (1866); *Reg. ex rel. Ferris* v. *Ber*, 15 C. L. J. N. S. 158, (1879); *Reg. ex rel. McGuire* v. *Birkett*, 21 O. R. 162 (1891).

(e) *Reg. ex. rel. Mack* v. *Manning*, 4 P. R. 73 (1867).

(f) *Reg. ex rel. Ross* v. *Rastal*, 2 C. L. J. N. S. 160 (1866).

(g) *Reg. ex rel. McGuire* v. *Birkett*, 21 O. R. 162 (1891).

(h) *Reg. ex rel. Armor* v. *Coste*, 8 U. C. L. J. 290 (1862); *Reg. ex rel. Hill* v. *Betts*, 4 P. R. 113 (1867); *Reg. ex. rel. Ford* v. *McRae*, 5 P. R. 309 (1870).

(i) *Reg. ex rel. Bagg* v. *Smith*, 1 C.L.J.N.S. 129 (1865).

(h) "Counsel or solicitor." See *Reg. ex rel. Coleman* v. *O'Hare*, 2 P. R. 18 (1855); *Town of Peterborough* v. *Burnham*, 12 C. P. 103 (1862).

With regard to unpaid accounts for the price of articles of trifling value ALDERSON, B., said (referring to the Act which was before the Court in *Woolley* v. *Kay* (a)

> "The prohibition seems to me to apply only to continuing contracts. . . . A single bargain *e.g.* if the commissioners bought a brush in a shop, would not disqualify the seller though the price had not been paid."

In *Lewis* v. *Carr*, (b) BRAMWELL, L. J., said (p. 490)

> "I doubt very much whether the Legislature intended these words to comprehend the case where there was a trifling dealing over the counter, and where the price paid for the articles was well known."

In *Nutton* v. *Wilson*, (c) LOPES, L. J., said (p. 749)

> "I express no opinion with regard to such very trifling matters as were suggested in the argument *e.g.*, the purchase of a paint-brush or a few nails from a member of the Board. It may be that the maxim *de minimis non curat lex* would be applicable in such cases."

But in *Neil* v. *Longbottom* (d) it was held by a Divisional Court that the section of "*The Municipal Act, 1882*" (e) which disqualifies from being a councillor any person who "has . . . any share or interest in any contract" applies to a person appointed chemist to the council, however small may be the value of the contract.

(i) **"Other causes of disqualification."** Certain other statutory provisions relating to disqualification for municipal office should here be referred to *e.g.* gr. s. 162, which provides that any person against whom judgment is rendered for the penalty thereby imposed for voting twice for mayor, reeve or deputy reeve shall be ineligible as a candidate, etc., at the next annual municipal elections s. 196, which creates a disqualification for four years ss. 249, 418 (2) and 435 (2) each of which creates a disqualification for two years s. 251, which disqualifies until the penalty and costs therein referred to have been paid and s. 71 of "*The Liquor License Act*," (a) which provides that

> "If a member of any municipal council is convicted of having knowingly committed any offence under this Act, he shall, in addition to any other penalty to which he may be liable under this Act, thereby forfeit and vacate his seat, and shall be ineligible to be elected or to sit or vote in any municipal council for two years thereafter; and if any such person, after the forfeiture aforesaid, sits or votes in any municipal council, he shall incur a penalty of $40 for every day he so sits or votes."

See also (as to the disqualification of army officers on full pay), note (a), *supra* referring to s. 146 of "*The Army Act*," (b)

(j) **"Notice of disqualification."** Notice of the disqualification of a candidate should be given as early and as widely as possible, and, at all events, in sufficient time to allow the electors an opportunity of nominating some one else who shall possess the necessary qualification.(c) If full and explicit notice of disqualification is thus given in due time(d), votes for the disqualified candidate will be thrown away(e), and the minority candidate will be entitled to the seat.

(a) 1 H. & N. 307, at p. 309. See the preceding note.
(b) 1 Ex. D., 4 84. (c) 22 Q.B.D. 744.
(d) [1894] 1 Q.B. 767. (e) Imp. Stat. 45 & 46 V. c. 56, s. 12 (1 c).
(a) R. S. O. c. 245. (b) Imp. Stat. 44 & 45 V. c. 58.
(c) *Reg. ex rel. Clack* v. *McMullen*, 9 U. C. R. 407 (1852); *Reg. ex rel. Metcalfe* v. *Smart*, 10 U. C. R. 89 (1853); *Reg. ex rel. Richmond* v. *Tegart*, 7 U. C. L. J. 128 (1861); *Reg. ex rel. Tinning* v. *Edgar*, 4 P. R. 36 (1867); *Reg. ex rel. Booth* v. *Sutherland*, 10 C. L. J. N. S. 287.
(d) *Reg. ex rel. Davis* v. *Carruthers*, 1 P. R. 114 (1854).
(e) *Reg. ex rel. Metcalfe* v. *Smart*, 10 U. C. R. 89, 92 (1852); *Reg. ex rel. Richmond* v. *Tegart*, 7 U. C. L. J. 128 (1861); *Reg. ex rel. Flanagan* v. *McMahon*, 7 U. C. L. J. 155 (1861); *Reg. ex rel. Forward* v. *Dittor*, 4 P. R. 197 (1868); *Reg. ex rel. Adamson* v. *Boyd*, 4 P. R. 204 (1868).

Sec. 80, Sub-sec. 1. Note (j).

It is true that in *Reg. ex rel. Forward* v. *Dellor*, JOHN WILSON, J., said (p. 198),

> "I do not think the relator should have the seat, for he waived his first protest by going to the polls. If a candidate claims to stand upon his rights, he must do so, and not waive them afterwards by going to the polls. He must elect his position and stand by it;"

and in *Reg. ex rel. Adamson* v. *Boyd*, the same learned Judge said (p. 214),

> "He (the relator) cannot be declared entitled to his seat if his conduct be equivocal, so as to mislead the electors. He cannot go to the polls, taking his chance of election, after deterring voters, and then fall back and claim his seat on grounds which, by going to the polls, he waived."

But in view of the English authorities(*f*) it would not be prudent to rely upon these *dicta*, or for a candidate who has, in due time given full and explicit notice to the electors of the disqualification of an opponent, to resign his candidature (under s. 129), especially where more than one candidate is to be elected. The notice must clearly apprise the electors that, if they vote for the disqualified candidate, their votes will be thrown away (*g*) and should make them aware of the facts constituting disqualification (*h*); but it is not necessary to give notice also of the law that such facts do disqualify (*i*). A notice has been held sufficient which stated that the candidate was "*believed* to be disqualified" (*j*). If the notice is not given in time (as above indicated) or is not clear and explicit, the minority candidate will not be entitled to the seat. (*k*)

(*f*) "If a person who receives a majority at an election is incapacitated from being elected, and such incapacity is known and must be known to those who voted for the candidate so incapacitated, the votes given to such person are taken to be thrown away, and the candidate (being qualified) with the next number of votes will be taken to be duly elected." ARNOLD, "Law of Municipal Corporations," (4th Ed.), p. 20.

The general principle is laid down in the case of *Gosling* v. *Veley*, 7 Q. B. 406, as follows: "Where the majority of electors vote for a disqualified person in ignorance of the fact of disqualification, the election may be void or voidable, and (in the latter case) may be capable of being made good according to the nature of the disqualification. The objection may [as in *Drinkwater* v. *Deakin*, L. R. 9 C. P. 626] require ulterior proceedings to be taken before some competent tribunal in order to be made available; or it may be such as to place the elected candidate on the same footing as if he had never existed and the votes for him were a nullity. . . . If the disqualification be of a sort whereof notice is to be presumed, none need expressly be given. No man can doubt that, if an elector would nominate and vote only for a woman to fill the office of mayor or burgess in Parliament, his vote would be thrown away. There the fact would be notorious, and every man would be presumed to know the law upon that fact." The same principle was cited with approval by Lord COLERIDGE, C. J., in *Drinkwater* v. *Deakin*, L. R. 9 C. P. 641, and by STEPHEN, J., in *Beresford-Hope* v. *Lady Sandhurst*, 23 Q. B. D. 85.

(*g*) *Reg. ex rel. Adamson* v. *Boyd*, *supra*; *Reg. ex rel. Clarke* v. *McMullen*, 9 U. C. R. 467 (1852); *Launceston*, (Election Case), L. R. 9 C. P. 626 (1874).

(*h*) *Reg. ex rel. Dexter* v. *Gowan*, 1 P. R. 104 (1854).

(*i*) *Reg.* v. *Tewkesbury*, L. R. 3 Q. B. 629 (1867), (referred to in former editions of this MANUAL as authority for this proposition) must be considered as having been overruled by *Beresford-Hope* v. *Lady Sandhurst*, 23 Q. B. D. 79 (1889). See also *Reg. ex rel. Booth* v. *Sutherland*, 10 C. L. J. N. S. 287, 289 (1874); *Cox* v. *Anderson*, 60 L. J. Q. B. 114 (1891).

(*j*) *Launceston*, (Election Case), L. R. 9 C. P. 626 (1874).

(*k*) *Reg. ex rel. Tinning* v. *Edgar*, 4 P. R. 36 (1867), and see *Reg. ex rel. McClaire* v. *Birkett*, 21 O. R. 162 (1892).

The notice may be in the following form:

MUNICIPAL ELECTIONS, 19 .

"To the electors of the township of.....

"Take notice that Mr. A. B., a candidate for the office of..... at this election, is (*here state the grounds of disqualification*) and is (*or* 'is believed to be') therefore disqualified, and that all votes given for him will be thrown away.

"Dated this ..... day of ....., 19....

"C. D."

The notice should be posted up in conspicuous places at or near every polling sub-division and, if possible, inserted in the local newspaper or newspapers. (*l*)

Proviso; as to shareholders in companies having dealings with corporations.

(2) But no person shall be held disqualified from being elected a member of the council of any municipal corporation,

(a) **By reason of his being a shareholder in any incorporated company having dealings or contracts with the council of any such municipal corporation, or by reason of his having a lease for twenty one years or upwards, of any property from the corporation; but no such leaseholder shall vote in the council on any question affecting any lease from the corporation, and no such shareholder on any question affecting the company; 55 V. c. 42, s. 77 (2)**

And lessees for 21 years from corporation.

(k) The exception in favour of shareholders in companies having dealings with the corporation was first made in 1864 by 27-28 V. c. 37, s. 2, the latter part of the section (relating to leases of corporation property) by the Act of 1866, (29-30 V. c. 51), s. 73. The law was formerly different on both points (*a*).

(l) "**But no such shareholder shall vote.**" Where four out of five of the members of a village council were shareholders in an incorporated company in the village, and (notwithstanding their interest) voted for the submission to the electors of a by-law for a bonus to the company, and after the vote of the electors the council passed the by-law (*b*) it was set aside.

Exemption from taxation not to disqualify for election to councils.

(b) **Or by reason only that a part of his property is exempt from taxation, if he is assessed for sufficient other property in the municipality, liable to taxation, to qualify him for such office; but no such person shall vote on any question affecting the property so exempt from taxation. 56 V. c. 35, s. 4.**

Added in 1893 by 56 V. c. 35, s. 4, the last words of which were, "Nothing herein shall relieve a person *having a contract* with the municipality from the disqualification which now exists to be a member of the council thereof."

(*l*) See Rogers on Elections, (17th Edition), pp. 109, 684.

(*a*) See *Reg. ex rel. Ranton* v. *Counter*, 1 U. C. L. J. 68 (1855); *Reg. ex rel. Padwell* v. *Stewart*, 2 P. R. 18 (1855); *Reg. ex rel. Stock* v. *Davis*, 3 U. C. L. J. 128 (1857); *Reg. ex rel. Mack* v. *Manning*, 4 P. R. 73 (1867); *Reg. ex rel. Patterson* v. *Clarke*, 5 P. R. 337, (1871).

(*b*) *Re Baird and the Village of Almonte*, 41 U. C. R. 415; and see s. 269, note (**a**) as to the disqualification of a municipal councillor to vote upon a question in which he has a pecuniary or other interest apart from that of the public.

Secs. 80-83.

Note (m); (c).

(m) In *Reg. ex rel. Harding* v. *Bennett* (c), the facts were:—A city council had passed a by-law exempting from taxation, except as to school rates, for a period of seven years, the property of a partnership of the respondent, who had been elected an alderman. *Held*, that the exemption, not being founded on any contract, but being an exemption without a contract, (d) there was no disqualification. *Reg. ex rel. Lee* v. *Gilmore* (e), distinguished on that ground.

Per STREET, J.:—The words "exempt from taxation" mean exempt from payment of all taxes (f).

Held, also that the respondent was entitled to qualify upon his rating upon the assessment roll of 1895 as the joint owner of a freehold estate in the partnership property, he and his three partners being jointly rated for this property as freeholders to the amount of $10,000. [See also, on this point, note (k) *supra*, and note (a) to s. 93.]

Certain persons not qualified to be county councillors.

81. Any person having the necessary qualification, and not otherwise disqualified, who is a member of a local municipal council for the year in which nominations are held for the election of members of the county council, shall be eligible for nomination and election as a member of the county council at such election; but no member of the council of a local municipality shall sit or vote as a county councillor; and no clerk or treasurer of a county shall be eligible for nomination or election as a county councillor, or shall sit or vote in any county council. 59 V. c. 52, s. 6 *part*; 60 V. c. s. 3; 60 V. c. 45, s. 60, *part*.

As to the sources of this section, see the notes at the end of it. Its object, as well as that of s. 82, is evidently to secure the complete independence of county councils.

Additional ground of disqualification to county councils.

82. No person who has been nominated and is a candidate for election as a county councillor in any county council division shall, while he remains a candidate as aforesaid, be eligible for nomination or election as a member of the council of any local municipality. 60 V. c. 45, s. 60, *part*.

Contracts, etc., with Members of Councils.

Contracts by members with the corporation to be held void in any action thereon.

83. In case a member of the council of any municipality, either in his own name or in the name of another, and either alone or jointly with another, enters into a contract of any kind, or makes a purchase or sale in which the corporation is a party interested, the contract, purchase or sale shall be held void in any action thereon against the corporation. 55 V. c. 42, s. 431.

Taken from 22 V. c. 99, s. 218, (C. S. U. C. c. 54, s. 249) under which it was held that one B., a member of the municipal council of the Town of Peterborough, could not recover for services rendered by him to the corporation as attorney and solicitor (g).

(a) The mayor of the City of Toronto, having secretly contracted to purchase at a discount a large amount of debentures of the city, which were expected

(c) 27 O. R. 314 (1896).

(d) See the wording of 56 V. c. 25, s. 4, in the note *supra* in small print.

(e) 8 P. R. 514 (1881), referred to *supra* in note (f).

(f) *Quære*, is this intended to include school rates? See s. 411, *post*; R. S. O. c. 292, s. 73, and *City of Winnipeg* v. *Canadian Pacific R. W. Co.*, 34 C. L. J. N. S. 706, 18 C. L. T. 370 (1898).

(g). *Town of Peterborough* v. *Burnham*, 12 C. P. 103.

to be issued under a future by-law of the city council, and having afterwards been an active party in procuring and giving effect to the by-law which was subsequently passed, the Court of Chancery held him to be a trustee for the city of the profit he had derived from the transaction (*h*). This decision was affirmed by the Court of Error and Appeal (*i*) and afterwards upheld by the Privy Council (*j*). So, where a member of a municipal corporation agreed with another person to take a contract from the corporation for the execution of certain works in the name of such person, the profits whereof were to be divided between the parties, it was held that such a contract was in contravention of the Municipal Act, and the Court of Chancery refused to enforce the agreement for a partnership (*k*). An action on a contract for the sale of goods by a trading partnership, a member of which is also a member of the municipal council, may, where the contract is not executed, be resisted on the ground that one of the plaintiffs is a member of the municipal council (*l*). An action will lie, by some of the inhabitants of a municipality alleging an illegal misapplication of municipal funds by the mayor, with which the council refused to interfere, though requested so to do (*m*).

Councillors, contracts of, with municipality.

Division III.—Exemptions (Sec. 84).

Exemptions.

84. All persons over sixty years of age, all members and officers of the Legislative Assembly of Ontario and of the Senate or House of Commons of Canada, all persons in the civil service of the Crown, all Judges not disqualified by section 80, all coroners, all persons in priests' orders, clergymen and ministers of the Gospel of every denomination, all members of the Law Society of Upper Canada, whether barristers or students, all solicitors in actual practice, all officers of Courts of Justice, all members of the medical profession whether physicians or surgeons, all professors, masters, teachers, and other members of any university, college, or school in Ontario, and all officers and servants thereof, all millers, and all firemen belonging to an authorized fire company—are exempt from being elected or appointed members of the council of any municipal corporation, or to any other municipal office. **55 V. c. 42, s. 78.** *See also as to firemen, c.* 231, *ss.* **2-4.**

Taken almost *verbatim* from 42 V, c. 81, s. 131.

(a) Section 80 contains the disqualifications, this section the exemptions. The difference between a disqualification and an exemption is, that a person disqualified *cannot* hold office, but a person exempt, even though qualified, *need not*. The one is an incapacity or disability; the other a privilege. It is an offence at common law for a person, without some legal ground of objection, to refuse to take upon himself an office to which he has been duly elected. So a qualified person duly elected refusing to accept office, may be summarily convicted and punished. See sec. 319, *post*.

How exemption differs from disqualification.

(*h*) *City of Toronto* v. *Bowes*, 4 Grant 489. (*i*) 6 Grant 1.
(*j*) 11 Moore, P. C. C. 463. (*k*) *Collins* v. *Swindle*, 6 Grant 282.
(*l*) *Brown* v. *Town of Lindsay*, 35 U. C. R. 509.
(*m*) *Paterson* v. *Bowes*, 4 Grant 170; see also *Township of West Gwillimbury* v. *Hamilton and North-Western R. W. Co.*, 23 Grant, 383.

PART III.

MUNICIPAL ELECTIONS.

TITLE I.—ELECTORS.
TITLE II.—ELECTIONS.

TITLE I.—ELECTORS.

DIVISION I.—QUALIFICATION, (Secs. 85-93).

TITLE II.—ELECTIONS.

DIV. I.—TIME AND PLACE OF HOLDING, (Secs. 94-105).
DIV. II.—RETURNING OFFICERS AND DEPUTY-RETURNING OFFICERS, (Secs. 106-111).
DIV. III.—OATHS, (Secs. 112-117).
DIV. IV.—PROCEEDINGS PRELIMINARY TO THE POLL, (Secs. 118-163).
DIV. V.—THE POLL, (Secs. 164-187).
DIV. VI.—MISCELLANEOUS PROVISIONS, (Secs. 188-206).
DIV. VII.—VACANCIES IN COUNCIL, (Secs. 207-218).
DIV. VIII.—CONTROVERTED ELECTIONS, (Secs. 219-244).
DIV. IX.—PREVENTION OF CORRUPT PRACTICES, (Secs. 245-258).

For the Synopses, see at the commencement of each Division.

TITLE I.—ELECTORS.

DIVISION I.—QUALIFICATION, (Secs. 85-93).

Synopsis: The important section of this Division is sec. 89, which provides that, except in a new municipality, for which there is no assessment roll, every person named on the voters' list, and no person not so named, shall be held to possess the necessary property qualification to entitle him to vote at a municipal election.

Sections 86-88 and 92-93—which specify in detail the qualifications of voters—belong rather to "*The Voters' Lists Act*" than to "*The Municipal Act*." They simply define the persons whose names the clerk is to place upon the alphabetical lists of the persons entitled to vote in the municipality at municipal elections. *(a)*

Sec. 91 is to be read with sec. 150, and sec. 90 with sec. 149.

Sec. 85 specifies who may vote at elections to a county council.

(*a*) See "*The Voter's Lists Act*," (R. S. O., c. 7), s. 6 (3).

Secs. 85, 86 (1).

Notes (a) (b); (a) (b).

Qualification of voters at elections of county councillors.

85. The persons qualified to vote at the elections of county councillors shall be the persons qualified to vote at the elections of members of the council of the local municipality and all local municipal clerks, and no others. 59 V. c. 52, s. 13, *part.*

Taken from 59 V. c. 52, s. 13, "*The County Councils Act, 1896.*"

(a) "**All local municipal clerks.**" But in a local municipal election, the clerk can only vote in the case of a tie (*b*).

(b) "**And no others.**" Every person appointed by the county council (*c*) to act as "nominating officer" for a county council division is disqualified (*d*) to vote at an election held for the county council [illegible] for which he is so appointed.

This accords with the general rule that a returning officer shall not vote at an election, at all events, unless there is a equality of votes. See ss. 179 and 365 of this Act; "*The Dominion Elections Act*" (R. S. C. c. 8), s. 42 (2 *a*), and "*The Ontario Election Act,*" (R. S. O. c. [illegible] ss. 6, 123.

Qualification of electors.

86.—(1) Subject to the provisions of the next following seven sections, the right of voting at municipal elections shall belong to the following persons, being men or unmarried women, or widows of the full age of twenty-one years, and subjects of Her Majesty by birth or naturalization, and being rated, to the amount hereinafter provided, on the revised assessment roll of the municipality upon which the voters' list used at the election is based, for real property held in their own right (or, in the case of married men, held by their wives), or for income, and having received no reward, and having no expectation of reward, for voting.

Women.

(a) "**Men or unmarried women or widows.**" Until 1884 women could not vote at municipal elections (*a*); though they had been entitled ever since 1816, if they were freeholders or householders within the school-section, to vote at the election of, or to be elected as school trustees. (*b*) But by 47 V. c. 32, s. 3 the right of voting at municipal elections was extended to widows and unmarried women possessing the other qualifications required by law. In England (*c*) unmarried women and widows, if otherwise qualified, have a right to vote in the election of councillors, auditors, and assessors, but they lose that right by marriage, "*The Married Women's Property Act, 1870,*" (*d*) having had no effect upon the political disabilities of married women at common law. (*e*)

Adults.

(b) "**Of full age.**" This qualification has always been necessary. (*a*) Full age is twenty-one years, and is completed on the day preceding the anniversary of a person's birth. (*b*) If, therefore, one is born on 1st January, he is of age to do any legal act on the morning of the last day of December, though he may not have lived twenty-one years by nearly 48 hours. (*c*) Upon a question as to the age of a voter, the written memorandum of the clergyman who married the parents was held better evidence than the memory of individuals, unaccompanied by such memorandum. (*d*)

(*b*) See 179 (1) *post.* (*c*) See 131. (*d*) See 183, *last clause.*

(*a*) *Cf.* 22 V. c. 99, s. 79; 29 & 30 V. c. 51, s. 75.

(*b*) 56 Geo. III, c. 36, ss. 1 and 2; 13 & 14 V. c. 48, ss. 5 and 6.

(*c*) Imp. Stat. 32 & 33 V. c. 55, s. 9. (*d*) Imp. Stat. 33 & 34 V. c. 93.

(*e*) *Reg.* v. *Harrald*, L.R. 7 Q.B. 361 (1872).

(*a*) See "*The Township Officers Act,*" (1 V. c. 2), s. 4, and the Act of 1849 (12 V. c. 81,) s. 121.

(*b*) 1 Co. Litt. 78 b; *Anon*, 1 Salk. 44; *Toder* v. *Sausam*, 1 Brown Parl. Cas. 468.

(*c*) Tomlin, "Infant," 1. (*d*) *Reg. ex rel. Forward* v. *Bartels*, 7 C.P. 533.

Sec. 86 (1).

Note (c).

British subjects.

(c) "**Subjects of Her Majesty.**" This qualification has also been necessary ever since 1849. See 12 V. c. 81, s. 121. It is to be presumed that resident and assessed inhabitants of this Province are British subjects until something is shewn to the contrary, from which it can be determined that they are aliens. (*a*) It is not sufficient for a relator to swear that certain voters are aliens, without giving particular facts to shew that they are aliens, and how aliens, as by having been born in a certain place named, out of the allegiance of the British Crown. (*b*) A person born in New York in 1830, the son of a British subject who had emigrated from Ireland a short time previously, and who, a year or two after the birth of this child, had come to Upper Canada, and resided here ever since, was held to be a British subject within the meaning of the Act. (*c*) But a person who was born in the United States before the Revolution and continued to reside there afterwards, was held to be an alien. (*d*) The son of a woman who (being a British subject) was married to an alien and was domiciled out of British possessions at the time of his birth, was held to be an alien. (*e*) But the son of a once naturalized alien continues to be a British subject notwithstanding the residence of his father beyond British allegiance. (*f*) A voter born in the United States, his parents being British-born subjects, his father and grandfather U. E. Loyalists, and himself nearly all his life resident in Canada: *Held*, entitled to vote. (*g*) An alien who came to Canada in 1850, and had taken the oath of allegiance in 1861, but had taken no proceedings to obtain a certificate of naturalization from the Court of Quarter Sessions was held not qualified to vote. (*h*) An alien whose father had taken the oath of allegiance on obtaining the patent for his land under 9 Geo. IV, c. 21., was held not qualified to vote. (*i*) Evidence that the parents of a voter had stated to him that he was born in the United States but that his father was born in Canada, was received and the vote held good. (*j*) Where evidence was given of parol admissions by certain voters that they had been born in a foreign country, and also evidence that since the admissions the voters had voted at parliamentary elections, and had taken the voters' oath as to being British subjects by birth or naturalization: *Held*, that there was no presumption of naturalization sufficiently strong to rebut the presumption of the continuance of the original *status* of alienage. (*j*) Certain aliens had taken the oath of allegiance, etc., before a Justice of the Peace of a town, but the oaths had been administered to them in a township, though in the same county: *Held*, that under the Act 34 V. c. 22, (Ca.) s. 2, the Justice of the Peace in administering the oaths was acting ministerially and not judicially, and that the oaths were properly administered. (*k*).

On objection taken to the *status* of an elector in *quo warranto* proceedings on the ground that as an alien he was not an elector (*a*), it was admitted that he had become a citizen of the United States, but he swore that he had returned to Canada and taken the oath of allegiance before a stipendiary magistrate. *Held*, that his admission that he had become naturalized in the United States cast upon him the *onus* of proving re-naturalization in Canada: and—it appearing that he had taken the oath of allegiance after July 4th, 1883, and had not obtained the certificate of naturalization required by ss. 11-21 of "*The Naturalization Act*" (*b*),—*Held* that he was not a British subject. (*c*).

Indians.

Indians who are British subjects may be electors or candidates for municipal offices. (*d*)

(*a*) *Reg. ex rel. Carroll* v. *Beckwith*, 1 P.R. 278, (1854) *per* ROBINSON, C. J., at p. 284.

(*b*) *Ibid.* (*c*) *Reg. ex rel. McVean* v. *Graham*, 7 U.C.L.J. 125 (1861).

(*d*) *Doe d. Patterson* v. *Davis*, 5 U.S. 494.

(*e*) *Doe Robinson* v. *Clarke*, 1 U.C.R. 37.

(*f*) *Doe d. Hay* v. *Hunt*, 11 U.C.R. 367. See further *Montgomery* v. *Graham*, 31 U.C.R. 57. (*g*) *Stormont* (Provincial Election), H.E.C. 21, at p. 42.

(*h*) *Brockville* (Provincial Election), H.E.C. 129, at p. 137.

(*i*) *Ibid*, at p. 138.

(*j*) *Lincoln* (Provincial Election) H.E.C. 500, at pp. 506-507.

(*k*) *Ibid*, pp. 512-514.

(*a*) See *post*, s. 219 notes (**e**) and (**f**). (*b*) [illegible] c. 113.

(*c*) *Reg. ex rel. Francis* v. *Young*, 33 C.L.J.N.S. 400 (1897).

(*d*) *Reg. ex rel. Gibb* v. *White*, 5 P.R. 315 (1870).

(d) "Being rated." (*e*) When (as was formerly the case) the assessment roll was the test of a man's right to vote at a municipal election (*f*), it was held that the franchise was not to be lost to any one who was really entitled to vote, if his right could be sustained upon a reasonable view of the requirements of the Act. (*g*) So the rating was held sufficient where the surnames were correct, though the Christian names were erroneous. Thus "Wilson Wilson" for "William Wilson," "Simond Faulkner" for "Alexander Faulkner," "Thomas Sanderson" held *idem sonans* with "Thomas Anderson," so as to entitle the person bearing latter name to vote (*h*). Any error in assessing as owner, tenant or occupant, was immaterial if the voter was qualified in any of these characters. (*i*) When a voter, properly assessed, whose name was accidentally omitted from the voters' list for polling sub-division No. 1, where his property lay, and entered upon the voters' list for sub-division No. 2, voted without question in No. 1, though not on the list, the vote was held good. (*j*) A municipal council has, of course, no power to declare a qualification of voters different from that prescribed by this Act. (*k*).

(e) "To the amount hereinafter provided." See s. 87. As to how the amount shall be estimated in case the owner and occupant of real property are severally rated therefor, see s. 92; as to cases of joint rating, s. 93.

(f) "The revised assessment roll . . . upon which the voters' list . . . is based." See "*The Voters' Lists Act*" (R.S.O. c. 9), s. 6 (3). As to the case of a new municipality for which there is no separate assessment roll, see s. 90, and as to cases of new or enlarged corporations, s. 91. Now, however, it is the voters' list and not the assessment roll which determines the right of an elector to vote. See notes **(m)** and **(n)** to s. 76, and note **(a)** to s. 89.

(f) "For real property held, etc." (*a*) This includes the first two classes of voters enumerated *infra*, viz.: "freeholders" and "tenants"; and the word "held" is intended to cover either a freehold or a leasehold interest in land. When it was the assessment roll, and not the voters' list, which determined whether a ratepayer had the right to vote (*b*), it was held that he must not only be "rated" thereon, but must also at the time of the election, hold the property in respect of which he claimed to vote (*c*); and notwithstanding the legislation (*d*) intended to give finality to voters' lists, this appears still to be necessary. (*e*)

(g) "In their own right, (or, in the case of married men) held by their wives." Until 1887 (*f*) the words were "in their own right or in the right of their wives." (*g*) although "*The Married Women's Property Act, 1872*," (*h*) had declared that from the date of its passing, "the real estate of any married woman . . . owned by her at the time of her marriage or acquired in any manner during her coverture" should "be held and enjoyed by her for her

In what right.

(*c*) *Cf.* 12 V. c. 81, ss. 22, 57, 65, 83; 14 & 15 V. c. 109, Sched. A. (4), (11), (12), (14). (*f*) See *post*, note **(a)** to s. 89.

(*g*) *Reg. ex rel. Ford* v. *Cottingham*, 1 C. L. J. N. S. 214 (1865). See also *Re McCulloch*, 35 U.C.R. 452, and the cases cited in note **(m)** to s. 76.

(*h*) *Reg. ex rel. Chambers* v. *Allison*, 1 C.L.J.N.S. 244 (1865).

(*i*) *Stormont* (Provincial Election), H.E.C. 21; *Brockville* (do) *Ibid.*, 129.

(*j*) *Brockville, Ibid. supra*, at p. 130.

(*k*) *Re Bell and Township of Maurice*, 3 C.P. 399; Dillon, s. 195.

(*a*) Taken from 22 V. c. 99, s. 75. (*b*) See *post*, note **(a)** to s. 89.

(*c*) *Reg. ex. rel. Lutz* v. *Hopkins*, 7 U. C. L. J. 152 (1861); *Reg. ex. rel. Avon* v. *Flynn*, 8 U. C. L. J. 76 (1862).

(*d*) 40 V. c. 12 (1877).

(*e*) See infra, "*Firstly* . . . who are *at the date of the election* freeholders; *Secondly* . . . who are *at the date of the election* tenants;" also the third clause of the freeholders' oath (s. 112) and the fourth clause of the tenants' oath (s. 113).

(*f*) 50 V. c. 8, Sched. p. 29, 4th paragraph.

(*g*) *Cf.* 22 V. c. 99, s. 75; C. S. U. C. c. 54, s. 75; 29-30 V. c. 51, s. 75; 31 V. c. 30, s. 9; R. S. O. (1877), c. 174, s. 76; 46 V. c. 18, s. 79

(*h*) 35 V. c. 16, s. 1, now R. S. O. c. 163, s. 5 (3).

Sec. 86 (1). Notes (g)-(l).

separate use free from any estate of her husband during her lifetime or as tenant by the curtesy." Property held in trust, (*e.g.*, by an executor, administrator or guardian) would not be available as a qualification. (*i*)

(h) "**Or for income.**" This franchise was created in 1874. (*j*)

(i) "**And having received no reward, and having no expectation of reward for voting.**" This is amplified in the form of oath (*k*) as follows:

> "That you have not, directly or indirectly, received any reward or gift, nor do you expect to receive any, for the vote which you tender at this election;
>
> "That you have not received anything, nor has anything been promised you, directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected with this election."

The definition of "bribery" given in s. 245 (*q. v.*) is even wider than the terms of the oath; and see par. 8 of the income voters' oath, s. 114.

Freeholders.

Freeholders.

Firstly, All persons, whether resident or not, who are in their own right, or whose wives are, at the date of the election, freeholders of the municipality;

(j) "**Whether resident or not.**" Residence within the municipality, and in towns and cities, within the ward, was required by the Acts of 1849 and 1851, (*a*) but ceased in 1858 (*b*) to be necessary in the case of freeholders.

"**In their own right or whose wives are.**" This wording was adopted in 1887. (*c*) See *supra*, note (g).

As to the meaning of "residence," see note (l) *infra*.

Tenants.

Tenants.

Secondly, All residents of the municipality, who have resided therein for one month next before the election, and who are, or whose wives are, at the date of the election, tenants in the municipality:

(k) "**Tenants.**" The word formerly used was "householders" (*d*); a "householder" being, in all the Municipal Acts until the present Consolidation, defined as a holder or occupant of a separate portion of a house having a distinct communication with a public road or street by an outer door. (*e*) The word "tenants" was added in 1867 (*f*) and is now substituted for the word "householders" the wording of this section being thus assimilated to that of sect. 13 (4) of "*The Assessment Act*." (*g*)

"Residents."

(l) "**Residents.**" Questions have arisen under many English Statutes as to what constitutes residence, since the word "has a variety of meanings according to the Statute in which it is used." (*h*) In *Rex* v. *North Cerey*, (*i*) BAYLEY

(*i*) See *Reg. ex rel. Stock* v. *Davis*, 3 U. C. L. J. 128 (1857), cited *ante*, in note (k) to s. 76.

(*j*) See the prefatory note, *ante*, p. 42; 37 V. c. 3, ss. 1-3; 39 V. c. 5, ss. 6-9.

(*k*) See ss. 112, 113, 115, *post*.

(*a*) 12 V., c. 81, ss. 25, 57, 65, 83; 14 & 15 V., c. 109, Sched. *A* (4), (11), (12), (14). (*b*) 22 V., c. 99, s. 75.

(*c*) 50 V. c. 8, Sched. p. 29, par. 5; *cf.* R. S. O. (1877) s. 174, s. 76.

(*d*) 12 V., c. 81, s. 22, 57, 65, 83; 14 & 15 V., c. 109, Sched. *A* (4), (11), (12), (14); 22 V., c. 99, s. 75; 29 & 30 V., c. 51, s. 75.

(*e*) 12 V., c. 81, s. 22; 55 V., c. 42, s. 87.

(*f*) 31 V., c. 30, s. 9. (*g*) R. S. O. c. 224.

(*h*) *Per* EBLE C. J., *Nauf* v. *Mutter*, 31 L. J. C. P. 359. (*i*) 4 B. & C. 959.

Sec. 86 (l). Notes (l)-(p).

J. says, "I take it that this word, where there is nothing to show that it is used in a more extended sense, denotes the place in which an individual eats, drinks and sleeps, or where his family or his servants eat, drink and sleep." See Stroud's "Judicial Dictionary," *sub verb.*, "reside."

Residence, what constitutes.

"The proper meaning of the term 'residence' as used in relating to rating or voting has been discussed in numerous English authorities, which I have examined. No precise definition has been formulated, but rather the Courts have been anxious to point out that there may be shades of difference in the sense in which the word is used in different Acts. But in all the idea of a *home* and a *sleeping apartment* seems to be either expressed or implied. In a standard work on registration it is laid down that 'in order to constitute residence a party must possess at least a sleeping apartment;' and this statement seems to have received the approval of Chief Justice ERLE in *Powell* v. *Guest*, 18 C. B. N. S. 72." (*j*)

In the case of a married man the general maxim is "*ubi uxor, ibi domus*." (*k*) Occasional absence from home to attend to business in another municipality, does not make a man's home less his residence (*l*). Where A. had a dwelling-house at Bowmanville, where his wife and family lived, but owned a saw mill and store and was postmaster in the township of Cartwright, had occasion frequently to visit that place, and, while there, used to board with one of his men in a house owned by himself: *Held*, that after voting in Bowmanville he had no right to vote in Cartwright (*m*). During imprisonment a man cannot be said to have "resided" at his home within the meaning of s. 37 of "*The Reform Act*," Imp. Stat. 2 Wm. IV. c. 45 (*n*); nor did the occupation by a gaoler of free apartments in a county gaol constitute him "a householder" within the meaning of our Provincial Act 14 & 15 V. c. 109, Sched. A (12) (o). A merely colourable residence is in no case sufficient (*p*). There is no absolute rule for ascertaining when a party is a resident; it is a mixed question of law and fact to be determined in each case according to its circumstances (*q*).

(m) "For one month next before the election." Taken from 22 V. c. 99, s. 75. See note (**g**) to s. 76.

(n) "Or whose wives are." Inserted by 50 V. c. 8, Sched., p. 29, par. 5. See note (**g**), *supra*.

(o) "At the date of the election." See note (**g**) to s. 76 and note (**f**) to this section.

(p) "Tenants in the municipality." It would seem to be unnecessary that the wife (tenant) should be a resident of a municipality in order that the (resident) husband may be entitled to vote on her property.

Income Voters.

Income voters.

Thirdly. All residents of the municipality at the date of the election, who are rated on the last revised assessment roll thereof, in respect of an income from some trade, office, calling or profession, of not less than $400, and have received such income during the twelve months before the date of the final revision and correction of the assessment roll, or for twelve months prior to the last day for making complaint to the

(*j*) Opinion of Moss, C.J., on a case stated by Judge of County of Elgin under 41 V. c. 21, s. 11, now R. S. O. c. 7, s. 38. Sessional Papers, 1879, Appendix No. 68, p. 14. (*k*) *Reg.* v. *Norwood*, L. R. 2 Q. B. 459 (1867); and see *Reg. ex rel. Horan* v. *Evans*, 31 O. R. 448 (1899).

(*l*) *Withorn* v. *Thomas*, 7 M. & G. 1.

(*m*) *Reg. ex rel. Taylor* v. *Cæsar*, 11 U. C. R. 461 (1854).

(*n*) *Powell* v. *Guest*, 18 C. B. N. S. 72; *Donnelly* v. *Graham*, 24 L. R. Ir. 127.

(*o*) *Re Charles* v. *Lewis et al*, 2 C. L. Chamb. 171 (1853).

(*p*) *Rex* v. *Duke of Richmond*, 6 T. R. 560.

(*q*) See Hodgins on Voters' Lists (2nd Ed.) 15, 176, 200, 207; *Reg. ex rel. Forward* v. *Bartels*, 7 C. P. 533 (1858); *Marr* v. *Village of Vienna*, 10 U. C. L. J. 275 (1864).

Sec. 86 (1). Notes (q)-(t). Income voters.

County Judge under "*The Voters' Lists Act,*" and have, since the said date, continuously resided in the municipality. 55 V. c. 42, s. 79 (1) *part*; s. 104; 55 V. c. 48, s. 31; 60 V. c. 3, s. 3; c. 15, *Sched.* C (18); 62 V. (2nd Session) c. 26, s. 8 (1).

(q) See note (h) *supra*. The clause has been recast in the present consolidation so as to make its requirements conform to those of the oath (*r*). The proper evidence as to the dates referred to is the certificate delivered under s. 156 by the clerk of the municipality to the deputy-returning officer and to any other person who applies therefor (*s*).

(r) "**Residents.**" See note (l) *supra*.

Farmers' Sons.

Farmers' sons.

Fourthly. All residents of the municipality at the date of the election, who are farmer's sons, and have resided in the municipality, on the farm of their father or mother, for twelve months next prior to the date of the final revision and correction of the assessment roll, or for twelve months prior to the last day for making complaint to the County Judge under "*The Voters' Lists Act.*" 55 V. c. 42, s. 79 (1) *part*; 62 V. (2nd Session), c. 26, s. 8 (2).

(s) This franchise was conferred in 1877 by 40 V. c. 9, both for municipal elections and also for elections to the Legislative Assembly (*t*). As to the proper evidence of the dates with respect to which the period of residence is to be reckoned, see s. 156, *post*.

(t) "**Residents.**" See note (l) *supra*.

When more than one son is resident.

(*a*) If more sons than one are so resident, and if the farm is not rated and assessed at an amount sufficient, if equally divided between them, to give a qualification to vote to the father and all the sons where the father is living, or to the sons alone where the father is dead and the mother is a widow, then the right to vote shall belong to, and be the right only of the father and the eldest or such of the elder of said sons, to whom the amount at which the farm is rated and assessed will, when equally divided between them, give the qualification to vote. 55 V. c. 42, s. 79 (2).

Where father living and assessment not sufficient to qualify more than one.

(*b*) If the amount at which the farm is so rated and assessed is insufficient, if equally divided between the father, if living, and one son, to give to each a qualification to vote, then the father shall be the only person entitled to vote in respect of such farm. 55 V. c. 42, s. 79 (3).

(*r*) See *ante*, note (h) to s. 4.

(*s*) See s. 156, *post*, p. 175.

(*t*) See *ante*, p. 12 of the Prefatory Note.

(c) Occasional or temporary absence from the farm for a time or times not exceeding in the whole six months of the twelve hereinbefore mentioned, shall not operate to disentitle a farmers' son to vote. 55 V. c. 42, s. 79 (4); 57 V. c. 50, s. 2 (1). Temporary absence.

(2) In this section: Interpretation.

"Farm" shall mean land actually occupied by the owner thereof, and not less in quantity than twenty acres:

"Son" or "sons" or "farmer's sons" or "farmers' sons" shall mean any male person or persons not otherwise qualified to vote, and being the son or sons of the owner and actual occupant of a farm:

"Father" shall include stepfather:

"Election" shall mean an election of a member of a municipal council:

"To vote" shall mean to vote at an election, and

"Owner" shall mean a person who is proprietor in his own right, or whose wife is proprietor in her own right, of an estate for life, or any greater estate, either legal or equitable; except where the owner is a widow, in which case the word "owner" shall mean proprietor in her own right of any such estate. 55 V. c. 42, s. 79 (5), *part.*

Taken from 40 V. c. 9, as amended by 50 V. c. 8, Sched. p. 29, par. 6.

(u) **"Owner."** Since the word "owner" does not (up to this point) occur anywhere in the section, this legislative interpretation of it would seem to be unnecessary, especially as it has no application whatever to the next subsection, (3).

(3) Any leaseholder the term of whose lease is not less than five years, shall be deemed an owner within the meaning of this section. 55 V. c. 42, s. 79 (5), *part*: c. 43, s. 4.

87. In order to entitle a person to vote as aforesaid in respect of real property, such property, whether freehold or leasehold, or partly each, must be rated at an actual value of not less than the following: Amount of rating necessary.

In townships and villages	$100
In towns where the population does not exceed 3,000	$200
In towns with a population of over 3,000	$300
In cities	$400

The population shall be determined by reference to the latest annual enumeration by the assessors. 55 V. c. 42, s. 80; c. 43, s. 5; 60 V. c. 15, *Sched.* C (19).

Taken from "*The Municipal Amendment Act, 1892*," (55 V. c. 43), s. 5.)

(a) **"Freehold or leasehold, or partly each."** *Cf.* the provision as to the qualification of a candidate, note (p) to s. 76.

Secs. 87-89.

Notes (b) (c); (a) (b).

(b) **"Actual value."** Until 1866 (a) property was rated for municipal purposes at its actual value in townships; but in cities, towns and villages at its annual value, which, in the case of realty, was declared to be a rack rent, and, in the case of personalty, 6 per cent upon its actual value (b). As to the mode of determining the actual value of property, see s. 28 of "*The Assessment Act*" (c).

(c) **"Annual enumeration by the assessors."** This probably refers to the enumeration annually made under ss. 13 and 15 of "*The Assessment Act*"; but see R.S.O. c. 8, s. 3 (1).

Persons in default for non-payment of taxes not to vote.

88. No person who has been returned by the treasurer or collector under section 137 as in default for non-payment of his taxes on or before the 14th day of December next preceding any election, shall be entitled to vote in respect of income in any municipality or in respect of real property in municipalities which have passed by laws under subsection 1 of section 635; but any person who is entitled to vote, and who at the time of the tendering of his vote produces and leaves with the deputy-returning officer a certificate from the treasurer of the municipality, or the collector of taxes, shewing that the taxes, in respect of which the default had been made, have since been paid, shall be entitled to vote; and the deputy-returning officer shall file the certificate, receive the vote and note the same on the defaulters' list. 55 V. c. 42, s. 81.

Taken from R. S. O. (1877), c. 174, s. 78, amended in 1887 as *infra*, note (b).

(a) The object is, in the case of intending voters, to enforce payment of taxes in the year in which they accrue, and under any circumstances before the election of the ensuing year. In the 29-30 V. c. 52, ss. 73, 75, the provision was absolute, making it essential to the qualification of a voter that he should have paid on or before the sixteenth day of December next preceding the election, all municipal taxes due by him. That provision was omitted when the section was amended and re-enacted in 1867 by 31 V. c. 30, s. 9. It was restored in a modified form by 36 V. c. 48, s. 77 (a). Except as to income voters it is still dependent on the passing of a by-law by the council of the municipality.

(b) **"But any person who is entitled to vote."** This part of the section was added in 1887 by 50 V. c. 29, s. 3.

Elector must be named in voters' list.

No question of qualification to be raised.

89. Except in the case of a new municipality for which there is no assessment roll, no person shall be entitled to vote at any election, unless he is one of the persons named or intended to be named in the proper list of voters; and no question of qualification shall be raised at any election, except to ascertain whether the person tendering his vote is the person intended to be designated in the list of voters. 55 V. c. 42, s. 82.

Taken from "*The Consolidated Municipal Act of 1883*," (46 V. c. 18), s. 82. *Cf.* 40 V. c. 1: s. 20. See note (d) to s. 80, note (b) to s. 112, note (a) to s. 148, and the corresponding provisi. (s. 78) of "*The Ontario Election Act*" (R. S. O. c. 9).

(a) 29-30 V. c. 51, s. 76; c. 5[illegible], s. 20.

(b) *Cf.* 13 & 14 V. c. 67, ss. 12 and 13.

(c) *Cf.* 13 & 14 V. c. 67, s. 21, and 29 & 30 V. c. 53, s. 30.

(a) *Cf.* 38 V. c. 28, s. 8; 39 V. c. 5, s. 9; and 40 V. c. 12, s. 6, (now [illegible] of this Act); and see ss. 151 (2), 152, 154, 292 and 295 (5) and 535 (1) *post*.

Sec. 89.

Note (a).

Prior to 1858.

(3) **How the right to vote is determined.** Under the law which governed municipal elections prior to the adoption therefor of voters' lists prepared under the provisions of the Voters' Lists Acts (*a*), the copy of the collector's roll, or of the assessment roll, which was furnished to each returning officer for use as a voters' list at the poll (*b*) was only "intended to be *prima facie* a guide for him at the election," and was "most certainly not conclusive upon the Judge when voters are objected to as not qualified to vote" (*c*). Where the returning officer had not been furnished with the list, but, notwithstanding this, proceeded with the election, it was *Held*, that this was an irregularity which rendered the election liable to be avoided if the objection were taken by one qualified to urge it, although it might not *ipso facto* render the election void. The acquiescence of the candidates in the election being proceeded with under these circumstances, though it might preclude *them* from disputing the validity of the election on that ground, could not affect the right of a voter who was no party to such an arrangement (*d*).

Under the Act of 1849 (*e*) it had been determined by BURNS, J.—and subsequently affirmed on appeal by the Court of Queen's Bench—that persons whose names, upon inquiry made by the returning officer, were found to be on the (original) collector's roll,—though omitted (accidentally or otherwise) from the verified copy thereof required to be furnished by the collector to the returning officer at the opening of the election,—were legally entitled to vote; but that persons whose names were on the copy so furnished, but not on the original roll, were not legally entitled to vote (*f*).

Under the Act of 1853 (*g*), it was held by Sir J. B. ROBINSON, C. J., (1) that an election could not be set aside because the returning officer had been supplied with no copy, or with an incorrect copy of the collector's roll, unless it was shown that the absence or inaccuracy of such roll had prejudiced the election, or that some candidate or voter had refused on that ground to proceed, and had relied upon the objection; and, (2), that it was no objection that the copy of the roll furnished to the returning officer was not verified as required by the statute—at least unless the exception was taken before or during the election, or some variance was shown to exist between the original and the copy used (*h*).

And where the returning officer had used the original collector's roll (instead of a copy as directed by the Statute),—having first announced that he intended to do so, and no objection having been made,—the Court of Q. B., following *Reg. ex rel. Ritson* v. *Perry*, refused to set aside the election (*i*).

Under the Act of 1858.

The assessment roll, which by the Assessment Acts of 1850 and 1851 (*j*) was made the basis of the collectors' roll (*k*) (and therefore of the list of voters supplied to each returning officer at an election) (*l*) was, under these Acts, considered to be "revised" when it had been finally passed by the Court of Revision and certified by the clerk as having been so passed. (*m*) The Assessment Amendment Act of 1853, (*n*) however, gave to this roll a new and more authoritative character by allowing a right of appeal from the Court of Revision to the County Judge—(a provision since continued in all the Assessment Acts down to the present time) (*o*)—and when the Municipal Act of 1858 (*p*) sub-

(*a*) See 40 V. c. 12 (1877). (*b*) See *post*, note (a) to s. 148.

(*c*) *Per* BURNS, J., in *Re Charles* v. *Lewis*, 2 C. L. Chamb. 171-173, a case decided in 1853 under 14-15 V. c. 109, Sched A. (12).

(*d*) Ibid. (*e*) 12 V. c. 81.

(*f*) *Reg. ex rel. Helliwell* v. *Stephenson*, 1 C. L. Chamb. 270 (1851). See also, as to the common law rule in parliamentary elections, the cases cited by WILSON, J., in *North Victoria* (Dominion Election) (1875), 11 C. L. J. N. S. at p. 168; H. E. C. 671, at pp. 684-685 (1895).

(*g*) 16 V. c. 181, s. 10.

(*h*) *Reg. ex rel. Ritson* v. *Perry*, 1 P. R. 237 (1854).

(*i*) *Reg. ex rel. Hall* v. *Grey*, 15 U. C. R. 257 (1857.)

(*j*) 13 & 14 V. c. 67, s. 28; 14 & 15 V. c. 110. (*k*) 13 & 14 V. c. 67, s. 32.

(*l*) 12 V. c. 81. ss. 22, 57, 65; 14 & 15 V. c. 109, Sched. A., ss. (4), (11), (12); 16 V. c. 181, ss. 10, 17.

(*m*) 13 & 14 V. c. 67, s. 28. (*n*) 16 V. c. 182, ss. 26-28.

(*o*) See R.S.O. c. 224, s. 72, 75-82. (*p*) 22 V. c. 99, s. 97 (2) (4)

Sec. 89.

Note (a).

stituted for the list theretofore procured *pro hac vice* by the returning officer from the collectors' roll, a *quasi*-official voters' list to be prepared by the clerk of the municipality from the assessment roll as thus revised,—this voters' list—or, at all events, the assessment roll from which it was taken—seems to have been generally regarded as final in regard to the question of the property qualification of a voter. In *Reg. ex rel. Anon* v. *Flynn*, (*q*), upon the trial of a controverted municipal election case, evidence was offered to show that a person entered on the assessment roll as an owner, was in reality an occupant, and that of two persons appearing on the roll as householders, one was in fact a freeholder; but MACKENZIE, Co. J., rejected the evidence, saying (p. 77):

> "The right of municipal electors to vote rests upon the last revised assessment roll; and every returning officer is bound, in the reception or rejection of votes, by what appears on such roll, and has no right to resort to extrinsic evidence to explain, vary or contradict what appears thereon. . . . The Statute declares that the roll, as finally passed by the Court of Revision and the County Judge, "shall be valid and binding on all parties concerned." The assessment rolls . . . fix the basis of taxation and regulate and limit the right of voting at elections . . . They settle the value of the property assessed, and also the character in which a party is assessed—whether as owner, occupant or jointly with other persons (*r*). The returning officer is bound to receive or reject a vote according to what appears on the roll or the copy sent to him . . . *In a scrutiny of votes, the Judge is bound by the same law, the same rules and the same restrictions as the returning officer at the election.*" [1]

After the Act of 1877.

In 1877 (*s*) the law was altered so as to make the voters' list, and not the assessment roll the ultimate criterion of the property qualification of an elector claiming the right to vote at a municipal election (*t*) thus assimilating the procedure to that which had already been adopted in elections to the Legislative Assembly. It was probably intended that such a list—which had thus been twice the subject of judicial scrutiny and certification—should be considered a finality, that the facts necessary to entitle a voter to have his name placed therein should be treated as *res judicatae*, and that,—provided he had taken the oaths prescribed by the Statute (*v*) or had voted without being required to take an oath—his property qualification was not to be questioned in any subsequent judicial proceeding.

In Provincial elections.

In elections to the Legislative Assembly this was undoubtedly the case, since by "*The Voters' List Finality Act*" (*w*) it was provided (with regard to Provincial elections) that

> "Every voters' list which under this Act is certified by the County Judge, shall, upon a scrutiny, be final and conclusive evidence of the right of all persons named therein to vote at any election at which such list was or could have been legally used; except
>
> 1. Persons guilty of corrupt practices at or in respect of the election in question on such scrutiny, or since the list was certified by the County Judge as aforesaid;
>
> 2. Persons who, at any time subsequently to the list being certified by the County Judge are or have been non-resident either within the municipality to which the list relates, or within the electoral district for which the election is held, and who by reason thereof are under the provisions of "*The Ontario Election Act*," incompetent and disentitled to vote;
>
> 3. Persons who, under sections 4 to 7 of "*The Ontario Election Act*" are disqualified and incompetent to vote. (*x*)

(*q*) 8 U.C.L.J. 76 (1862).

(*r*) But see, on this point, the later authorities cited in note (d) to s. 86.

(*s*) 40 V. c. 12. (*t*) See *ante*, at page 12 of the prefatory note.

(*v*) See ss. 122-117 of "*The Municipal Act*." See 39 V. c. 11, s. 9 and *cf.* 40 V. c. 12, s. 20, now s. 89 of this Act.

(*w*) 41 V. c. 21, s. 3,—(now consolidated as s. 24 of "*The Ontario Voters' Lists Act*," R.S.O. c. 7.)

(*x*) See *South Wentworth* (Provincial Election), H. E. C. 531 at p. 534.

Notes (a); (a).

But in the absence of such a provision, the finality of the voters' list in the case of a Dominion election was doubted.(a)

Dominion elections.

As to municipal elections, however, the finality of the voters' list, as to the property qualification of an elector, has now been determined by judicial decision (b).

Municipal elections.

It is also to be noted that neither in the sections of "*The Municipal Act*" relating to polling at elections (c) nor in those which refer to the voting on by-laws (d) is there any provision corresponding to that which is contained in ss. 107-108 of "*The Ontario Election Act*," (e) which permit a duly qualified elector to mark a tendered ballot paper in case some other person has already voted in his stead or his name has been inadvertently omitted from the copy of the voters' list contained in the poll book delivered to the deputy-returning officer.

Tendered ballots.

90. At the first election in a new municipality for which there is no separate assessment roll, every resident male inhabitant, though not previously assessed, shall be entitled to vote if he possesses the other qualifications above mentioned, and has at the time of the election sufficient property to have entitled him to vote if he had been rated for such property. 55 V. c. 42, s. 83.

In newly erected municipalities not having any assessment roll.

Taken from the Act of 1858, 22 V. c. 81, s. 77, part.

(a) "**The other qualifications above mentioned.**" This, it is apprehended, means that the voter must not be disqualified under ss. 80-82, must be able to take the prescribed oaths as to bribery and undue influence,(a) and must, either as a freeholder, tenant, income voter or farmer's son(b), possess the qualifications required by ss. 86-88 of a voter in the class to which he claims to belong except such as refer to being rated on the assessment roll, or named on the voters' list. See s. 149.

91. Where any territory is added for municipal purposes to any city, town or village, or where a town with additional territory is erected into a city, or a village with additional territory is erected into a town, or in case a new village is formed, and an election takes place before voters' lists including the names of the persons entitled to vote in such territory are made out for such new or enlarged city, town or village, or before such lists are certified by the County Judge, then all persons who would have been qualified as electors in such territory if the same had remained separate from the city, town or village, or if the town or village had not been erected into a city or town, or if the village had not been formed, shall be entitled to vote in the city, town or village at such election. 55 V. c. 42, s. 84.

Where new territory added to city, town or village, or a new city, town or village erected with added territory, and no voters' lists including such new territory.

(a) *Haldimand* (Dominion Election), 15 S. C. R. 495, *per* STRONG, J., at pages 516-517. But see, *per* TASCHEREAU, J., at page 528:—

"The (voters') list, coupled with the oath, (when the oath is required) is conclusive as to the right to vote;"

and the learned Judge held that evidence that voters named in the list were not in fact qualified was inadmissible on a scrutiny.

(b) *Reg. ex rel. Mackenzie* v. *Martin*, 28 O. R. 523 (1897); and see *Reg. ex rel. St. Louis* v. *Beaume*, 26 O. R. 460, where BOYD, C., says (p. 462) "The whole system is based on the finality of the voters' list as settled and certified by the Judge."

(c) Secs. 165-172. (d) Secs. 350-365. (e) R. S. O. c. 9.

(a) Secs. 112-117. (b) See s. 116.

Secs. 91-94.

Notes (a); (a).

(a) The necessity for s[illegible] as this section contains will be made apparent on reference to the language of ROBINSON, C. J., in *Reg. ex rel. Carroll* v. *Beckwith*,(a) and of ROSE, J., in *Reg. ex rel. Taverner* v. *Willson*.(b) No such provision was contained in the 36 V. c. 48, but the omission was afterwards supplied as to elections to the Legislative Assembly by 38 V. c. 3, ss. 16, 17 and the section was first incorporated into "*The Municipal Act*" as s. 81 of R. S. O. (1877), c. 174. See as to the cases referred to, ss. 16, 19, 21, 24 and 26. The mode of establishing the right secured by this section to electors under the circumstances therein mentioned, is pointed out by s. 150.

If owner and occupant severally rated both to be deemed rated.

92. In case both the owner and occupant of any real property are severally but not jointly rated therefor, both shall be deemed rated within this Act. 55 V. c. 42, s. 85.

Taken from 14 & 15 V. c. 109, Sched. A (1).

(a) Each may vote in respect of his interest, when rated severally, the one as proprietor (if a freeholder) the other as tenant.(a)

When joint owners or occupants rated rating to be equally divided.

93. Where real property is owned or occupied jointly by two or more persons, and is rated at an amount sufficient, if equally divided between them, to give a qualification to each, then each shall be deemed rated within this Act, otherwise none of them shall be deemed so rated. 55 V. c. 42, s. 86.

Taken from 14-15 V. c. 109, Sched. A (4). See "*The Assessment Act*," (R. S. O., c. 224) s. 25 (1), (2).

(a) This applies to the case of joint owners—*e. g.* partners or joint tenants. If the rating is for an amount sufficient to give a qualification to each, then each is to be deemed rated within the meaning of the section (*a*). The section apparently applies as much to candidates as to electors, though placed under the head of "Electors." (*b*) Where one of two partners, jointly interested in a property as co-tenants under a yearly tenancy, left the partnership before the day of nomination, and a new lease was afterwards granted to the remaining partner and a new partner, the retiring partner was held not to be qualified (*c*).

DIVISION I.—TIME AND PLACE OF HOLDING ELECTIONS. (SECS. 94-105).

Synopsis: These sections provide that a county council shall be elected every second year (sec. 94) and a local municipal council annually (sec. 95). The time for holding elections in new or altered municipalities is fixed by secs. 96-98, while secs. 99-100 specify two cases in which township elections shall be by general vote. Sec. 101 is (probably) superseded by 61 V. c. 23, s. 4, and the re-division of a city or town into wards is provided for by secs. 102-103.

Sec. 104 requires that every election shall be held within the municipality to which the same relates—but this, (as pointed out in the note thereto,) is subject to the provisions of sec. 123. Sec. 105 forbids the holding of any election in any tavern or house of public entertainment licensed to sell spirituous liquors.

Election of county councillors to be held in alternate years.

94. The election of county councillors shall be held in alternate years, but upon the days and at the time fixed by law

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(*a*) 1 P. R. 278 (1854). (*b*) 12 P. R. 546 (1888).

(*a*) See s. 86, and also ss. 13 (4, "column 4") and 24 of "*The Assessment Act*," (R. S. O. c. 224).

(*a*) *Reg. ex rel. Harding* v. *Bennett*, 27 O. R. 314, (1896), cited in note (m) to s. 80.

(*b*) *Reg. ex rel. McGregor* v. *Ker*, 7 U. C. L. J. 67, (1861), *per* DRAPER, C. J. approved and followed by STREET, J. in *Reg. ex rel. Harding* v. *Bennett*, *supra*, and also in *Reg. ex rel. Jonnisse* v. *Mason*, 28 O. R. 495 (1897).

(*c*) *Reg. ex rel. Adamson* v. *Boyd*, 4 P. R. 204 (1868).

for the annual municipal elections for members of the councils of the local municipalities. 59 V. c. 52, s. 6, *part*; c. 52, s. 18; 60 V. c. 15, *Sched.* C. (124).

Secs. 94-96. Notes (a); (a) (b); (a).

For the sources of this section, see the references appended thereto.

(a) "**Upon the days . . fixed by law for the annual municipal elections . .**" *i. e.* the first Monday in January (s. 95). Ss. 132-3 provide that the nomination of candidates for membership in the county council shall be held between 1 and 2 p. m. on the Monday two weeks before polling day, at such place within the county council division as may be fixed by the nominating officer.

95. The electors of every municipality (except a county) shall elect annually, on the first Monday in January, the members of the council of the municipality, except such members as have been elected at the nomination; and the persons so elected shall hold office until their successors are elected or appointed or sworn into office, and the new council is organized. 55 V. c. 42, s. 88.

Elections for local councils, to be held annually.

Term of office.

Taken from the Act of 1873 (36 V. c. 48), s. 85. *Cf.* 12 V. c. 81, ss. 21, 23, 53, 62, 63, 83; 22 V. c. 99, s. 86; 29 & 30 V. c. 51, ss. 87, 88, 89, 105; 33 V. c. 26, ss. 1, 2.

(a) "**And the persons so elected shall hold office . . .**" These words first occur in the Act of 1858. (*a*) Under the Act of 1849 (*b*) township councillors held office until the third Monday in January of the year next after their election; but in the cases of city, town, and village councillors, no term of office was specified.

(b) "**Or appointed.**" See s. 218.

96. In case of the incorporation of a new township or union of townships; or of the separation of a junior township from a union of townships; or of the erection of a locality into an incorporated village; or of the erection of a village into a town, or of a town into a city; or of a tract of land being added to a village, town or city; or in case of a new division into wards of a town or city—the first election, under the proclamation or by-law by which the change was effected, shall take place on the first Monday in January next after the date of the proclamation, or after the passing of the by-law by which the change is made; but the nomination of candidates, and the election of such as are unopposed, may, and shall be proceeded with at the same time and in the same manner as if the change had gone into effect on the last Monday of the month of December preceding such first election, or on such other day as the nominations may lawfully be held upon. 55 V. c. 42, s. 89.

First elections where corporations are newly erected or extended.

Times of elections.

Taken from the Act of 1858 (22 V. c. 99), s. 82. See as to the case of a new union of townships, ss. 29, 33, 34—the separation of a junior township from a union of townships, ss. 30, 31—the erection of a locality into an incorporated village, s. 11—of a village into a town or a town into a city, s. 21—the addition of a tract of land to a village, town or city, ss. 16, 19, 24, 26—a new division of a town or city into wards, ss. 23, 26 (3), 102, 103.

(a) "**Next after the date of the proclamation or . . . by-law.**" Until 1889 the words were "next after *the end of three months from* the date of the proclamation or . . . by-law." Under this provision a proclamation or by-law passed after 1st October might not come into effect for fifteen months. The section was, therefore, amended as above by 52 V. c. 36, s. 5. See also s. 24 and note (c) to s. 98.

(*a*) 22 V. c. 99, s. 86. (*b*) 12 V. c. 81, s. 23.

Secs. 96-99.

Notes (b); (a); (a) (b).

(b) "**But the nomination of candidates** . . ." Added in 1877 by 40 V. c. 8, s. 49. The word "officers" occurring in that section and in 55 V. c. 42, s. 89, before the words "as are unopposed" has been (no doubt intentionally) omitted by the Revisers of 1897.

Places to be fixed by by-law of municipality.

97. The council of every city, town and village (including a village newly erected into a town, and a town newly erected into a city), shall, from time to time, by by-law, appoint the place or places for holding the next ensuing municipal election, otherwise the election shall be held at the place or places at which the last election for the municipality or for the ward or polling subdivision was held. 54 V. c. 42, s. 90.

Taken from the Act of 1858, (22 V. c. 99,) s. 81.

(a) "**By by-law.**" See s. 535 (2) and note (d) to s. 325. A township council having, under 12 V. c. 81, s. 5, appointed a place for holding an election of township councillors, appointed the returning officer for a subsequent election *by resolution*, and directed him to hold the election at a place other than that named in the by-law. The election held under the resolution was set aside (*a*).

County council to make provision for first election in junior townships.

98. When in any year a junior township of a union has 100 resident freeholders and tenants on the then last revised assessment roll, the council of the county shall, by a by-law to be passed before the thirty-first day of October in the same year, fix the place for holding the first annual election of councillors in the township, appoint a returning officer for holding the same, and otherwise provide for the due holding of the election according to law. 55 V. c. 42, s. 91; 60 V. c. 15, *Sched.* C (21). *See sec. 30.*

Taken from "*The Consolidated Municipal Act, 1873*" (36 V. c. 48), s. 88. The word "tenants" being substituted for "householders" by 60 V. c. 15, Sched. C (21); see s. 2 (7) of this Act. *Cf.* 12 V. c. 81, ss. 11, 16; 16 V. c. 181, s. 3; 22 V. c. 99, s. 87; 29 & 30 V. c. 51, s. 91.

(a) "**When in any year a junior township has . . . on the then last revised assessment roll.**" This will be evidenced to the county council by the certified copy of the revised roll transmitted by the clerk of the township to the county clerk under s. 83 of "*The Assessment Act.*"

(b) "**The county council shall.**" See note (a) to s. 10.

(c) "**Passed before the 31st day of October.**" Since the County Judge (in case of appeals from the Court of Revision) has until August 1st to complete his revision of the roll, (*a*) and the township clerk has 90 days thereafter in which to forward the certified copy thereof to the county clerk, (*b*) there seems to be no longer any sufficient reason for hampering the action of the county council by retaining this time-limit, which was fixed nearly half a century ago, (*c*) especially as the grounds for making the amendment to s. 96 (*d*) apply here with equal force.

Existing ward divisions in united townships to cease on dissolution of union.

99. In case of the separation of a union of townships, the existing divisions thereof into wards, if any, shall cease, as if duly abolished by by-law, and the elections of councillors shall thereafter be by general vote, until the township or townships is or are divided into polling subdivisions [*or wards*] under the provisions of this Act. 55 V. c. 42, s. 92.

Taken from the Act of 1858 (22 V. c. 99, s. 88. *Cf.* 12 V. c. 81, s. 14. The Act of 1898 (61 V. c. 29), s. 4 has now in effect abolished township wards. See *ante*, s. 73 and note (a) thereto.

(*a*) *Reg. ex rel. Allemaing* v. *Zoeger*, 1 P. R. 219 (1853), and see *Ex p. Robinson*, 2 Pugs. N.B. 389, cited in note (d) to s. 118.

(*a*) R. S. O., c. 224, ss. 75-77. (*b*) *Ibid.*, s. 83. (*c*) 12 V. c. 81, s. 11.

(*d*) Referred to in note (a) thereto.

(a) "**Divided into polling subdivisions** *(or wards)* **under the provisions of this Act.**" As to the division of a township into polling subdivisions for municipal elections, see *post*, ss. 535 (2), 536; as to its division into wards, and the effect of the legislation of 1898, (61 V. 23, s. 4,) upon the provisions of "*The Municipal Act*" relative thereto, see note (**d**) to s. 100.

Sec. 99-102. Notes (a); (a)-(d)

100. *Except in the case of deputy-reeves and councillors in townships divided into wards,* the election, in townships and villages, of reeves, *deputy-reeves* and councillors, shall be by general vote, and the voting shall take place at the place where the last meeting of the council was held, or at such other place or places as may from time to time be fixed by by-law. 55 V. c. 42, s. 93.

Election of reeves, etc., in townships and villages to be by general vote.

Taken from R. S. O. (1877), c. 174, s. 90. *Cf.* 12 V., c. 81, ss. 5, 53; 22 V., c. 99, ss. 66 (3) (4), 132; 29 & 30 V., c. 51, s. 93; 30 V., c. 18, s. 90; 61 V. c. 23, s. 4; and see notes to ss. 72, 73.

(a) "**Except in the case of deputy-reeves and councillors in townships divided into wards.**" See note (**d**) infra.

(b) "**The election . . . of . . deputy-reeves.**" See *ante* notes (**a**) to ss. 72 and 73.

(c) "**Places . . . fixed by by-law.**" See s. 535 (2) and note (**a**) to s. 97.

In "*The Municipal Act,*" as printed in the R. S. O. (1897), the next section read as follows:

> **101.** *In case a majority of the qualified electors of a township whose names appear on the last revised assessment roll petition the council of the township to divide the township into wards, or to abolish or alter any existing division into wards, the council shall, within one month thereafter, pass a by-law to give effect to the petition; and, if the petition is for division into wards, shall divide the township into wards, so that the number of electors in each ward shall be as nearly as may be equal; and the number of wards for municipal purposes shall be four in all cases; and where the township is divided into wards, and is entitled to a deputy reeve or deputy reeves, the councillors shall at their first meeting, elect from among themselves such deputy reeve or deputy reeves.* 55 V. c. 42, s. 94.

Upon petition the council may, by by-law, divide townships into wards, etc.

Elections of deputy-reeves, etc., in such case.

Taken from "*The Consol. Mun. Act, 1873,*" (36 V., c. 48, s. 91. *Cf.* 12 V., c. 81, s. 4; 16 V., c. 181, s. 6; 22 V., c. 99, ss. 264-267; 29 & 30 V., c. 51, s. 278.

(d) Now that township councillors are elected by a general vote, instead of one from each ward as formerly, (*a*) the *raison d'etre* of wards in townships no longer exists and the provisions of the above section seem to be *effete*.

102. In case two thirds of the members of the council of a city or town do, in council, before the 15th day of July in any year, pass a resolution affirming the expediency of a new division into wards being made of the city or town or of a part of the same, either within the existing limits or with the addition of any part of the localities adjacent, which, from the proxim-

New division of wards in cities and towns.

(*a*) See s. 73 and note (**a**) thereto.

Secs. 102, 103 (3).

Extension of city or town.

ity of streets or buildings therein, or the probable future exigencies of the city or town, it may seem desirable to add thereto respectively, the Lieutenant-Governor may, by proclamation, divide the city or town or such part thereof, and with or without such addition, into wards, as may seem expedient. 55 V. c. 42, s. 22, *part*.

Taken from 22 V. c. 99, s. 19. *Cf.* 12 V. c. 81, s. 84 and s. 115, as amended by 16 V. c. 181, ss. 19, 23; and see s. 24 and notes thereto; also s. 96.

Re-division of wards in cities of 100,000 or over.

103.—(1) In any case where the resident freeholders of any city with a population of 100,000 or over, to the number of at least 500, petition the council, alleging the expediency of making, and praying that a new division into wards may be made of the city without reducing the number of wards, or that a new division may be made reducing the number of wards to nine or less, the council shall, at the next municipal elections, submit the question of a new division, as prayed for by the petition, to the vote of the persons entitled to vote at the municipal elections; and, in the event of a majority of the electors who vote thereon voting in favour of the petition, the council shall, within a reasonable time after the taking of the vote, subdivide the city into wards, so as to give effect to the prayer of the petition and the vote of the electors; and such new division shall, as far as possible, be based upon the assessed values of property, population and territorial extent.

Commission of inquiry as to division into wards, etc.

(2) In case for three months after the question has been voted upon and approved of by the electors, any council neglects or refuses to make a new sub-division of any city into wards under the provisions of the last preceding subsection, and in case one-third of the members of the council, or 100 duly qualified electors of the municipality petition for a commission to issue under the Great Seal to inquire into the existing division of the municipality into wards, and for a new division in accordance with the expressed wish of the electors, as evidenced by their vote taken in manner aforesaid, the Lieutenant-Governor in Council may issue a commission accordingly, to three commissioners, one to be named by the Lieutenant-Governor in Council, one by the Chancellor of Ontario, and one by the city council; and the commissioners or a majority of them shall have the same power to summon witnesses, enforce their attendance, and compel them to produce documents and to give evidence as any court has in civil cases. If the city council fails to name a commissioner within two weeks after notice, the Lieutenant-Governor shall name two commissioners.

Commissioners to prepare a scheme of division.

(3) The commissioners so appointed, or a majority of them, shall, within a reasonable time, report to the Provincial Secretary a new division into wards of the municipality in accordance with the prayer of the petition, having regard to the provisions of this Act as to equality of representation; and the Provincial Secretary shall forthwith transmit a copy thereof

to the council of the city, and shall cause the same to be published for one month in the *Ontario Gazette*, and once in each week for four weeks in one or more newspapers published in the municipality, naming a day when the same will be taken into consideration by the Lieutenant-Governor in Council; and all parties interested, opposed thereto, and who petition to be heard, shall then have an opportunity of being heard, and of being represented by counsel in that behalf.

Lieutenant-Governor may make division by proclamation.

(4) The Lieutenant-Governor in Council may, within three months after the receipt of the report of the commissioners, by proclamation divide the city into wards, and shall have the like powers as are by this Act conferred upon him when application is made by a city council under section 102 of this Act, to divide a city into wards.

Expenses of commission.

(5) The expenses allowed for executing the commission shall be payable by the municipality in the same manner and upon the same conditions as those provided for by sub-section 2 of section 428 of this Act.

Further division not to be made for five years.

(6) In case a new division of any city into wards is made as aforesaid, no new division thereof into wards shall be made for five years thereafter. 55 V. c. 42, s. 22, *part*.

Passed in 1890 as 53 V. c. 50, s. 1, at the instance of ratepayers of the City of Toronto—(to which alone this section applies),—but not then acted upon, the city having, at the next Session of the Legislature, obtained a special Act (54 V. c. 82) which reduced the number of its wards from thirteen to six, and the number of its aldermen from thirty-nine to twenty-four. See note (a) to s. 70.

Election to be held in municipality.

104. Every election shall be held in the municipality to which the same relates. 55 V. c. 42, s. 95.

Taken from 36 V. c. 48, s. 92. *Cf.* 22 V. c. 99, s. 83; 29 & 30 V. c. 51, s. 84.

(a) One Robert Gillis had a farm through which ran the division line between wards 2 and 3 of the Township of Manvers. His house stood on that part of the farm included in ward 2, but his barn on the part in ward 3. The township council of M. having under 12 V. c. 81, ss. 5 & 9, passed a by-law that the election of councillors, for "ward 3," should be held at "Robert Gillis's:" *Held*, that the by-law must be read as meaning some part of his property in ward 3, and that as the election was shewn to have taken place in the house outside the limits of the ward, it was void (*a*).

See, however, s. 123, as to nominations in a township which adjoins a city, town, or village.

Election of township councillors.

105. No election of township councillors shall be held within any city, town or village, nor shall any election for any municipality, or for any ward thereof, be held in a tavern or in a house of public entertainment licensed to sell spirituous or fermented liquors. 55 V. c. 42, s. 96.

Taken from 22 V. c. 99, s. 81.

(a) The first clause of this section is superseded by s. 534 (*a*) *q. v.*; but the remainder of it is still in force, and contravention of its provisions would perhaps invalidate the election (*b*).

(*a*) *Reg. ex rel. Preston* v. *Preston*, 2 C. L. Chamb. R. 178 (1852).

(*b*) *Reg. ex rel. Preston* v. *Preston*, 2 C. L. Chamb. R. 178 (1852); *Reg. ex rel. Allemaing* v. *Zoeger*, 1 P. R. 219 (1853).

DIVISION II.—RETURNING OFFICERS AND DEPUTY RETURNING OFFICERS (SECS. 106-111).

Synopsis: The nomenclature used in this Division is at first sight somewhat puzzling (see notes **(d)** and **(f)** to s. 106); but it is easily explained. The officers who have the conduct of a municipal election are: (1) The *clerk* of the municipality—who is "the returning officer for the whole municipality," (s. 106 (2)); (2) The (ward) *returning officers*—appointed in municipalities divided into wards, (now cities or towns only) and whose sole duty it is to hold the nomination for the ward, (s. 106 (1*a*)); (3) The *deputy-returning officers*—who severally preside at the polling places in each polling subdivision, (s. 106 (1*d*) *Cf.* ss. 138 (3) 144-146, 149-152, 156 and 164-177), and (4) The *poll clerks* (if any), (ss. 149, 165 (2), 174, first paragraph).

Sections 107 and 111 specify the duties of the clerk. Sec. 106 provides for the appointment of the (ward) returning officers and of the deputy-returning officers; ss. 109-110 defines their powers, and sec. 108 makes provision for the case of their neglect, refusal or inability to perform all their duties.

By-law for an election by wards or polling subdivisions.

106.—(1) The council of every local municipality in which the election is to be made by wards or polling subdivisions, shall from time to time, by by-law, appoint:

(*a*) The places for holding the nominations for each ward;

(*b*) The returning officers who shall respectively hold the nominations for each ward;

(*c*) The places at which polls shall be opened in the municipality in case a poll is required;

(*d*) The deputy-returning officers who shall preside at the respective polling places.

Clerk of municipality to be returning officer for whole municipality.

(2) The clerk of the municipality shall be the returning officer for the whole municipality; and in case a poll is required, the deputy-returning officers shall make to him the returns for their respective wards or polling subdivisions. 55 V. c. 42, s. 97.

Taken from R. S. O. (1877), c. 174, s. 94. *Cf.* 12 V. c. 81, s. 5; 22 V. c. 99, s. 90; 29 & 30 V. c. 51, ss. 85, 94; 36 V. c. 48, s. 94; 37 V. c. 16, s. 4.

(a) "**Shall appoint.**" See note (a) to 10, *ante*.

(b) "**By by-law.**" See note (a) to s. 97.

(c) "**The places for holding the nominations in each ward.**" The by-law may also fix *the hour* of the nominations in the cases referred to in ss. 118-123 and the Synopsis which precedes Division IV.

(d) "**The returning officers** (*sic*) **who shall respectively hold the nominations**" It was provided in 1877 by 40 V. c. 12, s. 13, as to municipal elections, that the person theretofore called "returning officer" should in future be called "deputy-returning officer," and that the clerk of the municipality should henceforth styled "the returning officer"; but this nomenclature has not since been strictly followed. See ss. 107-110, and the Synopsis, *supra*.

(e) "**The places at which polls shall be opened, etc.**" See s. 535 (2) and (as to the publication of notices), note (b) to s. 128 (3).

(f) "**The clerk shall be the returning officer for the whole municipality**" But in case of his absence or probable absence or of his incapacity through illness to discharge the duties of returning officer, the council must by by-law appoint some one to act in his stead. See ss. 118 (4), 179.

Notes (a)-(c); (a)-(c).

Returning officer for elections not by wards or polling subdivisions.

107. In the case of a local municipality in which the election is not to be by wards or polling subdivisions, the clerk shall be the returning officer to hold the nomination of candidates at all elections after the first, and he shall also perform all the duties hereinafter mentioned assigned to deputy-returning officers. 55 V. c. 42, s. 98.

Taken from R. S. O. (1877), c. 174, s. 195. *Cf.* 22 V. c. 99, s. 94; 29 & 30 V. c. 54, s. 95; 36 V. c. 48, s. 95.

(a) "**The clerk shall be the returning officer.**" See note (f) to s. 106.

(b) "**Elections after the first.**" As to the returning officer at the first election in townships and villages, see ss. 11, 31, 98.

(c) "**He shall perform all the duties . . etc.**" See these more fully set out in s. 157.

Refusal or neglect of returning officer or deputy returning officer to perform his duties.

108.—(1) In any case where the returning officer for any ward refuses or neglects to attend at the time and place required by the clerk to receive his instructions and nomination papers, and in any case where a deputy-returning officer refuses or neglects to attend at the time and place at which he is required by the returning officer to attend to receive his voters' lists, and other election papers, the clerk of the municipality as returning officer shall appoint another person to act in his place and stead; and the person so appointed shall have all the powers and authority which he would have had if he had been appointed by by-law.

This section has been built up by gradual accretions ever since 1849. See *infra*.

(a) "**Where the returning officer for any ward refuses or neglects to attend.**" This emergency was first provided for in 1892 by 55 V. c. 43, s. 6. As to the use of the word "returning officer" see the Synopsis, *supra*, and note (d) to s. 106.

(b) "**Where a deputy-returning officer refuses or neglects to attend.**" Taken from 50 V. c. 29, s. 4 (1887).

(2) In case, at the time appointed for holding a nomination or poll, the person appointed to be returning officer or deputy-returning officer has died, or does not attend to hold the nomination or poll within an hour after the time appointed, or in case no returning officer or deputy-returning officer has been appointed, the electors present at the place for holding the nomination or poll may choose from amongst themselves a returning officer or deputy-returning officer; and such returning officer or deputy-returning officer shall have all the powers, and shall forthwith proceed to hold the nomination or poll, and perform all the other duties of a returning officer or deputy-returning officer. 55 V. c. 42, s. 99; c. 42, s. 6.

(c) "**In case . . . the person appointed to be returning officer or deputy-returning officer has died . . .**" Taken from 22 V. c. 99, s. 94; substantially 12 V. c. 81, s. 154.

Where returning officer or deputy is unable to perform his duties.

(3) In case, during the polling, the returning officer or the deputy-returning officer at any polling place becomes unable, through illness or other cause, to perform his duties, the poll clerk at such polling place shall act as returning officer, or deputy-returning officer, as the case may be, and he shall

Secs. 108 (3), 110. Notes (d); (a) (b)

perform all the duties of a returning officer or deputy-returning officer, and may appoint some other person to act as poll clerk. 60 V. c. 45, s. 28.

(d) This subsection was passed in 1897 (*a*) in order to provide for the contingency which arose in *Reg. ex rel. Watterworth v. Buchanan* (*b*). See note (b) to s. 204.

Returning officers and deputy returning officers to be conservators of the peace. Their powers.

109. Every returning officer and deputy-returning officer shall, during the day of the election, or of the voting of electors upon a by-law, act as a conservator of the peace for the city or county in which the election or voting is held; and he, or any Justice of the Peace having jurisdiction in the municipality in which the election or voting is held, may cause to be arrested and may summarily try, and may punish by fine or imprisonment, or both, or may imprison or bind over to keep the peace, or for trial, any riotous or disorderly person, who assaults, beats, molests or threatens any voter coming to, or remaining at, or going from the election or voting; and, when thereto required, all constables and persons present at the election or voting, shall assist the returning officer, or deputy-returning officer or Justice of the Peace. 55 V. c. 42, s. 100.

Taken in substance from 22 V. c. 99, s. 95, the words "or of the voting of the electors upon a by-law" being added by 36 V. c. 48, s. 97.

Duties of a R. O.

(a) "**A conservator of the peace**" "These officers should not be partizans. It is the duty of such an officer to stand indifferent between the contending parties; to have no interests to serve for either, or for himself; to approach his duty with the simple desire to do strict justice; to be ready and willing to give reasonable information as to the state of his proceedings; to conceal nothing; to evade no proper enquiry; to mislead no one by silence, or exhibit anything calculated to deceive; and he ought not to make a pretence of strictly following the letter of the law, to defeat it" (*c*).

Powers of a R. O.

(b) "**May cause to be arrested and may summarily try.**" The officer will, in general, act under this section upon his own view. But when, instead of acting on facts observed by himself, or within his own knowledge, he acts on the information of others, it is suggested that he should take a regular information and proceed as any other magistrate would be required to do under like circumstances. An example would be, when the complaint is for an assault committed at a distance from the poll upon a voter coming to or returning from the election. The main object of this section is to empower the returning officer to act promptly on the spot in the hearing and determining of offences occurring at the poll; but in point of authority he is not so restricted.

Special constables may be sworn in.

110. Every returning officer, or deputy returning officer, or Justice of the Peace may appoint and swear in any number of special constables to assist in the preservation of the peace and of order at an election or at the voting of electors upon a by-law; and any person liable to serve as constable, and required by a returning officer or deputy-returning officer, or justice, to be sworn in as a special constable, shall, if he re-

(*a*) 60 V. c. 45, s. 28. (*b*) 28 O. R. 352 (1897).

(*c*) *Reg. ex rel. Corbett v. Jull*, 5 P.R. 41 (1869) *per* JOHN WILSON, J., at p. 48. In that case, owing to the improper conduct of the returning officer the election was set aside and the returning officer was ordered to pay the costs. See a further extract from the judgment in note (b) to s. 128.

fuses to be sworn in or to serve, be liable to a penalty of $20, to be recovered to the use of any one who will sue therefor 55 V. c. 42, s. 10.

Secs. 110, 111. Notes (a) (b).

Taken (in substance) from the Act of 1858 (12 V. c. 81), ss. 157-158, the words "or at the voting of electors upon a by-law" having been added in 1873, (36 V. c. 48, s. 98).

(a) "**Special constables.**" Persons appointed by the magistrates to assist in keeping the peace where the ordinary constables are insufficient for that purpose (*Wharton's* Law Lexicon,—"Special Constables").

Special constables.

(b) "**A penalty of $20, to be recovered to the use of any person who will sue therefor.**" The original section (12 V. c. 81, s. 158) added the words "in any Court of competent jurisdiction." These words have here been omitted, since it is now provided in "*The Interpretation Act*," R.S.O. c. 1, s. 8 (30) that

Penalty, how recoverable.

"Where a pecuniary penalty or a forfeiture is imposed for the contravention of any Act, —then, if no other mode is prescribed for the recovery thereof, the penalty or forfeiture shall be recoverable with costs by civil action or proceeding at the suit of the Crown only, or of a private party suing as well for the Crown as for himself, before a Court having jurisdiction to the amount of the penalty in cases of simple contract, upon the evidence of one credible witness other than the plaintiff or party interested;

Recovery of penalties when no special mode is prescribed.

"If no other provision is made for the appropriation of the penalty or forfeiture, one-half thereof shall belong to the Crown, and the other half shall belong to the private plaintiff, if any there be, and if there be none, the whole shall belong to the crown;"

Appropriation.

The penalty may, it is apprehended, be sued for in a Division Court (*b*).

111. The council of any local municipality in which the election of any member or members of the county council is to be held, and (in case of the election of all the members of the council of the local municipality by acclamation), the clerk of such municipality and any other officer thereof shall, nevertheless, so as to enable the election for county councillors to be held, do all things and take all proceedings which would have been necessary, and in the manner by law provided, that is to say, provide polling places, furnish the necessary and proper voters' lists and poll books, appoint deputy-returning officers and other necessary officers, and do any and all other matters and things which would have been necessary and proper to be done had the members of the council of such local municipality not been elected by acclamation; and every returning officer and deputy-returning officer so appointed shall have all the powers, rights and authorities respecting the election of county councillors, which returning officers and deputy-returning officers have respecting the election of the members of local municipal councils, and shall perform all the like or similar duties which such officers are required to perform under this Act, where an election is being held for the members of the council of a local municipality. 59 V. c. 52, s. 11; 60 V. c. 3, s. 3. *See also sec. 142.*

Holding election of county councillors where all members of local council elected by acclamation.

For the sources of this section, see the Revisers' note thereto, and note (**h**) to s. 4, *ante*, and further, as to the respective duties of the clerk of the county council and the clerk of each local municipality, s. 142 of this Act.

(*b*) See "*The Division Courts Act*," (R.S.O. c. 60), ss. 71, 72, and *Brock v. Taggart*, 16 C.P. 415.

DIVISION III.—OATHS. (SECS. 112-117).

Synopsis: This Division—which might more appropriately have been inserted *post* with Division V relating to procedure at the poll—contains the several forms of oath which may be administered to any person claiming the right to vote at a municipal election; (a), as a freeholder, (s. 112)—(b) as a tenant, (s. 113)—(c) in respect of income, (s. 114),—or (d) as a farmer's son, (s. 112)—(b) as a tenant, (s. 113)—(c) in respect of income, (s. 114),—or (d) as a farmer's son. In accordance with the rule expressed in note (**d**) to s. 86, *ante*, and lest anyone who is in fact entitled to a vote should be deprived of it by a clerical error—sec. 116 enables the elector whose vote is challenged to select from the above forms the one which applies to the facts of his case. Sec. 117 compels the administration of the oath upon a proper request made, and prohibits any inquiry as to extrinsic facts.

Oaths, etc., of person claiming to vote as a freeholder.

112. The only oaths or affirmations to be required of a person claiming to vote in respect of a freehold, shall be as follows, or to the like effect:

You swear (*or* solemnly affirm) that you are the person named, or intended to be named, in the list (*or* supplementary list) of voters now shewn to you (*shewing the list to the voter*);

(*In the case of an unmarried woman or widow claiming to vote.*) That you are unmarried (*or* a widow, *as the case may be.*)

That at the date of this election you are in your own right (*or* your wife is) a freeholder within this polling sub-division (*or where the ward is not sub-divided into polling sub-divisions then* "within this ward") in this municipality.

That you are a natural born (*or* naturalized) subject of Her Majesty, and of the full age of twenty-one years;

(*In the case of municipalities not divided into wards.*) That you have not voted before at this election, either at this or any other polling place.

(*In the case of municipalities divided into wards*) that you have not voted before at this election either at this or any other polling place in this ward, and (*if the elector is tendering his vote for mayor, reeve or deputy reeve*) that you reside in this polling sub-division (*or when ward not sub-divided into polling sub-divisions then* 'in this ward' *or* are not entitled to vote in the polling sub-division in which you reside, *or* are not resident within the municipality *as the case may be*) and that you have not voted before or elsewhere at this election in this municipality for mayor, (*or* reeve *or* deputy reeve), and will not vote elsewhere in this municipality at this election, for mayor, (*or* reeve *or* deputy reeve *as the case may be.*)

That you have not directly or indirectly received any reward or gift, nor do you expect to receive any, for the vote which you tender at this election;

That you have not received anything nor has anything been promised to you, directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected with this election;

And that you have not directly or indirectly paid or promised anything to any person either to induce him to vote or to refrain from voting at this election,

So help you God.

In new municipality where no assessment roll.

(*In the case of a new municipality in which there has not been any assessment roll, then instead of referring to the list of voters, the persons offering to vote may be required to state in the oath the property in respect of which he claims to vote.*)

55 V. c. 42, s. 102; 58 V. c. 42, s. 3; 60 V. c. 15, *Sched.* C. (22.)

This oath has very gradually assumed its present form. *Cf.* 22 V. c. 81, s. 97 (9); 29 & 30 V. c. 51, s. 101 (8); 36 V. c. 48, s. 99; 40 V. c. 8, s. 50; R.S.O. (1877) c. 174, s. 99; 46 V. c. 18, s. 102; 47 V. c. 32, s. 4; R.S.O. (1887) c. 184, s. 102; 53 V. c. 50, s. 5; 55 V. c. 42, s. 102; 58 V. c. 42, s. 3; 60 V. c. 15, Schel A (22): Paragraph 2 (unmarried women or widows) was added in 1884 by 47 V. c. 32, s. 4; paragraphs 3 and 6 (in their present form) are taken from 58 V. c. 42, s. 3 (1), (2) (1895); paragraph 7 from the Act of 1858 (22 V. c. 99, s. 97) (9); and paragraphs 8 and 9 from 40 V. c. 8, s. 50 (1877). The italic note (in parenthesis) at the end of the section appears first in the Act of 1873 (36 V. c. 48 s. 99), having been inserted on the authority of s. 77 of the Acts of 1858 and 1866.

(a) As to the necessary qualifications of voters, see s. 86 and notes thereto;—as to the particular form of oath to be used, s. 116;—as to how and in what cases it shall be administered to a voter, s. 117,—and as to what the word "oath" includes, "*The Interpretation Act*" (R. S. O., c. 1, s. 8 (18). **Secs. 112, 113. Notes (a)-(d).**

Art. 148 of "*The Criminal Code, 1892,*" provides that:—

Perjury defined.

"Every one is guilty of perjury who—

"(*a*) Having taken or made any oath, affirmation, solemn declaration, or affidavit where by any Act or law in force in Canada, or in any Province of Canada, it is required or permitted that facts, matters or things be verified, or otherwise assured or ascertained, by or upon oath, affirmation, declaration or affidavit of any person, wilfully or corruptly, upon such oath, affirmation, declaration or affidavit, deposes, swears to, or makes any false statement as to any such fact, matter, or thing; or,

"(*b*) Knowingly, wilfully or corruptly, upon oath, affirmation or solemn declaration, affirms, declares or deposes to the truth of any statement for so verifying, assuring or ascertaining any such fact, matter or thing, or purporting so to do, or knowingly, wilfully and corruptly takes, makes, signs or subscribes any such affirmation, declaration or affidavit, as to any such fact, matter or thing—such statement, affidavit, affirmation or declaration being untrue, in the whole or any part thereof."

Punishment for.

Art. 146 provides that any one who commits perjury is guilty of an indictable offence and liable to fourteen years imprisonment. As to the duty of the deputy-returning officer in case the voter takes or refuses to take the prescribed oath, see s. 164 (4), (5), of this Act;—as to the provisions of paragraph 6 (where electors may vote in municipalities divided into wards), s. 158-161 of this Act;—as to penalties for voting twice for mayor or reeve, s. 162;—and as to bribery (paragraphs 7, 8, 9), ss. 245, 250, 251, 253.

(b) "The list or supplementary list of voters." "List," see ss. 148, 151, 152. "Supplementary list," see s. 150.

Voters' List should be final.

(c) Paragraphs 2-4. It is difficult to understand why these paragraphs should have been retained in the oath after the passing in 1877 of 40 V. c. 12, entitled "An Act to extend the Voters' Lists Act of 1876 to Municipal Elections, etc." It would seem useless to adopt from the Ontario election law elaborate machinery for preparing voters' lists, unless—at all events so far as the polling is concerned—these lists are to be taken as final and conclusive in respect of the qualifications therein stated. Indeed, s. 20 of the Act of 1877, 40 V. c. 12, expressly provides that "no question of qualification shall be raised at any municipal election except to ascertain whether the person tendering his vote is the person intended to be designated in the list of voters." This provision has been repeated in all the Municipal Acts since 1877, and now forms part of s. 89 of the present Act. In view of these facts the further retention of paragraphs 2, 3 and 4 in the oath seems to be unnecessary and improper. See further as to the finality of the voters' list, note **(a)** to s. 89, *ante*, and especially the cases cited in foot note (*b*) on p. 127.

(d) Paragraphs 8, 9. These paragraphs were added to the oath by 40 V. c. 8, s. 50 (1877).

113. The oath or affirmation to be required of a person claiming to vote as tenant, shall be as follows or to the like effect:

Oath of tenant.

You swear (*or* solemnly affirm) that you are the person named, (*or* intended to be named,) in the list (*or* supplementary list) of voters now shown to you (*showing the list to the voter*);

(*In the case of an unmarried woman or widow claiming to vote,*) That you are unmarried (*or a widow, as the case may be*);

That you were (*or* your wife was) actually, truly, and in good faith, possessed to your (*or* her) own use and benefit as tenant of the real estate in respect of which your name is entered on the said list;

Sec. 113.

Notes (a) (c).

Oath of tenant.

That you are (*or* your wife is) a tenant within this municipality.

That you have been a resident within this municipality for one month next before this election;

That you are a natural-born (*or* naturalized) subject of Her Majesty, and of the full age of twenty-one years;

(*In the case of municipalities not divided into wards.*) That you have not voted before at this election, either at this or any other polling place;

(*In the case of municipalities divided into wards*) that you have not voted before at this election either at this or any other polling place in this ward, and (*if the elector is tendering his vote for mayor or reeve*), that you reside in this polling sub-division (*or where ward not sub-divided into polling sub-divisions then* 'in this ward' *or* are not entitled to vote in the polling sub-division in which you reside (*or as the case may be*) and that you have not voted before or elsewhere in this municipality at this election for mayor, (*or* reeve), and will not vote elsewhere in this municipality at this election for mayor (*or* reeve, *as the case may be.*)

That you have not, directly or indirectly, received any reward or gift, nor do you expect to receive any, for the vote which you tender at this election;

That you have not received anything, nor has anything been promised to you directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected with this election;

And that you have not directly or indirectly paid or promised anything to any person either to induce him to vote or to refrain from voting at this election,

So help you God.

(*In the case of a new municipality in which there has not been any assessment roll, then, instead of swearing to residence of one month next before the election, and referring to the list of voters, the person offering to vote may be required to state in the oath the property in respect of which he claims to vote, and that he is a resident of the municipality.*)

55 V. c. 42, s. 103: 58 V. c. 42, s. 4: 60 V. c. 15, *Sched.* C.(23): 62 V. (2nd Session) c. 26, s. 8 (5).

See the notes to the preceding section. *Cf.* 36 V. c. 48, s. 100; 37 V. c. 16, s. 2; 40 V. c. 12, s. 15; R. S. O. (1877), c. 174, s. 100; 46 V. c. 18, s. 103; 47 V. c. 32, s. 4; R. S. O. (1887), c. 184, s. 103; 55 V. c. 42, s. 103, etc.

(a) "**List or supplementary list.**" See note (a) to s. 112.

(b) See (as to paragraphs 2-6), note (b) to s. 112.

(c) The third paragraph of the above oath was altered to its present form by "*The Municipal Amendment Act, 1899,*" in order to remove certain anomalies and meet certain objections suggested by the present editor. Prior to 1899 —and ever since 1877—the paragraph had read as follows:—

"That on the day of 18 (*the day certified by the clerk of the municipality as the date of the return, or of the final revision and correction of the assessment roll upon which the voters' list used at the election is based*) you were actually, truly, and in good faith, possessed to your own use and benefit, as tenant or occupant, of the real estate in respect of which your name is entered on the said list."

This form—as was pointed out in the advance sheets of this edition of the MANUAL—resulted from a clumsy attempt made by 40 V. c. 12, s. 15, to combine in one the two forms of oath prescribed by 40 V. c. 10, ss. 9 and 10, to be used in elections to the Legislative Assembly. It differed *in toto* from the provisions of s. 86 as to the qualifications of tenants to vote (*a*), and it ignored the provisions of s. 89. To the latter of these objections (*b*) it would seem to be still open.

(*a*) See *ante*, p. 120, "Secondly."

(*b*) See note (a) to s. 89 and *Reg. ex rel. Mackenzie* v. *Martin*, 28 O. R. 523 (1897), etc., cited in foot-note (*b*), p. 127.

(d) **Paragraphs 10, 11.** Taken from 40 V. c. 8, s. 50 (1877).

Oath of income voter.

114. The oath or affirmation to be required of a person claiming to vote in respect of income shall be as follows:

You swear (*or* solemnly affirm) that you are the person named (*or* intended to be named by the name of) in the list (*or* supplementary list) of voters now shewn to you (*shewing the list to the voter*):

(*In the case of a widow or unmarried woman claiming to vote*). That you are unmarried (*or* a widow, *as the case may be*);

That on the day of 19 (*the day certified by the clerk as the date of the final revision and correction of the assessment roll upon which the voters' list used at the election is based, or, at the option of the voter, the day certified by the clerk as the last day for making complaint to the County Judge with respect to such voters' list*), you were, and thenceforward have been continuously, and still are, a resident of this township (city, town *or* village, *as the case may be*):

That at the said date, and for the twelve months previously, you were in receipt of an income from your trade (office, calling *or* profession, *as the case may be*) of a sum of not less than $400.

That you are a subject of Her Majesty by birth (*or* naturalization, *as the case may be*) and are of the full age of twenty-one years:

(*In the case of municipalities not divided into wards*). That you have not voted before at this election, either at this or any other polling place;

(*In the case of municipalities divided into wards.*) That you have not voted before at this election, either at this or any other polling place in this ward, and (*if the elector is tendering his vote for mayor or reeve*), that you have not voted before or elsewhere in this municipality at this election for mayor (*or* reeve, *as the case may be*);

That you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected with this election:

And that you have not, directly or indirectly, paid or promised anything to any person, either to induce him to vote or to refrain from voting at this election:

So help you God.

55 V. c. 42, s. 104; 60 V. c. 15, *Sched.* C. (24); 62 V. (2nd Session) c. 26, s. 8 (6).

A form of oath for income voters (at elections to the Legislative Assembly) was first prescribed by 37 V. c. 3, s. 4; was adopted for municipal elections by 39 V. c. 5, s. 7; and was altered into its present form by 40 V. c. 8, s. 50, and c. 12, s. 16. *Cf.* R. S. O. (1877), c. 174, s. 101. The changes made since then are the addition (in 1884) of par. 2, by 47 V. c. 32, s. 4, a clerical amendment made by 60 V. c. Sched. A (24), and the addition to par. 3 of the words (in italics) from "*or, at the option of the voter,*" etc., to the end of the italic clause.

(a) "**List or supplementary list.**" See note (a) to s. 112.

(b) **Paragraphs 2, 3, 4, 5.** See note (b) to s. 112.

(c) **Paragraphs 8, 9.** Taken from 40 V. c. 8, s. 50 (1877).

Oath of farmer's son.

115. The oath or affirmation to be required from a farmer's son claiming to be entitled to vote shall be as follows:

You swear (*or* solemnly affirm) that you are the person named (*or* intended to be named by the name of) in the list (*or* supplementary list of voters now shewn to you (*shewing the list to the voter*);

That on the day of 19 (*the day certified by the clerk as the date of the final revision and correction*

Secs. 115-116, Notes (a)-(b); (a).

Oath of farmer's son voter.

of the assessment roll upon which the voters' list used at the election was based, or, at the option of the voter, the day certified by the clerk as the last day for making complaint to the county judge with respect to such voters' list) A.B., (*naming him or her*) was actually, truly and in good faith possessed to his (*or* her) own use and benefit as owner (*or* as tenant under a lease the term of which was not less than five years) as you verily believe, of the lands in respect of which your name is so as aforesaid entered on said list of voters.

That you are a son (*or* stepson) of the said A.B.

That you resided on the said property for twelve months next before the said day, not having been absent during that period, except temporarily, and not more than six months in all;

That you are still a resident of this municipality, and entitled to vote at this election;

That you are a subject of Her Majesty by birth (*or* naturalization *as the case may be*); and are of the full age of twenty-one years;

(*In the case of municipalities not divided into wards.*) That you have not voted before at this election, either at this or any other polling place;

(*In the case of municipalities divided into wards.*) That you have not voted before at this election, either at this or any other polling place in this ward, and (*if the elector is tendering his vote for mayor or reeve*), that you have not voted before or elsewhere in the municipality at this election for mayor, (*or* reeve, *as the case may be*);

That you have not received anything, nor has anything been promised you, directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected with this election;

And that you have not directly or indirectly paid or promised anything to any person, either to induce him to vote or to refrain from voting at this election;

So help you God.

55 V. c. 42, s. 105; 57 V. c. 50, s. 2 (2); 60 V. c. 15, *Sched.* C (25); 62 V. (2nd Session) c. 26. s. 8 (7).

This oath was first prescribed by 40 V. c. 9, s. 9, amended (par. 2) by R. S. O. 1877), c. 174, s. 102, the changes since then being the alteration into their present form of paragraphs 2 and 2 by 62 V. (2) c. 26, s. 8 (7) and the substitution in paragraph 4 of "six months" for "four months," by 57 V. c. 50, s. 2 (2).

(a) **"List or supplementary list."** See note (a) to s. 112.

(b) **Paragraphs 2-6.** See note (b) to s. 112.

Voter may select any form of oath.

116. The voter shall be entitled to select for himself for that purpose any one of the forms contained in sections 112 to 115 both inclusive, whatever may be the description either in the voter's list or assessment roll as to the qualification or character in respect of which he is entered upon the list or roll. 55 V. c 42, s 105*a*; c. 43, s. 8.

Taken from 55 V. c. 43, s. 8.

(a) The intention of the Legislature is that no person who is really entitled to vote shall be deprived of his franchise by the mistake of a municipal officer. See also ss. 89, 117 and note (d) to s. 86.

The plaintiff's name was properly entered on the last revised assessment roll of a municipality as a tenant of real property of the value entitling him to vote at a municipal election under s. 80 of "*The Con. Mun. Act, 1892,*" (*a*) and was

(*a*) 55 V. c. 42.

Secs. 116, 117.

Notes (a), (b).

Wilson v. *Manes*.

entered on the voters' list; but after the first revision thereof, he ceased to be a tenant and to occupy the property, though he continued to reside in the municipality, and was the owner of real property as a freeholder of the value entitling him to vote, and was such freeholder at the time of the election. At such election he demanded a ballot paper, and was willing to take the oath for freeholders, but the defendant, the returning officer, refused to furnish him with a ballot or to permit him to vote unless he took the oath required for tenants.

Held, that the defendant's duties were merely ministerial, and that an action for a breach thereof was maintainable without any proof of malice or negligence; that the plaintiff was entitled to vote at such election; and that the defendant's refusal to allow him to vote constituted a breach of his duty, rendered him liable to the penalty of $400 given by s. 168 and also to damages at common law. (*b*)

When and how oaths are to be administered.

117. Such oaths or affirmations shall be administered by the returning officer or deputy-returning officer, as the case may be, at the request of any candidate or his authorized agent, and no inquiries shall be made of any voter, except with respect to the facts specified in such oaths or affirmations. 55 V. c. 42, s. 106.

Taken in substance from 22 V., c. 99, s. 97 (8).

(a) See as to the previous law (*c*) *Reg. ex rel. Gordanier* v. *Perry*, 3 U.C.L.J. 90 (1857); also *Reg.* v. *Spalding*, Car. & M. 568. Under the same Statutes (before voting by ballot) it was held that the acceptance by the R. O. of the votes of electors who (having been objected to) had refused to take the oath was, if the relator would otherwise have had a majority, a good ground for setting aside the election. (*d*) As to prosecutions for false oaths, under enactments corresponding to the above, see *Reg.* v. *Dodsworth*, 2 Moo. & R. 72; 8 C. & P. 218, where a form of indictment is given, and, as to the evidence required, *Reg.* v. *Ellis*, Car. & M. 564; *Reg.* v. *Thompson*, 2 Moo. & R. 355.

(b) "**At the request of any candidate or his authorized agent.**" See note (e) to s. 165.

Division IV.—PROCEEDINGS PRELIMINARY TO THE POLL. (Secs. 118-163).

Synopsis:—The date of the annual municipal election and the procedure to be observed upon the division of a city or town into wards having been provided for by Division I, the officers who are to conduct the election by Division II, and the oaths to be administered to voters by Division III,—this Division (IV) takes up the proceedings at a nomination, which may be either preliminary to a poll, or—in the cases mentioned in s. 128 and the first clause of s. 134—may constitute the whole election.

The sections relating to the place and time of nominations have, by means of successive (and not always very intelligible) amendments of the law, become so complicated that it is difficult at first to apprehend their exact effect. The following tabular view may be of use:—

(*b*) *Wilson* v. *Manes*, 28 O. R. 419 (1896). Affirmed on appeal, but the damages reduced to a nominal sum, 26 A. R. 398 (1899).

(*c*) 12 V. c. 81, ss. 122, 124: 16 V. c. 181.

(*d*) *Reg. ex rel. Dillon* v. *McNeil*, 5 C. P. 137 (1855).

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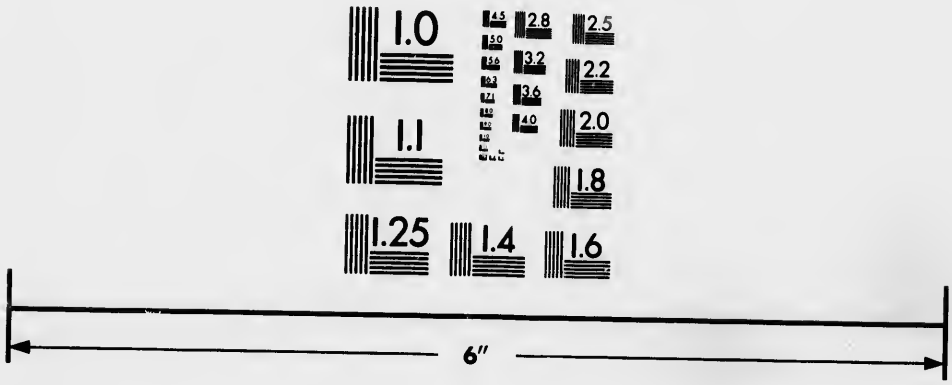

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WHERE AND WHEN NOMINATIONS MAY BE HELD.

LOCAL MUNICIPAL COUNCILS.

	Place.	Time.
		Date—*Last Monday in December, but if this is Christmas Day, then on the preceding Friday:* (s. 124).
In Cities:—		
Mayor.	City Hall	*Hour*—10 a.m.: (s. 118 (1)).
Aldermen.	in City Hall: s. 119, or Place (*or* places in each ward) to be fixed by by-law under s. 119 or s. 106 (1a).	at Noon: (s. 119), or 7.30 p.m. if so provided by by-law under s. 120.

N.B.—*Under s. 71a (4a) cities having a population exceeding 40,000 may elect aldermen "by general vote in two electoral divisions"—one half of the aldermen to be elected in each division. In such cases it would seem reasonable that there should be a separate nomination for each of the two electoral divisions, but up to the present time no express provision to this effect has been embodied in "The Municipal Act."*

In Towns:—		
Mayor.	in Town Hall: s. 118 (1)	at 10 a.m. (s. 118 (1)), or 7.30 p.m. if so provided by by-law under s. 120.
Councillors.	in Town Hall: s. 119, or Place (*or* places in each ward) fixed by by-law under s. 119 or s. 106 (1a).	at Noon: (s. 119), or 7.30 p.m. if so provided by by-law under s. 120.
	or Town Hall, if so provided by by-law under s. 118 (2).	at 10 a.m., or 7.30 p.m. if so provided by by-law under ss. 118 (2) and 120.
In Villages:—		
Reeve and Councillors.	in Village Hall: (s. 119) or Place fixed by by-law under s. 119.	at Noon: (s. 119), or 7.30 p.m. if so provided by by-law under s. 120.
In Townships:—		**Date**—*As above (but may be changed to 3rd Monday in December by County Council by-law under s. 125).*
Reeve and Councillors.	in Township Hall: (s. 119) or Place fixed by by-law, ss. 119, 123.	at Noon: (s. 119), or 1 p.m. if so provided by by-law under s. 122.

COUNTY COUNCILS.

County Councillors.	In each County Council Division,	**Date**—*Last Monday but one in December,* (s. 133).
	At place fixed by the nominating officer, (s. 132 (2a)).	**Hour**—Between 1 and 2 o'clock p.m., s. 132 (2 a).

The procedure relative to the nomination of candidates for local councils is prescribed by ss. 127 and 129, and for county councils by ss. 132 to 135. Sections 130 and 131 provide for the holding of a new election in local municipalities in case, by reason of the retirement of candidates, the election of the full council becomes impossible. Sections 136 to 157 relate to the duties devolving upon the officers of the municipality in case the election of a council has not been made at the nomination and a poll has to be held. They direct in what manner ballot boxes, ballot papers, voters' lists, poll books, defaulters' lists, certificates as to the date of the final revision of the assessment roll and of the last day for making complaint to the County Judge under R. S. O. c. 7, ss. 17 and 53, and lists of persons who have forfeited their right to vote by non-payment of taxes, shall be prepared and delivered to the persons who are to preside at each polling place.

Sections 158 to 162 provide where, when, and how often an elector may vote, and s. 163 enables a deputy-returning officer or poll clerk to vote at a polling sub-division other than the one where his name appears on the voters' list.

Meeting for nomination of mayor in cities and towns.

118.—(1) Subject to the provisions of section 120 of this Act, a meeting the electors shall take place for the nomination of candidates for the office of mayor in cities and towns, at the hall of the municipality, on the last Monday in the month of December, annually, at ten of the clock in the forenoon. 55 V. c 42, s. 107 (1): 62 V. (2nd Session) c. 26, s. 9 (1)

Subs. 1 is taken in substance from the Act of 1873 (36 V. c. 48) s. 102, but was amended in 1899 (62 V. (2) c. 26, s. 9 (1)) by striking out the words "reeves and deputy-reeves in towns." *Cf.* 22 V. c. 99, s. 103; 29 & 30 V. c. 51, s. 107; 59 V. c. 52, ss. 2-5.

What is a meeting.

(a) "A meeting of the electors." To constitute a meeting, at least two persons must be present. (*a*)

A nomination.

(b) "Nomination of candidates." A nomination is a resolution submitted to the electors that the party named is a candidate for their suffrages for an office named. (*b*) S. 128 now provides that "each nomination shall be in writing, shall state the full name, occupation, and residence of the candidate, and shall be signed by his proposer and seconder." Municipal elections begin with the nomination. (*c*)

Place.

(c) "At the hall of the municipality." The sessions of the county of St. John, N.B., had, pursuant to an Act of the Assembly, appointed a certain school-house in the parish of L. as the place of meeting for the nomination of candidates for parish officers, but the poll clerk gave a notice for the meeting to be held at the house of one C. in the same settlement and not more than seventeen rods distance from the school-house. The parishioners met at the place named in the notice, organized the meeting, and then adjourned to meet in the school-house, where the election afterwards took place. The election was held to be void. (*f*)

Time.

(d) "Last Monday in the month of December." Under the Acts of 1858 and 1866 the nomination of these officers was held on the last Monday but one in December. The present date was adopted in 1873. (*g*) See next note.

(*a*) *Sharpe* v. *Dawes*, 2 Q.B.D. 26 (1876).

(*b*) *Reg. ex rel. Corbett* v. *Jull*, 5 P.R. 41 (1869), *per* JOHN WILSON, J., at p. 47. See further note (**b**) to s. 128.

(*c*) See the cases collected in note (**g**) to s. 76.

(*d*) 59 V. c. 52.

(*e*) See note (**a**) to s. 66, and s. 71, note (**a**).

(*f*) *Ex parte Robinson*, 16 N.B. Rep. (3 Pugs.) 389 (1876).

(*g*) 36 V. c. 48, s. 102.

Secs. 118 (2), 119. Notes (e)-(h).

(e) "**If the last Monday in December is Christmas Day,**" see s. 124. As to the power of a county council to change the date of the municipal nominations in townships, see s. 125 (1).

Nomination of councillors in towns.

(2) The council of any town divided into wards may, by by-law, provide that the nomination for councillors for the several wards shall be held at the same time and place as the nomination for mayor.

(f) This would be at 10 a.m. or 7.30 p.m. at the town hall. See p. 144.

(3) Where no such by-law is passed, the nomination of councillors in such town shall take place as provided by section 119 of this Act. 55 V. c. 42, s. 107 (123); 62 V. (2nd Session) c. 26, s. 9 (2).

Subs. 2 and 3 were added by 51 V. c. 28, s. 10, (2), (3), (1888). The words "reeve and deputy-reeve" (which formerly ended subs. 2), were struck out in 1899 by 62 V. (2) c. 26, s. 9 (2).

(g) "**Any town divided into wards.**" As to by-laws abolishing wards in towns, see s. 71*a*.

The clerk to preside.

Chairman.

(4) The clerk of the municipality shall be the returning officer to preside at such meeting, or in case of his absence, or probable absence, the council shall appoint a person to preside in his place; and if the clerk or the person so appointed does not attend, the electors present shall choose from among themselves a chairman, and such clerk or chairman shall have all the powers of a returning officer. 55 V. c. 42, s. 108; 60 V. c. 15, *Sched.* C (26).

Taken from the Act of 1858, (22 V. c. 99), ss. 104, 105.

Effect of non-compliance.

(h) "**Council shall appoint; . . . electors present shall choose . . . etc.**" The council should provide for the absence of the clerk, if it is apprehended or expected; and the appointment of a substitute should be made by by-law. See note (f) to s. 106 and s. 179. Should the council fail to pass such a by-law the electors present may choose a chairman. If they do so, it is apprehended that the chairman so chosen would have a right to conduct the nomination to its termination, notwithstanding the arrival in the meantime of the clerk, or of a person appointed by the council as his substitute. Under this section the electors are not apparently required to wait before making an appointment as they are under sec. 108 (2). The proceedings of the meeting, if not presided over by the clerk—or in case of his absence by a person appointed or elected as herein provided—would in all probability be held absolutely void. "It cannot be a mere matter of procedure or form, that there should be no person presiding at the meeting in whom is vested the authority for conducting the election and for maintaining peace and order" (*a*). "The Legislature says, and, I must take it, for very good reasons, that the election is to be conducted by a particular officer, and then another person goes and conducts it. Even if I had a discretion, I should not exercise it in supporting such a practice. It is very much the same as if a cause was referred to a barrister, and he were to go away for his own pleasure and leave it to his clerks, and then it was said that the award was good because it was made just as well as if it had been made by the barrister. Or if a cause was to be heard by a Judge, and he left it to one of the masters, he might conduct it just as well as the Judge, but that would not do." (*b*)

Meetings for nominations of aldermen, councillors, etc.

119. Save as otherwise provided by section 120, a meeting of the electors shall take place for the nomination of the candidates for the offices of aldermen in cities, councillors in

(*a*) *Per* DRAPER, C. J. in *Re Hartley and Township of Emily*, 25 U. C. R. 12 (1865).

(*b*) *Per* CROMPTON, J., in *Reg.* v. *Backhouse*, 12 L. T. N. S. 579 (1851). See further, *Pickering* v. *James*, L. R. 8 C. P. 489 (1873).

towns, and of reeves and councillors in villages and townships, at noon, on the last Monday in December annually, at the town hall of the municipality, or at such place therein, and in cities and towns at such places *in each ward thereof* as may from time to time be fixed by by-law, subject, in the case of townships to the provisions of section 123. 55 V. c. 42, s. 109, *part*: 62 V. (2nd Session) c. 26, s. 9 (3).

Secs. 119-121 (1). Notes (a) (c).

Taken from the Act of 1883, (46 V. c. 18), s. 109, the words relating to deputy reeves having been struck out by 62 V. (2) c. 26, s. 9 (3). *Cf.* 29 & 30 V. c. 51, s. 101; 36 V. c. 48, s. 104; 37 V. c. 16, s. 3; R. S. O. (1877) c. 174, s. 106; 42 V. c. 31, s. 4; 59 V. c. 52, ss. 2, 5; 61 V. c. 23, ss. 3, 4.

(a) "**At noon.**" But see as to aldermen in cities, s. 120; as to councillors in towns, ss. 118 (1), 120; as to councillors in villages, s. 120; in townships, s. 122.

(b) "**Cities and towns, etc.**" This should be amended so as to apply only to cities and towns which are still divided into wards. See s. 71a. Provision should also be made for the nomination of aldermen in cities when one half of them are to be chosen from each of two electoral divisions, (s. 71a (4a)).

(c) "**Such places . . . as may . . . be fixed by by-law.**" See ss. 97, 100, 106 and (as to townships) s. 123.

120. Notwithstanding anything contained in sections 118 and 119, the hour for the nomination of candidates for the offices of aldermen in cities, may, in and by the by-law fixing the places for such nomination, be fixed at half-past seven o'clock in the evening, instead of at noon; and the council of any town or village may by by-law provide that the nomination for mayor or reeve and aldermen or councillors may be held at half-past seven o'clock in the evening instead of the hours in the said sections mentioned. 55 V. c. 42, s. 107 (4), 109, *part*: 62 V. (2nd Session) c. 26, s. 9 (4).

Hours for holding nominations in cities, towns and villages.

The first part of this section (relating to aldermen in cities), is taken from 51 V. c. 28, s. 11, the latter portion (relating to towns and villages), from 51 V. c. 28, s. 10 (4), the words relating to deputy reeves having been struck out by 62 V. (2) c. 26, s. 9 (4). In cities the change from the statutory hour of noon (s. 118 (1)) to 7.30 p.m. must be made "in such by-law" to be passed under s. 106 (1).

In "*The Municipal Act*" (R.S.O. c. 223) the next section read as follows:—

121.—(1) *Subject to the provisions of section 122, the nomination of candidates for the office of reeve in townships divided into wards, shall be held at ten of the clock in the forenoon on the last Monday in December, at such place in the township as may from time to time be fixed by by-law, and the township clerk shall preside.*

In townships divided into wards.

Taken from 37 V. c. 16, s. 3 (1874).

Secs. 121 (1)-124.

(2) *Subject to the provisions of section 123, the nomination of candidates for the office of councillor to be elected for each ward, shall take place at noon, at the town hall of the township or at such place in the township or in each ward as may be fixed by by-law.* 55 V. c. 42, s. 110.

Taken from 46 V. c. 18, s. 110. *Cf.* 37 V. c. 16, s. 3; R. S. O. (1877), c. 174, s. 107; 42 V. c. 31, s. 5, and the notes to subsec. 1, *supra*.

The above section (121) was repealed by "*The Municipal Amendment Act, 1900*," (62 V. (2nd Session) c. 26, s. 9 (5)).

Hour for holding nominations in townships.

122. Notwithstanding anything contained in section 119 of this Act, the council of any township may by by-law provide that the nomination for reeve and councillors may be held at one o'clock in the afternoon. 59 V. c. 51, s. 2: 62 V. (2nd Session) c. 26, s. 9 (6).

Place of meeting for nomination of reeves, etc., of townships.

123. Where a township is so situate that the territory of such township adjoins the limits of any city, town or village, such city, town or village may be designated by by-law as the place of meeting for the nomination of candidates for the offices of reeve and councillors, as the case may be. 55 V. c. 42, s 111; 60 V. c. 3, s. 3: 62 V. (2nd Session) c. 26, s. 9 (7).

Taken from 48 V. c. 39, s. 5 (1885.) Before that the rule of s. 104 applied. As to the case where a township owns, rents or has otherwise acquired a town hall built upon lands which are within (or partly within) the original boundaries of the township, see also s. 534 (3*a*).

If nomination day falls on Christmas Day.

124. When the last Monday in December is Christmas Day, the nomination of candidates for the offices of mayor and aldermen in cities, and of mayor, reeve and councillors in other municipalities, shall take place on the preceding Friday, at the times and places and in the manner prescribed by law. 55 V. c. 42, s. 112: 62 V. (2nd Session) c. 26, s. 9 (8).

Taken from 39 V. c. 7, s. 26 (1876).

N.B.—Note that s. 125 (though not so reprinted here) was amended by 62 V. (2nd Session) c. 26, s. 9 (9) by striking out the word "deputy-reeve" in line 3. See next page.

Notes (a); (a)-(c); (a).

County council may by by-law lengthen time between nomination and polling in townships.

Copy of by-law to be sent to townships affected.

125.—(1) Every county council may, by by-law, made on or before the 1st day of July in any year, provide that the day for the nomination of candidates for reeve, [*deputy-reeves*], and councillors in townships shall be the third Monday preceding the day for polling, but all the other provisions of law relating to municipal elections shall apply to the elections in such townships. 55 V. c. 42, s. 113 (1); 60 V. c. 45, s. 2.

(2) Forthwith after the passing of such by-law, the county clerk shall transmit a copy thereof to the clerks of the townships to which the same relates. 55 V. c. 42, s. 113 (2).

Taken from 10 V. c. 8, s. 18 (1877). "*The Municipal Amendment Act, 1892*," 60 V. c. 45, s. 2, altered the words "last Monday but one in December" to "third Monday preceding the day for polling" "a week earlier" in order, (probably) that the elections for local councils under this section and for county councils under s. 133 should not take place on the same day.

(a) "Deputy reeves." See s. 73, note (a).

Presiding officer.

126. The returning officer appointed for each ward, as in section 106 mentioned, or the clerk (as the case may be), shall respectively preside at the meeting for the nomination of candidates; and in case of the absence of such presiding officer, the meeting may choose a chairman, who shall, in respect of the meeting, have all the powers of a returning officer. 55 V. c. 42, s. 114; 60 V. c. 15, *Sched. C.* (27).

Taken from R. S. O. (1877), c. 174, s. 110, the words at the end "who shall in respect of the meeting . . . . . " having been added by 60 V. c. 15, Sched. C. (27). *Cf.* 29 & 30 V. c. 51, s. 100 (1); 31 V. c. 30, s. 17; 36 V. c. 18, s. 105.

(a) "Returning officer . . or clerk . . shall . . preside. See ss. 72, 73, 100, 106, 107, 118 (4), 121, 157.

(b) "In case of the absence of such presiding officer." See note (1) to s. 118.

(c) "All the powers of a returning officer." See ss. 109, 110 and the notes thereto.

Notice of nomination meeting.

127 The clerk or other returning officer whose duty it is to preside at the meeting for the nomination of candidates shall give at least six days' notice of such meeting. 55 V. c. 42, s. 115.

Taken from 29 & 30 V., c. 51, s. 100 (1). Ten days notice had previously been required. *Cf.* 22 V., c. 99, s. 97.

(a) "At least six days notice." This means six full days. (*a*) Where a Statute says that any thing shall be done so many days, or so many days "at least," before a given event, the day of the thing done and the day of the event must both be excluded. (*b*) A notice of "ten days at least" for a hearing means that there shall elapse at least ten periods of twenty-four hours each between the day of the delivery and the day of the hearing. (*c*) It means ten clear, full and complete days, and not nine days and fractions of other two days. (*d*) The section does not specify the mode in which notice shall be given. As to notice of the nominations for county councils, see s. 132 (2) (*a*).

"At least" meaning of.

(*a*) In re *Sams* v. *Toronto*, 9 U. C. R. 181.

(*b*) *Reg.* v. *Justices of Shropshire*, 8 A. & E. 173; *Mitchell* v. *Foster*, 9 Dowl. 527.

(*c*) *Norton* v. *Salisbury*, 4 C. B. 37.

(*d*) *Adey* v. *Hill*, 4 C. B. 40. See further *Howes* v. *Pierce*, 1 C. P. D. 670; *Re Railway Sleepers Supply Co.*, 39 Ch. D. 204; *Walker* v. *Crystal Palace Gas Co.*, [1891] 2 Q. B. 309.

Sec. 128 (1, 2).

Notes (a)-(b).

Nomination and proceedings incident thereto.

128.—(1) At such meeting, the person or persons to fill each office shall be proposed and seconded *seriatim*; and every such nomination shall be in writing, shall state the full name, place of residence and occupation of the candidate, and shall be signed by his proposer and seconder. 55 V. c. 42, s. 116, *part*; 60 V. c. 15, *Sched.* C. (28).

The first clause of the section is taken from the Act of 1873, 36 V. c. 48, s. 40. The provision requiring nominations to be in writing was added in 1897 by 60 V. c. 15, s. Sched. C. (28).

Irregular nomination papers.

(a) In England, under "*The Mun. Elections Act, 1875*," (38 & 39 V., c. 40) which requires (s. 1 (2)) that nominations shall be in writing, signed by two enrolled burgesses of the borough, and shall state the surname and other names of the person nominated, with his place of abode and description, and shall be in the form given in the Schedule or to the like effect, it was held that a nomination paper in which the name of a candidate (Robert Vicars Mather), was written "Robert V. Mather," did not comply with the requirements of the Act (*a*)

Rule 4 (2) of the (English) Election Orders, 1898 requires that a nomination paper shall contain the name of the candidate nominated, and shall be signed by his proposer and seconder. It also provides that the decision of the returning officer as to the validity of any nomination paper shall be final. A returning officer having held valid a nomination paper to which the names of a proposer and seconder had been signed before the name of a candidate was filled in there being no evidence that they did not assent to the names being thus subsequently inserted GRANTHAM and LAWRENCE JJ. upheld the returning officer's decision, although conceding that the nomination paper would have been invalid had the name so filled in not been assented to by the signers of the paper. (*b*)

Election by acclamation.

(2) If only one candidate for any particular office is proposed, the clerk or other returning officer or chairman shall, after the lapse of one hour from the time fixed for holding the meeting, declare the candidate duly elected for that office. 55 V. c. 42, s. 116, *part*.

Taken in substance from 22 V. c. 99, s. 97 (7).

What is an election "by acclamation."

(b) **"After the lapse of one hour, etc."** At a meeting called to receive nominations for municipal councillors, one party (as they alleged) made their nominations at 12 o'clock, or a few moments after, in the presence of only two or three persons, and without any effort on the part of the returning officer to call in the people who were outside the place of meeting. The returning officer did not enter in his book the names of the candidates nominated, and he gave to some of the other party who came in afterwards evasive answers as to whether any nominations had been made or not, and led some of the electors present to think that there was still an hour or so in which to make nominations, when, in fact, there was less than half that time. At one o'clock, the returning officer, without making any preliminary statement that certain persons had been nominated, and without asking if there were any other candidates to be nominated, declared that the persons nominated at the opening of the meeting were duly elected by acclamation. The other side, who were waiting,—under the impression (as they alleged) that no nominations had as yet been made, to make their nominations after the other party protested against this, and desired to nominate opposition candidates (of whom the relator was one), but the returning officer refused to receive their nominations as too late. *Held*, (1) that the election must be set aside and a new election ordered, and (2) that the returning officer had acted improperly and contrary to the spirit of the law, and he was therefore ordered to pay the costs (*a*).

(*a*) *Mather* v. *Brown*, 1 C.P.D. 596 (1876). See also *Reg.* v. *Coward*, 16 A. & E. 818, but *contra* see *Reg.* v. *Bradley*, 3 E. & E. 634 (1861) and *Reg.* v *Plenty*, L. R. 4 Q. B. 346. In *Harvey* v. *Armitage*, 12 Q. B. D. 127, a well-understood abbreviation of a Christian name, *ex. gr.*, "Wm." for "William" was held good. (*b*) *Cox* v. *Davis*, [1898], 2 Q. B. 292.

(*a*) *Reg. ex rel Corbett* v. *Jull*, 5 P. R. 41 (1869).

Sec. 128 (3). Notes (c)-(d); Election "by acclamation."

JOHN WILSON, J., in giving judgment says (p. 47):

"The conducting of an election is analogous to any public meeting "where the object sought is a fair expression of opinion on any question "proposed. The law in regard to elections assumes that when the "election of any officer is carried by acclamation, the electors are "fully and fairly informed of what they are assenting to by acclama-"tion. They cannot assent to what is not submitted to their choice "or present in their minds. A nomination is a resolution submitted "to the electors, that the party named is a candidate for their suf-"frages for an office named; but the Legislature, to prevent surprise, "requires that not less than one hour shall elapse between the sub-"mission of the last nomination and the putting of the question with "a view to its being passed by acclamation. In the meantime, the "vote is in abeyance. A resolution is said to be carried by acclama-"tion when, after it has been proposed and heard, it receives no "opposition, but is carried by the consent of the meeting, expressed "or implied from its silence. But in no case can it be correctly said "to pass by acclamation where it has not been proposed or not under-"stood. The Statute does not mean that the returning officer, if no "other nominations are made, shall simply declare those who have "been proposed duly elected; it means that the nominations shall be "put *seriatim* to the electors and their votes taken upon them. The "law prescribes no form of words, but it requires that the proposition "should be explained so as to be understood by men of ordinary "understanding."

(c) "**Shall . . . declare the candidate duly elected for that office.**" The returning officer or other chairman of a nomination meeting has nothing to do with any question as to the qualification of the candidates proposed (*a*). Powers of R. O.

(3) If more candidates are proposed for any particular office than are required to be elected, the clerk (or other returning officer or chairman) shall adjourn the proceedings for filling such office until the first Monday in January next thereafter, when (unless there is an election by acclamation by reason of the resignation of any candidate or candidates nominated, as in the next succeeding section provided) a poll or polls shall be opened in each ward or polling sub division at such place or places respectively as have been fixed by the by-law of the said council for the election. 60 V. c. 45, s. 29. In what cases poll to be held.

Taken from 60 V. c. 45, s. 29. *Cf.* 22 V. c. 99, s. 97 (7); 29 & 30 V. c. 51, ss. 100 (3), 101 (4); 111; 31 V. c. 30, ss. 13, 18, 21; 33 V. c. 18, s. 101; R.S.O. (1877) c. 174, s. 112; 46 V. c. 18, s. 115; R.S.O. (1887) c. 184, s. 116; 55 V. c. 42, s. 116.

(d) "**Shall adjourn the proceedings . . .**" This is imperative. See note (a) to s. 10. In the absence of such authority it was held in England that the chairman of a meeting cannot, after the business is opened, dissolve or adjourn the meeting at his pleasure; and that, if he wrongfully leaves the chair, those present can appoint a new chairman, and continue the business of the meeting (*b*). Adjournment for polling.

The polling is a continuation of the proceedings initiated by the nomination (*c*). When a poll is granted a poll must be had, even although all the candidates except one, after the nominations and before the polling, decline the contest (*d*).

(*a*) *Reg. ex rel. Stevenson* v. *Blanchard*, 2 Man. R. 78 (1885); *Reg. ex rel. Duncan* v. *Loughlin*, 2 Man. R. 78 (1885); and see *Pritchard* v. *Mayor of Bangor*, 13 App. Cas. 241, cited in note (b) to s. 178.

(*b*) *National Dwellings Society* v. *Sykes*, [1894] 3 Chy. 159.

(*c*) See *Reg.* v. *Archdeacon of Chester*, 1 A. & E. 342; and see note (g) to s. 76.

(*d*) *Wexford Election*, L.R. 3 Ir. C.L.R. 612; *Reg.* v. *Cooper*, L.R. 5 Q.B. 457.

Sec. 128 (4). Notes (e) (f).

(e) "A poll or polls shall be opened . . . at such place or places." There is no express provision in the Act requiring notice to be given to the electors of the day on which or of the places at which the polling is to be held, but it is believed that such notice is, in practice, almost invariably given.

Hours of polling.

(4) The said poll or polls shall be so opened at nine of the clock in the morning, and shall continue open until five of the clock in the afternoon, and no longer:

Provided, however, that in cities of over 100,000 inhabitants the council may, by by-law to be passed before the 15th day of November in any year, extend the time for holding the election until seven o'clock in the afternoon. 55 V. c. 42, s. 116, *part*; 61 V. c. 23, s. 6.

Taken from the Act of 1866 (29 & 30 V. c. 54, s. 190 (4)). The proviso referring to cities of over 100,000 inhabitants (viz., Toronto only), was added in 1898 by 61 V. c. 23, s. 6.

Effect of closing poll too soon.

(f) **Hours of polling.** Prior to 1866 the polling, if any, immediately followed the nomination and lasted (as a rule) for two days, beginning at 11 a.m. on the first day and at 10 a.m. on the second day, and closing at 4 p.m. on both days, subject, however, to the condition that if during this period the returning officer should see that all the electors intending to vote had had a fair opportunity of doing so, and one full hour should have elapsed during which no qualified elector had given or tendered his vote (free access to the poll for that purpose having been allowed) he (the returning officer) was authorized to close the election at 4 p.m. of the first day, or at any hour before 4 p.m. of the second day. (*a*)

At an election for township councillors, held in 1852, the returning officer, after the nomination of several candidates, adjourned the proceedings to another room in order to receive votes. No votes were tendered for any one (all parties holding back for some unexplained reason); and the returning officer therefore closed the election *at about three o'clock* and declared the defendants elected "by acclamation." (*b*)

On proceedings to set aside the election, DRAPER, J. said in giving judgment (p. 183):—

> "Had he waited until the hour of four, as the Statute provides, and concluded under the circumstances that all the electors intending to vote had had a fair opportunity, as more than one hour had elapsed without a vote, he might have considered the case in the same light as where each candidate has an equal number of votes; in which case, under the 160th Section of 12 V. c. 81, he would have had a casting vote. Had he taken this course he would (apparently) have complied with the letter of the law. But, after opening the poll, he could not return any one of the four candidates as elected "by acclamation" or "without opposition," and it is equally clear that he could not return any as elected by a majority.
>
> "I think therefore that the election and return must be set aside as wholly void."

And in *Re Johnson* v. *County of Lambton* (*g*) where a by-law under "*The Temperance Act of 1864*" (*h*) had been carried in a county by a majority of 193 votes, but it appeared that in one township the poll was kept open for only two thirds of the time required by law, and several votes on the list were unpolled, the by-law was set aside.

But where the variation from the period fixed by the Statute was slight and the result was apparently not affected, the election was sustained. (*i*)

(*c*) 12 V. c. 81, s. 159; 22 V. c. 99, s. 97 (7).

(*d*) *Reg. ex rel. Smith* v. *Brouse*, 1 P.R. 180 (1852).

(*g*) 40 U.C.R. 297 (1876). (*h*) 27 & 28 V. c. 18.

(*i*) *Limerick* (Election Case) P. & K. 373 (1833); *Drogheda*, 2 O'M. & H. 201 (1874); *East Clare*, 4 O'M. & H. 163 (1893).

Secs. 128 (4), 129 (1).

Notes (g); (a) (b).

(g) It is essential to the validity of the election that during the hours for polling the electors should have free access to the polling places. The fact that a large number of qualified electors could not cast their votes, is a sufficient reason for setting aside an election, if the result might have been affected by the unpolled votes. (j) "If rioting takes place to such an extent that ordinary men, having the ordinary nerve and courage of men, are thereby prevented from recording their votes, the election is void by the common law, for the common law provides that an election should be free, in the sense that all persons shall have an opportunity of coming to the poll and voting without fear of molestation." (k)

Free access to polls.

129.—(1) The clerk or other returning officer or chairman shall, on the day of the nomination, post up in the office of the clerk of the municipality the names of the persons proposed for the respective offices.

Names of candidates to be posted up.

Taken from 55 V. c. 43, s. 7 (1892).

(a) All the previous Acts, from 1866 onwards, provided that this should be done "on the day following that of the nomination."

> "I should think this provision was direct ory only, and that if he did it on the second day after the nomination, an election upon it would not be avoided (l).

(2) At the nomination meeting, or on the following day, or where such last named day is a public holiday, then before twelve o'clock noon of the succeeding day, any person proposed for one or more offices may resign, or may elect for which office he is to remain nominated; and in default he shall be taken as nominated for the office in respect of which he was first proposed and seconded.

Resignation of person nominated.

Taken from 55 V. c. 43, s. 7 (1892), the provision for the case in which the day following the nomination is a public holiday having been inserted in 1895 by 58 V. c. 42, s. 5.

(b) Until 1873 (m) there was nothing in the Act expressly permitting a person nominated for municipal office to decline the nomination; and, if elected, he was bound to accept the office, or pay the penalty (n). The late Master in Chambers, Mr. DALTON, nevertheless held (o) that a person who, at the nomination meeting, had been proposed and seconded for the office of reeve, might, with the consent of his proposer and seconder, withdraw from his candidature. The learned Master says (p. 332):

When first permitted.

> "The question is, can a candidate, once nominated, be withdrawn? It is difficult to comprehend why this cannot be done before the close of the meeting, with the assent of all concerned; for every one then acts of his own free will, with the full knowledge of the facts. Contracts can be dissolved by the will of those who made them. There are exceptions, but it is generally true; and it is the general rule that the legal effect of an action may be annulled or reversed by the common agreement of all who are concerned. Why then, before being acted upon, cannot a nomination be withdrawn, as here, by the candidate himself, his proposer and seconder, and the electors present? It is true that the clause of the Act does not speak of any power of resignation or withdrawal, but directs that the poll-book shall con-

(j) *Reg. ex rel. Davis* v. *Wilson*, 3 U.C.L.J. 165 (1857). See further, *Reg. ex rel. Kirke* v. *Assalsim*, 1 U.C.L.J. 49 (1855); *Reg. ex rel. Gibbs* v. *Brannigan*, 3 U.C.L.J. 127 (1857); *Reg. ex rel. Anon* v. *Flynn*, 8 U.C.L.J. 76 (1862).

(k) *Nottingham* (Election Case) 1 O'M. & H. 245; *Stafford, Ib.* 234; *Drogheda, Ib.* 252. See note (a) to s. 204, and note (a) to s. 246.

(l) *Per* ADAM WILSON, J. in *Reg. ex rel. Walker* v. *Mitchell*, 4 P. R. 218 (1868), at s. 225. See also s. 139, note (a); s. 144, note (a), and s. 204.

(m) 36 V. c. 48, s. 108. (n) See *post*, s. 319.

(o) *Reg. ex rel. Cogne* v. *Chisholm*, 5 P. R. 328 (1871).

Sec. 129 (3)

Notes (b)-(d).

Withdrawal of candidate at nomination

tain the names of the candidates "proposed and seconded," which no doubt means the names of all candidates proposed and seconded. But the answer to this seems to be, that when the nomination is withdrawn at the meeting, by the agreement of every one affected by the nomination or withdrawal, it is as though the candidate had never been proposed and seconded at all; for he does not continue to be till the close of the meeting, and is not then "a person proposed" for the office. That this is the construction put upon the Statute in practice, is very clear; for nothing is more common than for a number of candidates to be proposed, where there is no intention on the part of anyone that they should contest the election; and upon their withdrawal, it has never, that I know of, been suggested until now, that it may be demanded after the meeting that their names shall be entered on the poll-books."

The law was accordingly amended in 1873 (*p*) so as expressly to provide that a person proposed for one or more offices might resign or elect between the offices provided he did so at the nomination meeting. The Act of 1883 (*q*) extended this period to "any time before polling day;" but this was altered at the next Session of the Legislature (*r*) to the form used in the present section.

Resignations to be in writing.

(3) The resignation after the nomination meeting of any person so proposed shall be in writing, signed by him and attested by a witness, and shall, within the time hereinbefore mentioned, be delivered to the clerk of the municipality.

Taken from 47 V. c. 32, s. 5; the words "within the time hereinbefore mentioned" being substituted by 55 V. c. 43, s. 7 for the words "within the said two days."

(c) The following form of resignation is suggested:

Form of Withdrawal by Candidate after Nomination.

Form of Resignation.

"Municipal elections for the (*name of municipality*) for the year . . . (*insert number of next year*).

"To the clerk of the (*name of municipality*)

or

"To the nominating officer for the (*first*) county council division of the county (*or* united counties) of . . . . . .

"Sir,

I hereby resign my candidature for the office of (*naming the office*) of the (*naming the municipality, or wards* "of the municipality" of . . . . . ." (*or first as the case may be*) county council division of the county of . . . . .) for which I have been nominated as a candidate.

"Dated at . . . . . this . . . . . day of December, 19 .

(Signature of candidate.)

Signed by the said . . . . . .
in the presence of

(Signature of witness).

Form of election between two offices.

(d) The Act does not in terms make it necessary when a candidate nominated for two or more offices elects, after the nomination meeting, for which of them he will run that this election should be evidenced by writing. In order to avoid misunderstandings it is nevertheless advisable that the clerk should require a writing. The form given in the preceding note may be thus adapted to the case:

"Having been nominated as a candidate for the offices of (*name both offices*). I hereby elect to be a candidate for the office of (*naming it*) only."

In this case no witness is required.

(*p*) See foot note (*a*) *supra*. (*q*) 46 V. c. 18, s. 116. (*r*) 47 V. c. 32, s. 5.

Secs. 129 (4) 132 (1). Notes (a)-(c).

(4) If by reason of any such resignation or resignations the number of candidates remaining proposed for any office does not exceed the number required by this Act to be elected for such office, then the clerk or other returning officer shall declare such remaining candidate or candidates duly elected to such office. 55 V. c. 42, s. 117, *part*; c. 43, s. 7; 55 V. c. 42, ss. 5, 6.

Election by acclamation when other candidates retire.

Taken from 58 V. c. 42, s. 6. *Cf.* 47 V. c. 32, s. 5; R. S. O. (1887), c. 184, s. 117; 55 V. c. 43, s. 7. See note (b) to s. 128 (2).

130. In case, at an annual or other municipal election, the candidates, or any of them who are nominated, retire, and by reason of such retirement the requisite number of persons is not elected, then the members elected, if they equal or exceed the half of the council when complete, or a majority of such members, shall order a new election to be held in the manner provided by this Act to fill the vacancies so caused. 60 V. c. 45, s. 30.

Non-election of full council by reason of retirement of candidates.

(a) It is somewhat singular that the contingency mentioned here should not have been provided for until 1897. Until then, the only cases of non-election at the usual time covered by the Statute were (1) those caused by riot or other emergency (*a*), or (2) by the electors having from any other cause "neglected or declined" to elect the members or the requisite number of members of the council (*b*), or (3) where, owing to the presence in any municipality of an epidemic or contagious disease, the Lieutenant-Governor by his proclamation postpones the date of the election (*c*).

The law prior to 1897.

(b) Since "the members elected" under the circumstances here specified are required, "*if they equal* or exceed the half of the council when complete," to order a new election to be held to fill vacancies, it would seem to follow (notwithstanding the requirements of s. 268), that they may meet and organize under ss. 259, 260, and that the council of the preceding year thereupon cease to hold office. (*d*)

Council may organize.

(c) Section 131 being *in pari materia* with s. 130, the use therein of the words "the clerk (as returning officer) shall cause a new election to be held" indicates that these sections are not intended to apply to county council elections. (*e*) If so, the case of non-election (by reason of retirements) of the full number of county councillors authorized by this Act (*f*) seems to be still unprovided for.

Application of section.

131. In case, by reason of such retirement, less than half the members of council are elected, the clerk (as returning officer), shall cause a new election to be held in the manner provided by this Act; and until such election is held, and the number of members necessary to complete the council is elected, the council of the preceding year shall continue in office, and may do, or cause to be done, all such acts as a council duly elected for that year might lawfully do. 60 V. c. 45, s. 31.

Retirement by a majority of council.

132.—(1) In every year before that in which an election for county councillors is to be held, the county council shall

County Council elections.

(*a*) Secs. 186, 187. (*b*) Sec. 218. (*c*) R. S. O. c. 248, s. 47.
(*d*) Sec. 95. (*Cf.* s. 218, *post*.
(*e*) See also s. 2 (2). (*f*) Secs. 66, 67 (3).

Secs. 132 (1), 133. Notes (a)-(e).

appoint for each county council division, a "nominating officer," who shall act as such until his successor is appointed.

Nominating officer.

Taken from "*The County Councils Act, 1896*," (59 V. c. 52), s. 7 (1). The proviso to subsec. 2 (*a*) added in 1898 by 61 V. c. 23, s. 7.

(a) "**In every year before that in which an election . . . . is to be held.**" "An election" apparently means a general election. See subsec. 2. The appointment is to be made by each county council at some time during the first year of their term of office. See s. 67 (3).

(2) His duties shall be, in every year before an election of county councillors is to be held, or before a vacancy is to be filled,

His duties.

(*a*) To fix a place within the county council division for holding the nomination, between the hours of one and two o'clock in the afternoon, and to give under his hand, notice of such nomination and of the election, by advertisement in two weekly newspapers in the county, to be published for at least two successive weeks prior to such nomination day, or by giving sufficient public notice thereof by printed posters, provided that the said nominating officer, in case there is in his opinion no suitable place within the county council division at which to hold the nomination, may name some place within a city, town or village adjacent to the county council division in which the election is to be held:

Notice.

(b) "**Sufficient public notice.**" Who is to be judge of the sufficiency of the notice? It would seem better to have prescribed the alternative method of giving notice as in s. 21 (1), s. 338 (2), last clause, and s. 632 (1) (*a*), etc.

Duties at nomination.

(*b*) To attend at the day and place appointed for such nomination and to perform the duties (so far as applicable) which the clerk of a local municipality is required to perform as returning officer at the nomination for an election in a local municipality.

(d) "**The duties (so far as applicable) which the clerk of a local municipality is required to perform.**" These seem to be fully set out in ss. 134, 135 (2).

When electors may choose a chairman.

(*c*) In case at the time appointed for holding the nomination, the nominating officer has died, or does not attend to hold such nomination, the electors present for the purpose of holding a nomination may choose from amongst themselves a nominating officer who shall have all the powers and perform all the duties of such nominating officer. 59 V. c. 52, s. 7 (1), *part*; 61 V. c. 23, s. 7.

(e) Under this subsection, as under s. 118 (4), the electors are not apparently required to wait a certain length of time before making the appointment of a nominating officer. See s. 108 (2).

Nomination day.

133. The nomination day shall be Monday in the week which precedes the week before polling day. 59 V. c. 52, s. 7 (3).

(a) **"Monday in the week which precedes the week before polling-day."** As the polling-day (subject to the provisions of R.S.O. c. 248, s. 47) is the first Monday in January (*a*), the nomination day is the last Monday but one in December.

134. If upon the day and at the hour appointed for the nomination there are not more candidates nominated for any county council division than are required to be elected for such division, the nominating officer shall thereupon declare elected the candidate or candidates duly nominated, and shall thereupon prepare, and upon the same day mail to the county clerk, by registered letter with postage prepaid, a certificate under his hand of such election by acclamation; but if more candidates are nominated than are required to be elected in any county council division, the nominating officer shall, immediately after the lapse of the time in which candidates may withdraw from nomination, certify to the county clerk the facts, with the names and addresses of those remaining in nomination.

Election by acclamation.

Taken from 59 V. c. 52, s. 8 (1).

(a) **"At the hour appointed for holding the nominations."** It is apprehended that this is intended to mean what is better expressed in s. 128 (2), viz., "after the lapse of an hour from the time fixed for holding" the nomination under s. 132 (2) (*a*).

Time for nominations.

(b) **"Shall thereupon declare elected the candidate or candidates duly nominated."** "Candidates" in the case of a general (biennial) election (*b*). "Candidate" in the case of a vacancy (*c*). As to the meaning of "duly nominated," see s. 128 (1); as to the procedure and the questions which may (not) be determined by the nominating officer, note (c) to s. 128.

(c) **"Shall . . . mail to the county clerk . . . a certificate."** The officer intended is not the clerk of the county court (though he is often so styled), but the clerk of the county council. See s. 112 (1). The following form of certificate is suggested:

Form of Certificate of County Council Election by Acclamation.

Form of certificate of election by acclamation.

Election of County Councillors for the (*First*) County Council Division of the County (*or* United Counties) of .....

I certify that at the meeting for the nomination of County Councillors for the above County Council Division, held at ..... in the said Division on this ..... day of December, 19 ..... the following candidates, having been duly nominated, were elected by acclamation:

Full names of candidates.	Place of residence.	Occupation.	Nominated by	Seconded by

Dated at .... this ..... day of ..... 19....

A. B.,
Nominating officer.

To C. D., Esq.,
Clerk of the County Council,
(*Address*) .....

It is also recommended that the written nominations of the candidates be enclosed with the certificate and filed by the clerk of the county council therewith. If so enclosed, that fact should be mentioned in the certificate.

(*a*) See secs. 94, 95. (*b*) See s. 67 (3). (*c*) See s. 132 (2).

Secs. 134, 135 (1).

Notes (d) (e).

When candidates may withdraw.

(d) **"After the lapse of the time within which candidates may withdraw from nomination,"** *i.e.* at any time before midnight of the day (Tuesday) following nomination day. Since that day is not likely to be a public holiday, the words inserted in s. 129 (2) by 58 V. c. 42, s. 5 (see *ante*) are no doubt intentionally omitted from this section.

(e) **"Certify to the county clerk the facts."** The officer intended is the clerk of the county council. See s. 142 (1). The following form of certificate is suggested:

Form of Certificate when a Poll is Necessary.

Form of certificate when a poll is necessary.

Election of County Councillors for the (*Seventh*) County Council Division of the County of (*Middlesex*).

I certify that at the meeting for the nomination of County Councillors for the above County Council Division, held at *the Village Hall in the Village of Glencoe* within the said Division on *Monday* the *16th* day of December, 1900, the following candidates were duly nominated:

No.	Name in full.	Residence.	Occupation.	Nominated by.	Seconded by.	Remarks.
1	*George Smith Martin*	*Mosa Tp.*	*Farmer*	*J. Brydon*	*G. P. Booth*	
2	*James Taylor*	*Wardsville*	*Merchant*	*G. N. Miller*	*A. Talbot*	*Resigned at nomination.*
3	*John Irving*	*Newbury*	*Waggon-maker*	*A. Doig*	*Alex. Fraser*	*Letter of resignation herewith not witnessed.*
4	*Thomas Dickie*	*Ekfrid Tp.*	*Farmer*	*Thos. Foster*	*Wm. Adams*	
5	*Charles Alan Kennedy*	*Glencoe*	*Agent*	*Donald Graham*	*C. A. Young*	
6	*Arthur Riddell*	"	*Barrister*	*Alfred James*	*Peter Buchanan*	*Resigned Dec. 17th.*

The names of those remaining in nomination are *Thomas Dickie, John Irving, Charles Alan Kennedy,* and *George Smith Martin* (addresses as above.)

I enclose the nomination papers of all the candidates, *the resignation of Arthur Riddell and a letter (dated Dec. 17th) from Thomas Dickie stating that he is not a candidate, but the signature of Mr. Dickie is not witnessed as required by law.*

Dated at the *Village of Glencoe*, this *18th* day of December, 1900.

A. B.,
Nominating officer.

To C. D., Esq.,
Clerk of the County Council,
London, Ont.

Resignations.

135.—(1) Any person nominated may resign either at the nomination meeting or during the following day. If such resignation is after the meeting, it shall be signed and witnessed in the manner prescribed for resignations under section 129 of this Act, and shall be forthwith delivered to the nominating officer.

Taken from 59 V. c. 52, s. 8 (2).

Poll unnecessary by reason of resignations.

(2) If by reason of any such resignation or resignations the number of candidates remaining does not exceed that of the offices to be filled, the nominating officer shall certify such candidates as duly elected. 59 V. c. 52, s 8.

Taken from 59 V. c. 52, s. 8 (3).

(a) In this case the certificate may follow the form given above in note (d) to s. 134 down to the end of the tabular statement of candidates nominated, and then proceed:

Secs. 135 (2)-137 (1).

Notes (a); (a) (b).

Form of certificate in such cases.

"All of the above candidates except *Charles Alan Kennedy* and *George Smith Martin* having resigned, I hereby certify the said *Charles Alan Kennedy* and *George Smith Martin* as duly elected.

"I enclose the nomination papers of all the candidates and the resignations of *John Irving, Thomas Dickie* and *Arthur Riddell, Mr. Taylor* resigned at the nomination meeting."

Votes to be given by Ballot.

136. In case of a poll at an election of persons to serve in municipal councils, the votes shall be given by ballot. 55 V. c. 42, s. 118.

Votes to be by ballot.

Taken *verbatim* from s. 1 of 38 V. c. 28, which was passed Dec. 21st, 1874, but was not to apply to the municipal elections of January, 1875. The same year (1874) witnessed the introduction (by 37 V. c. 5, Ont.) of voting by ballot at elections to the Legislative Assembly of this Province, and (by 37 V. c. 9, Can.) at Dominion elections. Both the Dominion and the Province having in this matter promptly followed the example of the mother-country, where the ballot was adopted at both parliamentary and municipal elections by Imp. Stat. 35-36 V. c. 33, known as "*The Ballot Act, 1872*." For the former mode of voting at municipal elections in this Province see 12 V. c. 81, ss. 22, 57, 65, 84; 14 & 15 V. c. 109, Sched. A (4), (11), (12), (14); 22 V. c. 99, ss. 97-99, 108, 109; 29 & 30 V. c. 51, ss. 100-09, 101-09, 113; 31 V. c. 30, s. 19; 36 V. c. 48, s. 110.

List of Defaulters in payment of Taxes.

137.—(1) On or before the last Monday in December the treasurer of each local municipality shall, if the collectors' roll has been returned to him, prepare and verify on oath, or, if the collectors' roll has not been so returned, the collector shall prepare and verify on oath, a correct alphabetical list of—

Preparation of list of defaulters.

(*a*) All persons who, being on the voters' list (that is to say, the first and second parts thereof) in respect of their income only, have not paid their municipal taxes on such income on or before the 14th day of December preceding the election; and,

(*b*) (In municipalities which have passed by-laws under sub-section 1 of section 535 of this Act), all persons on the voters' list (that is to say, the first and second parts thereof), who have been assessed for real property, but have not paid their municipal taxes on such property on or before the 14th day of December preceding the election. 55 V. c. 42, s. 119 (1); 60 V. c. 15, *Sched.* C (29).

Taken from 40 V. c. 12, s. 6 (1877). See note (a) to s. 88. The words "last Monday in December" were substituted by 60 V. c. 15, Sched. C, (29) for the words "the day of nomination of candidates," which were ambiguous. See ss. 118 (1), 119, 121, 124, 125, 133.

(a) **"If the collectors' (? collector's) roll has been returned to him."** See "*The Assessment Act*," (R.S.O., c. 224) ss. 144-146. Since it is the duty of the collector under s. 295 (5) (*a*) to make a sworn return to the treasurer on the 15th of December in each year of the names of all defaulting tax payers, this, it would seem, should be sufficient to enable the treasurer to prepare the list in every case.

(b) **"The voters' list. (that is to say the first and second parts thereof."** *Cf.* "*The Voter's Lists Act*," (R. S. O., c. 7) s. 6, (2) (3).

(*a*) Taken from 36 V. c. 48, s. 199.

Secs. 137 (1), 138 (1).

Note (c).

List to be made for each polling subdivision.

(2) Where a municipality is divided into polling sub-divisions, such a defaulters' list shall be made for each polling subdivision

Taken from 40 V. c. 12, s. 7. See ss. 535 (1).

Certified copies to be furnished.

(3) The person preparing the said defaulters' list shall furnish to all persons applying for the same, certified copies thereof, and of the affidavit verifying the same, in the same manner and for the same compensation as copies of the voters' list are to be furnished. 55 V. c. 42, s. 119 (2-3)

Taken from 40 V. c. 12, s. 8

(c) "In the same manner . . . as copies of the voter's list are to be furnished. See "*The Voter's List Act*" (R.S.O. c. 7 ss. 49-51).

Ballot Boxes.

Ballot boxes to be furnished.

138.—(1) Where a poll is required, the clerk of the municipality shall procure or cause to be procured as many boxes (hereinafter called "ballot boxes") as there are wards or polling subdivisions within the municipality.

How made.

(2) The ballot boxes shall be made of some durable material, shall be provided with a lock and key, and shall be so constructed that the ballot papers can be introduced therein and cannot be withdrawn therefrom unless the box be unlocked.

Delivery of to deputy returning officers.

(3) When it becomes necessary for the purposes of an election to use the ballot boxes, it shall be the duty of the clerk of the municipality, two days at least before the polling day, to deliver one of the ballot boxes to every deputy-returning officer appointed for the purposes of the election.

Clerk to preserve boxes for future elections.

(4) The ballot boxes, when returned to the clerk after the election, shall be preserved by him for use at elections for the municipality: and it shall be the duty of the clerk to have ready for use, at all times, as many ballot boxes as there are wards or polling subdivisions in the municipality.

Penalty for failure to furnish boxes.

(5) If the clerk fails to furnish ballot boxes in the manner herein provided, he shall incur a penalty of $100 in respect of every ballot box which he has failed to furnish in the manner prescribed.

Deputy returning officer to procure boxes when not supplied.

(6) It shall be the duty of the deputy-returning officer in every ward or polling subdivision, who has not been so supplied with a ballot box within the time prescribed, forthwith to procure one, and he may issue his order for the cost of the ballot box upon the treasurer of the municipality in which such ward or polling subdivision is situate, and the treasurer shall pay to the deputy-returning officer the amount of the order. 55 V. c. 42, s. 126.

Taken from 38 V. c. 28, s. 2, the first clause of subs. 4 thereof being, however, omitted in the Revision of 1877 (c. 174, s. 116) and in all subsequent Acts, as having been superseded by the last clause of 39 V. c. 5, s. 13. See s. 177 (9), (4) of this Act. The words "polling subdivision" and "deputy-returning officer" have also been substituted for "electoral division" and "returning officer" respectively. See 40 V. c. 12, ss. 2, 13.

(a) Subs. 2.—How ballot boxes shall be made. *Cf.* "*The Ballot Act, 1872,*" (Imp. Stat. 35-36 V. c. 33) Sched. I., Rule 23.

Secs. 138 (6), 139 (1).

Notes (a); (a).

Ballot Papers.

Ballot papers to be printed.

139.—(1) Where a poll is required, the clerk of the municipality shall forthwith cause to be printed, at the expense of the municipality, such a number of ballot papers as will be sufficient for the purposes of the election.

Contents and form of ballot papers.

(2) Every ballot paper shall contain the names of the duly nominated candidates, arranged alphabetically in the order of their surnames; or if there are two or more candidates with the same surname, then in the order of their other names. 55 V. c. 42, s. 121.

Taken from 38 V. c. 28, s. 3. The original of subs. 2 is to be found in Rule 22 of Sched. I. to the Imp. Act 35-36 V. c. 33, but there the words are "every ballot paper shall contain a list of the candidates *described as in their respective nomination papers* and arranged alphabetically, etc."

How names of candidates to be printed.

(a) "Every ballot paper shall contain the names of the duly nominated candidate, etc." in a township election, held under the Act of 1866, (*a*) which provided that the clerk should furnish to each returning officer a certified list of the names of the several candidates (*b*) and that the returning officer or his sworn poll-clerk should enter these names in separate columns in the poll-book, (*c*) the name of one Henry, who had been duly nominated for the office of township councillor, was accidentally omitted by the clerk from the certified list of candidates furnished to the [deputy] returning officer for one of the five polling sub-divisions of the township. The omission was discovered, and the name inserted by the returning officer in the poll-book about half-past one o'clock of the polling day; but in the meantime at least six electors had tendered their votes for Henry, which votes had been rejected. 145 votes were given for Henry after his name was entered upon the poll-book, and the returning officer swore that the general impression among the electors present was that in consequence of the error there would be a new election in case of a protest. At the close of the poll the votes stood, Atkinson, 244, Mitchell, 192, Stubbs, 187, Walker, (the relator) 187, and Henry, 145. The returning officer gave his casting vote in favor of Stubbs and declared Atkinson, Mitchell and Stubbs the three duly elected councillors. Upon an application to set aside the election it was held that it is not every irregularity that will avoid an election, and that in this case the question to be decided was not as to the mere abstract ground of the omission of the name, but as to whether this had affected the result of the election; and as it did not appear that the result would have been different if the name of Henry had been properly entered on the list, the election should not be set aside. (*d*)

Under the existing law, it is, however, apprehended that the omission from the ballot papers of the name of a *bona fide* candidate would undoubtedly avoid the election.

The Christian name of each candidate should be printed in ful' as well as his surname. It is apprehended that the fact that a Christian name was represented (*e*) by its initial letter or by a contraction, (*f*) or that the names were not in alphabetical order, would be held to be such an irregularity as is cured by s. 204 of this Act, and s. 8 (35) of "*The Interpretation Act.*" (*g*) At a municipal

(*a*) 29-30 V. c. 51. (*b*) Sec. 100 (4). (*c*) Sec. 100 (6).

(*d*) *Reg. ex rel. Walker* v. *Mitchell*, 4 P. R. 218 (1868); and see *Reg. ex rel. Harris* v. *Bradburn*, 6 P. R. 308 (1876).

(*e*) See s. 141 (1) and Schedule A therein referred to. *Cf.* s. 128 (1) and note (a) thereto.

(*f*) See *Henry* v. *Armitage*, 12 Q. B. D. 257, (1883) referred to in note (a) to s. 128 (1).

(*g*) That clause of "*The Interpretation Act*" (R. S. O. c. 1), provides that:—

"Where forms are prescribed, slight deviations therefrom, not affecting the substance or calculated to mislead, shall not vitiate them."

Secs. 139 (2)-141 (1).

Notes (a); (a).

election in England, under the Municipal Corporations Act of 1835 (*a*) and the Municipal Elections Act of 1858, (*b*) the name of the candidate appeared in two separate nomination papers and was printed twice on the ballot papers. One of the two nominations was bad, the "place of abode" of the candidate being mis-stated therein; and this error was repeated in one of the two places where the name appeared on the ballot papers. 71 voters marked their ballots for the candidate opposite this, and 301 opposite the division in which the correct address was given. All these intended to vote for the candidate, and if the two classes of votes were added together, he had a majority. *Held*, that he was entitled to be returned. (*c*)

Ballot papers where election is by wards.

140.—(1) In the case of cities and towns in which the aldermen or councillors are elected by wards, the names of the candidates for mayor shall not be included in the same ballot with the names of the candidates for aldermen and councillors respectively, but one kind or set of ballot papers shall be prepared for all the wards or polling sub-divisions containing the names of the candidates for mayor, and another kind or set shall be prepared for each ward or polling sub-division containing the names of the candidates for aldermen and councillors in the ward.

Where aldermen and councillors are elected by general vote.

(2) In case of cities and towns in which the aldermen or councillors are elected by general vote, one kind or set of ballot papers shall be prepared for all the wards or polling sub-divisions containing the names of the candidate for mayor and the names of the candidates for aldermen or councillors as the case may be.

Ballot papers for townships and villages.

(3) In the case of villages and townships, one kind or set of ballot papers shall be prepared containing the names of the candidates for reeve and the names of the candidate for councillors. 62 V. (2nd Session), c. 26, s. 11.

Forms of ballot papers.

141. (1) The ballot papers shall be according to the forms given in Schedule A to this Act. 55 V. c. 42, s. 123.

Except that the words "polling subdivision" have been substituted for "electoral division," and a form of ballot has been added under the authority of 59 V. c. 52, s. 10, for county council elections, this sub-section and the forms given in Schedule A are taken from 39 V. c. 5, s. 2, as amended by 62 V (2) c. 26, s. 16.

The forms of the ballot papers are adapted from that given in the second schedule to "*The Ballot Act, 1872.*" (Imp. Stat. 35-36 V. c. 33), pp. 225, 226, 227.

(*a*) 5 & 6 Wm. IV. c. 76. (*b*) 22 V. c. 35.

(*c*) *Northcote* v. *Pulsford*, L. R. 10 C. P. 476 (1875).

Sec. 141 (1).

Note (a).

(a) "**Schedule A**" (as printed in "*The Municipal Act*") (*a*) was materially amended in 1899, by s. 16 of 62 V. (2nd Session) c. 26, which is printed *post* at pp. 988-989. The amending section is very carelessly drawn, and the reference (in the last line of subs. 2) to "the forms set out in Schedule B to this Act" is clearly an error, since Schedule A to the Act gives the form of ballot-paper to be used in incorporated villages and townships as well as in cities and towns where the aldermen and councillors are elected by general vote, and "the forms set out in Schedule B" (Directions to Voters) (*b*) are wholly inapplicable to the case sought to be provided for.

The following forms (taken from the Acts of 1897 and 1899) are thought to be in accordance with the (probable) intention of the Legislature :—

1. Form of ballot-paper for an election of County Councillors.

Election of County Councillors for the First (*or as the case may be*) County Council Division of the County of Kent), Township (*or as the case may be*) of , Polling Subdivision No. , day of January, 19 .	*FOR COUNTY COUNCILLOR.*	**CHUZZLEWIT.** Martin Chuzzlewit, of the Town of Bothwell, Barrister. **COPPERFIELD.** David Copperfield, of the Village of Tilbury, Gentleman. **PENDENNIS.** Arthur Pendennis, of the Township of Harwich, Farmer.

(*a*) See R.S.O. (1897), Vol. ii, pp. 2690-2693.
(*b*) See *post*, pp. 183-184.

Sec. 141 (1). Note (a).

2. Forms of ballot-papers for the election of the Mayor and Council of a City or Town divided into Wards :—

(1) Form for Mayor.

Election for the Members of the Municipal Council of the City (*or* Town) of Ward No. , Polling Subdivision No. day of January, 19 .	*FOR MAYOR.*	**ALLAN.** Charles Allan, of King Street, in the City (*or* Town) of Merchant. **BROWN.** William Brown, of the City (*or* Town) of , Banker.

(2) Form for Aldermen or Councillors.

Election for the Members of the Municipal Council of the City (*or* Town) of Ward No. , Polling Subdivision No. , day of January, 19 .	*FOR ALDERMEN (OR COUNCILLORS).*	**ARGO.** James Argo, of the City (*or* Town of , Gentleman. **BAKER.** Samuel Baker, of the City (*or* Town) of , Baker. **DUNCAN.** Robert Duncan, of the City (*or* Town) of , Printer.

3. In the case of Cities and Towns not divided into Wards.

Sec. 141 (1).

Note (a).

Election for the Members of the Municipal Council of the City (or Town) of , day of January, 19 .	*FOR MAYOR.*	**THOMPSON.** Jacob Thompson of the City (*or* Town of , Merchant.
		WALKER. Robert Walker, of the City (*or* Town) of , Physician.
	FOR ALDERMEN (OR COUNCILLORS).	**BULL.** John Bull, of the City (*or* Town of , Butcher.
		JONES. Morgan Jones, of the City (*or* Town of , Grocer.
		McALLISTER. Allister McAllister, of the City (*or* Town) of , Tailor.
		O'CONNELL. Patrick O'Conne' , of the City (*or* Town) of , Milkman.

Sec. 141 (1).
Note (a).

4. In the case of Villages and Townships.

Election of Members of the Municipal Council of the Village (*or* Township) of in the County of Polling subdivision No. day of January, 19 .	*FOR REEVE.*	**BROWN.** John Brown, of the Village (*or* Township) of , Merchant.
		ROBINSON. George Robinson, of the Village (*or* Township) of , Physician.
	FOR COUNCILLOR.	**BULL.** John Bull, of the Village (or Township of , Butcher.
		JONES. Morgan Jones, of the Village (*or* Township) of , Grocer.
		McALLISTER. Allister McAllister, of the Village (*or* Township) of , Tailor.
		O'CONNELL. Patrick O'Connell, of the Village (*or* Township) of , Milkman.

Secs. 141 (2), 142 (1).

Notes (a) (b).

Elections to fill vacancies.

(2) In the case of an election to fill a vacancy, the ballot papers shall contain only so much of the said form as is required; and the counterfoils thereof shall bear, instead of the words appearing on the form of ballot papers given in said Schedule, the words:

> "Election of a member of the municipal council of the city (*or* town, village *or* township *as the case may be*), of , to fill a vacancy in the office of (mayor, reeve, councillor, *etc., as the case may be*), Ward No. (*b*) , Polling subdivision No. , day of , 19 . For mayor (*or* "For reeve," "councillors," *etc., as the case may be*,")

Or (in the case of an election to the county council) the words:

> "Election to fill a vacancy in the office of county councillor for the first (*or as the case may be*) county council division of the county of , Township (*or as the case may be*) of , Ward No. , Polling subdivision No. (*b*) , day of 19 , for county councillors."

60 V. c. 15, *Sched* C (30).

(*b*) See note (**d**) to s. 100 and note (**a**) to s. 140, also the *note here* to the forms given above in note (**a**) (Sched. *A*) of ballots for the election of county councillors, for use in townships divided into wards, and for use in townships not so divided.

Ballot papers, etc.

142.—(1) Whenever an election of a member or members of the county council is to be held, it shall be the duty of the clerk of the county council to cause ballot papers to be printed therefor; and he shall, immediately after the receipt of the certificate from the nominating officer, and before polling day, forward a sufficient number of ballots and other necessary election papers to the clerk of each of the local municipalities within each county council division where elections for county councillors are to be held: and each clerk of a local municipality shall cause them to be supplied to the persons appointed to act as deputy-returning officers at the said election.

Taken from "*The County Councils Act, 1896*," (59 V. c. 52), s. 9.

(a) "**It shall be the duty of the clerk of the county council to cause ballot papers to be printed.**" The form is given in Sched. *A* to the Act (*a*). It apparently requires separate ballot papers for each local municipality within a county council division, but separate ballot papers for each ward of a township seem to be no longer necessary. See note (**a**) to s. 100, note (**a**) to s. 140, and foot-note (*b*) to s. 141 (2).

When ballot papers to be forwarded to local clerks.

(b) "**Immediately after the receipt of the certificate from the nominating officer.**" See s. 134. The evident intention of the section might be better expressed thus: "Whenever an election of member or members of a county council is to be held, the clerk of the county council shall, immediately after the receipt of the certificates from the nominating officer of the several county council divisions, cause the necessary ballot papers to be printed, and shall forthwith and before the polling day forward" etc. Since the ballot boxes must be delivered by the local clerks to the several deputy-returning officers "at least two days before polling-day (*a*)"

(*a*) Note (**a**) to s. 141. (*a*) Sec. 138 (3).

Secs. 144 (2)-144.

Note (c).

and it is more convenient that the deputy returning officer should at the same time receive the ballot papers (*b*) directions to voters (*c*) voters' and defaulters' lists (*d*) and [illegible] as to the roll (*e*) it would perhaps have been better if this section had also fixed a time before polling day by which the "ballots and other necessary election papers" (*e. g.* lists of candidates, etc.) should be furnished by the clerk of the county council to the local clerks. This, however will probably regulate itself in practice; but the clerk of the county council of a large county should lose no time in getting his ballot papers printed after he receives the certificates of the nominating officers (*f*).

When no election to be held for local municipality.

(2) If all the members of the council of any local municipality are elected by acclamation, the clerk of the municipality shall nevertheless (when an election of a member or members of the county council is to be held), take all proceedings necessary for such election, in the same manner (*mutatis mutandis*) as is provided by this Act for the election of members of the council of the local municipality. 59 V. c. 52, s. 9, *part*. *See also sec. 111.*

(c) The duties of the local clerk under this subsection are more fully set out in s. 111. They do not include the printing of the ballots. See subs. 1.

143. In preparing the ballot papers or any notices or other papers which may be necessary, the forms appended to or otherwise provided for by this Act shall be used as far as applicable, and, where not wholly applicable, shall be adapted by the clerk of the county council or the clerks of the local municipalities, or other officers (as the case may be), to the election of county councillors; and the words "*county councillor*" shall be printed on every such ballot. 59 V. c. 52, s. 10.

Taken from 59 V. c. 52, s. 10. Since that Act was passed, the form of ballot paper for the election of county councillors has been added to Sched. A. See note (a) to s. 141, s. 204, and R. S. O. c. 1, s. 8 (35), quoted in note (a) to s. 139, foot-note (*e*).

Polling Places.

Clerk to furnish deputy-returning officers with ballot papers, etc.

144. In the case of municipalities divided into wards or polling subdivisions, the clerk of the municipality shall, before the opening of the poll, deliver or cause to be delivered to every deputy-returning officer the ballot papers which have been prepared for use in the ward or polling subdivision for which such deputy-returning officer has been appointed to act, and the clerk shall also furnish to each deputy-returning officer (or see that he is furnished with) the materials necessary for voters to mark their ballot papers; and such materials shall be kept at the polling place by the deputy-returning officer for the convenient use of voters. 55 V. c. 42, s. 124.

Taken from 38 V. c. 28, s. 5 the "polling subdivision" being substituted for "electoral division," and "deputy-returning officer" for "returning officer." See 10 V. c. 12, ss. 2, 14.

(*b*) Sec. 144. (*c*) Sec. 146.
(*d*) Sec. 152. (*e*) Sec. 156. (*f*) Sec. 134 (1).

Secs. 144-147.

Notes (a) (b); (a).

(a) "**Materials necessary for voters to mark their ballot papers**" probably means "the pencil provided in the compartment." See the first paragraph of the "Directions for the Guidance of Voters in Voting," (Sched. B to this Act), *post*, note (a) to s. 168. The original of the section is to be found in Rule 20 of Sched. I. to "*The Ballot Act, 1872*," (Imp. Stat. 35-36 V. c. 33).

(b) These duties are ministerial. The neglect of them, except so far as that neglect may have the effect of making an election impossible, will not nullify the election. See s. 204 and notes thereto.

Compartment wherein voters may mark votes.

145. Every polling place shall be furnished with a compartment in which the voters can mark their votes screened from observation; and it shall be the duty of the clerk of the municipality and the deputy-returning officers respectively, to see that a proper compartment for that purpose is provided at each polling place. 55 V. c. 42, s. 125.

Taken from 38 V. c. 28, s. 4, with the clerical amendment first referred to in the note to s. 144. *Cf.* Rule 16 of Sched. I. to "*The Ballot Act, 1872*," (Imp. Stat. 35-36, V. c. 33), and s. 4 of "*The Municipal Elections Act*, 1875," (Imp. Stat. 38-39 V. c. 40).

(a) "**Screened from observation**." And see s. 169. At the first annual election held under 38 V. c. 28 (Jan. 1876), the return of a township reeve was objected to on the ground (among others) that at one of the polling places persons were allowed to enter with voters into the compartment where votes were marked while a voter was marking his ballot. It did not appear that there had been any interference with the freedom of the franchise. HARRISON, C. J., refused to set aside the election, "seeing no ground for thinking that the result would have been different if the irregularities complained of had not occurred" (*a*).

Directions to Voters.

Clerk to furnish deputy-returning officer with directions for voters' guidance.

146.—(1) In case of municipalities divided into wards or polling subdivisions, the clerk of the municipality shall, before the opening of the poll, deliver or cause to be delivered to every deputy-returning officer such number of printed directions for the guidance of voters in voting, as he may deem sufficient; and he shall so deliver or cause to be so delivered at least ten copies of such printed directions.

(2) Such directions shall be printed in conspicuous characters, and may be according to the form of Schedule B to this Act. 55 V. c. 42, s. 126.

Taken from 38 V. c. 28, s. 6 with the clerical amendments noted under s. 144.

(a) See these "Directions to Voters" in note (a) to s. 168.

Deputy returning officers to placard the directions.

147. Every deputy-returning officer shall, before the opening of the poll, or immediately after he has received the printed directions from the clerk of the municipality (if he did not receive the same before the opening of the poll), cause

(*a*) *Reg. ex rel. Preston v. Touchburn*, 6 P. R. 345 (1876); and see s. 204 of this Act.

Secs. 147-149. Notes (a); (a).

the said printed directions to be placarded outside the polling place for which he is appointed to act, and also in every compartment of the polling place, and shall see that they remain so placarded until the close of the polling. 55 V. c. 42, s. 127.

Taken from 38 V. c. 28, s. 87, "deputy-returning officer" having been substituted therein for "returning officer" (40 V. c. 12, s. 139). See note (d) to s. 106.

(a) As to the requirements of ss. 146, 147, see the notes to ss. 139 and 144; also s. 204 of this act.

Voters' Lists, Poll Books and Defaulters' Lists.

Proper voters' list to be used at an election.

Rev. Stat., c. 7.

148. Subject to the provisions of the next following three sections, the proper list of voters to be used at an election shall be the first and second parts of the last list of voters certified by the Judge and delivered or transmitted to the Clerk of the Peace under *The Voters' Lists Act.* 55 V. c. 42, s. 128.

Taken from R. S. O. (1877), c. 174, s. 124. *Cf.* 40 V. c. 12, s. 20.

(a) **"The proper list of voters."** See "*The Voters' Lists Act*" (R. S. O. c. 6, s. 7). Until 1858 the voters' lists for each municipal election were extracted *pro hac vice* from the last collector's roll (12 V. c. 81, ss. 22, 57, 65, 83; 14 & 15 V. c. 109, Sched. A (4), 11), (12), (14); 16 V. c. 181, s. 10). From 1858 to 1876, they were made up by the clerk from the last revised assessment roll (22 V. c. 99, s. 97 (2); 29 & 30 V. c. 51, s. 100 (5), 101 (5); 36 V. c. 48, s. 109; 38 V. c. 28, s. 8). By the last mentioned Act they were styled "voters' lists," and by 39 V. c. 11, (superseding 37 V. c. 4 and 32 V. c. 21), provision was made (as regards the lists for elections to the Legislative Assembly) for their preparation and revision at a fixed date in each year. By 40 V. c. 12 the provisions of 39 V. c. 11 were extended to municipal elections. See note (a) to s. 89.

For first election in new municipality.

149. For the first election in a new municipality for which there is no separate assessment roll, the clerk of the municipality shall, instead of a voters' list, provide every deputy-returning officer with a poll book, prepared according to the form of Schedule C to this Act, and either the deputy-returning officer or his sworn poll clerk shall therein enter, in the proper column, the name of every person offering to vote, and at the request of any candidate or voter, shall note opposite the name of such person, the property on which the person claims to vote. 55 V. c. 42, s. 129.

Taken from R. S. O. (1877), c. 174, s. 125. "The form of Schedule C" is substantially the same as in that Act, the only changes being the omission from column 4 of "Householder" (see note (k) to s. 86), the addition thereto of "Income voter," and the insertion of a column headed "County councillors." See s. 155.

(a) "Schedule C to this Act" is as follows:

SCHEDULE C.

(*Sections* 149, 150, 151, 152, 155 *and* 348).

FORM IN WHICH THE VOTERS' LIST AND POLL BOOK TO BE FURNISHED TO DEPUTY RETURNING OFFICERS IS TO BE PREPARED.

Column for mark indicating that the voter has voted.	NAMES OF THE VOTERS.	Description of Property in respect of which the voter is entitled to vote.	Freeholder, Tenant, Farmer's Son or Income Voter.	Residence of voter.	Objections.	Sworn or affirmed.	Refused to swear or affirm.	County Councillors.	Mayor and Reeve.	Councillor.	REMARKS.

NOTE.—In Cities, the column above headed "Mayor and Reeve" will be headed "Mayor;" and the column above headed "Councillors" will be headed "Aldermen." In Townships and Villages, the column above headed "Mayor and Reeve" will be headed "Reeve."

55 V. c. 42, *Sched.* C; 59 V. c. 52, s. 26.

Secs. 149, 150 (1).

Notes (b); (a) (b); (b).

(b) "**The property on which the person claims to vote.**" Since all "the other qualifications" (except that of being named on the voters' list) are required by s. 90, the returning officer should also note in the proper column (4) of the poll-book whether the voter claims the franchise as a freeholder, a tenant, a farmer's son or an income voter.

Voters' lists in cases under section 91.

150.—(1) Where any territory is added for municipal purposes to any city, town, or village, or where a town with additional territory is erected into a city, or a village with additional territory is erected into a town, or where a new village is formed, and an election takes place before voters' lists including the names of the persons entitled to vote in such added territory, or in such new city, town or village, are made out or before such lists are certified by the County Judge—in all such cases the clerk of the new or enlarged city, town, or village shall extract from the last filed or certified voters' list of the municipality to which such territory formerly belonged, and shall place in lists or supplementary lists, as the case may be, the names of the persons who would have been entitled to vote in the territory constituting or added to the city, town or village if no such change as aforesaid had been made. 55 V. c. 42, s. 130 (1): 60 V. c. 15, *Sched.* C. (31).

Form of supplementary lists.

(2) Such lists or supplementary lists shall be made in the form of Schedule C to this Act, and shall be signed by the clerk, and delivered by him to the proper deputy-returning officers for the purpose of enabling the persons named in such lists to vote at the election. 55 V. c. 42, s. 130 (2).

Taken from R. S. O. (1877), c. 174, s. 126. *Cf.* 36 V. c. 48, s. 79; 38 V. c. 3, s. 16, 17.

(a) "**Schedule C to this Act.**" See note (a) to s. 149.

(b) The right of the persons who, if no change had taken place, would have been entitled to vote in the territory constituting or added to the new or enlarged municipality is secured to them by s. 91 (originally 38 V. c. 3, s. 16). This section simply provides the means by which that right shall be established and evidenced.

What voters' list is meant.

(b) "**The last filed or certified voters' list of the municipality.**" The meaning is not very clear, since under "*The Voters' Lists Act*" as it stands to-day (*a*) the voters' list is not "filed" until it has been certified by the Judge under ss. 20, 21 thereof, and is filed at once when so certified (s. 21 (3)). An examination of the history of this section leads, however, to the inference that its intention was to authorize the use of the last alphabetical list of voters made out by the clerk under "*The Voters' Lists Act*," although it might be not yet have been confirmed by the County Judge. The words "last filed or certified list" were first used in the Election Law Amendment Act of 1874 (*b*). At that time the law governing the preparation of voters' lists was contained in "*The Election Law* of 1868," (*c*) s. 7 of which provided that the alphabetical list of voters made out by the municipal clerk thereunder should, when its correctness had been sworn to by him before a Justice of the Peace, be kept by the clerk "among the records of the municipality" or—in other words—should be "filed." Although ss. 8, 9 and 10 of the Act did indeed provide for appeals to the County Judge, the list "filed" as aforesaid was taken as *prima facie* correct and no means were provided for its printing and distribution as in the present Act (*d*). New provisions, intended ultimately to supersede those of "*The Election Law of*

(*a*) R. S. O. c. 7, sec. 55, 6-12, 20, 21. (*b*) 38 V. c. 3, s. 17.
(*c*) 32 V. c. 21. (*d*) R. S. O. c. 7, ss. 8-12.

1868," were made by the Voters' Lists Act of 1874 (*e*); but that Act was not to take effect until the dissolution of the Assembly in 1875 (*f*) and was not yet in force when the words "filed or certified" were used in December, 1874 by the draftsman of s. 17 of 38 V. c. 3 (*g*), from which they have passed into this section.

Secs. 150(2)-152. Note (a).

151.—(1) In any municipality for which there is a separate assessment roll, but for which no voters' list for the municipality has been filed with the Clerk of the Peace or certified by the County Judge under *The Voters' Lists Act*, the clerk of the municipality shall, before the poll is opened, prepare and deliver to the deputy-returning officer for every or any ward or polling subdivision, a list in the form of Schedule C to this Act, containing the names, arranged alphabetically, of all male persons appearing by the then last revised assessment roll to be entitled to vote in that ward or polling subdivision; and he shall attest the said list by his solemn declaration in writing under his hand.

Voters' list. When clerk to prepare.

Rev. Stat. c. 7.

(2) In the case of (*a*) income voters, and (*b*) persons assessed for real property, if the municipality has passed a by-law under sub section 1 of section 535 of this Act, the clerk shall exclude from the list such persons as have been returned to him by the treasurer or collector as in default for not having paid their municipal taxes on or before the 14th day of December preceding the election; and every list of voters so prepared shall be the proper voters' list to be used at the election. 55 V. c. 42, s. 131.

Persons in arrear for taxes shall be excluded from list.

Taken from R. S. O. (1877) c. 174, s. 127. *Cf.* 37 V. c. 3, ss. 1-3; c. 4, s. 2; 38 V. c. 28, s. 8; 39 V. c. 5, ss. 6, 9.

(a) **"Filed with the Clerk of the Peace or certified by the County Judge under "The Voters' Lists Act."** These words differ from those used in the last section and clearly indicate a list which has been certified by the Judge under ss. 20 or 21 of R. S. O. c. 7. Until so certified the list cannot properly be said to be "filed with the Clerk of the Peace" though the draft list prepared under s. 6 may have been posted up in his office as required by s. 11.

152. In the case of municipalities which are divided into wards or polling subdivisions, the clerk of the municipality shall, before the poll is opened, deliver to the deputy-returning officer for every ward or polling subdivision, a copy, either printed or written, or partly printed and partly written, certified to be a correct list of voters for the ward or polling subdivision under section 148 and the following sections, together with a blank poll-book according to the form of Schedule C. to this Act, and also a copy certified by the treasurer or collector pursuant to section 137 of this Act, of the proper defaulter's list for the polling subdivision. 55 V. c. 42, s. 132.

Delivery of copies of voters' list, poll-book, and defaulters' list to deputy-returning officers.

Taken from R. S. O. (1887) c. 184, s. 132 as amended by 54 V. c. 42, s. 3 (poll-book). *Cf.* 40 V. c. 12, s. 9; R. S. O. (1877) c. 174, s. 128; 46 V. c. 18, s. 131.

(*e*) 37 V. c. 4, ss. 3 *et seq.* (*f*) See s. 41 thereof.

(*g*) See also "*The Voters' Lists Act of 1876*," (39 V. c. 11,) especially s. 31 thereof.

Secs. 152-155.

Notes (a)-(c).

(a) "**A correct list of voters for the ward or polling subdivision,**" etc. The object of furnishing this list is "that all persons interested in the election may have a check at hand at the time of the polling of votes." (*a*)

(b) "**And the following sections.**" These words (inserted by the Revisers of 1877) seem to be unnecessary, the cases where a "proper voters' list," as required by s. 148, is not to be used having been already specially provided for in ss. 149-151.

(c) "**Together with a blank poll-book in the form of Schedule C.**" The form of Schedule "C" is given *ante* in note (a) to s. 149. Until the amendment of this section in 1891 by 54 V. c. 42, s. 3, each municipal clerk had to make out a complete poll-book for every polling sub-division in his municipality, since the "voters' list in the form of Schedule C" was intended to be used as such. See note (a) to s. 165 (2). Now, however, in the cases covered by this section he has only to supply the poll-book in blank, and the deputy-returning officer, or his poll clerk, makes the necessary entries therein according to the certified voters' list. See s. 165 (2).

Copies may be prepared by Clerk of Municipality or procured from Clerk of Peace.

Rev. Stat. c. 7.

153. The copies of the voters' lists in the next preceding section mentioned, may be prepared by the clerk of the municipality, or may be procured from the Clerk of the Peace, if filed under *The Voters' Lists Act*; and in the latter case the Clerk of the Peace shall be entitled to receive the sum of six cents for every ten voters whose names are on the list. 55 V. c. 42, s. 133.

Taken from 40 V. c. 12, s. 10, the words "if filed under *The Voters' Lists Act*" having been inserted by the Revisers of 1877 in apparent forgetfulness of the fact that s. 148 only authorizes the use of a voters' list which has been so filed.

Defaulters' lists to be evidence for deputy-returning officer as to payment of taxes.

154. The defaulters' lists furnished and verified by the treasurer or collector as aforesaid, shall be the evidence on which the deputy-returning officers shall act in ascertaining the payment or non-payment of taxes by persons claiming to vote in respect of income, or in respect of real property, in the cases mentioned in section 137 of this Act. 55 V. c. 42, s. 134.

Taken from 40 V. c. 12, s. 12, s. 11 (1877).

Column to be added for votes for county councillor.

155. Where an election for a member or members of the county council is being held at the same time as the election of a member or members of the council of the local municipality, the clerk of the local municipality in preparing the poll-book shall insert therein a column to be headed "*County Councillors*" between the columns headed "*Refused to swear or affirm*" and the column headed "*Mayor or reeve*"; and in case no election is being held for a member or members of the council of the local municipality, the like books shall be used unless the clerk prepares poll-books expressly, for the election of county councillors. 59 V. c. 52, s. 26.

Taken from 59 V. c. 52, s. 26 (1896). The addition to the form of poll-book provided for by this section has now been made in Sched. C to the present Act. Before this it might have been doubtful whether the word "poll-book" included the lists or supplementary lists of voters referred to in ss. 150, 151.

(a) *Per* BURNS, J., *Reg. ex rel. Dundas* v. *Niles*, 1 U. L. Chamb. 198, 200, (1851). See also ss. 89, 112 and 148 and the notes thereto.

R. S. O. (1877) c. 174, s. 132.

Certificates as to the Assessment Roll.

Secs. 156(1), 157.

Notes (a), (b).

Clerk to give certificate of dates of last day for complaints against voters' list and of final revision of assessment roll.

156.—(1) The clerk of the municipality shall, before the opening of the poll, deliver or cause to be delivered to every deputy-returning officer a certificate (which may be in the form of Schedule D to this A), of

(*a*) The last day for making complaints to the County Judge with respect to the voters' list to be used at the election, and also

(*b*) Of the day when the said assessment roll was finally revised and corrected.

Penalty for neglect. Fee for certificate.

(2) The clerk shall also, under penalty of $200 in case of neglect or refusal, give such certificate upon payment of the sum of twenty-five cents, to any person applying for the same.

To be evidence of such date at the poll.

(3) The certificate, when delivered to the deputy-returning officer, shall be the evidence upon which he shall act in inserting in the oath to be administered to voters, the date of the final revision and correction of the assessment roll or the last day for making complaint to the County Judge with respect to the voters' list (as the case may be). 55 V. c. 42, s. 135, (1-3); 62 V. (2nd Session) c. 26, s. 12.

Taken from 40 V. c. 12, s. 12, sub-s. 1-3. Sub-s. 4 of that section has become s. 3 of the present Act. For the reason why evidence as to these two dates is required at the poll, see s. 86 (1) "*Thirdly*" and "*Fourthly*"; the third paragraph of the oath prescribed for a tenant by s. 113, and for an income voter by s. 114 and the second paragraph of the oath to be taken by a farmer's son under s. 115. See also the notes to these sections and note (b) to s. 112.

(a) "**The form of Schedule D to this Act.**" as amended in 1899 by 62 V. (2) c. 26, s. 12, is as follows:

Certificate as to Assessment Roll.

Form of certificate.

Election to the Municipal Council of the
of 19.

I, *A. B.*, Clerk of the Municipality of , in the County of , do hereby certify that the assessment roll for this municipality of upon which the voters' lists to be used at this election is based, was finally revised and corrected on the day of , 19 , and that the last day for making complaint to the County Judge with respect to the said list was the day of , 19 .

A. B.
Clerk."

(b) "**Under a penalty of $200 in case of neglect.**" As to the recovery of this penalty, see ss. 704, 708.

In Municipalities not divided into Wards.

In municipalities not divided into wards or polling subdivisions, clerk to perform duties of deputy-returning officers.

157. In case of municipalities which are not divided into wards or polling subdivisions, the clerk shall perform the duties which in other cases are performed by deputy returning officers, and he shall provide himself with the necessary ballot papers, and also with the materials for marking ballot papers, the printed directions before mentioned, copies of the voters' list, poll book and defaulters' list, and a certificate of the dates of the return and final revision of the assessment roll, similar to

Secs. 157-160.

Notes (a), (b); (a)-(b); (a).

those required to be furnished to deputy-returning officers; and the clerk shall perform the like duties with respect to the whole municipality as are imposed upon a deputy-returning officer in respect of a ward or polling subdivision. 55 V. c. 42, s. 136.

Taken from 46 V. c. 18, s. 135 (1883), the word "poll-book" having been since inserted by 54 V. c. 42, s. 4 (1891). *Cf.* 38 V. c. 28, s. 9; 40 V. c. 12, s. 14 (2); R. S. O. (1877) c. 174, s. 132.

(a) "**The clerk shall perform the duties.**" etc. See s. 106, note (f) to s. 107 and s. 118, note (h).

(b) "**Dates of the return and final revision of the assessment roll.**" Since the amendment of s. 156 and Schedule D by 62 V. (2) c. 26, s. 12, the certificate is to shew not the date when the assessment roll was returned, but the last day for making complaints with respect to the voters' list. The failure of the Legislature to amend this section when they amended section 156 is another example of careless legislation.

Where Electors may Vote.

Voting in towns and cities.

158. In towns and cities in which the councillors or aldermen are elected by wards every elector may vote in each ward in which he has been rated for the necessary property qualifications for councillors or aldermen, but the elector shall be limited to one vote for mayor of a city or town. 55 V. c. 42, s. 137; 62 V. (2nd Session) c. 26, s. 13.

(a) Under s. 76 of the Act of 1858 (*a*), no elector in a municipality divided into wards was entitled to vote in more than one ward, and if entitled to vote in the ward in which he resided, he could not vote in any other ward (*b*). The Act of 1866 (*c*) first contained the provision embodied in the first clause of this section. The second clause (limiting the elector to one vote in the cases therein specified), was added in 1873 (*d*).

(b) "**May vote in each ward,**" *i.e.* for aldermen or councillors, and also on by-laws requiring the assent of the electors (*e*).

Voting in townships and villages.

159. No elector shall vote more than once for reeve in a township or village; *nor more than once in each ward for councillors in townships divided into wards*; nor at more than one polling place in the township or village for *deputy-reeve or deputy-reeves or* councillors in townships *not divided into wards* and villages. 55 V. c. 42, s. 138; 60 V. c. 15, *Sched.* C. (32).

Taken from 60 V. c. 15, Sched. C. (32) which is now substituted for the much less clearly worded s. 138 of 55 V. c. 42 and R.S.O. (1887), c. 184.

(a) The words here printed in italics should have been struck out long ago. Another instance of careless legislation.

In county council elections.

160. Where any person being a resident voter qualified to vote for county councillors is on the voters' list for two or more municipalities within any county council division, he shall vote for county councillors in that municipality only in which he resides, and only at the polling place of the polling subdivision in which he resides, if he is entitled to vote at such polling place. In case a voter is not resident within the division, he shall vote only once within any division, whether his name is on the voters' list of said division in more than one polling subdivision or not. 59 V. c. 52, s 13 *part.*

Taken from 59 V. c. 52, s. 13 (1896).

(*a*) 22 V. c. 99. (*b*) *Reg. ex rel. Anon* v. *Flynn*, 8 U.C.L.J. 76 (1862.
(*c*) 29 & 30 V. c. 51, s. 78. (*d*) 36 V. c. 48, s. 80. (*e*) Sec. 355.

(a) This section extends to county council elections the principle long since adopted by the Legislature in regard to elections to local municipal councils (*f*).

Secs. 160-162 (2). Notes (a); (a); (a)-(b).

161. Every elector who is entitled to a vote in more than one ward or polling sub-division shall vote for mayor (in the case of cities and towns in which the aldermen or the councillors, as the case may be, are elected by wards) at the polling place of the ward or polling subdivision in which he is resident, if qualified to vote therein; or when he is a non-resident or is not entitled to vote in the ward or polling subdivision where he resides, then where he first votes and there only. 55 V. c. 42, s. 139; 62 V. (2nd Session) c. 26, s 14.

Where persons are to vote for mayor in cities and towns divided into wards.

Founded upon 39 V. c. 5, s. 3 (1875) which was a return to the principle of 22 V. c. 99, s. 78; amended in 1889 (62 V. (2) c. 26, s. 14) by striking out after "mayor" in line 2 the words "in cities and for mayor, reeve and deputy reeve in towns and for reeve in townships divided into wards," and substituting the words here printed. The present wording of the last clause, "or when he is a non-resident," etc., is taken from 50 V. c. 29, s. 5 (1887). The object is evidently to prevent,—or at least to minimize,—the possibility of personation.

(a) **"In which he is resident."** As to the meaning of "resident" see note (1) to s. 86 and note (b) to s. 686.

162.—(1) Any person who votes for mayor or reeve, after having already voted for mayor or reeve at some other polling place at that election, shall incur a penalty of $50, to be recovered with full costs of suit, by any person who will sue for the same in the Division Court having jurisdiction where the offence was committed; and any person against whom judgment is rendered shall be ineligible either as a candidate or as an elector at the next annual elections. 55 V. c. 42, s. 140 (1); 62 V. (2nd Session) c. 26, s. 15.

Penalty for voting twice for mayor or reeve.

Taken from 39 V. c. 5, s. 4 (1875), the words referring to deputy reeves having been struck out by 62 V. (2) c. 26, s. 15.

(a) **Shall incur a penalty of $50.**" Apparently ss. 704-710 do not apply to the penalty imposed by this section; and since the mode of its recovery is thus "prescribed" the case would not be governed by R. S. O. c. 1, s. 8 (30) (*g*), but the whole amount recovered would belong to the plaintiff. See also ss. 166 and 251.

(b) **"Next annual elections."** The ineligibility would (apparently) not extend to a bye-election or to any annual election except the one to be held in the January following the judgment.

(2) The Judge shall direct that in default of payment of the said penalty and costs within the time fixed by the said Judge, the offender shall be imprisoned in the common gaol of the county for such period, not exceeding thirty days, as shall be directed by the said judgment; and in case of such default of payment the Judge shall issue a warrant for the arrest and confinement of the offender in such common gaol in accordance with the said judgment, unless the penalty and costs are sooner paid. 58 V. c. 42, s. 7.

Imprisonment of elector for voting twice for mayor, etc.

(*f*) See the note in small print under s. 161, and *cf. Knill* v. *Towse*, 24 Q.B.D. 186, 697 (1889-90), decided under a similar (English) Statute.

(*g*) Quoted *ante* in note (b) to s. 110.

Secs. 162 (1), 163 (3).

Notes (c); (d); (a).

(c) "**The Judge shall.**" The only matters left to the discretion of the Judge are the time within which the penalty and costs shall be paid, and the period (not to exceed 30 days) of imprisonment in default of payment thereof.

(d) "**Unless the penalty and costs are sooner paid.**" *Quære*, do these words cover the costs of the committal and conveyance of the offender to gaol? Sections 704-10 of this Act are clearly inapplicable here; nor is the warrant an "order under the authority of "*The Municipal Act*" within the meaning of s. 5 of "*The Ontario Summary Convictions Act*," (*a*) for this section relates only to orders made by certain magistrates, of whom a County Judge is not *ex officio* one (*b*).

(3) The receipt by any voter of a ballot paper within the polling booth shall be *prima facie* evidence that he has there and then voted. 55 V. c. 42, s. 140 (2).

Taken from 50 V. c. 29, s. 6 (1887).

Certificate to entitle deputy returning officers, poll clerks, and agents to vote where stationed.

163.—(1) The clerk of the municipality, on the request of any elector entitled to vote at one of the polling places, who has been appointed deputy-returning officer or poll-clerk, or who has been named as an agent of a candidate to attend at any polling place other than the one where he is entitled to vote, shall give to such elector a certificate that he is entitled to vote at the polling place where he is to be stationed during the polling day, and the certificate shall also state the property or other qualification in respect of which he is entitled to vote.

Right to vote on production of certificate.

(2) On the production of the certificate, the deputy-returning officer, poll-clerk or agent shall have the right to vote at the polling place where he is stationed during the polling day, instead of at the polling place where he would otherwise have been entitled to vote; and the deputy-returning officer shall attach the certificate to the voters' list; but no such certificate shall entitle such elector to vote at such polling place unless he has been actually engaged as such deputy-returning officer, poll-clerk, or agent during the day of polling; nor to vote for aldermen in cities, or for councillors in municipalities divided into wards, except in the ward where he would otherwise be entitled so to vote.

Who to administer oath.

(3) In case a deputy-returning officer votes at the polling place to which he has been appointed, the poll-clerk appointed to act at the polling place, or (in the absence of the poll-clerk) any elector authorized to be present, may administer to the deputy-returning officer the oath required by law to be taken by voters. 55 V. c. 42, s. 141.

Taken in substance from 39 V. c. 5, s. 10 (1875), except the last clause of subs. 2 beginning with the words "nor to vote for aldermen in cities," this clause having been added in the Revision of 1877 (R. S. O. (1877), c. 174, s. 137, apparently without any statutory authority. *Cf.* "*The Ontario Election Act*," (R. S. O. c. 9), s. 94.

(a) The principle of this section is adopted from the Election Amendment Act of 1874 (38 V. c. 3, s. 28). Sec. 27 of that Act removed the disqualification of deputy-returning officers and poll-clerks to vote at elections for the Legislative Assembly, which had theretofore existed by virtue of "*The Election Law of 1868*," (32 V. c. 21), s. 3.

(*a*) R. S. O. c. 90. (*b*) See R. S. O. c. 86, s. 1.

DIVISION V.—THE POLL, (SECS. 164-187.)

Synopsis. The sections contained in this Division of Part III, Title II of the Act, relate chiefly to the procedure to be followed during and immediately after the hours of polling—the duties of deputy-returning officers—the mode in which ballots are to be marked, (ss. 168-172) counted, (s. 174), and returned to the clerk (s. 177), the right of candidates and their agents to be present in the polling place and at the counting of the ballots (ss. 173, 175; and see s. 201.

NEXT follow the duties of the clerk when the ballots and ballot boxes have been returned to him, ss. 177 (*b*)-179.

The procedure at and after the polling at an election for county councillors is prescribed by ss. 180-183, and ss. 184-186 provide what shall be done in case the polling has, by reason of riot or other emergency, not been commenced or completed at the proper time, as to which see also R. S. O. c. 248, s. 47.

SEC. 187 requires the councillors elect to make the necessary declarations and assume office.

164. The deputy-returning officer shall, immediately before the commencement of the poll, shew the ballot box to such persons as are present in the polling place, so that they may see that it is empty; he shall then lock the box and place his seal upon it in such manner as to prevent its being opened without breaking the seal; and he shall then place the box in his view for the receipt of ballot papers, and shall keep it so locked and sealed. 55 V. c. 42, s. 142.

Deputy-returning officer to show box empty to persons present and then lock and seal it.

Taken from 38 V. c. 28, s. 10 (1874) into which it was copied *verbatim* from "*The Ballot Act of 1874*," 37 V. c. 5, s. 7, which in its turn was taken from Rule 23 of the First Schedule to "*The Ballot Act, 1872*" (*a*) by which voting by ballot was introduced at parliamentary and municipal elections in Great Britain and Ireland. See note to s. 130.

(a) These precautions are taken to render impossible what is known among our neighbours to the south as "stuffing the ballot boxes." SEC. 193 makes it an offence for any person, without due authority, to open or otherwise interfere with any ballot box then in use for the purposes of the election, and prescribes a punishment for committing or attempting to commit the offence.

Object of this precaution.

165. Where a person claiming to be entitled to vote presents himself for the purpose of voting, the deputy-returning officer shall proceed as follows:

Proceedings by deputy-returning officer on tender of vote.

Taken originally from 38 V. c. 28, s. 11 (1874) which was taken (with some alterations) from "*The Ballot Act of 1874*," 37 V. c. 5, s. 8. *Cf.* "*The Ballot Act, 1872*" (Imp. Stat. 35 & 36 V. c. 33) Sched. 1, Rules 24, 25. The word "poll-book" has been substituted for "voters' list" by 54 V. c. 42, s. 6, and "deputy-returning officer" for "returning officer" by 40 V. c. 12, s. 13. The other amendments made in the section since 1874 are noted *infra* under the several subsections.

1. He shall ascertain that the name of such person or a name apparently intended therefor is entered upon the voters' list for the ward or polling subdivision for which the deputy-returning officer is appointed to act. 55 V. c. 42, s. 143 (1); 60 V. c. 15, *Sched.* C (33).

Ascertaining that name is on list.

The words "or a name apparently intended therefor" are substituted by 60 V. c. 15, Sched. C (33) for the words "is entered or purports to be" in 38 V. c. 28, s. 11 (1).

(a) "**He shall ascertain that the name of such person . . . is entered upon the voters' list.**" The voters' list is the sole and final evidence of the property qualification of an elector to vote at a municipal election. See s. 89 and note (a) thereto; also note (b) to s. 112. No questions to or dealings with the voter by the deputy-returning officer or poll clerk are authorized or allowable other

(a) Imp. Stat. 35 & 36 V. c. 33.

Sec. 165, Sub-secs. 1-4. Notes (c)-(f).

than those expressly provided for in ss. 117, 165-172 (*a*). In *Cambridge*, (Election Case), Knapp and Ombler's Election Cases 131, the Judges severely animadverted upon the conduct of a deputy returning officer who required voters, as they came to the poll, to spell their names, and rejected their votes if the spelling differed from that in the voters' list.

Recording.

2. He shall record, or cause to be recorded by the poll clerk in the proper columns of the poll book the name, qualification, residence and legal addition of such person. 55 V. c. 42 s. 143 (2).

(c) The words "by the poll clerk in the proper columns of the *poll-book* the *name*, *qualification*, residence, and legal addition of such person" were substituted in 1891 (54 V. c. 42, s. 5) for the words "in the proper column of the voters' list the residence and the legal addition of such person" (38 V. c. 28, s. 11 (2)). This amendment seems to have been made by a draftsman not thoroughly familiar with the Act. It is true that the cases most commonly occurring are those governed by ss. 149 and 152, under which the deputy-returning officer is to be supplied with a *blank* poll-book in which he is to enter the name and qualification of the voter, as well as his residence and legal addition; but in the cases coming within the purview of ss. 150, 151, these particulars already appear upon the voters' lists which are supplied to the deputy-returning officer and are intended to be used as poll-books (*b*). The subsection requires amendment in regard to the procedure in those cases.

Votes objected to.

3. Where the vote is objected to by any candidate or his agent, the deputy-returning officer shall enter the objection (or cause the same to be entered) in the poll book, by writing opposite the name of such person in the proper column the words "*Objected to*," stating, at the same time, by which candidate, or on behalf of which candidate, the objection has been made, by adding after the words "*Objected to*," the name only of such candidate. 55 V. c. 42, s. 143 (4).

(d) This was formerly subs. 4 of 38 V. c. 28, s. 11 (37 V. c. 5, s. 8), and in "*The Con. Mun. Act of 1892*," (55 V. c. 42, s. 143) came after what is now subs. 4. The order of the subsections has, for obvious reasons, been changed in the present Revision.

(e) "**By any candidate or his agent.**" The deputy-returning officer has no right to take the objection (*c*). To support an indictment for perjury (see s. 112), it is sufficient that the person who required the oath to be administered *acted* as the candidate's agent (*d*).

Oath.

4. If such person takes the oath or affirmation required to be taken by voters in the manner directed by section 112 to 116 inclusive of this Act, the deputy-returning officer shall enter or cause to be entered opposite such person's name, in the proper column of the said poll book the word "*Sworn*," or "*Affirmed*," according to the fact. 55 V. c. 42, s. 143 (3).

(f) See note (d). If the oath is taken by the voter, the deputy-returning officer *must* deliver to him a ballot paper under subs. 7, even though he may be sure that the person tendering the vote is swearing falsely (*e*).

(*a*) *Wilson* v. *Manes*, 28 O. R. 419 (1896).

(*b*) See the heading of Schedule C to this Act in note (a) to s. 149 and compare with it the form of the voters' list given in the Schedule to "*The Voters' Lists Act*," (R.S.O. c. 7).

(*c*) See note (b) *supra*, and *per* ROSE, J., in *Wilson* v. *Manes*, 28 O. R. 419, 427 (1896). (*d*) *Reg.* v. *Spalding*, 1 Car. & Marsh. 568.

(*e*) Rogers on Elections (16th Ed.), p. 657 (Part II); (17th Ed.) p. 105 (Part III).

Secs. 165, 166.
Sub secs. 5-8.
Notes (g)-(k).

5. Where such person has been required to take the oath or affirmation, and refuses to take the same, the deputy-returning officer shall enter or cause to be entered opposite the name of such person, in the proper column of the poll book, the words "*Refused to be sworn*," or "*Refused to Affirm*," according to the fact; and the vote of such person shall not be taken or received; and if the deputy-returning officer takes or receives such vote, or causes the same to be taken or received, he shall incur a penalty of $200. 55 V. c. 42, s. 143 (5).

Refusal to take the oath.

(g) "A penalty of $200." As to how this penalty may be recovered see s. 704; as to its apportionment, s. 708.

6. Where the proper entries respecting the person so claiming to vote have been made in the poll book in the manner prescribed, the deputy-returning officer shall place (or cause to be placed) a check or mark opposite to the name of the voter in the certified voters' list to indicate that the name of such person has been entered in the poll book and that the person has been allowed to vote, and shall then sign his name or initials on the back of the ballot paper. 55 V. c. 42, s. 143 (6); 60 V. c. 3, s. 3.

Deputy returning officer to initial ballot paper and mark voters' list.

(h) The words "shall place or cause to be placed a check or mark," etc., down to and inclusive of the words in the seventh line, "has been allowed to vote" were inserted by 54 V. c. 42, s. 7 (1891) the language of which has been altered for the better by the Revisers of 1897 under the authority of 60 V. c. 3, s. 3. See note (h) to s. 4. The placing of a mark on the voters' list to indicate that a voter had received a ballot was directed by subs. 8 of the original section, 38 V. c. 28, s. 11, but that subsection was omitted in the Revision of 1877 (*f*).

(i) Whether a particular voter did or did not vote may be ascertained by means of this section, but for whom he voted is, and should remain a matter of secrecy. See s. 200. Any marking which would enable the deputy-returning officer to say for whom he voted would be illegal (*g*).

(j) "Shall sign (?) his name or initials on the back of the ballot paper." See as to this duty note (a) and (b) to s. 166.

7. The ballot-paper shall be delivered to such person. 55 V. c. 42, s. 143 (7).

Delivery of paper to voter.

(k) See the cases cited in note (a) to s. 116, and note (a) to s. 194.

8. The deputy-returning officer may, and upon request shall, either personally or through his sworn poll-clerk, explain to the voter, as concisely as possible, the mode of voting. 55 V. c. 42, s. 143 (8).

Deputy returning officer to explain mode of voting.

166. Every deputy-returning officer refusing, or wilfully omitting to sign his name or initials upon the back of the ballot paper, as provided for by clause 6 of section 165 of this Act, shall forfeit to any person aggrieved by such refusal or

Deputy-returning officer refusing, etc., to initial ballot papers.

(*f*) R. S. O. (1877) c. 174, s. 139.

(*g*) *Woodward* v. *Sarsons*, L. R. 10 C. P. 733; See note (g) to s. 174.

Secs. 166-168 (1). Notes (a) (b).

omission, the sum of $10, in respect of every ballot paper deposited at his polling subdivision upon which the said deputy-returning officer has not signed his name or initials as aforesaid; and the same may be recovered in the manner provided for the recovery of penalties by section 251 of this Act. 55 V. c. 42, s. 144.

Taken from "*The Con. Mun. Act, 1885*," (46 V. c. 18), s. 143. *Cf.* "*The Ontario Election Act*" (R.S.O. c. 10, ss. 193 (1), 194).

(a) Under s. 251 this sum of $10 is "recoverable with full costs of suit by any person who sues for the same in the Division Court having jurisdiction where the offence was committed." Since a mode is prescribed for its recovery, it is apprehended that subs. 30 of R.S.O. c. 1, s. 8 (*a*) would not apply, and that the plaintiff would be entitled to the whole amount recovered. See note (a) to s. 162 (1), *ante*.

(b) Under the rule (24) in the Schedule to the Imperial Act, which corresponds to the last clause of s. 165 (6), it has been held that the duty of the deputy-returning officer is a ministerial and not a judicial one, so that he is not protected by the Public Officers' Act (*b*), but is liable to a civil action by any party aggrieved by his default, in which action it is unnecessary to allege or prove malice or want of reasonable care on his part (*c*).

Deputy returning officer to note in poll book voters to whom ballot papers given.

167. The deputy-returning officer shall place or cause to be placed, in the columns of the poll book headed "*Mayor*," "*Reeve* (or "*Mayor and Reeve*"), "*Alderman*," "*County Councillor*," and "*Councillor*," as the case may be, his initials opposite the name of every voter receiving a ballot paper, to denote that the voter has received a ballot paper for mayor, reeve, alderman, county councillor, or councillor, as the case may be. 55 V. c. 42, s. 145.

Taken from 39 V. c. 5, s. 5 (2) (1875), the words "his initials" being substituted by 44 V. c. 24, s. 14 (1881) for the words "a mark" used in the original section. *Cf.* "*The Ontario Election Act*," (R.S.O., c. 10, s. 97 (11) and "*The Ballot Act, 1872*" (Imp. Stat. 35 & 36 V. c. 33), Sched. I. Part I. Rule 24.

Marking ballot paper.

168.—(1) Upon receiving from a deputy-returning officer the ballot paper prepared as aforesaid, the person receiving the same shall forthwith proceed into the compartments provided for the purpose, and shall then and therein mark his ballot paper in the manner mentioned in the directions contained in Schedule B of this Act by placing a cross, thus **X** on the right-hand side, opposite the name of any candidate for whom he desires to vote, or at any other place within the division which contains the name of such candidate. He shall then fold the ballot paper across, so as to conceal the names of the candidates, and the marks upon the face of the paper, and so as to expose the initials of the deputy-returning officer, and leaving the compartment, shall, without delay, and without showing the front to any one, or so displaying the ballot paper as to make known to any person the names of the candidates for or against whom he has marked his vote, deliver the ballot paper so folded to the deputy-returning officer, who shall, without unfolding the same, or in any way disclosing the

(*a*) See note (b) to s. 110. (*b*) R.S.O. c. 88.
(*c*) *Pickering* v. *James*, L.R. 8 C.P. 489.

names of the candidates, or the marks made by such elector, verify his own initials, and at once deposit the same in the ballot box in the presence of all persons entitled to be present and then present in the polling place; and the voter shall forthwith leave the polling place. 55 V. c. 42, s. 146.

Sec. 163 (1). Note (a).

Taken from 38 V., c. 28, s. 12 (37 V. c. 5, s. 9). The words in lines 8 and 9, "or at any other place within the division which contains the name of such candidate" were inserted in 1880 by 43 V. c. 24, s. 4, the same amendment having been made during the previous Session by 42 V. c. 4, s. 14 in the corresponding section of "*The Ontario Election Act*." See note (c) to s. 174. The original section was taken in substance from s. 2 of the Imperial Act cited in the last note ("*The Ballot Act, 1872*") and from Rule 25 of Part 1, Sched. 1, appended thereto. *Cf.* "*The Ontario Election Act*" (R.S.O. c. 9), s. 103.

(a) "**Schedule B of this Act**" as amended by 62 V. (2nd Session) c. 26, s. 16, (3), is as follows :—

Directions for the Guidance of Voters in Voting.

Directions to Voters.

The voter will go into one of the compartments, and with the pencil provided in the compartment place a cross, thus **X**, on the right hand side, opposite the name or names of the candidate or candidates for whom he votes or at any other place within the division which contains the name or names of such candidate or candidates.

Where two county councillors are to be elected, and the voter desires to give two votes for one candidate, he shall place two crosses, thus **XX**, on the right hand side opposite the name of the candidate for whom he votes, or at any other place in the division which contains the name of such candidate; but no person is allowed to give two votes for one candidate except as aforesaid.

The voter will fold up the ballot paper so as to show the name or initials of the deputy-returning officer (*or* returning officer, *as the case may be*) signed on the back, and, leaving the compartment, will, without showing the front of the paper to any person, deliver such ballot so folded to the deputy-returning officer (*or* returning officer, *as the case may be*) and forthwith quit the polling place.

If the voter inadvertently spoils a ballot paper, he may return it to the deputy-returning officer (*or* returning officer, *as the case may be*) who will, if satisfied of such inadvertence, give him another ballot paper.

If the voter votes for more candidates for any office than he is entitled to vote for, his ballot paper will be void as far as relates to that office, and will not be counted for any of the candidates for that office.

If the voter places any mark on his ballot paper by which he may afterwards be identified, or if the ballot paper has been torn, defaced, or otherwise dealt with by the voter so that he can thereby be identified, it will be void, and will not be counted.

If the voter takes a ballot paper out of the polling place, or deposits in the ballot box any other paper than the one given to him by the officer, he will be subject to imprisonment for any term not exceeding 6 months, with or without hard labour.

In the following forms of ballot paper, given for illustration, the candidates are: for county councillors, MARTIN CHUZZLEWIT, DAVID COPPERFIELD *and* ARTHUR PENDENNIS; *for Mayor,* JACOB THOMPSON *and* ROBERT WALKER; *and for councillors,* JOHN BULL, MORGAN JONES, ALLISTER MCALLISTER *and* PATRICK O'CONNELL; *and the elector has marked the first ballot paper in favour of* MARTIN CHUZZLEWIT *and* ARTHUR PENDENNIS *for county councillors, the second ballot paper in favour of* JACOB THOMPSON *for mayor, and the third ballot paper in favour of* JOHN BULL *and* PATRICK O'CONNELL *for councillors.*

Sec. 168 (1)

Note (a).

1. Form for County Councillors.

Election of County Councillors for the (*First*) County Council Division of the (*County of Kent*) *Township* of (*a*) Ward No. , Polling Subdivision No. , day of January, 19 .

FOR COUNTY COUNCILLOR.

CHUZZLEWIT.

Martin Chuzzlewit, of the Town of Bothwell, Barrister. **X**

COPPERFIELD.

David Copperfield, of the Village of Tilbury, Gentleman.

PENDENNIS.

Arthur Pendennis, of the Township of Harwich, Farmer. **X**

2. Forms for Cities and Towns divided into Wards (*b*).

Election for the Members of the Municipal Council of the of , Ward day of January, 19 .

FOR MAYOR.

THOMPSON.

John Thompson, of the City (*or* Town) of , Merchant. **X**

WALKER.

Robert Walker, of the City (*or* Town) of , Physician.

(*a*) See note (**a**) to s. 141.

(*b*) When the Legislature,—by ss. 11 and 16 of 62 V. (2) c. 26,—amended the forms of ballot-papers to be used at municipal elections, it seems inexplicable that they should have omitted from this Schedule of "Directions for the Guidance of Voters in Voting" any *fac simile* of the ballot papers which will be more frequently required than any others, viz.,—the forms prescribed by Schedule A of that Act for use in elections in townships and villages and also in cities and towns where the aldermen or councillors are elected by general vote. It is suggested to the clerks of municipalities in which these forms are to be used that when printing the "Directions to Voters" for a municipal election—pursuant to s. 146—they should remedy this legislative error and print therein a copy of the proper ballot-paper according to the forms given *ante*, at pp. 165, 166.

Sec. 168 (1).

Notes (a)-(b).

Election for the Members of the Municipal Council of the Town of Barrie, *Ward No.* | Polling Subdivision No. | Polling, Saturday, day of January, 19

FOR COUNCILLOR.

BULL.

John Ball, of the Town of Barrie, Butcher. **X**

JONES.

Morgan Jones, of the Town of Barrie, Grocer.

McALLISTER.

Allister McAllister, of the Town of Barrie, Tailor.

O'CONNELL.

Patrick O'Connell, of the Town of Barrie, Milkman. **X**

(b) "Shall . . . mark his ballot paper in the manner mentioned in the directions contained in Schedule B by placing a cross thus **X** on the right hand side, opposite the name of any candidate for whom he desires to vote or at any other place within the division which contains the name of such candidate." See further as the marking and counting of ballot papers, notes (**c**) and (**d**) to this section and note (**g**) to s. 174. In "*The Ballot Act, 1872*" (*a*) the only words used in the Statute itself are "The voter *having secretly marked his vote on the paper* and folded it up so as to conceal his vote shall place it in a closed box in the presence of the officer presiding at the polling station." It is not in the body of the Act, but in the second Schedule thereto,—under the title "Form of Directions for the Guidance of the Voter in Voting"—that the provision first occurs. (*b*)

> "The voter will go into one of the compartments and with the pencil provided in the compartment place a cross on the right hand side opposite the name of each candidate for whom he votes thus **X**."

On this ground it has been held in England that the provision requiring the voter to make a cross is directory only and not absolute, and that a substantial compliance with the "Directions to Voters" is sufficient. (*c*)

> "In our Statute it is very different and it is expressly enacted that the voter "shall mark his ballot paper in the manner mentioned in the directions . . . *by placing a cross* on the right hand side opposite the name of the candidate for whom he desires to vote." (*d*) The natural and obvious meaning of this language is that *he must make a cross* to signify his choice. The whole policy of securing secrecy precludes the suggestion that the voter is at liberty to make any mark he pleases; and the Legislature has therefore prescribed a kind of mark which is the easiest and most familiar—that, indeed, which is used by the illiterate." (*e*)

(*a*) Imp. Stat. 35-36 V. c. 33, s. 2.

(*b*) *Cf.* the first paragraph of Schedule B in the preceding note (**a**).

(*c*) *Athlone* (Election Case), 8 Ir. R. C. L. 240; *Woodward* v. *Sarsons*, L. R. 10 C. P. 733, *per* Lord COLERIDGE, C. J., at pp. 746-747, and see note (**a**) to s. 204, *post*. But s. 28 of "*The Ballot Act, 1872*" provides that the Schedules "shall be construed and have effect as part of this Act."

(*d*) The words "or in any any other place within the division," etc., had not been added to the section at the time of the election then in question. See note (**c**) *infra*.

(*e*) *Per* Moss, C. J. O., in *South Wentworth* (Provincial Election) H. E. C. 531 (1879), at p. 535.

Sec. 168 (1).

Notes (c)-(d).

Where ballots to be marked.

(c) **"Opposite to the name of any candidate for whom he desires to vote, or at any other place within the division which contains the name of such candidate."**

The words "or at any other place within the division etc." were added in 1880 (*a*). Ballots are in many instances, marked by hands unfamiliar with the use of pen or pencil, from which or perhaps from the carelessness or nervousness of the voter it often results that the cross is not wholly made within the division containing the name of the candidate for whom the vote is intended to be given. But a ballot thus marked is not necessarily void so long as the cross (*i. e.* the *crossing* or intersection of the two lines which compose it) is clearly and altogether within the division. It is only when the intersection of these lines so nearly coincides with the boundary line between two adjoining divisions of the ballot papers as to make it doubtful to which of them it belongs that the ballot must be rejected for uncertainty. See the cases on this point referred to in note (**g**) to s. 174.

(d) **"The division which contains the name of such candidate."** The effect of these words was considered by MACLENNAN, J. A., in *West Elgin* (Provincial Election) (*b*). He says:

> "The learned County Judge found the votes duly cast for the two defendants to be equal. His decision with respect to forty-seven votes was objected to before me. Twenty of these depend on the same question. The form of ballot used was identical with that in the Schedule of the Election Act, except that a scroll about one eighth of an inch wide was used instead of the plain lines running from right to left in the form. The upright lines separating the numbers from the names were thin plain lines similar to those in the form, and bore the same colours as the names of the candidates respectively. Fifteen of these twenty ballots were marked in the division containing McDiarmid's number, to the left of the line separating the numbers from the name; and the other five were similarly marked in the division containing MacNish's number. They were all counted by the learned Judge; and his decision is objected to on behalf of MacNish. The ground of objection is, that not being marked in the division containing the name, they are void, as not complying with s. 103 of the Act, which directs that the cross be placed by the voter on the right hand side opposite the name of the candidate for whom he desires to vote, or at any other place within the division which contains the name of such candidate.
>
> The question does not concern the right to vote, but only the proper method of doing so. The Legislature has given certain directions for marking the ballot. They are intended for all classes of voters, including some who are not accustomed to the use of paper and pencil, and some who are dull and unintelligent, and yet who have as good a right to vote as the most intelligent. Therefore, if a ballot is so marked that no one looking at it can have any doubt for which candidate the vote was intended, and if there has been a compliance with the provisions of the Act according to any fair and reasonable construction of it, the vote ought to be allowed. I think that is the result of the authorities, both here and in England; *Grenester*, 4 O'M. & H. 196; *Woodward* v. *Sarsons*, L. R. 10 C. P. 733; *Thornbury*, 16 Q. B. D. 739; *Phillips* v. *Goff*, 17 Q. B. D. 805; *North Victoria*, H. E. C. at p. 680; *Bothwell*, 8 S. C. R. 676. In the present case the question is whether twenty persons, who had an undoubted right to vote, and who desired and intended and endeavoured to do so, have nevertheless failed in their attempt. There are two methods of marking the ballot. The cross may be placed at the right hand side, opposite to the name of the candidate intended to be voted for, or it may be placed in any other place within the division containing his name. These are really not two alternative methods, because the second method includes the first. Are these ballots marked within the division containing the candidate's name? If we say, looking at the ballot which was here used, that the name

(*a*) 43 V. c. 24, s. 4. *Cf.* (as to elections to the Legislative Assembly), 42 V. c. 4, s. 13 (1879).

(*b*) 34 C. L. J. N. S. 461; 16 C. L. T. 249 (1898).

Sec. 168 (1) (2).

Notes (e)-(g).

of the candidate is in one division and his number in another, then these marks are not in the division containing the name, but in that containing the number. But I think it clear that *these are not the divisions intended by the Statute*. The dividing line between the name and the number is not essential. There is no need whatever for a separating line between a candidate's name and his number, and the ballot would be perfectly good without it. Section 69, ss. 5 (*c*) requires the names to be arranged alphabetically on the ballot, and subs. 3 directs the number and name of each to be printed in ink of different colours (*d*). Therefore, the number is something belonging to the candidate, and not something distinct. There is no direction where the number is to be placed, and it might be placed anywhere near the name, before or after it or above or under it. It is different with the *names* of the candidates. They must be separated from each other. Each must have a separate part of the ballot paper for itself, and must therefore be in a separate division. Accordingly, we find the form in the Schedule divided by lines drawn from right to left, with as many divisions as there are candidates. I think *these are the divisions intended by the Statute* and that the divisions containing the numbers are mere subdivisions of the divisions containing the names. In other words, it is the same division of the ballot paper which contains each candidate's name and number. It would be a strange construction of the Statute which would hold that, on a ballot from which the immaterial and useless upright lines were omitted, a cross near the number or even to the left of it would be good, as it clearly would be, but that on a ballot containing those lines, a cross so placed would be bad; and yet a ballot in either form would be good, and might be used with propriety in either election. I think a construction leading to such a result ought not to be adopted, if it can be avoided. In my opinion, there is a very plain sense in which, notwithstanding the upright line, the space containing the number may be regarded as part of the division of the ballot containing the candidate's name and therefore I am bound to hold that it is so, and to affirm the validity of ballots marked within that space.

Where bad lots to be marked.

I therefore think the learned Judge's decision was quite right, and that those twenty votes were properly allowed and counted by him."

(e) "**The deputy-returning officer . . . . . without unfolding the same.**" But where a deputy-returning officer had unfolded ballot papers delivered to him by voters, and refolded them so as to expose his initials (see next note) ROSE, J. affirmed the decision of the County Judge refusing to avoid the election, as it appeared that the irregularity had not affected the result (*e*).

(f) "**Shall . . . . verify his own initials.**" These words were probably inserted in consequence of the opinions expressed by KEATING and BRETT, JJ., in *Pickering* v. *James* (*f*).

(g) "**And at once deposit the same in the ballot box in the presence of all persons entitled to be present and then present in the polling place.**" Under the English Act the voter himself puts his ballot into the box. See *ante*, note (**b**). Subsections 1*b* and 3 of s. 193 prescribe the punishment for fraudulently putting into the ballot box any other than the proper ballot paper.

For County Councillors.

(2) Each person qualified to vote for county councillors shall be entitled to as many votes as there are members of the county council to be elected in his county council division; and he may, at his option, where there are two county councillors to be elected, give both of his votes to one candidate, in which case he shall place two crosses, thus **X X**, on the

(*c*) Sec. 69 (5) of "*The Ontario Election Act*" s. 139 (2) of this Act.

(*d*) There is no corresponding provision in "*The Municipal Act*."

(*e*) *Reg. ex rel. Thornton* v. *Dowar*, 26 O. R. 512 (1895). See s. 204 and notes (**a**) and (**b**) thereto.

(*f*) L. R. 8 C. P. 489; affirmed in *Thornbury* (Election Case), 16 Q. B. D. 739, 752.

Sec. 168 (2)-171. Sub-sec. 1. Notes (a) (b): (a).

right hand side opposite the name of the candidate for whom he votes, or at any other place in the division which contains the name of such candidate; but except in the case aforesaid no person shall give two votes for one candidate. 59 V. c. 52, s. 13, *part, and* s. 25.

Exclusion from balloting compartment.

169. While a voter is in a balloting compartment for the purpose of marking his ballot paper, no other person shall be allowed to enter the compartment, or to be in any position from which he can observe the mode in which the voter marks his ballot paper. 55 V. c. 42, s. 147.

Taken from 38 V. c. 28, s. 13 (37 V. c. 5, s. 10). *Cf.* "*The Ontario Election Act,*" (R. S. O. c. 9), s. 104.

(a) But see *Reg. ex rel Preston* v. *Tomchburn* (*g*), cited under s. 145, and also s. 204, note (a).

(b) Sec. 198 prescribes the penalty for attempting to obtain at the polling place information as to how a person is about to vote or has voted.

Voter not to take his ballot paper from polling place.

170. No person who has received a ballot paper from the deputy-returning officer shall take the same out of the polling place; and any person having so received a ballot paper, who leaves the polling place without first delivering the same to the deputy-returning officer in the manner prescribed, shall thereby forfeit his right to vote; and the deputy-returning officer shall make an entry in the poll-book, in the column for "*Remarks,*" to the effect that such person received a ballot paper, but took the same out of the polling place, or returned the same declining to vote, as the case may be; and in the latter case the deputy-returning officer shall immediately write the word "*Declined*" upon such ballot paper and shall preserve the same. 55 V. c. 42, s. 148; 60 V. c. 15, *Sched.* C (34).

Taken from 38 V. c. 28 s. 14 (=37 V. c. 5, s. 11). *Cf.* "*The Ontario Election Act,*" (R. S. O. c. 9), s. 105. Certain words added by 38 V. c. 28, s. 14 to the section as contained in "*The Election Act of 1874,*" (37 V. c. 5), s. 11, have been struck out by 60 V. c. 15, Sched. C (34) as unnecessary, the return of all ballot papers to the clerk being fully provided for by s. 177 (3), (4).

(a) The punishment for fraudulently taking a ballot paper out of the polling place is prescribed by s. 193 (1 *c*), (3).

Proceedings in case of incapacity to mark ballot paper.

171. In the case of an application by a person claiming to be entitled to vote, who is incapacitated by blindness or other physical cause from marking his ballot paper, or in the case of a person claiming to be entitled to vote who makes a declaration that he is unable to read, or (where the voting is on a Saturday) that he is of the Jewish persuasion and objects on religious grounds to mark his ballot in the manner prescribed by section 168, the proceedings shall be as follows:

1. The deputy-returning officer shall, in the presence of the agents of the candidates, cause the vote of such person to be marked on a ballot paper in the manner directed by such person, and shall place the ballot paper in the ballot box.

(*g*) 6 P. R. 344 (1876).

Sec. 171. Sub-secs. 2-4. Note (a).

2. The deputy-returning officer shall state or cause to be stated in the poll book, by an entry opposite the name of such person in the proper column of the poll book, that the vote of such person is marked in pursuance of this section, and the reason why it is so marked.

Procedure in case voter cannot mark his ballot paper.

3. The declaration aforesaid may be in the form of Schedule E to this Act, and shall at the time of the polling be made by the person claiming to be entitled to vote, before the deputy-returning officer, who shall attest the same as nearly as may be according to the form given in Schedule F to this Act; and the said declaration shall be given to the deputy-returning officer at the time of voting. 55 V. c. 42, s. 149; 60 V. c. 3, s. 3; c. 14, s. 83 (1).

4. In the case of a person who objects on religious grounds to mark his ballot, the declaration may be made orally and to that effect. 60 V. c 14, s. 83 (2).

The whole of this section (except the clause relating to voters "of the Jewish persuasion" and sub-s. 4 (relative thereto) is copied from 38 V. c. 28, s. 15 (27 V. c. 5, s. 12) and was originally taken from Rule 26 of Sched. 1 to "*The Ballot Act*," 1872, (Imp. Stat. 35 & 36 V. 3, 33.) The provision allowing the ballots of Hebrew voters to be marked for them if the voting is on Saturday was added in 1897 by 60 V. c. 14, s. 83, and is, in substance, contained in the section of the Imperial Statute just cited. *Cf.* "*The Ontario Election Act*," (R. S. O. c. 9) s. 106.

(a) "**The deputy-returning officer shall, in the presence of the agents for the candidates, cause the vote of such person to be marked.**" etc. The meaning of these words in 37 V. c. 5, s. 12 was discussed by DRAPER, C.J.A., in *Halton* (Provincial Election) (*h*), under the following circumstances:—One B., a voter who could neither read nor write, had come into the polling booth, and in the presence of the deputy-returning officer had asked for a person (who was not present) to give him instructions how to mark his ballot. The deputy-returning officer gave him a ballot paper, and he then stated that he wished to vote for the respondent. One W., an agent of the respondent in the polling booth, took the pencil and marked the ballot paper as the voter wished, and the voter handed it to the deputy-returning officer. No declaration of inability to read and write was made by the voter. *Held*, that no one but the deputy-returning officer was authorized to mark a voter's ballot, or to interfere with or question a voter as to his vote.

Who may be present.

But in *Prescott* (Provincial Election), tried before PATTERSON, J.A., and FERGUSON, J., and afterwards reviewed by the Court of Appeal, (*i*) the deputy-returning officer, in polling the votes of some fifty illiterate voters, instead of taking from each of them a declaration "that he was unable to read," asked each if he was able to read *or write*, and having received an answer in the negative, requested him to put his mark to the declaration of illiteracy, explaining what he conceived to be its effect thus:—"You hereby sign that you are unable to read or write sufficiently to mark your ballot paper." He then openly marked the ballot paper as instructed by the voter, in the presence of both candidates, their agents and the poll-clerk, all of whom had taken the usual declaration of secrecy. One witness also said that the constable was in the room and unsworn. *Held*, (at the trial and on appeal), that there was no substantial violation of the principle of secret voting laid down by "*The Ontario Election Act*" (*j*), and that the votes were not improperly taken.

Per OSLER, J.A.:—"There is nothing in the Act which makes it necessary that the deputy-returning officer should withdraw with the agents of the candidates and the voter to another room, or which forbids the poll-clerk or other persons lawfully present in the polling booth from remaining there while the voter announces for whom he wishes to vote."

(*h*) H.E.C. 283 (1875). (*i*) 1 Ont. El. Cases 88 (1883-84).
(*j*) R.S.O. (1877) c. 10.

Secs. 171, 172, Notes (b) (c).

Procedure in case a voter cannot mark his ballot paper.

Per STRAGE, C.J.O.: "The illiterate voters were not misled, but the conduct of the deputy-returning officer was perverse. The manifest policy of the Act is that the voting shall be in all cases as secret as under the circumstances it can be. It was not necessary that more than the three persons named in the Act, besides the voter himself, should be present: the deputy-returning officer and one representative of each candidate. The presence of any other officer was not in accordance with the spirit and policy of the Act, and should not have been permitted by the deputy-returning officer."

Per BURTON, J.A.:—"Beyond the slight mistake made by the deputy-returning officer in explaining the declaration, there appears nothing in the course pursued which was not warranted by the Act."

Opinions similar to those of OSLER and BURTON, JJ.A., were expressed by the Judges in *East Clare* (Election Case) (*k*).

(b) "**The form of Schedule E to this Act**" is as follows:

Form of Declaration of Inability to Read, etc.

I, *A. B.*, of , being numbered on the voters' list, for polling subdivision No. , in the city (*or as the case may be*) of and County of , being a legally qualified elector for the said City (*or as the case may be*) of , do hereby declare that I am unable to read (*or* that I am from physical incapacity unable to mark a voting paper, *or* that I object on religious grounds to mark a ballot paper (*as the case may be*).

(*A. B.*, His + mark.)

Dated this day of , A. D. 19 .

NOTE.—*In the case of a person who objects on religious grounds to mark a ballot paper the declaration may be made orally and to the above effect.*

(c) "**The form given in Schedule F**" is as follows:

Form of Attestation Clause to be Written upon or Annexed to the Declaration of Inability to Read, etc.

I, *C. D.*, the undersigned, being the Deputy Returning Officer for polling sub-division No. , for the City (*or as the case may be*) of , do hereby certify that the above (*or as the case may be*) declaration, having been first read to the above-named *A. B.*, was signed by him in my presence with his mark.

(*Signed*) *C. D.*,
Deputy Returning Officer for Polling Sub-Division No. , in the City (*or as the case may be*) of

Dated this day of , A. D., 19 .

Proceedings in case ballot paper cannot be used.

172. A person claiming to be entitled to vote, who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper, may, on delivering to the deputy-returning officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the deputy-returning officer, obtain another ballot paper in the place of the ballot paper so delivered up; and the deputy-returning officer shall immediately write the word "*Cancelled*" upon the ballot paper, and preserve the same. 55 V. c. 42 s. 150; 60 V. c. 15, *Sched.* C (35).

Taken from 38 V. c. 28, s. 16 (= 37 V. c. 5, s. 15, the original of which is Rule 28 in the Schedule to the Imperial Act cited in the last note. *Cf.* "*The Ontario Election Act*," (R. S. O. c. 9,) s. 199. See the note to s. 170.

(*k*) 4 O'M. & H. 163 (1893).

(a) The number of ballot papers given by the deputy-returning officer to voters should correspond with the number of marked papers deposited in the ballot box. If this were not so there would be no sufficient safeguard against dishonest practices on the part of a returning officer. But since a voter may by inadvertence so use his ballot paper as to render it useless for the purpose of his vote, he should not, for that reason, be deprived of his vote. Hence provision is made by this section for the issue, in such a case, of a second ballot paper to the voter, subject to the safeguards mentioned. It is not expressly stated whether in case the voter spoiled the second ballot paper he could obtain a third, but there is nothing in the section which indicates that its provisions are limited to a single instance.

(b) "**Cannot be conveniently used as a ballot paper.**" See *per* MACLENNAN, J.A., in *West Elgin* (Provincial Election) 18 C. L. T. at p. 252, cited in note (h) to s. 174.

(c) "*The Ontario Election Act*," (R.S.O. c. 9) contains two sections, (ss. 107, 108—the former taken from "*The Ballot Act, 1872*," (referred to in the preceding notes)—which permit the elector, upon taking the prescribed oath, to mark and cast a "tendered ballot paper," in case (1) some person has already voted as such elector, or (2) the elector claims that his name has been improperly omitted from the list in the possession of the deputy-returning officer, and that he has a right to vote. "*The Municipal Act*" contains no corresponding provision. See note (a) to s. 89.

173. During the time appointed for polling, no person shall be entitled or permitted to be present in the polling place, other than the officers, candidates, clerks or agents authorized to attend at the polling place and the voter who is for the time being actually engaged in voting; but it shall at all times be lawful for the deputy-returning officer to have present or to summon to his assistance in the polling place, any police constable or peace officer, for the purpose of maintaining order, or of preserving the public peace, or preventing any breach thereof, or of removing any person who, in the opinion of the deputy-returning officer, is obstructing the polling or wilfully violating the provisions of this Act. 55 V. c. 42, s. 151.

Who may be present in polling place.

Taken from 58 V. c. 28, s. 17 (= 37 V. c. 5, s. 109. *Cf.* "*The Ballot Act, 1872*," (imp. Stat. 35 & 36 V. c. 33,) Sched. 1, Rules 21, 51, and "*The Ontario Election Act*," (R. S. O. c. 9) s. 111.

(a) "**Candidates.**" In ss. 21 and 33 of "*The Ballot Act, 1872*," the candidate himself was not mentioned among the persons entitled to be present either at the polling or at the counting of the votes, but the Court of C. P., reading these sections with s. 51, (s. 201 of our Act) held that the candidate has as much right to be present as an officer, clerk or agent authorized to attend the polling place, although the fact of his presence may produce some of the mischiefs which it was the design of the Legislature when enacting vote by ballot, to remove (*l*). Under s. 201 of our Act, however, he may *not* be present at the marking of a ballot under s. 171.

(b) "**Agents authorized to attend.**" "*The Municipal Act*" nowhere requires this authorization to be in writing, nor, on the other hand, does it contain anything corresponding to ss. 208 and 210 of "*The Ontario Election Act*," (R. S. O. c. 9)—the first of which provides that no person disqualified to vote shall act as agent for a candidate; and the second, that in the absence of an agent having a written authority *any elector* present may declare himself to be and may act as a candidate's agent. In order to entitle him to be present in the polling place the agent must however have taken the statutory declaration of secrecy. (s. 199).

(*l*) *Clementson* v. *Mason*, L. R. 10 C. P. 209.

Sec. 174.
Sub-sec. 1.
Notes (a)-(e).

Counting the votes.

174. In every polling place, the deputy-returning officer shall, immediately after the close of the poll, in the presence of the poll clerk (if any) and of such of the candidates or of their agents as may then be present, open the ballot box, and proceed to count the votes as follows:

Section 174 is taken from 38 V., c. 28, s. 18 (=37 V., c. 5, s. 17), with the amendments noted *infra* under the several subsections. *Cf.* Imp. Stat., 35-36 V., c. 33 ("*The Ballot Act, 1872*") Sched I., Rules 33-36, and "*The Ontario Election Act*," (R.S.O., c. 9,) s. 112.

(a) **"The deputy-returning officer shall immediately after the close of the poll."** "Immediately" is a mistake. Section 177 (1) requires that the deputy returning officer shall not "after," but "*at* the close of the poll" *first* fill up and sign the certificate showing the total number of persons who have voted at the polling place.

(b) **"Such of the candidates or their agents as may then be present."** See ss. 201, 202.

(c) **"Open the ballot box."** which he locked and sealed before the commencement of the polling. See *ante*, s. 164.

Rejected ballots.

1. He shall examine the ballot papers, and any ballot paper which has not on its back the name or initials of the deputy-returning officer, or on which more votes are given than the elector is entitled to give, or on which anything, except the initials or name of the deputy-returning officer on the back, is written or marked, by which the voter can be identified, or which has been torn, defaced, or otherwise dealt with by the voter so that he can thereby be identified, shall be void, and shall not be counted.

Uncertain ballots.

A ballot paper on which votes are given for a greater number of candidates for any office than the voter is entitled to vote for, shall be void as regards all the candidates for such office, but shall be good as regards the votes for any other offices in respect to which the voter has not voted for more candidates than he is entitled to vote for. 55 V., c. 52 s. 152 (1); 60 V., c. 15, *Sched* C. (36).

The first sentence of this subsection is taken from 38 V., c. 28, s. 18—the words "or which has been torn, defaced or otherwise dealt with by the voter so that he can thereby be identified" having been inserted by 60 V., c. 15, Sched. C (36). The second sentence was added in 1877 by 40 V., c. 7, Sched. A (109). *Cf.* "*The Ontario Election Act*," (R. S. O., c. 9), s. 112 (1), (2), (3).

Who may be present.

(d) **"He shall examine the ballot papers."** Two agents for each candidate are entitled to be present (s. 175) and to take part in this examination and counting of the ballot papers (*a*). Any candidate may also be present in addition to his two agents or in the stead of one of them (*b*).

Ballots not initialed by D. R. O.

(e) **"Any ballot paper which has not on its back the name or initials of the deputy-returning officer."** See ss. 165 (6) and 166 and the notes thereto. The duty of the deputy-returning officer under this subsection is plain and imperative even though the want of the name or initials may have been due to his own neglect or default. But upon a recount of the votes the Judge is not thus restricted (*c*), and he should count such ballots, if they are otherwise regular; for "the neglect of the officer should not be visited on the elector or the candidate, unless it is apparent that it has caused or might have caused some substantial injustice" (*d*). In *Thornbury* (*e*), it was held by the Q.B.D. that a

(*a*) See subsec. 2, *infra*. (*b*) See note (b) to s. 175.

(*c*) Sec. 189 (8) (2), last clause.

(*d*) *Per* BLAKE, V.C., in *Monck* (Dominion Election) H. E. C. 725 (1876); and see *Queen's County* (Dominion Election), 7 S. C. R. 247 (1883); *Bothwell* (Dominion Election), 8 S. C. R. 676 (1884); *Stepney*, 4 O'M. & H. 34 (1886), at p. 43; *East York* (Dominion Election), 32 C.L.J.N.S. 481 (1896); *West Huron* (Provincial Election), (1898), referred to in note (h) *infra*.

(*e*) 16 Q. B. D. 739 (1886).

ballot paper which conforms in other respects to the requirements of "*The Ballot Act, 1872*," (*a*), is not void because it has not on its face the official mark which is directed by s. 2 of that Act to be marked "on both sides" of the ballot paper. "*The Ontario Election Act*" now provides for this case. See s. 112 (2) of that Act, which is taken from 58 V. c. 4, s. 15 (1895). As to the civil and *quasi*-criminal liability of the deputy returning officer in case of neglect or default, see s. 166 and notes (a) and (b) thereto.

(f) "Or on which more votes are given than the elector is entitled to give." When more votes appear upon the ballot paper than the elector is entitled to give, it cannot be decided which, if any, of them are the proper votes. In such a case the ballot paper must therefore be rejected (*b*) for uncertainty. This is, however, controlled by the final clauses of the subsection. So far as the intention of the voter is clearly apparent, he is not to lose his franchise. Too many votes.

(g) "Or on which anything . . . is written or marked by which the voter can be identified." (N.B.—*The comma after "marked" in the text of the Revised Statutes is a printer's error.*) It is not declared that all ballots having on them anything except the name or initials of the deputy-returning officer shall be rejected, but only such as have marks *by which the voter can be identified*. "It is not every writing or every mark . . . which is to make the paper void, but only such a writing or mark as is one by which the voter can be identified."(*c*) "The Statute says that the mark must be one by which the voter *can* [not *might possibly*] be identified."(*d*) Identifying marks.

Whether or not the marking upon, or otherwise dealing with, the ballot paper has been such that the voter can thereby be identified, must in every case be a question of fact; and it is therefore not surprising that there should have been very numerous decisions, and much conflict of judicial opinion.

Many of the earlier cases turn upon the question whether the ballot paper was properly marked "on the right hand side opposite the name" of the candidate (s. 168); but since the addition to that section in 1880 (*e*) of the words "or at any other place within the division which contains the name of the candidate," some of these decisions have ceased to be applicable (*f*).

The following tabular view may prove useful in the counting of ballots under both this Act and "*The Ontario Election Act*."

A SUMMARY OF THE LAW RELATING TO THE COUNTING OF BALLOTS.

I. As to the place of the mark. This must be "on the right hand side opposite the name of any candidate . . . or at any other place within the division which contains the name of such candidate."

1. If the cross extends beyond the division containing the name of one candidate into that which contains the name of another candidate, the ballot will be—

(a) Good (for the first named candidate) if the intersection (crossing) of the two lines is clearly in his compartment (*a*).

(b) But bad

(1) If mark not unmistakeably above or below the line separating the names of candidates. (*b*)

(*a*) Imp. Stat. 35-36 V. c. 33.

(*b*) See *North Victoria*, (Dominion Election), 1 H.E.C. 671 (1875); *Woodward* v. *Sarsons*, L.R 10 C.P. 733, 748 (1875); *Phillips* v. *Goff*, 17 Q.B.D. 805, 814 (1886).

(*c*) *Per* Lord COLERIDGE, C.J., in *Woodward* v. *Sarsons* (1875), L. R. 10 C.P. 733 at p. 741.

(*d*) *Per* HAWKINS, J, *Cirencester*, 4 O'M. & H. 194, 198 (1893); followed by MACLENNAN, J.A., in *West Elgin* (Provincial Election), 34 C.L.J.N.S. 461, 465; 18 C.L.T. 249, 254 (1898).

(*e*) By 43 V. c. 24, s. 4; (and to the corresponding section of "*The Ontario Election Act*" in 1879 by 42 V. c. 4, s. 13.)

(*f*) See, however, *West Elgin* (1898), referred to *supra*, in note (c) to s. 168.

(*a*) *Berwick* (1880), 3 O'M. & H., p. 181; *McShane* v. *Villeneuve* (1894) (Provincial Election) Onc. Rep. 5 S.C., p. 164, (Class 5), and p. 168; *West Elgin* (1898), 34 C.L.J.N.S. 465 (No. 6145); 18 C.L.T., p. 254.

(*b*) *Queen's County* (1883), (Dominion Election) 7 S.C.R. p. 251; *Stepney*, 4 O'M. & H. 34 (1880), at p. 37; *Buckrose*, 4 O'M. & H. 110 (1886), at p. 111; *Haldimand* (Dominion Election), (1888), 15 S.C.R., p. 496, 1 Ont. El. Cas. 529; *McShane* v. *Villeneuve*, p. 168.

Sec. 174.
Sub-sec. 1.
Note (g).

(2) The ballot is :

Bad. (1) If the cross is wholly outside any division containing the name of any candidate (*d*).

(2) If cross is in proper place but on back of ballot paper (*e*).

3. Where ballot papers contain names of four candidates, of whom two may be voted for—

(a) Ballots with two crosses, one on the line above the first name and one on the line above the second name **good** for the two candidates first named (*f*).

(b) Ballots with two crosses, one on the line above the first name and one on the line dividing the second and third compartments **good** for first named candidate only (*g*).

II. As to the nature of the mark.

It may be made either,—

(1) With a pencil. See note (a) to s. 168 ; or

(2) With ink (*h*).

(3) With a charred stick or by means of an indentation with a blunt knife or some other instrument (*i*).

III. As to the shape of the mark.

(1) A cross, thus **X**, is **good**. See s. 168 (1) and note (c) thereto.

(2) An elaborated cross. The following have been held

Good :

(a) With feet so as to look like the letter **X** (*j*).

(b) With lines across top and bottom, thus **X̲** (*k*).

(c) A double cross (*l*).

(d) A cross with a line or lines through the intersection, so that the figure approaches in form to a star (*m*).

(e) Several lines crossing another line or lines (*n*).

(3) An incomplete cross.

(a) **Good.**

(1) An inverted "V," thus **Λ** (*o*).

(2) A "Y," thus **Y**. (*p*).

(b) **Bad.**

(1) A single stroke, vertical, horizontal or diagonal (*q*).

(2) Two single strokes (*r*).

(*d*) *Berwick*, p. 182 ; *McShane* v. *Villeneuve*, pp. 164 (6), p. 168.

(*e*) *South Wentworth* (Provincial Election) (1879), H.E.C. at p. 536 ; *Berwick*, p. 182 ; *Queen's County*, p. 254 ; *Buckrose*, p. 111 ; *West Elgin*, 18 C.L.T. p. 253,—decisions which should be followed in preference to that to an opposite effect in *Monck* (Dominion Election), (1876), H.E.C. p. 734 ; 12 C. L. J. N. S. p. 116, (foot of col. 2) ; *East York* (Dominion Election), 32 C. L. J. N. S. 481 (1896), at p. 483. (*f*) *Queen's County*, p. 250. (*g*) *Ibid*, p. 251.

(*h*) *Wigtown* (1874), 2 O'M. & H. pp. 218, 219, 223 ; *North Victoria* (Dominion Election (1875), H.E.C. p. 680 *per* WILSON, J. ; *Monck* (1876), H.E.C. pp. 732, 733 ; 12 C.L.J.N.S. p. 115 ; *East York*, p. 483. (*i*) *Cirencester* (1869), 4 O'M. & H. p. 197, *per* HAWKINS, J. ; *Berwick*, p. 181.

(*j*) *North Victoria*, pp. 678 (6), 679 ; *McShane* v. *Villeneuve*, pp. 164 (1), 166 ; *East York*, p. 483. (*k*) *Wigtown*, p. 221 ; *North Victoria*, pp. 678 (6), 679.

(*l*) *Monck*, H.E.C. p. 733 ; 12 C.L.J.N.S. p. 117.

(*m*) *Woodward* v. *Sarsons* (1875), L.R. 10 C.P. pp. 737 (7), 749 ; *North Victoria*, pp. 678 (6), 679 ; *Monck*, H.E.C. p. 732 ; 12 C.L.J.N.S. p. 116.

(*n*) *Monck*, H.E.C. p. 730 ; 12 C.L.J.N.S. p. 115, *per* BLAKE, V.C.

(*o*) *Bothwell* (Dominion Election) (1884), 8 S.C.R. p. 696.

(*p*) *Queen's County*, p. 252,—to be followed rather than the contrary decision in *McShane* v. *Villeneuve*, p. 168.

(*q*) *Wigtown*, pp. 218, 221 ; *South Wentworth*, H.E.C. p. 534 ; *North Victoria*, pp. 674 (1), 680 ; *Monck*, pp. 723, 732-3-4 ; *McShane* v. *Villeneuve*, pp. 164, 168 ,to be followed in preference to *Woodward* v. *Sarsons*, pp. 737 (6), 749, and *Phillips* v. *Goff* (1886), 17 Q.B.D. 814.

(*r*) *Monck*, H.E.C. p. 731 12 C.L.J.N.S. p. 116

(4) An irregular or shaky mark.

(a) Good. So long as it does not lose the form of a cross, (*a*).

(b) Bad. When, instead of resembling a cross it takes a different form, (*b*).

(1) Two single strokes (*l*).

(2) A number of lines, parallel or otherwise, *but not making a cross* (*m*).

(3) A circle (*c*).

(4) Marks like this) (, or this)((*m*).

IV. Ballots with additional marks are

(a) Good.

(1) If with a second cross due to the blotting of ink or the rubbing off of black-lead when the ballot was folded (*n*).

(2) If more crosses than one in the same compartment (*g*).

(b) Bad.

(3) With any other plain and substantial mark in the front of the ballot paper in addition to and separate from the voter's cross (*z*).

But **good,**

(4) If the mark appears to be inadvertent and not such that the voter could thereby be identified (*o*).

(5) Or if the other mark has been erased or obliterated (*b*)

Bad.

(6) With any mark or marks (other than the initials of the deputy returning officer) on the back of the ballot paper (*e*).

(7) With any name or initials or any other writing (other than the initials of the deputy-returning officer) on the front or back of the ballot paper (*d*).

But in *West Elgin (MacNish* v. *McDiarmid)*, 34 C.L.J.N.S. 461; 18 C.L.T. 249 (1898), ballots (otherwise properly marked) were allowed, one of which had on its face the word "MacNish," another (on the back) "Mr. MacNish, West Elgin," a third (on the back) the initials "D. F." as well of those of the deputy-returning officer; but a fourth ballot having on the back the name "John Cains," was rejected.

(h) "Torn, defaced, or otherwise dealt with by the voter so that he can thereby be identified." In *South Wentworth*, H. E. C. 531 (1879), it appeared that a voter, after marking his ballot had inadvertently torn it in two. The returning officer refused to give him another ballot paper (*e*), but placed Torn or defaced ballots

(*a*) *Wigtown*, pp. 217, 221; *Monck*, H.E.C. p. 730; 12 C.L.J.N.S. p. 115; *McShane* v. *Villeneuve*, pp. 164 (1), 166; *East York*, p. 483; *West Elgin*, 34 C.L.J.N.S. p. 465; 18 C.L.T. p. 254; and see *Cirencester*, 4 O'M. & H. *per* HAWKINS, J. at p. 194.

(*b*) *Monck*, H.E.C. p. 734; 12 C.L.J.N.S. p. 116. (*c*) *North Victoria*, pp. 678, 681.

(*d*) *Wigtown*, p. 222; *Monck*, H.E.C., p. 733; 12 C.L.J.N.S. p. 117; *Bothwell*, p. 696; *Stepney* p. 37. (*e*) *Queen's County*, 7 S.C.R. 254.

(*f*) *Monck*, H.E.C. pp. 732, 733; 12 C.L.J.N.S. pp. 115, 117; *McShane* v. *Villeneuve*, p. 168

(*g*) *Woodward* v. *Sarsons*, pp. 737 (2 and 3), 749; *Monck*, H.E.C. pp. 724, 725; 12 C.L.J.N.S p. 116; *Bothwell*, pp. 696, 697; *Phillips* v. *Goff*, p. 813.

(*h*) *Wigtown*, p. 221; *Buckrose*, p. 111; *McShane* v. *Villeneuve*, pp. 164 (4), 167—to be preferred to the contrary decisions in *Woodward* v. *Sarsons*, p. 736 (5), 737(9), 749, and *West Elgin*, 34 C.L.J.N.S. p. 461; 18 C.L.T. p. 253. In *Stepney*, p. 39, the two Judges were divided in opinion as to such a ballot.

(*i*) *Monck*, H.E.C. 733; 12 C.L.J.N.S. p. 116; *Queen's County*, p. 253; *McShane* v. *Villeneuve* pp. 164 (1), 167; *East York*, p. 483.

(*l*) *Monck*, H.E.C. pp. 733, 734; 12 C.L.J.N.S. p. 117; *West Elgin*, 34 C.L.J.N.S. p. 464; 18 C.L.T. p. 253.

(*m*) *Wigtown*, p. 215; *McShane* v. *Villeneuve*, pp. 164, 169. But in *Buckrose*, p. 111, a ballot properly marked (on the face) for the respondent was allowed, although it had on the back a cross opposite the name of the petitioner.

(*n*) *Wigtown*, p. 217; *Woodward* v. *Sarsons*, pp. 736 (1), 737 (9), 749; *North Victoria*, p. 681 *Monck*, H.E.C. p. 731; 12 C.L.J.N.S. p. 115; *McShane* v. *Villeneuve*, pp. 164 (4), 167; *West Huron*, (1898) 18 C.L.T. 247; 34 C.L.J.N.S. 461.

(*o*) See s. 103 of R.S.O. (1877), c. 10 (= s. 172 of this Act).

Sec. 174. Sub-sec. 1. Notes (h) (i).

in the box the torn ballot paper, which was rejected on the counting of the votes. The evidence showed that the act was not done by the voter so that he could thereby be identified. On a scrutiny of the ballots before Moss, C. J. O., and GALT, J., the vote was allowed. So in *West Elgin* (1898) (Provincial Election), where a considerable portion of the blank paper on the right hand side of a ballot had been removed—about three-tenths of the whole width—the removed part having no printing on it, MACLENNAN, J. A., allowed the vote, holding that there was nothing by which the voter could be identified, and calling attention to the fact that the only case in which a voter can give back his ballot paper and ask for a new one is where the first has been dealt with "in such a manner that it cannot be conveniently used as a ballot paper" (s. 172), and that this was not the case here (*b*). The Election Acts under which the above cases were decided do not, however, contain the words now under consideration; yet in *West Huron* (Provincial Election) (1898) (*c*) OSLER, J. A., rejected a ballot from which a strip (having upon it the official number) was torn off and missing, holding that this must be presumed to have been done by the voter.

General rules.

(*i*) **General Principles.** The following general rules as to the principles which should govern the allowance or rejection of doubtful ballots may be of service not only to returning officers and deputy-returning officers but even to Judges also:

"Wherever the mark evidences an attempt or intention to make a cross though the cross may be in some respects imperfect, the ballot should be counted, unless from the peculiarity of the mark made it can be reasonably inferred that there was not an honest design simply to make a cross, but there was also an intention so to mark the paper that it could be identified, in which case the ballot should be rejected. But if the mark made indicates no design of complying with the law, but on the contrary, a clear intent not to mark with a cross as the law directs, as, for instance, by making a straight line or a round "O," then such non-compliance with the law renders the ballot null. The irresistible presumption from such a plain and wilful departure from the terms of the Statute is that the ballot was so marked for a sinister purpose (*d*)."

"With regard to those votes to which objections have been raised, we have proceeded upon what we think was the true intention of the Legislature in framing the Act of Parliament. We have, first of all, asked ourselves whether the voter received his paper with the intention of voting. The mere fact that he has applied for and received a voting paper affords abundant evidence that such was his intention. Then we have looked at the face of the paper itself, with a view to see whether or not the voter has by any mark thereby indicated the person for whom he wished and intended to vote; and if we have found such a mark, we have upheld the vote, regardless of the very technical, and (we think) unsubstantial objections which have been allowed in some of the earlier cases to be found in the Reports, . . . our view being that we ought to interpret the Act liberally, and (subject to other objections) to give effect to any mark on the face of the paper which, in our opinion, clearly indicated the intention of the voter, . . . whether such mark was made with pen and ink, pencil, or was even an indentation made in the face of the paper, and whether on the right or left hand of the candidate's name, or elsewhere within his compartment on the voting paper. Of course any deviation from the course pointed out in the Act tends to create difficulties such might be avoided by a rigid observance of it. It is highly prudent, therefore, to adhere to the directions of the Act, though we do not think it essential (*e*)."

Deputy returning officer to note objections taken to ballot papers at the counting, and

2. The deputy-returning officer shall take a note of any objection made by a candidate, his agent or any elector authorized to be present, to any ballot paper found in the ballot box, and shall decide any question arising out of the objection.

(*b*) 34 C.L.J.N.S. 461, 463; 18 C.L.T. 249.

(*c*) 34 C.L.J.N.S. 461; 18 C.L.T. 247. And see *Buckrose*, (1886) 4 O.M. & H. 110 at p. 111. (corner torn off; ballot rejected.)

(*d*) *Per* RITCHIE, C.J., FOURNIER, HENRY, and GWYNNE, JJ., in *Bothwell* (Dominion Election) (1884), 8 S.C.R. 576.

(*e*) *Per* HAWKINS and VAUGHAN WILLIAMS, J.J., in *Cirencester*, 4 O.M. & H. 194 (1896).

Secs. 174, 175, Sub secs. 3-6. Notes (j)-(k); (a).

3 Every objection shall be numbered, and a corresponding number shall be placed on the back of the ballot paper, and initialed by the deputy-returning officer.

Added by 39 V. c. 5, s. 11 (1875). *Cf.* R. S. O. c. 9, s. 112 (4-5).

(j) "**Any elector authorised to be present.**" There seems to be no provision authorizing an elector to be present unless he is an agent. See ss. 175, 176 and the first clause of this section. The mistake has evidently arisen in copying the subsection from the corresponding provision in "*The Ontario Election Act*," s. 112 (4). See note (b) to s. 173.

number objection and ballot paper to correspond.

4. The deputy-returning officer shall indorse "*Rejected*" on any ballot paper which he rejects as invalid, and shall indorse "*Rejection objected to*," if any objection is made to his decision.

Indorsing ballot paper.

Taken from 38 V. c. 28, s. 18 (2). *Cf.* R. S. O. c. 9, s. 112 (6); Imp. Stat. 35-36 V. c. 33, Sched. 1, Rule 36.

(k) The directions contained in this and the next subsection are for the purpose of enabling the Court or a Judge afterwards on a scrutiny to identify the ballots and decide on the propriety or otherwise of their rejection.

5. The deputy-returning officer shall then count up the votes given for each candidate upon the ballot papers not rejected, and shall make up a written statement, in words as well as in figures, of the number of votes given for each candidate, and of the number of ballot papers rejected and not counted by him, which statement shall be made under the several heads:—

Statement.

(*a*) Name or number of ward or polling subdivision and of the municipality, and date of election;

(*b*) Number of votes for each candidate;

(*c*) Rejected ballot papers.

Taken from 38 V. c. 28, s. 18 (3) as amended by 39 V. c. 5, s. 14. *Cf.* R. S. O. c. 9, s. 112 (7); Imp. Stat. 35-36 V. c. 33, Sch. 1, Rule 36.

6. Upon the completion of the written statement, it shall be forthwith signed by the deputy-returning officer, the poll clerk, (if any), and such of the candidates or their agents as are present, and desire to sign such statement. 55 V. c. 42, s. 152 (2-6).

Statement to be signed.

Taken from 38 V. c. 28, s. 18 (4). *Cf.* the sections referred to under subs. 5.

175. No more than two agents for any candidate shall be entitled to be present at the same time at the counting of the votes. 55 V. c. 42, s. 153.

Agents entitled to be present.

Taken from 38 V. c. 28, s. 18 (5). 37 V. c. 5, s. 17 (6). Identical with s. 113 of "*The Ontario Election Act*," (R. S. O., c. 9).

(a) "*The Ballot Act, 1872*," (Rule 51 of Sched. 1) requires that the name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer at least one day before the polling, but it does not limit the number of agents who may be appointed for any polling place (*a*).

(*a*) See a corresponding section (s. 197) in "*The Ontario Election Act*" as to the agent through whom any payment, etc. on account of the election may be made. See also note (b) to s. 173.

Secs. 175-177 (1).

Notes (b); (a).

(b) Except in the marking of a ballot under s. 171, a candidate may himself be present in addition to the two agents or instead of one of them (s. 201); and, it seems, he has also a general right to be present irrespective of the purpose of his attendance (*b*).

176. Every deputy-returning officer, upon being requested so to do, shall deliver to the persons authorized to attend at his polling place, a certificate of the number of votes given at that polling place for each candidate, and of the number of rejected ballot papers. 55 V. c. 42, s. 154.

Taken from 39 V. c. 5, s. 15. *Cf.* "*The Ontario Election Act*" (R. S. O. c. 9) s. 115.

(a) **"Persons authorized to attend."** *Cf.* the preceding section; also s. 173, ("agents authorized to attend"); and s. 201, ("agents may (in pursuance of this Act) be authorized to attend." The words may fairly include the poll-clerk and any candidate. "*The Ontario Election Act*" (s. 115) provides for the delivery of the certificate "in the absence of the candidates or agents, to the electors present representing the candidates respectively." In voting on by-laws "the persons authorized to attend" (s. 363) are defined by ss. 343 and 345.

Deputy-returning officer's duties after votes are counted.

177.—(1) Every deputy-returning officer shall, at the close of the poll certify under his signature on the voters' list in full words the total number of persons who have voted at the polling place at which he has been appointed to preside; and, at the completion of the counting of votes after the close of the poll, shall, in the presence of the agents of the candidates, make up into separate packets, sealed with his own seal, and the seals of such agents of the candidates as desire to affix their seals, and marked upon the outside with a short statement of the contents of such packet, the date of the day of the election, the name of the deputy-returning officer, and of the ward or polling subdivision and of the municipality.

(*a*) The statement of votes given for each candidate and of the rejected ballot papers:

(*b*) The used ballot papers which have not been objected to and have been counted;

(*c*) The ballot papers which have been objected to, but which have been counted by the deputy-returning officer;

(*d*) The rejected ballot papers;

(*e*) The spoiled ballot papers;

(*f*) The unused ballot papers;

(*g*) A statement of the number of voters whose votes have been marked by the deputy-returning officer under section 171 of this Act with the declarations of inability; and the notes taken of objections made to ballot papers found in the ballot-box. 55 V. c. 42, s. 155 (1); 60 V, c. 3, s. 3.

The first sentence is taken from 38 V. c. 28, s. 20, the rest of the section down to, and inclusive of clause (*a*), and including also clauses (*d*), (*e*) and (*f*), from 38 V. c. 28, s. 19. Clause (*b*) is also to be found there, but the present wording is taken from R. S. O. (1877), c. 174, s. 150 (1), (*b*). Clause (*c*) was added by 39 V. c. 5, s. 12; and clause (*g*) in its present form is found first in the Act of 1883, (46 V. c. 18), s. 154, the requirement of the previous Acts that the voters' list should be enclosed in this packet having been struck out in 1881 by 44 V. c. 24, s. 2, when the next subsection (2) was amended as shown in the note thereto. *Cf.* "*The Ontario Election Act*," (R. S. O. c. 9) ss. 114, 116, and "*The Ballot Act, 1872*" (Imp. Stat. 35 & 36 V. c. 33, Sched. 1, Rule 29.

(*b*) *Clementson* v. *Mason*, L. R. 10 C. P. 209.

Sec. 177 (1) (2).

Note (a).

(a) "Every deputy-returning officer shall . . . make up into separate packets . . sealed with his own seal," etc. In *Re Ottawa Municipal Election*, (a) two applications were made for writs of mandamus to the County Judges of Carleton commanding them to proceed with the recount of the ballot papers cast at the annual municipal elections in two of the city wards, both Judges having stopped because, on opening the ballot boxes, it appeared that the various classes of ballots had not been made up into separate packets, sealed and authenticated as required by this section. The applications were refused with costs, and it was held that the remedial provisions of s. 204 were inapplicable to such a case. BOYD, C., in giving judgment says (p. 107):

> "It appears to be the clear meaning of the law that there should be some substantial process of sealing and securing the various ballots entrusted to the deputy-returning officer and made use of for the purposes of the election."

And (p. 108):

> "When the provisions of the statute have been followed the ballot papers come before the County Judges carrying their own authentication, as being those which were sealed up at the close of the first count; for s. 166 (b) provides that any indorsement appearing on any package of ballot papers produced by the clerk shall be evidence of such papers being what they are stated to be by the indorsement. But without this, how can the Judges know that the unsealed and unsecured ballots are the same and in the same state and condition as when deposited by the voters? Because no means are given upon the recount by which he can take evidence to show with what other or equivalent care and custody the ballots have been protected."

At a municipal election in England under "*The Ballot Act, 1872*," (c) twenty ballot papers were marked by the deputy-returning officer by the direction of voters who were unable to read. Each of these ballot papers was placed by the deputy-returning officer in the ballot box wrapped up in the declarations of inability to read which had been made by these voters respectively. These declarations of inability to read were not made up into a separate packet, sealed with the seal of the deputy-returning officer, and so delivered to the clerk, (d) but were delivered to him in the ballot box with the ballot papers as above mentioned. These voters could have been, but were not in fact, identified by the clerk at the counting of the votes. *Held*, that, notwithstanding this breach by the deputy-returning officer of the directions in the rules, the votes in question were properly counted (e).

Declaration by deputy-returning officer as to use of voters' list and poll-book.

(2) Before returning the voters' list and poll-book to the clerk of the municipality, the deputy-returning officer shall make and subscribe before such clerk, or a Justice of the Peace or before the poll-clerk, his declaration under oath that the voters' list and poll-book were used in the manner prescribed by law, and that the entries required by law to be made therein were correctly made; which declaration shall be in the form of Schedule G to this Act and shall thereafter be annexed to the voters' list: and such voters' list, poll-book and declaration may be inspected at any time, in presence of the clerk, by any elector of the municipality. 55 V. c. 42, s. 155 (2): 58 V. c. 42, s. 8: 60 V. c. 3, s. 3.

Under 39 V. c. 5, s. 13 (which was the original of this subsection), the deputy-returning officer was required to make the declaration (Sched. G) "before placing the voters' list in its proper packet." This was altered to its present form; and the final clause permitting any elector to inspect the voters' list, declaration, etc., added, by 44 V. c. 24, s. 3. *Cf.* R.S.O. c. 9, ss. 120, 121, 174. The words "and poll-book" in line 5 were added in 1895 by 58 V. c. 42, s. 8.

(a) 26 O. R. 106 (1895). (b) Now s. 192.

(c) Imp. Stat. 35 & 36 V. c. 33.

(d) Pursuant to the Rules in the Schedule to the Imperial Statute corresponding to s. 177, sub ss. (1 *g*) and (3) of this Act.

(e) *Woodward* v. *Sarsons*, L. R. 10 C. P. 733, 734 (1875). And see *East Clare* (Election Case) 4 O'M. & H. 163 (1893).

Sec. 177 (2)-(4). Note (b).

(b) "The form of Schedule G to this Act" is as follows:

Oath of Deputy Returning Officer after the Closing of the Poll.

I, *C. D.*, the undersigned deputy-returning officer for polling sub-division No. , of the city (*or as the case may be*) of , in the county of , do solemnly swear (*or if he is a person permitted by law to affirm*, do solemnly affirm) that to the best of my knowledge the annexed voters' list and poll book used in and for the said polling sub-division No. of the said city (*or as the case may be*) were so used in the manner prescribed by law, and that the entries required by law to be made therein were correctly made.

(*Signed*) C.D.,
Deputy Returning Officer.

Sworn (*or* affirmed) before me at , this day of A.D., 19 .

(*Signed*) X.Y.,
Justice of the Peace.
Or A.B.,
Clerk of the Municipality of .

NOTE.—*The foregoing oath is to be annexed to the voters' list used at the election.*

Packets of ballot papers, etc., to be delivered to the clerk of municipality.

(3) If the clerk of the municipality is not himself performing the duties of deputy-returning officer, the deputy-returning officer shall forthwith deliver such packet personally to the clerk of the municipality; and if, owing to illness or other cause, he is unable to do so, he shall deliver such packets to a person chosen by him for the purpose of delivering the same to the clerk; and shall mention on the outside of the cover of each of the packets the name of the person to whom the same has been so delivered, and shall take a proper receipt therefor: he shall also forthwith return the ballot box to the clerk of the municipality. 55 V. c. 42, s. 155 (3).

Taken from R.S.O. (1877), c. 174, s. 150 (3). *Cf.* 37 V. c. 5, s. 18 (2); 38 V. c. 28, s. 19 (2); R.S.O. c. 9, s. 117; Imp. Stat. 35 & 36 V. c. 33, Sched. 1, Rule 38.

Return of ballot boxes, etc., in cities and towns.

(4) In cities and towns, each deputy-returning officer, as soon as the duties enumerated in subsections 1 and 2 of this section have been performed, (or in case of the illness or inability as aforesaid, the person chosen by him,) shall forthwith proceed directly from the polling place to the office of the clerk of the municipality with the ballot box and the said packets, and shall there personally and forthwith on the same day, and as soon as is possible after leaving the polling place deliver the same to the clerk of the municipality; and no deputy-returning officer in a city or town shall under any circumstances take the ballot box or packets, or allow the same to be taken to his home, or house, or office, or place of business, or to any house or place whatsoever other than the office of the clerk of the municipality. And for any breach of the provisions of this subsection a deputy-returning officer shall incur the penalties provided in sections 193 and 194 of this Act. The returning officer shall remain at his office on the evening of the polling day until the said boxes have been so returned to him. 59 V. c. 51, s. 3; 60 V. c. 3, s. 3.

Taken from 59 V. c. 51, s. 3 (1896), the last clause of which has been omitted by the Revisers of 1897 under the authority of 60 V. c. 3, s. 3, as wholly superfluous.

Secs. 177 (5) 178.

Notes (c) (d).

Statement to be made by deputy-returning officer on return of ballot papers, etc.

(5) The packets shall be accompanied by a statement made by the deputy-returning officer, shewing the number of ballot papers entrusted to him, and accounting for them under the heads of (1) Counted; (2) Rejected; (3) Unused; (4) Spoiled; (5) Ballot papers given to voters who afterwards returned the same, declining to vote: and (6) Ballot papers taken from the polling place: which statement shall give the number of papers under each head, and is in this Act referred to as the "Ballot Paper Account."

If dispute as to result arises, how to be settled.

(6) If the deputy-returning officer and one or more of the candidates or of the agents of the candidates present at the examination and counting of the ballot papers are unable to agree as to the written statement to be made by the deputy-returning officer, the packages of ballot papers made shall be broken open by the clerk of the municipality on the day succeeding the polling day, in the presence of the deputy-returning officer and of such of the candidates or their agents as may be present, at an hour and place to be appointed by the deputy-returning officer, and of which they have been notified by him; but if the distance necessary to be travelled is such that the appointed place cannot be reached on the day following the poll, a reasonable time shall be allowed, and no more, for the purpose of coming before the clerk of the municipality; and the clerk of the municipality, after examining the ballot papers, shall finally determine the matter in dispute, sign the written statement hereinbefore mentioned, and shall forthwith, in the presence of the deputy-returning officer and of such of the candidates or their agents as may then be present, securely seal up the ballot papers which have been examined by him in their several packages as before. 55 V. c. 42, s. 155 (4-5).

Taken from 38 V. c. 28, s. 19 (3) (4), the wording of the last subsection being somewhat amended in the Revision of 1897. (*Vide* 60 V. c. 3, s. 30. *Cf.* subs. 5 with R.S.O. c. 9, s. 118; Imp. Stat. 35 & 36 V. c. 33, Sched. I, Rule 30.

(c) "**The Ballot Paper Account.**" The object of this account is to enable the clerk of the municipality, who gave out the ballot papers, to make a comparison between the ballots given out and those returned, so as to detect whether an improper use has been made of any of the ballot papers.

(d) "**The clerk shall finally (?) determine the matter,**" etc. But his determination cannot bind any Court or Judge before whom the election may afterwards be contested, and a scrutiny had.

Clerk to cast up votes and declare who is elected to local council.

178. The clerk of the municipality, after he has received the ballot papers and statements before mentioned of the number of votes given in each polling place, shall, without opening any of the sealed packets of ballot papers, cast up from the statements the number of votes for each candidate; and shall, at the town hall, or, if there is no town hall, at some other public place, at noon on the day following the return of such ballot papers and statements, publicly declare to be elected to the council of the local municipality the candidate

Secs. 178-180. Notes (a); (a) (b).

or candidates having the highest number of votes; and he shall also put up in some conspicuous place a statement under his hand shewing the number of votes polled for each candidate for election to the council of the local municipality. 55 V. c. 42, s. 156.

Taken from 38 V. c. 28, s. 21. *Cf.* 27 V. c. 16, s. 9; 37 V. c. 5, s. 19; R.S.O. c. 9, s. 123 (1).

(a) **Powers of the clerk.** The duty of the clerk under this section is ministerial, not judicial. He is simply to declare elected "the candidate or candidates *having* (*i.e.* appearing from the statement signed by the deputy returning officers to have) the highest number of votes." The clerk has no power to decide as to the qualification of any candidates to be elected; that must be left for the decision of a competent tribunal. (*a*)

In case of a tie clerk to have a casting vote.

179.—(1) In case it appears, upon the casting up of the votes as aforesaid, that two or more candidates have an equal number of votes, the clerk of the municipality, (or other person appointed by by-law to discharge the duties of clerk in case of his absence or incapacity through illness), whether otherwise qualified or not, shall, at the time he declares the result of the poll, give a vote for one or more of such candidates, so to decide the election for the local municipality.

Taken from the Act of 1873, (36 V. c. 48), s. 114. The provision that the returning officer shall have the casting vote in case of a tie appears first in 12 V. c. 81, s. 160 (1849). *Cf.* 27 V. c. 16, s. 10; R.S.O. c. 9, s. 123.

(a) **Why the "casting vote" is given.** It is the ancient rule of the House of Lords that, in case of an equal division of votes upon any question, the question is "*praesumitur pro negante*" (see s. 274); but it is manifest that this cannot apply where an office is to be filled, and where, if all the candidates therefor have the same number of votes, the office must remain vacant unless some one is empowered to give a casting vote.

Under the Act of 1849, the clerk (returning officer) could only vote before closing the poll and not afterwards. (*b*)

but otherwise not to vote.

(2) Except in such case, no clerk of the municipality shall vote at any local municipal election held in his municipality.

(b) "**At any local election.**" Nor at the voting upon a by-law. See s. 365 and note (a) thereto. But the local clerk may vote for county councillors (s. 85).

Deputy returning officers, etc., may vote if qualified.

(3) All deputy-returning officers and persons employed as deputy-returning officers and poll clerks shall, if otherwise qualified, be entitled to vote. 55 V. c. 42, s. 157.

Taken from 38 V. c. 28, s. 22 (1874). The disqualification of deputy-returning officers and poll-clerks to vote at elections to the Legislative Assembly, (created by 32 V. c. 21, s. 39), was removed during this same Session (Nov.-Dec. 1874) by 38 V. c. 3, s. 27.

County Council Elections.

Ballots for county councillors how to be dealt with.

180. At the election of a member or members of a county council, the ballots shall be placed in the same ballot box as the ballots for the members of the council of a local municipality where an election for such local municipality is being

(*a*) See *Reg.* v. *Ledgard*, 8 A. & E. 535; *Reg. ex rel. Stevenson* v. *Blanchard*, *Reg. ex rel. Duncan* v. *Laughlin*, 2 Man. Rep. 75 (1885); *Pritchard* v. *Mayor of Bangor*, 13 App. Cas. (H. of L.) 241 (1888), and note (b) to s. 128, *ante*.

(*b*) *Reg. ex rel. Bulger* v. *Smith*, 4 U.C.L.J. 18 (1857).

held, and shall be counted in the same manner as such last-named ballots. Thereafter they shall be placed in a separate envelope or package and otherwise dealt with in the same manner as ballots for the election of members of the council of a local municipality. Where an election for the local municipality is not being held, the proceedings thereat and thereafter, (except where the same are varied hereby), shall be as nearly as possible the same as in the case of an election for a local municipality. 59 V. c. 52, s. 12.

Taken from "*The County Councils Act, 1896*," (59 V. c. 52), s. 12. And see ss. 112, 142, 155, 168 (2).

(a) "**A member or members of a county council.**" The section applies to an election for the purpose of filling a vacancy as well as to the regular biennial election.

(b) "**The ballots shall be placed in the same ballot box . . . and shall be counted in the same manner . . . "** etc. Secs. 111, 142, 155 and 168 (2) make full provision for everything necessary to be done in order to enable the election to be held; s. 85 specifies who may vote, and ss. 164-172 indicate the mode of voting at a county council election.

(c) "**In a separate envelope or package**" etc. The intention is that "separate packets" containing the ballot papers, statements, notes of objections, etc., relating to the county council election shall first be made up, sealed and indorsed in the manner specified by s. 177 (1), and that all these "separate packets" shall then be enclosed by the deputy-returning officer "in a separate envelope or package" for delivery to the clerk of the local municipality. It is suggested as an advisable precaution that this larger "separate envelope or package" should also be sealed by the deputy-returning officer and the agents of the candidates for county councillors. It should be accompanied by a separate "Ballot Paper Account" as required by s. 177 (5).

Certifying result of voting for county councillors.

181. The clerk of each municipality shall, on the day following the return to him of the ballot papers and statements, prepare and mail to the county clerk by registered letter with the postage prepaid, a certificate under his hand of the result of the voting in his municipality for the candidates for the county council. Such certificate shall be according to the form given in the Schedule H hereto. 59 V. c. 52, s. 15.

Taken from the "*The County Councils Act,*" *1896*, (59 V. c. 52), s. 15.

(a) "**Shall on the day following the return to him . . . prepare, etc.**" . . . See note (a) to s. 144. It is doubtless intended that the certificate of the local clerk shall be made up from the statements furnished to him by the several deputy-returning officers of the number of votes given for each candidate (*a*), and that he should not open any of the sealed packets of ballot papers.

(b) "**And mail to the county clerk.**" The officer intended is the clerk of the county council. See s. 134, note (c), and s. 142 (1).

(c) "**The form given in Schedule H hereto.**" This form is as follows:—

Form of Certificate of Result of Polls at an Election of Members of a County Council.

I, , Clerk of the municipal corporation of the of , hereby certify that at the election of county councillors for the First (*or as the case may be*) County Council Division of the County (*or United Counties of*) each candidate received the number of votes placed after his name in the list hereunder written.

(*a*) See s. 177 (1 *a*), and s. 180, note (c).

Sec. 181.

Certificate of local clerk in county council elections.

Name.	Occupation.	Number of Votes.

Dated at this day of , A.D. 19

A. B.

Clerk of the municipality of

Where municipality in different county council divisions.

It is evident that the Legislature, in passing "*The County Councils Act, 1896*," did not intend (*b*) that the boundaries of county council divisions should, as a rule, be so arranged that portions of the same municipality would be in different county council divisions,—and accordingly "the form given in Schedule H." does not provide for that contingency.

There are, however, several instances in which municipalities have been so divided (*c*), *e.g.*, the Townships of Amabel, Arran, Bastard and Burgess, F . ham, Brantford, Brighton, Cavan, Culross, Darlington, Elizabethtown, Fl. -borough W., Garafraxa E., Greenock, Hamilton, Hope, Malahide, Mono, Nepean, Nottawasaga, Ops, York, and the Town of Paris. In these cases the certificate of the local clerk under this section, in showing "the result of the voting *in the municipality*," must, of course, distinguish the result in each portion of the municipality which belongs to a separate county council division. The following form of certificate is suggested for use in such cases (*d*) :—

Form of Certificate where a Local Municipality is not all in one County Council Division.

I, , Clerk of the Municipal Corporation of the *Township* of *York*, hereby certify that at the election of county councillors, held on the day of January, 19 , each of the undermentioned candidates received at the polling places in the respective portions of this *Township* forming part of the undermentioned County Council Divisions of the *County* of *York*, the number of votes placed after his name in the list hereunder written.

First County Council Division.

Name.	Residence.	Occupation.	Number of Votes.

(*b*) See 59 V. c. 52, s. 31.

(*c*) See the list of County Council Divisions, *ante*, pp. 13-29.

(*d*) See R. S. O., c. 1, s. 8 (35).

SECOND COUNTY COUNCIL DIVISION.

Name.	Residence.	Occupation.	Number of Votes.

etc., (*showing separately the result in each County Council Division.*)

Dated at the Town Hall, *Eglinton*, this day of Jan., 19 .

W. A. C.,
Clerk of the Municipality
of the Township of *York*.

To *J. A. R.*,
Clerk of the County Council.

182. In elections to the county council the county clerk shall be returning officer, and shall (as such) perform the duties required of him by this Act, and shall on receipt of the certificates from the clerks of the municipalities comprising a county council division, cast up from such certificates the number of votes for each candidate, and at the hour of one o'clock in the afternoon of the second Monday in the month of January, in the county council chamber, shall publicly declare elected the two candidates having the highest number of votes in each county council division, and shall also post up in his office for public inspection a statement under his hand showing the number of votes polled for each candidate. 59 V. c. 52, s. 16.

County clerk to cast up votes and declare result.

(a) "**The county clerk**". See ss. 134, note (c), 142 (1).

(b) "**The duties required of him by this Act**". See ss. 142 (1), 143.

(c) "**Shall cast up from such certificates the number of votes . . . and shall publicly declare elected the two candidates having the highest number**" etc. "Having" means "appearing from the aforesaid certificates to have". See note (a) to s. 178.

183. Where an equal number of votes has been cast for two or more candidates in any county council division, and it is necessary to determine which one or two of such candidates shall be declared to be elected, the nominating officer for the division shall, upon the request of the county clerk, declare in writing for which of such candidates he votes, and in such case the candidate or candidates for whom he votes shall be elected: and except when so required to give a casting vote, no nominating officer shall vote at an election held for the county council division for which he is appointed. 59 V. c. 52, s. 17; 60 V. c. 45, s. 61.

When two candidates receive same number of votes.

Taken from "*The County Councils Act, 1896*," (59 V. c. 52), s. 17, the final clause begining "and except when so required to give a casting vote" being added in 1897 by 60 V. c. 45, s. 61. *Cf.* s. 179 (2).

(a) "**County clerk**". See ss. 134, note (c), 142 (1).

(b) The right of the nominating officer under these circumstances to dispose of his two votes (if there are two candidates to be elected) would, it is apprehended, be the same as that of any other elector under s. 168 (2).

Secs. 184, 185.

Notes (a) (b); (a)-(c).

In case Election not Held at Proper Time, etc.

Election not commenced or interrupted by reason of riot, etc., to be resumed.

184. In case, by reason of riot or other emergency, an election is not commenced on the proper day, or is interrupted after being commenced and before the lawful closing thereof, the returning-officer, or deputy-returning officer, as the case may be, shall hold or resume the election on the following day at the hour of ten o'clock in the forenoon, and shall continue the same from day to day, if necessary, for four days, until the poll has been opened without interruption, and with free acess to voters for eight hours in all, or thereabouts, in order that all the electors so intending may have had a fair opportunity to vote. 55 V. c. 42, s. 158; 60 V. c. 15, *Sched.* C (37).

Taken from the Act of 1866, (29 & 30 V. c. 51), s. 103; the words "eight hours" being substituted in 1897 by 60 V. c. 15, Sched. C (37), for the words "twelve hours" which occur in all the previous Acts. See s. 128 (4).

(a) "**Or deputy-returning officer, as the case may be.**" These words were inserted by the Revisers of 1877 (*a*) in order to provide for a case in which the riot or other emergency had not affected the entire municipality, but only one or more wards or polling subdivisions. See s. 212.

(b) "**Free access to voters.**" See note (**g**) to s. 128 and note (**a**) to s. 204.

If election is prevented for four days voters' list, etc., is to be returned, and a new election ordered.

185. In case the election has not, by the end of the fourth day from the day the same commenced or should have commenced, been kept open for the said eight hours the returning-officer, or deputy-returning officer, as the case may be, shall not return any person as elected, but shall return his voters' list and ballot papers on the following day to the head of the municipality, certifying the cause of there not having been an election; and a new election shall take place, and the head of the municipality shall forthwith issue his warrant therefor. 55 V. c. 42, s. 159; 60 V. c. 15, *Sched.* C (38). *See also sec.* 212.

Taken from 29 & 30 V. c. 51, s. 104, amended (as noted above under s. 184) by 60 V. c. 15, Sched. C (38) so as to make the number of hours allowed for polling correspond with those prescribed by s. 128 (4).

(a) "**The end of the fourth day from the day [on which] the same commenced.**" etc. Since the time should be computed exclusively *from* the "day the same commenced," (*b*) this gives a total period of five days.

See also as to computation of time s. 127, note (**a**) and s. 214, note (**b**).

(b) "**The head of the municipality shall forthwith issue his warrant.**" See s. 278. The case of his absence or of a vacancy in the office of head of the municipality is provided for by s. 212.

When returns imperfect.

(c) **Where no return from a polling subdivision.** Sec. 25 of "*The Municipal Ballot Act, 1874*," (*c*) provided that:

> "If no return has been made for one or more wards or electoral divisions, in consequence of no election having been held therein, or of the election having been interrupted through riot or other cause, the clerk shall declare the want of return for such ward or wards, or electoral divisions and the cause thereof."

(*a*) R. S. O. (1877) c. 174, s. 153.

(*b*) *Clarke* v. *Garrett*, 28 C. P. 75; *Edgar* v. *Magee*, 1 O. R. 287; *Thomson* v. *Quirk*, 18 S. C. R. 695, *per* PATTERSON, J. A.; *South Staffordshire Tramways Co.* v. *Sickness and Accident Assurance Assoc'n*, [1891] 1 Q. B. 402.

(*c*) 38 V. c. 28.

This section is (apparently without any statutory authority) marked "*effete*" in Appendix B to Vol. II of the R.S.O (1877), but—according to the judgment of OSLER, J. A., in *Scottish American Investment Company* v. *Village of Elora*, 6 A. R. 628, 638,—it would seem to be still in force.

Secs. 185-187.

Notes (d); (a); (a).

(d) Postponement of election on account of epidemic, etc.—See 47 of "*The Public Health Act*" (*d*) provides that:

Election postponed under "*The Public Health Act*."

"47.—(1) In case the Provincial Board of Health reports to the Lieutenant-Governor that on account of the presence in any municipality of an epidemic or contagious disease it would be dangerous to hold an election in such municipality, the Lieutenant-Governor may, upon application by the council of the municipality in that behalf, issue his proclamation postponing the holding of any intended municipal or school election, for a period not exceeding three months, and may from time to time further postpone such election if, in the opinion of the said Board, the necessity for postponement continues.

(2) The Lieutenant-Governor may, by his said proclamation, name the days for holding the nomination and polling for the election, but in case no days are named therefor, the council shall, as soon as practicable after the period named in such proclamation or the last of such proclamations expires, by by-law name days for the nomination and polling.

(3) In case an election postponed under the provisions of this section is the annual election, or an election of the entire council, or of all the members of a board of trustees or other body, the members of the council, board or other body shall continue to hold office until their successors are elected."

Declaration of election in such cases.

186. When a poll has been duly held in each of such wards or polling subdivisions, and the ballot papers and statements hereby directed to be returned to the clerk have been so returned to him, the clerk shall, without opening any of the sealed packets of ballot papers, cast up from said statements the number of votes given for each candidate for any office in respect whereof the election has not been previously declared, together with the votes appearing by the statements previously returned for other wards to be given for the candidate, and shall at noon on the next day, at the town hall (or if there is no town hall at some other public place), publicly declare to be elected the candidate or candidates having the largest number of votes polled. 55 V. c. 42, s. 160.

Taken from 38 V. c. 28, s. 36 (1874).

(a) See s. 178 and the notes thereto.

Declaration and assumption of office.

187. The person or persons so elected shall make the necessary declarations of office and qualification and shall assume office accordingly. 55 V. c. 42, s. 161.

Taken from 29 & 30 V. c. 51, s. 122.

(a) Acceptance of office, when the person elected is qualified to be elected, is obligatory, see s. 277.

(*d*) R.S.O. c. 248.

DIVISION VI.—MISCELLANEOUS PROVISIONS.
(SECS. 188-206)

Synopsis:—In these sections provision is made for the preservation, inspection and destruction of ballot papers (ss. 188-189 (1), (2); for a re-count of the votes by the County Judge, (ss. 189 (3)-(5) 192), and for securing the secrecy of the ballot and preventing frauds by any voter or municipal officer in relation thereto (ss. 193-206). The remaining sections of this Division contain certain miscellaneous provisions relative to the interpretation of preceding portions of the Act (ss. 201-203); the validity of an election in the conduct of which there may have been mistakes or irregularities not affecting the result (s. 204), and the payment by municipalities of election expenses (ss. 205-206).

Ballot papers how disposed of.

188. The clerk of the municipality shall retain for one month all ballot papers received by him or forwarded to him in pursuance of this Act by deputy-returning officers, and shall then, unless otherwise directed by an order of a Court or Judge of competent jurisdiction, cause them to be destroyed in the presence of two witnesses, whose declaration that they have witnessed the destruction of such papers shall be taken before the head of the municipality, and filed by the said clerk amongst the records of the municipality. 55 V. c. 42, s. 162.

Taken from 38 V. c. 28, s. 27 (1874). *Cf.* "*The Ontario Election Act*," (R.S.O. c. 9), s. 137 and "*The Ballot Act, 1872*," (Imp. Stat. 35 & 36 V. c. 33) Sched. 1, Rule 39.

(a) Under s. 220, proceedings to contest the election may be taken within six weeks after the election, or one month after the acceptance of office by the person elected; under s. 189 (3) proceedings for a recount must begin within 14 days from the receipt of the ballot papers by the clerk under s. 177.

Ballot papers to be inspected only by order of a Court or Judge.

189.—(1) No person shall be allowed to inspect any ballot papers in the custody of the clerk of the municipality except under the order of a Court or Judge of competent jurisdiction to be granted by the Court or Judge upon satisfactory evidence on oath that the inspection or production of the ballot papers is required for the purpose of maintaining a prosecution for an offence in relation thereto, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers shall be obeyed by the clerk of the municipality.

Order may be subject to conditions.

(2) The order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the Court or Judge making the order thinks expedient.

Taken from 38 V. c. 28, s. 28 (1874). *Cf.* "*The Ontario Election Act*," ss. 140-143; "*The Ballot Act, 1872*," (Imp. Stat. 35 & 36 V. c. 33, Sched. 1, Rule 40.)

(a) Secrecy is not the only object of the ballot. Purity of election is another object, and where an inspection of the ballot papers is necessary to secure this end, it may be had under the circumstances mentioned in this section.

(b) "**A Court or Judge of competent jurisdiction.**" See subsecs. 3, 5, and ss. 191, 194, 219, 228.

(c) "**A prosecution for an offence in relation thereto.**" See s. 193 and *Reg.* v. *Beardsall*, 1 Q. B. D. 452 (1876).

(d) "**A petition (?) questioning an election or return.**" This should be amended so as to conform to the present practice (s. 220 (1)). It does not apparently apply to an application for a re-count (subs. 3). See the notes to s. 220.

(e) A form of an order for production and inspection will be found in the report of *Reg.* v. *Beardsall*, 1 Q. B. D. at pp. 453, 454.

Recount of Votes.

Sec. 189 (3)-(6).

Notes (a), (b).

The following subsections (3-9) relating to a recount of the votes given in an election under this or "*The Municipal Waterworks Act*" (R. S. O. c. 235) ss. 40, 41, are taken from "*The Con. Mun. Act, 1883*" (46 V. c. 18) ss. 162, 163. *Cf.* s. 191 and "*The Ontario Election Act*," ss. 124-131. As pointed out by Boyd, C., in *Re Ottawa Municipal Election*, 26 O.R. at p. 109 they are "merely meant to give a limited jurisdiction to the County Judge, but not to constitute him a tribunal having cognizance of the election as a whole."

Re-count of votes by County Judge.

(3) In case at any time within fourteen days from the time when the ballot papers are received by the clerk of the municipality, it is, on the affidavit of a credible person, made to appear to the County Judge of the county in which the municipality is situated, that a deputy-returning officer at any election in the municipality, in counting the votes for mayor, alderman, reeve, [*deputy-reeve*] councillor, or water commissioner, has improperly counted or rejected any ballot papers, the County Judge may appoint a time to re-count the votes, and shall give notice in writing to the candidates of the time and place at which he will proceed to re-count the same.

Deposit by applicant.

(4) At the time of the application for a re-count, the applicant shall deposit with the clerk of the County Court the sum of $25 as security for the payment of costs, charges and expenses that may become payable by the applicant; and the said sum shall not be paid out by the clerk without the order of the Judge.

Who may be present at re-count.

(5) The County Judge, the clerk of the municipality with the ballot boxes, and each candidate and his agent appointed to attend the re-count of votes, and no other person except with the sanction of the County Judge, shall be entitled to be present at the re-count of the votes.

Opening of packets.

(6) At the time and place appointed, the County Judge shall proceed to re-count all the votes or ballot papers received by the clerk of the municipality, and shall in the presence of the parties aforesaid, if they attend, or in the presence of such of them as do attend, open the sealed packets containing (*a*) the used ballot papers which have not been objected to and have been counted; (*b*) the ballot papers which have been objected to, but which have been counted by the deputy-returning officer; (*c*) the rejected ballot papers; (*d*) the spoiled ballot papers; (*e*) the unused ballot papers. In re-counting the votes care shall be taken that the mode in which any particular voter has voted shall not be discovered.

(a) "**In the presence of the parties . . if they attend,**" etc. See s. 202.

(b) "**Open the sealed packets.**" Where the various classes of ballots had not been made up into separate packets sealed and authenticated as required by s. 177 (1) a mandamus to compel the County Judge to proceed with the re-count was refused with costs. (*a*)

(*a*) *Re Ottawa Municipal Election*, 26 O. R. 106 (1895), cited in note (a) to s. 177.

Sec. 189 (7)-(8).

Notes (c)-(e).

Re-count to be a continuous proceeding.

(7) The County Judge shall, as far as practicable, proceed continuously with the re-count of the votes, allowing only time for refreshment, excluding only Sundays and, on other days (except so far as he and the parties aforesaid agree), the hours between six o'clock in the evening and n' o'clock on the succeeding morning. During the excluded time the County Judge shall place the ballot papers and other documents relating to the election under his own seal, and the seals of such other of the parties as desire to affix their seals, and shall otherwise take precautions for the security of the papers and documents. 55 V. c. 42, s. 163 (1-7).

(c) The language of this subsection is taken (with some alterations) from Rule 35 of Sched I to "*The Ballot Act, 1872*," (Imp. Stat. 35 & 36 V. c. 33.)

(8) The County Judge shall proceed to re-count the votes as follows:

1. He shall examine the ballot papers.

Procedure on re-count.

2. Any ballot paper on which votes are given to more candidates than are to be elected, or on which anything except the name or initials of the deputy-returning officer on the back is written or marked by which the voter can be identified, or which has been torn, defaced, or otherwise dealt with by the voter so that he can thereby be identified, shall be void and shall not be counted. A ballot paper on which votes are given for a greater number of candidates for any office than the voter is entitled to vote for, shall be void as regards all the candidates for such office, but shall be good as regards the votes for any other offices in respect to which the voter has not voted for more candidates than he is entitled to vote for; but no word or mark written or made, or omitted to be written or made by the deputy-returning officer on a ballot paper, shall avoid the same.

(d) See notes (c), (d), (e) to s. 174 (1), and observe the difference in the language of the two subsections. The words "or which has been torn, defaced, or otherwise dealt with by the voter so that he can thereby be identified" were inserted in 1897 by 60 V. c. 15, Sched. C. (39). They are not in the corresponding section of "*The Ontario Election Act*."

(e) "But no word or mark written or made or omitted to be written or made," etc. These words were added in 1889 by 52 V. c. 36, s. 6. See note (c) to s. 174 (1) citing the *Thorabury* (Election Case) 16 Q.B.D. 739 (1886), followed in *South Perth* (Provincial Election) 34 C. L. J. N. S. 465, 18 C.L.T. 255, (1898), where ballots numbered on the back in pencil by the D. R. O. were allowed on a recount. In *West Huron* (Provincial Election) 34 C.L.J.N.S. 461; 18 C.L.T. 247 (1898) it was held that a ballot should not be rejected because initialed by the poll clerk instead of the R. O., the whole number of ballots counted agreeing with the number of electors who voted as shown by the poll book; and see also *Gloucester* (Election Case) 4 O'M. & H. 194 (1893).

Objections.

3. The County Judge shall take a note of any objection made by a candidate or his agent to any ballot paper found in the ballot box, and shall decide any question arising out of the objection; and the decision of the County Judge shall be final.

(d) "**The decision of the County Judge shall be final.**" That is, so far as the recount is concerned. But *see* subsection (10), *infra*.

Statement to be made by County Judge.

4. The County Judge shall then count up the votes given for each candidate upon the ballot papers not rejected, and shall make up a written statement, in words as well as in figures, of the number of votes given for each candidate, and of the number of ballot papers rejected and not counted by him; which statement shall be made under the several heads following:

(*a*) Name of municipality;

(*b*) Names of the candidates;

(*c*) Number of votes for each candidate;

(*d*) Papers wanting signature or initials of deputy-returning officer;

(*e*) Papers rejected as voting for more candidates than entitled to;

(*f*) Papers rejected as having a writing or mark by which the voter can be identified, or as torn, defaced or otherwise dealt with by the voter so that he can thereby be identified;

(*g*) Papers rejected as unmarked or void for uncertainty.

Clerk to certify result.

5. Upon the completion of the re-count, or as soon as he has thus ascertained the result of the poll, the County Judge shall seal up all the ballot papers in separate packets, and shall forthwith certify the result to the clerk of the municipality, who shall then declare elected the candidate having the highest number of votes; and in case of an equality of votes, the clerk of the municipality shall have the casting vote as provided in section 179 of this Act. 55 V. c. 42, s. 163 (8); 60 V.c. 15, *Sched.* C (39).

(g) "**Upon the ballot papers not rejected.**" *i.e.* by him.

(h) "**Shall certify the result.**" The certificate should be attached to, or endorsed upon the detailed statement made up under the preceding subsection. The following form is suggested:

Form of County Judge's certificate.

Form of Certificate of the Result of a Recount.

"I, *T. W. B.*, Judge of the County Court of the *United Counties of Northumberland and Durham*, hereby certify that I have, pursuant to "*The Municipal Act*," re-counted the votes given for *Reeve* of the Township of *Murray* at the polling places in polling subdivisions *2 and 4* of the said township at the *annual* municipal elections held on the *1st* day of *January, 1900*, and that the result of the said re-count is as appears by the *within* statement.

"Dated at the *Court House* in the *Town of Cobourg* this *29th* day of *January, 1900*.

T. W. B.,
Judge, etc.,

(i) "**Shall declare elected the candidate having the highest number of votes.**" See note (b) to s. 178.

Secs. 198 (9)-191 (3).

Existing remedies not affected.

(9) Nothing in this section contained shall destroy or prevent any remedy which any person now has by *quo warranto* or otherwise. 55 V. c. 42, s. 164.

Costs of application.

190.—(1) All costs, charges and expenses of, and incidental to an application for a re-count and to the proceedings consequent thereon, shall be defrayed by the parties to the application in such manner and in such proportion as the Judge may determine, regard being had to the disallowance of any costs, charges or expenses which may, in the opinion of the Judge, have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the applicant or the respondent, regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful.

Taxation of costs.

(2) The costs may be taxed in the same manner, and according to the same principles as costs are taxed between solicitor and client in the County Court.

Recovery of costs.

(3) The payment of any costs ordered by the Judge to be paid, may be enforced by an execution against goods and chattels, to be issued from any County Court, upon filing therein the order of the Judge and a certificate showing the amount at which the costs were taxed and an affidavit of the non-payment thereof. 55 V. c. 42, s. 165.

Taken from "*The Con. Mun. Act, 1883*" (46 V. c. 18) s. 164.

Recount in elections to County Councils.

191.—(1) In the case of an election of a member or members of a county council, the same proceedings may be had for a recount of votes, as may be had in the case of a member or members of the council of a local municipality.

(2) In case of a recount the County Judge may require the clerk or clerks of the local municipality or municipalities to forward, under seal, for the purpose of production before him, to the clerk of the county, all ballot papers, books, voters' or other lists, and other papers in his or their hands connected with the election.

(3) Each such clerk shall so forward the ballot papers, books, voters' or other lists, and other papers as directed, with a statutory declaration that they are the ballot papers, books, voters' or other lists and other papers (if any) returned to him, in connection with such election and no others, and that he has kept them safely and has not permitted or given opportunity to any person or persons to examine inspect or see them since they were returned to him, and that he has kept them under seal securely since their return to him. 59 V. c. 52, s. 20, *part*.

Production of documents and indorsements on ballot papers evidence for certain purposes.

192. Where a rule or order is made for the production by the clerk of the municipality of any document in his possession relating to a specified election, the production of the document by the clerk, as directed by the rule or order, shall be conclusive evidence that the document relates to the specified election; and any indorsement appearing on any packet of ballot papers produced by the clerk, shall be evidence of the papers being what they are stated to be by the indorsement. 55 V. c. 42, s. 166.

Taken from "*The Municipal Ballot Act of 1874*," (38 V. c. 28,) s. 29. *Cf.* "*The Ontario Election Act*," (R. S. O. c. 9) s. 143 and "*The Ballot Act, 1872*" (Imp. Stat. 35 & 36 V. c. 32), Sched. 1, Rule s. 43.

Offences and Penalties.

193.—(1) No person shall—

(*a*) Without due authority supply any ballot paper to any person; or

(*b*) Fraudulently put into any ballot box any paper other than the ballot paper which he is authorized by law to put in; or

(*c*) Fraudulently take out of the polling place any ballot paper; or

(*d*) Without due authority destroy, take, open, or otherwise interfere with any ballot box or packet of ballot papers then in use for the purposes of the election; or

(*e*) Apply for a ballot paper in the name of some other person, whether such name is that of a person living or dead or of a fictitious person; or advise or abet, counsel or procure any other person so to do; but this provision shall not be construed as including a person who applies for such ballot paper believing that he is the person intended by the name entered on the voter's list in respect of which he so applies; or

(*f*) Having voted once and not being entitled to vote again at an election, apply at the same election, for a ballot paper in his own name, or advise, or abet, counsel or procure any other person so to do. 55 V. c. 42, s. 167 (1); 59 V. c. 51, s. 4 (1); 60 V. c. 15, *Sched.* C (40).

(2) No person shall attempt to commit any offence specified in this section.

Penalty by imprisonment

(3) A person guilty of any violation of this section shall be liable, if he is the clerk of the municipality, to imprisonment for any term not exceeding two years, with or without hard labour; and, if he is any other person, to imprisonment for a term not exceeding six months, with or without hard labour. 55 V. c. 42, s. 167 (2-3).

Sec. 193 (3).

Notes (b)-(e).

Sub-sec. 1 (*a*), (*b*), (*c*), (*d*) and sub-secs. 2 and 3 are taken unaltered from "*The Municipal Ballot Act of 1875*," (38 V. c. 28,) s. 30, the first sub-section of which (relating to forgery or fraudulent alteration, etc., of ballot papers) was repealed at the next Session by 39 V. c. 1, s. 4, as *ultra vires* of the Provincial Legislature. Clauses (*e*) and (*f*) of sub-s. 1 are taken from 51 V. c. 28, s. 12 (1888) as amended by 59 V. c. 51, s. 4 (1896), but were recast in their present form by 60 V. c. 15, Sched. C (40). The original of clauses (*a*), (*b*), (*c*), (*d*) of sub-s. 1 is s. 3 of "*The Ballot Act, 1875*," (Imp. Stat. 35 & 36 V. c. 33). Clauses (*e*) and (*f*) are taken from s. 21 of the same Act, "Definition and punishment of personation." Section 210 (2) of "*The Consolidated Municipal Act, 1892*," (taken from 54 V. c. 42, s. 81) which imposed a pecuniary penalty for the violation of clauses (*e*) and (*f*), was repealed by 59 V. c. 51, s. 4 (2) in consequence of the decision in *Reg.* v. *Rose*, 27 O. R. 495 (1896).

Personation.

(a) "**Apply for a ballot paper in the name of another person,**" etc. Even before this enactment, it had been held under Imp. Stat. 22 V. c. 35, s. 9 ("*The Municipal Corporations Act, 1859*"), that the offence of personation was complete although the personator had not actually voted. (*a*) In a prosecution under s. 24 of "*The Ballot Act, 1872*," (*b*) where a man applied for a ballot paper in a name which was not his name of origin or the one by which he was generally known, but was a name which appeared on the voters' list, having been placed there to designate him, he was held not to be guilty of personation within the meaning of the clause. (*c*)

In the *Hexham Case* (Day's El. Cas. 68) and the *Gloucester Case* (2 O'M. & H. 63) agents were proved to have endeavoured to get persons to vote who were not entitled to vote; but they were acquitted of aiding and abetting personation because they did not know that such persons were not entitled to vote. In the *Hexham Case*, CAVE, J., said that persons might be guilty of aiding and abetting personation who corruptly induced a person to vote, although the voter himself was not guilty of personation because he did not know that he was not entitled to vote. (*f*)

(b) "**Whether such name is that of a person living or dead.**" Under an Act (*d*) which provided for the punishment of "any person who shall personate any person *entitled to vote*," it was held not to be an offence to tender a voting paper purporting to be signed by a man who was dead. (*e*)

Voting too often.

(c) "**Having voted once and not being entitled to vote again . . . apply . . for a ballot paper in his own name.**" The words used in both this and the preceding clause are wide enough to include the case of a person who innocently applies for a ballot paper in the name of some other person or who votes a second time, since neither of the clauses contains any such word as "wilfully" or "corruptly." It is difficult, however, to believe that the Legislature intended the innocent commission of such an act to be punishable as provided in sub-s. 3. It has accordingly been held in England that it is of the essence of the offence that the act be committed "corruptly." Thus in the *Stepney* (El. Case), 4 O'M. & H. 43 (1893), a voter registered in two divisions of a parliamentary borough and entitled to vote in but one of them, voted twice, contrary to Imp. Stat. 48 & 49 V. c. 23, s. 8 (3), but in the honest belief that he was entitled so to do; and the question was whether his first vote should be struck off because he had been guilty of the corrupt practice of personation by voting a second time. The Judges (DENMAN & FIELD, JJ.) held that since there was no corrupt intention, personation had not been committed, and that the first vote was good.

(d) "**Shall be liable to imprisonment.**" While the Local Legislature has no general power, under the B.N.A. Act, to legislate as to crime or criminal procedure, it has power to punish by fine or imprisonment with a view of enforcing Acts within its jurisdiction (*a*).

Form of indictment.

(e) Under the section of the Imperial Act (*b*), cited in note (b) *supra*, it has been held that in order to sustain a conviction for personation, it is not necessary to state in the indictment or to prove at the trial that the deputy-returning officer at the polling place where the offence was committed was duly appointed (*c*), or that the election was duly held (*d*).

(*a*) *Reg.* v. *Hague*, 9 Cox C. C. 412; 4 B. & S. 713 (1864).

(*b*) Imp. Stat. 35-36 V. c. 33. (*c*) *Reg.* v. *Fox*, 16 Cox C. C. 166.

(*f*) See also, as to corrupt intention being essential to personation, *Athlone* (Election Case), 3 O'M. & H. 57. (*d*) Imp. Stat. 14 & 15 V. c. 105, s. 3.

(*e*) *Whitley* v. *Chappell*, 11 Cox C. C. 307.

(*a*) *Reg.* v. *Bourdoiau*, 30 U.C.R. 553. (*b*) 14 & 15 V. c. 105, s. 3.

(*c*) *Reg.* v. *Garvey*, 16 Cox C. C. 252. (*d*) *Reg.* v. *Hague*, 4 B. & S. 713.

Sec. 194.

Note (a).

Money penalty for offences.

194 Every officer or clerk who is guilty of any wilful misfeasance, or any wilful act or omission in contravention of sections 137 to 193, inclusive, of this Act, shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act or omission, a penal sum of $400. 55 V. c. 42, s. 168.

Taken from 38 V. c. 28, s. 31 (1874). *Cf.* "*The Ontario Election Act*" (R.S.O. c. 9, s. 194 and s. 11 of "*The Ballot Act, 1872*" (Imp. Stat. 35 & 36 V. c. 33).

What is "wilful" misfeasance.

(a) "**Wilful misfeasance.**" Sec. 180 of "*The Ontario Election Act,*" R.S.O. (1877), c. 10 (*e*), imposed a penalty of $200 on any deputy-returning officer or poll-clerk "who refuses or neglects to perform any of the obligations or formalities required of him by this Act." In a case decided under that section in 1884 it appeared that at the election of a member of the Legislative Assembly of Ontario, in and for the District of Algoma, six persons had tendered their votes and offered to take the necessary oaths required by the Act to entitle them to vote. The deputy-returning officer refused the vote of one because he could not produce his title deeds, and of the others because they had no houses on their lands. In an action under the above section against the deputy-returning officer for penalties for refusing the votes, four of those rejected offered to take the oath prescribed and described the property on which they claimed to vote. *Held*, that the duties of the deputy-returning officer in taking the votes are ministerial save when he suspects personation, want of qualification, etc.; in which case he should exercise his judgment as to administering the oath; and that, having refused the tendered votes of those who had sufficiently shewn their right to vote, he had "refused to perform an obligation or formality required of him" within s. 180, and was liable to the penalties prescribed in the Act (*f*).

In a later action in the same Court,—under a section of "*The Ontario Election Act*" identical with this section (194) of "*The Municipal Act,*"—by "a person aggrieved" by the alleged wilful refusal of a deputy-returning officer to allow him to vote, it was held that the word "wilful" in the section means "perverse" or "malicious"; and that, although the plaintiff was deprived of his vote by the refusal of the defendant to allow him to deposit a "straight" ballot, and there was thereby a contravention of the Act, yet, as the defendant honestly believed the plaintiff was not qualified, and believed in his own power to withhold the ballot, the action must fail (*g*).

Per BOYD, C.:

> "Wilful misfeasance involves the doing of something which the doer knows will cause harm, or in the doing of which he is so reckless of consequences that he goes on his own way obstinately or wilfully, no matter who suffers."

But in *Fearnley* v. *Ormsby*, L. R. 4 C. P. D. 136, it was held sufficient to constitute an act "wilful" that it should have been done "purposely;" and in *Wilson* v. *Manes*, 28 O. 419 (1897), cited in note (a) to s. 116, the majority of the Court refused to adopt the meaning of the word "wilful" given by BOYD, C., in *Johnson* v. *Allen*, *supra*, and held,—following *Re Young and Harston's Contract*, 31 Ch. D. 163, 174 (1886)—that "wilful" means no more than "the intentional act of a free agent" (*a*); and the defendant (returning officer) in that case having refused to allow the plaintiff (a freeholder) to vote unless he took the oath prescribed for tenants, it was held that his duties were merely ministerial, that an action for breach thereof would lie without proof of malice or negligence, that the plaintiff had a right to vote, and that the defendant's

(*e*) Equal to 193 (2) of the present Election Act.

(*f*) *Walton* v. *Appjohn*, 5 O.R. 65.

(*g*) *Johnson* v. *Allen*, 26 O.R. 550 (1895). *Lewis* v. *The Great Western R. W. Co.*, 3 Q.B.D. 195, and *Re London (Mayor of)* v. *Tubbs* [1894], 2 Ch. 524, were followed; *Walton* v. *Appjohn*, 5 O. R. 65, was distinguished on the ground that in that case the element of "wilfulness" was not necessary to entitle the plaintiff to recover.

(*a*) See *per* ARMOUR, C. J., at p. 421, and *per* McMAHON, J., at p. 435.

Secs. 194, 195. Notes (b)-(d); (a) (c).

refusal was a "wilful misfeasance" within the meaning of this section, which rendered him liable to the penalty of $400 and also to damages at common law. And see note (c) *infra*.

(b) "**Wilful act or omission.**" This section is inapplicable to cases of mere neglect (*b*).

(c) "**In contravention of sections 137 to 193 inclusive.**" This limitation applies also to the words "wilful misfeasance" at the beginning of the section (*c*).

(c) "**Person aggrieved.**" In an action under this section by a defeated candidate against a deputy-returning officer for alleged wilful breaches of ss. 165, 177 and 284 of the present Act, there being no allegation that the plaintiff had lost his election or any votes or had suffered any personal grievance by the acts complained of, it was held on demurrer that the plaintiff was not, by reason only of being a candidate, a "person aggrieved" within this section (*d*).

In an action under s. 181 of "*The Ontario Election Act*," (R. S. O. (1877), c. 10),—identical with this section of "*The Municipal Act*,"—by a defeated candidate against a returning officer for not delaying his return after notice of a recount of ballots by the County Judge, the late Chief Justice WILSON, at the trial, held that if the defendant's contravention of the Act was wilful, the plaintiff, (who had been prevented from exercising his legal right to have a recount by reason of the ballots not being produced before the County Judge), was "a person aggrieved" (*e*) within the meaning of this section.

(d) As to the mode of recovering this penalty and its application when recovered, see R. S. O. c. 1, s. 8 (30), quoted in note (b) to s. 110.

In County Council Elections.

195. Any county clerk or clerk or officer of a local municipality who refuses or neglects to perform the duties prescribed by this Act in relation to elections for membership of a county council, shall be liable, on conviction thereof, to a fine of $200 and costs. 59 V. c. 52, s. 23; 60 V. c. 3, s. 3.

Taken from "*The County Councils Act, 1896*," (59 V. c. 52), s. 23, the latter part of which is omitted in this Revision as superfluous. See ss. 704, 708.

(a) "**County Clerk.**" See s. 134, note (c) and s. 142 (1).

(b) "**Refuses or neglects to perform the duties.**" The word "wilfully" is not used here. See note (a) to s. 194.

How fine recoverable.

(c) "**A fine of $200 and costs.**" Sec. 704 prescribes how this fine may be enforced, and s. 70 provides how it shall be applied. Sec. 60 of "*The Election Law of 1868*" (*f*) enacted that "every person convicted" of a battery committed during any part of the days whereon "any election is to be held, within two miles of the place where the election is so held" etc., "shall incur a penalty of fifty dollars"; and s. 77 provided that all penalties imposed by the Act should be recoverable by any person who would sue for the same by action of debt or information in any Court having competent jurisdiction; and that it should be sufficient for the plaintiff in any such action or suit to state in the declaration that the defendant was indebted to him in the sum of money thereby demanded, and to allege the particular offence for which the action was brought, and that the defendant had acted contrary to the Act. It was *Held* (in the County Court) that the words "every person convicted" etc., did not mean convicted in some criminal proceeding, but that the offence might be proved, and the person "convicted" in the same action. On appeal WILSON J. was of the opinion that the judgment below was right; MORRISON J. that it was wrong. The appeal was therefore dismissed (*g*).

(*b*) See secs. 249 and 251 of "*The Assessment Act*," (R. S. O. c. 224) and notes thereto.

(*c*) *Atkins* v. *Ptolemy*, 5 O. R. 366.

(*d*) *Atkins* v. *Ptolemy*, *supra*.

(*e*) *Hays* v. *Armstrong*, 7 O. R. 621, 622 (1885). (*f*) 32 V. c. 21.

(*g*) *Wilde* v. *Bowen*, 37 U. C. R. 504 (1875).

Penalty for false returns.

196. In addition to any other penalties imposed by this Act, any clerk of a local municipality who knowingly makes a false or incorrect return under section 181 of this Act, and any county clerk who knowingly makes a false or incorrect declaration of election under section 182 of this Act, and any nominating officer who knowingly makes a false or incorrect declaration of election or knowingly gives a false or incorrect certificate under section 135 of this Act, or commits any other act of falsification, concealment or fraud, with intent to affect the election of a candidate or candidates for a county council, shall, upon conviction thereof, be liable to a fine of $500 and costs, and shall be disqualified for a period of four years thereafter from holding any office or position in the gift or control of any municipal council in the Province of Ontario, and shall not be eligible during the said period for election as a member of any such council. 59 V. c. 52, s. 24.

(a) **"Knowingly."** As to the importance of this word in statutory definitions of offences, see *Mullins* v. *Collins*, L. R. 9 Q. B. 292; *Candy* v. *Le Cocq*, 13 Q. B. D. 207, and the cases there cited. "Knowingly" issuing a fraudulent prospectus under the (English) Companies' Act means "intentionally" issuing it (*h*).

(b) **"County clerk."** See note (c) to s. 134 and s. 142 (1).

(c) **"Nominating officer who knowingly makes a false or incorrect declaration of election."** This expressly refers only to a declaration under s. 135. It is singular that the certificate of an election by acclamation, which by s. 134 the nominating officer is required to give to the clerk of the county council, should not also have been mentioned.

"Knowingly."

(d) **"Shall upon conviction thereof be liable to a fine of $500 and costs."** See note (c) to s. 195.

197. All the other provisions of this Act relating to the imposition of penalties in connection with municipal elections, shall apply to elections to county councils. 59 V. c. 52, s. 27, *part*.

(a) **"All the provisions of this Act,"** etc. See ss. 165 (5), 166, 193, 195.

Secrecy of Proceedings.

Maintaining secrecy of proceedings at polling places.

198.—(1) Every officer, clerk and agent in attendance at a polling place shall maintain and aid in maintaining the secrecy of the voting at the polling place.

(2) No officer, clerk or agent, and no other person shall interfere with or attempt to interfere with a voter when marking his ballot paper, or shall otherwise attempt to obtain at the polling place information as to the candidate or candidates for whom any voter at such polling place is about to vote or has voted.

(3) No officer, clerk, agent or other person shall communicate at any time to any person any information obtained at a polling place as to the candidate or candidates for whom any voter at such polling place is about to vote or has voted.

(*h*) *Twycross* v. *Grant*, 2 C. P. D. 469.

Secs 198 (4-6), 199.

Note (a).

(4) Every officer, clerk and agent in attendance at the counting of the votes, shall maintain and aid in maintaining the secrecy of the voting, and shall not communicate or attempt to communicate any information obtained at such counting as to the candidate or candidates for whom any vote is given in any particular ballot paper.

(5) No person shall, directly or indirectly, induce a voter to display his ballot paper after he has marked the same, so as to make known to any person the name of any candidate or candidates for or against whom he has marked his ballot paper.

Penalty for contravening this section.

(6) Every person who acts in contravention of this section shall be liable, on summary conviction before a Stipendiary Magistrate, Police Magistrate, or two Justices of the Peace, to imprisonment for any term not exceeding six months, with or without hard labour. 55 V. c. 42, s. 169.

Taken from 38 V. c. 28, s. 32 (1874). *Cf.* 37 V. c. [illegible]; R.S.O. c. 9, s. 155; Imp. Stat. 35 & 36 V. c. 33, s. 4 and note the difference in subs. 1.

What is "communicating" information.

(a) In a case under sec. 4 of "*The Ballot Act, 1872*," (*a*)—which provides that:

> "Every officer, clerk and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate before the poll is closed to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station."

an information was laid against the respondent under the above section, charging that he, being a personating agent duly appointed and in attendance at a certain polling station in connection with a municipal election for a town-councillor, did not then and there maintain and aid in maintaining the secrecy of the voting in such station, but did then and there communicate, before the poll was closed, to a certain person or persons certain information as to the names and numbers on the register of voters of certain electors who had and who had not applied for ballot papers or voted at that election.

It appeared that the respondent, having been appointed "personating agent," as stated in the information, attended at the polling booth with a copy of the burgess-roll, and remained there some hours placing a mark against the name of each voter who obtained a ballot paper; and that he then before the close of the poll left the station, taking with him his copy of the burgess-roll, which he left in the committee-room of the candidate by whom he was employed. There was no proof that the copy of the burgess-roll was seen by any person while in the room.

Held, that there was not sufficient evidence to warrant a conviction under the above section, as there was no proof that the information as to the voters was actually communicated to any person, and it was not enough that the means of acquiring such information were afforded to any one. (*b*)

Statutory declaration of secrecy.

199. The clerk of the municipality, and every officer, clerk or agent authorized to attend a polling place or at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy in the presence (if he is the clerk of the municipality) of a Justice of the Peace, and if he is any other officer or clerk, in the presence of a Justice of the Peace or of the clerk of the municipality, and (if he is an agent of a

(*a*) Imp. Stat. 35 & 36 Vict. c. 33.

(*b*) *Stammanought* v. *Hazebline*, 4 C.P.D. 191 (1879).

Notes (a) (b) (a); (a).

candidate) in the presence of a Justice of the Peace or of the clerk of the municipality or of the deputy-returning officer at whose polling place he is appointed agent. Such statutory declaration of secrecy shall be in the form mentioned in Schedule I to this Act, or to the like effect. 55 V. c. 42, s. 170.

Taken from 38 V. c. 28, s. 33 (1874) as amended by 40 V. c. 12, s. 19 (1877). *Cf.* 37 V. c. 5, s. 31; 39 V. c. 10, s. 18; "*The Ontario Election Act*" (R. S. O. c. 9, s. 156.

(a) "**Agent authorized to attend.**" See note (b) to s. 173.

(b) "**The form mentioned in Schedule I to this Act**" is as follows:—

Form of Statutory Declaration of Secrecy.

I, *A. B.*, solemnly promise and declare that I will not at this election of members of the municipal council of the city (*or as the case may be*) of , disclose to any person or persons the name of any person who has voted, and that I will not in any way whatsoever unlawfully attempt to ascertain the candidate or candidates for whom any elector shall vote or has voted, and will not in any way whatsoever aid in the unlawful discovery of the same; and I will keep secret all knowledge which may come to me of the person for whom any elector has voted.

Made and declared before me at , this day of

A. D. 19

C. D.,

Justice of the Peace (*or* Clerk of the Municipality of).

No one compellable to disclose his vote.

200. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted. 55 V. c. 42, s. 171.

Taken from 38 V. c. 28, s. 34 (1874). *Cf.* 37 V. c. 5, s. 32, "*The Ontario Election Act* (R. S. O. c. 9, s. 158; "*The Ballot Act, 1872*" (Imp. Stat. 35 & 36 V. c. 33), Sched. I, Rule 54.

But he may legally do so.

(a) Secrecy is the *privilege* but not the obligation of the voter. He cannot in any legal proceeding to question the election, be compelled to state for whom he has voted. But there is nothing to forbid his stating for whom he voted if he sees fit to do so, and his voluntarily so doing is not made illegal by the Act. (*c*)

Miscellaneous Provisions.

Candidates may undertake duties of an agent.

201. A candidate may himself undertake the duties which any agent of his, if appointed, might have undertaken, or he may assist his agent in the performance of such duties, and may be present at any place at which his agent may (in pursuance in the Act) be authorized to attend; but no candidate shall be present at the marking of a ballot for a voter under section 171. 55 V. c. 42, s. 172.

Taken from 38 V. c. 28, s. 35 (1874). *Cf.* 37 V. c. 5, s. 33; "*The Ontario Election Act*" (R.S.O. c. 9, s. 209; "*The Ballot Act, 1872*" (Imp. Stat. 35 & 36 V. c. 33), Sched. I, Rule 51).

(a) See s. 173, note (a) and s. 175, note (b).

(c) See *Bernard* v. *Brillon*, M. L. R. 1 S. C. 121.

Secs. 202-204.

Notes (a) (b).

Expressions in ss. 137-201, referring to agents.

Non-attendance of agents.

202. When in the sections of this Act numbered from 137 to 201 inclusive, expressions are used, requiring or authorizing any act or thing to be done, or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as are authorized to attend, and as have in fact attended, at the time and place where such act or thing is being done; and the non-attendance of any agent at such time and place shall not, if the act or thing is otherwise duly done, invalidate in anywise the act or thing done. 55 V. c. 42, s. 173.

Taken from 38 V. c. 28, s. 36 (1874). *Cf.* 37 V. c. 5, s. 34; "*The Ontario Election Act*" (R. S. O. c. 9), s. 211; "*The Ballot Act, 1872*" (Imp. Stat. 35 & 36 V. c. 63), Sched. 1, Rule 55.

Public holidays, etc., excluded in reckoning time under ss. 137-201, except for nomination and election of mayors, etc.

203. In reckoning time for the purposes of the said sections, 137 to 201, Sunday and any day set apart by any act of lawful authority for a public holiday, fast or thanksgiving shall be excluded; and where anything is required by this Act to be done on a day which falls on any of such days, such thing may be done on the next juridical day; but nothing in this section contained shall extend or apply to the days fixed by this Act for the nomination or election of candidates for the offices of mayor and alderman in cities, of county councillors, or of mayor, reeve, *deputy-reeve* or councillors in other municipalities. 55 V. c. 42, s. 174; 59 V. c. 52, s. 27.

The first clause is taken from 38 V. c. 28 s. 37 (1874). *Cf.* 37 V. c. 5, s. 35; "*The Ontario Election Act*" (R. S. O. c. 9), s. 213; "*The Ballot Act, 1872*" (Imp. Stat. 35 & 36 V. c. 33), Sched. 1, Rule 56. The second clause, "but nothing in this section contained," etc., was added in 1877 by 40 V. c. 7, Sched. A (170), and was extended to county councillors by "*The County Councils Act, 1896*" (59 V. c. 52), s. 27.

"Juridical" days.

(a) "**On the next juridical day.**" Strictly speaking, "juridical days" are "days in Court on which the laws are administered" (*Wharton's* Law Lexicon); "days on which Courts can lawfully sit" (*Webster's Dictionary*); but the term is loosely used in our Statutes to indicate a day which does not fall within any of the classes previously referred to in this section. The (more accurate) language of "*The Ballot Act, 1872*," is "unless it is one of the days excluded as above mentioned."

(b) "**Nothing in this section contained shall . . . apply to the days fixed . . . for nomination . . . or election.**" The meaning is, that should the day appointed for nominations under ss. 118-125, 133, or for election (polling) under ss. 94, 95, 128 (3), fall upon a public holiday, etc., that fact shall make no difference. As to what are public holidays, see R.S.O. c. 1, s. 8 (16), and *West Toronto* (Provincial Election), 31 U.C.R. 409 (1871).

No election to be invalid for want of compliance with provisions of Act where principles followed and result not affected.

204. No election shall be declared invalid by reason of a non-compliance with the provisions of this Act as to the taking of the poll or the counting of the votes or by reason of any mistake in the use of the forms contained in the schedules to this Act, or by reason of any irregularity, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in this Act, and that such non-compliance, mistake or irregularity did not affect the result of the election. 55 V. c. 42, s. 175

What irregularities will avoid an election.

(a) This section is compounded of two, viz., 38 V. c. 28, s. 38 (1874), and 39 V. c. 5, s. 16 (1875). The first was copied from 37 V. c. 5, s. 37, and that in its turn from "*The Ballot Act, 1872*" (Imp. Stat, 35 & 36 V. c. 33), s. 13, in which the words used were "by reason of a non-compliance with the rules contained in the first Schedule to this Act, or any mistake in the use of the forms contained in the second Schedule to this Act, if it appears to the tribunal," etc. The Act of 1875 (39 V. c. 5, s. 17), inserted the further words "or by reason of any irregularity."

Under s. 13 of the Imperial Statute, it was held (*a*):—

1. That the Rules in the First and the Forms in the Second Schedule were directory only, as distinguished from the absolute enactments contained in the body of the Act,—and it was therefore sufficient if these Rules or Forms were substantially, though not exactly, complied with.

(2) That an election is void under the common law applicable to Parliamentary elections, if it has been so conducted that the tribunal which is asked to avoid it is satisfied, as a matter of fact, that there was no real electing at all, or that the election was not really conducted under the subsisting election laws,—that is, that the constituency has not in fact had a fair and free opportunity of electing the candidates which the majority might prefer, or that there is reasonable ground to believe that a majority of the electors may, by reason of irregularities in the mode of conducting the election, have been prevented from electing the candidate they preferred.

(3) That to render an election void under "*The Ballot Act, 1872*," by reason of a non-observance of, or non-compliance with the Rules or Forms given therein, such non-observance or non-compliance must be so great as to satisfy the tribunal before which the validity of the election is contested, that the election has been conducted in a manner contrary to the principle of an election by ballot, and that the irregularities complained of did affect, or might have affected the result of the election.

It is extremely difficult to educe "the principles laid down in" an Act containing 750 sections so as to state them within the compass of a few sentences; but in determining the validity or otherwise of a municipal election the following points seem to be of primary importance:—

(1) The actual possession, at the time of the election, of the qualifications required by law in the case of candidates (ss. 76, 77) and of voters (ss. 85-89, 148-154) (*b*).

(2) That every qualified elector shall have free access to the polls, and a fair opportunity of voting (*c*).

(3) That the voting should be secret (*d*).

Provided the result of the election has not been thereby affected, the following irregularities seem to be within the remedial operation of this section:—

(1) Failure on the part of the municipal clerk to post up a list of the nominated candidates on the very day of the nomination (s. 129 (1)): to print their Christian or surnames in full, or in strictly alphabetical order upon the ballot papers (s. 139); to sign or "attest by his solemn declaration in writing" the list of voters delivered to each deputy-returning officer under ss. 150, 151, or to certify as correct the copies of the voters' list so delivered under s. 152 (provided, in the last three cases, that the lists thus furnished are in reality correct): to post up the statement required by s. 178, or to prepare and mail the certificate under s. 181 on the precise dates thereon respectively mentioned, etc.

(*a*) *Woodward* v. *Sarsons*, L.R. 10 C.P. 733 (1875).

(*b*) *Reg. ex rel. St. Louis* v. *Reaume*, 26 O. R. 460 (1895) cited *infra*.

(*c*) See notes (**a**) and (**b**) to s. 128, and the cases of *The Hackney Election, Davies* v. *Lord Kensington, Re Pounder and Village of Winchester*, and *Re Croft and Town of Peterborough*, cited *infra* in this note.

(*d*) Secs. 136, 168 (1), 169, 173, 175, 189 (6), last clause, and 198-200, and the cases cited thereunder.

Sec. 204.

Note (a).

(2) Failure on the part of a deputy-returning officer to comply "absolutely and exactly" with the requirements of s. 106 (*d*) (*e*), s. 147 (*f*), s. 169 (*g*), s. 171 (*h*), ss. 173, 174, 175, (*i*) or s. 177 (1*g*) (*j*).

What irregularities will avoid an election.

(3) Even where one who was himself a candidate acted as returning officer, instead of the person who should have so acted, the Court, finding that there was no *mala fides*, and that the result had not been affected, refused to set aside the election. (*k*)

For examples of irregularities which would probably invalidate an election, see s. 118, notes (**a**) and (**b**); s. 121, note (**a**); s. 127, note (**a**); s. 128 subs. 2, note (**a**); subs. 4, note (**a**); s. 139, note (**a**); s. 165, note (**b**); s. 177, note (**a**), citing *Re Ottawa Municipal Election* (*l*).

It has been held that a mere casual affray or incidental disturbance, not calculated to prevent any man of ordinary nerve and courage from going to the poll, is not of itself sufficient to avoid an election where the majority of the successful candidate is large (*m*). But in other cases (*n*), although there was no proof that the poll had been interfered with, the elections were not set aside; and where,—as in Ontario—women are entitled to vote (s. 86), absolute freedom of election would probably be required.

It is to be further observed that the cases of "non-compliance with the provisions of the Act" *etc.*, first referred to in this section, are limited to those provisions which refer to "the taking of the poll or counting of the votes." In *Reg. ex rel St. Louis* v. *Reaume*, (*o*) Boyd, C. set aside the election (though by a majority of 66 votes) of a deputy-reeve who on the Saturday before polling day had participated in a transaction by which some 80 names were added to the voter's list as certified by the County Judge, notwithstanding the fact that only 31 of the persons thus illegally added appeared to have voted in the election. In this case it may be said that the election was not conducted in accordance with one of the "principles laid down in the Act," viz.: the finality of the voters list as settled and certified by the Judge (ss. 89, 148). In a parliamentary election, where the returning officer had omitted to provide enough ballot boxes, so that at two polling places no poll was taken, and at

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(*e*) At an election of county councillors, one of the deputy-returning officers for a town in the county was absent from his booth on three separate occasions during polling-day. The first and second absences were on account of illness; on the third occasion he went out to dinner and voted in another place. The first absence was for about ten minutes during which the booth was locked up, with the poll clerk and constable inside in charge, and it was sworn by the deputy-returning officer that no voter came in till he returned. At his second and third absences the town-clerk took his place. During the second no votes were cast, but during the third there were several. The town-clerk placed the initials of the D. R. O. on the back of the ballots given out to such voters, and the consequence was that upon a judicial investigation these ballots were identified and separated. It appeared that during the third absence nine votes were cast for the relator and nine for the respondent, and that upon the whole the respondent had two more votes than the relator, and by sec. 13 of "*The County Councils Act, 1896*," (there being two county councillors to be elected,) a voter could give both his votes to one candidate. There was no suggestion of bad faith.

Held, that the absence of the D. R. O. and what was done during these absences had not affected the result of the election, and applying the provisions of the above section, that the election should not be declared void. *Reg, ex rel. Watterworth* v. *Buchanan*, 28 O. R. 352 (1897).

(*f*) See note (**a**) thereto. (*g*) See s. 145 note (**a**).

(*h*) See note (**a**) thereto.

(*i*) *Reg. ex rel. Preston* v. *Touchburn*, 6 P. R. 344 (1879).

(*j*) See note (**a**) thereto. (*k*) *Reg.* v. *Ward*, L. R. 8 Q. B. 210 (1873).

(*l*) 26 O. R. 196 (1895).

(*m*) *Stafford* (Election Case), 1 O'M. & H. 229.

(*n*) *Coventry* (Election Case), 15 Commons Journals, 276; *Westminster*, 20 Commons Journals, 53, and *Coventry* (No. 2), 20 Commons Journals, 63.

(*o*) 26 O. R. 460 (1895).

several others the polling was somewhat delayed, the election was held void.(p) And a like rule has been followed where in voting on by-laws *a class* of electors entitled to vote has not been allowed to do so. (q)

Secs. 204 205 (3). Notes (b); (a).

(b) **"Did not affect the result of the election."** It is not enough for those who desire to uphold the election to prove that the irregularities shown were such that the result *may not* have been affected. The tribunal having cognizance of the question must be satisfied that, as a matter of fact, they *did not* affect it. And this, in the case of a mere irregularity, is the ultimate test. (r)

205.—(1) The expenses incurred in and about the election of county councillors shall be borne by the county; but where a poll is held for the election of a member or members of the council of a local municipality at the same time as the election for the county council is held, the cost of the polling booth and the fees of the deputy-returning officer, poll clerk and constable, and any other expenses which would be necessary for such election for the local municipality shall be borne by the local municipality as heretofore.

Expenses of elections, payment of.

(2) In case of any dispute between the local municipality and the county as to the apportionment or payment of any such expenses, the difference between them shall be summarily and finally settled by the County Judge upon the application of either party, upon four days' notice to the other party, and the Judge shall make such order in the matter as to him appears just.

(3) Where an election for the county council is held when no poll is required at an election for the local municipality or municipalities, then the expense thereof shall be borne wholly by the county. 59 V. c. 52, s. 22.

(a) **"Upon four days' notice to the other party."** The notice may be in the following form:

Form of Notice of Application to County Judge.

In the County Court of the *County of Carleton.*

In the matter of the expenses of the municipal election held in the *Village of Hintonburgh*, on the *1st* day of *January, 1900.*

Take notice that an application will be made to His Honour, *D.B.M.*, Judge of the County Court of the *County of Carleton*, at his Chambers in the Court House in the *City of Ottawa*, on *Tuesday*, the *30th* day of *January, 1900*, at 10 o'clock in the forenoon, or so soon thereafter as the application can be heard, for an order apportioning the expenses incurred in and about the said election between the *County of Carleton* and the said *Village of Hintonburgh* and

(p) *Davies* v. *Lord Kensington*, L. R. 9 C. P. 723, in which the *Hackney* (Election Case), 2 O'M. & H. 77, was cited with approval.

(q) *Re Croft and Town of Peterborough*, 17 O. R. 522, 17 A. R. 21; *Re Poundder and Village of Winchester*, 19 A. R. 684.

(r) *Reg. ex rel. Walker* v. *Mitchell*, 4 P. R. 218, 224 (1868) cited in note (a) to s. 139; *Monck* (Election Case) 3 U. C. R. 147, 153 (1871); *Reg. ex rel. Davies* v. *Bradburn*, 6 P. R. 308 (1876); *Reg. ex rel. Preston* v. *Touchburn*, *Ib.* 344 (1876); *Woodward* v. *Sarsons*, *supra*, note (a); *Shaw* v. *Thompson*, 3 Ch. D. 233 (1876); *Reg. ex rel. Wadsworth* v. *Buchanan*, 28 O. R. 352 (1897).

Secs. 206(1)-207. Note (a).

ordering the payment by such of the parties as he shall adjudge to be liable therefor, of such portion of the said expenses as the said Judge shall then and there determine.

Dated this *29th* day of *January, 1900.*

W. A. M.,
Clerk of the *Village of Hintonburgh.*

To C. McN.,
Clerk of the *County of Carleton,*
Ottawa, Ont.

Expenses incurred by officers to be repaid to them.

206. Subject to the provisions of the last preceding section, the reasonable expenses incurred by the county clerk, the clerk of the local municipality and the other officers and clerks for printing, providing ballot boxes, ballot papers, materials for marking ballot papers, balloting compartments, transmission of the packets required by this Act to be transmitted, and all reasonable fees and allowances for services rendered under this Act, shall be paid to the county clerk or the clerk of the local municipality, by the treasurer of the county or local municipality, (as the case may be), and shall be distributed by him to the several persons entitled thereto. 55 V. c. 42, s 176.

Taken from 38 V. c. 28, s. 39 with such verbal alterations as have been necessitated by "*The County Councils Act, 1896.*" See 60 V. c. 3, s. 3.

(a) The Act contains no provision for the taxation of the amount of these services. Their reasonableness must in the first instance be judged of by the treasurer of the municipality. In the event of a difference as to their value between him and the person who performed the services the amount can only be settled by action or arbitration.

DIVISION VII.—VACANCIES IN COUNCIL.

Synopsis—The preceding Divisions of this Title having prescribed when, where and how municipal elections shall be held, and (s. 187) that the persons elected thereat "shall make the necessary declarations of office and qualification" (as to which, see post ss. 311-319),—"and shall assume office,"—the sections composing this Division provide for cases in which, after the council is organized, vacancies occur by reason (a) of crime, insolvency or absence from meetings, (s. 207); (b) disqualification—*e. g.*, by statute, or by the acceptance of an incompatible office, (s. 208); or (c) by non-return or non-election in one or more divisions, neglect or refusal to accept office, resignation, death or judicial decision, (s. 212).

Provision is made in the first of these cases for an official declaration by the council of the vacancy of the seat, (ss. 207-209), and in all of them for the holding of a new election, (ss. 212-214, 217) to fill the vacancy for the residue of the municipal year (s. 215); but in certain specified cases an option is permitted to the council as to whether or not the seat shall remain vacant for the remainder of the year or as to whether it shall be filled by popular election or by a vote of the council itself, (s. 216). Sec. 218 provides for the (very improbable) event of an election in which the ratepayers "neglect or decline" for any cause other than those specified in ss. 184 and 185, to elect the requisite number of members of the council.

Seats to become vacant by crime, insolvency, absence, etc.

207. If, after the election of a person as a member of a council, he is convicted of felony or infamous crime, or becomes insolvent within the meaning of any Insolvent Act in force in this Province or applies for relief as an indigent debtor, or remains in close custody, or assigns his property for the benefit of his creditors, or absents himself from the meetings of the council for three months without being authorized so to do

by a resolution of the council entered upon its minutes, his seat in the council shall thereby become vacant, and the council shall forthwith declare the seat vacant and order a new election. 55 V. c. 22, s. 177; 60 V. c. 15, *Sched.* C (41).

Sec. 207. Notes (a) (e).

Taken from 31 V. c. 30, s. 22 (1868) with certain verbal alterations made by 60 V. c. 15, Sched. C, (III) (1897). *Cf.* 12 V. c. 81, ss. 110, 112; 22 V. c. 99, s. 121; 29 & 30 V. c. 51, s. 124; R.S.O. c. 225, s. 28.

(a) "**A member of the council.**" This includes the head of the council, notwithstanding *Reg. ex rel. Doran* v. *Haggart* cited in note (a) to s. 171, (*a*)

(b) "**Felony.**" "*The Interpretation Act,*" (R. S. O. c. 1) s. 13 provides that "In these Revised Statutes 'felony' shall mean any crime which before the passing of '*The Criminal Code, 1892,*' would have been a felony under the law of Canada." Crime.

(c) "**Infamous crime.**" This term was applied at common law to certain crimes upon conviction of which a person became incompetent to testify as a witness, on the theory that a person who could commit so heinous a crime must be unworthy of credit. The principal of these crimes were treason, felony, and the *crimen falsi*, which was the general designation of a class of offences including all such as involve deceit or falsehood, *e. g.*, forgery, counterfeiting, using false weights or measures, perjury, subornation of perjury, bribery or conspiracy to procure the absence of a witness, and other like offences affecting the public administration of justice.

(d) "**Insolvent within the meaning of any Insolvent Act in force in this Province.**" There is at present no Insolvent Act passed by the Parliament of Canada to which, under the B. N. A. Act is assigned exclusive jurisdiction respecting bankruptcy and insolvency (s. 91 (21)) and the meaning of the words here used will not be extended. Insolvency.

In *Ashatt* v. *Southampton* (*b*), the plaintiff, an alderman, had offered to his creditors a composition of 7s. 6d. in the pound, but he executed no composition deed, and no proceedings were taken under "*The Bankruptcy Act, 1869.*" A meeting of the corporation of the borough having been summoned for the purpose of declaring his seat as an alderman vacant under s. 76 of the (English) Municipal Corporations Act of 1835 (*c*), (which provided for vacating the seat of any member "who shall compound by deed with his creditors"), and s. 21 of "*The Debtors' Act, 1869,*" (which extended this to every arrangement by a mayor, alderman, etc., with his creditors under "*The Bankruptcy Act, 1869,*") this action was brought for an injunction. It was contended that "the object and spirit of the Statutes are to disqualify an insolvent person from holding office," but JESSEL, M.R., in giving judgment, said:

> "Whatever I may think as to the spirit or meaning of the section, I am not entitled to get rid of the limitation imposed by the Legislature; because, if it was contended that a man compounding in any manner whatever with his creditors should be subject to the disqualification mentioned in the sections, nothing would have been easier than to have said so. The disqualification mentioned in "*The Debtors' Act, 1869,*" is expressly limited to an arrangement or composition "under '*The Bankruptcy Act, 1869,*'" so that these words must have been put in intentionally, according to some view which I do not profess to understand; that is to say, a composition with creditors was not to be a disqualification unless it took place under "*The Bankruptcy Act, 1869.*" The result, therefore, is that this gentleman has not become disqualified, and does not cease to hold office as an alderman." (*b*)

(e) "**Applies for relief as an indigent debtor.**" The word "indigent" was (properly) substituted for "insolvent" in 1877. (*d*) For the nature and grounds of this application, see "*The Indigent Debtors Act*" (R. S. O. c. 81). Indigent debtor.

(*a*) See the heading of Title I of Part II, *ante*, p. 91 and ss. 70-71 (1), 80-84, 210, 259, 261, 274, etc.

(*b*) 16 Ch. D. 143 (1880).

(*c*) 5 & 6 Wm. IV. c. 76. (*d*) R. S. O. (1877) c. 174, s. 170.

Secs. 207, 208.

Notes (f)-(k).

(f) "**Remains in close custody.**" See R. S. O. c. 80, ss. 15-28.

(g) "**Assigns his property for the benefit of his creditors.**" See R. S. O. c. 147, although the words are not limited to an assignment under that Act. "His property" seems to be intended to designate a general assignment.

What absence vacates seat.

(h) "**Absents himself from the meetings of the council.**" In *Richardson* v. *Methley School Board* (e)—a case decided under Rule 14 in Sched. II, Part I of "*The Elementary Education Act, 1870*," (f) which vacates the seat of a member of a school board who "absents himself during six successive months from all the meetings of the board," etc.,—KEKEWICH, J., in giving judgment says:

> "A member of the board cannot save his position by looking in casually, taking no part in the proceedings, and being present only a few minutes out of a long meeting. What is sufficient attendance must be decided according to the circumstances in each particular case."

(i) "**For three months.**" The three months should be counted, not from the last meeting at which the defaulter was present, but from the first one which he failed to attend (g).

Nulla bona.

(j) In the Third Edition of THE MUNICIPAL MANUAL (1874), Mr. HARRISON, in annotating this section, observes:

> "The Act of 1866 (s. 124) made a return of *nulla bona* against the goods of a member of the council ground for vacating the seat, (see *Re Wood*, 26 U. C. R. 513); but this, no doubt, has been removed at the instance of some disinterested holder of, or aspirant to office. So long as a property qualification is necessary to office, one would think that a return of *nulla bona* would be good evidence of the want of the qualification."

Council to declare seat vacant.

(k) "**The council shall forthwith declare the seat vacant.**" These words were added by 31 V. c. 30 s. 22 (1868) to the section as it stood in the previous Acts. When an act is directed by statute to be done "forthwith," it must be done within a reasonable time (h). The seat does not actually become vacant until the council so declares, (i) but the council may now be compelled by *mandamus* to pass the necessary by-law (j). Before 1868, when a person whose seat became vacant under the section as it then stood, insisted upon holding it, the proper mode of procedure against him was held to be an information in the nature of a *quo warranto*, and not a writ of *mandamus* to the mayor to hold a new election (k).

Proceedings on member's omitting to vacate seat.

208. In the event of a member of a council forfeiting his seat at the council or his right thereto, or becoming disqualified to hold his seat, or of his seat becoming vacant by disqualification or otherwise, he shall forthwith resign his seat, and in the event of his omitting to do so within ten days thereafter, proceedings may be taken to unseat such member, as provided by sections 219 to 244, both inclusive, of this Act, and the said sections shall, for the purposes of such proceedings, apply to any such forfeiture, disqualification or vacancy. 55 V. c. 42, s. 178; 60 V. c. 3, s. 3; c. 15, *Sched.* C. (42).

Taken from 37 V. c. 16, s. 5 (1874).

(e) [1893] 3 Ch. 510. (f) Imp. Stat. 33 & 34 V. c. 75.

(g) *Mearns* v. *Town of Petrolia*, 28 Grant, 98.

(h) *Reg.* v. *Justices of Worcester*, 7 Dowl. P. C. 789.

(i) *Reg.* v. *Oxford*, 0 A. & E. 349; *Reg*, v. *Leeds*, 7 A. & E. 963; *Hardwick* v. *Brown*, L. R. 8 C. P. 406; *Chaplin* v. *Woodstock School Board*, 16 O. R. 728.

(j) See note (a) to s. 10.

(k) *Reg.* v. *Mayor of Cornwall*. 25 U. C. R. 293 (1866.)

(a) Soon after the decision in *Reg.* v. *Mayor of Cornwall* (referred to in note (k) to s. 207) it was held (*a*) that the summary procedure authorized by "*The Municipal Act*" (*b*) to be taken to contest the validity of an election was not applicable to unseat a member of the council who, though legally elected, had forfeited his seat by a subsequent act. The above section was accordingly passed, in order to obviate the necessity in such cases of a resort to the cumbrous and expensive procedure by *quo warranto* under the Statute of Anne. (*c*)

(b) **"Forfeiting his seat at the council or his right thereto."** Sec. 71 of "*The Liquor License Act*," (*d*) provides that,

Forfeiture of seat.

> "If any member of a municipal council is convicted of having knowingly committed any offence under this Act, he shall, in addition to any other penalty to which he may be liable under this Act, thereby forfeit and vacate his seat, and shall be ineligible to be elected to or to sit or vote in any municipal council for two years thereafter; and if any such person, after the forfeiture aforesaid, sits or votes in any municipal council, he shall incur a penalty of $40 for every day he so sits or votes."

(c) **"Becoming disqualified to hold his seat."** This may be by the acceptance of an incompatible office, *e. g.* that of treasurer, (*e*) or it may be found that some private business interest clashes with the duty which every member of a municipal council owes to those for whom he is a trustee. (*f*) In that case he ought (of course) to resign at once. If he does not, this section applies.

(d) **"Or of his seat becoming vacant by disqualification or otherwise,"** *i. e.* from any of the causes mentioned in s. 207. The section does not apply where the vacancy is caused by resignation.

Does not apply in case of resignation.

In December, 1892, S. was elected reeve of a rural municipality in Manitoba. On March 18th, 1893, he resigned his seat by writing pursuant to the Municipal Act. Afterwards, on May 6th he attended a meeting of the council, took part in the proceedings, and voted on a motion to amend the minutes of the previous meeting by inserting therein a declaration that the council accept the withdrawal of his resignation, and (the other members of the council being equally divided) he declared the motion carried by his casting vote. A petition having been filed to have his seat declared vacant, two preliminary objections were taken by the respondent on the hearing before the County Judge, viz.:—

(1) That s. 178 of The Municipal Act, R.S. Man. c. 100—(identical with this section)—does not apply to the case of a member of the council who has resigned his seat; (2) That the petition had not been presented within the time prescribed by R. S. Man. c. 100, s. 197, viz., within 21 days from the day on which the election was held (corrupt practices not being alleged). These objections being over-ruled, S. applied to the Queen's Bench for a prohibition. *Held*, (1) that under the circumstances the remedy prescribed by s. 178 was the proper remedy: (2) that the 21 days mentioned in s. 197 should be reckoned from the date of the Act complained of—viz. the sitting and voting on May 6th—and that the petition was presented in time: (3) that as there was a *bona fide* dispute on a doubtful legal question concerning the vacancy of the seat, the clerk was right in not assuming to determine it by issuing a writ for a new election. (*g*)

(e) **"Within ten days thereafter,"** *i. e.* after the happening of the event which, under s. 207, is sufficient ground for declaring a vacancy, or which, under this section, involves disqualification or a forfeiture of the right to the seat.

209. In the case of members of a county council, the same proceedings may be taken for the vacating of any seat as in the case of members of the council of any local municipality, 59 V. c. 52, s. 20, *part*.

In county councils.

(*a*) *Reg. ex. rel. McGouvercin* v. *Lawlor*, 5 P.R. 208 (1870).
(*b*) See ss. ss. 220 *et seq.*
(*c*) As to which see *Reg. ex rel. Hart* v. *Lindsay*, 18 U.C.R. 51 (1858).
(*d*) R.S.O. c. 245. (*e*) *Reg.* v. *Smith*, 4 U.C.R. 322.
(*f*) See note (**b**) to s. 10. (*g*) *Sexsmith* v. *Montgomery*, 9 Man. Rep. 173 (1893).

Secs. 210, 211.

Notes (a) (c); (a) (b).

Any member may resign with consent of majority of council.

210. Any mayor or other member of a council may, with the consent of the majority of the members present, to be entered upon the minutes of the council, resign his seat in the council. 55 V. c. 42, s. 179.

Taken from the Municipal Institutions Act of 1873, (36 V. c. 48), s. 123. *Cf.* 12 V. c. 81, s. 111; 16 V. c. 181, s. 38; 22 V. c. 99, ss. 148, 149; 29 & 30 V. c. 51, s. 151.

(a) **"Mayor or other member of a council."** The mode in which the warden of a county may resign is prescribed by s. 211.

How and where seat may be resigned.

(b) **"May resign his seat."** etc. Strictly speaking a "resignation" implies that the person resigning has been elected to the office which he resigns, and has accepted that office (*a*). The right of a member of a municipal corporation to resign in the absence of express provision authorizing it, has been doubted (*b*). In 2 Roll. Ab. 456, it is said that an alderman, with the assent of the corporation may resign his office in the corporation, and that the corporation may accept the resignation as of right. Where the Act which sanctions a resignation prescribes the mode, that mode must be followed (*c*). Where no particular mode is specified, the resignation need not be in writing or other set form (*d*). By this section the resignation can only be effective when made "with the consent of the majority of the members present, to be entered on the minutes of the council." Until such consent has been given and recorded the office is not vacant (*e*), and up to that time the offer to resign may be recalled (*f*). In general, the right to accept a resignation is incidental to the power of appointment (*g*). Under ss. 238 and 240 a member of a municipal council may, in case his election is contested, vacate his seat by means of a disclaimer. And in that event, the assent of the council seems to be unnecessary.

(c) **"With the consent . . . to be entered on the minutes."** In this case a simple resolution seems to be sufficient. (*h*)

Resignation of warden.

Vacancies, how filled.

211. The warden of a county may resign his office by verbal intimation to the council while in session, or by letter to the county clerk if the council is not in session, in which case, and in case of vacancy by death or otherwise, the county clerk shall notify all the members of the council, and shall, if required by a majority of the members of the council, call a special meeting to fill such vacancy. 55 V. c. 42, s. 180.

Taken from the Act of 1866, (29 & 30 V. c. 52), s. 150, the words "and in the case of vacancy by death or otherwise" having been inserted in 1873 by 36 V. c. 48, s. 130.

(a) In this case, no action or consent on the part of the council is necessary. The office becomes vacant as soon as the resignation is made.

(b) **"Shall notify all the members of the council."** The notification is only of the fact that the warden has resigned. The clerk is not to call a special meeting to fill the vacancy unless and until a majority of all the members of the council require him to do so.

(*a*) *Reg.* v. *Blizard*, L. R. 2 Q. B. 55; *Hardwick* v. *Brown*, L. R. 8 C. P. 406; but see ss. 129 (2) (4) and 135 (1)

(*b*) *Reg.* v. *Tidderley*, 1 Sid. 14; Com. Dig., Title "Franchise," F. 30; *Rex* v. *Rippon*, 1 Ld. Rayd. 563; *Reg.* v. *Law*, 2 Ld. Rayd. 1304.

(*c*) *Rex* v. *Hughes*, 5 B. & C. 886; *Rex* v. *Rippon*, *supra*; *Rex* v. *Pagge*, 2 Chitty, 367; *Reg.* v. *Morton*, 4 Q. B. 146.

(*d*) *Rex* v. *Rippon*, *supra*; *Reg.* v. *Law*, *supra*; see *Jenning's Case*, 12 Mod. 402; *Reg.* v. *Gloucester*, Holt 450; Dillon, s. 224; Tiedeman, s. 86.

(*e*) *Hardwick* v. *Brown*, L. R. 8 C. P. 406; *Chaplin* v. *Woodstock School Board*, 16 O. R. 728.

(*f*) *Reg.* v. *Law*, *supra*; *Rex* v. *Rippon*, *supra*; *Jenning's Case*, *supra*; *Hazard's Case*, 2 Roll. 11; *Rex* v. *Patteson*, 4 B. & Ad. 9; see also Dillon, s. 224; Tiedeman, s. 86. But see *State* v. *Hause*, 13 Am. 384.

(*g*) *Rex* v. *Tidderley*, 1 Sid. 14; *Jenning's Case*, 12 Mod. 402; *Taylor's Case*, Popham, 133; *Staniland* v. *Hopkins*, 9 M. & W. 178. (*h*) See s. 325, note (e)

Sec. 212.

Notes (a) (c).

New election provided for and mode of conducting same.

212. In case no return is made for one or more wards or polling subdivisions, in consequence of non-election owing to interruption by riot or other cause, or in case a person elected to a council neglects or refuses to accept office, or to make the necessary declarations of office within the time required, or in case a vacancy occurs in the council caused by resignation, death, judicial decision or otherwise, the head of the council for the time being, or in case of his absence, or of his office being vacant, the clerk, or in the case of the like absence or vacancy in the office of the clerk, one of the members of the council, shall forthwith, by warrant, under the signature of such head, clerk or member, require the returning officers and deputy-returning officers appointed to hold the last election for the municipality, ward and polling subdivision respectively, or such other persons as may be duly appointed to those offices, to hold a new election in the wards or polling subdivisions for which no return has been made, or to fill the place of the person neglecting or refusing as aforesaid, or to fill the vacancy aforesaid. 55 V. c. 42, s. 181; 60 V. c. 15. *Sched.* C (43).

Taken from *The Municipal Institutions Act of 1883* (46 V. c. 48), s. 125,—with certain verbal amendments made in 1897 by 60 V. c. 15, Sched. C (43). *Cf.* 22 V. c. 99, s. 122; 29 & 30 V. c. 51, s. 125, and the sections referred to in note (a) *infra*.

(a) **"In case no return is made . . . in consequence of non-election owing to interruption," etc.** This is the case now provided for by s. 185 and (?) by the still unrepealed provision of s. 25 of "*The Ballot Act of 1874*," (38 V. c. 28), referred to in note (c) to s. 185. As to the former procedure under these circumstances, see 22 V. c. 99, s. 116; 29 & 30 V. c. 51, s. 120; and c. 52, s. 120.

What is neglect or refusal to accept office.

(b) **"In case a person elected neglects or refuses to accept office within the time rsquired,"** i. e., within twenty days (or, in the case of a county councillor, within thirty days) after *knowing of* his election (s. 319). The "neglect or refusal" must be intentional. "Inability may excuse the performance of a duty by one who is willing to do it" (*a*). Mere hesitation to take the oath until legal advice can be procured is not to be deemed a neglect or refusal within the meaning of this section. In *re Township of Asphodel and Sargant*, (*b*) the facts were that five councillors had been elected. At the first meeting, on the 17th of January, only one made the declaration of qualification; and, a doubt having been raised as to the remaining four in consequence of some employment held by them under the corporation, they delayed in order to consult the County Judge. On the 19th of January they met again and organized themselves; but on the same day the reeve for the previous year issued his warrant to elect four other councillors, who were returned thereunder; on the 31st of January these four new councillors with the one first qualified, met and claimed to be the council. *Held*, that the second election was invalid; for the parties first elected not having *refused* to qualify, but only delayed, and having done so within the twenty days allowed, there was no ground for a new election. A *mandamus* was therefore ordered to the clerk to deliver up the papers to the council first chosen. BURNS, J., in giving judgment, says (p. 396):

> "It is an important point to consider upon what evidence the head of the council shall act in issuing a warrant for another election. In the case now before us there is nothing to show at what time these persons were aware of their elections; and if it were to happen that in any case the person elected did not become aware of his election until perhaps a day or two before the third Monday in January (*c*) we could not hold that he was bound, at the risk of losing his seat,

(*a*) Per Lord DENMAN, C. J., in *Rex* v. *Burrell*, 12 A. & E. 460-467.

(*b*) 17 U. C. R. 592 (1868). (*c*) See small-print note under s. 259.

Secs. 212-214.

Notes (a)-(f); (a)-(a).

Neglect or refusal to accept office.

to qualify himself on that day, when we see that he may do it within twenty days after knowledge of his election. If he would lose his seat by reason of not qualifying on that day, and a new election must be the legal result of his doing so, then this absurdity would follow, either that he would be liable for not qualifying within the twenty days, or, if he did qualify within that time then there was no use in it, for that by reason of neglecting or delaying to do so on the third Monday in January, his seat might be filled by another person to his exclusion. It is impossible to lay down any rule as to what amount or what kind of information should be laid before the head of the council to enable or authorize him to issue his warrant to hold another election; but in this case it does not appear from the evidence before us that he could have had sufficient information or evidence before him." (*d*)

(c) "**Or in case a vacancy occurs . . . by resignation, death, judicial decision or otherwise,**" etc. Unless it is necessary to pass a by-law (s. 106) appointing new officers to hold the nominations or to preside at the polling places, the warrant, in the case of vacancies caused by death or judicial decision, or by a by-law passed under s. 207, may issue at once without waiting for a meeting of the council; but in the case of a resignation (other than that of a warden) it cannot issue until the council has assented thereto (*e*).

(d) "**The head of the council . . . the clerk . . or one of the members of the council shall.**" See note (**a**) to s. 10.

(e) "**Forthwith.**" See note (**k**) to s. 207.

(f) "**The returning officers and deputy-returning officers appointed to hold the last election.**" See s. 106. "Returning officers" to hold the nominations; "deputy-returning officers" to preside at the polls (*f*).

Warrant for new election.

But neglect not to prevent organization of council.

213. In case such non-election, neglect or refusal as aforesaid occurs previous to the organization of the council for the year, the warrant for the new election shall be issued by the head or a member of the council for the previous year, or by the clerk, in like manner as provided by section 212: but such neglect or refusal shall not interfere with the immediate organization of the new council, provided a majority of the full number of the council are present. 55 V. c. 42, s. 184.

Taken from the Act of 1858, (22 V. c. 99,) s. 124. *Cf.* 12 V. c. 81, s. 162; 13 & 14 V. c. 64, Sched. A. (27).

(a) "**By the head . . . of the council for the previous year.**" This was the case in *Re Township of Asphodel and Sargant* (*g*).

Time for holding new election.

214. The returning officers and deputy-returning officers shall hold the new election at furthest within fifteen days after receiving the warrant, and the clerk shall appoint a day and place for the nomination of candidates, and the election shall, in respect to notices and other matters, be conducted in the same manner as the annual elections. 55 V. c. 42, s. 185.

Taken from 48 V. c. 39, s. 7 (1885). *Cf.* 22 V. c. 99, s. 125; 29 & 30 V. c. 51, s. 128; 36 V. c. 48, s. 128; R. S. O. (1877), c. 174, s. 177; 46 V. c. 18 s. 183.

(a) "**Shall hold the new election.**" Do these words include the polling as well as the nomination of candidates? The better opinion is that they do. In

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(*d*) See further as to the meaning of "wilful neglect," *Reg.* v. *Downes*, 1 Q. B. D. 25; *Reg.* v. *Morley*, 8 Q. B. D. 571; of "wilful refusal," *Re Mills*, 04 Ch. D. 14. (*e*) See s. 210 and note (**b**), *supra*.

(*f*) See the Synopsis prefixed to Div. II (*ante*, p. 134), and note (**d**) to s. 106.

(*g*) 17 U.C.R. 593 (1860), cited in note (**b**) to s. 212, *ante*.

ss. 94-100, 104-111, etc., the word "election" includes the polling (*a*). If so, the clerk should at once give the six clear days notice required by s. 127, of the date and place of the nomination—since the election is to be "conducted in the same manner as the annual elections," and therefore a week should elapse between nomination and polling (s. 128). The use of the words "annual elections" and the periods fixed by ss. 132 (*b*) and 133 indicate that the section is not intended to apply to a county council. In such an election the procedure prescribed by s. 217 should probably be adopted in all cases referred to in s. 212 (*b*).

(b) **"Within fifteen days after receiving the warrant."** Since the day of the receipt of the warrant should be excluded from computation, this gives the whole 15 days (*c*). Under the earlier Acts above cited, the time was only 8 days.

215. The person thereupon elected shall hold his seat for the residue of the term for which his predecessor was elected or for which the office is to be filled. 55 V. c. 42, s. 183

Seat to be held for residue of term.

Taken from the Act of 1858, (22 V. c. 99), s. 123.

(a) **"Shall hold his seat for the residue of the term."** *i.e.*, subject to the contingencies referred to in s. 207.

216.—(1) In case the office of mayor of a town, or the office of reeve of a township or village, becomes vacant after the first day of November in any year, and an election to fill the vacancy has not been ordered by the Court or a Judge, the council may either direct that an election be held to fill the vacancy, or may elect one of their number to fill the office during the residue of the term. 55 V. c. 42, s. 182; 58 V. c. 42, s. 10; 60 V. c. 45, s. 32 (1).

Vacancies in office of mayor of town or reeve of township or village after 1st November.

(2) In case the office of mayor of a city becomes vacant after the first day of July in any year, and an election to fill the vacancy has not been ordered by the Court or a Judge, the council shall elect one of their own number to fill the office during the residue of the term. 60 V. c. 45, s 32 (2).

Vacancies in office of mayor of a city after 1st July.

(3) In case the office of alderman or councillor becomes vacant after the first day of November in any year, and an election to fill the vacancy has not been ordered by the Court or a Judge, it shall be in the discretion of the council to direct that an election be held to fill such vacancy, or otherwise as they may see fit. 58 V. c. 42, s. 11.

Vacancies in office of alderman or councillor after 1st November

From 1885 (*d*) to 1895 this section applied only to a vacancy in the office of mayor of a city or town; and the date named was the 1st of December in any year. In 1895 it was amended so as to apply to the reeve of a township or village, the date was changed to November 1st and sub-s. 3 was added. (*e*) In 1897 it was altered into the present form by 60 V. c. 45, s. 32.

(a) **"The Court or a Judge."** The word "Judge" includes the Master in Chambers or any officer having jurisdiction to act for him under Con. Rule 43 (1897).

(*a*) See also *Reg. ex rel. Taverner* v. *Willson*, 12 P. R. 546 (1888).

(*b*) See note (a) to s. 217.

(*c*) See *McCrea* v. *Waterloo County M.F. Ins. Co.*, 26 C. P. 431; *Hannes* v. *Johnston*, 3 O. R. 100; *Radclyffe* v. *Bartholomew*, [1892] 1 Q. B. 161; and note (a) to s. 185.

(*d*) 48 V. c. 39, s. 6. (*e*) 58 V. c. 42, ss. 10, 11.

Secs. 217 (1).

Notes (a)-(d).

Filling vacancies in county councils.

217.—(1) In case of a vacancy occurring in a county council before the June meeting of the council, by the death of a member or from some other cause, the warden (or in case of a vacancy in that office, the county clerk) shall issue to the nominating officer of the division in which the vacancy exists, his warrant for a new election to fill the vacancy, in time, if practicable, to allow of the filling of the same before the regular June meeting of said council is held; and where there is not time to fill the same before the said meeting, such vacancy shall be filled at the next annual municipal election; and the clerk of the county council and the councils and the clerks of the local municipalities comprising the county council division in which such vacancy has occurred, shall take all necessary proceedings, as provided by this Act, to hold the election. When an election to fill any such vacancy is held at the annual municipal election, or at any other time during the year, the proceedings shall be the same (as nearly as may be) as in the case of the biennial election under this Act; but where at such by-election one councillor only is to be elected, each elector shall be entitled to but one vote.

(2) The councillor so elected to fill a vacancy shall hold office during the unexpired portion of the term for which his predecessor was elected. 59 V. c. 52, s. 21.

Sub-s. 1 and 2 are taken from s. 21 of "*The County Councils Act, 1896*," (59 V. c. 52). Sub-s. 3 was added in 1897 by 60 V. c. 45, s. 62.

(a) "**In case of a vacancy occurring in a county council . . by death.**" The vacancy contemplated by the draftsman of this section was evidently one occurring (as in s. 207) after the election and by reason of something subsequent thereto, but the procedure should also be adopted in all cases referred to in s. 212. (*f*)

(b) "**The warden (or . . the county clerk) shall issue his warrant for a new election.**" See note (a) to s. 10. As to the meaning of "county clerk," see s. 134, note (a), and s. 142 (1). As to vacancies caused by resignation, see s. 210 and note (c) to s. 212.

"**The councils and clerks of the local municipalities shall take the necessary proceedings . . . to hold the election.**" See ss. 106, 107, 111, 142, 157, 182, etc.

(3) In case the nominating officer of the division in which the vacancy exists is dead, or is unable through illness or absence, or neglects or refuses to act, the warrant for a new election may be directed to some other person; and thereupon such person shall act as nominating officer and shall have all the powers and perform all the duties of a nominating officer duly appointed under section 132 of this Act. 60 V. c. 45, s. 62.

(d) "**In case the nominating officer . . neglects . . to act**" etc. The failure of the nominating officer to comply within a reasonable time with the requirements of s. 132 (a) would be sufficient to authorize the cancellation of the warrant to him, and the issue of a new one to another person. (*g*)

(*f*) See s. 214, note (a)

(*g*) *Willoughby* v. *Willoughby*, 9 Q. B. 923; *Rex* v. *Burrell*, 12 A. & E. 468, *per* PATTESON, J.

(e) "**To some other person.**" The appointment of a new nominating officer under the circumstances mentioned, is apparently committed to the warden, or (if there is no warden) to the clerk.

Secs. 217-219(1). Notes (e); (a)-(d).

218. In case, at an annual or other election, the electors, from any cause not provided for by sections 184 or 185, neglect or decline to elect the members of the council for a municipality on the day appointed, or to elect the requisite number of members, the new members of the council, if they equal or exceed the half of the council when complete, or a majority of such new members—or if half of such members are not elected, then the members for the preceding year, or a majority of them,—shall appoint as many qualified persons as will constitute or complete the number of members requisite; and the persons so appointed shall accept office and make the necessary declarations, under the same penalty, in case of refusal or neglect, as if they had been elected. 55 V. c. 42, s. 186.

Mode of appointing requisite number of members of council if election neglected, etc.

Taken from R.S.O. (1877), c. 174, s. 178. *Cf.* 12 V. c. 81, s. 165; 13 & 14 V. c. 64, Sched. A. (31); 22 V. c. 99, s. 126; 29 & 30 V. c. 51, s. 129; 36 V. c. 48, s. 129.

(a) "**Neglect or decline.**" This does not apply to the cases referred to in ss. 130, 131, or in R.S.O. c. 248, s. 47, quoted *ante*, in note (**d**) to s. 185.

(b) "**If they equal or exceed the half of the council when complete.**" This limitation does not appear in the Acts prior to that of 1873 cited above (*a*).

(c) "**Shall accept office and make the necessary declarations.**" Sec. 219 (*q.v.*) applies to "persons appointed" as well as persons elected.

(d) "**Refusal or neglect.**" See note (**b**) to s. 212.

Division VIII.—CONTROVERTED ELECTIONS.
(Secs. 219-244).

Synopsis.—This Division provides a summary procedure for the trial of a controverted municipal election. Instead of a petition being filed (as in Dominion and Provincial elections) a 7-days notice of motion may be given—within six weeks after the election or one month after the acceptance of office by the defendant, by leave of a Judge or of the Master in Chambers, and upon giving proper security for costs—to the person whose election is questioned, by any one who was a candidate at the election, or by any elector who voted thereat, or, in the case of an election by acclamation, by any elector who was entitled so to vote (ss. 219-220). The contents of this notice of motion, the manner in which it shall be served, the procedure upon the hearing, the judgment which may be given and the mode of its enforcement are dealt with in ss. 221-237, and ss. 238-243 provide for a disclaimer by which the candidate-elect may abandon his claim to the contested seat and (under certain circumstances) escape liability for costs.

Sec. 244 provides for the making of further rules regulating the practice in these proceedings, by the Judges of the High Court or by such of them as are authorized by s. 124 of "*The Judicature Act*" to make general rules for regulating the practice of the High Court.

219.—(1) In case the validity of the election of a mayor, warden, reeve, deputy-reeve, alderman, county councillor or councillor is contested, the same may be tried by a Judge of the High Court, or by the senior or officiating Judge of the County Court of the county in which the election or appointment took place. Any candidate at the election, or any elector

Trial of contested elections.

(a) See note (**b**) to s. 120.

Sec. 219 (1). Note (a).

who gave or tendered his vote thereat, or, in the case of an election by acclamation, any elector entitled to vote at a municipal election for the municipality may be the relator for the purpose. 55 V. c. 42, s. 187 (1); 58 V. c. 42, s. 12; 59 V. c. 52, s. 27, *part*; 60 V. c. 15, *Sched.* C (44).

When this procedure is applicable.

(a) Prior to 1849, a person who illegally usurped a municipal office could only be removed by *quo warranto* proceedings either at common law or under the Statute of 9 Anne, c. 20, (*a*) and this method of procedure is still the proper one in cases to which this and the following sections of this Division of the Act do not apply. (*b*)

The Municipal Act of 1849 (*c*) provided a more summary mode of testing the validity of a municipal election by means of a writ of summons in the nature of a *quo warranto;* and this procedure—as amended by 13 & 14 V. c. 64, Sched. A (23); 16 V. c. 181, ss. 27, 29; 22 V. c. 99, ss. 127, 129,—was extended, by 29-30 V. c. 51, to cases involving "the right of any municipality to a reeve, deputy-reeve or reeves." As this question can no longer arise—since the passing of "*The County Councils Act, 1896*" (59 V. c. 52) and of 61 V. c. 23, ss. 2-4 (*d*)—these words have been struck out of the section by 60 V. c. 15, Sched. C (44).

The statutory procedure is not cumulative, but is now substituted for the information by *quo warranto*, "the object being to give an expeditious, convenient and less expensive remedy"; (*e*) and the Courts will in general refuse relief except to the persons, and in the manner specified in the Statute. (*f*) And this is so whether the validity of the election is questioned on the ground of irregularity or of corrupt practices. (*g*)

The practice under this and the following sections of the Act was formerly regulated not only by the Act itself but also by Rules of Court made under the authority of what is now s. 244. See the note to that section and notes (c) and (f) to s. 220.

A Court of Equity will not, upon an injunction bill, try the validity of an election to municipal office,—at all events unless others are claiming the seat. The fact that the custody of books and papers of the municipality is in question does not warrant the exercise of jurisdiction in such a case (*h*).

Where, however, the object is not to unseat a member of a municipal council but only to restrain him from sitting and voting, it would seem that this may be done by injunction proceedings (*i*).

(*a*) *Re Board of Police, Brockville*, 3 O.S. 173 (1849); *Re Biggar*, 3 U.C.R. 144 (1845).

(*b*) *Reg ex rel. Coleman* v. *O'Hare*, 2 P. R. 18 (1855); *Reg. ex rel. Beaty* v. *O'Donaghue*, 3 U.C.L.J. 75 (1857); *Re McPherson and Beeman*, 17 U.C.R. 99 (1858); *Reg. ex rel. Hart* v. *Lindsay*, 18 U.C.R. 51 (1859); *Reg. ex rel. Clancy* v. *St. Jean*, 46 U.C.R. 77 (1881); *Reg. ex rel. Stewart* v. *Standish*, 6 O.R. 403 (1884); *Chaplin* v. *Woodstock School Board*, 16 O.R. 728 (1889); *Reg. ex rel. Moore* v. *Nagle*, 26 O.R. 249 (1895). And see *Askew* v. *Manning*, 38 U.C.R. 345 (1876) at pp. 351, 355-361, where many cases are cited and reviewed by HARRISON, C.J. (*c*) 12 V. c. 81, ss. 146-153.

(*d*) See *ante*, s. 66, note (a), ss. 71-73 and notes thereto.

(*e*) *Reg. ex rel. White* v. *Roach*, 18 U.C.R. 226 (1859), *per* ROBINSON, C.J.

(*f*) *Re Kelly and Macarow*, 14 C.P. 457 (1864), *per* RICHARDS, C.J.; followed by HAGARTY, J., in *Reg. ex rel. Bagg* v. *Bell*, 4 P.R. 226 (1868), and by HARRISON, C.J., in *Askew* v. *Manning*, 38 U.C.R. 345, 351, 355 (1876).

(*g*) *Reg. ex rel. Johns* v. *Stewart*, 16 O.R. 5 (1888). See however *Reg. ex rel. Clancy* v. *St. Jean*, *supra*.

(*h*) *Fairbanks* v. *Douglas*, 5 Man. Rep. 41 (1887).

(*i*) *Coughlan et al.* v. *City of Victoria*, 3 B. C. R. 57; Cf. *Asdatt* v. *Southampton*, 16 Ch. D. 143, referred to in note (d) to s. 207; *Mearns* v. *Town of Petrolia*, 28 Grant 98; *Smith* v. *Village of Peterseille*, Ibid, 599; *Chaplin* v. *Public School Board of Town of Woodstock*, 16 O.R. 728. As to a *mandamus* to compel the admission and swearing of a councillor, see *Reg.* v. *Burke*, 33 C. L. J. N. S., 84 (1896).

Sec. 219 (1). Notes (b)-(f).

(b) "In case the validity of the election." See preceding note. The elision of the words "or appointment" by 60 V. c. 8 15, Sched. C (44) was probably an oversight. In lines 4 and 5 of the section they are retained. See s. 218.

Where and to whom application may be made.

(c) "A Judge of the High Court." The application may be made to a Judge sitting in the weekly Court elsewhere than in Toronto for "*ubi judex, ibi curia* (*j*).

(c) "The senior or officiating Judge of the County Court." This may include a Deputy Judge (*k*); but apparently not a Junior Judge (*l*). In *Reg. ex rel. McDonald* v. *Anderson* (*m*), the fiat for the writ was issued by a Junior Judge, but this question does not seem to have been raised.

Who May Be a Relator.

A candidate.

(e) "A candidate." The correct sense of the word "candidate" is "a person offering himself to the suffrages of the people." (*n*) It is not necessary in order to constitute a person a "candidate" so as to qualify him to be a relator, that he should have been actually nominated at the election, where his actual nomination has been prevented by the misconduct of the returning officer (*o*). But, if after being nominated, he withdraws with the consent of his proposer and seconder, he ceases to be a candidate (*p*). A relator who was a candidate need not, in his application to oust the defendant, show that he himself was qualified for the office; nor does the fact that he did not object when the returning officer closed the poll before the statutory period had elapsed, disqualify him from being a relator (*q*).

An elector.

(f) "Any elector who gave or tendered his vote," etc. As to who are electors, see *ante*, ss. 2 (5), 85-93. The qualification of the relator must clearly appear on the material filed upon the application (*r*). Before the Act of 1858, the words used were "any person having an interest as a municipal voter in or for" the municipality. In *Reg. ex rel. Shaw* v. *Mackenzie* (*s*), it was held that the use of the exact words of the Statute was not essential, and that, the writ having issued, the interest of the relator, though not thereby established, would be presumed in the absence of proof to the contrary (*t*). In *Reg. ex rel. White* v. *Roach* (*u*), Chief Justice ROBINSON held it insufficient for a relator to state "that he protested and voted against" the election of the defendant; but in *Reg. ex rel. Ross* v. *Rastal* (*v*), the allegation in the statement that the relator "had an interest in the election as a voter" coupled with his affidavit that he had "voted in the said election, but not for the said defendant," was held sufficient. In *Reg. ex rel. Chauncey* v. *Billings* (*w*), MCMAHON, J. held that where the affidavit filed by a relator on an application for a fiat (*x*) under the Act of 1883 did not show that he was a candidate or an elector who had voted or tendered his vote at the election in question, this was not a mere irregularity which could be amended at a later stage of the proceedings; and the fiat, writ, and subsequent proceedings were set aside with costs. But where the affidavit filed showed the relator to possess the necessary status, the want of an allegation to that effect, in the statement of the relator (under

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(*j*) *Reg ex rel. Pilon* v. *Lalonde*, 33 C. L. J. N. S., 242; 17 C. L. T. 120 (1897). (*k*) R. S. O. c. 54, s. 10. (*l*) *Ibid.* s. 4. (*m*) 8 P. R. 241.

(*n*) *Per* Lord ELLENBOROUGH in *Morris* v. *Burdett*, 2 M. & S. 217. See the definition of "candidate" given by s. 2 (8) of "*The Ontario Election Act*," (R. S. O. c. 9). (*o*) *Reg. ex rel. Corbett* v. *Jull*, 5 P. R. 41 (1869).

(*p*) *Reg. ex rel. Coyne* v. *Chisholm*, 5 P. R. 328 (1871); and see *Reg. ex rel. Harris* v. *Bradburn*, 6 P. R. 308 (1876); *Mantz* v. *Stamp*, 8 M. & W. 302; *Edwards* v. *Whitehurst*, 5 H. & N. 131.

(*q*) *Reg. ex rel. Mitchell* v. *Adams*, 1 C. L. Ch. 203 (1851).

(*r*) *Reg.* v. *Thielwin*, 10 Jur. N. S. 206; 9 L. T. N. S. 731.

(*s*) 2 C. L. Chamb. 36 (1851).

(*t*) See also *Reg. ex rel. Bartliffe* v. *O'Reilly*, 8 U. C. R. 617 (1853); *Reg. ex rel. Pomeroy* v. *Watson*, 1 C. L. J. N. S. 48 (1855).

(*u*) 18 U. C. R. 227 (1857). (*v*) 2 C. L. J. N. S. 160 (1866).

(*w*) 12 P. R. 404 (1888). (*x*) See s. 220 (1).

Sec. 219 (1).

Notes (f) (h).

Who may be a relator.

the former practice (*y*) or (under the present practice) in the notice of motion served on the defendant (*z*) is not a fatal objection, and an amendment will, if necessary, be allowed. It would seem that if the relator, although he may have voted at the election, was not, in fact, an elector,—*i.e.*, did not possess the qualifications required by ss. 85-87, or was disqualified under ss. 81, 88, 246, 250, etc., his proceedings may be set aside (*a*); but the judge may, under s. 231, allow any person entitled to be a relator to intervene on such terms as appear to be just and reasonable (*b*).

(g) **"In case of an election by acclamation, any elector entitled to vote," etc.** These words were added in 1895 by 58 V. c. 42, s. 12. Prior to this amendment an election by acclamation could be attacked, if at all, only by *quo warranto* proceedings at common law or under the Statute of Anne (*c*). In *Reg. ex rel. Bugg* v. *Bell*, HAGARTY, J., said (p. 229):—

> "If the electors do not think it worth while to contest an election in the ordinary way, it may properly be considered that the Legislature did not mean to give them the right to contest it by an application of this kind."

And in *Re Kelly and Macarow*, RICHARDS, C.J., said (p. 461):—

> "It is urged that when a disqualified person has been elected without opposition, the Municipal Act makes no provision for proceeding under it to contest the election, because there would have been no other candidate, and no elector would have given or tendered his vote thereat. The obvious and ready answer is that the Legislature thought if no elector took sufficient interest in the subject to propose a qualified person as a candidate, and to offer to vote for him, that it was scarcely necessary to provide that such an election should afterwards be contested because some electors had become awakened to the importance of having only properly qualified persons elected as members of the corporation. If all the electors were so little inclined to assert their rights as not to have a person nominated to oppose the disqualified person, it would not be unreasonable to suppose that the Legislature intended that they should have until the next election to gather energy enough to exercise some little activity in relation to their municipal affairs."

(h) **"May be the relator for the purpose."** But even a person who possesses the statutory qualifications may so conduct himself that he will not be allowed to contest the validity of a municipal election, *e.g.*, by participating in the irregularity complained of (*d*), or taking part in an election held under a by-law which he now alleges to be defective (*e*), or upon the faith of the existence of a state of facts which afterwards turns out to be incorrect (*f*). Still less can one attack the election of a candidate for whom he has voted, or whom he has been instrumental in electing (*g*), unless he was at the time ignorant of his disqualification (*h*); and when the relator admitted that the candidate elected was qualified in fact, and objected, not to the irregularity of the election, but only that the declaration was of a qualification upon a freehold instead of a leasehold estate, the writ was refused (*i*). Though a person who has voted for the candidate cannot attack his election, he may (having himself been a candidate),

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(*y*) *Reg. ex rel. O'Reilly* v. *Charlton*, 5 P. R. 254 (1874).

(*z*) *Reg. ex rel. Percy* v. *Worth*, 23 O. R. 688 (1893).

(*a*) *Reg. ex rel. Francis* v. *Young*, 33 C. L. J. N. S. 459 (1897).

(*b*) See *South Ontario* (Provincial Election), 18 C. L. T. 321 (1898).

(*c*) See note (a) to this section, citing *Re Kelly* v. *Macarow*, 14 C.P. 457, and *Reg. ex rel. Bugg* v. *Bell*, 4 P.R. 226.

(*d*) *Reg. ex rel. Pomeroy* v. *Watson*, 1 U.C.L.J. 48 (1855); *Reg* v. *Lofthouse*, L.R. 1 Q.B. 433 (1866); *Reg. ex rel. Harris* v. *Bradburn*, 6 P.R. 308 (1876).

(*e*) *Reg. ex rel. McLaughlin* v. *Hicks*, 5 U.C.L.J. 89 (1859).

(*f*) *Reg. ex rel. Regis* v. *Cusac*, 6 P.R. 303 (1876).

(*g*) *Reg. ex rel. Rosebush* v. *Parker*, 2 C.P. 15 (1851); *Reg. ex rel. Coleman* v. *O'Hare*, 2 P.R. 18 (1856).

(*h*) *Reg. ex rel. Loyall* v. *Pouton*, 2 P.R. 18 (1856), at p. 21.

(*i*) *Reg ex rel. Grayson* v. *Bell*, 1 C.L.J.N.S. 130 (1865).

be awarded the seat on a successful application by another relator (*j*); and the acquiescence of all the candidates in an irregularity cannot affect the right of a voter to contest the validity of the election (*k*). It is not desirable that clerks of municipal councils, having the custody of papers of the corporation, should be relators in *quo warranto* cases to unseat members of the councils of which they are clerks, and, —in order to discountenance such a practice, —costs were refused to the relator, clerk of the county council to which the defendant had been elected a member, although the application to unseat the defendant was successful (*l*).

Jurisdiction of Master in Chambers.

Jurisdiction of Master in Chambers.

(2) The Master in Chambers or other officer having jurisdiction to sit for the Master in Chambers at his request under the rules of the Supreme Court of Judicature from time to time in force, shall have the same jurisdiction as a Judge of the High Court to try the matters aforesaid: and the word "Judge" in sections 216 and 220 to 224 inclusive, and sections 248 to 257 inclusive, shall include such Master or officer. 55 V. c. 42, s. 187 (2); 60 V. c. 15, *Sched.* C (45).

Appeal from County Judge or Master in Chambers.

(3) The decision of a Judge of the High Court shall be final, but the decision of the Master in Chambers or other officer aforesaid or of the County Court Judge shall be appealable to a Judge of the High Court, and the proceedings incident thereto shall be the same, as nearly as may be, as in the case of an appeal in other cases from a decision of the Master in Chambers. The decision of the Judge of the High Court on such an appeal shall be final. 55 V. c 42, s. 187 (3).

(a) **Subs. 2.** This and the following subsection first appear in "*The Con. Mun. Act, 1892,*" (*m*) but the last clause of subs. 2, interpreting the word "Judge" in ss. 216, 220-224 and 248-257 inclusive, has been added in the Revision of 1897. Prior to the passing of the Con. Rules of 1888 there had been a conflict of judicial opinion as to the jurisdiction of the Master in Chambers to try cases of controverted municipal elections. In *Reg. ex rel. Feliz* v. *Howland*, (*n*) Mr. DALTON held that s. 13 of "*The Administration of Justice Act, 1885,*" (*o*) had "put an end to any question on the subject," and that the jurisdiction clearly existed; but in a later case decided during the same year, O'CONNOR, J., came to a directly opposite conclusion (*p*).

The question was accordingly settled by Rule 30 of the Con. Rules of 1888, which expressly included "proceedings in the nature of *quo warranto* under the Municipal Act," among the matters as to which the Master in Chambers was to have all the authority formerly exercisable by a Judge in Chambers; and Rule 31 provided that the same authority should be exercisable by any Official Referee sitting for the Master in Chambers at his request or at the request of a Judge of the High Court. In *Reg. ex rel. White* v. *McClay*, (*q*) it was held that under the rule (30) above referred to, the Master in Chambers had power to make an order of reference to a County Court Judge to take evidence under s. 248.

Rules 42 and 43 of the present Con. Rules (1897) correspond to Rules 30 and 31 of the Con. Rules (1888).

(*j*) *Reg. ex rel. Clint* v. *Upham*, 7 U.C.L.J. 69 (1861).

(*k*) *Re Charles* v. *Lewis*, 2 C.L.Chamb. 171 (1853).

(*l*) *Reg. ex rel. McMullen* v. *De Lisle*, 8 U.C.L.J. 291 (1862), followed in *Reg. ex rel. Brine* v. *Booth*, 9 P.R. 452 (1883), where the relator was the auditor of the village corporation. (*m*) 55 V. c. 42, s. 187 (2) (3).

(*n*) 11 P. R. 264, 269 (1886). (*o*) 48 V. c. 13, s. 13.

(*p*) *Reg. ex rel. Wilson* v. *Duncan*, 11 P.R. 379 (1886). (*q*) 13 P.R. 96 (1889).

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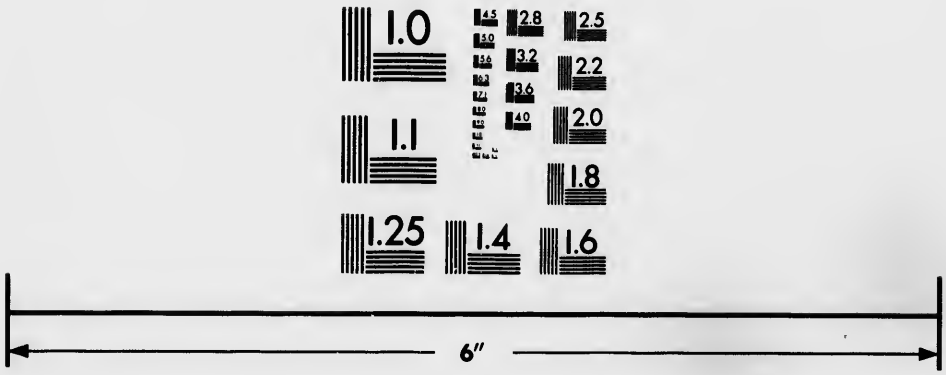

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Sec. 220 (1).

Note (a).

Time within which proceedings to be instituted.

Security and proof required.

220.—(1) In case within six weeks after an election, or one month after acceptance of office by the person elected, the relator shows by affidavit to such Judge, reasonable ground for supposing that the election was not legal, or was not conducted according to law, or that the person declared elected thereat was not duly elected, or for contesting the validity of the election of any mayor, warden, reeve, [*deputy-reeve*] alderman, county councillor or councillor, the Judge shall grant his fiat, authorizing the relator, upon entering into a sufficient recognizance as hereinafter provided, to serve a notice of motion in the nature of a *quo warranto* to determine the matter.

This section has been entirely recast by 60 V. c. 15, Sched C (4). *Cf.* Rules 1-3 of M. T. 14 V.; 13-14 V. c. 64, Sched. A (23); 16 V. c. 181, s. 27; 22 V. c. 99, s. 128; 29 & 30 V. c. 51, s. 131; 36 V. c. 48, s. 132; R. S. O. (1877) c. 174, s. 180; 46 V. c. 18, s. 186; R. S. O. (1887) c. 184, s. 188; 55 V. c. 42, s. 188.

(a) "Within six weeks after an election or within one month after acceptance of office," etc.

This period was fixed in 1850 by 13-14 V. c. 64, Sched A (23) amending 12 V. c. 81, s. 146. In computing the six weeks, the day of the election (polling) is to be excluded. See note (**b**) to s. 214. The application may be made although the defendant has not accepted office.(*a*) The "acceptance of office" intended is the formal acceptance by making the statutory declaration of qualification and office under s. 319; not a mere verbal acceptance by speech to the electors, (*b*) or by other acts less formal than the statutory declaration. (*c*)

The "month" is a calendar month, (*d*) and in computing it the last day falls on the corresponding day in the ensuing month to that on which the acceptance of office took place, (*e*) but if the acceptance takes place on the 29th, 30th or 31st January the month ends on the last day of the ensuing month of February. Six weeks are allowed to impeach the election, although the office may have been accepted more than the calendar month. If the application be not made within six weeks after the election, it still may be made if the office has not been accepted a calendar month previously. (*f*) Where, after a summons had been obtained under the former practice, the relator, finding his proceedings irregular, notified the defendant not to appear, and that it was his intention to proceed *de novo*, it was,—*Held*, that the first proceeding was no bar to his making a second application, the time fixed by the Statute not having expired. (*g*) But if the statutory period has been permitted to elapse, the relator may not be allowed to file an information by way of *quo warranto*. (*h*) In *Reg.* v. *Calloway*, (*i*) it was held that on an application for a *quo warranto* the utmost strictness will be required, and the Court will not readily give leave to file a *quo warranto* after proceedings taken under the Statute have been dismissed. In that case an affidavit was held insufficient which alleged that the deponent had been present at a meeting of the council and had seen the respondent take his oath of office without making any declaration of qualification, and that the deponent had reason to believe that the respondent had never made a declaration of qualification. *Held*, that the affidavit should have shewn the deponent was present throughout the entire period of the meeting. But in *Reg. ex rel. Clancy* v. *St Jean*, (*j*) the late Sir MATTHEW CAMERON, C. J., held (1) that the declaration of qualification required by

(*a*) *Re Sawers and Stevenson*, 5 U. C. L. J. 42 (1859).

(*b*) *Reg. ex rel. Clancy* v. *McIntosh*, 46 U. C. R. 98 (1881).

(*c*) *Reg. ex rel. Felitz* v. *Howland*, 11 P.R. 264 (1886). See *Reg. ex rel. Linton* v. *Jackson*, 2 C. L. Ch. 26 (1851); *Reg ex. rel Horne* v. *Clarke*, 6 U.C.L.J. 114 (1860).

(*d*) R. S. O. c. 1, s. 8 (15). (*e*) *Freeman* v. *Read*, 4 B. & S. 184-5.

(*f*) *Reg. ex rel. Rosebush* v. *Parker*, 2 C. P. 18 (1851).

(*g*) *Reg. ex rel. Metcalfe* v. *Smart*, 10 U. C. R. 89; 2 C. L. Ch. 114 (1852).

(*h*) *Reg. ex rel. White* v. *Roach*, 18 U. C. R. 226 (1859).

(*i*) 3 Man. Rep. 297 (1886). (*j*) 46 U. C. R. 77 (1881).

ss. 311 and 319 is an essential pre-requisite to the discharge of the duties of every municipal office for which a property qualification is required and (2)—an alderman elect not having stated in his declaration of qualification the value of the land or the nature of his estate therein,—but only that he was "truly and *bona fide* seized and possessed to his own use and benefit of such an estate,—to wit, a freehold property (describing it) as qualified him to act in the office according to the true intent and meaning of the municipal laws of Upper Canada,"—that this declaration was insufficient, (3) that the respondent's right to the office might be questioned by *quo warranto* proceedings at the instance of a ratepayer who was not a resident of or a voter in the ward which respondent claimed to represent in the council, and who therefore could not be a relator under "*The Municipal Act*," and (4) that the relator was not too late, he having applied during the Common Law Term next after the election and only one day after the time for moving under "*The Municipal Act*."

Time within which proceedings to be instituted.

The learned Judge distinguished *Reg. ex rel. White* v. *Rowch*, (*k*) and *Kelly* v. *Macarow*, (*l*) on the ground that in the first case the matter was *res judicata*, and the application, in effect, one to have the question tried a second time; and that in *Kelly* v. *Macarow* the Court had expressly refrained from affirming that in no case would leave be given, but had only held that upon the authorities Kelly was estopped from being a relator by being present at the election and having then made no protest.

It should be noted that if the relator does not move within the period limited by s. 188, he may not be able to inspect the ballot papers.

(b) "The relator shows by affidavit . . reasonable ground for supposing that the election was not legal." Even if the Judge is satisfied that there is reasonable ground for supposing that the election was in some respects irregular, he may still refuse a fiat if it appears to him that the result was not thereby affected. (*m*) In *Reg. ex rel. Labsted* v. *Ferris*, (*n*) the objection was that the defendant's declaration of qualification (s. 319) although it described the property in respect of which he claimed to qualify, did not specify the nature of his estate therein. *Held*, not a case within the words of the Act.

No leave given if only trivial irregularities shewn

(c) "A notice of motion in the nature of a quo warranto." As to the form and contents of the notice, see s. 221. Under the former practice it was held that the application must not only be made within the time limited by the Statute, but also that the requirements of the rules and practice of the Court must be strictly observed. The proceedings were accordingly set aside where there was no notice paper as required by Rule 1 of M. T. 14 V. and the statement of the relator was not signed by him as required by Rule 2 (*o*); where the affidavit of the relator did not fully set out the facts alleged in the statement as required by the same rule (*p*); where the recognizance filed by the relator was not entered into before a Judge or commissioner for taking affidavits—as required by subs. 2 of this section—was not conditioned as therein required, and had not been allowed by the Judge (*q*); and where the statement of the relator did not show that he was one of the persons named in the Act as qualified to be a relator (*r*). The relator's signature to the notice of motion is not necessary unless he is proceeding in person, but it will be sufficient if signed by his solicitor in the ordinary way. The affidavit of the relator alone was held sufficient to obtain the writ of summons in the nature of a *quo warranto* under the former practice, even before the Act enabling him to be a witness on his own behalf (*s*). The affidavit in the support of the relator's case need not necessarily state that the defendant has accepted or acted in the office (*t*) But where alienage is the objection relied on by the relator, it must be shown particularly how the parties complained of are aliens; a general affidavit of the fact was held insuffi-

What must be shewn.

(*k*) 18 U. C. R. 226. (*l*) 14 C. P. 457.

(*m*) See the cases cited in note (**a**) to s. 204; also *Reg. ex rel. Grayson* v. *Bell*, 1 C. L. J. N. S. 130 (1865); *Reg.* v. *Cousins*, L. R. 8 Q. B. 216 (1873).

(*n*) 5 P. R. 241 (1870). (*o*) *Reg. ex rel. Telfer* v. *Allan*, 1 P. R. 214 (1853).

(*p*) *Reg. ex rel. Chauncey* v. *Billings*, 12 P. R. 404 (1888). (*q*) *Ibid.*

(*r*) See cases cited in note (**e**) to s. 219.

(*s*) *Reg. ex rel. Carroll* v. *Beckwith*, 1 P. R. 278 (1854).

(*t*) *Reg. ex rel. Helliwell* v. *Stephenson*, 1 C. L. Ch. 270 (1851).

Sec. 220 (1)-(3). Notes (c)-(e).

cient (*u*). Where the affidavit of the relator, though not entitled to any Court, followed and referred to his statement, which was properly entitled, it was held sufficient, and an objection that the recognizance was not entitled in any Court was disallowed on similar grounds (*v*). An objection that the affidavit was sworn and the recognizance entered into before the relator's solicitor who was also a commissioner for taking affidavits was over-ruled (*w*); but see now Con. Rule 1073.

The fiat.

(d) "The Judge shall grant his fiat," etc. The fiat may be in the following form:—

Form of Fiat allowing Service of Notice of Motion.

"In the High Court of Justice.

In Chambers.

The Hon. Mr. Justice .....
or The Master in Chambers

the....day of....., 19

The Queen upon the relation of
A. B.
against
C. D.

Upon reading the notice of motion proposed to be served by *A.B.* of the of in the County of on *C.D.* of the of in the said county for an order setting aside the election of the said *C. D.* as a municipal councillor for the said *Township* of (or as the case may be) [and (if the relator claims the seat for himself or some other person) declaring that was duly elected and ought to have been returned to the said office] and upon reading the affidavit filed in support of the said notice of motion, I do order that the said *A.B.*, upon filing a sufficient recognizance, as required by section 220 of "*The Municipal Act*," be at liberty to serve the said notice of motion upon the said *C.D.*"

The recognizance.

(2) The recognizance shall be entered into before the Judge or before a commissioner for taking affidavits or bail, by the relator in the sum of $200, and by two sureties (to be all as sufficient by the Judge upon affidavit of justification in the sum of $100: and the recognizance shall be conditioned to prosecute the motion with effect, and to pay to the party against whom the motion is made any costs which may be adjudged to him against the relator.

Its allowance.

(3) When the sufficiency of the said sureties has been determined and the said recognizance allowed as sufficient by the said Judge, he shall note or indorse thereon and upon the fiat allowing service of the notice of motion the words "*Recognizance allowed*" and shall initial the same.

(e) "The recognizance shall be entered into," etc. The following may be the form of the recognizance:—

Its form.

Form of the Recognizance.

IN THE HIGH COURT OF JUSTICE.

ONTARIO, County (*or* United Counties) of ——. Be it remembered, that on the —— day of ——, in the year of our Lord one thousand nine hundred and ——, before me ——, of ——, Chief Justice (*or* a

(*u*) *Reg. ex rel. Carroll* v. *Beckwith*, 1 P. R. 278 (1854).

(*v*) *Reg. ex rel. Bland* v. *Figg*, 6 U. C. L. J. 44 (1860); but see *Hiscons* v. *Town of Amherstburgh*, 11 U. C. R. 458 (1854).

(*w*) *Reg. ex rel. Blaisdell* v. *Rochester*, 12 U. C. R. 630 (1855).

Sec. 220 (3). Note (e).

Form of recognizance.

Judge of——*or* Commissioner for taking affidavits in) Her Majesty's High Court of Justice for Ontario, cometh (*relator's name*) of——, and ——, of ——, (*names and occupation of sureties*) and acknowledge themselves severally and respectively to owe to our Sovereign Lady the Queen as follows, that is to say, the said (*relator's name*) the sum of two hundred dollars, and the said —— and —— (*names of sureties*) the sum of one hundred dollars each, upon condition that if the said *relator's name*) do prosecute with effect the notice of motion in the nature of a *quo warranto*, to be served pursuant to a fiat to be made at the instance and upon the relation of the said (*relator's name*) against the said (*respondent's name or respondents' names*) to show by what authority he (*or* they) the said —— claims (*or* claim) to be (*here state the office so claimed*), and why he (*or* they) the said ——should not be removed therefrom [and (*where so claimed by the relator*) why he the said relator (*or* the party *or* parties entitled) should not be declared duly elected, and be admitted to the said office]; and if the said (*relator's name*) do pay to the said (*respondent or respondents*) all such costs may be adjudged to the said (*respondent or respondents*) against said (*relator*) then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the day and year first above mentioned,
Before me——

Of affidavit of justification.

The following may be the form of the affidavit of justification:

Form of the Affidavit of Justification.

IN THE HIGH COURT OF JUSTICE.

I, *A. B.*, of &c., one of the sureties in the recognizance hereto annexed, make oath and say as follows:—

1. That I am a freeholder (*or as the case may be*), residing at, &c.

2. That I am worth property to the amount of $100 over and above what will pay all my just debts (*if bail in any other action &c. proceeding add*) "and for every other sum for which I am now bail or surety in any action or proceeding.

3. That I am not bail or surety in any other action or proceeding (*or*, except for *E. F.*, at the suit of *G. H.*, in the Court of &c., in the sum of, &c)

And I, *C. D.* of, &c., the remaining surety in the recognizance hereto annexed, make oath and say as follows:

1. That I am a freeholder, &c. (*as before*).

The above named deponents, *A. B.* and *C. D.*, were severally sworn before me, at, &c., in the County of, &c., this——day of——, A. D. 19—. } *A. B.* *C. D.*

A Commissioner, &c.

The recognizance need not be signed by the relator or by the sureties; and where it appears on its face to have been entered into before a commissioner for taking bail, it is good; for all commissioners for taking bail are also commissioners for taking affidavits. (*x*) Where the Judge of the County Court has determined the sufficiency of the sureties, and allowed the recognizance, a Judge of the High Court cannot interfere upon appeal. (*y*) As to intitling the recognizance, see *Reg. ex rel. Bland* v. *Figy*. (*z*)

(*x*) *Reg. ex rel. Mangan* v. *Fleming*, 14 P. R. 458 (1893).

(*y*) *Reg. ex rel. Harwood* v. *Fournier*, 14 P. R. 463 *note*, (1892); followed in *Reg. ex rel. Mangan* v. *Fleming*, *supra*; and see *Reg. ex rel. Grant* v. *Coleman*, cited in note (**f**) to s. 200.

(*z*) 6 U. C. L. J. 44, (1860).

Sec. 220 (4).

Note (f).

Proceedings, how entitled and where carried on.

(4) Where the proceedings are taken before a Judge of the High Court or before the Master in Chambers or other officer having jurisdiction to sit for the Master in Chambers, the same shall be entitled and conducted in the High Court of Justice in the same manner as other proceedings in Chambers; and where the proceedings are taken before the Judge of the County Court, the same shall be entitled and conducted in the County Court in the same manner as other proceedings in Chambers. 55 V. c. 42, s. 188; 60 V. c. 15, *Sched.* C (46): Con Rules (1888,) Rule 1038.

Former practice as to this.

(f) **How proceedings to be entitled and where carried on.** This subsection makes clear a point upon which there has heretofore been much uncertainty and conflict of judicial opinion.

Until the passing of the Con. Rules of 1888—(to which the force of statutory law was given by 51 V. c. 2, s. 4)—these proceedings were commenced by writ of summons issued out of a Superior Court upon the fiat of either a Judge of that Court or, after 1853, of a County Court Judge (*a*), but the proceeding itself was carried on in the Court from which the writ issued (*b*), and the judgment was returned thereto to remain of record as a judgment thereof. (*c*) The County Court Judge who issued the fiat might make the writ returnable before himself, determine the case and make the order; or he might make the writ returnable before a Judge in Chambers at Toronto. (*d*).

This practice was altered in 1888 by Con. Rule 1038—(which substituted for the writ of summons a notice of motion to be given "upon leave obtained from the Court or a Judge"); Rule 2—(which defined a "Judge" as "a Judge of the Supreme Court (of Judicature for Ontario) or a Judge having for the time being the authority of a Judge of the High Court"; and Rule 41—which expressly excepted "proceedings in the nature of a *quo warranto* under the Municipal Act" from the cases in which a County Court Judge should exercise the authority of a High Court Judge. (*e*) In consequence of this decision the Statute 52 V. c. 36, s. 46 was immediately passed,—declaring that in proceedings to contest the validity of municipal elections within his county, a County Court Judge should have the same jurisdiction as a High Court Judge, but that his decision should be subject to appeal as provided by s. 219 (2). The rules above quoted, nevertheless, still remained in force until repealed by Rule 2 of the Con. Rules (1897). The effect of the repeal and of the present subsection will be to remove the difficulty suggested by MERRILL, Co.J., in *Reg. ex rel. Hudgin* v. *Rose* (*f*); and henceforth all the proceedings will, subject to s. 229, be carried on in the Court in which they originate.

Where, under the former practice, a County Court Judge had set aside a writ which had been granted by himself, on exceptions taken thereto for irregularity, it was held that he had power to take that course, and that a Superior Court had no power to interfere with his decision. (*g*) But in *Reg. ex rel. Grant* v. *Coleman*, the Court of Appeal, though affirming the decision on the ground that the matter was not appealable, nevertheless held that after a *quo warranto* summons had been issued and served, it could not properly be set aside for irregularity, but must be disposed of on its merits. (*h*)

(*a*) *Reg. ex rel. McDonald* v. *Anderson*, 8 P.R. 241 (1880).

(*b*) *Reg. ex rel. Dougherty* v. *McClay*, 13 P.R. 56 (1889).

(*c*) See 13 & 14 V. c. 64, Sched. A (23); 16 V. c. 181, s. 27; 22 V. c. 99, s. 128 (5), (17); 29 & 30 V. c. 51, s. 131 (5), (18); 36 V. c. 48, ss. 137, 151; R.S.O. (1877), c. 174, ss. 185, 190; 46 V. c. 18, ss. 191, 205; R.S.O. (1887), c. 184, ss. 193, 207.

(*d*) *Lutz* v. *Williamson*, 1 P.R. 94 (1853).

(*e*) *Dougherty* v. *McClay*, 13 P.R. 56 (March, 1889).

(*f*) 33 C.L.J.N.S. 398 (1897).

(*g*) *Reg. ex rel. Grant* v. *Coleman*, 8 P.R. 497, 46 U.C.R. 175 (1881), and see *Reg. ex rel. O'Dwyer* v. *Lewis*, 32 C.P. 104.

(*h*) 7 A.R. 619, 626 (1882).

Sec. 221 (1).

Notes (a)-(b).

Notice of motion.

221.—(1) The notice of motion shall be at least seven clear day's notice and may either state the return day of the motion or state that the notice will be made on the eighth day after the day of service of the notice, excluding the day of service. Con. Rule 1039, 1888.

Taken from the Consolidated Rules (1888), No. 1039, 1040. *Cf.* Rules of M. T. 14 V., Nos. 2, 3.

(a) "**At least seven clear days.**" See note (a) to s. 127. This corresponds with the time allowed under the old practice for the return to the writ, viz., "the eighth day after the day of service." (Rule No. 3, M. T. 14 V.).

Notice of motion, what to contain.

(2) The relator shall, in his notice of motion, set forth his name in full, his occupation, place of residence, and the interest which he has in the election, as candidate or voter, and shall also state specifically under distinct heads, all the grounds of objection to the validity of the election complained against, and in favour of the validity of the election of the relator, or other person or persons, where the relator claims that he or they, or any of them, have been duly elected. Con. Rule 1040 (1888).

(b) "**The relator shall . . set forth his name in full,**" **etc.** This follows almost *verbatim* what Rule No. 2 of M. T. 14 V., required to be set out in the statement of the relator to be annexed to his notice paper. See note (f) to s. 219 and note (c) to s. 220.

The following may be the form of the notice of motion:

Notice of Motion to set aside a Municipal Election.

IN THE HIGH COURT OF JUSTICE, *or*

IN THE COUNTY COURT OF THE COUNTY OF ———,

BETWEEN The Queen on the relation of

———

AGAINST

———

Take notice that by leave of —— a motion will be made before the presiding Judge in Chambers (*or* the Master in Chambers) at Osgoode Hall in the City of Toronto [*or* before His Honour the Judge of the County Court of the County of ——, at his Chambers in the Court House in the City (*or* town) of ——] at —— o'clock in the forenoon of the eighth day after the day of service hereof, excluding the day of such service, or so soon thereafter as counsel can be heard on behalf of the above named relator —— (*set out the name in full of the relator, his occupation and place of residence*) who has an interest in the election hereinafter referred to as (*a candidate or voter thereat, as the case may be*) for an order setting aside and declaring invalid and void the election or pretence of an election held on the —— day of ——, A.D. ——, at ——, in the County of ——, under which election or pretended election —— the above named defendant hath unjustly usurped and still doth usurp the office of——*[and (*when it is claimed that the relator, or the relator and another or others ought to have been returned*) declaring that (*here name the party or parties so entitled*) was (*or were*) duly elected thereto and ought to have been returned at such election and should now be admitted thereto,]

Secs. 221 (1), 222.

Notes (c); (a).

Form of notice of motion.

Upon the following grounds :—

1. That (*for example*) the said election was not conducted according to law in this, that, &c.

2. That the said ——(*naming the defendant*) was not duly, or lawfully elected or returned, in this, that &c.

3. That &c.

and upon grounds disclosed in the affidavits and papers filed, or for such further and other order as to the said [Judge *or* Master in Chambers] shall seem meet and as the nature of the case shall require, and that upon and in support of such motion will be read the affidavits of ——this day filed [*or in case viva voce evidence is to be tendered the names of the witnesses whom it is proposed to examine should be given.*]

Dated &c.

Signed by the relator in person or by his solicitor.

NOTE.—Where the intention of the relator is to impeach the election as altogether void, as in that event, the office cannot be claimed by any other or others, this portion of the above form relating thereto should be omitted.

The proper designation of a warden in *quo warranto* proceedings is "Warden of the Corporation of the County of....." but "Warden of the County of....." is not improper. (*a*)

(c) "**Where the relator claims that he or they . . . have been duly elected.**" Where the relator claims the seat for himself or for some other person on the ground of the disqualification of the person elected, he must show that the electors were duly notified at or before the nomination. (*b*) But it is not necessary in order to set aside the election to show that such notice was given. (*c*) And it seems to be wholly discretionary with the Judge whether or not he awards the seat to the relator, (*d*) and (*per* ROBINSON, C.J.) "it is a discretion with which there ought to be no interference by way of appeal, at least unless the ground for claiming the seat be so clear under the circumstances that it can properly be said to be a plain right." (*e*)

Affidavits to be filed.

222. Before serving his notice of motion the relator shall file all the affidavits and material upon which he intends to move, except where *viva voce* evidence is to be taken, and in that case he shall name in his notice the witnesses whom he proposes to examine. Con. Rule 1041 (1888).

(a) In *Reg. ex rel. Mangan* v. *Fleming*, (*f*) the affidavit of the relator issued on the application for the fiat had not been filed before serving the notice of motion, the relator intending to establish his allegation wholly by means of *viva voce* evidence; on appeal from the County Court Judge setting aside (for this reason) the service of the notice of motion, FERGUSON, J. said, (pp. 461, 462 :)

> "I do not see that an affidavit used for the purpose of procuring the fiat is necessarily an affidavit on which the relator "intends to move." The relator in this case declares that the affidavit referred to is not any part of the material on which he intends to rely in support of his motion; and I am of opinion that he was not bound to file that affidavit before serving his notice of motion, for the sole reason that he had used it in obtaining the fiat.

(*a*) *Reg. ex rel. McManus* v. *Ferguson*, 2 C. L. J. N. S. 19 (1866).

(*b*) See the cases cited in note (j) to s. 80.

(*c*) *Reg. ex rel. Coleman* v. *O'Hare*, 2 P. R. 18 (1856); *Reg. ex rel. Timmy* v. *Edgar*, 4 P. R. 36 (1867).

(*d*) *Reg. ex rel. Clark* v. *McMullen*, 9 U. C. R. 467 (1853).

(*e*) *Ibid*, p. 469.

(*f*) 14 P. R. 458 (1893).

Secs. 222-224.

Notes (a); (a) (b).

Affidavits to be filed.

"The literal reading of Rule 1041 favours the contention of the relator that a case where *viva voce* evidence is to be taken is an exception to the rule requiring all the affidavits and material to be filed (that is, all upon which the relator intends to move) before the service of the notice of motion. But I do not think that this is the true meaning. I am of opinion that, notwithstanding the apparent exception, the relator must file the affidavits and material to be used in support of his motion before serving the notice of motion. This is no more than ordinary practice in other cases. The omission to file them does not, however, I think, constitute a good reason for setting aside the service of the notice. The effect simply is, I think, that he cannot read in support of his motion affidavits or material not so filed, and in this case the relator says he does not want to read anything of the sort. Even when affidavits and material are filed, they must be mentioned or referred to in the notice of motion, or they cannot be read in support of the motion. Mentioning an affidavit or other material in the notice of motion, when there is no such paper or none such filed, does not, so far as I can see, vitiate the motion. The mover may, nevertheless, proceed as best he can upon the material that he has properly before the Court."

The appeal was accordingly allowed.

Where bribery or undue influence is alleged, the evidence relating thereto must be taken *viva voce* (s. 248).

Under the old practice, when the papers on which a summons was obtained were left with the County Court Judge, but were handed to him by the defendant's solicitor, before the return day, for perusal: it was *Held*, sufficient, and that it was not essential that they should have been filed with the Deputy Clerk of the Crown before the summons issued. (*g*) But under the present law this decision would not be followed.

Service of notice of motion.

223.—(1) The notice of motion shall be served personally, unless the party to be served keeps out of the way to avoid personal service, in which case the Judge upon being satisfied thereof, by affidavit or otherwise, may make an order for such substitutional service as he think fit. 55 V. c. 42, s. 194.

Taken from the Act of 1858, (22 V. c. 99) s. 128 (7). *Cf.* 12 V. c. 81, s. 148.

(a) Except in the case mentioned, the Judge has no power to dispense with personal service. (*h*) In general a copy of the notice should be left with the defendant and the original shown to him if he desires to see it. (*i*) Service upon a wife, agent, or servant is not personal service. (*j*)

Time for service of notice of motion.

(2) Service of the notice of motion shall be made within two weeks from the date of the fint so granted by the Judge, unless otherwise ordered by the Judge, as in the preceding subsection provided. 58 V. c. 42, s. 13.

(b) Subs. 2 was added by 58 V. c. 32, s. 13 (1895), prior to which no time was limited within which the notice of motion, or the writ (under the old practice), must be served. The power of the Judge to extend the time seems to be limited to cases where the defendant is keeping out of the way to avoid personal service.

When the relator claims the seat.

224. In case the relator alleges that he himself or some other person has been duly elected, the motion shall be to try

(*g*) *Reg. ex rel.* v. *Blaisdell* v. *Rochester*, 12 U.C.R. 630 (1856).

(*h*) *Reg. ex rel. Arnott* v. *Marchant*, 23 C. L. Chamb. 167 (1852).

(*i*) *Goggs* v. *Huntingtower*, 1 D. & L. 599, *per* ALDERSON, B.

(*j*) *Frith* v. *Donegal*, 2 Dowl. 527; *Davies* v. *Morgan*, 2 C. & J. 237; *Goggs* v. *Huntingtower*, *supra*; *Christmas* v. *Eicke*, 6 D. & L. 150.

Secs. 224-227. Notes (a); (a)[1]; (a)[2].

the validity, both of the election complained of and of the alleged election of the relator or other person. 55 V. c. 42, s. 190.

Taken from the Act of 1858, (22 V. c. 99), s. 128 (2). *Cf.* 13 & 14 V. c. 64, Sched. A. (23); 16 V. c. 181, s. 27.

(a) If the relator claims the seat for himself or for some other person, he must establish not only that the election complained of is invalid, but that there has been a valid election.

When several elections complained of.

225. In case the grounds of objection apply equally to two or more persons elected, the relator may proceed by one motion against such persons. 55 V. c. 42, s. 191.

Taken from 13 & 14 V. c. 64, Sched. A. (23).

(a) Under the Statute 12 Vict. c. 81, s. 146, it was held that a private relator had no right by a writ of summons in the nature of a *quo warranto*, either to attack the township council by name upon grounds which, if mentioned, must necessarily lead to a dissolution of the body, or to attack the whole council in one proceeding, through the individual names of every member of it. (*k*) But the law in this respect was amended (see 13 & 14 V. c. 64, Sched. A. (23) and 16 V. c. 181, s. 27), and sec. 234 of this Act appears in the amended and extended form.

The object of the section is "that cases having so much in common that they can conveniently be tried together may be combined in one proceeding with the double advantage of economy and expedition,"; but it does not preclude a Judge from giving effect in one of the cases to a ground of relief not common to all. (*l*)

Hearing of motion.

226. On the hearing of the motion the relator shall not be allowed to object to the election of the person complained against, or to support the election of any person alleged to have been duly elected on any ground not specified in the notice of motion; but the Judge in his discretion may entertain any substantial ground of objection to, or in support of, the validity of the election of either or any of the parties which may appear in the evidence before him. Con. Rule 1042 (1888).

Taken from Rule 9 of M. T. 14 V., the words "notice of motion" in line 5 being substituted for the word "statement" in the original rule.

(a) See note (c) to s. 219.

Where more motions than one, all to be tried by the same judge.

227. Where more motions than one are made to try the validity of an election, all the motions shall be made returnable before the Judge who is to try the first of them; and the Judge may give one judgment upon all, or a separate judgment upon each one or more of them, as he thinks fit. 55 V. c. 42, s. 192.

Taken from the Act of 1849, (12 V. c. 81), s. 149.

(a) At an election there may be several candidates; so there may be several persons elected to office. One person may see fit to contest the election of any successful candidate; and so another person may see fit to contest the election of

(*k*) *Reg. ex rel. Lawrence* v. *Woodruff*, 8 U.C. R. 336 (1853).

(*l*) *Reg. ex rel. St. Louis* v. *Rourke*, 26 O. R. 460 (1895), *per* BOYD, C. at p. 461.

another of the successful candidates (*a*). Each relator complying with this Statute may have his own separate and independent proceeding. In this way there may be several motions made to try the validity of the same election. In such case, all the motions are to be made returnable before the Judge who is to try the first; the object being, no doubt, to preserve uniformity of decision (*b*). But where, in an application to a Superior Court, it was urged that proceedings, at the instance of another relator, were already pending before a County Judge, and that, under this section, the second writ should also be made returnable before him, the objection was overruled and judgment given unseating the defendant, it being sworn that the first proceeding was collusive (*c*); and in *Reg. ex rel. Patterson* v. *Vance* (*d*), proceedings begun before a County Judge were set aside at the instance of a subsequent relator on the same ground, though it was held that the second relator could not object to mere irregularities in the proceedings of the first one, unless they were designedly committed in order to secure the failure of the application (*e*).

Where more motions than one are made.

In *Reg. ex rel. Hall* v. *Gwanlock* (*f*), two motions had been made by different relators attacking the validity of the election of a city alderman. The first of these applications was made to the Master in Chambers; the second, five days afterwards—to the Judge of the County Court, who (in ignorance of the prior application to the Master in Chambers) granted his fiat for service of a notice of motion. Upon the return of this motion the County Judge (notwithstanding objection by respondent that a motion under a fiat of earlier date was pending before the Master in Chambers, and that under this section both motions must be heard by said Master in Chambers) proceeded to try the validity of the election, and found as a fact that the proceeding pending before the Master was collusive, and that there were irregularities apparent on the face of it of such a nature and character as to support and confirm the suggestion that it was collusive and intended to produce an abortive result. A Judge of the High Court sitting in Chambers having made an order prohibiting the County Judge from further proceeding in the matter, it was, *Held*, (by a Divisional Court), reversing FERGUSON, J., that the County Judge having equal and concurrent jurisdiction in respect of the matter with a Judge of the High Court and the Master in Chambers, the order of prohibition had been improperly made, and it was set aside with costs: STREET, J., dissenting.

Production of books and papers.

228. The Judge may require the clerk of any municipality to produce before him or to forward under seal to the clerk of the county, for the purpose of production before the said Judge, such assessment rolls, collector's rolls, ballot papers, books, voters' and other lists and such other records of the election and papers in his hands connected therewith as to the said Judge may from time to time seem fit. 55 V. c. 42, s. 197, *part*; 59 V. c. 52, s. 20, *part*; 60 V. c. 3, s. 3; c. 15, *Sched.* C (51).

This section has been constructed out of those portions of 59 V. c. 52, s. 20, and 55 V. c. 42, s. 197, as amended by 60 V. c. 15, Sched. C (51), which relate to the production of documents. In the case of local elections the clerk is to produce the books and papers; in the case of county council elections he is to forward them to the clerk of the county council.

Evidence to be used on return of motion may be taken *viva voce*.

229. In case the motion is returnable before a Judge of the High Court, he may order the evidence to be used on the hearing of the motion to be taken *viva voce* before a County Court Judge, in the presence of counsel for, or after notice to, all the parties interested, and the County Court Judge shall

(*a*) See *Line* v. *Warren*, 14 Q. B. D. 548.
(*b*) *Reg. ex rel. Forward* v. *Detlor*, 4 P. R. 197 (1868).
(*c*) *Reg. ex rel. McLean* v. *Watson*, 1 C. L. J. N. S. 71 (1855).
(*d*) 5 P. R. 334 (1871).
(*e*) See also *Reg.* v. *Orde*, 8 A. & E. 420, *note*; *Reg.* v. *Anderson*, 11 A. & E. 3.
(*f*) 29 O. R. 435 (1898).

Secs. 229-231.

Notes (a) (b); (a); (a) (b).

Viva voce evidence.

return the evidence to the proper officer of the High Court of Justice, and every party shall be entitled to a copy thereof. 55 V. c. 42, s. 189; 60 V. c. 15, *Sched.* C (47).

Taken from 35 V. c. 36, ss. 5, 6 (1872), which also provided that where bribery or undue influence is alleged, the evidence relating thereto must be taken *viva voce* (s. 248).

(a) Before this enactment the Judge might refuse to have the witnesses orally examined (*a*). Even prior to the passing of s. 187 (2) of "*The Con. Mun. Act, 1892*," 55 V. c. 42 (s. 219 (2) of this Act) which gave the Master in Chambers the same jurisdiction as a Judge of the High Court in regard to controverted municipal elections, it was held that he had power under Con. Rule 30 (1888) to direct a reference to a County Court Judge under this section (*b*).

(b) "**The proper officer of the High Court of Justice.**" As the proceedings are in Chambers (*c*), the "proper officer" would seem to be the Clerk in Chambers at Osgoode Hall (*d*).

Returning officer, etc., may be made a party.

230. The Judge before whom the motion is made returnable, may, if he thinks proper, at any stage of the proceedings make an order adding the returning officer or any deputy-returning officer or any other person as a party thereto. 55 V. c. 42, s. 195; 60 V. c. 15, *Sched.* C (48).

Taken from the Act of 1858, (22 V. c. 99,) s. 128 (6); extended by R. S. O. (1877), c. 174, s. 187 to "any deputy-returning officer," and in 60 V. c. 15, Sched. C (48) to "any other person."

(a) "The object which the Legislature had in view in enabling the judge to make the returning officer a party to the proceedings was that costs might be imposed upon him in case he were the cause of illegal proceedings." (*e*) The Court will presume that a public officer acts properly and honestly till the contrary is shown; and where it is intended to charge any officer with partiality or unfairness, the case should be plainly stated and clearly made out (*f*). Where a returning officer, after closing the poll, received an affidavit from M. that his vote had been entered by mistake for relator, on which he altered his vote in the poll-book, and, —the votes then being equal,—gave his casting vote, the election was set aside (*g*). As to costs in such a case, see note (a) to s. 235.

The Judge may allow certain persons to intervene and prosecute or defend.

231. The Judge before whom the motion is returnable may allow any person entitled to be a relator to intervene and prosecute or defend, and may grant a reasonable time for the purpose; and an intervening party shall be liable or entitled to costs like any other party to the proceedings. 55 V. c. 42, s. 196; 60 V. c. 3, s. 3; c. 15, *Sched.* C (49).

Taken from the Act of 1858, (22 V. c. 99,) s. 128 (8); amended by 60 V. c. 15, Sched. C (49), as noted *infra*, note (b).

(a) "**Any person entitled to be a relator.**" See s. 219 (1), and notes thereto.

(b) "**Prosecute or defend.**" Until the amendment made in 1897 by 60 V. c. 15, Sched. C (49), the only power of the Court was to substitute a new defendant, the section being "based on the old law whereby, when the Court was convinced that important questions arose, or were likely to arise, which the defendant was unwilling to contest, another person interested was per-

(*a*) *Reg. ex rel. Piddington* v. *Riddell*, 4 P. R. 80 (1867).

(*b*) *Reg. ex rel. White* v. *McClay*, 13 P. R. 496 (1889).

(*c*) s. 220 (4). (*d*) See s. 238.

(*e*) *Per* BURNS, J., in *Reg. ex rel. Arnott* v. *Marchant*, 2 C. L. Cham. 167-170 (1852).

(*f*) *Reg. ex rel. Walker* v. *Hall*, 6 U. C. L. J. 138 (1860).

(*g*) *Reg. ex rel. Acheson* v. *Donoghue*, 15 U. C. R. 454 (1858).

mitted to conduct the defence at his own risk as to costs" (*h*). Accordingly, where a relator withdrew, the Court had no power either to compel him to go on, or to substitute a new relator (*i*). The amendment of the section (by inserting the words "prosecute or" in lines 2 and 3) brings it into accord with the English practice in *quo warranto* proceedings (*j*).

Mode of trial.

232.—(1) The Judge shall, in a summary manner, without formal pleadings, hear and determine the validity of the election, and may inquire into the facts on affidavit or affirmation, or by oral testimony, or by issues framed by him and sent to be tried by a jury in any Court named by the Judge, or by one or more of these means, as he deems expedient; subject, however, to the provisions of section 248. 55 V. c. 42, s. 197; 60 V. c. 15, *Sched.* C (50), (51).

Cf. 46 V. c. 18, s. 27; 22 V. c. 99, s. 128 (9); 29 & 30 V. c. 51, s. 131 (9); 35 V. c. 36, s. 5; 36 V. c. 48, s. 111; R.S.O. (1877), c. 174, s. 189; 46 V. c. 18, s. 195; R.S.O. (1887), c. 184, s. 197.

(**a**) Although there are no "formal pleadings," it was provided by all the Acts above cited, prior to that of 1892, that the question of the validity of the election, etc., should be heard and determined "upon statement and answer." Even these words are now omitted; and,—subject to the requirements of s. 248,—the Judge may proceed "as he deems expedient" to elicit the facts. Parties to an action were formerly incompetent as witnesses on their own behalf (*k*). This was held to apply to the defendant named in a *quo warranto* summons (*l*). In *Reg. ex rel. Campbell* v. *O'Malley* (*m*), HUGHES, Co.J., held that the proper proof of the right of an elector to be a relator is the production of the voters' list or an authenticated copy thereof, and that parol evidence is not admissible to establish this fact. Material facts alleged in the relator's notice of motion and supported by affidavit should be answered, else they may be taken to be admitted by the defendant (*n*).

Trial of issue by a jury.

(2) If necessity arises for sending an issue to be tried by a jury, an order for the purpose may be made, and the issue to be tried shall be stated in the order. Con. Rule 1043 (1888).

(**b**) The order for the trial of an issue or issues under this subsection may be in the following form:

Form of Order for Trial of an Issue or Issues.

IN THE HIGH COURT OF JUSTICE.

The Queen upon the relation of *A. B.*
against
C. D.

Upon the application of Her Majesty the Queen upon the relation of *A. B.* to set aside the election of chosen upon the day of , to be for the *Township* of *(or as the case may be)*, in the County of , and for an order declaring that the said *A. B.* *(or* that the said *A. B.* and *C. D.* etc., were, *or* that *C. D.* etc., was duly elected and ought to have been returned , it hath become material to ascertain whether *(here state concisely the issues to be tried)*; and that the truth of such matters as aforesaid should be found by a jury; I do, therefore, pursuant to "*The Municipal Act*," order that

(*h*) *Rex* v. *Dawes*, 4 Burr. 2277; *Rex* v. *Marshall*, 2 Chitty, 370.

(*i*) *Reg. ex rel. Masson* v. *Butler*, 17 P.R. 382; 17 C.L.T. 148; 33 C.L.J. N.S. 288 (1897). (*j*) *Reg* v. *Quayle*, 9 Dowl. 548.

(*k*) See Rob. & Joseph's Dig., col. 1313.

(*l*) *Reg. ex rel. McGregor* v. *Ker*, 7 U.C.L.J. 67 (1861).

(*m*) 10 C.L.J.N.S. 250 (1874).

(*n*) *Reg. ex rel. Harvey* v. *Scott*, 2 C.L.Ch. 88 (1852).

Secs. 232 (2), 233.

Notes (b); (a).

Trial of issue by a jury.

an issue be tried between the said relator and the said *C. D.* before the Judge of the County Court of the County of and a jury of the said County, and that the question (*or* questions) to be tried shall be whether (*here state the issues*).

Dated, etc.

The following may be the form of indorsement of the findings of the jury thereon:

Form of Indorsement of Verdict.

I hereby certify that on the day of , before me, *L. M.*, Judge of the County Court of the County (*or* United Counties) of (*or as the case may be*) came as well the within named relator as the within named (*the other party or parties*) by their solicitors (*or as the case may be*) and the jurors of the jury, by me duly summoned as within commanded, also came, and being sworn to try the matters within mentioned on their oath, said that, &c.

If election invalid, judge shall remove person not duly elected, and admit person elected or order new election.

233. In case the election complained of is adjudged invalid, the Judge shall, by the judgment, order to be removed the person found not to have been duly elected: and in case the Judge determines that any other person was duly elected, the Judge shall forthwith order such other person to be admitted: and in case the Judge determines that no other person was duly elected instead of the person removed, the Judge shall order a new election to be held. 55 V. c. 42, s. 198.

Taken from the Act of 1858, (22 V. c. 99), s. 128 (10). *Cf.* 13 & 14 V. s. 64, Sched. A. (29); 16 V. c. 181, s. 27.

(a) The following may be the form of judgment:

Form of judgment.

Form of Judgment in favour of the Relator.

"In the High Court of Justice,

Before the Honourable Mr. Justice *or* Chief Justice In Chambers *or* Before the Master in Chambers *(as the case may be.)* | day the day of A.D. 19 .

Between

The Queen, on the relation of *A. B.*,
against
C. D. and E. F. (or as the case may be).

Be it remembered, that upon the day of 19 , at Chambers in the of before me, the Honourable Mr. Justice (*or as the case may be*) came as well the above-named relator as the above named respondent by their respective solicitors and upon the said day at my Chambers aforesaid, having heard and read the notice of motion given herein by the said relator and the proofs of the said relator touching and concerning the usurpation by him alleged against the said respondent *C. D.* of the office of in the said notice of motion mentioned and the answers and proofs of the said respondents respectively, and having heard the said parties by their counsel and upon due consideration of all and singular the premises. Now, that is to say this day of 19 , I do adjudge and determine:

First. That the said relator had at the time of his making of his aforesaid complaint an interest in the election to the said office of as ;

Secondly. That the said hath usurped, and doth still usurp, the said office.

Sec. 233. Notes (a) (b).

Thirdly. That the said relator (*or* the said) was duly elected thereto and ought to have been returned and is entitled in law to be received into and to use, exercise and enjoy the said office (*or* that the said is not entitled in law to be received into or to use, exercise and enjoy the said office).

Form of judgment.

Fourthly. That the defendant *E. F.* was guilty of misconduct as returning officer at the said election.

1. And I do adjudge and determine that the said *C. D.* do not in any manner concern himself in or about the said office and that he be absolutely forejudged and excluded from further using or exercising the same under pretence of the said election and that he be and he is hereby removed therefrom;"

In case the Judge determines that the relator or some other person was duly elected continue as follows:

If relator, etc., entitled to the seat.

"2. And that the said be forthwith admitted, received and sworn into the said office, in the place and stead of the said *C. D.* to use exercise and enjoy the same."

In case the Judge determines that no other person was du. elected instead of the person removed, in lieu of the foregoing paragraph substitute the following:

If election avoided *in toto.*

"2. And that the council of the municipal corporation of the of (*or* the Sheriff of the county of (*naming the county in which the election took place*) do forthwith pursuant to "*The Municipal Act*," cause to be held an election of a person or persons in the place and stead of the said *C. D., etc.*, who has (*or* have been removed as aforesaid and that the person (*or* persons) so elected be forthwith admitted, received and sworn into the said office to use, exercise and enjoy the same.

3. And that the said relator do recover against the said his costs and charges by him in and about the said relation and the prosecution thereof expended, to be taxed.

All which, the said notice of motion and the statements, answers and proofs of the said relator and of the said respondents and all other things had before me touching the same, I hereby certify and deliver into the said Court according to the form of the Statute in such case made and provided."

Form of Judgment for Respondent.

Form of judgment for respondent.

In case of judgment for the respondent, proceed as in the first paragraph to the * and continue as follows:

That the said office of under the election to the said office holden on the day of , 19 , be allowed and adjudged to the said respondent *C. D.*, and that the said respondent *C. D.* be dismissed and discharged of and from the premises above charged upon him.

2. And that the said *C. D. or C. D. and E. F.* do recover against the said *A. B.* his *or* their costs by him, *or* by them respectively, laid out and expended in defending himself, *or* themselves respectively, in this behalf to be taxed."

All which, etc., *as above.*

(b) **Costs.**—Section 206 of the Act of 1892, (55 V. c. 42,) expressly declared that "in all cases not otherwise provided for (ss. 241, 243), costs shall be in the discretion of the Judge," and although that section has been omitted from the present revision, it is still law (*a*).

Costs.

The Judge may refuse to give costs to either party (*b*). But where a new election is ordered the relator is *prima facie* entitled to costs as against the respondent, especially if the ground on which the election was set aside was the

(*a*) See Con. Rule 1130; *Lovering* v. *Dawson*, L.R. 10 C.P. 726.

(*b*) *Reg. ex rel. Swan* v. *Rowat*, 13 U.C.R. 340 (1856); *Reg. ex rel. Gordanier* v. *Perry*, 3 U.C.L.J. 90 (1857); *Reg. ex rel. Forward* v. *Detlor*, 4 P.R. 197 (1868); *Reg. ex rel. Cavanagh* v. *Smith*, 26 O.R. 632, 635 (1895).

Secs. 233, 234.

Note (b).

Costs.

disqualification of the latter (*c*), or if he participated or acquiesced in the illegal proceedings on account of which the election was set aside (*d*). But otherwise the tendency of the decisions is not to make the respondent pay costs (*e*) unless he wrongfully holds on where he should have disclaimed (*f*). And where the respondent, through the improper decision of the clerk of a council, was declared entitled to a seat, at once accepted office, and was sworn in, without his having interfered with the decision of the clerk, or otherwise misconducted himself, though his election was set aside, no costs were awarded against him (*g*). Where a returning officer was added as a party, and was acquitted and discharged, the relator's statement not being strictly correct, the relator was ordered to pay the officer his costs (*h*); and where the relator was an officer of the corporation, though he succeeded, costs were refused him (*i*). Costs will not always be awarded even against an unsuccessful relator, *e.g.*, if there was reasonable ground for taking proceedings (*j*), for it is in the public interest that relators should not be discouraged from bringing cases of invalid election to the notice of the Courts by the peril of having to pay costs (*k*). The costs of affidavits which are unnecessary or too diffuse should be disallowed or reduced on taxation (*l*). A by-law passed by a township council levying money to pay the costs of a contested municipal election is illegal and will be quashed with costs (*m*). Costs in proceedings in the High Court under these sections will be taxed according to the High Court tariff (*n*).

When order for new election to be directed to the sheriff.

234. In case the election of all the members of a council is adjudged invalid, the order for their removal, and for the election of new members in their place, or for the admission of others adjudged to be legally elected, and for an election to fill up the remaining seats in the council, shall be directed to the sheriff of the county in which the election took place; and the sheriff shall have all the powers for causing the election to be held which a municipal council has in order to supply vacancies therein. 55 V c. 42, s. 199.

Taken from the Act of 1858, (22 V. c. 99), s. 128 (11). *Cf.* 13 & 14 V. c. 64, Sched. A (23); 16 V. c. 181, s. 27.

(*c*) *Reg. ex rel. Metcalfe* v. *Smart*, 10 U.C.R. 89 (1852); *Reg. ex rel. Lutz* v. *Williamson*, 1 P. R. 94 (1853); *Re Charles* v. *Lewis*, 2 C. L. Chamb. 171, 177 (1853); *Reg. ex rel. Dexter* v. *Gowan*, 1 P.R. 104 (1853); *Reg. ex rel. Davis* v. *Carruthers*, 1 P. R. 114 (1854); *Reg. ex rel. Carroll* v. *Beckwith*, 1 P. R. 278 (1854); *Reg. ex rel. Richmond* v. *Tegart*, 7 U.C.L.J. 128 (1862); *Reg. ex rel. Rollo* v. *Beard*, 1 C.L.J.N.S. 126; 3 P.R. 357 (1865); *Reg. ex rel. Ross* v. *Rastal*, 2 C.L.J.N.S. 160 (1866); *Reg. ex rel. Tinning* v. *Edgar*, 4 P. R. 36 (1867); *Reg. ex rel. Boyes* v. *Detlor*, 4 P.R. 195 (1868); *Reg. ex rel. Adamson* v. *Boyd*, 4 P.R. 204 (1868); *Reg. ex rel. Hauer* v. *Roberts*, 7 P.R. 315 (1878). *Reg. ex rel. Lee* v. *Gilmour*, 7 P.R. 515 (1881); *Reg. ex rel. McGuire* v. *Birkett*, 21 O.R. 162 (1891).

(*d*) *Reg. ex rel. Smith* v. *Brouse*, 1 P.R. 180 (1852); *Reg. ex rel. Kirke* v. *Asselstine*, 1 U.C.L.J. 49 (1855); *Reg. ex rel. Gibbs* v. *Brannaghan*, 3 U.C.L.J. 127 (1857); *Reg. ex rel. Pollard* v. *Prosser*, 2 P.R. 330 (1859); *Reg. ex rel. Corbett* v. *Hall*, 5 P.R. 41 (1869).

(*e*) *Reg. ex rel. Davis* v. *Wilson*, 3 U.C.L.J. 165 (1857); *Reg. ex rel. Walker* v. *Mitchell*, 4 P.R. 218 (1868).

(*f*) *Reg. ex rel. Allemaing* v. *Zoeger*, 1 P.R. 219 (1853); *Reg. ex rel. Dillon* v. *McNeil*, 5 C.P. 137 (1855); *Reg. ex rel. Johnson* v. *Murney*, 5 U.C.L.J. 87 (1859). (*g*) *Reg. ex rel. McManus* v. *Ferguson*, 2 C.L.J.N.S. 19 (1865).

(*h*) *Reg. ex rel. Hawke* v. *Hall*, 2 C.L.Ch. 182 (1852).

(*i*) *Reg. ex rel. McMullen* v. *DeLisle*, 8 U.C.L.J. 291 (1863); *Reg. ex rel. Brine* v. *Booth*, 9 P.R. 452 (1883).

(*j*) *Reg. ex rel. Crozier* v. *Taylor*, 6 U.C.L.J. 60 (1860); *Reg. ex rel. Armor* v. *Coste*, 8 U.C.L.J. 290 (1862); *Reg. ex rel. Piddington* v. *Riddell*, 4 P.R. 80 (1867). (*k*) *Reg. ex rel. Rollo* v. *Beard*, 3 P.R. 357; 1 C.L.J.N.S. 126 (1865)

(*l*) *Reg. ex rel. Walker* v. *Hall*, 6 U.C.L.J. 138 (1860).

(*m*) *Re Bell and Township of Maurers*, 2 C.P. 507; 3 C.P. 400 (1853-54).

(*n*) *Reg. ex rel. Stonehouse* v. *Hill*, 9 C.L.T. 170 (1898).

Secs. 234, 235 (2).

Notes (a); (a) (b).

(a) See note (a) to s. 225. Even when the number of those adjudged to be legally elected equals or exceeds the half of the council, they have no authority to order the new election, as in the case provided for by s. 130, or to appoint the remaining members of the council, as in that provided for by s. 218. It is therefore apprehended that the new council cannot meet for organization until the election ordered by the Judge has taken place, and that, in the meantime the council of the preceding year remains in office, (s. 95).

Where election has been declared invalid owing to refusal to permit qualified persons to vote.

235. In any case where an election has been held invalid owing to the improper refusal of the returning officer or deputy-returning officer to receive ballot papers tendered by duly qualified electors, or to give ballot papers to duly qualified electors, the Judge may, in his discretion, order the costs of the proceedings to unseat the person declared elected, or any part thereof or any other costs, to be paid by the respondent or by such returning officer or deputy-returning officer.

Taken from "*The Municipal Amendment Act, 1896*" (59 V. c. 51), s. 5.

R. O. may be ordered to pay costs.

(a) **Where returning officer may be ordered to pay costs.**—Before this enactment, it had been held that a returning officer would not, as a rule, be ordered to pay costs even though his conduct was in some particulars irregular, provided he had acted in good faith, and without any evil intent (*a*), or corruption or partiality (*b*). But where a returning officer, for the purpose of enabling himself to decide an election, struck out of the poll-book a vote which he had deliberately, though erroneously, received and recorded, and,—having thus made the candidates equal,—gave his casting vote, the election was set aside and the returning officer ordered to pay the relator's costs (*c*). In *Reg. ex rel. Totten* v. *Benn* (*d*), a returning officer who had accepted a vote which he knew to be bad, in order to give himself a casting vote; and in *Reg. ex rel. Johnson* v. *Murney* (*e*), one who had received votes not on the assessment roll were each ordered to pay costs. In *Reg. ex rel. Arnott* v. *Marchant* (*f*), the returning officer improperly closed the poll, both candidates having at the time received an equal number of votes; and when in the act of recording his own vote, a vote was tendered by an elector (who had been present for a long time without voting) for the candidate against whom the returning officer voted, which he refused to record. *Held*, that there should be a new election, and that under the circumstances, the returning officer should pay the relator's costs and also the costs of the defendant, if he chose to exact them (*g*).

Right of action against R. O. not affected.

(2) Nothing in this section contained shall affect any right of action against such returning officer or deputy-returning officer, or be deemed to relieve such returning officer or deputy-returning officer from any penalty to which he may be liable under the provisions of this Act. 59 V. c. 51, s. 5.

(b) "**Nothing . . shall affect any right of action against such returning officer,**" etc. See note (a) to s. 116, note (b) to s. 166, and note (a) to s. 194; *Pickering* v. *James*, L. R. 8 C. P. 489 (1873); *Walton* v. *Appjohn*, 5 O. R. 65 (1884) *Johnson* v. *Allen*, 26 O. R. 550 (1895); *Wilson* v. *Manes*, 28 O. R. 419 (1896).

(*a*) *Reg. ex rel. Coupland* v. *Webster*, 6 U. C. L. J. 89 (1860).

(*b*) *Reg. ex rel. McVean* v. *Graham*, 7 U. C. L. J. 126 (1860).

(*c*) *Reg. ex rel. Mitchell* v. *Rankin*, 2 C. L. Ch. 161 (1853). So also in *Reg. ex rel. Acheson* v. *Donoghue*, 15 U. C. R. 454 (1858), cited in note (a) to s. 230.

(*d*) 4 U. C. L. J. 262 (1858).

(*e*) 5 U. C. L. J. 87 (1859).

(*f*) 2 C. L. Chamb. 189 (1852).

(*g*) *Reg. ex rel. Smith* v. *Brouse*, 1 P. R. 180 (1852), cited in note (a) to s. 128 (4), and *Reg. ex rel. Corbett* v. *Jull*, 5 P. R. 41 (1869), cited in note (b) to s. 128 (2), are also cases in both of which the misconduct of the returning officer was punished by making him pay the relator's costs.

Secs. 236-238.

Notes (a); (a).

Judgment.

236. After the adjudication upon the case an order shall be drawn up in the usual manner which shall state concisely the ground and effect of the decision, which order may be at any time amended by the Judge in regard to any matter of form, and the order shall have the same force and effect as a writ of mandamus formerly had in the like case. Con. Rule 1044 (1888).

(a) See the form of the order, *ante*, note (a) to s. 233.

Judgment to be returned to the Court.

Mode of enforcing judgment.

237. The Judge shall, immediately after his decision, return his order with all things had before him touching the same, to the proper office of the Court in which the proceedings are entitled, there to remain of record as a judgment of the High Court; and, as occasion requires, the judgment may be enforced in the same manner as an ordinary order of *mandamus*, and (for the costs awarded) by writs of execution. 55 V. c. 42, s. 207; 60 V. c. 15, *Sched.* C (46).

Taken from the Act of 1892, 55 V. c. 42, s. 207, the words "the proper officer of the Court in which the proceedings have been conducted," having (under the authority of 60 V. c. 3, s. 3,) been substituted by the Revisers of 1897 for the words "the Registrar of the Division to which the matter is assigned." *Cf.* 13 & 14 V. c. 64, Sched. A (23); 16 V. c. 181, s. 27; 22 V. c. 99, s. 128 (17); 29 & 30 V. c. 51, s. 131 (18); 30 V. c. 48, s. 151; R. S. O. (1877) c. 174, s. 190; 46 V. c. 18, s. 205; R. S. O. (1887) c. 184, s. 207.

(a) **"To remain of record as a judgment of the High Court."** The words "the High Court" have evidently been retained by oversight. The intention is that the judgment shall remain of record in the Court in which the proceedings have been conducted. See note (f) to s. 220 (4).

There was originally a right of appeal to the full Court.(*a*) That privilege was in the Municipal Institutions Act of 1858, when first introduced, but was struck out in Committee. The object, no doubt, is to insure prompt relief. (*b*)

Disclaimer.

When defendant may disclaim.

238. Any person whose election is complained of may, (unless such election is complained of on the ground of corrupt practices on the part of such person), within one week after service on him of the notice of motion, transmit, post paid, through the post office, directed to "The Clerk in Chambers, at Osgoode Hall, Toronto," or to "The Judge of the County Court of the County of " (*as the case may require*) and also to the relator or his solicitor, or may cause to be delivered to such Clerk or Judge and to the relator or his solicitor, a disclaimer signed by him, to the effect following:

Form of disclaimer.

"I, *A. B.*, upon whom a notice of motion, in the nature of a *quo warranto*, has been served for the purpose of contesting my right to the office of Township Councillor (*or as the case may be*) for the Township of , in the County of (*or as the case may be*), do hereby disclaim the said office, and all defence of any right I may have to the same.

"Dated day of

(Signed) *A. B.*"

55 V. c. 42, ss. 200 and 201; 60 V. c. 15, *Sched.* C (52).

Taken from the Act of 1873 (36 V. c. 48), s. 144, the words "to the relator and to his solicitor" in lines 8, 9 and 10 having been added in 1897 by 60 V. c. 15, Sched. C (52). *Cf.* 13 & 14 V. c. 64, Sched. A (23); 16 V. c. 181, s. 27; 22 V. c. 99, s. 128 (12)-(16); 29 & 30 V. c. 51, s. 131 (12) (16).

(*a*) 12 V. c. 81, s. 152: *Reg. ex rel. McKean* v. *Hogg*, 15 U. C. R. 140 (1857).

(*b*) See *Reg. ex rel. Grant* v. *Coleman*, 7 A. R. 619.

239. The disclaimer, or the envelope containing the same, shall moreover be indorsed on the outside thereof with the word "*Disclaimer*," and shall be registered at the post office where it is mailed. 55 V. c. 42, s 202.

Transmission of disclaimer.

Taken from the Act of 1858, (22 V. c. 99) s. [illegible] (13). *Cf.* as under s. 238.

240. Where there has been a contested election, the person elected may at any time after the election, and before his election is complained of, deliver to the clerk of the municipality a disclaimer signed by him as follows:

Person elected may disclaim at any time before his election is complained of.

"I, *A. B.*, do hereby disclaim all right to the office of Township Councillor (*or as the case may be*) for the Township of (*or as the case may be*), and all defence of any right I may have to the same.

Form.

55 V. c. 42, s. 203.

Taken from the Act of 1866 (29 & 30 V. c. 51), s. 131 (17). *Cf.* as under s. 238.

241. Such disclaimer shall relieve the party making it from all liability to costs, and where a disclaimer has been made in accordance with the preceding sections, it shall operate as a resignation, and the candidate having the next highest number of votes shall then become the member or officer elected. 55 V. c. 42, s. 204.

Disclaimer to operate as resignation.

Who to be deemed elected.

Taken from the Act of 1873 (36 V. c. 48), s. 147. *Cf.* as under s. 238.

242. Every person disclaiming shall deliver a duplicate of his disclaimer to the clerk of the municipality, and the clerk shall forthwith communicate the same to the council. 55 V. c. 42, s. 205.

Duplicate disclaimer to be delivered to clerk.

Taken from the Act of 1850, (13 & 14 V. c. 64), Sched. A (23).

243. No costs shall be awarded against a person duly disclaiming, unless the Judge is satisfied that such person consented to his nomination as a candidate, or accepted the office, in which case the costs shall be in the discretion of the Judge. 55 V. c. 42, s. 206.

Costs against person disclaiming.

(a) When disclaimer may be made.—The right to disclaim after proceedings had been commenced (s. 238) was given by the Act of 1850, 13 & 14 V. c. 64, its effect being to relieve the person disclaiming from the liability for costs. It did not nullify the election or give the seat to the candidate having the next highest number of votes. (*a*) The right to disclaim (instead of resigning) before proceedings taken (s. 240) was first permitted by the Act of 1866 (29 & 30 V. c. 51) s. 131 (7), which provided,—as s. 241 now provides,—that such disclaimer should operate as a resignation and entitle the candidate having the next highest number of votes to the vacated seat. By means of a disclaimer under these sections, a member of the council may at once vacate his seat without the necessity for an acceptance of his resignation by the council. (*b*)

When disclaimer may be made.

(b) Form of disclaimer.—A disclaimer under s. 240 in the following words, "I disclaim the seat as councillor for the Village of P. for which I have been

Form of disclaimer.

(*a*) *Reg. ex rel. Freeman* v. *Jones*, 1 P. R. 306 (1854).

(*b*) See note (**a**) to s. 210.

Sec. 243. Notes (b)-(e).

elected," was held sufficient by PROUDFOOT, V. C., in *Smith* v. *Village of Petersville* (c). In *Reg. ex rel. Mitchell* v. *Davidson*, (d) OSLER, J. held insufficient a disclaimer under the same section which was in the following words:

"Palmerston, Feb. 7th, 1881.

Form of disclaimer.

"To the Mayor and Council of the Town of Palmerston. Gentlemen, I beg to disclaim my seat at the Council Board. (Signed) G. S. D." In giving judgment he says (p. 436),—

> "A short, plain, and simple form of disclaimer is thus given by s. 191, [now s. 240]. It is required to be "as follows": that is to say, in accordance with the form given, not as the disclaimer mentioned in section 192, given after the proceedings have been commenced, "*to the effect* following." I think there is reason for the difference. In the one case it is to be acted upon by the council, or those objecting to the election, without judicial direction, and terms are used which leave no room for doubt as to what is meant by them. In the other, it may very well be left to the Judge who disposes of the case to determine, in dealing with the costs, whether the defendant has substantially disclaimed his right to the office by the formula which he has made use of. I do not think the relator was bound to speculate upon the meaning of the informal instrument delivered to the council in the present case, and to take the chance of the council refusing to act upon it, or to accept the defendant's subsequent resignation. I am of opinion that the disclaimer was not effectual, and that the relator is entitled to his costs."

Effect of disclaimer.

(c) **Effect of Disclaimer.**—In case the relator claims the seat for himself or for some other person, the effect of a disclaimer under s. 238 is to put an end to the suit, its object having been thus accomplished (e). But the defendant will not be allowed to defeat the relator's right and to bring about a new election by resigning, instead of disclaiming, a seat which he wrongfully holds (f); and if he attempt to do so, judgment may be given awarding the seat to the person entitled thereto (g).

Next unelected candidate takes the seat.

(d) **"The candidate having the highest number of votes."** These words mean the candidate having such number of votes who has not been elected; consequently where the three highest candidates were declared elected, and the one at the head of the poll resigned, the candidate who was fourth in order was held entitled to the seat (h).

In *Reg. ex rel. Percy* v. *Worth*, (i) there were three candidates for an office. The one who received the highest number of votes and was declared elected, disclaimed under s. 240, whereupon the next in order also disclaimed. The third candidate (the defendant), who had received the lowest number of votes, thereupon made the declaration of office under s. 319 and took his seat. Upon a motion under s. 220 to have it declared that there had been no election, and that the seat was vacant, STREET, J., held, reversing the judgment of the Master in Chambers, that the defendant was entitled to the seat under this section.

Costs.

(e) **Costs in case of a disclaimer.**—The effect of a disclaimer under s. 240,—*i.e.* before proceedings taken—is absolutely to relieve the person disclaiming from all liability to costs (s. 241); but a disclaimer under s. 238,—*i. e.* after proceedings taken—has not this effect if the Judge is satisfied that the party disclaiming consented to his nomination as a candidate, or accepted office (s. 243). In either of these latter cases the costs are in the discretion of the Judge, and will be awarded in accordance with the principles laid down in note (b) to s. 233. Where the defendant, who had personally contested the election, disclaimed in time and asked to be relieved from costs because—being duly elected—he was obliged, under a penalty, to accept office, SULLIVAN J.

(c) 28 Gr. 599 (1881). (d) 8 P. R. 434 (1881).

(e) *Reg. ex rel. Hannah* v. *Paul*, 9 C. L. J. N. S. 238 (1873); *Patterson* v. *Brown*, 11 Man. L. R. 612 (1897).

(f) *Reg. ex rel. Johnston* v. *Murney*, 5 U. C. L. J. 87 (1859); *Reg.* v. *Blizard*, L. R. 2 Q. B. 55 (1867). (g) *Reg.* v. *Blizard*, *supra*.

(h) *Smith* v. *Village of Petersville*, 28 Grant 599 (1881).

(i) 23 O. R. 688 (1893).

ordered him to pay the relator's costs. (a) But where the election was set aside on account of a mistake of the returning officer, the defendant, who had not participated therein or taken his seat, but had disclaimed as soon as he knew of the illegality of his election, was not subjected to the payment of costs. (b)

Rules of Practice.

The Judges to make rules, etc.

Rev. Stat. c. 51.

244. The Judges of the High Court, or such of them as may be authorized by *The Judicature Act* to make general rules for regulating the practice of the High Court, may, by rules, settle the forms of any writs, notices, orders or other proceedings to be issued, given or made under sections 219 to 243 inclusive of this Act, and respecting the practice generally, in hearing and determining the validity of such elections, and respecting the costs thereon: and may from time to time rescind, alter, or add to such rules; but all existing rules shall remain in force until rescinded or altered as aforesaid. 55 V. c. 42, s. 208; 60 V. c. 15, *Sched.* C (54).

(a) The present form of this section is taken from the Act of 1892 (55 V. c. 42), s. 208, as amended by 60 V. c. 15, Sched. C (54), but a corresponding provision is to be found in the earlier Acts.(c) The rules of M. T. 14 V.,—referred to in note (c) to s. 220 and notes (a) and (b), to s. 221—governed the practice until they were gradually superseded by other provisions contained in the later Municipal Acts.(d) In 1888 were passed the Con. Rules Nos. 1038-1044 (referred to in note (f) to s. 220 (2)); but these were repealed in 1897 by Con. Rule No. 2, having already been harmonized with and embodied in ss. 220, 221, 226, 232, and 236 of the present Act.

Division IX.—Corrupt Practices.

Synopsis.—The important sections of this Division are s. 245 which defines bribery and s. 246 which defines undue influence.

Secs. 249-251 prescribe the penalty and punishment for these offences; s. 257 relates to a case in which no penalty shall be recoverable.

Sec. 247 declares what expenses a candidate may lawfully incur. Secs. 248, 252, 253, 256 relate to procedure, and ss. 254, 255 to securing the attendance of necessary (but perhaps reluctant) witnesses and compelling them to testify.

Sec. 258 provides for the publication at every election of the sections composing this Division of the Act.

Bribery Defined.

Certain persons to be deemed guilty of bribery.

Giving money to voters, etc.

245. The following persons shall be deemed guilty of bribery, and shall be punished accordingly:—

1. Every person who, directly or indirectly, by himself, or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers or promises money or valuable consideration, or gives or procures, or agrees to give or procure, or offers or promises, any office, place or employment, to or for

(a) *Reg. ex rel. Featherston* v. *McMonies*, 2 C.L. Cham. 137 (1852). So in *Reg. ex rel. Hawke* v. *Hall*, 2 C.L. Ch. 132 (1852) where the disclaimer was filed a day too late.

(b) *Reg. ex rel. Coupland* v. *Webster*, 6 U.C.L.J. 89 (1860).

(c) *Ex. gr.*, 12 V. c. 81, s. 153; 13 & 14 V. c. 64, Sched. A (23); 22 V. c. 99, s. 128 (18); 29 & 30 V. c. 51, s. 131 (19); 36 V. c. 48, s. 152; R. S. O. (1877) c. 174, s. 200; 46 V. c. 18, s. 206; R. S. O. (1887) c. 184, s. 208.

(d) See *Reg. ex rel. McDonald* v. *Anderson*, 8 P. R. 241 (1880).

Sec. 245, Sub-sec. 1. Notes (a) (b).

Procuring office, etc., for voters.

any voter, or to or for any person on behalf of any voter, or to or for any person in order to induce any voter to vote or to refrain from voting at a municipal election, or upon a by-law for raising money or creating a debt to be charged upon a municipality or part of a municipality for any purpose whatever, or who corruptly does any such act as aforesaid, on account of such voter having voted or having refrained from voting at such election, or upon such by-law:—

Bribery as a statutory offence.

(a) This statutory definition of bribery was originally taken from ss. 2 and 3 of the Imp. Act 17 & 18 V. c. 102 (1854), entitled "*An Act to consolidate and amend the laws relating to bribery, treating, and undue influence at elections of Members of Parliament.*" It was first applied to parliamentary elections in Canada by 23 V. c. 17, ss. 1, 2 (1860), to elections for the Legislative Assembly of Ontario by "*The Election Law of 1868,*" (*a*) and to municipal elections by 35 V. c. 36, s. 1 (1872), the language of which is substantially followed in the present section, the words "or defeat" having been inserted in subs. 2, lines 4 and 6, and in subs. 3, lines 3 and 4, and the words "at the voting upon" having been substituted for the word "for" in the last line of these subsections by 60 V. c. 15, Sched. C. (55), (56). (*b*) Independently of any Statute on the subject, bribery at a parliamentary election was and is a crime at common law, (*c*) and long before bribery at a municipal election had been made the subject of statutory enactment in this Province, Chief Justice ROBINSON held that it "would no doubt be an indictable offence." (*d*) The statutory penalties are not substituted for the punishment to which the offender is subject at common law, but are cumulative, (*e*) and the giver of a bribe, as well as the receiver, may still be indicted for bribery. (*f*)

As a common law offence.

What is bribery.

(b) **"Shall be deemed guilty of bribery."** The essence of the offence of bribery, both at common law and under the Statute, is that a person who is bound by law to act without any view to his private emolument, is thereby induced by means of gain, or hope of gain, to act as some other person prescribes (*a*). "Anything, great or small, which is given to procure a vote is a bribe" (*b*). The governing words of subss. 1 and 2 are "in order to induce"; and—since the question of intention must be determined upon the facts in each particular case—it is difficult, if not impossible, to lay down a hard and fast rule as to when an act will, and when it will not amount to bribery (*c*). The *bona fide* payment to a voter of a reasonable sum of money for work done (*d*) and even for services agreed to be rendered, but not in fact rendered owing to misconduct of the voters themselves (*e*) has been held not to be bribery (*f*).

(*a*) 32 V. c. 21, s. 67.

(*b*) *Cf.* "*The Ontario Election Act,*" (R. S. O. c. 9), ss. 159, 160, and "*The Dominion Elections Act,*" (R. S. Ca. c. 8), ss. 84, 85.

(*c*) *Rex* v. *Pitt*, 3 Burr. 1338; *Reg.* v. *Lancaster*, 16 Cox, 737.

(*d*) *Reg. ex rel. McKeon* v. *Hogg*, 15 U. C. R. 140 (1857).

(*e*) *Rex* v. *Pitt, supra.* (*f*) *North Victoria*, H. E. C. 584, 604.

(*a*) 2 Doug. 400. (*b*) *Coventry*, 1 O'M. & H. 100.

(*c*) See *Glengarry*, H. E. C. 8; *Monck*, *Ib.* 154; *Dundas*, *Ib.* 205; *North Ontario*, *Ib.* 304; *London*, *Ib.* 214; *North Victoria*, *Ib.* 252; *South Ontario*, *Ib.* 751; *Cornwall*, *Ib.* 803; *Selkirk*, 4 S. C. R. 494; *Montcalm*, 9 S. C. R. 93; *Megantic*, *Ib.* 279; *West Northumberland*, 10 S. C. R. 635; *Levis*, 11 S. C. R. 133; *Haldimand*, 17 S. C. R. 170; 1 Ont. El. Cas. 572.

(*d*) *North Ontario*, 1 Ont. El. Cas. 1; *East Middlesex*, *Ib.* 250.

(*e*) *West Toronto*, H. E. C. 97.

(*f*) But see as to employing voters as canvassers, note (i); as to betting on the result of the election, *Lincoln*, 1 H. E. C. 489; *South Norfolk*, *Ib.* 660; *West Northumberland*, 10 S. C. R. 635, reversing s. c. 1 Ont. El. Cas. 32; *Trebilcock* v. *Walsh*, 21 A. R. 55; *Walsh* v. *Trebilcock*, 23 S. C. R. 695; and now "*The Ontario Election Act,*" (R. S. O. c. 9), s. 164. "*The Municipal Act*" contains no provisions corresponding to that section or to ss. 161-163 of R. S. O. c. 9, respecting the furnishing of meat, drink, or refreshment to voters, but the words of this section are wide enough to include such cases; *Bodmin*, 1 O'M. & H. 124; *Hastings*, *Ib.* 218.

Sec. 245. Sub-sec. 1. Note (c).

Effect of bribery by agents at a municipal election.

(c) **"By himself or by any other person on his behalf."** The relation between a candidate and his agents in parliamentary elections has been likened to that of master and servant (*g*); or to that which exists between a sheriff and his under sheriff and bailiffs (*h*). So far as regards the validity of an election at which bribery is proved to have been committed, or undue influence exercised, the candidate will be held responsible for illegal acts of his agents, though these were unauthorized, and even contrary to his express instructions (*i*). The act must, however, have been done by the agent in the course of his employment as such, and must have been within the scope of his authority, though it may be an abuse of such authority (*j*).

But in order to subject the principal to criminal or *quasi*-criminal responsibility, the rule is very different.

> "As it is an illegal act for a man to offer to give money to another for voting, I take the law to be clear that a man cannot be guilty by his agent of an illegal act, and be held responsible for that act, unless he has given the agent authority, expressed or implied, to do that illegal act. I know that the law of agency to such cases has been much extended by committees of the House of Commons; but I take it to be a clear proposition of law, that if a man employs an agent for a perfectly legal purpose, and that agent does an illegal act, that act does not affect the principal, unless a great deal more is shown; unless it be shown that the principal directed the agent to so act, or really meant that he should so act, or afterwards ratified the illegal act, or that he appointed one to be his general agent to do both legal and illegal acts, to do everything, in short, which he might think proper to support the interest of the candidate. If the candidate gives his agent such a general authority, and the agent is guilty of bribery, the candidate is no doubt responsible for it (*a*)."

Accordingly, in the *Kingston Case* (*b*) in construing words similar to those of this section RICHARDS, C. J. says (p. 633).

> "The person to be deemed guilty of bribery is spoken of throughout the sections as doing the guilty act. The addition that he does it by another on his behalf need only mean that he does it through one whom he has authorized for that purpose; and it is settled law that enactments are not to be given a penal effect beyond the necessary import of the terms used."

This was followed by SPRAGGE, C. in the *Cornwall Case* (*c*). And in *Reg. ex rel. Thornton* v. *Dewar* (*d*), ROSE, J. says in giving judgment (p. 513).

> "In my opinion no one can be found guilty of bribery under ss. 209-213 of the Consolidated Municipal Act, 55 V. c. 42, unless the evidence discloses in him an intention to commit the offence; and I decline to hold that a candidate desiring and intending to have a pure election can be made a *quasi*-criminal by the act of an agent who, without the knowledge or desire of the principal, violates the Statute to advance the election of such candidate. The acts which were relied upon here to show bribery by the candidate were in no sense brought home to him personally. It was not shown that they were done with his knowledge or consent, or under instructions which either expressly or impliedly warranted any such misconduct, even if the evidence estabablished it against persons who were in a general sense agents of the candidate. It would shock our sense of justice to be told that where a candidate had conducted the election contest

(*g*) *Norwich*, 1 O'M. & H. 10; *Westminster*, *Ib.* 95; *Wigan*, *Ib.* 191.

(*h*) *Bewdley*, 1 O'M. & H. 19; *Harwich*, 3 O'M. & H. 69; 44 L. T. N. S. at p. 189.

(*i*) *Taunton*, 1 O'M. & H. 182; *South Grey*, H.E.C. 52; *West Toronto*, *Ib.* 97; *Cornwall*, *Ib.* 547; *Muskoka and Parry Sound*, 1 Ont. El. Cas. 197.

(*j*) *Per* BURTON, J. A. in *West Simcoe*, 1 Ont. El. Cas., 128, 170; *per* GWYNNE, J. in *Lincoln*, H. E. C. 391, 403; *Berthier*, 9 S. C. R. 102.

(*a*) Per Lord WENSLEYDALE in *Cooper* v. *Slade*, 6 H. L. Cas. 746 at p. 793. See also *Dangarvan*, 2 P. R. & D. 324; *Lovering* v. *Dawson*, 10 C. P. 711. (*b*) H. E. C. 625.

(*c*) H. E. C. 647, 659; 11 C. L. J. N. S. 81, 86. (*d*) 26 O. R. 512 (1895).

Sec. 245, Sub-sec. 1. Notes (c) (d).

with every endeavour to avoid any and all acts of impropriety, he could be found guilty of bribery—be made liable to a penalty and rendered ineligible as a candidate at any municipal election for two years because some agent, acting to advance his interests as a candidate, should, without his knowledge and consent and possibly in direct opposition to his express orders, have paid a man to vote for him."

Effect of bribery by agents.

In *Booth* v. *Sutherland* (*e*) however, the learned County Judge of Simcoe held that the fact of bribery having been committed by his agents subjected a candidate to disqualification, under s. 249 of this Act.

Evidence of agency.

(d) **Evidence of Agency.**—Agency in election matters is a result of law to be drawn from the facts of the case, and from the acts of individuals. (*f*)

> "There is always a great difference in the degrees of agency. As you go lower down you require more distinctly to show that the act was done by a person whom the candidate would be responsible for; as you come higher up it is more as if the candidate had done it himself." (*g*)

No one can lay down a precise rule as to what would constitute evidence of being an agent. (*h*) A man's wife, if she interfere in the election, is *ipso facto* his agent. (*i*) It may be said that any act, however trifling, is evidence of agency, and that an aggregate of isolated acts will, by their cumulative force, constitute agency. (*j*) Canvassing alone, with or without canvass books, is evidence of agency (*k*); so is attending meetings and speaking on behalf of the candidate. (*l*) In order to establish agency it it necessary to prove some recognition by the candidate of a voluntary agent's services. (*m*) But canvassing independently of the candidate, and for an independent association, rebuts the inference of agency. (*n*)

> "I cannot concur in the opinion that any supporter of the candidate who chooses to ask others for their votes, and to make speeches in his favor, can force himself upon the candidate as an agent." (*o*)

A supporter of the candidate, who accompanied the candidate in a sleigh, saying to some cabmen, "Boys, follow me," does not sufficiently constitute him an agent of the candidate so as to affect him with illegal acts. (*p*)

As to how far members of conventions at which the candidate has been nominated, or members of volunteer committees formed to promote his election, are to be considered his agents, see *Welland* (two cases), H. E. C. 187; 1 Ont. El. Cas. 383; *London*, H. E. C. 214; *North Ontario* (two cases), *Ib.* 304, 785; 1 Ont. El. Cas. 1; *North Wentworth*, H. E. C. 343; *North Grey*, *Ib.* 362; *East Northumberland* (two cases), 387, 577; 1 Ont. El. Cas. 434; *South Ontario*, H. E. C. 420; *Cornwall*, *Ib.* 547; *West Simcoe*, 1 Ont. El. Cas. 128; *Muskoka and Parry Sound*, *Ib.* 197; *East Simcoe*, *Ib.* 291; *Haldimand*, *Ib.* 572. A scru-

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(*e*) 10 C. L. J. N. S. 287.

(*f*) *Sligo*, 1 O'M. & H. 301; *East Peterborough*, H. E. C. 245; and see *West Simcoe*, 1 Ont. El. Cas. 126; *Muskoka and Parry Sound*, *Ib.* 197; *West Northumberland*, 10 S. C. R. 634.

(*g*) *Per* Blackburn, J., in *Hereford*, 1 O'M. & H. 194; 21 L. T. N. S. 118.

(*h*) *Bewdley*, 1 O'M. & H. 17; 18 L. T. N. S. 676; *Bridgewater*, 1 O'M. & H. 115. (*i*) *Cashel*, *Ib.* 288. (*j*) *Bewdley*, *Ib.* 18.

(*k*) *Staleybridge*, 1 O'M. & H. 66; *Lichfield*, *Ib.* 25; *Windsor C.*, 19 L. T. N. S. 613; *Londonderry*, 21 L. T. N. S. 709; *Cornwall*, H. E. C. 547; 10 C. L. J. N. S. 313.

(*l*) *West Wellington*, 11 Jour. Leg. Assembly, Ont., p. 10.

(*m*) *Per* Strong, V. C., in *Welland*, H. E. C. 47, 50, following *Westminster*, 1 O'M. & H. 89, and *Taunton*, 2 O'M. & H. 74.

(*n*) *Westminster*, 1 O'M. & H. 91.

(*o*) *Per* O'Brien, J., *Londonderry*, 21 L. T. N. S. 712. See also *Prescott*, 1 Ont. El. Cas. 88.

(*p*) *Reg. ex rel. Thompson* v. *Medcalf*, 11 C. L. J. N. S. 248. See also on this point, *Taunton*, 2 O'M. & H. 66; *Bolton*, *Ib.* 138; *Staleybridge*, 20 L. T. N. S. 75; 1 O'M. & H. 70; *Hereford*, 21 L. T. N. S. 117; *North Ontario*, 1 Ont. El. Cas. 1; *Lennox*, *Ib.* 41; *Prescott*, *Ib.* 88.

tineer appointed for a polling place under the written authority of a candidate is an agent for whose illegal acts at the polling place the candidate will be answerable. (*q*)

For other decisions upon the question of agency at parliamentary elections, see Rob. and Joseph's Digest, columns 2633-2636; The Ontario Digest (1880-1890), pp. 1450-1457; *Re Beautiful Plains* (Provincial Election), 10 Man. L. R. 130; 14 C. L. T. 226.

(e) "**Offers or promises money,**" etc. "It cannot be supposed that an offer to bribe is not as bad as the actual payment of money," (*a*) but the evidence to prove such an offer must be stronger than that required when money has actually passed. (*b*) A promise to work for a voter, made without reference to the election and in jest, held no evidence of bribery, (*c*) but a statement that an offer to bribe was made in jest should be received with great suspicion; for a briber may make an offer which he intends to be taken seriously, and then, if it is not accepted, may say that it was made in jest. (*d*) Offer to bribe.

It matters not how long before the election the promise may have been made (*e*)

(f) "**Or upon a by-law for raising money or creating a debt.**" The section under consideration applies only to electors. The case of bribery intended to affect the vote of a member of the council upon any by-law, resolution, etc. is governed by s. 136 of "*The Criminal Code, 1892,*" which provides that,— Bribery of members of municipal councils.

> "Every one is guilty of an indictable offence and liable to a fine not exceeding one thousand dollars and not less than one hundred dollars, and to imprisonment for a term not exceeding two years and not less than one month, and in default of payment of such fine to imprisonment for a further term not exceeding six months, who directly or indirectly,—
>
> (a) makes any offer, proposal, gift, loan, promise, or agreement to pay or give any money or other material compensation or consideration to any member of a municipal council, whether the same is to inure to his own advantage or to the advantage of any other person, for the purpose of inducing such member either to vote or abstain from voting at any meeting of the council of which he is a member or at any meeting of a committee of such council, in favour of or against any measure, motion, resolution, or question submitted to such council or committee; or
>
> (b) makes any offer, proposal, gift, loan, promise or agreement to pay or give any money or other material compensation or consideration to any member or to any officer of a municipal council for the purpose of inducing him to aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; or
>
> (c) Makes any offer, proposal, gift, loan, promise, or agreement to pay or give any money or other material compensation or consideration to any officer of a municipal council for the purpose of inducing him to perform or abstain from performing, or to aid in procuring or preventing the performance of, any official act; or
>
> (d) Being a member or officer of a municipal council, accepts or consents to accept any such offer, proposal, gift, loan, promise, agreement, compensation or consideration as is in this section before mentioned; or in consideration thereof, votes or abstains from voting in favour of or against any measure, motion, resolution, or question, or performs or abstains from performing any official act; or

(*q*) *South Ontario*, H. E. C. 420; *Haldimand* (two cases), 1 Ont. El. Cas. 529, 572; 15 S. C. R. 495.

(*a*) *Coventry*, 1 O'M. & H. 107; *Staleybridge*, *Ib.* 66; *Taunton*, *Ib.* 183; *Cornwall*, 1 H.E.C. 547.

(*b*) *Cheltenham*, 1 O'M & H. 64; *Hereford*, *Ib.* 195; *South Grey* H.E.C. 52; *East Toronto*, *Ib.* 70; *Welland*, *Ib.* 187; *Dundas*, *Ib.* 205; *West Peterborough*, *Ib.* 274; *Centre Wellington*, *Ib.* 579; *North Ontario*, *Ib.* 785; *Halton*, *Ib.* 736; *South Ontario*, *Ib.* 751; *North Renfrew*, *Ib.* 710; *Welland*, 20 S.C.R. 376.

(*c*) *Halton*, H.E.C. 735. (*d*) *North Middlesex*, H.E.C. 376.

(*e*) *Sligo*, 1 O'M. & H. 302; *Stroud*, 2 O'M. & H. 183.

Sec. 245.
Sub-secs. 1-3.
Notes (f)-(l).

(e) Attempts by any threat, deceit, suppression of the truth or other unlawful means to influence any member of a municipal council in giving or withholding his vote in favour of or against any measure, motion, resolution, or question, or in not attending any meeting of the municipal council of which he is a member, or of any committee thereof; or

Bribery of municipal councillors.

(f) Attempts by any such means as in the next preceding paragraph mentioned to influence any member or any officer of a municipal council to aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person, or to perform or abstain from performing, or to aid in procuring or preventing the performance of, any official act."

Bribery after an election.

(g) **"Or who corruptly does any such act as aforesaid on account of such voter having voted," etc.** If the prohibited act be done *before* the election or the voting on a by-law, it is *ipso facto* bribery; but if afterward, it must be shown to have been done "corruptly." "An act done 'corruptly' does not mean 'dishonestly,' but 'purposely doing an act which the law forbids;'" (*f*) or, as put by MARTIN, B., in the *Bradford* case, (*g*) "a corrupt act" is "an act done by a man knowing that he is doing what is wrong and doing it with an evil object." Both these definitions are quoted and approved in *Halton*, (*h*) "Corruptly" means "to produce the result which the Legislature intended to forbid." (*i*) "Contrary to the intention of the Act, with a motive or intention by means of it to produce an effect on the election." (*j*)

Bribery to induce persons to influence voters.

2. Every person who, directly or indirectly, by himself or by any other person on his behalf, makes any gift, loan, offer, promise or agreement as aforesaid, to or for any person, in order to induce such person to procure or defeat, or endeavour to procure or defeat, the return of any person to serve in any municipal council, or to procure or defeat the passing of any by-law as aforesaid, or the vote of any voter at a municipal election, or at the voting upon such by-law;

(h) **"By himself or by some other person on his behalf."** See notes (c) and (d), *supra*.

Employment of voters as canvassers.

(i) **"In order to induce such person to procure or defeat," etc.** In *Reg. ex rel. Johns* v. *Stewart*, (*k*) it appeared that in the election in question every member of certain committees had been paid a uniform sum of $2, nominally for his services as a canvasser, but apparently without regard to the time actually devoted to the work, and without inquiry as to whether he had in fact canvassed at all. *Held*, that such payments constituted the offence of bribery as defined by the sub-section.

As to the right to employ voters as canvassers, there has been much conflict of judicial opinion. In *East Toronto*, (*l*) *West Toronto*, (*m*) and *Lennox*, (*n*) such *bona fide* employment and payment of voters was held to be legal; and in *North Ontario*, (*o*) the majority of the Supreme Court so held; but ARMOUR, C.J., at the trial, (*p*) and (in the Supreme Court) TASCHEREAU and GWYNNE, JJ., (*q*) were of the contrary opinion.

Corruptly influencing voters.

3. Every person who, by reason of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure or defeat the return of any person in a municipal election, or to procure or defeat the passing of any by-law as aforesaid, or the vote of any voter at a municipal election, or at the voting upon such by-law;

(*f*) *Per* WILLES, J., in *Cooper* v. *State*, 6 H. L. Cas. 746, at p. 773.
(*g*) 1 O'M. & H. 37, 39. (*h*) H. E. C. 730, 741.
(*i*) *Wallingford*, 1 O'M. & H. 60. (*j*) *Hereford*, *Ib.* 195.
(*k*) 16 O. R. 583. (*l*) H. E. C. 70. (*m*) *Ib.* 97. (*n*) 1 Ont. El. Cas. 41.
(*o*) 4 S. C. R. 430. (*p*) H. E. C. 785, 801. (*q*) 4 S. C. R. 485, 486.

(j) The transaction intended by this and the preceding subsection is one and the same. But while the preceding subsection makes illegal the conduct of the giver, this makes illegal the conduct of the receiver.

Sec. 245 Sub secs. 3-5 Notes (j)-(k).

4. Every person who advances or pays, or causes to be paid, money to or to the use of any other person with the intent that such money or any part thereof, shall be expended in bribery at a municipal election, or at any voting upon a by-law as aforesaid, or who knowingly pays, or causes to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery at such election, or at the voting upon such by-law;

Advancing, etc., money for bribery, etc.

(k) The object of this subsection is to prevent the expenditure of money for purposes of bribery. If advanced or paid *before* the election, *with intent* that it shall be expended in bribery, it is illegal. If *knowingly* paid *after* the election in discharge of money expended in bribery, it is illegal. The word "knowingly," in this subsection is used very much in the same sense as the word "corruptly" is in the latter part of subsection 1. It is by no means an uncommon practice for a candidate to pay a large sum of money into the hands of two or three persons, or into the hands of a banker, with permission to certain persons to draw upon such sum of money. This occurs most frequently at elections where it is considered expedient that the candidate should know as little as possible of the means used to procure his return.

In *London* (a) immense sums of money were expended by agents of the successful candidate, but he denied all knowledge of these payments, although he had made a very diligent personal canvass. The trial judge, in setting aside the election, accepted this denial, though with much hesitation; but the Court of Common Pleas held, upon appeal, that the circumstantial evidence set out in the case was sufficient to show that corrupt practices had been committed by the agents of the respondent, and with his knowledge and consent, notwithstanding his disclaimer; that wilful intentional ignorance is the same as actual knowledge; that the assent of a candidate to the corrupt acts of his agents may be assumed from his non-interference or non-objection when he has the opportunity to interfere or object; and that it is sufficient to establish such candidate's knowledge of, and assent to, the fact that his agents committed bribery to procure his election without connecting him with any particular act of bribery.

And in *Reg. ex rel. Johns* v. *Stewart* (b), it was held by STREET, J., that a candidate who, on the eve of a hotly-contested election, places a considerable sum of money in the hands of an agent capable of keeping part of it for himself, and spending the rest improperly or corruptly, who never asks for an account of it, gives no directions as to it and exercises no control over it, must be held personally responsible if it is improperly expended.

And where money given to agents by the candidate was in fact used in bribery, it was *Held*, that the presumption that the candidate intended the money to be so used became conclusive in the absence of denial on his part (c).

5. Every voter who, before or during a municipal election, or the voting on such by-law, directly or indirectly, by himself or any other person on his behalf, receives, agrees or contracts for any money, gift, loan, or valuable consideration, office, place of or employment, for himself or any other person, for voting or agreeing to vote, or refraining or agreeing to refrain from voting at such election, or upon such by-law:

Voter receiving money, etc., for vote, or agreeing for money to vote, etc.

(l) This subsection applies to the voter prohibitions corresponding to those contained in subs. 1 with regard to the briber, but it is limited to cases arising *before or during* the election or the voting upon a by-law. The receipt of a bribe *after* the election is provided for by subs. 6.

(a) 10 C.L.J.N.S. 281; 24 C.P. 434; H.E.C. 560.

(b) 16 Ont. 583. (c) *Ibid*, and see also *South Grey*, H.E.C. 52.

Secs. 245, 246, Sub-secs. 6, 7. Notes (m) (n).

Receiving money, etc., after the election for voting, or inducing, etc., to vote.

6. Every person who, after such election, or the voting upon such by-law, directly or indirectly, by himself or any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at such election, or upon such by-law;

(m) The word "corruptly," as used in the first subsection, is not repeated here, but is involved in the language used. To receive after an election money or valuable consideration "on account of any person having voted or refrained from voting," etc., is to receive it corruptly (*d*).

Hiring teams, etc.

7. Every person who hires horses, teams, carriages or other vehicles for the purpose of conveying electors to or from the polls, and every person who receives pay for the use of any horse, team, carriages, or other vehicle, for the purpose of conveying electors to or from any poll as aforesaid. 55 V. c. 42, s. 209; 60 V. c. 15, *Sched.* C. (55, 56).

(n) This subsection is not in the Imperial Statute. It is taken, (with some alteration), from section 3 of the Corrupt Practices Prevention Act, 1860, (*e*) These sections apply only to the hiring, etc., of conveyances "by a candidate or by a person on his behalf" or the letting of conveyances, etc., by an elector "for a candidate or for an agent of a candidate," whereas the present section applies to "every person" (*f*).

Undue Influence Defined.

Undue influence at elections.

246. Every person who, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts, or threatens the infliction, by himself or by or through any other person, of any injury, damage, harm or loss, or in any manner practices intimidation upon or against any person, in order to induce or compel such person to vote or to refrain from voting, at any municipal election, or at the voting upon any by-law, or on account of such person having voted or refrained from voting thereat, or who by abduction, duress, or any fraudulent device or contrivance, impedes, prevents or otherwise interferes with the free exercise of the franchise of a voter, or thereby compels, induces or prevails upon a voter either to give or to refrain from giving his vote at any municipal election, or at the voting upon any by-law, shall be deemed to have committed the offence of undue influence, and shall incur a penalty of $100, and shall be disqualified from voting at any municipal election or upon a by-law for the next succeeding two years. 55 V. c. 42, s. 210 (1); 60 V. c. 15, *Sched.* C. (57).

Taken from 54 V. c. 42, s. 8 (1890), the original of which is s. 5 of the Imp. Stat. 17 & 18 V. c. 102. *Cf.* 23 V. c. 17, s. 4; 32 V. c. 21, s. 72; 35 V. c. 36, s. 2; 36 V. c. 48, s. 154. See also "*The Ontario Election Act*," (R. S. O. c. 9), s. 166, and "*The Dominion Elections Act*," (R. S. Ca. c. 8), s. 87.

(*d*) See note (**g**) to subs. 1 of this section.

(*e*) 23 V. c. 17. *Cf.* "*The Dominion Elections Act*" (R. S. Ca. c. 8), s. 88, and "*The Ontario Election Act*" (R. S. O. c. 9), s. 165.

(*f*) See *Selkirk*, 4 S. C. R. 494; *West Toronto*, H. E. C, 97; *North Victoria* (two cases), *Ib.* 252, 612. *Halton*, *Ib.* 737; *North Ontario*, *Ib.* 785; *Muskoka and Parry Sound*, 1 Ont. El. Cas. 197; *West Middlesex*, *Ib.* 465; *Lewis*, 11 S. C. R. 133.

Sec. 246.

Note (a) (b).

(a) The kinds of undue influence forbidden by this section are :—

I. "**Force, violence or restraint,**" or the threat thereof (*a*).

Undue influence.

II. The infliction or threat of "**injury, damage, harm or loss,**"—which includes, *inter alia*, eviction (*b*) or threats of eviction by landlords (*c*), threats to suspend or refuse the rites of the Church (*d*) [it may be noted here that the Imp. Act uses the words "any temporal *or spiritual* injury, etc.], dismissal from employment (*e*) or threats of such dismissal (*f*), or of criminal proceedings (*g*). The case of a threat of, or an actual withdrawal of custom from a tradesman or artificer is a question of more difficulty. It is open to any man to say, "I choose to deal with you, not in accordance with the merits of the commodities you sell to me, but according to your politics on one side or the other" (*h*), and it would seem to be doubtful whether such a threat or such a withdrawal would be within the section. At all events the loss threatened or inflicted must be an *appreciable* loss, so as to affect the value of the business (*i*). In *Northallerton* (*j*), it was held by WILLES, J., that a threat to a Baptist minister to give up a sitting in his chapel, if he voted as he wished, amounted to intimidation. But a candidate's appeal to his business or to his employment of capital in promoting the prosperity of a constituency is not an exercise of undue influence (*k*). When the threat is proved, it is unnecessary to shew that any person was in fact prevented from voting, because the offence is complete (*l*).

III. The practising of "**intimidation in any manner.**" In the Imp. Stat 17 & 18 V. c. 102, s. 5, the words were, "in any other manner." This clause is altogether omitted from the section as re-enacted by Imp. Stat. 46 & 47 V. c. 51, s. 2.

IV. "**Abduction, duress, or any fraudulent device which impedes, prevents, or otherwise interferes with the free exercise of the franchise, or compels, induces, or prevails upon a voter to give or refrain from giving his vote,**" etc. Forcible abduction would come under clause 1 of this section. The present clause seems to refer more particularly to other means of keeping voters from the poll ; *e.g.* by sending them away on some pretence, or by making them drunk, etc. (*m*) In *East Northumberland*, (*n*) the issue of a false statement that W., (an independent candidate) despairing of electing himself, was inducing his friends to vote for another of the candidates, was held not to be a "fraudulent device" within the meaning of the corresponding section of "*The Ontario Election Act*." The issue of cards like ballot papers, marked opposite the name of a candidate, and with a notice that if marked otherwise, the vote would be "lost" or would be "invalidated," *Held*, not a "fraudulent contrivance" within the meaning of the Imp. Stat. (*o*)

Penalty.

(b) "**Shall incur a penalty of $100.**" See, as to the mode of recovery, s. 704.—as to the application of the amount recovered, s. 708—as to the time within which proceedings must be taken, s. 256.

(*a*) See *Cheltenham*, 1 O'M. & H. 64 ; *Stalybridge*, *Ib.* p. 72 ; *Longford*, 2 O'M. & H. 12 ; *Galway*, *Ib.* 196, and the cases collected in note (**g**) to s. 128 *ante*, footnote (*b*).

(*b*) *North Norfolk*, 1 O'M. & H. 241. (*c*) *Reg.* v. *Barnwell*, 5 W. R 557.

(*d*) *Galway*, 1 O'M. & H. 303 ; *Longford*, 2 O'M. & H. 16 ; *Tipperary*, *Ib.* 31 ; *South Meath*, 4 O'M. & H. 131 ; *North Meath*, 4 O'M. & H. 130, 185 ; *Charlevoix*, 1 S. C. R. 145.

(*e*) *Blackburn*, 1 O'M. & H. 203, 204 ; *North Norfolk*, *Ib.* 241.

(*f*) *Westbury*, 1 O'M. & H. 50. (*g*) *Soulanges*, 10 S. C. R. 652.

(*h*) *North Durham*, 2 O'M. & H. 159.

(*i*) *North Norfolk*, 1 O'M. & H. 241. (*j*) 10 M. & H. 168.

(*k*) *West Peterborough*, H. E. C. 274, and see *Welland*, *Ib.* 187 ; *Halton*, *Ib.* 283 ; *North Ontario*, *Ib.* 304 ; *Muskoka*, *Ib.* 458.

(*l*) *South Meath*, 4 O'M. & H. 142. But see *North Norfolk*, 1 O'M. & H. 242 ; *Windsor*, 2 O'M. & H. 91 ; *Lichfield*, 3 O'M. & H. 136.

(*m*) *Cockermouth*, 2 P. R. & D. 160 ; *Lisburn*, W. & Br. 227 ; *North Ontario* H.E.C. 785, 794-796. (*n*) H. E. C. 387 ; 11 C. L. J. N. S. 328.

(*o*) *Gloucester*, 2 O'M. & H. 50 ; *Stepney*, 4 O'M. & H. 85. See also *Down*, 3 O'M. & H. 122 ; *South Meath*, 4 O'M. & H. 142 . .

Secs. 146, 247.

Notes (c); (a) (b).

(c) The Act of 1891, 54 V. c. 45, s. 8, added a subsection inflicting a penalty of $200 for personation, but this subsection was repealed in 1896 by 59 V. c. 51, s. 4 (2). (p)

Lawful Expenses.

Lawful expenses of candidates.

247. The actual personal expenses of a candidate, his expenses for actual professional expenses performed, and *bona fide* payments for the fair cost of printing and advertising shall be held to be expenses lawfully incurred: and the payment thereof shall not be a contravention of this Act. 55 V. c. 42, s. 211.

Taken from 35 V. c. 36, s. 3 (1872), the original of which is the proviso to s. 1 of 23 V. c. 17, copied in s. 67 of "*The Election Law of 1868*" (32 V. c. 21).

In England.

(a) The corresponding enactments in the Imperial Statutes are the proviso to s. 1 of 17 & 18 V. c. 102—which declares that the definition of bribery therein contained (a) "shall not extend to any money paid, or agreed to be paid on account of any legal expenses *bona fide* incurred at or concerning any election —", and s. 31 (1) of 46 & 47 V. c. 51—which permits the candidate at an election to pay "any personal expenses incurred by him on account of, or in connection with, or incidental to such an election to an amount not exceeding £100"; but all further payments must be made through an election agent, and by him transmitted to the returning officer for publication. Similar provisions are contained in "*The Ontario Election Act*" (R. S. O. c. 9), ss. 197-202, and "*The Dominion Elections Act*" (R. S. Ca. c. 8), ss. 118-120.

In Provincial elections.

(b) **"Actual personal expenses."** In *East Toronto* (b) decided under "*The Election Law of 1868*," (c) it was held by RICHARDS, C.J., that the candidate is not restricted to purely personal expenses, but may (if there is no attempt thereby to influence voters, or to induce others to procure his return) hire rooms for committees and meetings, and employ men to act as canvassers, to distribute cards and placards and to perform similar services in connection with the election. Sec. 197 of "*The Ontario Election Act*," (d) as amended in 1898 by 61 V. c. 5, s. 1, now provides that:

> "Personal expenses of a candidate" . . . shall include among other things the following expenses; and payment therefor may lawfully be made by the candidate personally:
>
> (a) A reasonable and *bona fide* rent or hire of halls or other places used by the candidate personally in which to address public meetings of electors; and the expenses incurred in heating, lighting or cleaning same when necessary;
>
> (b) Tolls on toll roads;
>
> (c) The reasonable, ordinary and necessary hotel expenses of one speaker for each meeting (not including expenditure for treating) who accompanies the candidate and travels with him for the purpose of speaking at a public meeting to be addressed by the candidate;
>
> (d) Reasonable charges for the hire and keep of horses and hire of conveyances for the use of the candidate in travelling to and from public meetings and in canvassing in the constituency, and reasonable and ordinary charges for the services and maintenance of a driver when one is employed by the candidate;
>
> (e) The charges for use by the candidate personally of not more than one team and conveyance, and the services of a person as driver, on the day of the poll; and the carriage of voters to the poll in such conveyance personally by the candidate shall not be a violation of this Act.

(p) See *Regina* v. *Rose*, 27 O.R. 195.

(a) Subs. 1-4 of s. 245 of this Act.

(b) H. E. C. 70. (c) 32 V. c. 21.

(d) R. S. O. c. 9.

The onus of showing that the personal expenses so paid by the candidate, as aforesaid, were fair, reasonable and proper and not in excess of what is ordinarily paid for similar services and accommodation, shall be upon the candidate."

And "*The Dominion Elections Act*" (*e*) provides that:

"The expression 'personal expenses,' as used in this Act with respect to the expenditure of any candidate in relation to the election at which he is a candidate, includes the reasonable travelling expenses of such candidate, and the reasonable expenses of his living at hotels, or elsewhere, for the purpose of, and in relation to such election."

"Personal expenses" in Dominion elections.

(c) "**Actual professional services.**" In the *North Ontario case*, decided under "*The Dominion Elections Act, 1874*" (*f*), ARMOUR, J., held that the employment as a public speaker in the election campaign of a voter, who was a lawyer, was not permitted and amounted to bribery; (*g*) but this was reversed by the Supreme Court (*h*), TASCHEREAU and GWYNNE, J.J., dissenting (*i*).

Evidence as to corrupt practices to be taken viva voce.

Evidence of corrupt practices on application in nature of *quo warranto* to be taken *viva voce*.

248. Where, upon a motion in the nature of a *quo warranto*, a question is raised as to whether the candidate or any voter has been guilty of any violation of section 245 or 246 of this Act, affidavit evidence shall not be used to prove the offence, but it shall be proved by *viva voce* evidence taken before any County Court Judge, upon an order of reference to him for that purpose by a Judge of the High Court in case the motion is returnable before a Judge of the High Court, or upon an appointment granted by the County Court Judge in case the motion is returnable before him. 55 V. c. 42, s. 212; 60 V. c. 3, s. 3.

This section has been recast in the Revision of 1897. *Cf.* 35 V. c. 36, ss. 5, 6; 36 V. c. 48 s. 156; R. S. O. (1877), c. 174, s. 204; 46 V. c. 18, s. 210; R. S. O. (1887), c. 184, s. 212; 55 V. c. 42 s. 212.

(a) Since the offence of bribery or undue influence, if proved, involves the punishments prescribed by ss. 249 and 250, the evidence should be of the clearest and most conclusive character. The Master in Chambers has power to direct a reference to a County Court Judge under this section (*a*).

Similar provision is made by s. 382 for taking evidence *viva voce* on an application to quash a by-law, the passing of which is alleged to have been procured by bribery or undue influence.

Penalties and Punishments.

Penalty on candidates guilty of bribery, etc.

249. Any candidate elected at a municipal election, who is found guilty by the Judge, upon a trial upon a motion in the nature of a *quo warranto*, of any act of bribery, or of using undue influence as aforesaid, shall forfeit his seat, and shall be ineligible as a candidate at any municipal election for two years thereafter. 55 V. c. 42, s. 213.

Taken from 35 V. c. 36, s. 4 (1872).

(a) "**Any candidate . . . who is found guilty.**" See note (c) to s. 245.

(b) "**The Judge.**" See s. 219 (2).

(*e*) R. S. Ca. c. 8, s. 2 *h*. (*f*) 37 V. c. 9 (Ca.). (*g*) H. E. C. 799, 801.
(*h*) 4 S. C. R. 430. (*i*) See note (i) to s. 245.
(*a*) *Reg. ex rel. White* v. *McClay*, 13 P. R. 96; and see now s. 219 (2).

Secs. 250-253.

Notes (a) (b) (a); (a).

Penalty for offences under s. 245.

250. Any person who is adjudged guilty of any offence within the meaning of section 245 of this Act, shall incur a penalty of $20, and shall be disqualified from voting at any municipal election or upon a by-law for the next succeeding two years. 55 V. c. 42, s. 214.

Taken from 35 V. c. 36, s. 8 (1872)

Recovery of penalties.

251. The penalties imposed by the preceding section and by section 166 of this Act shall be recoverable, with full costs of suit, by any person who sues for the same in the Division Court having jurisdiction where the offence was committed; and any person against whom judgment is rendered, shall be ineligible, either as a candidate or as a municipal voter, until the amount which he has been condemned to pay is fully paid and satisfied. 55 V. c. 42, s. 215.

Taken from 35 V. c. 36, s. 9 (1872).

(a) "**Shall be recoverable.**" etc. As to the time within which proceedings must be taken, see s. 256.

(b) "**Shall be ineligible . . until the amount is fully paid.**" But even payment of the amount of the judgment will not remove the disqualification for two years created by ss. 249, 250.

Report and Record of Judgment.

Judge to make return.

252. It shall be the duty of the Judge or officer who finds any candidate guilty of a contravention of section 245 or 246 of this Act, or who condemns any person to pay any sum in the Division Court for any offence within the meaning of this Act, to report the same forthwith to the clerk of the municipality wherein the offence has been committed. 55 V. c. 42, s. 216.

Taken from 35 V. c. 36, s. 10 (1872).

(a) "**Judge or officer.**" The words "or officer" were inserted in "*The Con. Mun. Act, 1892,*" apparently without authority, and are both unnecessary and improper; unnecessary, because of s. 219 (2), and improper, because they do not apply to the case of a Division Court action under s. 251.

Clerk to keep book showing names of persons guilty of offences, etc

253. The clerk of every municipality shall duly enter in a book, to be kept for that purpose, the names of all persons within his municipality who have been adjudged guilty of any offence within the meaning of section 245 or section 246 of this Act, and of which he has been notified by the Judge who tried the case. 55 V. c. 42, s. 217.

Taken from 35 V. 3, 36, s. 11 (1872).

(a) It has been suggested that the object of this section is to enable the clerk to omit from the voters' list the names of persons reported to him under the preceding section, and entered in the book herein referred to; but "*The Voters' Lists Act,*" (R. S. O. c. 7) s. 6 (1), provides that the list to be prepared thereunder shall contain the names of "*all persons* being of the full age of 21 years and subjects of Her Majesty by birth or naturalization, and *appearing by the assessment roll* to be entitled to be voters in the municipality," and ss. 52 and 64 make similar provision as to the preparation of voters' lists in Toronto and in unorganized territory.

The entries in the book to be kept under this section would, however, be evidence upon which the County Judge might act in revising the list at the instance of any voter or person entitled to be a voter (a).

(a) R. S. O. c. 7, ss. 13 *et seq.*

Attendance of witnesses.

254. Any witness shall be bound to attend before the County Court Judge upon being served with the order of the County Court Judge directing his attendance and upon payment of the necessary fees for his attendance, in the same manner as if he had been directed by a writ of subpœna so to attend; and he may be punished for contempt, and shall be liable to all the penalties for such non-attendance in the same manner as if he had been served with a subpœna. 55 V. c. 42, s. 218.

Taken from 35 V. c. 36, s. 16 (1872).

(a) This section apparently provides for securing the attendance of the witnesses to be examined under s. 248.

(b) "**Upon payment of the necessary fees for his attendance.**" It is presumed these fees would be those fixed by the tariff applicable to the Court in which the proceeding is pending.

(c) "**Shall be liable to . . . penalties for non-attendance . . . as if he had been served with a subpœna.**" A witness who refuses or neglects to attend after being subpœnaed in time and paid the proper witness fees and conduct money may be proceeded against by attachment (*a*), by action under 5 Eliz. c. 9, or by action at common law (*b*).

Witnesses not excused from answering on grounds of self-crimination or privilege.

Proviso.

255. No person shall be excused from answering any question put to him in any action or other proceeding in any Court or before any Judge or officer, touching or concerning any election or by-law, or the conduct of any person thereat, or in relation thereto, on the ground of any privilege, or on the ground that the answer to the question will tend to criminate such person; but no answer given by any person claiming to be excused on the ground of privilege, or on the ground that such answer will subject him to any penalty under this Act, shall be used, in any proceeding under this Act, against such person, if the Judge or officer gives to the witness a certificate that he claimed the right to be excused on either of the grounds aforesaid, and made full and true answer, to the satisfaction of the Judge or officer. 55 V. c. 42, s. 219.

Taken from 35 V. c. 36, s. 17 (1872).

(a) At common law, a witness is entitled to refuse to answer any question that may tend to criminate him, not only because the answer itself might be evidence against him on a criminal charge, but because it might furnish a link in the chain of testimony which might implicate him in such charge. (*c*) The object of this section is to infringe to a certain extent, upon these principles of the common law. Election inquiries and investigations are made among persons who are often hostile and unwilling to tell the truth, and who, if the common law were left untouched, would be entitled to say, "I will answer no such question," and so the inquiry would be baffled. Therefore the Legislature, has enacted that the tendency of the answer to expose the witness to a criminal charge, shall be no excuse for not answering the question (*d*), but the common law immunity against incriminating himself having been thus taken away from the witness, he is here given an immunity on certain conditions; and if he has really complied with the conditions he is entitled to a certificate, and the Judge has no right to refuse it (*e*). The conditions are not only that he

(*a*) *Deadman* v. *Ewen*, 27 U. C. R. 176. (*b*) *Archbold's* Practice (14th Ed.) 568.
(*c*) See *Keith* v. *Lynch*, 19 Grant, 497; *Reg.* v. *Roddy*, 41 U. C. R, 291.
(*d*) See *per* BLACKBURN, J., *Reg.* v. *Hulme* L. R. 5 Q. B. 383, 384.
(*e*) *Reg.* v. *Price*, 22 L. T. N. S. 12.

Secs. 255-258.

Notes (a); (a); (a).

claimed the certificate, but "made full *and* true answer *to the satisfaction of the Judge*." The obligation intended to be thrown upon the person who is called as a witness is, that he shall make full *and true* answers to the questions put to him. If the evidence given be false there is no protection, and the witness is undoubtedly liable to be prosecuted for perjury (*f*). The certificate only protects the witness from the effect of his own evidence and does not free him from the consequences of his own improper conduct.

Limitation of Time for Proceedings.

Limitation of actions.

256. All proceedings other than an application in the nature of a *quo warranto* against any person for any violation of section 245 or 246 of this Act, shall be commenced within four weeks after the municipal election at which the offence is said to have been committed, or within four weeks after the day of the voting upon a by-law as aforesaid. 55 V. c. 42, s. 220.

Taken from 35 V. c. 36, s. 18 (1872).

(a) This applies to proceedings under ss. 246 and 251, and also to an indictment for bribery under s. 245 (*g*).

When no Penalty Recoverable.

No statutory penalty for corrupt practices at elections, where the party charged has first prosecuted a party jointly liable.

Proviso.

257. No pecuniary penalty or forfeiture imposed by this Act or any other Act of the Legislature of Ontario, shall be recoverable for any act of bribery or corrupt practice at an election, in case it appears that the person charged and another person or other persons were together guilty of the act charged, either as giver and receiver, or as accomplices or otherwise, and that the person charged has previously *bona fide* prosecuted such other person or persons or any of them for the said act; but this provision shall not apply in case the Judge before whom the person claiming the benefit thereof is charged, certifies that it clearly appears to him that the person so charged took the first step towards the commission of the offence charged, and that such person was in fact the principal offender. 55 V. c. 42, s. 221.

Taken from "*The Administration of Justice Act of 1874*," 37 V. c. 7, s. 95. *Cf.* "*The Ontario Election Act*," R. S. O. c. 9, s. 186.

Publication of Law as to Corrupt Practices.

Copies of ss. 245-258 to be posted up prior to election.

258. The clerk of every municipality shall, prior to any election, or the voting on any by-law furnish every deputy-returning officer with at least two copies of the sections of this Act, numbered from 245 to 258 inclusive, and it shall be the duty of the deputy-returning officer to post the same in conspicuous places at the polling place of the polling subdivision for which he is deputy-returning officer. 55 V. c. 42, s. 222.

Taken from 35 V. c. 36, s. 19 (1872).

(a) The object of this provision is to bring home to the electors a knowledge of the highly penal character of the sections as to bribery and undue influence, in the hope that such knowledge will deter them from committing any such offence. The section is directory (*h*)

(*f*) See *Reg.* v. *Brattle*, L. R. I. C. C. 248.

(*g*) See note (a) to that section. As to computation of time, see note (b) to s. 214.

(*h*) See *Township of West Gwillimbury* v. *County of Simcoe*, 20 Grant, 211.

PART IV.

MEETINGS OF MUNICIPAL COUNCILS.

DIV. I.—WHEN AND WHERE HELD, (SECS. 259-266).
DIV. II.—CONDUCT OF BUSINESS, (SECS. 267-275).
DIV. III.—BOARDS OF CONTROL IN CITIES HAVING 100,00 INHABITANTS OR MORE (SECS. 276-277).

DIVISION I.—MEETINGS OF MUNICIPAL COUNCILS, (SECS. 259-266).

Synopsis.—County Councils are to hold their first (organization) meeting at the county hall, or the court house if there is no county hall (s. 264), at (or after) 2 p.m. on (or after) the fourth Tuesday of the January following their election (s. 259).

The first meeting of all local municipal councils (after the annual elections) is to be held at 11 a.m. on (or after) the second Monday in January, a week after the election day (s. 259), "at such place . . . as the council from time to time appoint by by-law, or by resolution on adjourning" (s. 265); and the subsequent meetings of all councils are to be held at a place thus fixed.

S. 266-263 relate, not to the place or time of meeting, but to the conduct of business at the organization meeting, and would be more properly placed in Div. II., "Conduct of Business."

Secs. 261-263 prescribe the mode in which the warden of a county shall be elected.

Sec. 266 empowers a county or township corporation to keep its public offices and transact its business in a city, town or village situate within its territorial limits, and to purchase and hold land therein for that purpose.

First Meeting.

First meeting of council.

259. The members of every municipal council (except county councils) shall hold their first meeting at eleven o'clock in the forenoon, on the second Monday of the same January in which they are elected, or on some day thereafter; and the members of every county council shall hold their first meeting at two o'clock in the afternoon, or some hour thereafter, on the fourth Tuesday of the same month, or on some day thereafter. 55 V. c. 42, s. 223; 59. V. c. 51, s. 6.

Taken from "*The Con. Mun. Act, 1892*," (55 V. c. 42), s. 223, the day of the first meeting of councils other than county councils having been altered from the third to the second Monday in January by 59 V. c. 51, s. 6 (1896). *Cf.* 12 V. c. 81, s. 24, 34, 66; 22 V. c. 99, s. 130; 29 & 30 V. c. 51, s. 133; 36 V. c. 48, s. 167; R. S. C. (1877), c. 174, s. 215; 46 V. c. 18, s. 221; R. S. O. (1887), c. 184, s. 223.

(a) **"At eleven o'clock in the forenoon."** An objection that the election of a reeve of a village council took place at 6 p.m. instead of the hour named in the Statute was considered by HAGARTY, J., "too trivial to require serious notice" (*a*).

(b) **"On the second Monday of . . . . January, or on some day thereafter."** The Statute does not make it imperative that the first meeting should be held

(*a*) *Reg. ex rel. Heman v. Murray*, 1 C. L. J. N. S. 104 (1864).

Secs. 259-261.

Notes (b) (c); (a)-(c); (a)-(c).

on the second Monday in January (*b*), nor does it require that any notice shall be given of the day of the meeting. If the meeting is held, as is generally the case, on the second Monday in January, there is no necessity for a notice (*c*). But if the meeting be held on a subsequent day, it would appear to be only reasonable, in order to prevent surprise, that notice should be given of the subsequent day (*d*).

(c) **Place of meeting.** See s. 264 as to the place of the first meeting of a new county council, of the subsequent meetings of a county council, and of all the meetings of a local council.

No business before declarations of office, etc.

260. No business shall be proceeded with at the first meeting of the council, until after the declarations of office and qualification have been first administered to all the members who present themselves to take the same. 55 V. c. 42, s. 224.

Taken from the Act of 1873, (36 V. c. 48,) s. 175. *Cf.* 29 & 30 V. c. 51, s. 118.

(a) "**The first meeting of the council,**" apparently includes both local councils and county councils.

(b) "**Declarations of office and qualifiction.**" See ss. 311, 312. These may be taken before the clerk of the municipality (s. 315). They must be in writing, signed by the deponent, etc., certified by the person by whom they are administered, and preserved by the clerk (s. 317).

(c) "**To all the members who present themselves to take the same.**" No question of the validity of an election can be raised at this stage. (*e*)

Election of Warden.

Election of warden.

261. The members elect of every county council shall, at their first meeting after a general election of members for the council, at which a majority of the full council are present, and after making the declarations of office and of qualification, organize themselves as a council and elect one of themselves to be warden; and the warden so elected shall hold office until the first meeting in the succeeding year, when a new election of warden shall take place, and the warden chosen at such last mentioned election shall hold office until a new council is organized, as in this section provided. 60 V. c. 45, s. 64.

Taken from 60 V. c. 45, s. 64 (1897). *Cf.* 12 V. c. 81, s. 35; 22 V. c. 99, s. 132; 29 & 30 V. c. 51, s. 135; 36 V. c. 48, s. 120; R.S.O. (1877) c. 174, s. 217; 46 V. c. 18, s. 223; R.S.O. (1887) c. 184, s. 225; 55 V. c. 42, s. 225.

(a) The section was recast in 1897 into its present form in order to make it clear that, although the term of office of a county councillor is now two years (s. 67 (3)), the warden is to be elected annually.

(b) "**At which a majority of the full council are present.**" S. 268 provides that a majority of the whole number of members required by law to constitute the council shall be necessary to form a quorum. But see ss. 130 and 218 and the notes thereon.

(c) "**After making the declarations of office and of qualification.**" See ss. 311, 312, 315, 317.

(*b*) *Reg. ex rel. Hyde* v. *Barnhart*, 7 U. C. L. J. 126 (1861).

(*c*) Tiedeman, s. 97.

(*d*) *Rex* v. *Liverpool*, 2 Burr. 731; *Rex* v. *Doncaster*, *Ib.* 7643; *Rex* v. *Theodorick*, 8 East, 543; *Rex* v. *May*, 5 Burr. 2682; *Rex* v. *Grimes*, *Ib.* 2601; *Musgrave* v. *Nevinson*, 1 Str. 584; *Kynaston* v. *Shrewsbury*, 2 Str. 1051; *Rex* v. *Hill*, 4 B. & C. 441; *Smyth* v. *Darley*, 2 H. L. Cas. 789; see further, *Rex* v. *Faversham*, 8 T. R. 352; *Rex* v. *Langhorn*, 4 A. & E. 538.

(*e*) *Re Hawk* v. *Ballard*, 3 C.P. 241.

(d) "**Elect one of themselves to be warden.**" It is evidently the intention of the Act that the election should be made by ballot (*f*).

See No. of the "Rules of Procedure" in note (**b**) to s. 275.

262. At every such election the clerk of the council shall preside, and if there is no clerk, the members present shall select one of themselves to preside, and the person selected may vote as a member. 55 V. c. 42, s. 226.

Who to preside at election.

Taken from the Act of 1858, (22 V. c. 99, s. 133.

(a) "**The clerk shall preside.**" See note (**h**) to s. 118, and *Reg. ex rel. Walker* v. *Biggar* (*g*) a case determined under "*The District Councils Act*," 4 & 5 V. c. 10.

263. Where the number of votes cast for a warden is even, and no election can be had during the first day of meeting, if no choice is made after two ballots on the second day, the senior member representing the division having the largest equalized assessment shall have two votes.

Tie vote for warden.

(*a*) The words "senior member" in this section shall mean that member for such division who received at the last preceding election the higher number of votes in his division.

(*b*) Where the two county councillors from such division have each an equal number of votes, or where they have been elected by acclamation, the clerk shall in open council draw lots to ascertain which one of the two shall give the casting vote. 59 V. c. 52, s. 19; 60 V. c. 3, s. 3.

Taken from "*The County Councils Act, 1896.*" (59 V. c. 52, s. 19).

(a) **Who may give the "casting vote."** Until the passing of "*The County Councils Act, 1896,*" the right to give a second and casting vote for warden in the event of a tie belonged to the reeve (or in his absence to the deputy-reeve) of the municipality which had, during the preceding year, the largest equalized assessment, (*h*) or if two municipalities had the same equalized assessment, then the reeve or deputy-reeve of the municipality which had the greatest number of voters on its last revised assessment roll. (*i*) The latter contingency is not provided for in the present Act. The case of two county council divisions having precisely the same equalized assessment is one most unlikely to occur. (*j*)

Place of Meeting.

264. The members of every county council shall hold their first meeting at the county hall if there is one, or otherwise at the county court-house. 55 V. c. 42, s 228.

Place of first meeting.

Taken from the Act of 1858, (22 V. c. 99, s. 132.

(*f*) See s. 263. (*g*) 4. U. C. R. 497.

(*h*) See "*The Assessment Act*" (R. S. O. c. 224), ss. 87, *et seq.*

(*i*) 55 V. c. 42, s. 227.

(*j*) See, as to the old procedure, *Reg. ex rel. Pollard* v. *Prosser*, 2 P. R. 330 (1859); *Reg. ex rel. Hume* v. *Lutz*, 7 U. C. L. J. 103 (1861).

Secs. 265-267.

Notes (a); (a); (a).

Place of subsequent meetings of county councils, etc.

265. The subsequent meetings of the county council, and all the meetings of every other council shall be held at such place, either within or without the municipality, as the council from time to time appoints by by-law or by resolution on adjourning, and every such resolution shall be entered upon the minutes. 55 V. c. 42, s. 229.

Taken from the Act of 1858, (22 V. c. 99), s. 136.

(a) The effect of this section is to render it necessary that the place of every meeting of the council of a local municipality, and of every one but the organization meeting of a county council, shall be fixed beforehand by by-law or resolution. It is apprehended that very few municipalities have passed such a by-law, but it is desirable that this requirement of the Act should be complied with, since, in default thereof, the validity of acts of the council may be questioned.(*k*)

When place of meeting may be in another municipality.

266. The council of any county or township in which any city, town or village lies, may hold its sittings, keep its public offices, and transact all the business of the council and of its officers and servants, within such city, town or village, and may purchase and hold such real property therein as may be convenient for such purposes. 55 V. c. 42, s 230.

Taken from the Act of 1873, (36 V. c. 48), s. 170. The earlier Acts, (22 V. c. 99, s. 137, and 29 & 30 V. c. 51, s. 130), applied only to a county which embraced a city within its territorial, but not its municipal limits.

(a) As to the application of the Statutes of Mortmain to municipal corporations in Ontario, see note (a) to s. 534.

DIVISION II.—CONDUCT OF BUSINESS, (SECS. 267-275).

Synopsis: The sections of this Division, together with ss. 261, 263 of Div. I of Part IV contain the statutory rules governing the procedure at meetings of municipal councils. Since these rules fall far short of what is needed to form anything like a complete code, it has been deemed advisable—upon the suggestion of several municipal clerks—to insert some further Rules of Procedure (see note (b) to s. 275). These, although originally prepared for the City of Toronto—may be very easily adapted to meet the requirements of any municipal council.

Ordinary meetings to be open.

267. Every council shall hold its ordinary meetings openly, and no person shall be excluded except for improper conduct, but the head or other chairman of the council may expel and exclude from any meeting, any person who has been guilty of improper conduct at such meeting. 55 V. c. 42, s. 233.

The first part of this section was taken from the Act of 1858 (22 V. c. 99), s. 138, the remainder, beginning with the words "but the head or other chairman," etc., was added in 1873 by 36 V. c. 48, s. 171.

(a) The proceedings of every Court of Justice are, as a rule, open to the public, and all persons desirous of hearing what is going on, if there be room in the place for that purpose, provided they do not interrupt the proceedings, and provided they are not guilty of any other improper conduct, may be present and hear what is going on. (*a*) This rule is to its fullest extent to be applied to ordinary meetings of every municipal council.

But see as to special meetings, s. 271.

(*k*) See *Re Paffard and County of Lincoln*, 24 U. C. R. 16.

(*a*) *Per* BAYLEY, J., in *Daubney v. Cooper*, 10 B. & C. 237, at p. 240.

268. A majority of the whole number of members required by law to constitute the council shall be necessary to form a quorum. 55 V. c. 42, s. 234.

Sect. 268, 269. Notes (a); (a).

Taken from the Act of 1849, (12 V. c. 81), s. 168.

(a) **"Quorum," meaning of.** The old form of the Royal Commission for the appointment of Justices of the Peace directed that no business should be transacted without the presence of some one or more of the persons therein named, "*quorum aliquem vestrum A, B, C, D, etc., unum esse volumus.*" Hence the word has come to mean, "such number of persons as is competent by law to transact business" *(Imp. Dict.)*. Except in the case provided for by ss. 130 and 218, the quorum in the case of a municipal council must consist of a majority of the full council. Thus where a provisional county council consisted of 12 members, it was held that an election of a warden by six of these members, though unanimous, was invalid *(a)*. Acts done with less than a legal quorum are as a rule void *(b)*. It is true that in *Re Sutherland and Township of East Nissouri (c)*, the Court refused to quash a by-law passed by two out of five members of a township council, but this was on the ground that the by-law on its face was not illegal *(d)*; and ROBINSON, C.J., in giving judgment says, "It is a void proceeding and must be so pronounced, if the legality of any act done under it should come to be questioned." A by-law so passed would now be set aside. Members present at the meeting, though only for the purpose of protesting, may be counted as of the quorum *(e)*.

Quorum.

269. Where a council consists of only five members, the concurrent votes of at least three shall be necessary to carry any resolution or other measure. 55 V. c. 42, s. 235.

In councils of five, three must concur.

Taken from the Act of 1853, (16 V. c. 181), s. 30.

(a) **"The concurrent votes of at least three shall be necessary."** In *Re Malbough v. Township of Ashfield, (a)* a by-law which required the vote of at least four-fifths of the members of the council was attacked on the ground that, when the motion for its passing was put by the reeve, only two out of the four members present voted for the by-law, the third councillor made no objection, and the reeve, (who appeared to be in its favour) declared it carried. *Held*, that the by-law had been duly passed. DRAPER, C. J., in giving judgment, says: *(b)*

> "I do not treat the proviso requiring the four-fifths vote as rendering it necessary that a formal vote of each member shall be taken, one by one, in order to ascertain that four out of the five members support it. Suppose all five present: if when the question is put, no one expresses his dissent, his opposition to its passing, but all acquiesce tacitly, it will be properly, in my opinion, taken to be a unanimous vote. There must be four members at the meeting when such by-law is passed, and if only four, they must be unanimous; but if the passing of such a by-law be moved, be put from the chair, and no dissent be expressed, I think it may properly be taken to have the assent of all four, and therefore to have passed legally."

The concurrent votes must, however, be those of members not disqualified to vote on the question; and where four out of five members of a village council, being shareholders in an incorporated company, voted to submit to the electors of the village a by-law granting a bonus to the company, and after the vote the by-law was passed by a council in which three out of five members were shareholders in the company, the by-law was set aside. *(c)* So in *Re Vashon*

(a) *Reg. ex rel. Evans v. Starratt*, 7 C.P. 487.

(b) *Rex. v. Billringe*, 4 T.R. 810; *Rex. v. Miller*, 6 T.R. 268; *Morrus v. Town of Petrolea*, 28 Grant, 98 (1858). (c) 10 U.C.R. 626 (1853).

(d) See the second paragraph of note (g) to s. 378.

(e) *Reg. ex rel. Ross v. Beach* (argued before Mr. DALTON, May 8th, 1873, and affirmed by GWYNNE, J.) not reported.

(a) 6 C. P. 158. (b) Page 162.

(c) *Re Baird and Village of Almonte*, 41 U. C. R. 415. See note (k) to s. 80.

Secs. 269, 270 (2). Notes (a); (a) (b).

and Township of East Hawkesbury, (*d*) a by-law passed by the concurrent votes of three out of five members of a township council was set aside, one of the three councillors having an interest in the matter apart from that of the public. (*e*) But an interest which results solely from the fact of being a ratepayer does not disqualify a municipal councillor from voting upon a by-law. (*f*)

Head of councils to preside.

Special meetings.

270.—(1) The head of every council shall preside at the meetings of the council, and may at any time summon a special meeting thereof; and it shall be his duty to summon a special meeting whenever requested in writing by a majority of the members of the council so to do.

Summoning special meetings in absence of the head.

(2) In case of the absence or death of the mayor or head of the council, a special meeting may be summoned at any time by the clerk upon a special requisition to him, signed by a majority of the members of the council. 55 V. c. 42, s. 236.

Subsec. 1 is taken from the Act of 1858, (22 V. c. 99), s. 113. Subsec. 2 was added in 1884 by 47 V. c. 32, s. 6.

(a) "**Head . . . shall preside.**" It is not only the right but the duty of the head of the council to preside at its meetings. In the event of the right being questioned, legal proceedings may be instituted to determine it (*a*). But the question cannot in general be determined upon a collateral inquiry in an existing suit (*b*). If the head of the council refuse to put a motion which it is his duty to put, he may be voted out of the chair (*c*) or the members may vote on the motion without it being put from the chair (*d*).

The presiding officer of a meeting has authority as such to decide all incidental questions which arise at the meeting (*e*).

(b) "**To summon a special meeting.**" All the members entitled to be present at a special meeting should be notified to attend, and, if practicable, notified also of the purpose for which the meeting is called (*f*). The omission to notify a member entitled to be present may be held to invalidate all proceedings at such meetings (*g*). Where the purpose is specified in the notice, there is in general no power to transact business beside such purpose (*h*).

A municipal council passed a resolution appropriating corporate funds towards the payment of expenses of the attendance of counsel and witnesses at a Royal Commission issued under s. 431 of the Manitoba Municipal Act to enquire into the financial affairs of the municipality. It was the custom to adjourn "to the call of the reeve," and the notices of meetings issued by him did not specify the business to be transacted. *Held*, that these were special meetings of the council, and, that the resolution, having been passed at such a meeting the object of which had not been specified in the notice, must be quashed (*i*).

(*d*) 30 C. P. 194.

(*e*) See also *Hewison* v. *Township of Pembroke*, 6 O. R. 170; *Stefani* v. *Monbleau*, M. L. R. 5 Q. B. 23.

(*f*) *Re McLean and Township of Ops*, 45 U. C. R. 325.

(*a*) See *Rex* v. *Williams*, 1 Burr. 402; *Commonwealth* v. *Arrison*, 15 Serg. & Rawle (Pa.) 130.

(*b*) See Dillon, s. 272.

(*c*) *Re Preston and Township of Maurers*, 21 U. C. R. 626.

(*d*) *Brock* v. *Toronto and Nipissing R. W. Co.*, 17 Grant, 425.

(*e*) *Re Indian Zoedome Co.*, 26 Ch. D. 70.

(*f*) *Smyth* v. *Darley*, 2 H. L. Cas. 789; *Cannon* v. *Toronto Corn Exchange*, 27 Grant, 23; *Marsh* v. *Huron College*, 27 Grant, 605; Dillon, s. 286.

(*g*) *Smyth* v. *Darley*, *supra*.

(*h*) *Rex* v. *Liverpool*, 2 Burr. 735; *Rex* v. *Carlisle*, 1 Str. 385; *Machell* v. *Nevinson*, 2 Ld. Raym. 1355.

(*i*) *Re Rural Mun. of Macdonald*; 10 Man. Rep. 294, 382.

Special meeting, where to be held.

271. In case there is no by-law of a council fixing the place of meeting, any special meeting of the council shall be held at the place where the then last meeting of the council was held, and a special meeting may be either open or closed as in the opinion of the council, (expressed by resolution in writing) the public interest requires. 55 V. c. 42, s. 237.

Taken from the Act of 1858 (22 V. c. 99) s. 139.

May be either open or closed.

272. In the case of the absence of the head of the council from illness or any other cause, or in case his office is vacant, the council may, from among the members therof, appoint a presiding officer, who during such absence or vacancy, shall have all the powers or the head of the council. 55 V. c. 42, s. 239 (1); 60 V. c. 45, s. 34.

Appointment of president of council.

See 60 V. c. 45, s. 33, and *Cf.* 12 V. c. 81, s. 27; 22 V. c. 99, ss. 141, 145; 29 & 30 V. c. 51, ss. 146, 147; 36 V. c. 48, ss. 179, 180; etc.

(a) "**President of Council.**" See s. 216 (1), (2). The presiding officer of a city or town council, appointed under this section, has also authority, during his tenure of office, to act as a police commissioner in place of the mayor. (s. 481 (2)).

Casual absence provided for.

273.—If the person who ought to preside at any meeting does not attend within fifteen minutes after the hour appointed, the members present may appoint a chairman from amongst themselves, and such chairman shall have the same authority in presiding at the meeting as the absent person would have had if present. 55 V. c 42, s 240.

Taken from the Act of 1858 (22 V. c. 99), s. 146, the words "fifteen minutes" being substituted therein by the Act of 1873 (36 V. c. 48), s. 181, for the words "a reasonable time." *Cf.* 12 V. c. 81, s. 168 as amended by 16 V. c. 181, s. 30.

(a) The authority of the person appointed under this section ends with the meeting, or perhaps upon the arrival thereat of "the person who ought to preside." (*j*) The power of the presiding officer—(commonly styled "president of the council")—appointed under s. 272, continues during the whole period of the absence of the head of the council or of a vacancy in the office. (*k*)

Head may vote.

Question negatived in case of equality of votes

274. The head of the council, or the presiding officer or chairman of any meeting of any council, may vote with the other members on all questions; and any question on which there is an equality of votes shall be deemed to be negatived. 55 V. c. 42, s. 241.

Taken from the Act of 1858 (22 V. c. 99) s. 147. *Cf.* 16 V. c. 181, s. 30.

(a) "**The head . . presiding officer . . or chairman.**" See ss. 270, 272, 273.

(b) "**May vote . . on all questions.**" This is, however, subject to the condition that he is under no disqualification to vote by reason of interest. (*l*)

(c) "**Any question upon which there is an equality of votes shall be deemed to be negatived.**" This in the ancient rule of the House of Lords. It does not apply when a office is to be filled. (*m*) Nor to a case where the council of a union of counties desires to raise funds or make appropriations for local improvements in one of the counties. (*n*)

(*j*) See note (a) to s. 270.

(*k*) s. 216 (1), (2).

(*l*) *Baird* v. *Village of Almonte*, 41 U.C.R. 415, and the other cases cited in note (a) to s. 269.

(*m*) See ss. 179, 263.

(*n*) s. 659 (2).

Sec. 275.

Notes (a) (b).

275. Every council may adjourn its meeting from time to time. 55 V. c. 42, s. 242.

Adjournment

Taken from the Act of 1858, (22 V. c. 99) s. 142.

(a) Adjourned meetings are generally held for the purpose of completing the unfinished business of a preceding meeting. It is allowable, therefore, in the case of an ordinary adjournment, to transact any business that might have been lawfully transacted at the preceding meeting but which was not transacted thereat for want of time or opportunity to do so. (o)

RULES OF PROCEDURE.

(b) In addition to the Rules of Procedure contained in the sections of "*The Municipal Act*" which compose this Division, the following may be found useful, at all events by way of suggestion. They are based upon the procedure by-law (No. 3523) of the City of Toronto as amended by by-law No. 3527 thereof. The references in the notes are to the "Manual on the Procedure at Meetings of Municipal Councils," etc., by Sir JOHN GEORGE BOURINOT, K. C. M. G., D. C. L., etc., Clerk of the House of Commons of Canada.

MEETINGS OF COUNCIL.

Ordinary meetings.

1. After its inaugural meeting, the council shall meet on every alternate Monday during the year at *7 o'clock p.m.*, (a) unless otherwise ordered by special motion or unless such Monday is a public or civic holiday in which case the council shall meet at the same hour on the next day following which is not a holiday. The inaugural meeting of the new council in each year shall be opened with prayer, the officiating clergyman to be chosen by the mayor elect.

Special meetings.

2. The mayor may at any time summon a special meeting of the council; and it shall be his duty to summon a special meeting whenever requested in writing so to do by a majority of the members of the council.

(2) In case of the absence or death of the mayor, or head of the council, a special meeting may be summoned at any time by the clerk upon a special requisition to him signed by a majority of the members of the council. (b)

ORDER OF PROCEEDINGS.

Mayor takes chair.

3. As soon after the hour of meeting as there shall be a quorum present, the mayor shall take the chair, and call the members to order. (c)

If mayor absent.

4. In case the mayor does not attend within fifteen minutes after the time appointed, the clerk shall call the members to order, and if a quorum be present, a chairman shall be chosen, who shall preside during the meeting, or until the arrival of the mayor. (d)

(o) See *Rex.* v. *Harris*, 1 B. & Ad. 936; *Scadding* v. *Lorant*, 3 H. L. Cas. 418; Dillon, s. 287; Tiedeman, s. 97.

(a) Now 3 p.m. in Toronto by-law. And see Bourinot, pp. 262-265, 384.

(b) See Bourinot, pp. 264-267, 384. Subsec. 2 is simply a repetition of s. 270 (2) of "*The Municipal Act*."

(c) See Bourinot, pp. 266-269, 384. It is there suggested that the mayor, reeve or warden might follow the example of the English Commons, viz., take (temporarily) the clerk's chair until there is a quorum, then assume his own chair and formally call the meeting to order.

(d) See Bourinot, pp. 268-269, 384. This case is provided for by s. 273 of "*The Municipal Act*" (*see supra*). Until a chairman is thus chosen the clerk presides, and puts the motion, "that alderman A, B, or C. do now take the chair." If more than one name is proposed a vote is taken on each name in order until one receives a majority.

5. If there be no quorum present within half an hour after the time appointed for the meeting, the clerk shall call the roll and take down the names of the members then present, and the council shall stand adjourned until the next day of meeting, subject to the provisions of section 2 of this By-law (*e*). Failure of quorum.

6. Immediately after the mayor shall have taken his seat, the minutes of the preceding meeting shall be read by the clerk, in order that any mistake therein may be corrected by the council (*f*). Reading minutes.

7. The mayor shall preserve order and decorum, and decide questions of order, subject to an appeal to the council, and in the absence of the mayor, the chairman shall have the same authority while presiding at the meeting as the mayor would have had if present (*g*). Mayor's duties.

8. When the mayor is called upon to decide a point of order or practice, the point shall be stated without unnecessary comment, and the mayor order etc. shall cite the rule or authority applicable to the case. (*h*). Questions of

9. The mayor may vote with the other members on all questions; and any question on which there is an equality of votes shall be deemed to be negatived (*i*). Mayor's vote equality of votes.

10. If the mayor desires to leave the chair for the purpose of taking part in the debate or otherwise, he shall call on some other member of the council to fill his place until he resumes the chair (*j*). If mayor leaves chair.

11. Every member, previous to speaking to any question or motion, shall rise from his seat, uncovered, and shall address himself to the mayor (*k*) How chair to be addressed.

12. When two or more members rise to speak, the mayor shall name the member who, in his opinion, first rose from his seat; but a motion may be made that any member who has risen "be now heard," or "do now speak" (*l*). If two members rise at once.

13. Every member who is present in the council chamber when a question is put, shall vote thereon, unless the council shall excuse him, unless he is personally interested in the question, provided such interest is resolvable into a personal pecuniary profit, or is peculiar to that member, and not one in common with the interests of the citizens at large, and in such cases he shall not vote (*m*). When member not to vote.

(*e*) See Bourinot, pp. 268, 271, 384. Under the London, Ont., by-law, the clerk publishes in a city paper the names of the absentees.

(*f*) See Bourinot, pp. 270, 271, 385. The Toronto and Ottawa by-laws add "if required by any alderman present" but this is not to be recommended. Brantford requires corrected minutes to be signed by the clerk, Guelph by the mayor or chairman.

(*g*) See Bourinot, pp. 270, 271, 385. This is also the rule of the House of Commons of Canada, and of the Legislative Assembly of Ontario. An appeal upon a point of order should be made succinctly and without discussing the merits of the subject under debate.

(*h*) See references to last section. The presiding officer should not argue the case, but should give his decision succinctly, referring to the authority (if any) therefor.

(*i*) See s. 274 of the Act, and Bourinot, pp. 272, 273, 385. The rule assumes that in ordinary cases the presiding officer will not vote.

(*j*) See Bourinot, pp. 272, 273, 385. The rules of the House of Commons and Legislative Assembly provides that "The Speaker shall not take part in any debate before the House," but he may (and does) speak in committee of the whole.

(*k*) See Bourinot, pp. 272, 273, 385. This is *verbatim* the parliamentary rule. (*l*) The preceding note (*k*) applies also to this rule.

(*m*) See Bourinot, pp. 272-275, 385. See *ante*, note (a) to s. 80, and note (i) to s. 269. If a member desires to be excused from voting a motion should be made to that effect. If a member votes contrary to this rule his name should be struck out of the division list upon a motion "That the vote of Alderman A. be disallowed."

Sec. 275.

Note (b).

No disturbance when question is being put.

14. When the mayor is putting the question no member shall walk across or out of the room, or make any noise or disturbance; nor when a member is speaking shall any other member pass between him and the chair, or interrupt him, except to raise a point of order (*n*).

Member called to order.

15. A member called to order from the chair shall immediately sit down, but may afterwards explain; and the council, if appealed to, shall decide the case, but without debate; if there be no appeal the decision of the Mayor shall be final (*o*).

Rules of order.

16. No member shall speak disrespectfully of Her Majesty the Queen, or of any of the Royal Family, or of the Governor-General, Lieutenant-Governor, or person administering the Government of the Dominion or of this Province; nor shall he use offensive words in or against the council or against any member thereof; nor shall he speak beside the question in debate; and no member shall reflect upon any vote of the council except for the purpose of moving that such vote be rescinded; nor shall he resist the rules of the council, or disobey the decision of the mayor or of the council on questions of order or practice or upon the interpretation of the rules of the council; and in case any member shall so resist or disobey, he may be ordered by the mayor to leave his seat for that meeting; but in case of ample apology being made by the offender, he may, by vote of the council, be permitted forthwith to take his seat (*p*).

Question may be read at any time.

17. Any member may require the question or motion under discussion to be read at any time during the debate, but not so as to interrupt a member while speaking (*q*).

When member may speak twice.

Right to reply.

Time limit.

18. No member shall speak more than once to the same question, without leave of the council, except in explanation of a material part of his speech which may have been misconceived; and in doing so he is not to introduce new matter. A reply is allowed to a member who has made a substantive motion, but not to any member who has moved an order of the day, an amendment, the previous question, or an instruction to a committee. No member, without leave of the council, shall speak to the same question, or in reply, for longer than a quarter of an hour. (*r*)

Record of yeas and nays.

19. Upon a division of the council, the names of those who vote for and those who vote against the question shall be entered upon the minutes, not only in the case required by law, but whenever two members shall call for the yeas and nays. (*s*)

(*a*) See Bourinot, pp. 274, 275, 385. This also is the rule of the Parliament of Canada and the Legislative Assembly of Ontario. The Ottawa by-law adds, "The mayor or chairman shall rise and stand when putting the question," which is the correct parliamentary usage.

(*o*) See Bourinot, pp. 274, 275, 385. Taken from the parliamentary rule. The appeal to the council, being on a point of order, is governed by Rules 7 and 8, *supra*.

(*p*) See Bourinot, pp. 274-277, 385, and (as to the exclusion of persons guilty of improper conduct) s. 267 of "*The Municipal Act*," *supra*. The St. Catharines by-law provides that persons so offending—not being members of the council—shall be taken into custody "to await the decision of the council." [*Sed qu.* as to the authority for this?] The Guelph by-law imposes a penalty, and, in default of payment or of sufficient distress, 10 days imprisonment. See s. 702 of the Act.

(*q*) See Bourinot, pp. 274, 275, 385. Taken *verbatim* from the parliamentary rule.

(*r*) See Bourinot, pp. 38, 276, 277, 385. "Leave of the council" must be given by a majority vote on a motion therefor duly put. "Substantive motion," *i.e.*, as distinguished from an amendment. A motion to adjourn may be a substantive motion if no other question is before the house, but if a question is under consideration it is merely a dilatory or incidental motion and does not give the right to the reply. See as to other dilatory motions, Rule 30, *infra*.

(*s*) See Bourinot, pp. 41, 42, 278, 279, 388. The Hamilton by-law requires the yeas and nays to be recorded in every case, the by-laws of Kingston, Brantford and Guelph, if so required by any alderman: in the Guelph by-law, "previous to the question being finally put."

20. All inquiries shall be in writing, and shall be handed to the clerk of the council at least two clear days before the day of the meeting at which such inquiry is to be made; and the answer to such inquiry shall also be put in writing and handed to the mayor or other presiding officer at least one hour before the meeting, and shall be read by him from the chair. (*t*) — Inquiries.

21. No person except members and officers of the council shall be allowed to come within the bar during the sittings of the council without the permission of the mayor or an alderman. (*u*) — Admission of strangers.

22. The members of the council shall not leave their places, on adjournment, until the mayor leaves the chair. (*v*) — Adjournment.

23. No standing rule or order of council shall be suspended, except by a vote of two-thirds of the members present. (*w*) — Suspension of rules.

24. In all unprovided cases in the proceedings of council or in committee, the law of Parliament shall be followed. (*x*) — Law of Parliament to govern.

25. One day's notice shall be given of all motions for introducing new matter other than matters of privilege and bringing up petitions, unless the council dispense with such notice by a vote of two-thirds of the members present, without debate. (*y*) — Notice of new business.

26. All motions shall be in writing and seconded before being debated or put from the chair, but motions to adjourn or go into committee of the whole may be made *viva voce*. When a motion is seconded, it shall be read ,or if *viva voce*, stated by the mayor before debate. (*z*) — Motions to be in writing, etc.

27. After a motion is read or stated by the mayor, it shall be deemed to be in possession of the council, but may, with permission of the council, be withdrawn at any time before decision or amendment. (*a*) — When motions may be withdrawn.

28. A motion for commitment, until it is decided, shall preclude all amendment of the main question. (*b*) — Motions to commit.

(*t*) See Bourinot, pp. 44, 278, 279, 388. The by-laws of Ottawa, London, Belleville and Stratford provide that the inquiries shall be limited to matters "connected with the business of the council or the affairs of the city," and that "no argument or opinion is to be offered or facts stated except so far as necessary to explain the same, and in answering any such question a member is not to debate the matter to which the same refers." This accords with parliamentary practice.

(*u*) See Bourinot, pp. 278, 279.

(*v*) See Bourinot, pp. 280-281.

(*w*) Bourinot says (p. 280): "It is better to have such a fixed rule than to allow unanimous consent to be asked; that is too often granted in the Canadian Parliament."

(*x*) London, Guelph, Stratford and Belleville add in such cases "the decisions of the mayor or other presiding officer shall be final and shall be acquiesced in without debate," *i.e.*, there shall be no appeal. See Bourinot, pp. 280-281.

(*y*) See Bourinot, pp. 30, 285, 287 and 385. Notwithstanding Rule 26 a motion to suspend this or any other rule is usually made *viva voce*.

(*z*) See Bourinot, pp. 30, 286-289. Such motions of routine business as that a bill be read a first or second or third time," or "to go into committee of the whole," or a motion for "the previous question," or to suspend a rule of order, or to adjourn the house or the debate, are in practice usually excepted from this rule.

(*a*) See Bourinot, pp. 31, 288, 289, 385. A motion withdrawn may, under parliamentary rules, be again proposed, even during the same session, provided the order of business permits.

(*b*) See Bourinot, pp. 37, 288, 289, 386. That is to say—if it has been proposed to refer a bill or question to a committee, that motion must be determined before a motion can be made to amend. But the motion to go into committee may be rejected, or a motion proposed which will (if adopted) prevent committal by negativing the principle of the bill, etc.

Sec. 275.

Note (b).

To adjourn.

29. A motion to adjourn the council, or to adjourn the debate, shall always be in order, but no second motion to the same effect shall be made until after some intermediate proceeding shall have been had. (*e*)

Dilatory motions.

30. When a question is under debate, no motion shall be received, unless (1) to commit it; (2) to amend it; (3) to lay it on the table; (4) to postpone it indefinitely; (5) to postpone it to a certain time; (6) to adjourn it; (7) to move the previous question, these several motions shall have precedence in the order in which they are named and the last five shall be neither amendable nor debatable. (*d*)

Previous question.

31. The previous question, until it is decided, shall preclude all amendment of the main question, and shall be put, without debate, in the following words: "That this question be now put;" if this motion be resolved in the affirmative, the original question is to be put forthwith, without any amendment or debate; but if the previous question is resolved in the negative, the main question may then be debated and amended. (*e*)

Amendments.

32. Amendments shall be put in the reverse order to that in which they are moved, except in filling up blanks, when the longest time and smallest sum shall be put first. Every amendment submitted shall be reduced to writing, and shall be decided or withdrawn before the main question is put to the vote. Only one amendment shall be allowed to an amendment, and any amendment more than one must be to the main question. (*f*)

Appointments.

33. In the appointment of any person to any position in the gift of the Council, candidates shall be proposed and then voted for by ballot, the balloting papers having been previously prepared and initialed by the clerk, the candidate receiving the lowest number of votes being dropped after each vote until only two remain, or until one shall have received a majority of the votes cast. When more than one person is to be elected or appointed, each member of the council shall be entitled to vote for as many as there are positions to be filled. Any candidate receiving a majority of the ballots cast shall be elected. If more than one ballot is necessary, the candidate having the smallest number of votes on the preceding ballot shall be dropped. Where appointments are required by Statute to be made by by-law, such by-law shall contain the names chosen by ballot as aforesaid, and such by-law shall not be subject to amendment by the council after the election of candidates by ballot as hereinbefore provided.

(2) No member of the council, while retaining his seat therein, shall be eligible for any office to which there is attached any salary, remuneration or emolument payable by the council.

Dividing a motion.

34. When the question under consideration contains distinct propositions, the vote upon each proposition shall, upon the request of any member, be taken separately. (*g*)

(*c*) See Bourinot, pp. 33, 288, 289, 386. A motion to adjourn should be simply that "the council do now adjourn" or that "the debate be adjourned." It may usually be made *viva voce*, is not amendable and cannot be made in a committee, where the equivalent motion is "that the committee rise and report" or, "that the chairman do now leave the chair." See *infra*., Rules 42, 43. The Ottawa by-law provides that "a motion to adjourn the council or to adjourn the debate shall be always in order except—1. When a member is in possession of the floor. 2. When the yeas and nays have been called. 3. When the members are voting. 4. When it has been decided that the previous question shall be taken." This is practically the parliamentary usage.

(*d*) See Bourinot, pp. 25, 33, 37, 290, 291, 386.

(*e*) See Bourinot, pp. 292-293 and (as to the parliamentary rule which differs from the above), pp. 13-16 and 387. This is practically *cloture*.

(*f*) This is in accordance with the old English parliamentary rule See MAY, Parl. Prac. (8th Ed.), p. 619. The by-law of Toronto and of most other councils, following the United States practice, put the largest sum first. See Bourinot, pp. 34, 47, 294, 295, 388.

(*g*) See Bourinot, pp. 35, 298, 299, 388.

35. After a question is finally put by the mayor, no member shall speak to the question, nor shall any other motion be made until after the result of the vote has been declared; and the decision of the mayor, as to whether the question has been finally put, shall be conclusive. (*h*)

Putting the question.

36. Whenever the mayor is of opinion that a motion is contrary to the rules and privileges of the council, he shall apprise the members thereof immediately, before putting the question, and shall cite the rule or authority applicable to the case, without argument or comment. (*i*)

Privilege.

37. Whenever any matter of privilege arises, it shall be immediately taken into consideration. (*j*)

38. Members, having been previously summoned, shall immediately take their places when any division is called for, and shall remain in their places until the mayor or chairman has declared the result of the division. (*k*)

Divisions.

PROCEEDINGS IN COMMITTEE OF THE WHOLE.

39. Whenever it shall be moved and carried that the council shall go into committee of the whole, the mayor shall leave the chair, but he shall first appoint a chairman of the committee of the whole, who shall maintain order in the committee, and shall report the proceedings thereof (*l*).

Chairman of committee.

40. The rules of the council shall be observed in committee of the whole, so far as may be applicable, except that no motion shall require to be seconded, nor shall a motion for a previous question, or for an adjournment be allowed; and in taking the yeas and nays the names of the members shall not be recorded, nor shall the number of times of speaking on any question be limited. Provided, however, that no member shall speak more than twice until every member who desires to do so shall have spoken (*m*).

Rules of debate.

41. Questions of order arising in committee of the whole shall be decided by the chairman, subject to an appeal by any member to the council. If any disorder should arise in the committee the mayor shall resume the chair, without any question being put (*n*).

Questions of order.

42. On motion in committee of the whole to rise and report, the question shall be decided without debate (*o*).

Motion to rise and report.

(*h*) See Bourinot, pp. 298, 299, 388.

(*i*) Taken almost *verbatim* from the parliamentary rule. See Bourinot, pp. 28, 298, 299, 388.

(*j*) The parliamentary rule. See Bourinot, pp. 40, 298, 299, 387.

(*k*) See Bourinot, pp. 300, 301, 388

(*l*) This is in accordance with parliamentary practice; see Bourinot, pp. 44, 46, 302, 303, 389. The Guelph by-law further provides that "when a report or by-law is under discussion in committee of the whole, the chairman of a committee whose report is under consideration, or the introducer of the by-law shall not be required to take the chair; but the member who is next in turn liable to serve as chairman of committee shall be called to the chair."

(*m*) See Bourinot, pp. 45, 302, 303, 389. The Guelph by-law adds, "No member shall speak for a longer period than ten minutes;" a commendable addition to the rule.

(*n*) Taken from the parliamentary rule, see Bourinot, pp. 45, 304, 305, 389. A member who objects to a ruling may say, "I appeal to the council against the ruling." The chairman will then leave the chair and state the question to the mayor or presiding officer, who will again state it to the council, and ask, "Shall the decision (or ruling) of Mr. A., chairman of the committee on , be sustained." The vote will then be taken in the usual way.

When the question in dispute has been decided by the council, the committee may be resumed by order of the mayor or presiding officer, with the words, "The committee on , may resume."

(*o*) "A wise limitation of Canadian parliamentary usage which should be adopted by all councils," see Bourinot, pp. 46, 304, 305, 389.

Sec. 275.

Note (b).

To rise without reporting.

43. A motion in the committee of the whole to rise without reporting, or that the chairman leave the chair, shall always be in order, and shall precedence of any other motion. On such motion debate shall be allowed, and, on an affirmative vote, the subject referred to the committee shall be considered as disposed of in the negative, and the mayor shall resume the chair, and proceed with the next order of business. (*p*)

READING OF BILLS AND PROCEEDINGS THEREON.

How a by-law is introduced.

44. Every bill shall be introduced upon motion for leave, specifying the title of the bill, or upon motion to appoint a committee to prepare and bring in the bill. (*q*)

Readings in council and committee of the whole.

45. No bill shall be introduced either in blank, or in an imperfect shape.

46. The question, "That this bill be now read a first time," shall be decided without amendment or debate; and every bill shall be read a second time, and then considered in committee of the whole, and shall be read a third time before it is signed by the mayor.

References to a committee.

47. Every bill (unless previously reported upon by a committee, or otherwise determined by the council) shall be referred, after the second reading thereof, to a standing, or select committee of the council to report upon the leading features of the same. (*r*)

Three readings.

Urgent bills.

48. Every bill shall receive three several readings, and on different days previous to its being passed, except on urgent and extraordinary occasions, *and upon a vote of two-thirds of the members present*, when it may be read twice or thrice, or advanced two or more stages in one day. (*s*)

Duties of clerk as to bills.

49. The clerk shall indorse on all bills read in the council the dates of the several readings thereof, and shall be responsible for the correctness of such bills should they be amended. (*t*)

Procedure in committee of the whole.

50. In proceedings in committee of the whole upon bills, each clause shall be considered in its proper order, then the preamble, and then the title. (*u*)

Reporting bill to council.

51. All amendments made in committee of the whole shall be reported by the chairman of the council, which shall receive the same forthwith. After the report has been received, the bill shall be open to debate and amendment before it is ordered for a third reading. (*v*)

Signing and sealing by-law

52. Every by-law which has passed the council shall, immediately after being sealed with the seal of the corporation, and signed by the mayor, be deposited by the clerk for security in the safe connected with his office. (*w*)

(*p*) This is substantially the parliamentary rule. See Bourinot, pp. 46, 304, 305, 389, and *supra*, Rule 29. The Guelph By-law adds "no member shall speak more than once on such a motion."

(*q*) See Bourinot, pp. 53, 54, 306, 307. This and the two following Rules (45 and 46) are taken almost *verbatim* from the rules of the House of Commons and the Legislative Assembly, the word "bill" being used throughout for a proposed by-law. (*r*) See Bourinot, pp. 54, 308, 309, 311, 389.

(*s*) Taken (except the words in italics) from the parliamentary rules. See Bourinot, pp. 56, 308, 311.

(*t*) The parliamentary rule. See Bourinot, pp. 56, 310, 311, 390.

(*u*) The parliamentary rule. See Bourinot, pp. 55, 310, 311, 390. The St. Catharines by-law adds "On an amendment "to strike out and insert" the paragraph to be amended shall first be read as it stands, then the words proposed to be struck out and those to be inserted, and finally the paragraph as it would stand if so amended."

(*v*) This is practically the parliamentary rule in England. See Bourinot, pp. 312, 313, 390.

(*w*) Now that the bill has passed it is styled a "by-law." The clerk also should sign it: see s. 333 of "*The Municipal Act*."

PETITIONS AND COMMUNICATIONS.

Sec. 275.
Note (b).

61. Every petition, remonstrance, or other written application intended o be presented to the council must be fairly written or printed on paper or parchment, and signed by at least one person; and no letters affidavits, or other documents shall be attached to it. (*x*)

Procedure on presenting petition, etc.

62. Every petition, remonstrance or other written application may be presented to the council by any member thereof, who shall examine the same and shall be answerable that it does not contain any impertinent or improper matter, and that the same is respectful and temperate in its language; he shall also indorse thereon the name of the applicant and the substance of such application, and sign his name thereto, which indorsement only shall be read by the mayor, unless a member shall require the reading of the document, in which case the whole shall be read. (*y*)

Referring petitions, etc.

63. All petitions or other written communications on any subject within the cognizance of any standing committee shall, on presentation, be considered as referred to the proper committee without any motion, unless otherwise ordered; and no member shall speak upon, nor shall a debate be allowed upon, the presentation of a petition or other communication to the council; but a member may move that in referring a petition or other communication certain instructions may be given by the council, or that the petition or communication shall be referred to a select committee; and if the petition or communication complain of some present personal grievance, requiring immediate remedy, the matter contained therein may be brought into immediate discussion and disposed of forthwith. (*z*)

Petitions, etc., presented in previous years.

64. Any member may move to take up or refer a communication or petition made or presented to the council during the year in which such motion is made, or during the year next preceding such year, and whether such communication or petition has been referred to a committee and reported upon or not; but no motion shall be in order to take up or refer a communication or petition made or presented at any time before the commencement of the year next preceding such motion. (*a*)

APPOINTMENT AND ORGANIZATION OF COMMITTEES.

Appointment of committees.

65. All standing or select committees shall be appointed on a motion of a member, and any member of the council may be placed on a committee, notwithstanding the absence of such member at the time of his being named upon such committee, and the mayor shall be ex-officio a member of every standing or select committee. (*b*)

STANDING COMMITTEES.

66. There shall be annually appointed, at the first meeting of each newly-elected council, the following committees, which shall compose the Standing committees of the council:—1st, The Executive Committee; 2nd, The Committee on Works; 3rd, The Committee on Markets and Licenses; 4th, The Committee on Water Works; 5th, The Committee on Fire and Light; 6th, The Committee on Property; 7th, The Committee on Parks and Gardens; 8th, The Committee on Legislation; 9th, The Reception

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(*x*) See Bourinot, pp. 52, 53, 312, 313. The parliamentary rule requires at least three signatures to be on the sheet containing the prayer, but this refers only to petitions signed by a number of individuals.

(*y*) This is substantially the same as the parliamentary rule, except that in Parliament the Clerk or his assistant reads the indorsement. See Bourinot, pp. 52, 314, 315, 390.

(*z*) This rule is based on parliamentary usage. See Bourinot, pp. 53, 316, 317, 390.

(*a*) See also s. 327 of "*The Municipal Act*."

(*b*) See Bourinot, pp. 48-51, 316, 318, 390.

Sec. 275.
Note (b).

Committee; and the council shall also at the said meeting appoint from among the members of the council, the persons who shall compose the Court of Revision, and shall also appoint the Local Board of Health. (*d*)

Quorum of committee.

67. Of the number of members appointed to compose any standing or select committee, five exclusive of any ex-officio member, shall be a quorum, but if a committee consist of less than nine members a majority shall be a quorum, and the mayor if present shall be counted in making up such quorum. (*e*)

First meeting of standing committees.

68. The members of each standing committee of the council shall meet at the city hall for the purpose of organization within three days after their appointment, at such hour as the mayor may direct. (*f*)

Business to be done thereat.

69. The members of each standing committee shall at their first meeting elect from among themselves a chairman, and shall immediately thereafter determine the days and the hour of their future regular meetings. (*g*)

Special meetings of standing committees.

70. Special meetings of standing committees may be called by the chairman whenever he shall consider it necessary to do so; and it shall be the duty of the chairman, or, in case of his illness or absence from the city, it shall be the duty of the clerk of the council, or the clerk of the standing committee (if a special clerk shall have been appointed in that behalf) to summon a special meeting of the committee whenever requested in writing to do so by a majority of the members composing it. (*h*)

Special committees.

71. A special or select committee may be at any time appointed on motion of a member of the council by a majority vote of the members of the council present at any meeting thereof, but no such special or select committee shall be appointed unless and until notice thereof, specifying the matters to be dealt with by such committee, and the names of the members thereof, shall have been given at a previous meeting of the council.

Members of council may be present at all committee meetings.

72. Members of the council may attend the meetings of any of its committees, but shall not be allowed to vote; nor shall they be allowed to take part in any discussion or debate, *except by the permission of the majority of the members of the committee.* (*i*)

(*d*) In Parliament the standing committees are appointed at the commencement of each Session. See Bourinot, pp. 48, 318-321, 390, 391. The Simcoe County Council by-law provides for the annual appointment of nine committees (of 3 members each) for the following purposes (1) Finance and Assessment, (2) Education, (3) Roads and Bridges, (4) County Property, (5) Printing, (6) Gaols, (7) Railways, (8) Canals, (9) Contingencies. The Town of Peterborough has twelve Standing Committees, as follows (1) Finance, (2) Appointments to Office and Supervision of Police, (3) Licenses, (4) Streets and Bridges, (5) Charity, (6), Fire, Water and Light, (7) Market, (8) Printing, (9) Health and Sanitary, (10) Property and Building, (11) Joint with County, (12) Court of Revision. Except the Charity Committee, each of the foregoing consists of not less than 5 nor more than 7 members.

(*e*) See s. 268 of "*The Municipal Act*," and note (a) thereto; Bourinot, pp. 48, 322, 323.

(*f*) See Bourinot, pp. 326, 327, 392.

(*g*) See Bourinot, pp. 326, 327, 392.

(*h*) See Bourinot, pp. 328, 329, 392.

(*i*) This (except the words in italics) accords with the parliamentary rule. See Bourinot, pp. 328, 329, 393.

DIVISION III.—BOARD OF CONTROL IN CITIES HAVING 100,000 INHABITANTS OR MORE, (SECS. 276-277.)

276.—(1) In cities having a population of 100,000 or more there shall be a Board of Control, to consist of the mayor and three alderman, three of whom shall form a quorum. Such three aldermen shall be elected by the council at the first meeting of the council for the year, or in case of failure to elect at such meeting, then within one week thereafter. Constitution of board of control in cities of 100,000 or over.

(2) Upon the election of the said three members of the Board of Control, the names of all the candidates shall be submitted to the council and shall be balloted for at the same ballot; and each member of the council shall for the purpose of such election be entitled to as many votes as there are candidates to be elected, but he shall not give to one candidate more than one vote. Voting upon election of board.

(3) The mayor, when present, shall preside at the meetings of the board, and in the absence of the mayor the board shall select one of their number to preside. In the event of a tie at the board, the mayor shall have a second and casting vote. Who to preside at meetings of board.

(4) The council may fix by by-law the salaries to be paid to the members of the Board of Control, but the same shall not exceed for each member the sum of $700 per annum. Salaries of board.

(5) The elective members of the Board of Control shall hold office for the remainder of the municipal year in which they are elected, unless removed; but they shall, if members of the council, be eligible for re-election. In case any member of the board dies, resigns or becomes incapable of acting, the council may, at a meeting called for that purpose, elect a successor to hold office for the unexpired portion of the term of such member; or in case of the temporary absence of any member for more than one month, or of his inability to act, his place may be temporarily filled by the council. Term of office.

(6) The election or appointment of any alderman as a member of the Board of Control shall not render him ineligible for election as chairman of any committee. Chairman of committee may be elected.

(7) The council at any time after three days' notice in writing to each member of the council, may, by an affirmative vote of two-thirds of the members of the council present and voting, remove any member of the Board of Control other than the mayor, and may after such removal proceed to fill the vacancy thus created. But such removal and the filling of the vacancy shall take place only at a meeting specially called for such purpose. 59 V. c. 51, s. 33. Removal of members of board.

Sec. 377 (1).

Duties of board.

277.—(1) It shall be the duty of the Board of Control:—

Preparing estimates.

(*a*) To prepare an estimate of the proposed expenditure of the year and certify the same to the council for its consideration. The council shall not appropriate or expend, nor shall any officer thereof expend or direct the expenditure of, any sum or sums not included in or provided for by such estimates or in or by any special or supplementary estimates duly certified by the board to the council, without the affirmative vote of two-thirds of the members of the council present and voting, authorizing such additional appropriation or expenditure. But this prohibition shall not extend to the payment of any debenture or other debt or liability lawfully contracted and payable, nor to the interest thereon.

Awarding contracts.

(*b*) To prepare specifications for and award all contracts, and for that purpose to call for all tenders for works, material and supplies, implements or machinery or any other goods or property required and which may lawfully be purchased for the use of the corporation, and to report their action to the council at its next meeting. Upon the opening of any tenders, the chairman or board shall require the presence of the head of the department or sub-department with which the subject matter of such tender is connected, and of the city solicitor when required. Such head of department may take part in any discussion at the board relating to such tenders, but shall not be entitled to vote. The council shall not, unless upon an affirmative vote of at least two-thirds of the members of the council present and voting, reverse or vary the action of the Board of Control in respect of such tender and decision of the board thereon, when the effect of such vote would be to increase the cost of the work or to award the contract to a tenderer other than that one to whom the Board of Control has awarded it.

Inspecting municipal works.

(*c*) To inspect and report to the council monthly or oftener upon all municipal works being carried on or in progress within the city.

Nominating officers of corporation.

(*d*) To nominate to the council all heads of departments and sub-departments in case of any vacancy and, after a favourable report by the head of the department any other officer of the corporation required to be appointed by by-law or resolution of the council, and any other permanent officers, clerks or assistants, and to recommend the salaries of all officers and clerks; and no head of department or sub-department or other permanent officer, clerk or assistant as aforesaid shall be appointed or selected by the council in the absence of such nomination without an affirmative vote of at least two-thirds of the members of the council present and voting; but the council may, by a majority vote, refer such nomination back to the Board of Control for reconsideration.

(*e*) To dismiss or suspend any head of a department and forthwith to report such dismissal or suspension to the council. Where any head of department has been dismissed by the board, he shall not be reappointed or reinstated by the council unless upon an affirmative vote of at least two-thirds of the members of the council present and voting. Sec. 277 (1-7). Suspension or dismissal of officers.

(*f*) To discharge all other duties heretofore assigned to or discharged by the existing Board of Administration under any by-law of the municipality. Other duties.

(2) In the absence of any by-law of the council prescribing the mode of appointment of all or any other subordinate officers, clerks, assistants, employees, servants and workmen not included in clauses (*d*) and (*e*) of the preceding subsection and required by any department or sub-department for the due and proper discharge and performance of the duties and work thereof, the board may by regulation or resolution direct by whom and in what manner such subordinate officers, assistants, employees, servants or workmen shall be appointed, engaged or employed. Controlling appointment and duties of subordinate officers.

(3) The board may, from time to time, submit proposed by-laws to the council, and where in the opinion of the board it is desirable, may amalgamate departments or sub-departments. Submission of by-laws, etc.

(4) The board may appoint a secretary or clerk whose duty it shall be to keep minutes of all proceedings of the board and prepare all reports and other proceedings of the board; and he shall perform such other duties and services as may be assigned to him from time to time by the board, the mayor or the council. Secretary of board.

(5) The council may by by-law or resolution impose upon or assign to the Board of Control such other duties as to the council may seem meet. And the board shall, when so required by resolution of the council, and upon one week's notice thereof, return to the council copies of the minutes of its meetings, and any other information in their possession which the council may require. Council may impose other duties on board.

(6) Nothing in this section contained shall prevent the council (by a vote of the majority of the members of the council present and voting), from referring back to the Board of Control any report, question, matter or thing for reconsideration. Referring back matters for reconsideration by board.

(7) In all cases where it is sought in council to reverse, set aside or vary the action of the Board of Control, or where a two-thirds vote of the members of the council present and voting is required for any purpose, the vote by yeas and nays shall be recorded in the minutes of the council. Recording votes on action of board.

Sec. 277 (8)-10.

School boards etc., to send in estimates before 1st March.

(8) The public school board, the separate school board and the high school board, the board of police commissioners and the board of management of the free library of the city respectively, shall furnish to the said Board of Control on or before the first day of March in each year, their several and respective annual estimates.

Certain officers not to be nominated by board.

(9) Clause (*d*) of subsection 1 of this section shall not apply to any member of the fire department of the city, except the head thereof, nor to any assessor except the assessment commissioner, nor to the representatives (if any) of the council at or upon the board of any harbour trust, or of any corporation to which the council is entitled to elect a representative, nor to the members of the Court of Revision of the city. And nothing in this section contained shall deprive any head of department of the power which he possessed on the 7th day of April, 1896, under any by-law or otherwise, to dismiss any subordinate officer, clerk or employee.

Exclusive rights of board.

(10) Notwithstanding anything in this Act contained, the duties herein assigned to the Board of Control shall be discharged exclusively by the said Board, except in the cases provided for in sub-section 3 of this section. 59 V. c. 51, s. 34.

PART V.

OFFICERS OF MUNICIPAL CORPORATIONS.

DIV. I.—THE HEAD, (Secs. 278-281).
DIV. II.—THE CLERK, (Secs. 282-287).
DIV. III.—THE TREASURER, (Secs. 288-294)
DIV. IV.—ASSESSORS AND COLLECTORS, (Secs. 295-298).
DIV. V.—AUDITORS AND AUDIT, (Secs. 299-309).
DIV. VI.—VALUATORS, (Sec. 310).
DIV. VII.—DUTIES OF OFFICERS RESPECTING OATHS AND DECLARATIONS, (Secs. 311-319).
DIV. VIII.—SALARIES, TENURE OF OFFICE AND SECURITY, (Secs. 320-323)
DIV. IX.—JUDICIAL INVESTIGATION OF MUNICIPAL MANAGEMENT, (Sec. 324).

Note. For the Synopses see under the several Divisions.

DIVISION I.—THE HEAD, (SECS. 278-281).

Synopsis.—In this Division (ss. 279, 279*a*) are enumerated [illegible]e—but by no means all—of the duties of the head of a municipal corporation in Ontario [illegible] see also note (a) to s. 279). Sec. 281 defines the circumstances under which he may—as chief magistrate—call out the *posse*, if that step becomes necessary to enforce the law, and s. [illegible] authorizes his remuneration by the council.

278. The head of every county and provisional county corporation shall be the warden thereof, and of every city and town the mayor thereof, and of every township and village the reeve thereof. 55 V. c. 42, s. 243. Who to be head of council.

Taken from the Act of 1849, (12 V. c. 81), s. 108.

(a) As to the election of a warden, see ss. 261, 263; as to the nomination and election of mayors and reeves, ss. 118-130 and 136 *et seq.*

279. The head of the council shall be chief executive officer of the corporation; and it shall be his duty to be vigilant and active at all times in causing the law for the government of the municipality to be duly executed and put in force; to inspect the conduct of all subordinate officers in the government thereof, and, as far as may be in his power, to cause all negligence, carelessness and positive violation of duty to be duly prosecuted and punished, and to communicate from time to time to the council all such information, and recommend such measures within the powers of the council, as may tend to the improvement of the finances, health, security, cleanliness, comfort and ornament of the municipality. 55 V. c. 42, s. 244. Duties of head of council.

Taken from the Act of 1858, (22 V. c. 99), s. 120.

Secs. 279-281.

Notes (a); (a).

Duties of head of council.

(a) The head of every municipal council is *ex officio* and without any further oath or property qualification than that required by this Act (*a*) a Justice of the Peace for the county within which the municipality is situated (*b*); and in cities and towns, in the absence of the police magistrate, or when there is a vacancy in the office, it is the duty of the mayor to attend personally or by deputy at the police office daily or as the occasion may require (*c*). If the municipal corporation holds stock to the amount of $10,000 in an incorporated gas or water company (*d*), or to the amount of $20,000 in a railway company (*e*), the head of the council becomes *ex officio* a director of the company. He is also one of the first selectors of jurors under "*The Jurors Act*," (*f*). As to his duties under "*The Trade Disputes Act*," see R. S. O. c. 16 (4); under "*The Ontario Anatomy Act*," see R. S. O. c. 177, s. 11, and as to notifying electric railway companies when a level crossing is out of repair, see R.S.O. c. 209, s. 102. Under "*The Children's Protection Act of Ontario*," (*g*) the head of every municipal council is entitled to visit and be admitted to any temporary home or shelter provided under s. 4 of that Act.

Statement of amounts paid by Registrar to a municipality to be sent by him annually to head of municipality.

Duty of head of municipality in relation thereto.

279*a*. Every registrar of deeds, shall on or before the seventh day of January in each year make up and transmit to the head of any municipality to which he has made payments in accordance with the provisions of *The Registry Act* during the preceding year a statement signed by him showing the amounts so paid and the dates of payment, and the head of the municipality receiving such statements shall cause the same to be laid before the auditors when auditing the accounts of the previous year, and shall also read such statements at the first meeting of the council held after the receipt thereof. 61 V. c. 23, s. 12.

(a) See also s. 291*a* and note (a) to s. 291 containing ss. 21 and 22 of R. S. O. c. 228. These sections impose upon the head of the municipality a similar duty with regard to the statements to be annually furnished by the treasurers of other (accounting) municipalities, and by every bank or company in which moneys of the municipality are on deposit, and by every mortgagor or other person liable for the payment of any debt secured by a mortgage given to or held by the municipality.

Remuneration of mayor, etc.

280. The head of the council of any county, city, town or village may be paid such annual sum or other remuneration as the council of the municipality may determine. 55 V. c. 42, s 232.

Taken from the Act of 1873, (36 V. c. 48) s. 173, which applied only to cities, towns and villages; extended to counties in 1877 by 40 V. c. 7, Sched. A (172).

(a) Prior to this enactment, it was held that a resolution and by-law passed by the council of a town granting to the retiring mayor a sum of $1600, "as a small token of their appreciation of his long and faithful services" was *ultra vires*, and must be quashed with costs: (*h*) The "annual remuneration" under this section should be fixed by by-law (s. 325).

Mayor may call out *posse comitatus*.

281. The mayor of any city or town may call out the *posse comitatus* to enforce the law within his municipality should exigencies require it, but only under the same circumstances in which the sheriff of a county may now by law do so. 55 V. c. 42, s. 478.

Taken from the Act of 1858, (22 V. c. 99), s. 345.

(*a*) Ss. 76, 77, 311, 312, 475. (*b*) Ss. 473, 474. (*c*) S. 479. (*d*) S. 591 (5*a*). (*e*) S. 695. (*f*) R. S. O. c. 61, ss. 17 *et seq.* (*g*) R. S. O. c. 259, s. 17. (*h*) *Re McLean and Town of Cornwall*, 31 U.C.R. 314 (1871).

Secs. 281, 282, Notes (a); (a). "Posse comitatus."

(a) "**Posse comitatus,**" or power of the county, includes the aid of and attendance of all male persons within the county between the ages of 15 and 70 who are able to travel. It is used when a riot is committed, a possession kept on a forcible entry, or any force or rescue made contrary to the Queen's writ or in opposition to the execution of justice. The power is usually summoned by the sheriff. But with respect to writs that issue in the first instance to arrest in civil suits, the sheriff is not bound to take the *posse* to assist him in the execution of them, though he may do so if he pleases, on forcible resistance to the execution of the process. Sheriffs, &c., are to assist Justices of the Peace in suppressing riots, &c., and raise the *posse* by charging any number of men to attend for that purpose, who may take with them such weapons as shall be necessary; and they may justify the beating and even killing such rioters as resist or refuse to surrender; and persons refusing to assist in the *posse* may be fined and imprisoned. It is lawful for a peace officer to assemble a competent number of people and sufficient power to suppress rebels, rioters, &c.; but there must be great caution, lest under a pretence of keeping the peace, the peace officer cause a breach of it; and sheriffs, &c., are punishable for using needless violence or alarming the county in these cases without just ground. (*i*) It may be assumed that the jurisdiction of a mayor under this section would not extend beyond the limits of the municipality of which he is chief magistrate. See note (a) to s. 325.

Division II.—THE CLERK, (Secs. 282-287).

Synopsis.—Sec. 282 makes it the duty of every municipal council to appoint a clerk, and prescribes his duties as the secretary of the council and the custodian of its records, by-laws, accounts, etc. Secs. 285-286 refer to certain statistical returns to be made annually to the Provincial Government. Sec. 283 provides for the appointment of a deputy clerk. Sec. 284 relates to the right of the public to inspect the records and documents of which the clerk is *ex officio* the custodian and to order copies thereof; and (by subs. 2) copies of such documents certified by the clerk under the corporate seal of the municipality are receivable in evidence after production by him of the originals.

Appointment of clerk, and his duties.

282. Every council shall appoint a clerk; and the clerk shall truly record in a book, without note or comment, all resolutions, decisions and other proceedings of the council, and, if required by any member present, shall record the name and vote of every member voting on any matter submitted, and shall keep the books, records and accounts of the council, and shall preserve and file all accounts acted upon by the council, and also the originals or certified copies of all by-laws, and of all minutes of the proceedings of the council, all of which he shall so keep in his office, or in the place appointed by by-law of the council. 55 V. c. 42, s. 245.

Taken from the Act of 1858, (22 V. c. 99), s. 150. *Cf.* 12 V. c. 81, ss. 169, 170.

(a) "**Every council shall appoint a clerk.**" The appointment of the clerk should be made by by-law (*a*). As to his tenure of office, see s. 321 and the cases there cited. The clerk is disqualified from being a member of any municipal council (*b*), and he cannot be appointed an assessor or collector (*c*), but he is not disqualified by law from acting as treasurer (*d*). As to his power to bind the council, see *Ramsay* v. *Western District Council* (*e*).

(*i*) See *Watson's* Office of Sheriff, (2nd Ed.) 2, 73, 193; 2 Inst. 194; 4 Blackstone, 122. As to calling out the militia in aid of the civil power, see R. S. Ca. c. 41, s. 34.

(*a*) S. 325. (*b*) S. 80. (*c*) S. 295.

(*d*) See s. 312 and note (a) to s. 288. (*e*) 4 U. C. R. 374.

Secs. 282-284 (1). Notes (b); (a). Duties of the clerk.

(b) Duties of the clerk.—The duties of the clerk of a local municipality are of the most important character. In addition to those imposed by "*The Municipal Act*" and "*The Assessment Act*," he is charged (except in unorganized territory where there are no assessment rolls) with the preparation of the voters' lists of the municipality (*f*). He is a Division Registrar under "*The Act respecting the Registration of Births, Marriages and Deaths*" (*g*), and *ex officio* a selector of jurors under "*The Jurors Act*" (*h*). As to his duties under "*The Registry Act*" (*i*), "*The Marriage Act*" (*j*), "*The Municipal Drainage Act*" (*k*), "*The Public Health Act*" (*l*), "*The Act respecting Pounds*" (*m*), "*The Line Fences Act*" (*n*), "*The Ditches and Watercourses Act*" (*o*), "*The Railway Ditches and Watercourses Act*" (*p*), "*The Public Schools Act*" (*q*), and "*The Separate Schools Act*" (*r*), see the sections of these several Statutes referred to in the foot-notes. As to the right of the clerk or assessment commissioner of a city to obtain from the registrar a list of conveyances registered during the preceding month, see R. S. O. c. 136, s. 125, quoted in note (**b**) to s. 296.

Provision for absence, etc., of clerk.

283. The council may by resolution provide that, in case the clerk is absent, or incapable through illness of performing the duties of clerk, some other person, to be named in the resolution, or to be appointed under the hand and seal of such clerk, shall act in his stead; and the person so appointed shall, while he so acts, have all the powers of the clerk. 55 V. c. 42, s. 246.

Taken from the Act of 1873, (36 V. c. 48), s. 187.

Minutes, etc., to be open to inspection.

Copies to be furnished, and charged therefor, etc.

284.—(1) Any person may, at all reasonable times, inspect any of the particulars aforesaid, as well as the assessment rolls, voters' lists, poll books, and other documents in the possession of or under the control of the clerk; and the clerk shall, within a reasonable time, furnish copies thereof to any applicant at the rate of ten cents per hundred words, or at such lower rates as the council appoints, and shall, on payment of the proper fee therefor, furnish within a reasonable time, to any elector of the municipality, or to any other person interested in any by-law, order or resolution, or to his solicitor, a copy of such by-law, order or resolution, certified under his hand, and under the corporate seal. 55 V. c. 42, s. 247 (1); 60 V. c. 15, *Sched.* C. (58).

Taken from R.S.O. (1877), c. 174, s. 239, the word "reasonable" being substituted for "seasonable," by 60 V. c. 15, Sched. C (58). *Cf.* 22 V. c. 99, s. 151; 34 V. c. 20, s. 18; 36 V. c. 48, s. 188.

(a) "Any person may . . . inspect any of the particulars aforesaid." This refers to the matters mentioned in s. 282. It is the right of every ratepaying in-

(*f*) See R. S. O. c. 7, ss. 6-12, 17, 20, 21, 27, 41-44, 49-60.
(*g*) R. S. O. c. 44, s. 11.
(*h*) R. S. O. c. 61, ss. 11, 17, 28.
(*i*) R. S. O. c. 136, ss. 86 (1), 111.
(*j*) R. S. O. c. 162, s. 25.
(*k*) R. S. O. c. 226, ss. 16, 21, 28, 43, 44, 46.
(*l*) R. S. O. c. 248, ss. 53, 54, 60.
(*m*) R. S. O. c. 272, s. 10.
(*n*) R. S. O. c. 284, ss. 9 (2), 12 (2).
(*o*) R. S. O. c. 285, ss. 4 (5), 13, 14, 15, 18, 20, 22, 26.
(*p*) R. S. O. c. 286, ss. 6, 7, 8.
(*q*) R. S. O. c. 292, ss. 58, 68, 69.
(*r*) R. S. O. c. 294, ss. 13-16, 31 (13), 42, 51, 52, 54, 56, 57.

habitant of the municipality to inspect the records, books and other documents of the corporation on proper occasions (*a*). And it is a right which may be enforced by *mandamus* (*b*).

Secs. 284 (1), 285 (2).

Notes (a) (b); (a).

The right extends to minutes of proceedings of committees, whether the acts of these committees have been adopted by the council or not (*c*). The right of inspection carries with it the right to take a copy (*d*).

(b) "**On payment of the proper fee therefor.**" See note (a) to s. 220.

Documents certified by clerk to be receivable in evidence.

(2) A copy of any document in the possession of or under the control of the clerk of the municipality, certified under his hand and under the corporate seal of the municipality, may, after the original thereof has been produced from the proper custody, be filed in any Court in lieu of such original, and shall be received in evidence without proof of the seal of the corporation or of the signature or official character of the person appearing to have signed the same, and without further proof thereof unless the Court or Judge otherwise directs. 55 V. c. 42, s. 247 (2); c. 43, s. 10.

Taken from "*The Municipal Amendment Act, 1892*," (55 V. c. 43), s. 10.

Returns to be made to the Bureau of Industries.

285.—(1) The clerk of every municipality shall in each year, within one week after the final revision of the assessment roll, under a penalty of $20 in case of default, make a return to the Secretary of the Bureau of Industries, Toronto, on schedules or forms furnished by the said Secretary, and approved by the Lieutenant-Governor in Council, of such statistics or information as the assessment roll or other records of his office afford, and as such schedules or forms call for; and every such return shall be transmitted by mail in a registered package. 55 V. c. 42, s. 248 (1); 60 V. c. 45, s. 35.

Taken from 50 V. c. 29, s. 13 (1887), the last clause having been added in 1897 by 60 V. c. 45, s. 35.

(a) "**Shall . . within one week after the final revision of the assessment roll.**" As to the date of the final revision of the assessment roll, see s. 3 of this Act; "*The Assessment Act*" (R. S. O. c. 224), ss. 58, 59, 61, 71 (19), 75 (2) (7); the "*Act respecting the establishment of Municipal Institutions in Territorial Districts*" (R. S. O. c. 225), ss. 41, 44, 46, 47. The duty of the clerk is to make the return required under the penalty named. The machinery of municipal government assumes that certain things are done by certain days in the municipal year, so that other things may follow in their order. Municipal officers cannot, therefore, regard provisions as to time with too much strictness. But if the thing required to be done within the time limited be not done, it does not follow that it cannot afterwards be done. It is, no doubt, important that it should be done within the time limited; but "it is still more important that it *should be done*; and therefore if, owing to some uncontrollable circumstances, it is not done on the proper day, it ought to be done on the next or some other day." (*a*) So far as the public interests are concerned, the Act may be

(*a*) *Rex* v. *Shelley*, 3 T.R. 142; *Rex* v. *Babb*, *Ib.* 570; *Harrison* v. *Williams*, 3 B. & C. 162; *Rogers* v. *Jones*, 5 D. & R. 484.

(*b*) *Rex* v. *Newcastle*, 2 Str. 1223; *Rex* v. *Lucas*, 10 East 235; *Rex* v. *Purnell*, 1 Wils. 242; *Rex* v. *Bridgeman*, 2 Str. 1203; Dillon, s. 303.

(*c*) *Williams* v. *Manchester (Mayor of)*, 13 Times L.R. 299 (1897).

(*d*) *Boord* v. *African Consolidated Land Co.*, [1898] 1 Ch. 596.

(*a*) *Per* POLLOCK, C.B., in *Hunt* v. *Hibbs*, 5 H. & N. 126.

Secs. 285 (1)-287. Notes (a) (b); (a).

looked upon as directory. (*b*) But as regards the officers whose duty it is made to do the things within a limited time, the Act may be construed as imperative. (*c*) See note (**a**) to s. 10.

Advertisement of debt by-law to be sent to Bureau.

(2) The clerk of every municipality shall, within one month after the final passing of every by-law for creating a debt, send to the Secretary of the Bureau of Industries, one copy of the newspaper advertisement required under section 390 of this Act. 60 V. c. 3. s. 3; c. 45, s. 36.

This sub-section was added in 1897 by 60 V. c. 45, s. 36.

(**b**) The reference to s. 390 is apparently a mistake. That section applies only to county councils. Sec. 338 (2) was probably intended.

Tabulated statement of returns to be made by Secretary of Bureau.

(3) The Secretary of the Bureau of Industries shall, as soon as may be, after the opening of every Session of the Legislature, report to the Minister of Agriculture, for the purpose of being laid before the Legislative Assembly, a tabulated statement of all the returns hereby required to be made.

Moneys payable to municipalities in default to be retained.

(4) The Treasurer of the Province shall retain in his hands any moneys payable to any municipality, if it is certified to him by the Secretary of the Bureau of Industries that the clerk of such municipality has not made the returns hereby required. 55 V, c. 42, s. 248 (2, 3).

Taken from 50 V. c. 29, ss. 14, 15 (1887).

Clerk to make annual return to Minister of Agriculture as to number of steam boilers in the municipality.

286. The clerk of every municipality shall, on the first day of June in each year, return to the Minister of Agriculture the number of steam boilers in the municipality used for driving machinery or for any manufacturing purpose as shown by the last assessment roll of the municipality. 55 V. c. 48, s. 14 (3), *part.*

Taken from 51 V. c. 29, s. 3 (1888), the words "Minister of Agriculture" being substituted for "Provincial Secretary" by 53 V. c. 12, s. 3 (1890). This and the following section are taken from "*The Con. Asst. Act, 1892,*" 55 V. c. 48, s. 14 (2).

Penalty on clerks failing to make return under s. 286.

287. If any clerk refuses or neglects to perform the duty required of him by the preceding section, he shall, upon conviction thereof before any Court of competent jurisdiction in the county in which he is clerk, forfeit to Her Majesty such sum as the Court may order and adjudge, not exceeding $100. 55 V. c. 48, s. 225.

Taken from the Assessment Act of 1869, (32 V. c. 36,) s. 175, *Cf.* 16 V. c. 182, s. 77.

(**a**) "**Refuses or neglects.**" Either refusal or neglect is made punishable. The first involves an act of the will (*a*). The second does not necessarily do so. Mere inadvertent omission is not always equivalent to neglect. Nor does it always follow that every trivial failure to comply with the directions of the

(*b*) *Rex.* v. *Norwich*, 1 B. & Ad. 310. See further, *Cole* v. *Green*, 6 M. & G. 872; *Morgan* v. *Parry*, 17 C. B. 334; *Brumfit* v. *Bremmer*, 9 C. B. N. S. 1; *Nickle* v. *Douglas*, 35 U. C. R 127; *Reg.* v. *Ingall*, 2 Q. B. D. 199.

(*c*) *Hunt* v. *Hibbs*, 5 H. & N. 126.

(*a*) See note (**a**) to s. 194, note (**b**) to s. 195, and note (**b**) to s. 212.

Secs. 287, 288.

Notes (a); (a) (b).

Statute will warrant a conviction and the imposition of a penalty. As to the mode of enforcing the forfeiture, sec. 8 (31) of "*The Interpretation Act*" provides that :—

May be recovered on indictment.

"Where a pecuniary penalty or forfeiture is imposed by an Act of this Province, and the amount of the penalty or forfeiture is in any respect in the discretion of the Court or Judge, or in case the Court or Judge has the right to impose imprisonment in addition to, or in lieu of, the penalty or forfeiture, and no other mode is by the Act expressly prescribed for the recovery of the penalty or forfeiture, the same may be recovered upon indictment in the High Court of Justice or General Sessions of the Peace."

DIVISION III.—THE TREASURER, (SECS. 288 294).

Synopsis.—Scarcely less important than the duties of the clerk are those of the municipal treasurer. His appointment is provided for by s. 288, and his duties (generally speaking) by s. 290. (But see also note (d) thereto.) S. 291 prescribes the form in which certain of his books of account shall be kept, and s. 291 (a)—293 require him to make annually certain returns to the head of every other municipality to which he has paid out municipal moneys, to the council and the clerk of his own municipality, and to the Provincial Government. Sec. 289 provides, in the case of the death of a county treasurer, for the appointment of a temporary successor; and s. 294 for the event of a municipal treasurer absconding or being dismissed.

Treasurer to be appointed.

To give security.

Annual inquiry as to sufficiency of.

288. Every municipal council shall appoint a treasurer, who may be paid either by salary or by a percentage; and every treasurer, before entering upon the duties of his office, shall give such security as the council directs for the faithful performance of his duties, and especially for duly accounting for and paying over all moneys which may come into his hands; and it shall be the duty of every council, in each and every year, to inquire into the sufficiency of the security given by the treasurer, and to report thereon. 55 V. c. 42, s. 249.

The first part of this section is taken from the Act of 1858, (22 V. c. 99,) s. 158. *Cf.* 12 V. c. 81, s. 71. The last clause was added in 1866 by 29 & 30 V. c. 51, s. 161. Until 1873 the treasurer of a city was styled "chamberlain": see 36 V. c. 48, s. 195.

(a) "**Shall appoint a treasurer.**" The appointment should be made by by-law (*b*). As to the tenure of the office, see s. 321 and the cases there cited. The treasurer is disqualified from being a member of any municipal council (*c*), and cannot be appointed an assessor or collector (*d*), but there seems now to be no reason why the clerk should not also be treasurer (*e*). In the Province of Quebec the two offices are combined in one (*f*), but in England the offices of town-clerk and treasurer cannot be held by the same person (*g*). As to salary, see s. 320, *post*. The treasurer of a municipality should not be permitted to act as the agent of a bank (*h*). He cannot bind the corporation by accepting an order drawn upon its funds (*i*).

The treasurer's bond.

(b) "**Security . . . for the faithful performance of his duties.**" It is no objection to the bond that it was executed before the appointment to office was made (*j*), and if the condition of the bond substantially complies with the requirements of the Statute, the Court will endeavour to sustain its validity as

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(*b*) S. 325. (*c*) S. 80; see *Reg.* v. *Smith*, 4 U. C. R. 322. (*d*) S. 295.
(*e*) See s. 312; *Village of Weston* v. *Conron*, 15 O. R. 595, cited *infra*, note (b).
(*f*) Quebec Mun. Code, ss. 142, 172. (*g*) 45-46 V. c. 50, s. 18 (4).
(*h*) *Village of Ingersoll* v. *Chadwick*, 19 U. C. R. 278.
(*i*) *Smith* v. *Village of Collingwood*, 19 U. C. R. 259.
(*j*) *County of Essex* v. *Strong*, 8 U. C. L. J. 15; 21 U. C. R. 149.

Sec. 288.

Note (b). The treasurer's bond.

against technical defences (*k*). The invalidity of the appointment cannot be set up as a defence to an action on a bond where moneys have been collected (*l*), nor can irregularities in the mode of appointment (*m*). The imposition of additional taxes to those assessed at the time of taking the security and the consequent increase of risk, has been held not to vitiate a bond given for the general performance of duties and payment of moneys (*n*). Nor is it a defence that the money received by the treasurer was not demanded by the Government, which was entitled thereto (*o*). It has been held in the United States that sureties for an officer whose term is limited to a year are not liable beyond the year, though the officer continue by law to hold office till his successor is appointed (*p*). Where a treasurer was re-appointed annually for several years, it was held that the re-appointments were not equivalent to removals and re-appointments, but were rather a retention in office of the same treasurer, and that his sureties were not discharged in consequence thereof (*q*).

The treasurer of plaintiffs, who was also clerk, was in that capacity permitted by resolution of the council to retain the collector's roll for three months and he was granted a percentage on the moneys received by him for taxes. In an action against him and his surety it was—*Held*, that this temporary function was not of such a nature as to terminate his duties as treasurer by necessary implication, and that when the money came to his hands with which he charged himself as treasurer the responsibility of the surety began, but that the latter should not be charged with any sums which did not appear in the books of the former as treasurer and which were referable to taxes otherwise received by him (*r*).

In an action by a municipal corporation against the sureties of a defaulting collector of taxes, for the due performance of his duties for 1886 and 1887, it appeared that there had been great laxity on the part of the plaintiffs', but that shortly before the collector absconded, in 1888, a majority of the members of the council had confidence in his honesty; and the defendants had not sought information from the plaintiffs as to the manner in which the collector had performed his duties in former years. *Held* that the non-disclosure by the plaintiffs to the defendants of the facts (1) that a motion had been made in council in 1885 that unless the roll for 1884 was returned by the next meeting, an inquiry would be asked for before the County Court Judge; (2) that in August, 1885, a resolution had been adopted instructing the treasurer to take proceedings against the collector and his sureties for the balance due on the 1884 roll, unless fully settled before September 10th then next, (3) that a like resolution had been passed in 1886, in reference to the taxes for 1885 (which afterwards—(in 1888)—were paid over in full by the collector), and (4) that the roll for 1885 was not returned until 1888,—were not such non-disclosures as amounted to constructive fraud on the part of the plaintiffs and were not sufficient to relieve the defendants from liability on their bonds. (*s*)

In *County of Simcoe* v. *Burton* (*t*) the treasurer of a county had for a number of years embezzled county funds, and by the manipulation of his books had deceived the county auditors, who from year to year reported in good faith that his accounts were correct. The council in good faith adopted the reports. While the treasurer was in fact a defaulter to a large amount, the defendant,—a ratepayer resident in the county and a relative of the treasurer,—became, at

(*k*) *Baby* v. *Baby*, 8 U. C. R. 76.

(*l*) Dillon, s. 216, citing *Hoboken* v. *Harrison*, 1 Vroom, (N.J.) 73; *Seiple* v. *Elizabeth*, 3 Dutch (N.J.) 407.

(*m*) *Township of Whitby* v. *Harrison*, 1 U. C. R. 603; *Township of Whitby* v. *Flint*, 9 C. P. 449; *Todd* v. *Perry*, 20 U. C. R. 649.

(*n*) *Township of Beverley* v. *Barlow*, 10 C. P. 178.

(*o*) *County of Essex* v. *Park*, 11 C. P. 473.

(*p*) Dillon, s. 216, citing *Dover* v. *Twombly*, 42 N. H. 59; *Clemsford Co.* v. *Demorest*, 7 Gray (Mass.) 1. See *Reg. ex rel. Ford* v. *McRae*, 5 P. R. 309 (1870); *Smith* v. *Town of Collingwood*, 19 U. C. R. 259.

(*q*) *Township of Adjala* v. *McElroy*, 9 O. R. 580.

(*r*) *Village of Weston* v. *Conron*, 15 O. R. 595.

(*s*) *Town of Meaford* v. *Lang*, 20 O. R. 541 (1890-91); *Township of Adjala* v. *McElroy*, 9 O. R. 580, (1885), considered.

(*t*) 25 A. R. 478 (1898).

his request, one of his sureties, having at the time been told in good faith by some of the county officials that the treasurer's accounts were correct. *Held*, (1) that the auditor's reports thus adopted by the council were not implied representations by the council, which by reason of their incorrectness discharged the defendant; (2) that the statements made by the county officials were not binding upon the council, and that (3) even if they were, having been made in good faith, they formed no defence to the action.

The personal representatives of a deceased treasurer are liable to be sued in respect of his default (*v*).

(c) **"Duly accounting for and paying over all moneys," etc.** Accounting for money includes paying it over (*w*). Where the treasurer had in his hands a large balance belonging to the township at the time of his giving his bond with new sureties, it was held that subsequent payments by the treasurer were applicable first to the discharge of that balance (*x*). Where a bond, instead of using the words in the Statute, limited the responsibility to moneys coming into the treasurer's hands, applicable to the general uses of the municipality, it was held that the Clergy Reserve moneys and money derived from the distribution of the Provincial surplus, which had by by-law been specially appropriated to educational purposes, were not within the condition of the bond, and that the operation of the bond was not extended by R.S.O. (1877,) c. 180, s. 213 and c. 204, s. 221 (*y*).

Accounting for municipal funds.

As to the liability of the municipality to account for moneys fraudulently obtained by the treasurer acting in a matter within the scope of his authority and where the corporation has received the benefit of the fraud, see *Molsons Bank* v. *Town of Brockville*, (*z*).

(d) **"It shall be the duty of every council in each and every year to inquire into the sufficiency of the security given by the treasurer and to report thereon."** This is a most important duty, but, it is believed, one of the most neglected of all the duties imposed on councils. It may be that if the municipality lose the benefit of their security by reason of a neglect to perform this duty on the part of the members of the council, the latter might be made liable to make good the loss. One of the sureties of a treasurer being desirous of being relieved from his suretyship, the treasurer offered to the council a new surety in his place. The council thereupon passed a resolution approving of the new surety, and declaring that on the completion of the necessary bonds the withdrawing surety should be relieved. No further act on the part of the council took place; but the treasurer and his new surety (omitting the second surety) joined in a bond conditioned for the due performance of the treasurer's duties for the future, and the treasurer executed a mortgage to the same effect. The clerk, on receiving these, gave up to the treasurer the old bond and the treasurer destroyed it. Eight years afterwards a false charge was discovered in the accounts of the treasurer of a date prior to these transactions, and it was held that the sureties on the first bond were responsible for it (*a*).

Council to inquire annually into sufficiency of treasurer's security.

289.—(1) In case of the death of the county treasurer, the warden for the time being may, by warrant under his hand and seal, appoint for such special purpose or purposes as the warden may deem necessary, a treasurer *pro tempore*, who shall hold office until the next meeting of the council; and all acts performed by him, and authorized by the said warrant, shall be as valid and binding as if performed by a treasurer regularly appointed.

Appointment of county treasurer *pro tem.*

(*u*) *County of Lincoln* v. *Thompson*, 8 U. C. R. 615.

(*w*) *Keeling* v. *Chalkin*, 3 M. & S. 502.

(*x*) *Township of East Zorra* v. *Douglas*, 17 Grant, 462. See further, *Leonard* v. *Black*, 4 U. C. L. J. 260; *Peers* v. *County of Oxford*, 17 Grant, 472; *Township of Adjala* v. *M'Elroy*, 9 O. R. 580.

(*y*) *Township of Oakland* v. *Proper*, 1 O. R. 330.

(*z*) 31 C. P. 174.

(*a*) *County of Frontenac* v. *Breden*, 17 Grant, 645.

Secs. 289 (2), 290. Note (a).

Security to be given by.

(2) The warden shall, in and by such warrant of appointment, direct what security shall be given by such treasurer *pro tempore* for the faithful performance of his duties, and especially for duly accounting for and paying over all moneys which may come into his hands, and such treasurer *pro tempore* shall, before entering upon his duties, give such security, but he shall not interfere with the books, vouchers, or accounts of the deceased treasurer until a proper audit thereof has been made. 55 V. c. 42, s. 250 (2).

Taken from 42 V. c. 31, s. 8 (1879).

To receive and take care of and disburse moneys, etc.

290. Every treasurer shall receive, and safely keep, all moneys belonging to the corporation, and shall pay out the same to such persons and in such manner as the laws of the Province, and the lawful by-laws or resolutions of the council of the municipal corporation whose officer he is, direct; but save, as provided by sections 537 and 538 of this Act, no member of the council shall receive any money from such treasurer for any work performed or to be performed; and the treasurer shall not be liable to an action for any moneys paid by him in accordance with any by-law or resolution passed by the council of the municipality of which he is the treasurer, unless where another disposition of such moneys is expressly made by statute. 55 V. c. 42, s. 250 (1); 62 V. c. 2, Sched. (7).

The first clause of this section down to and inclusive of the word "direct" is taken from the Act of 1858 (22 V. c. 99), s. 160; the latter portion, beginning with the words "no member of the council," was added in 1866 by 29 & 30 V. c. 51, s. 162. The reference to the exception created by s. 538 first occurs in the Revision of 1897. This exception was extended to s. 537 by the Act of 62 V., c. 2.

Municipal moneys to be kept in a separate account.

(a) **"Every treasurer shall receive and safely keep all moneys belonging to the corporation."** R.S.O. c. 228, s. 20 (quoted in note (a) to s. 291) provides that he shall keep the moneys of the municipality separate from his own moneys, and that in depositing them in any bank or company they shall be deposited to a separate account, etc. Most of the losses which municipalities have sustained have arisen by the misconduct of their treasurers, through their being tempted to use and using the money of the corporation for purposes of speculation or otherwise as their own. The only safe course for a treasurer to adopt is to keep strict account of the money entrusted to his charge, and on no pretext whatever to touch it, except for corporation purposes. A county treasurer, through a misapprehension of what was the proper course, had been allowed to mix all county money with his own, and had used for his private purposes a large sum of money received in that way. In this state of things he had occasion to give the corporation a new bond, with two new sureties. Shortly afterwards it was ascertained that he was not able to pay his indebtedness to the corporation. The sureties filed a bill to be relieved from their bond, on the ground of the treasurer's misconduct and of the uncommunicated knowledge of that misconduct by the representatives of the corporation at the time when the bond was given; but the Court, being of opinion that most of the facts relied on as proving misconduct were known to the sureties, and that no information had been withheld from them fraudulently, held that the bond was valid. (a) A surety cannot get rid of liability on the ground of having become surety in ignorance of material facts, unless he

(a) *Peers* v. *County of Oxford*, 17 Grant, 472; see *Village of Gananoque* v. *Shanden*, 1 O.R. 1; *Township of Adjala* v. *McElroy*, 9 O.R. 580; *Town of Meaford* v. *Lang*, 20 O. R. 541; and *County of Simcoe* v. *Burton*, 25 A. R. 478, cited *supra* in note (b) to s. 288.

can show that the information was *fraudulently* withheld from him. (*b*) So the fact that the council tacitly permits the treasurer to mix the money of the municipality with his own is not of itself a defence available to the sureties. (*c*)

Secs. 290, 271 (1). Notes (a)-(d).

Municipal funds, safe-keeping of.

The defendant, being treasurer of a municipality, kept his moneys in his house, there being no proper place for depositing the same provided by the municipality, and there being no bank in the county within a distance of thirty-five miles. *Held*, that under these circumstances the treasurer was not liable to make good to the corporation the amount of loss sustained by the accidental burning of his house; and that his own statements under oath, which appeared satisfactory to the Court, were sufficient evidence to exonerate him from liability. (*d*).

Payments to members of the council.

(b) **"Save as provided by sections 537 and 538 . . . no member of the council shall receive any money from such treasurer for any work,"** etc. See these sections and note (a) to s. 538 (1).

Illegal payments.

(c) **"The treasurer shall not be liable to an action for any moneys paid by him in accordance with any by-law or resolution . . . unless where another disposition of the moneys is expressly made by statute."** An example of such disposition of municipal moneys is offered by s. 418. In *Daniels* v. *Township of Burford* (*a*), and in *Township of East Nissouri* v. *Horseman* (*b*), ROBINSON, C.J., expressed the opinion that a treasurer who paid out moneys of the municipality upon illegal resolutions would probably be subject to criminal prosecution (*c*).

The last clause of this section was probably passed to relieve treasurers from the burden of inquiring into the legality of every by-law or resolution under which money is ordered to be paid; but it is more than doubtful whether it would authorize a payment to a member of the council, otherwise than is permitted by ss. 537 and 538. In order to protect the treasurer, there must be a formal act of the council, not mere conversations which result in no by-law or resolution (*d*). And the treasurer cannot bind the municipal corporation by accepting orders, the payment of which is not authorized by law (*e*).

Other duties of a municipal treasurer.

(d) For other duties and powers of the treasurer of a municipality, in addition to those mentioned in the Municipal and Assessment Acts, see "*The Jurors Act*" (*f*), "*The Coroners Act*" (*g*), "*The Constables Act*" (*h*), "*The Registry Act*" (*i*), "*The Land Titles Act*" (*j*), "*The Act respecting the Registration of Partnerships*" (*k*), "*The Public Schools Act*" (*l*), etc. See note (b) to s. 296. In *London & Canadian Loan & Agency Co.* v. *Morris* (*m*), it was held that the treasurer of a municipality is not as such "a third person indebted" to the municipality, so that corporate funds in his hands can be attached under "*The Garnishment Act*" of Manitoba (*n*), which is substantially the same as our Con. Rule 911. *Seymour* v. *Brecon* (*o*), was not followed.

Books to be kept by treasurers, etc.

291.—(1) The treasurer shall keep a book to be known as the "cash-book," on the left-hand page of which he shall enter in consecutive order all sums of money received by him, the dates of the receipt thereof, the names of the persons from

(*b*) *Township of East Zorra* v. *Douglas*, 17 Grant, 462.
(*c*) *Ib.*; see also *Township of Rawdon* v. *Ward*, 27 U.C.R. 609.
(*d*) *Township of Houghton* v. *Freeland*, 26 Grant 500.
(*a*) 10 U.C.R. 478. (*b*) 16 U.C.R. 577.
(*c*) And see *Township of East Nissouri* v. *Horseman*, 9 C.P. 191 *per* DRAPER, J.
(*d*) *Town of Ingersoll* v. *Chadwick*, 19 U.C.R. 278, 295.
(*e*) *Smith* v. *Village of Collingwood*, 19 U.C.R. 259; *Munson* v. *Town of Collingwood*, 9 C.P. 497. See also ss. 392, 393, 418 (2), 429 (1).
(*f*) R.S.O. c. 61, ss. 11, 145, 159, 162. (*g*) R.S.O. c. 97, ss. 14, 16.
(*h*) R.S.O. c. 99, s. 43. (*i*) R.S.O. c. 136, ss. 29, 30, 112, 122, 126, 132.
(*j*) R.S.O. c. 138, s. 109. (*k*) R.S.O. c. 152, s. 17.
(*l*) R.S.O. c. 292, s. 75. (*m*) 9 Man. Rep. 431 (1893.
(*n*) R. S. Man. c. 64, s. 8. (*o*) 29 L. J. Ex. 243.

Sec. 291 (1-7) Note (a).

Books to be kept by treasurer.

whom and on what account the same were received and the amounts thereof, and on the right-hand page of which he shall in like order enter all moneys paid out by him, the dates of the payment thereof, the persons to whom and on what account the same were paid, and the amounts thereof.

(2) The cash-book shall at all times be open for inspection by any member of the council and by the auditors, and shall be produced and exhibited by the treasurer at all meetings of the council at which he shall be directed to produce it; and at the times of such meetings it shall show the balance on hand in two items—that is to say, (1) the balance deposited to the credit of the municipality; and (2) the balance in the hands of the treasurer; and the treasurer shall also produce and exhibit at every such meeting the proper book verifying the balance so deposited.

(3) No entry other than a cash entry shall be made in the cash-book; but the treasurer shall keep a book to be known as the "journal," in which he shall duly enter all debits and credits not consisting of cash.

"Cash" meaning of.

(4) The term "cash" shall mean lawful currency of Canada, cheques and such other representatives of cash as are usually received and credited as cash by the chartered banks of Canada.

(5) The treasurer shall open an account in the name of the municipality in such of the chartered banks of Canada or at such other place of deposit as may be approved of by the council, and shall deposit to the credit of such account all moneys received by him.

(6) The cash-book and journal shall be provided at the expense of, and shall be the property of the municipality.

Enactments in section to be in force in certain municipalities until altered by by-law.

(7) The provisions contained in this section shall be in force in every county, city, town and village, except in so far as altered, amended or declared not to be in force in the municipality by the council thereof, and shall apply to and be in force in every township the council of which so enacts by by-law. 56 V. c. 35, s. 5; 57 V. c. 50, s. 4.

Taken from "*The Municipal Amendment Act*," 1893, 56 V. c. 35, s. 4; the last clause of subs. 7 (referring to townships) having been added in 1894 by 57 V. c. 50, s. 4.

(a) Further provision in respect to the matters referred to in this section was made in 1897 by 60 V. c. 48, now consolidated in R.S.O. c. 228, entitled "*An Act to make better provisions for keeping Municipal and School Accounts*," ss. 19-24 of which are as follows:—

By-laws directing payment of moneys into bank to credit of corporation.

19. (1) The council of any municipality may by by-law direct that moneys payable to the municipality for taxes or rates and upon such other accounts as may be mentioned in the by-law shall be by the person charged with the payment thereof paid into a chartered bank having an office in the municipality, and in such case the person making the payment shall obtain a receipt from the bank therefor, and produce the same to the municipal treasurer, who shall make the proper entries thereof in the books of the municipality.

(2) The council of any municipality may by by-law direct that moneys of the municipality paid to or received by the treasurer of the municipality deposited in a chartered bank or elsewhere to the credit of the municipal corporation, shall be withdrawn therefrom only upon the cheque of the treasurer, countersigned by the head of the municipality or such other person or official as may be named in the by-law.

By-laws directing that cheque of treasurer shall be countersigned.

20. The treasurer of every municipality and school board shall keep the moneys held by him as such treasurer entirely separate from his own moneys, and in depositing any moneys of the municipality or board in any bank or company he shall deposit the same to a separate account kept in his name as treasurer of the municipality or school board under some designation that will show the account to be an account of the money of such municipality or school board.

Treasurer to keep money of corporation or board separate from his own.

21. The manager or other person in charge of the business of every chartered bank or private bank or company in which the treasurer of any municipality or school board deposits moneys and keeps an account as such treasurer, shall truly state the balance in the hands of the bank or company or charged to the treasurer at any time when required so to do by a member of the council or school board; and shall, on or before the fourth day of the months of January, April, July and October in every year, make up and deliver or send by registered letter to the head of the municipality or chairman of the school board, as the case may be, a statement in writing signed by such manager or person in charge, showing the balance of such treasurer's account at the close of business on the last day of the preceding month; and the head of the municipality or chairman shall cause the same to be read at the next regular meeting of the council or school board held thereafter.

Bank to state balance of treasurer's account to member of council or board.

Statement of balance to be required quarterly.

22. The mortgagor and every other person liable for the payment of any debt secured by a mortgage given to or held by a municipal corporation, shall on the 31st day of December in every year, deliver to the head of the municipality a statement in writing showing the amount remaining unpaid upon such mortgage at the said date, and the head of the municipality shall lay the said statement before the council at the next regular meeting held thereafter.

Persons liable to corporation on mortgage to state balance due thereon annually.

23. Every person guilty of any act or omission in contravention of this Act for which no other penalty is provided, shall be liable on summary conviction thereof before two or more Justices of the Peace, to a fine of not less than $5 and not more than $20 and costs of conviction.

Penalties.

24. Nothing in this Act contained shall affect or impair any security heretofore given by any treasurer to the municipality for the due and faithful performance of the duties of his office, nor be deemed to relieve the sureties named in any bond or other security from liability in case of default on the part of the treasurer in duly accounting for all moneys coming into his hands. Nor shall anything herein contained relieve the council or board or any member thereof from their present duty to appoint competent auditors.

Securities heretofore given by treasurers not affected.

And see also the duties imposed upon municipal treasurers by ss. 11 and 12, and upon members of municipal councils by s. 14 of the above Act.

291*a*.—(1) The treasurer of every municipality paying money to the treasurer of any other municipality, shall, on or before the seventh day of January in each year, make up a statement in detail showing the amounts of such payments and the dates of the same for the year ending on the thirty-first day of December last preceding, and he shall transmit such statement by registered letter to the head of the municipality, to whose treasurer the payments have been made.

Treasurer making payments to other municipalities to send statement to head.

Secs. 291a (2)-294.

Notes (a) (b); (a).

Duty of head of municipality in reference thereto.

(2) The head of every municipality, upon receiving such statement, shall cause the same to be read at the meeting of the council and shall also deliver the statement to the auditors of his municipality before the auditing of the accounts of the previous year. 61 V. c. 23, s. 11.

Half-yearly statement of assets.

292.—Every treasurer sh . also prepare and submit to the council, half-yearly, a correct statement of the moneys at the credit of the corporation whose officer he is; and in cities, towns, villages and townships which have passed by-laws requiring this to be done, the treasurer shall, on or before the 20th day of December in each year, prepare and transmit to the clerk of the municipality a list of all persons who have not paid their municipal taxes on or before the 14th day of said month of December. 55 V. c. 42, s. 251. *See secs.* 89, 535 (1).

Annual list of persons in default for taxes.

Taken from the Act of 1873, (36 V. c. 48), s. 163. *Cf.* 29 & 30, V. c. 51, s. 163, *latter part.*

(a) "**A list of all persons who have not paid their municipal taxes on or before the 14th day of . . December.**" As to the object of this return, see ss. 88, 151, 154, 535 (1).

(b) As to the duty of the treasurer to report annually to the council the amount of money necessary to be raised during the year for sinking fund purposes under debenture by-laws, see s. 418 (4).

Returns to be made to Bureau of Industries.

293.—(1) The treasurer of every municipality shall, on or before the first day of May in each year, under a penalty of $20 in case of default, furnish to the Secretary of the Bureau of Industries, Toronto, on schedules or forms furnished by said Secretary and approved by the Lieutenant-Governor in Council, such information or statistics regarding the finances or accounts of the municipality, as such schedules or forms call for, and every such return shall be transmitted by mail in a registered package. 55 V. c. 42, s. 252 (1); 60 V. c. 45, s. 37.

Tabulated statement of returns to be made by Secretary of Bureau.

(2) The Secretary of the Bureau of Industries, shall, as soon as may be, after the opening of every Session of the Legislature, report to the Minister of Agriculture for the purpose of being laid before the Legislative Assembly, a tabulated statement of all the returns hereby required to be made.

Moneys payable to municipalities in default to be retained.

(3) The Treasurer of the Province shall retain in his hands any money payable to any municipality, if it is certified to him by the Secretary of the Bureau of Industries that the treasurer of such municipality has not made the returns hereby required. 55 V. c. 42, s. 252 (2, 3).

Taken from 50 V. c. 29, ss. 12, 14. 15; the last clause of subs. 1 having been added in 1897 by 60 V. c. 45, s. 37.

Provision on dismissal from office.

294. In case any treasurer is dismissed from office, or absconds, it shall be lawful for his successor to draw any moneys belonging to the municipality. 55 V. c. 42, s. 253.

Taken from the Act of 1873, (36 V. c. 48), s. 198. *Cf.* 29 & 30 V. c. 51, s. 163, last clause.

(a) The withdrawal of moneys after dismissal is not to affect the right of the municipality against the sureties of the dismissed treasurer. But it is recommended that so soon as the dismissal takes place, the sureties be informed of the fact, and be thereby placed in a position to protect themselves as far as possible without detriment to the municipality.

DIVISION IV.—ASSESSORS AND COLLECTORS.

(SECS. 295-296.)

Synopsis.—These officers are appointed in local municipalities only; in villages and townships by the council, annually, as soon as convenient after the January elections; in cities and towns the collectors also are thus appointed—but, as to assessors, the council, instead of adopting the same method, may appoint an assessment commissioner, who shall, with the mayor, appoint the assessors, and in cities the term of office of the assessment commissioner, assessors and collectors, instead of being annual, may be during the pleasure of the council. By the last clause of subs. 1 of s. 295 (1) and subs. (2) of the same section certain persons are disqualified from being appointed assessors or collectors. Secs. 297, 298 relate to the duties of collectors in case of the separation of a union of counties.

Assessors and collectors, appointment of.

295.—(1) The council of every city, town, township, and village, shall, as soon as may be convenient after the annual election, appoint as many assessors and collectors for the municipality as they may think necessary, and shall fill up any vacancy that occurs in the said offices as soon as may be convenient after the same occurs; but the council shall not appoint as assessor or collector a member of the council or the clerk or treasurer of the municipality. 55 V. c. 42, s. 254 (1); 55 V. c. 48, s. 12 (1).

The present form of this section is new. It is made up of two corresponding sections one taken from the Municipal, the other from the Assessment Act. Cf. 12 V. c. 81, ss. 28, 78; 22 V. c. 99, s. 162; 29 & 30 V. c. 51, s. 164; c. 53, ss. 19, 20; 32 V. c. 36, ss. 19, 20; 36 V. c. 48, s. 190; R. S. O. (1877), c. 174, s. 250; c. 180, ss. 10, 11; 46 V. c. 18, s. 250; R. S. O. (1887), c. 184, s. 254; c. 193, ss. 12, 13; 55 V. c. 42, s. 254; c. 48, ss. 12, 13. As to the sources of the last clause of subs. 1, and subs. 2, 4 and 5, see *infra*.

Duties of.

(a) The appointment of assessors and collectors should be made by by-law (s. 325) and as early in the year as possible. As to their tenure of office, see s. 321 and the cases there cited. As to the duties of assessors under "*The Assessment Act*," see R. S. O. c. 224, ss. 13-57, 153, 154, 249-254; in Territorial Districts, R. S. O. c. 225, s. 40; under "*The Manhood Suffrage Act*," R. S. O. c. 8, s. 3; "*The Jurors Act*," R. S. O. c. 61, ss. 17, 28; "*The Separate Schools Act*," R. S. O. c. 294, ss. 48, 49. As to the duties and responsibilities of collectors under "*The Assessment Act*", see R. S. O. c. 224, ss. 129-148, 247-249, 251-257, 265, 266; "*The Public Schools Act*," R. S. O. c. 292, ss. 46, 66, 67; "*The Separate Schools Act*," R. S. O. c. 294, s. 251.

Vacancy in office.

(b) **"Shall fill up any vacancy"** The council, by resolution, appointed B. assessor, who was sworn into office, and made the assessment. This appointment was made by a vote of three against two. The election of one of the three councillors was afterwards set aside, and by a subsequent vote the resolution was rescinded, and a by-law passed appointing a different person assessor. Both appointees made assessments, and in consequence much confusion arose. The Court, under these circumstances, granted a *quo warranto* to determine the validity of the last appointment (*a*).

(c) **"Shall not appoint as assessor or collector a member of the council."** Taken from 44 V. c. 25, s. 12 (1881). See *supra*. "This does not prevent the appointment of one who has been, however recently, but has ceased to be a member of the council. In effect, it prevents one person from holding the two offices, as the law, if there had been no enactment affecting the question, would probably have prevented it, these being incompatible offices." (*b*)

Who may not be appointed.

(2) No person convicted of treason, felony or any infamous crime (unless he has obtained a free pardon or served the term of imprisonment or paid the penalty imposed under the sen-

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(*a*) *Re McPherson and Brennan*, 17 U. C. R. 99.

(*b*) *Per* MEREDITH, J., in *Macdonald* v. *City of Toronto*, 17 C. L. T. 405. See *Reg.* v. *White*, L. R. 2 Q. B. 157.

Secs. 295 (2), 296 (4).

Notes (d), (e).

tence), and no person under outlawry, shall be qualified to act as assessor or collector. 55 V. c. 48, s. 12 (2); c. 49, s. 27.

Added in 1892 by 55 V. c. 48, s. 12 (2).

Assessment districts

(3) The council may assign to such assessors and collectors the assessment district or districts within which they are to act, and may prescribe regulations for governing them in the performance of their duties. 55 V. c. 48, s. 13.

need not be identical with wards, etc.

(4) The same person may, in a city, town or township, be appointed assessor or collector for more than one ward or polling subdivision. 55 V. c. 42, s. 254 (2).

(d) The Act of 1858 (c) provided that the same person might be appointed an assessor or collector for more than one ward; the Act of 1866 (d) added the words "or electoral division," for which "polling subdivision" was substituted by R. S. O. (1877) c. 174, s. 250.

Return as to persons making default in payment of taxes.

(5) In municipalities which have passed by-laws requiring taxes to be paid on or before the 14th day of December, it shall be the duty of the collectors, on the 15th day of December in each year to return, upon oath, to the treasurer the names of all persons who have not paid their municipal taxes on or before the 14th day of the said month of December. 55 V. c. 42, s. 254 (3).

Added in 1873. 36 V. c. 48, s. 199.

(e) As to the object of this provision, see ss. 88, 137, 151-154 and 292. (e)

In cities and towns, assessment commissioner may be appointed instead of assessors, etc.

296. In cities and towns, the council, instead of appointing assessors under the preceding section, may appoint an assessment commissioner, who, in conjunction with the mayor for the time being, shall, from time to time, appoint such assessors and valuators as may be necessary, and such commissioner, assessors, and valuators shall constitute a board of assessors, and shall possess all the powers and perform the duties of assessors appointed under the last preceding section;

Duties may be prescribed by by-law.

(2) The council shall also have power, by by-law, to determine the number of collectors to be appointed, and to prescribe their duties;

Tenure of office of commissioner, assessors, etc.

(3) Any commissioner, assessor or collector appointed in any city need not be appointed annually, but shall hold office at the pleasure of the council;

Notices.

(4) All notices (in other municipalities required to be given to the clerk of the municipality in matters relative to assessment) shall in such city be given to the assessment commissioner. 55 V. c. 42, s. 255.

Taken from the Act of 1873, 36 V. c. 48, s. 200, extended to towns in 1889 by 52 V. c. 36, s. 9.

(c) 22 V. c. 9[illegible], s. 162.
(d) 29 & 30 V. c. 51, s. 164.
(e) Cf. s. 535 (1)

(a) This amendment was suggested to the present Editor by the late S. B. HARMAN who was afterwards the first Assessment Commissioner of the City of Toronto. It was hoped,—and experience has since fully justified the hope,—that the creation of a board of assessors, appointed as in this section provided and responsible to one official head, would tend to secure greater uniformity of practice and equality of assessment than was possible under the old system.

(b) "*The Registry Act*" (*f*) provides that,—

Registrar to deliver on request duplicates of registered maps and plans.

"Every person who is required to lodge with the registrar a plan or map of any survey or subdivision of land in any municipality shall at the same time deposit with the said registrar a duplicate of such plan or map, and the registrar shall endorse thereon a certificate showing the number of such plan or map and the date when the duplicate original thereof was filed with him, and the same shall upon request and without any fee being chargeable in respect thereof, be delivered by the registrar to the treasurer or assessment commissioner of the local municipality in which such land is situate. The registrar shall not register any such plan or map unless and until a duplicate thereof is deposited in accordance with the provisions hereof."

Section 125 of the same Act provides that,—

And list of registered conveyances.

"The registrar shall, upon request, furnish to the clerk or assessment commissioner of a city, a list of all absolute conveyances whereby property has been transferred, which have been registered in his office within the next preceding month, and in such list shall include the names of the grantor, the grantee, the consideration shown in such transfer, and a short description of the land conveyed; provided that such list shall not include leases for less than twenty-one years, mortgages, discharges of mortgage, or other like instruments, and that the registrar shall be entitled to have and receive therefor a fee of five cents for every instrument included in the said list."

Collectors for provisional council.

Payments.

297. The collectors of the several townships in a junior county of a union of counties shall, *ex officio*, be collectors in such townships for the provisional council; and the collectors shall pay over to the provisional treasurer the money which they collect under any by-law of the provisional council. 55 V. c. 42, s. 256.

Taken from the Act of 1858, (22 V. c. 99), s. 165.

(a) See s. 45 and the notes thereto.

Moneys, how to be disposed of.

298. The money so collected shall be deemed the money of the union, so far as may be necessary to make the collectors and their sureties responsible therefor to the union; and in case the corporation of the union receives the same, such corporation shall immediately pay the amount to the provisional treasurer, retaining the expenses of collection. 55 V. c. 42, s. 257.

Taken from the Act of 1858, (22 V. c. 99), s. 166.

(a) The powers of a provisional council are not in any way intended to interfere with the powers of the council of the union and any money raised by the provisional council in the junior county is independent of any money raised therein by the council of the union. (*g*)

(*f*) R. S. O. c. 136, s. 112.

(*g*) See s. 45.

DIVISION V.—AUDITORS AND AUDIT, (SECS. 299-309).

Synopsis.—Except the city of Toronto—as to which special provision is made by s. 300,—every council shall annually (either) appoint two auditors at its first meeting after the January elections (s. 299), or, (if so provided by by-law) shall appoint an auditor or auditors during the preceding November or December, (s. 301). Provision may also be made for a daily audit (s. 309), and in cities (s. 305) for a pre-audit of municipal accounts. S. 299 (1) prohibits the appointment as auditor of certain persons therein named and s. 299 (2) and s. 303 provide for filling vacancies in the office. The duties of auditors are prescribed by ss. 302, 304 (1-4) and 306, those of municipal clerks in reference to the accounts thus audited, by ss. 304 (8) and 306; those of the councils of towns, townships and villages by s. 304 (6), (7), and those of the councils of all municipalities by s. 307.

Auditors.

299.—(1) Subject to the provisions of the next two sections as to cities, every council shall at the first meeting thereof in every year after being duly organized, appoint two auditors: but no one who, at such time, or during the preceding year, is or was a member, or is or was clerk or treasurer of the council, or who has, or during the preceding year had, directly or indirectly, alone or in conjunction with any other person, a share or interest in any contract or employment with or on behalf of the corporation, except as auditor, shall be appointed an auditor. 55 V. c. 42, s. 258; 61 V. c. 23, s. 8.

Disqualification for office of.

Taken from the Act of 1858, (22 V. c. 99), s. 167. See 61 V. c. 23, s. 8.

(a) There is scarcely any particular in which the administration of municipal affairs in this Province is more lax than in respect to the audit of municipal accounts. Councils appear to be unwilling to pay the necessary expenses of a thorough annual investigation, and so many cases of defalcation have occurred that the Legislature has been obliged to take further action. (a) Yet the provisions of this section and of s. 291, if strictly adhered to, would make such an audit comparatively easy.

(b) "**At the first meeting in every year after being duly organized.**" See ss. 259, 261, and see the alternative provision contained in s. 301 (1).

(c) "**No one who . . is or was a member . . or is or was a clerk or treasurer,**" etc. This provision is intended to secure an independent audit.

If auditor appointed will not or cannot act.

(2) In the event of an auditor so appointed to audit the accounts of a county refusing, or being unable to act, the head of the council shall nominate another person to act in his stead.

Added in 1887 by 50 V. c. 29, s. 10.

Head of council may not appoint an employee.

(3) The person so to be appointed by the head of the council shall not be a person in his employment. 55 V. c. 42, s. 258.

Added in 1890 by 53 V. c. [illegible] s. 6. See note (c).

Appointment of auditors for Toronto.

300.—(1) The council of the corporation of the city of Toronto shall appoint two auditors, who shall hold office during pleasure.

Treasurer to prepare abstract.

(2) The treasurer shall prepare in duplicate, not later than the first day of April in each year, an abstract of the receipts and expenditure of the city for the year ending on the 31st of December preceding, and of the assets and liabilities thereof

(a) See R. S. O. cc. 228, 229.

Note (a).

at that date, and shall submit the same to the auditors for examination. The auditors shall audit such abstract with the treasurer's books, and shall make a report on all accounts audited by them, and a special report as to any expenditure made contrary to law; and on or before the first day of May they shall transmit one copy of the said abstract with their report thereon to the Secretary of the Bureau of Industries, Toronto, and file the other in the office of the clerk of the council; and thereafter any inhabitant or ratepayer of the municipality may inspect the same at all reasonable hours, and may, by himself or his agent, at his own expense, take a copy thereof or extracts therefrom. 55 V. c. 42, s. 259.

Report of auditors thereon.

Auditors' report may be inspected.

Taken from 52 V. c. 36, s. 10 (1889). *Cf.* 35 V. c. 77, s. 1; 43 V. c. 24, s. 22.

(a) **"Inhabitant or ratepayer."** The right to inspect the auditors' report is extended to "any inhabitant *or* ratepayer." The difference between an inhabitant and a ratepayer is, that "inhabitant" means a resident, whether a ratepayer or not, and that a "ratepayer" is a person who pays taxes, whether a resident or not. (*b*) Mere colourable residence is insufficient to constitute a person an inhabitant. (*c*)

"Inhabitant," "Ratepayer," meaning of.

301.—(1) The council of any municipality may pass a by-law declaring that it is expedient to appoint an auditor or auditors for the municipality in the month of November or in the month of December in each year; and thereafter while such by-law remains in force the council shall appoint an auditor or auditors in the month of November or in the month of December according to the tenor of the by-law, instead of at its first meeting after being duly organized. 61 V. c. 23, s. 9.

Time for appointment of auditors.

(2) Notwithstanding this section, or any such by-law, the provisions of section 299 of this Act, as to the appointment of auditors, shall apply to the audit of the accounts of the year in which such by-law takes effect. 55 V. c. 42, s. 260 (2).

Application of existing laws as to appointment of auditors.

Subs. 1 is taken from 61 V. c. 23, s. 9 (1898), subsec. 2 from 47 V. c. 32, s. 7 (5) (1884).

302. The auditors appointed under the next preceding two sections shall, every month, commencing at the end of the first month in the year following the said month of December, and so on to the end of such year, examine and report upon all accounts affecting the corporation, or relating to any matter under its control, or within its jurisdiction. 55 V. c. 42, s. 261.

Duty of auditors.

Taken from 35 V. c. 77, s. 2 (1872) which applied only to the City of Toronto. Extended by 47 V. c. 32, s. 7 (4) to the case of auditors appointed by any city.

(*b*) See *Rex* v. *North Curry*, 4 B. & C. 961.

(*c*) *Rex* v. *Savyat*, 5 T. R. 436; *Rex* v. *Duke of Richmond*, 6 T. R. 560; *Bruce* v. *Bruce*, 2 B. & P. 229, *note*; *Rex* v. *Mitchell*, 10 East 511; *Whitborn* v. *Thomas*, 7 M. & G. 1.

Secs. 302-304 (3).

Notes (a); (a), (a).

(a) "All accounts affecting the corporation." These words are wide enough to include the accounts of moneys raised by the council for police purposes under s. 492, for public libraries under R.S.O. c. 292, s. 17, for public parks under R.S.O. c. 233, s. 17, and for school purposes under "*The Public Schools Act*," R.S.O. c. 292, ss. 66, 67, and "*The High Schools Act*," R.S.O. c. 293, ss. 31-36. As to the audit of public school accounts in urban municipalities see R.S.O. c. 292, s. 62 (11), printed in full in note (c) to s. 587, *post*.

Filling vacancies.

303. The council of a city, in the event of a vacancy in the office of auditor happening by death, resignation or otherwise, may, by by-law, fill such vacancy, and the person so appointed shall hold office for the remainder of the year for which the original appointment was made. 55 V. c. 42, s. 262.

Taken from 43 V. c. 24, s. 22, which applied only to the City of Toronto. Extended by 47 V. c. 32, s. 7 (2) to all auditors appointed under that section. (See now s. 301).

Duties of auditors.

304.—(1) The auditors shall examine and report upon all accounts affecting the corporation, or relating to any matter under its control or within its jurisdiction for the year ending on the 31st day of December preceding their appointment. 55 V. c. 42, s. 263 (1).

Taken from the Act of 1858, (22 V. c. 99,) s. 168. *Cf.* 12 V. c. 81, s. 144; 14 & 15 V. c. 109, Sched. A (19).

(a) "All accounts affecting the corporation," etc. See note (a) to s. 302.

To prepare abstract and detailed statement of receipts and expenditure, etc.

(2) The auditors shall prepare in duplicate an abstract of the receipts, expenditure, assets and liabilities of the corporation, and also in duplicate a detailed statement of the same in such form as the council directs. They shall make a report on all accounts audited by them, and a special report of any expenditure made contrary to law. The auditors shall, under a penalty of $20 in case of default, transmit by mail in a registered package one copy of the abstract and also one copy of the detailed statement in such form as these have been submitted to the council to the Secretary of the Bureau of Industries, Toronto, and shall file the other abstract, together with the other detailed statement and reports, in the office of the clerk of the council, within one month after their appointment; and thereafter any inhabitant or ratepayer of the municipality may inspect the same at all reasonable hours, and may, by himself or his agent, at his own expense take a copy thereof or extracts therefrom. 55 V. c. 42, s. 263 (2); 60 V. c. 45, s. 38.

Taken originally from the Act of 1858 (22 V. c. 99, s. 169; amended by the Act of 1866, 29 & 30 V. c. 51, s. 171, by 50 V. c. 28, s. 11, and by 60 V. c. 45, s. 38.

(a) "Inhabitant or ratepayer." See note (a) to s. 300.

Report of treasurer's sureties.

(3) They shall also make a report upon the condition and value of the securities given by the treasurer for the due performance of the duties of his office; and such report shall show what cash balance, if any, was due from the treasurer to the municipality from the date of the audit, and where such balance is deposited, and what security exists that the same will be available when required for the purposes of the municipal-

ity; but this shall not relieve the council from the performance of any duty imposed thereon by section 288. 55 V. c. 42, s. 263 (2*a*); c. 43, s. 11.

Added in 1892 by 55 V. c. 43, s. 11.

Inspection of books of bank or company.

(4) The auditors may make a written requisition upon the treasurer for an order or request to or upon any bank or company with whom the public moneys are or have been deposited, or with whom such treasurer has kept an account, authorizing and requesting such bank or company to exhibit the account and details thereof to such auditors; and such treasurer shall within twenty-four hours after the delivery to him of such requisition comply therewith upon pain of forfeiture of office. 55 V. c. 42, s. 263 (2*b*); c. 43, s. 12, *part*.

Added in 1892 by 55 V. c. 43, s. 12 (2*a*).

Money payable by Province to be retained if auditors' return not made.

(5) The Treasurer of the Province shall retain in his hands any moneys payable to any municipality, if it is certified to him by the Secretary of the Bureau of Industries that the auditor or auditors of the municipality have not made the returns hereby required. 62 V. c. 45, s. 39.

Publication of statements of assets and liabilities,

(6) The council of every town, township and village shall hold a meeting on the 15th day of December in each year, or if that day is a Sunday, then on the Monday following, and shall immediately thereafter publish a detailed statement of receipts and expenditure for the portion of the year ending on the day of such meeting, together with a statement of assets and liabilities and uncollected taxes. A similar statement in detail respecting the last 15 days of the preceding year shall be attached thereto. The said statement shall be signed by the mayor or reeve and by the treasurer, and shall be published forthwith in one or more newspapers (if any) of the municipality and also in such other newspapers circulated in the municipality, as the council may direct. 55 V. c. 42, s. 263 (3): c. 43, s. 13.

or posting up the same.

(7) Instead of publishing the said statement in any newspaper, the council may cause the same to be posted up, not later than the 24th day of December in the offices of the clerk and of the treasurer, as well as at all the post offices in the municipality, and at not less than 12 other conspicuous places therein. 55 V. c. 42, s. 263 (3*a*).

Delivery of copies to electors.

(8) The clerk shall procure not less than one hundred copies of the said statement and, shall deliver or transmit by post one of such copies to the electors who first request him to do so not later than the 24th day of December in each year, and shall also see that copies of the said statement are produced at the nomination. 55 V. c. 42, s. 263 (4).

Taken from 51 V. c. 28, s. 13 (1888), as amended by 55 V. c. 43, s. 13.

Secs. 304 (9) 307.
Notes (a); (a)

Nor to apply to certain municipalities

(9) The provisions of the preceding three sub-sections shall not apply to the township municipalities situated in the electoral districts of East Algoma, West Algoma, North Renfrew, Muskoka, or Parry Sound, or the Provisional County of Haliburton. 55 V. c. 42, s. 263 (5).

Taken from 51 V. c. 28, s. 14.

Making untrue entries in financial statement.

(10) If any member or officer of a municipal corporation, or any other person, wilfully or knowingly makes or causes or procures to be made, any untrue entry in the statement required by subsection 6 of this section, or wilfully or knowingly causes to be omitted from the said statement any entry or item which should be included therein, he shall be liable, on summary conviction thereof before two or more Justices of the Peace, to a penalty of not less than $5, nor more than $40, and costs of conviction. 60 V. c. 45, s. 40.

(a) "Wilfully or knowingly." As to the meaning of these words see note (a) to s. 194 and note (k) to s. 245.

Accounts may be audited before payment.

305. The council of any city may, by by-law, provide that the auditors shall audit all accounts before payment. 55 V. c. 42, s. 264.

Taken from 45 V. c. 24, s. 22, which applied only to the City of Toronto; extended by 47 V. c. 22, s. 7 (3) to all auditors appointed under that section (See now s. 301).

(a) No better means can be devised for preventing illegal expenditure than a prior audit of the accounts presented to the council.

Clerks to publish abstracts and statements.

306. The clerk shall publish the auditors' abstract and report (if any), and shall also publish the detailed statement in such form as the council directs; and in the case of a local municipality the clerk shall transmit to the clerk of the county council a copy of such abstract and statement, and the same shall be kept by the clerk of the county council, as of record, in his office. 55 V. c. 42, s. 265.

The first clause is taken from the Act of 1866, (29 & 30 V. c. 51) s. 173. *Cf.* 22 V. c. 99, s. 171. The last clause, providing for the transmission by the clerk of each local municipality to the clerk of the county council of a copy of the auditor's abstract and statement, was added in 1877 by 40 V. c. 7, Sched. A (174).

Auditors to mark vouchers, etc.

306*a*. The auditor or auditors of every municipality after the examination of every account, voucher, receipt and paid debenture submitted to them for audit, shall stamp in indelible letters thereon the word "audited," and shall also initial the same; and the municipality shall furnish a suitable stamp and pad for that purpose.

Taken from 61 V. c. 23, s. 13.

The council to audit finally, etc.

307. The council shall, upon the report of the auditors, finally audit and allow the accounts of the treasurer and collectors, and all accounts chargeable against the corporation; and in case of charges not regulated by law, the council shall allow what is reasonable. 55 V. c. 42, s. 266.

Taken from the Act of 1866, (22 V. c. 99,) s. 170.

308. Unless otherwise provided, every county council shall have the regulation and auditing of all moneys to be paid out of the funds in the hands of the county treasurer. 55 V. c. 42, s. 267.

Secs. 308-310(2). Notes (a), (b).

Audit of moneys to be paid by county treasurer.

Taken from the Act of 1858, (22 V. c. 99), s. 172.

(a) "**Moneys to be paid out of the funds in the hands of the county treasurer.**" See, as to the accounts for the expenses of criminal justice note **A** under s. 530; R.S.O. cc. 101, 102, 103, 105; as to the appointment of the County Board of Audit, s. 530, and R. S. O. c. 102, s. 106; and as to the rights of the parties after such audit, *Re Sheriff of Lincoln*, (*a*); *Reynolds* v. *County of Ontario*, (*b*)

(b) "**Unless otherwise provided.**" See R. S. O. c. 103, ss. 1, 2.

309. Notwithstanding anything in this Act contained, the council of any municipality may appoint an auditor, who shall, daily or otherwise as directed by the council, examine and report and audit the accounts of the corporation, in conformity with any regulations or by-laws of the council, and who shall perform such other duties as the council may by by-law direct. 61 V. c. 23, s. 10.

Audit of accounts in cities and towns.

In other municipalities.

(a) It is apprehended that the disqualification mentioned in s. 299 (1) would apply to an auditor appointed under this section.

Division VI.—Valuators (Sec. 310).

310.—(1) The council of every county may appoint two or more valuators for the purpose of valuing the real property within the county, and it shall be their duty to ascertain, in every fifth year at furthest, the value of the same in the manner directed by the county council; but the valuators shall not exceed the powers possessed by assessors. The valuation so made shall be made by the county council the basis of equalization of the real property for a period not exceeding five years; and the equalization of personal property shall be as heretofore.

County council may appoint valuators, their duties, etc.

Equalization of real property.

(2) The county council may, at or before the expiration of the said period, extend the time for a term not exceeding five years further: and thereupon the valuation shall continue to be made the basis of equalization of the real property by the county council for such extended period. 55 V. c. 42, s. 269; c. 43, s. 14.

Terms for which valuation to be in force.

Subsec. 1 is taken from the Act of 1866, (29 & 30 V. c. 51), s. 175, the last clause being added in 1873 by 36 V. c. 48, s. 210. Subs. 2 is taken from "*The Municipal Amendment Act of 1892*," 55 V. c. 43, s. 14.

(*a*) 34 U. C. R. 1.

(*b*) 29 C. P. 488; 30 C. P. 14.

Secs. 310 (2), 311 (1).

Notes (a), (b); (a).

(a) Before the Act of 1866 (*a*), a county council arrived at the value of lands situate in the several local municipalities of the county merely by a process of equalization on an assumed or arbitrary valuation, with the object of producing a just relation between the different local municipalities without reducing the aggregate valuation of the whole county. This was found unsatisfactory, and for remedy section 175 of the Act of 1866 was enacted. The appointment of county valuators is the main feature of the remedy, and is left discretionary with the county councils. The purpose of the appointment is "the valuing the real property" in the county. The duty of the valuators, when appointed, is to ascertain the value "in the manner directed by the county council," but with this limitation: that they (the valuators) are not to "exceed the powers possessed by assessors." The valuing may be as often or as seldom as the county council see fit, provided it be done at every fifth year at furthest. It is not supposed that a valuation will be necessary every year. But in some localities real property fluctuates in value more than in others, and so, within the limit mentioned, a discretion is vested in the county council.

(b) **"The equalization of personal property shall be as heretofore."** The reference in the Act of 1873, from which these words are taken, was to s. 71 of "*The Assessment Act of 1869*" (*b*), now consolidated as s. 87 of R.S.O. c. 224.

DIVISION VII.—DUTIES OF OFFICERS RESPECTING OATHS AND DECLARATIONS (SECS. 311-319).

Declaration to be made by certain persons.

Synopsis.—The form of the "declaration of qualification" referred to in ss. 76 (*b*), 187 and 261 is given in s. 312, and forms of the "declaration of office" to be taken by every member and officer of a municipal council by ss. 312-314. The mode of administering and of prescribing these declarations is pointed out by ss. 315-317, and the time within which they must be taken by s. 319. Sec. 318 gives a general authority for the administration of an oath in relation to accounts and other matters submitted to a municipal council.

Form of.

311.—(1) Every person elected or appointed under this Act to any office requiring a qualification of property in the incumbent shall, before he takes the declaration of office, or enters upon his duties, make and subscribe a solemn declaration to the effect following:

I, *A. B.*, do solemnly declare that I am a natural born (*or* naturalized) subject of Her Majesty; and have and had to my own use and benefit, in my own right (*or* have and had in right of my wife, *as the case may be*), as owner (*or* tenant, *as the case may be*), at the time of my election (*or* appointment, *as the case may require*), to the office of
hereinafter referred to, such an estate as does qualify me to act in the office of (*naming the office*) for (*naming the place for which such person has been elected or appointed*); and that such estate is (*the nature of the estate to be specified, as* an equitable estate of leasehold *or otherwise, as the case may require, and if land, the same to be designated by its local description, rents or otherwise*) and that such estate at the time of my election (*or* appointment, *as the case may require*) was of the value of at least (*specifying the value*) over and above all charges, liens, and incumbrances affecting the same.

Taken from the Act of 1873, (36 V. c. 48), s. 241. *Cf.* 12 V. c. 81, s. 129; 14 & 15 V. c. 109, Sched. A (17); 22 V. c. 99, s. 175; 29 & 30 V. c. 51, s. 178.

(a) **"Elected or appointed."** Appointments to office requiring a property qualification may be made under s. 218.

(*a*) 29-30 V. c. 51.

(*b*) 32 V. c. 36.

(b) "**Any office requiring a qualification of property in the incumbent.**" The only municipal offices which require such qualification are those of mayor, alderman, reeve, councillors (*a*), and county councillors (*b*). Section 475 provides that

> "No warden, mayor, reeve or alderman, after taking the oaths or making the declarations as such, shall be required to have any property qualification, or to take any further oath to enable him to act as a Justice of the Peace."

(c) "**The declaration of office.**" See s. 312.

(d) "**Enters upon his duties.**" This would include the election of a warden by a county council under ss. 260, 261 (*c*).

(e) "**Make and subscribe.**" See ss, 315, 317.

(f) "**Have and had to my own use and benefit . . . such an estate as does qualify me.**" **etc.** Notwithstanding the addition to this section in 1873, of the words "over and above all charges, liens and incumbrances affecting the same," Mr. DALTON, in 1875, held the amount at which the property of a municipal councillor was rated on the assessment roll to be conclusive evidence of his qualification, and that incumbrances were not to be deducted therefrom (*a*). But this is no longer the law, and by 43 V. c. 24, s. 3 (1880) the wording of the section relating to qualification (now s. 76) was made to agree with the language of the declaration in this section. In estimating the property qualification, the amount of any charges, liens, and incumbrances should be deducted from the assessed value of the property, and not from its actual value (*b*), and when the amount of the incumbrances appearing on the books of the registry office was shown by affidavit to have been so reduced as to leave, according to the assessed value of the property, a margin of $963, the qualification was held to be sufficient (*c*).

It was attempted to unseat a member of the council on the ground that he had not, in his declaration of office, specified the nature of the estate; but it was held that such an objection could not be made a ground for setting aside an election under the summary provisions of the Statute (*d*). Where an alderman elect did not state in his declaration the nature of his estate, or the value of the land, but declared that his property was sufficient to qualify him "according to the true intent and meaning of the municipal laws of Upper Canada" the declaration was held insufficient (*e*). Where the declaration of qualification had not been made, leave was given to the defendant to make the same within ten days, otherwise leave was granted to file an information on the ground that the defendant illegally exercised the franchises of the office (*f*). An alderman's right to the office may be questioned on the ground of an insufficient declaration of qualification and for the want of qualification by a *quo warranto* at the instance of a ratepayer not a voter of or resident in the ward (*g*). A refusal to take the oath of office has been held equivalent to a refusal of the office (*h*). Upon the declaration being made, the office becomes full, *de facto* (*i*).

(*a*) s. 76. (*b*) s. 77.

(*c*) See those sections and *Re Hawk and Ballard*, 3 C.P. 241.

(*a*) *Reg. ex rel. Bole* v. *McLean*, 6 P. R. 249.

(*b*) *Reg. ex rel. Kelly* v. *Ion*, 8 P. R. 432.

(*c*) *Reg. ex rel. Brine* v. *Booth*, 9 P. R. 452.

(*d*) *Reg. ex rel. Grayson* v. *Bell*, 1 C. L. J. N. S. 130; *Reg. ex rel. Halsted* v. *Ferris*, 6 C. L. J. N. S. 266.

(*e*) *Reg. ex rel. Clancy* v. *St. Jean*, 46 U. C. R. 77.

(*f*) *Reg. ex rel. Clancy* v. *Conway*, 46 U. C. R. 85.

(*g*) *Reg. ex rel. Clancy* v. *St. Jean*, 46 U. C. R. 77.

(*h*) *Rex* v. *Larwood*, Carthew, 306; *Exeter* v. *Starre*, 2 Show. 158; *s. c.* in error, 3 Lev. 116, and see s. 112 of this Act.

(*i*) *Rex* v. *Sawyer*, 10 B. & C. 486; *Rex* v. *Winchester*, 7 A. & E. 215.

Secs. 311 (2), 312 (2).

Note (g).

(2) Where any person has been elected as reeve, *deputy reeve*, or councillor of any township council he may, instead of the foregoing declaration, make and subscribe a solemn declaration to the effect following :

I, *A. B.*, do solemnly declare that I am a natural born (*or* naturalized) subject of Her Majesty : and have and had to my own use and benefit, in my own right (*or* have and had in right of my wife, *as the case may be*) as owner at the time of my election to the office of referred to, such an estate as does qualify me to act in the office of (*naming the office*) for (*naming the place for which such person has been elected*), and that such estate is (*the nature of the estate to be specified and the land to be designated by its local description*) ; and that such estate at the time of my election was in my actual occupation, and was actually rated in the then last revised assessment roll of this township (*naming it*) at an amount not less than $2,000.

55 V. c. 42, s. 270 ; 59 V. c. 52, s. 14 *part.*

(g) This subsection first appeared as s. 272 (2) in the Act of 1883. (*j*) By an addition there first made to the section, relating to the qualification of members of municipal councils (s. 76 of the present Act), it was provided that actual occupation *in any township* of a freehold rated, etc. for *not less than $3,000* should be sufficient property qualification for a reeve, deputy-reeve, or councillor, and that in such case the existence of incumbrances on the property should not affect the qualification. (*k*) In 1887 this clause was made applicable to all municipalities, and the amount of the rating necessary was reduced to $2,000 ; (*l*) but apparently by oversight, the section respecting the declaration of qualification, though amended as to the amount required, was not extended, as it should have been, to all municipalities, and still applies only to townships. (*m*)

Declaration of office to be made by certain officers.

312. Every member of a municipal council, every mayor, clerk, treasurer, assessor, collector, engineer, clerk of works, street overseer or commissioner appointed by a council, shall also, before entering on the duties of his office, make and subscribe a solemn declaration to the effect following :—

Form of declaration of office.

I, *A. B.*, do solemnly promise and declare that I will truly, faithfully and impartially, to the best of my knowledge and ability, execute the office of (*inserting the name of the office*), *or in the case of a person who has been appointed to two or more offices which he may lawfully hold at the same time*, that I will truly, faithfully and impartially, to the best of my knowledge and ability, execute the offices of assessor and collector (*or as the case may be*) to which I have been elected (*or* appointed) in this township (*or as the case may be*) and that I have not received, and will not receive, any payment or reward, or promise of such, for the exercise of any partiality or malversation or other undue execution of the said office (*or* offices) and that I have not by myself or partner, either directly or indirectly, any interest in any contract with or on behalf of the said corporation (*where declaration is made by the clerk, treasurer, collector, engineer, clerk of works or street overseer add the words following*) save and except that arising out of my office as clerk, (*or* my office of assessor and collector *or as the case may be.*)

55 V. c. 42, s. 271 ; c. 4[illegible] 15 ; 60 V. c. 45, s. 41 (1).

Persons appointed to more than one office need make only one declaration.

(2) Any person who has been elected or appointed to two or more municipal offices which he may lawfully hold at the same time may make one declaration of office as to all the offices

(*j*) 46 V. c. 18.

(*k*) 46 V. c. 18, s. 73, *last part.*

(*l*) 50 V. c. 29, s. 2.

(*m*) R.S.O. (1887) c. 184, s. 270 (2) ; 55 V. c. 42, s. 270 (2). *Cf.* the last paragraph of s. 76 (1) of the present Act.

which he has been elected or appointed, but the same shall be made and subscribed before he enters upon the duties of any of the said offices. 60 V. c. 45, s. 41 (2).

Secs. 312 (2)-315. Note (a).

(a) A "declaration of office," which forms the basis of those contained in this and the next section, appears first in the Act of 1849 (*a*) but has since been repeatedly amended (*o*). Subs. 2 was added in 1897 by 60 V. c. 45, s. 41 (2). As to the period within which the declarations of office and of qualification must be made in the case of certain of the officers named in the section, see s. 319. If the declarations are not made within the prescribed period, the officer will be subject to the penalties imposed by that section; but failure to make the declarations does not *ipso facto* render void his official acts done in the meantime (*p*).

313. Every returning officer, deputy-returning officer, poll clerk, constable and other officer appointed by a council shall, before entering upon the duties of the office, make and subscribe a solemn declaration to the effect following:—

Declaration of returning officers and others.

I, *A. B.*, do solemnly promise and declare that I will truly, faithfully and impartially, to the best of my knowledge and ability, execute the office of (*inserting the name of the office*), to which I have been elected (*or* appointed) in this township (*or as the case may be*), and that I have not received, and will not receive any payment or reward, or promise of such, for the exercise of any partiality or malversation or other undue execution of the said office.

See reference under s. 312.

55 V. c. 42, s. 271*a*.

314. The solemn declaration to be made by every auditor shall be as follows:

Auditor's declaration

Form of.

I, *A. B.*, having been appointed to the office of auditor for the municipal corporation of , do hereby promise and declare, that I will faithfully perform the duties of such office according to the best of my judgment and ability; and I do solemnly declare, that I had not directly or indirectly any share or interest whatever in any contract or employment (except that of auditor, *if reappointed*) with, by, or on behalf of such municipal corporation, during the year preceding my appointment, and that I have not any such contract or employment except that of auditor, for the present year.

Taken from the Act of 1858, (22 V. c. 99, s. 178.

55 V. c. 42, s. 272.

315. The head and other members of the council, and the subordinate officers of every municipality, shall make the declarations of office and qualification before some Court, Judge, Police Magistrate, or other Justice of the Peace having jurisdiction in the municipality for which such head, members or officers have been elected or appointed, or before the clerk of

Before whom declaration to be made.

Certificate of declaration.

(*a*) 12 V. c. 81, s. 127.

(*o*) See 13 & 14 V. c. 18, s. 1; c. 64, Sched. A. (22); 22 V. c. 99, ss. 176, 177; 29 & 30 V. c. 51, ss. 179, 180; 36 V. c. 48, s. 212; R. S. O. (1877), c. 174, s. 266; 46 V. c. 18, s. 273; R. S. O. (1887), c. 184, s. 271; 51 V. c. 28, s. 15; 55 V. c. 42, ss. 271, 271 (a); c. 43, s. 15; 60 V. c. 45, s. 41 (1).

(*p*) *Lewis* v. *Brady*, 17 O. R. 377, 390, following *Margate Pier Co.* v. *Hannam*, 3 B. & Ald. 266; *Rex.* v. *Justices of Hertfordshire*, 1 Chitty 700, and see Dillon, s. 215; *Town of Peterborough* v. *Hatton*, 30 C. P. 455, at p. 461.

Secs. 315-317.

Notes (a), (b); (a), (b).

the municipality; and the Court, Judge, or other person before whom such declaration is made, shall give the necessary certificate of the same having been duly made and subscribed. 55 V. c. 42, s. 273.

Taken from the Act of 1858 (22 V. c. 99) s. 179.

(a) The Municipal Act of 1849, (a) provided :—

"That the head of every municipal corporation erected, or to be erected under the authority of this Act, shall be sworn or affirmed into office by the highest Court of Law or Equity, whether of general or only of local jurisdiction, which shall at the time be sitting within the limits of such corporation, or by the Chief Justice or other Justice or Judge of such Court at his chambers within the limits of such corporation at the time, then before the Recorder or Police Magistrate of such city or town, or any Justice of the Peace of the county or town in or over which such corporation shall have jurisdiction, or in the case of townships and villages by any Justice of the Peace for the county in which such township or village shall be situate, or in case there be no such Court, Justice, Judge, or Justice of the Peace within such limits at the time, then before the clerk of such municipal corporation, in the presence of a meeting of such corporation, which several Courts, Justices, Judges, Recorders, and Police Magistrates, and Justices of the Peace, and clerks are hereby severally authorized and required to administer such oath or affirmation, and give the necessary certificate of the same having been duly taken and subscribed. (b)

(b) "**Duly made and subscribed.**" Both acts are necessary to complete the declaration; (c) and both should be stated in the certificate. (d)

Certain officers may administer certain oaths etc., within municipality.

316. The head of any council, any alderman, reeve or deputy-reeve, any Justice of the Peace or the clerk of any municipality may, within the municipality, administer any oath, affirmation or declaration under this Act, relating to the business of the place in which he holds office, except where otherwise specially provided, and except where he is the party required to make the oath, affirmation or declaration. 55 V. c. 42, s. 274.

Taken from the Act of 1849, (12 V. c. 81), s. 125, *part*.

(a) See also s. 634 as to the right of the head of the council to administer an oath in certain cases.

(b) "**Oath, affirmation or declaration.**" As to the cases in which an affirmation or declaration may be made instead of an oath, see "*The Evidence Act*" (e). As to the provisions of "*The Criminal Code of Canada, 1892*," respecting perjury, see note (a) to 112, *ante*.

Oath, affirmation or declaration to be subscribed and deposited with clerk of municipality.

317. The deponent, affirmant or declarant shall subscribe every such oath, affirmation or declaration; and the person administering it shall duly certify and preserve the same, and shall within eight days deposit the same in the office of the clerk of the municipality to the affairs of which it relates. 55 V. c. 42, s. 275.

Taken from the Act of 1858, (22 V. c. 99), s. 182. *Cf.* 12 V. c. 81, s. 125.

(a) 12 V. c. 81, s. 128.
(b) See also the Act of 1853, 16 V. c. 181, s. 24.
(c) *Reg. ex rel. McManus* v. *Ferguson*, 2 C.L.J.N.S. 19.
(d) *Ib.* p. 23.
(e) R. S. O. c. 73, ss. 12-15.

Secs. 318, 319.

Notes (a), (b), (c), (d).

Head of council may administer certain oaths, etc.

318. The head of every council, or in his absence the chairman thereof, may administer an oath or affirmation to any person concerning any account or other matter submitted to the council. 55 V. c. 42, s. 276.

Taken from the Act of 1849, (12 V. c. 81), s. 113.

Penalties for refusing to accept office or administer declaration, etc.

319. Every qualified person duly elected or appointed to be a mayor, alderman, reeve, or deputy-reeve, county councillor, councillor, police trustee, assessor or collector of or in any municipality, who refuses such office, or does not, in the case of a county councillor within thirty days, and in any of the other cases aforesaid within twenty days, after knowing of his election or appointment, make the declarations of office and qualification where a property qualification is required, and every person authorized to administer such declaration, who, upon reasonable demand, refuses to administer the same, shall, on summary conviction thereof before two or more Justices of the Peace, forfeit not more than $80 nor less than $8, at the discretion of the Justices, to the use of the municipality, together with the costs of prosecution. 55 V. c. 42, s. 277; 60 V. c. 15, *Sched.* C (59); 60 V. c. 45, s. 1.

Taken from the Act of 1858, (22 V. c. 99), s. 183. *Cf.* 12 V. c. 81, s. 130. The words "county councillors" in lines 2 and 3 were added in 1897, 60 V. c. 15, Sched. C (59), and the period of thirty days in their case fixed by 60 V. c. 45, s. 1.

(a) **"Every qualified person."** The section does not apply to persons disqualified for municipal office under ss. 80, 162, 196, 249, 251 or 418 of this Act, or under s. 71 of "*The Liquor License Act*" (*b*), nor, would it seem, to persons exempted by s. 84.

(b) **"Who refuses such office or does not . . . make the declarations of office and qualification."** The acceptance of the office, when the person is qualified, is obligatory. It is an offence at common law for a person to refuse to serve in an office when duly elected (*f*). A person so refusing may be indicted (*g*) or, in case of urgency, may be proceeded against by criminal information (*h*) or mandamus (*i*) in the discretion of the Court (*j*). But, in any event, it must appear that the person elected had notice of the election (*k*).

As to what is a "refusal," and the consequence thereof as to creating a vacancy in the office, see s. 212 and *Re Township of Asphodel and Sargant*, there cited (*l*).

(c) **"After knowing of his election or appointment."** Casual information is not sufficient. Before an elected officer can be visited with penalties, imposed for neglecting to accept his office, he must have regular notice of his election, either by being present when it is announced, or being apprised of the fact by some official authority (*m*).

(d) **"Shall forfeit not more than $80 nor less than $8" etc.** This section does not declare that the payment of the fine shall be in lieu of service. Mere payment of the fine is no excuse for non-acceptance of the office (*n*).

(*b*) See note (i) to s. 80.

(*f*) *Vintner's Co.* v. *Passey*, 1 Burr. 239; *Reg.* v. *May*, 20 L. J. Q. B. 268.

(*g*) *Rex*, v. *Burder*, 4 T. R. 778; *Vanacker's Case*, 1 Ld. Raym. 496.

(*h*) *Rex* v. *Woodrow*, 2 T. R. 731; *Rex* v. *Leyland*, 3 M. & S. 186.

(*i*) *Rex* v. *Whitwell*, 5 T. R. 85; *Rex* v. *Bower*, 1 B. & C. 585.

(*j*) *Rex* v. *Grosvenor*, 2 Str. 1193; *Reg.* v. *Hungerford*, 11 Mod. 142.

(*k*) *Reg.* v. *Preece*, 5 Q. B. 94; *Reg.* v. *Cooks*, 3 E. & B. 249.

(*l*) 17 U. C. R. 593. See also *Reg. ex rel. Forsyth* v. *Delson*, 7 U. C. L. J. 71, and *per* LORD DENMAN, C. J. in *Rex* v. *Burrill*, 12 A & E. 460, 467.

(*m*) *Reg.* v. *Preece* 5 Q. B. 97; see also *London* v. *Vanacre*, 1 Salk. 142.

(*n*) See *Rex* v. *Bower*, 1 B. & C. 585, and *Reg. ex rel. Blasdell* v. *Rochester*, 7 U. C. L. J. 101.

DIVISION VIII.—SALARIES, TENURE OF OFFICE AND SECURITY, (SECS. 320-323.)

Synopsis.—S. 320 provides that the council shall provide for the remuneration of all municipal officers and shall fix the *quantum* of their remuneration, where this is not settled by Statute; but that no appointment or arrangement shall be made for securing the services of municipal officers by tender or at the lowest possible remuneration. Special provision is made as to the duties of the municipal clerk under R.S.O. c. 285 and as to the case of a salaried solicitor.

S. 321 provides that the tenure of office of all municipal officers shall be during the pleasure of the council, which may also impose upon them additional duties.

S. 322 specifies when gratuities may be granted out of municipal funds to officers who have become incapacitated, through old age, from efficiently performing their duties; and s. 323 authorizes municipal corporations to accept as security for the faithful discharge of duty by their officers the bonds of certain incorporated companies.

Salaries of officers.

320.—(1) In case the remuneration of any of the officers of the municipality has not been settled by Act of the Legislature, the council shall settle the same; and the council shall provide for the payment of all municipal officers, whether the remuneration is settled by Statute or by by-law of the council.

Remuneration of clerks for services performed under R. S. O. c. 285.

(*a*) It shall be the duty of the council to give to the clerk of the municipality for services and duties performed by him in carrying out the provisions of *The Ditches and Watercourses Act*, a fair and reasonable remuneration, to be fixed by by-law of the council.

Remuneration of clerks for copying documents, etc. R. S. O. c. 285.

(*b*) The council shall fix by by-law the sum to be paid to the clerk by any person for copies of awards or other documents, or for any other services rendered by the clerk, other than services which it is his duty to perform under the provisions of *The Ditches and Watercourses Act*.

Remuneration not to be settled by tender.

(2) No municipal council shall assume to make any appointment to office, or any arrangement for the discharge of the duties thereof, by tender, or to applicants at the lowest remuneration.

Subsec. 1 is taken from the Act of 1858, (22 V. c. 99,) s. 173; subs. 1 (*a*) and 1 (*b*) from "*The Municipal Amendment Act of 1892*," 55 V. c. 43, s. 16; subs. 2 from "*The Con. Mun. Act of 1873*," (36 V. c. 48,) s. 219.

(a) Officers of a municipal corporation are deemed to have accepted their office with a knowledge of, and with reference to the provisions of the Statutes relating to the services which they may be called upon to render, and the compensation provided therefor. Aside from some express provision in these Statutes or in some by-law, there is no implied *assumpsit* on the part of the corporation with respect to the services of its officers (*a*). Where duties are imposed by Statute on a public officer, his remuneration therefor has in some cases been settled by the Legislature (*b*). The fact that such statutory allowance has been made should be taken into account in fixing the salary of the officer (*c*); and in some of the cases above mentioned the Statute expressly provides that

(*a*) *Askin* v. *London District Council*, 1 U.C.R. 292; *Jones* v. *Carmarthen*, 8 M. & W. 605; *Thomas* v. *Swansea*, 2 Dowl. N.S. 470; 12 L.J.E. 73; *Reg.* v. *Kingston-on-Hull*, 2 E. & B. 182; *Reg.* v. *Cumberlege*, 36 L.T.N.S. 300; Dillon, s. 230; Fiedeman, s. 79.

(*b*) "*The Voters' Lists Act*," (R.S.O. c. 7,) s. 28; *The Act respecting the Registration of Births, Marriages and Deaths*, (R.S.O. c. 44,) s. 36; "*The Jurors Act*," (R.S.O. c. 61,) ss. 159, 162; "*The Ditches and Watercourses Act*," (R.S.O. c. 285,) s. 4 (2); and ss. 156, 284, and 480 of this Act; also subs. 1 (*a*) and 1 (*b*) of this section.

(*c*) *Re Pringle and McDonald*, 10 U.C.R. 254.

the salary given may include all such statutory fees, or that the fees shall be paid over and form part of the funds of the municipality (*d*). See also, as to the fees of salaried constables, s. 496, *infra*, and as to the clerk of the peace, s. 3 of R.S.O. c. 101 which provides that

> "It shall be lawful for a county council to agree from time to time with the Clerk of the Peace for the payment to him of a gross annual sum, in lieu of all fees chargeable by him to the county and which are not repayable to the county by the Province."

In *Town of Stratford* v. *Wilson*, (*e*) the plaintiffs appointed the defendant chief of police of the town at a named salary, but stipulated that he should act as county constable within the town only, and should account for and pay over to the plaintiffs all fees received by him from the county for services performed by him as county constable. ROSE, J., held that the agreement to account for such fees was invalid under 5 & 6 Edw. VI. c. 16 and 49 Geo. III. c. 126 which forbid the buying and selling of offices in any way concerned with the administration of justice; but the attention of the Court in that case was not called to the enactment—in the same year—of 47 V. c. 32, s. 24 (2), now s. 496 of this Act, which provides that :—

> "Where any salaried constable is appointed for any municipality, whether by the municipal council or by the Board of Commissioners of Police, the council may agree that such constable shall keep for his own use his fees of office; or may require that the said fees shall be paid to the municipal treasurer for the use of the municipality."

(3) Where a municipality employs a solicitor or counsel whose remuneration is wholly or partly by salary, annual or otherwise, the municipality shall notwithstanding, have the right to recover and collect lawful costs in all actions and proceedings, in the same manner as if the solicitor or counsel was not receiving a salary, where the costs are, by the terms of his employment, payable to the solicitor or counsel as part of his remuneration in addition to his salary. 55 V. c. 42, s. 278; 55 V. c. 43, s. 16.

When municipality employing solicitor at a salary may recover costs.

Taken from "*The Mun. Amendment Act, of 1881*," (44 V. c. 24,) s. 5.

(b) **"Where a municipality employs a solicitor or counsel."** By-laws fixing salaries are not in the nature of contracts with the officers of a municipal corporation. But where the services to be performed are professional or private, rather than public or official, an employment under a by-law for a fixed time, at a fixed sum for the period, has been held to be a contract, and not subject to be impaired by the corporation. (*f*) The appointment of a solicitor to a municipal corporation should be by by-law (*g*) or at all events should be authenticated by the seal of the corporation. (*h*)

(c) **"The municipality shall have the right to recover and collect lawful costs."** This provision was considered necessary because of the decisions in *Jarvis* v. *Great Western R. W. Co.* (*i*) and *Stevenson* v. *City of Kingston*, (*j*) which were founded upon the rule of law that, costs being in the nature of an indemnity, the right of a successful party to recover them depends upon his liability to pay costs to his solicitor. (*k*)

321. All officers appointed by the council shall hold office until removed by the council, and shall, in addition to the duties assigned to them by this Act, perform all other duties required of them by any other statute, or by the by-laws of the council. 55 V. c. 42, s. 279.

Tenure of office.

Duties.

Taken from the Act of 1858, (22 V. c. 99,) s. 174.

(*d*) See "*The Voters Lists Act*," (R.S.O. c. 7,) s. 28, and s. 480 of this Act. See also *Town of Peterborough* v. *Hatton*, 30 C.P. 455.

(*e*) 8 O. R. 104 (1884). (*f*) Dillon, s. 232. (*g*) s. 325.

(*h*) *Arnold* v. *Poole*, 4 M. & G. 860; *Curran* v. *Rural Municipality of North Norfolk*, 8 Man. Rep. 250. (*i*) 8 C. P. 280. (*j*) 31 C. P. 333.

(*k*) See also *Galloway* v. *City of London*, L. R. 4 Eq. 90.

Sec. 321.

Notes (a), (b).

(a) "**Officers appointed by the council.**" Section 325 declares that (a11) "the powers of the council"—which would include the power of appointing its officers—"shall be exercised by by-law when not otherwise authorized or provided for." See note (**d**) to that section. But notwithstanding the use of these very words in the Municipal Act of British Columbia it was held in *Tuck* v. *City of Victoria*, (*l*) that the election by vote of the council of a city engineer is sufficient to constitute a valid appointment to such an office, and that the person so elected may sue for damages if not admitted thereto, the corporation not being allowed to set up as a defence their own default in not providing him with some contract or other instrument under seal. The plaintiff in that case, his election having been reconsidered and cancelled by a vote of the council at its next meeting, recovered a month's salary, s. 93 of the B. C. Mun. Act, 1891, then in force, providing that "any officer can be dismissed by giving him 30 days notice." The Mun. Act of British Columbia (*m*) now provides that: "The council may appoint by resolution or elect by written ballot such officers as may be deemed necessary" and that appointments to offices in the gift of the council shall be held during its pleasure.

(b) "**Shall hold office until removed by the council.**" "The effect of this is that all such officers hold their offices during the pleasure of the council, and may be removed by the council at any time without any notice of such intended removal, and without any cause being shown for such removal, and without the council thereby incurring any liability to such officers for such removal" (*n*). The same rule applies to the tenure of office of a town-clerk appointed under the Imp. Stat. 45 & 46 V. c. 50, s. 17 (2) to hold office "during the pleasure of the council" (*o*): The charter of the City of Montreal (*p*), gives power to the city council to appoint and remove such officers as it may deem necessary to carry into execution the powers thereby vested in it, the French version of the Act stating that such powers may be exercised "*a sa discretion*," while the English version has the words "at its pleasure." *Held*, that notwithstanding the apparent difference in the two versions of the Statute, it must be interpreted as one and the same enactment, and the city council was thereby given full and unlimited power, in cases where the engagement had been made indefinitely as to duration, to remove officers summarily and without notice, upon payment only of the amount of salary accrued to such officer up to the date of his dismissal (*q*). "When a council appoints an officer like a clerk, he enters upon his duties with the fullest knowledge of his dependence upon the pleasure of either the present or of the future council" (*r*). An officer appointed at an annual salary is entitled, in the event of dismissal during the year, to be paid the proportion of his salary accruing up to the time of his dismissal (*s*). As to the rule where the services to be performed are professional or private, rather than public or official, see note (**b**) to s. 320 and *Broughton* v. *Town of Brantford*, (*t*) where the property of the Grand River Navigation Co. having passed into the hands of the defendants, they appointed the plaintiff, under the corporate seal, as manager thereof from Jan. 1st, 1866, but dismissed him in September, 1867, it was held that such dismissal before the end of the year was illegal, and that he was entitled to damages for wrongful dismissal. The case, however, must be considered as overruled by the later decisions above referred to.

In *Vernon* v. *Town of Smith's Falls*, the plaintiff had been appointed chief constable of the town "for one year" by a by-law of the council. Having been dismissed within the year without cause assigned, he brought an action for wrongful dismissal. It was contended that *Broughton* v. *Town of Brantford* applied; but FERGUSON, J. says (at p. 332)

> "If the Statute enacts that municipal officers shall hold office only during pleasure, can the corporation tie its hands by appointing for a fixed period?" and *per* MEREDITH, J. (p. 333)

(*l*) 2 B.C.R. 179 (1892). (*m*) R.S.B.C. (1897) c. 144, s. 45.

(*n*) *Per* ARMOUR, J. in *Willson* v. *Township of York*, 46 U. C. R. 289, at p. 299; followed in *Vernon* v. *Town of Smith's Falls*, 21 O. R. 331; *Hellems* v. *City of St. Catharines*, 25 O. R. 583.

(*o*) *Hayman* v. *Governors of Rugby School*, L. R. 18 Eq. 28, *per* MALINS, V. C. (*p*) 52 V. c. 79 (1889).

(*q*) *Davis* v. *City of Montreal*, 27 S. C. R. 539.

(*r*) *Hickey* v. *County of Renfrew*, 20 C. P. 429, 432.

(*s*) *Dempsey* v. *City of Toronto*, 6 U. C. R. 1. (*t*) 19 C. P. 434.

"The council are not the corporation, they cannot exceed the powers conferred upon them so as to bind the corporation. Their power was to appoint during pleasure only."

It seems that a municipal officer, though appointed by by-law, may be removed by resolution (*u*) and that when the seal of the corporation is wrongfully detained by the clerk, a by-law for his removal may be sealed with another seal *pro hac vice* (*v*). In the Province of Quebec,—where the secretary treasurer of a municipal corporation holds his office during pleasure,—it has been held that the dismissal of such an officer results from the adoption by the council of a resolution appointing another person and another resolution directing the retired officer to prepare his official statement, and from the fact that since the passing of these resolutions the officer in question has not acted as secretary-treasurer nor attended a meeting of the council. In these circumstances the council may claim the books etc., pertaining to this office, even before adopting a resolution formally dismissing the official (*w*).

(c) "**And shall . . . perform all other duties required of them.**" It is a well settled rule that a person, accepting a public office with a fixed salary, is bound to perform the duties of the office for the salary. He cannot legally claim additional compensation for the discharge of those duties, even though the salary may be a very inadequate remuneration for the services. Nor does it alter the case that by subsequent Statutes or by-laws his duties within the charter powers pertaining to the office are increased. Whenever he considers the compensation inadequate, he is at liberty to resign. The rule is of importance to the public. To allow changes and additions in the duties properly belonging, or which may properly be attached, to an office to lay the foundation for extra compensation, would soon introduce intolerable mischief. The rule should be very rigidly enforced. The Statutes of the Legislature and the by-laws of municipal corporations seldom describe with much detail and particularity the duties annexed to public offices; and it requires but little ingenuity to run nice distinctions between what duties may, and what may not, be considered as strictly official; and if these distinctions are much favoured by Courts of Justice, it may lead to great abuse (*x*).

A gratuity may be given in certain cases.

322. Any municipal council, other than a provisional council, may grant to any officer who has been in the service of the municipality for at least twenty years, and who, while in such service, has become incapable, through old age, of efficiently discharging the duties of his office, a sum not exceeding his aggregate salary or other remuneration for the last three years of his service, as a gratuity upon his removal or resignation. 55 V. c. 42, s. 280.

Taken from the Act of 1873 (36 V. c. 48), s. 221.

(a) Without legislation, there is no power in a municipal corporation to grant a gratuity. Service for any period *less* than twenty years, or incapacity from any other cause than old age, gives no right to the exercise of the power hereby conferred. The gratuity is only to be paid on removal or resignation. The decision as to a gratuity, when made under the circumstances and within the limits prescribed, is not subject to review by any Court (*a*). There is a distinction between a gratuity and an annuity (*b*).

(*u*) *Vernon* v. *Smith's Falls, supra*; *Township of London West* v. *Bartram*, 26 O. R. 161.

(*v*) *Ibid.*

(*w*) *Village of Coteau Landing* v. *Filiatrault*, Quebec Rep. 9 S. C. 497.

(*x*) *Per* Potts, J. in *Evans* v. *Trenton*, 4 Zabr. (N. J.), 766 (1853). Dillon, s. 233.

(*a*) *Reg.* v. *Sandwich*, 5 Q. B. 895, s. c. in Error, 10 Q. B. 563.

(*b*) See *Gibson* v. *East India Co.*, 5 Bing. N. C. 262; *Clarke* v. *Imperial Gas Co.*, 4 B. & Ad. 315; *James* v. *East India Co.*, 17 Q. B. 351; *Marshall* v. *Lee Conservancy Board*, L. R. 8 Ex. 290.

Secs. 323, 324.

Corporations, etc., may accept security of certain companies for their officers.

323. The bonds or policies of guarantee of any incorporated company, empowered to grant guarantees, bonds or policies for the integrity and faithful accounting of public officers, servants or persons occupying positions of trust or other like purposes, may be accepted instead of, or in addition to, the bond or security of any officer or servant of a municipal corporation, in all cases where, by the provisions of this or any other Act, or of any by-law of the corporation, such officer or servant is required to give security, either by himself or by a surety or sureties, and where the persons directed or authorized to take the security see fit to accept the bond or policy of such company as aforesaid, and approve the terms and conditions thereof; and all the provisions in such Act relating to such security to be given by such officer or servant, or his sureties shall apply to the bonds and policies of guarantee of such company as aforesaid; and the same may be taken instead of, or in substitution for, any existing securities, if the persons directed or authorized as aforesaid see fit; whereupon such existing securities shall be delivered up to be cancelled. 55 V. c. 42, s. 281.

Existing bonds may be cancelled.

Taken from 27 & 28 V. c. 7, s. 2. *Cf.* R. S. O. c. 220.

Division IX.—Investigation of Charges of Malfeasance, etc., or Judicial Inquiry in Relation to Municipal Matters. (Sec. 324.)

Investigation by County Judge of charges of malfeasance by municipal officers.

324.—(1) In case the council of any municipality at any time passes a resolution requesting the Judge of the County Court of the county in which the municipality is situate to investigate any matter to be mentioned in the resolution, and relating to a supposed malfeasance, breach of trust or other misconduct on the part of any member of the council or officer of the corporation, or of any person having a contract therewith, in relation to the duties or obligations of the member, officer or other person, to the municipality, or in case the council of any municipality sees fit to cause inquiry to be made into or concerning any matter connected with the good government of the municipality, or the conduct of any part of the public business thereof, and passes a resolution requesting the Judge to make the inquiry, the Judge shall inquire into the same, and shall for that purpose have all the powers which may be conferred upon Commissioners under *The Act respecting Inquiries concerning Public Matters*, and the Judge shall, with all convenient speed, report to the council the result of the inquiry and the evidence taken thereon.

Judge to have powers mentioned in Rev. Stat. c. 19.

Taken from the Act of 1858 (22 V. c. 99, s. 360, which applied only to cities, and under which the investigation was to be held by the recorder of the city. The Judge of the County Court was substituted for the recorder by "*The Law Reform Act of 1868*" (32 V. c. 6) s. 12, and the section applied to all municipalities by the Act of 1873 (36 V. c. 48). s. 370. Subs. 2 was added in 1886 by 49 V. c. 37, s. 11.

(a) There are two classes of cases in which an investigation may be had under this section:—

(1) Any matter relating to a supposed malfeasance, breach of trust or other misconduct on the part of any member of the council or officer of the corporation, or of any person having a contract therewith, in relation to the duties and obligations of the member, officer or other person, to the municipality; or

(2) any matter connected with the good government of the municipality, or the conduct of any part of the public business thereof.

The "misconduct" referred to under the first of these heads is doubtless misconduct in the nature of malfeasance or breach of trust of some kind appertaining to the duties of the office. According to the rules governing the construction of Statutes, where general words follow particular words, they are to be construed as *ejusdem generis* with the particular words which have preceded them (*a*).

(b) **"The Judge shall inquire into the same."** In making the inquiry authorized by this section, the Judge acts as *persona designata*, and not in a judicial capacity, and is therefore not subject to control by a writ of prohibition from a Superior Court. (*b*)

(c) **"All the powers which may be conferred upon commissioners under The Act respecting inquiries concerning Public Matters."** Under the Act referred to (R.S. O. c. 19), the Lieutenant-Governor may confer upon commissioners so appointed the power of summoning before them any party or witnesses, and of requiring them to give evidence on oath, orally or in writing (or on solemn affirmation, if they be parties entitled to affirm in civil matters), and to produce such documents and things as such commissioners deem requisite to the investigation; (*c*) and the commissioners have the same power to enforce the attendance of witnesses, and to compel them to give evidence as is vested in any court in civil cases. (*d*) No party, in such an inquiry, can be compelled to answer any question by his answer to which he might render himself liable to a criminal prosecution. In this respect there is a difference between inquiries here authorized and inquiries in cases of controverted municipal elections. (*e*) Witnesses, it is apprehended, would not be entitled to compensation for loss of time.

(d) **"The Judge shall . . report to the council the result of the inquiry and the evidence taken thereon."** The evidence must therefore be reduced to writing.

Jurisdiction of councils.

(2) The Judge of the County Court, holding such investigation, shall be entitled to receive, and shall be paid by the municipality requesting him to hold the investigation, the same fees as he would be entitled to receive if the matter had been referred to him as a referee under the provisions of *The Judicature Act*. 55 V. c. 42, s. 477.

(e) For the fees payable to the County Judge, under this subsection, see Tariff B, referred to in No. 1179 of the Con. Rules, 1897. *Quære*, whether a municipal council has power to expend corporate funds in paying counsel and witnesses in an investigation under this section. (*f*)?

(*a*) *Rex* v. *Manchester and Salford Water Works Co.*, 1 B. & C. 630; *Rex* v. *Mosley*, 2 B. & C. 226; *Lyndon* v. *Standbridge*, 2 H. & N. 46; *Reg.* v. *Neath*, L. R. 6 Q. B. 707; *Reg.* v. *Clewarth*, 9 L. T. N. S. 682; *Re Stockport Schools* [1898], 1 Ch. 610.

(*b*) *Re Godson and City of Toronto*, 16 A. R. 552; 18 S. C. R. 36, reversing s. c. 16 O. R. 275.

(*c*) R. S. O. c. 19, s. 1. (*d*) *Ib.* sec. 2. (*e*) See sec. 255.

(*f*) See *Rural Mun. of Macdonald*, 10 Man. Rep. 294, referred to in note (c) to s. 428, *post*.

PART VI.

GENERAL PROVISIONS APPLICABLE TO ALL MUNICIPALITIES.

TITLE I.—GENERAL JURISDICTION OF COUNCILS. (SECS. 325-332).
II.—RESPECTING BY-LAWS, (SECS. 333-416).
III.—RESPECTING FINANCE, (SECS. 417-428).
IV.—DEBENTURES AND OTHER INSTRUMENTS. (SECS. 429-436).
V.—ARBITRATIONS, (SECS. 437-467).
VI.—ACTIONS AGAINST MUNICIPAL CORPORATIONS, (SECS. 468-471).
VII.—WITNESSES, (SEC. 472).
VIII.—ADMINISTRATION OF JUSTICE AND JUDICIAL PROCEEDINGS, (SECS. 473-530).

TITLE I.—GENERAL JURISDICTION OF COUNCILS.

DIVISION I.—NATURE AND EXTENT. (SECS. 325-332.)

Fees payable to county judge.

R. S. O. c. 51.

325. The jurisdiction of every council shall be confined to the municipality which the council represents, except where authority beyond the same is expressly given; and the powers of the council shall be exercised by by-law, when not otherwise authorized or provided for. 55 V. c. 42, s. 282.

Taken from the Act of 1858, (22 V. c. 99), s. 186.

(a) **"The jurisdiction of every council shall be confined to the municipality which the council represents."** This applies to municipal corporations a rule already well established in regard to the territorial limits within which the laws of a state usually have force (*a*). "The cardinal principle of municipal government is that each municipality shall be, as far as possible, self-governing in matters of police and municipal jurisdiction, and that one municipality shall not invade the territory or interfere with the concerns of another municipality without the consent of the latter or the adjustment of points of difference by means of arbitration or other appropriate tribunal" (*b*). In *R. Boylan and City of Toronto* (*c*), a city by-law limiting the number of tavern licenses was moved against because it showed on its face no description of the local limits within which it was intended to be operative. *Held*, no objection. *Per* ARMOUR, C. J.: "The by-law was passed by the council of the city and could have no operation elsewhere."

(*a*) Story, Conflict of Laws, c. 1, ss. 7, 8. See *Adam* v. *British, etc., S. S. Co.*, [1898], 2 Q. B. 430.

(*b*) *Per* BOYD, C., in *Township of Barton* v. *City of Hamilton*, 18 O. R. 199, at p. 202. (*c*) 15 O. R. 13.

(b) **"Except where authority beyond the same is expressly given."** Examples of such authority are afforded by s. 501, which empowers a county council to expropriate land in a city for the purpose of building a court house thereon; s. 527 (2), which provides that any industrial farm or ground held by a city or town for exhibition purposes, and any house of correction, house of industry, house of refuge, house for the poor, aged and infirm, or lock-up house erected thereon, shall, for the purposes of the sub-section be deemed to be within the municipality and the jurisdiction thereof; s. 577 (1), which makes similar provision as to lands acquired by townships, cities, towns and villages for public cemeteries; s. 543 (17), which relates to the acquisition by townships, cities, towns and villages of land outside the municipality for the purpose of erecting powder-magazines thereon, and ss. 554 (1) and 555, which authorize the exercise by by-law of certain drainage powers beyond the territorial limits of the municipality. See also s. 534 (2) which authorizes the council of a township, city, town or village to pass by-laws for acquiring and holding "for the public use of the municipality" land situate outside its corporate limits, but provides that such land shall continue to be subject to the by-laws of the municipality in which it is situated, and s. 569 (3), which authorizes a city or town (under the conditions therein mentioned) to build, equip, maintain and operate in any adjoining municipality, an extension of a street railway operated or intended to be built or operated by such city or town within its own limits.

(c) **"The powers of the council."** See note (a) to s. 10.

(d) **"Shall be exercised by by-law."** According to Lord Coke the word "by" or "bye" signifies a habitation (*d*). Hence a by-law may be defined as "the law of some particular district made by the inhabitants thereof or their authorized representatives," as distinguished from the general law of the Province or the Dominion. It is "a law governing a corporate body and which they are authorized to make" (*e*). "Though made by and applicable to a particular body it is still a law, and thus differs from a provision made on, or limited to particular occasions: it is a rule made prospectively, and to be applied whenever the question arises for which it is intended to provide (*f*).

"All regulations made by a corporate body and intended to bind not only themselves and their servants but the public are by-laws, whether valid or invalid in law" (*g*).

Limits of operation.

The by-laws of a municipal corporation have, within the territorial limits of the municipality "the same effect as an Act of Parliament has upon the subjects at large" (*h*), and they are binding on all persons whether strangers or members of the corporation (*i*), and whether they have notice of them or not (*j*).

Requisites of a valid by-law.

A good by-law should be (a) clearly and definitely expressed, (b) positive, general and equal in its operation as a law, and (c) reasonable in its terms. It must be (d) within the express or necessarily implied powers of the corporation, (e) consistent with, not repugnant to, the general law of the land, and (f) made *bona fide* in the interests of the corporation, not to serve those of some other person or body of persons.

Ambiguity.

In order to vary or alter the common law, a by-law ought to be reasonably clear, definite and free from ambiguity in its language (*k*); and this applies especially to by-laws which create a new offence (*l*); but "although it is desirable that by-laws should be so free from doubt that 'he who runs may

(*d*) Wilson on Municipal Corporations, 73.

(*e*) *Per* ALDERSON, B., in *Hopkins* v. *Swansea*, 4 M. & W. 621.

(*f*) *Per* LORD DENMAN, C.J., in *Gosling* v. *Veley*, 7 Q.B. 406.

(*g*) *Per* LINDLEY, L.J., in *London Association of Shipowners, etc.* v. *London and India Docks Joint Committee*, [1892] 3 Ch. 242, at p. 252.

(*h*) *Per* Lord ABINGER, C.B., in *Hopkins* v. *Swansea*, 4 M. & W. 621, 640, cited by Dillon, s. 308; *Cf. Canada Central R. W. Co* v. *Brown*, 35 U.C.R. 390.

(*i*) *Reg.* v. *Osler*, 32 U.C.R. 324.

(*j*) *Corporation of London* v. *Bernardiston*, 1 Lev. 16; *Briggs* v. *Adams*, Skinner, 350; *Cambridge (Mayor of)* v. *Herring*, 1 Lutw. 405; *Cudden* v. *Eastwick*, 6 Mod. 124; *Corporation of Gravesend* v. *Edmunds*, 2 Brownl. 182.

(*k*) *Jack* v. *Ontario, Simcoe & Huron R. W. Co.*, 14 U.C.R. 328; *Crowe* v. *Sleeper*, 16 U.C.R. 87.

(*l*) *Foster* v. *Moore*, 4 L.R. (Ir.) C.L. 670.

Sec. 325.
Note (d).

read,' yet as even in the case of higher legislative bodies, this is not always possible; and the Court should strive so to construe a by-law as to give reasonable effect to the object aimed at" (*m*).

The Courts will not subject the by-laws of municipal corporations to a scrutiny unreasonably rigid (*n*), nor will they quash a by-law because of "a want of a clearness of expression or a difficulty in construing or applying its provisions" (*o*); and where a by-law is open to two constructions according to one of which it would be illegal the Court will prefer to adopt the other, though in that event the facts of a particular case will constitute a breach of the by-law. (*p*)

In the cases of *Re Smith and Township of Euphemia* (*q*), *Dennis* v. *Hughes* (*r*), *Re Brown and County of York* (*s*), *McIntyre and Township of Bosanquet* (*t*), *Re Thompson and Township of Bedford*, (*u*), *Wannamaker* v. *Green* (*v*), *St. Vincent* v. *Greenfield*, (*w*), by-laws opening, establishing or closing highways were held defective by reason of uncertainty in the description, but see on this point, *Re Chambers and Township of Burford* (*x*).

In *Re Town of Ingersoll and Carroll*, (*y*) CAMERON, J., evidently thought that a by-law (under s. 641 (10)) for searching for and taking stone and gravel for road repairs should have defined the quantity to be taken and an award thereunder for so much per cord taken was set aside.

But see as to the stricter rules applied to by-laws regulating the carrying on of trades, etc., note (a) to s. 329, *post*; and for examples of by-laws which have been held void for uncertainty, see *Re Harris and City of Hamilton* (*z*) ("no vendor of small wares shall practise his calling (*sic*) in the J. street market or in the public streets adjacent thereto," *Held* bad as not specifying the streets intended); *Reg.* v. *Reid* (*a*) (by-law excepting from its operation "the pay day at the Rosamond Woollen Mills"); *Re Cloutier* (*b*), (boot and shoe shops to close at 7 p.m. "except during the days on which the exhibition of the Winnipeg Industrial Exhibition Association is being held"); *Reg.* v. *Jim Sing* (*c*), (market fees "to be fixed from time to time by resolution of the council.")

But in *Re Cribbin and City of Toronto* (*d*), the use of the words "Sabbath day" meaning Sunday was held not to make a by-law bad for uncertainty, (*e*) and in *Reg.* v. *McMillan*, (*f*) a by-law under "*The Ontario Shops Regulation Act*" which excepted from its operation "the days during which The Canada Central Exhibition Association is being held" was sustained, the Court refusing to follow *Reg.* v. *Reid*. *Per* ARMOUR, C. J., "*Re Cloutier* is not a decision binding on this Court and the (over-ruled) judgment of the Chief Justice in that case commends itself to us rather than the judgment of the Court." And see the language of s. 583 (8*a*) of this Act.

Certainty.

A by-law must be certain and positive in its operation and directed to prohibit some act, or to prescribe how, when or where it may be done.

Therefore a by-law is bad if its terms may be varied by agreement of parties, (*g*) or if its effect depends upon the consent of a certain number of inhabitant householders; (*h*) or owners of property adjacent to that affected

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(*m*) *Per* LORD RUSSELL OF KILLOWEN, C.J., *Kruse* v. *Johnson*, [1898] 2 Q.B. 91, at p. 93; 14 Times L.R. 416, at p. 417.

(*n*) *Per* HAGARTY, C.J., *Re Arkell and Town of St. Thomas*, 38 U.C.R. 594, at p. 598; adopted by ROSE, J., in *Re Croome and City of Brantford*, 6 O.R. 188, at p. 192.

(*o*) *Per* DRAPER, C.J., *Re Smith and City of Toronto*, 10 C.P. 225, 228.

(*p*) *Dearden* v. *Townsend*, L. R. 1 Q. B. 10; *Poulterers Co.* v. *Phillips*, 6 B.N.C. 314, followed in *Reg.* v. *Saddlers Co.*, 3 E. & E. 42, 81, 82; 10 H.L. Cas. 404, 426; *Re Cameron and Township of East Nissouri*, 13 U.C.R. 190; *Re Gibson and United Counties of Huron and Bruce*, 20 U.C.R. 111; *Re Bothwick and City of Ottawa*, 9 O.R. 401.

(*q*) 8 U.C.R. 222. (*r*) *Ibid.* 444. (*s*) *Ibid.* 596. (*t*) 11 U.C.R. 460.

(*u*) 21 U.C.R. 545. (*v*) 10 O.R. 457. (*w*) 12 O.R. 297; 15 A.R. 567.

(*x*) 25 O.R 276. (*y*) 1 O.R. 488. (*z*) 44 U.C.R. 641.

(*a*) 28 O.R. 172, 173 note. (*b*) 11 Man. Rep. 220.

(*c*) 4 B.C. R. 338. (*d*) 21 O.R. 325.

(*e*) See *Re Barclay and Township of Darlington*, 12 U. C. R. 86; *Reg.* v. *Martin*, 12 O. R. 800. (*f*) 28 O. R. 172.

(*g*) *Reg.* v. *Latham*, 24 O.R. 616. (*h*) *Ellwood* v. *Bullock*, 6 Q.B. 383.

thereby: (*i*) or of some official of the corporation or member of the council; (*j*) or perhaps if it delegates to another body the power of fixing the time during which or the dates on which it shall or shall not have effect. (*k*)

Reasonableness.

Another essential to the validity of a by-law is that it shall be reasonable. "By-laws which are nugatory and vexatious, unequal, oppressive or manifestly detrimental to the interests of the corporation are void." (*l*)

"The jurisdiction of testing by-laws by their reasonableness was originally applied in such cases as those of manorial bodies, towns or corporations having inherent powers or general powers conferred by charter of making such by-laws (*i. e.*, 'reasonable by-laws'). As new corporations or local administrative bodies have arisen, the same jurisdiction has been exercised over them." (*a*)

> "If by-laws (passed under an authority conferred in general terms) are found to be partial and unequal in their operation as between different classes: if they are manifestly unjust: if they disclose bad faith: if they involve such oppressive or gratuitous interference with the rights of those subject to them as can find no justification in the minds of reasonable men,—the Court may well say 'Parliament never intended to give authority to make such rules. They are unreasonable and *ultra vires*.'" (*b*)

Many of the earlier cases relating to the reasonableness of by-laws have arisen upon the by-laws of trading guilds or corporations passed for regulating trade, or upon by-laws made by railway and canal companies under s. 7 of the Imp. Stat. 17-18 V. c. 31, ("*The Railway and Canal Traffic Act, 1854*"); but in more recent times the question of reasonableness has been often discussed in reference to by-laws of municipal corporations, local highway and sanitary authorities, etc. (*c*) A by-law of a Local Board requiring a written notice with plans, etc., to be left with the clerk at least within one month before the commencement of any new building was held unreasonable, (*d*) but in *Hall* v. *Nixon*, (*e*) the Court of Queen's Bench refused to follow this decision, and held that a by-law which required that every person intending to erect a new building should give 14 days' notice to the Local Board of his intention and deliver plans to them at their office was a reasonable and valid by-law.

Under a Statute empowering a Local Board to make by-laws with respect to the drainage of buildings and to water closets, privies, ash-pits, and cess-pools, etc., a by-law was passed that "no dwelling house shall be erected without having at the rear or side thereof a good and sufficient back street or roadway at least 12 feet wide communicating with some adjoining public street or highway for the purpose of affording access to the privy or ash-pit of that house." The Court of Queen's Bench held the by-law invalid as unreasonable, since it might in some cases wholly prevent a person from building on his land,—but one of the Judges thought that a by-law providing that no privy should be constructed unless there was an access thereto by a back street might be good. (*f*)

A by-law which required that all the grounds, etc., abutting on any street on which there was a common sewer should be drained into such sewer *within fourteen days from the advertising of the by-law*, was held to be "an unreasonable requirement not falling within a legitimate use of the powers conferred by" what is now s. 551 (2) of this Act. (*g*)

(*i*) *Re Kiely*, 13 O.R. 451; *Reg.* v. *Webster*, 16 O.R. 187.

(*j*) *Re Nash and McCracken*, 33 U. C. R. 181; *Reg* v. *Webster*, *supra*; *Re Elliott*, 11 Man. Rep. 358; 16 C.L.T. 234; *Re Taylor and City of Winnipeg*, 11 Man. Rep. 420; *Munro* v. *Watson*, 51 J. P. 660, cited in note (d) to s. 326.

(*k*) *Re Cloutier*, 11 Man. Rep. 220; *Reg.* v. *Jim Sing*, 4 B.C.R. 228, and *Reg.* v. *McMillan*, 28 O.R. 172, cited *supra*. And see also *Mackenzie and City of Brantford*, 4 O.R. 382; *Acer* v. *De Montigny*, M.L.R. 5 S. C. 117.

(*l*) Angell and Ames on Corporations, s. 347; Dillon ss. 321, 322.

(*a*) *Per* Lord Hobhouse, in *Slattery* v. *Naylor*, 13 App. Cas. 446, 452.

(*b*) *Per* Lord Russell of Killowen, C. J., in *Kruse* v. *Johnson*, [1898] 2 Q. B. 91; 14 Times L. R. 416, 417.

(*c*) See *post*, note (d) to s. 326.

(*d*) *Hattersley* v. *Burr*, 4 H. & C. 523.

(*e*) L. R. 10 Q. B. 152.

(*f*) *Waite* v. *Garston Local Board of Health*, L. R. 3 Q.B. 5.

(*g*) *Re McCutcheon and City of Toronto*, 22 U.C.R. 613, 620.

Sec. 325.

Note (d).

Discriminating by-laws.

By-laws which are not general, *i.e.*, do not operate equally and indiscriminately, are bad. In *Re Pirie and Town of Dundas*, (*h*) a by-law under 31 V. c. 30, s. 44 was set aside because it exempted new manufactures, but not those already existing. (*i*) In *Reg.* v. *Pipe*, (*j*) a by-law under s. 559 (5) for regulating the conveyance of traffic and the width of tires, etc., which was not to apply to certain waggons or to persons conveying therein certain goods passing through the town, was held bad as being unequal. (*k*)

A by-law passed under s. 2 (2) of "*The Ontario Shops Regulation Act*," (*l*) provided, (s. 1) "That all shops, etc., where goods are exposed for sale by retail shall be closed at 7 p.m. on each day of the week, excepting Saturday, from the 15th January to the 15th September," etc., and s. 3 provided that it should not be deemed an infraction of the by-law for any shop-keeper or dealer to supply any article after 7 p.m. to mariners, owners or officers of steam boats or vessels calling or staying at the port of A. It was held that s. 3 was illegal in discriminating against different classes of buyers and different classes of tradesmen, and was in contravention of sub-s. 9 of s. 2 of the Act. (*m*)

In *Rawoni* v. *City of Montreal*, (*n*) a by-law passed under a Provincial Shops Regulation Act, 57 V. c. 50, (Q.) ordered certain shops to be closed during certain hours at night, but excepted shops where fruit, confectionery, tobacco and liquor by retail were sold. *Held*, that the by-law was arbitrary and oppressive in so far as it made an unjust discrimination between different classes of merchants selling the same articles, that it was a by-law in restraint of freedom of trade and was null and void.

See also the cases collected in this note under the side head "By-laws not in the Public Interest," and for examples of by-laws which have been held to be unreasonable under the general language of s. 23 of The English Municipal Corporations Act, see the cases collected in note (**d**) to s. 326 and the notes to s. 586.

But the question whether a by-law is reasonable or not usually depends upon whether it can reasonably be considered as authorized by general words used in the charter or Statute under the presumed authority of which it has been passed. In many of the earlier cases, the Judges in determining upon the reasonableness of by-laws assumed a much larger jurisdiction in this respect than would at present be deemed proper. See Lumley on By-laws, pp. 101 *et seq.* (*o*)

But it is now pretty generally conceded that if a Statute gives power to any person or body of persons to make rules for a specific purpose, the reasonableness of such rules, provided they are strictly confined to the purpose for which they are authorized to be made, is not examinable by the judges. (*p*)

> "As a rule the municipality is the best judge of its own affairs; and it is probably an extreme case in which the Court would interfere." (*q*)

(*h*) 29 U. C. R. 401. (*i*) See note (**a**) to s. 366. (*j*) 1 O. R. 43.

(*k*) See note ( ) to s. 559. See also *Re Campbell and City of Kingston*, 14 C. P. 285; (note (**e**) to s. 562); *Re Snell and Town of Belleville*, 30 U. C. R. 81; (s. 330 note (**a**), s. 580 notes (**b**), (**f**), (**h**)); *Reg.* v. *Johnson*, 38 U. C. R. 549; (s. 530 note (**a**); *Jonas* v. *Gilbert*, 5 S. C. R. 356, where a by-law imposing a license fee of $20 on resident and $40 on non-resident traders was held bad as unequal. (*l*) 51 V. c. 33.

(*m*) *Reg.* v. *Flory*, 17 O. R. 715. (*n*) Quebec Rep. 10 S. C. 278.

(*o*) *Peters* v. *Board of Police of London*, 2 U. C. R. 543; *Baker* v. *Municipal Council of Paris*, 10 U. C. R. 621; *Re Barclay and Township of Darlington*, 12 U. C. R. 86; *Re Greystock and Township of Otonabee*, 12 U. C. R. 458; *Re* v. *Belmont*, 35 U. C. R. 298; *Re Brodie and Town of Bowmanville*, 38 U. C. R. 580; *Roberts* v. *Climie*, 46 U. C. R. 264. The last five cases are more fully referred to in note (**a**) to s. 329, and the cases of *Re Barclay and Darlington*, *Re Greystock and Otonabee* and *Re Brodie and Bowmanville*, *infra* in this note under "*Bona fides*."

(*p*) Hardcastle on Statutory Law (2nd Ed.) 310, *Simmons* v. *Malling Rural District Council*, 13 Times L. R. 447 *per* WRIGHT, J.;

(*q*) *Per* WILSON, C. J., *Re O'Meara and City of Ottawa*, 11 O. R. 603, 609; see also *Re Prince and City of Ottawa*, 25 U. C. R. 175; *Re Snell and Town of Belleville*, 30 U. C. R. 81, 88, 89, 94; *Re Cribbin and City of Toronto*, 21 O. R. 325; *Reg.* v. *Petersky*, 4 B. C. R. 385; Dillon, ss. 319-322, and the language of LORD RUSSELL OF KILLOWEN in *Walker* v. *Stretton* and *Kruse* v. *Johnson*, quoted in note (**d**) to s. 326.

The question, therefore, whether a municipal by-law is or is not reasonable appears to be, as a rule, only a branch of the question whether it is or is not *ultra vires*: (*a*) and in *Reg.* v. *Greenville* (*b*), O'Connor, J., expresses the opinion that the reasonableness of such a by-law where the council have power to legislate in regard to that particular subject matter, can be considered only upon a direct application to quash the by-law and not upon a motion to quash a conviction thereunder.

A by-law cannot be considered unreasonable or illegal if it simply follows the words of a Statute. (*c*)

Ultra Vires By-law.

If there is no authority, either express or implied, to deal with the subject matter, the by-law is clearly *ultra vires* the corporation; *e.g.*—a by-law to indemnify a member of the council for the costs of a contested election (*d*)—to declare the property-qualification of municipal voters (*e*):—to remunerate members of the council (before this was authorized by s. 538) (*f*),—to authorize the lending of municipal funds to ratepayers, (*g*)—for purchasing land not intended for the use of the corporation, (*h*) or otherwise appropriating corporate funds for unauthorized objects. (*i*)

And even where statutory authority exists in relation to the subject matter of a by-law, the powers of the corporation must be exercised strictly within the limits and in the manner prescribed by the Statute (*a*).

(*a*) See *per* Lord Hobhouse, 13 App. Cas. 452.

(*b*) 10 O.R. 735, 736.

(*c*) *Reg.* v. *Petersky*, 4 B. C. R. 385; *Re Croome and City of Brantford*, 6 O.R. 188, 191-2; *Re Milloy and Township of Onondaga*, 6 O. R. 573, 577; *Re Boylan and City of Toronto*, 15 O. R. 13, 14. And see *Re Brodie and Town of Bowmanville*, 38 U.C.R. 580, 590; *Re Arkell and Town of St. Thomas*, 38 U.C. R. 594, 598.

(*d*) *Re Bell and Township of Manvers*, 2 C.P. 507; 3 C.P. 400.

(*e*) *Re Bell and Township of Manvers*, 3 C.P. 399.

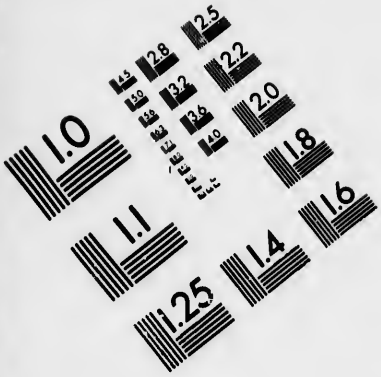
(*f*) *Re Wright and Township of Cornwall*, 9 U.C.R. 442; *Daniels* v. *Township of Burford*, 10 U. C. R. 478; *Township of East Nissouri* v. *Horsemun*, 16 U.C.R. 576; *Re Patterson and County of Grey*, 18 U.C.R. 189; *Re Blaikie and Township of Hamilton*, 25 U.C.R. 469; *McLean* v. *Township of Cornwall*, 31 U.C.R. 314; and see *Township of St. Vincent* v. *Grier*, 13 Grant 173.

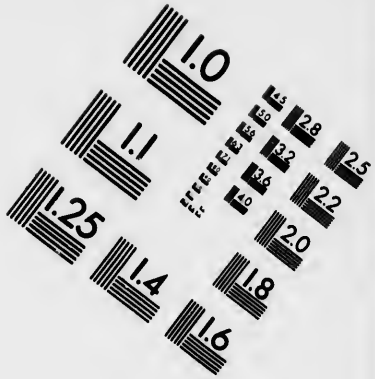
(*g*) *Campbell* v. *Township of Elma*, 13 C. P. 296.

(*h*) *Jones* v. *Town of Port Arthur*, 16 O.R. 474.

(*i*) *Re Strachan and County of Frontenac*, 41 U.C.R. 175; *Jarvis* v. *Fleming*, 27 O.R. 309.

(*a*) See *Re Dickson and Village of Galt*, 9 U. C. R. 257; *Re Tilt and Township of Toronto*, 13 U. C. R. 447 (by-laws relating to statute labour)—; *Hayes* v. *City of Toronto*, 7 C. P. 253, (Toronto Esplanade)—; *Loucks* v. *Towaship of Russell*, 7 C. P. 388, (division of township into wards) ; *Re Smith and City of Toronto*, 10 C. P. 225; *Re Gifford and Township of Darlington*, 35 U. C. R. 285; *Re Donnelly and Township of Clarke*, 38 U. C. R. 599; *Re Goulden and City of Ottawa*, 28 O. R. 387, (tavern licences)—; *Re Coe and Towaship of Pickering*, 24 U. C. R. 439; *Re Hartly and Township of Emily*, 25 U. C. R. 12; *Re Miles and Township of Richmond*, 28 U. C. R. 333; *Re Day and Township of Storrington*, 38 U. C. R. 528; *Re Johnson and County of Lambton*, 40 U. C. R. 297; *Re O'Neil and Township of Oxford*, 41 U. C. R. 170; *Re Macy and County of Frontenac*, 42 U. C. R. 70; *Re Brophy and Village of Gananoque*, 26 C. P. 290, (by-laws under "*The Canada Temperance Act, 1864*")—; *Clapp* v. *Township of Thurlow*, 10 C. P. 553; *Re Doherty and Township of Toronto*, 25 U. C. R. 409; *Re McIntyre and Township of Elderslie*, 27 C. P. 58; *Re Carpenter and Township of Burton*, 15 O. R. 55; *Re Peck and Township of Amaliasburg*, 17 O. R. 54; *Re Armstrong and Township of Toronto*, 17 O. R. 766; *Re Cooke and Village of Norwich*, 18 O. R. 72; *Re Hay and Town of Listowel*, 28 O. R. 332, (by-laws creating debts)—; *Re Davis and Town of Clifton*, 8 C. P. 236; *McKnight* v. *City of Toronto*, 3 [illegible] R. 284, (nuisances)—; *Farquhar* v. *City of Toronto*, 10 C. P. 379; *Re Campbell and City of Kingston*, 14 C. P. 285; *Re Fennell and Town of Guelph*, 24 U. C. R. 238; *Re Wilson and Town of St. Catharines*, 21 C. P. 462; *Re Kinghorn and City of Kingston*, 26 U. C. R. 130; *Re McLean and Town of St. Catharines*, 27 U. C. R. 603; *Re Snell and Town of Belleville*, 30 U. C. R. 81; *Re Harris and City of Hamilton*, 44 U. C. R. 641, (regulation of markets)—; *McMaster* v. *Village of Newmarket*, 11 C P. 398, (purchase of site for town hall —" ordinary





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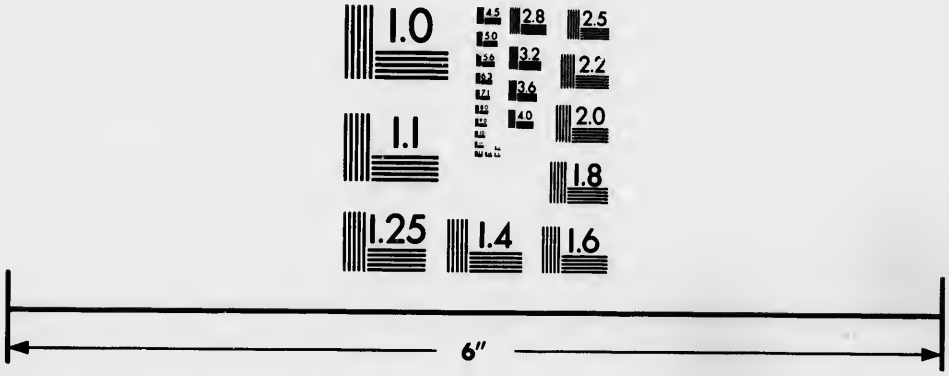

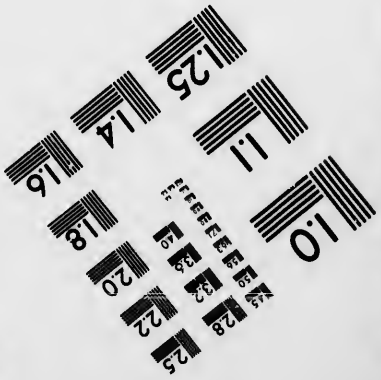

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Sec. 325.

Note (d).

"All by-laws must ever be subject to the general law of the land and subordinate to it" (*a*).

Repugnant to law.

Therefore a by-law must not impose unauthorized penalties nor apply penalties otherwise than as directed by Statute; (*b*) nor substitute for the method of providing for the support of public schools, which has been laid down by the Legislature, a wholly different system devised by the municipal council (*c*), nor provide for the appointment of arbitrators in a different manner from that prescribed by ss. 450 *et seq.* of this Act (*d*), nor may the rights of property nor the statutory mode of levying a tax be departed from (*e*), nor can a by-law be sustained which commands anything contrary to public policy or public morality (*f*), nor one which assumes to shift upon the shoulders of another body a liability imposed by Statute upon a municipality (*g*).

See further as to by-laws affecting public highways, s. 632 and note (**a**) thereto.

Bona fides.

But by-laws even though reasonably within the powers of the corporation, and not at variance with the general law of the land, may be set aside if it be shewn that in passing them the council have not exercised *bona fide* the powers conferred upon them by the Legislature. The Act 13 & 14 V. c. 65, s. 4, em-

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expenditure")—; *Re Ross and United Counties of Stormont, Dundas and Glengarry*, 22 U. C. R. 531, (county council by-law respecting township roads); *Re Campbell and City of Kingston*, 14 C. P. 285; *Re McLeod and Town of Kincardine*, 38 U.C.R. 617, (harbours)—; *Re Clement and County of Wentworth*, 22 C. P. 300; *Re Bate and City of Ottawa*, 23 C. P. 32; *Canada Atlantic R. W. Co.* v. *City of Ottawa*, 8 O.R. 183, 201; 12 A.R. 234; 12 S.C.R. 365; *Scott* v. *Town of Tilsonburg*, 10 O.R. 119; 13 A.R. 233; *Canada Atlantic R. W. Co.* v. *Township of Cambridge*, 14 A.R. 299; 15 A.R. 219, (railway aid)—; *Re People's Milling Co. and Town of Meaford*, 10 O.R. 405; *Re Denne and Town of Peterboro'*, 10 O.R. 767, (exemption of manufactory)—; *Re McAvoy and Township of Sarnia*, 12 U.C.R. 99; *Re Cunningham and Almonte (Village of)*, 21 C.P. 459; *Re Pickett and Township of Wainfleet*, 28 O. R. 464, (local option by-laws)—; *Attorney-General* v. *Campbell*, 19 Grant 299; *Reg.* v. *Howard*, 4 O.R. 377; *Reg.* v. *Copp*, 17 O. R. 738; *Quinn* v. *Town of Orillia*, 28 O.R. 435, (buildings)—; *Moore* v. *Township of Esquesing*, 21 C.P. 277; *Re Annis* v. *Township of Mariposa*, 25 C.P. 133—; *Re Birdsall and Township of Asphodel*, 45 U. C. R. 149; *Re Adams and Township of East Whitby*, 2 O. R. 473; *Wannamaker* v *Green*, 10 O. R. 457; *Re Waldie and Village of Burlington*, 13 A. R. 104; *Re Ostrom and Township of Sidney*, 15 O. R. 43; 15 A. R. 372, (by-laws establishing or closing highways)—; *Re Misener* v. *Township of Wainfleet*, 46 U.C.R. 457; *Re Townships of Romney and Mersea*, 11 A. R. 712; *Re Clark and Township of Howard*, 9 O. R 576; *Re Funston and Township of Tilbury East*, 11 O. R. 74; *Alexander* v. *Township of Howard*, 14 O. R. 22; *Township of West Nissouri* v. *Township of North Dorchester*, 14 O. R. 294; *Re Clark and Township of Howard*, 14 O. R. 598; 16 A. R. 72; *Re Robertson and Township of North Easthope*, 15 O. R. 423; 16 A. R. 214; *Broughton* v. *Townships of Grey and Elma*, 26 O. R. 694; 23 A. R. 601; 27 S.C.R. 495, (drainage by-laws)—; *Fleming* v. *City of Toronto*, 20 O. R. 547; 19 A. R. 318; *Re Gillespie and City of Toronto*, 19 A. R. 713; *Sweeny* v. *Town of Smith's Falls*, 22 A. R. 429; *Re Hodgins and City of Toronto*, 26 O. R. 480; 23 A. R. 80; *Re Canadian Pacific R. W. Co. and City of Toronto*, 23 A. R. 250; 26 S. C. R. 682; *Pelman* v. *City of Toronto*, 24 A. R. 53, (other local improvements)—; *Bannan* v. *City of Toronto*, 22 O. R. 274; *Reg.* v. *Butler*, 22 O. R. 462; *Reg.* v. *Latham*, 24 O. R. 616; *Merritt* v. *City of Toronto*, 25 O. R. 256; 22 A. R. 205; *Re Elliott*, 11 Man. Rep. 358; *Re Taylor and City of Winnipeg*, 11 Man. Rep. 420; *Virgo* v. *City of Toronto*, 22 A. R. 435; 25 S. C. R. 447; [1896] A. C. 88, (licensing powers).

(*a*) See note (**b**) to s. 326 and *Strickland* v. *Hayes*, 1 Q. B. 290 quoted in note (**d**) to the same section.

(*b*) *Re McCutcheon and City of Toronto*, 22 U.C.R. 613; *Re McLeod and Town of Kincardine*, 38 U. C. R. 617; *Ex p. Lou. Kai Long* Quebec Rep. 6 Q.B. 301; *Re Snell and Town of Belleville*, 30 U.C.R. 81, 89.

(*c*) *Re Dunlop and Township of Douro*, 18 U.C.R. 227. See also *McMillan* v. *Rankin*, 19 U.C.R. 356; *Craig* v. *Rankin*, 10 C.P. 186.

(*d*) *Re Laplante and Town of Peterboro'*, 5 O.R. 634.

(*e*) *Re Clark and Township of Howard*, 9 O.R. 576.

(*f*) *Re Denne and Town of Peterboro'*, 10 O.R. 767.

(*g*) *Smith* v. *Township of Ancaster*, 27 O.R. 276; 23 A.R. 596.

powered township councils to pass by-laws "for *limiting the number of* inns or houses of entertainment" in the municipality, and 16 V. c. 184, s. 4, required the assent of the electors to any by-law "for *prohibiting* the sale of spirituous liquors . . . in such municipality." A by-law limiting the number of licenses to one in a township 10 miles square and containing 6,000 inhabitants (besides those of a large village situated within the township), was set aside as unreasonable (*h*). *Per* ROBINSON, C.J.,

> "It was not a *bona fide* exercise of the discretion of limiting the number of licensed taverns . . . it was in reality a prohibitory measure . . . and was intended to give the go-by to a legislative enactment, which gave the inhabitants of the township a direct voice upon the question of prohibition."

So in *Re Brodie and Town of Bowmanville* (*i*), a by-law under 39 V. c. 26, s. 2 (3), limiting to one the number of shop licenses in a town was quashed as being in effect prohibitory and creating a monopoly.

A later example of a by-law set aside as not being a *bona fide* exercise of statutory powers is *McMillan* v. *Portage la Prairie* (*j*), the facts of which are stated in note (**a**) to s. 559 *post*.

A by-law for the division of the village of Rigaud into electoral districts passed to favour the majority of the council to the prejudice of the minority, whose term of office (*mandat*) would only terminate after the elections of the month of January then next, and to control (by means of this division) the general election which would thus become necessary, was set aside as unjust, partial and oppressive (*a*).

By-laws not in the public interest.

So a by-law will be held bad when it appears to have been passed not to subserve the interests of the corporation, *i.e.*, the public, but those of some private person or class of persons (*b*).

By-laws partly good and partly bad.

A by-law may be good in part and bad in part (*c*); but that can only be so when the two parts are entire and distinct from each other (*d*).

Thus, if a by-law consists of several distinct and independent provisions, although one or more of these may be void, yet the rest of the by-law may be valid. (*a*) That is, if the valid portion is sufficient without that which is void, to constitute a complete by-law. (*b*)

But if a by-law be entire, and one part void, it is void altogether. Thus, a by-law which, instead of being limited to those within the jurisdiction of the corporation, professed to extend to others also, was held void not only as to the latter but also as to members of the corporation. (*c*)

(*h*) *Re Barclay and Township of Darlington*, 12 U.C.R. 86, followed under identical circumstances in *Re Graystock and Township of Otonabee*, 12 U.C.R. 458.

(*i*) 38 U.C.R. 589.

(*j*) 11 Man. Rep. 216.

(*a*) *Mongenais* v. *Corporation of Rigaud*, Quebec Rep. 11 S. C. 348.

(*b*) *Re Morton and City of St. Thomas*, 6 A. R. 323; *Re Peck and Town of Galt*, 46 U. C. R. 211; *Re Vashon and Township of East Hawkesbury*, 30 C. P. 194; *Hewison* v. *Town of Pembroke*, 6 O. R. 170; *Re Township of Romney and Township of Mersea*, 11 A. R. 712; *Pells* v. *Boswell*, 8 O. R. 680; and see *Re Scott and Town of Tilsonburg*, 10 O. R. 119; 13 A. R. 233; *Re Ostrom and Township of Sidney*, 15 O. R. 43; 15 A. R. 372; *Ontario Natural Gas Co.* v. *Smart*, 19 O. R. 591; *Alexander* v. *Village of Huntsville*, 24 O. R. 665, and *per* LORD RUSSELL OF KILLOWEN in *Kruse* v. *Johnson*, *supra*.

(*c*) *Fazakerley* v. *Wiltshire*, 1 Stra. 469; *Gunmakers' Co.* v. *Fell*, Willes, 390; *Reg.* v. *Lundie*, 8 Ir. N. S. 640.

(*d*) *Per* LORD KENYON in *Rex* v. *Faversham*, 8 T. R. 356, 357; *Rex* v. *Bunstead*, 2 B. & Ad. 705; *Blackpool L. B. of Health* v. *Bennett*, 4 H. & N. 138.

(*a*) *Lee* v. *Wallis*, 1 Ken. 295; *Ross* v. *United Counties of York and Peel*, 14 C. P. 171; *Re Fennell and Town of Guelph*, 24 U. C. R. 238; *Re Snell and Town of Belleville*, 30 U. C. R. 81; *Re Harris and City of Hamilton*, 44 U. C. R. 641.

(*b*) *Reg.* v. *Jim Sing*, 4 B. C. R. 338.

(*c*) *Guilford (Mayor of)* v. *Clark*, 2 Vent. 247; *Dodwell* v. *Oxford (University of)*, 2 Vent. 33, 34; and see *Elwood* v. *Bullock*, 6 Q. B. 383; *Reg.* v. *Robinson*, 17 Q. B. 46.

Secs. 325, 326.

Note (e).

Recital of authority.

It is not necessary to recite in a by-law the authority of the council. This will be presumed until the contrary is proved. (*d*)

Mistake as to jurisdiction.

A city corporation, under a misconception as to the extent of its statutory powers, passed a by-law prohibiting peddling on certain streets. The plaintiff having declined to take out a license containing this illegal restriction was interfered with by the police, and a license omitting the restriction was refused him. *Held*, that he had no right of action, and that a municipal corporation is not liable in damages for attempting to enforce a by-law under a misconstruction of its powers, unless such liability is expressly or impliedly imposed by Statute. (*e*)

(e) "**Unless otherwise authorized or provided.**" The cases in which authority is expressly given or provision made for dispensing with a by-law are comparatively few and unimportant. See ss. 19, 24, 26 (1), (6), 58 (4), 210, 265, 271, 324, 326, 574 (*2b*) and R.S.O. c. 243, s. 6. In *Township of Pembroke* v. *Canada Central R. W. Co.*, (*a*) it was held that the consent of the municipal authority—which is required by s. 183 of "*The Railway Act of Canada*" before a railway can be carried along the line of an existing highway,—may be given by resolution, and that the above section does not apply to powers exercised not under "*The Municipal Act*," but under special Acts passed for other purposes and by a different Legislature. But this section declares that in all other cases the powers of the council *shall* be exercised by by-law. No language could be plainer, yet no provision of the Act is more often disobeyed. The result is illegality of procedure, and in very many cases unnecessary and costly litigation. An order or resolution duly signed and sealed is virtually a by-law; but many orders and resolutions pass by mere vote, without the formalities required in the case of a by-law by the regulations which the council have themselves made for governing their proceedings. (*b*) Such resolutions have not the force nor effect of by-laws.(*c*) A by-law should not be dispensed with except in a very clear case. (*d*) In fact, whenever a municipal council is in doubt whether it can or cannot do a particular thing by order or resolution, it would be much safer and wiser to use a by-law. Were this rule understood and followed it would prevent much confusion in the administration of municipal affairs. Another common but erroneous belief is, that a municipal council can by order or resolution do that which if done through a by-law, would be illegal. This is absurd. No municipal council can do informally that which it has no power to do directly and formally. (*e*) Municipal corporations, however, may become liable as wrongdoers for things done by direction of the council without by-laws. (*f*)

General power to make regulations;

To repeal, alter, etc. by-laws.

326. Every council may make regulations not specifically provided for by this Act, and not contrary to law, for governing the proceedings of the council, the conduct of its members, the appointing or calling of special meetings of the council, and generally such other regulations as the good of the inhabitants of the municipality requires, and may repeal, alter and amend its by-laws, save as by this Act restricted. 55 V. c. 42, s. 283.

Taken from the Act of 1858, 22 V. c. 99 s. 187.

(*d*) *Fisher* v. *Township of Vaughan*, 10 U. C. R. 492, and see *Tyler* v. *County of Waterloo*, 9 U. C. R. 588, 590; *Re Cameron and Township of East Nissouri*, 13 U. C. R. 190; *Re Gibson and United Counties of Huron and Bruce*, 20 U. C. R., 111; *Re Croome and City of Brantford*, 6 O. R. 188; Dillon, s. 318. (*e*) *Pocock* v. *City of Toronto*, 27 O. R. 635.

(*a*) 3 O.R. 503. (*b*) See. 326 note (**b**).

(*c*) *Re Morrell and City of Toronto*, 22 C.P. 323; *Dunston* v. *Imperial Gas Light Co.*, 3 B. & Ad. 125, and see note (**a**) to s. 10 *ante*.

(*d*) *Gooderham* v. *City of Toronto*, 21 O. R. 120; 19 A.R. 641; *McNab* v. *Township of Dysart*, 22 A.R. 508; *Wigle* v. *Village of Kingsville*, 28 O.R. 378.

(*e*) *Daniels* v. *Township of Burford*, 10 U.C.R. 478.

(*f*) *Croft* v. *Town of Peterborough*, 5 C.P. 35; *Neill* v. *Township of Ross*, 22 C.P. 487; *Darby* v. *Township of Cleveland*, 38 U.C.R. 338; *Lewis* v. *City of Toronto*, 39 U.C.R. 343.

(a) **"Every council may make regulations not specifically provided for by this Act . . . for" etc.**

These regulations should be made by by-law, (s. 325.) The fact that a charter empowered a select body to make by-laws touching certain specified matters was held not to take away from the body at large the power (incidental to every corporation) of making by-laws relating to other matters not specified in the charter (*a*). Indeed it may be fairly argued that the object of specifying, in ss. 531-597, and in other parts of this Act, a long list of matters in respect of which councils may pass by-laws was not to attempt an exhaustive enumeration or a complete definition of the powers of municipal corporations in this Province, but rather to discriminate between the classes of subjects which may be dealt with by county, city, town, village and township councils respectively (*b*).

(b) **"And not contrary to law."** By-laws which are contrary or repugnant to the laws and Statutes of the realm are void and of no effect. "All by-laws must ever be subject to the general law of the realm and subordinate to it" (*c*). "Corporations cannot make by-laws contrary to their constitution. If they do so they act without authority" (*d*). In case of conflict between Statutes and by-laws the latter must give way (*e*).

But where power to pass by-laws on a subject is clearly given to a municipal corporation "the same act may constitute an offence against both the State and the municipal corporation and both may punish it without violation of any constitutional principle" (*f*): a dictum which is illustrated by numerous examples in the notes to ss. 549-556 relating to public morals and public health (*g*).

(c) **"For governing the proceedings of the council," etc.** A by-law to regulate the proceedings of a council required that every by-law should receive three readings, and that no by-law which had a tendency to increase the burdens of the people should be finally passed on the day it was introduced except by a two-thirds vote of the whole council. A by-law to limit the number of tavern and shop licenses to be issued in the municipality, and to fix the sum to be paid therefor (*h*),—and which therefore required a two-thirds vote—was read three times on the same day, and on the third reading was declared to have been passed, but the vote on such third reading was 8 yeas to 5 nays, ten being necessary to constitute a two-thirds vote. A special meeting of the council having been called for the next evening, the by-law received a third reading by the necessary two thirds vote. *Held*, (by ROBERTSON, J.), that the by-law must be quashed: for, not having received the necessary number of votes when it first came up for a third reading, it could not be validated by what took place at the subsequent meeting (*j*). In *Dwyre* v. *City of Ottawa* (*k*), a by-law under this section required that work exceeding $200 in value should be done by contract after tenders had been called for; but the council, in accepting tenders for paving a street, stipulated that the successful tenderers should agree to construct at the same prices and upon the same conditions any similar pavements required by the city during the year; and other contracts were accordingly entered into with these tenderers without calling for fresh tenders. After the work under these contracts had been commenced, and while it was yet in progress, a ratepayer obtained from ROBERTSON, J. an interim injunction restraining the contractors from further proceeding therewith and the city from paying any more money on account thereof. On appeal to the Court of Appeal it was held that as the plaintiff's legal right was not clear, and as serious loss and public inconvenience would result from stopping the work, while no irreparable loss would result from refusing an interlocutory injunction, it should not have been granted. Referring to the case of *Re Wilson and*

(*a*) *Rex* v. *Westwood*, 4 B. & C. 781; 7 Bing. 1, 39, 52.

(*b*) See this question further discussed in note (**d**) *infra*.

(*c*) *Norris* v. *Staps*, Hob. 210; 5 Co. 63.

(*d*) *Per* YATES, J. in *Rex* v. *Spencer*, 3 Burr. 1839.

(*e*) Dillon, s. 367; and see the cases on this point cited in note (**d**) to s. 325.

(*f*) Cooley, Constit. Limitations, s. 199.

(*g*) See also note (**a**) to s. 549.

(*h*) See R.S.O. c. 245, ss. 20, 32, 42, 43.

(*j*) *Re Wilson and Town of Ingersoll*, 25 O.R. 439 (1894).

(*k*) 25 A.R. 121 (1898).

Sec. 326.
Notes (c), (d).

Town of Ingersoll, OSLER, J.A., says (p. 428) "the case is not very clearly reported, and it is unnecessary to say whether I agree with it on the point for which it was cited."

(d) "And generally such other regulations as the good of the inhabitants of the municipality requires." "*The Municipal Corporations Act, 1882*," (Imp. Stat. 45-46 V. c. 50), instead of attempting to enumerate in detail the matters in respect of which by-laws may be passed by the corporations to which the Act applies, sums up their jurisdiction in a single section by enacting, (s. 23), that

> "The council may from time to time make such by-laws as to them seem meet for *the good rule and government of the borough* and for prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough."

words which have received (especially of late) a very large and liberal interpretation.

So in the charter of many American cities, a "general welfare clause" authorizing the council "to ordain and publish such acts, laws and regulations . . . as shall be needful to the good order of the city," or "to pass such ordinances as the council may deem expedient to maintain the peace, good government and order of the city," or a grant of "all powers and rights incident to municipal corporations and necessary for the proper government of the same," have been held to include many of the powers in relation to the protection of life and property, public morals, public health, public highways, the regulation of trade, the suppression of nuisances, etc., which are expressly enumerated in ss. 540-586 of this Act.(*a*)

Authority to make by-laws "for the good rule and government of the borough" (which are the words used in the Imperial Statute), has reference to the government of the borough as a corporation and the making of regulations for carrying into effect the purposes for which it was incorporated; but such general powers do not without more enable a council to carry out any unreasonable ideas of general "good government." (*b*)

Subject, however, to the limitations indicated in this section and in note (d) to s. 325, it is obvious that there are still many unenumerated subjects to which the general language of this section is applicable, and in respect of which municipal councils in this Province have therefore the power to legislate.

In *Re Richmond and Township of Front of Leeds and Lansdowne*, (*c*) SIR JOHN ROBINSON considered that, unless expressly debarred from doing so, a council might under the authority of this section pass a by-law applying only within a limited area of the municipality. He says (p. 569)

> "We cannot lay it down as a general principle . . . . that "the good of the inhabitants of the township" . . . . may not require local regulations of various kinds . . . It is for the municipal council to judge of that . . . The question is rather whether there are not excepted cases in which . . . the council . . . has not such discretion; and whether this is not one of those cases."

So, in *Ross* v. *United Counties of York and Peel*, (*d*) a section of a by-law prohibiting the sale of intoxicating liquors to idiots and insane persons was held good, though not expressly authorized by the Statute; in *Irwin* v. *Township of Mariposa*, (*e*) GWYNNE, J., (at p. 371) upheld the validity of a by-law indemnifying a township officer for all lawful acts done by him in his official capacity, and in *Re Snell and Town of Belleville*, (*f*) the Court refused to quash a by-law which required that every person selling meat or articles of provision by retail . . shall provide himself with weights, scales and measures, etc. (*g*)

(*a*) See Dillon ss. 394-407; American and English Encyclopædia of Law, "Municipal Corporations."—"General Welfare Clause."

(*b*) Dillon, s. 393.

(*c*) 8 U. C. R. 567 (1853).

(*d*) 14 C. P. 171. (*e*) 22 C. P. 367. (*f*) 30 U. C. R. 81.

(*g*) See also *Peters* v. *Board of Police of London*, 2 U. C. R. 543, cited in note (f) to s. 580, and *per* HAGARTY, C. J., in *Reg.* v. *Smith*, 401, 405; and (as to the limitations of this power) the cases cited in note (a) to s. 329, *post*, especially *Re Davis and Town of Clifton*, 8 C. P. 236.

Sec. 326.

Note (d).

In *Walker* v. *Stretton*, (*a*) LORD RUSSELL OF KILLOWEN, C. J., lays it down as a general rule that "the Court ought as far as possible to support by-laws made by local authorities unless it can be clearly seen that the by-law was made without jurisdiction and was unreasonable" and that Judges "should not willingly pick holes in rules which deal with local matters and local requirements which the local authorities are often better able to judge of than the Courts." And in a later case, *Kruse* v. *Johnson*, (*b*) the same learned Judge, after pointing out that the majority of the (English) cases in which the validity of by-laws has been discussed relate to the by-laws of railway companies, deck companies and other commercial corporations, expresses the opinion that a much more liberal rule should be applied to the by-laws of representative public bodies entrusted by Parliament with legislative powers for the general good, and that such a by-law

> "should not be set aside as unreasonable merely because particular Judges may think that it goes further than is necessary or convenient, or because it is not accompanied by qualifications or exceptions which some Judges think ought to have been there. In matters which directly or mainly concern the people . . . who have the right to choose those whom they think best fitted to represent them in their local governing bodies, such representatives may be trusted to understand their own requirements better than (some) Judges."

A by-law which provided that "no person shall, to the annoyance or disturbance of residents or passengers, keep or manage a shooting gallery, swing boat, roundabout or other like thing in any street or public place or on land adjoining or near to such street or public place," was attacked on the ground that the town-council had no right to pass legislation affecting private property or creating a new criminal offence; but the by-law was held good under the general authority conferred by s. 23 of "*The Municipal Corporations Act, 1882*," above quoted. (*c*) So by-laws (passed under the same authority) were upheld which enacted that no person should frequent or use a street or other public place for the purpose of book-making and betting or wagering or agreeing to bet or wager with any person (*d*); that no person should use indecent or obscene language in any public place to the annoyance of the public (*e*); that a person should not assemble with other persons in any street for the purpose of betting (*f*); that persons driving or having charge of vehicles during the hours between sunset and 2 a.m. should (except between the rising and the setting of the moon) carry lighted lamps attached to their vehicles so as to show light in the direction in which such persons were proceeding (*g*); that no person should sound . . . any musical instrument . . . within 50 yards of any dwelling house after being required by any constable or by any inmate of such house . . . to desist (*h*). But a by-law (passed under the same authority) which prohibited the use of obscene language in a street or public place or on land adjacent thereto was held to be invalid as repugnant to the general law because it was not limited to the use of such language to the annoyance of the public, nor did it contain any limitation to the like effect. (*i*) So a by-law providing that "no person not being a member of Her Majesty's Army or Auxiliary Forces, under the orders of his commanding officer, shall sound or play upon any musical instrument upon any street in the borough on Sunday" was held unreasonable and void for stating no qualification or exception in any circumstances, (*j*) as was also a by-law prohibiting parents from allowing any child under 12 years of age to sell after 10 p.m., (*k*) and a by-law that every person who shall sing or play a noisy instrument, or sing or preach in any street without a previously written license from the mayor,—since it would enable the mayor to license a nuisance or to prohibit a lawful act which was not a nuisance. (*l*)

(*a*) 12 Times L.R. 363 (1896). (*b*) [1898,] 2 Q.B. 91; 14 Times L.R. 416 (1898).
(*c*) *Teale* v. *Harris*, 13 Times L.R. 15 (1896).
(*d*) *Burnett* v. *Berry*, [1896] 1 Q.B. 641.
(*e*) *Month* v. *Jordan*, 13 Times L.R. 121 (1896).
(*f*) *Godwin* v. *Walker*, 40 Sol. Jour. 481 (1896).
(*g*) *Walker* v. *Stretton*, 12 Times L.R. 363 (1896).
(*h*) *Kruse* v. *Johnson*, 14 Times L.R. 416 (1898).
(*i*) *Strickland* v. *Hayes* [1896] 1 Q.B. (see however s. 549 (2) of this Act).
(*j*) *Johnson* v. *Croydon (Mayor of)* 16 Q.B.D. 708 (1885).
(*k*) *McDonald* v. *Lochrane*, 51 J.P. 629. (*l*) *Munro* v. *Watson*, 51 J.P. 660.

Secs. 326-328.

Notes (d), (e), (f); (a).

Express authority has, however, been conferred in this Province upon the Boards of Police Commissioners in cities and the councils of towns to regulate or prohibit the playing of bands or musical instruments in any street (s. 484 (5)), and as to *McDonald* v. *Lochrane*, see s. 484 (4).

(e) "**And may repeal, alter and amend its by-laws.**" It need hardly be mentioned that the municipal body which has power to make has power to repeal by-laws; it being of the very nature of legislative power that, by timely changes in the rule it prescribes, it should be enabled to meet the exigencies of the occasion (*a*). Repeals cannot be made to operate retrospectively to the prejudice of vested rights (*b*), unless for the purpose of abating an actual nuisance (*c*).

(f) "**Save as by this Act restricted.**" There are certain by-laws, such as those authorizing the issue of debentures (s. 392), or granting exemptions from taxation (s. 411), upon the faith of which third persons act and change their circumstances, and from which the municipality in general derives an immediate benefit. These, being in the nature of contracts, rather than ordinary regulations, cannot be repealed until the loan or debt arising thereout or dependent thereupon is satisfied, or so long as the conditions upon which the exemption depends are fulfilled (s. 392). Hence it is that in this section the power given is to repeal, alter or amend by-laws in general, "save as by this Act restricted (*d*).

Council a continuing body.

327. A municipal council shall be deemed and considered as always continuing and existing, notwithstanding any annual or other election of the members composing the same, and, after any such election and the organization of the council for the current year, may take up and carry on to completion all proceedings commenced but not completed prior thereto. 55 V. c. 42, s. 284: 60 V. c. 3, s. 3.

Taken from 49 V. c. 37, s. 63 (1886), the wording of which has been altered in the Revision of 1897 under the authority of 60 V. c. 3, s. 3.

(a) Prior to this enactment each new council was considered to be a distinct legislative body, and, like a newly elected Parliament, incapable of carrying on proceedings initiated, and not completed by its predecessor, but obliged to commence *de novo* (*e*). This frequently resulted in much delay and inconvenience, especially in cases where the passing of a by-law is required to be preceded by advertisement or notice for a certain period, *e.g.*, by-laws requiring the assent of the electors (s. 338), local improvement by-laws (s. 671), or drainage by-laws (R.S.O. c. 226, ss. 21-45). In *The Canada Atlantic R. W. Co.* v. *City of Ottawa* (*f*), a by-law voted on in 1873 was passed by the council of 1874. *Held*, not a compliance with s. 236 of the Mun. Act then in force (*g*), which required that such a by-law should be "passed by the council which submitted the same." But see now s. 373 of the present Act.

Certain acts not to be done by councils after 31st December.

328. No council of any local municipality shall, after the 31st day of December in the year for which its members were elected, pass any by-law or resolution for the payment of money or which involves directly or indirectly the payment of money, nor shall they enter into any contract or obligation

(*a*) *Rex* v. *Bird*, 13 East. 379, and see "*The Interpretation Act*," (R.S.O. c. 1.) s. 8 (38).

(*b*) *Rex* v. *Ashall*, 12 East. 22. (*c*) Dillon, s. 314.

(*d*) See further, *Re Cunningham* v. *Village of Almonte*, 21 C.P. 459; *Re Great Western R. W. Co. and Township of North Cayuga*, 23 C.P. 28; *Wright* v. *Incorporated Synod of the Diocese of Huron*, 11 S.C.R. 95; *Alexander* v. *Village of Huntsville*, 24 O.R. 665.

(*e*) See *per* ROBINSON, C.J., in *Township of East Nissouri* v. *Horsman*, 16 U.C.R., at p. 583.

(*f*) 8 O. R. 183, 201; 12 A. R. 234; 12 S.C.R. 365. (*g*) 36 V. c. 248.

on the part of the municipality, nor shall they appoint to or dismiss from office any officer under the control of the council, or do any other corporate act after said day except in case of extreme urgency; but the council may, before the 31st day of December, do any necessary business which, having regard to the circumstances, may be done at such time, and which they are authorized to do at their last meeting. 59 V. c. 51, s. 7.

Secs. 328, 329.

Notes (a); (a).

Taken from 59 V. c. 51, s. 7 (1896).

(a) During the period which intervenes between the annual municipal elections (ss. 95, 128), and the organization of the new council (s. 259), the old council remains in office (s. 95); but such members thereof as have not been re-elected may be in the meantime less amenable to the controlling influence of public opinion than if they had again to give an account of their stewardship. It has therefore been found advisable to limit the powers which may be exercised by the council during this period of comparative irresponsibility.

329. In all cases where, under the provisions of this Act, or of any other Act, any council or the board of commissioners of police in any city, or either of them, is or are authorized to pass by-laws for licensing any trade, calling, business, or profession, or the person carrying on or engaged in any such trade, calling, business or profession, the council and the board of commissioners of police, respectively, shall, subject to sections 581, 583 and 585 of this Act, have power to pass by-laws fixing the sum to be paid for a license for exercising any such trade, calling, business, or profession, in the municipality, and for enforcing payment of the license fee, and for determining the time during which the license shall be in force. 55 V. c. 42, s. 285; 59 V. c. 51, s. 31 (1), *part*.

Traders' license fees.

Taken from 42 V. c. 31, s. 23 (1879).

(a) The Act empowers councils or Boards of Commissioners of Police to pass by laws "for regulating" or "for licensing and regulating," or "for licensing, regulating and governing," or "for preventing *or* regulating and licensing" persons engaged in carrying on certain trades and occupations or doing certain kinds of business, etc., within the municipality. (*a*)

By-laws in *restraint* of trade are bad as contrary to public policy. (*b*) But they are valid when they *regulate* the manner of carrying on trade within the borough, so far as to prevent monopoly or the sale of unfit commodities, or to insure the proper conduct of those who trade therein. (*c*) So a by-law which prohibited the slaughter of any animal within the walls of a city was held good, since it did not absolutely restrain the trade of a butcher but only regulated its exercise and prevented the nuisance which would arise from the slaughter of beasts within the city. (*d*) Authority to "regulate" or to "regulate and govern" the exercise of a trade or calling does not empower the

(*a*) See ss. 484, 540 (6) (7), 541, 542, 551, 559 (4) (5), 580, 581, 583, 585, 586, etc.

(*b*) *Mitchell* v. *Reynolds*, 10 Mod. 130; *Dare-mont* v. *Hardis*, Moore 376; *Ryskith* v. *Braddock*, 3 Burr. 1847; *Butchers' Co.* v. *Morey*, 1 H. Bl. 370; *Clark* v. *Denton*, 1 B. & Ad. 92; *Clark* v. *Le Creu*, 9 B. & C. 52; *Shaw* v. *Poynter*, 2 A. & E. 312; and see the judgment of GWYNNE, J., in *Virgo* v. *City of Toronto*, 22 S.C.R., pp. 452-462 referred to in note (u) to s. 583., where many of the English authorities on this point are reviewed by the learned Judge.

(*c*) *Re the Bricklayers and the Plasterers*, 2 Roll. Rep. 391; *Freemantle* v. *Silk Throwsters Co.* 1 Lev. 229, and see the authorities referred to in note (a) *supra*.

(*d*) *Pierce* v. *Bartcum*, Cowp. 469.

(*e*) See *Virgo* v. *City of Toronto*, referred to in note (u) to s. 583, *post*.

Sec. 329.

Note (a).

council to prohibit its exercise (for which express words are necessary) (*e*) nor will it (without more) confer a right to compel those carrying on the trade to take out a license, and pay a license fee, though it does authorize the council to require a certificate that their regulations have been complied with. (*f*) It is in the nature of a police power; and is conferred only where it is advisable for the protection of the public that the local authority should have jurisdiction to impose, if necessary, restrictions upon that right which ordinarily belongs to every citizen of carrying on his lawful business without interference provided he complies with the general law of the land. (*g*) It has, for example, been deemed expedient for the protection of public morals to authorize the regulation of the liquor traffic; (*h*)—the use of spirituous liquors in gaols and prisons; (*i*)—to prevent minors from frequenting billiard rooms, etc., (*j*)—to authorize municipalities to restrict the sale and gift of intoxicating drink to children, apprentices and minors (*k*)—to provide for the inspection of bathing houses and boat houses so as to prevent their use for illegal or immoral purposes; (*l*)—to license and regulate keepers of billiard and bagatelle tables, (*m*) and bill-posters; (*n*)—to prevent or regulate and license bowling alleys, circuses, menageries, roller skating rinks and exhibitions of wax works, etc.—and see as to the "curfew bell" note (**q**) to s. 549.

So in the interest of the public health, power is conferred to regulate the erection or occupation of dwellings on narrow streets or in crowded or unsanitary localities (*a*), —the preparation and sale of food and drink (*b*),—to license and regulate milk vendors (*c*), plumbers (*d*), tobacconists (*e*), eating houses, etc. (*f*), and the carrying on of certain trades and occupations which do or may occasion nuisances injurious to public health (*g*).

And the grant of jurisdiction to local authorities to regulate and license the keepers of second-hand shops, junk shops and livery stables, carters, teamsters, cabmen, —to regulate the hours of labour in certain callings,—to regulate and control children engaged in certain occupations (*h*),—to regulate the weight of bread (*i*) or the weighing and selling of other marketable articles (*j*),—to license and regulate auctioneers (*k*), ferries (*l*), hawkers, pedlars and petty chapmen (*m*), keepers of intelligence offices for servants, etc., (*n*) "runners" for hotels, lodging houses, etc. (*o*) may be explained in each of the cases enumerated by the existence of a necessity (real or imaginary) for protecting the public, and especially those least able to protect themselves, against probable fraud or injustice (*p*).

But by-laws of this class should be strictly construed, and any ambiguity or doubt as to the extent of the statutory authority of municipalities in respect thereof is to be determined in favor of the public, as against the grantee of the power, especially when the by-law is in derogation of common law rights and of the liberty of every subject to employ himself in any lawful trade or calling (*q*).

Even where power to regulate is accompanied by express power to license it has been held in the United States that this does not—(except perhaps in the case of exhibitions and amusements)—confer the right to use the license as a means of taxation with a view to revenue, but only to charge a reasonable fee for the license itself and the labour attendant upon its issue (*r*).

(*f*) See s. 330 and note (**c**) thereto.

(*g*) See *Virgo* v. *City of Toronto*, [1896] A. C. 88, cited in note (**c**) to s. 330, and per OSLER J.A. in *Merritt* v. *City of Toronto*, 22 A.R. 205 at p. 207, cited *infra*. (*h*) R.S.O. c. 245. (*i*) R.S.O. c. 315. (*j*) R.S.O. c. 247.

(*k*) S. 549 (9). (*l*) S. 549 (10). (*m*) S. 583 (4). (*n*) S. 583 (6).

(*a*) Ss. 553 (1) and 631.

(*b*) S. 550 and the Statutes referred to in note (**a**) thereto.

(*c*) S. 583 (23). (*d*) S. 583 (25). (*e*) S. 583 (28) and see R.S.O. c. 261.

(*f*) S. 583 (34-36).

(*g*) S. 586, and see "*The Public Health Act*," (R.S.O. c. 248).

(*h*) Ss. 484, 583 (22) (37-38), 584. (*i*) S. 583 (1). (*j*) Ss. 579-581.

(*k*) S. 583 (1). (*l*) S. 583 (12). (*m*) S. 583 (14). (*n*) S. 583 (17).

(*o*) S. 583 (27)) (*p*) See Tiedeman, Police Power, ss. 85-89.

(*q*) *Re Taylor and City of Winnipeg*, 11 Man. Rep. 420, citing the language of OSLER, J.A., in *Merritt* v. *City of Toronto*, 22 A.R. 205, at p. 207.

(*r*) Dillon, ss. 357-360, 768; Cooley on Taxation (2nd Ed.), c. XVIII., followed in *Walker* v. *City of Montreal*, M. L. R. 10 Q. B. 469, referred to in note (**c**) to s. 330.

But even in the United States this doctrine is not universally accepted (s)—and *Pigeon* v. *City of Montreal* (t) shews that, at least where the power to license is coupled (as is usually the case in this Act) with express power "to fix the sum to be paid for such license," the council is not limited to the exaction of a nominal fee, as it is by s. 330 in the case of a certificate of compliance with regulations in regard to any trade or calling.

In *Re Neilly and Town of Owen Sound* (u), a by-law under s. 583 (4) fixing at $300 the sum to be paid for a license to keep a billiard table in the town for hire was held not to be *ultra vires* as imposing a fee which was so excessive as to be unreasonable or prohibitory. *Per* HAGARTY, C.J., C.P., "the trade or profession of keeping a billiard table for profit is not like that of buying or selling the necessaries of life. . . It is not like a license to a butcher or a baker or a seller of firewood . . . but merely a matter of pleasure or luxury." (v)

But power "to regulate" or "to pass by-laws for regulating the houses or places licensed" will not authorize a by-law that "in case the (licensee) is convicted of a breach of any of the provisions of the by-law, he shall in addition to the penalty, absolutely forfeit his license for the remainder of the current year" (w). Nor is such authority conferred by the (concluding) words of this section "for determining the time during which the license shall be in force" (h), for the power to create a forfeiture of property is one which must be expressly given . . . and such an extraordinary power is least of all to be inferred when the Legislature has provided other means of enforcing by-laws by fine and amerciament (e).

Nor is a general authority to pass by-laws "for regulating" or "for licensing and regulating" or "for licensing, regulating and governing," the carrying on of a trade or business, or to make "such other regulations as the good of the inhabitants of the municipality requires" (s. 326), sufficient to warrant a by-law which results or may result either in a total prohibition of the trade, etc., (d), or in the creation of a monopoly therein (e).

> "The absolute prohibition of any particular occupation, not in itself unlawful, and only a nuisance from its abuse, cannot, I think, be held to come fairly within the general power to make by-laws for the peace, welfare and good government of a municipality, when we look at the authority specially given in the same Act over particular matters, some of them so nearly of a similar character as almost to warrant the application of the maxim *expressio unius est exclusio alterius*" (f).

"There is a great difference between prevention and regulation . . . and between restraint and regulation . . . No man should be prevented from the exercise of a lawful calling by mere inference" (g). So, under a power to pass by-laws "for licensing, regulating and governing hawkers," etc., a by-law prohibiting sales during certain hours except at specified places, *e.g.*, the market place, etc., was held *ultra vires* of the City of Vancouver (h), and a by-law prohibiting hawkers and pedlers from exercising their trade on several of the principal streets of a city was held to be beyond the power conferred by ss. 580 (4) and 583 (14) of this Act upon the municipalities therein named to pass by-laws "for preventing or regulating the sale by retail in the public streets or vacant lots adjacent thereto of" certain articles, and "for licensing, regulating and governing hawkers, pedlars," etc. (i).

(s) See Tiedeman, Police Power, s. 101.

(t) 17 S.C.R. 495, referred to in note (c) to s. 330. (u) 37 U.C.R. 289.

(v) And see *Jones* v. *Gilbert*, 5 S.C.R. 456, referred to in note (d) to s. 325, and *Merritt* v. *City of Toronto*, 25 O.R. 256, where ROSE, J., observes that one of the subjects of Provincial jurisdiction under s. 92 of the B. N. A. Act is "9. Shop, saloon, tavern, auctioneer and other licenses *in order to the raising of a revenue for Provincial, local or municipal purposes.*"

(w) *Re Smith and City of Toronto*, 10 C. P. 225; *Re Bright and City of Toronto*, 12 C. P. 433. (h) *Bannon* v. *City of Toronto*, 22 O. R. 274.

(e) *Kirk* v. *Nowill*, 1 T. R. 118, 124; and see *Doggerill* v. *Pokes*, Moore, (K. B.) 411. (d) Dillon, s. 362. (e) See s. 330 and note (a) thereto.

(f) *Per* DRAPER, C.J., *Re Davis and Town of Clifton*, 8 C. P. 236.

(g) *Per* HARRISON, C.J., *Reg.* v. *Johnston*, 38 U. C. R. 549, 551.

(h) *Reg.* v. *Jim Sing*, 4 B. C. R. 338.

(i) *Virgo* v. *City of Toronto*, 22 S. C. R. 447; [1895] A. C. 88, reversing s. c. 22 A. R. 435.

Sec. 329

Note (a)

Per Lord DAVEY, (p. 93)—

> "No doubt the regulation and governance of a trade may involve the imposition of restrictions upon its exercise, both as to time and also, to a certain extent, as to place, where such restrictions are, in the opinion of the public authority, necessary to prevent a nuisance or for the maintenance of order. But . . . there is a marked distinction to be drawn between the prohibition and prevention of a trade and the regulating or governance of it. Indeed the power to regulate and govern seems to imply the continued existence of that which is to be regulated and governed. The examination of other sections of the Act shews that when the Legislature intended to give power to prevent or prohibit they did so by express words" (*j*).

And, especially in the earlier cases decided in this Province, it was required that by-laws passed under a general authority to regulate, should, in the opinion of the Courts, be "reasonable." The Act, 13-14 V, c. 65, s. 4, which empowered municipal councils to pass by-laws "for regulating taverns, inns and houses of public entertainment" was held to authorize a by-law requiring a person applying for a license to produce a certificate of honesty and good moral character signed by four municipal electors residing in the locality, etc.; to give a bond that he would abide by all the township by-laws regulating houses of public entertainment; to close his bar and bar-room at 10 p.m., and keep it closed on Sunday and not to sell to persons in a state of intoxication (*k*).

In *Baker* v. *Town of Paris* (*a*), a by-law (passed under the same authority) required (clause (6)) that:

> "Every innkeeper shall shut up his bar-room, the outer as well as the inner doors each night at 11 o'clock and keep them closed during the night except on Saturday night when they shall be closed at the same hour and not opened till 1 a. m. on Monday except for the entrance of himself or his servants *during which time no spirituous or intoxicating liquors shall be sold or furnished to anyone*" and

(Clause 7).

> "If any dispute shall arise between the guests and the innkeeper it shall be referred to any Justice of the Peace, whose decision by his verbal order, as to the *quantum* of the charge shall be final."

Held, that clause 7 and the final words (in italics) of clause 6 were *ultra vires* as an unreasonable exercise of the power of regulation given by the Statute. So regulations "that no innkeeper shall sell or permit the drinking of any intoxicating liquors on the Sabbath Day except in case of sickness, or to travellers" and "that no innkeeper shall be allowed to sell, give, loan, barter or dispose . . . of any intoxicating liquors after 10 p. m. or before 5 a. m. travellers excepted" were held unreasonable and void (*b*) and similar decisions were given as to a regulation "that the bar-room of every licensed tavern . . . shall be closed and unoccupied except by members of the family etc., and shall have no light except the light of day" from 12 midnight to 5 a. m. (*c*) and "that no intoxicating liquors shall be sold in any tavern to any person who has the habit of drinking intoxicating liquors to excess, nor to the wife &c. of any such person, nor to any person concerning whom notice has been given to the landlord by the husband, etc., of such person or by any J. P. or Inspector that such person is in the habit of drinking intoxicating liquors to excess (*d*).

But the following were held to be reasonable and valid by-laws under a general power of regulation:—"that no person who has not a tavern license shall exhibit or suffer or permit to be exhibited or continued over his or her door or otherwise (the sign) "Licensed to sell wine, beer or other spirituous or fermented liquors" or the words "Bar-room" or "Tavern" or "Inn" or "Saloon" or any other word or signs or sign boards indicating that the person keeping it is authorized to keep . . . any house or place of public enter-

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(*j*) And see this case more fully referred to in note (u) to s. 583 *post*.

(*k*) *Re Greystock and Township of Otonabee*, 12 U. C. R. 458.

(*a*) 10 U. C. R. 621.

(*b*) *Re Barclay and Township of Darlington*, 12 U. C. R. 86.

(*c*) *Reg.* v. *Belmont*, 35 U. C. R. 298, but see *Reg.* v. *Martin*, *infra*.

(*d*) *Roberts* v. *Climie*: *Murphy* v. *Climie*, 46 U. C. R. 264, see now "*The Liquor License Act*" (R. S. O. c. 245), ss. 54, 57, 124, 125.

Notes (a) ; (a).

tainment" (e) ; that it should be unlawful to sell or give intoxicating liquor of any sort to any child, apprentice, idiot or insane person without the consent of the parent or legal protector of such child (f) ; that the consent required by 36 V. c. 48, s. 379 (31) (g) to authorize the sale or gift of intoxicating drink to a child, apprentice or servant should be evidenced by a *written order* (h) and "that the windows of every bar-room shall during the time the bar-room is required to be kept closed, have at least the lower half of the whole width uncovered by blinds, shutters" etc (i). In that case OSLER, J. A. says (j) "I think that the decision in *Reg.* v. *Belmont* (k) has been to say the least, very much limited by the subsequent case of *Hodge* v. *The Queen*, 9 App. Cas. 117" (l). The decisions as to s. 11 of the by-law which was in question in *Re Bright and Toronto* (m) ss. 5-9 of the by-law in *Re Brodie and Town of Bowmanville* (n), and ss. 3, 7 and the last clause of s. 5 of the by-law in *Re Arkell and Town of St. Thomas* (o), turned upon the construction of express enactments relative to the subject matter thereof respectively, and not upon the scope of a general authority "to regulate."

In *Reg.* v. *Hodge*, (a) where the conviction of the defendant for permitting a billiard table to be used in his tavern and a game of billiards played thereon during the time prohibited by "*The Liquor License Act*" for the sale of liquor therein, contrary to a resolution of License Commissioners passed under their general power to regulate taverns and shops, was attacked on the ground that the Statute giving this power was *ultra vires* of the Provincial Legislature, it seems to have nowhere been seriously urged that the resolution itself exceeded the limits of the jurisdiction which the Statute assumed to confer. And see the extract from the judgment of Chief Justice SEDGEWICK given in note (g) to s. 583, the authorities cited in note (d) to s. 325, and the language of the present Chief Justice of England relative to the limits of judicial authority in determining whether a by-law is or is not reasonable, (b)

See also as to the powers of municipal councils for regulating markets and sale of marketable articles, s. 580 —as to butcher's licenses, s. 581 —as to billiard and bagatelle tables, s. 583 (4).

330. Subject to the provisions of sections 331 and 332 of this Act no council shall have the power to give any person an exclusive right of exercising, within the municipality, any trade or calling, or to impose a special tax on any person exercising the same, or to require a license to be taken for exercising the same, unless authorized or required by statute so to do: but the council may direct a fee, not exceeding $1, to be paid to the proper officer for a certificate of compliance with any regulation in regard to such trade or calling. 55 V. c. 42, s. 286.

Granting monopolies prohibited.

But fee may be required for certificate.

Taken from the Act of 1858 (22 V. c. 99), s. 216. *Cf.* 12 V. c. 81, s. 116.

(a) "No council shall have the power to give any person an exclusive right of exercising within the municipality any trade or calling."

This would be the creation of a monopoly, which is forbidden by law. (a) This section has been held to render illegal by-laws which assumed to limit

(e) *Re Bright and City of Toronto*, 12 C. P. 433.

(f) *Ross* v. *United Counties of York and Peel*, 14 C. P. 171.

(g) S. 549 (9) of this Act.

(h) *Re Arkell and Town of St. Thomas*, 38 U. C. R. 594.

(i) *Reg.* v. *Martin*, 21 A. R. 145. (j) P. 148. (k) *supra*.

(l) See *supra*. (m) 12 C. P. 433, 434.

(n) 38 U. C R. 580. (o) 38 U. C. R. 594.

(a) 46 U. C. R. 141 ; 7 A. R. 246, and *sub. nom. Hodge* v. *Reginam*, 9 App. Cas. 117.

(b) Quoted in note (d) to s. 326 from the judgments in *Walker* v. *Stretton*, 12 Times L. R. 363, and *Kruse* v. *Johnson*, [1898] 2 Q.B. 91 ; 14 Times L. R. 416.

(a) 2 Inst. 63 ; 21 Jac. 1, c. 3.

Sec. 330.
Notes (a)-(c).

taverns and shops in a municipality to a single one. (*b*); a by-law providing that "no person shall keep a slaughter house in the city without a special resolution of the council," (*c*), and a by-law that "none but those persons appointed by the council shall sweep for hire or gain any chimney or flue in the city." (*d*)

(b) "Or to impose a special tax on any person exercising any trade or calling.

In *Farquhar* v. *City of Toronto*, (*e*) a by-law that "all wood brought into the city for sale shall be subject to a fee or charge of five cents per cord" was quashed as being an attempt to impose a tax for which there was no express authority. So in *Re Campbell and City of Kingston*, (*f*) so much of a market by-law as declared that all boats, rafts, cribs or railway cars, bringing to the city or into the harbour for delivery at or consumption in the city, firewood, coal, charcoal, etc., should be subject and liable to a toll of twenty-five cents for every ton's capacity, was held to be unauthorized either by s. 562 (7) or s. 580 (12) and to be clearly bad. (*g*)

(c) "Or to require a license to be taken, etc. . . . unless authorized or required by Statute to do so."

The right to license must be plainly conferred or it will be held not to exist. (*h*) "Where the Legislature intended to give power to license as well as to regulate they have said so." (*i*) In *Re Fennell and Town of Guelph*, (*j*) a by-law that all persons exercising the trade of a butcher within the town should take out an annual license and pay five shillings therefor, and in *Re Snell and Town of Belleville*, (*k*) a regulation that "any person wishing to sell fresh meat in quantities less than a quarter in a shop or stall in Coleman or in Baldwin wards, shall before the first of March in each year, apply in writing to the chairman of the market committee, stating the annual sum he or she will pay in addition to the sum of $40 to obtain a certificate from the proper authority authorizing the holder of the certificate to expose for sale and sell fresh meat in one stall in Coleman Ward or in Baldwin Ward for one year from the first of March of the year in which the certificate is obtained," were both (prior to the passing of s. 581) held bad as directly contravening the provisions of this section. (*l*)

In *City of Montreal* v. *Walker*, (*m*) a Statute authorizing the municipality to "license and regulate junk stores" was held not to warrant the exaction of a revenue duty but only of a moderate fee sufficient to cover the cost of inspection and regulation and of the issue of the licenses. (*n*) But where a Provincial Statute empowering the City of Montreal to prohibit the sale of certain articles elsewhere than on the public markets provided that the council might by by-law authorize any person to sell these articles beyond the market limits upon obtaining a license "for which he shall pay . . . such sum as may be fixed by such by-law;" and, by another clause, power was given to the city to impose a duty on all private marts for the sale of these articles "with power to regulate and fix the said duty as regards each particular mart as the council may see fit;" a by-law was held valid which fixed the license fee for the right to sell at a private stall at $200 in addition to a 7½ per cent. business tax levied under another by-law. (*o*) *Per* STRONG, J.:

(*b*) *Re Barclay and Township of Darlington*, *Re Greystock and Township of Otonabee*, and *Re Brodie and Town of Bowmanville*, all referred to in note (d) to s. 325.

(*c*) *Re Nash and McCracken*, 33 U. C. R. 181.

(*d*) *Reg.* v. *Johnson*, 38 U. C. R. 549. See the English cases on this point collected in Grant on Corporations, p. 83 and Lumley on By-laws, pp. 129 *et seq.*, and the American authorities in Dillon, s. 362.

(*e*) 10 C. P. 379. (*f*) 14 C. P. 285, 289.

(*g*) See also *Re Fennell and Town of Guelph*, 24 U. C. R. 238; *Re Kinghorn and City of Kingston*, 26 U. C. R. 130, cited in note (e) to s. 580; *Re Taylor and City of Winnipeg*, 11 Man. Rep. 420.

(*h*) Dillon, s. 361.

(*i*) *Per* DRAPER, C.J., 24 U. C. R. at p. 243. (*j*) 24 U. C. R. 238.

(*k*) 30 U. C. R. 81, 93.

(*l*) See these cases again referred to in the notes to ss. 580 and 581.

(*m*) M. L. R. 1 Q. B. 469. (*n*) Cooley on Taxation (2nd Ed.) chap. xviii.

(*o*) *Pigeon* v. *City of Montreal*, 17 S. C. R. 495.

"Had the city council only possessed the police power—and it would have been restricted to that if the mere power to regulate, and for that end to license, had been conferred without any express provision authorizing the exaction of a sum to be paid for the license—there might have been some colour for this contention; but when we find the Legislature authorizing the city council to impose such charge for the license as it should think reasonable, without any reference to the payment being by way of indemnity, as a fee for the trouble and expense involved in issuing the license, an interpretation which would restrict the words in which the Statute is expressed in the way contended for would be nothing short of legislation and is therefore entirely inadmissible."

And see the question of the right of municipalities in this country to employ as a means of raising revenue their licensing powers in respect of certain trades and callings more fully discussed in note (a) to s. 329.

Powers of municipalities as to telephone companies.

331.—(1) The council of every city, town and village may pass by-laws granting, from time to time, to any telephone company upon such terms and conditions as may be thought expedient, the exclusive right within the municipality for a period not exceeding five years at any one time, to use streets and lanes in the municipality for the purpose of placing in, upon, over or under the same, poles, ducts and wires for the purpose of carrying on a telephone business, and may on behalf of the municipal corporation, enter into agreements with any such company not to give to any other company or person for such period any license or permission to use such streets or lanes for any such purpose; but no such by-law shall be passed, nor shall any such agreement be entered into without the assent of two-thirds of the members of the council of the municipality being present and voting therefor.

Certain rights not affected.

(2) Nothing in the preceding subsection contained, or done by virtue thereof, shall limit or prejudicially affect any rights of any telephone company with respect to the use of streets or lanes for the purposes aforesaid which existed on the 27th day of May, 1893, nor shall the said preceding subsection or any by-law passed or agreement made before the said date, prevent any municipal council from granting to any person permission to use streets or lanes for the purpose of a private telephone line for the use of such person, his servants, clerks or agents, or persons communicating with them.

Agreements made prior to May 17th, 1893.

(3) For the removal of doubts it is hereby declared that all by-laws passed and all agreements made prior to the 17th day of May, 1893, for the granting of the exclusive rights mentioned in subsection 1 for any period not exceeding ten years, are hereby declared to be as valid and binding as they would have been if the said municipalities had had power to grant such exclusive rights. 56 V. c. 35, s. 6 (1-3).

(a) Prior to this enactment contracts had been entered into between the Bell Telephone Company and certain municipalities in Ontario granting to the company for a limited time the exclusive right in this section mentioned. But in *Robinson* v. *City of St. Thomas* (a) it was held that a by-law of the defendants ratifying such a contract between the company and the municipality was *ultra vires* of the municipal corporation, whereupon this section was passed. The date (May 17th, 1893) in subs. 2 is that on which the Act came into force.

The amendment made by 61 V. c. 23, s. 14 is noted post as s. 581a.

(a) 23 O. R. 189.

Sec. 332.

Note (a).

Privileges of ferry.

Exception as to certain ferries.

332. A council may grant exclusive privileges in any ferry which is vested in the corporation represented by such council, other than a ferry between a Province of the Dominion of Canada and any British or foreign country, or between two Provinces of the Dominion. 55 V. c. 42, s. 287. *See B. N. A. Act, 1867, s. 91 (13); R. S. O. c. 139; and sec. 583 (12), post.*

Taken from the Con. Mun. Act of 1873 (36 V. c. 18) s. 225; *Cf.* 12 V. c. 81, s. 145; 22 V. c. 96, s. 217; 29-30 V. c. 51, s. 221.

(a) Ferries between a Province and any British or foreign country or between two Provinces, are subject to the exclusive legislative authority of the Parliament of Canada. B. N. A. Act, s. 91 (13). As to ferries wholly within the Province, but of which the termini are in different municipalities, it is provided by R. S. O. c. 139, that :—

> **1.** Every grant or license of ferry shall be issued by the Lieutenant-Governor under the Great Seal.
>
> **4.** In all cases where a ferry is required over any stream or other water within Ontario, and the two shores of the stream or other water are in different municipalities, such municipalities not being in the same county, the Lieutenant-Governor in Council may grant a license to either of such municipalities exclusively, or to both conjointly, as may be most conducive to the public interest.
>
> **5.** Where a ferry is required over any stream or other water within Ontario, and the two shores of the stream or other water are in different counties, the Lieutenant-Governor may, instead of granting the license to a minor municipality, grant the same to either of the counties or to both jointly, or to one of them jointly with a city or town, or in the manner provided by the preceding section, as he may consider most conducive to the public interest.
>
> **6.** The license shall confer a right on the municipality or municipalities to establish a ferry from shore to shore on such stream or other water, and with such limit and extent as may appear advisable to the Lieutenant-Governor in Council, and be expressed in the license.
>
> **7.** The license shall be upon condition that the craft to be used for the purpose of the ferry shall be propelled by steam, and be of such dimensions, and the engine thereof be of such power as the Lieutenant-Governor in Council may direct; and upon such further conditions as the Lieutenant Governor in Council may think fit and express in the license.
>
> **8.** The council of the municipality to which such license is issued, may pass by-laws, not contravening the terms of the license, declaring their determination to sub-let the said ferry, and may sub-let the same for the price, and upon such terms, and to such parties, and on such conditions, and at such rates of ferriage to be paid, as the council may think fit.
>
> **9.** Where a license is granted to two municipalities jointly, no by-law of the council of one of such municipalities with respect to the ferry shall have any force until a by-law has been passed in similar terms, as nearly as may be, by the other council.

Sections 10-13 of the Act relate to the rights of those who hold a ferry license direct from the Crown under s. 1, *supra*. Sections 14-15 (quoted in note (t) to s. 583, *post*) relate to the power of municipalities to license and regulate ferries, the termini of which are wholly within the same municipality.

A license by the Crown to the town of Belleville giving the right to ferry "between the town of Belleville *to* Ameliasburg" was held a sufficient grant of ferriage *to and from* the two places named : (a)

(a) *Anderson* v. *Jellett*, 9 S. C. R. 1 ; s. c. *sub. nom. Jellett* v. *Anderson*, 27 Grant, 411 ; 7 A. R. 341.

"I think there can be no doubt that what was granted was a ferry both ways. We cannot construe the words of the letters patent literally—so construed, they would be insensible; we must either reject the word "to" and substitute the conjunction "and" for it, or we must reject "between" and substitute "from." It seems to me that the argument in favor of the former construction is conclusive. The ferry was being established for the use and benefit of the public, and we must therefore so interpret the grant as best to sustain that object." (*b*)

Secs. 332, 333.

Notes (a); (a), (b).

TITLE II—RESPECTING BY-LAWS.

DIV. I.—AUTHENTICATION OF BY-LAWS, (Secs. 333-335).

DIV. II.—OBJECTIONS BY RATEPAYERS, (Secs. 336, 337).

DIV. III.—VOTING ON BY ELECTORS, (Secs. 338-374).

DIV. IV.—CONFIRMATION OF BY-LAWS, (Secs. 375-377).

DIV. V.—QUASHING BY-LAWS, (Secs. 378-383).

DIV. VI.—BY-LAWS CREATING DEBTS, (Secs. 384-395).

DIV. VII.—REGISTRATION THEREOF, AND NOTICE, (Secs. 396-401).

DIV. VIII.—BY-LAWS RESPECTING YEARLY RATES, (Secs. 402-413).

DIV. IX—ANTICIPATORY APPROPRIATIONS, (Secs. 414-416).

DIVISION I.—AUTHENTICATION OF BY-LAWS, (Secs. 333-335).

How by-laws to be authenticated.

333. Every by-law shall be under the seal of the corporation, and shall be signed by the head of the corporation, or by the person presiding at the meeting at which the by-law was passed, and by the clerk of the corporation. 55 V. c. 42, s. 288.

Taken from the Act of 1849, (12 V. c. 81), s. 198.

(a) **"Shall be under the seal of the corporation."** It is the corporate seal which distinguishes a by-law from a mere resolution, which is simply an expression of the opinion of the council. Unless the seal is affixed it is not a by-law; (*a*) As to what is a sufficient seal, and the cases in which the municipality will be estopped from setting up the want of a seal, see note (a) to s. 9.

(b) **"Shall be signed by the head of the corporation."** This also is essential to the validity of a by-law. (*b*) Being a statutory duty, its performance would probably be enforced by mandamus. (*c*) But the demand, which is an essential

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(*b*) *Per* STRONG, J., 9 S. C. R. at p. 6. As to the general power of a municipal corporation to license and regulate ferries, see s. 583 (12): Dillon, ss. 114-116; Tiedeman, s. 134.

(*a*) *Re Croft and Township of Brooke*, 17 U.C.R. 269; *Re Mottashed and County of Prince Edward*, 30 U.C.R. 74.

(*b*) *Per* GWYNNE, J., in *Canada Atlantic R. W. Co. v. City of Ottawa*, 12 S.C.R. 365, 379; *Wise v. Village of Kingsville*, 28 O. R. 378.

(*c*) *Township of Brock v. Toronto & Nipissing R. W. Co.*, 17 Grant, 425, *per* SPRAGGE, C., at page 434.

Secs. 333-335.

Notes (b); (a); (a).

pre-requisite to the application for a mandatory order, should be made upon the officers named, and where it was addressed not to them but to the municipal corporation a mandamus was refused. (d) In *Re Preston and Township of Manvers*, (e) the reeve of a township being opposed to a by-law regularly passed while he was present and presiding, refused to sign it or affix the seal. By direction of the council, the deputy-reeve then took the chair, and signed and sealed the by-law. *Held*, valid, and the Court discharged with costs a rule afterwards obtained by the reeve to quash it. As to by-laws of a Board of Police Commissioners, see s. 485.

Evidence of.

334. A copy of any by-law, written or printed, without erasure or interlineation, and under the seal of the corporation, and certified by the clerk, and by any member of the council to be a true copy, shall be deemed authentic, and shall be received in evidence in any Court of Justice, without proof of the seal or signatures, unless it is specially pleaded or alleged that the seal or one or both of the signatures has or have been forged. 55 V. c. 42, s. 239. [*See also Sec. 485.*]

Taken from the Act of 1849, (12 V. c. 81), s. 198.

(a) Similar provision is made by s. 485 as to by-laws of Boards of Police Commissioners. But for these provisions, it would be necessary to produce and prove the original by-law (a). "*The Municipal Corporations Act, 1882*" (b), contains a similar provision, s. 24. Where on a trial on a charge of being a transient trader without a license, contrary to a municipal by-law, no copy thereof, certified by the clerk to be a true copy, and under the corporate seal, was given in evidence; but a by-law stated by the solicitor for the complainant to be the original by-law, was read to the defendant in Court, it was held that the requirements of the above section not having been complied with, the conviction was invalid and must be quashed (c). This is the general and proper method of proving a by-law (d). On a motion to quash a by-law, order or resolution, the copy of the by-law filed is not required to be verified by the signature of the head of the council (e). Sec. 710 provides for the case where a conviction is attacked on the ground that the by-law was not properly proved before the magistrate.

By-laws requiring assent of the Lieutenant Governor.

335. The facts by this Act required to be recited in any by-law which requires the approval of the Lieutenant-Governor in Council, shall, before the by-law receives such approval, be verified by solemn declaration by the head of the council, and by the treasurer and clerk thereof, and by such other person, and on such other evidence, as to the Lieutenant-Governor in Council satisfactorily proves the facts so recited; or in case of the death or absence of any of the municipal officers hereinbefore mentioned, upon the declaration of any other member of the council, whose declaration the Lieutenant-Governor in Council accepts. 55 V. c. 42, s. 290.

Taken from the Act of 1858, (22 V. c. 99), s. 193.

(a) This section applies to the cases provided for by ss. 391, 412-413, 414-415 and 569 (5).

(d) *McLellan v. Man. of Assiniboia*, 5 Man. Rep. 127.

(e) 21 U.C.R. 626.

(a) *Re Thetford*, 12 Vin. Abr, 90.

(b) Imp. Stat. 45 & 46 V. c. 50.

(c) *Reg. v. Dowsley*, 19 O. R. 622.

(d) *Re School Trustees of the Town of Sandwich and Town of Sandwich*, 23 U. C. R. 639, 642.

(e) See s. 378 (3).

DIVISION II.—OBJECTIONS BY RATEPAYERS, (SECS. 336, 337).

Secs. 336, 337.
Note (a).

336. In case a person rated on the assessment roll of a municipality, or of any locality therein, objects to the passing of a by-law, the passing of which is to be preceded by the application of a certain number of the rateable inhabitants of such municipality or locality, he shall, on petitioning the council, be at liberty to attend in person, or by counsel or solicitor, before the council at the time at which the by-law is intended to be considered, or before a committee of the council appointed to hear evidence thereon, and to produce evidence that the necessary notice of the application for the by-law was not given, or that any of the signatures to the application are not genuine, or were obtained upon incorrect statements, and that the proposed by-law is contrary to the wishes of the persons whose signatures were so obtained, and that the remaining signatures do not amount to the number, or represent the amount of property, necessary to the passing of the by-law. 55 V. c. 42, s. 291.

Opposition to by-laws.

How to be made.

337. If the council is satisfied upon the evidence that the application for the by-law did not contain the names of a sufficient number of persons, whose names were obtained without fraud and in good faith, and who represent the requisite amount of property, and are desirous of having the by-law passed, or if the council is satisfied that the notice required by law was not duly given, the council shall not pass the by-law. 55 V. c. 42, s. 292.

When by-laws shall not pass.

Taken from 16 V. c. 181, s. 37. *Cf.* 22 V. c. 99, ss. 190, 191.

(a) At the time when this section was passed the only by-laws to which it applied were by-laws of township councils (1) for taxing portions of the township for constructing, improving, or repairing a road, bridge, or other public improvement, which might be passed upon the written application of two-thirds of the freeholders and householders rated on the assessment roll of the township, and representing, in value, at least one-half the rateable property within the limits to be affected by the by-law; and (2) for levying a poor-rate, which required a written request from a majority of the freeholders and householders rated on the assessment roll.

The section now applies to the cases referred to in ss. 11, 26 (4), 31, 71, 71a (61 V. c. 23, s. 2), 103, 544, 668 (1), 686 (1), 688, 691, and 699 of this Act, s. 4 of "*The Municipal Drainage Act*," (R. S. O. c. 226), and s. 2 (2) of "*The Public Parks Act*." (R. S. O. c. 233).

The right to attend for the purpose mentioned exists only "on petitioning the council." Where the application was to quash a drainage by-law, GWYNNE, J., said,

> "We are not prepared to say, that if a municipal council, in violation of the apparent fact that a sufficient number to put the council in motion had not petitioned, such fact being made apparent in the manner indicated in sections 194 and 195 (ss. 336 and 337 of this Act) should nevertheless proceed to pass a by law imposing rates, that such a by-law could be sustained upon a motion, showing these facts, made to quash it. But in the absence of all suggestion of fraud and all opposition to the by-law when before the council, upon the ground taken, I think that a by-law which recites that a sufficient number

Secs. 337-338 (1).

Note (a).

had petitioned should be taken to be true, unless, at least, the recital be clearly established to be glaringly untrue, so as to afford a presumption of fraud in the proceedings of the council" (*a*).

But in *Re Robertson and Township of North Easthope*, (*b*) a drainage by-law passed under the Municipal Act of 1883, (*c*) had not in fact been petitioned for by a majority of the owners of the property to be benefited. On motion to quash, it was held by the Court of Appeal that unless the petition is signed by such majority, the council have no jurisdiction, and a by-law founded on a petition not so signed is void and cannot be upheld even though valid on its face; that if the petition is not signed by such majority, the opponents of the by-law are not restricted to the mode of objection given by ss. 336 and 337, but are entitled to attack the validity of the by-law on this ground by application to quash, even after an unsuccessful appeal to the council; that where a council know that a majority has not signed, though no evidence to prove this fact is given by the opponents of the by-law, it is just as much their duty not to pass the by-law as if its insufficiency had been proved after the most elaborate investigation at the instance of the persons opposed to it, and they have no right to impose upon the opponents of the by-law, as a term for refusing to pass it, any condition as to payment of expenses theretofore incurred. The decision of STREET, J., (*d*) refusing to quash the by-law, was accordingly reversed.

The by-law should not be passed until after the fullest opportunity to object has been given to every ratepayer who will be affected thereby. (*e*)

DIVISION III.—VOTING ON BY ELECTORS.

(SECS. 338-374).

Synopsis.—Although it is true as a general rule that the powers of every municipal corporation may be exercised by its council (s. 10), an exception has been created in the case of certain matters affecting the future position of the municipality (see note (a) to s. 338), and it is provided that by-laws in regard to these matters shall not be finally passed by the council unless and until they have received the approval of a select body of the ratepayers. The "electors" who are entitled to exercise this power of approval or of veto are defined by ss. 353 and 354. Sec. 338 points out the mode in which a by-law to be thus submitted to their vote shall first be publicly advertised, and ss. 339-352, 355-365 and 367 provide for taking the vote in much the same manner as at a municipal election. A scrutiny of the ballots may be had under ss. 369-372; and ss. 373, 374 fix the period within which, after the vote has been taken, the by-law is to be finally adopted by the council.

In the case of certain bonus by-laws a minimum percentage of the total number of those entitled to vote is required by s. 366.

If a by-law requires the assent of the electors, mode of obtaining same.

338. In case a by-law requires the assent of the electors of a municipality before the final passing thereof, the following proceedings shall, except in cases otherwise provided for, be taken for ascertaining such assent:—

Time and place of voting to be fixed by the by-law.

1. The council shall, by the by-law, fix the day and hour for taking the votes of the electors, and the places in the municipality for the purpose, as the council, in their discretion, deem best, and (where the votes are to be taken at more than one place,) shall name a deputy-returning officer to take the votes at every such place. The day so fixed for taking the votes shall not be less than three, nor more than five weeks after the first publication of the proposed by-law. 55 V. c. 42, s. 293 (1).

(*a*) *Re Montgomery and Township of Raleigh*, 21 C. P. 394.

(*b*) 16 A.R. 214. (*c*) 46 V. c. 18, s. 570 (now R.S.O. c. 226, s. 4.)

(*d*) 15 O.R. 423.

(*e*) *Re Morell and City of Toronto*, 22 C.P. 323; and *Re Hodgins and City of Toronto*, 26 O.R. 480; 23 A.R. 80.

(a) The first provision for obtaining the assent of the electors to a by-law was made in 1851 by 14 & 15 V. c. 51, s. 18, which enabled municipal corporations in this Province to aid railway companies, provided the by-law therefor was adopted with the consent of a majority of the qualified electors of the municipality. 16 V. c. 22 (1853) established a Consolidated Municipal Loan Fund for Upper Canada, and provided that every municipal by-law authorizing the borrowing of money upon the credit thereof should be similarly approved. By 18 V. c. 133 (1855) the provisions of 16 V. c. 22 were made applicable to all by-laws creating debts. See now ss. 366, 388, 389, 591 (5) (6) (8), 694, 696, 700. The same requirement has since been made in regard to a resolution for the annulment of the incorporation of a village, (*a*) for the annexation of a village or town to an adjoining municipality (*b*) and to by-laws for the separation of a town from the county in which it is situated, (*c*) the reunion of such separated town with the county (*d*), the reduction of the number of councillors in a town, (*e*) or for the repeal of such by-law, (*f*) for changing the mode of election of members of the council in certain cities and towns, (*g*) for redividing cities into wards, (*h*) for acquiring and selling water privileges, (*i*) for constructing gas and water works, (*j*) for building and operating street railways, (*k*) for adopting the system of local assessment for local improvements, (*l*) etc. As to the impropriety of referring to a vote of the electors questions which do not require their assent. See *Holm* v. *Town of Port Hope*, 22 Grant, 273; *Wallace* v. *Town of Orangeville*, 5 O. R. 37; *Davis* v. *City of Toronto*, 15 O. R. 33; *Darby* v. *City of Toronto*, 17 O. R. 554.

(b) **"Requires the assent of the electors."** The word "electors" here is not an accurate expression, the persons entitled to vote upon such a by-law being only ratepayers who are either freeholders (s. 353) or leaseholders (s. 354), and the interpretation clause (s. 2 (5)), does not wholly remove the ambiguity suggested by its use, a better expression would be "ratepayers qualified to vote on by-laws."

Under the earlier Acts a by-law creating a debt or borrowing money required the assent of a majority of "the qualified municipal electors" assembled at a meeting held for the purpose of approving or disapproving of the by-law, (*m*) or voting thereon if a poll was demanded at the meeting. (*n*) The Act of 1858 (*o*) provided for taking the votes of the electors by a poll in every case, and is the original of the present section. The Act of 1866 (*p*) first limited the right of voting on by-laws to such municipal electors as were either freeholders or leaseholders rated on the assessment roll, and in the case of leaseholders, to those whose leases extended over the period within which the debt was payable and contained a covenant by the lessee to pay the municipal taxes.

(c) **"The following proceedings shall be taken."** If the proceedings prescribed be not duly taken, the by-law may be invalid (*a*).

(d) **"The council shall by the by-law fix the day and hour for taking the vote of the electors."** As to the meaning of the word "by-law" here, see *Re Pafford and County of Lincoln* (*b*). Under "*The Railway Act*" of 1851 (*c*), which provided that a by-law for aiding a railway company should "be adopted with the consent first had of a majority of the qualified electors of the municipality to be ascertained in such manner as shall be determined by the said by-law," the time and place of taking the vote of the electors thereon was not stated in the published copy of the proposed by-law, but in a notice appended thereto. This was held to be sufficient. *Per* ROBINSON, C.J.:—

> "The words must receive a reasonable construction. The proposed by-law could not be an actual by-law till after the consent of the ratepayers had been obtained, and it was therefore incorrect to require that the manner of ascertaining such consent must *be determined*

(*a*) Sec. 19 (1). (*b*) Sec. 26 (1) (7). (*c*) Sec. 27. (*d*) sec. 28.
(*e*) Sec. 71 (1). (*f*) Sec. 71 (2). (*g*) Sec. 71 (a); 61 V. c. 23, s. 2.
(*h*) Sec. 103. (*i*) Sec. 565. (*j*) Sec. 566 (4).
(*k*) Sec. 569 (1) (5). (*l*) Sec. 682.
(*m*) 16 V. c. 22, s. 2 (5). (*n*) Sec. 2 (6-9); 18 V. c. 133.
(*o*) 22 V. c. 99, s. 192. (*p*) 29 & 30 V. c. 51, s. 196.
(*a*) See note (a) to s. 10 and note (a) to s. 384.
(*b*) 24 U.C.R. 16. (*c*) 14 & 15 V. c. 51, s. 18.

Sec. 338 (1), (2).

Notes (d)-(f).

by the by-law. When the by-law came afterwards to be passed, all that operation would be over. We see no more reasonable way of complying with the enactment than that adopted in this case, of printing a notice of the time and place of holding the meeting at the foot of the draft of the proposed by-law, and authenticating that by the signatures of the proper officers, so that the draft of the by-law could not be seen by anyone without seeing the notice" (*d*).

It seems that the omission from the by-law as finally passed by the council of the time and places of the voting thereon, will not invalidate the by-law (*e*).

(e) "**Not less than three nor more than five weeks after the first publication of the proposed by-law.**" It seems to be a fatal objection to a by-law that the day fixed for taking the votes thereon is more than five weeks from the first publication (*f*).

Publication of by-law.

2. The council shall, before the final passing of the proposed by-law, publish a copy thereof in some public newspaper published either within the municipality or in the county town, or in a public newspaper published in an adjoining or neighbouring local municipality, as the council may designate by resolution; and the publication shall, for the purpose aforesaid, be continued in at least one number of such paper each week for three successive weeks; and the council shall put up a copy of the by-law at four or more of the most public places in the municipality. 55 V. c. 42, s. 293 (2); 56 V. c. 35, s. 7.

(f) When the right to pass a by-law is made conditional upon the giving of a certain notice, the provisions relating to such notice should be strictly followed (*a*). The object of such a notice in by-laws requiring the assent of the electors, is of course to secure a full expression of opinion by the electors as to whether they approve or disapprove of the by-law, and that they may be as widely and generally as possible informed of the intended voting (*b*). "*The Temperance Act of 1864*" (*c*) provided that the requisition for a by-law thereunder should be published for four consecutive weeks with a notice that on some day within the week next after such four weeks, a vote would be taken thereon. The notice first published on Thursday, 12th January, appointed Tuesday, 7th February for the voting. *Held*, too soon, and the by-law was quashed. So, in another case under the same Act, where the first publication fixed the hour of polling for 2 p.m. on a certain day, but the three subsequent notices were for a poll at 10 a.m., at which hour the voting was actually held, the by-law was quashed on the ground that as the Statute required the poll to be at 10 a.m. the first publication could not be counted, and the voting was too soon after the first correct publication (*d*). These cases were followed in *Re Brophy and Village of Gananoque* (*e*). But where a local option by-law passed under 53 V. c. 56, s. 18, was objected to on the ground that two of the days of publication were Christmas and New Year's Day, the objection was overruled (*f*). Where the Statute required publication of the by-law in each newspaper published in the municipality, an omission to publish it in one of them was held fatal (*g*).

(*d*) *Boulton* v. *Town of Peterborough*, 16 U.C.R. 380, at pp. 386, 387.

(*e*) *Canada Central R. W. Co.* v. *City of Ottawa*, 8 O.R. 201; *Boulton* v. *Town of Peterborough*, 16 U.C.R. 380, 386.

(*f*) *Per* FALCONBRIDGE, J., in *Re Armstrong and Township of Toronto*, 17 O.R. 766.

(*a*) Dillon, s. 519, and see the cases collected in note (a) to s. 632.

(*b*) *Re Mace and County of Frontenac*, 42 U. C. R. 70, 83, 86.

(*c*) 27 & 28 V. c. 18, s. 5.

(*d*) *Re Miles and Township of Richmond*, 28 U. C. R. 333.

(*e*) 26 C. P. 290.

(*f*) *Brunker* v. *Township of Mariposa*, 22 O. R. 120.

(*g*) *Simpson* v. *County of Lincoln*, 13 C. P. 48. But see now s. 351.

(g) **In some public newspaper published . . . in an adjoining or neighbouring municipality.**" The words "or neighbouring" were added in 1893 by 56 V. c. 35, s. 7 probably in consequence of the question raised in *Re Hanson and Township of South Norwich*, (*a*) where notice of intention to submit a local option by-law to the votes of the township electors was given in the proper form and for the requisite number of times in the village of Norwich, in the county of Oxford, which does not touch the boundaries of South Norwich, but which is completely surrounded by North Norwich which does touch the said boundaries. This paper was the nearest paper; it had a large circulation in the township, and was that in which the township council had been in the habit of publishing their notices and by-laws. No paper was published in the township in question. The Court refused to quash the by-law, and on appeal to the Supreme Court, it was held that, as the village of Norwich was geographically within "an adjoining local municipality," the requirement of the section had been substantially complied with. (*b*)

(h) "**Four or more of the most public places of the municipality.**" In *Re Mace and County of Frontenac*, (*a*) WILSON, J., says,—

> "Putting up three out of four notices in one village in a large township . . . and the fourth notice within a mile of the same village, where there are other villages in the township where they could more properly be put up, is not a compliance with the Statute."

And where a by-law which required the assent of the electors was carried by a majority of sixteen in a total vote of 550 out of an electorate of 941, it was held that the unexplained omission of the council to put up anywhere in the municipality copies of the by-law, as required by this section, was fatal, the council having failed to show under s. 204 that the result was not thereby affected. (*b*)

In that case it was contended that the general interest taken in the subject and the information given by posters distributed throughout the municipality and meetings held therein, together with publication in the newspapers, must have brought notice of the by-law and of the time and places of polling home to every elector, and therefore that the omission to comply with the requirements of this section could not be said to have affected the result; but OSLER, J. A., in giving judgment says (p. 466);—

> "The vote, no doubt, was a substantial one, but the majority is very small, sixteen only, and there were at least two votes improperly polled, reducing it to fourteen, and there remained nearly 400 unpolled votes. Had the majority been large, or had the posters calling the meetings specified the time and places at which the votes were to be taken the conclusion might be different. Everybody does not take a newspaper, and the posting of the by-law and notice is one of the methods specially required by the Legislature to be observed for giving notice to the electors. The absolute and unexplained omission to comply with that requirement is one very difficult to excuse, and needs much more convincing evidence that it was harmless than the respondents have adduced. I refer to *Re Cox and Township of Pickering* (*a*), *Re Miles and Township of Richmond* (*b*), *Re Mace and County of Frontenac*. (*c*) Even if the direction is not imperative, as ARMOUR, C.J., seems to have thought in the latter case, it is clear that the onus of proving that the omission to comply with it has not affected the result is upon the respondents, and they have failed to sustain it. Sections 175 and 306 of this Act [=ss. 204 and 351 of the present Act] were relied on; but they merely enable the Court to refrain from declaring the by-law invalid for want of compliance with forms or rules as to taking the poll or counting the votes, or by reason of the irregularity, if it appears that the proceedings were conducted in accordance with the principles laid down in the Act, and that the non-compliance, mistake or irregularity did not affect the result. I am not satisfied with respect to the latter condition, while as to the former there is evidence that at more than one of the polls the voting was conducted with an entire disregard of

(*a*) 19 A.R. 343. (*b*) 21 S.C.R. 669.

(*a*) 42 U.C.R. 70.

(*b*) *Re Pickett and Township of Wainfleet*, 28 O. R. 464.

(*a*) 24 U. C. R. 439. (*b*) 28 U. C. R. 333. (*c*) 42 U. C. R. 70.

Sec. 338 (2), (3).

Notes (h)-(k).

some of the safeguards provided by the Act for insuring the secrecy of voting. Everything was conducted in the loosest way and with a disregard of the plain directions of the Act which is surprising."

Order made quashing by law with costs.

Notice.

3. Appended to each copy so published and posted shall be a notice, signed by the clerk of the council, stating that the copy is a true copy of a proposed by-law which has been taken into consideration, and which will be finally passed by the council (in the event of the assent of the electors being obtained thereto), after one month from the first publication in the newspaper, stating the date of the first publication, and that at the hour, day and place or places therein fixed for taking the votes of the electors, the polls will be held. 55 V. c. 42, s. 293 (3).

(i) "**A notice.**" The notice may be in this form:

Take notice, that the above is a true copy of a proposed by-law, which has been taken into consideration, and which will be finally passed by the council of the municipality (in the event of the assent of the electors being obtained thereto) after one month from the first publication in the *(naming the newspaper)*, the date of which first publication was *(stating the day, of the week, month and year)*, and that the votes of the electors of the said municipality will be taken thereon on the day and at the hours and places therein fixed. *(a)*

D. C., *Clerk.*

(j) "**Which has been taken into consideration, and which will be finally passed by the council.**" These words were substituted by 49 V. c. 37, s. 3, for the words "which will be taken into consideration by the council," in the earlier Acts *(b)*. They indicate that, before submitting the by-law to the electors, it must have received some consideration by the council.

(k) "**After one month from the first publication in the newspaper.**" The date when the by-law will be considered by the council is not required to be mentioned in the notice, as it is under s. 632, because in the latter case there is no means of opposing the by-law except by a hearing before the council. Where the by-law, assented to by the vote of the electors, was passed by the council a few days before a month had elapsed since the first publication, an objection on this ground was overruled *(c)*.

The R. S. Man. (1891) c. 99, s. 63, provides in the case of by-laws which require the assent of the electors, that:—

> "The council shall . . . publish in some newspaper in the municipality . . . a notice showing the object and purpose of the proposed by-law, that the same has been submitted to the council and has received its first and second readings, and that a vote thereon . . . will be taken on the day and at the hour and places fixed under this Act: that the proposed by-law or a true copy thereof can be seen on file until the day of the taking of the vote at the office of the clerk of the municipality, and that the further consideration of the proposed by-law . . . is fixed for the time and place appointed therefor by the council *(naming such time and place)* . . : and such notice shall be so published for at least one month before the vote is taken, but no more than one insertion each week shall be necessary."

In *Hall* v. *South Norfolk (d)*, a notice published under the above section stated that the vote of the electors would be taken on Tuesday, May 10th, 1892, and that the further consideration of the by-law after taking the vote,

(a) But in *Canada Atlantic R. W. Co.* v. *City of Ottawa*, 8 O. R. 201; 8 A. R. 234, 258; 12 S. C. R. 365; the notice contained only the words "a true copy."

(b) 36 V. c. 48, s. 23 (3); R. S. O. (1877) c. 174, s. 286 (3); 46 V. c. 18, s. 294 (3).

(c) *Canada Atlantic R. W. Co.* v. *City of Ottawa, supra.*

(d) 8 Man. Rep. 430 (1892).

and the final reading would be given by the council in the village of Treherne on May 17th, 1892; *Held*, that the notice was insufficient as to the further consideration and reading of the by-law because the hour of the day was not designated.

The notice was published on the 6th, 13th, 20th, 23rd, 27th and 30th days of April; *Held*, that the notice was not published "at least one month before the vote" was taken. What the Statute requires is at least one publication in each week of the month before the vote is taken, and for the purpose of reckoning weeks, it is necessary to begin with the day of the first publication, and not with the first day of an ordinary week.

Ballot papers to be printed.

339. Forthwith after the day has been fixed as aforesaid for taking the votes of electors with respect to the by-law, the clerk of the municipal council which proposed the by-law, shall cause to be printed, at the expense of the municipality, such a number of ballot papers as will be sufficient for the purposes of the voting. 55 V. c. 42, s. 294.

This and the eight following sections, to s. 349 inclusive, are taken from 39 V. c. 35 (1876), entitled, "*An Act to provide for Voting by Ballot on Municipal By-laws requiring the consent of the Electors.*"

Form of.

340. The ballot papers shall be according to the form of Schedule J to this Act. 55 V. c. 42, s. 295.

Taken from 39 V. c. 35, s. 2 (1876).

(a) "**The form of Schedule J**" is as follows:—

Form of Ballot Paper for Voting on a By-law.

Voting on By-law to (*here insert object of By-law*), submitted to the Council of 19	**FOR** The By-Law.
	AGAINST The By-Law.

55 V. c. 42 *Sched.* J.

Council to fix a day for appointment of persons to attend at polling places, and for final summing up of votes.

341. The council shall, by the by-law, fix a time when, and a place where, the clerk of the council which proposed the by-law is to sum up the number of votes given for and against the by-law and a time and place for the appointment of persons to attend at the various polling places, and at the final summing up of the votes by the clerk respectively, on behalf of the persons interested in, and promoting or opposing the passing of the by-law respectively. 55 V. c. 42, s. 296.

Taken from 39 V. c. 35, s. 3 (1876).

(a) The length of the notice required to be given is not fixed by the Statute, so that reasonable notice must be given to enable the parties to select scrutineers for the purposes named. (*a*)

(*a*) *Per* McMahon, J., in *Re Brunker and Township of Mariposa*, 22 O. R. 120, 124. In the case cited, three weeks' notice was held to be ample.

Secs. 342-345

Notes (a); (a); (a), (b).

Selection of agents.

342. At the time and place named, the head of the municipality shall appoint, in writing signed by him, two persons to attend at the final summing up of the votes, and one person to attend at each polling place on behalf of the persons interested in and desirous of promoting the passing of the by-law, and a like number on behalf of the persons interested in and desirous of opposing the passing of the by-law. 55 V. c. 42, s. 297.

Taken from 39 V. c. 35, s. 4 (1876).

Agents to make declaration.

343. Before any person is so appointed he shall make and subscribe, before the head of the municipality, a declaration in the form of Schedule K to this Act, that he is interested in, and desirous of promoting, or opposing (as the case may be), the passing of the by-law. 55 V. c. 42, s. 298.

Taken from 39 V. c. 35, s. 5 (1876).

(a) "The form of Schedule K" is as follows :—

Declaration to be made by persons interested in the Voting on a By-law.

I, the undersigned *A. B.*, solemnly declare that I am a ratepayer of the Township (*or as the case may be*) of (*the municipality the council of which proposed the by-law*), and that I am desirous of promoting (*or* opposing *as the case may be*) the passing of the By-law to (*here insert object of by-law*), submitted to the Council of said Township (*or as the case may be*).

(*Signature*) *A. B.*

Made and declared before me this day of A.D. 19 .

C. D.,
Head of Municipality.

Admission of agents to polling place, etc.

344. Every person so appointed, before being admitted to the polling place or to the summing up of the votes, as the case may be, shall produce his written appointment to the deputy-returning officer, or clerk of the municipality, as the case may be. 55 V. c. 42, s. 299.

Taken from 39 V. c. 36, s. 6 (1876).

(a) "To the deputy-returning officer or the clerk of the municipality, as the case may be." In case the municipality is divided into wards or polling subdivisions, the appointment is to be produced to the deputy-returning officer for the polling place; in case it is not so divided, then to the clerk as returning officer for the whole municipality. (*a*)

Appointment in absence of agent.

345. In the absence of any person authorized as aforesaid to attend at a polling place, or at the final summing up of the votes, any elector in the same interest as the person so absent may upon making and subscribing, before the deputy-returning officer at the polling place, or before the clerk of the municipality a declaration in the form of Schedule K to this Act, be admitted to the polling place to act for the person so absent. 55 V. c. 42, s. 300.

Taken from 39 V. c. 36, s. 7 (1876). *Cf.* *The Ontario Election Act*," (R. S. O. c. 9), s. 210.

(a) "Before the deputy-returning officer at the polling place, or the clerk of the municipality." See preceding note.

(b) "A declaration in the form of Schedule K." See note (a) to s. 343.

(*a*) *Cf.* ss. 106, 107, 157, 348, 349.

Secs. 346-348.

Note (a).

Exclusion from polling place.

346. During the time appointed for polling no person shall be entitled or permitted to be present in any polling place, other than the officers, clerks and persons or electors authorised to attend as aforesaid at the polling place. 55 V. c. 42, s. 301.

Taken from 39 V. c. 35, s. 8 (1876). *Cf.* s. 173.

Deputy-returning officers, poll clerks and agents may vote at polling places where they are employed.

347.—(1) The clerk of the municipality, on the request of any elector entitled to vote at one of the polling places, who has been appointed deputy-returning officer or poll-clerk, or who has been named as the person to attend at a polling place, other than the one where he is entitled to vote, shall give to such elector a certificate that such deputy-returning officer, poll clerk, or person is entitled to vote for or against the by-law, at the polling place where such elector is stationed during the polling day; and the certificate shall also state the property or other qualification in respect to which such elector is entitled to vote.

On certificate from the clerk of the municipality.

(2) On the production of the certificate, such deputy-returning officer, poll clerk or person shall have the right to vote at the polling place where he is stationed during the polling day, instead of at the polling place of the ward or polling subdivision where he would otherwise have been entitled to vote; and the deputy-returning officer shall attach the certificate to the voters' list; but no such certificate shall entitle such elector to vote at such polling place, unless he has been actually engaged as such deputy-returning officer, poll clerk or person during the day of polling.

Who to administer oath in such case.

(3) In the case of a deputy-returning officer voting at the polling place at which he is appointed to act, the poll clerk, or in the absence of the poll clerk any one authorized to be present at the polling place, may administer to the deputy-returning officer the oath required to be taken by voters qualified to vote on the by-law. 55 V. c. 42, s. 302.

Taken from 39 V. c. 35, s. 9 (1876).

(a) See s. 163 and notes thereon.

Who to conduct the poll in municipalities divided into wards or polling subdivisions.

348. In the case of municipalities which are divided into wards or polling subdivisions, the clerk of the municipality shall, before the poll is opened prepare and deliver to the deputy-returning officer for every ward or polling subdivision, a voters' list in the form to Schedule C to this Act, containing the names, arranged alphabetically, of all persons appearing by the then last revised assessment roll to be entitled, under the provisions of sections 353 and 354 of this Act, to vote in that ward or polling subdivision, and he shall attest the said list by his solemn declaration in writing under his hand. 55 V. c. 42, s. 303.

Taken from 40 V. c. 12, s. 18 (1) (1877). *Cf.* s. 152, *ante*.

(a) **"Schedule C to this Act."** See note (a) to s. 149.

Secs. 348-351.

Notes (b); (a).

(b) "All persons appearing by the . . . assessment roll to be entitled . . . to vote." This seems to require an impossibility. How is the clerk to know, in the case of a person assessed as tenant (*a*), whether the person so assessed is a leaseholder for a term equal to that within which the debt to be contracted or the money to be raised is payable, and whether the lease (if there is a lease), contains a covenant by the lessee to pay municipal taxes other than local improvement rates? None of these particulars appear on the assessment roll. The solution suggested by GWYNNE, J., in *Erwin* v. *Township of Townsend* (*b*) is that the clerk, in making out the voters' list required by this section, should insert therein the names of all freeholders and tenants appearing on the assessment roll to be rated for an amount sufficient to entitle them to vote at municipal elections, leaving it to the scrutineers at the polls to object to the qualification of any person who, though rated as a tenant, is not qualified to vote as a leaseholder under s. 354. It will be observed that the fifth clause of the oath to be taken by a leaseholder is, "That you are according to law entitled to vote on the said by-law," etc. (*c*)

In municipalities not divided into wards or polling subdivisions.

349. In the case of municipalities which are not divided into wards or polling subdivisions, the clerk shall provide himself with the necessary ballot papers, the materials for marking ballot papers, printed directions to voters and a list of electors for the municipality similar to the list mentioned in the preceding section; and the clerk shall perform the like duties with respect to the whole municipality as are imposed upon a deputy-returning officer in respect of a ward or polling subdivision. 55 V. c. 42, s. 304.

Taken from 40 V. c. 12, s. 18 (2) (1877). *Cf.* ss. 107, 157, *ante*.

The Poll.

Voting to be by ballot.

350. At the day and hour fixed as aforesaid, the poll shall be held and the vote shall be taken by ballot. 55 V. c. 42, s. 305.

Taken from 39 V. c. 35, s. 10 (1876).

Proceedings to be as at municipal elections.

351. The proceedings at the poll, and for and incidental to the same, and the purposes thereof, shall be the same, as nearly as may be, as at municipal elections; and all the provisions of sections 138 to 206, inclusive, of this Act, so far as the same are applicable, and except so far as is herein otherwise provided, shall apply to the taking of votes at the poll, and to all matters incidental thereto. 55 V. c. 42, s. 306.

Taken from 39 V. c. 35, s. 11 (1876).

(a) "This is a loose way of applying a large group of sections which have a general bearing on the procedure of voting by ballot" (*d*). The question in that case (*e*), was whether the clerk of the municipality could under this section and s. 179 give a casting vote when the voting upon a by-law resulted in a tie. ROSE, J., who tried the case, held that he could (*f*), but this decision was reversed by the Court of Appeal (*g*), and the Supreme Court (*h*).

The very general language of the section still leaves open to question the applicability of some of the sections referred to. It is clear that the provisions of s. 156, in regard to certificates as to the assessment roll; of ss. 154, 155, as to defaulters' lists, and of ss. 194 to 196, imposing certain penalties are inap-

(*a*) See "*The Assessment Act*" (R.S.O. c. 224), s. 13 (4), "Column 4."

(*b*) 21 C.P. 330. (*c*) See ss. 357, 358.

(*d*) *Per* OSLER, J.A., in *Canada Atlantic R. W. Co.* v. *Tp. of Cambridge*, 12 A.R. 299, at p. 303.

(*e*) Since settled by s. 365.

(*f*) 11 O.R. 392, 399. (*g*) 12 A.R. 299. (*h*) 15 S.C.R. 219.

plicable to the voting on by-laws; as to those of ss. 159-162 (where electors may vote), other provision is made by s. 355. The sections relating to proceedings at the polls (*a*) seem *mutatis mutandis*, to be included, as are also those of ss. 188-190 and 192 (preservation of ballots and recount of votes), s. 193 (offences in relation to ballots), s. 198 (secrecy of proceedings), and ss. 202-205 (miscellaneous). Whether ss. 184-186 also apply to voting on by-laws is not clear, the passing of a by-law not being a matter of the same public interest as the filling of an office.

Secs. 351-352. Notes (a); (a), (b).

352. The printed directions to be delivered to the deputy-returning officers shall be in the form of Schedule L to this Act. 55 V. c. 42, s. 307.

Form of directions for guidance to voters.

Taken from 39 V. c. 35, s. 12 (1876).

(a) "**The form of Schedule L**" is as follows:—

Directions for the Guidance of Voters in Voting. (*b*)

The voter will go into one of the compartments, and with the pencil provided in the compartment, place a cross (thus **X**) on the right hand side, in the upper space if he votes for the passing of the by-law, and in the lower space if he votes against the passing of the by-law.

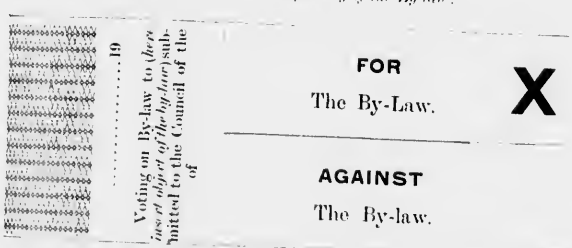
The voter will then fold up the ballot paper so as to show the name or initials of the Deputy Returning Officer (*or* Returning Officer, *as the case may be*) signed on the back, and leaving the compartment will, without showing the front of the paper to any person, deliver such ballot so folded to the Deputy-Returning Officer (*or* Returning Officer *as the case may be*) and forthwith quit the polling place.

If the voter inadvertently spoils a ballot paper, he may return it to the Deputy-Returning Officer (*or* Returning Officer *as the case may be*), who will, if satisfied of such inadvertence, give him another ballot paper.

If the voter places on the paper more than one mark, or places any mark on his ballot paper by which he may be afterwards identified, or if the ballot paper has been torn, defaced or otherwise dealt with by the voter so that he can thereby be identified, it will be void, and will not be counted.

If a voter takes a ballot paper out of the polling place, or deposits in the ballot box any other paper than the one given to him by the Deputy-Returning Officer (*or* Returning Officer *as the case may be*) he will be subject to imprisonment for any term not exceeding six months, with or without hard labour.

In the following form of Ballot Paper, given for illustration, the elector has marked his ballot paper in favour of the passing of the By-law:



(*a*) Secs. 164, 172, 174, 176, 178, inclusive, except so far as they are varied by ss. 359-364.

(*b*) See s. 168 and notes (**a**) and (**b**) thereto, s. 172, s. 174 (1), notes (**f**), (**g**), (**h**), and s. 193.

Secs. 353-354 (1).

Note (a).

Freeholders who may vote on by-laws.

353.—(1) Every ratepayer, being a man, an unmarried woman or a widow, shall be entitled to vote on any by-law requiring the assent of the electors, who, at the time of tender of the vote, is of the full age of twenty-one years, and a natural-born or naturalized subject of Her Majesty, and who has neither directly or indirectly received, nor is in expectation of receiving, any reward or gift for the vote so tendered, and who is at the time of the tender a freeholder, in his or her own right, or (if a man) whose wife is a freeholder of real property within the municipality, of sufficient value to entitle him to vote at any municipal election, and is rated on the last revised assessment roll as such freeholder, provided such person is named or intended to be named on the voters' list.

Taken from the Act of 1873, 36 V. c. 48, s. 232; extended to unmarried women and widows by 45 V. c. 23, s. 15. *Cf.* 16 V. c. 22, s. 2 (5-9); 18 V. c. 133, s. 2; 22 V. c. 99, s. 192; 29 & 30 V. c. 51, s. 196 (7).

In case of new municipality where there has been no assessment roll.

(2) In the case of a new municipality in which there has not been any assessment roll, the qualification of being named on the list and of being rated on the roll shall be dispensed with; but in such case the person offering to vote shall not be entitled to vote, unless he possesses the other qualifications above mentioned, and has, at the time of tender of his vote sufficient property to have entitled him to vote if he had been rated therefor, and unless at the said time he names the property to the deputy-returning officer; and the deputy-returning officer shall note such property in the voters' list opposite the voter's name, at the request of any one entitled to vote on the by-law. 55 V. c. 42, s. 308.

Taken from 36 V. c. 48, s. 232. *Cf.* 29 & 30 V. c. 51, s. 77.

(a) Until 1866 the right of voting on by-laws creating debts belonged to "all qualified electors." As regards freeholders, a comparison of this section with ss. 86, 87, 90 shows that the qualifications required for voting at a municipal election and on a by-law are identical, except that, in the latter case, there is no disqualification by reason of non-payment of municipal taxes.

Leaseholders who may vote on by-laws.

354.—(1) Every ratepayer shall be entitled to vote on any by-law requiring the assent of the electors, who is a man, an unmarried woman or a widow, and is named, or intended to be named, in the voters' list, and at the time of tender of the vote is of the full age of twenty-one years, and a natural born or naturalized subject of Her Majesty, and who has neither directly or indirectly received nor is in expectation of receiving, any reward or gift for the vote so tendered, and is resident within the municipality for which the vote is taken for one month next before the vote, and who is, or whose wife is, a leaseholder of real property within the municipality of sufficient value to entitle him to vote at a municipal election, and who is rated on the last revised assessment roll therefor; provided he has in his lease covenanted to pay all municipal taxes in respect of the property leased (other than taxes assessed for local improvements), and, in case of a by-law for contracting a debt, provided the lease extends for the period of time within

Proviso.

which the debt to be contracted or the money to be raised by the by-law is made payable. 55 V. c. 42, s. 309 (1); 60 V. c. 3, s. 3; c. 14, s. 28; c. 15, *Sched.* C (60).

Secs. 354(1), 355. Notes (a); (a).

(2) No lessee shall be entitled to vote on a by-law respecting local improvements under section 682 of this Act, unless he has in his lease covenanted to pay taxes assessed for local improvements, and, in the case of such a by-law, the said proviso as to the lease extending for the period of time within which the debt to be contracted or the money to be raised by such by-law is made payable, shall not apply. 55 V. c 42, s 309 (2); 60 V. c. 3, s. 3; c. 14, s. 28.

Leaseholders who may vote on local improvement by-laws.

(3) In the case of a new municipality in which there has not been any assessment roll, the qualification of being named on the list and of being rated on the roll, and of residence for one month, shall be dispensed with; but in such case the person offering to vote shall not be entitled to vote unless he possesses the other qualifications above mentioned, and is at the time of tender of his vote a resident of the municipality, and then has sufficient property to have entitled him to vote if he had been rated therefor, and unless at the said time he names the property to the deputy-returning officer; and the deputy-returning officer shall note the property in the voters' list, opposite the voter's name, at the request of any one entitled to vote on the by-law. 55 V. c. 42, s. 309 (3).

In case of new municipality where there has been no assessment roll.

Taken from the Act of 1873, (36 V, c. 48), s. 233, *part*; extended to unmarried women and widows by (45 V. c. 23), s. 45; amended as to the clause relating to the covenant to pay municipal taxes by (60 V. c. 14), s. 28, (1); and the word "intended" in line 3 substituted (by 60 V. c. 15, Sched. C (60)) for the word "purported." *Cf.* the earlier Statutes referred to in the first note on s. 353 (on subs. 3). *Cf.* 29 & 30 V. c. 51, s. 77.

(a) The qualification for voting on by-laws and at municipal elections differs more widely in the case of leaseholders than in that of freeholders. Although there is no disqualification to vote on by-laws by reason of non-payment of taxes, (as in s. 88), and although most of the other qualifications are identical, including the requirement of a residence within the municipality for one month before the voting, two further conditions are necessary to entitle a leaseholder to vote on a by-law which requires the assent of the electors:—(1) except in the case of a vote under s. 682 on a by-law for the adoption of the system of local assessment for local improvements, the term of the lease must be at least equal to that of the currency of the debt; and (2) the lease must contain a covenant by the lessee to pay all municipal taxes (except taxes for local improvements) and, in the case of a vote under s. 682, to pay them also. (*a*)

The voters' list prepared by the clerk under s. 348 includes all tenants who are assessed for an amount sufficient to entitle them to vote at municipal elections; whether or not they possess the additional qualifications above referred to can be ascertained only at the time of the tender of the vote.

355. Where a municipality is divided into wards, each ratepayer shall be so entitled to vote in each ward in which he has the qualification necessary to entitle him to vote on the by-law. 55 V. c. 42, 309*a*; c. 43, s. 17.

Where ratepayers qualified in more than one ward.

Taken from 55 V, c. 43, s. 17 (1892).

(a) Some distinct enactment on this point was found to be necessary on account of the difficulty of applying to ss. 158, 159 the very general language of s. 351.

(*a*) *Cf.* the form of the lessee's covenant to pay taxes, R. S. O. c. 125, Sched. B. "Forms of Covenants," No. 3.

Secs. 356, 357.

Oath of freeholder voting on by-law.

356. Any ratepayer offering in respect of a freehold to vote on the by-law, may be required by the deputy-returning officer or by any ratepayer entitled to vote on the by-law, to make, before his vote is recorded, the following oath or affirmation, or any part thereof, or to the effect thereof:

Taken from "*The Con. Mun. Act, 1892*" (55 V. c. 42), s. 310, the words "or ward as the case may be" in the second paragraph of the oath, and the words after "by-law" in the fourth paragraph having been added by 55 V. c. 43, s. 18; and the word "intended" substituted for the word "purporting" in the sixth paragraph, by 60 V. c. 15, Sched. C (61). For the sources of the several paragraphs see *infra*.

You swear that you are of the full age of 21 years, and a natural-born (*or* naturalized) subject of Her Majesty;

Taken from 22 V. c. 99, s. 97 (9). *Cf.* 29 & 30 V. c. 51, s. 101 (8).

That you are a freeholder in your own right (*or* your wife is a freeholder), within the municipality (*or* ward *as the case may be*) for which this vote is taken;

Taken from 36 V. c. 48, s. 234, amended as above by 55 V. c. 43, s. 18.

That you have not voted before on the by-law in this township (*or* ward *as the case may be*);

Taken from 29 & 30 V. c. 51, s. 101 (8). *Cf.* 22 V. c. 99, s. 97 (9).

That you are, according to law, entitled to vote on the said by-law in this township (*or* ward *as the case may be*);

Taken from 36 V. c. 48, s. 234, amended as above by 55 V. c. 43, s. 18.

That you have not, directly or indirectly, received any reward or gift, nor do you expect to receive any, for the vote which you tender;

Taken from 22 V. c. 99, s. 97 (9).

That you are the person named (*or* intended to be named) in the voters' list;

Taken from 29 & 30 V. c. 51, s. 101 (6), s. 106 (8), amended as above by 60 V. c. 15, Sched. A (61). *Cf.* 22 V. c. 99, s. 97 (9); 31 V. c. 30, s. 40.

(In the case of an unmarried woman or widow claiming to vote.) That you are unmarried (*or* a widow *as the case may be*);

Taken from R.S.O. (1887), c. 184, s. 310, having been added to the oath under the authority of 45 V. c. 23, s. 15, and 47 V. c. 32, s. 3.

That you have not received anything, nor has anything been promised to you directly or indirectly, either to induce you to vote on this by-law, or for loss of time, travelling expenses, hire of team, or any other service connected therewith; and that you have not, directly or indirectly, paid or promised anything to any person, either to induce him to vote, or to refrain from voting;

Taken from 40 V. c. 8, s. 50.

(In the case of a new municipality in which there has not been any assessment roll, then instead of referring to being named on the voters' list, the person offering to vote may be required to state, in the oath, the property in respect of which he claims to vote.)

Taken from 36 V. c. 18, s. 234. *Cf.* 22 V. c. 99, s. 97 (9); 29 & 30 V. c. 51, s. 77.

And no inquiries shall be made of any voter, except with respect to the facts specified in such oath or affirmation. 55 V. c. 42, s. 310; c. 43, s. 18; 60 V. c. 15, *Sched.* C (61).

Oath of leaseholder voting on by-law, other than one respecting local improvements under section 682.

357. Any ratepayer offering in respect of a leasehold to vote on such by-law, other than a by-law respecting local improvements, under section 682, may be required by the deputy-returning officer, or by any ratepayer entitled to vote on such by-law, to make, before his vote is recorded, the following oath or affirmation, or any part thereof, or to the effect thereof:

Taken from "*The Con. Mun. Act, 1892*" (55 V. c. 42), s. 311, which was amended by 55 V. c. 3, s. 19, in the same manner as was the last preceding section by 55 V. c. 43, s. 18.

You swear that you are of the full age of 21 years, and a natural-born (*or* naturalized) subject of Her Majesty;

Taken from 22 V. c. 99, s. 97 (9). *Cf.* 29 & 30 V. c. 51, s. 101 (8).

That you have been a resident within the municipality for which this vote is taken for one month next before the vote;

Taken from 22 V. c. 99, s. 97 (9).

That you are (*or* your wife is) a leaseholder within this municipality (*or* ward *as the case may be*) and (*in the case of a by-law creating a debt*) that the lease extends for the period of time within which the debt to be contracted or the money to be raised by the by-law now submitted to the ratepayers is made payable, and that you have (*or* the lessee in said lease has) covenanted in such lease to pay all municipal taxes other than taxes assessed for local improvements;

Taken from 36 V. c. 48, s. 235, amended so as to agree with 60 V. c. 14, s. 28; R.S.O. c. 125, Sched. B. *Cf.* 31 V. c. 30, ss. 40, 47.

That you have not before voted on the by-law in this township (*or* ward *as the case may be*);

Taken from 29 & 30 V. c. 51, s. 101 (8). *Cf.* 22 V. c. 99, s. 97 (9).

That you are, according to law, entitled to vote on the said by-law in this township (*or* ward *as the case may be*);

Taken from 36 V. c. 48, s. 235, amended as above by 55 V. c. 43, s. 19.

That you have not directly or indirectly received any reward or gift, nor do you expect to receive any, for the vote which you tender;

Taken from 22 V. c. 99, s. 97 (9).

That you are the person named (*or* intended to be named) in the voters' list;

Taken from 29 & 30 V. c. 51, ss. 101 (6), 196 (8), amended as above by 60 V. c. 15, Sched. C (61). *Cf.* 22 V. c. 99, s. 97 (9).

(*In the case of an unmarried woman or widow claiming to vote.*) That you are unmarried (*or* a widow *as the case may be*);

Taken from R.S.O. (1887), c. 184, s. 311. *Cf.* 45 V. c. 23, s. 15; 47 V. c. 32, s. 3.

That you have not received anything, nor has anything been promised to you, directly or indirectly, either to induce you to vote on this by-law, or for loss of time, travelling expenses, hire of team or any other expenses connected therewith;

And that you have not directly or indirectly paid or promised anything to any person, either to induce him to vote or to refrain from voting;

Taken from 40 V. c. 8, s. 50.

(*In the case of a new municipality in which there has not been any assessment roll, then instead of swearing to residence for one month next before the vote, and instead of referring to being named in the voters' list, the person offering to vote may be required to state in the oath the property in respect of which he claims to vote, and that he is a resident of such municipality*);

Taken from 36 V. c. 48, s. 235. *Cf.* 22 V. c. 99, s. 97 (9); 29 & 30 V. c. 51, s. 77.

And no inquiries shall be made of a voter, except with respect to the facts specified in the oath or affirmation. 55 V. c. 42, s. 311; c. 43, s. 19; 60 V. c. 3, s. 3; c. 15, *Sched.* C (61).

358. A ratepayer offering in respect of a leasehold, to vote on a by-law respecting local improvements, under section 682, may be required by the deputy-returning officer, or by any ratepayer entitled to vote on the by-law, to make, before his vote is recorded, the following oath or affirmation, or any part thereof, or to the effect thereof: Oath of leaseholder voting on by-law respecting local improvements under section 682.

You swear that you are of the full age of 21 years, and a natural-born (*or* naturalized) subject of Her Majesty;

That you have been a resident within the municipality for which this vote is taken, for one month next before the vote;

Secs. 358-361.

That you are (*or* your wife is) a leaseholder within the municipality, (*or* ward *as the case may be*) and that you have (*or* the lessee in said lease has) covenanted in such lease to pay all municipal taxes, including taxes assessed for local improvements.

That you have not before voted on the by-law in this township (*or* ward *as the case may be*);

That you are, according to law, entitled to vote on the said by-law in this township (*or* ward *as the case may be*);

That you have not directly or indirectly received any reward or gift, nor do you expect to receive any, for the vote which you tender;

That you are the person named, (*or* intended to be named), in the voters' list;

(*In the case of an unmarried woman or widow claiming to vote*). That you are unmarried (*or* a widow *as the case may be*);

That you have not received anything, nor has anything been promised to you directly or indirectly, either to induce you to vote on this by-law, or for loss of time, travelling expenses, hire of team, or any other service connected therewith;

And that you have not directly or indirectly paid or promised anything to any person, either to induce him to vote or to refrain from voting;

(In the case of a new municipality in which there has not been any assessment roll, then instead of swearing to residence for one month next before the vote, and instead of referring to being named in the voters' list, the person offering to vote may be required to state in the oath the property in respect of which he claims to vote, and that he is a resident of such municipality);

And no inquiries shall be made of a voter, except with respect to the facts specified in the oath or affirmation. 55 V. c. 42, s. 312; c. 43, s. 20; 60 V. c. 3, s. 3; c. 14, s. 28: c. 15, *Sched.* C (61).

Taken from 55 V. c. 42, s. 312; amended by 55 V. c. 43, s. 20, as was the preceding section by 55 V. c. 43, s. 19. For the sources of the several paragraphs of the oath, see the notes to s. 357; and as to the third paragraph of the oath, s. 354 (2), and note (a) thereto.

Form of statement to be made by deputy-returning officers of result of poll.

359. The written statement to be made by every deputy-returning officer at the close of the polling shall be made under the following heads:

(*a*) Name or number of ward or polling subdivision, and of the municipality, and the date of the polling;

(*b*) Number of votes for and against the by-law;

(*c*) Rejected ballot papers. 55 V. c. 42, s. 313.

Taken from 39 V. c. 35, s. 13 (1876). *Cf.* s. 174 (5), *ante.*

Objections to ballot papers.

To be numbered.

360. The deputy-returning officer shall take a note of any objection made by any person authorized to be present, to any ballot paper found in the ballot box, and shall decide any question arising out of the objection. Each objection to a ballot paper shall be numbered, and a corresponding number shall be placed on the back of the ballot paper, and initialed by the deputy-returning officer. 55 V. c. 42, s. 314.

Taken from 39 V. c. 35, s. 14 (1876). *Cf.* s. 174 (2) (*b*), ante.

Deputy-returning officer's duties after votes are counted.

361. Every deputy-returning officer, at the completion of the counting of votes after the close of the poll, shall, in the presence of the persons authorized to attend, make up into separate packets, sealed with his own seal, and the seals of such persons authorized to attend as desire to affix their

Secs. 361, 362. Notes (a); (a).

seals, and marked upon the outside with a short statement of the contents of such packet, the date of the day of the polling, the name of the deputy-returning officer, and of the ward or polling subdivision and of the municipality—

(*a*) The statement of votes given for and against the by-law, and of the rejected ballot papers;

(*b*) The used ballot papers which have not been objected to and have been counted;

(*c*) The ballot papers which have been objected to, but which have been counted by the deputy-returning officer;

(*d*) The rejected ballot papers;

(*e*) The spoiled ballot papers;

(*f*) The unused ballot papers;

(*g*) The voters' list and poll book, with the oaths in the form of Schedule G annexed thereto; a statement of the number of voters whose votes are marked by the deputy-returning officer, under section 171 of this Act, with the declarations of inability; and the notes taken of objections made to ballot papers found in the ballot box. 55 V. c. 42, s. 315; 58 V. c. 42, ss. 8, 9; 60 V. c. 3, s. 3.

Taken from 39 V. c. 35, s. 14 (1876). *Cf.* s. 177 (1). Subsec. (*g*) has been amended in the present revision by inserting after the words "The voters' list" the words "and poll book," so as to agree with s. 177 and with the oath, Sched. G., as amended by 58 V. c. 42, s. 9; and in the revision of 1887, by adding in line 2 the words "with the oath in the form of Schedule G. annexed thereto," and at the end the words "and the notes taken of objections made to ballot papers found in the ballot box"; R. S. O. (1887), c. 184, s. 308.

(a) "**The oath in the form of Schedule G.**" See note (b) to s. 177, *ante* p. 200.

Certificate and declaration of deputy returning officer and return of voters' list and of ballot box.

362. Every deputy-returning officer shall, at the close of the poll, certify, under his signature, on the voters' list, in full words, the total number of persons who have voted at the polling place at which he has been appointed to preside, and before placing the voters' list and poll book in their proper package as aforesaid, he shall make and subscribe before the clerk of the municipality or before a Justice of the Peace or the poll-clerk, his solemn declaration that the voters' list and poll book were used in the manner prescribed by law and that the entries required by law to be made therein were correctly made. The declaration shall be in the form of Schedule G to this Act, and shall thereafter be annexed to the voters' list. The deputy-returning officer shall then forthwith return the ballot box to the clerk of the municipality. 55 V. c. 42, s. 316; 58 V. c. 42, ss. 8, 9; 60 V. c. 3, s. 3.

Taken from 39 V. c. 35, s. 16 with such verbal amendments as were rendered necessary by 58 V. c. 42, s. 9. *Cf.* s. 177 (2-4).

(a) "**Schedule G.**" See note (b) to s. 177, *ante*, p. 200.

Secs. 363-366 (1).

Notes (a); (a), (b); (a).

Deputy returning officer to certify as to number of votes and rejected ballot papers.

363. Every deputy-returning officer, upon being requested so to do, shall deliver to the persons authorized to attend at his polling place a certificate of the number of votes given at the polling place for and against the by-law, and of the number of rejected ballot papers. 55 V. c. 42, s. 317.

Taken from 39 V. c. 35, s. 17 (1876).

(a) "**Persons authorized to attend.**" See ss. 343-345. *Cf.* the meaning of the same words in s. 176, note (a).

Clerk to cast up votes and declare result.

364. The clerk, after he has received the ballot papers and the statements before mentioned of the number of votes given in each polling place, shall, at the time and place appointed by the by-law, in the presence of the persons authorized to attend or such of them as may be present, without opening any of the sealed packets of ballot papers, sum up from such statements the number of votes for and against the by-law, and shall then and there declare the result, and shall forthwith certify to the council, under his hand, whether the majority of the electors voting upon the by-law have approved or disapproved of the by-law. 55 V. c. 42, s. 318.

Taken from 39 V. c. 35, s. 18 (1876). *Cf.* s. 178.

(a) **Declare the result.**" See note (b) to s. 178.

(b) "**The majority of the electors voting upon the by-law.**" Where a by-law required the assent of the electors, the approval of a majority of those voting thereon was formerly sufficient in every case; (*a*) but in the case of by-laws for bonuses, etc., it has been found necessary, in the interests of the municipality, to require the approval of a certain percentage of the total number of ratepayers entitled to vote. (*b*)

Clerk not to have casting vote as to certain by-laws.

365. Where the assent of the electors, or of the ratepayers or of a proportion of them, is necessary to the validity of a by-law, the clerk or other officer shall not be entitled to give a casting vote. 55 V. c. 42, s. 319.

Taken from "*The Con. Mun. Act, 1883*," (46 V. c. 18), s. 321.

(a) The reason for giving a casting vote to the clerk in the case of a municipal election (viz., that the filling of a vacant office is necessary in order that the business of the municipality may be carried on) does not apply to the voting on a by-law. (*a*)

Prior to this enactment there had been a conflict of judicial opinion as to the right of the clerk to give a casting vote. (*b*)

Requisites of Bonus By-laws.

Requisites to validity of certain bonus by-laws.

366.—(1) To render valid a by-law of a municipality for granting a bonus in aid of a railway, or in aid of any water-works or water company, or for taking stock in a railway company, or for lending money to such company, or for

(*a*) *Re McAroy and Township of Sarnia*, 12 U. C. R. 99 (by-law prohibiting the sale of liquor); *Jenkins* v. *County of Elgin*, 21 C. P. 325; *Erwin* v. *Township of Townsend*, 21 C. P. 330 (railway aid); *Adamson* v. *Township of Etobicoke*, 22 O. R. 341 (aid to street railway company).

(*b*) See s. 366. (*a*) See s. 274 and note (a) to s. 179 (1).

(*b*) See *Canada Atlantic R. W. Co.* v. *Township of Cambridge*, 11 O. R. 392; 14 A. R. 299; 15 S. C. R. 219, referred to in note (a) to s. 351.

guaranteeing the payment of money borrowed by such company, the assent shall be necessary of one-third of all the ratepayers who were entitled to vote, as well as of a majority of the ratepayers voting on the by-law.

(a) Taken from 43 V. c. 27, s. 16 (1880), which applied only to by-laws on "granting a bonus in aid of a railway or for promoting any manufacture," and required the assent of "a majority of the electors entitled to vote" thereon. In 1882, by 45 V. c. 23, s. 17, this was extended so as to include "by-laws for lending money to railway companies, or for guaranteeing the payment of money borrowed by any such company, or for lending money to any other company or person on condition of such company or person establishing or continuing a manufactory in or near such municipality," and the proportion of assenting ratepayers required was reduced to two-fifths of those entitled to vote, being a majority of those actually voting. By 51 V. c. 28, s. 16 (1888), this proportion was raised to two-thirds in the case of by-laws for aiding manufacturing establishments, but this section was repealed in 1892 by 55 V. c. 43, s. 29. In 1890 the percentage in the cases mentioned in the section was reduced by 53 V. c. 50, s. 7, to one-third of all those entitled to vote; and the provisions of the section were extended to by-laws for granting a bonus "in aid of any waterworks or water company," by 53 V. c. 50, s. 8. By 55 V. c. 43, s. 21 the words relating to bonuses for promoting any manufacture and for lending money to any other company or person on condition of such company or person establishing or continuing a manufactory in or near the municipality were struck out.(c)

(b) "**For granting a bonus in aid of a railway . . . or for taking stock in a railway company,**" etc. See s. 694 and R.S.O. c. 207, s. 39.

(c) "**In aid of any water works or water company.**" See s. 591 (5) and R.S.O. c. 199, ss. 12, 13.

Certificate to be given by clerk.

(2) In addition to the certificate required by section 364 of this Act, the clerk, in case of the majority of votes being in favour of the by-law, shall further certify whether or not, as far as shewn by the voters' list and assessment roll, such majority appears to be one-third of all the ratepayers who were entitled to vote on the by-law.

Appeal to county judge.

(3) In case of dispute as to the result of the vote, the Judge shall have the same powers for determining the question as he has in any case of a scrutiny of the votes.

Procedure.

(4) The petition to the Judge may be by any elector, or by the council; and the proceedings for obtaining the Judge's decision shall be the same, as nearly as may be, as in the case of a scrutiny. 55 V. c. 42, s. 320; c. 43, s. 21. *See sec.* 369.

Taken from 43 V. c. 27, s. 16, "one-third" being substituted for "a majority" in the fifth line of subs. 2 by 53 V. c. 50, s. 7.

(d) "**The petition to the Judge.**" See s. 369.

Secrecy of Proceedings.

Maintaining secrecy of proceedings at polling place.

367.—(1) Every officer, clerk and person in attendance at a polling place shall maintain and aid in maintaining the secrecy of the voting at the polling place.

Voter not to be interfered with.

(2) No officer, clerk, or other person whosoever, shall interfere with or attempt to interfere with a voter when marking

(c) See *Re Campbell and Village of Lanark*, 20 A. R. 372, referred to in note (a) to s. 591, where the subject of bonus by-laws for aiding manufactures is more fully discussed.

Secs. 367 (2), 368. Notes (a); (a).

his vote, or otherwise attempt to obtain, at the polling place, information as to the manner in which any voter at such polling place is about to vote or has voted.

No information to be given as to how any one is about to vote or has voted.

(3) No officer, clerk or other person shall communicate at any time, to any person, any information obtained at a polling place, as to the manner in which any voter at such polling place is about to vote or has voted.

Secrecy to be maintained at counting.

(4) Every officer, clerk and person in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not communicate or attempt to communicate any information obtained at such counting, as to the manner in which any vote is given in any particular ballot paper.

Voters not to be induced to disclose votes.

(5) No person shall, directly or indirectly, induce any voter to display his ballot paper after he has marked the same, so as to make known to any person the manner in which he has marked his ballot paper.

Penalty for contravening this section.

(6) Every person who acts in contravention of this section shall be liable, on summary conviction before a Stipendiary Magistrate, Police Magistrate, or two Justices of the Peace, to imprisonment for any term not exceeding six months, with or without hard labour. 55 V. c. 42, s. 321.

Taken from 39 V. c. 35, s. 19 (1876).

(a) See s. 198 and notes thereto.

Statutory declaration of secrecy to be made by officers, etc., before a poll.

368. The clerk of the municipality, and every officer, clerk or person authorized to attend at a polling place, or at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, (if he is the clerk of the municipality), of a Justice of the Peace, and (if he is any other officer, or a clerk, or an agent), in the presence of a Justice of the Peace, or of the clerk of the municipality, or of a deputy-returning officer. Such statutory declaration of secrecy shall be in the form given in Schedule M to this Act, or to the like effect. 55 V. c. 42, s. 322.

Taken from 39 V. c. 35, s. 20 (1876). *Cf.* s. 199.

(a) "**The form of Schedule M**" is as follows :—

Form of Statutory Declaration of Secrecy.

I, A. B., solemnly promise and declare that, at the voting on the by-law submitted to the electors by the Council of the Township (*or as the case may be*) of (and the voting on which has been appointed for this day), I will not attempt in any way whatsoever unlawfully to ascertain the manner in which any elector shall vote or has voted, and will not in any way whatsoever aid in the unlawful discovery of the same; and I will keep secret all knowledge which may come to me, of the manner in which any elector has voted.

Made and declared before me at , this day of , A.D., 19 .

C.D.,
Justice of the Peace (*or* Clerk of the Municipality of).

Scrutiny.

Sec. 369.

Notes (a), (b).

Scrutiny may be had, on application to County Judge.

369. If within two weeks after the clerk of the council which proposed the by-law has declared the result of the voting, any elector applies upon petition to the County Judge after giving such notice of the application, and to such persons as the Judge directs, and shows by affidavit to the Judge reasonable grounds for entering into a scrutiny of the ballot papers, and if the petitioner enters into a recognizance before the Judge in the sum of $100, with two sureties (to be allowed as sufficient by the Judge upon affidavit of justification) in the sum of $50 each, conditioned to prosecute the petition with effect, and to pay the party against whom the same is brought any costs which may be adjudged to him against the petitioner, the Judge may appoint a day and place, within the municipality, for entering into the scrutiny. 55 V. c. 42, s. 323.

Taken from 39 V. c. 35, s. 21 (1876).

(a) "**Any elector,**" *i.e.*, any elector who was entitled to vote upon the by-law. (*a*)

(b) "**Applies by petition to the County Judge.**" The following form of petition is suggested :—

Form of Petition for a Scrutiny.

"IN THE COUNTY COURT OF THE COUNTY (*or* UNITED COUNTIES) OF

In the matter of a proposed By-law of the Corporation of the (*Township*) of , entitled "A By-law," etc.

To His Honour the Judge of the County Court of the County (*or* United Counties) of

The petition of the undersigned A. B. of the *Township* of in the County of (*occupation*).

1. Your petitioner is a municipal elector of the said (*Township*) of and was entitled to vote (and did vote) upon a proposed By-law of the Corporation of the said (*Township*) of which was submitted by the Council of the said (*Township*) of to the vote of the qualified electors thereof on the day of last past.

2. On the day of last past, the Clerk of the said (*Township*) of declared the said By-law to have been approved by a majority of the qualified electors of the said municipality and certified under his hand to the Council of the said (*Township*) of that a majority of the qualified electors so voting had approved of the said proposed By-law and [*if s. 366 applies to the case*] that such majority included one-third of all the ratepayers of the said (*Township*) entitled to vote on the said By-law.

3. Your petitioner submits and alleges that the said declaration and certificate were and are incorrect and that the said by-law was not in fact approved of by one-third of the electors of the said (*Township*) of qualified by law to vote on the said By-law, nor by a majority of the said electors actually voting thereon.

4. [*Here state with as much particularity as possible the reasons for the statement in the preceding paragraph, e.g.*, that the deputy-returning officer in polling subdivision No. of the said (*Township*) of counted as votes in favor of the said By-law, ballot papers objected to by the scrutineers appointed on behalf of the parties interested in opposing the said By-law, etc.] (*b*)

(*a*) See s. 2 (5) and note (**a**) to s. 338. (*b*) See note (**c**) to s. 372.

Secs. 369, 370.
Notes (b)-(d).

Your petitioner therefore prays that a scrutiny may be had by your Honour of the ballot papers containing the votes given upon the said By-law as aforesaid.

And your petitioner will ever pray.

Signature of petitioner.

(c) "**After giving such notice of the application and to such persons as the Judge directs.**" Since the application itself is to be made within two weeks after the clerk has declared the result of the voting, and the petition and affidavit in support thereof to be filed before notice of the application is given under this section, the period actually allowed for preparing and filing this material is practically limited to a single week.

(d) "**And the petitioners enters into a recognizance before the Judge.**" It will be observed that the language here used differs from that of s. 220. The expression "to pay to the party against whom the same is brought any costs which may be awarded" is not an accurate one. The discretion of the Judge as to costs is the same "as in the case of applications to quash a by-law," (a) *i. e.*, he "may award costs for or against the corporation" only (*b*).

The following form of recognizance is suggested:

Form of Recognizance.

IN THE COUNTY COURT OF THE COUNTY (*or* UNITED COUNTIES) OF

Ontario.
County of
To wit:

Be it remembered that on the day of in the year of Our Lord One thousand nine hundred and before me Judge of the County Court of the County (*or* United Counties) of , cometh
of (*occupation*),
of (*occupation*), and
of (*occupation*), and acknowledge themselves severally and respectively to owe to our Sovereign Lady the Queen the amounts following, that is to say, the said (*naming the petitioner*) the sum of $100 and the said and (*naming the sureties*) the sum of $50 each. UPON CONDITION that if the said (*petitioner*) do prosecute with effect the petition filed by him praying for a scrutiny of the ballot papers containing the votes given on the day of last past at the voting by the qualified electors of the said municipality of upon a proposed by-law of the said the Corporation of the of entitled "A By-law, *etc.*," and if the said (*petitioner*) do pay to the said the Corporation of the of all such costs as the Judge of the County Court of the County (*or* United Counties) of shall direct in that behalf then this recognizance to be void otherwise to remain in full force.

Taken and acknowledged the day and year first above mentioned before me.

Judge of the County Court of the County (or United Counties) of

The affidavit of justification may be in the form of that given in note (e) to section 220, but should be entitled in the same way as the petition (*c*).

Notice of time of scrutiny.

370. At least one week's notice of the day appointed for the scrutiny shall be given by the petitioner to such persons as the Judge directs, and to the clerk of the municipality. 55 V. c. 42, s. 324.

Taken from 39 V. c. 35, s. 22 (1876).

(*a*) S. 372. (*b*) S. 378 (1). (*c*) See note (c).

Secs. 371-373. Notes (a); (a), (b); (a).

Proceedings.

371. On the day and at the hour appointed, the clerk shall attend before the Judge with the ballot papers in his custody, and the Judge upon inspecting the ballot papers, and hearing such evidence as he may deem necessary, and on hearing the parties, or such of them as may attend, or their counsel, shall, in a summary manner, determine whether the majority of the votes given, is for or against the by-law, and shall forthwith certify the result to the council. 55 V. c. 42, s. 325.

Taken from 39 V. c. 35, s. 23 (1876).

(a) "**The Judge . . . shall determine whether the majority of votes given is for or against the by-law.**" Although termed "a scrutiny" the proceeding authorized by this section is in reality no more than a recount of ballots. The rules as to marking the ballots referred to in the notes to s. 174 are applied by section 351 to the voting on by-laws which require the assent of the electors; but it would seem that under this section the Judge has no power to report that persons voted who were not qualified to do so, or that bribery or undue influence was used to secure the passing or defeat of the by-law. It is true that the next section gives the Judge "as to all matters arising from the scrutiny" the like powers and authority as are possessed by him on the trial of a controverted municipal election, but these words seem to be controlled by the language of the present section which expressly limits the issue to the question whether or not the majority of the votes cast is for or against the by-law. If it is desired to attack the by-law on the ground of bribery or undue influence, proceedings should be taken under ss. 381 and 382.

Powers of Judge.

Costs.

372. The Judge shall on the scrutiny possess the like powers and authority, as to all matters arising upon the scrutiny as are possessed by him upon a trial of the validity of the election of a member of a municipal council; and in all cases costs shall be in the discretion of the Judge, as in the case of applications to quash a by-law, or he may apportion the costs as to him seems just. 55 V. c. 42, s. 326.

Taken from 39 V. c. 35, s. 25 (1876).

(a) "**The Judge shall . . . possess the like powers and authority . . . as are possessed by him on a trial of the validity of the election of a member of a municipal council.**" This apparently refers to the power to allow substitutional service on any person to whom notice is directed to be given and who keeps out of the way to avoid personal service (*a*), to order the production of books, papers and documents by any municipal clerk (*b*), to add or substitute parties as petitioners or respondents (*c*), and to try the question to be determined under s. 371 in such manner as the Judge sees fit (*d*); but, as pointed out in the last preceding note, it does not apparently extend the scope of the inquiry.

(b) "**Costs shall be in the discretion of the Judge as in the case of applications to quash a by-law.**" See s. 378 (1).

Passing By-laws by Council.

By-law carried by voters to be passed by council.

373. A by-law which is duly carried by the vote of the qualified electors, shall within six weeks thereafter be passed by the council. 55 V. c. 42, s. 327.

Taken from 34 V. c. 30, s. 16 (1871). The words "which submitted the same" which occurred at the end of that section were struck out in 1886 by 49 V. c. 37, s. 16.

(a) It was formerly held that the duty of the council under this section was simply ministerial and that if they refused to pass the by-law they might be compelled by *mandamus* to do so, but in *Re Canada Atlantic Railway Co. v.*

(*a*) Sec. 223. (*b*) Sec. 228. (*c*) Secs. 230, 231. (*d*) Sec. 232.

Secs. 373, 374.

Notee (a); (a).

City of Ottawa, (*a*) the Supreme Court came to a different conclusion. In that case a by-law in aid of a railway company had been approved by the ratepayers and it was contended that it must under this section be adopted by the council, GWYNNE, J., in giving the judgment of the Court says :— (*b*)

> "In presence of the provisions of the Statute, that to the copy of the proposed by-law there should be appended a notice to the effect that the proposed by-law so submitted *will be taken into consideration* by the council after one month from the first publication, I cannot think that the council were divested of their legislative, deliberative character, and that they had no power to express an opinion upon a matter which the Legislature said they should take into their consideration; or that the vote of the ratepayers converted their office from being one of a deliberative and legislative character into one purely ministerial, the execution of which would be enforced by *mandamus* against their deliberate conviction that there were abundant reasons why the by-law should not be passed."

And in *Canada Atlantic Railway Co.* v. *Township of Cambridge* (*c*), OSLER, J.A., says (p. 302) :—

> "This section . . . merely prescribes a time within which the by-law is to be taken into consideration and perfected. It does not cast upon them an imperative duty to pass it at all events. If not passed within the time limit it drops."

And in *Re Langdon and The Arthur Junction Railway Company and the Township of Arthur* (*d*), where a railway bonus by-law had been approved by the electors, a mandamus to the township council directing them to pass the by-law was refused with costs, it appearing that bribery and personation had been committed by those interested in securing the vote in favour of the by-law.

In *Re Baird and Village of Almonte* (*e*), a bonus by-law approved by a majority of the qualified electors and passed by the council was quashed on the ground that the council was incompetent to pass it by reason of a majority of its members being pecuniarily interested in the company to be aided (*f*).

In the successive consolidations of the Municipal Act from 1873 to 1887 inclusive, the final words of the section were "the council which submitted the by-law." This was held by the Ch. D. to mean the council of the same municipality, but not necessarily the council of the same year; (*g*) but this decision having been reversed by the Court of Appeal, (*h*) and the Supreme Court, (*i*) the words "which submitted the same" were struck out of the section by 49 V. c. 37, s. 6, and see now s. 327.

The passing of the by-law stayed on presenting of a petition.

374. In case of a petition being presented, the by-law shall not be passed by the council until after the petition has been disposed of; and the time which intervenes between the presenting of the petition and the final disposal thereof shall not be reckoned as part of the six weeks within which the by-law is to be passed. 55 V. c. 42, s. 328.

Taken from 39 V. c. 35, s. 24 (1876).

(a) "**A petition.**" This refers to a petition for a scrutiny under s. 369.

(*a*) 12 S.C. R. 365. (*b*) p. 375. (*c*) 14 A.R. 299. (*d*) 45 U.C.R. 47.
(*e*) 41 U.C.R. 415. (*f*) See note (**1**) to s. 80, and note (**a**) to s. 269.
(*g*) *Canada Atlantic Railway Company* v. *City of Ottawa*, 8 O. R. 201.
(*h*) 12 A. R. 234. (*i*) 12 S. C. R. 365.

DIVISION IV.—CONFIRMATION OF BY-LAWS.
(SECS. 375-377.)

Secs. 375, 376.
Note (a).

Promulgation of by-laws.

375. The promulgation of a by-law shall consist in the publication, through the public press, of a true copy of the by-law, and of the signature attesting its authenticity, with a notice appended thereto of the time limited by law for applications to quash the same or any part thereof, and the publication aforesaid shall be in such public newspaper, published either within the municipality or in the county town, or in an adjoining or neighbouring local municipality, as the council by resolution may designate, and the publication shall, for the purpose aforesaid, be continued in at least one number of such paper, each week for three successive weeks. 55 V. c. 42, s. 329; 56 V. c. 55, s. 8; 62 V. c. 2, *Sched.* (8).

(a) This method of confirming a by-law by publishing it "through the public press" was introduced in 1851 by 14 & 15 V. c. 109, Sched. A (21), which is the foundation of the present section. That section limited to six months the time for motions to quash a promulgated by-law, and provided

> "That every special promulgation of a by-law within the meaning of The Municipal Corporations Acts, shall consist in the publication through the public press of a true copy of such by-law, and the signature attesting its authenticity, with a notice appended thereto of the time limited by law for applications to the Courts to quash the same or any part thereof; or in the case of by-laws by which any rate shall be imposed for any purpose whatsoever, then either by such publication of a copy of such by-law, with such notice as aforesaid, or, in lieu thereof, by such publication of a notice setting forth the amount of such rate, and giving the substance only of other parts of such by-law, with a similar notice of the time so limited for such applications to quash as aforesaid, which publication shall for the purpose aforesaid be in each public newspaper published weekly or oftener within the territorial jurisdiction of such municipal corporation; or if there be no such public newspaper within such jurisdiction, then in at least two public newspapers published weekly or oftener nearest to such jurisdiction, every which publication shall for the purpose aforesaid be continued in at least three consecutive numbers of such paper."

The mode of publication prescribed by the above Act has since been several times amended, (a) and the period within which application to quash a promulgated by-law must be made has also been more than once altered; (b) but the effect of promulgation, s. 377, remains precisely what it was under the Act of 1851.

In the Province of British Columbia no municipal by-law comes into effect until a copy of it has been published in the British Columbia Gazette and in one or more newspapers circulating in the municipality. Publication of the by-law in the Gazette with a notice similar to that given in the next section has the effect of promulgation under this Act, and any motion to quash the by-law must be made within one month thereafter. (c)

Form of notice to be published with by-law.

376. The notice to be appended to every copy of the by-law for the purpose aforesaid, shall be to the effect following:

(a) See 36 V. c. 48, s. 237; 37 V. c. 16, s. 7; 42 V. c. 31, s. 9; 56 V. c. 35, s. 8.

(b) 36 V. c. 48, ss. 238, 239 (next succeeding Term); 44 V. c. 24, s. 32 (two months); 46 V. c. 18, s. 332 (three months).

(c) "*Municipal Clauses Act*," B. C. Statutes, 59 V. c. 37, ss. 83-86.

Secs. 376-378 (1).

Notes (a); (a).

NOTICE,—The above is a true copy of a by-law passed by the municipal council of the of on the day of A. D. 19 (and approved by His Honour the Lieutenant-Governor in Council on the day of 19 *where such approval is required to give effect to the by-law*): And all persons are hereby required to take notice that any one desirous of applying to have such by-law, or any part thereof, quashed, must make his application for that purpose to the High Court of Justice, within three months next after the publication of this notice once a week for three successive weeks, in the newspaper called the or he will be too late to be heard in that behalf.

55 V. c. 42, s. 330.

See the statutes referred to under s. 375.

(a) "**Within three months next after the publication.**" See as to the meaning of similar words in "*The Municipal Clauses Act*," of British Columbia, (*d*) *Kane* v. *City of Kaslo*, (*e*) referred to in note (a) to s. 379.

If not moved against within the time limited, to be valid.

377. In case no application to quash a by-law is made within three months next after the third publication thereof and of the notice aforesaid, the by-law, or so much thereof as is not the subject of any such application, or is not quashed upon such application, shall, notwithstanding any defect of substance or form, either in the by-law itself, or in the time or manner of passing the same, be a valid by-law, so far as the same ordains, prescribes or directs anything within the proper competence of the council to ordain, prescribe or direct. 55 V. c. 42, s. 331; 60 V. c. 15, *Sched.* C (62).

Taken in substance from 14-15 V. c. 109, Sched. A. (21).

(a) "**Anything within the proper competence of the council to ordain, prescribe or direct.**" The words seem to mean "that the by-law be on a subject properly cognizable by the municipality as within their general jurisdiction."(*f*)

Where, by a by-law granting aid to a railway, the period within which the debt was made payable exceeded the term allowed by s. 384 (4) the defect was held to have been cured by promulgation.(*g*) But on appeal this decision was reversed, and the by-law quashed on the ground that it was not within the competence of the council to pass such a by-law without the assent of the electors, and that such assent had not been given.(*h*)

DIVISION V.—QUASHING BY-LAWS. (SECS. 378-383.)

Proceedings to quash by-law.

378.—(1) Any resident of a municipality or any other person interested in a by-law, order or resolution of the council thereof, may apply to the High Court of Justice upon motion to quash the by-law, order or resolution in whole or in part for illegality: and the Court upon such motion may quash the by-law, order or resolution in whole or in part for illegality, and may, according to the result of the application, award costs for or against the corporation.

(*d*) R.S.B.C. c. 144, ss. 85, 86, 89. (*e*) 4 B. C. R. 486.

(*f*) *Per* HAGARTY, C. J., in *Connor* v. *Middagh*, 16 A.R. 268.

(*g*) *Re Canada Atlantic Railway Company and Township of Cambridge*, 11 O. R. 392.

(*h*) s.c., 14 A.R. 290; 15 S.C.R. 219.

(a) The statutory jurisdiction of our Courts to quash municipal by-laws for illegality is usually treated as having been first conferred by s. 155 of the Act of 1849, (*a*) which is the foundation of this section. But in England the Courts have long exercised this power of deciding upon the validity of the by-laws of corporations; (*b*) and it seems evident that their authority to do so does not rest wholly upon the Statute 19 Hen. VII. c. 7, since that Act applies only to the by-laws of guilds, fraternities, etc., and not to those of cities or boroughs. (*c*) The jurisdiction is now, however, fully established and can only be taken away by express enactment. (*d*)

(b) **"Any resident of the municipality or any other person interested."** The affidavit of the applicant should show that he is a resident of the municipality in which the by-law was passed, or has an interest in the provisions of the by-law. (*e*) Where an applicant, who moved against a by-law of the united counties of Peterborough and Victoria, swore that during all the year 1850 he had been, and was at the time of the separation, a resident of and within the limits and boundaries of the town of Peterborough, a corporation within the county of Peterborough, it was held that he was sufficiently described as a resident, so as to be entitled to make the application. (*f*) Where a freeholder of a township, though not a resident, applied to quash a by-law, and it was objected that, being a non-resident, he could not do so; it was held that, as a freeholder of the township, he had an *interest* in all the by-laws passed by the township council sufficient to enable him to move to quash any of its by-laws. (*g*) So it has been held that the owner of real estate assessed in the municipality, though not himself named on the assessment roll, had a sufficient interest. (*h*) Where the affidavit stated the deponent to be a ratepayer and a resident householder, it was held unnecessary to give any further description of him. (*i*) Acquiescence of the applicant cannot be properly used against him on an application to quash a by-law passed contrary to law, when interests, both public and private, other than those of the applicant are affected. (*j*) Where the parties applying to quash a by-law incorporating a village, had voted at the municipal elections held for the village as incorporated; one of them had been a candidate for the office of reeve, and another had been elected to the school board, but none of them had promoted the passing of the by-law or had any part in the taking of the census required, it was held that the applicants were not estopped from moving to quash the by-law. (*k*)

(c) **"By-law, order or resolution."** The Act of 1849 only mentioned "by-laws," and it was therefore held that the orders and resolutions of municipal councils could not be quashed thereunder (*a*). By the Act of 1858 (*b*), the wording of the section was altered as above, so as to include resolutions (*c*), and in *Re Snell and Town of Belleville* (*d*), the words "orders or resolutions" were held to cover market regulations made by a council under s. 580 (2). When that which was intended to be a by-law cannot be treated as such for want of a seal, it may perhaps be included under these words (*e*).

(*a*) 12 V. c. 81.

(*b*) See *per* HARRISON, C. J., in *Re Brodie* v. *Town of Bowmanville*, 38 U. C. R. 580-582, and *per* LORD HOBHOUSE, in *Slattery* v. *Naylor*, 13 App. Cas. 446, at p. 452, quoted in note (**d**) to s. 325.

(*c*) Com. Dig., Tit. "By-law"; Hardcastle on Statutory Law (2nd Ed.) 310.

(*d*) *Per* COCKBURN, C.J., in *Bentham* v. *Hoyle*, 3 Q.B.D. at p. 292.

(*e*) *Babcock* v. *Township of Bedford*, 8 C. P. 527; *Bogart* v. *Town of Belleville*, 6 C. P. 425; *Re Kinghorn and City of Kingston*, 26 U. C. R. 130.

(*f*) *Re Conger and County of Peterborough*, 8 U. C. R. 349.

(*g*) *Re De la Haye and Township of Toronto*, 2 C. P. 317.

(*h*) *Re Boulton and Town of Peterborough*, 16 U. C. R. 380.

(*i*) *Baker* v. *Town of Paris*, 10 U. C. R. 621.

(*j*) *Per* WILSON, J., in *Re Fairbairn and Township of Sandwich East*, 32 U. C. R. 582.

(*k*) *Re Fenton and County of Simcoe*, 10 O. R. 27. See also *Re Peck and Town of Galt*, 46 U. C. R. 211.

(*a*) *Daniels* v. *Township of Burford*, 10 U.C.R. 478; *Caesar* v. *Township of Cartwright*, 12 U.C.R. 441. (*b*) 28 V. c. 99, s. 194.

(*c*) *Re Olver and City of Ottawa*, 20 A.R. 529. (*d*) 30 U.C.R. 81.

(*e*) See *per* ROSE, J., in *Alexander* v. *Village of Huntsville*, 24 O.R. 662, 672, 673, 674.

Sec. 378 (1).

Notes (c)-(g).

Quære as to the application of this section to by-laws or resolutions of a Board of Police Commissioners, although these Boards now exercise powers which would otherwise (and some of which did in fact formerly) belong to municipal councils (*f*)?

As to applications to quash by-laws, orders or resolutions in the Provisional Judicial Districts of Algoma and Manitoulin, Thunder Bay and Rainy River, see R.S.O. c. 109, s. 93.

(d) **"May apply to the High Court of Justice."** The application should be made to a single Judge, not to a Divisional Court (*a*). Before "*The Judicature Act, 1881*," (*b*) the application was to be made to one of the Superior Courts of Common Law (*c*): But the Court of Chancery though it had no jurisdiction to entertain a motion to quash a by-law, could nevertheless restrain proceedings for its enforcement, if it was of doubtful validity (*d*).

(e) **"Upon motion."** Until the Act of 1892 the procedure was by a rule *nisi* returnable (at first) after eight days (*a*); and under the later Statutes (*b*) after four days from service thereof on the corporation (*c*).

(f) **"To quash the by-law etc., in whole or in part."** See note (d) to s. 325.

(g) **"The Court may quash the by-law in whole or in part for illegality."** These words first appear in the Act of 1858 (*a*). In the early Statutes (*b*) the language was somewhat different, *i. e.*, "*if it shall appear to the Court* that such by-law is illegal" the Court may quash it, etc.

In several of the cases decided under these earlier enactments doubts were expressed as to whether these words empowered the Court to quash a by-law for illegality not apparent on its face, but established by evidence *aliunde*. In *Sutherland* v. *Township of East Nissouri* (*c*) the late Chief Justice ROBINSON, says (*d*).

> "The language of the clause seems to me to be confined to cases of illegality in the contents of the by-law. It directs that any person interested in the provisions of a by-law may obtain a certified copy of it, and may move the Court *upon production of such copy*, to quash the by-law; and that *if it shall appear to the Court* that such by-law is *in the whole* or *in part* illegal, they may order it to be quashed in the whole or in part, and may award costs in favour of the corporation or against them. This provision does not seem to contemplate the case of a by-law complained of on grounds wholly apart from the nature of its provisions, and referring to something irregular in the manner of passing it."

(*f*) See *McGill* v. *License Commissioners of the City of Brantford*, 21 O.R. 665, where this question is raised but not decided.

(*a*) "*The Judicature Act*," R. S. O. c. 51, s. 65; *Landry* v. *City of Ottawa*, 11 P. R. 442. (*b*) 44 V. c. 5, s. 9.

(*c*) 12 V. c. 81, s. 155 as amended by 13 & 14 V. c. 64, Sched. A (26); 14 & 15 V. c. 64, Sched, A (21); 22 V. c. 99, s. 194; 29 & 30 V. c. 51, s. 205; 36 V. c. 48, s. 241; R. S. O., (1877), c. 174, s. 323. *Cf.* "*The Con. Municipal Act 1883*," (46 V. c. 18), s. 334.

(*d*) *Carroll* v. *Town of Perth*, 10 Grant, 64; *Edinburgh Life Insurance Co.* v. *Town of St. Catharines*, 10 Grant, 379; *Grier* v. *Township of St. Vincent*, 12 Grant, 330; 13 Grant, 512; *Wilkie* v. *Village of Clinton*, 18 Grant, 557; *Helm* v. *Town of Port Hope*, 22 Grant, 273; *Vandecar* v. *Township of East Oxford*, 3 A. R. 131.

(*a*) 12 V. c. 81, s. 155; 22 V. c. 99, s. 194.

(*b*) 29-30 V. c. 51, s. 198; R. S. O. (1887), c. 184, s. 332.

(*c*) See as to the former practice, *Perry* v. *Town of Whitby*, 13 U. C. R. 564; *Re Peck and Township of Amelianburg*, 12 P. R. 664; *Re Colemutt and Township of Colchester North*, 13 P. R. 253; *Re Sweetman and Township of Gosfield*, 13 P. R. 293; *Re Hewison and Township of Pembroke*, 6 O. R. 170; *Re Borthwick and City of Ottawa*, 9 O. R. 114, 119; *Re Funston and Township of Tilbury East*, 11 O. R. 74. (*a*) 22 V. c. 99, s. 192.

(*b*) 12 V. c. 81, s. 155; 13 & 14 V. c. 64, Sched. A. (26); and 14 & 15 V. c. 64, Sched. A. (21).

(*c*) 10 U. C. R. 626. (*d*) Page 627.

Similar language is used by the same learned Judge in *Dennis* v. *Hughes* (*a*) in *Hill* v. *Township of Walsingham*, (*b*) in *Boulton* v. *Town of Peterborough*, (*c*) in *Standley* v. *Township of Vespra and Sunnidale*, (*d*) and *Re Taber and Township of Scarborough* (*e*), but where the by-law was shown to have been passed under circumstances which by the express language of other sections would make it illegal (*e. g.* a by-law under s. 632, without the notices required by that section having first been given) the statutory jurisdiction to quash was of course undoubted (*f*).

In the case of a by-law not illegal on its face, nor passed in direct contravention of a section of the Statute, it was held to be discretionary with the Court, under its common law jurisdiction, to determine upon extraneous evidence "whether there is such manifest illegality that it would be unjust that the by-law should stand," (*a*) and it has always been held that the Court will only quash a by-law "for illegality," not for want of clearness of expression or because of difficulty in construing or applying its provisions. (*b*)

Since the passing of the Act of 1858—the language of which is on this point the same as that of the present section—the following propositions seem to be established.

I. The power of the Court to quash illegal by-laws is discretionary, whether the illegality is or is not apparent on the face of the by-law,—the words "may quash" conferring an authority with a discretion to abstain from its exercise. (*c*) And it is only where the validity of the by-law is incidentally attacked, *e.g.*, on a prosecution for breach of its provisions, or on a motion to quash a conviction made under it, that the illegality must be apparent on the face of the by-law in order to induce the Court or the magistrate to hold it invalid. (*d*)

II. The power to quash is not limited to cases where the illegality is thus apparent, but extends to those where it is established by extraneous evidence. (*a*)

III. Where the illegality appears on the face of the by-law the Court will be less reluctant to quash than when it is *dehors* the by-law. (*b*)

IV. Unless the by-law is one affecting rights of property and the jurisdiction of the council to pass it is conferred subject to the fulfillment of certain statutory conditions,—*e. g.*, where it has been petitioned for by a prescribed number of ratepayers, or after certain notices have been given or other preliminary steps taken by the council. (*e*)

(*a*) 8 U. C. R. 444, at p. 454. (*b*) 9 U. C. R. 310, at p. 312.

(*c*) 16 U. C. R. 380, at p. 389. (*d*) 17 U. C. R. 69. (*e*) 20 U. C. R. 549.

(*f*) See *Lafferty* v. *United Counties of Wentworth and Halton*, 8 U. C. R. 232, at p. 234-5; *Boulton* v. *Town of Peterborough*, *supra*, at p. 389.

(*a*) *Per* BURNS, J., in *Grierson* v. *County of Ontario*, 9 U. C. R. 623, at p. 632. (*b*) *Re Smith and City of Toronto*, 10 C. P. 225, 228.

(*c*) *Per* DRAPER, C. J., in *Michie* v. *City of Toronto*, 11 C. P. 379, 386; *Re Iauson and Township of Reach*, 19 U. C. R. 591; *Re Taber and Township of Scarborough*, 20 U. C. R. 549; *Simmons* v. *Township of Chatham*, 21 U. C. R. 75; *Re Secord and County of Lincoln*, 24 U. C. R. 142; *Grant* v. *Township of Puslinch*, 27 U. C. R. 154; *Re Platt and City of Toronto*, 33 U. C. R. 53, 58; *Re McKinnon and Township of Caledonia*, 33 U. C. R. 502, 507; *Re Lloyd and Township of Elderslie*, 44 U. C. R. 235; *Re Milloy and Township of Onondaga*, 6 O. R. 573; *Bann* v. *Town of Brockville*, 19 O. R. 409, 412; *Re Kerr and County of Lambton*, 27 O. R. 334, 340. See also *Hodgson* v. *United Counties of York, Peel and Ontario*, 13 U. C. R. 268.

(*d*) See *per* SIR THOMAS TAYLOR, C. J., in *Re Cloutier*, 11 Man. Rep. 220 quoted in the next note.

(*a*) *Fenton* v. *County of Simcoe*, 10 O. R. 27; *Jones* v. *Town of Port Arthur*, 16 O. R. 474.

(*b*) *Per* HARRISON, C. J., in *Re Revell and County of Oxford*, 42 U. C. R. 338, 347; *Re Ferguson and Township of Howick*, 44 U.C.R. 41; *per* HAGARTY, C. J., in *Re Huson and Township of South Norwich*, 19 A. R. 343, 350.

(*c*) *Lafferty* v. *United Counties of Wentworth and Halton*, 8 U. C. R. 232; *Boulton* v. *Town of Peterborough*, 16 U.C.R. 380, 389; *Birdsall* v. *Tp. of Asphodel*, 45 U. C. R. 149; *Re Misener and Tp. of Wainfleet*, 46 U. C. R. 457; *Laplante* v. *Town of Peterborough*, 5 O. R. 634; *Ostrom* v. *Tp. of Sidney*, 15 A. R. 372, reversing s. c., 15 O. R. 43; *Robertson* v. *Tp. of North Easthope*, 16 A. R. 214, reversing s. c., 15 O. R. 423; *Re Gillespie and City of Toronto*, 19 A. R. 713; *Petman* v. *City of Toronto*, 24 A. R. 53; and see *Belrose* v. *Chilliwack*, 3 B. C. R. 115; *White* v. *Rural Mun. of Louise*, 7 Man. Rep. 231.

Sec. 378 (1).

Note (g).

The same rule has been applied to a by-law passed under a special Act authorizing a change in the locality of a county town, (*d*) and to by-laws under "*The Temperance Act, 1864*." (*e*)

V. Or unless the evidence establishes that the by-law was passed, not in the interests of the public, but to subserve the interest of some private person or class of persons. (*f*)

VI. The Court in the exercise of its discretionary power has refused to set aside a by-law even though illegal;

(aa) Where a long time has been allowed to elapse unexplained between the passing of the by-law and the motion to quash.(*g*) And the Court of Chancery,—which had until 1881 no power to quash by-laws,(*h*)—refused to interfere by injunction to restrain municipalities from proceeding to enforce the provisions of their by-laws in cases where the person complaining had permitted a Term of the Common Law Courts to pass without moving to quash.(*i*)

In *Re Chamberlain and United Counties of Stormont, Dundas and Glengarry* (*j*) leave was granted notwithstanding the lapse of two Terms to re-hear a rule made absolute setting aside a by-law, no cause being shown thereto.

(bb) The Court is still less likely to interfere

(1) If the objections are wholly of a technical character; (*k*) or are mere trivial errors in calculation.(*l*)

(2) Or if work has been done or money expended under the by-law, or it has been otherwise so acted upon that its repeal would cause much inconvenience(*m*

(3) Or where the operation of the by-law is practically spent.(*n*)

(*d*) *Simpson* v. *Co. of Lincoln*, 13 C. P. 48.

(*e*) *Re Coe and Tp. of Pickering*, 24 U. C. R. 439; *Re Miles and Tp. of Richmond*, 28 U. C. R. 333; *Re Brophy and Village of Gananoque*, 26 C. P. 290; *Re Day and Tp. of Storrington*, 37 U. C. R. 528; *Mace* v. *County of Frontenac*, 42 U. C. R. 70; but see *Wycott* v. *Tp. of Ernestown*, 38 U. C. R. 532; *Re Lake and County of Prince Edward*, 26 C. P. 173.

(*f*) See the cases on this point collected in note (**d**) to s. 325.

(*g*) Even before 1866, when the time-limit of a year was imposed in the case of by-laws requiring the assent of the electors: *Hill* v. *Tp. of Tecumseth*, 6 C. P. 297 (14 months); *Bogart* v. *Town of Belleville*, 6 C.P. 425 (2 years); *Standley* v. *Tp. of Vespra and Sunnidale*, 17 U.C.R. 69 (2 years); *Cotter* v. *Tp. of Darlington*, 11 C.P. 265 (16 months); *Re Grant and City of Toronto*, 12 C.P. 357 (2 years); *Hodgson* v. *Counties of York, Peel and Ontario*, 13 U. C. R. 268 (9 years); *Walton* v. *Tp. of North Monaghan*, 13 C. P. 401 (3 years); *Scarlett* v. *Tp. of York*, 14 C.P. 161 (2 Terms—7 months); *Re Sheley and Town of Windsor*, 23 U. C. R. 569 (18 months); *Re Drope and Tp. of Hamilton*, 25 U. C. R. 363 (2 years and 3 months); *Re Laddingham and Tp. of Bentinck*, 29 U.C.R. 206 (1 year). As to by-laws passed since 1866, see *Re Taylor and Tp. of West Williams*, 30 U.C.R. 337 (6 months); *Re Richardson and License Commissioners of City of Toronto*, 38 U.C.R. 621 (1 year); *Re McAlpine and Tp. of Euphemia*, 45 U.C.R. 199 (7 months); *Re Colborne and Town of Niagara Falls*, 9 O.R. 168 (apparently 11 months—really 12 years); *Bann* v. *Town of Brockville*, 19 O. R. 409 (13 months).

(*h*) See note (**d**).

(*i*) *Carroll* v. *Town of Perth*, 10 Grant, 64; *Grier* v. *Tp. of St. Vincent*, 12 Grant, 330; 13 Grant, 512; *Vandecar* v. *Tp. of East Oxford*, 3 A.R. 131.

(*j*) 45 U.C.R. 26.

(*k*) *Re Taylor and Township of West Williams*, 30 U.C.R. 337.

(*l*) *Re Paffard and County of Lincoln*, 24 U.C.R. 16; *Re Lloyd and Tp. of Elderslie*, 44 U.C.R. 235; *Re Gilchrist and Tp. of Sullivan*, 44 U.C.R. 587.

(*m*) *Hill* v. *Tp. of Tecumseth*, 6 C.P. 297; *Standley* v. *Tp. of Vespra and Sunnidale*, 17 U.C.R. 69; *Re Taber and Tp. of Scarborough*, 20 U.C.R. 549; *Re Grant and City of Toronto*, 12 C. P. 357; *Scarlett* v. *Tp. of York*, 14 C. P. 161; *Bann* v. *Town of Brockville*, 19 O.R. 409; *Re Davis and City of Toronto*, 21 O.R. 243.

(*n*) *Daniels* v. *Tp. of Burford*, 10 U.C.R. 478; *Terry* v. *Tp. of Haldimand*, 15 U.C.R. 380. But a by-law which has already been repealed may be quashed. *Re Patterson and Tp. of Hope*, 31 U.C.R. 360.

(cc) These considerations as to merits, convenience, etc., may be taken into account even though there has not been delay in moving.(o)

(h) The validity of a by-law, etc., may however be incidentally questioned otherwise than by a motion under the above section ;

(1) By a motion to quash a conviction made thereunder : (a)

(2) Or in an action of replevin ; (b)

(3) Or by an action for trespass against an officer acting under its authority ; (c)

(4) Or for a *mandamus* :

Township of West Nissouri v. *Township of North Dorchester*, 14 O. R. 294.

(5) Or in an action for (a) an injunction to restrain a breach of the by-law, etc. ; (e) or (b) to restrain the municipality from taking proceedings thereunder ; (f) or (e) for such an injunction and also for other relief—*e.g.* damages, or a declaration that the by-law is invalid, or both. (g)

(6) Incidentally upon the trial of an action. (h)

But when a by-law is thus incidentally attacked, the Court may refuse to declare it invalid although a direct motion to quash it would be successful. (i) In *Re Cloutier*, (j) TAYLOR, C. J., held that when objection is taken before a magistrate to the validity of a by-law under which he is asked to convict, the illegality must appear on the face of the by-law, and no evidence should be received to show how the by-law came to be passed, or that there was irregularity or failure to comply with statutory requirements relative to its introduction or passing.

Although section 468 provides that no action shall be brought for anything done under an illegal by-law, etc., until one month has elapsed after the by-law, etc., has been quashed, it was nevertheless held in an action to restrain a municipality from taking gravel from the lands of the plaintiff under the presumed authority of a by-law passed under s. 640 (10), that, notwithstand-

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(o) *Re Grant and Tp. of Puslinch*, 27 U.C.R. 154 ; *Re Platt and City of Toronto*, 33 U. C. R. 53 ; *Re McKinnon and Village of Caledonia*, 33 U. C. R. 502 ; *Begg* v. *Tp. of Southwold*, 6 O.R. 184.

(a) *Reg.* v. *Ross*, M. T. 3 Vict., R. & J. Dig. col. 1979 ; *Reg.* v. *Osler*, 32 U.C.R. 324 ; *Reg.* v. *Belmont*, 35 U.C.R. 298 ; *Reg.* v. *Hiscox*, 44 U.C.R. 214 ; *Reg.* v. *Cuthbert*, 45 U. C. R. 19 ; *Reg.* v. *Pipe*, 1 O. R. 43 ; *Reg.* v. *Chapman*, 1 O. R. 582 ; *Reg.* v. *Nunn*, 10 P. R. 395 ; *Reg.* v. *Howard*, 4 O. R. 377 ; *Reg.* v. *Smith*, 4 O. R. 401 ; *Reg.* v. *Coutts*, 5 O. R. 644 ; *Reg.* v. *Gravelle*, 10 O. R. 735 ; *Reg.* v. *Chayter*, 11 O. R. 217 : *Reg.* v. *Reed*, 11 O. R. 242 ; *Reg.* v. *McNicol*, 11 O.R. 639 ; *Reg.* v. *Bassett*, 12 O.R. 51 ; *Reg.* v. *Marshall*, 12 O.R. 55 ; *Reg.* v. *Swalwell*, 12 O. R. 391 ; *Reg.* v. *Caton*, 16 O. R. 11 ; *Reg.* v. *Webster*, 16 O. R. 187 ; *Reg.* v. *Flory*, 17 O.R. 715 ; *Reg.* v. *Copp*, 17 O.R. 738 ; *Reg.* v. *Verral*, 18 O.R. 117 ; *Reg.* v. *Henderson*, 18 O. R. 144 ; *Reg.* v. *Grant*, 18 O.R. 169 ; *Reg.* v. *Latham*, 24 O. R. 616 ; *Reg.* v. *Cloutier*, 11 Man. Rep. 220 ; *Reg.* v. *McMillan*, 28 O.R. 172 ; *Reg.* v. *Reid*, 28 O.R. 173, *note*.

(b) *Wilson* v. *County of Middlesex*, 18 U.C.R. 348 ; *Haynes* v. *Copeland*, 18 C. P. 167.

(c) *Barclay* v. *Township of Darlington*, 5 C.P. 432 ; *Chamberlain* v. *Turner*, 31 C.P. 460 ; *Jones* v. *Gilbert*, 5 S.C.R. 356 ; *McLennan* v. *McKinnon*, 1 O.R. 219 ; *Connor* v. *Middagh*, 16 A.R. 356.

(e) *Attorney General* v. *Campbell*, 19 Grant, 299.

(f) *Jones* v. *Town of Port Arthur*, 16 O. R. 474 ; *Rose* v. *Township of West Wawanosh*, 19 O. R. 294 ; *Kerfoot* v. *Village of Watford*, 24 O. R. 235 ; *Sweeny* v. *Town of Smith's Falls*, 22 A.R. 429 ; *Smith* v. *City of London*, 13 C.L.T. 90 ; *Smith* v. *Township of Ancaster*, 27 O.R. 276 ; 23 A.R. 596 ; *Petman* v. *City of Toronto*, 24 A.R. 53 ; *Quinn* v. *Town of Orillia*, 28 O.R. 435.

(g) *Malott* v. *Township of Mersea*, 9 O.R. 611 ; *Alexander* v. *Township of Howard*, 14 O.R. 22 ; *Bannan* v. *City of Toronto*, 22 O.R. 274 ; *Holt* v. *Township of Medonte*, 22 O.R. 302.

(h) *Roberts* v. *Climie*, 46 U. C. R. 204.

(i) See *per* FERGUSON, J., in *Bogart* v. *Township of Seymour*, 10 O. R. 322, 324 ; and the remarks of O'CONNOR, J., in *Reg.* v. *Gravelle*, 10 O. R. 735, 736, quoted in note (d) to s. 325.

(j) 11 Man. Rep. 220.

Sec. 378 (d).

Notes (h), (i).

ing the provisions of s. 468, the plaintiff was entitled, without quashing the by-law, to an injunction to restrain the defendants from proceeding to enforce the rights claimed by them thereunder. (*q*) STREET, J., in giving judgment, says (p. 297).

> "It was objected on the part of the defendants that, even supposing the by-law to be illegal, they were protected by s. 338 (*r*) of "*The Municipal Act*" from any action because the by-law has not been quashed. It is perhaps true that the plaintiff here might be unable, until he had quashed the by-law, to recover damages for anything done under even such a by-law as this; but the damages here claimed are trifling; the substantial relief sought is an injunction to restrain the defendants from proceeding to enforce the rights they claim under this by-law. Section 338 does not tie the hands of a person threatened with damage under an illegal by-law; it only prevents him, until he has quashed the by-law, from bringing an action to recover damages for a wrong already done."

(d) "And may according to the result of the application award costs for or against the corporation."

The costs of an application to quash a by-law usually follow the result. If the motion is successful, they are awarded to the applicant. (*a*)

If the motion to quash is unsuccessful, costs are usually awarded to the corporation. (*b*)

(*q*) *Rose* v. *Township of West Wawanosh*, 19 O. R. 294. (*r*) Now s. 468.

(*a*) *Re Dickson and Village of Galt*, 9 U. C. R. 257; *Re Wright and Township of Cornwall*, 9 U. C. R. 442; *Re McAvoy and Township of Sarnia*, 12 U. C. R. 99; *Re De La Haye and Township and Gore of Toronto*, 2 C. P. 317; *Re Bell and Township of Manvers*, 2 C. P. 507; 3 C. P. 399, 400; *Re Tilt and Township of Toronto*, 13 U. C. R. 447; *Re Davis and Town of Clifton*, 8 C. P. 236; *Re Smith and City of Toronto*, 10 C. P. 225; *Farquhar* v. *City of Toronto*, 10 C. P. 379; *Clapp* v. *Township of Thurlow*, 10 C. P. 533; *Re Hagaman and Town of Owen Sound*, 20 U. C. R. 583; *McMaster* v. *Village of Newmarket*, 11 C. P. 398; *Simpson* v. *County of Lincoln*, 13 C. P. 48; *Re Rose and United Counties of Stormont, Dundas and Glengarry*, 22 U. C. R. 531; *Re Campbell and City of Kingston*, 14 C. P. 285; *Re Hartley and Township of Emily*, 25 U. C. R. 12; *Re Kinghorn and City of Kingston*, 26 U. C. R. 130; *Re McLean and Town of St. Catharines*, 27 U. C. R. 603; *Re Pirie and Town of Dundas*, 29 U. C. R. 401; *Re Clement and County of Wentworth*, 22 C. P. 300; *Re McLean and Town of Cornwall*, 31 U. C. R. 314; *Re Day and Township of Storrington*, 38 U. C. R. 528; *Re Annis and Township of Mariposa*, 25 C. P. 133; *Re McIntyre and Township of Elderslie*, 27 C. P. 58; *Re Baird and Village of Almonte*, 41 U.C.R. 415; *Re Nicol and Township of Alnwick*, 41 U.C.R. 577; *Re Revell and County of Oxford*, 42 U. C. R. 337; *Re McArthur and Township of Southwold*, 29 C. P. 216; but see 3 A. R. 295; *Re Vashon and Township of East Hawkesbury*, 30 C. P. 194; *Re Ferguson and Township of Howick*, 44 U. C. R. 41; *Re Peck and Town of Galt*, 46 U. C. R. 211; *Re Misner and Township of Wainfleet*, 46 U. C. R. 457; *Re Morton and City of St. Thomas*, 6 A. R. 323; *Re Township of Romney and Township of Mersea*, 11 A. R. 712; *Re Laplante and Town of Peterborough*, 5 O. R. 634; *Waddie* v. *Village of Burlington*, 7 O. R. 192; *Re Clark and Township of Howard*, 9 O. R. 576; *Re Fenton and County of Simcoe*, 10 O. R. 27; *Re Scott and Town of Tilsonburg*, 10 O. R. 119; 13 A. R. 233; *Re Denne and Town of Peterborough*, 10 O. R. 767; *Re Funston and Township of Tilbury East*, 11 O. R. 74; *Re Kiely*, 13 O. R. 451; *Re Clark and Township of Howard*, 14 O. R. 598; *Re Carpenter and Township of Barton*, 15 O. R. 55; *Re Peck and Township of Ameliasburg*, 17 O. R. 54; *Re Croft and Town of Peterborough*, 17 O. R. 522; *Re Armstrong and City of Toronto*, 17 O. R. 766; *Re Cooke and Village of Norwich*, 18 O. R. 72; *Alexander* v. *Village of Huntsville*, 24 O. R. 665; *Re Trustees School Section 5, Township of Asphodel and Humphries*, 24 O. R. 682; *Re Jenkins and Township of Enniskillen*, 25 O. R. 399; *Re Wilson and Town of Ingersoll*, 25 O. R. 439; *Re Stonehouse and Township of Plympton*, 27 O. R. 541; *Re Hay and Town of Listowel*, 28 O. R. 332; *Re Goulden and City of Ottawa*, 28 O. R. 387; *Re Pickett and Township of Wainfleet*, 28 O. R. 464; *Re Campbell and Village of Southampton*, 34 C. L. J. N. S. 197.

(*b*) *Tylee* v. *County of Waterloo*, 9 U. C. R. 588; *Grierson* v. *County of Ontario*, 9 U. C. R. 623; *Re De La Haye and Gore of Toronto*, 3 C. P. 23; *Re Cameron and Township of East Nissouri*, 13 U. C. R. 190; *Re Stoddart and*

But the rule is not imperative, and even where the by-law has been quashed, costs have in some instances been refused to the applicant, *e. g.*, where it was shown that the applicant was himself a petitioner for the particular resolution moved against (*a*); where the application was against the whole by-law and was successful only in part (*b*); where the objections were of a purely technical character and the by-law was only quashed in deference to decided cases (*c*); where the by-law was quashed upon grounds other than those upon which the motion was made (*d*), and where the applicant had acted under the by-law by moving for the appointment of an arbitrator (*e*).

In other cases, although the by-law has not been quashed, costs have been refused to the corporation, *e. g.*, where the corporation had not preserved evidence that proper notice had been given of a by-law altering the line of a road (*f*); where the resolution moved against, though illegal, was allowed to stand, on the ground that it was spent and inoperative (*g*); where, though the proceedings had not been strictly regular, the objections were technical (*h*); where the application failed because the by-law was not sealed (*i*); where the council had acted on the authority of previous decisions and great inconvenience would have been caused by quashing the by-law (*j*); where the point raised was an extremely doubtful one (*k*); where the corporation, though served, did not appear upon the return of the motion (*l*); where the corporation had

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Townships of Wilberforce et al, 15 U. C. R. 163; *Standley* v. *Municipality of Vespra and Sunnidale*, 17 U. C. R. 69; *Parker* v. *Townships of Pittsburgh and Howe Island*, 8 C. P. 517; *Re Smith and City of Toronto*, 10 C. P. 225; *Re Gibson and United Counties of Huron and Bruce*, 20 U. C. R. 111; *Walton* v. *Township of North Monaghan*, 13 C. P. 401; *Re Pafford and County of Lincoln*, 24 U. C. R. 16; *Re Secord and County of Lincoln*, 24 U. C. R. 142; *Re Forester and Township of Ross*, 24 U. C. R. 588; *Re Grand and Township of Guelph*, 27 U. C. R. 46; *Re Gibb and Township of Moore*, 27 U. C. R. 150; *Re Gibson and County of Bruce*, 20 C. P. 398; *Re Montgomery and Township of Raleigh*, 21 C. P. 381; *Re Taylor and Township of West Williams*, 30 U. C. R. 337; *Re McMichael and Township of Townsend*, 33 U. C. R. 158; *Re Starin and Village of Orillia*, 36 U. C. R. 159; *Re Lake and County of Prince Edward*, 26 C. P. 173; *Re Mace and County of Frontenac*, 42 U. C. R. 70; *Re Reubottom and United Counties of Northumberland and Durham*, 42 U. C. R. 358; *Re McLean and Township of Ops*, 45 U. C. R. 325; *Re Gallerno and Township of Rochester*, 46 U. C. R. 279; *Re White and Township of Sandwich East*, 1 O. R. 530; *Re Nasmith and City of Toronto*, 2 O. R. 192; *Begg* v. *Township of Southwold*, 6 O. R. 184; *Re Croome and City of Brantford*, 6 O. R. 188; *Re Milloy and Township of Onondaga*, 6 O. R. 573; *Re Colborne and Town of Niagara Falls*, 9 O. R. 168; *Re People's Milling Co. and Township of Meaford*, 10 O. R. 405; *Re O'Meara and City of Ottawa*, 11 O. R. 603; 15 A. R. 75; 14 S. C. R. 742; *Re Boylan and City of Toronto*, 15 O. R. 13; *Re Ostrom and Township of Sidney*, 15 O. R. 43; 15 A. R. 372; *Re Robertson and Township of North Easthope*, 15 O. R. 423; but see 16 A. R. 214; *Re Farlinger and Village of Morrisburg*, 16 O. R. 722; *Re McCormack and Township of Howard*, 18 O. R. 260; *Re Bann and Town of Brockville*, 19 O. R. 409; *Re Cribbin and City of Toronto*, 21 O. R. 325; *Re Brunker and Township of Mariposa*, 22 O. R. 120; *Re Suskey and Township of Romney*, 22 O. R. 664; *Re Stephens and Township of Moore*, 25 O. R. 600; *Re Kerr and County of Lambton*, 27 O. R. 334.

(*a*) *Re Morell and City of Toronto*, 22 C. P. 323.

(*b*) *Re Patterson and County of Grey*, 18 U. C. R. 189; *Ex rel. McMullen and Tp. of Caradoc*, 22 C. P. 356; *Re Harris and City of Hamilton*, 44 U. C. R. 641.

(*c*) *Re Brophy and Village of Gananoque*, 26 C. P. 290.

(*d*) *Re Mackenzie and City of Brantford*, 4 O. R. 382.

(*e*) *Re Davis and City of Toronto*, 21 O. R. 203.

(*f*) *Re Lafferty and United Counties of Wentworth and Halton*, 8 U. C. R. 232.

(*g*) *Daniels* v. *Tp. of Burford*, 10 U. C. R. 478.

(*h*) *Re Grant and Tp. of Pustinch*, 27 U. C. R. 157.

(*i*) *Re Mottashed and County of Prince Edward*, 30 U. C. R. 74.

(*j*) *Re Lloyd and Tp. of Eldersdie*, 44 U. C. R. 235; *Re McKinnon and Village of Caledonia*, 33 U. C. R. 502.

(*k*) *Re Storms and Tp. of Ernestown*, 39 U. C. R. 353.

(*l*) *Re Kelly and City of Toronto*, 23 U. C. R. 425, and *Re Wycott and Tp. of Ernestown*, 38 U. C. R. 533.

Sec. 378 (1), (2). Notes (i), (j).

induced the application by reason of the defective character of its by-law, (*m*) and where the applicant had been led into his present position by the action of members of a previous council (*n*).

The Court may apportion the costs between the parties (*o*).

Where the corporation, on being served with a rule *nisi*, repealed the by-law complained of, they were nevertheless ordered to pay the costs of the application (*p*). So where the by-law was confirmed by legislation after the motion to quash it had been made (*q*).

In *Re Thompson and United Townships of Bedford et al* (*r*), a motion to quash a by-law for opening a road, the name of the applicant was written by mistake "James" instead of "Joseph" in the copy of the rule *nisi* served. The road in question also passed through the land of James Thompson, and the corporation, supposing him to be the applicant, prepared affidavits in answer. The mistake having been afterwards discovered and a correct copy of the rule served, the Court, in quashing the by-law, directed the costs incurred by the corporation in consequence of the error to be deducted.

Section 382 provides that in case a by-law is quashed on the ground that its passage has been secured by means of bribery or undue influence, costs may be awarded "against the parties who have supported the by-law or any of them," language which may include others than the corporation.

(2) Notice of the motion shall be served at least seven days before the day on which the motion is to be made.

Taken from 55 V. c. 42, s. 332 (2).

(j) The notice of motion may be entitled "In the matter of A. B. and the Corporation of " (*a*).

Form of Notice of Motion to quash a By-law.

The notice may be in the following form;

IN THE HIGH COURT OF JUSTICE.

In the Matter of A. B. and
The Corporation of

Take notice that the Court will be moved on behalf of the above named applicant on day the day of 19 at o'clock in the noon, or so soon thereafter as counsel can be heard for an order quashing so much of by-law No. of the Corporation of the of as provides that (*or* quashing sections of a certain by-law of the Corporation of the of entitled "A by-law etc.") on the following grounds (*here state grounds of application*) and that on the said motion will be read a copy of the said by-law certified under the hand of the clerk of the Corporation of the of and under the corporate seal of the said Corporation and the affidavits of C. D., and E. F., this day filed.

Dated the day of 19

Solicitor for the above named Applicant.

(*m*) *Re Platt and City of Toronto*, 33 U. C. R. 53; *Re McIntyre and Tp. of Elderslie*, 27 C. P. 58, and *Re Borthwick and City of Ottawa*, 9 O. R. 114.

(*n*) *Re Workman and Town of Lindsay*, 7 O. R. 425.

(*o*) *McKnight* v. *City of Toronto*, 3 O. R. 284; *Re Snell and Town of Belleville*, 30 U. C. R. 94; *Re Brodie and Town of Bowmanville*, 38 U. C. R. 580.

(*p*) *Re Coyne and Tp. of Dunwich*, 9 U. C. R. 309; *Re Barclay and Tp. of Darlington*, 11 U. C. R. 470; *Re Coleman*, 9 C. P. 146.

(*q*) *Re Holden and Town of Belleville*, 39 U. C. R. 88.

(*r*) 21 U. C. R. 545.

(*a*) *Re Couger and County of Peterborough*, 8 U. C. R. 349; *Re McLean and Town of St. Catharines*, 27 U. C. R. 603 and see the cases referred to in the preceding note.

The notice of motion should be served on the mayor or clerk of the council whose by-law is attacked.

The Court has no power to shorten the period of notice prescribed by this sub-section, Con. Rule 353 applying only to the enlargement or abridgment of times fixed by the Rules or by an order. *Re Sweetman and Township of Gosfield*, 13 P. R. 293.

Where the rule was to quash a by law for taking stock in a railway company, though the municipal corporation did not show cause the Court declined to hear counsel for the railway company (*a*), but in *Re McKinnon and Village of Caledonia* (*b*)—which was an application to quash a by-law closing a street and allowing a railway company to build an embankment upon it for railway purposes,—WILSON, J. considered that the railway company should have been a party to the rule. And under s. 382, when the motion is to quash the by-law on the ground that its passage was procured by means of bribery or undue influence the Judge may direct notice to be given to parties other than the corporation and may award costs against the parties supporting the by-law or any of them.

(3) Upon such motion the by-law, order or resolution may be proved by the production of a copy thereof, certified under the hand of the clerk, and under the corporate seal, and shewn by affidavit to have been received from the clerk.

Taken from "*The Con. Man. Act, 1892*," (55 V. c. 42,) s. 272 (3); the original of which is the Act of 1858, (22 V. c. 99,) s. 104. *Cf.* 12 V. c. 81, s. 155; 14-15 V. c. 109, Sched. A (21).

(k) Nothing could be more simple than the procedure pointed out by this section; yet it is often disregarded and something more difficult adopted in its stead.

Where the applicant swore that he received the copy from the clerk of the council through R. F. F., his attorney, the sufficiency of the affidavit was doubted. (*a*) Where the deponent swore that the copy produced was received by one T. from the clerk of the council and was delivered by T. to deponent the affidavit was held sufficient. (*b*) The Statute does not require that the copy of by-law shall be annexed to the affidavit, but only that it shall be shown that the copy produced is the one received from the clerk, (*c*) but the Court will not, without sufficient cause shown on affidavit, dispense with the production of a copy of the by-law certified as the section requires, (*d*) where the copy produced was not under seal and no sufficient proof was given to account for its absence.

In the following cases the by-law was held to be sufficiently proved:—Where the seal of the corporation, though not mentioned in the clerk's certificate, was on the same page with the certificate and was verified by the signature of the reeve and clerk, (*e*); where the by-law had been passed by the corporation of two united townships and was moved against after the union had been dissolved, and the copy produced was certified under the hand of the clerk of the senior township and under the corporate seal of that township, (*f*); where the copy filed was under the seal of the municipality and bore opposite the seal the signature "M. F., City Clerk," under the words "A true copy," (*g*); where the certificate on the copy of the by-law received from the township clerk was in the words "Verified a true copy" which was signed by the clerk and under the corporate seal, but the by-law was not stated to have been signed by the reeve and other proper officer or to be under the corporate seal, (*h*), and where, on an application for a *mandamus*, the copy of the by-law put in, not being

(*a*) *Re Billings and Township of Gloucester*, 10 U. C. R. 273.
(*b*) 33 U. C. R. 502.
(*a*) *Re Mottashed and County of Prince Edward*, 30 U. C. R. 77.
(*b*) *Re Fisher and Township of Vaughan*, 10 U. C. R. 492.
(*c*) *Re Bessey and Township of Grantham*, 11 U. C. R. 156.
(*d*) See *Re Buchart and United Townships of Brant and Carrick*, 6 C. P. 130.
(*e*) *Baker* v. *Town of Paris*, 10 U. C. R. 621.
(*f*) *Re Scott and Township of Harvey*, 26 U. R. C. 32.
(*g*) *Re Kinghorn and City of Kingston*, 26 U. C. R. 130.
(*h*) *Re Vashon and Township of East Hawkesbury*, 30 C. P. 194.

Sec. 378 (3)-(5). Notes (k), (l).

certified as required by this section, could not be read, but the deponent swore that "a by-law was passed by the town council in words following" (setting out the whole by-law in full) the material before the Court was held to be sufficient for the purposes of the application. (*i*)

(4) Before any such motion is made or entertained the applicant (or, in case the applicant is a company, some person on its behalf) shall enter into a recognizance before the Judge of the County Court of the county in which is situated the municipality whose by-law is the subject of the notice, himself in the sum of $50, and two sureties each in the sum of $50, conditioned to prosecute the motion with effect, and to pay to the municipality any costs which may be adjudged to them against the applicant.

Taken from the proviso to s. 332 (3) of "*The Con. Mun. Act, 1892*," 55 Vic. cap. 42. The last clause; "and to pay to the municipality any costs which may be adjudged to them against the applicant," added in 1897 by 60 V. c. 15, Sched. C (63) and the words in parentheses in lines 2 and 3, "or in case the applicant is a company some person on its behalf," by 60 V. c. 42, which in the original section is limited to the case of a railway company, but has been extended as above in the Revision of 1897 under the authority of 60 V. c. 3, s. 3.

(l) As to the difference between a recognizance and a bond to the municipality see *Re Burton and Village of Arthur*. (*a*)

The recognizance may be in the following form,—

Form of Recognizance.

IN THE HIGH COURT OF JUSTICE,
ONTARIO,
County, (*or* United Counties) of
To WIT:

Be it remembered that on the day of in the year of Our Lord one thousand nine hundred and , before me Judge of the County Court of the County (*or* United Counties) of cometh (*name of applicant*) of (*occupation*), (*name of surety*) of (*occupation*) and (*name of surety*) of (*occupation*) and acknowledged themselves severally and respectively to owe to our Sovereign Lady the Queen as follows, that is to say, the said (*applicant*) the sum of fifty dollars and the said and the sum of fifty dollars each upon condition that if the said (*applicant*) do prosecute with effect the motion made by him for an order quashing so much of By-law Number of the Corporation of the of as provided that " " (*or* quashing sectio .s of a certain by-law of the Corporation of the of entitled "A By-la 'c.") and do pay to the Corporation of the of a. costs which may be adjudged to them against the said (*applicant*) then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the day and year first above mentioned before me, Judge of the County Court of the County, (*or* United Counties) of

The affidavit of justification may be in the form given in note (e) to s. 220.

(5) The Judge may allow the said recognizance upon the sureties entering into proper affidavits of justification, and thereupon the same shall be filed in the High Court with the other papers relating to the motion. 55 V. c. 42, s. 332; c. 43, s. 22; 60 V. c. 3, s. 3; c. 15, *Sched.* C (63); c. 45, s. 42.

Taken from "*The Con. Mun. Act, 1892*," (55 V. c. 42,) s. 332 (3) last clause.

(*i*) *Re School Trustees of Town of Sandwich and Town of Sandwich*, 23 U. C. R. 639.

(*a*) 16 P.R. 160.

(6) In lieu of the recognizance mentioned in sub-sections 4 and 5 of this section the applicant may pay into Court the sum of one hundred dollars as security for any costs which may be adjudged to the municipality against the applicant; and the certificate of such payment into Court having been made, shall be filed in the High Court with the other papers relating to the motion. Sec. 378 (6). Deposit as security for costs of motion to quash by-law.

(7) Upon the determination of the proceedings the judge may order the money so paid into Court to be applied in the payment of costs, or to be paid out to the applicant in the discretion of the judge according to the result of the application. Application of deposit on determination of application.

(8) Subject to any Rules of Court, all moneys required to be paid into or out of Court under this section shall be paid in and paid out in like manner as moneys are paid into and out of Court in actions pending in the High Court. 62 V. (2nd Sess.) c. 26, s. 21. Procedure on payment into or out of Court.

Sub-ss. 6-8 were added to the section by "*The Municipal Amendment Act*, 1899," (62 V. (2nd Session), c. 26, s. 21).

(m) "**In like manner as moneys are paid into and out of Court in actions pending in the High Court.**"

As to the procedure in such cases, see Con. Rules (1897) Nos. 42, 45, 405-429 inclusive, and the cases noted thereon in Holmested & Langton, (2nd Ed.), pp. 583-593.

378*a*. Where it is alleged that a by-law of any municipality injuriously affects another municipality or the ratepayers thereof or any of them, and that such by-law is illegal or contrary to law, the said other municipality or any ratepayer thereof shall have the same right to apply to quash or set aside the by-law as a ratepayer of the municipality which passed or adopted the by-law may have; but in case an application to quash a by-law is made by a municipal corporation hereunder, such corporation shall not be required to give a recognizance under section 378, nor shall sub-sections 4 and 5 of the said section apply to any such application by a municipal corporation. 62 V. (2nd Session) c. 26, s. 22. By-law affecting another municipality. Who may apply to quash. Sub-ss. 4 and 5 not to apply to municipal corporations.

(a) Since the payment of $100 into Court under s. 378 (6) is only "*in lieu of* the recognizance mentioned in sub-sections 4 and 5," it would seem that no security is required in the case covered by the last clause of this section.

379. No application to quash a by-law, order or resolution, in whole or in part, shall be entertained unless the application is made within one year from the passing of the by-law, order or resolution, except in the case of a by-law requiring the assent of electors or ratepayers, where the by-law has not been submitted to, or has not received the assent of, the electors or ratepayers; and in such case an application to quash the by-law may be made at any time. 55 V. c. 42, s. 333, Time within which application must be made. Exception.

Taken from the Act of 1866, (29-30 V. c. 52) s. 198.

(a) "**No application to quash a by-law, etc., shall be entertained.**" (*a*) Even before 1866, when this time-limit was imposed, the Courts required that applications to quash by-laws should be made within a reasonable time. (*b*) Although

(*a*) See as to the meaning of these words, *Smith* v. *Rooney*, 12 U.C.R. 661 (1855).

(*b*) See the cases collected in note (**g**) to s. 378, foot note (*g*), p. 378.

Sec. 379.

Note (a).

an application to quash a by-law which requires, (but is alleged not to have received,) the assent of the electors or ratepayers "may be made at any time," yet the Court, in the exercise of its discretionary power, may refuse to set aside such by-law if there has been delay in applying, especially where the by-law is valid on its face. (a)

Time within which application to quash by-law must be made.

An amending by-law may be moved against after the expiration of a year from the passage of the original by-law :—

(1) Where the original by-law is *intra vires*, but by the amendment is made *ultra vires* or so objectionable as to demand the interference of the Court ;

(2) Where the original by-law is objectionable, and the amending by-law extends its objectionable provisions to new objects, new territory, or over a further period of time.

Where, however, the original by-law is objectionable, and the amending by-law limits its application or makes some immaterial verbal alteration, the Court should not interfere, since the party moving has lost his right to take the objection as against the original by-law. (b)

Sec. 128 of the Municipal Act of British Columbia provided that "no application to quash a by-law . . . shall be entertained unless made within one month after the passing of the by-law." By s. 122, every by-law was binding after publication in the B. C. Gazette. S. 126 (1) provided for the publication of a notice (appended to the published copy) similar to that given in s. 376 of this Act, but limiting to one month after publication the time for any application to quash ; and s. 126 (2) provided—(like s. 377 of this Act)—that, failing such application within the month, the by-law should be valid. *Held*, that an application to quash might be made within a month after the publication in the Gazette, though more than a month had elapsed since the by-law was passed by the council. (c)

(b) **"Unless the application is made within one year."**

The application is "made" when notice of motion to quash the by-law is served. It is not necessary that the motion should be brought on for hearing within the year. (d)

Time after which by-law imposing a rate cannot be quashed, if promulgated.

380. In case a by-law by which a rate is imposed has been promulgated in the manner hereinbefore specified, no application to quash the by-law shall be entertained after the expiration of three months from the promulgation. 55 V. c. 42, s. 334.

Taken from "*The Con. Mun. Act, 1883*," (46 V. c. 18,) s. 332.

(a) **"A by-law by which a rate has been imposed."** In *Re Cooke and Village of Norwich*, (e) SIR THOMAS GALT, C. J. held that these words apply to by-laws passed under section 405 "for levying and collecting rates" but not to by-laws "for contracting debts" passed under section 384 ; and that in the latter case a motion to quash may be made under section 399 at any time within three months after the by-law has been registered as required by s. 396, although more than three months may have elapsed from the promulgation of the by-law.

(b) **"Three months from the promulgation,"** *i.e.*, from the third publication of the by-law and notice as provided by sections 375, 376. (f)

(a) *Bann* v. *Town of Brockville*, 19 O.R. 409 (1890). But as to cases where the invalidity is apparent on the face of the by-law, see *Canada Atlantic Railway Company* v. *City of Ottawa*, 8 O.R. 183 (1885), *per* PROUDFOOT, J., at p. 192, citing *Vandecar* v. *Tp. of East Oxford*, 3 A.R. 131 (1878), and *Harding* v. *Tp. of Cardiff*, 2 O.R. 329 (1882), and see also note (g) to s. 378, footnote (b), p. 377 : *Re Caldwell and Town of Galt*, 30 O.R. 378 (1899).

(b) *Per* ROSE, J., in *Re Milloy and Tp. of Onondaga*, 6 O.R. 573, 576-7 (1884).

(c) *Kane* v. *City of Kaslo*, 4 B.C.R. 486 (1896). See now R. S. B. C. (1897), c. 144, ss. 85, 86, 89.

(d) *Re Shaw and City of St. Thomas*, 18 P. R. 454 (1899), referred to in note (b) to s. 399 *post*.

(e) 18 O.R. 72 (1889).

(f) See note (a) to section 375 as to the period within which, prior to 1883, a motion could be made to quash a promulgated by-law.

Secs. 381, 382.

Quashing by-laws obtained by bribery, etc.

381. Any by-law the passage of which has been procured through, or by means of, any violation of the provisions of sections 245 and 246 of this Act, shall be liable to be quashed upon an application made in conformity with the provisions hereinbefore contained. 55 V. c. 42, s. 335.

Taken from 35 V. c. 36, s. 13, (1872).

(a) "**Any violation of the provisions of sections 245 and 246 of this Act.**" These are the sections relating to bribery and undue influence.

(b) "**In conformity with the provisions hereinbefore contained.**" The reference is to the procedure under section 378.

Procedure in such cases.

382.—(1) If, before determining an application for the quashing of a by-law, upon the ground that any of the provisions of sections 245 and 246 of this Act have been contravened in procuring the passing of the same, it is made to appear to a Judge of the High Court that probable grounds exist for a motion to quash the by-law, the Judge may, upon such notice to the parties affected as he may direct, make an order for an inquiry to be held concerning the said grounds before the Judge of the County Court of the county in which the municipality which passed the by-law is situate, and may require that upon the inquiry all witnesses, both against and in support of the by-law, shall be orally examined and cross-examined upon oath before the County Court Judge.

Inquiry by County Judge.

Return of evidence.

(2) The County Court Judge shall thereupon return the evidence so taken before him to the proper office of the High Court of Justice; and after the return of the evidence and upon reading the same, a Judge of the High Court may, upon notice to such of the parties concerned as he thinks proper, proceed to hear and determine the question; and if the grounds therefor appear to him to be satisfactorily established, he may make an order quashing the by-law, and may order the costs of the proceedings to be paid by the parties who have supported the by-law or any of them; and if it appears that the application to quash the by-law ought to be dismissed, the Judge may so order, and may in his discretion order the costs to be paid by the persons applying to quash the by-law. 55 V. c. 42, s. 336; 60 V. c. 15, *Sched.* C (64).

Judgment.

Costs.

Taken from 35 V. c. 36, s. 14 (1872), the words "proper office of the High Court of Justice" having been substituted by 60 V. c. 15, Sched. C (64) for the words "one of the Registrars of the High Court at Toronto."

(a) This section provides for an "inquiry" and (afterwards) for "a hearing and determination." The inquiry is to be held before a Judge of the County Court, the hearing and determination before a Judge of the High Court; but before an inquiry can be ordered, "probable grounds" for a motion to quash the by-law must have been shewn to the Judge to whom the application is made. On the inquiry, all witnesses, both against and in support of the by-law, are to be orally examined and cross-examined before the County Judge. No express provision is made for compelling the attendance of witnesses on the inquiry, but it is apprehended that their attendance may be compelled by subpoena issued out of the Court in which the application is pending.

Sec. 382-384.

(b) "**A Judge of the High Court.**" The Master in Chambers has no power to order an inquiry under this section, as he has under section 248 (*a*).

(c) "**The proper office of the High Court of Justice.**" The Central Office is intended.

Stay of proceedings on the by-law.

383. After an order has been made by a Judge directing an inquiry, and after a copy of the order has been left with the clerk of the corporation the by-law of which is in question, all further proceedings upon the by-law shall be stayed until after the disposal of the application in respect of which the inquiry has been directed; but if the matter is not prosecuted to the satisfaction of the Judge he may remove the stay of proceedings. 55 V. c. 42, s. 337.

Taken from 35 V. c. 36, s. 15, (1872).

DIVISION VI.--BY-LAWS CREATING DEBTS.

(SECS. 384-395.)

Synopsis.--Sections 384-386 prescribe certain matters which, in order to the validity of a debenture by-law, must appear upon its face. Sections 394 and 395 exempt from certain of these requirements the debenture by-laws therein specified. Section 389 (1) lays down the general rule that by-laws for raising upon the credit of a municipality money not required for its ordinary expenditure and not payable within the municipal year must receive the assent of certain of the electors as provided in ss. 338-368, *ante*; but several exceptions to this general rule are enumerated in ss. 388, 388*a*, 389, and in the other sections referred to in the notes thereon.

Section 390 regulates the procedure under which county councils may avail themselves of the power conferred by s. 388; and ss. 391-393 limit the powers of councils and municipal officers as to altering or repealing debenture by-laws.

Section 387,—which declares that all special rates and assessments imposed and levied under the Act, and all sewer rents and charges for work done upon the default of owners of real property, "shall form a lien and charge," etc.,—would seem to belong rather to "*The Assessment Act*" than to a Division of "*The Municipal Act*" which relates chiefly to the form of debenture by-laws and the procedure necessary to their adoption.

By-laws for contracting debts payable *in futuro*.

384.—(1) Every municipal council may, under the formalities required by law, pass by-laws for contracting debts for any purpose within the jurisdiction of the council, by borrowing money or otherwise, and for levying rates on the rateable property of the municipality for payment of such debts, but no such by-law shall be valid which is not in accordance with the following restrictions and provisions, except in so far as is otherwise provided in the next following two sections of this Act. 55 V. c. 42, s. 340, *first clause*.

Taken from the Act of 1858 (22 V. c. 99), s. 222. *Cf.* 12 V. c. 81, s. 177; 14-15 V. c. 109, Sched. A (24) and s. 4.

(a) "**No such by-law shall be valid which is not in accordance with the following restrictions,**" etc. Since a municipal council holds office only for a year, it is essential for the protection alike of the ratepayers and of the municipal creditor that its power to create debts payable *in futuro* should be strictly limited. Accordingly it is provided by this section that no such debt shall be incurred unless,—(1) it is for a purpose within the jurisdiction of the council; (2) the by-law creating it complies with the statutory requirements set out in this and the two following sections; and (3) is passed "under the

(*a*) See s. 219 (2); Con. Rule 42 (1897).

formalities required by law," viz. (except in the cases enumerated in ss. 388, 388a, 389, and the notes thereto), with the assent of the ratepayers as provided by sections 338-368, inclusive; and, in the case of a county council by-law, under the procedure prescribed by s. 390. Until 1858 these requirements were only directory (*a*), but now they are imperative and essential to the validity of the by-law.

Sec. 234.

Note (a).

Requirements of debenture by-laws.

(2) The by-law, (if not creating a debt for the purchase of public works, whether of this Province or of the Dominion of Canada, pursuant to the Statutes in that behalf and to the provisions of sections 394 and 395), shall name a day in the financial year in which the same is passed when it is to take effect; and if no day is named it shall take effect on the day of the passing thereof. 60 V. c. 45, s. 43 (1).

By-law to name a day when it goes into effect.

Taken from the Act of 1858 (22 V. c. 99), s. 222 (1); the words "and if no day is named, it shall take effect on the day of the passing thereof," added by R.S.O. (1887), c. 184, s. 340 (1).

(b) "**If not creating a debt for the purchase of public works.**" As to by-laws for this purpose, see R.S.Ca. c. 36, [illegible] 19 and ss. 394-395 of this Act.

(c) "**Shall name a day in the fin[illegible] year . . . when it is to take effect.**"

The "financial year" is appar[illegible] intended to coincide with the civil year ending with December 31st. See ss. 409, 427; and *cf.* ss. 279*a*, 291*a*, 300 (2), 302, 304 (1), 328, 391, 402 (1), etc.

> "The Legislature meant that it should not be necessary to refer to anything extrinsic to the by-law for the purpose of learning when it would or ought to come into operation. The purchaser of a debenture, for instance, would require to see that it and the by-law under which it was issued were legal, and might on that account require to see when the by-law took effect" (*b*).

In that case, however, although the by-law named no day on which it was to take effect, the learned Chief Justice refused to quash it, "considering the mischief or serious inconvenience which would probably result" (*c*), but in *Re Nichol and Tp. of Alnwick* (*d*) the omission to name a day on which the by-law should take effect was held fatal.

Since these cases were decided the final clause of the section has been added (*e*); and in *Re Caldwell and Town of Galt* (*f*), where a by-law was moved against on the ground that in the printed copy published under s. 338 (2) the date on which the by-law was to come into operation was left blank (although stated to be "in the same financial year in which the by-law will be passed"), ROBERTSON, J., refused to give effect to this objection, saying, (p. 381):

> "It appears to me that the reference to the date of its taking effect, being in blank, may be treated as surplusage. It was not necessary to its validity to name a day, the Statute supplying the omission by declaring that in that case it shall take effect on the day on which it passed."

But where the copy of a proposed debenture by-law, published under s. 338 (2), named the 13th of December as the day on which the by-law should go into effect, and in the by-law itself (as adopted by the council) this was altered to the 30th of December, the variance was held to be fatal. (*g*)

(*a*) *Re Sells and Village of St. Thomas*, 3 C. P. 286-291 (1853).

(*b*) *Per* DRAPER, C. J. in *Re Michie and City of Toronto*, 11 C. P. 379-384 (1861).

(*c*) See also on this point the cases collected in foot-note (*m*) on p. 378.

(*d*) 41 U. C. R. 577, 589 (1877),—A. WILSON, J.

(*e*) See reference in small print, *supra*.

(*f*) 30 O. R. 378 (1899).

(*g*) *Canada Atlantic R. W. Co. v. City of Ottawa*, 8 O. R. 183, 190 (PROUDFOOT, J.); 12 A. R. 234, 238 (HAGARTY, C. J. O.); 12 S. C. R. 365, 374 (1885). But see *per* OSLER, J. A., in s. c., 8 O. R. 214, 217.

Sec. 384 (2)-(4).

Note (c).
Date of taking effect.

GWYNNE, J., in delivering the judgment of the Supreme Court, says, (p. 374):

> "It has been argued that the alteration from the 13th of December . . . to the 30th of December . . . was the mere correction of a mistake of a most formal nature, which it was quite within the power of the council to make; for the reason that, as is suggested (a), the mistake cannot be supposed to have influenced the ratepayers in recording their votes; but, . . . in an action of this nature, I do not think we can inquire whether the mistake could or could not have influenced the ratepayers in recording their votes. The question appears to me to be simply, has the Statute been complied with? If a by-law of this nature, in order to be a valid by-law, must "name a day within the financial year in which the same is passed when the by-law shall take effect," and if it must be approved by the ratepayers before the council can pass it, it appears to me that the proposed by-law, which is to be taken into consideration by the council after having been voted upon by the ratepayers, and is to be passed as having been approved by them, must be the very one which was submitted to them."

Debentures, when to be issued.

(3) The debentures may be issued all at one time, and in such case within a year after the passing of the by-law; or, in any case where, because of the proposed expenditure upon the objects for which the debt is contracted being estimated to extend over a series of years, and it being undesirable to have large portions of the moneys in hand unused and uninvested, or for other like or sufficient causes set out in the by-law, it would, in the opinion of the municipal council, be to the advantage of the municipality, the debentures may be issued in instalments of such amounts (not exceeding in the aggregate the total amount for which provision is made by the by-law), and at such times, as the exigency of the case demands, but so that the whole shall be issued within five years, and the first instalment within one year, after the passing of the by-law. 60 V. c. 45, s. 43 (2).

When to be made payable.

(4) If contracted for railways, harbour works or improvements, gas or water-works, or for the construction of sewers, the purchase and improvement of parks or the erection of public school houses, or for electric light works in towns having a population of 5,000 or under, the whole debt, or each instalment of the debt, as the case may be, and the obligations to be issued therefor, respectively, shall be made payable in thirty years at furthest; and unless contracted for any of the purposes aforesaid, or for the purchase of public works, as aforesaid, then in twenty years at furthest from the time or times when the debentures are by the by-law directed or authorized to be issued, whether that be at a date or dates certain, specifically fixed, or at a date or dates depending upon and determined by the happening of any event or events or upon the fulfilment of any condition or conditions as set forth in the by-law. 60 V. c. 45, s. 43 (2*a*). *See sec.* 565.

(d) The original time-limit within which debts contracted by municipal corporations were required to be payable was in all cases twenty years at farthest from the time of the coming into force of the by-law creating them. (b)

(a) By OSLER, J. A., 8 O. R. at p. 217.

(b) 14-15 V. c. 109, Sched. A (24).

By the Act of 1858, debts contracted for the purchase of public works were excepted, and the period was extended to thirty years in the case of those contracted for gas- and water-works. (*a*)

Term for which debt may be created.

By 52 V. c. 36, s. 12 (1889), the thirty years limit was extended to debts created in aid of railways; by 53 V. c. 50, s. 9 (1890), to those incurred for the construction of sewers, the purchase and improvement of parks, and the erection of public school houses; by 54 V. c. 42, s. 10, to debts for harbour works or improvements, and by 60 V. c. 45, ss. 3 and 43 (2*a*) to debts incurred for the erection or purchase of electric light works in towns having a population of 5,000 or under. (*b*) By the section last cited, the date from which the thirty years (or twenty years) is to be counted was the time when the debentures are authorized or required to be issued, instead of (as formerly) the date when the by-law came into effect.

Prior to the amendment of this sub-section in 1897, a by-law to raise by way of loan $3,000 to aid in repairing harbour-works, which provided that the debentures should be payable annually and that the first payment should be made on the 15th day of December "in the year next succeeding the year in which the repairs will have been completed," was held to be illegal on the ground that the time thereby fixed for repayment of the debt was uncertain. (*c*)

Specific sums to be annually raised for principal and interest respectively.

(5) The by-law shall settle a certain specific sum to be raised annually, for the payment of interest during the currency of the debentures or of each instalment of the debentures, as the case may be, and also a certain specific sum to be raised annually for the payment of the debt, or of each instalment thereof, as the case may be; and the said sums shall be such as will be sufficient, with the estimated interest on the investments thereof, to discharge the debt, or the instalment, as the case may be, when payable; and the annual rate required for such purposes shall begin from the date when the debentures are by the by-law directed or authorized to be issued as aforesaid. 60 V. c. 45, s. 43 (3).

Taken from 42 V. c. 31, s. 10 (1), (1879); last clause added by 57 V. c. 50, s. 12, (1894), and the whole sub-section recast by 60 V. c. 45, s. 43 (3), (1897).

Former law.

(e) Prior to 1879 the amount necessary to pay the debt and interest was required to be raised by an equal annual special rate. (*d*)

Under these Acts it was held that the by-law must show on its face the rate authorized to be levied, and not leave the amount of such rate to be computed by the clerk of the municipality (*e*). Where the rate imposed by the by-law was insufficient, the by-law was held bad. (*f*)

By 42 V. c. 31, s. 10 (2),—passed on the 11th of March, 1879,—this sub-section was amended so as to provide that instead of imposing an equal annual special *rate*, the by-law should settle *a specific sum* to be raised in each year for interest and for sinking fund respectively, it having been found by experience

(*a*) 22 V. c. 99, s. 222 (2).

(*b*) See *Re Hay and Town of Listowel*, 28 O. R. 332 (1897), where a by-law authorizing 30-year debentures for the construction of electric light works was quashed as being (then) unauthorized by the Act.

(*c*) *Re Armstrong and Township of Toronto*, 17 O. R. 766 (1889), referred to in note (f) *infra*. But see now the last clause of this sub-section and sub-section 6.

(*d*) 12 V. c. 81, s. 177; 14-15 V. c. 109, Sched. A (24); 22 V. c. 99, s. 222 (3); 29-30 V. c. 51, s. 226 (3); 36 V. c. 48, s. 248 (3); R.S.O. (1877) c. 174, s. 330 (3).

(*e*) *Canada Company* v. *County of Middlesex*, 10 U.C.R. 93 (1852).

(*f*) *Re Billings and Township of Gloucester*, 10 U.C.R. 273 (1852); *Perry* v. *Town of Whitby*, 13 U.C.R. 564 (1856); *Re Hawke and Township of Wellesley*, 13 U.C.R. 636 (1856). But see *Re Gilchrist and Township of Sullivan*, 44 U.C.R. 588 (1879).

Sec. 384 (5-6).

Note (e).

Specific sums to be raised annually.

that, owing to the increase in the assessed value of rateable property, an equal annual rate often produced a larger sum than was needed. Since this amendment, a by-law was held invalid which, though fixing specific *sums* to be annually raised as aforesaid, directed (as under the former law) that during the currency of the debentures a special *rate* of so much on the dollar should be levied and collected in each year. (*a*)

In the preamble of a debenture by-law (passed in August, 1898) to raise the sum of $10,000, it was recited that "it will require the sum of $400 to be raised annually for payment of . . . interest, and the further sum of $335.81 to be raised annually as a sinking fund," etc.; and the by-law enacted that for paying the debentures and interest "*the specific sum* hereinbefore recited, viz., *the sum of $735.81*" should be annually raised, etc.

An objection that the enacting part of the by-law should have stated separately the specific sums to be raised for interest and for sinking fund respectively, was overruled. (*b*)

The amount to be raised in any year under a debenture by-law towards the sinking fund of the debt created thereby is "a debt falling due within the year;" (*c*) and, upon the application of a debenture-holder, the council may be compelled by mandamus to levy and to collect the amount for the current year, but (it seems) not to collect arrears, nor can the mandamus direct a levy in any future year, since it will not be assumed that the municipality will not include this debt in their annual estimates. (*d*)

The provisions of this sub-section apparently apply to by-laws passed under "*The Public Schools Act*," (R. S. O. c. 292,) s. 70, for the issue of debentures for the erection of school-houses. (*e*)

Commencement of annual rate.

(6) No by-law passed before the 1st day of July, 1897, shall be deemed to be invalid by reason only of such annual rate commencing at a time subsequent to the year in which the by-law took effect, or because the levy of such annual rate did not begin until the fulfilment of conditions contained in the by-law. 60 V. c. 45, s. 43 (3*a*) *and* s. 46.

Taken from 57 V. c. 50, s. 12, (1894).

(**f**) Prior to 1894, the combined effect of this section (384) and s. 402 (1) was, apparently, to render it necessary that the annual rate imposed by a by-law creating a debt should begin to be levied and collected in the year immediately succeeding the passing of the by-law. In other words, the ratepayers by whose votes the obligation was imposed could not escape their liability to contribute towards its payment by postponing the issue of the debentures (*f*). This, however, may now be done. See sub-ss. 4 and 5, *supra*.

(*a*) *Re Peck and Township of Ameliasburgh*, 17 O.R. 54 (1889).

Per STREET, J., (p. 57):

> "Under the law as amended the by-law is to provide only that a certain *sum* shall be raised in each year . . . leaving the . . . *rate* to be determined in each year by the amount of the assessment roll in that year."

(*b*) *Re Caldwell and Town of Galt*, 30 O. R. 378 (1899).

Per ROBERTSON, J., (p. 384):

> "The recitals and the enacting clause together make it quite clear what is to be done. . . . The preamble is undoubtedly part of the Act."

See *Salkeld* v. *Johnson*, 2 Ex. 256 (1848), *per* POLLOCK, C. B., at p. 283; "*The Interpretation Act*," (R.S.O. c. 1), s. 8 (40), and note (**n**), *post*.

(*c*) Sec. 402.

(*d*) *Re Clarke and Town of Palmerston*, 6 O.R. 616 (1883).

(*e*) *Re McIntyre and Tp. of Elderslie*, 27 C. P. 58 (1876).

(*f*) See *Re Armstrong and Tp. of Toronto*, 17 O. R. 766 (1889), referred to in note (**d**), *supra*.

(7) Nothing in this section contained shall apply to or affect any debentures issued or to be issued in pursuance of section 21 of the Act passed in the 54th year of Her Majesty's reign, chaptered 72, or sections 1 and 3 of the Act passed in the 57th year of Her Majesty's reign, chaptered 71. 60 V. c. 45, s. 43 (3c).

Debentures issued under certain special Acts not affected.

(g) The Acts referred to are private Acts of Parliament relating to debenture by-laws of the City of London, Ont.

(8) In settling the sum to be raised annually for the payments of the debt, the rate of interest on investments shall not be estimated at more than four per cent. per annum, to be capitalized yearly. 55 V. c. 42, s. 340 (4); 60 V. c. 45, s. 45.

Interest on investments how estimated.

(h) Under the law as it stood prior to the alteration made in 1879 and referred to in note (e), *supra*, no allowance was to be made for any income arising from the temporary investment of moneys raised for sinking fund (*a*), although such investment was expressly authorized (*b*).

When, however, the Act of 1879 (*c*) provided that instead of an equal annual special *rate* being levied to pay the debt and interest, the by-law should fix a specific *sum* to be raised each year for sinking-fund, it was also declared that in fixing this sum allowance might be made for interest arising from the investment thereof (*d*). The maximum rate to be allowed on account of such interest was fixed by the Act of 1879 at five per cent, which is reduced to four per cent per annum by 60 V. c. 45, s. 45 (1897) (*e*). The estimates on which the by-law is founded need not appear on its face. In the absence of evidence to the contrary the Court will assume that the requirements of the Statute have been complied with (*f*).

(9) The by-law shall provide that such annual sum shall be raised and levied in each year by a special rate sufficient therefor, on all the rateable property in the municipality; or, (if the by-law is for a work payable by local assessment), on all the property rateable under the by-law or per foot frontage as the case may be. 55 V. c. 42, s. 340 (5).

Property on which rate is to be levied.

Taken from 49 V. c. 31, s. 10 (5), (1870).

(i) "**The by-law shall provide.**" This provision is imperative (*g*).

(j) "**On all the rateable property in the municipality.**" See "*The Assessment Act*," (R. S. O. c. 224), ss. 6, 7; and, as to the power of a municipal council to create further exemptions from taxation, see s. 411.

(k) "**Or . . . on all property rateable under the by-law or per foot frontage.**" See ss. 665, 674, 652 (3), 686, 687, 691, 693.

(10) The by-law, unless it is for a work payable by local assessment, shall recite:

Recitals:

(*a*) The amount of the debt which the new by-law is intended to create, and, in some brief and general terms, the object for which it is to be created;

Amount and object of debt;

(*a*) 22 V. c. 99, s. 222 (5); 29-30 V. c. 51, s. 226 (5); 36 V. c. 48, s. 248 (2); R. S. O. (1877), c. 174, s. 330 (5).

(*b*) 22 V. c. 99, s. 228; 29-30 V. c. 51, s. 232; 36 V. c. 48, s. 268; R. S. O. (1877), c. 174, s. 358.

(*c*) 42 V. c. 31, s. 10 (2).

(*d*) 42 V. c. 31, s. 10 (4).

(*e*) And see s. 539 (3), *post*.

(*f*) *Fletcher* v. *Tp. of Euphrasia*, 13 U. C. R. 129 (1856).

(*g*) See note (a), *supra*.

Sec. 384 (10).

Notes (l), (m).

Amount to be raised annually;

Value of rateable property;

Amount of existing debt.

(b) The total amount required by this Act to be raised annually by special rate for paying the new debt and interest;

(c) The amount of the whole rateable property of the municipality according to the last revised, or revised and equalized assessment roll;

(d) The amount of the existing debenture debt of the municipality, and how much (if any) of the principal or interest is in arrear. 55 V. c. 42, s. 340 (6).

Clauses (*a*) and (*b*) are taken from the Act of 1858, (22 V. c. 99), s. 222 (6); clause (*c*) from the same Act as amended by 29 & 30 V. c. 51, s. 226 (6), and clause (*d*) from 42 V. c. 31, s. 11. *Cf.*—as to clauses (*a*), (*b*) and (*c*)—14-15 V. c. 109, s. 4.

Amount of new debt.

(l) "**The amount of the debt which the new by-law is intended to create.**" A very common mistake in drawing debenture by-laws is the recital therein of the amount of *money* intended to be raised, instead of the amount of *the debt* which the by-law is intended to create. The two are quite distinct, and it is the latter, not the former, which must appear in the recital. If, therefore, it is desired to raise a certain sum of money, allowance must be made for discount and other charges incidental to the sale of the debentures, and the by-law must authorize the issue of debentures for a sum sufficient, after these deductions, to produce the amount required. It is this latter sum which constitutes "the debt" created by the by-law.

Before the provisions of this section in regard to debenture by-laws had been made imperative and essential to the validity of such by-laws, a by-law of the City of Toronto to raise for Esplanade purposes "a sum not exceeding in the whole £75,000" (although quashed on other grounds) was sustained as against an objection that it did not positively state the amount of the debt to be created.(*a*) But in *Re Hawke and Township of Wellesley*, (*b*) a by law was held invalid which, after providing for the sale of the old town-hall, directed that "any money beyond the proceeds of such sale required for the erection of a new hall" should be levied, etc.,—the amount of the debt not being fixed by the by-law.

Object of new debt.

(m) "**In some brief and general terms, the object for which it is to be created.**" Even before this was required by 14-15 V. c. 109, s. 4, a by-law to provide for the current general expenses of, and the liquidation of "the debt due by" the County of M., but not stating what debt or for what amount, was held bad (*c*). *Per* ROBINSON, C. J., (p. 96).

> "When the ratepayers had paid up the whole £1,500 to be levied under this by-law they would not know what debt they had paid."

A town council—with the approval of the ratepayers entitled to vote on money by-laws—passed a by-law "to raise $10,000 to pay the expenses of opening up a new street between Main street and H. street, through the property known as the Addison property and other properties, so as to continue and extend A. street in a southerly direction between Main street and H. street." Subsequently, and before the argument of a motion to quash, they passed another by-law, expropriating the land required for the extension, and describing it by metes and bounds. ROBERTSON, J. nevertheless quashed the debenture by-law on the ground that the recital (above quoted) was not sufficient to satisfy the requirements of this sub-section, and held that the expropriating by-law should first have been passed defining with reasonable certainty the lands to be taken for the street extension (*d*).

(*a*) *Ex p. Hayes and City of Toronto*, 7 C.P. 255 (1856); and see *Re Cameron and Township of East Nissouri*, 13 U.C.R. 190 (1856).

(*b*) 13 U.C.R. 630 (1856).

(*c*) *Canada Company* v. *County of Middlesex*, 10 U.C.R. 93 (1852).

(*d*) *Re Caldwell and Town of Galt*, 30 O.R. 378, 385 (1899). But see *Tylee* v. *County of Waterloo*, 9 U.C.R. 588 (1852), a case under "*The District Councils Act*," (4 & 5 V. c. 10).

(n) **"The total amount required by this Act to be raised annually for paying the new debt and interest."** These words have not been altered since 1858, although since 1879 this "total amount" is to be made up by adding together two distinct sums, viz., the specific sum annually raised for interest and the specific sum annually raised towards making up the sinking fund for payment of the principal of the debt.

Where, (before the Act of 1879,) the by-law fixed an annual special rate which, upon the amount of the rateable property named therein, would produce about $150 less than the total amount of the debt to be incurred, the Court refused to set aside the by-law. (*a*)

(o) **"The amount of the whole rateable property of the municipality."** In stating this amount, the assessed value of property exempt from taxation either under s. 7 of "*The Assessment Act*" or under s. 411 of this Act, must of course be excluded.

In an affidavit filed on a motion to quash a debenture by-law it was sworn that the amount of the rateable property of the municipality was not $6,434,-773 (as stated in the by-law) but $7,568,468. The clerk of the municipality, in answer, stated the true amount to be $6,435,475. *Held*, that the objection could not prevail, and that the difference between the amount stated in the by-law and that sworn to by the clerk was immaterial. (*b*)

(p) **"The amount of the existing debenture debt of the municipality."** The Court refused to set aside a by-law (otherwise valid) from which had unintentionally been omitted a recital of an existing debt of $2,691, the assessed value of the rateable property of the township being about $1,500,000. (*c*) Such a defect would now be cured by registering the by-law under s. 396.

(q) The following forms of debenture by-laws under s. 384 may be found useful: Forms.

Form No. 1.

Where the principal of the debt is payable at the end of the period, the interest being payable [semi-annually] in the meantime.

A By-law to authorize the issue of debentures of the township (*or* "county") of to the amount of $ for the purpose of *granting a bonus of $ to The Railway Company in aid of the said Railway.* (*d*)

Whereas it is advisable that the township (*or* "county") of should grant a bonus of $ to The Railway Company in aid of the said railway; (*e*)

And whereas in order thereto it will be necessary to issue debentures of the township (*or* "county") of for the sum of $ as hereinafter provided, (which is the amount of the debt intended to be created by this by-law), the proceeds of the said debentures to be applied to the said purpose and to no other; (*f*)

And whereas the total amount required by "*The Municipal Act*" to be raised annually by special rate for paying the said debt and interest is the sum of $; whereof $ is to be so raised annually for payment of interest during the currency of the said debentures, and $ is to be so raised annually for the purpose of creating a sinking fund for payment of the debt secured by the said debentures; (*g*)

And whereas the amount of the whole rateable property of the township (*or* "county") of according to the last revised (*or, in the case of a county,* "the last revised and equalized") assessment roll thereof is $; (*h*)

And whereas the amount of the existing debenture debt of the said municipality is $ whereof $ of principal and $ of interest are in arrear (*or as the case may be*); (*i*)

(*a*) *Re Gilchrist and Township of Sullivan*, 44 U.C.R. 588 (1879).

(*b*) *Re Paffard and County of Lincoln*, 24 U.C.R. 16 (1864).

(*c*) *Re Lloyd and Township of Elderslie*, 44 U.C.R. 235 (1879) See *McConnell* v. *Oakley*, 17 U.C.R. 345 (1859).

(*d*) See sec. 694, *post*. (*e*) S. 384 (10) (*a*). (*f*) S. 384 (10) (*a*); s. 392. (*g*) S. 384 (10) (*b*). (*h*) S. 384 (10) (*c*). (*i*) S. 384 (10) (*d*).

Sec. 384 (10).

Forms of debenture by-laws.

THEREFORE the municipal council of the corporation of the township (*or* "county") of enacts as follows:—

1. A bonus of $ is hereby granted by the township (*or* "county") of to the Railway Company in aid of this said railway; and for the purpose of raising the said sum debentures of the said township (*or* "county") to the amount of $ as aforesaid shall be issued in sums of not less than $100 each (*a*) on the day of (*naming (or otherwise specifying) a definite date within one year after the passing of the by-law*) (*b*): each of which debentures shall be dated on the said day of and shall be payable on the day of 19 (*naming a date within thirty years*) at the Bank of in the town of . (*c*)

(2). Each of the said debentures shall be signed by the reeve of the said township of (*or* "by the warden of the said county of") or by some other person authorized by by-law to sign the same, and also by the treasurer thereof; and the clerk of the said township (*or* "county") of shall attach thereto the corporate seal of the municipality. (*d*)

(3). The said debentures shall bear interest at the rate of per centum per annum payable *half yearly* at the said Bank on the days of in each and every year during the currency thereof and shall have attached to them coupons for payment of the said interest, which coupons shall be signed by the said reeve (*or* "warden") and treasurer. (*e*)

(4). During the currency of the said debentures there shall be raised annually by special rate on all the rateable property in the said township (*or* "county") of the said sum of $ for payment of interest on the said debentures, and the said sum of $ for the purpose of creating a sinking fund for payment of the debt hereby secured, making in all the sum of $ to be raised annually, by special rate as aforesaid, during each of the said *thirty* years. (*f*)

(5). This by-law shall take effect on the day of 19 . (*g*)

N.B.—If (in the case of a county by-law) the amount of the debt is within the limit of $20,000 up to which, by s. 388, a county council may contract debts without the assent of the ratepayers), the following sections will not be required.

(6). The votes of the electors of the said township of shall be taken on this by-law at the following times and places, that is to say on day the day of , next, commencing at the hour of nine o'clock in the forenoon and continuing till five o'clock in the afternoon of the same day, by the following deputy-returning officers:—(*Here insert polling places and names of deputy-returning officers.*) (*h*)

(7). On day the day of the reeve of the said township shall attend at the *town hall* of the said township at o'clock in the forenoon to appoint persons to attend at the various polling places aforesaid and at the final summing up of the votes by the clerk on behalf of the persons interested in and promoting or opposing the passing of this by-law respectively. (*i*)

(8). The clerk of the said township of shall attend at *the said town hall* at o'clock in the forenoon of day the day of to sum up the number of votes given for and against this by-law. (*j*)

Dated at the Town Hall (or "Shire Hall") in the of this day of A.D. 19 .

A.B., Reeve (*or* "Warden".)
C.D., Clerk.

For the form of the notice to be appended to each copy of the proposed by-law published and posted as required by s. 338 (2), see note (i) *to that section.*

(*a*) S. 436. (*b*) S. 384 (3). (*c*) Ss. 384 (3) (4) s. 436.
(*d*) S. 429. (*e*) S. 429 (2). (*f*) S. 384 (5).
(*g*) S. 384 (2). (*h*) S. 338 (1). (*i*) S. 341.
(*j*) S. 341.

Forms of debenture by-laws.

Form No. 2.

Where the debentures are to be issued at different times, the interest being payable annually on the whole debt and the principal in instalments, not being annual instalments or "yearly sums so calculated that the amount payable in each year shall be as nearly as possible equal."

A BY-LAW to provide for the expenditure of *$5,000 in improving the harbour of* and to authorize the issue of debentures of the town of to the amount of $ for the purpose of raising the said sum of (*a*).

WHEREAS it is desirable that the sum of $5,000 should be expended by the town of in improving the harbour of and that the said sum should be raised on the credit of the town, (*b*)

AND WHEREAS in order thereto it will be necessary to issue debentures of the town of for the sum of $ as hereinafter provided (which is the amount of the debt intended to be created by this by-law) the proceeds of the said debentures to be applied to the said purpose and to no other; (*c*)

AND WHEREAS under the terms of the contract between the said town of and Messrs. A. B. & Co., contractors for the work of improving the said harbour, the said sum of $5,000 is to be paid to the said contractors from time to time as the said work progresses at the rate of 80% of the amount of the work done by them as certified by C. D., Esq., the engineer in charge of the said work, the remaining 20% of the contract price being payable to the said contractors within thirty days after the said C. D. has granted to the said A. B. & Co. a final certificate showing the completion of the said work; (*d*)

AND WHEREAS it is estimated that the proposed expenditure upon the said harbour improvements will extend over a series of years, and that for the purpose of paying the amount from time to time due to the said contractors under the said certificates, the sum of $1,000 will be required in each of the years 19 , 19 and 19 , and the sum of $2,000 in the year 19 ; (*e*)

AND WHEREAS—it being undesirable to have large portions of the money to be raised under this by-law in hand and unused uninvested—it would, in the opinion of the municipal council of the town of , be to the advantage of the municipality to issue the said debentures in four instalments, as follows: $ thereof within one year, $ thereof within two years, $ thereof within three years and the remaining $ thereof within four years after the passing of this by-law, and to make each of the said instalments of the said debt payable in *thirty* years from the date of the debentures by which the same is respectively secured; (*f*)

AND WHEREAS the total amount required by "*The Municipal Act*" to be raised annually during (*thirty*) years by special rate for paying the instalment of the debt to be secured by the debentures for $ firstly above mentioned and the interest thereon is $; for paying the instalment thereof to be secured by the debentures for $ secondly above mentioned and the interest thereon $; for paying the instalment thereof to be secured by the debentures for $ thirdly above mentioned and the interest thereon $; and for paying the instalment thereof to be secured by the debentures for $ fourthly above mentioned and the interest thereon $; (*g*)

AND WHEREAS the amount of the whole rateable property of the town of according to the last revised assessment roll thereof is $; (*h*)

AND WHEREAS the amount of the existing debenture debt of the said municipality is $, whereof no sum either of principal or interest is in arrear (*or as the case may be*); (*i*)

(*a*) See *Re Armstrong and Township of Toronto*, 17 O.R. 766 (1889) and the amendment of s. 384 (4) made by 54 V. c. 42, s. 10 (1891).

(*b*) S. 384 (10) (*d*). (*c*) S. 384 (10) (*a*); s. 392. (*d*) S. 384 (3).

(*e*) S. 384 (3). (*f*) S. 384 (3). (*g*) S. 384 (10) (*b*).

(*h*) S. 385 (10) (*c*). (*i*) S. 384 (10) (*d*).

Sec. 384 (10).

Forms of debenture by-laws.

THEREFORE the municipal council of the corporation of the town of enacts as follows:—

(1) The sum of $5,000 shall be expended by the town of in improving the harbour of ; and for the purpose of raising the said sum debentures of the said town of to the said amount of $ in the whole shall be issued in sums of not less than $100 each (*a*), as follows: $ (*naming the time of issue which may either be a specified date, or a time to be determined by the council or by the mayor, treasurer, etc., but which in the case of the first instalment must be within one year after the date of the passing of the by-law*); $ thereof on the day of (*or as the case may be*) (*b*); $ thereof on the day of (*or as the case may be*), and the remaining $ thereof on the day of (*or as the case may be*), each of which debentures shall be dated on the day of its issue and shall be made payable within (*thirty*) years from said date at the Bank of in the said town of (*c*).

(2) Each of the said debentures shall be signed by the mayor of the said town of or by some other person authorized by by-law to sign the same, and shall be countersigned by the treasurer thereof; and the clerk of the said town of shall attach thereto the corporate seal of the municipality (*d*).

(3) The said debentures shall bear interest at the rate of per centum per annum payable at the said Bank on the day of in each and every year during the currency thereof, and shall have attached to them coupons for payment of the said interest, which coupons shall be signed by the mayor and the treasurer of the said town of (*e*).

(4) During the currency of the debentures for $, representing the first instalment of the debt hereby created, there shall be raised annually by special rate upon all the rateable property of the said town of the sum of $ for payment of the interest falling due in each of the said years respectively on the said debentures and the sum of $ for the purpose of creating a sinking-fund for payment of the said first instalment of the debt, making in all the sum of $ to be raised annually by special rate as aforesaid during each year of the said (*thirty*) years. (*f*).

(5) During the currency of the debentures for $ representing the second instalment of the debt hereby created, there shall be raised annually by special rate upon all the rateable property in the said town of the sum of for payment of the interest falling due in each of the said years respectively on the said debentures and the sum of $ for the purpose of creating a sinking-fund for payment of the said second instalment of the debt, making in all the sum of $ to be raised annually by special rate as aforesaid, during each year of the said (*thirty*) years.

(6) During the currency of the debentures for $ representing the third instalment of the debt hereby created, there shall be raised annually by special rate on all the rateable property in the said town of the sum of $ for payment of the interest falling due in each of the said years respectively on the said debentures and the sum of $ for the purpose of creating a sinking fund for payment of the said third instalment of the said debt, making in all the sum of $ to be raised annually by special rate as aforesaid during each year of the said (*thirty*) years.

(7) During the currency of the debentures for $ representing the fourth and final instalment of the debt hereby created, there shall be raised annually by special rate on all the rateable property in the said town of the sum of $ for payment of the interest falling due in each of the said years respectively on the said debentures and the sum of $ for the purpose of creating a sinking fund for the payment of the said fourth and final instalment of the

(*a*) S. 436. (*b*) See s. 384 (3). (*c*) Sections 384 (3) (4), s. 436.
(*d*) S. 429. (*e*) S. 429 (2). (*f*) S. 384 (5).

said debt, making in all the sum of $ to be raised annually by special rate as aforesaid during each year of the said (*thirty*) years (*a*).

(8) This by-law shall take effect on the day of , 19 . (*b*)

(9) The votes of the electors of the said town of shall be taken on this by-law at the following times and places, that is to say on day the day of next, commencing at the hour of nine o'clock in the forenoon and continuing till five o'clock in the afternoon of the same day by the following deputy-returning officers (*Here insert polling places and names of deputy-returning officers*) (*c*).

(10) On day the day of the mayor of the said town of shall attend at the *council chamber* at o'clock in the forenoon to appoint persons to attend at the various polling places aforesaid and at the final summing up of the votes by the clerk on behalf of the persons interested in and promoting or opposing the passing of this by-law respectively (*d*).

(11) The clerk of the council of the said town of shall attend at *his office in the said town hall* of the said town of at o'clock in the forenoon of the day of to sum up the number of votes for and against this by-law (*d*).

Dated at the Town Hall in the town of this day of A. D. 19

A. B.
Mayor.

C. D.
Clerk.

For the form of the notice to be appended to each copy of the proposed by-law published and posted as required by s. 338, see note (1) *to that section.*

Forms of debenture by-laws.

385.—(1) If the by-law is for a work payable by local assessment, it shall recite:

By-law for a work payable by local assessment must

(*a*) The amount of the debt which the by-law is intended to create, and, in some brief and general terms, the object for which it is to be created;

Amount and object of debt

(*b*) The total amount required by this Act to be raised annually by special rate for paying the debt and interest under the by-law;

Amount to be raised annually:

(*c*) The value of the whole real property rateable under the by-law, as ascertained and finally determined as aforesaid;

Value of real property rateable:

(*d*) That the debt is created on the security of the special rate settled by the by-law, and on that security only.

That debt created on security of special rate.

(2) In the case of by-laws passed, or to be passed for works payable by local assessment, in order to facilitate the negotiation of debentures issued thereunder, and add to their commercial value, the council of any township, city, town, or village, may declare that the debt to be created on the security of the special rate settled by the by-law is further guaranteed by the municipality at large, anything contained in clause (*d*) of subsection 1 of this section to the contrary notwithstanding. 55 V. c. 42, s. 341.

Power to guarantee local improvement debentures.

(*a*) S. 384 (5). (*b*) S. 384 (2). (*c*) S. 338 (1). (*d*) S. 341.

Sec. 385 (1), (2).

Note (a).

Form of a local improvement by-law.

(a) The following form of a "local improvement by-law," *i. e.*, a by-law creating a debt for work the cost of which is to be repaid by local assessment, having been made part of the Act 60 V. c. 47. (See s. 670, *post* and Schedules N. & O. therein referred to) may be regarded as having received the approval of the Legislature; although but for that fact it could scarcely be considered a model by-law.

Short Form of Local Improvement By-law.

A By-law to provide for borrowing money by the issue of debentures, secured by local special rates, on the property fronting or abutting on (*King Street between Yonge Street and Church Street, in Ward Number 2,*) for the paving of said portion of said street.

WHEREAS, upon the recommendation of the city engineer and in the opinion of the council of the corporation of it became desirable and necessary to pave with asphalt paving and stone curbing, (*or as the case may be*), part of *King Street between Yonge Street and Church Street, in Ward number two of this city* as a local improvement, and the said council thereupon gave due notice of their intention to pass a by-law for that purpose, and to assess and levy the cost of such improvement or work upon the real property fronting or abutting upon *King Street*, within the limits hereinafter described, pursuant to the provisions of the Statutes in that behalf;

AND WHEREAS although duly notified as aforesaid, the majority of the owners of such real property, representing at least half of the value thereof, have not petitioned the said council against the said work and assessment;

[*Or in lieu of the above two recitals, if the work is petitioned for, use the following:*

WHEREAS and others have petitioned to have *King Street between Yonge Street and Church Street* paved with asphalt paving and stone curbing.]

AND WHEREAS it has been ascertained and determined that the real property fronting or abutting upon the lines described as follows, that is to say:—

1. Commencing at a point on the north side of *King Street at its intersection with the east side of Yonge Street, thence easterly along the north side of King Street feet, more or less, to the west side of Church Street, being the frontage on the north side of King Street, from Yonge Street to Church Street*, producing, after deducting the width of feet for street intersections and exempt properties, as shown by the statement of the frontage liable for assessment as settled by the Court of Revision, feet, more or less, of frontage assessable on the north side of the street.

2. Commencing at a point on the *south side of King Street, at its intersection with the east side of Yonge Street, thence easterly along the south side of King Street feet, more or less, to the east side of Church Street, being the frontage on the south side of King Street, from Yonge Street to Church Street*, producing after deducting the width of feet for street intersections and exempt properties as shown by the report of the City Engineer, feet, more or less, of frontage assessable on the south side of the street; or, a total of feet, more or less, of assessable property on both sides of *King Street*, aforesaid, is immediately, directly, equally and especially benefitted by the said improvement;

AND WHEREAS the total assessed value of the said property is $

AND WHEREAS the said pavement has been laid, and the total cost thereof is the sum of $, of which amount the city disburses the sum of $, being the cost of laying down the said pavement opposite the said street intersections and exempt properties [*add* "and flankages" *if flankages are allowed by a by-law of the municipality*]; and the remaining $ is to be defrayed by the ratepayers, and is the amount of the debt to be created by this by-law;

Sec. 385.

Form of a local improvement by-law.

AND WHEREAS it will require the sum of $ to be raised annually for a period of years, the currency of the debentures to be issued under and by virtue of this by-law, to pay the interest of the said debt, and the sum of $ to be raised annually during the said period for the payment of the debt to be created by this by-law, such last mentioned sum being sufficient, with the estimated interest on the investment thereof (*a*), to discharge the said debt when the same becomes payable, making in all the sum of $ to be raised annually as aforesaid;

AND WHEREAS there are feet of frontage of the said assessable real property on both sides of *King Street*, within the limits aforesaid according to the said description, immediately, directly, equally and specially benefitted by the said improvement and work, upon which at will be required to charge an annual special rate per foot, sufficient to pay the interest and create an annual sinking fund for paying the said principal debt of $ within years, which said debt is created on the security of the special rate settled by this by-law, and on that security only (*b*); [*or, if the debentures are to be guaranteed by the municipality at large, substitute for all the words after the word* "by-law" *the following*: "and further guaranteed by the said municipality at large."] (*c*)

AND WHEREAS it is expedient to raise the said sum of $ by debentures of the Corporation of to defray that part of the expense of said work payable by local special rates.

THEREFORE the Municipal Council of the Corporation of enacts as follows:—

NOTE.—*Insert in the blanks in the short forms the number of years in which the rate is to be raised, the sum to be raised for interest and sinking fund, the rate to be imposed on each foot and other particulars.*

Column One (*d*)	*Column Two.*
1. During years $ shall be raised for interest and $ for debt, making together $	1. During years the currency of the debentures to be issued under the authority of this by-law the sum of $ shall be raised annually for the payment of interest on said debentures and also the sum of $ shall be raised annually for the payment of the debt, making in all the sum of $ to be raised annually as aforesaid.
2. A special rate of per foot is imposed on each foot of above described property to produce $ and shall be collected by collector of taxes as other rates.	2. A special rate of per foot is hereby imposed on the real property above described, according to the frontage thereof, over and above all other rates and taxes, which special rate shall be sufficient to produce in each year the said sum of $, and shall be annually inserted in the collector's roll for ward number two in each year for the next succeeding years and shall be payable to and collected by in the same way as other rates on the said roll.

(*a*) See ss. 384 (8) and 539 (3). (*b*) See s. 385 (1) (*d*) (*c*) See s. 385 (2).

(*d*) Section 670, *post*, gives to the Forms of words in Column One the same legal effect as the forms which bear the same initial number in Column Two.

Sec. 385.

Form of a local improvement by-law.

Column One.	*Column Two.*
3. During years commencing with 189 above described property shall be exempt from general rates for improvements.	3. During the period of years commencing from and after the first day of January, A.D. 19 , the said above described real property shall be exempt from all general rates or assessments for improvements and works similar to those above mentioned, save and except the cost of similar works and improvements at the intersection of streets, and except such portion of the general rate as may be imposed to meet the cost of like works and improvements opposite real property which is exempt from such special assessment.
4. $ shall be raised by loan on above special rate and debentures therefor shall be issued.	4. The sum of $ shall be raised by loan by this corporation on the security of the special rate hereby imposed, and on that security only; and debentures amounting to the sum of $ shall be issued by the said corporation therefor. [*If the debentures are to be guaranteed by the municipality, add after the word* "issued" *in the first column* "guaranteed by the municipality," *and after the word* "only" *in the second column* "and further guaranteed by the said municipality at large."]
5. Debentures shall be payable years after issue, and shall bear per cent. interest.	5. The said debentures shall be made payable at the expiration of years from the date of issue of the same, and bear interest at a rate not exceeding per cent. per annum.
6. Debentures may be made payable anywhere, in any currency, and proceeds thereof shall be used in paying off loans for work (if any).	6. The debentures may, both as to principal and interest be payable in any place in Great Britain, in the United States of America or Canada, and may be expressed in sterling money or in any other currency, and may be made payable in gold, and the amount to be raised thereon shall be paid out and expended in paying off and discharging any temporary loans heretofore obtained on account of the said improvement and works and in no other way and for no other purpose whatsoever.
7. Owners may commute assessment by paying per foot in first year and a proportionately reduced rate for the years collected.	7. If at any time any of the owners of the said real property hereinbefore described, or of any part thereof, desire to commute the assessment imposed by this by-law by the payment of his, her or their proportionate share or shares of the cost thereof as a principal sum in lieu thereof, he, she or they may so commute by the payment of per foot on his, her or their property

Column One.	*Column Two.*
	on street aforesaid, at any time during the first year after the passing of this by-law, or in any subsequent year by the payment of such sum as may be necessary to realize at the end of the currency of such debentures a sum equivalent to the balance then unpaid of the said annual special rate thereon.
8. Moneys received from special rates or commutation shall be invested.	8. All moneys arising out of the said annual special rate and all moneys received in commutation thereof under the preceding section of this by-law, shall be invested by the treasurer of this municipality from time to time as the law directs.
9. Debentures shall contain provision of section 434 (1) of "*The Municipal Act.*"	9. Every debenture to be issued hereunder shall contain a provision, in the following words:—"This debenture, or any interest therein, shall not, after a certificate of ownership has been indorsed thereon by the treasurer of this municipal corporation, be transferable except by entry by the treasurer or his deputy in the debenture registry book of the said corporation at the city, town (*or* village) of (*or to the like effect*).
10. Debentures shall be subject to consolidation.	10. The amount of debentures authorized to be issued under this by-law is subject to consolidation by including the same in a collective or cumulative by-law to be hereafter passed, consolidating the same with other amounts authorized, or to be authorized, by other local improvement by-laws, and under which consolidating by-law the required debentures to provide for the amounts to be raised under this and said other individual by-laws shall be issued in a consecutive issue, as shall in said consolidating by-law be more particularly enacted in that behalf.
11. This by-law to take effect now.	11. This by-law shall come into operation and take effect on the day of the passing thereof.

Form of a local improvement by-law.

386.—(1) In any case of passing a by-law for contracting a debt, by borrowing money for any purpose, the municipal council may, in its discretion, make the principal of the debt, or of each instalment, of the debt, as the case may be, repayable by yearly sums, during the currency of the period (not exceeding thirty years, if the debt is for railways, harbour-works or improvements, gas or water-works or for the construction of sewers, the purchase and improvement of parks or the erection of public school-houses, and not exceeding twenty years if the debt is for any other purpose except

Making debts payable in annual instalments.

Sec. 386 (1).

Note (a). Forms of debenture by-laws.

the purchase of public works as in subsection 2 of section 384 mentioned), within which the debt, or the instalment of the debt, as the case may be, is to be discharged; and such yearly sums shall be of such amounts that the aggregate amount payable for principal and interest in any year in respect of the debt, or of the instalment, as the case may be, shall be equal, as nearly as may be, to what is payable for principal and interest during each of the other years of such period; and the council may issue the debentures of the municipal corporation for the amounts, and payable at the times corresponding with such yearly sums, together with interest, annually or semi-annually, as may be set forth and provided in the by-law. 60 V. c. 45, s. 44 (1). *See sec. 567 as to certain debenture by-laws of towns having less than 5,000 inhabitants.*

(2) The by-law shall set forth a certain specific sum to be raised in each year during the currency of the debt, or of the instalment of the debt, as the case may be, which sum shall be sufficient to discharge the several yearly sums of principal and interest accruing due, as the said yearly sums become respectively payable according to the terms of the by-law; and in cases within this section it shall not be necessary that any provision be made for sinking fund. 60 V. c. 45, s. 44 (2).

(a) The following forms may be used in drawing by-laws under this section.

Form No. 3.

Where the debentures are all to be issued at once, but the debt is to be payable in equal annual instalments made up of principal and interest as provided in the above section.

A By-law to authorize the purchase by the Town of of stock to the amount of $ in the Gas Company, and to provide for the issue of debentures of the said town to the amount of $ and to raise the sum required therefor. (a)

Whereas it is advisable that the municipal council of the corporation of the town of should purchase capital stock of the Gas Company to the amount of .

And whereas in order thereto it will be necessary to issue debentures of the said municipality for the sum of $ as hereinafter provided (which is the amount of the debt intended to be created by this by-law), the proceeds of the said debentures to be applied to the purpose aforesaid and to no other (b).

And whereas it is desirable to issue the said debentures at one time and to make the principal of the said debt repayable by yearly sums during the period of (*twenty*) years being the currency of the said debentures; said yearly sums being of such respective amounts that the aggregate amount payable in each year for principal and interest in respect of said debt shall be as nearly as possible equal to the amount so payable in each of the other *nineteen* years of said period [as shewn in Schedule "A" hereto annexed]. (c)

Note.—The Schedule may be dispensed with; and the words in the square brackets [ ] omitted.

(a) See s. 591 (5). (b) S. 384 (10) (a); s. 392. (c) S. 386 (1).

Forms of debenture by-laws.

AND WHEREAS the total amount required by "*The Municipal Act*," to be raised annually by special rate for paying the said debt and interest as hereinafter provided is $. (*a*).

AND WHEREAS the amount of the whole rateable property of the town of according to the last revised assessment roll thereof is $. (*b*).

AND WHEREAS the amount of the existing debenture debt of the said municipality is $, whereof $ of principal and $ of interest are in arrear (*or as the case may be*). (*c*)

THEREFORE the municipal council of the corporation of the town of enacts as follows:

(1) The municipal council of the said town of shall expend the sum of $ in the purchase of shares in the capital stock of the Gas Company; and for the purpose of raising the said sum debentures of the said town to the amount of $ as aforesaid in sums of not less than $100 each (*d*) shall be issued on the day of , 19 , (*naming a date within one year after the passing of the by-law*); each of which debentures shall be dated on the date of the issue thereof and shall be payable within (*twenty*) years thereafter [viz., *on the day of 19*] at the Bank of in the said town of . (*e*).

(2) Each of the said debentures shall be signed by the mayor of the said town of or by some other person authorized by by-law to sign the same, and by the treasurer thereof of the said town of , and the clerk shall attach thereto the corporate seal of the municipality (*f*).

(3) The said debentures shall bear interest at the rate of per centum per annum payable ("yearly or half-yearly") at the said Bank on the ("day" or "days") of in each and every year during the currency thereof [and shall have attached to them coupons for payment of the said interest, which coupons shall be signed by the mayor and treasurer of the said town of] (*g*)

Note.—A much more convenient plan is to dispense with coupons and to issue the debentures for the aggregate amount including both the interest and the annual instalment of principal. If this is done the words in the square brackets [ ] *may be omitted.*

(4) During the currency of the said debentures, there shall be raised annually by special rate on all the rateable property in the said town of the sum of $ for the purpose of paying the amount due in each of the said years for principal and interest in respect of the said debt, [as shewn in the Schedule "A" hereto annexed]. (*h*)

Note.—If the Schedule is dispensed with, (see supra) the words within the square brackets should be omitted.

(5) This by-law shall take effect on the day of 19 . (*i*)

(6) The votes of the electors of the said town of shall be taken on this by-law at the following times and places, that is to say: on day the day of next, commencing at the hour of nine o'clock in the forenoon and continuing till five o'clock in the afternoon of the same day, by the following deputy-returning officers. (*Here insert polling-places and names of deputy-returning officers*). (*j*)

(7) On day the day of , the mayor of the said town of shall attend at *the council chamber* at o'clock in the forenoon to appoint persons to attend at the various polling places aforesaid and at the final summing up of the votes by the clerk on behalf of the persons interested in and promoting or opposing the passing of this by-law respectively. (*k*)

(*a*) S. 384 (10), (*b*).
(*b*) S. 384 (10) (*c*).
(*c*) S. 384 (10) (*d*).
(*d*) S. 436.
(*e*) See s. 384 (3) last clause.
(*f*) S. 429.
(*g*) S. 429 (2).
(*h*) S. 386.
(*i*) S. 384 (2).
(*j*) S. 338 (1).
(*k*) S. 341.

Sec. 386.

Forms of debenture by-laws.

(8) The clerk of the council of the said town of shall attend at *his office in the Town Hall* at o'clock in the forenoon of day, the day of , to sum up the number of votes for and against the by-law. (*a*)

Dated at *the Town Hall* in the town of the day of , A.D. 19 .

A. B.,
Mayor.
C. D.,
Clerk.

SCHEDULE "A."

REFERRED TO IN THE FOREGOING BY-LAW.

Shewing how the amount of $ thereby required to be raised annually by special rate is apportioned.

Year.	Principal.	Interest.	Total.
1901, 1902, etc.	$	$	$

See Schedules "A" and "B" to the Act 60 V. c. 65 (1897), pp. 540 and 542, and Schedule "A" to the Act. 60 V. c. 73 (1897), p. 590.

N. B. For the form of the notice to be appended to each copy of the proposed by-law published and posted as required by s. 338, see note (i) *to that section.*

Form No. 4.

Where the debentures are to be issued by instalments and the debt is to be payable in equal annual instalments made up of principal and interest as specified in the above section.

A BY-LAW to provide for *the construction of sewers in the village of* and to authorize the issue of debentures of the said village to the amount of $ for the purpose of raising the sum required therefor.

WHEREAS it is desirable to *construct a system of sewers in the village of according to the plans therefor prepared by A. B., Esq., and adopted by the council of the said village*, and to raise the sum of $ to be applied for the said purpose. (*b*).

AND WHEREAS in order thereto it will be necessary to issue debentures of the said village for the sum of $ as hereinafter provided (which is the debt to be created by this by-law), the proceeds of the said debentures to be applied to the purpose aforesaid and to no other purpose (*c*).

AND WHEREAS it is estimated that the proposed expenditure for the said sewers will extend over a series of years and that for the said purpose the sum of $ will be required during the year *19* , the

(*a*) S. 341. (*b*) S. 384 (10) (*a*). (*c*) Ss. 384 (10) (*a*), 392.

Forms of debenture by-laws.

sum of $ during the year *19* and the sum of $ during the year *19* , and—it being in the opinion of the municipal council of the corporation of the said village of undesirable to have large portions of the money to be raised under this by-law in hand unused and uninvested,—it would be to the advantage of the municipality to issue the said debentures in instalments as hereinafter provided, each instalment of the debt thereby respectively secured, together with the interest thereon being made payable in equal annual instalments extending over (*twenty-five*) years from the date of the issue of the debentures respectively representing the same (*a*).

AND WHEREAS the total amount required by "*The Municipal Act*" to be raised annually during the first of such periods of *twenty-five* years for paying the first instalment of the said debt and interest thereon is $ and during the second of such periods of (*twenty-five*) years for paying the second instalment of the said debt and interest thereon is $ and during the third of such periods of (*twenty-five*) years for paying the third and final instalment of the said debt and interest thereon $ [the amounts payable for principal and interest respectively on account of each instalment of the said debt being shewn in the Schedule "A" hereto annexed] (*b*).

Note.—The words in square brackets may be omitted. See preceding form.

AND WHEREAS the amount of the whole rateable property of the village of , according to the last revised assessment roll thereof is $ (*c*).

AND WHEREAS the amount of the existing debenture debt of the said municipality is $, whereof $ of principal and $ of interest are in arrear (*or as the case may be*), (*d*).

THEREFORE the municipal council of the corporation of the village of enacts as follows :—

(1) The sum of $ shall be expended by *this village in constructing a system of sewers according to the plans therefor prepared by A. B., Esq., and adopted by the council of this municipality*; and for the purpose of raising said sum debentures of the said village to the said amount of $ in all shall be issued in sums of not less than $100 each (*e*) as follows : $ thereof on the day of 19 , (*naming a day within one year after the passing of the by-law*) $ thereof on the day of 19 , and the remaining $ on the day of 19 , (*f*).

(2) The said debt and the debentures issued therefor shall bear interest at the rate of per cent. per annum. The debentures representing each instalment thereof shall be dated on the day of the issue thereof respectively, and shall be payable in equal amounts in each of the (*twenty-five*) years next succeeding the said date (*g*) such amounts being made up of the aggregate sum due each year on account of principal and interest [as shewn in the Schedule hereto annexed].

Note. The Schedule may be dispensed with. See Form No. 3, third recital and s. 4.

(3) Each of the said debentures shall be signed by the reeve of the said village, or by some other person authorized by by-law to sign the same and shall be countersigned by the treasurer ; and the clerk of the said village of shall attach thereto the corporate seal of the municipality (*h*).

(4) The said debentures shall be payable on the day (*or* days) of in each year during the said (*twenty-five*) years, at the Bank of in the said village of .

(5) During the (*twenty-five*) years from 19 to 19 inclusive, being the (*twenty-five*) years next succeeding the date of the issue of the first instalment of debentures to be issued as aforesaid, there shall be annually raised by special rate on all the rateable property in the said

(*a*) Ss. 384 (3), 386.
(*b*) Ss. 384 (10) (*b*), 386.
(*c*) S. 384 (10) (*c*).
(*d*) S. 384 (10) (*d*).
(*e*) S. 436.
(*f*) S. 384 (3).
(*g*) S. 386.
(*h*) S. 429.

Sec. 386.

Forms of debenture by-laws.

village the sum of $ for the purpose of paying the debenture falling due in each of the said years respectively. (*a*)

(6) During the (*twenty-five*) years from 19 to 19 inclusive, being the (*twenty-five*) years next succeeding the date of the issue of the second instalment of debentures to be issued as aforesaid there shall be annually raised by special rate on all the rateable property in the said village the sum of $ for the purpose of paying the debenture falling due in each of the said years respectively (*b*).

(7) During the (*twenty-five*) years from 19 to 19 inclusive, being the (*twenty-five*) years next succeeding the date of the issue of the third and final instalment of debentures to be issued as aforesaid, there shall be annually raised by special rate on all the rateable property in the said village the sum of $ for the purpose of paying the debenture falling due in each of the said years respectively (*c*).

(8) This by-law shall take effect on the day of 19 (*d*).

(9) The votes of the electors of the said village shall be taken on this by-law at the following times and places, that is to say, on day the day of next, commencing at the hour of nine o'clock in the forenoon and continuing till five o'clock in the afternoon of the same day by the following deputy-returning officers (*Here insert polling-places and names of deputy-returning officers*) (*e*).

(10) On day the day of the reeve of the said village of shall attend at *the Council Chamber* at o'clock in the forenoon to appoint persons to attend at the various polling places aforesaid and at the final summing up of the votes by the clerk on behalf of the persons interested in and promoting or opposing the passing of this by-law respectively (*f*).

(11) The clerk of the council of the said village of shall attend at *his office in the Village Hall* at o'clock in the forenoon of day the day of to sum up the number of votes for and against this by-law (*g*).

Dated at *the Village Hall* in the village of this day of A. D. 19 .

A. B.
Reeve.

C. D.
Clerk.

For the form of the notice to be appended to each copy of the proposed by-law, posted up and published as required by s. 338 of this Act, see note (i) *to that section.*

SCHEDULE "A."

REFERRED TO IN THE FOREGOING BY-LAW.

Shewing in respect to each instalment of the debt to be thereby created how much of the amount to be annually raised is for principal and how much is for interest.

1st Instalment.

Annual payments from 19 to 19 inclusive.

Year when payable.	Principal.	Interest	Total Amount.

(*a*) S. 386. (*b*) S. 386. (*c*) S. 386. (*d*) S. 384 (2).
(*e*) S. 338 (1). (*f*) S. 341. (*g*) S. 341.

Forms of debenture by-laws.

2nd Instalment.

Annual payments from 19 to 19 inclusive.

Year when payable.	Principal.	Interest.	Total Amount.

3rd Instalment.

Annual payments from 19 to 19 inclusive.

Year when payable.	Principal.	Interest.	Total amount.

Special rates a charge on property

387. Every special assessment made, and every special rate imposed and levied under any of the provisions of this Act, and all sewer rents and charges for work or services done by the corporation, upon the default of the owners of real estate, under the provisions of any valid by-law of the council of the corporation, shall form a lien and charge upon the real estate upon or in respect of which the same have been assessed and rated or charged, and shall be collected in the same manner, and with the like remedies as ordinary taxes upon real estate are collectable under the provisions of *The Assessment Act*. 55 V. c. 42, s. 343.

Rev. Stat. c. 224.

Taken from 42 V. c. 31, s. 25, (1879).

(a) This section seems to relate to three distinct classes of incumbrances which may be created by municipal councils on real estate, viz.,

(1) Special rates under debenture by-laws for local improvements or otherwise. (*a*)

Until the passing (in 1891) of the Act 54 V. c. 42, s. 35—(now s. 681 of this Act *q.v.*)—a purchaser of real estate "free from incumbrances" had the right to have such special rates paid off and discharged out of his purchase money whether they were or were not yet due. (*b*)

(2) Sewer rents; such as may be imposed by by-laws passed under s. 539 (2).

Until this enactment such rents were not a tax upon the land, but only a personal charge against the owner or occupant (*c*): payment thereof could

(*a*) The effect of a by-law imposing such rates is "as if a mortgage had been given to the (municipality) payable by instalments." *Per* STREET J., in *Capon* v. *City of Toronto*, 26 O. R. 178, 184 (1894).

(*b*) *Cumberland* v. *Kearns*, 18 O. R. 151, 17 A. R. 281 (1889-90); *Re Graydon and Hammill*, 20 O.R. 199 (1890); *Armstrong* v. *Anger*, 21 O.R. 98 (1891). As to the prior law see *Bank of Montreal* v. *Fox*, 6 P.R. 217 (1875).

(*c*) *Moore* v. *Hynes*, 22 U.C.R. 107 (1862).

Sec. 387.

Note (a).

not be enforced by the same means as in the case of ordinary assessments, (a) and the incumbrance was not one which the vendor was bound to remove under a covenant to sell "free from incumbrances." (b)

(3) Charges for work and services done by the corporation upon the default of the owners of real estate, etc., These are also provided for by s. 703.

As to the date on which the lien attaches see *Hove Local Board* v. *Monarch Investment Building Society* (c); as to the nature and extent of the interest affected, *Corporation of Birmingham* v. *Baker*, (d) *Guardians of Tendring Union* v. *Dowton*. (e)

As to the priority of the lien over all other liens, charges and incumbrances except those in favour of the Crown see "*The Assessment Act*," s. 120. (f)

County by-laws for raising more than $20,000 in any one term to be submitted to electors.

388. A county council elected under this Act may, during any one term for which it is elected raise by a by-law or by-laws for contracting debts or loans not more than $20,000 over and above the sums required for its ordinary expenditure without submitting such by-law or by-laws for the assent of the electors. 59 V. c. 52, s. 37; 60 V. c. 15, *Sched.* C. (125).

Taken from the Act of 1858, (22 V. c. 99) s. 223, under which the debt of $20,000 might be incurred within a year. The term of office of county councillors having been extended to two years by "*The County Councils Act, 1896*," the section was amended as above by 60 V.c. 15, Sched. C. (125). See s. 390.

(a) "**Ordinary expenditure.**" See note (d) to s. 389.

By-laws for raising money not for ordinary expenditure must (with certain exceptions) receive assent of electors.

389.—(1) Subject to the provisions of the last preceding section, every by-law (except for drainage, as provided for under *The Municipal Drainage Act*, or for a work payable entirely by local assessment) for raising, upon the credit of the municipality, any money not required for its ordinary expenditure, and not payable within the same municipal year, shall, before the final passing thereof, receive the assent of the electors of the municipality in the manner provided for in section 338 and following sections of this Act. 55 V. c. 42, s. 344 (1), *part*; 59 V. c. 52, s. 37; 60 V. c. 15, *Sched.* C. (65).

Exception as to erecting court houses and offices.

(2) But where a county and city are united for judicial purposes, the council of the county or city may, at any meeting of the council without submitting the same for the assent of the electors of such county or city, as the case may be, pass a by-law or by-laws for contracting a debt, by raising such sums of money as may be required for erecting, building and furnishing a court house and offices to be used in connection therewith, and for acquiring such land as may be necessary or convenient for the purposes of such court house and offices, and may for that purpose issue debentures at such rates and upon such terms and payable at such times as they may do for meeting any other liability of the said county or city. 55 V. c. 42, s. 344 (2); 60 V. c. 15, *Sched.* C. (66).

(a) *Re McCutchon and City of Toronto*. 22 U.C.R. 613 (1863).

(b) *Moore* v. *Hynes*, supra; *Bank of Montreal* v. *Fox*, 6 P.R. 217 (1875); *Squire* v. *Oliver* 24 Grant 441 (1876); *Re Armstrong*, 12 O.R. 457 (1886).

(c) 23 Q.B.D. 149; 24 Q.B.D. 1 (1890).

(d) 17 Ch. D. 782 (1880).

(e) 45 Ch. D. 583, (1891) 3 Ch. 265.

(f) R.S.O. c. 224.

Sec. 389 (3).

Notes (a)-(e).

Exception as to payment by a city or town of share of county debt.

(3) The council of a city or of a town withdrawn from the county, may, by by-law passed at any meeting of the council, without submitting the same for the assent of the electors, raise such sums of money as may be required to liquidate their share of the county debt (as awarded or agreed upon pursuant to this Act), and may, for that purpose, issue debentures at such rates, for such times and upon such terms as they are entitled to do for meeting any other liability of said city or town. 55 V. c. 42, s. 344 (3).

Taken from the Act of 1858 (22 V. c. 99) s. 223. The exception as to drainage by-laws and by-laws for works payable by local assessment, was created by the Act of 1866, (29-30 V. c. 5) ss. 227 and 305; as to by-laws for the erection, etc., of court-houses, (sub. 2) by 14 V. c. 25, s. 6, (1881), and as to by-laws by a separated city or town for raising its share of the county debt, (sub.-s. 3) by 49 V. c. 37, s. 7. (1886).

(a) **"Every by-law except for drainage as provided for under "The Municipal Drainage Act,"** etc. See as to such by-laws, R.S.O. c. 226, ss. 19, *etseq.*

(b) **"Or for a work payable entirely by local assessment."** These words have not been altered since 1866, when they first appeared in the section. They are now not strictly accurate; see ss. 675, 678 and 685, which authorize the passing without the assent of the electors of by-laws creating debts for works the cost of which is not to be entirely paid by local assessment.

(c) **"For raising upon the credit of the municipality,"** *i.e.*, for creating a debt. The section does not in terms apply to any work which may be paid for out of the taxes of the year. (*a*)

(d) **"Its ordinary expenditure."** This expression has apparently the same meaning as the words "the current annual expenses of the municipality" in s. 402 (2) and covers "salaries of officers, ordinary repairs and works of that kind . . . which must be provided for year by year; as distinguished from that which is to last for many years," *e.g.*, erecting an engine house or constructing extensive sewer works. (*b*)

For examples of what cannot be considered as "ordinary expenditure," see *Scott* v. *Town of Peterborough*, (*c*) (bridge across the River Otonabee); *McMaster* v. *Town of Newmarket*, (*d*) (erection of town hall); *Cross* v. *City of Ottawa*, (*e*) (construction of main drain); *Wright* v. *County of Grey*, (*f*) (grading and ditching 177 miles of road); *Oliver* v. *City of Ottawa*, (*g*) (bridge across the River Ottawa); but in *County of Wentworth* v. *City of Hamilton*, (*h*) the amount payable as the city's share of the expense of maintaining prisoners in the county gaol was held to be within their ordinary expenditure.

(e) **"And not payable within the same municipal year."**

> "I incline to think that any appropriation of moneys for other than ordinary purposes, whether payable within the year or not, requires the express sanction of the ratepayers. I am led to this conclusion from the exception in regard to county councils." (*i*)

The town of St. Catharines had been authorized to issue debentures to the amount of £45,248, for the liquidation of which a special rate was directed to be levied, the proceeds of which were directed to be invested to form a sinking fund for this purpose. By the Act the town was prohibited (except for the construction of water-works) from passing any by-law to create any new debt extending beyond the year in which the by-law was passed, until the debt was reduced to £25,000. The special rate authorized to be imposed had been duly levied and collected, but it was alleged that instead of investing the proceeds to form a

(*a*) *Re McMaster and Town of Newmarket*, 11 C.P. 398, 403 (1861). But see the dictum of SPRAGGE, V. C., in *Edinburgh Life Assurance Company* v. *Town of St. Catharines*, 10 Grant 379, 388 (1864), quoted in note (e).

(*b*) *Per* WILSON, J., in *Potts* v. *Village of Dunnville*, 38 U.C.R. 96, 102 (1876).

(*c*) 19 U.C.R. 469 (1860). (*d*) 11 C.P. 398 (1861). (*e*) 23 U.C.R. 288 (1864).

(*f*) 2 C.P. 479 (1862). (*g*) 20 A.R. 529 (1893). (*h*) 34 U.C.R. 585 (1874).

(*i*) *Per* SPRAGGE, V.C., in *Edinburgh Life Assurance Company* v. *City of St. Catharines*, 10 Grant 379, (1864) at p. 388.

Sec. 389.

Note (e).

When by-laws require assent of electors.

sinking fund for the payment of the debentures these proceeds had been applied to the general purposes of the town. The defendants denied the misapplication of the fund, but did not shew how it had been applied. With the view of inducing the county council to remove the county town of Lincoln from Niagara to St. Catharines, the town council of St. Catharines, without any by-law authorizing the same, contracted with certain builders to erect, at an outlay of £3,000, a gaol and court house for the use of the county, to be completed in two years. Upon an application at the instance of the holders of the debentures issued under the first mentioned Act, the Court restrained the town from suffering or permitting the buildings to be proceeded with. On appeal, the injunction was dissolved, it appearing that the contract had been cancelled, and that no liability had been incurred by the corporation extending beyond the current year. If it had been shewn that any act of the corporation would have had the effect of incurring a liability payable in a future year, the injunction would have been continued to the hearing.(*a*)

In *Re Carpenter and Township of Barton*,(*b*) the facts were as follows :—

A by-law had been passed by the City of Hamilton on the 10th of January, 1887, granting $5,000 towards the construction of one of several "free roads", leading into the city, to be paid for when and so soon as the sum of $3,500 should have been contributed by the corporation of the Township of Barton, or any other municipality and private subscribers and should have been actually expended on the work of the construction of the said roads or on the purchase of the right of way therefor. The payment was also to be made conditional on the construction of the roads in the manner and on the terms stated in the by-law and subject to certain conditions therein contained. Among these was a condition that no money should be paid until the council of the Township of Barton should have passed a by-law for the assumption of the said roads, and their proper maintenance by the township, and until an agreement should have been entered into between the township and the City of Hamilton, providing for the maintenance of the said roads in a proper state of repair, and as free roads for all time to come ; and it was further provided that before any moneys were paid, the city was to be satisfied that the eastern free road would provide connection with the present system of township roads to secure free travel from the top of the mountain, etc. No date was fixed for doing the work or for paying the money, and no provision made for levying the amount during the municipal year, nor was the by-law submitted to the vote of the ratepayers.

Held, that the by-law created a future, indefinite and contingent liability, and, if it was valid at all, it should have been submitted to a vote of the ratepayers.

In *Kerfoot* v. *Village of Watford* (*c*), the facts were as follows :—

The construction of a drain being alleged to be necessary, both for sanitary reasons and for the purpose of keeping in repair the highway under which a portion of it passed, the defendants resolved to construct it if necessary as part of the ordinary expenditure of the current year, but nevertheless submitted to the electors a by-law for the cost of its construction, which by-law was defeated. The council, however, proceeded with the construction of the drain; and again a second time in the same year submitted a by-law, which was carried. It appeared that the drain might have been paid for out of the ordinary expenditure of the year without exceeding the statutory limit of taxation.

Held, that the first by-law having been defeated did not prevent the submission of the second in the same year, nor did the fact of the work having been commenced as part of the ordinary expenditure for the year prevent the defendants (after the defeat of the first by-law) from submitting a second by-law for the construction of the drain.

Certain by-laws of county councils not to be valid unless passed at meeting specially called and held three months after notice, etc.

390. Except in the case provided for by subsection 2 of the last preceding section, no by-law of a county council for contracting any such debt or loan as is mentioned in section 388 of this Act, shall be valid, unless the same is passed at a meeting of the council specially called for the purpose of considering the same, and held not less than three months after a copy of the by-law, as the same is ultimately passed, to-

(*a*) 10 Grant 379 (1864). (*b*) 15 O.R. 55 (1888). (*c*) 24 O. R. 235 (1893).

gether with a notice of the day appointed for the meeting, has been published in some newspaper issued weekly or oftener within the county (as constituted for judicial purposes), or if there is no such public newspaper, then in a public newspaper published nearest to the county, which said notice may be to the effect following:

Form of notice.

The above is a true copy of a proposed by-law to be taken into consideration by the county council of the County (*or* United Counties) of at , in the said County (*or* United Counties), on the day of , 19 , at the hour of o'clock in the noon, at which time and place the members of the Council are hereby required to attend for the purposes aforesaid.

G. H.
Clerk.

55 V. c. 42, s. 345.

The original of this section is 14-15 V. c. 109, s. 16, which applied to all municipal councils. Its application was restricted to county councils by the Act of 1858, (22 V. c. 99), s. 224. *Cf.* 29-30 V. c. 51, s. 252; 37 V. c. 16, s. 8; 40 V. c. 7, Sched. "A" (175); 44 V. c. 24, s. 7; 46 V. c. 18, s. 347.

(a) "**No by-law . . . . shall be valid unless,**" etc. See note (a) to s. 383.

(b) "**A meeting of the Council specially called for the purpose of considering the same.**" See note (b) to s. 270.

(c) "**A copy of the by-law as the same is ultimately passed.**" If the by-law as passed materially differs from the published copy, it will be held invalid. (*a*)

Where part only of money raised, by-law may be repealed as to residue.

391. Where only part of a sum of money provided for by a by-law has been raised, the council may repeal the by-law as to any part of the residue, and as to a proportionate part of the special rate imposed therefor, provided (*a*) the repealing by-law recites the facts on which it is founded, (*b*) is appointed to take effect on the 31st day of December in the year of its passing, (*c*) does not affect any rates due, or penalties incurred before that day, and (*d*) is first approved by the Lieutenant-Governor in Council. 55 V. c. 42, s. 346.

Taken from the Act of 1858, (22 V. c. 99), s. 230.

(a) It is an erroneous impression that when once a municipal council has determined to contract a loan, in order, for example, to aid in advancing a public work, the whole matter of the by-law passed for that object is entirely out of their control, and not merely such parts of it as are necessary for securing those who have advanced money under its provisions. (*b*)

Until debt paid certain by-laws cannot be repealed.

392. After a debt has been contracted, the council shall not until the debt and interest have been paid, repeal the by-law under which the debt was contracted, or any by-law for paying the debt or the interest thereon, or for providing therefor a rate or additional rate, or for appropriating thereto the surplus income of any work or of any stock or interest therein, or money from any other source; and the council shall not alter a by-law providing any such rate, so as to diminish the amount

Nor altered.

(*a*) *Re Bryant and Township of Pittsburg*, 13 U.C.R. 347 (1855),—a case decided under the Act of 1851, (14-15 V. c. 109), s. 16; and see the cases collected in note (c) to s. 384.

(*b*) *Re Hill and Township of Walsingham*, 9 U.C.R. 310 (1851). See also s. 412.

Secs. 392-394.

Exceptions.

to be levied under the by-law, except in the cases herein authorized, and shall not apply to any other purpose any money of the corporation which, not having been previously otherwise appropriated by any by-law or resolution, has been directed to be applied to such payment. 55 V. c. 42, s. 347.

Taken from the Act of 1858, (22 V. c. 99), s. 231. *Cf.* 14-15 V. c. 109, Sched. A (24).

(a) This section creates in favour of the municipal creditor an exception to the general rule that a corporation may amend or repeal its by-laws. (*a*)

(b) "**Any by-law for appropriating thereto the surplus income of any work or of any stock or interest therein or money from any other source.**" Such by-laws are authorized by ss. 421 and 422.

(c) "**Except in the cases herein authorized:**" *viz.*, by ss. 390, 412 and 414. A by-law which does not comply with these conditions is invalid. (*b*)

No officer to neglect, etc., to carry out by-law for payment under colour of illegal by-law.

393. No officer of the municipality shall neglect or refuse to carry into effect a by law for paying a debt under colour of a by-law illegally attempting to repeal such first-mentioned by-law, or to alter the same so as to diminish the amount to be levied under it. 55 V. c. 42, s. 348.

Taken from the Act of 1858, (22 V. c. 99), s. 203.

(a) The original section, (22 V. c. 99, s. 203; 29-30 V. c. 51, s. 207), declared that

> "Such officer shall be guilty of a misdemeanour and be punished by fine or imprisonment or both at the discretion of the Court," etc.

The case is now governed by s. 138 of "*The Criminal Code, 1892*," which provides that

> "Every one is guilty of an indictable offence and liable to one year's imprisonment, who, without lawful excuse, disobeys any Act of the Parliament of Canada or of any Legislature in Canada by wilfully doing any act which it forbids, or omitting to do any act which it requires to be done, unless some penalty or other mode of punishment is expressly provided by law. (*c*)

Municipal councils may purchase public works, etc. and contract debts to the Crown.

Although no special or other annual rate settled thereby.

394. Any council may contract a debt to Her Majesty in the purchase of any of the public roads, harbours, bridges, buildings or other public works in Ontario, whether belonging to this Province or to the Dominion of Canada, or of any claim in respect of such works, or of any right to collect tolls on such road or bridge, or for making such road or bridge wholly or partly free from tolls; and may execute such bonds, deeds, covenants and other securities to Her Majesty as the council deems fit, for the payment of the price of any such public work or claim already sold or transferred, or which may be sold or transferred, or agreed to be sold or transferred to the municipal corporation, and for securing the performance and observance of all or any of the conditions of sale or transfer; and may also pass all necessary by-laws for any of the purposes aforesaid; and all such by-laws, debts, bonds, deeds, covenants and other securities shall be valid, although no

(*a*) S. 326.

(*b*) *Re Smith and Township of Oakland*, 24 C.P. 295 (1874).

(*c*) As to the meaning of "wilfully" see note (a) to s. 194.

special or annual rate has been settled or imposed, to be levied in each year, as provided by sections 384 to 386 of this Act. 55 V. c. 42, s. 349.

Secs. 394-396 (1). Purchase of public works.

Taken from 14-15 V. c. 124, s. 1 (1851). *Cf.* 12 V. c. 5, s. 12; 16 V. c. 181, s. 39.

(a) In *Re O'Neil and The United Counties of York and Peel*(a), RICHARDS, C.J. considered it open to argument whether a by-law passed under this section required the assent of the electors; but, as the Act now stands, s. 389—which requires such assent to be given except in cases under s, 390—would seem to be applicable.

395. The council may, in any by-law to be passed for the creation of such debt, or for the execution of such bonds, deeds, covenants or other securities as aforesaid to Her Majesty, or in any other by-law to be passed by the council, settle and impose a special rate per annum, of such amount as the council deem expedient, in addition to all other rates whatsoever, to be levied in each year upon the assessed rateable property within the municipality, for the payment and discharge of such debts, bonds, deeds, covenants or other securities, or some part thereof; and the by-laws shall be valid, although the rate settled or imposed thereby is less than is required by sections 384 to 386; and the said sections shall, so far as applicable, apply and extend to every such by-law, and the moneys raised or to be raised thereby, as fully in every respect as such provisions would extend or apply to any by-law enacted by any council for the creation of any debt as provided in the said sections, or to the moneys raised or to be raised thereby. 55 V. c. 42, s. 350.

Rates may be imposed for the payment of debts contracted with the Crown for such works.

Taken from 14-15 V. c. 124, s. 2 (1851).

DIVISION VII.—REGISTRATION OF BY-LAWS AND NOTICE THEREOF.

(SECS. 396-401.)

Synopsis.—Section 396 and 397 require—in the case of debenture by-laws—registration in the county registry-office and publication for three weeks in a newspaper of the by-law. Sec. 398 excepts local improvement and drainage by-laws,—which, however, may be registered. Ss. 399-401 declare what shall be the effect of such registration, and prescribe the procedure upon a motion to quash a by-law so registered.

396—(1) Subject to the provisions of section 398 of this Act, a duplicate original or a copy certified as hereinafter mentioned of every by-law passed by any municipality for contracting any debt, by the issue of debentures for a longer term than one year, and for levying rates for the payment of such debts on the rateable property of the municipality or any part thereof, shall, within four weeks after the final passing thereof, be transmitted by the clerk of the municipality, in the case of a county to the registrar of the registry division in which the county town is situate, and in the case of a local municipality to the registrar of the registry division in which the local municipality is situate.

By-laws creating debts to be registered.

(a) 15 C. P. 249 (1865).

Sec. 396 (2)-(6).

(2) The registrar shall receive and file in his office, and enter in the proper book, every by-law so transmitted to him.

Registration of by-laws.

Such book shall be called "The By-law Book" and shall contain the following particulars:—the registration number, the by-law number of the municipality, the title, the amount of the debt, the term of the debentures, the rate of interest, and the number of years over which the debentures are to extend, also whether the rates to be levied are upon the whole rateable property of the municipality or on part thereof.

Proof for registration.

(3) The by-law shall be certified and authenticated by the seal of the municipal corporation, and the signature of the head thereof or of the person presiding at the meeting at which the by-law has been made and passed, and that of the clerk of the corporation.

Inspection of registered by-laws.

(4) The copy so certified shall be opened to public inspection and examination at all reasonable times and hours upon payment of the proper fees.

Fees of registrar.

(5) The registrar shall be entitled to the fees following:

For the registration of each such certified copy	$2 00
For making search, inspecting each copy of by-law, and examining entries connected therewith	50

Penalty.

(6) Any clerk who neglects to perform within the proper period any duty devolving upon him in virtue of this section shall be subject to a fine of $200. to be recovered by prosecution in the name of the Attorney-General of Ontario in any court of competent jurisdiction, and in default of payment, to imprisonment for a period not exceeding twelve months. 55 V. c. 42, s 351; 60 V. c. 3, s. 3; 60 V. c. 45, ss. 7 (1) 47, 48.

Taken from 44 V. c. 24, s. 28. "Four weeks" substituted for "two weeks" in sub-s. 1 by 60 V. c. 45, s. 7 (1). The wording of sub. s. 1 amended by 60 V. c. 45, s. 47, and 62 V. (2nd Session) c. 26, s. 24 (1). Subsects 2-6 added by 60 V. c 45, s. 47, and the last clause of subs. 2 added by 62 V. (2nd Session) c. 26, s. 24 (2).

(a) **"Shall be transmitted."** "*The Corrupt and Illegal Practices Prevention Act, 1883*" (*a*) requires that within thirty-five days after the day on which the candidates returned at an election are declared elected, the election agent of every candidate shall transmit to the returning officer a true return respecting his election expenses.

Held, that the word "transmit" means "send;" and, therefore, that if the return is posted to the returning officer within the thirty-five days, the requirement of the Statute has been complied with, although the return may not reach the R. O. until after the expiration of the 35 days (*b*).

(b) **"Within four weeks."** In *Re Farlinger and Village of Morrisburg* (*c*), STREET, J., treated these words respecting registration as "merely directory," since the Act does not declare that non-compliance with the provisions of the section shall render the by-law invalid; but in *Sweeny* v. *Town of Smith's Falls* (*d*), OSLER, J. A., in giving judgment says, (p. 441):—

> "I cannot regard the requirement of s. 351 (*e*) as merely directory, having regard to the provisions of s. 352 (*f*) which makes the effect of registration dependent upon the performance of the provisions pre-

(*a*) Imp. Stat. 46-47 V. c. 51, ss. 33, 34.

(*b*) *Mackenzie* v. *Clark*, (1898) 2 Q. B. 251. See, however, *Ottawa* (Provincial Election), 34 C. L. J. N. S. 634 (1898).

(*c*) 16 O. R. 722, 724 (1889).

(*d*) 22 A. R. 429 (1895).

(*e*) Now s. 396.

(*f*) Now s. 399.

scribed by the former section. The case of *Re Farlinger and Village of Morrisburg* only decided that registration was not essential in the validity of a by-law, *i. e.*, that its non-registration within the time limited by the Statute did not *ipso facto* render it invalid."

Sec. 396 (6). Note (b).

But s. 399 having since this decision been amended by 60 V. c. 45, s. 7 (2) so as to give to a registration of the by-law before the sale of the debentures issued thereunder the same effect as if it had been registered within the four weeks—the above provision as to time—so far at all events as regards its effect upon the validity of the by-law—would probably be regarded as directory and not imperative.

(c) **"A fine of $200 to be recovered by prosecution in the name of the Attorney-General of Ontario in any Court of competent jurisdiction."**

It can scarcely have been intended that s. 704 of "*The Municipal Act*" should apply to a prosecution under this section, and that "any Justice of the Peace for the county or of the municipality in which the offence was committed "(*a*) should have power to sentence a municipal clerk to twelve months imprisonment. It would probably be held that the case was intended to be covered by s. 8 (31) of "*The Interpretation Act*," which is quoted in note (a) to s. 387, *ante*.

397.—(1) Notice of the passing of every such by-law which has not been submitted to the ratepayers, shall, immediately after the registration of the by-law, be published in such public newspaper, published either within the municipality, or in the county town, or in an adjoining local municipality, as the council may designate by resolution, and the publication thereof shall for the purpose aforesaid be continued in at least one number of such paper each week for three successive weeks. 55 V. c. 42, s. 352 (3).

Publication of notice.

(2) The notice shall be in the form following or to the like effect:

Form of notice.

Notice is hereby given that a by-law was passed by the of on the day of A.D. 19 . providing for the issue of debentures to the amount of $ for the purpose of and that such by-law was registered in the Registry Office of the county of on the day of A.D. 19 .

Any motion to quash or set aside the same or any part thereof, must be made within three months [*or (in the case provided for by section 400)* within one month] from the date of registration, and cannot be made thereafter.

Dated the day of 19

Clerk.

55 V. c. 42, s. 354.

Taken from 44 V. c. 24, s. 28 *part*, and s. 29, except the words included in the square brackets [ ] in lines 10 and 11 of subs. 2, which were added in the Revision of 1897.

(d) **"Every such by-law which has not been submitted to the ratepayers."** The only by-laws to which this section seems to apply are those passed under s. 389 (3) and s. 390; but local improvement by-laws (*b*) and drainage by-laws, (*c*) may be registered in the same way (*d*) and with the like effect. (*e*)

(b) **"Published in some public newspaper,"** etc. The only difference between the procedure prescribed by this section and the mode of promulgation provided for by s. 376 is that under s. 376 the copy of the by-law and notice may be published in a newspaper published in a *neighbouring* though not *adjoining* municipality.

(c) **"By resolution."** See note (e) to s. 325.

(*a*) See ss. 473, 704. (*b*) Secs. 664 *et seq.* (*c*) R.S.O. c. 236, s. 19 *et seq.*
(*d*) Sec. 398. (*e*) Sec. 400.

Secs. 398-399.

Exception as to local improvement by-laws.

398. Nothing in sections 396 to 401 inclusive contained shall make it obligatory upon any city, town or village to register any by-laws providing for the issue of debentures, passed under the provisions of *The Municipal Drainage Act*, or under the provisions of this Act relating to local improvements, but the same may be so registered at the option of the municipality. R.S.O. c. 184, s. 353.

Taken from 44 V. c. 24, s. 28 (1881).

Applications to set aside registered by-laws.

399.—(1) Every by-law registered under section 396 of this Act, or registered before the sale of the debentures issued thereunder, and also the said debentures shall be absolutely valid and binding upon the municipality, according to the terms thereof, and the by-law shall not be quashed or set aside on any ground whatever, unless, within three months from the registry thereof, an application or action to quash or set aside the same is made to some Court of competent jurisdiction, and a certificate under the hand and seal of the Clerk of the Court, stating that such action or proceeding has been brought or application made, has been registered in said registry office within the said period of three months. 55 V. c. 42, s 352 (1); 60 V c. 45, s. 7 (2).

Taken from 44 V. c. 24, s. 28 (1881); the words "or registered before the sale of the debentures issued thereunder" having been inserted in 1897 under the authority of 60 V. c. 45, s. 7 (2).

Form of certificate of pending action.

(2) The certificate shall be in the form or to the effect following:

In the (*Name of Court*)

This is to certify that in a certain action or proceeding in this Court, entitled the validity of by-law No. of the entitled has been called in question. (*If a portion only of the by-law is called in question, state the fact*).

Dated,

(Signed) *A. B.*
Clerk of

Seal.

55 V. c. 42, s. 356 (1).

Taken from 44 V. c. 24, s. 31, (1881).

Where by-law, or so much thereof as is not quashed, to be valid.

Certificate of dismissal of action.

(3) If the action or proceeding is dismissed, in whole or in part, then, on the expiration of three months from the date of the registration of the by-law, the by-law or so much thereof as is not the subject of the application, or is not quashed upon the application shall be absolutely valid and binding, according to the terms thereof. Upon the dismissal of such action or proceeding, a certificate to that effect may be registered in the said registry office. 55 V. c. 42, s. 352 (2).

Taken from 44 V. c. 24, s. 28, (1881).

(4) The certificate of dismissal of the action or proceeding shall be in the form or to the effect following:

Sec. 399 (4), (6), Note (a).

Form of certificate of dismissal of action.

In the (*Name of Court*)

I hereby certify that the action or proceeding in this Court, entitled calling in question the validity of by-law No. of the has been dismissed (*or if dismissed in part and granted in part, set out the order made, verbatim*).

Dated,

(Signed) *A. B.*
Clerk of

Seal.

Taken from 44 V. c. 24, s. 31, (1881). 55 V. c. 42, s. 356 (2).

(5) The registrar shall be entitled to the sum of fifty cents for registering either of said certificates. 55 V. c. 42, s. 356 (3).

Fee for registration.

Taken from 44 V. c. 24, s. 31, (1881).

(6) Nothing in this section contained shall be taken to make valid a by-law or the debentures issued thereunder where it appears on the face of such by-law that the provisions of sub-sections 4, 5, 8 and 9 of section 384 or the provisions of section 386 of this Act have not been substantially complied with. 55 V. c. 42, s. 352 (6); c. 43, s. 23.

Illegal by-laws not validated.

Taken from "*The Consolidated Municipal Act, 1892*," (55 V. c. 42), s. 352 (6).

(a) "**Shall be absolutely valid and binding upon the municipality . . . and . . . shall not be quashed or set aside on any ground whatever, unless.**" etc. In *Re Village of Georgetown and Stimson* (*a*), a by-law passed under all the proper formalities required by the Act, and for a purpose within the jurisdiction of the council, created a debt payable by instalments under s. 386, but the aggregate amounts payable in each year, instead of being "equal as nearly as may be," varied in different years from $600 to $3,975. The by-law had been assented to by the electors and had been duly registered under s. 396. The application to quash it was made within three months after the publication of a notice under s. 397. On a special case to test the validity of the by-law and of the debentures issued thereunder, it was,

Held, that the defect,—viz., the non-compliance with the requirements of s. 386 as to equality of the amount to be raised in each year—had been cured by the registration, and that the by-law and debentures were valid and binding on the municipality.

Since that decision, however, subs. 6 of this section has been added, and the effect of registration has been thereby materially qualified.

In *Sutherland Mines Co.* v. *Township of Romney*, (*b*) a case decided since subs. 6 was passed—FERGUSON, J., expressed the opinion that a by-law registered under this section *and not attacked* (the certificate required by this section having been duly registered within the three months) is valid even though *ultra vires*. But for this expression of opinion by a very learned Judge, it might have been considered doubtful whether the registration of a debenture by-law under s. 396 could ever have been intended to cure a jurisdictional defect, *i. e.*, whether it could validate a by-law which assumed to ordain, prescribe or direct something beyond the jurisdiction of the Council (*c*). And, notwithstanding this dictum, it would seem better to hold that since the passing of subs. 6 the validating effect of this section is restricted to defects (other than jurisdictional defects) not apparent on the face of the by-law, (or, if so apparent, not excluded by the language of subs. 6,)—*e. g.*, failure to comply with any of the formalities required by s. 338, or the omission or inaccuracy of recitals prescribed by s. 384 (10), *etc.*, (*d*).

(*a*) 23 O. R. 33 (1893). (*b*) 34 C. L. J. N. S. 695 (1898).

(*c*) See *per* OSLER, J., *Sweeny* v. *Town of Smith's Falls*, 22 A. R. 429 (1895), at p. 440.

(*d*) See *Bickford* v. *Town of Chatham*, 14 A. R. 32 (1886), *per* HAGARTY, C. J. O. at p. 36, and *s.c.*, 16 S. C. R. 235 (1888), *per* SIR WM. RITCHIE at p. 263, and *per* STRONG, J., at pp. 264-5.

Sec. 399 (6), - 400 Note (b).

(b) "An application . . to quash . . the same is made . . within . . three months."

Application to quash.

When notice of motion to quash the by-law is served—the affidavits to be used in support of the motion having first been filed as required by Con. Rule 524 (1897)—the application is "made" within the meaning of this section although the motion may not be brought on for hearing within the three months (*a*).

Per OSLER, J. A., (p. 455):—

"I think the applicant has sufficiently complied with the requirements of the Act. Section 399 enacts that every by-law registered under sec. 396 of the Act shall be absolutely valid and binding upon the municipality, according to the terms thereof, and shall not be quashed or set aside upon any ground whatever, unless, within three months from registry thereof, an *application* or *action* to quash or set aside the same *is made* (sic) *to some Court* of competent jurisdiction, and a certificate under the hand and seal of the officer of the Court, stating that such action or proceeding has been brought or application made has been registered in said registry office within the said period of three months. The issue of a writ on the very last day of the third month would have been in time. It need not have been served for months afterwards, though the opposite party, having notice of it by the registered certificate or otherwise, might have appeared to it and thus have forced the action on. Evidently what the Act requires is that some effective proceeding shall be taken within the prescribed time by which the municipality is brought into Court to defend the by law. There is nothing in the section which makes it necessary that the action or motion shall be brought on for trial or hearing during the three months. . . . By the service of the notice of motion, the affidavits in support of which have been already filed, the party is really brought into Court, and the Court is seised of the application. It may be necessary in such a case as this (though I do not so decide or express any opinion either way) to file the notice of motion and affidavit of service in order to obtain the certificate of the registrar for the purpose of registration, and so to comply with the other conditions of the section."

Irregularities in form not to invalidate debentures in certain cases.

400.—(1) Every by-law providing for the issue of debentures passed under the provisions of this Act relating to local improvements, where the same has been so registered, and the debentures issued thereunder, and the assessment made upon the real property therein mentioned shall, notwithstanding any defect of substance or form either in the by-law itself, or in the time and manner of passing the same, be absolutely valid and binding according to the terms thereof, upon the municipality and upon such real property, and shall not be quashed or set aside on any ground whatever, unless an application or action to quash or set aside the same is made to some Court of competent jurisdiction, within one month from the registry thereof. 55 V. c. 42, s. 352 (4); 60 V. c. 15, *Sched.* C (67); c. 45, ss. 4, 5.

Taken from 60 V. c. 45, s. 5 (1). *Cf.* 54 V. c. 42, s. 11 (4) (1891).

Application to by-laws passed under section 678.

(2) The provisions of this section shall also apply to all by-laws passed under section 678 of this Act, and to the debentures issued thereunder. 60 V. c. 45, s 5 (3).

(*a*) *Re Shaw and City of St. Thomas*, 18 P. R. 454 (1899).

And see *Re Sweetman and Tp. of Gosfield*, 13 P. R. 293, 297 (1889), *per* STREET, J. C.—(a case under "*The Municipal Drainage Act*," now R.S.O. c. 226)—; *Re Gallop & Central Queensland Meat Export Co.*, 25 Q. B. D. 230 (1890)—(motion to set aside an award)—; *Ex parte Viney*, 4 Ch. D. 794 (1877); *Christopher* v. *Croll*, 16 Q. B. D. 66 (1885).

(a) "**Shall . . be absolutely valid and binding,**" etc. See note (a) to s. 399.

(b) "**Unless an application . . . is made . . within one month,**" etc. As to when such an application will be considered as having been "made" see *Re Shaw and City of St. Thomas*, (a) cited in note (b) to s. 399.

Sec. 400.

Note (a), (b).

401. Where any action or proceeding is brought or taken or where an application is made to quash or set aside such by-law so registered, a certificate thereof under the hand and seal of the clerk of the Court in the form given in subsection 2 of section 399, or to the same effect, shall be registered in the proper registry office within five weeks from the date of registering the by-law, and in default thereof the Court may refuse to hear, or may dismiss any such action, proceeding, motion or application to quash or set aside the by-law. 55 V. c. 42, s. 352 (5); c. 45, ss. 4, 5.

Registration of certificate of application to quash.

Cf. 54 V. c. 42, s. 11 (5), (1891).

Division VIII.

BY-LAWS RESPECTING YEARLY RATES.

(Secs. 402-413).

Synopsis:—Sec. 402 prescribes the maximum and minimum amount, exclusive of school rates and local improvement rates, to be raised annually in taxes by every municipal corporation; s. 403, the basis upon which the rates shall be calculated; and ss. 404 and 405 (in general terms) the manner in which these rates shall be fixed, levied and collected.

Secs. 406-408 provide for the cases of deficiency or excess in the amount of the taxes so collected, and s. 409 the date in each year on which, as a rule, they shall be considered to fall due.

Sec. 411 provides that in the cases and subject to the conditions therein mentioned, a council may exempt certain industries from general municipal taxation; s. 410 relates only to debentures issued before Jan. 1st, 1867, and ss. 412 and 413 to debenture by-laws passed before March 11th, 1879.

402.—(1) The council of every municipal corporation, and of every provisional corporation, shall in each year assess and levy on the whole rateable property within its jurisdiction, a sufficient sum to pay all valid debts of the corporation, whether of principal or interest, falling due within the year; but no such council shall assess and levy in any one year more than an aggregate rate of two cents in the dollar on the actual value exclusive of school rates and local improvement rates. 55 V. c. 42, s. 357 (1); 60 V. c. 15, *Sched.* C. (68).

Yearly rates to be levied, sufficient to pay all debts payable within the year.

Aggregate rate limited to two cents in the dollar.

The first part of the sub-section (down to the word "but" in the fifth line) is taken from the Act of 1858, (22 V. c. 99) s. 221, the original of which is 12 V. c. 81, s. 177. The Act of 1866, (29-30 V. c. 51) s. 225 limited the aggregate rate per annum to two cents in the dollar exclusive of school rates. The further exception of local improvement rates was made in 1897 by 60 V. c. 15, Sched. A (68).

(a) "**A sufficient sum to pay all valid debts . . . falling due within the year; but no . . . more than two cents in the dollar,**" etc.

The maximum and minimum amounts of the annual tax rate are both fixed by this section.

(a) 18 P. R. 451 (1899).

Sec. 402 (1).

Notes (a)-(c).

By-laws respecting yearly rates.

Requisites of.

The holder of a municipal debenture can compel the Council to levy a rate sufficient to pay so much of any debt in which he is interested as matures during their year of office. (*a*) See also s. 418 (2) which imposes a penalty of disqualification from office for two years upon every member of a council which neglects to levy the amount required to be levied in any year for sinking-fund purposes. On the other hand, the rate for all purposes (including the amount payable in respect of debts previously created) must not exceed a certain limit, and the council may be restrained at the instance of a ratepayer from levying a larger rate. (*b*)

(b) "Shall assess and levy a sufficient sum."

To "assess" is to consider and determine the whole amount necessary to be raised by rate. (*c*)

To "levy" is to raise (*lever*) this amount by the machinery which "*The Assessment Act*" provides.

(c) "To pay all valid debts . . . falling due within the year."

The amount required by a by-law to be raised in any year towards making up the sinking fund necessary to pay off a debenture debt is "a debt" within the meaning of these words (*d*). So—in the case of a county, city or separated town—is any sum required to pay the municipality's share of the expenses of the administration of justice,(*e*) police maintenance,(*f*) the support, care and maintenance of prisoners in the county gaol (*g*) or of children sent to an industrial school (*h*), etc.

In *Mellish* v. *Town of Brantford*, (*i*) the defendants, being sued in 1851 for a debt contracted in 1850, pleaded that no provision had been made by the by-law creating the debt for the imposition of a special rate to be levied in each year for paying off the debt. *Held*, a good defence. (*j*)

Retrospective rates illegal.

The inconvenience of retrospective rates has long been known and recognized in England (*k*). "As a general rule a retrospective rate is illegal." (*l*)

In *County of Frontenac* v. *City of Kingston*, (*m*) it was held that an action by the county to recover some fifteen years arrears of the city's share of jurors' fees could not be maintained, since the defendants could not pay these arrears without levying a retrospective rate "upon a class of persons and out of property totally different from that which the Legislature, by the Acts imposing the obligation, had made specially liable for its discharge." But in a subsequent action between the same parties upon amended pleadings it was held that the plaintiffs were entitled to recover a judgment, although arrears for

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(*a*) *Clarke* v. *Town of Palmerston*, 6 O. R. 616 (1883).

(*b*) *Wilkie* v. *Village of Clinton*, 18 Grant 557 (1871)

(*c*) See *per* LORD ESHER, M. R. in *Mogg* v. *Clark*, 16 Q. B. D. 79, 82 (1885).

(*d*) *Wilkie* v. *Village of Clinton*, 18 Grant, 557 (1871); *Clarke* v. *Town of Palmerston*, 6 O. R. 616 (1883).

(*e*) See note (**A**) under s. 530.

(*f*) S. 492.

(*g*) S. 516.

(*h*) R. S. O., c. 304, ss. 16 (2), 30.

(*i*) 2 C. P. 35 (1851.)

(*j*) Similar defences were held good in *Scott* v. *Town of Peterborough*, 19 U. C. R. 469, (1860); *Wright* v. *County of Grey*, 12 C. P. 479, (1862); *Cross* v. *City of Ottawa*, 23 U. C. R. 288 (1864); *Potts* v. *Village of Dunnville*, 38 U. C. R. 96 (1876).

(*k*) See *Rex* v. *Haworth*, 12 East 556; *Attorney General* v. *Church*, 2 H. & M. 697; *Cortis* v. *Kent Waterworks Co.* 7 B. & C. 314; *Rex* v. *Flintshire*, 5 B. & Al. 761; *Woods* v. *Reed*, 2 M. & W. 777; *Jones* v. *Johnson*, 5 Ex. 862, 7 Ex. 452; *Reg.* v. *Wavell*, Dougl. 116; *Rex.* v. *Goodcheap*, 6 T. R. 159; *Attorney General* v. *Lichfield*, 11 Beav. 120; *Attorney General* v. *Wigan*, 18 Jurist 299; *Rex.* v. *Lichfield*, 4 Q. B. 893; *Re Bootle Overseers*, 7 Times L. R. 219, (1890).

(*l*) *Per* BRETT, L. J., in *Reg.* v. *Maidenhead*, 9 Q. B. D. 494, 504 (1882).

(*m*) 20 C. P. 49 (1869).

which the defendants had made no levy at the time might now be uncollectable, since a rate imposed therefor would be retrospective. (*a*)

In *Haynes* v. *Copland* (*b*), JOHN WILSON, J., says (at p. 168):

> "Suppose a valid debt was incurred in one year, and the corporation omitted to levy it in that year, does it become a less valid debt the next year? Is the debt paid or the duty extinguished by reason of the omission?"

Objects of and limitations upon amount of yearly rate.

The answer seems to be that a debt incurred by a municipal council without having money in hand to pay it, and without making provision for its payment either out of the year's taxes or by a debenture by-law, cannot be regarded as "a valid debt"; and that it is necessary for those who deal with municipal councils to see that their power to contract liabilities is exercised in accordance with the formalities prescribed by law (*c*).

Where an Act prohibited municipalities from "contracting any debt or pecuniary liability without fully providing in the ordinance creating the debt the means of paying the principal and interest of the debt so contracted," this was held inapplicable to ordinary street work forming part of the current expenditure of the corporation and payable out of current revenues (*d*). So where the words of the Act were "The council shall not create or permit to accrue any debts or liability which shall exceed," &c., this was held not to refer to liabilities arising *ex delicto* (*e*). Whether the granting of special power to a municipal corporation to aid particular railway enterprises does or does not repeal *pro tanto* a general provision limiting its power of taxation has in the United States been a subject of controversy and of much conflict of judicial opinion (*f*). The inclination of the Supreme Court of the United States seems to be in favour of the construction which restricts such a limitation to the exercise of the power of taxation in the ordinary course of municipal action (*g*). Generally speaking, the Legislature of Ontario, where it has intended that municipal corporations should have power to aid corporations notwithstanding the two-cent limitation, has so declared in the particular Act.

School rates.

(d). **"Exclusive of school rates."** The amount to be levied for school purposes is very properly excluded from the limitation of tax rates to two cents in the dollar, since the school rates are not fixed by the council, but by independent representative bodies (*h*).

(*a*) *County of Frontenac* v. *City of Kingston*, 30 U. C. R. 584 (1871); and see *s.c.* 32 U. C. R. 348 (1872); *Re Johnston & Trustees of S. S. No. 13 Harwich*, 30 U.C.R. 264 (1870); *Stratton* v. *Metropolitan Board of Works*, L. R. 10 C. P. 76 (1874); *City of Dartmouth* v. *The Queen*, 14 S. C. R. 45 (1886). In support of the proposition that inability to make a judgment productive is not a sufficient reason why it should not be obtained, where a legal liability exists, see *Pallister* v. *Gravesend*, 9 C. B. 744; *Kendall* v. *King*, 17 C. B. 483; *Payne* v. *Brecon*, 3 H. & N. 572; *Bush* v. *Martin*, 2 H. & C. 311; *Hartnell* v. *Ryde Commissioners*, 4 B. & S. 361; *Lewis* v. *Rochester*, 9 C. B. N. S. 401; *Hartley* v. *Mare*, 19 C. B. N. S. 85; *Scott* v. *Union S. S. No 1 Burgess and No. 2 Bathurst*, 19 U. C. R. 38 (1859), 21 C. P. 398 (1871); *Township of Eldersli* v. *Village of Paisley*, 8 O. R. 270 (1885); *Daw* v. *Ackerill*, 25 A.R. 37 (1898), *per* OSLER, J. A. at p. 41; *Port Arthur High School Board* v. *Town of Fort William*, 25 A. R. 522 (1898), *per* MOSS, J. A. at p. 530.

(*b*) 18 C. P. 150 (1868).

(*c*) See *per* ROBINSON, C. J. in *Scott* v. *Town of Peterborough*, 19 U.C.R. 469, 471 (1860); and the cases cited in *Canadian Pacific Railway Company* v. *Township of Chatham*, 22 A.R. 330, at p. 333 (1890), and in foot note (*j*) on page 41 of this work.

(*d*) *Reynolds* v. *Shreveport*, 13 La. Ann. 326.

(*e*) *McCracken* v. *San Francisco*, 16 Cal. 591.

(*f*) *Butz* v. *Muscatine*, 8 Wall. (U.S.) 575; *Clark* v. *Davenport*, 14 Iowa 494; *Learned* v. *Burlington*, 2 Am. Law Reg. N. S. 394, and note; *Leavenworth* v. *Norton*, 1 Kansas 432; *Barnes* v. *Atchison*, 2 Kansas 454; *Fosdick* v. *Perrysburg*, 14 Ohio St. 472; *Commonwealth* v. *Pittsburg*, 34 Pa. St. 496; Dillon, ss. 162, 769.

(*g*) *Amey* v. *Allegheny*, 24 How. (U.S.) 364.

(*h*) See "*The Public Schools Act*," (R.S.O. c. 292), ss. 66, 67, 70, 72; "*The High Schools Act*," (R.S.O. c. 293), ss. 31-36; "*The Separate Schools Act*," (R.S.O. c. 294), s. 58; *City of Winnipeg* v. *Canadian Pacific R. W. Co.*, 34 C. L. J. N. S. 706, 18 C. L. T. 370 (1898), referred to in note (**a**) to s. 411, *post*.

Sec. 402 (1). Note (d).

The words "school rates" in this section include the amount required to be annually raised to pay off debentures issued under s. 70 (1) of "*The Public Schools Act*," to pay for the purchase of a school site and the erection of a school house thereon (*a*).

Local improvement fund.

(3) "**And of local improvement rates.**" Rates imposed to pay the cost of local improvements (or "betterments" as they have been styled in the United States) are not, properly speaking, taxes (*b*). In making such improvements the municipality simply acts as an agent for the owners of the property to be benefitted thereby.

Provision when such aggregate not sufficient to pay debts payable within the year.

(2) If in a municipality the aggregate amount of the rates necessary for payment of the current annual expenses of the municipality, and of the interest and principal of the debts contracted by the municipality on or prior to the 29th day of March, 1873, exceeds the said aggregate rate of two cents in the dollar on the actual value of such rateable property, the council of the municipality shall levy such further rates as may be necessary to discharge obligations incurred up to that date, but shall contract no further debts until the annual rates required to be levied within the municipality are reduced within the aggregate rate aforesaid; but this shall not affect any special provisions to the contrary contained in any special Act now or hereafter in force. 55 V. c. 42, s. 357 (2).

Proviso.

This sub-section was added in 1893 by 29-30 V. c. 51, s. 225.

How rates to be calculated.

403. In counties and local municipalities the rates shall be calculated at so much in the dollar upon the actual value of all the real and personal property liable to assessment therein. 55 V. c. 42, s. 358.

Taken from the Assessment Act of 1866, (29-30 V. c. 53) s. 10. *Cf.* 13-14 V. c. 67, s. 11; 16 V. c. 182, s. 31.

Basis of assessment and levy.

(a) Prior to January 1st, 1867, (when the above enactment came into force,) property in cities, towns and villages was assessable at its annual value, and property in counties and townships at its actual value (*c*); and, for the purpose of apportioning county rates, provision was made for capitalizing the annual values assessed in towns and villages (*d*). But a *county* by-law imposing a rate *for county purposes* on actual value was held not to be illegal,—the provision that "in towns and villages" the assessment should be upon annual value being held to apply only to rates imposed by those municipalities for their own purposes (*e*). A by-law passed under "*The District Councils Act*," (*f*) imposing a tax of so much *per acre* on unoccupied or wild lands was held bad (*g*).

Estimates to be made annually.

404. The council of every county and of every local municipality shall every year make estimates of all sums which may be required for the lawful purposes of the county or local municipality, for the year in which such sums are required to be levied, each municipality making due allowance for the cost

(*a*) *Foster* v. *Village of Hintonburg*, 28 O. R. 221 (1897).

(*b*) Cooley on Taxation, 207: *St. Henri (City of)* v. *Coursol*, Q. R. 13 S. C. 222 (1898)

(*c*) 16 V. c. 182, s. 31; C. S. U. C. c. 55, s. 10.

(*d*) 16 V. c. 182, s. 33; C. S. U. C. c. 55, s. 73.

(*e*) *Grierson* v. *County of Ontario*, 9 U. C. R. 623 (1851).

(*f*) 4 & 5 V. c. 10.

(*g*) *Doe d. McGill* v. *Langton*, 9 U. C. R. 91 (1851)

of collection, and of the abatement and losses which may occur in the collection of the tax, and for taxes on the lands of non-residents which may not be collected. 55 V. c. 42, s. 359.

Taken from the Assessment Act of 1853, (16 V. c. 182) s. 31.

By-law respecting yearly rates.

Requisites of.

(a) It is not necessary that the by-law should set forth the estimates on which it is founded: the Court will intend that proper estimates have been made, in the absence of evidence that they are wanting. (*a*) Mentioning a specific sum to be raised for specific purposes "may be treated as setting forth an estimate that such a sum is required for these purposes.". (*b*) But a by-law which authorizes the levy for township purposes of certain moneys, and for county purposes, of *double* the amount required therefor by the county, is clearly bad.

> "To raise money for those same purposes to the full amount in one case, and to double the amount in the other, is, on the face of it, beyond the power of the township council, for it is exercising a power not only not conferred upon them, but expressly conferred upon another municipal corporation. The only argument offered to justify this course was that the township council has ascertained that, owing to the large proportion of lands held by non-residents, a sum very far short of that imposed by the county by-law would be collected by the collector on the roll; that a considerable deficiency would remain to be made up which the township treasurer would have no funds to meet, and therefore such a by-law was necessary to supply those funds..... If our decision had to rest upon any such ground, it would be indispensable that all those facts should be established before us; but we think, even assuming everything suggested, that this will not sustain the by-law, *which is not, on the face of it, directed to the purpose of meeting a deficiency.* (*c*)

A by-law enacting "that the sum of three pence in the pound be levied and raised on all rateable property, to raise the sum of £375, to defray all expenses of the township for the current year, *county and township included*, and a portion of the said sum to be laid out on repairs of roads and bridges as the council thinks most wanted, and if any balance remain, to be handed over to the credit of the council for the ensuing year," was quashed. (*d*)

DRAPER, J. says, (p. 135):—

> "In our opinion this by-law must be quashed altogether. As to the part imposing rates for county purposes, it is bad for the reason given in the preceding case [*Fletcher* v. *Township of Euphrasia*, supra] and then this by-law affords no means of telling how much must be deducted from the sum of £375 directed to be raised; nor yet can it be ascertained how much the rate of three pence in the pound must be reduced in order to raise that portion of £375 which the township council had authority to impose. There are also other apparent objections to this by-law which it is not necessary to advert to for the purpose of sustaining our judgment."

It is expressly provided (*e*) that—

Deficiency in amount collected.

"Every local municipal council, in paying over . . . its share of any county rate or any other tax or rate lawfully imposed for Provincial or local purposes *shall* supply out of the funds of the municipality *any deficiency arising from the non-payment of the tax*, but shall not be held answerable for any deficiency arising from the abatements of, or inability to collect the tax on *personal* property other than for county rates."

It has therefore been decided that a local municipality has no power to add to the column headed "County Rate" an allowance for the cost of collecting the county rate, for the abatements and losses which may occur in the

(*a*) *Fletcher* v. *Township of Euphrasia*, 13 U.C.R. 129 (1856).
(*b*) *Per* ROBINSON, C.J., *Ib.* 133.
(*c*) *Per* ROBINSON, C.J., *Fletcher* v. *Township of Euphrasia*, *supra at p.* 132.
(*d*) *White* v. *Township of Collingwood*, 13 U. C. R. 134 (1856).
(*e*) See s. 223 of "*The Assessment Act*" (R.S.O. c. 224.)

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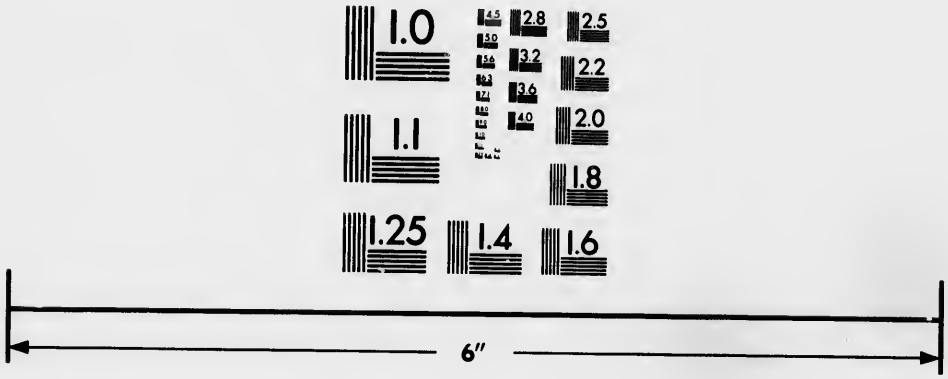

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Sec. 404.
Note (a).

collection of it, and for the taxes on the lands of non-residents which may not be collected. (a) In the last case, MOWAT, V. C., said, (b)

Deficiency in amount of taxes realized.

"The addition to the county rate column [of a percentage] for the cost of collection [and] for the possible deficiency in respect of the taxes on the lands of non-residents seems to me to have been an error. I think the allowance should not have been made in that column. The [Act] expressly directed the township to supply *out of the general funds of the municipality* any deficiency arising from the non-payment of the tax on land. The amount of the rate in respect of their unpaid taxes on land being made good to the county out of the general funds of the township becomes, as from time to time afterwards realized, part of the general funds of the township. The policy of the Legislature appears to have been to guard as far as possible the moneys raised in the township by its municipal authority for Provincial, county, school and other special purposes from the control of the township council, these moneys not being raised by their authority, or not going to purposes over which they have jurisdiction."

And again; (c)

"It is now suggested that the 11th section of "*The Assessment Act*" (d) . . . . sanctions what was done here. That section directs every local municipality in the estimates of the year to "make due allowance" etc., but says nothing as to the column in which the allowance is to be entered . . . I think it is sufficiently apparent . . . that it is contrary to the intention and policy of the Legislature that the township should mix up in the "county rate" column, money of which they are to have the control, with the money levied for the county."

By-laws for raising money by rate.

405. The council of every municipality may pass one by-law, or several by-laws, authorizing the levying and collecting of a rate or rates of so much in the dollar upon the assessed value of the property therein as the council deems sufficient to raise the sums required on such estimates. 55 V. c. 42, s. 360.

Taken from 16 V. c. 182, s. 31 (1853).

(a) "One by-law or several by-laws."

It is quite possible that, owing to the causes mentioned in s. 404, the taxes collected may fall short of the amount required. The deficiency may be made up, either (1) by imposing a further rate under this section or (2) (if there are unappropriated funds on hand) by a by-law under s. 406.

(b) As to the effect of promulgating a by-law passed under this section see s. 380.

If the amount collected falls short.

406. If the amount collected falls short of the sums required, the council may direct the deficiency to be made up from any unappropriated fund belonging to the municipality. 55 V. c. 42, s. 361.

Taken from 16 V. c. 182, s. 31 (1853).

Estimates may be reduced.

407. If there is no unappropriated fund, the deficiency may be equally deducted from the sums estimated as required, or from any one or more of them. 55 V. c. 42, s. 362.

Taken from 16 V. c. 182, s. 31 (1853).

(a) *Grier* v. *Township of St. Vincent*, 12 Grant 330; *s. c.* 13 Grant 512.
(b) 13 Grant, at pp. 518-519. (c) *Ibid*, p 520. (d) Now s. 404 of this Act.

Secs. 408, 409.

When sums collected exceed estimates: appropriation of balance.

408. If the sums collected exceed the estimates, the balance shall form part of the general fund of the municipality, and be at the disposal of the council, unless otherwise specially appropriated; but if any portion of the amount in excess has been collected on account of a special tax upon any particular locality, the amount in excess collected on account of such special tax shall be appropriated to the special local object. 55 V. c. 42, s. 363.

Taken from 16 V. c. 182, s. 31 (1853). The wording of the second clause has since been altered by 29-30 V. c. 53, s. 17.

(4) The preceding sections (404 to 408 inclusive) relate more particularly to general estimates for general purposes. But the proceeds of special local rates are ear-marked and must be applied to the purposes for which they are raised and to no other purpose (*a*).

Yearly taxes to be computed from 1st Jan. unless otherwise ordered.

409. The taxes or rates imposed or levied for any year shall be considered to have been imposed and to be due on and from the 1st day of January of the then current year ending with the 31st day of December thereof, unless otherwise expressly provided by the enactment or by-law under which the same are directed to be levied. 55 V. c. 42, s. 364.

Taken from the Assessment Act of 1866, (29-30 V. c. 53) s. 18.

When yearly taxes are "due."

(a) It had been declared by the Assessment Act, of 1853 (*b*), that the taxes or rates imposed or levied for any year should be considered *to have been imposed* for the then current year commencing with January 1st and ending with December 31st, unless otherwise expressly provided, etc. In *Ford* v. *Proudfoot* (*c*) *Corbett* v. *Taylor*, (*d*) and *Bell* v. *McLean*, (*e*) it was contended that this meant that the taxes for the year should be considered *as due* on and from the 1st of January; but the Court refused so to interpret the section.

In *Corbett* v. *Taylor* (*d*) DRAPER, C.J., said, (p. 456):—

> "We do not so interpret this section of the Statute. We read it as intended [merely] to fix the fiscal year for all municipalities for the purposes of rates and taxes, and as providing that, no matter in what part of a year a by-law imposing rates and taxes may be passed, the taxes shall be considered as imposed for the whole current year."

In *Bell* v. *McLean*, (*e*) WILSON J., said, (p. 421):—

> "In one sense the tax may be said to be "due" when it is imposed by the passage of a by-law for that purpose; but it cannot be strictly said to be due until the collector has got his roll; nor even then,—for he cannot distrain nor take any compulsory proceeding to enforce payment until he has called at least once on the party taxed and demanded payment, or has transmitted a statement by post demanding payment if the party be non-resident within the municipality."

And again,

> "A person who pays the taxes imposed upon him for a particular year before the end of that year pays the amount in advance. He pays it up to a day which has not yet arrived. The time for its payment has gone by, but the time for its complete accrual has still to come."

(*a*) See ss. 410, 418 (2), 429 (1); *Re Barber and City of Ottawa*, 39 U. C. R. 406, (1876); *Reg. ex rel Cavanagh* v. *Smith*, 26 O. R. 632, (1895), *per* BOYD, C. at p. 636.

(*b*) 16 V. c. 162, s. 14; C. S. U. C. c. 55, s. 16.

(*c*) 9 Grant 478, (1862).

(*d*) 23 U. C. R. 454, (1864).

(*e*) 18 C. P. 416, (1868).

Secs. 409.

Note (a). When annual taxes are "due."

The section was amended in 1866, so as to provide that the year's taxes should not only have been considered to have been imposed for the year beginning with January 1st but also that they should be considered as "due" on and from January 1st.

The meaning of the section, as thus amended, was very fully discussed in *Chamberlain* v. *Turner* (a) where, under a by-law of the City of Toronto providing that the taxes for the year should be due on June 4th, a tax collector left with the plaintiff on May 20th a tax bill shewing the amount of his taxes, and (without further demand) issued a distress warrant on June 12th and sold the plaintiff's goods under it on June 18th.

It was held that the delivery of the bill on May 20th, before the taxes were due—even if it could be considered a demand of the taxes within the meaning of s. 134 (1) of "*The Assessment Act*," (since amended)—was of no avail, the taxes not yet being "due," and that the sale of plaintiff's goods was therefore illegal. WILSON, C. J., in giving judgment says (b):—

> "The section referred to cannot be given effect to in the terms in which it is expressed. The taxes may be "considered to have been imposed and to be due on and from the first of January," &c., after they have been ascertained and declared, but not before; for until then they have no existence; *i. e.* the taxes when imposed shall have a retroactive effect, and be due at that antecedent period; and that may be so consistently and properly enough in computing the time for the sale of lands in arrear for taxes, as in *Woods* v. *Bell*, (c) or in arrangements between landlord and tenant, vendor and purchaser, and perhaps in other cases. But when the Statute says the taxes shall not only "be considered to have been imposed," but shall "be *due* on and from the first of January," &c., it cannot mean that,—because not only are there no taxes until they are fixed, but also because they cannot be sued or distrained for until a demand has been made for them by the collector."

The effect of the section was still further considered in *Goldie* v. *Johns*, (f) by OSLER, J. A., who says (g):—

> "The section relates merely to the period of the fiscal year, and not to a postponement of the time for payment of the taxes of the year, which, though "due" from the commencement of the year, are not payable or in arrear until the collector has received his roll and has taken the necessary steps to enable him to distrain. The word "due" has no relation to the time of payment of the taxes, or to their being in arrear, referring back as it does to a period when they have not even been ascertained."

And again:—

> "One object of the amendment [of 1866] was probably to simplify the mode of ascertaining when taxes could be said to be due, for the purpose of selling lands for taxes and computing the time necessary to elapse before they could be offered for sale, thus removing the objections which invalidated the sales in question in *Ford* v. *Proudfoot*, (h) *Kelly* v. *Macklem* (i) and *Connor* v. *Macpherson* (j)."

In *Dennney* v. *Dorr*, ( ) the defendant in purchasing a business covenanted to pay all debts and liabilities due or accruing, contracted by the vendor in connection therewith. At the time of the agreement the stock in trade had been assessed, but the rate was not imposed nor the amount of taxes ascertained until some time afterwards. *Held*, that until the rate had been struck the taxes were not "a debt or liability due or accruing contracted by the vendor."

Priority of debentures.

410.—(1) All debentures issued before the 1st day of January, 1867, by municipal corporations, under any by-law, and based upon the yearly value of rateable property at the time of the passing of such by-law, shall hold the order of priority

(a) 31 C. P. 460 (1881).
(b) P. 460.
(c) 29 C. P. 403 (1878).
(f) 16 A. R. 129 (1889).
(g) P. 134.
(h) 9 Grant 478 (1862).
(i) 14 Grant 29 (1867).
(j) 18 Grant 607 (1871).
(k) 4 O. R. 206, (1883). And see *Barrowman* v. *Fader*, 31 Nova Scotia Rep. 20 (1898).

Sec. 410. Note (a).

which they occupied on the said 1st day of January, 1867: and each municipal corporation having so issued debentures shall levy a rate on the actual real value of the rateable property within the municipality, sufficient to produce a sum equal to that leviable or produced on the yearly value of such property as established by the assessment roll for the year 1866; and such rates shall be applied solely to the payment of such debentures, or of the interest on such debentures, according to the terms of the by-laws under which they were issued.

How rates for paying them to be calculated.

To be applied solely by such purposes.

(2) In cases where a sinking fund is required to be provided either by the investment of a specific rate or amount, or on a rate on the increase in value over a certain sum, then such a rate shall be levied as shall at least equal the sum originally intended to be set apart. 55 V. c. 42, s. 365.

Rate for sinking fund.

Taken from the Assessment Act of 1866, (29-30 V. c. 53) s. 11.

(a) See note (a) to section 403. Few, if any, debentures issued before January 1st, 1867 can be still current.

411.—*(a)* Every municipal council may by by-law exempt any manufacturing establishment or any building for the storage of ice for commercial purposes or any waterworks or water company in whole or in part from taxation except as to school taxes for any period not longer than ten years and to ["may"] renew this exemption for a further period not exceeding ten years.

By-laws for exemption from taxation.

(*b*) No such by-law shall be passed until the assent of the electors has been obtained in conformity with the provisions of this Act in respect of by-laws for creating debts.

Assent of electors required.

(*c*) To render valid a by-law of a municipality for granting exemption from taxation under this section the assent shall be necessary of two-thirds of all the electors on the voters' list as well as of a majority of the electors voting on the by-law.

What majority necessary.

(*d*) In addition to the certificate required by section 364 of this Act, the clerk in case of a majority of the votes being in favour of the by-law shall further certify whether or not as far as shown by the voters' lists such majority appears to be two-thirds of all the electors who are entitled to vote on the by-law.

Certificate of Clerk.

(*e*) The provisions of subsections 3 and 4 of section 366 of *The Municipal Act* shall apply to any such by-law.

Sec. 366, sub-s. 3, 4 to apply.

(*f*) Nothing in this section contained shall affect any by-law or agreement existing in the 1st day of April, 1899

Existing by-laws and agreements.

(*g*) Nothing in this section contained shall prevent a municipal council from completing any agreements or arrangements, negotiations in respect of which were carried on prior to April 1st, 1899, and were then pending with a view to exemption from taxation in whole or in part of any company or companies not situated in any other municipality of this Province under the provisions of *The Municipal Act* as they

Completion of negotiations begun before Act.

Sec. 411. Note (a).

existed prior to the said date; but any such agreements or arrangements may be completed and carried out as though this section had not been passed; nor shall it be necessary to submit any by-law for such purpose to the vote of the electors of the municipality. Provided nevertheless that any such agreement or arrangement shall be completed on or before the 1st day of September, 1899. 62 V. (2nd Session) c. 26, s. 25.

The power of municipal councils to exempt manufacturing establishments from taxation was first conferred in 1868 by 31 V. c. 30, s. 44. Under that Act municipalities were authorized to exempt from taxation for any period not longer than five years "manufacturers of woollens, cottons, glass, paper and such (?) other commodities of the like nature." In 1869 this power was extended so as to cover "any manufacturing establishment," (33 V. c. 26, s. 15.) In the Act of 1873, (36 V. c. 48, s. 259,) the section read:

> "Every municipal council shall have the power of exempting any manufacturing establishment in whole or in part from taxation for any period not longer than ten years, and to renew this exemption for a further period not extending ten years."

In 1882 similar power was conferred in respect to "any water-works or water company." In 1884, (47 V. c. 32, s. 8), a vote of two-thirds of the members of the council was made necessary in every case. The words "except as to school taxes" were added in the Revision of 1892, (55 V. c. 42, s. 368; see also R.S.O. c. 292 s. 75); and the section was again amended in 1895 so as to include "any building for the storage of ice for commercial purposes," (58 V. c. 42, s. 14). See R. S. O. c. 208, s. 25 as to the power of a municipal council to exempt from taxation the property of a street railway company and the income derived therefrom by the shareholders. As to the former power of municipal councils to aid manufacturing establishments by way of bonus, see note **A** to s. 591, *post*.

(**a**) A by-law under 31 V. c. 30, s. 44 exempting "new manufactories" only, and limited to those doing a specified amount of business, was held bad. (*a*)

Per A. WILSON J. (*b*):—

> "The by-law provides that every person, firm, or corporation, who shall thereafter commence and proceed to carry on any *new manufacture* of the nature contemplated by the Statute, shall be exempt, &c. It appears to me that this is clearly bad, as it is giving a benefit to new businesses over prior established businesses of the same kind. I do not think it would be against the Statute to provide that *all* cotton manufacturers should be exempt from taxation; because it places all persons of the same line of business on the same footing, without giving any advantages or privileges to one or more of that trade over the others. Nor do I think it would be bad because it gave *cotton* manufacturers some advantage over woollen or other manufacturers, for the Statute did not intend that every kind of manufacture should be exempted or that none of them should, but that all or any of them should be exempted as the council of the municipality might deem advisable. There might be special reasons which might induce them to cultivate and encourage one or more branches of trade that did not apply to other branches. But in no case—is A., of the cotton or any particular trade, to get a benefit which B. of the same trade is not to get also. For this is a monopoly of the worst description, and it cannot be necessary either for the proper stimulus of the *trade*, though it may stimulate A. very wonderfully in that trade, but then only at the expense of B. I also think, that if one manufacturer is to be exempt, that all manufacturers of the same trade must be exempt, though they do not each employ in carrying on business a sum exceeding $1,000, and though they do not each pay weekly in wages to operatives a sum exceeding $30. For this is to protect the large business against the small beginning, and it is well known that a large trade is always conducted more economically in proportion than a small one, and requires less protection. It is as vicious a distinction to make between the capitalist and the energetic handicraftsman, as it is to make between the old and the new manufacturer."

An exemption should not be granted arbitrarily; there ought to be a sufficient public benefit to the tax-payers of the locality to sustain a by-law, and to support the exemption there must be a good and valid consideration which should be in some way connected with the business of the manufacturing establishment. Where a municipality agreed with the owner to exempt two existing

(*a*) *Re Pirie and Town of Dundas*, 29 U. C. R. 401 (1869).

(*b*) P. 407.

Sec. 411.

Notes (a), (d).

By-laws exempting manufacturing establishments, etc., from taxation.

manufacturing establishments in consideration of his paying a sum of $1,800 (which the municipality had agreed to pay to a railway company) and providing also the right of way upon the company building a switch into the town, it was held that there was not a proper public consideration from T, and that the agreement was in effect a sale of an exemption; and a by-law passed by the municipality for the purpose, but not submitted to the ratepayers, was quashed (*a*).

It would seem that such a by-law (if founded upon a good consideration) may be looked upon as a contract; and that after its terms have been accepted and acted upon by the person in whose favour the exemption has been created, the by-law cannot be repealed without his consent (*b*).

The general rule is, that the burden of taxation should fall equally; and for this reason Statutes exempting particular persons or particular property from taxation are construed strictly. See notes to sec. 7 of "*The Assessment Act*."

A by-law exempting from taxation a manufacturing establishment "established for the purpose of carrying on the milling and grain merchant business," and the land held by it, was held bad as dealing with two kinds of business, the first of which alone there was power to exempt. The by-law was also held bad in exempting all the land and not the mill only, as other buildings suitable for the grain business might be erected thereon. The effect of the by-law was to discriminate against other large milling establishments in the municipality, and the by-law was held bad on this ground also (*c*). A by-law limiting the assessment on property about to be used for manufacturing purposes to the value of the land without buildings is not valid under this section (*d*).

(b) **"Except as to school taxes."** In *City of Winnipeg* v. *Canadian Pacific R. W. Co.* (*e*) a by-law which exempted property of the defendants from "all municipal taxes, rates and levies and assessments of every nature and kind" was held not to exempt such property from school taxes.

Per CURIAM:—

> "The by-law being one of the municipal corporation, the inference would be that it was municipal taxation that was referred to. The words 'rates and levies and assessments' as used in the by-law mean just the same thing as 'taxes' with which they are collocated. The word 'municipal' in the enacting clause was manifestly used in the sense of pertaining or belonging to a municipality. As the by-law was one of a municipality incorporated as a city, the words 'municipal taxes,' etc., meant no more than would be expressed if the words had been 'city or corporation taxes,' etc" (*f*).

(c) **"And to renew such exemption for a further term of ten years."** The power to renew can only be exercised once; in other words, the total period of exemption cannot exceed twenty years (*g*).

(d) **"Electors."** As to the meaning of the word "electors" as used in clauses (*b*), (*c*), and (*d*), see note (**b**) to s. 338, *ante*.

(*a*) *Re Scott and Town of Tilsonbury*, 10 O. R. 119 (1885), 13 A. R. 233 (1886).

(*b*) See *per* ROSE, J. in *Alexander* v. *Village of Huntsville*, 24 O. R. 665 (1894) at p. 667, and *per* STREET, J. in *Reg. ex rel. Harding* v. *Bennett*, 27 O. R. 314 (1896), referred to in note (**m**) to s. 80, *ante*; Dillon, ss. 314, 450; *East Saginaw Manufacturing Co.* v. *East Saginaw*, 2 Am. Rep. 82; *People ex rel. Cunningham* v. *Roper*, 35 N. Y., 629. But, as to the effect to s. 56 on such a by-law, see note (**a**) to that section, and the Quebec case of *Stuart* v. *City of Montreal*, Q. R. 6 Q. B. 555 (1897.) In *Great Western R. W. Co.* v. *Township of North Cayuga*, 29 C. P. 28 (1873); *Wright* v. *Incorporated Synod of Huron*, 29 Grant 348 (1881), 11 S.C.R. 95 (1885) and *Water Commissioners of Windsor* v. *Canada Southern Railway Company*, 20 A. R. 388 (1893), the by-laws were held to be repealable under the circumstances of the cases respectively.

(*c*) *Re People's Milling Company and Town of Meaford*, 10 O. R. 405 (1885).

(*d*) *Re Deane and Town of Peterborough*, 10 O. R. 767 (1886).

(*e*) 34 C. L. J. N. S. 706 (1898)—better reported in 18 C. L. T. 370 (1898).

(*f*) But see *per* STREET, J., in *Reg. ex rel. Harding* v. *Bennett*, 27 O. R. 314 (1896), quoted in note (**m**) to s. 80, *ante*, p. 114.

(*g*) See as to the meaning of similar words in s. 249 of the C. L. P. Act, *Nelson* v. *Jarvis*, 13 C. P. 176 (1863).

Secs. 412 (1), 413.

When the rate imposed by a by-law may be reduced.

412.—(1) If, on account of a sum being on hand from a previous year, or a sum being on hand which has been derived from the work, or from the investment of the sinking fund, or on account of the increased value of property liable to assessment, it is found to be unnecessary to levy the full rate imposed by any by-law, in order to raise the instalment of the sinking fund and interest thereby required to be raised for any year, or to raise such instalments for any future years of the then unexpired time which the debentures have to run, the council may pass a by-law reducing the rate for such year or for any such future years, so that no more money may be collected than the amount required.

Taken from 50 V. c. 29, s. 16 (1887), repealing 46 V. c. 18, s. 369 (1).

(2) No such by-law shall be passed unless, having regard to the time the debentures have to run, a proper proportion of sinking fund and interest has been levied, according to the intention of the original by-law. 55 V. c. 42, s. 367.

Taken from 46 V. c. 18, s. 369 (2). *Cf.* 14-15 V. c. 109, s. 10; 22 V. c. 99, ss. 232, 233; 29-30 V. c. 51, ss. 236, 237; 36 V. c. 48, ss. 260, 261; R.S.O. 1877, c. 174, ss. 350, 351; 46 V. c. 18, s. 369

Former Law.

(a) See also the provisions of s. 539 (3). As has already been pointed out (*a*), it was necessary prior to 1879 (*b*), that a by-law creating a debt—unless such debt was payable as provided by s. 386,—should settle an equal annual special rate "sufficient according to the amount of rateable property appearing by the last revised assessment roll to discharge the debt and interest when respectively payable," and it was directed by the Act that the amount of such rateable property should be ascertained irrespective of any future increase in its value, and of any income in the nature of tolls, interest or dividends from the work in which the money raised was to be invested, or from any stock, share or interest therein, and of any income to be derived from the temporary investment of the sinking fund (*c*).

It therefore frequently happened that the rate fixed by such a by-law yielded a sum larger than that required to pay off the debt. In these cases the council were empowered to reduce the rate where this could safely be done without prejudice to the security of the debenture holders (*d*). Since the Act 42 V. c. 31, s. 10, came into force, viz., March 11th, 1879, the by-law is to settle not an annual special *rate*,—but a specific *sum* to be annually raised for interest and sinking fund respectively (*e*), or for payment of the debt by instalments (*f*). The present section will therefore apply only to by-laws passed under the old law, *i. e.*, before March 11th, 1879.

By-law to be approved by Lieutenant Governor.

413. No by-law passed under the preceding section shall be valid unless, after it is passed, it is approved by the Lieutenant Governor in Council; and the facts which authorize the passing of such by-law shall, on its submission for approval, be verified in the manner provided by section 335 of this Act. 55 V. c. 42, s 368.

Taken from 46 V. c. 18, s. 370. *Cf.* the Statutes referred to under s. 412.

(a) **"Verified in the manner provided by section 335 of this Act,"** *i. e.*, by statutory declaration as mentioned in that section.

(*a*) See note (**e**) to s. 384, *ante*. (*b*) 42 V. c. 31, s. 10 (3).

(*c*) See 12 V. c. 31, s. 177; 14-15 V. c. 109, Sched. A (24); 22 V. c. 99 s. 222 (3-5); 29-30 V. c. 51, s. 226 (3-5); 35 V. c. 48, s. 248 (3-5); R. S. O. (1877), c. 174, s. 330 (3-5).

(*d*) See also s. 391 and note (**a**) thereto.

(*e*) s. 384 (5). (*f*) s. 386.

DIVISION IX.—ANTICIPATORY APPROPRIATIONS.

(SECS. 414–416.)

Anticipatory appropriations may be made.

414. In case a council desires to make an anticipatory appropriation for the next ensuing year in lieu of the special rate for such year, in respect of any debt, the council may do so by by-law, in the manner and subject to the provisions and restrictions following:

What funds may be so appropriated.

1. The council may carry to the credit of the sinking-fund account of the debt, as much as may be necessary for the purpose aforesaid,

(*a*) Of any money at the credit of the special rate account of the debt beyond the interest on such debt for the year following that in which the anticipatory appropriation is made;

(*b*) And of any money raised for the purpose aforesaid by additional rate or otherwise;

(*c*) And of any money derived from any temporary investment of the sinking fund;

(*d*) And of any surplus money derived from any corporation work or from any share or interest therein;

(*e*) And of any unappropriated money in the treasury; such money respectively not having been otherwise appropriated.

The sources and application to be stated.

2. The by-law making the appropriations shall distinguish the several sources of the amount, and the portions thereof to be respectively applied for the interest and for the sinking-fund appropriation of the debt for the next ensuing year.

When moneys retained sufficient, the yearly rate may be suspended for the ensuing year.

3. In case the moneys so retrained at the credit of the special rate account, and so appropriated to the sinking-fund account, from all or any of the sources above mentioned, are sufficient to meet the sinking-fund appropriation and interest for the next ensuing year, the council may then pass a by-law directing that the original rate for such next ensuing year be not levied. 55 V. c. 42, s. 369.

Taken from the Act of 1858, (22 V. c. 99) s. 234. *Cf.* 14-15 V. c. 109, ss. 11-12.

(a) This section, like s. 412, can only apply to by-laws passed before March 11th, 1879, and where the debt is not payable by annual instalments of principal and interest under s. 386, (*a*)

(b) "**Any money at the credit of the special rate account of the debt.**"

Section 417 requires that separate accounts should be kept shewing (1) The

(*a*) See note (a) to s. 412.

Secs. 414.

Note (b).

total amount raised in each year towards paying the debt and interest, and (2) the amount annually raised for sinking fund or to pay off instalments of principal.

(c) "**Beyond the interest on such debt for the year following**," etc.

The next year's interest is to be retained as required by s. 418 (1).

(d) "**Any money derived from the temporary investment of the sinking fund.**"

This includes interest allowed by a bank on deposit of sinking-fund moneys. (a)

(e) "**Any surplus money derived from any corporation work or from any share or interest therein.**" See s. 422.

By-law must recite

The original debt and object;

The amount paid;

The annual amount for sinking fund.

The amount for sinking fund in hand;

The amount required for interest;

And that it is reserved, etc.

415.—(1) The by-law shall not be valid unless it recites—

(*a*) The original amount of the debt, and in brief and general terms, the object for which the debt was created;

(*b*) The amount, if any, already paid of the debt;

(*c*) The annual amount of the sinking-fund appropriation required in respect of such debt;

(*d*) The total amount, then on hand, of the sinking-fund appropriations, in respect to the debt, distinguishing the amount thereof in cash in the treasury, from the amount temporarily invested:

(*e*) The amount required to meet the interest of the debt for the year next after the making of such anticipatory appropriation: and

(*f*) That the council has retained at the credit of the special-rate account of the debt a sum sufficient to meet the next year's interest (naming the amount of it), and that the council has carried to the credit of the sinking-fund account a sum sufficient to meet the sinking-fund appropriation (naming the amount of it) for such year.

By-law to be approved by Lieut.-Governor.

(2) No such by-law shall be valid unless it is approved by the Lieutenant-Governor in Council. 55 V. c. 42, s. 370.

Taken from the Act of 1858, (22 V. c. 99) s. 235. *Cf.* 14-15 V. c. 109, s. 12.

Anticipatory appropriation on separation of municipalities.

416. After the dissolution of any municipal union, the senior municipality may make an anticipatory appropriation for the relief of the junior municipality, in respect of any debt secured by by-law, in the same manner as the senior municipality might do on its own behalf. 55 V. c. 42, s. 371.

Taken from the Act of 1858, (22 V. c. 99) s. 236. *Cf.* 14-15 V. c. 109, s. 20.

(a) *Re Barber and City of Ottawa*, 39 U.C.R. 406 (1876).

TITLE III.—RESPECTING FINANCE.

[*And see also s. 549*, post.]

DIV. I.—ACCOUNTS AND INVESTMENTS, (SECS. 417-427.)
DIV. II.—COMMISSION OF INQUIRY INTO FINANCES, (SEC. 428.)

DIVISION I.—ACCOUNTS AND INVESTMENTS.

(SECS. 417-427.)

Synopsis. The sections in this Division relate to moneys held by municipal corporations in trust, not to those raised for the purposes of ordinary annual expenditure.

Sec. 417 requires that in the case of every debenture by-law passed under s. 384, two separate accounts shall be kept of the moneys raised under the by-law, one of which shall show the total sum raised annually, the other the amount thereof which is intended to be applied towards the formation of a sinking-fund for payment of the principal amount of the debt when it matures.

Secs. 418, 419, and 420 relate to the annual levy, the application and the investment of moneys to be thus raised and held in trust; ss. 421 and 422 to accretions thereto from other moneys on hand; s. 423 to the investment of surplus moneys derived from "The Ontario Municipalities Fund," and s. 424 to moneys held in trust for educational purposes.

Illegal investments of any of the trust funds aforesaid are prohibited by s. 425; and ss. 426 and 427 relate to certain annual returns to be made to the Provincial Government.

417. The council of every municipal corporation shall keep in its books two separate accounts of every debt, one for the special rate and one for the sinking fund or for instalments of principal, both to be distinguished from all other accounts in the books by some prefix designating the purpose for which the debt was contracted; and they shall keep the said accounts, with any others that are necessary, so as to exhibit at all times the state of every debt, and the amount of moneys raised, obtained, and appropriated for payment thereof. 55 V. c. 42, s. 372.

Two special accounts to be kept as to every debenture debt; (1) of the special rates; (2) of the sinking fund or instalments of principal.

Taken from 14-15 V. c. 109, s. 7. The words "or for instalments of the principal" in line 2 were added in 1873; 36 V. c. 48, s. 205.

(a) The language used in this section is in strictness applicable only to by-laws passed before March 11th, 1879. Since then, a by-law creating a debt (if passed under section 384 or the corresponding section of the Acts of 1883, 1887 or 1892) instead of settling a special *rate* to be levied in each year for paying the principal and interest fixes a specific *sum* to be annually raised for each. (*a*)

The intention of the section is nevertheless clear, viz., that two accounts shall be kept of every debenture debt. The first (called in ss. 414, 418-420 "The Special Rate Account") is to show all moneys received and paid or payable on account of either principal or interest; The second (called the "The Sinking Fund Account") is to show such only of these moneys as have been received and paid or are payable on account of the principal of the debt. It is a "culpable neglect of duty" on the part of municipal officers not to comply with the directions of the section. (*b*)

(*a*) See note (e) to s. 384.

(*b*) *Per* SPRAGGE, C., in *Wilkie* v. *Village of Clinton*, 18 Grant, 557, 560 (1871).

Sec. 418 (1) (3). Notes (a), (b).

When surplus may be applied to next year's interest, and to sinking fund.

418.—(1) If, after paying the interest of a debt for any financial year, and appropriating the necessary sum to the sinking fund of such debt, or in payment of any instalment of principal, there is a surplus at the credit of the special-rate account of such debt, such surplus shall so remain, and may be applied, if necessary, towards the next year's interest; but if such surplus exceeds the amount of the next year's interest, the excess shall be carried to the credit of the sinking-fund account, or shall be applied in payment of principal of such debt.

Taken from the Act of 1858, (22 V. c. 99) s. 227; except the words at the end ("or shall be applied in payment of principal") which were added in 1873, by 36 V. c. 18, s. 266.

Moneys levied for a sinking fund not to be diverted.

(2) No moneys levied and collected for the purpose of a sinking-fund shall in any case be applied towards paying any portion of the current or other expenditures of the municipality, save as may be otherwise authorized by this or any other Act. 55 V. c. 42, s. 373 (1-2).

Taken from 54 V. c. 42, s. 12 (2) (1891).

(a) Moneys levied and collected for the purpose of creating a sinking fund to pay off a debt form a trust fund. (*a*) and their diversion to any other purpose is a breach of trust. (*b*)

In *Smith* v. *Township of Raleigh* (*c*) moneys raised by local assessment for the construction of a drain, had, under a resolution of the council passed in accordance with a promise made to certain of the petitioners for the work, been applied towards the construction of another drain not mentioned in the petition. *Held*, that a petitioning ratepayer was entitled to an order compelling the corporation to complete the first drain according to the by-law, and to an account, the by-law having created a trust which had been violated; also that the facts above mentioned constituted no justification of the breach of trust committed by the defendants.

Liability of councillors for diversion of sinking fund.

(3) In the event of the council of a municipality diverting any of said moneys for current or other expenditure, save as aforesaid, the members who vote for the diverting of said moneys shall be personally liable for the amount so diverted, and the said amount may be recovered in any Court of competent jurisdiction; and the members who have voted for the same, shall be disqualified from holding any municipal office for the period of two years. In case the council of the municipality, upon the request of any ratepayer, refuse or neglect for one month thereafter to bring an action therefor in the name of the municipality, the action may be brought by any ratepayer on behalf of himself and of all the other ratepayers of the municipality. 55 V. c. 42, s. 373 (3); 60 V. c. 15, *Sched.* C. (69).

Taken from 54 V. c. 42, s. 12 (3) (1891). The last sentence—("In case the council of the municipality," etc.)—was added in 1897 by 60 V. c. 15, Sched. C. (69).

(b) The effect of this section was considered by BOYD, C., in *Reg. ex. rel. Cavanagh* v. *Smith*, (*a*) an application to set aside the election of the respondent as reeve of a village, on the ground that he was disqualified for office, having in the previous year voted for the payment of current expenses out of sinking-fund moneys.

(*a*) *Per* SPRAGGE, C., *Wilkie* v. *Village of Clinton*, 18 Grant 557, 559 (1871).

(*b*) *Per* BOYD, C., *Reg. ex. rel Cavanagh* v. *Smith*, 26 O. R. 632, 636 (1895).

(*c*) 3 O. R. 405 (1883).

(*d*) 26 O. R. 632 (1895).

Sec. 418 (3).

Note (b).

Illegal diversion of sinking fund moneys.

It appeared that on August 20th, 1894 a by-law had been passed under s. 420 authorizing the investment of sinking-fund moneys on hand which were therein stated to be $566.63. The total amount of money in the hands of the treasurer at that date for all purposes was only $132.13. Seven days afterwards, on motion of the respondent, who was chairman of the Finance Committee, five small accounts, amounting in all to $11.99, were ordered to be paid out of the $132.13. The election of the respondent was set aside and he was declared to be disqualified from holding any municipal office for two years.

Boyd, C., in giving judgment says: (a)

> "The course of dealing with the year's taxes was that the whole was handled by the treasurer and council as one fund available fo all purposes. The amount collected for the sinking fund was not set apart but was mingled with the rest of the money. Nevertheless its trust character remained so long as there was $566 in the municipal treasury. When the amount was reduced below that sum the diversion of the sinking fund moneys began, and it was repeated when the defendant voted for the payment of the general accounts out of the $132 balance. This conclusion is reached by the application of the doctrine of *In re Hallett's Estate* (b) that where trust moneys are mixed at a banker's with other moneys and chequed out by the depositor, the drawer must be taken to have first drawn out his own money in preference to the trust money. Therefore the residue of the year's money,—viz. $132—was impressed with the character of moneys belonging to the sinking fund, and the act of the defendant was *pro tanto* a diversion of this fund in contravention of the Statute. The present investigation is not one respecting a matter of criminal import, so that condemnation should be witheld unless a guilty knowledge—the *mens rea*—be established. The object of the Legislature is to check careless, unbusiness like management of the public moneys, and, with this view, to disqualify members of the council who, with or without design, commit breaches of trust as to this fund. Ignorance that wrong is being done,—so far from excusing, is the very thing that the law seeks to mark with disapproval. The erring member, whether he goes astray in the light or in the dark, is no safe councillor, and he is placed under a two years' sentence of exclusion from office in order that correct administration of municipal finance may for the future, as far as possible, be insured."

Treasurer to state annually amount required to be levied for sinking-fund.

(4) In every municipality in which any sum of money is required by law to be raised toward a sinking fund, it shall be the duty of the treasurer to prepare and lay before the council in every year, previous to the striking of the annual rate, a statement showing what amount or amounts will be required for the purpose; and any treasurer making default in the performance of the duty imposed by this sub-section, shall be liable to a penalty not exceeding $25, to be recovered as are other penalties under this Act, at the instance of any ratepayer resident in the municipality.

Liability of members of council neglecting to levy for sinking fund

(5) In the event of the council of a municipality neglecting in any year to levy the amount required to be raised under this or any other Act to provide a sinking fund for the payment of the debenture debt of the municipality, every member of the council shall be disqualified from holding any municipal office for the period of two years; but no member of the council shall be liable to the penalty hereby imposed, who shows to the satisfaction of the Court or Judge that he made reasonable efforts to procure the levying of the rate for the sinking fund. 56 V. c. 35, s. 9.

Sub-ss. 4 and 5 were added to the section in 1893. See the reference.

(a) P. 637.

(b) 13 Ch. D. 696, (1879).

Sec. 418.

Note (c)

(a) These sub-sections apparently apply not only to by-laws passed before March 11th, 1879, but also to by-laws passed under the existing law (a) which settle a specific sum to be raised in each year for payment of the debt or of each instalment thereof, such specific sum being in fact "money required by law to be raised toward a sinking-fund" although the word "sinking-fund" is not now used in the sub-section.

Application of moneys with consent of Lieutenant-Governor in Council.

419. The Lieutenant-Governor in Council may, by Order in Council, direct that such part of the produce of the special rate levied, and at the credit of the sinking-fund account or of the special-rate account as aforesaid, instead of being so invested as hereinafter provided, shall from time to time, as the same accrues, be applied to the payment or redemption, at such value as the said council can agree for, of any part of such debt or of any of the debentures representing or constituting such debt, or any part of it, though not then payable, to be selected as provided in such Order in Council, and the municipal council shall thereupon apply, and continue to apply, such part of the produce of the special rate at the credit of the sinking-fund account, or special-rate account, as directed by such Order in Council. 55 V. c. 42, s. 374.

The original of this section is the latter part of s. 228 of the Act of 1858 (22 V. c. 99), and was added by the Committee of the Legislative Council to what is now s. 429. It authorized the application—under the authority of an Order in Council—of surplus moneys on hand from the produce of special rates over and above the amount required to pay the next year's interest (b) towards the payment or redemption at any rate agreed upon, "not exceeding par," of the debt created by the by-law or any part thereof. The words "not exceeding par" were omitted in 1866 (29-30 V. c. 51, s. 232). The section can now only apply to by-laws passed before March 11th, 1879. See note (e) to s. 384, and note (a) to s. 412.

Investment of surplus moneys raised on special rates.

420.—(1) If any part of the produce of the special rate levied in respect of any debt, and at the credit of the sinking-fund account, or of the special rate account thereof, cannot be immediately applied towards paying the debt, by reason of no part thereof being yet payable, the council shall, from time to time, invest the same in government securities, municipal debentures, or in first mortgages on real estate held and used for farming purposes, and being the first lien on such real estate, or in local improvement debentures of the municipality, or in such other manner as the Lieutenant-Governor in Council may by general or special Order in Council direct, or in any other debentures of the municipality which may be approved of by the Lieutenant-Governor in Council by such Order in Council; and from time to time, as such securities mature, may invest the proceeds thereof in other like securities; but no sum so invested in mortgages shall exceed two-thirds of the value, according to the last revised and corrected assessment roll at the time it is invested, of the real estate on which it is secured.

To be regulated by by-law.

(2) The council of the municipality may regulate, by by-law, the manner in which such investments shall be made.

Sinking fund may be used in purchasing unsold debentures.

(3) It shall not be necessary that any local improvement or other debentures of the municipality referred to in this section

(a) s. 384 (5).

(b) See s. 418 (1).

shall have been disposed of by the council; but the council may apply the sinking fund to an amount equal to the amount of such debentures towards the purposes to which the proceeds of such debentures would properly be applicable, and the council shall thereupon hold the debentures as an investment on account of the sinking fund, and may deal with the same accordingly. 55 V. c. 42, s. 375.

Sec. 420(3). Notes (a), (b). Investment of trust moneys raised by special rate.

Taken from 47 V. c. 32, s. 9 (1884). *Cf.* 42 V. c. 81, s. 177; 44-45 V. c. 109. Sched. A (21); 22 V. c. 99, s. 228; 29-30 V. c. 51, s. 232; 36 V. c. 48, s. 268; 44 V. c. 24, s. 9.

(a) This section applies to any money raised under a debenture by-law which cannot immediately be applied towards paying off the debt thereby secured. The investment of such moneys is imperative, but the manner of investment, *i.e.*, the choice of securities among those authorized by law is left to the council (*a*).

(b) "In such other manner as the Lieutenant-Governor in Council may by general or special Order in Council direct."

By an Order in Council of March 4th, 1885, passed under this section, it was directed that where municipalities have amounts at the credit of a sinking-fund account which cannot be immediately applied towards paying debts by reason of no part thereof being yet payable, they may, from time to time, invest the same by special deposit bearing interest in some chartered bank carrying on business in this Province, until the debts mature or more permanent investment can be made.

And by another Order in Council (dated March 29th, 1895), the investment of moneys under this section may be made in debentures of any society or company, in the debentures of which trustees may invest funds under the provisions of the Statute 54 V. c. 19, s. 4. That section is now s. 5 of "*The Trustee Investment Act*" (R. S. O. c. 130), and—as amended in 1899 by 62 V. (2nd Session) c. 11, s. 32)—is as follows:

> "It shall be lawful for a trustee, unless expressly forbidden by the instrument (if any) creating the trust, to invest any trust funds in his hands in terminable debentures or debenture stock of the hereinafter mentioned societies and companies, provided that such investment is in other respects reasonable and proper, and that the debentures are registered, and are transferable only on the books of the society or company in his name as the trustee for the particular trust estate for which they are held in such debentures or debenture stock as aforesaid:
>
> "(*a*) Of any incorporated society or company which has been or shall hereafter be authorized by any lawful authority to lend money upon mortgages on real estate, or for that purpose and other purposes, such society or company having a capitalized, fixed, paid up and permanent stock not liable to be withdrawn therefrom amounting to at least $500,000, and having a reserve fund amounting to not less than 25 per cent. of its paid-up capital, and its stock having a market value of not less than 25 per cent. premium.
>
> "(*b*) Or of any society or company heretofore incorporated under chapter 164 of the Revised Statutes of Ontario, 1877, or any Act incorporated therewith, or under chapter 169 of the Revised Statutes of Ontario, 1887, having a capitalized, fixed, paid up, and permanent stock not liable to be withdrawn therefrom amounting to at least $100,000, and having a reserve fund amounting to not less than 15 per cent. of its paid up capital, and its stock having a market value of not less than 7 per cent. premium.

421. Any council may by by-law direct that any surplus moneys in the hands of the treasurer, and not specially appropriated to any other purpose, shall be credited to the sinking-

Investment of sinking fund.

(*a*) See subs. 2.

Secs. 421-423 (2).

fund account of any debenture debt of the municipality, and the council may, subject to the provisions of the preceding section, invest such sinking-fund account in any of the securities therein named. 55 V. c. 42, s. 376.

Taken from 45 V. c. 23, s. 16 (1882). *Cf.* 14-15 V. c. 109, s. 6.

Council may apply other funds towards such debts.

422. A council may appropriate to the payment of any debt the surplus income derived from any public or corporation work, or from any share or interest therein, after paying the annual expenses thereof, or may so appropriate any unappropriated money in the treasury, or any money raised by additional rate; and any money so appropriated shall be carried to the credit of the sinking fund of the debt, or in payment of any instalment accruing due. 55 V. c. 42, s. 377.

Taken from the Act of 1858, (22 V. c. 99), s. 229. The words at the end ("or in payment of any instalment accruing due") were added in 1873 by 36 V. c. 48, s. 279. *Cf.* 14-15 V. c. 109, s. 5.

(a) Moneys once appropriated under either this section or s. 421 towards payment of a debt, become trust funds for that particular purpose, and cannot be diverted to any other purpose. The original sections from which these are taken expressly so provided. (*a*)

Certain moneys may be set apart for educational purposes.

Investment thereof.

423.—(1) A municipal corporation having surplus moneys derived from "The Ontario Municipalities Fund," or from any other source, may, by by-law, set such surplus apart for educational purposes, and may invest the same, as well as any other moneys held by such municipal corporation for, or by it lawfully appropriated to educational purposes, in public securities of the Dominion, municipal debentures, or first mortgages on real estate held and used for farming purposes, being the first lien on such real estate, and from time to time, as such securities mature, may invest in such other like securities, or in securities already authorized by law, as may be directed by the by-law, or by other by-laws passed for that purpose.

Amount which may be so invested.

(2) No sum so invested shall exceed two-thirds of the value, according to the last revised and corrected assessment roll at the time it is so invested, of the real estate on which it is secured. 55 V. c. 42, s. 378.

Taken from the Act of 1873, (36 V. c. 48,) s. 423. *Cf.* 24 V. c. 17, s. 1; 29-30 V. c. 51, s. 272; 31 V. c. 30, s. 27; 32 V. c. 43, s. 21.

"The Ontario Municipalities Fund."

(a) "The Ontario Municipalities Fund" was formed in from the proceeds of the sales of lands originally designated as "Clergy Reserves." (*b*)

By s. 5 of the Act of 1854 (18 V. c. 2) the balance of the fund remaining at the end of each year in the hands of the Receiver-General after paying the stipends of those clergy who still had claims thereon, was to be apportioned among the county and city municipalities of the Province according to their population, and was to form part of the general funds of the municipality. By 19-20 V. c. 16, s. 1 (1856) the apportionment was directed to be made among all (local) municipalities, (cities, towns, villages and townships),—according to the number of ratepayers on the last assessment roll;—and by 20

(*a*) See 14-15 V. c. 109, ss. 5, 6, 9.

(*b*) See Imp. Stat. 16 V. c. 21; Provincial Stats. 18 V. c. 2, ss. 1, 2, (1854). R.S.O. c. 34.

Sec. 423.

Note (a).

V. c. 71 (1857) these municipalities were authorized to invest moneys received by them from the Fund in Provincial, Consolidated Loan, or municipal debentures. The Act 27 V. c. 17, s. 1,—after reciting the expediency of allowing further discretion as to such investments,—authorized the setting aside for educational purposes of any money derived from the Fund and its investment in first mortgages of farm-lands within the municipality, provided that the amount invested should not exceed one-third of the assessed value of such lands. This is the foundation of the above section.

"The Ontario Municipalities Fund."

The limitation in amount of the investment to one-third of the assessed value of the farm property was altered to *two-thirds* thereof by 32 V. c. 44, s. 21 (1868), and the words "or from any other source" in lines 2 and 3 were added by 31 V. c. 30, s. 27.

Municipality may foreclose mortgage.

(b) A municipal corporation having invested money on mortgage under this section is not restricted to its remedy by sale, but may obtain a judgment for foreclosure (*a*); notwithstanding the fact that the Statutes of Mortmain apply to such corporations. (*b*)

Loans or gifts to school corporations.

424. Any municipal corporation having surplus moneys set apart for educational purposes, may, by by-law, invest the same in a loan or loans to any board of school trustees within the limits of the municipality, for such term or terms, and at such rate or rates of interest as may be agreed upon by and between the parties to such loan or loans respectively, and as may be set forth in such by-law: or may by by-law grant any portion of such moneys, or other general funds, by way of gift to aid poor school sections within the municipality. 55 V. c. 42, s. 379.

(a) The first part of this section is taken from s. 4 of the Act 27 V. c. 17, (referred to in the preceding note,) which authorized the setting aside for educational purposes of any surplus moneys received by a municipality from "The Upper Canada Municipalities Fund," and the loan of such moneys to any Board or Boards of School Trustees within the limits of the municipality.

The last clause—authorizing the granting of such moneys or other general funds by way of gift to aid poor school sections,—was added in 1873 by 36 V. c. 48, s. 271. The first clause of this section must be read with and is controlled by s. 74 of "*The Public Schools Act*," (*c*)—(which empowers the school corporation to borrow from the municipal corporation any of the moneys referred to in this section, but only for the purpose of purchasing a school site or erecting a school-house,)—and also with s. 29 of "*The Statute Law Amendment Act, 1899*," (*d*) which provides that:—

> 29. "The municipal corporation of every township shall have power to apportion by by-law among the public school sections in the township the principal or interest of any investments held by the corporation for public school purposes, according to the salaries paid the teachers engaged by the respective school sections during the past year, or according to the average attendance of pupils at each school section during the same period, as may be deemed expedient."

Illegal investments.

425. No member of a municipal council shall take part in, or in any way be a party to, the investment of such moneys as are mentioned in this Act, by or on behalf of the municipality, otherwise than is authorized by this Act, or by

Penalty.

(*a*) *Township of Oxford* v *Bailey*, 12 Grant 276 (1866), more fully referred to in note (a) to s. 534.

(*b*) *Brown* v. *McNab*, 20 Grant 179 (1873). See note (a) to s. 534.

(*c*) R.S.O. c. 292.

(*d*) 62 V. (2nd Session), c. 11,

Secs. 425, 426.

Illegal investments.

any other law in that behalf made and provided; and any person so doing shall be held personally liable for any loss sustained by the municipality. 55 V. c. 42, s. 380; 60 V. c. 3, s. 3.

Taken from 27 V. c. 17, s. 6. "Council" substituted for "corporation" in lines by the Statute Commissioners of 1897: see 60 V. c. 3, s. 3.

(a) **"Such moneys as are mentioned in this Act."** The original section applied only to surplus moneys derived from "The Upper Canada Municipalities Fund;" but the section has now a much wider scope. (a)

(b) By 27 V. c. 17, s. 6, the act here forbidden was declared to be a misdemeanour, and punishable by fine or imprisonment, or both. It is apprehended that this is still the result of *wilful* disobedience. (b)

Municipalities indebted to Municipal Loan Fund to make annual returns to Provincial Treasurer.

426. The treasurer of any municipality for which any sum of money has been raised on the credit of the Consolidated Municipal Loan Fund, shall, so long as any part of such sum or of the interest thereon remains unpaid by the municipality, transmit to the Treasurer of Ontario on or before the 15th day of January in every year, a return, certified on the oath of the treasurer before some Justice of the Peace, containing the amount of taxable property in the municipality according to the then last revised assessment roll or rolls; a true account of all the debts and liabilities of the municipality, for every purpose, for the then last year; and also such further information and particulars with regard to the liabilities and resources of the municipality as the Lieutenant-Governor in Council may from time to time require, under a penalty, in case of neglect or refusal to transmit the return, account, information or particulars, of $100, to be recovered, with costs, as a debt due to the Crown. 55 V. c. 42, s. 381.

Penalty for default.

Taken from 18 V. c. 78, s. 14, under which the return thereby required was to be made to the Board of Audit constituted by s. 1 of that Act.

"The Consolidated Municipal Loan Fund."

(a) "The Consolidated Municipal Loan Fund for Upper Canada" was established in 1852 by 16 V. c. 22, in order "to facilitate the borrowing on advantageous terms of such sums as might be required by (municipalities) in Upper Canada for effecting, or aiding in affecting, important public works calculated to benefit such municipalities." The moneys constituting the Fund were to be borrowed by the Province at a rate of interest not exceeding six per cent. (c), and lent to the municipalities at eight per cent per annum. (d) By 18 V. c. 18 (1854) the benefits (?) of this scheme were extended to the municipalities of Lower Canada, and the amount of the Fund was limited to £1,500,000 stg. for each section of the Province. The Act seems to have fully accomplished the object for which it was passed as indicated by the recital above quoted, viz., "to facilitate the borrowing" of money by municipalities. The sums advanced by the Province proved in many instances to be uncollectable; and the total amount owed in 1872 to the Province of Ontario by municipalities situate therein was no less than $12,000,000. Upon the distribution of the Provincial surplus in 1873, an adjustment of accounts took took place between the Province and the municipalities indebted to the Fund, particulars of which appear in the Act 36 V. c. 47 and the Schedules thereto. The municipalities still remaining debtors to the Fund were to issue new debentures for the amount of their respective liabilities, which debentures or the proceeds thereof were to be dist-

(a) See s. 420.

(b) See s. 138 of "*The Criminal Code, 1892*," quoted in note (a) to s. 393.

(c) Sec. 3 (5).

(d) Sec. 5 (1).

Secs. 426.

Note (a).

"The Consolidated Municipal Loan Fund."

ributed *pro rata* among the municipalities entitled to receive moneys under the Act, the latter being thus substituted for the Province as creditors of the indebted municipalities. The debentures were to mature in twenty years from their date, but it was provided that the total amount annually payable thereon should not exceed the proceeds of a rate of two cents on the dollar on the assessment of 1872 after meeting the ordinary and necessary expenditures of the municipality (other than for schools) calculated on the basis of the expenditure of the year 1872.

Provision was made by s. 12 of the Act and subsequently by 38 V. c. 29 (1874) and 39 V. c. 4 (1876), 40 V. c. 13 (1877), 42 V. c. 9 (1879), and 45 V. c. 27 (1882) as to the purposes to which the moneys or the proceeds of the debentures distributed under the Act might be applied. From inquiries in the Department of the Provincial Treasurer it appears that all the debentures issued under the Act of 1873 have not yet been redeemed, and that there are consequently a few municipalities to which this section still applies. (*a*)

(b) "**Under a penalty . . . of $100 to be recovered with costs as a debt due to the Crown.**" This provision is taken from s. 15 of "*The Act respecting the Management of the Public Revenue*," etc. (*b*) The whole section is as follows:

Penalty for not transmitting accounts, etc.

"If any corporation, officer or person refuses or neglects to transmit any account, statement or return, with the proper vouchers, to the officer or department to whom he is hereby required to transmit the same, on or before the day hereby appointed for the transmission thereof, such corporation, officer or person shall for such refusal or neglect forfeit and pay to the Crown for the public uses of this Province, the sum of $100, to be recovered with costs, as a debt due to the Crown, and in any Court and in any way in which debts to the Crown can be recovered; and in any action for the recovery of such sum, it shall be sufficient to prove by any one witness or other evidence that such account, statement or return ought to have been transmitted by the defendant, as alleged on the part of the Crown, and the onus of proving that the same was so transmitted shall rest upon the defendant."

Proof in action for penalty.

427. Every council shall, on or before the 31st day of January in each year, under a penalty of $20 in case of default, to be paid to the Treasurer of Ontario, transmit to the Lieutenant-Governor, through the Minister of Agriculture, an account in such form as may from time to time be prescribed by the Lieutenant-Governor in Council, of the several debts of the corporation, as they stood on the 31st day of December preceding, specifying in regard to every debt of which a balance remained due at that day:

Every council to make a yearly report of the corporation debts to the Lieut-Governor in Council.

What such report must shew.

1. The original amount of the debt;

2. The date when it was contracted;

3. The days fixed for its payment;

4. The interest to be paid therefor;

5. The rate provided for the redemption of the debt and interest;

6. The proceeds of such rate for the year ending on said 31st day of December;

7. The portion (if any) of the debt redeemed or paid during that year;

(*a*) See 48 V. c. 7 (1885).

(*b*) R.S.O. c. 22.

Secs. 427, 428(1).

Annual return as to debts, etc.

8. The amount of interest (if any) unpaid on said 31st day of December; and

9. The balance still due of the principal of the debt. 55 V. c. 42, s. 382.

Taken from the Act of 1873, (36 V. c. 48), s. 274. *Cf.* 16 V. c. 163, ss. 1, 2, 3; 22 V. c. 99, s. 277; 29-30 V. c. 51, ss. 241, 242.

(a) Clauses 5 and 6 require amendment so as to accord with the provisions of s. 384 (5).

Division II—COMMISSION OF INQUIRY INTO FINANCES, (Sec. 428).

When a Commission of Inquiry may issue.

428.—(1) In case one-third of the members of any council, or thirty duly qualified electors of the municipality, petition for a commission to issue under the Great Seal, to inquire into the financial affairs of the corporation, and things connected therewith, and if sufficient cause is shewn, the Lieutenant-Governor in Council may issue a commission accordingly, and the Commissioner or the Commissioners, or such one or more of them as the commission empowers to act, shall have the same power as any Court has in civil cases to summon witnesses, enforce their attendance, and compel them to produce documents and to give evidence. 55 V. c. 42, s. 383.

Expenses of such commissions.

(2) The expenses to be allowed for executing the commission shall be determined and certified by the Treasurer of Ontario, and shall thenceforth become a debt due by the corporation to the Commissioner or Commissioners, and shall be payable within three months after demand therefor, made by the Commissioner or by any one of the Commissioners, at the office of the treasurer of the corporation. 55 V. c. 42, s. 384.

Taken from the Act of 1858, (22 V. c. 99), ss. 239, 240. *Cf.* 12 V. c. 81, s. 181. The words "or thirty duly qualified electors of the municipality," were inserted in 1871 by 34 V. c. 30, s. 15. As to the meaning of "electors," see ss. 2 (5) and 86.

(a) The power conferred is one of inquiry, and may be of great advantage to municipalities in enabling them to enforce the attendance of witnesses and compel them to give evidence (*a*). Since it is a public inquiry conducted under a public Act of Parliament which says nothing about compensation to witnesses, it would seem that persons called before the Commissioners are not entitled—any more than they would have been so entitled at common law in the case of a prosecution for a misdemeanour,—to compensation for expenses or loss of time (*b*).

Inquiries into other than financial matters are authorized by s. 324. If councillors whose duty it is to give all necessary and reasonable information maliciously conspire to withhold information, and contrive and intend to cause expense and damage to the corporation by increasing the costs and expenses of the Commission, and throw upon the corporation any costs, and if it be charged and proved that councillors in pursuance of such contrivance and intention have misconducted themselves to the damage of the corporation, an

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(*a*) *Per* Richards, J., in *Re Township of Elton and Ferguson*, 6 U. C. L. J., 207 (1860).

(*b*) *Per* Robinson, C. J., in *Township of East Nissouri* v. *Horseman*, 16 U.C.R. 556 (1858), at p. 567.

Secs. 428.

Note (a).

Commission of inquiry as to municipal finances.

action may be maintained against them at the suit of the corporation for recovery of damages (*a*). Where it was shewn in such an action that the clerk had absented himself and kept back the books, &c., in collusion with the defendants, and that in consequence the costs of the commission—which otherwise would not have exceeded £75 or £100—had been increased to £328, it was held that the sum of £250 damages was not excessive (*b*). There is nothing in the section to prevent the corporation from suing for money due them; and it would be unreasonable to hold that the power to inquire should deprive the corporation of the right to resort to a more speedy and economical mode of investigating accounts, and of obtaining payment of the amount due when ascertained (*c*).

(b) It is presumed that witnesses on such an inquiry would not be bound to answer questions tending to criminate them (*d*).

(c) The expenses are to be "determined" by the Treasurer of the Province of Ontario. No appeal is provided for. When so determined the account may be certified When certified the amount becomes a debt due by the municipality to the Commissioner or Commissioners, payable "within three months after demand," &c. The Commissioners are entitled to recover the money by action after the amount has been determined, certified and demanded; and the plaintiff in such an action is not obliged to prove the regularity of the issue of the commission (*e*).

In *Re Rural Municipality of Macdonald*, (*f*) it was held under the Municipal Act of the Province of Manitoba (*g*) that the municipality in question had no power to provide for payments of the expenses of counsel and witnesses in attendance upon a Royal Commission issued under s. 431 of the Act to inquire into the financial affairs of the corporation. (*h*)

(d) The powers conferred by this section are not affected by R.S.O, c. 228, which provides, *inter alia*, for the appointment of a Provincial Municipal Auditor (*i*).

TITLE IV.—DEBENTURES, (SECS. 429-436).

Synopsis:—Sec. 429 (1-2) prescribes the mode of execution of municipal debentures and coupons. S. 429 (3) provides for the recovery at their full face amount of debentures negotiated at a discount, etc.; and s. 436 prohibits the issue of debentures, etc., for less than $100 each.

Secs. 430-432,—like ss. 399-400 *ante*—validate certain classes of debentures under the circumstances therein mentioned. S. 433 relates to Local Improvement Debentures and authorizes the consolidation of debenture debts thereby secured. S. 434 provides for the registration of debenture transfers, and s. 435 gives municipal councils power to borrow money for current expenses pending the collection of the taxes for the year.

Debentures, bonds, etc., how to be executed.

429.—(1) All debentures and other instruments duly authorized to be issued on behalf of a municipal corporation shall, unless otherwise specially authorized or provided, be sealed with the seal of the corporation, and signed by the head thereof, or by some other person authorized by by-law to sign the same, otherwise the same shall not be valid; and it shall be the duty of the treasurer of the municipality to see

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(*a*) *Township of East Nissouri* v. *Horseman*, supra.

(*b*) *S. C.*, 18 U. C. R. 31 (1859).

(*c*) *Per* RICHARDS, J., in *Re Township of Eldon and Ferguson*, supra.

(*d*) See note (c) to s. 324.

(*e*) *Bristow* v. *Town of Cornwall*, 36 U. C. R. 225 (1875).

(*f*) 10 Man. Rep. 294 (1894).

(*g*) R. S. Man. (1891) c. 100, s. 432—(identical with this section).

(*h*) And see *Tynemouth (Mayor of)* v. *Attorney General*, 15 Times L. R. 370 (1899).

(*i*) See R. S. O. c. 228, s. 25.

Secs. 429 (1). Note (A).

that the money collected under the by-law is properly applied to the payment of the interest and principal of the debentures. 55 V. c. 42, s. 405.

The first part of this section is taken from the Act of 1858, (22 V. c. 99 s. 209). The latter part (relating to the duty of the treasurer) was added in 1866, by 29-30 V. c. 51, s. 213.

Form of a Municipal Debenture.

(a) The following form of a municipal debenture is suggested as sufficient :

Form of a Municipal Debenture.

PROVINCE OF ONTARIO.

(*Town*) of

$ No.

Under the authority of "*The Municipal Act*," and of By-law No. of the Corporation of the (*Town*) of passed on the day of 19 the said Corporation hereby promises to pay to the bearer at $ on the day of 19 (*if interest is payable in the meantime add*) and to pay to the bearer the amount of each of the interest coupons hereto attached as the same shall severally become due.

Dated at this day of 19

Corporate Seal of the Municipality.

....
Mayor.

....
Treasurer.

In the case of a local improvement debenture the words "Local Improvement Debenture" should be printed thereon. If a Debenture Registry Book is kept by the municipality the words contained in s. 434 should be added before the date.

Negotiability of such debentures.

"Municipal bonds, notwithstanding they are under seal, are clothed with all the attributes of commercial paper, pass by delivery or indorsement and are not subject to equities in the hands of holders for value before due without notice. Such bonds usually have coupons attached, which partake of the nature of the bond, are likewise negotiable, may be detached and held separately from the bond ; and the holder may sue thereon in his own name without producing or being interested in the bonds to which they were originally attached. Such securities are made to raise money by their sale ; and this object would be defeated if they were subject to equities in the hands of *bona fide* holders. (a)

The rule in this Province is equally clear.

In the earlier Municipal Acts it was expressly provided that municipal debentures should be transferable by delivery (1) if originally made payable to bearer, or (2) if indorsed in blank by a holder to whom or to whose order they were originally made payable (b). These sections were omitted from "*The Consolidated Municipal Act of 1873*" as unnecessary ;—the Act 35 V. c. 12 having by that time provided for the case. R.S.O. c. 119, s. 38, now declares that

(1) "The bonds or debentures of corporations made payable to bearer, or to any person named therein or bearer, may be transferred by delivery, and if payable to any person or order shall (after general indorsation thereof by such person) be transferable by delivery from the time of the indorsation.

(2) Any such transfer shall vest the property of such bonds or debentures in the holder thereof to enable him to maintain an action thereon in his own name."

(a) Dillon, s. 486. And see *St. Cesaire (Parish of)* v. *McFarlane*, M.L.R. 2 Q.B. 160, 14 S.C.R. 738 (1887).

(b) 22 V. c. 99, ss. 210, 211 ; 29-30 V. c. 51, ss. 214, 215.

In *Trust & Loan Co. v. City of Hamilton* (*a*), the *bona fide* holder for value of a municipal debenture was held entitled to sue thereon, though the debenture, after being signed and sealed, had been stolen from the defendants by the person through whom the plaintiff derived title (*b*).

Rights of holders thereof.

In *Scully v. McCallum* (*c*), the purchaser of a township debenture issued under a by-law which was subsequently held to be illegal brought an action against the representatives of the person by whom the debenture had been sold, asking a rescission of the contract and a refund of the purchase money; but (there being no evidence of fraud) SPRAGGE, V. C., dismissed the bill, holding that it lies upon the purchaser of debentures to satisfy himself as to their validity (*d*).

(b) **"Shall be sealed with the seal of the corporation and signed by the head thereof,"** etc. These provisions are imperative, and obedience to their requirements may be enforced by mandamus (*e*). Sealing.

(c) **"Or by some other person authorized by by-law to sign the same."** Where a by-law which had been submitted to and approved by the electors contained a clause providing that the debentures to be issued thereunder should be signed by the reeve, and he refused to sign them, it was held that this section was applicable, and the council might by by-law appoint some other person to sign the debentures (*f*). Signing.

(d) **Otherwise the same shall not be valid."** See note (**a**) to s. 384.

(e) **"And it shall be the duty of the treasurer,"** etc. See also ss. 290, 392, 393, 410 (1), 418 (2). But where moneys collected under a debenture by-law had been paid out by a township treasurer in good faith under the direction of the reeve and in discharge of a legal liability of the township, and the council afterwards approved of and adopted the payment, MOWAT, V.C., declined to make the treasurer personally liable for the moneys so applied, and, *semble* that, if so liable, he would be entitled to be recouped by the township (*g*). Application of proceeds.

(2) The coupons attached to every such debenture issued by any municipal corporation other than a city shall each be signed by the head of the municipality and the treasurer of the corporation. 59 V. c. 51, s. 8. Execution of debenture coupons.

Added in 1896 by 59 V. c. 51, s. 8.

(f) The following is the usual form of the interest coupons attached to municipal debentures: Form of coupon.

Form of a Debenture Coupon.

$ No.

"The Corporation of the (*Town*) of will pay the bearer at the dollars and cents interest due on day of 19 on Debenture No. issued under By-law No.

.....

Mayor *or* Reeve.

.....

[*Except in the case of a city*] Treasurer.

(*a*) 7 C. P. 98 (1858).

(*b*) In England, however, the applicability to such debentures of the law governing bills and notes is by no means so well established. See *Re Imperial Land Company of Marseilles, Ex p. Colborne*, L. R. 11 Eq. 478 (1870); *Crouch v. Credit Foncier*, L. R. 8 Q. B. 374 (1873); *Re Hercules Ins. Co.*, L. R. 19 Eq. 302, 311 (1874); *British India, etc., Navigation Co. v. Commissioners of Inland Revenue*, 7 Q. B. D. 165, 169 (1881).

(*c*) 9 Grant 434 (1862).

(*d*) See also *Athenæum Life Ins. Co. v. Pooley*, 1 Giff. 102; 3 De G. & J. 294 (1858).

(*e*) See s. 333, note (**b**).

(*f*) *Township of Brock v. Toronto Nipissing Railway Company*, 17 Grant 425 (1870).

(*g*) *Grier v. Plunkett*, 15 Grant 152 (1868).

Secs. 428 (3) 431.

Full amount of debentures sold at a discount to be recoverable.

(3) Subject to any Act of the Parliament of Canada which may be passed respecting the lawful rate of interest, any debentures issued under the formalities required by law, by any municipal or provisional municipal corporation, payable to bearer, or to any person named therein or bearer, shall be valid and recoverable to the full amount, notwithstanding their negotiation by such corporation at a rate less than par, or at a rate of interest greater than six per centum per annum, or although a rate of interest greater than six per centum per annum is reserved thereby or made payable thereon. 29-30 V. c. 51, ss. 214, 217.

Taken from the Act of 1866 (29-30 V. c. 51), s. 217. *Cf.* 22 V. c. 99, s. 213.

(g) This subsection was omitted from "*The Consolidated Municipal Act of 1873*," apparently on the ground that it related to interest, a subject within the exclusive jurisdiction of the Parliament of Canada. It is, however, still in force, as was pointed out by SPRAGGE, C.J.O. in *Scottish-American Investment Company* v. *Village of Elora* (a).

Municipal corporations are not restricted, any more than individuals, as to the rate of interest which they may pay or receive (b).

In certain cases, debentures valid without corporate seal, etc.

430. Debentures issued in aid of any railway, or for any bonus, signed or indorsed and countersigned as directed by the by-law, shall be valid and binding on the corporation without the corporate seal thereto, or the observance of any other form with regard to the debenture than such as may be directed by the by-law. 55 V. c. 42, s. 406.

Taken from 14-15 V. c. 51, s. 18 (2); (1851).

Debentures issued under promulgated by-law valid notwithstanding defect in form.

Proviso.

431. Debentures issued under the authority of any by-law promulgated under this Act or any former Municipal Act, shall be valid and binding upon the corporation, notwithstanding any insufficiency in form or otherwise of such by-law, or in the authority of the corporation in respect thereof; provided that the by-law has received the assent of the electors (where necessary), and that no successful application has been made to quash the same within the time limited in the notice of promulgation. 55 V. c. 42, s. 407.

Taken from R.S.O. 1887, c. 184, s. 407. *Cf.* 36 V. c. 48, s. 298; 39 V. c. 7, s. 2 (Sched.); R.S.O. (1877), c. 174, s. 388; 44 V. c. 24, s. 34; 46 V. c. 18, s. 408.

[*As to the validity of debentures issued under by-laws duly registered, see sec. 399.*]

(a) This section applies in terms only to by-laws which have been promulgated under s. 375, have received the assent of the ratepayers under s. 338 (where such assent is necessary), and have not been moved against within the period limited by the notice published under s. 376.

In *Mellish* v. *Town of Brantford* (c) the defendants were held not to be estopped from setting up in an action upon a debenture regular in form, the

(a) 6 A.R. 628, 637, 638 (1881).

(b) *Township of Westminster* v. *Fox*, 19 U.C.R. 203 (1860); *Township of North Gwillimbury* v. *Moore*, 15 C.P. 445 (1865); *Re Nichol and Township of Alnwick*, 41 U.C.R. 577 (1877).

(c) 2 C.P. 35 (1851).

invalidity of the by-law under which it had been issued (*a*); but in *Crawford* v. *Town of Cobourg* (*b*), an action upon certain debentures purporting on their face to have been issued under a special Act vesting the Cobourg Harbour in the defendants, a plea that the debentures were not issued for the purpose authorized by the Act, but for a purpose unauthorized by law, was held bad—for "the corporation, if this were a defence, would be taking advantage of their own fraud, after having negotiated debentures and obtained money upon them" (*c*).

Sec. 431. Note (a).

Defence of illegality of debenture sued on.

And it has been held in England that a body corporate, having issued debentures which are assignable and which purport to have been executed pursuant to powers conferred by Statute, are estopped from alleging against an innocent assignee for value that the debentures have been issued illegally and in contravention of their statutory powers, and may be compelled by mandamus to apply their corporate funds in payment of the interest due on such debentures (*d*); and that where a corporation has power to issue legally-transferable securities, irregularities in such issue cannot be set up even against the original holder if he has the right to presume that all things were rightly done; still less can such irregularity or any equity against the original holder be urged against a *bona fide* transferee for value without notice (*e*).

Debentures issued before Feb. 1, 1883, on which payment has been made for two years, to be valid.

432. Where debentures were issued prior to the first day of February, 1883, by any municipality under a by-law passed by such municipality, and the interest on such debentures, and the principal of such of them (if any) as have fallen due, has been paid by the municipality for the period of two years or more, the by-law and the debentures issued thereunder, or such of them as are yet unpaid, shall be valid and binding upon the corporation, and shall not be quashed or set aside on any ground whatever. 55 V. c. 42. s. 408.

Taken from 44 V. c. 24, s. 27, which came into force on March 11th, 1881, and applied to by-laws passed prior to that date. The substitution,—in R.S.O. (1887), c. 184, s. 408,—of "February 1st, 1883," was (apparently) an error of the Statute Commissioners.

Local improvement debentures.

433.—(1) Every debenture issued under section 664 of this Act, or under the provisions of any other Act relating to the issue of debentures for local improvement purposes, shall bear on its face the words "*Local Improvement Debenture*," and shall contain a reference by date and number to the by-law under which it is issued.

Consolidation thereof.

(2) In order to obviate a difficulty which has been found to prevail in negotiating local improvement debentures, in consequence of many of the same having to be issued for small and broken amounts, councils may, from time to time, after the passing of the several by-laws covering the several amounts required for particular local improvements, as therein specified, and without in any way affecting the liens on the lands therein named and to be improved thereby, pass a collective or cumulative by-law consolidating the said several

(*a*) This defence was also set up in *Anglin* v. *Township of Kingston*, 16 U.C.R. 121 (1858), and in *Scottish-American Investment Company* v. *Village of Elora*, 6 A.R. 628 (1881).

(*b*) 21 U.C.R. 113 (1861.)

(*c*) *Per* ROBINSON, C.J., at p. 119.

(*d*) *Webb* v. *Commissioners of Herne Bay*, L.R. 5 Q.B. 642 (1870).

(*e*) *Re Romford Canal Company*, 24 Ch. D. 85 (1883), a case in which the resolution authorizing the issue of debentures had been passed at a meeting where a quorum of shareholders was not present.

Sec. 433 (2).

By-laws consolidating local improvement debentures.

amounts, and may issue the required debentures in a general consecutive issue under such consolidated by-law, apportioning, nevertheless, the amount raised thereby, and crediting each service with the amount previously estimated and named for the same under the individual by-law passed in the first instance.

What individual by-law shall state.

(3) Councils desiring to avail themselves of the provisions of the preceding subsection shall insert, in each such by-law, a clause intimating that the amount of the debentures to be issued thereunder is subject to consolidation; and in such case it shall be sufficient to state in the said individual by-law that debentures to be issued thereunder shall be issued at so many years from the date of issue of the same, without defining a specific date:

Debentures already issued or sold to be excluded.

(4) No consolidated debenture shall be issued, covering any debentures which have been issued or sold under any original by-law. 55 V. c. 42, s. 409.

Subsection 1 is taken from the Act of 1866, (29-30 V. c. 51), s. 304, the remaining subsections from "*The Municipal Amendment Act of 1882*," (45 V. c. 23,) s. 3.

(a) The advisability of increasing the selling value of local improvement debentures by permitting their consolidation in the manner herein provided was brought to the attention of the Legislature in 1882 by the late S. B. Harman, D.C.L., then City Treasurer of Toronto. The procedure suggested is first to pass the local improvement by-law assessing the property benefited by the work, and then, before issuing the debentures thereunder, to pass a consolidating by-law, which may at the same time provide for raising the share (if any) of the cost of the work to be contributed by the municipality at large. (a)

Form of consolidating by-law.

The following is a form of by-law for both these purposes:

Form of a By-law consolidating several issues of Local Improvement Debentures.

A BY-LAW

To consolidate into one issue of $77,699.76 the broken amounts of certain four per cent. nineteen year Local Improvement Debentures.

"WHEREAS, pursuant to the provisions of "*The Municipal Act*," the Corporation of the City of Toronto have passed twelve several By-laws for raising, by the issue of Local Improvement Debentures, payable at the expiration of nineteen years from the date of the issue of the same, the aggregate amount of $33,261.76 for carrying out certain local improvements mentioned in the said several by-laws, and whereas over and above the amounts for which the property on the said streets is rated under the said by-laws, the city contributes towards the cost of said local improvements the sum of $24,496; and whereas the said twelve by-laws are numbered as follows, and the several amounts to be defrayed by the city and the property holders respectively are as follows:—

(a) See ss. 679, 685.

No. of original by-law.	Nature of improvement.	Street.	Section. From.	Section. To.	City's proportion.	Ratepayers' proportion.	Total
					$ c.	$ c.	$ c.
2409	Sewer	Collier	Hawthorne st	East limit	160 00	869 41	1,029 41
2503	"	Prince Arthur av.	End of present sewer.	Huron st	400 00	3,331 72	3,731 72
2505		Grace	Arthur st	College st	1,205 00	4,071 12	5,276 12
2525	Stone block road-way.	Front	Yonge st	Bay st	4,931 30	7,819 81	12,751 11
2555	Sewer	Jamieson ave	First lane north of College st.	Bloor st	720 00	5,044 45	5,764 45
2558	" brick	Dagmar av	Pape av	Eastern terminus.	160 00	1,273 17	1,433 17
2590	Stone roadway	Howie	Clark st	North terminus	160 00	825 87	985 87
2596	Sewer	Bloor	Huron st	Brunswick ave	5,373 53	5,338 07	10,711 60
2597	"	"	Brunswick ave	Garrison Creek	10,546 17	17,676 17	28,222 34
2647	"	Reed	Terminus of present sewer.	Lane rear of Sumach st.	120 00	265 45	385 45
2649	"	Tarratt's lane	St. David st	Wilton ave	160 00	747 30	907 30
2663	"	Brunswick ave	Bloor st	Wells st	560 00	5,941 13	6,501 13
					$24,496 00	$53,203 76	$77,699 76

AND WHEREAS each of the individual by-laws above named contains a clause intimating that the amount of debentures to be issued thereunder is subject to consolidation;

AND WHEREAS it is expedient to further pass this collective or cumulative by-law, consolidating the several amounts above named, and to issue the required debentures in a general consecutive issue, apportioning nevertheless the amount raised and crediting each service with the amount previously estimated and named for the same under the individual by-laws passed in the first instance as aforesaid;

AND WHEREAS it is further expedient to declare that the debt to be created on the security of the special rates settled by the several by-laws hereby consolidated as aforesaid and hereunder is further guaranteed by the municipality at large; (a)

AND WHEREAS it is advisable to consolidate the broken amounts (being the ratepayers' share) named in the said several by-laws, and also to consolidate the several amounts which make up the said sum of $24,496 and to raise by loan, on the credit of the said city, the amount of the ratepayers' share together with the city's share, making in all the sum of $77,699.76, together with interest thereon at the rate of four per cent. per annum for nineteen years;

AND WHEREAS it will require the sum of $979.84 to be raised annually for nineteen years, the currency of the debentures to be issued under and by virtue of this by-law, to pay the interest of the said sum of $24,496, being the portion of the debt created by this by-law to be borne by the city, as shewn by the above recited by-laws, and the sum of $885.26 to be raised annually during the same period for the payment of the city's said portion of the debt, making in all the sum of $1,865.10 to be raised annually as aforesaid;

AND WHEREAS it is necessary that such annual sum of $1,865.10 shall be raised and levied in each year during the said period of nineteen years by a special rate sufficient therefor on all the rateable property in the city of Toronto;

THEREFORE the Municipal Council of the Corporation of the City of Toronto, enacts as follows:

1. The amounts mentioned in the said several by-laws above recited as the ratepayers' portion of the cost of the several improvements therein referred to are hereby consolidated, and a sum not exceeding $53,203.76, being the property-holders' proportion of the cost of the said improvements, as shown in the preamble to this by-law, together with a further sum not exceeding $24,496, being the portion of the cost of the said improvements to be borne by

(a) Sec. 385 (2).

Sec. 433.

Note (a).

Form of by-law consolidating several issues of local improvement debentures.

the city, as in the preamble to this by-law mentioned, making in all the sum of $77,699.76, shall be raised by loan on the security of the special rates imposed in the several by-laws above named, and on the security of the special rate hereinafter imposed, the debt so to be created being further guaranteed by the municipality at large; and debentures not exceeding in amount the said sum of $77,699.76 shall be issued by the said corporation therefor.

2. It shall be lawful for the mayor of the said city to raise by way of loan, from any person or persons, body or bodies corporate who may be willing to advance the same upon the credit of the debentures to be issued hereunder and guaranteed as aforesaid, a sum of money not exceeding in the whole the sum of $77,699.76 as aforesaid, and to cause the same to be paid into the hands of the treasurer of the said city, for the purposes above recited.

3. The said mayor may cause any number of debentures to be made for such sums of money as may be required, either in currency or sterling money, not less than one hundred dollars Canadian currency or twenty pounds sterling each, and not exceeding in the whole the said sum of $77,699.76, as in the preceding section mentioned, and the said debentures shall be sealed with the seal of the said corporation, and signed by the said mayor and treasurer.

4. The said debentures shall be made payable at the expiration of nineteen years from the date of the issue thereof, in this Province, Great Britain, or elsewhere, and may be expressed in sterling money or any other currency, and shall have attached to them coupons for the payment of interest, which coupons shall be signed by the mayor and treasurer.

5. The said debentures shall bear interest at four per cent per annum from the date of the issue thereof, which interest shall be payable half-yearly, on the first days of the months of January and July, in each year, at the place where the said debentures are made payable.

6. The said sum of $77,699.76 to be raised as aforesaid shall be apportioned and credited to the several services named in the several by-laws aforesaid, and shall not be applied to any other purpose whatsoever.

7. During nineteen years, the currency of the debentures to be issued under the authority of this by-law, the sum of $979.84 for the payment of interest and the sum of $885.26 for the payment of the principal of the said city's proportion of the cost of the said improvements, as in the preamble and in the first section of this by-law mentioned, making in all the sum of $1,865.10, shall be raised annually as aforesaid, and a special rate in the dollar upon the assessed value of all rateable property in the City of Toronto over and above all other rates and taxes, sufficient to produce in each year the said sum of $1,865.10, shall be annually levied and collected from the year one thousand eight hundred and ninety to the year one thousand nine hundred and eight, both years inclusive, unless the said debentures shall be sooner paid, for the purpose of paying the said debt of $24,496 with interest thereon, as aforesaid.

8. All moneys arising out of the annual special sinking-fund rates in the several by-laws above named and herein, and all moneys received in commutation thereof, shall be invested by the treasurer under resolution of this council from time to time as the law directs.

9. Every debenture to be issued hereunder shall contain a provision in the words set out in section 434 of "*The Municipal Act*".

10. This by-law shall come into operation and take effect on the day of the passing thereof."

Mode of transfer may be prescribed.

434.—(1) Debentures issued by any municipal council may contain a provision in the following words:

"This debenture, or any interest therein, shall not, after a certificate of ownership has been indorsed thereon by the treasurer of this municipal corporation, be transferable, except by entry by the treasurer or his deputy in the Debenture Registry Book of the said Corporation at the town (*or* village) of ," *or to the like effect.*

55 V. c. 42, s. 410.

Debenture Registry Book.

(2) The treasurer of every municipality issuing any debentures containing the provision in the last subsection mentioned, shall open and keep a Debenture Registry Book, in which he shall enter a copy of all certificates of ownership of

debentures which he may give, and also every subsequent transfer of such debenture; such entry shall not be made except upon the written authority of the person last entered in such book as the owner of such debenture, or of his executors or administrators, or of his or their lawful attorney, which authority shall be retained and duly filed by the treasurer. 55 V. c. 42, s. 411.

Registered debentures transferable by entry, etc.

(3) After the certificate of ownership has been indorsed as aforesaid, the debenture shall only be transferable by entry by the treasurer of the municipality or his deputy, in such Debenture Registry Book, from time to time, as transfers of such debenture are authorized by the then owner thereof, or his lawful attorney. 55 V. c. 42, s. 412.

Taken from the Act of 1873, (36 V. c. 48,) ss. 300, 301, 302.

(a) The design of this section is so far to control the negotiability of the debenture as to enable the municipal corporation at all times to know who is the holder of it. This is effected in the first instance by a declaration on the face of the debenture in the form given in the section. After the indorsement of ownership by the treasurer, no legal transfer of the debenture can be made, except by entry by the treasurer or his deputy in the Debenture Registry Book. The provision is analogous to that against transfer of property in a ship except in a particular mode, after certificate of ownership granted. (a)

Borrowing sums for current expenditure.

435.—(1) The council of any municipality may by by-law authorize the head, or acting head, with the treasurer thereof, to borrow from any person or bank such sums as the council deem necessary to meet the then current expenditure of the corporation, until such time as the taxes levied therefor can be collected, and the council shall by such by-law regulate the amounts to be so borrowed, and define the notes, cheques, covenants or agreements or other vouchers to be given in security therefor. 56 V. c. 35, s. 10.

Limit of amount to be borrowed for current expenditure.

(2) The amount so borrowed and outstanding shall not, in the case of any municipality other than a county, exceed eighty per cent. of the amount collected as taxes to pay the ordinary current expenditure of the municipality in the preceding municipal year, and in the case of a county, the amount so borrowed and outstanding shall not at any time exceed the amount to be raised and paid over to the county by the local municipalities therein for ordinary expenditure for county purposes for the current municipal year; and in the event of any council authorizing the borrowing of any larger sum than the amount limited by this sub-section, the members of the council who vote therefor shall be disqualified from holding any municipal office for the period of two years. 60 V. c. 45, s. 50 *part*: 61 V. c. 23, s. 16.

(2*a*) In the case of a town, township or village, any portion of which is situate within two miles of a city containing more

(a) See *Sherwood* v. *Coleman*, 6 U. C. R. 614 (1849); *Orser* v. *Mountenay*, 9 U. C. R. 382 (1851); *Chisholm* v. *Potter*, 11 C. P. 165 (1861); *Wilson* v. *Cameron*, 22 C. P. 198 (1872).

Sec. 434, (2a)-4.

than 100,000 inhabitants, the amount so borrowed and outstanding shall not exceed eighty per cent. of the taxes levied in the preceding municipal year. 62 V. (2nd Session) c. 26, s. 45.

Object of loan.

Lender not bound to prove necessity for borrowing.

(3) The powers by this section conferred shall not be exercised except for the purpose of meeting the ordinary expenditure of the municipality; and the person or bank lending any sum to a municipal corporation under this section shall not be bound to establish the necessity of borrowing the same. 56 V. c. 35, s. 10 *part*; 60 V. c. 45, s. 50 *part*.

Disqualification of councillors voting to exceed limit in borrowing for current expenditure.

(3*a*) The disqualification mentioned in subsection 2 shall not apply to the case of any member or members of any municipal council elected for the year 1899, not already unseated or who may have already resigned; and the judgment of any Court imposing such disqualification on any member or members of any municipal council who may have been unseated shall not disqualify him or them from holding any municipal office other than that of municipal councillor nor from holding the office of municipal councillor after the expiration of the present year, 1899. 62 V. (2nd Session) c. 26, s. 26.

Sub-section 1 is taken from 56 V. c. 35, s. 10, the original of which is s. 303 of "*The Consolidating Municipal Act of 1873*," (36 V. c. 48). The sources of the remaining sub-sections are indicated in the references appended to them respectively.

Former law.

(a) Until it was expressly conferred by the Legislature in 1873, the power of a municipal council to borrow money, even for current expenditure, and to execute as security therefor instruments binding upon the assets of the corporation, was a subject of some doubt, although the preponderance of authority was in favour of the right to do so. (*a*)

Under the Act of 1873, (s. 303,) the council could authorize the borrowing (to meet current expenditure) of such sums "as might be required" This has been altered to "such sums as the council deem necessary" for that purpose, —an important difference. The amount has also been limited by subss. 2 and 2*a*, and the rights of the lender still further protected by the last clause of subs. 3. Prior to the amendment of 1897—by which the amount which might be borrowed was limited to 80 per cent. of the taxes collected in the preceding year—it was held that, although not bound to establish the necessity for borrowing, the lender was nevertheless bound to inquire into the amount of the taxes authorized to be levied to meet current expenditure, and could not lawfully lend more than that amount (*b*); but when money has been borrowed to an amount unauthorized by this section, and has been expended upon objects for which moneys lawfully obtained might have been expended by the council, a debenture by-law approved by the ratepayers to raise money for its repayment will be upheld (*c*).

Borrowing money for school purposes.

(4) The council of any municipality shall have similar borrowing powers, with regard to moneys required by the trustees of any public school within such municipality or by the trustees of a high school district of which such municipality is

(*a*) *Holdsworth* v. *Dartmouth*, (*Mayor of*) 11 A. & E. 490 (1840); *Pallister* v. *Gravesend*, (*Mayor of*) 9 C. B. 774 (1850); *Nowell* v. *Worcester*, (*Mayor of*) 9 Ex. 457 (1854); *Payne* v. *Brecon*, *Mayor of*) 3 H. & N. 572 (1858); Brice on Ultra Vires (3rd Ed.) 194, 221, 225-6; Dillon, ss. 117 *et seq.*

(*b*) *Fitzgerald* v. *Molsons Bank*, 29 O. R. 105, 109, (1898).

(*c*) *S. C.* pp. 109, 110.

partly or wholly composed; provided such sums of money do not exceed the estimates submitted by such public or high school trustees as required by *The Public Schools Act* and *The High Schools Act*. 57 V. c. 50, s. 5, *part*.

Secs. 435 (4)-436. Rev. Stat. ec. 292, 293.

(5) All moneys raised by the municipal council for the current expenditure of public or high schools shall be paid to the treasurer of the school corporation entitled to receive the same in monthly instalments on the requisition of the school corporation concerned. 57 V. c. 50, s. 5 *part*.

Payment of school loans to treasurers of school boards.

(b) See "*The Public Schools Act*," (a); "*The High Schools Act* (b).

It is evidently not intended that the limitation (contained in subss. 2 and 2a) of the amount which may be borrowed to meet current expenditure, should apply to sums borrowed for school purposes under these subsections. The trustees of rural school sections are also empowered (c) to borrow money for payment of teachers' salaries and to give therefor a promissory note under the seal of the school corporation.

436. Unless specially authorized so to do, no council shall make or give any bond, bill, note, debenture or other undertaking, for the payment of a less amount than $100; and any bond, bill, note, debenture or other undertaking issued in contravention of this section, shall be void. 55 V. c. 42, s. 414.

Without special authority, no bond, etc., to be given for less than $100.

Taken from the Act of 1849, (12 V. c. 81), s. 83; re-enacted by 22 V. c. 99, s. 214, and 29-30 V. c. 51, s. 218.

(a) The original section—which prohibits municipal councils from acting as bankers or issuing any bond, bill, note, debenture or other undertaking of any kind or in any form in the nature of a bank-bill or note or intended to form a circulating medium or to supply the place of specie or to pass as money,—is expressly preserved by s. 304 of the Act of 1873, and appears to be still in force; but s. 215 of 22 V. c. 99 and s. 218 of 29-30 V. c. 51,—which declared the making, etc., of such bond, bill, etc., to be a misdemeanour—are now superseded by "*The Criminal Code, 1892*." In *Gillespie* v. *Municipality of Westbourne* (d) decided under an identical section in the Manitoba Municipal Act of 1881, it was held that the words "bond, bill, note, debenture or other undertaking" do not include an interest coupon, which is "issued as a mere incident to a debenture"; and that the plaintiff could recover in an action on such a coupon made for $30.

(a) R. S. O. c. 292, ss. 62 (9), 67.
(b) R. S. O. c. 293, ss. 15 (5), 33, 37.
(c) R.S.O. c. 292, s. 62 (10).
(d) 10 Man. Rep. 656 (1895).

Sec. 437.

Note (a).

TITLE V.—ARBITRATIONS.

DIV. I.—LANDS TAKEN OR INJURIOUSLY AFFECTED, (SECS. 437-447).
DIV. II.—APPOINTMENT OF ARBITRATORS, (SECS. 448-457).
DIV. III.—PROCEDURE, (SECS. 456-467).

N. B. The sections of "The Municipal Act" included under this Title apply also to Boards of Park Management constituted under "The Public Parks Act," R.S.O. c. 243). See s. 16 of that Act.

DIV. I.—LANDS TAKEN OR INJURIOUSLY AFFECTED, (SECS. 437-447).

Synopsis:—Sec. 437 provides that claims by owners, etc., of real property for compensation for damages necessarily resulting from the exercise of certain powers of municipal corporations in respect of such property shall, unless settled by agreement, be determined by arbitration under the Act.

Sec. 438 sets a time-limit, which cities and towns may still further reduce in the cases mentioned in ss. 439-443 by adopting the procedure prescribed by these sections.

Ss. 444-446 enable municipal corporations to deal with cases in which a clear title could not otherwise be acquired, and (under certain circumstances) to pay compensation money into Court.

The costs of arbitrations under the foregoing sections are dealt with by s. 447.

Compensation for Lands Taken or Injuriously Affected.

Owners of lands taken, etc., to be compensated.

437. Every council shall make to the owners or occupiers of, or other persons interested in, real property entered upon, taken or used by the corporation in the exercise of any of its powers, or injuriously affected by the exercise of its powers, due compensation for any damages, (including cost of fencing when required) necessarily resulting from the exercise of such powers, beyond any advantage which the claimant may derive from the contemplated work; and any claim for such compensation, if not mutually agreed upon, shall be determined by arbitration under this Act. 55 V. c. 42, s. 483, *part.*

Differences to be determined by arbitration.

Taken from the Con. Mun. Act, of 1873, (36 V. c. 48) s. 373. *Cf.* 12 V. c. 81, ss. 195, 197; 11 & 15 V. c. 109, Sched. A (27) (28); 16 V. c. 181, ss. 33, 35; 22 V. c. 99, s. 310; 29 & 30 V. c. 51, s. 325.

"Eminent Domain."

(a) "**Every council shall make . . compensation.**"

> "The property of subjects is under the eminent dominion of the State; so that the State, or he who acts for it, may use or even alienate or destroy such property, not only in case of extreme necessity,—in which even private persons have a right over the property of others,—but also for the ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way (*a*)."

Compensation.

In most civilized communities this right of "eminent domain" is subject to the condition that compensation shall be made to the owners of the property taken or used (*b*). An express provision to this effect is contained in the Constitution of the United States, and a similar one in most of the State Constitutions (*c*). But the State, in the exercise of this power to take private

(*a*) Grotius, Bk. III, c. 20, s. 7. See note (**b**) to s. 540, *post*, and an article on "Expropriation of Property" in 18 C.L.T. 230 (1898).

(*b*) Randolph on Eminent Domain, s. 2. See *Re Burritt and Township of Marlborough*, 29 U. C. R. 119 (1869), *per* RICHARDS, C. J., at p. 131; *Wells v. London, Tilbury and Southend R. W. Co.*, 5 Ch. D. 126, 130 (1877).

(*c*) See the citations from these in Dillon, s. 995 (c), note; Lewis on Eminent Domain, ss. 14-52.

Sec. 437.

Note (a).

"Eminent Domain."

property for public uses being thus at once actor and beneficiary, its duty, (in the absence of such express provision,) to make compensation, "is moral rather than legal, since the immunity of the sovereign from the suit of the subject is generally admitted" (*a*). Accordingly it is a well established rule of English law that when an act, which would otherwise be the subject of an action, is authorized by Statute and is done in accordance with that authority *and without negligence* compensation is recoverable only in case the Statute so provides, and in the mode which it prescribes (*b*).

Power delegated to private corporations.

The Legislature, instead of directly exercising its power to take private property for public use, may delegate this power (attended, however, by its constitutional restrictions), to private corporations organized for public purposes, and therefore, of course, to municipal corporations, which, for all purposes of local government, are essentially public in their nature and ends. It may also confer upon these corporations the right to decide upon the existence of the necessity for the exercise of the power. Thus a municipal corporation may be invested with power to open and establish by compulsory acquisition or purchase such streets as its council may judge necessary or expedient, to acquire land for parks or public buildings, to authorize the use of streets or squares by railways, tramways, etc., (*c*).

How Statutes giving powers of expropriation are to be construed.

But Statutes conferring these powers—being in derogation of private rights—will be construed strictly as against the grantee, and favourably for the person whose property is taken (*d*). Especially will the Courts require a strict compliance with all the conditions prescribed as precedent to the exercise of the power and with all provisions as to the manner of its exercise which are intended for the benefit of the citizen (*e*). And if the act has not been done "*in the exercise of*" the statutory powers, but outside of those powers, or otherwise than in the manner and under the formalities prescribed by the Statute, the remedy by action may still be resorted to (*f*). It is only where

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(*a*) See an article on "The Eminent Domain" by Carman F. Randolph in 3 Law Quarterly Review, (1887) p. 314.

(*b*) *Rankin* v. *Great Western R. W. Co.*, 4 C. P. 463 (1855); *Cotton* v. *Hamilton and Toronto R. W. Co.*, 14 U. C. R. 87 (1856); *Grimshaw* v. *Grand Trunk R. W. Co.*, 19 U. C. R. 493 (1860); *Galt* v. *Erie and Niagara R. W. Co.*, 19 C. P. 357 (1869); *County of Welland* v. *Buffalo & Lake Huron R. W. Co.*, 30 U. C. R. 147 (1870), 31 U. C. R. 539 (1871); *McLean* v. *Great Western R. W. Co.*, 33 U. C. R. 198 (1873); *Mayor of Montreal* v. *Drummond*, 1 App. Cas. 384 (1876); *Norvall* v. *Canada Southern R. W. Co.*, 28 C. P. 309 (1877); *Adams* v. *City of Toronto*, 12 O. R. 243 (1886); *Preston* v. *Township of Camden*, 14 A. R. 85 (1887); *Pratt* v. *City of Stratford*, 14 O. R. 260; 16 A.R. 5 (1888); *Township of Raleigh* v. *Williams*, [1893] A.C. 540-550; *Manchester, Sheffield, etc., R. W. Co.* v. *Anderson*, [1898] 2 Ch. 394. Art. 5536 of the R.S. Quebec (1888)—which provides for the determination by arbitration of claims by land-owners for damages occasioned by the improvement of water-courses for the purpose of erecting mills, manufactories, etc.—does not deprive a party damnified of his right to recover these damages by action; *Compagnie de Pulpe*, etc. v. *Village d' Agnes*, Q. R. 7 Q. B. 339 (1898); *Brisette* v. *Pillsbury*, 4 Rev. de Jur. 243 (1898). As to cases in which negligence can be proved, see note (**f**) *infra*.

(*c*) Dillon, s. 602; Tiedeman, s. 233.

(*d*) Dillon, s. 603; Maxwell on Statutes, (4th Ed.) 420.

(*e*) Dillon, s. 605; Tiedeman, s. 241.

(*f*) See the cases collected in note (**f**), *infra*, also *Doe d. Hutchinson* v. *Manchester, etc., R. W. Co.*, 14 M. & W. 687; *Smalley* v. *Blackburn R. W. Co.*, 2 H. & N. 158; *Ramsden* v. *Manchester, etc., R. W. Co.*, 1 Ex. 723; *Reg.* v. *Darlington Local Board*, 33 L. J. Q. B. 305; *Grand Junction Canal Co.* v. *Shugar*, L. R. 6 Ch. 483; *Attorney-General* v. *Shrewsbury (Kingsland) Bridge Co.*, 21 Ch. D. 752; *Jannette* v. *Great Western R. W. Co.*, 4 C. P. 488 (1855); *Wilkes* v. *Ozowski*, 13 U. C. R. 308 (1855); *Township of Brock* v. *Toronto & Nipissing R. W. Co.*, 37 U. C. R. 372 (1875); *Ayers* v. *Town of Windsor*, 14 O. R. 682 (1887); *West* v. *Village of Parkdale*, 12 App. Cas. 602 (1887); *Mason* v. *South Norfolk R. W. Co.*, 19 O. R. 132 (1889); *Baskerville* v. *Canada Atlantic R. W. Co.*, 20 A. R. 108, 116 (1892); *Hendrie* v. *Toronto, Hamilton & Buffalo R. W. Co.*, 26 O. R, 667, 27 O. R. 46 (1895); *Walsh* v. *Corp'n of Cascapediac*, Q. R. 7 Q. B. 290 (1898).

Sec. 437.

Note (a).

the act causing the injury can be justified as having been done in the exercise of a statutory power, and without negligence, that the party injured *must* seek his remedy by arbitration under the Statute (*a*); and where it is urged that the right of action has been taken away or turned into a statutory claim for compensation, it must be clearly shown that the case is one of those to which the Statute applies (*b*).

Exceptions to this rule of strict construction.

But in the case of municipal corporations, the object of which must be assumed to be the common good, such powers are less strictly construed than are the charters of commercial undertakings such as railway companies (*c*), and in England a similar rule is adopted in construing the charters of bodies which exist for essentially public purposes, *e.g.*, the Metropolitan Board of Works (*d*).

"Owner."

(b) "The owners or occupiers of or other persons interested in real property."

An "owner," under "*The Lands Clauses Consolidation Act, 1845*," (*e*) "*The Railway Act*," (*f*) and "*The Railway Act of Ontario*." (*g*) means "any person or corporation who under the provisions of the . . . Act . . . would be enabled to sell and convey lands," etc.

In *Stewart* v. *Ottawa & N. Y. R. W.Co.* (*h*) a case under "*The Railway Act*," Boyd, C., says (pp. 600-601):

> The scheme of the Act appears to be to deal with the person in possession as owner (*i*), and if the company propose to disturb that possession, it must be pursuant to the powers conferred by the Act. The matter of title is to be held in abeyance until a later stage in the expropriation proceedings (*j*). . . . The company cannot, even in the case of defective title, ignore the person who actually occupies the land as owner, and proceed as if his interest had been duly invalidated by legal process on the part of the real owner "(*k*).

(*a*) *Williams* v. *Township of Raleigh*, 21 S. C. R. 103, 131 (1892); *s. c. sub. nom. Township of Raleigh* v. *Williams*, [1893] A. C. 540; *McCulloch* v. *Township of Caledonia*, 25 A. R. 417 (1898); and see note (**f**), *infra*.

(*b*) See *per* Mellish, L. J., *Clowes* v. *Staffordshire Potteries Waterworks Co.*, L. R. 8 Ch. 125, 139 (1872); *Township of Raleigh* v. *Williams*, [1893] A. C. at p. 548.

(*c*) *Harding* v. *Township of Cardiff*, 29 Grant 308, 2 O. R. 329 (1882); *Kruse* v. *Johnson*, 14 Times L. R. 416, 417 (1898).

(*d*) *Per* Wood, V. C., *North London R. W. Co.* v. *Metropolitan Board of Works*, 1 Johns. 405; *Pallister* v *Gravesend*, 9 C. B. 174; *Galloway* v. *Mayor of London*, L. R. 1 H. L. 34; *Quinton* v. *Mayor of Bristol*, L. R. 17 Eq. 524; *Attorney-General* v. *Cambridge*, L. R. 6 H. L. 303; *Richmond* v. *North London R. W. Co.*, L. R. 3 Ch. 679; *Lyon* v. *Fishmongers' Co.*, 1 App. Cas. 662.

(*e*) Imp. Stat. 8 V. c. 18, s. 3. By s. 7, "corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees . . . for charitable or other purposes, executors and administrators, and all parties . . . entitled to the receipt of the rents and profits of lands in possession or subject to any estate in dower or to any lease for life or for lives and years or for years or for any less interest" are empowered to sell, convey and release, not only on behalf of themselves, but also on behalf of the persons entitled in reversion, remainder or expectancy after them, and on behalf of those for whom they are guardians, committees or trustees. *Cf.* s. 444 of this Act.

(*f*) 51 V c. 29 (Ca.) s. 2 (*p*).

(*g*) R.S.O. c. 207, s. 3 (10).

(*h*) 30 O.R. 599 (1899).

(*i*) See 59 V. c. 9 (Ca), s. 3.

(*j*) See *Re Manor of Lowestoft and Great Eastern R. W. Co.*, 24 Ch. D. 253 (1883); *Re Alston's Estate*, 5 W.R. 189: 28 L.T.O.S. 337 (1857).

(*k*) See *Ex p. Winder*, 6 Ch. D. (1877) at p. 703, where Hall, V.-C. intimates that the man in possession can hold against the railway company, if they do not observe the directions of the Statute. In *Re Alston's Estate*, supra, payment for the property expropriated was ordered to one who claimed to be in possession of part of the foreshore as against the Crown.

Sec. 437.

Note (c).

Persons interested.

Any interest in land, whether legal or equitable, is within the scope of this section, *e.g.*, that of a tenant for years (*a*); and under "*The Lands Clauses Consolidation Act*," (*b*) a tenant in possession under an agreement for a lease for years (*c*); a person entitled to an annuity charged upon land (*d*), a mortgagee (*e*): and even an equitable mortgagee (*f*), have been held to be proper parties to the arbitration (*g*).

But in *Re Town of Cornwall and The Cornwall Water Works Co.* (*h*), an arbitration under "*The Act respecting Joint Stock Companies for supplying Cities, etc., with Gas and Water*" (*i*), the mortgagees were not made parties; and, an award having been made for an amount less than their claim, it was held that the omission to make them parties did not entitle the defendants to have the matter referred back, since the mortgagees' rights could not be thereby affected.

One arbitration to settle all claims.

Where there is possession of the whole as one property, there should be but one set of proceedings and one arbitration, and the whole should be dealt with under the Statute as the property of one and the same owner (*j*).

A claim to compensation does not pass to the purchaser of real property.

The right to compensation, when once created, continues to exist as something distinct from the land and is not affected by any subsequent transfer or surrender of such land (*k*).

As to the meaning of "real property" under "*The Municipal Act*," see s. 2 (8), *ante*, p. 34.

(c) "Entered upon, taken, or used by the corporation in the exercise of any of its powers."

Examples.

Examples of such powers under "*The Municipal Act*" are:—s. 501 (taking land for court house); s. 534 (town or city hall, etc.); s. 554 (drains and sewers); s. 571 (telephone works); s. 576 (parks, squares, boulevards, etc.); s. 637 (roads and bridges); s. 640 (10) (taking material for roads); s. 658 (2) (opening and altering roads and bridges), etc. (*l*)

"Using."

"Using," as applied to land, means holding or occupying (*m*).

(*a*) *Johnson* v. *Ontario, Simcoe & Huron R. W. Co.*, 11 U.C.R. 246 (1853).

(*b*) Imp. Stat., 8 V. c. 18, s. 3. See *supra*.

(*c*) *Sweetman* v. *Metropolitan R. W. Co.*, 10 L.T.N.S. 156 (1859).

(*d*) *Re Brewer*, 1 Ch. D. 409 (1875).

(*e*) *Pile* v. *Pile*, 3 Ch. D. 36 (1876).

(*f*) *Martin* v. *London, Chatham and Dover R. W. Co.*, L.R. 1 Ch. 501 (1875).

(*g*) As to yearly tenants, see s. 121 and *Syers* v. *Metrop. Bd. of Works*, 36 L.T.N.S. 277 (1862).

(*h*) 29 O.R. 350 (1898). And see 29 O.R. pp. 605, 607-8.

(*i*) See R.S.O. c. 199, ss. 59-67.

(*j*) *Per* BOYD, C., in *Stewart* v. *Ottawa and N. Y. R. W. Co.*, supra, at p. 601, citing *Holt* v. *Gas Light and Coke Co.*, L.R. 7 Q.B. 728 (1872); and see *Abrahams* v. *Mayor of London*, L. R. 6 Eq. 62, 5 (1868);

(*k*) *Reg.* v. *McCurdy*, 2 Ex. C.R. 311 (1891). See *Partridge* v. *Great Western R. W. Co.*, 8 C. P. 97 (1858); *Re Prittie and City of Toronto*, 19 A. R. 503 (1892), at p. 522; *City of Montreal* v. *Mulcair*, 28 S. C. R. 458, 471 (1898); *Dixon* v. *Baltimore and Potomac R. W. Co.*, 1 Mackey, 78.

(*l*) See also "*The Public Works Act of Ontario*," (R.S.O. c. 37), ss. 25, 28, 29; do. of Canada, (31 V. c. 12,) ss. 24, 25, (now "*The Expropriation Act*," (R.S.Ca. c. 39), s. 3); "*The General Road Companies Act*," (R.S.O. c. 193), ss. 14-28; "*The Timber Slide Companies Act*," (R.S.O. c. 194), ss. 24-27; "*The Gas and Water Companies Act*," (R.S.O. c. 199), ss. 22, 27; "*The Railway Act of Ontario*," (R.S.O. c. 207), ss. 8, 20; "*The Railway Act*," of Canada (51 V. c. 29), ss. 90-172; "*The Street Railway Act*," (R.S.O. c. 208), s. 39; "*The Electric Railway Act*," (R. S. O. c. 209), ss. 11, 28-35; "*The Municipal Water Works Act*," (R.S.O. c. 235), ss. 4-6; "*The Railway Streets and Drains Act*," (R. S. O. c. 241), ss. 4, 5; "*The Public Health Act*," (R.S.O. c. 248), ss. 22, 26; "*The Public Schools Act*," (R.S.O. c. 292), ss. 31-37; "*The High Schools Act*," (R.S.O. c. 293), ss. 18-22, etc.

(*m*) *Per* FALCONBRIDGE, J., *Re Davis and City of Toronto*, 21 O.R. 243 (1891), at p. 247.

Sec. 437.

Note (d).

(d) "Or injuriously affected by the exercise of its powers."

Until the Act of 1873 (a) the section made no provision for compensation in cases where, though real property might be injuriously affected, no land was actually taken (b).

"Injuriously affected," meaning of.

The expression "injuriously affected" is borrowed from s. 68 of "*The Lands Clauses Consolidation Act, 1845*" (c), and has been thus explained by BRAMWELL, B., —(d)

> "The word 'injuriously' affected does not mean 'wrongfully' affected; what is done is rightful under the powers of the Act. It means 'hurtfully' or 'damnously' affected. As where we say of a man that he fell and injured his leg, we do not mean that his leg was wronged, but that it was hurt. We mean that he fell and that his leg was 'injuriously,' that is to say hurtfully, affected. At the same time I am clearly of opinion that to entitle the parties interested to compensation the injury or hurt must be such as could not lawfully be inflicted except by the powers of the Act. . . . The act, therefore, injuriously affecting must be one which would be wrongful but for the Statute." (e)

But a right to compensation does not arise in every case in which, but for the Statute, an action would have lain.

> "No case comes within the purview of the Statute, unless some damage has been occasioned *to the land itself*, in respect of which, but for the Statute, the complaining party might have maintained an action. The injury must be an actual injury, to the land itself, as by loosening the foundations of buildings on it, obstructing its light or its drains, making it inaccessible by lowering or raising the ground immediately in front of it, or by some such physical deterioration. Any other construction of the clause would open the door to claims of so wide and indefinite a character as could not have been in the contemplation of the Legislature," (f)

The limitations of the right to compensation under the words "injuriously affected" in s. 68 of "*The Lands Clauses Consolidation Act*" (g) have been very clearly defined by Mr. (afterwards LORD JUSTICE) THESIGER when arguing the case of *The Metropolitan Board of Works* v. *McCarthy* (h); and his definition, — which was accepted by LORDS CAIRNS, HATHERLEY and O'HAGAN, and (with a slight qualification) by LORD CHELMSFORD, in their judgments in that case, and which has since been approved by COTTON and BOWEN, L.JJ., in *Ford* v. *Metropolitan R. W. Co.* (i), — may now be regarded as a succinct statement of the law on this point. It is as follows:—

> "Where, by the construction of works there is a *physical interference with any right*, public or private, which the owners or occupiers of property *are by law entitled to make use of in connection with such property*, and which right gives an additional market value to such property, *apart from the uses to which any particular owner or occupier might put it*, there is a title to compensation if, by reason of such interference, the property as a property is lessened in value."

(a) 36 V. c. 48, s. 373.

(b) *Re Yeomans and County of Wellington*, 43 U.C.R. 522 (1878), *per* GWYNNE, J., at p. 529, referring to *Croft* v. *Town of Peterborough*, 5 C.P. 35 (1855); *Reid* v. *City of Hamilton*, 5 C.P. 269 (1855); *Reg.* v. *County of Perth*, 14 U.C.R. 156 (1856).

(c) Imp. Stat. 8 V. c. 18.

(d) *McCarthy* v. *Metropolitan Board of Works*, L.R. 8 C.P. 191 (1872-3) *Per* BRAMWELL, B., at pp. 208, 209.

(e) See on this point *Ricket* v. *Metropolitan R. W. Co.*, L.R. 2 H.L. 175 (1867); *McCarthy* v. *Metropolitan Board of Works*, L.R. 7 H.L. 243 (1874); *Re Derlin and Hamilton & Lake Erie R. W. Co.*, 40 U.C.R. 160, 162 (1876); *Mayor of Montreal* v. *Drummond*, 1 App. Cas. 384 (1876); *Mayor of Birkenheads, L. & N. W. R. W. Co.*, 15 Q.B.D. 572 (1885), at p. 578; *North Shore R. W. Co.* v. *Pion*, 14 App. Cas. 612 (1889).

(f) *Per* LORD CRANWORTH, *Ricket* v. *Metropolitan R. W. Co.*, L.R. 2 H.L. 175 (1847), at p. 198.

(g) Imp. Stat. 8 V. c. 18. (h) L.R. 7 H.L. 243 (1874) at p. 249.

(i) 17 Q.B.D. 12 (1886).

Sec. 437.

Note (d).

"Injuriously affected," meaning of.

In the case of *The Caledonian R. W. Co.* v. *Walker's Trustees* (*a*), LORD SELBORNE, L.C., after discussing the earlier decisions, laid down the following four propositions as having been established by them :—

1. When a right of action, which would have existed if the work in respect of which compensation is claimed had not been authorized by Parliament, would have been merely personal, without reference to land or its incidents, compensation is not due under the Acts (*b*).

2. When damage arises, not out of the execution, but only out of the subsequent use of the work, there is no case for compensation. (*c*)

3. Loss of trade or custom, by reason of a work not otherwise directly affecting the house or land in or upon which a trade has been carried on, or any right properly incident thereto, is not by itself a proper subject for compensation (*d*).

4. The obstruction by the execution of a work of a man's direct access to his house or land, whether such access be by a public road or by a private way, is a proper subject for compensation (*e*).

LORD BLACKBURN, in his judgment in the same case (*f*) considered the following propositions as "now no longer upon to discussion" :—

1. No action can be maintained for anything which is done under the authority of the Legislature, though the act is one which, if unautherized by the Legislature, would be injurious and actionable.

2. The remedy of the party who suffers the loss is confined to recovering such compensation as the Legislature has thought fit to give him.

3. Compensation is confined to damages arising from that which would, if done without authority from the Legislature, have given rise to a cause of action.

4. It must also be shown that it (the action) would have lain in respect of an injury to the land or an interest in land.

So, it will be observed that the right to compensation under this section of "*The Municipal Act*," although given to *persons* (—viz. "owners, occupiers, and persons interested")—is so given only where *real property* is injuriously affected, and it therefore follows that the compensation is limited to the amount of injury done to that real property.

The words in "*The Public Works Act*" (*g*) "injury done to any land or property," are commensurate with, and intended to have the same meaning as the phrase "injuriously affected" in "*The Lands Clauses Consolidation Act*" (*h*), and accordingly in *Paradis* v. *The Queen* (*i*), a case where the lands were injuriously affected, but no part thereof had been expropriated, damage to a man's trade or business, and any other damages not arising out of injury to the land itself, were held to form no ground for compensation (*j*). But where

(*a*) 7 App. Cas. 259 (1882) at p. 276.

(*b*) *Caledonian R. W. Co.* v. *Ogilvy*, 2 Macq. 229 (1856).

(*c*) *Hammersmith R. W. Co.* v. *Brand*, L. R. 4 H. L. 171 (1889); *Re Derlin & Hamilton & Lake Erie R. W. Co.*, 40 U. C. R. 160 (1876). In the opinion of ARMOUR, C. J., this rule does not apply to cases under our Dominion or Provincial Railway Acts; see *Re Birely* v. *Toronto, Hamilton & Buffalo R. W. Co.*, 28 O.R. 468 (1897), more fully cited *post*, note (f).

(*d*) *Ricket* v. *Metropolitan R. W. Co.*, L.R. 2 H.L. 185 (1867). So—under "*The Railway Act of Canada*" (51 V. c. 29)—; *St. Catharines R. W. Co.* v. *Norris*, 17 O.R. 667 (1889); *Powell* v. *Toronto, Hamilton & Buffalo Railway Co.*, 25 A.R. 209 (1898); and—under "*The Public Works Act*," (31 V. c. 12 (D),)—*McPherson* v. *The Queen*, 1 Ex. C.R. 53 (1882); *Lefebvre* v. *The Queen*, 1 Ex. C.R. 121 (1884).

(*e*) *Metropolitan Board of Works* v. *McCarthy*, L.R. 7 H.L. 243 (1874). See the cases collected *infra* on p. 462.

(*f*) 7 App. Cas. 259 (1882), at p. 293.

(*g*) 31 V. c. 12 (Ca.), s. 40.

(*h*) *McPherson* v. *The Queen*, 1 Ex. C.R. 53 (1882).

(*i*) 1 Ex. C. R. 191 (1887).

(*j*) On this point see also *Powell* v. *Toronto, Hamilton & Buffalo R. W. Co.*, 25 A.R. 209 (1898),—a case under "*The Railway Act of Canada*."

Sec. 437.

Note (d).

"Injuriously affected," meaning of.

a colliery was injured by the diversion of a brook, the colliery owner was held entitled to compensation (*a*). So, where a stream of water flowing through a farm was cut off by the construction of a railway (*b*). And under "*The Land Clauses Consolidation Acts*" lands have been held to be "injuriously affected" where the access thereto has been obstructed by narrowing (*c*), or obstructing (*d*), or diverting (*e*), or closing highways leading thereto (*f*), or where the grade of such a highway has been so altered as to cut off or impede access to the land (*g*), or where a right of way has been, though but temporarily, interfered with (*h*), or a right of access to a water frontage appurtenant to the land has been cut off (*i*).

Damage must be peculiar to the property affected.

Need not be permanent.

But a mere right not appurtenant to the land, *but enjoyed in common with the rest of the public* is not a matter for compensation (*j*). The damage must be peculiar to the property in question, differing not only in degree but also in kind from that to which the rest of Her Majesty's subjects are exposed by the execution of the work (*k*). It need not, however, be of a permanent character, the dictum of LORD CHELMSFORD, L.C., to that effect in *Ricket* v. *Metropolitan R. W. Co.* (*l*), having been overruled in *Ford* v. *Metropolitan R. W. Co.* (*m*).

But must be irrespective of any particular use of the property.

> "The damage must be sustained in respect of the property itself, not in respect of any particular use to which it may from time to time be put. . . . It must be a damage which would be sustained by *any person* who was the owner, *to whatever use* he might think it proper to put the property" (*n*):

a rule contained in the one laid down in *McCarthy's* case, *ante*, and which upon examination will be found not to conflict with the later decision in *Re Wadham and North Eastern R. W. Co.* (*o*), where, a railway company having stopped up a street in which was a building used as a public house and hotel, it was

(*a*) *Reg.* v. *North Midland R. W. Co.*, 2 Railway Cas. 1 (1840).

(*b*) *Little* v. *Dublin and Drogheda R. W. Co.*, 7 Irish C.L.R. 82 (1857).

(*c*) *Beckett* v. *Midland R. W. Co.*, L.R. 1 C.P. 241, L.R. 3 C.P. 82 (1867-8).

(*d*) *Caledonian R. W. Co.* v. *Walker's Trustees*, 7 App. Cas. 259 (1882); *Reg.* v. *Barry*, 2 Ex. C.R. 333 (1891); *Reg.* v. *Malcolm*, 2 Ex. C.R. 357 (1891).

(*e*) *Metropolitan Board of Works* v. *Howard*, 5 Times L.R. 732 (1889).

(*f*) *Mayor of Montreal* v. *Drummond*, 1 App. Cas. 384 (1876); *Wadham* v. *North-Eastern R. W. Co.*, 14 Q.B.D. 747, 16 Q.B.D. 227 (1885).

(*g*) *Reg.* v. *Eastern Counties R. W. Co.*, 2 Q.B. 347 (1841); *Reg.* v. *Wallasey Local Board*, L.R. 4 Q.B. 351 (1869); *Reg.* v. *St. Luke's, Chelsea*, L.R. 6 Q.B. 572, L.R. 7 Q.B. 148 (1871); *Truhey* v. *Great Southern and Western R. W. Co. of Ireland*, 10 Irish C.L.R. (N.S.), 98 (1859); *Furness R. W. Co.* v. *Cumberland Building Society*, 52 L.T.N.S. 144 (1884); *Re Yeomans and County of Wellington*, 43 U.C.R. 522 (1878), 4 A.R. (1879), (where the previous cases are fully reviewed); *Adams* v. *City of Toronto*, 12 O.R. 243 (1886); *Bowen* v. *Canada Southern R. W. Co.*, 14 A.R. 1 (1887); *Pratt* v. *City of Stratford*, 14 O.R. 260 (1887), 16 A. R. 5 (1888); *Baskerville* v. *City of Ottawa*, 20 A.R. 108 (1892); *Re Cummings and County of Carleton*, 25 O.R. 607, 26 O.R. 1 (1894).

(*h*) *Ford* v. *Metropolitan R. W. Co.*, 17 Q.B.D. 12 (1886).

(*i*) *Bell* v. *Hull & Selby R. W. Co.*, 2 Railway Cases 279 (1840); *Reg.* v. *Buffalo and Lake Huron R. W. Co.*, 23 U.C.R. 208 (1864); *Macey* v. *Metropolitan Board of Works*, 33 L.J.Ch. 377 (1864); *Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R. 5 H. L. 418 (1872); *McCarthy* v. *Metropolitan Board of Works*, L.R. 7 C.P. 508, L.R. 8 C.P. 181, L.R. 7 H.L. 243 (1874); *Lyon* v. *Fishmongers' Co.*, 1 App. Cas. 662 (1876); *North Shore R. W. Co.* v. *Pion*, 14 App. Cas. 612 (1889); *Bigaouette* v. *North Shore R. W. Co.*, 17 S.C.R. 363 (1888).

(*j*) *Reg.* v. *Metropolitan Board of Works*, L.R. 4 Q.B. 358 (1869); *Powell* v. *Toronto, Hamilton & Buffalo R. W. Co.*, 25 A.R. 209 (1898).

(*k*) *Robinson* v. *The Queen*, 4 Ex.C.R. 439, 451; 25 S. C. R. 692 (1895); and see *Powell* v. *Toronto, Hamilton & Buffalo R. W. Co.*, 25 A.R. 209 (1898), *per* MACLENNAN, J. at p. 219.

(*l*) L.R. 2 H.L. 175, 196 (1867). (*m*) 17 Q.B.D. 12 (1886).

(*n*) *Per* WILLES, J., in *Beckett* v. *Midland R. W. Co.*, L.R. 3 C.P. 82, 94 (1868).

(*o*) 14 Q.B.D. 747; 16 Q.B.D. 227 (1885).

Held, that although the exceptional value which the premises might have in the hands of the then proprietor could not be taken into account, the owners were entitled to compensation for the depreciation in the special marketable value of the premises as a public house or hotel, for which purposes they were, from their situation and construction, especially suitable.

Lands injuriously affected.

If the market value of the lands, if used for some other available purpose, would not be decreased, that possibility must be taken into account (*a*).

(c) "Due compensation." Where any land is actually taken the owner is entitled to a much larger measure of compensation than in a case merely of injurious affection (*b*). It has been pointed out that there is a distinction between the compensation which may be claimed under this section—(or under the corresponding sections of "*The Expropriation Act*" (*c*), "*The Railway Acts*" (*d*), or "*The Lands Clauses Consolidation Act*" (*e*),—in respect of real property taken or used in the exercise of statutory powers, and the damages which would be recoverable in an action of ejectment or trespass in respect of the same lands. In the latter case, it is assumed that the acts complained of are unlawful; in the former case, that they are rightfully done under statutory authority; and "this distinction is one of substance, affecting not only the proceedings but the tribunal to which recourse should be had" (*f*).

Where any land is taken.

> "Where part of the claimant's land has been taken and the remainder injuriously affected, the measure of the damage for which he is entitled to compensation is the value of the land taken and the depreciation occasioned by the construction of the public work in the value of other lands held with those so taken." (*g*).

Measure of compensation

In view of the authorities just cited, this appears to be a more accurate statement of the law than to say that "the principle of compensation in such a case is the same as in an action for forcible eviction," (*h*) or "as in trespass for expulsion" (*i*). But the distinction is in many cases a very fine one; and it is well established that the owner—if any part of his land is taken—is entitled to compensation "for all the loss caused by the expulsion," (*j*) including *(inter alia)* compensation for;

(a) Good will and loss of profits, (*k*).

(b) Damage, loss and injury by enforced removal, (*l*).

(c) Damage by severance, (*m*).

(*a*) *Senior* v. *Metropolitan R. W. Co.*, 2 H. & C. 258 (1863); *Eagle* v. *Charing Cross R. W. Co.*, L.R. 2 C.P. 638 (1867).

(*b*) Freeman on Compensation, (1897), p. 44.

(*c*) R.S.Ca. c. 39.

(*d*) R.S.O. c. 207; 51 V. c. 29 (Ca.).

(*e*) Imp. Stat. 8 V. c. 18.

(*f*) *Per* MONTAGUE SMITH, J., in *Jones* v. *Stanstead Ry. Co.*, L.R. 4 P.C. 98 (1872) at p. 115; *Mayor of Montreal* v. *Drummond*, 1 App. Cas. 384, 413 (1876); *West* v. *Village of Parkdale*, 15 O.R. 319, 323 (1888).

(*g*) *Per* BURBIDGE, J. in *Reg.* v. *Moss*, 5 Ex. C. R. 30, 35, (1895).

(*h*) *Paradis* v. *The Queen*, 1 Ex. C. R. 191 (1887).

(*i*) *Ricket* v. *Metropolitan R. W. Co.*, 5 B. & S. 156 (1864).

(*j*) *Per* ERLE, C. J., in *Ricket's Case*, *supra*, at p. 162.

(*k*) *White* v. *Commissioners of Works*, 22 L.T.N.S. 591 (1870); *McCauley* v. *City of Toronto*, 18 O. R. 416 (1889). See *Cooper* v. *Metropolitan Board of Works*, 25 Ch. D. 472 (1883); *Commissioners of Inland Revenue* v. *Glasgow & S. W. Ry. Co.*, 12 App. Cas. 315 (1887); *Reg.* v. *Scard*, 10 Times L. R. 545 (1894).

(*l*) *Jubb* v. *Hull Dock Co.*, 9 Q. B. 443 (1846); *Reg.* v. *Hull Dock Co.*, 3 Railway Cas. 795 (1846).

(*m*) *Re Oxford, etc., R. W. Co.. Ex p. Melward*, 27 Beav. 571 (1859); *Reg.* v. *Brown*, L.R. 2 Q.B. 630 (1867); *Holt* v. *Gas Light & Coke Co.*, L. R. 7 Q.B. 728 (1872); *Ripley* v. *Great Northern Railway Co.*, L.R. 10 Chy. 435 (1875). Although damage "by reason of the severance of the lands taken from the other lands of the owner" is not expressly referred to in s. 437 of "*The Municipal Act*" (as it is in s. 63 of "*The L. C. C. Act, 1845*"), there seems to be no reason to doubt that it is fairly included within the general language of the former section.

Sec. 437.

Note (e).

"Due compensation."

Damages by future user of portion taken.

(d) Loss sustained by reason of not being able to carry on his business on the remaining portion of the property (*a*), and (in England),

(e) Damage to stock in trade or other property on the premises, (*b*).

> "Where part of a proprietor's land is taken, and the future use of the part taken may damage the remainder, such damage may be an injurious affecting of the proprietor's other lands, though it would not be an injurious affecting of the land of neighbouring proprietors from whom nothing had been taken." (*c*)

And in such a case the damage to the lands not taken is to be estimated not only with reference to the construction of the works but also to the purpose for which the land taken is to be used (*d*).

Owing to the difference in this respect between the language of "*The* (Dominion) *Railway Act*" and "*The L.C.C. Act, 1845*," it has been held under the former Statute that possible damage to bush land from greater exposure to winds and storms and its greater liability to injury by fire (*e*), or loss of local custom to and from a mill arising not from the construction of the railway but from its subsequent user (*f*), were considerations which could not be taken into account in estimating the damages, although in both cases contiguous lands belonging to the same claimant had been taken or used by the company (*g*).

How value of land taken to be estimated.

The value of the land taken is to be assessed on the principle of compensation to the owner, the question being what he will lose by having it taken from him, not what will be gained by those who take it (*h*); and such value should be estimated, "not only with reference to the present purpose to which the land is applied, but also to any other more beneficial purpose to which in the course of events at no remote period it may be applied" (*i*)

Or—as it is expressed in the leading American case of *Boom Co.* v. *Patterson* (*j*)—

> "Compensation to the owner is to be estimated by reference to the uses for which the expropriated lands are suitable, having regard to the existing business or wants of the community, or to such as may reasonably be expected in the immediate future. The inquiry must be what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted, that is to say, what is it worth from its availability for valuable uses." (*k*)

And where lands are taken which possess capabilities rendering them available for more than one purpose, compensation should be assessed with reference to that purpose which gives the lands their highest value. (*l*)

(*a*) *Reg.* v. *Sheward*, 5 Q. B. D. 179 (1880), 9 Q. B. D. 741 (1880).

(*b*) *Knock* v. *Metropolitan Ry. Co.*, L. R. 4 C. P. 131 (1869).

(*c*) *Per* Lord Halsbury, L.C., in *Cooper, Essex* v. *Acton*, 14 App. Cas. 153 (1889), at p. 161, affirming the decision in *Re Stockport etc., Ry. Co.*, 33 L.J.Q.B. 251 (1864), where damages by reason of increased risk of fire to cotton mills on land not taken—thus involving the payment of higher insurance premiums—were held to be recoverable. See also *Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R. 5 H. L. 418 (1872); *Paradis* v. *The Queen*, 1 Ex. C. R. 191 (1887); *Vezina* v. *The Queen*, 2 Ex. C. R. 11 (1888).

(*d*) Cripps on Compensation, (3rd Ed.) 162.

(*e*) *Re Ontario & Quebec Ry. Co. and Taylor*, 6 O. R. 338 (1884).

(*f*) *St. Catharines Ry. Co.* v. *Norris*, 17 O. R. 667 (1889).

(*g*) But see now *Re Birely and Toronto, Hamilton & Buffalo Ry. Co.*, 28 O. R. 468, (1897) cited *infra* in note (f)

(*h*) *Stebbing* v. *Metropolitan Board of Works*, L. R. 6 Q. B. 37 (1870) *per* Lush J. at p. 45; *Re Harvey* and *Town of Parkdale*, 16 O. R. 372; 16 A. R. 468 (1889); *Paint* v. *The Queen*, 2 Ex. C. R. 149, 18 S. C. R. 718 (1891).

(*i*) *Per* Cockburn, C. J., in *Reg.* v. *Brown*, L. R. 2 Q. B. 630, 631 (1867).

(*j*) 98 U. S. 403 (1878).

(*k*) See *Ripley* v. *Great Northern Ry. Co.*, L.R. 10 Ch. 435 (1875); *Mayor of Montreal* v. *Brown*, 2 App. Cas. 168 (1876) at pp. 184-5; *Lefebvre* v. *The Queen*, 1 Ex. C. R. 121 (1884); *Paint* v. *The Queen*, 2 Ex. C. R. 149 (1890), 18 S.C.R. 718 (1891); *Re Macpherson and City of Toronto*, 26 O. R. 558 (1895): Cooley on Constitutional Limitations, (4th Ed.) 709.

(*l*) *Burton* v. *The Queen*, 1 Ex. C. R. 87 (1883).

Sec. 437.

Note (a).

Where it is claimed that lands would have a special value for building purposes, which cannot be established by actual sales of any part thereof, evidence as to sales of similar and similarly situated properties affords the best test of such value (*a*).

Due compensation.

As to the principles upon which a percentage upon the fair value of the property should be added for compulsory sale, see Freeman on Compensation pp. 40, 41. In *Reg.* v. *City of Toronto*—a case before BURBIDGE, J. in the Ex. Ct. (not reported)—10 per cent. was added to the value of the land thus taken (*b*). An express provision requiring arbitrators to add 10 per cent to the actual value is contained in s. 60 of R.S.O. c. 199, which relates to the mode of computing the value of gas works or water works constructed by a company under that Act and sought to be acquired by a city, town or village at a price fixed by arbitration.

Percentage altered for compulsory sale.

Payment of compensation not a condition precedent to right to enter.

In the case of municipal corporations exercising their powers in accordance with the Statute, payment of the compensation is not a condition precedent to the right of entry upon the land (*c*); but it is otherwise in cases under "*The Railway Acts*" (*d*).

(f) "**For any damages necessarily resulting from the exercise of such powers.**" The damages claimed must be the legal and necessary result of the act complained of (*e*); and it is only as to damages thus "necessarily resulting" from the exercise of the statutory powers that the land-owner is compelled to seek compensation under the Statute (*f*).

If work negligently done the right of action is not taken away.

> "The distinction is now clearly established between damage arising from works authorized by the Statute (where the party generally is to have compensation, and the authority is a bar to the action), and damage by reason of the work being *negligently done*, as to which the owner's remedy by action remains" (*g*).

Compensation must cover all the damages.

The compensation must cover *all* damages necessarily resulting from the exercise of the powers conferred upon the corporation to enter upon, take, use or injuriously affect the land in question. In this respect the language of our Statutes differs from that of "*The Lands Clauses Consolidation Act*" (*h*), the corresponding words of which are, "compensation in respect of any lands . . . taken for or injuriously affected *by the execution of the works*." So in "*The Rail-*

(*a*) *Falconer* v. *The Queen*, 2 Ex. C. R. 82 (1889).

(*b*) And see *Re Wilkes Estate*, 16 Ch. D. 597, (1880) at p. 599.

(*c*) *Harding* v. *Township of Cardiff*, 29 Grant 308, 2 O. R. 329, 341 (1882). And see *Stonehouse* v. *Township of Enniskillen*, 32 U. C. R. 562 (1872).

(*d*) *West* v. *Village of Parkdale*, 12 App. Cas. 602 (1887); *Mason* v. *South Norfolk Ry. Co.*, 19 O. R. 132 (1889); *Buskerville* v. *Canada Atlantic Ry. Co.*, 20 A. R. 108 (1892); *Hendrie* v. *Toronto, Hamilton & Buffalo R. W. Co.*, 20 O. R. 667; 27 O. R. 46 (1895); *Drummond R. W. Co.* v. *Ollivier*, Q. R. 7 Q. R. 41 (1897).

(*e*) *Reg.* v. *Poulter*, 20 Q.B.D. 132 (1887).

(*f*) *Township of Raleigh* v. *Williams* [1893], A.C. 540 at p. 550.

(*g*) *Per* CROMPTON, J., *Brine* v. *Great Western R. W. Co.*, 31 L.J.Q.B. 101; 2 B. & S. 402 (1862). See the cases collected in foot-note (*f*) on p. 457, *ante*, and also *Lawrence* v. *Great Western R. W. Co.*, 16 Q.B. 643 (1851); *Clothier* v. *Webster*, 12 C.B.N.S. 790, 31 L.J.C.P. 316 (1862); *Geddis* v. *The Proprietors of the Bann Reservoir*, 3 App. Cas. 430 (1878); *London, Brighton, etc., R. W. Co.* v. *Truman*, 11 App. Cas. 45 (1885); *Reg.* v. *Selby Dam Drainage Commissioners*, [1892] 1 Q.B. 348. Accordingly, in *Alton* v. *Hamilton & Toronto R. W. Co.* 13 U.C.R. 595 (1856); *Northwood* v. *Township of Raleigh*, 3 O.R. 347 (1883); *Quillinan* v. *Canada Southern R. W. Co.*, 6 O.R. 567 (1884); *Van Egmond* v. *Town of Seaforth*, 6 O.R. 599 (1884); *McArthur* v. *Town of Collingwood*, 9 O.R. 368 (1885); *Malott* v. *Township of Mersea*, 9 O.R. 611 (1885); *McGarvey* v. *Town of Strathroy*, 10 A.R. 631 (1889); *Re Nickle and Town of Walkerton*, 11 O.R. 433 (1886); *City of New Westminster* v. *Brighouse*, 20 S.C.R. 520 (1892); *Township of Sombra* v. *Township of Chatham*, 18 A.R. 252, 21 S.C.R. 305 (1892); *Atchison* v. *Town of Portage la Prairie*, 9 Man. Rep. 192 (1893); and *Foster* v. *Mun. of Lansdowne*, 12 Man. Rep. 616 (1899),—it was held that the work having been negligently done the right of action was not taken away, although in the absence of negligence the only remedy would have been by arbitration.

(*h*) Imp. Stat. 8 V. c. 18, s. 68.

Sec. 437.
Note (i).

way Clauses Consolidation Act" (*a*), the words "damages . . . by reason of the *exercise of the powers by this* or the Special Acts, etc. . . . *vested in the Company*," used in sections 6 and 16, have been held to be controlled by the words used in the general heading of those sections, viz., "And with respect to the *construction of the railway* and the works connected therewith, be it enacted," etc.; so that where lands had not been taken, but only injuriously affected by the subsequent lawful user of the railway, compensation was held not to be recoverable in respect of damages arising from such user, *e.g.*, vibration (*b*), noise of trains and smoke (*c*), etc. But under "*The Municipal Act*," and, *semble*, under "*The Railway Acts*" of Canada (*d*), and Ontario (*e*),—where the words are "damage from [or, "by reason of,"] *the exercise of the powers granted*" to the company—it has been held that the award should include compensation for all damage which will necessarily result from the subsequent user of the works, as well as from their original construction (*f*).

Compensation must cover all the damages.

The compensation for all the damage which can be foreseen must be determined once and for all by the award. Any such damage subsequently occurring cannot be recovered either under the Statute or by action (*g*).

As of what date should damages be ascertained.

In the case of lands entered upon, taken or used by a municipal corporation, the date with reference to which the amount of the compensation should be determined appears to be that of the by-law expropriating the land or authorizing the work; and the claimant is entitled to interest from that date on the amount awarded (*h*). In *Reg.* v. *Murray* (*i*), it was held that under "*The Expropriation Act*" (*j*), interest upon the value of the lands taken, (when this value has been ascertained by the arbitrator) runs from the date on which possession was taken, notwithstanding the fact that the plan and description may not then have been filed (*k*), or that the Crown may not have acquired a good title until a subsequent date (*l*). In *Re Prittie and City of Toronto* (*m*), a case where lands had been taken and others belonging to the same owner were alleged to have been injuriously affected, doubts were expressed by the Judges as to whether the date of the expropriating by-law or that of the actual entry should be taken (*n*).

Where the case is wholly one of lands injuriously affected by the construction of works authorized by a municipal by-law, no lands being actually taken therefor, it would seem reasonable that a later date than that of the by-law should be taken as the time when the assessment of damages is to be made, since until the execution of the work any accurate ascertainment of damage is often impossible.

(*a*) Imp. Stat. 8 V. c. 20.

(*b*) *Hammersmith R. W. Co.* v. *Brand*, L.R. 4 H.L. 171 (1869).

(*c*) *City of Glasgow Union R. W. Co.* v. *Hunter*, L.R. 2 H.L. Sc. 78 (1870).

(*d*) 51 V. c. 29, s. 92. (*e*) R.S.O. c. 207, ss. 19, 20.

(*f*) See *Re Birely and Toronto, Hamilton and Buffalo R. W. Co.*, 28 O.R. 468 (1897), in which *Re Devlin and Lake Erie R. W. Co.*, 40 U.C.R. 160 (1876), was not followed by ARMOUR, C. J.

(*g*) *Lawrence* v. *Great Northern R. W. Co.*, 16 Q.B. 643 (1851); *Bagnall* v. *L. & N. W. R. W. Co.*, 7 H. & N. 423 (1861); *Chamberlain* v. *West End of London, etc., R. W. Co.*, 2 B. & S. 617 (1863) *per* ERLE, C. J. at p. 638; *Croft* v. *London & North Western R. W. Co.*, 3 B. & S. 436 (1863); *Simoneau* v. *The Queen*, 2 Ex. C.R. 391 (1890); *Davidson* v. *The Queen*, 6 Ex. C. R. 51 (1897). See the provision formerly made by 16 V. c. 181, s. 35 for the recovery of such subsequent damages.

(*h*) *Re Macpherson and City of Toronto*, 26 O.R. 558 (1895).

(*i*) 5 Ex. C. R. 69 (1896). (*j*) R. S. Ca. c. 39.

(*k*) *Lrury* v. *The Queen*, 6 Ex. C.R. 204 (1898).

(*l*) *Reg.* v. *Clarke*, 5 Ex. C.R. 64 (1896); and see also *James* v. *Ontario & Quebec R. W. Co.*, 12 O.R. 624 (1886), a case under "*The Dominion Railway Act*," (42 V. c. 9 (Ca.)).

(*m*) 19 O.R. 503 (1892).

(*n*) See *per* HAGARTY, C.J.O. at p. 508-509, *per* BURTON, J.A. at p. 511, *per* MACLENNAN, J.A. at p. 522, and *per* OSLER, J.A. at p. 529.

Sec. 437.

Note (f).

In *Re Bively and Toronto, Hamilton & Buffalo R. W. Co.* (*a*), a case under "*The Railway Act of Canada*,"—although the claim was wholly one for injuriously affecting lands,—ARMOUR, C.J., sustained an award allowing the claimant interest from the time when his right to compensation accrued.

As of what date damages should be ascertained.

But in *Re Leak and City of Toronto* (*b*), the Court of Appeal (affirming STREET, J.) reversed the judgment of a Divisional Court (*c*), which had held, (FERGUSON, J. dissenting,) that in awarding compensation where land has been injuriously affected (no land having been taken), the arbitrator, in addition to the sum allowed by way of compensation, may award interest thereon from the date of the by-law authorizing the execution of the works.

Interest.

Per OSLER, J. A.:—

> "There is a clear distinction between . . . . the compensation for land taken, and damages for merely injuriously affecting land by the deprivation of access to and from a highway. . . . . Where land is *taken* the compensation is purchase money; where it is merely *injuriously affected*, and no land is taken, the compensation sounds in damages strictly. . . . . These are, in the strictest sense of the words, "unliquidated damages," and no debt, statutory, legal or equitable, arises in respect of them until they have been ascertained and assessed by the appropriate means for doing so. . . . It by no means follows—as the Court below seems to have held—that because interest may be given upon damages which are in their nature the purchase money of land entered upon and taken, it can be given upon damages which are of a wholly different character . . . No authority, in the English Courts or our own, has been cited to shew that interest can be awarded or recovered in such a case."

(g) **"Beyond any advantage which the claimant may derive from the contemplated work."**

Nature of "advantage to be set off

Since compensation cannot be claimed under the Act for any damage which is "merely personal, without reference to land or its incidents," so also the benefit or "advantage which the claimant may derive from the contemplated work" must be a benefit "in respect of land or an interest in land."

And the advantage must be one which may fairly be expected to result "from the contemplated work," and not from some outlay which the land-owner has made or will be compelled to make in order to repair injuries occasioned by the work itself.

In *Re Christie and Town of Toronto Junction*, (*d*) the evidence of the claimant went to show that the municipal corporation had by altering the grade of a street cut off the drainage of his houses and caused the cellars to be flooded by water falling on the street, and that it would cost about $2,000 to make such alterations as were necessary to render them again tenantable or saleable and to prevent a recurrence of the damage. The arbitrators by their award found that the premises had been injuriously affected by the works, but only to the extent of $200 "over and above any benefit and advantage to the said land and premises arising from the grading and levelling of said street." On appeal, ROSE, J. increased this to $1,000, and (his decision having been affirmed in the Court of Appeal by an equal division of opinion) the Supreme Court again increased the award to $1,866.20 (*e*).

GWYNNE, J., in his judgment says:—(*f*)

> "What the Statute contemplates and the utmost it authorizes is that the value of any benefit (if any there be) which the injured property—that is to say, which the property in its injured condition—may derive from the work which causes the injury (if it can be ascertained and is not wholly speculative,) may be deducted from the amount which, apart from the value of such benefit, would be required to afford due compensation for the injury."

(*a*) 28 O.R. 468 (1897). (*b*) 26 A.R.—(1899), (not yet reported).

(*c*) 29 O.R. 685, 687, (1898).

(*d*) 24 O. R. 443 (1894); 22 A. R. 21 (1895) and *sub nom. Town of Toronto Junction* v. *Christie*, 25 S. C. R. 551 (1895).

(*e*) See the case again referred to in note (d) to s. 464.

(*f*) 25 S. C. R. at p. 561.

Sec. 437.

Note (g).

Set-off of advantage derived from the work.

> "If, for example, property be injured in such a manner that it is necessary that the injury caused should be repaired before any benefit could accrue, the Statute is not open to a construction so at variance with common justice and common sense, as that the prospective speculative estimate of the value of such benefit should be deducted from the amount necessary to repair the injury and to put the property into a condition to receive such benefit. Such benefit could not be said to be derived from the work causing the injury, but from the outlay expended to repair the injury" (*a*).

But where a property owner has given evidence of the potential capabilities of his land in order to show its value and the extent to which it has been damaged (*b*) the municipal corporation, for the purpose of showing the value of the remaining or injured lands of the claimant, may give evidence as to what these would be worth if laid out and utilized in a particular manner, although this would involve the expenditure of money by the claimant (*c*).

Advantage need not be peculiar to the property.

The benefit or "advantage" which is to be set off against the landowner's claim for damage is not merely such increase in value from the contemplated work as is direct and peculiar to the particular property, but also such as may be shared by that property in common with other lands benefited by the work (*d*).

In case the work is one to be paid for by local assessment, the landowner's share of such assessment should be added to the amount of his damages, or (which amounts to the same thing) deducted from the estimated amount of his benefit, he being in effect to that extent a purchaser of such benefit (*e*).

No set off under English Acts. But *semble* under our Railway Acts.

"*The Railway Clauses Act*" and "*The Lands Clauses Consolidation Act*" contain no provision allowing a deduction from the compensation awarded on account of advantage derived from the work (*f*) but such a provision (*g*) is to be found in "*The Railway Act of Ontario*" (*h*), and in "*The Railway Act*" of Canada (*i*).

The Expropriation Act.

And the Exchequer Court of Canada in determining claims against the Crown for property taken or damages to property injuriously affected by any public work is:

> "To take into account and consideration, by way of set off, any advantage or benefit, special or general, accrued or likely to accrue by the construction or operation of such public work to such person in respect of any lands held by him with the lands so taken or injuriously affected" (*j*).

(h) "Any claim for such compensation . . . . shall be determined by arbitration under this Act."

Arbitrations under this Act may be held (1) before the Official Arbitrator appointed under R. S. O. c. 227, in the cases to which that Act applies (*k*); (2) Before the County Court Judge or an arbitrator appointed by him [s. 448], or (3) before three arbitrators appointed as provided in ss. 449-454

(*a*) See also *Re Hodgson and Township of Bosanquet*, 11 O. R. 589 (1886).

(*b*) See note (e), *supra*. and the cases cited in foot notes (*i*), (*j*) and (*k*).

(*c*) *Re Credit Foncier Franco-Canadien and City of Toronto. The Union Hotel Case, coram* FERGUSON, J., May 9th, 1898, not reported.

(*d*) *Re Pryce and City of Toronto*, 16 O. R. 726 (1889), 20 A. R. 16 (1892); *Re Richardson and City of Toronto*, 17 O. R. 491 (1889).

(*e*) *Per* MACLENNAN, J. A., in *Re Pryce and City of Toronto*, 20 A.R. 16 at p. 24; and see *Re Hodgson and Township of Bosanquet*, and *Re Richardson and City of Toronto*, supra.

(*f*) *Senior* v. *Metropolitan R. W. Co.* 33 L J. Ex. 225, 2 H. & C. 258 (1863); *Eagle* v. *Charing Cross R. W. Co.* L. R. 2 C. P. 638 (1867).

(*g*) Taken from 35 V. c. 25, s. 5.

(*h*) R. S. O. c. 207, s. 20 (9). See *Re Credit Valley R. W. Co.* v. *Spragge*, 24 Grant 231 (1876); *Re Canada Southern R. W. Co. and Norvall*, 41 U. C. R. 195 (1877).

(*i*) 51 V. c. 29 (Ca), s. 153; *Re Ontario and Quebec R. W. Co. and Taylor*, 6 O.R. 338 (1884); *James* v. *Ontario and Quebec R. W. Co.*, 12 O. R. 624 (1886).

(*j*) 50-51 V. c. 16, ss. 16, 31; 54-55 V. c. 26, s. 7; *Reg.* v. *Murray*, 5 Ex. C. R. 69 (1896).

(*k*) See ss. 1, 15.

Secs. 438, 439.

Limitation of claims for compensation.

438. Every such claim, except in the cases of infants, lunatics and persons of unsound mind, shall be made within one year from the date when the real property was so entered upon, taken or used, or when the alleged damages were sustained or became known to the claimant, or, in case of a continuance of damage, then within one year from the time when the cause of action arose or became known to the claimant. Any claim now existing of the nature aforesaid may be made within one year from the passing of this Act but not afterwards, except in the cases of infants, lunatics or persons of unsound mind. 62 V. (2nd Session) c. 26, s. 27.

This section was substituted in 1899 for s. 438 of the R. S. O. (55 V. c. 42, s. 482 *part*), which was taken from 54 V. c. 42, s. 16 (1891).

(a) This section seems to support the view (suggested in note (f) to s. 437), that, in the cases of lands injuriously affected, the damages should be assessed with reference not to the date of the by-law authorizing the execution of the work, but to that of its actual execution. The final paragraph—which makes this time-limit applicable to claims which existed at the time (1891) when the section first became law—was probably passed in consequence of the decision in *Re Roden and City of Toronto* (a) where it was held that the original section, (54 V. c. 42, s. 16), did not apply to such a claim.

City or town taking, etc., lands for public works.

Filing plans and specifications and giving notice.

439. Wherever the council of a city or town is desirous of entering upon any public work or undertaking, in the pursuance of which any real property may be entered upon, taken or used by the corporation in the exercise of any of its powers, or may be injuriously affected by the exercise of its powers, the council may file plans and specifications of the work or undertaking, or certified copies thereof, with the clerk of the municipality, who shall, on receiving the same, issue a notice setting out the council's intention to proceed with such work or undertaking, and to enter upon, take or use the lands necessary therefor, and that such plans and specifications have been filed with him and may be inspected at his office, and that all claims for damages by reason of the said proposed work or undertaking must be filed with him within sixty days from the service of such notice, and that such owners, occupiers or other persons must file with the said clerk, within the said period of sixty days, their claims for damages for any of the causes aforesaid, showing the amount thereof, or that in default thereof any claim for such damages will be barred; and he shall cause such notice to be served upon the owners and occupiers or of other persons interested in the said real property to be so taken, entered upon or used as aforesaid, or which may be injuriously affected as aforesaid.

(2) In case the person served as aforesaid is, at the time of such service, resident outside the Province of Ontario, a further period of thirty days shall be allowed such person to file his claim. 58 V. c. 42, s. 20 (2).

This section was added to the Act in 1895, by 58 V. c. 42, s. 20 (2).

(a) 25 A. R. 12 (1898)

Sec. 439.

Note (a).

Notice by city or town of intention to take, etc., lands for a public work.

(a) "Wherever the council of a city or town is desirous of entering upon any public work, etc."

The work should be authorized by a by-law, in which it would be advisable to provide (1) that except for the purpose of survey no entry or use shall be made of any real property to be entered upon, taken or used thereunder until the amount of compensation payable in respect thereof has been determined by award (*a*); and (2) that the provisions of s. 402 shall apply to any such award. See that section.

(b) "The council may file plans and specifications of the work or undertaking . . . . . with the clerk of the municipality."

These should show clearly not only the character and extent of the proposed work (*b*) but also its situation with reference to any real property which may be injuriously affected thereby.

(c) "The clerk of the municipality . . . . . shall issue a notice."

The following is a form of notice prepared under this section:—

Form of Notice under s. 439.

Form of Notice.

"Take Notice that the council of the corporation of the city of intends to remove the existing bridge across the River from to in the said city and to proceed with the erection of a new bridge on the same site according to plans and specifications prepared by and which are now filed with me and may be inspected at my office in the City Hall at any time between the hours of 10 a. m. and 5 p. m. on any day on which the said office is open.

And that the said council intends to enter upon, take and use, in the erection of the said bridge, the lands necessary therefor, being those shown in red upon said plan, and, during the removal of the old bridge and the construction of the new bridge and a further period of thirty days after the completion thereof, to enter upon, occupy and use for the purpose of such removal and construction but not otherwise or further the lands shown in yellow upon said plan.

And that the owners and occupiers of and other persons interested in any lands so to be entered upon taken or used, or which may be injuriously affected by the said proposed work must within sixty days from the service upon them respectively of this notice (or in the case of persons resident outside the Province of Ontario within ninety days from such service) file with me their claims for any damages by reason of the said proposed work, showing in each case the amount claimed for such damages with full particulars thereof.

And that in default thereof the claims of such persons for such damages will be barred.

Dated at the City Hall in the City of this day of 19

. . . . . .

City Clerk."

(d) "He shall cause such notice to be served upon the owners and occupiers of or other persons interested in the said real property."

The section makes no provision for service by advertisement, similar to that contained in "*The Railway Acts*" of Ontario, (*c*) and of Canada, (*d*) in case the person to be served is absent or unknown.

It is presumed that the claims of persons not served are governed by s. 438. (*e*)

(*a*) s. 463; and see note (a) to s. 441.

(*b*) S. 443.

(*c*) R. S. O. c. 207, s. 20 (3).

(*d*) 51 V. c. 29, ss. 148, 149 (d).

(*e*) See *Corporation of Verdun* v. *Grand Trunk Boating Club*, Q. R. 7 Q. B. 185 (1898).

Time within which claim is to be made.

440. All such claims shall be made pursuant to the said notice, and unless made, in the case of persons resident within the Province within sixty days after the serviee of such notice, or in the case of persons resident outside of the Province within the said further period of thirty days, shall be barred and extinguished unless upon application to the Judge of the County Court of the county in which such city or town is situated, and upon giving to the said council at least seven days notice of such application, such Judge allows the claims to be made and served. Either party may appeal from the decision of the Judge to a Divisional Court of the High Court of Justice; but every such claim shall be absolutely barred and extinguished unless made within a period of one year from the service of the said notice. 58 V. c. 42, s. 20 (3).

(a) **"All such claims."** i. e., the claims of all persons who have been notified as provided by the preceding section. (*a*)

Determining claims by arbitration.

441 If any such claim is so filed within the time aforesaid, the same, unless accepted by the council, shall forthwith be determined by arbitration under this Act. 58 V. c. 42, s. 20 (4).

(a) It would seem that the claimant cannot, either under ss. 448 or 451 of this Act, or s. 2 of R. S. O. c. 227, compel an arbitration, since these sections apply only when the property has already been entered upon, taken, used, or injuriously affected. It is probably intended that the council should have a right to abandon their proceedings if it appears probable that the proposed work will prove too expensive (*b*).

Particulars to be delivered.

442. The person making a claim shall deliver full particulars of the damages for which such claim is made, and the arbitrator or arbitrators, upon the hearing of the claim, shall have the same power as to amendment generally, or to amend such claim or particulars or any proceeding had or taken upon the hearing thereof, as a Judge would have in an action; and the arbitrator or arbitrators may, in his or their discretion, refuse at any time to hear, upon any matter or question, further evidence of a cumulative character. 58 V. c. 42, s. 20 (5).

(a) **"The same power as to amendment as a Judge would have in an action."** See Con. Rule 304 (1897).

(b) **"The arbitrator . . . . may refuse . . . . to hear . . . . upon any matter or question, further evidence of a cumulative character."**

It would seem that an arbitrator had power so to rule independently of this provision (*c*).

(*a*) As to the rights of persons not so notified see s. 438 and foot-note (*c*) on p. 470.

(*b*) See *Re McColl and City of Toronto*, 21 A. R. 256 (1894); *City of Montreal* v. *Gauthier*, Q.R. 7 Q. B. 100 (1898); *Hollester* v. *City of Montreal*, 29 S.C.R. 402 (1899).

(*c*) See *Widder* v. *Buffalo & Lake Huron R. W. Co.*, 27 U. C. R. 425, 433 (1868); *Re Canada Southern R. W. Co. and Norwall*, 41 U.C.R. 195, 203 (1877); *Webster* v. *Haggart*, 9 O.R. 27 (1885).

Secs. 443-444 (1).

Claims not barred where plans insufficient.

443. Nothing in sections 439 to 442 contained shall bar or extinguish any claim when the plans and specifications filed do not reasonably and sufficiently disclose the damage that may be sustained. 58 V. c. 42, s. 20 (6); 60 V. c. 3, s. 3.

Corporations, tenants in tail or for life, guardians, etc., may convey in fee simple.

444.—(1) In the case of real property which a council has authority under this Act to enter upon, take or use without the owner's consent, corporations, tenants in tail or for life, guardians, committees, and trustees, shall, on behalf of themselves, their successors and heirs respectively, and on behalf of those whom they represent, (whether infants, issue unborn, lunatics, idiots, married women or others), have power to act, as well in reference to any arbitration, notice and action under this Act, as in contracting for and conveying to the council any such real property, or in agreeing as to the amount of damages arising from the exercise by the council of any power in respect thereof.

Taken from the Act of 1858, (22 V. c. 99,) ss. 311, 312. *Cf.* 16 V. c. 181, s. 36, the original of which is s. 7 of "*The L. C. C. Act, 1845,*" (Imp. Stat. 8 V. c. 18), quoted *ante* p. 458, foot note (*e*). See also "*The Railway Act of Ontario,*" (R.S.O. c. 207), s. 13; and, "*The Railway Act*" of Canada, (51 V. c. 29), ss. 136-139.

(a) "On behalf of themselves, their successors and heirs, and on behalf of those whom they represent."

Owing to differences in the language of the two Statutes, many of the cases decided under s. 7 of "*The Lands Clauses Consolidation Act, 1845,*" (*a*) and referred to in previous editions of this Manual, (*b*) are of no authority upon the construction of this section, which relates wholly to the acquisition of title, not to the application of the purchase or compensation money.

The Imperial Act (*c*) provides that tenants for life or in tail shall have power to contract and convey "for and on behalf of every person entitled in remainder, reversion or expectancy after them, or in defeasance of the estate of such parties."

Under these words it was held that a tenant in tail in possession of inalienable estates with reversion to the Crown, could convey the estates so as to bar his heirs in tail and remainder-men other than the Crown, notwithstanding his statutory disability to bar the entail. (*d*)

But under this section and the cognate sections of *The Railway Acts*, (*e*)—although a tenant for life has power to contract for sale, (*i.e.* to agree upon the price or amount of compensation), and to convey, so that a conveyance executed by him alone will vest the fee simple of the land in the corporation,—yet "it does not follow that the tenant for life is entitled to receive, or the [corporation] authorized to pay to him or to any person having only a partial or qualified interest in the land, its full fee-simple value." (*f*)

Accordingly, in that case, the railway company, which had paid over to the tenant for life the full amount of the compensation agreed upon, were afterwards compelled, at the suit of a remainder-man, to make good the value of his interest. (*g*)

(*a*) See this section quoted in foot-note (**e**) on p. 458, *ante*.

(*b*) See HARRISON'S MUNICIPAL MANUAL, (3rd Ed.) p. 306; (4th Ed.) p. 376; (5th Ed.) p. 372.

(*c*) 8 V. c. 18, s. 7.

(*d*) Re *Cuckfield Burial Board. Ex p. Earl of Abergavenny,* 19 Beav. 153, (1854).

(*e*) See R.S.O. c. 207, s. 13; 51 V. c. 29 (Ca.), s. 136-139.

(*f*) *Per* SPRAGGE, C., in *Cameron* v. *Wigle*, 24 Grant 8, 11, (1876).

(*g*) See also *Owston* v. *Grand Trunk R. W. Co.*, 28 Grant 482 (1881); *Re Dolsen*, 13 P.R. 84 (1889) (referred to more fully in note (**b**) to this section); and *Young* v. *Midland R. W. Co.*, 16 O.R. 738 (1839), 19 A.R. 265 (1892), 22 S.C.R. 190 (1893).

Note (a).

In *Dunlop* v. *Canada Central R. W. Co.* (*a*) the mother of infant children (who resided with her) was the owner in fee of an undivided three-eighths interest in certain lands, the children owning the remaining five-eighths. She—not having been appointed guardian to the children—conveyed to the defendants "the right of way through my land;"

Held, that under s. 9 of "*The Railway Act of 1868*," (*b*) her deed barred the childrens' interest as well as her own, and that they were not entitled to compensation from the company; but the case turned upon a section (s. 9 (9) of the Act), which has since been omitted from "*The Railway Act of Canada*," and was never in "*The Municipal Act*," and which provided that, in the case of land owned by several joint tenants or tenants in common, a contract or conveyance *bonâ fide* made to the company by any one or more of such persons, being together proprietors of one-third or more of such land, should be binding on the rest. (*c*)

If no party who can convey, County Court Judge may appoint one.

(2) In case there is no such person who can so act in respect to such real property, or in case any person interested in respect to any such real property is absent from this Province, or is unknown, or in case his residence is unknown, or he himself cannot be found, the Judge of the County Court for the county in which such property is situate may, on the application of the council, appoint a person to act in respect to the same for all or any of the said purposes. 55 V. c. 42, s. 484.

(b) The corresponding section of "*The Railway Act*" of Canada is as follows:

> "In all cases in which such persons have no right in law to sell or convey the rights of property of the said land, such persons shall obtain from a Judge, after due notice to the persons interested, the right to sell the said land." (*d*)

In *Re Dolsen*, (*e*) a case under that Act, where a mother to whom land had been conveyed for life with remainder to her children, had agreed, during the infancy of the children, to sell and convey to a railway company, BOYD, C. held that a Judge's order under the above section was necessary, as the mother had "no right in law to sell," and (the proceeding being entirely for the benefit of the railway company), that they should pay the costs of the order.

Application, etc., of purchase money where party has not an absolute estate in the property.

(3) In case any person acting as aforesaid has not the absolute estate in the property, the council shall pay to him the interest only at six per centum per annum on the amount to be paid in respect of such property, and shall retain the principal to be paid to the person entitled to it whenever he claims the same and executes a valid acquittance therefor, unless the High Court of Justice, or a Judge thereof, in the meantime directs the council to pay the same to any person or into Court; and the council shall not be bound to see to the application of any interest so paid, or of any sum paid under the direction of such Court. 55 V. c. 42, s. 485; 60 V. c. 3, s. 3.

(c) In cases where no valid sale and conveyance can be made, "*The Railway Acts*" of Ontario (*f*), and of Canada (*g*) provide for payment of an annual rent to be determined by agreement or in default thereof by arbitration.

(*a*) 45 U.C.R. 74 (1880).
(*b*) 31 V. c. 68 (Ca.).
(*c*) See "*The Railway Act of Ontario*," (R.S.O. c. 207), s. 181.
(*d*) 51 V. c. 29 (Ca.), s. 137.
(*e*) 13 P.R. 84, (1889).
(*f*) R. S. O. c. 207, s. 17.
(*g*) 51 V. c. 29 (Ca.), s. 142.

Sec. 444.

Note (c). Where vendor has not absolute estate, council may retain principal and pay interest pending acquisition of good title.

In *Re Beckett and City of Toronto*, (*a*) the city petitioned to be allowed to pay into Court money awarded to an estate as compensation for land taken, alleging that the executrix had not an absolute estate, since, under the will appointing her, she could not sell the property until her son was of age, or died, or she herself married again. The application being opposed by the executrix,—who wished the corporation to retain the money and pay her interest thereon until the estate could be distributed, instead of forcing her to find a new investment for the money,—CAMERON, C. J., was

> "Inclined to think that the section is imperative and imposes upon the corporation the obligation of ascertaining whether the person acting in respect of the property expropriated is the absolute owner or not; and if he or she be not such owner, then the corporation is created a statutory trustee of the principal for such owner or owners, as the case may be, and becomes burdened with the payment of six per cent. interest until the person or persons entitled to the principal shall claim the same. It was not intended that the Court should interfere at the instance of the corporation, (though I do not say the Court may not so interfere), but at the instance of some party claiming to be entitled to the principal or some part thereof. The payment of interest at six per cent. is the compensation payable for the present use by the corporation of the expropriated land; and whether the person acting in respect of the land is in fact entitled to the interest or not, payment to him relieves the corporation from liability to him in respect of the interest, if he should have the status of those specially indicated as having the right to act in respect of the land under section 487. There is no question in this case that Mrs. Becket had such a status, and the corporation runs no possible risk in paying the interest to her (*b*).

"*The Lands Clauses Consolidation Act, 1845*," (*c*) makes full provision in ss. 69-80 respecting the application of the purchase money or compensation in the case of parties who have limited interests or who are prevented from treating or from making title. (*d*)

Compensation to stand in the stead of lands taken, etc.

445. The compensation or damages which may be agreed upon or awarded for any land taken or injuriously affected by any municipal corporation in the exercise of its corporate powers shall stand in the stead of such lands and shall be subject to the limitations and charges (if any) to which the said lands were subject; and any claim to or incumbrance upon the said lands, or to or upon any portion thereof shall, as against the said corporation, be converted into a claim to the money so paid, or to a like proportion thereof. 55 V. c. 42, ss. 486, 488*a*.

This section is based upon s. 488*a* of "*The Con. Mun. Act, 1872*," (55 V. c. 42,) with which is now consolidated s. 486 of that Act, taken from 16 V. c. 181, s. 36, last clause,(=22 V. c. 99, s. 313).

Cf. "*The Railway Act of Ontario*," (R. S. O. c. 207), s. 20 (25); "*The Railway Act of Canada*," (51 V. c. 29), s. 166; "*The Expropriation Act*," (R. S. Ca. c. 39), s. 11.

(a) "Shall stand in the stead of such lands."

> "The meaning of this I understand to be that the money value of land is turned into a piece of real estate . . . and that the estates in the land existing at the time the land is taken become estates in the compensation instead." (*e*)

In *Young's Case* the tenant for life had conveyed land to a railway company in 1871, and died in 1884.

Held, that upon such conveyance she became a tenant for life in the compensation money, and those entitled to the inheritance in the land became

(*a*) 10 O. R. 106 (1885).

(*b*) Pp. 108, 109.

(*c*) Imp. Stat. 8 V. c. 18.

(*d*) See Woolf & Middleton on Compensation, pp. 132, 184.

(*e*) *Per* STREET, J., in *Young* v. *Midland R. W. Co.*, 16 O.R. 738 (1889). See, as to the Quebec law, *Credit Foncier* v. *Loranger*, Q.R., 13 S.C. 353 (1898).

entitled to the reversion in fee therein, and that the Statute of Limitations did not begin to run against their claim until the death of the tenant for life in 1884. (*a*)

Sec. 445.

Note (a).

Compensation to stand in lieu of lands taken, etc.

So in England money belonging to a person absolutely entitled passed, in the absence of a devise, to his heir at law (*b*), and compensation money paid into Court under the Statute of 5 & 6 Wm. IV. c. 16, "To facilitate the Conveyance of Workhouses and other property of Parishes" etc., is to be treated as real estate (*c*). The compulsory purchase of land belonging to a lunatic does not change the order of devolution (*d*): but in *Re Cross*, (*e*) LORD CRANWORTH, V. C.,—considering the decision in *Oswin's Case* as dependent upon the language of the special Act relating to the Midland Counties R. W. Co.,—refused to consider as land, money which had been paid into Court by a railway company for lands taken under "*The Lands Clauses Consolidation Act, 1845*" from a person who was in a state of mental imbecility but who had not been declared a lunatic.

(b) "**Any claim to or incumbrance upon the said lands, shall as against the said corporation, be converted into a claim to the money so paid.**"

Land upon which there was a registered mortgage was taken by a township council for a road, and the compensation, having been ascertained by arbitration, was attached by a creditor and paid to him by the municipality.

Held, that the mortgagee was entitled to the money and was entitled to recover it from the municipality with costs (*f*).

> "The moment the sum was awarded, it was, in the hands of the municipality, impressed with a trust in favor of the mortgagee, and it was so when paid away by the municipality. It is in principle the case of a purchaser paying his purchase money to the mortgagor instead of the mortgagee with a registered mortgage; with this difference,—that in the case of an ordinary purchaser the land remains liable, while in the case of a municipality it is the purchase money that is made liable, the land itself becoming public property." (*g*)

Compensation may be paid into Court.

446.—(1) If in the opinion of the High Court of Justice or of any Judge thereof, there is reason to fear any claims or incumbrances, or if any person to whom the compensation or damage or any part thereof is payable, refuses to execute the proper conveyance or guarantee, or cannot be found, or is unknown to the corporation, the corporation may pay such compensation into the office of the Accountant of the Supreme Court of Judicature for Ontario with interest thereon at 6 per cent. per annum for six months, and may deliver to such Accountant an authentic copy of the conveyance or of the award or agreement, as the case may be: and such award or agreement or conveyance shall thereafter be deemed to be the title of the corporation to the land therein mentioned. 55 V. c. 42, s. 488 *b*.

Notice to be given.

(2) A notice in such form and for such time as any Judge of the High Court of Justice may direct, shall be inserted in a newspaper, if there is one published in the municipality in which the lands are situated, or if there is no newspaper published in the municipality, then in the *Ontario Gazette*, and

(*a*) See *S. C.*, 19 A. R. 265 (1892), 22 S. C. R. 190 (1893).

(*b*) *Re Bagot*, 10 W. R. 707 (1861).

(*c*) *Re Homer*, 3 De. G. & Sm. 483 (1850); *Re Stewart*, 1 Sm. & G. 32 (1852).

(*d*) *Midland Counties R. W. Co.* v. *Oswin*, 1 Coll. 74, 80 (1844).

(*e*) 1 Sim. N. S. 260 (1851).

(*f*) *Dunlop* v. *Township of York*, 16 Grant 216 (1869).

(*g*) *Per* SPRAGGE, V. C., in *S. C.* at p. 219.

Sec. 446 (2).

Notice.

also in a newspaper published in the nearest municipality thereto in which any newspaper is published. Such notice shall state that the title of the corporation under such agreement, award or conveyance is under this Act, and shall call upon all persons entitled to the lands or to any part thereof so taken or injuriously affected to file their claims to the said compensation money or any part thereof; and all such claims shall be received and adjudicated upon by the High Court of Justice or by any Judge thereof. 55 V. c. 42, s. 488*c*, *part*; 60 V. c 3, s. 3.

Costs.

(3) The costs of the proceedings, including proper allowances to witnesses, shall be paid by the corporation or by such other person as the said Court or any Judge thereof may order; and if the said order of distribution is obtained in less than three months from the payment into Court of the said compensation moneys, the Court or any Judge thereof may direct any proportionate part of such interest to be returned to the said corporation. 55 V. c. 42, s. 488*d*.

Judgment shall bar all claims.

(4) The judgment in such proceedings shall forever bar all claims to the lands or any part thereof, including dower, as well as any mortgage or incumbrance upon the same; and the Court or Judge shall make such order for distribution, payment or investment of the said compensation money, and for securing the rights of all persons interested therein as may be necessary. 55 V. c. 42, ss. 488*c* *part*, 488*e*.

Added to the Act by 53 V. c. 50, s. 17 (1890). Taken from the Railway Acts. *Cf.* R.S.O. c. 207, s. 20 (26-28); 51 V. c. 29 (Ca.), ss. 167-171.

(a) This section, and also s. 445, apply to awards made under s. 59 of "*The Act respecting Joint Stock Companies for Supplying Cities, etc., with Gas and Water.*" (R. S. O. c. 199) *(a)*

Tender of compensation.

447. The council of any municipality, in all cases where claims for compensation or damages are made against them which, under the provisions of this or any other Act, are declared to be the subject of arbitration in the event of the parties not being able to agree, may tender to any person making such claim, such amount as they consider proper compensation for the damage sustained or lands taken; and in the event of the non-acceptance by the claimant of the amount so tendered, and of the arbitration being proceeded with, if an award is obtained for an amount not greater than the amount so tendered, the costs of the arbitration and award shall, unless otherwise directed by the arbitrator, be awarded to the corporation and set off against any amount awarded against them. 55 V. c. 42, s. 488.

Costs.

Taken from 49 V. c. 37, s. 42 (1886). *Cf.* 12 V. c. 81, s. 196; 44 V. c. 24, s. 25; ss. 469 and 470 of this Act and s. 34 of "*The Lands Clauses Consolidation Act, 1845*," Imp. Stat. 8 V. c. 18.)

(a) "**May tender such amount as they consider proper compensation**," etc. As to what constitutes a good tender of money see note (**b**) to s. 469 *post*.

(a) Re Town of Cornwall v. Cornwall Waterworks Co., 30 O.R. 81 (1898).

Sec. 447.

Note (b).

(b) **Costs.** "*The Railway Act*" of Canada (*a*) provides that in every case, and "*The Railway Act of Ontario*" (*b*) that in every case where three arbitrators have been appointed,

> "If the sum awarded exceeds the sum offered by the company, the costs of the arbitration shall be borne by the company, but if otherwise they shall be borne by the opposite party, and be deducted from the compensation."

Costs of arbitrations where tender has been made.

The same rule prevails under this section "unless otherwise directed by the arbitrator"; but it is apprehended that (except under special circumstances) the rule of the Railway Acts should be adhered to, and that the discretion vested in the arbitrator (or arbitrators) should be exercised on much the same principles as those which govern the exercise of similar discretion by a Judge under Con. Rule 1130 (3) (1897). (*c*)

Where in a case under "*The Expropriation Act*," (*d*) the compensation which had been tendered by the Crown was found by the Court to have been sufficient, and there was no dispute as to the amount of interest to which the defendant was entitled, but no tender of the interest had been made by the Crown, costs were refused to either party. Mortgagees made parties to a proceeding under the Act, who had appeared by counsel at the trial, were allowed their costs, although they did not dispute the amount of compensation (*e*).

DIVISION II—APPOINTMENT OF ARBITRATORS.

(SECS. 448-457.)

Synopsis.—Arbitrations under this Act may be held before,—

1. An official arbitrator (under R.S.O. 227);
2. A County Court Judge or an arbitrator appointed by him (s. 448), or
3. Three arbitrators—to be appointed in the manner prescribed by ss. 449-454.

Sec. 457 disqualifies certain persons from acting as arbitrators. Sec. 455 provides that the appointment of an arbitrator by a municipal corporation shall not be an admission of liability; and sec. 456 limits the period within which an award under the Act is to be made.

448.—(1) Save as provided by *The Municipal Arbitrations Act*, in every case where a claim is made for compensation for damages by the owner or occupier of, or other person interested in lands entered upon, taken or used by the corporation of any city or town, or alleged to have been injuriously affected by such corporation in the exercise of any of its powers, in the event of the corporation not being able to agree with the claimant as to the amount of compensation to be made, and if the amount claimed does not exceed $1,000, the same shall be settled and determined by the award of the Judge of the County Court of the county within which the city or town is situate, (sitting as sole arbitrator) or (at the option of either party) by such other sole arbitrator as the said Judge on application made to him by either party, upon notice to the other party, may appoint. 55 V. c. 42, s. 487 (1) *part*; 59 V. c. 51, s. 13.

Rev. Stat. c. 227.

Compensation where lands taken or injured by city or town.

(*a*) 51 V. c. 29 (Ca.), s. 151.

(*b*) R.S.O. c. 207, s. 20 (8).

(*c*) See Helmested & Langton (2nd Ed.) p. 1251. See further as to costs of arbitrations under "*The Municipal Act*," ss. 460, 462 (3-10) *post*, and ss. 18-27 of "*The Arbitration Act*," quoted under s. 467.

(*d*) R.S.Ca. c. 39.

(*e*) *Reg.* v. *Wallace*, 6 Ex. C. R. 264 (1899).

Sec. 448.

Appointment of sole arbitrator by county judge.

(2) Either party shall be entitled to at least seven days' notice, exclusive of the day of the service of the notice, of the wish of the other party to have an arbitration, and seven days' notice, exclusive of the seven days above mentioned and of the day of the service of the notice, shall be given of any application to the Judge to appoint any sole arbitrator as aforesaid. 55 V. c. 42, s. 487 (2)

Taken from 49 V. c. 37, s. 41, which applied only to cities; extended to towns by 59 V. c. 51, s. 13.

(a) This section is of little practical value, since it has no application to cases under s. 439 (where the land has not yet been taken, etc., or the damage occasioned,) but only to those in which (a) there has already been an entry or taking, etc., (b) by a city or town, (c) to which R.S.O. c. 227 does not apply, (d) where the land owner has specified the amount claimed by him—which he is not compelled to do by s. 451 (1)—and (e) where the amount so claimed is less than $1,000 (a).

Arbitrator's fees.
Rev. Stat. c. 62.

(3) The fees to be paid to the arbitrator shall be the same as those payable to referees under the provisions of *The Act respecting Arbitration and References* 55 V. c. 42, s. 487 (3).

See R.S.O. c. 62, ss. 19, 20, and Schedules B and C thereto, quoted in note (a) to s. 467.

Procedure.

(4) Save as herein otherwise provided, the provisions of this Act as to arbitrators and procedure in arbitrations shall, so far as applicable, apply to and govern all arbitrations had and awards made by a sole arbitrator under the provisions of this Act. 49 V. c. 37, s. 41 (4); 60 V. c. 3, s. 3.

Appointment by parties how made.
Rev. Stat. c. 227.
Council, or head thereof, may appoint.

449. Save as herein or in *The Municipal Arbitrations Act* otherwise provided, the appointment of all arbitrators shall be in writing under the hands of the appointers, or, in case of a corporation, under the corporate seal, and authenticated in like manner as a by-law; and the arbitrators on behalf of a municipal corporation shall be appointed by the council thereof, or by the head thereof, if authorized by a by-law of the council. 55 V. c. 42, ss. 385, 386

Taken from the Act of 1858, (22 V. c. 99), s. 336 (8) (9).

(a) "**Save as herein . . . otherwise provided.**" The reference is to the appointment of an arbitrator or arbitrators by a County Judge under ss. 448 or 454.

(b) "**The appointment of all arbitrators shall be in writing,**" etc. It is recommended that in making the appointment words should be inserted making sec. 462 of this Act applicable thereto (b). The provisions relating to the appointment of arbitrators must be strictly followed (c).

(c) "**In the case of a corporation, under the corporate seal and authenticated in like manner as a by-law,**" *i.e.* (d) by the signature of the head of the corporation or other person presiding in his stead (e) and of the clerk.

(a) See *Re Cummings and County of Carleton*, 25 O.R. 607, 26 O.R. 1 (1894).
(b) See note (a) to s. 451.
(c) *Bryce* v. *Louth*, 21 A.R. 100 (1894).
(d) Sec. 333.
(e) Secs. 272, 273.

Appointment by a corporation, how to be authenticated.

In *Re Gifford and Bury* (*a*), a case under "*The Public Health Act, 1875*" (*b*), s. 180,—which requires that

> "Every appointment of an arbitrator . . . when made on behalf of the local authority shall be made under their common seal, and when made on behalf of any other party under his hand."—

the claimant appointed an arbitrator, but not in writing "under his hand."

Held, that the provisions of the Statute not having been complied with the award was invalid.

But either party may so act as to be estopped from taking the objection (*c*), or any other objection of a technical character (*d*).

Revocability of appointment of arbitrator.

(**d**) It seems that the appointment of an arbitrator under this section may be revoked at any time before the award has actually been made. This was the rule at common law (*e*); and an award made after such revocation was a nullity (*f*). And even where an arbitrator had under s. 13 of "*The Common Law Procedure Act, 1854*" (*g*), been appointed to act alone, in consequence of the failure of the other party to appoint his arbitrator, it was held that the Statute did not make the appointment irrevocable, and that the party who had failed to appoint might revoke the statutable power (*h*); which "is an authority for the position that a reference under the direction or terms of an Act of Parliament does not interfere with the party's common law right of revocation" (*i*).

In a case of land damage (*j*), where the land owner, who had appointed an arbitrator under s. 437 of "*The Municipal Act*," revoked his authority before award, CAMERON, C. J. says (*k*):

> "Such a decision is not made irrevocable by the Municipal Act, nor by the Common Law Procedure Act. By section [illegible] of the latter Act, (R. S. O. c. 50) it is provided that:
>
> 'In case of the appointment of any referee, arbitrator or umpire . . . by or in pursuance of any submission or reference, not containing words purporting that the parties intended that such agreement should not be made a Rule or Order of any such Superior Courts, the power and authority of such referee, arbitrator, etc., shall not be revocable by any party to the reference, without leave of the Court . . . mentioned in the submission . . . or in case no Court is mentioned in the submission . . . then not without the leave of one of such Superior Courts, or of a Judge thereof, and the referee, arbitrator, and umpire shall proceed with the reference notwithstanding any such revocation, and make an award although the person making such revocation does not afterwards attend the reference.'
>
> This can only have relation to a submission or agreement of reference where the arbitrators are named therein; and while under s. 405 of '*The Municipal Act of 1884*' (*l*) jurisdiction is given to the High Court of Justice over an award in the same way that it would have were the submission by a bond containing an agreement for making the submission a Rule of Court, the common law right of the parties to revoke is not interfered with."

Section 3 of "*The Arbitration Act*" (*m*) which has been passed since the above decision, does not seem to affect its correctness. That section provides that:

> "A submission to arbitration, unless a contrary intention is expressed therein, shall be irrevocable except by leave of the High Court of Justice or a Judge thereof."

(*a*) 20 Q.B.D. 368 (1888).

(*b*) Imp. Stat. 38-39 V. c. 55.

(*c*) *Re Harvey and Town of Parkdale*, 16 O.R. 372, 380 (1888).

(*d*) *Slack* v. *McEathron*, 3 U. C. R. 184 (1847). *Wilson* v. *Town of Port Hope*, 10 U.C.R. 405 (1852); *Harpel* v. *Township of Portland*, 17 U.C.R. 455 (1859); *Re Township of Eldon and Ferguson*, 6 U.C.L.J. 207, 209 (1860); *Scott* v. *City of Winnipeg*, 11 Man. R. 84 (1894).

(*e*) Russell on Awards, (7th Ed. 152; Crewe's Law of Arbitration, (1898) p.2.

(*f*) *Marsh* v. *Bulteel*, 5 B. & Al. 507 (1822).

(*g*) Imp. Stat. 17-18 V. c. 125. See R. S. O., (1877) c. 50, s. 215.

(*h*) *Fraser* v. *Ehrensperger*, 12 Q. B. D. 310 (1883).

(*i*) *Per* CAMERON, C. J., *in Smith* v. *Township of Plympton*, 12 O. R. 20 (1886), at p. 32. See also *Deutsche Springstoff, etc.*, v. *Briscoe*, 20 Q. B.D. 177 (1887).

(*j*) *Smith* v. *Township of Plympton*, supra.

(*k*) pp. 31-32.

(*l*) S. 464 of this Act.

(*m*) R. S. O. c. 62.

Sec. 449.

Note (d). Revocability of appointment of arbitrator.

And s. 47 of "*The Arbitration Act*" declares that the Act

> "Shall apply to every arbitration under any Act passed before or after the commencement of this Act (Sept. 1st, 1897) as if the arbitration were pursuant to a submission, except in so far as this [('*The Arbitration*)] *Act*,' is inconsistent with the Act regulating the arbitration."

But s. 467 of "*The Municipal Act*," which enumerates the sections of "*The Arbitration Act*" applicable to municipal arbitrations, omits section 3 therefrom, thus in effect declaring that the section does not apply to such arbitrations.

It is therefore apprehended that the law still remains as stated by Chief Justice CAMERON *in Smith* v. *Township of Plympton*, supra (*a*).

Either party may appoint an arbitrator and give notice to opposite party.

450.—(1) Save as herein or in *The Municipal Arbitrations Act* otherwise provided, in every case where arbitration is directed or authorized by this Act, either party may appoint an arbitrator, and give notice thereof in writing to the other party, calling upon such party to appoint an arbitrator. A notice to a corporation shall be given to the head of the corporation. 55 V. c. 42, s. 387; 60 V. c. 15, *Sched.* C. (70).

Taken from the Act of 1858, (22 V. c. 99), s. 336 (1). The words "or authorized" in line 3, were inserted by 60 V. c. 15, Sched. A (70).

Form and requisites of such appointment and notice.

(a) This notice must be in writing. It should state the object of the arbitration, name the arbitrator appointed by the party giving the notice, and call upon the other party to name his arbitrator. It should be express and absolute.

The following form may be used:

General Form of Appointment of Arbitrator and Notice to Opposite Party.

"In the Matter of an Arbitration

Between

A. B.,

and

The Corporation of the *Township*, etc., of

I, the above named *A. B.* [of the *Township* of in the County of *Farmer*] do hereby appoint *W. X.*, of the village of in the said county, *Estate Agent*, to be the arbitrator in my behalf to determine by arbitration (*here state fully the question to be determined*).

And I hereby give you notice of the said appointment and call upon you to appoint an arbitrator in your behalf for the purpose aforesaid, pursuant to the provisions of "*The Municipal Act*."

Dated this day of 19

Witness:

To the Corporation of the *Township* of

." *A. B.*

Where B. had given notice to a railway company that it *was his intention* to appoint M. as arbitrator, and that if they failed for fourteen days to appoint one, *he would appoint him* to act for both parties, and M. did so act, the Court refused to enforce the award (*b*).

(b) In an arbitration between two municipal corporations the appointment of a second arbitrator is provided for by subsection 3: in a case under s. 437 by ss. 451, 453 and 454,—but, *quære*, do the words in s. 454 "if . . . the head of such council . . . omits to name an arbitrator within seven days

(*a*) As to the revocation of a submission or reference to arbitration by the death of a party thereto see 62 V. (2nd Sess.) c. 11, s. 12, quoted in note (88) on p. 510.

(*b*) *Bradley* v. *London and North Western R. W. Co.*, 5 Ex. 769 (1850).

Sec. 450 (1).

after receiving notice to do so," apply except in cases where real property has been entered upon, etc., as mentioned in s. 451. It is only subsection 2 of that section which contains an express limitation to seven days of the time within which such an appointment is to be made.

Note (b).

If, in an arbitration between an individual and a municipal corporation, it is only in cases under section 451 that the time is so limited, it may in other cases be necessary to compel by mandamus the appointment by the corporation of an arbitrator on their behalf, if this is not done within a reasonable time after notice (a).

Compelling municipalities to make appointment in other than expropriation cases.

(2) The two arbitrators appointed by or for the parties shall within seven days from the appointment of the lastly appointed of them, appoint in writing, a third arbitrator. 55 V. c. 42, s. 388.

Third arbitrator to be appointed.

Taken from "*The Con. Mun. Act, 1883*," (46 V. c. 18,) s. 390. *Cf.* 22 V. c. 99, s. 336 (2); 29-30 V. c. 51, s. 353 (2); 33 V. c. 26, s. 13; 36 V. c. 48, s. 280.

(c) "**Within seven days from the appointment of the lastly-appointed of them.**" As to the computation of time see note (b) to s. 214.

Time.

(d) "**Appoint in writing.**" See note (b) to s. 449.

Mode,

(e) "**A third arbitrator.**"

The following form may be used:

and Form of appointment.

Form of Appointment of Third Arbitrator.

In the matter of an Arbitration
Between
A. B.
and
The Corporation of the *Township*, etc., of

We, *W. X.* and *Y. Z.* the arbitrators appointed by the above named parties do hereby, before entering upon the arbitration, appoint *V. V.* to be the third arbitrator pursuant to the provisions of "*The Municipal Act*," [provided he do within days from this date by writing under his hand consent to act.]

Dated this day of 19

Witness

W. X.
Y. Z."

In case the third arbitrator fails to accept the office within the time limited, a fresh appointment may be made.

The appointment of a third arbitrator is a judicial act (*b*), and should be made by the two arbitrators at the same time and in each other's presence (*c*).

It is a common error to look upon a *third* arbitrator as an umpire. The difference between a third arbitrator and an umpire is that the former is appointed *before* the arbitration proceeds, the latter after the arbitrators have entered upon the reference and are unable to agree (*d*). There are other distinctions unnecessary to be mentioned here.

A by-law to close up and grant to a company a portion of a street, which provided for arbitration by the mayor and by two other persons, one to be appointed by the company and one by the applicant, was held invalid as prescribing a different procedure from that which is prescribed by the Act (*e*).

(3) In case of an arbitration between municipal corporations, if for twenty-one days after having received such notice, the party notified omits to appoint an arbitrator: or if, for seven days after the second arbitrator has been appointed, the

Arbitrations between municipal corporations.

(a) See *Reg.* v. *County of Perth*, 14 U. C. R. 156 (1856).
(b) *Pescod* v. *Pescod*, 58 L. T. N. S. 76 (1888).
(c) *Re Lord and Lord*, 5 E. & B. 404 (1855).
(d) See *Willson* v. *Township of York*, 46 U. C. R. 289, 301 (1881).
(e) *Re Laplante and Town of Peterborough*, 5 O. R. 634 (1884).

Secs. 450 (3)-451.

Arbitration between municipalities.

Provision in case of neglect to appoint.

two arbitrators omit to appoint a third arbitrator, then, in case the arbitration is between townships or between a township and a town or village, the Judge of the County Court of the county within which the townships, town or village are, or any of them is situate, may, (or in case the arbitration is between other municipalities, the Lieutenant-Governor in Council may) appoint an arbitrator for the party in default, or a third arbitrator as the case may require. 55 V. c. 42, s. 390; 60 V. c. 3, s. 3.

Taken from the Act of 1873 (36 V. c. 48,) s. 282. *Cf.* 22 V. c. 99, s. 336 (3); 29-30 V. c. 51, s. 353 (3).

Such appointment by Judge not a judicial act.

(f) Under the sections of "*The Mines and Minerals Consolidation Act*" of Nova Scotia, (*a*) referring to the ascertainment of the damages to which an owner or tenant of lands is entitled by reason of the opening or working of a mine thereon, it is provided (s. 19) that if, after a notice (as prescribed by s. 18), such proprietor refuses or declines to appoint an arbitrator, or if for any other reason no arbitrator is appointed on his behalf within the time limited thereby the warden of the municipality may appoint an arbitrator on behalf of such proprietor.

In *Re Palgrave Gold Mining Co. and McMillan*, (*b*) the Judicial Committee of the Privy Council determined that such an appointment is not a judicial act, and that it may be made without any notice to the land owner (*c*).

When more than two municipalities interested.

(4) In cases where more than two municipalities are interested, each of them shall appoint an arbitrator, and in such case, if there is an equality of arbitrators, the arbitrators so appointed shall appoint another arbitrator, or, in default, at the expiration of twenty-one days after the last of such arbitrators has been so appointed, the Lieutenant-Governor in Council may, on the application of any one of the municipalities interested, appoint the other arbitrator. 55 V. c. 42, s. 389; 60 V. c. 3, s. 3.

(g) "**Where more than two municipalities are interested.**" As to the meaning of "interested" when applied to cases of arbitrations between municipalities under the drainage sections of R. S. O. (1887,) c. 184, (now superseded by R. S. O. c. 226), see *Re County of Essex and Township of Rochester* (*d*), *Re Townships of Harwich and Raleigh* (*e*), *Re Townships of Romney and Tilbury West, et al* (*f*).

(h) "**The Lieutenant-Governor in Council may . . . appoint the other arbitrator.**"

See *Re Palgrave Gold Mining Co. and McMillan*, cited in note (**f**) *supra*.

Where real property taken, etc.

Owner, etc., may appoint arbitrator and serve notice.

451.—(1) Save as aforesaid, where real property is, pursuant to a by-law of a municipal council, entered upon, taken or used by the municipal corporation in the exercise of any of its powers, or is injuriously affected thereby, any owner or occupier of, or person interested in such property may, after the passing of the by-law, appoint an arbitrator to determine the compensation to which he is entitled and give to the head of the council due notice of such appointment.

(*a*) R.S.N.S. (5th Series) c. 7.

(*b*) [1892] A. C. 460.

(*c*) And see *Smith and Township of Plympton*, 12 O. R. 20, 36 (1886), referred to in note (**b**) to s. 454.

(*d*) 42 U. C. R. 523 (1878). (*e*) 20 O. R. 154 (1890).

(*f*) 18 A. R. 477 (1891).

Sec. 451 (2).

Appointment of arbitrator for municipality, upon notice of appointment by land-owner.

(2) Within seven days after a notice has been served under the preceding subsection, the head of the council (if authorized by by-law) shall appoint a second arbitrator, and give notice thereof to the person who has served the notice under the said sub-section. 60 V. c. 15, *Sched.* C. (71). *See* 55 V. c. 42, s. 391.

The present form of this section is taken from 60 V. c. 15, Sched. C. (71); but *cf.* 12 V. c. 81, s. 195; 16 V. c. 51, s. 33, 35; 22 V. c. 99, s. 336 (4); 29-30 V. c. 51, s. 353 (4); 36 V. c. 48, s. 28; 40 V. c. 7, Sched. A. (176); 46 V. c. 18, s. 393, etc.

(a) "**Save as aforesaid.**" i. e., except in cases coming under s. 448, or "*The Municipal Arbitrations Act.*" (*a*).

(b) The section only applies "after the passing of the by-law" and to property which *has been* (not to property which *is intended to be*) entered upon, etc. (*b*).

In *Re Cummings and County of Carleton*, (*c*) a land-owner who alleged that in the building of a bridge over the Rideau River, a joint work undertaken by the city of Ottawa and the co[illegible] of Carleton, land belonging to him and situate outside the city but in [illegible]nty, had been injuriously affected by raising the approaches to such [illegible]rved upon both corporations a notice claiming compensation, appoi[illegible] an arbitrator and requiring each of the corporations within seven days thereafter to name an arbitrator on its behalf.

Neither of the corporations having appointed an arbitrator, the land-owner applied *ex parte* under s. 454 to the County Judge, who appointed an arbitrator on behalf of both the city and the county. The two arbitrators so appointed chose a third, and the three arbitrators named a day on which they would proceed. Upon an application by the city to prohibit the arbitrators from proceeding with the reference, Boyd, C. held that the words "municipal corporations" might be read in the plural (*d*), and that it was competent for the Judge to appoint, *ex parte*, the same arbitrator for both of the municipal corporations. But on appeal to a Divisional Court the judgment was reversed (*e*); the Court holding that this section does not provide for an arbitration between a land-owner and a city and county jointly, and that such an arbitration is not otherwise provided for by law; that under ss. 605, 613, and 617 of the Act, the bridge was under the exclusive jurisdiction of the county; that therefore the county alone could be compelled to arbitrate; and—the County Judge having acted without any jurisdiction—prohibition was ordered.

(c) The following form of notice is suggested.

Form of Notice Appointing an Arbitrator under s. 451 (1).

Form of appointment and notice.

"In the Matter of an Arbitration
Between *A. B.*
and
The Corporation of the *Township* of

Take Notice that I, the said *A. B.*, being the owner of (*or* "being the occupant of" *or* "being interested" ("as mortgagee" *or as the case may be*), in *the North half of Lot No.* *in the* *Concession of the Township of* which (*or* "part of which") has been entered upon (*or* "taken" *or* "used" *or* "injuriously affected") by the Corporation of the *Township of* under the alleged authority of By-law No. of the said *Township*, hereby appoint *W. X.* of the said *Township of* , Esquire, as an arbitrator to determine the compensation to which I am entitled for damages necessarily resulting from the exercise of the powers of the Corporation as afore-

(*a*) R. S. O. c. 227. (*b*) See s. 439.
(*c*) 25 O.R. 607 (1894).
(*d*) See "*The Interpretation Act*" (R. S. O. c. 1), s. 8 (24).
(*e*) 26 O.R. 1 (1894).

Sec. 451 (2).

Note (c).

said in respect of the said property. [And I agree that section 462 of "*The Municipal Act*" shall apply to any award to be made under this submission.] (*a*) And I call upon you the said *Township* to appoint an arbitrator on your behalf for the purpose aforesaid, [and to agree that the said section shall apply to any award made under this submission.]

Form of appointment of arbitrator under s. 451 (1).

Dated this day of 19

To the Municipal Council of the
Township of
A. B.,
and to *C. D.*,
Reeve of the said *Township*."

If this form is used and signed by the claimant, no other or further appointment by the claimant of an arbitrator in his behalf will be necessary to comply with the requirements of s. 449. (*b*)

As to the procedure in case no arbitrator is appointed on behalf of the council within seven days after service of the above notice, see s. 454.

In case several persons interested in property taken, etc.

452. In case there are several persons interested, but having distinct interests in the property (whether such persons are all interested in the same piece of property, or some or one in one part thereof and some or one in another part thereof), the municipal council may by the by-law or by any subsequent by-law provide that the claims of all such persons shall be disposed of by one award. 60 V. c. 15, *Sched.* C. (71). *See* 55 V. c. 42, ss. 392, 393.

Taken from 60 V. c. 15, Sched. C. (71). *Cf.* 22 V. c. 99, s. 336 (10); 29-30 V. c. 51, s. 353 (10)—in which the time allowed was one month—; 36 V. c. 48, s. 285,—by which it was reduced to 21 days—and the corresponding sections of the later Municipal Acts.

(a) "By the by-law or by any subsequent by-law."

In case land-owners taking the initiative have appointed several arbitrators.

Since these sections have been recast by 60 V. c. 15, Sched. C (71) it is not very clear how "the several persons interested" are to be compelled to agree upon a single arbitrator in cases where they have already appointed their several arbitrators and served notices thereof under s. 451 (1). This difficulty arises by reason of the words "In case a notice has not been served under sub-section 1 of section 451" which are now prefixed to s. 453.

The practice previously adopted was for the corporation—(ignoring any appointment under s. 451 (1) of an arbitrator by the land owner)—to serve upon him a certified copy of the by-law and notice of the appointment of an arbitrator on behalf of the corporation, and (at the expiration of 21 days) to apply, upon notice to all parties interested, to the County Judge to appoint, under s. 454, an arbitrator on their behalf. It is probable that such an appointment would be upheld under the Act as it now stands, since under s. 454 the right of the County Judge to make such appointment arises "if the persons having distinct interests omit to name an (*i.e.*, one) arbitrator within 7 days after receiving notice to do so," which notice may apparently be given at any time after a by-law has been passed under this section (452).

The municipal corporation may avoid any such question by inserting in the original by-law authorizing the work a provision that the claims of all persons interested shall be disposed of by one award, and by proceeding at once, upon the passing of the by-law, to initiate proceedings under s. 453.

When council may take the initiative.

453.—(1) In case a notice has not been served under sub-section 1 of section 451, the municipal council may serve upon the owner, occupier or person interested in the property, a copy of the by-law (certified under the hand of the clerk of the council to be a true copy) together with a notice in writing

(*a*) As to the words in square brackets, see s. 462.

(*b*) See the criticisms of CAMERON, C.J., in *Smith* v. *Tp. of Plympton*, 12 O.R. 20 at p. 31 (1886) upon the form of the notice given in the report of that case at p. 22.

of the appointment of an arbitrator on behalf of the municipal council. 60 V. c. 15, *Sched.* C. (71). *See* 55 V. c. 42, s. 391 *part.*

Appointment of arbitrator by owner, etc., of property.

(2) Such owner, occupier or person interested shall within 7 days after such service—or (in the case provided for by section 452) the persons having distinct interests as therein mentioned, shall agree upon and shall within 21 days from such service—appoint an arbitrator on his or their behalf, as the case may be, and give notice thereof to the municipal council. 60 V. c. 15, *Sched.* C. (71). *See* 55 V. c. 42, ss. 392 *part*, 393 *part.*

Taken from 60 V. c. 15, Sched. C. (71). *Cf.* 12 V. c. 81, s. 195; 14-15 V. c. 109, Sched. A. (27); 16 V. c. 81, s. 195; 14-15 V. c. 109, Sched. A. (27); 16 V. c. 181, ss. 33, 35; 22 V. c. 99, s. 336 (5); 29-30 V. c. 51, s. 353 (5); 36 V. c. 48, s. 284, etc.

County Court Judge to appoint arbitrator in certain cases.

454. If such owner, occupier or person so interested, or the head of such council, whether from want of authority in that behalf, or otherwise, omits to name an arbitrator within seven days after receiving notice to do so, or if the persons having distinct interests as aforesaid omit to name an arbitrator within twenty-one days after receiving notice to do so, or if the two arbitrators do not within seven days from the appointment of the lastly named of the two arbitrators agree on a third arbitrator, or if any of the arbitrators refuse or neglect to act, the Judge of the County Court of the county in which the property is situated, on the application of either party, shall nominate as an arbitrator a fit person, resident without the limits of the municipality in which the property in question is situated, to act for the party failing to appoint, or as such third arbitrator, or in the stead of the arbitrator refusing or neglecting to act, and such arbitrators shall forthwith proceed to hear and determine the matters referred to them. 55 V. c. 42, s. 394.

Taken from 36 V. c. 48, s. 286. *Cf.* 12 V. c. 81, s. 195; 14-15 V. c. 109, Sched. A (28); 16 V. c. 181, ss. 33, 35; 22 V. c. 99, s. 336 (7); 29-30 V. c. 51, s. 353 (7).

(a) **"If any of the arbitrators refuse or neglect to act."**

As to the meaning of these words see note (a) to s. 212, and *Direct Cable Co.* v. *Dominion Telegraph Co.* (*a*)

In *Willoughby* v. *Willoughby*, (*b*) the omission of an arbitrator to make his award within the time fixed by the Statute under which he had been appointed was held to be a "neglect to act" which warranted the appointment of a new arbitrator. The section contemplates the neglect or refusal of an arbitrator to act after the reference has been entered upon as well as the case of an arbitrator refusing to accept the appointment. (*c*)

(b) **"The Judge of the County Court . . . shall nominate as arbitrator a fit person, etc.**

"Nominate" here means "appoint." The Judge may make such appointment *ex parte*. (*d*)

(*a*) 28 Grant 648 (1881), 8 A.R. 416 (1882). (*b*) 9 Q.B. 923 (1847).

(*c*) Per CAMERON, C.J., in *Smith* v. *Township of Plympton*, 12 O.R. 20 (1886) at p. 33. As to the time to be allowed for making a new appointment in case of the death before award of an arbitrator appointed under "*The Railway Act*," (51 V. c. 29 (Ca.)) see *Shannon* v. *Montreal Park and Island R.W. Co.*, 28 S.C.R. 374 (1898).

(*d*) *Smith* v. *Township of Plympton*, 12 O.R. 20 (1886). See *Re Cummings and County of Carleton*, 25 O.R. 607 (1897) at p. 608, and *Pategrave Gold Mining Company* v. *McMillan* [1892] A.C. 460, referred to in note (f) to s. 450.

Sec. 454.

Note (b).

Appointment of arbitrator by County Judge.

"If the Judge thinks fit, he may act without notice to the opposite party and may make the appointment *ex parte*. At the same time I think it most undesirable that such appointment should be made without hearing the parties to ascertain whether there is any good objection to the person he may determine to appoint. His duty is to appoint a person resident outside the municipality concerned in the arbitration . . . and there may be other valid objections that he can scarcely be expected to be aware of, as he cannot, being unremunerated for his services, be required to take the trouble of making inquiries outside of the qualification of his nominee to discharge the duties. Of this he may, from the standing of the parties selected, be quite satisfied, and still the person chosen might be an undesirable person from circumstances that would not be within the knowledge of the Judge in that particular matter." (*a*)

Appointment of arbitrator not to be admission of liability.

455. The appointment of an arbitrator shall not be deemed to be an admission of any liability on the part of the corporation; and all defences and objections shall be open to either party as if an action had been brought. 55 V. c. 42, ss. 487 (6), 487*a*; 55 V. c. 43, s 30.

Taken from 52 V. c. 36, s. 22 (6) (1889). *Cf.* 55 V. c. 42, s. 487*a*.

(a) Even before the passing of this section it had been held that in an arbitration under s. 437 the arbitrators may find that no dama, nas been sustained and are not bound to award even nominal damages. (*b*)

Time for making award.

456. In any of the cases herein provided for, the arbitrators shall make their award within one month after the appointment of the third arbitrator. 55 V. c. 42, s. 395.

Taken from the Act of 1873, (36 V. c. 48,) s. 207. *Cf.* 12 V. c. 81, s. 195; 16 V. c. 181, ss. 33-35; 22 V. c. 99, s. 336 (6); 29-30 V. c. 51, s. 353 (6).

(a) "**Shall make their award.**" These words mean "the execution of the award in the presence of a witness or . . . any other act intended to show the final award of the arbitrator, upon which he becomes *functus officio*." (*c*)

(b) "**Within one month**" As to computation of time see note (b) to s. 214, *ante*. An award not made within the prescribed period may not be enforceable. (*d*)

Enlarging time for award.

Section 10 of "*The Arbitration Act*," (*e*) (which by s. 467 is made applicable to arbitrations under "*The Municipal Act*") provides that "the time for making an award may from time to time be enlarged by order of the High Court of Justice or of a Judge thereof, whether the time for making the award has expired or not." (*f*) In *Re City of Toronto and Scott*, (*g*) a similar section of "*The Common Law Procedure Act*," (*h*) was held to be applicable

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(*a*) Per CAMERON, C.J., in *Smith* v. *Township of Plympton*, *supra* at p. 36.

(*b*) *Re Colquhoun and Town of Berlin*, 44 U.C.R. 631 (1879). The difference in this respect between our *Municipal Act* and the *Lands Clauses Consolidation Act* is there pointed out by OSLER, J., at pp. 636, 637. See the cases cited by him and also *Turner* v. *Sheffield and Rotherham R. W. Co.*, 10 M. & W. 425 (1842); *Eagle* v. *Charing Cross R. W. Co.*, L. R. 2 C. P. 638 (1867); *Davis* v. *Witney*, etc., *District Council*, 15 Times L.R. 275 (1899); *Walshaw* v. *Brighouse* (*Mayor of*), 15 Times L.R. 403 (1899).

(*c*) Per BOYD, C., in *Hayck* v. *Wilson*, 18 P.R. 44 (1898) at p. 46, citing *Brown* v. *Vawser*, 4 East 384 (1804) and *Brooke* v. *Mitchell*, 6 M. & W. 473 (1840).

(*d*) *Baring-Gould* v. *Sharpington*, [1898] 2 Ch. 633.

(*e*) R.S.O. (1897) c. 62.

(*f*) See this section and the cases under it in note (cc) to s. 467.

(*g*) 8 P.R. 318 (1880).

(*h*) R.S.O. (1877) c. 50, s. 219.

Sec. 456.

Note (b).

to an arbitration under "*The Municipal Act*," and though not containing the words "whether the time for making the award has expired or not," was held to authorize an enlargement by the Court of the time for making an award even after the period of one month mentioned in this section had expired. (*a*)

Enlargement of time for making award.

The power of the arbitrators to extend the time for making their award must be regarded as more than doubtful. In *Township of Thurlow* v. *Township of Sidney*, (*b*) PROUDFOOT, V. C. considered that the words "with power to adjourn from time to time," used in s. 459 empowered the arbitrators to award extend the time for making their award beyond the month, and that the Act should be read as enacting that the award should be made within a month unless the time for making it were extended (*c*); but in *Re Township of Muskoka and Village of Gravenhurst*, (*d*) CAMERON, C.J. says:—

"There is no doubt the language used in s. 377 (*e*) is imperative, *i.e.*, imperative on the arbitrators."

Sec. 4 of "*The Arbitration Act*," (*f*) provides that a submission to arbitration shall—(unless a contrary intention is expressed therein)—be deemed to include (so far as they are applicable to the reference thereunder) the provisions contained in Schedule "A" to that Act, among which is one allowing the arbitrators from time to time by writing signed by them to enlarge the time for making their award; but this applies (*g*) to arbitrations under other Statutes only in so far as "*The Arbitration Act*" is not inconsistent with the Statute governing such arbitrations.

It is apprehended, therefore, that the express provision of this section and the omission in s. 467 of any reference to s. 4 of "*The Arbitration Act*" may be regarded as indicating that the latter section is not intended to apply to municipal arbitrations.

Validity of award made after time has expired.

The question as to the right of arbitrators to extend the time for making their award, affects also the validity of an award made by them by virtue of such an enlargement after the month has expired.

In *Re Township of Muskoka and Village of Gravenhurst*, (*h*) CAMERON, C. J. was inclined to think that an award so made would be valid, and to regard the limitation of time as directory only in its effect upon the rights of the parties, though it imposed upon the arbitrators an imperative duty to make their award within the month, and subjected them to any consequences which might flow from a breach of such duty. At p. 355 he says:—

"I am by no means prepared to say that the above limitation of a month must have the effect of invalidating an award otherwise valid. . . . It does not follow that the act of those who fail to perform within a specified time a duty made imperative upon them, must be nugatory when performed by them afterwards."

But when the same question was raised before him in the later case of *Smith* v. *Township of Plympton*, (*i*) he says:—

"The current of English authority is, I think, against the validity of an award made after the time fixed by Statute.(*j*) If the statutory limit is exceeded, there is no limit, and the matter would be pending before the arbitrators so long as they refrained from making any award. This certainly would not be what was contemplated by the Legislature. It is perhaps better to require that the award should be made within the month, unless the time is enlarged by an order of the Court or a Judge."

But a party to the arbitration who has acquiesced in an enlargement by arbitrators beyond the time fixed by the Act for making the award, may be estopped from taking this objection. (*k*)

(*a*) See also s. 464 and *Re Clement and Dixon*, 17 P.R. 455 (1897), where the time was enlarged by BOYD, C. even after the award had been made.

(*b*) 29 Grant 497 (1881).

(*c*) P. 498.

(*d*) 6 O.R. 352 (1884).

(*e*) Now s. 456.

(*f*) R.S.O. c. 62.

(*g*) Ibid, s. 47.

(*h*) 6 O. R. 352 (1884).

(*i*) 12 O. R. 20 (1886).

(*j*) See *Re Yeadon Local Board and Yeadon Waterworks Co.*, 41 Ch.D. 52 (1888-9).

(*k*) *Re Oakes and City of Halifax*, 4 S.C.R. 640 (1879); *Township of Thurlow* v. *Township of Sidney*, 29 Grant 497 (1881); and the cases referred to in Russell on Awards, (7th Ed.) pp. 148, 149, and in Crewe on Arbitrations, (1898), pp. 28-29.

Sec. 456.

Note (b). Enlargement of time for making award.

But where the arbitrators have power to extend the time they must do so according to the strict terms of their authority, and an objection to the award on other grounds by a party ignorant at the time of an irregularity in the mode of such extension is not a waiver of the right to object on this ground to the award. (*a*)

In *Re Laplante and Town of Peterborough* (*b*) a by-law providing that the award should be made within one month from the passing of the by-law, instead of one month from the appointment of the third arbitrator, was quashed with costs as prescribing a condition unauthorized by the Statute. (*c*)

Persons disqualified from acting as arbitrators.

457. No member, officer, or person in the employment of any corporation which is concerned or interested in any arbitration, nor any person so interested, shall be appointed or act as an arbitrator in any case of arbitration under this Act: but nothing in this section contained shall prevent the appointment of or disqualify as an arbitrator any person by reason merely that such person is a ratepayer of or within any municipality concerned or interested in the arbitration, unless the arbitration relates to drainage under the provisions of this Act. 55 V. c. 42, s. 396; 57 V. c. 56, s. 89 (1).

The first part of the section is taken from the Act of 1873, (36 V. c. 48), s. 288. *Cf.* 32 V. c. 13, s. 11; 35 V. c. 26, s. 12. The last paragraph ("but nothing in this section contained," etc.,) was added in 1895 by 58 V. c. 38, s. 9 in consequence of the decision in *Re Township of Muskoka and Village of Gravenhurst*, 6 O.R. 352 (1884), that a ratepayer was disqualified from acting as an arbitrator and that the right to object on this ground to the award was not waived by acquiescence in the proceedings.

Division III.—PROCEDURE.

(Secs. 458-467.)

Synopsis. The procedure in arbitrations under the "*The Municipal Act*" is regulated by ss. 458-464 and by those sections of "*The Arbitration Act*" (R. S. O. c. 62) which have been imported into this Statute by s. 467.

Costs and arbitrators' fees are dealt with by ss. 460, 462 (2-10); appeals and motions to review or set aside awards by ss. 463 (2-3), 464 and 465, and the mode of enforcing awards by s. 466.

Arbitrators to be sworn.

458. Every arbitrator, before proceeding to try the matter of the arbitration, shall take and subscribe the following oath (or in case of those who by law affirm shall make and subscribe the following affirmation) before any Justice of the Peace:

Form of oath or affirmation.

"I (*A. B.*) do swear (*or* affirm) that I will well and truly try the matters referred to me by the parties, and a true and impartial award make in the premises, according to the evidence and my skill and knowledge. So help me God."

55 V. c. 42, s. 397.

Taken from the Act of 1858, (22 V. c. 99), s. 336 (11). The words "and my skill and knowledge" were added to the oath by the Act of 1873 (36 V. c. 48), s. 289. See 35 V. c. 26, s. 13.

(**a**) The oath must not only be *taken*, but must also be *subscribed* by each of the arbitrators and that "before proceeding to try the matter of the arbitration"; but a slight variation from the words of the Statute will be immaterial

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(*a*) *McKay* v. *Nicol*, 28 Nova Scotia R. 43 (1895).

(*b*) 5 O.R. 634, (1884).

(*c*) See note (**d**) to s. 325 at p. 332, *ante*.

so long as the oath taken is substantially the same as the one prescribed. (*a*) When taken and subscribed it should be filed under s. 462 with the evidence and other papers relating to the reference. (*b*)

Sec. 458.
Note (a).

459. The arbitrators shall, within twenty days after the appointment of the third arbitrator, meet at such place as they may agree upon, to hear and determine the matter in dispute, with power to adjourn from time to time, and shall make their award in writing, which shall be binding on all parties; and one copy thereof shall be filed with the clerk of each of the municipalities interested. 55 V. c. 42, s. 398; 60 V. c. 3, s. 3.

Time of meeting, etc.

Taken from the Act of 1873, (36 V. c. 48,) s. 290. *Cf.* 35 V. c. 26, s. 14.

(a) "**Shall, within twenty days . . . meet to hear and determine.**"

"If the time for making the award under s. 397 (*c*) must be regarded as imperative, it is difficult to say that the time for commencing the proceedings must not also be regarded as imperative. I am inclined, however, to think, as it is purely a matter of formal procedure, it should be regarded as directory; and that the omission to hold the first meeting within twenty days would not make an award made within the month invalid." (*d*)

(b) There is no express direction that the arbitrators shall give to the parties notice of their meetings and an opportunity of being heard; but it is essential that, whether there has been a formal notice or not, it should appear that the parties had knowledge of the time and place of each meeting and a full opportunity of being heard, of producing evidence, (*e*) and of arguing points of law (*f*)

But the arbitrators may for good cause and after due notice proceed *ex parte*, as where a party refuses to attend or causes unreasonable delay. (*g*)

In *Re Johnston and Township of Gloucester*, (*h*) the Court set aside an award in favour of a person through whose land a road had been opened, it appearing that no notice of the time and place of meeting of the arbitrators had been given to the municipal corporation.

Similar notice should be given to each of the arbitrators (*i*) and if it appears that the arbitrators have received evidence in the absence of one of the parties and without notice to him, this is a ground for setting aside the award (*j*)

(*a*) Per CAMERON, C.J., *Smith* v. *Township of Plympton*, 12 O.R. 20 (1886) at p. 37; and see *Re Smith and City of Toronto*, 13 P.R. 479 (1890).

(*b*) 22 V. c. 99, s. 336 (11). (*c*) Now s. 456.

(*d*) *Per* CAMERON, C.J., in *Re Smith and Township of Plympton*, 12 O. R. 20 (1886) at p. 35. As to computation of time, see note (b) to s. 214.

(*e*) See Russell on Awards. (7th Ed.) 172, 173; *Grisdale* v. *Boulton*, 1 U.C R. 407 (1842); *Re McMullen and Cayley*, 2 U. C. R. 175 (1846); *Lister* v. *Ham*, 1 C. L. J. N. S. 298 (1865); *Ward* v. *McAlpine*, 25 C. P. 119 (1875); *Peuchen* v. *Lamb*, 25 C. P. 588 (1876); *Re Johnson and The Montreal & City of Ottawa Junction R. W. Co.*, 40 U. C. R. 359 (1877).

(*f*) *Perlet* v. *Perlet*, 15 U. C. R. 165 (1857).

(*g*) *Wood* v. *Leake*, 12 Ves. 412 (1806); *Harcourt* v. *Ramsbottom*, 1 J. & W. 505 (1820).

(*h*) 12 U. C. R. 135 (1854).

(*i*) *Re McCluny and Motley*, 6 U. C. L. J. 92 (1860); *Re McDonald and Present*, 16 U. C. R. 84 (1857); *Martin* v. *Kergan*, 2 P. R. 370 (1859); *Re City of Toronto and Leak*, 23 U. C. R. 223 (1864).

(*j*) *Grisdale* v. *Boulton*, 1 U. C. R. 407 (1843); *Davis* v. *Birdsall*, 2 U. C. R. 199 (1846); *McNulty* v. *Johson*, 2 P. R. 119 (1857); Russell on Awards, (7th Ed.) 191-195; *Williams* v. *Roblin*, 2 P. R. 234 (1858); *Hickman* v. *Lawson*, 8 Grant 386 (1860); *Peuchen* v. *Lamb*, 25 C. P. 588 (1876); *Re Cruickshank and Corby*, 30 C.P. 466 (1879); *Whitely* v. *McMahon*, 32 C.P. 453 (1882); *Herring and The Napanee, Tamworth & Quebec R W. Co.*, 5 O. R. 349 (1884); *Race* v. *Anderson*, 14 A. R. 213 (1886); *Wood* v. *Gold*, 3 B. C. Rep. 281 (1894); *Bache* v. *Billingham*, [1894] 1 Q. B. 107 (C.A.); *Re Gregson and Armstrong*, 70 L. T. N. S 106 (1894); *Kennedy* v. *Beal*, 29 O. R. 599 (1898). And see *Purdee* v. *Lloyd*, 26 Grant 374 (1879).

Sec. 459.

Note (b).

It is not necessary in such a case to impute to the arbitrators any intentional impropriety of conduct, nor to show that their decision has been in any way influenced by such *ex parte* statements. It is only necessary to show that their minds may possibly have been influenced by the communications which have taken place. (*a*) And even where the arbitrator swore that the evidence thus received had had no effect upon his mind, LORD ELDON, C., set aside the award, being of opinion that no Court should permit an arbitrator to decide so delicate a question as whether a witness examined in the absence of one of the parties had had an influence upon him or not. (*b*)

Arbitrators proceeding *ex parte*.

But in *Anderson* v. *Wallace* (*c*) the House of Lords determined that it is no objection to an award that the arbitrators have in the absence of one of the parties called in the other, and asked him whether he admitted or disputed certain items of an account, and have merely taken his answer.

In the Province of Quebec, arbitrators who are appointed *aimables compositeurs*, may, under Art. 1346 of the Quebec Code of Civil Procedure, dispense with the strict observance of those rules of law, non-observance of which would result in no more than irregularity; and where such arbitrators in good faith obtained from one of the parties in the absence but to the knowledge of the other, correct information as to the law bearing upon the case before them, it was *Held*, that that was not an irregularity which vitiated the award. (*d*)

Misconduct.

Under "*The Arbitration Act*" (*e*) the Court may set aside an award or remove an arbitrator for misconduct, and, (independently of that Statute) may restrain him from acting if he is shewn to be disqualified by interest or otherwise. (*f*)

Interest.

Mistake

(c) Arbitrators being in general judges of the law as well as of the facts, (*g*) the Court will not set aside the award solely on the ground of mistake in law or of fact, unless such mistake is apparent on the face of the award (*h*) or is disclosed by some contemporaneous writing (*i*) and the contemporaneous writing must form part of or be incorporated with the award (*j*) or unless the mistake is admitted by the arbitrators; (*k*) or (perhaps) where the mistake is so gross as to amount (in the judicial sense of the word) to misconduct (*l*). And now by "*The Arbitration Act*" (*m*) the arbitrators may (unless the submission

(*a*) *Per* STREET, J. in *Re Ferris and Eyre*, 13 O. R. 395 (1889).

(*b*) *Fetherston* v. *Cooper*, 9 Ves. 67 (1803); approved in *Dobson* v. *Groves*, 6 Q. B. 637 (1844); *Plews* v. *Middleton*, 6 Q. B. 845 (1845), and *Drew* v. *Drew*, Paterson's Appeals (H.L. 1855) 443; and followed in *Waters* v. *Daly*, 2 P. R. 202 (1854); *McEdward* v. *Gordon*, 12 Grant 333 (1866). See also *Re Lawson and Hutchison*, 19 Grant 84 (1872).

(*c*) 3 Cl. & F. 26 (1835).

(*d*) *Rolland* v. *Cassidy*, 13 App. Cas. (H.L.) 770 (1888).

(*e*) R. S. O. (1897) c. 62, s. 12. See *post*, p. 503.

(*f*) See the cases collected in note (*ss*) to s. 467, *post*, pp. 503-505.

(*g*) *Young* v. *Walter*, 9 Ves. 364 (1804); *Perriman* v. *Steggall*, 9 Bing. 679 (1833); *Jupp* v. *Grayson*, 1 C. M. & R. 523 (1834); *Wilson* v. *King*, 2 C. & M. 689 (1834); *Hall* v. *Ferguson*, 4 O.S. 392 (1834); *McLeod* v. *Vandecar*, 6 O.S. 481 (1843); *Newman* v. *Niagara District Mutual Fire Ins. Co.* 25 U.C.R. 435 (1866); *Severs* v. *Cosgrave*, 2 C.L.J.N.S. 11 (1860).

(*h*) *Fuller* v. *Fenwick*, 3 C. B. 705 (1846); *Re Grant and Eastwood*, 22 Grant 563 (1875).

(*i*) *Township of Kingston* v. *Day*, 1 P.R. 142 (1853); *Hodgkinson* v. *Fernie*, 3 C.B.N.S. 189 (1857); *Hodge* v. *Burgess*, 3 H. & N. 293 (1858); *McDonald* v. *McDonald*, 7 U.C.L.J. 297 (1861).

(*j*) *Lemay* v. *McRae*, 16 A.R. 348 (1889); *S.C. sub nom. McRae* v. *Lemay*, 18 S.C.R. 280 (1889).

(*k*) *Mills* v. *Bowyers Society*, 3 Kay & J. 66 (1856); *Flynn* v. *Robertson*, L.R. 4 C.P. 324 (1869); *Re Fowler*, 27 L.T.N.S. 637 (1873); *Connor* v. *McCormack*, 23 C.P. 271 (1873); *Re Grant and Eastwood*, 22 Grant 563 (1875); *Graham* v. *Turnbull*, 44 L.J.Ch. 538 (1875); *Dinn* v. *Blake*, L. R. 10 C. P. 388 (1875); *Greenwood* v. *Browning*, 44 L.T.N.S 47 (C.A.) (1881); *McClean* v. *Marvin*, 6 Times L.R. 355 (1890).

(*l*) *Re Hall and Hinds*, 2 M. & G. 847 (1841); *Hutchison* v. *Shepperton*, 13 Q.B. 955 (1849); *G. T. R. W. Co.* v. *Coupal*, 28 S.C.R. 531 (1898).

(*m*) R.S.O. (1897) c. 62.

expresses a contrary intention) correct any clerical mistake or error in an award arising from any accidental slip or omission (*a*); or the High Court of Justice or a Judge thereof may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators. (*b*) See further note (d) to s. 464 as to the powers conferred upon the High Court of Justice in regard to awards under "*The Municipal Act*."

Mistake.

(d) "Shall make their award in writing."

An arbitrator must form his own judgment on the questions submitted (*c*) and a lay arbitrator may not have a solicitor to sit with and advise him if any of the parties objects. (*d*)

Award must embody judgment of arbitrator.

But an arbitrator may consult scientific experts or call in a valuator to assist him (*e*).

Section 464 requires that "the award shall be in writing under the hands of all or a majority of the arbitrators." But for some provision of this kind, an award by word of mouth might be sufficient. (*f*) Where there are more arbitrators than one, all of them, or at least, those who join therein, should execute the award at the same time and in the presence of each other (*g*); and an award executed by the arbitrators or by the assenting arbitrators at different times and places is invalid. (*h*) So an award executed by two out of three arbitrators in the absence of the third and without finally consulting him may be set aside, (*i*) or referred back, (*j*) even in cases which are not governed by the express provision of the Railway Acts, (*k*) that "no award shall be made nor any official act done by the majority of the arbitrators except at a meeting held at a time and place of which the other arbitrator has had at least one—[in the Dominion Act "two"]—clear days notice, or to which a meeting at which such third arbitrator was present had been adjourned." (*l*) But it seems that if the assenting arbitrators execute the award at the same time, it will not be set aside because the dissenting arbitrator is not present, provided all the matters in dispute have been discussed by all the arbitrators, each is aware of the judgment formed by the others on the several points, and the dissenting arbitrator, having had a full opportunity of joining in the award, declares his dissent from it or definitely withdraws from the reference. (*m*) But a party to an arbitration may, by acquiescence, estop himself

Execution of award.

(*a*) S. 9, *part* p. 503. (*b*) S. 11, *post*, p. 503.

(*c*) *Ellison* v. *Bray*, 9 L.T.N.S. 730 (1864).

(*d*) *Proctor* v. *Williams*, 1 L.T.N.S. 372 (1860).

(*e*) *Caledonian R. W. Co.* v. *Lockhart*, 3 Macq. H.L. Cas. (Sc.) 808 (1860)

(*f*) Russell on Awards, (7th Ed.) 248.

(*g*) *Stalworth* v. *Innes*, 13 M. & W. 466 (1845); *Wade* v. *Dowling*, 4 E. & B. 44 (1854); *Eads* v. *Williams*, 24 L.J. Ch'y. 531 (1855).

(*h*) *Wright* v. *Graham*, 3 Ex. 134 (1848); *Helps* v. *Roblin*, 6 C.P. 52 (1856); *Nott* v. *Nott*, 5 O.R. 283 (1884).

(*i*) *Re Beck and Jackson*, 1 C.B.N.S. 695 (1857); *Re McDonald and Presant*, 16 U.C.R. 84 (1857); *Martin* v. *Keegan*, 2 P.R. 370 (1859); *Jekyll* v. *Wade*, 8 Grant 363 (1860); *Re City of Toronto and Leak*, 23 U.C.R. 223 (1864).

(*j*) *Anning* v. *Hartley*, 3 H. & N. 929 (1858).

(*k*) R.S.O. (1897) c. 207, s. 20 (7); 51 V. c. 29 (Ca.), s. 152.

(*l*) *Anglin* v. *Nickle*, 30 C.P. 72 (1879); *Norvell* v. *Canada Southern R. W. Co.*, 9 A.R. 310 (1884).

(*m*) *Freeman* v. *Ontario and Quebec R. W. Co.*, 6 O.R. 413 (1884), referring to *Goodman and Sayers*, 2 Jac. & W. 249, 261 (1820); *Re Templeman and Reid*, 9 Dowl. 962 (1829); *Pering* v. *Keymer*, 3 A. & E. 245, 246 (1835); *Young* v. *Bulman*, 13 C.B. 623, 627 (1853); *Re City of Toronto and Leak*, 23 U.C.R. 223 (1864), *per* DRAPER, C. J., at p. 248. See also *Anderson* v. *Cotton*, 2 P.R. 109 (1856); *Re McClung and Motley*, 6 U. C. L. J. 92 (1860); *Re Hubbard and Union Fire Ins. Co.*, 44 U.C.R. 391 (1879). The cases of *Williams* v. *Spair*, 10 U.C.R. 24 (1852); *Jones* v. *Reid*, 1 P.R. 247 (1853); and *Re Hopper*, L.R. 2 Q.B. 367 (1867), are considered and distinguished by ROSE, J., in *Nott* v. *Nott*, 5 O.R. 283 (1884), at p. 294.

Sec. 459 — Note (d).

from objecting that the third arbitrator has not joined in the award. (a) It is highly objectionable, and may affect the validity of the award, for arbitrators, even though they may have fully made up their minds upon all the points in dispute, to employ a solicitor for one of the parties to the reference to draw up the award. (b)

(e). "And one copy shall be filed with the clerk of each of the municipalities interested."

This was formerly required only in the case of awards respecting drainage works (c).

Costs.

Taxation thereof.

460. The arbitrators shall have power to award the payment by any of the parties to the other of the costs of the arbitration, or of any portion thereof, and may either direct the payment of a fixed sum, or that the costs should be taxed on either the scale of the High Court, or of the County Court, in which case the costs shall be taxed by the officer of the proper Court in the county without any further order, and the amount shall be payable within one week after taxation. Such costs when taxed by an officer of a County Court or by a local taxing officer of the High Court, shall be subject to revision by one of the taxing officers at Toronto, upon one week's notice, and such revision shall be subject to appeal to a Judge of the High Court, as in the case of appeals from a taxation of costs in an action. 55 V. c. 42, s. 399.

Taken from the Act of 1873 (36 V. c. 48 s. 291). The wording of the final sentence was altered in the Revision of 1897 (under the authority of 60 V. c. 3, s. 3) so as to bring it clearly into accord with the practice under Con. Rules 774-776 and 1167-1171 (1897).

Form of award as to costs of arbitration.

(a) This provision is, however, subject to the condition imposed by s. 447. The form of the award as to costs may be as follows:

> "And we further award and direct that the said, the municipal corporation of the township of — — shall pay to the said J. B. (*the claimant*) the costs of this arbitration (*or* 'one-half, etc., of the costs of this arbitration') to be taxed on the scale of the High Court (*or*, 'or the County Court,') *or*, 'which are hereby fixed at the sum of $ — .'"

Before this enactment there was no power to award as to costs (d), but where arbitrators, not having power to do so, assumed to deal with the costs of the proceedings, it was held that this part of the award, being separable, might be set aside without interfering with the rest of the award (e).

Limits of power to award as to costs.

> "The authority given by the Statute is to award costs and to define the tariff, but no more; that being so, the costs are to be taxed as in other and ordinary litigated cases . . . the Act does not empower costs to be awarded as between solicitor and client, which has here been attempted and directed." (f)

But where the award directed that "the costs" should be paid by the land owners, not fixing the amount nor directing on what scale they should be taxed, it was held that there was no authority to tax them either upon the High Court or the County Court scale. (g) Before the passing of "*The Arbi-*

(a) *Re McClung and Mutley*, 6 U.C.L.J. 92 (1860).

(b) *Underwood & Bedford & Cambridge R. W. Co.*, 11 C.B.N.S. 442 (1861).

(c) See 55 V. c. 42, s. 398.

(d) *Re United Counties of Northumberland & Durham and Town of Cobourg*, 20 U.C.R. 283 (1860), cited in note **(f)** to s. 27, *ante*.

(e) *Re City of Toronto and Leak*, 23 U.C.R. 223 (1864) at p. 248.

(f) *Per* BOYD, C. in *Re Beaty and City of Toronto*, 13 P.R. 316 (1889), a case in which, though the arbitrators awarded costs "as between solicitor and client," the ruling of the taxing officer that the costs should be taxed as between party and party was affirmed.

(g) *Re Village of Preston and Klotz*, 16 P.R. 318 (1894).

tration Act," (*a*) it seems that in such a case the award would probably have been referred back to the arbitrators under s. 464 in order that they might make it complete in this respect (*b*); but now the omission may be remedied by the arbitrators themselves. (*c*)

Award as to costs of arbitrations.

Where a municipal corporation in expropriating lands for waterworks purposes under the authority of a special Act, adopted the procedure prescribed by "*The Municipal Act,*" it was held that the arbitrators had power under this section to award costs (*d*). On motion under s. 464 the decision of the arbitrators as to costs may be varied by the Court or Judge (*e*). Con. Rule 1129 (1897)—which authorizes the Court or a Judge to make a charging order in favour of a solicitor upon property recovered or preserved through his instrumentality in prosecuting or defending "any cause, matter or other proceeding,"—applies only to causes in Court, and not to an award under "*The Municipal Act,*" (*f*). See further as to the arbitrators' fees and the taxation thereof, ss. 492 (2-10) and the notes on pp. 506-508 *post*.

461. In case of a difference between the arbitrators, the decision may be given by the majority of them. 55 V. c. 42, s. 400.

Majority to decide.

Taken from 36 V. c. 48, s. 292. *Cf.* 33 V. c. 26, s. 13; 35 V. c. 26, s. 15.

(a) As to the manner in which this "decision" is to be given, see note (d) to s. 459.

462.—(1) In case of an award under this Act which does not require adoption by the council, or in case of an award to which a municipal corporation is a party, and which is to be made in pursuance of a submission containing an agreement that this section shall apply thereto, the arbitrator or arbitrators shall take, and immediately after the making of the award shall file with the clerk of the council, for the inspection of all parties interested, full notes of the oral evidence given on the reference, and also all documentary evidence so given or a copy thereof; and in case they proceed partly on a view, or any knowledge or skill possessed by themselves or any of them, they shall also put in writing a statement thereof, sufficiently full to allow the Court to form a judgment of the weight which should be attached thereto.

Notes of the evidence adduced to be taken and filed in certain cases.

Arbitrators acting on their own knowledge, etc., to put statement thereof in writing.

Taken from the Act of 1858, (22 V. c. 99), s. 336 (13).

(a) "In case of an award . . . which does not require adoption."

See s. 463. An award of compensation to a land-owner for damages by reason of his land having been injuriously affected by work done by a municipal corporation does not require adoption. (*g*)

(b) "In case of an award made in pursuance of a submission containing an agreement that this section should apply thereto."

See note (b) to s. 449 and the form given in note (c) to s. 451.

(*a*) R.S.O. (1897) c. 62.

(*b*) See *Harland* v. *Mayor of Newcastle*, L.R. 5 Q.B. 47 (1869).

(*c*) See R.S.O. c. 62, s. 9 (c) quoted *post* at p. 503.

(*d*) *Re Smith and City of Toronto*, 13 P.R. 479 (1890).

(*e*) *Per* DRAPER, J., in *Christie and Town of Toronto Junction*, 22 A.R. 21 (1895), at p. 37.

(*f*) *Re Mullan* v. *City of Toronto*, Chambers, June 22nd, 1898, not reported; *Macfarlane* v. *Lister*, 37 Ch.D. 88 (1887).

(*g*) *Re McLellan and Tp. of Chingucousy*, 18 P.R. 246 (1898).

Sec. 462 (1).

Note (c).

Filing notes of evidence, etc.

(c) "The arbitrators shall file . . . full notes of the oral evidence," etc.

In Re Townships of Albemarle and Eastnor, (a) ARMOUR, J., held that the requirements of this section are imperative, and that the omission of the arbitrators in that case to take full notes of the oral evidence and to put in writing the statement prescribed by the last clause of the section was fatal to the award, although the mere omission to file notes of evidence taken might not have been so, the Court having power to compel such notes if they existed to be filed *nunc pro tunc*. In *Re Colquhoun and Town of Berlin* (b) OSLER, J., had held the omission of the written statement not to be fatal to the award, (c) and allowed it to be put in afterwards, and this ruling—having been meanwhile approved by CAMERON, C.J., in *Re Township of Muskoka and Village of Gravenhurst* (d) and by BOYD, C., in *Re Harvey and Town of Parkdale* (e) was repeated by OSLER, J. A., in *Re Roden & City of Toronto*. (f)

Arbitrators to file certificate shewing time occupied and fees charged.

(2) The arbitrator or arbitrators shall also at the same time file with the said clerk a certificate of each of the said arbitrators, showing the number of hours actually occupied by him or them in the said arbitration, and verifying in detail the number of hours so occupied at each sitting of the said arbitrator or arbitrators, with the date of each such sitting and the fees charged by the said arbitrators in respect of such sitting. 55. V. c. 42, s. 401.

Taken from 53 V. c. 50, s. 11 (1890).

(d) See also as to the fees to be allowed arbitrators, the taxation and recovery thereof, ss. 18 to 27 inclusive of "*The Arbitration Act*" printed in full at pp. 506-508, *post*.

Payment of arbitrators' fees on taking up award.

(3) Either of the parties to the arbitration may pay into the office of the Clerk of the County Clerk of the county in which the land which is the subject matter of the arbitration is situated the fees of the arbitrators as demanded by them before delivery of their award, together with $10 as security for costs, and the said clerk shall give a receipt for the same, and shall enter such payment in a book to be kept by him for the purpose, and shall be entitled to receive from the said party as a fee to his own use, when the sum paid in does not exceed $50, a fee of fifty cents, and when the sum paid in exceeds $50 a fee of $1; and the said arbitrators, or any two of them, who may have made the award in such arbitration, upon the production of such receipt, shall forthwith deliver their said award to the party so paying in the said fees and the said $10.

Taxation of arbitrators' fees by clerk.

(4) The party so paying in the said sum may have the arbitrators' fees taxed by the clerk on the latter's appointment without any Judge's order, upon giving two days' notice of such appointment by service of a copy thereof upon the arbitrators or upon the person named by them to receive service thereof for them; and if the said fees are found upon the taxation to be authorized by *The Arbitration Act*, the said fees

Rev. Stat. c. 62.

(a) 46 U.C.R. 183 (1881). (b) 44 U.C.R. 631 (1879).

(c) And see *Re United Counties of Northumberland and Durham and Town of Cobourg*, 20 U.C.R. 283 (1860).

(d) 6 O.R. 352 (1884) at p. 357. (e) 16 O.R. 372 (1888) at p. 379.

(f) 25 A.R. 12 (1898) at p. 17. See s. 9 (c) of "*The Arbitration Act*" quoted *post*, p. 503.

so paid into the office of the said clerk as aforesaid, shall, unless there is a revision of the taxation as hereinafter provided, be forthwith paid out to the said arbitrators by the said clerk: but in case of a revision of the taxation, such payment out shall be postponed until such revision has been finally disposed of, and shall be subject to the result of such revision.

How costs to be taxed.

(5) The said clerk upon taxation shall have regard to the charges made by each arbitrator and shall tax the fees of each arbitrator separately; and the costs of the taxation shall be in his discretion, and he may order the same to be paid either by the applicant or by the arbitrators or by any one or more of them; and he shall make such order in the premises as to him appears just.

Revision of clerk's taxation.

(6) Either party to the taxation may, within two days after the completion of such taxation, upon giving four days' notice to the opposite party, require a revision of such taxation by one of the taxing officers of the High Court at Toronto, and may require the clerk to transmit all papers in the matter to such taxing officer; and upon payment of the necessary postage to the clerk, the latter shall forthwith transmit to such taxing officer such papers and his certificate of taxation or decision or a duplicate thereof.

Powers of taxing officer.

(7) Upon such revision, the taxing officer shall revise the said taxation and the order or decision of the said clerk as well as to costs as to all other matters. The costs of the appeal shall be in his discretion and he may order the same to be paid either by the applicant or by any one or more of the arbitrators as to him seems just. His order shall be final and conclusive upon all parties; and such order when necessary may be enforced by execution to be issued out of the County Court wherein the money was deposited.

Payment of costs out of $10 paid in as security.

(8) The order of the clerk (or of the taxing officer upon a revision as aforesaid) may direct the $10 so paid in as security as aforesaid, or so much as may be necessary, to be applied toward the payment of any costs payable by the applicant, and the remainder, if any, to be returned to him, and that any costs payable by any arbitrator shall be deducted from any fees payable to him and so paid into Court as aforesaid. In the event of such moneys being insufficient in any case to pay such costs, the Clerk of the County Court may order that execution issue against the person ordered to pay any balance, and the same shall issue upon such order out of the County Court into which the fees were paid.

Either party may file affidavits.

(9) Upon such taxation either party may file affidavits, or upon the request of either party to the taxation the clerk may examine the parties and the said arbitrators and any other witnesses upon oath.

Scale of taxation of costs.

(10) When the amount of the fees paid in does not exceed $100, the costs of taxation or appeal shall be upon the Division

Sec. 462 (10).

Lump sum in lieu of taxation.

Court scale, and where the fees paid in exceed $100, upon the County Court scale; but the clerk, or (upon revision) the taxing officer, may, in his discretion, fix a lump sum to be paid in lieu of taxation. 58 V. c. 42, s. 15.

Award to be binding in certain cases, must be adopted by by-law within a certain time.

463.—(1) In case the award relates to property to be entered upon, taken or used as mentioned in subsection 1 of section 451, and in case the by-law did not authorize or profess to authorize any entry or use to be made of the property before an award has been made, except for the purpose of survey, or in case the by-law did give or profess to give such authority, but the arbitrators find that such authority was not acted upon, the award shall not be binding on the corporation unless it is adopted by by-law, within three months after the making of the award; and if the same is not so adopted, the original by-law shall be deemed to be repealed, and the property shall stand as if no such by-law had been made, and the corporation shall pay the costs of the arbitration. 55 V. c. 42, s. 402.

Taken from the Act of 1858, (22 V. c. 99, s. 326 (12). "Three months" in line 9 substituted for "6 weeks" by 53 V. c. 50, s. 11 (1890).

(a) Per HAGARTY, C.J.O.:—

"The power given to a municipal council to back out of an arbitration to fix compensation seems to me a most wholesome provision. . . . An alleged improvement is suggested requiring the purchase of property; on investigating the amount of compensation it is discovered to be far beyond the original estimate of the cost. The corporation then find that the proposed 'improvement' is too costly. For the protection of the ratepayers they resolve to abandon its further prosecution, paying the expenses of the other party to the compensation proceedings." (a)

BURTON J.A. in the same case refers to this section as

"a provision which has now for a long series of years been found to be most beneficial . . . giving to the governing body of the municipality a *locus poenitentiæ* in case the amount awarded proves to be largely in excess of the sum estimated or for other good and sufficient reason, or without assigning any reason, they consider it desirable to abandon the expropriation proceedings." (b)

As to the Quebec law under similar circumstances, see *Hollester* v. *City of Montreal* (c) and *cf. City of Montreal* v. *Gauthier* (d).

Power of Courts to review awards adopted by councils, etc.

(2) An award not binding upon the council until adoption, as mentioned in the last preceding subsection, shall, if adopted, be subject to the jurisdiction of the Court, and to review on the merits, at the instance of the person whose property is affected or taken, in the same manner as is provided by the next following section of this Act in respect of any award not requiring adoption: and the provisions of sections 462 and 464 shall hereafter extend to every such award. 55 V. c. 42, s 403 (1).

Taken from 47 V. c. 32, s. 10 (1884).

(b) "And to review on the merits as is provided by the next following section." See note (b) to s. 464.

(a) *Re McColl and City of Toronto*, 21 A.R. 256 (1894) at p. 260.

(b) Ibid, p. 261. (c) 29 S.C.R. 402 (1899). (d) Q.R. 7 Q.B. 100 (1898.

(3) The award may be moved against within one month (excluding vacations) next after the adoption thereof. 55 V, c. 42, s. 403 (2).

Taken from R.S.O. (1887) c. 184, s. 403 (2). *Cf.* 47 V. c. 32, s. 10 (2).

Motion against award which requires adoption.

(c) As to the time for moving against an award which does not require adoption, see s. 465.

464. Every award made under this Act shall be in writing under the hands of all or a majority of the arbitrators, and shall be subject to the jurisdiction of the High Court of Justice, as if made on an ordinary submission in writing under *The Arbitration Act*; and in the cases provided for by subsection 1 of section 462, the Court shall consider not only the legality of the award but the merits as they appear from the proceedings so filed as aforesaid, and may call for additional evidence, to be taken in any manner the Court directs, and may, either without taking such evidence or after taking such evidence, set aside the award or remit the matters referred, or any of them, from time to time, to the consideration and determination of the same arbitrators, or to any other persons whom the Court may appoint, as prescribed in *The Arbitration Act*, and may fix the time within which such further or new award shall be made; or the Court may itself increase or diminish the amount awarded or otherwise modify the award, as the justice of the case may seem to require. 55 V. c. 42, s. 404.

Taken (with a few verbal alterations) from the Act of 1858, (22 V. c. 99), s. 336 (14.)

Award to be made by at least two arbitrators, and subject to jurisdiction of High Court.

Powers of the Courts in such matters.

Rev. Stat. c. 62.

(a). "**Every award made under this Act, shall be in writing under the hands of all or a majority of the arbitrators.**"

See s. 459, note (**d**), and s. 461.

(b). "**And shall be subject to the jurisdiction of the Court as if made on an ordinary submission in writing under 'The Arbitration Act.'**"

See *post*, pp. 502 *et seq.* ss. 9-12 of "*The Arbitration Act*," which by s. 467 are declared to apply to arbitrations under "*The Municipal Act*."

In the Municipal Act of 1858 (*a*) the corresponding words were

> "as if made on a submission by a bond containing an agreement for making the submission a rule or order of such Court."

One effect of this was to make the provisions of the Statute 9 & 10 Wm. III. c. 15 applicable thereto,—under which (although there was no cause in the Court) the party in whose favour the award was made might have his costs taxed by the Master of the Court, (*b*) and might

> "enforce the award by the process of the Court when the submission was made a rule, unless it appeared to that Court that the award should be set aside as unduly made,—in which case the Court would not merely refuse the aid of its process; but (upon complaint made in time), would set aside the award." (*c*)

The costs are now taxable without an order under Con. Rule 1166 (1897), although the time for appealing or moving against the award has not elapsed, and the award may be enforced

(1) By leave of the High Court or of a Judge in the same manner as a judgment or order to the same effect (*d*).

(*a*) 22 V. c. 99, s. 336 (14).

(*b*) *Bleaw* v. *Harradine*, 7 Ex. 269 (1852).

(*c*) *Per* Sir John Leach, V.C., in *Dawson* v. *Sadler*, 1 Sim. & Stu. 537 (1824) at p. 541.

(*d*) See s. 13 of "*The Arbitration Act*," re-enacted as s. 466 of this Act.

Sec. 464.

Note (b).

Or (2) by action on the award itself (*a*).

In *Re McLellan and Township of Chingiuacousy*, (*b*) ARMOUR, C.J., expressed the opinion that an award of compensation to a land-owner for damages to lands injuriously affected by reason of the municipality having cut a ditch and raised the level of the road in front of such land,—and which therefore did not require adoption by the municipal council (*c*)—was "subject to an appeal to the High Court . . . in the same manner and subject to the same restrictions as in the case of a reference under an order of Court." (*d*)

Motions against the award.

(c) "In the cases provided for by subsection 1 of section 462."

i.e., Where the award does not require adoption by the council or where the submission provides that s. 462 shall apply thereto (*e*).

(d) "and may . . . either set aside the award, or remit the matters referred or any of them from time to time," etc.

Award may be remitted to arbitrators

In *Re Keighley, Maxsted & Co. and Durant & Co.*, (*f*) it was held by the Court of Appeal, following *Barnard* v. *Wainwright* (*g*) that under s. 10 of "*The Arbitration Act, 1889*," (*h*) the Court or a Judge has power to remit an award to the arbitrator for reconsideration where it appears that since the making of the award, material evidence has been discovered which might have affected the arbitrator's decision.

Per LORD ESHER, M.R. (p. 410):—

> "In *Dinn* v. *Blake*, (*i*) it is said in terms that an award cannot be sent back to the arbitrator on the mere grounds of mistake, the exception being when there has been corruption or fraud, where there is a mistake of law or fact apparent on the face of the award, and where the arbitrator himself admits that he has made a mistake. The law or rule of the Court, therefore, only applies where there is an allegation by the arbitrator that he has made a mistake of law or fact; and the case of *Dinn* v. *Blake* is no authority for anything beyond. In the present case there is no allegation of any mistake by the arbitrators during the progress of the arbitration; but it is said that all the case was not before them, further material evidence having since been discovered. Our decision to-day will apply only to cases where evidence has been discovered since the award, and we do not determine whether in other cases and under other circumstances the Court would be justified in sending back the award, as, for example, where the evidence was known to one of the parties, but kept back by him in order to deceive the arbitrator."

An award may be remitted to the consideration of the arbitrators even after judgment thereon has been entered and paid (*j*).

But an award will not be remitted solely on the ground that the arbitrators have made a mistake in their opinion upon a question of law (*k*).

or the amount awarded may be increased or diminished.

The extent of the jurisdiction of the Court under this section of "*The Municipal Act*," was very fully considered in *Re Christie and Town of Toronto Junction*, (*l*) an appeal from a judgment of ROSE, J. (*m*).

(*a*) See the forms of indorsements of writs given in Con. Rules (1897), App. Pt. II., Sec. 1, No. 4, "Money payable under an award," and Sec. III., No. 6, "Damages for non-compliance with the award of *X. Y.*"; *Hodgson* v. *Township of Whitby*, 17 U.C.R. 230 (1858); *Harpel* v. *Township of Portland*, 17 U.C.R. 455 (1859); *Widder* v. *Buffalo and Lake Huron R. W. Co.*, 24 U. C. R. 520 (1865), 27 U. C. R. 425 (1868), 29 U. C. R. 154 (1869); *Norvall* v. *Canada Southern R. W. Co.* 5 A. R. 13 (1880).

(*b*) 18 P. R. 246 (1898).

(*c*) See s. 463 (1).

(*d*) See s. 465 and notes (a) and (b) thereto.

(*e*) See note (b) to s. 449 and note (c) to s. 451.

(*f*) [1893] 1 Q.B. 405.

(*g*) 19 L. J. Q. B. 423 (1850).

(*h*) Identical with s. 11 of R.S.O. c. 62. See *post* p. 503.

(*i*) L.R. 10 C.P. 388 (1875).

(*j*) *Sprague* v. *Allen*, 15 Times L.R. 150 (1899).

(*k*) *Re Montgomery, Jones & Co. and Liebenthal & Co.*, 78 L.T.N.S. 406 (1898).

(*l*) 22 A.R. 21 (1895).

(*m*) Referred to, but not reported on this point, in 24 O.R. 443 (1894).

Sec. 464.

Note (d).

Court may increase or diminish amount of award.

The case arose out of an arbitration under s. 437 at the instance of a land-owner, who alleged that the town, by altering the grade of a street, had injuriously affected his property. Two out of the three arbitrators (the third dissenting) awarded the claimant $200 damages and ordered the town to pay two-fifths and the claimant three-fifths of the costs. Upon appeal, ROSE, J. took a view of the premises under Con. Rule 701 (1887), (a) and, without hearing further evidence, increased the award to $1,000 and gave the claimant full costs of the reference. Upon appeal from this decision to the Court of Appeal, BURTON and OSLER, JJ.A., held that he had power to do so, HAGARTY, C.J.O., and MACLENNAN, J.A., that he had not,—the result being that the appeal failed and the judgment of ROSE, J., stood affirmed. OSLER, J., (after quoting the words of this section) says, (p. 35):

> "To these provisions may well be applied the observation of PATERSON, J. in *Green* v. *Citizens' Insurance Co.*, (b) that they are "in the spirit of the day, which tends to bring the subject of arbitration more under the supervision and control of the Court than formerly, and to place it more fully on a footing with other forms of litigation." And it cannot fail to be remarked that the jurisdiction conferred upon the High Court is not only not in terms described as "an appeal," but that it is of the widest and most comprehensive character possible. To deny that these sections confer upon the High Court the power to deal with the case when brought before it with regard to the weight of evidence as well as with the legality of the award is simply to emasculate them and to limit the jurisdiction of the Court, contrary almost to their very words. The Court is to be placed, says section 401 (c), in a position to form a judgment of the weight which should be attached to a view taken by the arbitrators, or to any knowledge or skill possessed by themselves where they proceed partly upon anything of that kind; and by section 404 (d), the Court shall consider not only the legality of the award but the merits as they appear from the proceedings filed. It may, it is true, call for additional evidence; but the power to deal with the case is not dependent upon that—for either without taking such evidence, or after taking it, it may set aside or remit back the award, or may increase or diminish the amount awarded, or otherwise modify the award as the justice of the case may seem to require."

Upon a further appeal to the Supreme Court (e) the view of ROSE, J., and of BURTON and OSLER, JJ.A., was unanimously sustained and the amount of the damages increased to $1,866.20 with interest from the date of the award. (f)

But question of weight of evidence is for arbitrators.

But in *Re Calquhoun and Town of Berlin*, (g) OSLER, J. said:

> "The arbitrators have awarded that the claimant is not entitled to compensation because his property has not been injuriously affected. Unless I could see that they had arrived at this conclusion upon some erroneous principle . . . . I ought not to interfere with the award merely because I may think the weight of evidence is against the view which the arbitrators have taken. This is a matter peculiarly for them and not for the Judge, even when he is considering the merits of the case as he is required to do by s. 464." (h)

(a) Con. Rule 570, (1897.)

(b) 18 S.C.R. 338 (1890), at p. 370.

(c) Now s. 462.

(d) Now s. 464.

(e) 25 S.C.R. 551 (1895).

(f) See the remarks of GWYNNE, J., quoted in note (g) to s. 437, *ante*: also *Re Township of Howick and Village of Wroxeter*, 12 C. L. J. N. S. 64 (1876); *Re Townships of Albemarle and Eastnor*, 46 U.C.R. 183 (1881); *Re Hodgson and Township of Bosanquet*, 11 O.R. 589 (1886).

(g) 44 U.C.R. 631 (1879) at (p. 639).

(h) Following *McKnight* v. *McKnight*, 12 Grant 363 (1866); *Re Canada Southern R. W. Co and Norvall*, 41 U.C.R. 195 (1877); *Re Hamilton & North Western R. W. Co. and Roys*, 44 U.C.R. 626 (1879), and see *Re Collins and Water Commissioners of Ottawa*, 42 U.C.R. 378 (1877); *Re Prittie and City of Toronto*, 19 A.R. 503 (1892); *Lemoine* v. *City of Montreal*, 23 S.C.R. 390 (1894); *Re Macpherson and City of Toronto*, 26 O.R. 558 (1895); *Grand Trunk R. W. Co.* v. *Coupal*, 28 S.C.R. 531 (1898); *Re Stephens and Township of Sunnidale* (*coram* FALCONBRIDGE, J., May 28th, 1898), not reported.

Sec. 465.

Appeals and motions against awards not requiring adoption.

465. In case the award does not require adoption, but is subject to an appeal to the High Court, the appeal shall lie to the High Court and from the High Court to the Court of Appeal in the same manner, and subject to the same restrictions as in the case of a reference under an order of Court; and all applications (otherwise than by way of appeal) to set aside such award shall be made within six weeks (excluding vacations) after the publication of the award; but the High Court or a Judge thereof may under special circumstances allow the application to be made after the said time. 52 V. c. 13, ss. 2, 3, 5. *See* 60 V. c. 16, ss. 15, 45; 60 V. c. 3, 3.

This section is new, but is taken in part from "*The Arbitration Act*," s. 45.

Practice as to such appeals.

(a) "In case the award . . . is subject to an appeal to the High Court."

According to the decision of ARMOUR, C.J., in *Re McLellan and Township of Chinguacousy*(*a*) [illegible] cited in note (**b**) to s. 464—it would seem that these words cover all awards under "*The Municipal Act*" except those which, under s. 463 (1), do not require to be adopted by by-law. If so, every such award may—like the report of an Official Referee—be filed in the High Court under s. 31 of "*The Arbitration Act*" and notice of filing given to the other parties. (*b*) The Con. Rules provide that such a report when thus filed shall have the effect of and be subject to all the incidents of the report of a Master as regards confirmation, appealing therefrom, motions thereupon and otherwise, and shall become absolute at the expiration of 14 days from the date of serving notice of filing the same unless notice of appeal is served within that time. (*c*)

The practice as to appeals from such reports is regulated by Con. Rules 771 and 772 (1897), and ss. 33 and 34 of "*The Arbitration Act*,"—the combined effect of which is to require that the notice of appeal shall be a clear seven days notice setting out the grounds of appeal and returnable within fourteen days from the filing of the report, unless under special circumstances the Court or a Judge shall allow an appeal after the fourteen days. (*d*) The appeal must be set down for argument before a Judge in Court at latest on the day before the day on which the motion is returnable. (*e*) From the judgment or order of a Judge in Court upon an appeal from such a report an appeal lies to a Divisional Court or to the Court of Appeal in the same manner and subject to the same restrictions as in the case of other judgments or orders of a Judge in Court. (*f*)

Motions to set aside award.

(b) "All applications (otherwise than by way of appeal) to set aside such an award."

This would apply to an application to set aside the award on the ground of mistake (*g*) or that the arbitrator or one of the arbitrators was disqualified to act by reason of interest, corruption or partiality (*h*) or that proper notice of the proceedings had not been given. (*i*)

In the case of awards which require to be adopted by by-law (*j*) the time is limited to one month (exclusive of vacations) after the passing of the by-law. (*k*)

"Publication" of award.

(c) "Shall be made within six weeks (excluding vacations) after the publication of the award."

The award is "published" (*i.e.* to the parties) and the time begins to run when the arbitrator gives the parties notice that it may be had on payment of

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(*a*) 18 P.R. 246 (1898).
(*b*) See also Con. Rule 659 [illegible].
(*c*) Con. Rule 769 (1897). Holmested & Langton (2nd Ed.) pp. 951-[illegible].
(*d*) Con. Rule 771 (1). R.S.O. 62, s. 34.
(*e*) Con. Rule 771 (2). R.S.O. c. 62, s. 33.
(*f*) Con. Rule 772.
(*g*) See cases in note (c) to s. 459.
(*h*) See s. 467, note (**gg**).
(*i*) See cases in note (b) to s. 459.
(*j*) See. 463 (1).
(*k*) See. 463 (3).

his charges. (a) It is not necessary that the parties should have had notice of the contents of the award. (b)

Sec. 465.

Note (c). When Court will extend time for moving against award.

(d) "But the High Court or a Judge may under special circumstances allow the application to be made after the said time."

Sec. 34 of "*The Arbitration Act*" contains a similar provision as to extending the time for appealing from an award made on a reference under the order of a Court.

The fact that the arbitrator demanded more than his proper fees as a condition of delivering the award was held not to be an excuse for delay in moving. (e) And even where a person is induced to refrain from moving by the act of the opposite party in leading him to believe that such party intends himself to move, it seems to be a sufficient answer that he was not justified in relying upon the opposite party but should have moved himself. (d) In determining what are such "special circumstances" as will induce the Court to extend the time reference may be had to the cases collected in Holmested & Langton, (2nd Ed.) p. 531, under Con. Rule 353 (1897).

Enforcing award by order of the High Court.

466. An award under this Act may, by leave of the High Court or a Judge thereof, be enforced in the same manner as a judgment or order to the same effect. 60 V. c. 16, s. 14; 60 V. c 3, s. 3.

Taken from "*The Arbitration Act*," (R.S.O. c. 62), s. 13. *Cf.* "*The Arbitration Act, 1889*," (Imp. Stat. 52-53 V. c. 49,) s. 12.

(b) See note (b) to s. 464. The application should be made to a Judge, the jurisdiction of the Master in Chambers being at least doubtful. (e) The proceedings should be entitled

"In the matter of an Arbitration
Between
A.R.
and
The Corporation of the of
And in the matter of "The Arbitration Act.""

and the notice of motion should be "For leave to enforce the award dated in the above matter in the same manner as a judgment or order to the same effect." The applicant should produce and verify the original award and a copy thereof, the latter being filed with the affidavits to be used on the motion.

Sections of R. S. O. c. 62 to apply.

467. Sections 9 to 12, 15, 17 to 27 and 40 to 44, and section 48 of *The Arbitration Act* shall apply to arbitrators appointed under this Act and to arbitrations thereunder. (f) 60 V. c. 16, s. 47; 60 V. c. 3, s. 3.

This section is new and was inserted by the Statute Revision Commissioners of 1897 under the authority of 60 V. c. 3, s. 3.

(a) *McArthur* v. *Campbell*, 5 B. & Ad. 518 (1833); *Paxton* v. *Great Northern R. W. Co.*, 8 Q.B. 938, 946 (1846); *Redick* v. *Skelton*, 18 O.R. 100 (1889); *Hayck* v. *Wilson*, 18 P.R. 44 (1898), per BOYD, C., at p. 45.

(b) *Redick* v. *Skelton*, supra.

(c) *McArthur* v. *Campbell*, 5 B. & Ad. 518 (1833); *Moore* v. *Darley*, 1 C.B. 445 (1845); and see now s. 462 (3-10) of this Act and s. 26 of "*The Arbitration Act*" (R.S.O. c. 62), quoted *post*, p. 508.

(d) *Per* MOSS, C.J.O., in *Pardee* v. *Lloyd*, 5 A.R. 1 (1880) at p. 11.

(e) See "*The Arbitration Act*," s. 2, quoted in note (a) to s. 467, also Con. Rule 42 (1897).

(f) According to the decision of ARMOUR, C.J., in *Re McLellan and Township of Chingucousy*, 18 P. R. 246 (1898)—referred to in note (b) to s. 464 and note (a) to s. 465—ss. 31, 34 and 47 of "*The Arbitration Act*" are also applicable.

Sec. 467.

Note (a). "The Arbitration Act."

(a) The following are the sections of "*The Arbitration Act*" referred to;

Interpretation.

"2. In this Act, unless a contrary intention appears, "Submission" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

"Court" means Her Majesty's High Court of Justice.

"Judge" means Judge of Her Majesty's High Court of Justice.

"Rules of Court" means the Rules of the Supreme Court, made by the proper authority under "*The Judicature Act*." 60 V. c. 16, s. 2. *Cf.* **Imp. Stat 52-53 V. c. 49, s. 27.**

"Submission."

(aa) **"Submission."** An agreement which simply appoints one or more persons to make a *valuation*, even though it may be of the amount of compensation to which one of the parties may be entitled, is not a "submission." (*a*)

The word "arbitration" has been construed to mean a proceeding conducted according to judicial rules, where the person who is appointed arbitrator is bound to hear the parties, to hear evidence (if they so desire) and to determine judicially between them. A "valuation" is a proceeding in which a person especially skilled in the subject-matter decides solely by the use of his eyes and his knowledge. (*b*)

In *Re Herring and Napanee, Tamworth & Quebec R. W. Co.* (*c*) ROSE J., (after reviewing the cases), held that the notices by the land-owner and the company naming their respective arbitrators, together with the written appointment of the third arbitrator by the other two, constituted "a submission to arbitration by consent," under s. 201 of "*The Common Law Procedure Act*" (*d*).

In *Re City of Toronto Lemler Lane Arbitration*, (*e*) a municipal by-law authorizing the widening of a street, together with the written appointments by the parties of their respective arbitrators, was held to constitute "a submission to arbitration by consent," within the meaning of the corresponding section (13) of "*The Arbitration Act*." (*f*)

"Judge."

(bb) **"Judge."**

It is doubtful whether the powers conferred by this Act upon a Judge are exercisable by the Master in Chambers (*g*).

Arbitrators to administer oaths, etc.

"9. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power:—

(*a*) To administer oaths or to take affirmations of the parties and witnesses appearing:"

(cc) It is apprehended that this is a case in which the words "shall have power" would be construed as imperative (*h*). "*The Common Law Procedure Act*," (*i*) expressly required that the witnesses upon a reference under any rule, order or submission should be examined on oath unless the parties should otherwise agree or consent (*j*).

To state special case.

(*b*) To state an award as to the whole or part thereof in the form of a special case for the opinion of the Court;

(dd) The special case must state the facts found but not the evidence by which they are supported (*k*), and the arbitrator must also state a question of law finding affirmatively the facts on which it depends (*l*).

(*a*) *Carus Wilson* v. *Greene*, 18 Q.B.D. 7 (1887); *Hammond* v. *Westerton*, 62 L.T.N.S. 808 (1890).

(*b*) *Per* Lord ESHER, M. R., in *Re Dawdy*, 15 Q.B.D. 426, 429 (1885); and see *Collins* v. *Collins*, 28 L.J.N.S. Chy. 184 (1858); *Vickers* v. *Vickers*, L.R. 4 Eq. 529 (1867); *Dinham* v. *Bradford*, L. R. 5 Ch. 519 (1869); *Re Casterton Estate*, 3 Times L. R. 22 (1886).

(*c*) 5 O. R. 349 (1884).

(*d*) R. S. O. (1877) c. 50.

(*e*) 13 P. R. 166 (1889).

(*f*) R. S. O. (1887) c. 53.

(*g*) See Con. Rule 42 (1897).

(*h*) Maxwell on Statutes, (3rd Ed.) 334-349.

(*i*) R. S. O. (1877), c. 50, s. 224.

(*j*) See *Re Rushbrook and Starr*, 46 U. C. R. 73 (1881); also *Poulint* v. *The Queen*, 1 Ex. C. R. 313 (1887).

(*k*) *Derbyshire* v. *Leigh* [1896], 1 Q.B. 554.

(*l*) *N. & S. W. Co.* v. *Brentford*, 58 L. J. M. C. 95 (1889).

Sec. 467.

Note (a) (dd).

Under s. 211 of "*The Common Law Procedure Act*" (*a*), under s. 35 of "*The Arbitration Act*," (*b*) (in the cases therein referred to), and now by s. 41 of "*The Arbitration Act*," (*c*)—provided an application has been made to the arbitrator before the award was made (*d*) the Court or a Judge may direct the arbitrators at any stage of the reference to state in the form of a special case any question of law arising in the course of the reference. But after award made the arbitrator has no power to state nor the Court to order him to state a special case. (*e*) The Court may give judgment simply upon the special case submitted (*f*) or may give judgment subject to a further inquiry which it may order the arbitrator to hold (*g*) and may also deal with the costs of such special case (*h*).

To state a special case.

(*c*) To correct in an award any clerical mistake or error arising from an accidental slip or omission. 60 V. c. 16, s. 9. Imp. Stat. 52-53 V. c. 49, s. 7.

To correct clerical errors.

Formerly this was impossible (*i*).

10. The time for making an award may from time to time be enlarged by order of the Court or a Judge, whether the time for making the award has expired or not. 60 V. c. 16. s. 11. Imp. Stat. 52-53 V. c. 49, s. 9.

Enlarging time for making award.

(**ee**) Even before the Act this was done in some cases after the time for making the award had expired (*j*). But where there had been great delay in applying the Court refused to enlarge the time (*k*). As to the power of the arbitrators to enlarge the time see note (**b**) to s. 456, *ante*.

11.—(1) In all cases of reference to arbitration the Court or a Judge may from time to time remit the matters referred, or any of them to the reconsideration of the arbitrators or umpire.

(2) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order. 60 V. c. 16, s. 12. Imp. Stat. 52-53 V. c. 49, s. 10.

Power to remit award.

(**ff**) This is fully covered by the wide provisions of s. 464, *ante* p. 497.

12.—(1) Where an arbitrator or umpire has misconducted himself the Court may remove him.

(2) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside. 60 V. c. 16, s. 13. Imp. Stat. 52-53 V. c. 49, s. 11.

Power to remove arbitrator or set aside award.

(**gg**) In order to upset an agreement of reference to an arbitrator who from his position may naturally be open to a suspicion of partiality, *e.g.*, the engineer of one of the parties to the arbitration, it is necessary to show some specific ground for believing that he will not act fairly. (*l*)

(*a*) R. S. O. (1877), c. 50. (*b*) R. S. O. (1887) c. 53. (*c*) R. S. O. c. 62.

(*d*) *Re Montgomery, Jones & Co. & Liebenthal*, 78 L.T.N.S. 406 (1898).

(*e*) *Re Palmer & Co. & Hoskein & Co.*, [1898] 1 Q.B. 131, following *Tabernacle, etc., Building Society* v. *Knight*, [1892] A.C. 298.

(*f*) See *Re George*, [1898] 2 Q.B.136.

(*g*) *Page* v. *Kettering Waterworks*, 8 Times L. R. 228 (1892).

(*h*) See *post*, s. 42, p. 509, note (**rr**).

(*i*) *Mordine* v. *Palmer*, L. R. 6 Ch. 22 (1870), and see note (**c**) to s. 459.

(*j*) *Deaton* v. *Strong*, 9 Q. B. 117 (1846); *Lord* v. *Lee*, L. R. 3 Q. B. 404 (1868); *May* v. *Harcourt*, 13 Q. B. D. 688 (1884); *Re Clement and Dixon*, 17 P. R. 455 (1897). See note (**a**) to s. 456, *ante*.

(*k*) *Re Dare Valley R. W. Co.*, L. R. 4 Ch. 554 (1869).

(*l*) *Jackson* v. *Barry R. W. Co.*, [1893] 1 Ch. 238, *per* BOWEN, L. J., at p. 247; *Nuttall* v. *Manchester (Mayor of)*, 8 Times L.R. 513 (1892); *Farquhar* v. *City of Hamilton*, 20 A.R. 86 (1892); *Donkin* v. *Leeds Canal Co.*, 9 Times L.R. 192 (1893); *McNamee* v. *City of Toronto*, 24 O.R. 313 (1894); *Ives* v. *Williams*, [1894] 2 Ch. 478; *Eckersley* v. *Mersey Docks, etc., Board*, [1894] 2 Q.B. 667. It has been held in the Province of Quebec that an expression of opinion by an arbitrator—in order to constitute a sufficient cause for his rejection as such under a clause in a Provincial Railway Act corresponding to s. 20 (17) of R.S.O. c. 207 and s. 159 of 51 V. c. 29 (Ont.),—must have been such as to evidence partiality or animosity or a prejudice which would influence his decision, and that a notary employed to explain to landowners whose property has been expropriated their rights and the proceedings which they should adopt to enforce them, is not thereby disqualified from acting as an arbitrator in those proceedings. *Richelieu Valley R.W. Co.* v. *Menard*, 4 Rev. de Jur. 109 (1898). And see *Ethier* v. *Ewing*, Q.R. 12 S.C. 134 (1898), 29 S.C.R. 446 (1899).

Sec. 467.

Note (a) (gg).

Restraining or removing an unfit arbitrator.

And even where it was shewn that an arbitrator who was the engineer of one of the parties had expressed a strong opinion upon the question in difference the Court declined to interfere, the engineer having sworn that if he had expressed such an opinion it was as the engineer of the defendants, and that should the matter come before him as an arbitrator, he would give the plaintiff's contention fair and impartial consideration.(*a*)

The Court, however, does not approve of the appointment of an arbitrator who, from his position must inevitably be biassed, and will not uphold his appointment in the absence of a positive agreement therefor,(*b*) or if, though in reality the engineer of one of the parties, he is described as, and is supposed to be, the engineer of a third party.(*c*)

And even before the enactment of this section, which, it will be observed, applies only "where an arbitrator or umpire *has misconducted* himself" the Court of Chancery could, and upon sufficient grounds would, restrain an arbitrator from acting (*d*)—*e.g.* where he was shewn to have or to have had such financial or other transactions with one of the parties as to render him, in the opinion of the Court, unfit to act impartially, (*e*) or where a gentleman proposed as arbitrator in a claim by a married woman against a township municipality had acted (being a barrister and solicitor), as counsel for the husband of the claimant on an indictment and trial of the husband for obstructing a highway in the municipality.(*f*)

Setting aside the award.

Since an arbitration is "a judicial proceeding in which the arbitrator is bound to hear the parties, to hear evidence if they desire it, and to determine judicially between them," (*g*) an award may be set aside if the arbitrators or any of them have been guilty of misconduct:

1. By refusing to any party a fair opportunity of being heard or of giving evidence or of hearing or cross-examining his opponent's witnesses.

2. By taking evidence behind the back of a party. (*h*)

3. By fraud, partiality or corruption.(*i*)

(*a*) *Sherwood* v. *Balch*, 30 O.R. (1898). See *Jackson* v. *Barry R. W. Co.*, supra; *Baring Bros.* v. *Doulton*, 61 L.J. Q.B. 704 (1892).

(*b*) *Re Frankenberg and Security Co.*, 10 Times L.R. 393 (1894). And see *Emerson* v. *Secretary for War*, 9 Times L.R. 470 (1893).

(*c*) *Good* v. *Toronto, Hamilton & Buffalo R. W. Co.*, 26 A.R. 133 (1897-8).

(*d*) See *Direct Cable Co.* v. *Dominion Telegraph Co.*, 28 Grant 648 (1881), *per* BLAKE, V.C., at p. 666.

(*e*) *Malmesbury R. W. Co.* v. *Budd*, 2 Ch.D. 113 (1876); *Bethlow* v. *Bethlow*, 9 Ch.D. 89 (1878).

(*f*) *Re Township of Bucke and Chambers*, 25 O.R. 662 (1895). But see *Re Christie and Town of Toronto Junction*, 24 O.R. 443 (1894).

(*g*) *Per* Lord ESHER, M.R., in *Re Dawdy*, 15 Q.B.D. 426 (1885), at p. 429.

(*h*) See note (**b**) to s. 459, *ante*. The question of bias, though generally raised earlier in the proceedings and by a motion to remove the arbitrator, may of course come up on a motion to set aside the award. On such a motion it has been held not to be misconduct that the arbitrator had obtained an undertaking from one party to take up the award in any event: *Kenworthy* v. *Queen Ins. Co.*, 9 Times L.R. 181 (1891); or that he had, during the pendency of the arbitration, given evidence on behalf of one of the parties in a similar arbitration: *Haigh* v. *L. N. W. R. W. Co.* [1896] 1 Q.B. 649.

(*i*) As to setting aside an award for this cause see Russell on Awards, (7th Ed.), pp. 116, 664, *et seq.*; *Re Hotchkiss* v. *Hall*, 7 L.J.N.S. 320 (1871); *Moseley* v. *Simpson*, L. R. 16 Eq. 226 (1873); *Parsons* v. *Lloyd*, 26 Grant 374 (1879); *Coomee* v. *Canadian Pacific R. W. Co.*, 16 O.R. 639 (1889); *Vinbury* v. *Guardian Fire and Life Assurance* A.R Co., 19 293 (1892). In *Barr* v. *Gamble*, 4 Grant 626 (1854) it was held that a charge of corruption and partiality against an arbitrator is not sustained by general affidavits that throughout the arbitration he had evinced a hostile disposition towards the party complaining, by a constant disposition to discredit his witnesses, and by proposing to award a much larger sum against him than was ultimately done. In *Blanchard* v. *Sun Fire Office*, 6 Times L. R. 365 (1890)—where it was shown that one of the parties had sold his interest in the subject matter of the arbitration to one of the arbitrators without the knowledge of the other arbitrator or of the umpire the award was set aside. But see *Tulles* v. *Jacson*, [1892] 3 Ch. 441.

Sec. 467.

Note (a) (gg).

4. A decision intentionally contrary to law would be gross misconduct, (a) and if, after stating a special case under s. 9 (b), *ante*, an arbitrator refuses to act upon the law as stated by the Court, this "might be a ground for impeaching his award on the ground of misconduct." (b)

Setting aside award for misconduct of arbitrator.

5. Refusal of a *bona fide* request to state a special case might amount to misconduct, (c) and "it is a question whether an excessive and extravagant charge by an arbitrator made by him in the award as part of the award might not amount to such misconduct as would justify the Court in setting aside the award." (d) But where an application was made to remove an arbitrator because he refused to alter the date of an arbitration as he was asked to do because the principal witness for one of the parties was leaving England prior to the date fixed, the motion was dismissed with costs. (e)

Enforcing award.

13. An award on a submission may, by leave of the Court or a Judge, be enforced in the same manner as a judgment or order to the same effect. 60 V. c. 16, s. 14; Imp. Stat. 52-53 V. c. 49, s. 12.

(hh) This is re-enacted as s. 466, q. v., *ante*, p. 501.

Where submission provides for appeal.

14. Where it is agreed by the terms of the submission that there may be an appeal to the High Court, the reference shall be conducted and an appeal shall lie to the High Court and Court of Appeal in the same manner and subject to the same restrictions as in the case of references under order of Court. 60 V. c. 16, s. 15.

(ii) The practice upon such references is regulated by Con. Rules 648 to 700 (1897) inclusive, (f) and by s. 32 of "*The Arbitration Act*," which provides that—

"The evidence of the witnesses examined together with the exhibits therein referred to, shall forthwith, after the making of the report, be transmitted by the referee to the proper officer of the Court." (g)

Subpœnaing witnesses.

15. Any party to a submission may sue out a writ of subpœna *ad testificandum*, or a writ of subpœna *duces tecum*, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action. 60 V. c. 16, s. 10; Imp. Stat. 5[illegible] V. c. 49, s. 8.

(jj) The Ontario Act also provides (s. 17, *infra*) for the issue of a commission. See also s. 40 as to obtaining the evidence of a prisoner. It is presumed that the allowance to witnesses should be the same as in civil actions, (h) though there is now no express provision to that effect such as was contained in the repealed Act, R.S.O. (1887) c. 53, s. 47. As to what documents are privileged from production on the trial of an action see Holmested & Langton, (2nd Ed.) pp. 640-652.

Evidence, how taken on reference.

16. The evidence of the witnesses examined upon such reference shall be taken down in writing, and shall, at the request of either party, be transmitted by the arbitrator or umpire, as the case may be, together with the exhibits, to the Central Office at Osgoode Hall. 60 V. c. 16, s. 16.

See note (ii) *supra* and s. 32 of "*The Arbitration Act*" there quoted.

Commissions to examine witnesses.

17.—(1) In case a party to a reference by submission is desirous of having and submitting therein to and before the referee, arbitrator or umpire, the testimony of any aged or infirm person resident within Ontario, or of a person who is about to withdraw therefrom, or who is residing without the limits thereof, the High Court, or a Judge thereof, may upon the motion of the party, and upon notice to the other parties to the reference, order the issue of a commission under the seal of the said Court in that behalf, to a commissioner, to take the examination of such person.

(a) *Darlington, etc., Co.* v. *Harding*, 7 Times L.R. 160 (1891).

(b) *Per* Bowen, L.J., in *Re Knight and Tabernacle Building, etc., Society* [1892] 2 Q.B. 613, at p. 618.

(c) *Re Palmer & Co. and Hosken & Co.*, [1898] 1 Q.B. 131.

(d) *Re Prebble*, [1892] 2 Q.B. 602, *per* Lord Coleridge, C.J., at p. 604.

(e) *Re Whitlock and Wrexham R. W. Co.*, 39 Sol. Jour. 692 (1894).

(f) See Holmested & Langton (2nd Ed.) pp. 814-872, and note (a) to s. 465, *ante*.

(g) See *infra*, s. 16 of "*The Arbitration Act*."

(h) Tariff "B," items 117, 118.

Sec. 467.

"The Arbitration Act." Ss 17 (2)-20

Commissions to examine witnesses.

(2) Due notice of the execution of the commission shall be given to the adverse party, to the end that he may cause the witness to be cross-examined.

(3) In case the examination of the witness taken without the limits of Ontario, pursuant to the commission, is proved by an affidavit of the due taking of the examination, sworn before and certified by the mayor or chief magistrate of the city or place where the same has been taken, and in case the commission, with the examination and affidavit thereto annexed, is returned to the Court, enclosed in a cover under the hand and seal of one or more of the Commissioners, the same shall *prima facie* be deemed to have been duly taken, executed and returned, and shall be received as evidence in the matter of the reference by and before the referee, arbitrator or umpire, unless it is made to appear to the Court, or to a Judge thereof, that the same was not duly taken, or unless it was made to appear to and before the said referee, arbitrator or umpire that the deponent is of sound mind, memory and understanding, and living within Ontario, at the time the examination is offered in evidence. 60 V. c. 16, s. 17.

(**kk**) See s. 15 and note (**jj**) thereunder, also s. 40 which provides for the issue of a *habeas corpus ad test.* As to the costs of an order under the above section, see s. 40, *post.* There is no power under the English Act to order the issue of a commission (*a*).

Costs on References by Consent out of Court.

Interpretation. "Arbitrator" "Award."

16. In sections 19 to 27 inclusive of this Act:

"Arbitrator" shall include umpire and referee in the nature of an arbitrator; and

"Award" shall include umpirage and certificate in the nature of an award. 60 V. c. 16, s. 16.

Fees to arbitrators not being barristers, architects, etc.

19. No arbitrator, who is not by profession and calling a barrister, solicitor, engineer, architect or Ontario land surveyor, shall be entitled to demand or take for his attendance and services as an arbitrator any greater fees than are hereinafter set down in Schedule B to this Act, except as provided in section 21. 60 V. c. 16, s. 19.

SCHEDULE B.

FEES CHARGEABLE BY NON-PROFESSIONAL ARBITRATORS.

(1) For every meeting where the cause is not proceeded with, but an enlargement or postponement is made at the request of any party, not less than	$2 00
Nor more than	4 00
(2) For every day's sitting, to consist of not less than six hours, not less than	5 00
Nor more than	10 00
(3) For every sitting not extending to six hours (fractional parts of an hour being excluded) where the arbitration is actually proceeded with, for each hour occupied in such proceedings, at the rate of not less than	1 00
Nor more than	1 50

60 V. c. 16, Sched. B.

Fees to arbitrators being barristers, architects, etc.

20. No arbitrator who is by profession and calling a barrister, solicitor, engineer, architect or Ontario land surveyor, shall be entitled to demand or take for his attendance and services as such arbitrator any greater fees than are hereinafter set down in Schedule C to this Act except as provided in section 21. 70 V. c. 15, s. 20.

SCHEDULE C.

FEES CHARGEABLE BY PROFESSIONAL ARBITRATORS.

(1) For every meeting where the cause is not proceeded with, but an enlargement or postponement is made at the request of any party, not less than	$4 00
Nor more than	8 00
(2) For every day's sitting, to consist of not less than six hours, not less than	10 00
Nor more than	20 00
(3) For every sitting not extending to six hours (fractional parts of hours being excluded) where the arbitration is actually proceeded with, for each hour occupied in such proceedings, at the rate of not less than	2 00
Nor more than	3 00

60 V. c. 16, Sched. C.

(*a*) *Re Douglas and Paul*, 9 Times L.R. 228, 37 Sol. Jour. 357 (1892).

(ll) Upon the proper construction of these Schedules, arbitrators are not entitled to charge as fees for a single day's sitting which extends beyond six hours, any amount beyond the maximum (of $10 or $20 as the case may be) fixed by the second item of the Schedules for a single day's sitting (*a*).

Parties to submission may agree as to fees to be paid to arbitrators.

21. The parties to the submission may agree, by writing signed by them, or by making such agreement a part of the submission, to pay to the arbitrator, or arbitrators if more than one, such fees or sums for such day's attendance, or such gross sums for their taking upon themselves the burden of the reference and making the award, as the said parties see fit, and in every such case the fees and sums so agreed upon shall be substituted for those set down and authorized in the Schedules to this Act, and shall be taxed and allowed by the taxing officer accordingly. (*b*) 60 V. c. 16, s. 25.

Fees to witnesses.

22. No greater fees shall be taxed or allowed to any person called as a witness before an arbitrator than would be taxed and allowed to the same person in an ordinary action before a Court having jurisdiction over the subject of the reference. 60 V. c. 16, s. 21.

In case of absence of parties, or postponement at their request, costs of meeting to be charged against them.

23. Where, at a meeting of the arbitrators, of which due notice has been given, no proceedings are taken in consequence of the absence of any party, or because a postponement is made by the arbitrators at the request of any party to some future day, the arbitrators shall make up an account of the costs of the meeting, including the proper charges for their own attendance and that of any witnesses, and of the counsel or solicitor of the party present, and not desiring the postponement, and unless, under the special circumstances of the case, they think that it would be unjust so to do; they shall charge the amount thereof, or of the disbursements against the party in default or at whose request the postponement is made, and the last named party shall be bound to pay the same to the other party, whatever may be the event of the reference, and the arbitrators shall, in the award, make any direction necessary for that purpose, and if such sum is payable by the party in whose favour the award is otherwise made, it may be set off against, and deducted from any amount awarded in favor of that party. 60 V. c. 16, s. 22.

Taxing costs on arbitrations.

24. Any party entitled to an arbitration shall be entitled to have the costs thereof, including the fees of the arbitrators, or such fees alone, taxed by one of the taxing officers of the Supreme Court at Toronto, upon an appointment which may be granted by the taxing officer for that purpose on the filing of an affidavit setting forth the facts. A taxation of the said fees by one of the said taxing officers may likewise be had upon an appointment at the instance of the arbitrators granted upon an affidavit as aforesaid. 60 V. c. 3, s. 3; c. 16, s. 23 and part 27.

(mm) This section appears to be controlled by ss. 460 and 462 (3-10) of "*The Municipal Act*" so far as it is inconsistent therewith (*c*). The taxation is to take place in the first instance before the local officer (or as to arbitrators' fees in cases under s. 462 (3-10) before the Clerk of the County Court)—subject to revision by one of the taxing officers at Toronto as provided by Con. Rules 1167 to 1171.

Discretion of taxing officer.

25.—(1) The taxing officer shall in no case, except as provided in section 211, tax higher fees than are set down in the Schedules to this Act, but, reasonable grounds established upon affidavit, he may reduce the maximum mentioned in the Schedules, but not below the minimum, having always regard to the length of the arbitration and to the value of the matter in dispute, and the difficulty of the questions to be decided; but he shall not tax more than one counsel fee to either party for any meeting of the arbitrators.

Costs of award.

(2) The taxing officer may tax and allow a reasonable sum for the preparation and drawing up of the award.

Revision of taxation.

(3) An appeal may be had from such taxation in the same manner as from the taxing officer's certificate of taxation in an action. 60 V. c. 16, s. 24.

Counsel Fees.

(nn) Item 163 of Tariff A appended to the Con. Rules (1897), provides that:

"On arbitrations, counsel fees may be allowed and taxed on the same scale and conditions, so far as possible, as those hereinbefore prescribed for counsel fees at trials."

And, under Item 153 of the same Tariff, the fee with brief at trial ($10) may in High Court cases be increased by the Taxing Officer in his discretion to a sum not exceeding $40 to a senior counsel and $20 to a junior counsel in actions of a special and important nature, and in County Court cases by the Judge in actions of a special and important nature . . . to a sum not exceeding $25.

(*a*) *Re Town of Thornbury and County of Grey*, 15 P.R. 192 (1893), overruling *Armstrong* v. *Darling*, 22 C.L.J.N.S. 149; 6 C.L.T. 214 (1886).

(*b*) See *Re Jewett*, 35 C.L.J.N.S. 85 (1898).

(*c*) See s. 47 of "*The Arbitration Act*," quoted *ante*, p. 489 in note (**d**) to s. 449.

Sec. 467.

Note (a) (nn).

Counsel fees.

In *Re Montague and Township of Aldborough* (*a*), WILSON, C.J., held that the maximum counsel fee which could be allowed to counsel when the costs were to be taxed on the County Court scale was $25, even though the attendance was for several days.

In *Re McKeen and Township of South Gower* (*b*), it was held by BOYD, C., that Item 153 is to be read as incorporated with Item 164, and that the effect is to enable a taxing officer at Toronto to allow increased counsel fees in a proper case.

In *Re Pollock and City of Toronto* (*c*), it was held by ROSE, J., that the provision in R. S. O. (1887), s. 53, s. 25, that the taxing officer shall not tax more than one counsel fee to either party for any meeting of arbitrators, being inconsistent with items 153 and 164 of the Tariff re-enacted in the Con. Rules of 1888, was repealed by 51 V. c. 2, s. 4, and that the taxing officer might therefore allow a second counsel fee on an arbitration. But now that the same words in this section of "*The Arbitration Act*" have been re-enacted as from December 31st, 1897, as part of "*The Municipal Act*," it seems that they supersede the provisions of the Tariff, which came into force on September 1st, 1897 (*d*), and therefore that the above decision is no longer to be followed.

Penalty for arbitrator attempting to exact excessive fees.

26. An arbitrator who, after having entered upon the reference, refuses or delays after the expiration of one month from the publication of the award to deliver the same until a larger sum is paid to him for his fees than is by this Act permitted; or receives for his award or for his fees as arbitrator any such larger sum, shall forfeit and pay to the party who has demanded delivery of the award or who has paid to the arbitrator such larger sum in order to obtain, or as a consideration for having obtained it, treble the excess so demanded by and paid to the arbitrator and received by him contrary to the provisions of this Act, to be recovered with costs in an action to be brought in the High Court. 60 V. c. 16, s. 26.

When right to penalty arises.

(oo) The liability imposed upon arbitrators by this section is penal in its nature, and does not arise where a person entitled to take up the award has voluntarily paid the arbitrators' charges, without there having been first a demand for the delivery of the award and a refusal or delay to make, execute or deliver it until the excessive charge has been paid. Taxation of the fees is not a condition precedent to the right to maintain an action for the penalty (*e*). And an arbitrator is not brought within the punitive provisions of the section when payment of the alleged excessive fees is made by cheque to an agent who has authority to accept money only, and the arbitrator refuses to take the cheque.

Per OSLER, J. A.: (*f*)

> "In order to fix the arbitrator with the penalty, there must be, after the expiration of the month, either actual payment of the sum demanded, or else a demand and refusal as stated in the judgment in 25 O. R. 444."

Per MACLENNAN, J. A.: (*g*)

> "The person desiring to take up the award may either have the fees taxed and then tender the amount, or he may pay the amount demanded and then bring an action for the penalty, which is a sum equal to treble the excess demanded, and not treble the whole amount of fees demanded."

But see now the summary procedure provided by s. 462 (3-10).

Arbitrator to have action for fees.

27. In all cases where an award is made the arbitrator may maintain an action for his fees upon the award, after the same have been taxed; and in the absence of an express agreement in respect thereof, the arbitrator may maintain such action, after taxation, against all parties to the reference, jointly or severally. 60 V. c. 16, s. 27, part.

(pp) In England an arbitrator cannot maintain an action for his fees (*h*), unless there has been an express promise to pay them (*i*).

(*a*) 12 P. R. 141 (1887). (*b*) 12 P. R. 553 (1888).

(*c*) 15 P. R. 355 (1893). (*d*) See 60 V. c. 3, ss. 4, 5; 61 V. c. 2, s. 1.

(*e*) *Jones* v. *Godson*, 25 O. R. 444 (1895); affirmed in the Court of Appeal, 23 A. R. 34 (1896). (*f*) 23 A. R. at p. 35. (*g*) Ibid, p. 36.

(*h*) *Veitch* v. *Russell*, 3 Q. B. 928 (1842).

(*i*) *Crampton* v. *Ridley*, 20 Q. B. D. 48 (1887); *Willis* v. *Wakeley*, 7 Times L. R. 604 (1891).

General Provisions.

Sec. 467.

Note (a) (qq).

Issuing writs of *habeas corpus ad test.*

40. The Court or a Judge may order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before . . . any official or special referee, or before any arbitrator or umpire. 60 V. c. 16, s. 41. Imp. Stat. 52-53 V. c. 49, s. 18.

Statement of case for opinion of Court.

41. Any referee, arbitrator or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the Court or a Judge, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference. 60 V. c. 16, s. 41. Imp. Act, 52-53 V. c. 49, s. 19.

(qq) "At any stage of the proceedings." The application to compel the arbitrator to state a special case may be made before he has ruled upon the questions of law (*a*); and although he has in no way indicated his own opinion thereon (*b*). "At any stage" means before the proceedings have come to an end by a completed award (*c*); but even then the Court may, under s. 11 of "*The Arbitration Act*," and s. 464 of "*The Municipal Act*," remit the award to the arbitrators with a direction to re-state their findings in the form of a special case so as to raise the point of law whether their calculation of compensation has proceeded upon a right principle (*d*). In arbitrations under "*The Common Law Procedure Act*," s. 211, and "*The Act respecting Arbitrations and References*" (*e*), the referee or arbitrator might—if he chose and if the reference did not preclude him from so doing,—state his award or any part thereof in the form of a special case, but he was not compelled to do so (*f*). The order is discretionary with the Court and is subject to appeal (*g*).

Costs in discretion of Court.

42. Any order made under this Act may be made on such terms as to costs or otherwise, as the authority making the order thinks just. 60 V. c. 16, s. 42. Imp. Stat. 52-53 V. c. 49, s. 20.

(rr) This section enables the Court to deal with the costs of a special case ordered under s. 41 (*h*), and it "probably gives a discretion to the Court setting aside an award to deal with the costs" (*i*).

Copies of documents used as evidence may be filed in lieu of original.

43. The . . . referee or arbitrator to whom a reference is made, upon the application of any party, and where no special reason appears to him to exist for filing any original book, paper or document as an exhibit, as hereinbefore provided, may, at the close of the reference, and before the said exhibits are so filed, allow a sworn copy of such original book, paper or document which has been given in evidence before him on the reference, or of such portions thereof as he may deem material to be substituted as an exhibit in the place of the original book, paper or document. 60 V. c. 16, s. 46.

Production of exhibits on appeal or motion to set aside award.

44. Upon any appeal or motion to set aside an award, any party may by notice require any other party to produce, and the party so required shall produce, upon the hearing of the appeal or motion, any original book, paper or document in his possession which has been used as an exhibit or given in evidence upon the reference, and which has not been filed with the depositions. 60 V. c. 16, s. 44.

Pending arbitrations.

45. This Act shall not affect any arbitration pending on the 1st day of September, 1897, but shall apply to any arbitration commenced thereafter, under any agreement or order made on or before the said date. 60 V. c. 16, s. 45.

(*a*) *Re Jenison & Kakabeka Falls L. & E. Co.*, 25 A. R. 361 (1898).

(*b*) *Re Spellers & Baker, (Ltd.) and Leatham & Son*, [1897] 1 Q. B. 312.

(*c*) *Tabernacle Permanent Building Society* v. *Knight*, [1892] A. C. 298.

(*d*) *Re Kirkleatham Local Board and Stockton Water Board*, [1893] 1 Q. B. 375.

(*e*) R. S. O. (1887) c. 53, s. 35.

(*f*) So—under "*The Land Clauses Consolidation Act, 1845*"—*Rhodes* v. *Airedale Commissioners*, 1 C. P. D. 402 (1875). For examples of special cases stated under the above sections see *Page* v. *Kettering Water Works Co.*, 8 Times L. R. 228 (1892); *Rio, etc., Flour Mills Co. and De Morgan*, 8 Times L. R. 108, 292 (1892); *Re Richmond Gas Co., etc.*, [1893] 1 Q. B. 56. Orders compelling a case to be stated were refused in *Gough* v. *Liverpool Corporation*, 36 Sol. Jour. 270 (1891); *Re Gray & Co. and Boustead & Co.*, 8 Times L. R. 703 (1892); *Re Credit Foncier Franco-Canadien and City of Toronto* (1897)—not yet reported,—and *Re Jenison and Kakabeka Falls L. & E. Co.*, supra.

(*g*) *Re Jenison and Kakabeka Falls L. & E. Co.* (1898), supra.

(*h*) *Re Gonty and Manchester, etc., R. W. Co.* [1896] 2 Q. B. 439. See *Re Knight and Tabernacle Permanent Building Society*, [1892] 2 Q. B. 613.

(*i*) *Per* STREET, J., in *Kennedy* v. *Beal*, 29 O. R. 599 [1898], at p. 601, and, as to awards under "*The Municipal Act*" see also s. 464, *ante*.

(ss) Sec. 52 of "*The Arbitration Act*"—which was added in 1899 by 62 V. (2nd Session), c. 11, s. 12—provides that—

> **"52. No submission or reference to arbitration heretofore or hereafter made shall be deemed to have been, or be revoked by the death of any party thereto whether occurring before or after the passing of this Act."**

In the absence of any enactment amending s. 467 of "*The Municipal Act*" so as to include the above section among those applicable to municipal arbitrations, it must—for the reasons already suggested in note (a) to s. 449—be regarded as extremely doubtful whether this provision applies to such arbitrations (*a*).

TITLE VI.—ACTIONS AGAINST MUNICIPAL CORPORATIONS

(SECS. 468-471.)

Synopsis.—Secs. 468-9 relate to actions for damages against municipal corporations on account of something done under an illegal by-law, order or resolution. Section 470 provides for the tender or payment into Court of compensation in case of claims or actions for alleged negligence; and s. 471 describes the method in which a *fi. fa.* against a municipal corporation is to be executed by the sheriff.

Actions against a municipality for acts done under illegal by-law.

468. In case a by-law, order or resolution is illegal, in whole or in part, and in case anything has been done under it which, by reason of such illegality, gives any person a right of action, no such action shall be brought until one month has elapsed after the by-law, order or resolution has been quashed or repealed, nor until one month's notice in writing of the intention to bring the action has been given to the corporation; and every such action shall be brought against the corporation alone, and not against any person acting under the by-law, order or resolution. 55 V. c. 42, s. 338.

Taken from the Act of 1858 (22 V. c. 99), s. 201. *Cf.* 12 V. c. 81, s. 155; 14-15 V. c. 109, s. 35.

(a) The effect of this section was fully considered in *Connor* v. *Middagh* and *Hill* v. *Middagh* (*b*), where all the previous cases are reviewed by HAGARTY, C. J. O., and OSLER, J. A.

They were actions of trespass to land, brought against a person who had been appointed by a by-law passed by a county council under s. 652 of this Act to enforce a previous by-law of the same council opening a road between two townships. Neither of the by-laws had been quashed or repealed, but it was contended that the road authorized to be opened was not upon the true road allowance. The plaintiffs having recovered damages at the trial, and their right to recover having been affirmed by a Divisional Court, the cases were appealed to the Court of Appeal on the ground that this section applied. It was held (BURTON, J.A., doubting) that whether the road defined in the by-law was the true road or not, and whether, therefore, a trespass had been committed or not, the by-laws, being within the general competence of the council, and not having been quashed, afforded a complete defence to the actions.

HAGARTY, C. J. O. in giving judgment, says (p. 374):—

> "I think the Legislature has wisely provided, as a most important element in the scheme of municipal government, essential to the working of a complex system of local legislation, that, prior to the right to seek damages for any interference with private rights, the judgment of a Court shall be sought and obtained that the local law warranting such interference is illegal and beyond the limited authority given to the enacting body."

(*a*) See also *Zelma Gold Mining Co. and Hoskins*, [1895] A.C. 100.

(*b*) 16 A.R. 356 (1889).

Sec. 468.

Note (a).

By-law must first be quashed or repealed.

And again (p. 366):—

"This protecting clause has been in our Statutes since 1849,—since the Act which recast the early Act of 1841, and created the township municipalities. The Legislature was creating several hundred inferior representative bodies, and endowing them with large powers of interference with private rights and properties. Their by-laws would have to be enforced by individual officers or servants, and it was felt that the strict rules of law might not be infrequently violated, and claims for damages incurred, both as to the council and the executors of its mandate. In the passing and preparation of these by-laws, and in ascertaining whether all the statutable requirements and conditions precedent had been fulfilled, very great care was necessary, and, as the innumerable cases before our Courts during the last forty years can testify, it was very hard to be always free from some omission or miscarriage which Judges would be compelled to hold fatal to the legality of the whole proceeding. It would be a most unfortunate state of the law if, in actions of trespass against the municipality enacting the by-law or against those to whom its execution was committed, at the trial every objection should be open, and if the success or failure of the action were to depend on the proof of exact fulfilment of all conditions necessary to warrant the passing of the by-law."

And OSLER, J. A. says, (p. 388):

"The object of the Legislature seems to have been,—in the first place to protect officers and persons acting ministerially in carrying out the by-law and in reliance upon it, and to confine the remedy of the person injured to the corporate body under the authority of whose illegal enactment the injury was committed,—and secondly, to provide that the illegal legislation and apparent authority should be removed out of the way of the suitor by an independent application. While it stands, an action of trespass cannot be maintained against the corporation any more than (by force of an analogous provision) it can be maintained against a magistrate for acts done under a conviction made by him, though illegal on its face, without, or in excess of his jurisdiction, until the conviction has been quashed."

(b) "**No such action.**" The action referred to is an action for damages against the corporation or its officers for something done under the by-law, order or resolution. (a)

To what actions this section applies.

"It is only the remedy for acts done under the by-law which is interfered with." (b) The section would seem therefore not to apply to an action of replevin, brought merely to try the right in the property replevied. (c)

It certainly does not apply to an action brought to restrain a municipal corporation from proceeding to enforce rights claimed by them under an illegal by-law, (d) even (it seems) though a claim for damages may have been added, (e)

(a) See *per* HAGARTY, C. J. O., in *Hill* v. *Middagh*, 16 A.R. 350, at pp. 378, 380. *Per* OSLER, J. A., in *McCulloch* v. *Township of Caledonia*, 25 A.R. 417 (1898), at p. 427. *Cf. Edwards* v. *Midland R. W. Co.*, 6 Q.B.D. 287 (1880); *Cornford* v. *Carlton Bank*, [1899], 1 Q.B. 392.

(b) *Per* OSLER, J. A., in *Hill* v. *Middagh*, supra, at p. 388.

(c) *Wilson* v. *County of Middlesex*, 18 U.C.R. 348 (1859), *per* ROBINSON, C. J. at p. 352; *Fletcher* v. *Wilkins*, 6 East 283 (1845); *Waterhouse* v. *Keen*, 4 B. & C. 200 (1825); but see *Haynes* v. *Copeland*, 18 C.P. 150 (1865), *per* WILSON, J., at p. 159.

(d) *Rose* v. *Township of West Wawanosh*, 19 O.R. 294 (1890); *Holt* v. *Township of Medonte*, 22 O.R. 322 (1892); *Smith* v. *City of London*, 13 C.L.T. 90 (1892); *Bannan* v. *City of Toronto*, 22 O.R. 274 (1892); *Kerfoot* v. *Village of Watford*, 24 O.R. 235 (1893); *Sweeny* v. *Town of Smith's Falls*, 22 A.R. 429 (1895); *Smith* v. *Township of Ancaster*, 27 O.R. 276, 23 A.R. 596 (1896); *Petman* v. *City of Toronto*, 24 A.R. 53 (1897); *Quinn* v. *Town of Orillia*, 28 O.R. 435 (1897).

(e) *Malott* v. *Township of Mersea*, 9 O.R. 611 (1885); *Alexander* v. *Township of Howard*, 14 O.R. 22 (1887).

Sec. 468.

Note (a).

provided the substantial relief sought is the injunction restraining the wrongful acts complained of. (*a*)

And a municipal corporation is not liable to an action for damages arising out of the enforcement or attempted enforcement of a by-law passed under a misconstruction of its powers, unless such liability is expressly or impliedly imposed by Statute. (*b*)

Notice of action.

(e) "**One month's notice in writing of the intention to bring the action.**"

As to computation of time see note (a) to s. 127. "Month" means a calendar month; R.S.O. c. 1, s. 8 (15). A clear month's notice exclusive of the first and last days is necessary. (*c*) Notice served March 28th; writ issued April 29th, *Held* sufficient. (*d*)

The notice should be a notice of intention to bring an action, not a mere notice that injury has been sustained, as under s. 9 of "*The Workman's Compensation for Injuries Act.*" (*e*)

Under Rev. Stat. N.B., c. 56, ss. 1 and 2, and 31 V. c. 19 (N.B.), s. 1 which provides that no action shall be brought against a commissioner of highways unless "upon one month's previous notice thereof in writing,"—the following letter from the plaintiff's solicitor was relied on as sufficient notice of action:

"The Council of the City of Portland.

Gentlemen:—On behalf of Mr. J. J. Christie of the city of St. John, dealer in shoe findings, and as his attorney, I have to notify you that on Friday last, in consequence of the defective sidewalk in your city, he fell and received severe injuries, from which he is now and for weeks will be confined to his bed.

As it is Mr. Christie's intention to claim damages from you for such injuries, I give you this notice that a prompt inquiry into the circumstances may be made, and such damages paid as Mr. Christie is entitled to."

Held, (*per* RITCHIE, C. J. and STRONG, J.), that the letter was not a sufficient notice of action. (*f*)

TASCHEREAU, GWYNNE and PATTERSON, JJ., holding that upon the construction of the Statutes relating to the city of Portland no notice was necessary, gave no opinion upon this point.

Per Sir WM. RITCHIE, C. J. (p. 7):—

> "I cannot think that this is a sufficient notice; there is nothing whatever to convey to the council of the city of Portland the intention to bring an action."

The notice need not state the form of the intended action; (*g*) it is sufficient to state the cause of it (*h*); but this should be stated with clearness and certainty; (*i*) and the time and place of the act complained of should be men-

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(*a*) *Per* STREET, J., in *Rose* v. *Township of West Wawanosh*, 19 O.R. 294 (1890) at pp. 297, 298, quoted at length in note (h) to s. 378. And see *Township of Sombra* v. *Township of Chatham*, 18 A.R. 252 (1891), 21 S.C.R. 305, 311 (1892).

(*b*) *Porock* v. *City of Toronto*, 27 O.R. 635 (1896).

(*c*) *Dempsey* v. *Dougherty*, 7 U.C.R. 313 (1850).

(*d*) *McIntosh* v. *Vansteenburg*, 8 U.C.R. 248 (1850). See *Young* v. *Higgon*, 6 M. & W. 49 (1840); *Freeman* v. *Read*, 4 B. & S. 174 (1863).

(*e*) R.S.O. c. 160. *Cf. Union Steamship Co.* v. *Melbourne Harbour Trust Commissioners*, 9 App. Cas. 365 (1884) (P.C.), with *Cox* v. *Hamilton Silver Pipe Co.*, 14 O.R. 300 (1887).

(*f*) *Christie* v. *City of St. John*, 21 S.C.R. 1 (1892).

(*g*) *Prickett* v. *Gratrex*, 8 Q.B. 1020 (1846); *Pilkington* v. *Riley*, 3 Ex. 739 (1849).

(*h*) *Jones* v. *Bird*, 5 B. & Al. 837 (1822); *Smith* v. *West Derby Local Board*, 3 C.P.D. 423 (1878).

(*i*) *Freeman* v. *Line*, 2 Chit. 673 (1820); *Gimbert* v. *Coyney*, McCl. & Y. 469 (1825); *Jacklin* v. *Fytche*, 14 M. & W. 381 (1845); *Breece* v. *Jordon*, 4 Q.B. 385 (1843); *Gillespie* v. *Wright*, 14 U.C.R. 52 (1856).

Sec. 463.

Note (c).

Notice of action.

tioned. (a) But where notice of action in trespass described the place as "at or near the W. ½ of Lot 31" and the jury found that it had been committed on the East half of Lot 32, the notice was held sufficient, as reasonable certainty only is required and the defendants could not have been misled. (b) A conditional notice,—*e.g.*, that an action will be brought *unless* something is done by the defendant, was held bad in *Norris* v. *Smith* (c) and *Wingard* v. *Marks*. (d) Since "the intent of the Statute is that the party should have an opportunity of tendering amends," it is advisable, if not necessary, to state in full the name and place of abode of the intended plaintiff. (e)

By the terms of this section, notice of action is required only "in case anything has been done" under the by-law, etc., which gives the right of action, *e.g.*, an act of trespass. (f) Notice would therefore seem to be unnecessary in an action for an omission. (g) And, except in the cases referred to in this section and s. 606, a municipal corporation is not entitled to notice of action; (h) unless by virtue of some special Act. (i)

In cases under this section and s. 606 the want of a notice of action must be raised by the pleadings. (j)

And now in England "*The Public Authorities Protection Act, 1893*" (k) has repealed so much of any public general Act as requires a notice of action to be given.

469. In case the corporation tenders amends to the plaintiff or his solicitor, if such tender is pleaded and (if traversed) proved, and if no more than the amount tendered is recovered, the plaintiff shall have no costs, but costs shall be taxed to the defendant, and set off against the amount recovered; and the balance due to either party shall be recovered as in ordinary cases. 55 V. c. 42, s. 339

Tender of amends.

Costs.

Taken from the Act of 1858 (22 V. c. 99), s. 202. *Cf.* 12 V. c. 81, s. 155; 14-15 V. c. 109, Sched. A. (21).

(a) For the reason stated by LORD LOUGHBOROUGH in *Wood* v. *Folliott* (l) a similar provision is usually contained in all Statutes requiring a notice of action. (m)

(a) *Madden* v. *Shewer*, 2 U.C.R. 115 (1846); *Cronkhite* v. *Sommerville*, 3 U.C.R. 129 (1846); *Parkyn* v. *Staples*, 19 C.P. 240 (1869); *Moore* v. *Gilley*, 32 U.C.R. 233 (1872); *Spring* v. *Anderson*, 23 C.P. 152 (1873); *Alderich* v. *Humphrey*, 29 O.R. 427 (1898); *Mott* v. *Milne*, 31 Nova Scotia Rep. 372 (1898).

(b) *Langford* v. *Kirkpatrick*, 2 A.R. 513 (1875).

(c) 10 A. & E. 188 (1839).

(d) 15 L.T.N.S. 591 (1866).

(e) *Per* LORD LOUGHBOROUGH, C. J., in *Wood* v. *Folliott*, 3 B. & P. 552: note (1806), at p. 553.

(f) *Hill* v. *Middagh*, 16 A.R. 356 (1889).

(g) See *Harrison* v. *Brega*, 20 U.C.R. 324 (1861); *Harrold* v. *County of Simcoe*, 16 C.P. 43 (1865).

(h) *McCarthy* v. *Township of Vespra*, 16 P.R. 416 (1895), following *Hodgins* v. *United Counties of Huron and Bruce*, 3 E. & A. 169 (1866).

(i) As *e.g.*, in *Trotter* v. *City of Toronto*, 28 C.P. 574, 29 C.P. 365 (1878), and see *Scottish Ontario, etc., Land and Investment Co.* v. *City of Toronto*, 24 A.R. 208 (1896); *City of St. John* v. *Christie*, 29 N.B. Rep. 311 (1890), 21 S.C.R. 1 (1892) referred to *supra*.

(j) *Verral* v. *Macaulay*, 5 O.R. 313 (1884); *McKay* v. *Cummings*, 6 O.R. 400 (1884); Con. Rule 271 (1897).

(k) Imp. Stat. 56-57 V. c. 61, s. 2.

(l) 3 B. & P. 552 note. See foot note *supra*.

(m) E. g. "*The Division Courts Act*," (R.S.O. c. 66), ss. 298, 299; "*The Justices of the Peace Protection Act*," (R.S.O. c. 88), ss. 14, 17, 18, "*The Constables Act*," (R. S. O. c. 99), ss. 44, 45; "*The* (Imperial) *Lands Clauses Consolidation Act, 1845*," (8 V. c. 18), s. 135; "*The Railway Clauses Act*," (Imp. Stat. 8 V. c. 20), s. 139; "*The Waterworks Clauses Act*," (Imp. Stat. 10 11 V. c. 17), s. 84; "*The Public Health Act*," (Imp. Stat. 38-39 V. c. 55, s. 264, etc.

Sec. 469.

Note (a).

Tender of amends.

(b) **"In case the corporation tenders amends," etc.** The tender may be made "to the plaintiff or his solicitor" *i.e.*, the solicitor employed in the action. It should be made in "legal tender," viz., silver up to $10 and gold to any amount, (*a*) provided it is not defaced, (*b*) but a tender of bank notes will be good if not objected to on that ground (*c*). If change is required which the claimant says he has not got, the tender is insufficient, but if no objection is made on this ground it is a good tender (*d*). A mere offer to pay is not a tender (*e*). Still less is a mere statement of readiness to pay (*f*). There must be actual production and offer of the money (*g*) unless dispensed with by the declaration of the party that he will not accept it (*h*) or by other conduct fairly warranting the assumption that it would be refused (*i*). The offer to pay must be unqualified, and it clogged with conditions,—*e. g.* that a mortgage or other document shall be given up, (*j*) or that the sum offered shall be accepted as the amount due (*k*) it is not a valid tender; for the person offering the money has no right to insist upon admissions which will be evidence against the party receiving it (*l*). Therefore an offer of money to be accepted as "all that is due," (*m*) or "in full of all demands" (*n*) or "as a settlement" (*o*) is not a valid tender; But a tender accompanied by the words "I have come to pay the amount of your bill" is good,—being no more than is implied in every tender, viz., that the tenderer intends to cover the whole demand and insists that the sum tendered is sufficient for that purpose (*p*)—and a tender "under protest" is a perfectly good tender (*q*), and though the tenderer may not demand a receipt "in full of all demands," (*r*) he may demand a receipt for the amount paid, leaving the opposite party at liberty to claim more (*s*), at all events where the tender is

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(*a*) R. S. Ca. c. 30, ss. 4-5. (*b*) S. 9.

(*c*) *Blow* v. *Russell*, 1 C. & P. 365 (1824); *Polglass* v. *Oliver*, 2 Cr. & J. 15 (1831); *Jones* v. *Arthur*, 8 Dowl 442, (1840).

(*d*) *Black* v. *Smith*, Peake 121 (1792); *Cadman* v. *Lubbock*, 2 D. & R. 289 (1823).

(*e*) *Leatherdale* v. *Sweepstone*, 3 C. & P. 342 (1828); *Kraus* v. *Arnold*, 7 Moore 59 (1849).

(*f*) *Thomson* v. *Hamilton*, 5 O.S. 111 (1836); *Garforth* v. *Cairns*, 9 C. L. J. N. S. 212 (1873).

(*g*) As in *Milburn* v. *Milburn*, 4 U. C. R. 179 (1847); *Reynolds* v. *Allan*, 10 U. C. R. 350 (1852); *Howell* v. *Listowel Rink & Park Co.*, 13 O. R. 476 (1887); with which *cf. Dickinson* v. *Shee*, 4 Esp. 68 (1801); *Thomas* v. *Evans*, 13 East 101 (1810); *Matheson* v. *Kelly*, 24 C. P. 598 (1875).

(*h*) *Douglas* v. *Patrick*, 3 T. R. 683 (1790); *Read* v. *Goldring*, 2 M. & S. 86 (1813); *Harding* v. *Davies*, 2 C. & P. 77 (1825); *Jackson* v. *Jacob*, 3 Bing. N. C. 869 (1837).

(*i*) *Lhado* v. *Morgan*, 23 C. P. 517 (1874); *Ex p. Danks. Re Farley*, 2 De G. M. & G. 934 (1852).

(*j*) *Peers* v. *Allen*, 19 Grant 98 (1872).

(*k*) *Huxham* v. *Smith*, 2 Camp. 21 (1809); *Evans* v. *Judkins*, 4 Camp. 156 (1815); *Strong* v. *Harvey*, 3 Bing. 304 (1825); *Hough* v. *May*, 4 A. & E. 954 (1836).

(*l*) *Hastings (Marquis of)* v. *Thorley*, 8 C. & P. 573 (1838); *Foord* v. *Noll*, 2 Dowl. N. S. 617 (1842); *Bowen* v. *Owen*, 11 Q. B. 130 (1847).

(*m*) *Sutton* v. *Hawkins*, 8 C. & P. 259 (1838); *Field* v. *Newport, etc., R. W. Co.*, 3 H. & N. 409 (1858).

(*n*) *Cheminant* v. *Thornton*, 2 C. & P. 51 (1825).

(*o*) *Mitchell* v. *King*, 6 C. & P. 237 (1833).

(*p*) *Eckstein* v. *Reynolds*, 7 A. & E. 80 (1837); *Henwood* v. *Oliver*, 1 Q. B. 409 (1842); *Bowen* v. *Owen*, supra.

(*q*) *Manning* v. *Lunn*, 2 C. & K. 13 (1845); *Thorpe* v. *Burgess*, 8 Dowl. 603 (1840); *Scott* v. *Uxbridge R. W. Co.* L. R. 1 C. P. 596 (1866); *Stanley* v. *Smith*, L. R. 7 Eq. 324 (1869).

(*r*) *Glasscott* v. *Day*, 5 Esp. 48 (1802); *Ryder* v. *Lord Townsend*, 7 D. & R. 119 (1825); *Bowen* v. *Owen*, supra.

(*s*) *Richardson* v. *Jackson*, 8 M. & W. 298 (1831); *Lockridge* v. *Lacey*, 20 U. C. R. 494 (1870).

Sec. 469.

Note (a).

not refused on that ground; for if the party to whom a tender is made gives his reasons for not receiving the money, he must rely on the objections then stated, and will be taken to have waived all other objections (*a*).

Tender of amends.

When the words or facts accompanying a tender are disputed, it is a question for the jury (or for the Judge sitting as a jury) whether the tender was conditional or not; (*b*) or whether the person to whom the offer was made dispensed with the actual production and offer of the money (*c*) but where the facts are undisputed or have been found by a jury, or the expressions in question are contained in written documents, their legal effect is to be determined by the Judge (*d*).

(c) "If such tender is pleaded and . . . . . proved, and if no more than the amount tendered is recovered, the plaintiff shall have no costs but costs shall be taxed to the defendant."

Where a defendant,—not alleging a tender before action—pays money into Court under Con. Rule 419 (1897), the plaintiff (if he so elects) may take out the money in satisfaction of all his causes of action, tax his costs and sign judgment therefor (*e*). But where money is brought into Court under Con. Rule 428 with a defence setting up a tender before action, Rules 424 and 425 do not apply (*f*); for "if the plea of tender is made out, the action ought never to have been brought, and the defendant is entitled to his costs, and in order to get them he is obliged to go to trial and have the issue tried which is raised by the plea of tender" (*g*).

Tender or payment into Court of compensation in action for negligence.

470. The council of any municipality, upon any claim being made or action brought for damages for alleged negligence on the part of the municipality, may tender, or pay into Court (as the case may be) such amount as they may consider proper compensation for the damage sustained; and in the event of the non-acceptance by the claimant of such tender or of the amount paid into court, and of the action being proceeded with, and no greater amount being recovered than the amount so tendered or paid into court, the costs of suit shall be awarded to the defendants, and set off against any amount recovered against them. 55 V. c. 42, s. 430.

Added to the Act in 1881 by 44 V. c. 24, s. 25. *Cf.* s. 447.

(a) By this section the provisions of s. 469 as to the effect of a tender of amends before action are made applicable to claims or actions against municipal corporations for damages for alleged negligence. See note (e) to s. 469.

Where the defence set up is not tender before action but payment into Court *pendente lite*, the plaintiff may take out the money under Con. Rules 424 and 425, (1897) in which case he will be entitled to costs; but if, instead of doing so, he chooses to proceed with the action, and recovers no more than the

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(*a*) Per BAYLEY, B., *Polglass* v. *Oliver*, 2 Cvr. & J. 15 (1831) at p. 17.

(*b*) *Eckstein* v. *Reynolds*, 7 A. & E. 80 (1837); *Marsden* v. *Goode*, 2 C. & K. 133 (1845).

(*c*) *Milburn* v. *Milburn*, 4 U. C. R. 179 (1847); *Long* v. *Long*, 17 Grant, 251 (1870); *Matheson* v. *Kelly*, 24 C. P. 598 (1875); *Howell* v. *Listowel Rink & Park Co.*, 13 O. R. 476 (1887).

(*d*) *Thomson* v. *Hamilton*, 5 O. S. 111 (1836); *Powney* v. *Blomberg*, 14 Sim. 179 (1844); *Reynolds* v. *Allan*, 10 U. C. R. 350 (1852); *Fulton* v. *Grand Trunk R. W. Co.*, 17 U. C. R. 428, 433 (1859); *Lake* v. *Biggar*, 11 C. P. 170 (1861); *Harper* v. *Paterson*, 14 C. P. 538 (1864); *Lockridge* v. *Lacey*, 30 U. C. R. 494 (1870); *Peers* v. *Allan*, 19 Grant 98 (1872); *Garforth* v. *Cairns*, 9 C. L. J. N. S. 212 (1873); *Llado* v. *Morgan*, 23 C. P. 517 (1874).

(*e*) Con. Rules 424, 425 (1897). See *Lomer* v. *Waters*, [1898] 2 Q. B. 326; *Magann* v. *Ferguson*, 18 P. R. 201 (1898). As to the practice in the Division Court, see *O'Neil* v. *Hobbs*, 29 O. R. 487 (1898).

(*f*) *Griffiths* v. *School Board of Ystradyfodwg*, 24 Q. B. D. 307 (1890).

(*g*) *Per* WILLS, J., at p. 308.

Sec. 470.

Note (a).

amount paid in, the result will be that the defendant, having succeeded on the issue (of "damages *extra*") will be entitled to the costs of the action; as—independently of this section—he formerly was under "*The Common Law Procedure Act*," (*a*) and still is under the present practice (*b*); subject however to the discretion as to costs of the Court or Judge under Con. Rule 1130 (*c*).

Proceedings on writs of execution against municipalities.

471.—(1) Any writ of execution against a municipal corporation may be indorsed with a direction to the sheriff to levy the amount thereof by rate, and the proceedings thereon shall then be the following;

Sheriff to deliver copy of writ and statement of claim to treasurer.

(*a*) The sheriff shall deliver a copy of the writ and indorsement to the treasurer of the municipality or leave such copy at the office or dwelling-house of that officer, with a statement in writing of the sheriff's fees, and of the amount required to satisfy the execution, including in such amount the interest calculated to some day as near as is convenient to the day of the service.

If claim not paid, rate to be struck by Sheriff.

(*b*) In case the amount, with interest thereon from the day mentioned in the statement, is not paid to the sheriff within one month after the service, the sheriff shall examine the assessment rolls of the corporation, and shall in like manner as rates are struck for general municipal purposes, strike a rate sufficient in the dollar to cover the amount due on the execution with such addition to the same as the sheriff deems sufficient to cover the interest, his own fees, and the collector's percentage, up to the time when the rate will probably be available.

Sheriff's precept to collector, etc., to levy rate.

(*c*) The sheriff shall thereupon issue a precept or precepts, under his hand and seal of office, directed to the collector or respective collectors of the corporation, and shall annex to every precept the roll of such rate, and shall by the precept, after reciting the writ, and that the corporation has neglected to satisfy the same, and referring to the roll annexed to the precept, command the collector or collectors, within their respective jurisdictions, to levy such rate at the time and in the manner by law required in respect to the general annual rates.

Rate rolls.

(*d*) In case at the time for levying the annual rates next after the receipt of such precept, the collectors have a general rate roll delivered to them for such year, they shall add a column thereto, headed "*Execution rate in A. B. vs. The Township*" (or as the case may be, adding a similar column for each execution if more than one), and shall insert therein the amount by such precept required to be levied upon each person

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(*a*) R. S. O. (1877) c. 50, s. 111; *Tobin* v. *McGillis*, 12 P. R. 60, *note* (1886).

(*b*) *Small* v. *Lyon*, 10 P. R. 223 (1884); *Bank of London v. Guarantee Co. of North America*, 12 P. R. 499 (1888); *Wheeler* v. *United Telephone Co.* 13 Q. B. D. 597 (1884); *Gouland* v. *Carr*, 13 Q. B. D. 598, *note*, (1884).

(*c*) *Small* v. *Lyon*, 10 P. R. 223 (1884). See *Gratton* v. *Mees*, 7 Ch. D. 839, (1878); *Buckton* v. *Higgs*, 4 Ex. D. 174 (1879); and *The Wm. Symington*, 10 P. D. 1 (1884) in each of which cases the costs up to the time of payment into Court were given to the plaintiff and the subsequent costs to the defendant.

respectively, and shall levy the amount of such execution rate as aforesaid, and shall, within the time within which they are required to make the returns of the general annual rate, return to the sheriff the precept with the amount levied thereon, after deducting their percentage.

Sec. 471 (1) (d).

(*e*) The sheriff shall, after satisfying the execution and all fees thereon, pay any surplus, within ten days after receiving the same, to the treasurer of the municipality, for the general purposes of the corporation. 55 V. c. 42, s. 428.

Surplus.

(2) The clerk, assessors and collectors of the corporation shall, for all purposes connected with carrying into effect, or permitting or assisting the sheriff to carry into effect the provisions of this Act with respect to such executions, be deemed to be officers of the Court out of which the writ issued, and as such shall be amenable to the Court, and may be proceeded against by attachment, *mandamus* or otherwise, in order to compel them to perform the duties hereby imposed upon them. 55 V. c 42, s. 429.

Clerk, assessors and collectors to be officers of the court from which writ issues.

Taken from the Act of 1858, (22 V. c. 99), s. 220, which was based upon s. 179 of the Act of 1849 (12 V. c. 81).

TITLE VII.—WITNESSES.

(SEC. 472.)

472. In any prosecution, action or proceeding in any civil matter to which a municipal corporation is a party, no ratepayer, member, officer or servant of the corporation shall, on account of his being such, be incompetent as a witness. 55 V. c. 42, s. 425, *part*.

Ratepayers, members, officers, etc., of corporation competent witnesses.

Taken from "*The Law Reform Act of 1868*," (32 V. c. 6), s. 13, which was based upon s. 186 of the Act of 1849, (12 V. c. 81). *Cf.* 22 V. c. 99, s. 367.

(a) The parties to a civil action or criminal proceeding, and all other parties having any interest, however trifling, in the result (*a*) were formerly incompetent as witnesses. This disability,—(except as to the parties by or for whose immediate benefit the action was brought or defended and the wives and husbands of such parties)—was removed in England by Lord Denman's *Evidence Act* (*b*). By our Provincial Statute 14-15 V. c. 66, s. 1 (1851) even these exceptions were removed, and the parties to the record and persons for whose immediate benefit the action was brought or defended and the wives and husbands of such parties were made competent witnesses: and (under s. 2) a party to any civil proceeding could be called and examined as a witness by the opposite party, save that a wife could not give evidence for or against her husband. But in the following year the enabling provisions of 14-15 V. c. 66, s. 1 were repealed (*c*) and it was not until 1869 that the disqualification of witnesses in civil cases on the ground of interest was finally removed by 33 V. c. 13, save as provided in s. 5 of that Act. (*d*)

The provision that any member, etc., of a municipal corporation shall not *on that ground* be an incompetent witness in a prosecution, suit, action or proceeding to which the corporation is a party, first appeared in the Act

(*a*) *Doe* v. *Bramwell*, 3 Q. B. 307 (1842).
(*b*) Imp. Stat. 6-7 V. c. 85 (1843), re-enacted in Canada as 12 V. c. 70 (1849).
(*c*) By 16 V. c. 19, s. 1. See C. S. U. C. c. 32, s. 5.
(*d*) See now "*The Evidence Act*," R. S. O. c. 73, ss. 1-11.

Sec. 472.

Note (a).

Competency of ratepayers, etc., as witnesses and jurors.

of 1849 (*a*) and has been the law ever since. The word "ratepayers" and the words "in any civil matter" were inserted in 1868 by 32 V. c. 6, s. 13. The Act of 1849 further provided that no such member, officer or servant of the corporation should on that ground be liable to challenge as a juror if he had no more direct interest in the result of the suit, etc., and was not otherwise incompetent. This provision was altered by 32 V. c. 6, s. 13; and now by "*The Juror's Act*," (*b*) it is provided that :—

> "Every warden and every member of any county council, every mayor, reeve, [*or deputy reeve*] of any city, town, township, or village, every Justice of the Peace, and every other member and officer of any municipal corporation, is hereby absolutely freed and exempted from being selected by the selectors of jurors . . . to serve as a grand or petit juror in Her Majesty's Inferior Courts; and none of the names of any such persons shall be inserted in the rolls from which jurors are to be taken for such purposes; and if any such name be at any time accidentally inserted in any such roll, it shall, if drawn in selecting any jury list or drafting any panel therefrom for such Inferior Courts, be set aside and not inserted therein."

And by s. 112 of the same Act :

> "In any prosecution, action or proceeding in any civil matter to which a municipal corporation other than a county is a party, every ratepayer, member, officer, or servant of the corporation shall, on account of his being such, be liable to challenge as a juror."

TITLE VIII.—RESPECTING THE ADMINISTRATION OF JUSTICE.

DIV. I.—JUSTICES OF THE PEACE, (SECS. 473-478).
DIV. II.—POLICE OFFICE IN CITIES AND TOWNS, (SECS. 479-480).
DIV. III.—BOARD OF COMMISSIONERS OF POLICE AND POLICE FORCE IN CITIES AND TOWNS, (SECS. 481-499).
DIV. IV.—COURT HOUSES, GAOLS, REFORMATORIES AND PLACES OF CORRECTION OR IMPRISONMENT, (SECS. 500-529).
DIV. V.—BOARD OF AUDIT—CRIMINAL JUSTICE, ETC, (SEC. 530).

DIVISION I.—JUSTICES OF THE PEACE.

(SECS. 473-478.)

Synopsis :—Section 473 provides that certain municipal offices shall confer upon the persons who hold them, the status of J. P.'s. Sec. 474 relates to the jurisdiction over certain offences of the Mayor of a town having no Police Magistrate, (see *infra* note (b) to the section), and s. 476 to the jurisdiction of county J. P.'s over cases arising under by-laws of local municipalities in the county which have no Police Magistrate. In the case of wardens, mayors, reeves and aldermen, who, under s. 473, are constituted *ex officio* J. P.'s, sec. 475 dispenses with further property qualification than that required by law for these municipal offices; and ss. 477-478 provide that the fact of a J. P. being a municipal councillor or ratepayer shall not disqualify him from adjudicating in certain cases.

Certain persons to be *ex officio* Justices of the Peace.

473. The head of every council, all members of a county council, and the reeve of every town, township and village, shall, *ex officio*, be Justices of the Peace for the whole county or union of counties in which their respective municipalities

(*a*) 12 V. c. 81, s. 186. (*b*) R. S. O. c. 61, s. 7.

lie; and aldermen in cities shall be Justices of the Peace for such cities. 55 V. c. 42, s. 415: 60 V. c. 45, s. 8.

Sec. 473.

Taken from the Act of 1866 (29-30 V. c. 51,) s. 357, which also included (in clause 1) "the Police Magistrate of every city and town." The words "all members of a county council" were added in 1867 by 30 V. c. 45, s. 8. *Cf.* 12 V. c. 81, ss. 72, 109; 16 V. c. 181, s. 22; 22 V. c. 99, s. 340.

Certain municipal officers to be *ex officio* J. P.'s.

(a) The ordinary rule is that the jurisdiction of a local officer is not to extend beyond the municipality of which he is an officer. But as many of the criminals who find their way into cities and towns are from rural municipalities, and as some of those who escape from cities and towns find their way into rural municipalities, it has been deemed proper, in order to obviate the necessity for backing warrants in such cases, to make the officers in this section mentioned not simply "*ex officio* Justices of the Peace," but *ex officio* Justices of the Peace "for the *whole* county or union of counties in which their respective municipalities lie" (*a*).

(b) "**Aldermen in cities shall be Justices of the Peace for such cities.**" It was formerly provided that before any alderman or reeve could act in the capacity of a Justice of the Peace for the city or county, he should take the same oath of qualification, and in the same manner, as is by law required of Justices of the Peace (*b*); and it was held that a warrant of commitment signed by an alderman who had not so qualified was invalid to uphold the detention of the prisoner confined under it (*c*). But now no alderman, etc., after taking the oaths or making the declaration as such, is to be required to have any property qualification or to take any further oath to enable him to act as a Justice of the Peace. See s. 475.

Where there is a Police Magistrate, no other Justice of the Peace to act.

(c) R.S.O. c. 87 provides (*d*) that, except at a Court of General Sessions of the Peace, or in the case of illness, absence, or at the request of the Police Magistrate, no Justice of the Peace shall admit to bail, or discharge a prisoner, or adjudicate upon, or otherwise act in any case for a town or city where there is a Police Magistrate, or (in a county in which a Police Magistrate has been appointed under s. 15 of the Act,) in any case prosecuted under any Statute of Ontario within the district assigned to a Police Magistrate (*e*).

But in *Reg.* v. *McLean* (*f*), McDougall, Co. J. of York, held that the words "any case *for* a town or city" refer to cases originating, (*i.e.*, to offences committed) in the town or city, and that a J.P. for the County of York could sit in Toronto and adjudicate upon a case arising out of an offence committed at the village of Woodbridge which is within that county (*g*).

Jurisdiction of mayors over certain offences.

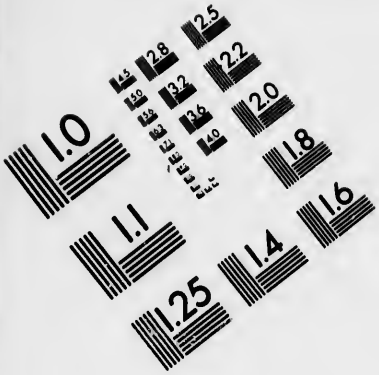
474. The mayor of a town or city where there is no Police Magistrate, shall have jurisdiction, in addition to his other powers, to try and determine all prosecutions for offences against the by-laws of the town or city, and for penalties for refusing to accept office therein or to make the necessary declarations of qualification and office. 55 V. c. 42, s. 416.

Taken from the Act of 1858 (22 V. c. 99), s. 208. *Cf.* 12 V. c. 81, s. 185; 16 V. c. 181, s. 31.

(a) This section seems to be entirely unnecessary. See ss. 473, 479, 704 and 705.

(b) "**Any town or city where there is no Police Magistrate.**" "Every city and every town having more than 5,000 inhabitants shall have a Police Magistrate. (*h*) "Every other town may, if the Lieutenant-Governor sees fit to make an appointment, have a Police Magistrate." (*i*)

(*a*) See *Reg.* v. *Mosier*, 4 P.R. 64, (1867).
(*b*) 31 V. c. 30, s. 38.
(*c*) *Reg.* v. *Boyle*, 4 P.R. 256, 1868.
(*d*) Ss. 7 and 17.
(*e*) See also s. 479 and note (**b**) thereon.
(*f*) 35 C.L.J.N.S.241 (1899).
(*g*) See *Reg.* v. *Riley*, 12 P.R. 98 (1884); *Reg.* v. *Lee*, 15 O.R. 353 (1887) *Reg.* v. *Roe*, 16 O.R. 1 (1888); *Reg.* v. *Gulley*, 21 O.R. 219 (1891).
(*h*) R.S.O. c. 87, s. 2 (1).
(*i*) Ibid. s. 3 (1).



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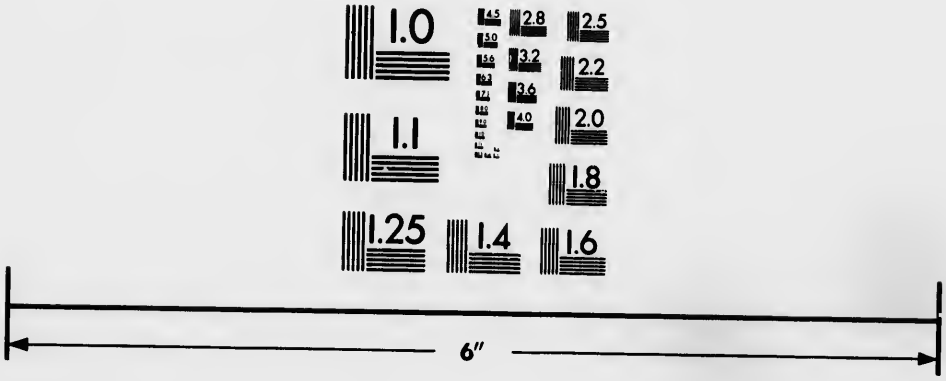

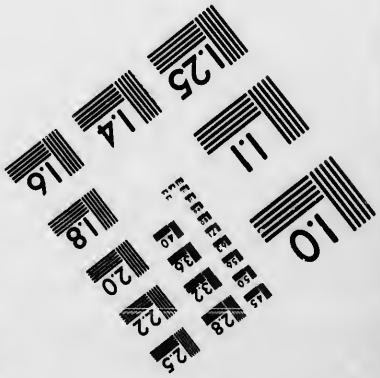

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Secs. 475-477.

Qualification of certain officials.

475. No warden, mayor, reeve or alderman, after taking the oaths, or making the declarations as such, shall be required to have any property qualification or to take any further oath to enable him to act as a Justice of the Peace. 55 V. c. 42 s. 417.

Taken from 16 V. c. 181, s. 26; 22 V. c. 99, s. 341.

Property qualification.

(a) It is the policy of the law to require that those who are authorized to discharge the responsible duties of a Justice of the Peace shall have some property qualification to answer to persons who may be aggrieved by their misconduct. It is therefore enacted by R.S.O. c. 86, s. 9 that—

> "Except where otherwise provided by law, no person shall be a Justice of the Peace, or act as such, who has not in his actual possession, to and for his own proper use and benefit, an estate in free and common soccage, in absolute property, or for life, or lease for one or more lives, or originally created for a term not less than twenty-one years, in lands, tenements or hereditaments, lying and being in this Province, or of above the value of $1,200 over and above what will satisfy and discharge all incumbrances affecting the same, and over and above all rents and charges payable out of or affecting the same."

No one can become a warden, mayor, reeve or alderman without a property qualification (ss. 76, 77). The possession, therefore, of such an office affords evidence of this, and, to some extent, of the other necessary qualifications.

Since no greater property qualification is required of a warden than of every other member of a county council (*a*), and since they all (equally with the warden) become *ex officio* Justices of the Peace (*b*), there would seem to be no reason why this section should not be amended so as to include all county councillors.

Jurisdiction of J. P.'s. under by-laws.

476. Every Justice of the Peace for a county shall have jurisdiction in all cases arising under any by-law of any municipality in the county for which there is no Police Magistrate. 55 V. c. 42, s. 418.

Taken from the Act of 1866 (29-30 V. c. 51), s. 364. *Cf.* 27 V. c. 18, s. 3.

(a) But, as to cities and towns which have a Police Magistrate, and as to other local municipalities situated within a county for which a Police Magistrate has been appointed under s. 15 of R.S.O. c. 87,—see ss. 7 and 17 of that Act quoted in note (c) to s. 473, *ante*. Section 8 of R.S.O. c. 87 also provides that:

> "Nothing in the preceding sections contained shall interfere with the jurisdiction of Justices of the Peace for the county in which a town having no Police Magistrate is situate, over offences committed in the town."

J. P.'s not disqualified by being members of council.

477. A Justice of the Peace shall not, by reason of his being a member of a municipal council, be disqualified to act as a Justice in the case of a prosecution for an offence committed against a by-law of such council. 55 V. c. 42, s. 419, *part*.

This section has been re-cast in the last Revision, apparently under the authority of 60 V. c. 3, s. 3. Taken from the Act of 1858, (22 V. c. 99,) s. 204, and based upon the last clause of 12 V. c. 81, s. 185, it had remained until 1892 in the following form:

> "In case any offence is committed against a by-law of a council, for the prosecution of which offence no other provision is made, any Justice of the Peace having jurisdiction in the locality where the offender resides, or where the offence was committed, may try and determine any prosecution for the offence, whether the Justice is a member of the council or not;" *Cf.* s. 705. 55 V. c. 42, s. 419.

(*a*) S. 77. (*b*) S. 473.

Sec. 477.

Note (a).

(a) In *Reg.* v. *Justices of Huntingdon* (*a*), it was held that a J. P. who was a member of a town council, and as such had taken an active part in the making of an order under "*The Dogs Act*" (*b*), was not disqualified from sitting to hear a complaint for non-observance of the order thus made.

But it has been held in the Province of Quebec that a J. P., who is at the same time a member of a municipal council, is not competent to preside at a proceeding taken, upon the instructions of the council, against an officer of the municipality for the infraction of a by-law which he (the J. P.) had concurred in passing. (*c*)

Nor by reason of penalty being payable to municipality.

478. A Justice of the Peace shall not be disqualified to act as a Justice where in case of a conviction the fine or penalty or part thereof goes to a municipality in which he is a ratepayer. 55 V. c 42, s. 419*a*; c. 43, s. 24.

Taken from "*The Municipal Amendment Act, 1892*," (55 V. c. 43,) s. 24.

(a) The words "Justice of the Peace" now used in this section instead of the word "magistrate" used in 55 V. c. 43, s. 24, mean and include a police magistrate (*d*).

Division II.—POLICE OFFICE IN CITIES AND TOWNS.

(Secs. 479-480.)

Police offices in cities and towns.

479.—(1) The council of every town and city shall establish therein a police office; and the Police Magistrate, or, in his absence, or where there is no Police Magistrate, the mayor of the town or city, shall attend at such police office daily or at such times and for such period as may be necessary for the disposal of the business brought before him as a Justice of the Peace: but any Justice of the Peace having jurisdiction in a town or city may, at the request of the mayor thereof, act in his stead at the police office. 55 V. c. 42, s. 432.

Taken from the Act of 1858, (22 V. c. 99), s. 347. Based upon the Act of 1849, s. 49 (police office in towns), and s. 93 (as amended by 13-14 V. c. 64, Sched. A. (18)—(police office in cities)

(a) As to the appointment and salary of Police Magistrates and Deputy Police Magistrates in cities and towns, see ss. 1-14 of the *Act respecting Police Magistrates* (R. S. O. c. 87). As to returns of convictions by Police Magistrates see the *Act respecting Returns of Convictions*, etc., (R. S. O. c. 94), especially s. 7 thereof.

As to the "Recorder's Court" which formerly existed in every city, until its abolition by "*The Law Reform Act of 1868*," (32 V. c. 6, s. 10), see the Act of 1849, (12 V. c. 81,) ss. 93-105; 14-15 V. c. 109, ss. 27-32; 16 V. c. 181, ss. 20, 21; 22 V. c. 99, ss. 348-359; C. S. U. C. c. 54, ss. 370-381; 29-30 V. c. 51, ss. 368-379.

(*a*) 4 Q. B. D. 522 (1879). (*b*) Imp. Stat. 34-35 V. c. 56.

(*c*) *Tessier* v. *Desnoyers*, Q.R. 12 S.C. 35 (1897).

(*d*) *Reg.* v. *Fleming*, 27 O. R. 122 (1895). See as to the disqualification of magistrates on the ground of interest, the cases there cited by Armour, C. J., at p. 124, also *Reg.* v. *Chapman*, 1 O. R. 582 (1882); *Reg.* v. *Langford*, 15 O. R. 52 (1888); *Reg.* v. *Stone*, 23 O. R. 46 (1892); *Reg.* v. *Steele*, 26 O. R. 540 (1895); *Ex p. Flannagan*, 34 N. B. Rep. 326 (1897); *Ex p. Michaud*, 34 N. B. Rep. 123 (1898); and (in prosecutions under "*The Canada Temperance Act*"). *Reg.* v. *Eli*, 10 O. R. 727 (1886); *Reg.* v. *Klemp*, 10 O. R. 143 (1885), (where the cases on the point are discussed); *Reg.* v. *Brown*, 16 O. R. 41 (1888); *Ex p. McCay*, 33 N.B. Rep. 605 (1898). See also R.S.O. c. 251, s. 12.

Sec. 479.
Note (b).

(b) "The Police Magistrate or in his absence, or where there is no Police Magistrate, the Mayor . . . shall attend . . . but any Justice of the Peace having jurisdiction . . . may, at the request of the Mayor . . . act in his stead."

Police office in cities and towns.

This section must be read with s. 13 of R. S. O. c. 87,—which provides that where there is a Deputy Police Magistrate he shall have authority to act in case of the death, illness or absence of the Police Magistrate—; and also with ss. 7 and 29 of the same Statute—which empower the Police Magistrate to request any Justice of the Peace or any two or more Justices of the Peace to act for him in case of his illness or absence. It is apprehended that the duty and power of the mayor under this section arise only where there is no Police Magistrate or Deputy Police Magistrate, or where the Police Magistrate has failed to request any one to act for him during his illness or absence.

(c) Section 38 of R.S.O. c. 87—which provides that:—

> "Except in cases of urgent necessity no attendance of the Police Magistrate shall be required at the police office on Sundays or other holidays, or on any day set apart by the municipal council as a civic holiday."

—was formerly part of this section and applied also to the attendance of the mayor at the police office in towns not having a police Magistrate.

Accomodation, etc., for police office.

(2) The council shall from time to time provide all necessary and proper accommodation, fuel, light, stationery and furniture for the police office, and for all officers connected therewith. 59 V. c. 51, s. 35; 60 V. c. 3, s. 3.

Taken from 59 V. c. 51, s. 35 (1896).

(c) See note (e) to s. 506, *post*.

Clerk of police office, and his duties.

If paid by salary, fees to be paid over to municipality.

480. The clerk of the council of every city or town, or such other person as the council of the city or town appoints for that purpose, shall be the clerk of the police office thereof, and shall perform the same duties and receive the same emoluments as clerks of Justices of the Peace; and in case the said clerk is paid by a fixed salary, the emoluments shall be [illegible] by him to the municipality and form part of its funds, such clerk shall be the officer of and under the Police Magistrate. 55 V. c. 42, s. 433.

Taken (except the last clause) from the Act of 1858, 22 V. c. 99, s. 354. *Cf.* 12 V. c. 81, s. 73; the last clause, "And such clerk shall be the officer of" etc., was added in 1896, by 29-30 V. c. 51, s. 374.

(a) "Or such other person as the council . . . appoints," etc.

The appointment should be made by by-law.(*a*) Where a town clerk, though specially instructed by resolution of the council, did not act as Police Court Clerk, and the Police Magistrate appointed a clerk who acted for nearly six years with the knowledge of the municipal council of the town, and without any repudiation by them of his right to do so, it was held that he might be considered as if appointed by the council and was entitled to the emoluments mentioned in this section. (*b*)

(b) "And shall perform the same duties and receive the same emoluments as clerks of Justices of the Peace."

This section applies to cases arising under both Dominion and Provincial Acts. (*c*) As to the duties of the Clerk of the Police Court, see R.S.O. c. 94, ss. 1, 3, 4, 5, 8, 9. The "fees to be taken by Justices of the Peace or their clerks in summary proceedings or convictions before the Justice where no other fees are expressly prescribed," are fixed by the Schedule to R. S. O. c. 95, entitled "*An Act respecting the Fees of Justices of the Peace*," and are as follows:—

(*a*) S. 325.

(*b*) *Town of Peterborough* v. *Hatton* 30 C. P. 455, 461 (1879).

(*c*) Ibid.

Table of Fees to be Taken by Justices of the Peace or their Clerks, under R.S.O. c. 95.

Sec. 480.

Note (b).

Fees of Justices of the Peace and clerks.

1. For an information and warrant for apprehension, or for an information and summons for assault, trespass, or other misdemeanor	$0 50
2. For each copy of summons to be served on defendant or defendants	10
3. For every subpœna, *(only one subpœna on each side to be charged for in each case, which may contain any number of names.)*	10
(If the justice of the case requires it, additional subpœnas shall be issued without charge.)	
4. For every recognizance *(only one to be charged in each case.)*	25
5. For information and warrant for surety of the peace for good behaviour, *(to be paid by complainant.)*	50
6. For warrant of commitment for default of surety to keep the peace or for good behaviour *(to be paid by complainant.)*	50
7. For hearing and determining the case	50
8. Where one Justice alone cannot lawfully hear and determine the case, an additional fee for hearing and determining to be allowed to the Associate Justice	50
[In case more Justices hear the case, the Justice by whom the information was taken if he hears the case, shall be entitled to one fee of fifty cents for hearing and determining, and the Justice who sat at his request shall be entitled as Associate to the said additional fee, when one is chargeable; if a case occurs which is not covered by this provision, the justices shall be entitled to the fees according to their seniority as justices.]	
9. For warrant to levy penalty	25
10. For making up every record of conviction where the same is ordered to be returned to the Sessions, or on *certiorari*	1 00
11. But in all cases which admit of a summary proceeding before a single Justice of the Peace and wherein no higher penalty than $20 can be imposed, there only shall be charged for the conviction not more than	50
And for the warrant to levy the penalty	25
12. For copy of any other paper connected with any trial, and the minutes of the same if demanded—per folio of one hundred words	10
13. For every bill of costs, *(when demanded to be made out in detail)*	10
[Items 12 and 13 to be only chargeable when there has been a conviction.]	

And Article 871 of "*The Criminal Code, 1892*," (as amended by 57-58 V. c. 57 (1894) prescribes the following as the tariff of fees to be taken on proceedings before Justices of the Peace under Part LVIII—(Arts 839-909)—of the Code, which are the Articles thereof relating to Summary Convictions.

Fees to be taken by Justices of the Peace or their Clerks, under Art. 871 of "The Criminal Code. 1892."

1. Information or complaint and warrant or summons	$ 50
2. Warrant where summons issued in first instance	10
3. Each necessary copy of summons or warrant	10
4. Each summons or warrant to or for a witness or witnesses. (Only one summons on each side to be charged for in each case, which may contain any number of names. If the justice of the case requires it additional summonses shall be issued without charge.)	
5. Information for warrant for witness and warrant	10
6. Each necessary copy of summons or warrant for witness	50
7. For every recognizance	10
8. For hearing and determining case	25
9. If case lasts over two hours	50
10. Where one Justice alone cannot lawfully hear and determine the case the same fee for hearing and determining to be allowed to the Associate Justice	1 00
11. For each warrant of distress or commitment	....
12. For making up record of conviction or order where the same is ordered to be returned to Sessions or on *certiorari*	25
But in all cases which admit of a summary proceeding before a single Justice and wherein no higher penalty than $20 can be imposed, there shall be charged for the record of conviction not more than	1 00
13. For copy of any other paper connected with any case, and the minutes of same if demanded, per folio of 100 words	50
14. For every bill of costs when demanded to be made out in detail	5
(Items 13 and 14 to be chargeable only when there has been an adjudication.)	10

(c) "In case the . . . clerk is paid by . . . salary . . . the emoluments shall be paid by him to the municipality and form part of its funds."

See note (a) to s. 320.

Sec. 481.

DIVISION III.—BOARDS OF COMMISSIONERS OF POLICE AND POLICE FORCE IN CITIES AND TOWNS.

(SECS. 481-499.)

Synopsis:—Sec. 481 constitutes a Board of Commissioners of Police in every city and provides for the constitution of a like Board in every town which has a police magistrate. By sec. 494 a town council may in the case therein mentioned assume the powers theretofore exercised by an existing Board.

Secs. 484, 486, 486 (a), 489, 490 and 492 enumerate the various powers exercisable by Boards of Police Commissioners under the Municipal Act; and ss. 482, 483 and 485 relate to the mode of such exercise.

Secs. 487-493 and 495-499 relate to the appointment, government, duties, remuneration and suspension of high-bailiffs, chief-constables, and constables.

Boards of Commissioners of Police.

Boards of commissioners of police in cities and towns, of whom composed.

481—Notwithstanding anything in any special Act contained there is hereby constituted in every city a Board of Commissioners of Police, and in every town having a Police Magistrate the council may constitute a like Board. Such Board shall consist of the mayor, the Judge of the County Court of the county in which the city or town is situate, and the Police Magistrate. In case the office of County Judge or that of Police Magistrate is vacant, the council of the city shall, and the council of the town may, appoint a person resident therein to be a member of the Board, or two persons so resident to be members thereof, as the case may require, during such vacancy; but the council of such town may at any time, by by-law, dissolve and put an end to the Board, and thereafter the council shall have and exercise all powers and duties previously had or exercised by the Board. 55 V. c. 42, s. 434; 62 V. (2nd Session), c 26, s. 28.

Taken from 37 V. c. 16, ss. 10, 13 (1874). The first six words of the section were added in 1899 by 62 V. (2nd Sess.) c. 26, s. 28.

(a) The first step in the direction of transferring to an official (but not representative) body some share of the powers exercised by municipal councils under the Act of 1849 was made by the Act of 1858 (22 V. c. 99, s. 374), which constituted in every city a Board of Commissioners of Police, to be composed of the Mayor, Recorder and Police Magistrate, and to have the powers now given by ss. 490, 491, together with some of those given by s. 492 (1). (a) The composition of the Board has remained substantially the same ever since,—the County Court Judge being substituted for the Recorder by s. 12 of "*The Law Reform Act of 1868*," (b) when the latter office was abolished by s. 10 of the same Act—(c) but the powers of the Board have from time to time been extended, as will appear from the notes to ss. 484, 540 (1), 541, 583 and 585, *post*.

(b) "**Every town having a police magistrate.**"

See note (b) to s. 474.

(c) "**The Mayor, the Judge of the County Court . . and the Police Magistrate.**" *i.e.*, one member chosen by the municipal electors, one appointed by the Governor-General (*d*), and one by the Lieutenant-Governor (*e*).

(*a*) See the notes on those sections.

(*b*) 32 V. c. 6.

(*c*) See note (a) to s. 479 *ante*.

(*d*) B.N.A. Act, s. 96.

(*e*) R.S.O. c. 87, s. 4.

The powers of a Board of Commissioners of Police must be exercised judicially; and in a proper case the Court will, no doubt, compel the Board so to exercise them. *Semble*, that an action for a mandamus for this purpose is not within the terms of R.S.O. c. 88, entitled "*An Act to protect Justices of the Peace and Others from Vexatious Actions*," and that no notice of such an action is necessary (*a*).

Person acting as mayor to act as police commissioner.

(2) In case of the illness or absence of the mayor, or of the office of mayor being vacant, the person appointed by the council under section 272 as their presiding officer shall also have authority during the time he acts as such presiding officer to act as a police commissioner in the place of the mayor. 55 V. c. 42, s. 239 (2); c. 43, s. 9.

Added by "*The Municipal Amendment Act, 1892*," (55 V. c. 43), s. 9.

Payment of police commissioners.

(3) The council of any city with a population of 100,000 or over, may by by-law provide for the payment of the Police Commissioners or any of them. 55 V. c. 42, s. 434 (2).

Added by 53 V. c. 50, s. 14 (1890).

Board may examine witnesses on oath.

482.—(1) The commissioners shall have power to summon and examine witnesses on oath on all matters connected with the administration of their duties, and shall have the same power to enforce the attendance of such witnesses and to compel them to give evidence as is vested in any Court of law in civil cases. A notice to attend before the Board shall be sufficient, if signed by the chairman of the Board, or by any one of the commissioners.

The first clause of subsection 1 (power to summon and examine witnesses on oath) is taken from the Act of 1866 (29-30 V. c. 51), s. 394; the rest of the subsection, and also subsection 2, were added in 1887 by 50 V. c. 8, *Schedule*.

(a) "**The same power to enforce the attendance of . . . witnesses,**" etc.

A witness refusing or wilfully neglecting to attend on being duly served with a subpœna may be proceeded against by attachment. See note (c) to s. 254. One who refuses to be sworn or give evidence, or to answer any question which the Court holds that he is bound by law to answer, is guilty of contempt, and may be punished *instanter* by fine and imprisonment. (*b*)

(2) No party or witness shall be compelled to answer any question his answer to which might render him liable to a criminal prosecution. 55 V. c. 42, s. 435 (1), (2).

(b) See also "*The Evidence Act*," (R.S.O. c. 73), s. 5, and *cf.* s. 255 of this Act.

Chairman.

483.—(1) The commissioners shall annually at their first meeting held after the mayor of the municipality has taken his oath of office, elect a chairman. 57 V. c. 60, s. 6.

Quorum.

(2) A majority of the Board shall constitute a quorum, and the Acts of a majority shall be considered acts of the Board.

(a) See *Hasdem* v. *Schwarz*, 30 O.R. 89 (1898), an action against License Commissioners; in which *Leeson* v. *Board of License Commissioners of the County of Dufferin*, 19 O.R. 67 (1890), was not followed.

(b) *Ex p. Fernandez*, 10 C.B.N.S. 3 (1861); *Doe d. Marr* v. *Marr*, 5 C.P. 36 (1852).

Sec. 483 (3).

Meetings in cities to be open to public.

(3) All meetings of the Board of Commissioners of Police in cities shall be open to the press and the public, unless otherwise decided by the Board. 55 V. c. 42, s. 435 (3), (4).

Subsection 1 is taken from 57 V. c. 50, s. 6 (1894); subsection 2 from 50 V. c. 8, Sched. (1887), and subsection 3 from 45 V. c. 8, s. 2 (1882).

Licensing and regulating second-hand and junk shops, livery stables, cabs, etc., in cities.

484.—(1) The Board of Commissioners of Police shall, in cities, license and regulate second-hand shops and junk stores or shops and the owners of livery stables and of horses, cabs, carriages, carts, trucks, sleighs, omnibuses and other vehicles regularly used for hire within the said city whether such owners are resident or non-resident therein, and shall establish the rates of fare to be taken by the owners or drivers of such vehicles for the conveyance of goods or passengers, either wholly within the limits of the city, or from any point within the city to any other point not more than three miles beyond said limits, and may provide for enforcing payment of such rates; and for such purposes shall pass by-laws and enforce the same in the manner in which and to the extent to which any municipal by-law passed under the authority of this Act may be enforced. 55 V. c. 42, s. 436 (1).

These powers have been gradually and successively conferred. See the notes *infra*.

"License and regulate."

(a) "Shall license and regulate"

See note (**b**) to s. 19, note (**a**) to s. 329, and note (**c**) to s. 330. Under s. 329 the right to license includes the right to pass by-laws

(1) For fixing the sums to be paid for a license,

(2) For enforcing payment thereof (*a*), and

(3) For determining the period during which the license shall be in force.

But, as pointed out by HARRISON, C. J., (*b*) "There is a great difference between *prevention* and *regulation*, and between *restraint* and *regulation*." (*c*) Accordingly, in *Reg.* v. *Levy* (*d*) a by-law of a Board of Police Commissioners that "no keeper of a second-hand store and junk store shall receive, purchase or exchange any goods, articles or things from any person who appears to be under the age of eighteen years," was set aside as *ultra vires*.

"Junk shops."

(b) "Second hand shops and junk stores and shops."

This power was conferred in 1886.(*e*) "Junk," (from the Latin *junceus*, a rush or reed), means old cordage or pieces of old cable which when untwisted and picked to pieces forms oakum for filling the seams of ships, (*f*) and a "junk-shop" has been defined by a South Carolina Court as "a place where odds and ends are purchased or sold." (*g*) As to licensing junk shops see *City of Montreal* v. *Walker*, (*h*) referred to in note (**a**) to s. 329 and note (**c**) to s. 330; as to "regulating" them, *Reg.* v. *Levy*, cited in note (**a**) *supra*; and as to the powers of the councils of cities and separated towns in reference to junk shops, s. 583 (22) and s. 586 (5).

Owners of livery stables, cabs, etc.

(c) "Owners of livery stables and of horses, cabs, carriages," etc.

The Act of 1849, (*i*) authorized the councils of cities and towns to pass by-laws "for regulating and licensing the owners of livery stables, horses, cabs, hackney coaches, omnibuses, carts and other carriages *used for hire in such*

(*a*) See s. 702 and the last clause of subsection 1 of this section.

(*b*) *Reg.* v. *Johnson*, 38 U.C.R. 549 (1876), at p. 551.

(*c*) See *ante*, pp. 341-342.

(*d*) 30 U.C.R. 403 (1899).

(*e*) 49 V. c. 37, s. 9.

(*f*) Imp. Dict.

(*g*) *City of Charleston* v. *Goldsmith*, 12 Rich. (S.C.) 470 (1860).

(*h*) M.L.R. 1 Q.B. 469 (1885).

(*i*) 12 V. c. 81, ss. 81 (4), 82.

Sec. 484.

(Note (c).

Owners of livery-stables, cabs, etc.

towns and for establishing the rates of pay or hire to be taken by the owners or drivers thereof." The Act of 1850 (*a*) added "and to compel in a summary manner the prompt payment of the lawful pay or hire . . . . by the parties hiring or using the same." The Act of 1858 (*b*) extended this power to the councils of villages (*c*); but (as regards cities) it was transferred in 1868 (*d*) to the Boards of Commissioners of Police. The last clause of this sub-section "and for such purposes shall pass by-laws, etc.," was added in 1869.(*e*) The whole sub-section was re-cast in 1886 (*f*) and again amended in 1892 (*g*) when for the words "used for hire" were substituted the words "regularly used for hire within the said city, whether such owners are resident or non-resident therein."

As to the powers of town and village councils in relation to livery stables and vehicles used for hire, etc., see s. 583 (37) (38); as to the powers of county councils, s. 584; as to the meaning of the word "owner," *Reg.* v. *Seadwell*,(*h*) referred to in note (**jj**) to s. 583, and as to the extent of the power "to regulate" under this section *Reg.* v. *Verral*, (*i*) referred to more fully in note (**dd**) to the same section.

In *Reg.* v. *Hiscox*, (*j*) the defendant was convicted in 1878 under a by-law passed by a city council in 1866 of carrying on the business of a livery stable keeper without a license. *Held*, that the conviction must be quashed.

ARMOUR, C.J., in giving judgment, observed that if the power to legislate on this subject had still continued to be vested in the city council, the by-law would have remained in force notwithstanding the repeal of the Statute under the authority of which it was originally passed, since in each subsequent consolidation of "*The Municipal Act*" there has been inserted a section preserving existing by-laws.(*k*)

> "But the effect of . . . taking away from the city council the power to pass by-laws for regulating and licensing the owners of livery stables, and vesting this power in the Board of Commissioners of Police, and of then making it imperative upon the Board to regulate and license the owners of livery stables, and of repealing the legislation inconsistent with the duty so imposed upon them, has been to render the by-law of no further force or effect."(*l*)

Accordingly in *Re Kirby*, (*m*) a by-law passed in 1887 by a city council declaring it unlawful for any person to establish or keep a livery stable in the city unless he should first have procured the consent of a majority of the owners and lessees of surrounding property within a certain radius, was held to be *ultra vires*.

Per WILSON, C.J., at p. 456:

> "I am of opinion the Board of Police [Commissioners] is the body which *alone* has the power to regulate and license livery stables, etc., that the by-law of the city is one which assumes to regulate them, and cannot be supported. *The power to regulate confers upon the Commissioners the power to declare in what locality or localities such stables shall be allowed.*" (*n*)

For the form of a by-law licensing livery stables and of a conviction thereunder see *Reg.* v. *Seadwell* (*o*); for a form of license, *Reg.* v. *Gurr* (*p*). Such a

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(*a*) 13-14 V. c. 64, Sched. A (14).
(*b*) 22 V. c. 99, s. 287 (31).
(*c*) See s. 583 (38) of this Act and 29-30 V. c. 51, s. 296 (31).
(*d*) By 31 V. c. 30, s. 33.
(*e*) 32 V. c. 43, s. 22.
(*f*) By 49 V. c. 37, s. 9.
(*g*) By 55 V. c. 43, s. 25.
(*h*) 12 O.R. 391 (1886).
(*i*) 18 O.R. 117 (1889).
(*j*) 44 U.C.R. 214 (1879).
(*k*) See 29-30 V. c. 51, s. 3; 36 V. c. 48, s. 3; R.S.O. (1877) c. 174, s. 4, etc.
(*l*) *Per* ARMOUR, C.J., *Ibid* at p. 217.
(*m*) 13 O.R. 451 (1887).
(*n*) But this dictum, in so far as it involves the proposition that the power to regulate will include a power to prohibit, was dissented from and disapproved by GWYNNE, J., in *Virgo* v. *City of Toronto*, 22 S.C.R. 447 (1894), at p. 469. See that case referred to in note (**a**) to s. 329 and note (**u**) to s. 583, and see now subsec. 2 of this section.
(*o*) 12 O.R. 391, 396-7 (1886).
(*p*) 21 O.R. 499 (1892).

Sec. [484. Note (c).

license applies only to the premises therein mentioned and does not authorize the licensee to solicit passengers elsewhere, though on the premises owned by him (*a*).

There was originally no power under this section or s. 329 to impose a license fee upon the *driver* of an omnibus or other vehicle used for hire (*b*).

Owners of livery stables, cabs, etc.

A by-law passed under R.S.O. (1887), c. 184, — viz., before the word "regularly" had been inserted in the section by 55 V. c. 43, s. 25 — provided that no person should, without being licensed, "keep or use for hire any wagon, cart or truck," etc. The defendant, a contractor, owned carts which he used in his business. These were employed by him in hauling coal and gas pipes for a gas company, for which he was paid by the hour or day. On motion to quash a conviction of the defendant under the above by-law, it was contended that to "keep or use carts for hire" means "keep carts for hire or use carts kept for hire," but, *Held*, that the conviction was valid (*c*).

A Police Commissioners' by-law fixing the rates of fare to be charged for the conveyance of goods, etc., enacted "that no other or higher rate *unless varied by agreement*, should be collectable." *Held*, that the by-law was bad (*d*).

Prohibiting livery stables, etc., except within certain areas.

(2) The Board of Commissioners of Police in any city may pass by-laws defining areas or districts and localities in the city within the limits of which no livery stable or sale or boarding stable, or stable in which horses are to be kept for hire or for express purposes shall be established or maintained. 55 V. c. 42, s. 436 (2); c. 43, s. 25; 56 V. c. 35, s. 11; 59 V. c. 51, s. 9: 60 V. c. 15, *Sched.* C (116).

For the sources of this subsection see the references thereto. See also in note (c) *supra*, a reference *Re Kiely* (*e*), which occasioned its enactment.

(3) The Board of Commissioners of Police in any city shall pass a by-law or by-laws for regulating the hours of labour of persons employed in livery or boarding stables, or as drivers of cabs, carriages or sleighs kept for hire within the said city, and may also pass by-laws for regulating the hours of labour of persons employed by the owners of horses, carts, trucks, omnibuses and other vehicles kept for hire within the said city, and for licensing drivers of cabs within the said city. 60 V. c. 45, s. 52.

Regulating hours of labour.

(d) The first part of this subsection (like the first part of subsection 1) is imperative (*f*). The latter part is permissive only.

(e) **"For licensing drivers of cabs."** See *Reg.* v. *Reeves* (*g*); *Reg.* v. *Butler* (*h*), referred to in note (c) *supra*.

(*a*) *Reg.* v. *Gurr*, supra. See *Clarke* v. *Stanford*, L.R. 6 Q.B. 357 (1871), and *Allan* v. *Tunbridge*, L.R. 6 C.P. 481 (1871), decided under a somewhat similar section of "*The Metropolitan Public Carriage Act, 1869*," Imp. Stat. 32-33 V. c. 115. But in *Skinner* v. *Usher*, L.R. 7 Q.B. 423 (1872) it was held that the driver of a hackney carriage which stood awaiting passengers on private ground to which the public had access was not liable to the penalty imposed by "*The Hackney and Stage Carriages (London) Act*," (Imp. Stat. 6-7 V. c. 86, s. 33), on any such driver who shall "ply for hire elsewhere than at some standing appointed for the purpose."

For further cases decided under the English "*Hackney and Stage Carriages (London) Act*," (6-7 V. c. 86), s. 33; "*The Metropolitan Public Carriages Act*," (32-33 V. c. 115), s. 4, and the "*Town Police Clauses Acts, 1847*," (10-11 V. c. 89), s. 40, and "*1889*" (52-53 V. c. 14), see Stone's "Justice's Manual" (29th Ed., 1897), pp. 899-900.

See also Dillon, ss. 358-359; Tiedeman, s. 239, and the "American and English Encyclopædia of Law" (1st Ed.), Vol. 13, p. 535, under the Title "Municipal Licenses," 5 (b).

(*b*) *Reg* v. *Reeves*, 1 O.R. 490 (1882); *Reg.* v. *Butler*, 22 O.R. 462 (1892); but see now the last clause of subsec. 3, added in 1897 by 60 V. c. 45, s. 52.

(*c*) *Reg.* v. *Boyd*, 18 O.R. 485 (1889).

(*d*) *Reg.* v. *Latham*, 24 O.R. 616 (1894).

(*e*) 13 O.R. 451 (1887).

(*f*) See note (b) to s. 10.

(*g*) 1 O.R. 490 (1882).

(*h*) 22 O.R. 462 (1892).

(4) The Board of Commissioners of Police shall also regulate and control children engaged as ;

Control of children.

(a) Express or despatch messengers ;

(b) Vendors of newspapers and smallwares ;

(c) Bootblacks. 55 V. c 42, s. 436 (3).

(f) Added by 51 V. c. 28, s. 17 (1888). The reason for conferring this power is obvious (*a*). The duty is imperative (*b*).

(g) "Children." The limits of the age of childhood are undefined by law. The word does not include a person over 21 years of age (*c*) ; but, on the other hand, it is said to be not synonymous with "minor" or "infant." (*d*) "It means a young person as distinguished from one supposed to have settled habits and fixed discretion." (*e*) It is generally restricted to one under the age of puberty, i.e., 14 in males and 12 in females (*f*). But in R.S.O. c. 262, entitled "*An Act to regulate the Immigration into Ontario of certain classes of Children*," "child" means a person under 18 years of age (*g*), and "*The Assessment Act*" (*h*) speaks of "children between the ages of five and twenty-one years." See also "*The Public Schools Act*" (R. S. O. c. 292), s. 62 (3) ; "*The Separate Schools Act*" (R.S.O. c. 294), s. 28 (8) ; "*The Industrial Schools Act*" (R.S.O. c. 304), ss. 11, 13, 16, 24 ; "*The Act respecting Provincial Aid toward the Establishment of Houses of Refuge*" (R.S.O. c. 312), s. 8, and *cf.* note (b) to s. 2 of this Act.

Who are "children.

(5) The Board of Commissioners of Police in any city, and the council of any town, may regulate or prohibit the playing of bands and of musical instruments on any street, highway, park or public place in the city ; but this shall not apply to any military band attached to any regular corps of the militia of Canada when on duty under the command of its regular officer. 55 V. c. 42, s. 436 (5).

Bands of music.

[*See as to additional powers of Boards of Police Commissioners in cities of 100,000 inhabitants or over. Secs.* 540 (1), 581, 583.]

(h) Added by 54 V. c. 42, s. 13 (1891). Prior thereto the only power to deal with this subject was that contained in s. 586 (8) relating to nuisances. See the notes to that subsection.

485. All by-laws of any Board of Commissioners of Police shall be sufficiently authenticated by being signed by the chairman of the Board which passes the same ; and a copy of such by-law, written or printed, and certified by any member of the Board to be a true copy, shall be deemed authentic, and be received in evidence in any Court of Justice without proof of such signature, unless it is specially pleaded or alleged that the signature to such original by-law has been forged. 55 V. c. 42, s. 437.

How by-laws of Board authenticated and proved.

Taken from "*The Tavern and Shop License Act of 1888*," (32 V. c. 32) s. 39. *Cf.* the similar provisions as to the by-laws of municipal corporations, *ante*, ss. 333, 334.

(*a*) See note (a) to s. 329, *ante* p. 340. (*b*) See note (b) to s. 10.

(*c*) *Rex* v. *St. John Bedwardine*, 5 B. & Ad. 169 (1833).

(*d*) *McGregor* v. *The State*, 4 Tex. App. 599.

(*e*) *Bell* v. *State*, 18 Tex. App. 53 ; 51 Am. Rep. 293.

(*f*) *Black's* Law Dict.

(*g*) S. 1 (1).

(*h*) R.S.O. c. 224, s. 17 (2).

Secs 486-488.

May be enforced by penalties, etc.

How recovered.

486. In all cases where any Board of Commissioners of Police are authorized to make by-laws, either under this or any other Act or law, they shall have power in and by such by-laws, to attach penalties for the infraction thereof; and such by-laws may be enforced, and such penalties may be recovered by summary proceedings before the Police Magistrate of the city for which the same are passed, or, in his absence, before any Justice of the Peace having jurisdiction therein, in the manner and to the extent that by-laws of city councils may be enforced under the authority of this Act; and the convictions in such proceedings may be in the form set forth in section 707 of this Act. 55 V. c 42, s. 438.

Taken from "*The Tavern and Shop License Act of 1888*," 52 V., c. 32 s. 38

(a) "Such by-laws may be enforced and such penalties may be recovered . . . in the manner and to the extent that by-laws of city councils may be enforced."

See ss. 702, 705-712, *post*.

Discretion in granting or refusing licenses.

486*a*. The granting or refusing of a license to any person to carry on a particular trade, calling, business or occupation under any of the powers conferred upon the municipal council or Board of Police Commissioners of any municipality by this Act shall be deemed to be in the discretion of the council or Board as the case may be; and the council or Board shall not be bound to state any reason for the granting or the refusing of any such license. 62 V. (2nd Session) c. 26, s. 29.

High Bailiff and Police Force.

High bailiffs.

487. The council of every city shall appoint a high bailiff; but may provide by by-law, that the offices of high bailiff and chief constable shall be held by the same person. 55 V. c. 42, s. 439.

The first clause is taken from the Act of 1849, under which the High Bailiff was to be appointed annually; the rest of the section from 13-14 V. c. 64, Sched. A (17). *Cf.* 22 V. c. 99, s. 369; 29-30 V. c. 51, s. 380.

(a) The High Bailiff seems to have been an officer of the Recorder's Court,(*a*) corresponding to the officer so styled in the (English) *County Courts Acts*, (*b*) whose duty it is to attend the Court when sitting, to serve summonses, execute orders, warrants, etc. (*c*).

(b) If the city council pass a by-law under this section providing that the offices of high bailiff and chief constable shall be held by the same person, the right of appointment would seem to be henceforth vested in the Board of Police Commissioners (*d*). The city council formerly had power to suspend the High Bailiff (*e*)

Police force in cities and towns.

488. The police force in cities and in towns having a Board of Commissioners of Police, shall consist of a chief constable, and as many constables and other officers and assistants as the council from time to time deem necessary, but in cities, not less in

(*a*) 12 V., c. 81, ss. 94, 102.

(*b*) 9 & 10 V. c. 95 s. 33; 51 & 52 V. c. 43 s. 35.

(*c*) Heywood Co. Ct. Prac. (1895) *Vol. I* p. 18. See *Glass* v. *Wigmore*, 21 U. C. R. 37 (1861).

(*d*) See s. 489 and, *cf.* 22 V. c. 99, s. 369. (*e*) See note to s. 498.

number than the Board reports to be absolutely required; but this section shall not affect or apply to a city in which, by the special Act of incorporation thereof, provision is made for the appointment, control and management of the police by the council. 55 V. c. 42, s. 440.

Police force in cities and towns.

The first part of the section is taken from 37 V. c. 16, s. 12 (1874) based upon 22 V. c. 99, s. 376; 29-30 V. c. 54, s. 396; extended to towns having a police magistrate by 36 V. c. 18, s. 339. The last clause (which is quite unnecessary; see s. 1) was inserted in 1893, 56 V. c. 18, s. 440 as an attempt to consolidate part of 44 V. c. 24, s. 23. See 4 V. c. 31, s. 24.

(a) "**Towns having a Board of Commissioners of Police.**" See ss. 481, 491 and 13 S. O. c. 87, s. 3, quoted in note (b) to s. 474.

489. The members of the police force in cities and in such towns shall be appointed by and hold their offices at the pleasure of the Board, and shall take and subscribe the following oath:

Appointment of members of police force.

I, *A. B.*, do swear that I will well and truly serve our Sovereign Lady the Queen in the office of Police Constable for the
of without favour or affection, malice or ill-will; and that I will, to the best of my power, cause the peace to be kept and preserved, and will prevent all offences against the persons and properties of Her Majesty's subjects; and that while I continue to hold the said office, I will, to the best of my skill and knowledge, faithfully discharge all the duties thereof according to law.

Oath of office.

55 V. c. 42, s. 441.

First clause taken from the Act of 1858, (22 V. c. 99) s. 377, the words "in cities and in such towns" having been inserted in the Revision of 1897 (60 V. c. 3, s. 3). The latter part "and shall take and subscribe the following oath," etc. was added in 1896 by 29-30 V. c. 5, s. 397. The form of oath was as in this section; but with the addition of the words "and that I will not connect myself with, or attend the meetings of any secret society while I am a member of the police force for the said of . So help me God." These words were struck out in 1896 by 31 V. c. 30, s. 41.

(a) As to the appointment of constables in other municipalities see ss. 493, 495 and note (a) to s. 495.

(b) "**Shall hold their offices at the pleasure of the Board.**"

See note (a) to s. 321.

(c) "**Shall take and subscribe.**"

See ss. 316, 317.

490. The Board shall, from time to time, make such regulations as they may deem expedient for the government of the force, for preventing neglect or abuse, and for rendering the force efficient in the discharge of all its duties. 55 V. c. 42, s. 442.

Board to make regulations.

Taken from the Act of 1858, (22 V. c. 99, s. 378.

491. The constables shall obey all lawful directions of, and shall be subject to the government of the Board; and they shall be charged with the special duties of preserving the peace, preventing robberies and other crimes and offences, and apprehending offenders; and shall have generally all the powers and privileges, and be liable to all the duties and responsibilities, which belong by law to constables duly appointed. 55 V. c. 42, s. 443; 60 V. c. 15, *Sched.* C. (78).

Duties of constables.

Taken from the Act of 1858 (22 V. c. 99,) s. 379, the words "crimes and offences" (in line 4) having been substituted by 60 V. c. 15, Sched. A (78) for the words "felonies and misdemeanours." See "*The Criminal Code, 1892*," Art. 535.

Sec. 491.

Note (a).

(a) Under "*The Criminal Code, 1892*," (*a*) every police officer, police constable, constable, or other person employed for the preservation and maintainance of the public peace, etc., is a "peace officer" within the meaning of the Code (*b*).

Article 552 (7), provides that,

Power to arrest without warrant.

> "Any peace officer may, without a warrant, take into custody any person whom he finds loitering in any highway, yard or other place during the night, [i. e. from 9 p. m. to 6 a. m.] (*c*) and whom he has good cause to suspect of having committed, or being about to commit any indictable offence, and may detain such person until he can be brought before a justice of the peace, to be dealt with according to law.
>
> No person who has been so apprehended shall be detained after noon of the following day without being brought before a Justice of the Peace."

Article 28 provides that a peace officer is justified in making such an arrest.

Article 552 (3) enacts that a peace officer may arrest without warrant any one whom he finds committing any offence against the Act, and Article 27 that he shall be justified in arresting without warrant any one whom he finds committing "any offence."

"*The Indian Act*," (*d*) provides that any constable or peace officer may arrest without warrant any person or Indian found gambling or drunk or with intoxicating liquor in his possession on any part of a Reserve, and may detain him until he can be brought before a Justice of the Peace.

Under "*The Animal Contagious Diseases Act*" (*e*):—

> "Any constable may without warrant apprehend any person found committing an offence against the provisions of the Act with respect to infected places,"

but such person shall not be detained in custody longer than 24 hours without the order of a Justice.

The words "found committing" used in the above Articles mean either that the person was actually seen committing the offence (*f*) or was pursued immediately or continuously after he had been seen committing it (*g*).

"Immediately" means immediately after commission of the offence, not immediately after the discovery of its commission. A pursuit after an interval of three hours would not be considered a fresh pursuit (*h*), and two hours has been held too long (*i*).

Article 22 of the Code provides that :—

> "Every peace officer who, on reasonable and probable grounds, believes that an offence for which the offender may be arrested without warrant has been committed, whether it has been committed or not, and who, on reasonable and probable grounds, believes that any person has committed that offence, is justified in arresting such person without warrant, whether such person is guilty or not." (*j*)

(*a*) Article 3 (*s*).

(*b*) As to the requisites of a notice of action, under R.S.O. c. 88, s. 1. in an action against such an officer for any act done by him in the execution of his duty, see note (c) to s. 468, *ante*.

(*c*) Art. 3 (*q*). (*d*) 57-58 V. c. 32, s. 7 (D). (*e*) R. S. O. (Ca.) c. 69, s. 44.

(*f*) *Roberts* v. *Orchard*, 2 H. & C. 769, (1863); *Horley* v. *Rogers*, 2 E. & E. 674 (1860).

(*g*) *Rex.* v. *Curran*, 3 C. & P. 397 (1828); *Hanway* v. *Boulthee*, 1 M. & R. 15 (1830); *Griffith* v. *Taylor*, 2 C. P. D. 194, (1877).

(*h*) *Downing* v. *Capel*, L. R. 2 C. P. 461 (1867); *Leete* v. *Harte*, L. R. 3 C. P. 322, (1868).

(*i*) *Reg.* v. *Walker*, 23 C. L. J. N. S. 123 (1887).

(*j*) This Article not only protects the peace officer from civil or criminal proceedings (under the circumstances mentioned), but it also authorizes the arrest and makes it lawful; *Reg.* v. *Clouthier*, 12 Man. Rep. 183 (1898).

Sec. 491.

Note (a).

Power to arrest without warrant.

And Article 25 that,—

> "If any offence has been committed for which the offender may be arrested without warrant, any one who on reasonable and probable grounds believes that any person is guilty of that offence is justified in arresting him without warrant, whether such party is guilty or not."

In order to justify an arrest under these sections the belief must be based on reasonable and probable grounds, *i.e.*, on such grounds as would lead any reasonable person, acting without bias or prejudice, to believe the person guilty of the offence. (*a*) But in *Malcolm* v. *Perth Mutual Fire Ins. Co.* (*b*) a finding (warranted by the evidence) that the defendant's officers, who had laid the information upon which the plaintiff was arrested for arson, believed it to be true, was held by ROSE, J. to negative the absence (in other words to establish the existence) of reasonable and probable cause; and the action (for malicious prosecution) was accordingly dismissed with costs, although the jury further found that the defendant's officers in laying the information did not act upon their belief in the plaintiff's guilt, but were act[illegible]d by improper motives. This judgment was affirmed by a Divisional Court.

The offence must be one for which the offender, if guilty, might be arrested without warrant. Driving an omnibus for hire without a license contrary to a Police Commissioners' by-law passed under s. 484 (1) does not justify the arrest of the offender, without warrant, although the officer who arrested a person in the act of infringing a by-law, may have believed that he was acting legally and in the discharge of his official duty. (*d*) In *Jordan* v. *McDonald*, (*e*) the defendant, a police officer of and within the Town of Windsor in the County of Hants, N.S., holding a warrant (not indorsed for service out of the jurisdiction) for the arrest of the plaintiff for unlawfully wounding a police officer at Windsor, arrested him at Halifax which is in another county. *Held*, that he could justify the arrest by showing that *he was then aware* that the plaintiff was guilty of the offence charged, and that the question whether the arrest was in fact made under the warrant or under Article 25 of the Code should have been submitted to the jury.

Assisting constable in making an arrest.

Article 23 provides that :—

> "Every one called upon to assist a peace officer in the arrest of a person suspected of having committed such an offence as last aforesaid (i.e., an offence for which the offender may be arrested without a warrant) is justified in assisting, if he knows that the person calling on him for assistance is a peace officer and does not know that there is no reasonable grounds (*sic*) for the suspicion."

And by Article 142,—

> "Every one is guilty of an indictable offence . . . . who, having reasonable notice that he is required to assist any magistrate or peace officer in the execution of his duty in arresting any person or in preserving the peace, without reasonable excuse omits to do so." (*f*)

Under Article 29,—

> "Every one is protected from criminal responsibility for arresting without warrant any person whom he on reasonable and probable ground, believes to have committed an offence and to be escaping from and to be freshly pursued by those whom he on reasonable and probable grounds, believes to have lawful authority to arrest that person for such offence." (*g*)

(*a*) *Allen* v. *Wright*, 8 C. & P. 522 (1838); *Leete* v. *Harte*, L.R. 3 C.P. 322 (1868); *Pocket* v. *Poole*, 11 Man. R. 275 (1896); *Scarry* v. *Saxton*, 28 Nova Scotia R. 278 (1896); *Lemire* v. *Duclos*, O.R. 13 S. C. 82 (1898).

(*b*) 29 O.R. 406 (1898).

(*c*) 29 O.R. 717 (1898).

(*d*) *Kelly* v. *Barton*; *Kelly* v. *Archibald*, 26 O.R. 608; 22 A.R. 522 (1895).

(*e*) 34 C.L.J.N.S. 425 (1897).

(*f*) See *Reg.* v. *Brown*, 1 C. & M. 314 (1841); *Reg.* v. *Sherlock*, L.R. 1 C.C. 20 (1866).

(*g*) As to what is "fresh pursuit" see *Downing* v. *Capel* and *Leete* v. *Hart*, supra.

Sec. 491.

Note (a).

Using force to effect arrest or prevent escape.

Articles 31 and 33 provide that:—

"Every one justified or protected from criminal responsibility in executing any sentence, warrant or process, or in making any arrest, and every one lawfully assisting him, is justified or protected from criminal responsibility (as the case may be), in using such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, process or warrant can be executed, or the arrest effected by reasonable means in a less violent manner." (a)

And

"Every peace officer proceeding lawfully to arrest, with or without warrant, any person for any offence for which the offender may be arrested without warrant, and every one lawfully assisting in such arrest, is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by such flight, unless such escape can be prevented by reasonable means in a less violent manner." (b)

But the protection of these sections does not extend to a case in which the force used is unnecessary and unreasonable, (c) where a constable who without necessity or justification handcuffed a prisoner, was held liable in trespass.(d) A constable is entitled upon the lawful arrest of a person charged with crime to take and detain any property found upon the prisoner, which will form material evidence for the prosecution.(e)

Breaches of the peace.

As to breaches of the peace, Articles 38 and 39 provide that—

"Everyone who witnesses a breach of the peace is justified in interfering to prevent its continuance or renewal, and may detain any person committing or about to join in or renew such breach of the peace, in order to give him into the custody of a peace officer; provided that the person interfering uses no more force than is reasonably necessary for preventing the continuance or renewal of such breach of the peace, or than is reasonably proportioned to the danger to be apprehended from the continuance or renewal of such breach of the peace." (f)

and

"Every peace officer who witnesses a breach of the peace, and every person lawfully assisting him, is justified in arresting any one whom he finds committing such breach of the peace, or whom he, on reasonable and probable grounds, believes to be about to join in or renew such breach of the peace."

(2) "Every peace officer is justified in receiving into custody any person given into his charge as having been a party to a breach of the peace by one who has, or whom such peace officer, upon reasonable and probable grounds, believes to have, witnessed such breach of the peace." (g)

Arrests under warrant.

As to arrests under warrant,—it is, under Section 32 of the Code, the duty of every one executing any process or warrant to have it with him, and to produce it if required.(h)

and

"It is the duty of every one arresting another, whether with or without warrant, to give notice, where practicable, of the process or warrant under which he acts, or of the cause of the arrest." (i)

"A failure to fulfil either of the two duties last mentioned shall not of itself deprive the person executing the process or warrant, or his assistants or the person arresting, of protection from criminal responsibility, but shall be relevant to the inquiry whether the process or warrant might not have been executed, or the arrest effected, by reasonable means in a less violent manner." (j)

(a) Article 31. (b) Art. 33. (c) See *Hamilton* v. *Massie*, 18 O.R. 585 (1889).

(d) *Wright* v. *Court*, 4 B. & C. 596 (1825); *Reg.* v. *Taylor*, 59 J.P. 393 (1895). As to the right to search a prisoner see *Reg.* v. *Boulton*, 12 Cox C.C. 95 (1871); *Agnew* v. *Jobson*, 13 Cox C.C. 625 (1875); *Gordon* v. *Denison*, 24 O.R. 576, 586, 605 (1893); 22 A.R. 315, 325 *et seq.* (1895).

(e) *Dillon* v. *O'Brien*, 20 L.R. (Ireland) C.L. 300 (1887). (f) Art. 38.

(g) Art. 39. And see also s. 497 of this Act. (h) Subs. 1.

Subs. 2. (j) Subs. 3.

Sec. 491.

Note (a).

Arrests under warrant.

Provided the requirements of Article 32 of the Code are complied with, a warrant of commitment, valid on its face and issued by a magistrate or magistrates having jurisdiction over the offence, protects a constable executing it from civil as well as criminal responsibility, though the warrant itself may be irregular.(a)

It is (in effect) provided by the Imperial Statute of 24 Geo. II c. 44 (1751), s. 6—which is in force in this Province by virtue of the Provincial Act 32 Geo. III. c. 1 (1792)—that "No action shall be brought against any constable . . . or against any person . . . acting by his order *and* in his aid for anything done in obedience to any warrant under the hand and seal of any Justice of the Peace until a written and signed demand has been served or left at the usual place of abode of the defendant by the party . . . intending to bring such action or by his attorney . . . for the perusal and copy of the warrant"; and also that if the action is brought jointly against the Justice of the Peace and the constable or person so aiding him, the jury shall, on proof of the warrant, give a verdict for the constable.

> "This provision was made for the protection of constables acting in obedience to a warrant issued by a Justice of the Peace without authority."(b)

The section does not apply where the constable had no warrant, (c) or where, having a warrant, he has not acted strictly in obedience to it.(d)

It seems that a constable executing a warrant of commitment issued on default of payment of a fine and costs has no authority to receive the fine and costs and discharge the prisoner.(e)

When police constable may take bail.

When officers in charge of police station may take bail.

R. S. O. c. 100, entitled "*An Act to authorize Police Constables to take bail*," and applying only to cities, provides that:

> **1.** Where a person charged with an offence against any Statute of the Province of Ontario, or against any by-law passed under any such Statute, is taken into custody either with or without the warrant of a Justice of the Peace and is brought into a police station in a city at any time during the day or night, the police officer in charge of the station may, if he thinks the case a proper one, take bail without fee from such person, by recognizance conditioned for his appearance for examination within two days before the Police Magistrate or other Justice in the city at the time and place therein specified. 59 V. c. 27, s. 1.

Effect of recognizance so taken.

> **2.** A recognizance so taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof as if taken before a Justice of the Peace. 59 V. c. 27, s. 2.

Entry of recognizance by person taking same.

> **3.** The said police officer shall enter in a book the name, residence and occupation of the person entering into the recognizance, and of his surety or sureties, if any, with the condition of the recognizance, and the sums acknowledged, and a proper book shall be kept in every city police station for the purpose of making such entries. 59 V. c. 27, s. 3.

Return of recognizance to Magistrate on day for appearance of recognizor

> **4.** The said police officer shall make a return of all recognizances taken by him to the Police Magistrate (or other Justice present) at the time when, and place where, the person charged is required to appear. 59 V. c. 27, s. 4.

(a) *Reg.* v. *King*, 18 O.R. 566 (1889).

(b) *Per* ARMOUR, C.J., in *Alderich* v. *Humphrey*, 29 O.R. 427, 433 (1898), citing *Parton* v. *Williams*, 3 B. & Ald. 330, 333 (1820); *Hoye* v. *Bush*, 1 M. & G. 775 (1840); and see *Cotton* v. *Kadwell*, 2 Nev. & M. 399 (1833).

(c) *Postlethwaite* v. *Gibson*, 3 Esp. 226 (1800); *Ballinger* v. *Ferris*, 1 M. & W. 628 (1836).

(d) *Money* v. *Leach*, 3 Burr. 1742, 1768 (1765); *Prestidge* v. *Woodman*, 1 B. & C. 12 (1822); *Munday* v. *Stubbs*, 10 C.B. 432 (1850); *Parton* v. *Williams*, supra; *Pepperorn* v. *Hofman*, 9 M. & W. 618 (1842); *Barons* v. *Luscombe*, 3 A. & E. 589 (1835); *Crozier* v. *Candey*, 6 B. & C. 232 (1827).

(e) *Arnott* v. *Bradly*, 23 C.P. 1 (1873). See *Hickey* v. *Fitzgerald*, 41 U.C.R. 303 (1877).

Sec. 492 (1).

Remuneration and contingent expenses.

492—(1) The council shall appropriate and pay such remuneration for and to the respective members of the force, as may be required by the Board of Commissioners of Police; and shall provide and pay for all such offices, watch-houses, watch-boxes, arms, accoutrements, clothing and other necessaries and necessary expenses as the Board may from time to time deem requisite and require for the payment, accommodation, use and maintenance of the force; but this section shall not affect or apply to any city in which, by the special Act of incorporation thereof, provision is made for the appointment, control and management of the police by the council. 55 V. c. 42, s. 444; 58 V. c. 42, s. 16.

The first part of the section is taken from the Act of 1866 (29-30 V. c. 51), s. 400. The words "and necessary expenses" in lines 5 and 6 and the word "maintenance" in line 8 were inserted in 1895 by 58 V. c. 42, s. 16. The final clause "but this section shall not apply," etc., is an attempt (unnecessarily made in the Revision of 1883) to consolidate with the section a part s. 23 of 44 V. c. 24. See *ante* under s. 488.

Amount to be fixed by Board of Police Commissioners.

(a) In the Act of 1858, (22 V. c. 99,) s. 380, by which this provision was first made, the words used were:—

> "The *council shall fix* and pay a reasonable remuneration to and for the respective members of the force," etc.(*a*)

Accordingly in *Re Prince and City of Toronto*, (*b*)—where the city council had fixed the remuneration of a chief constable at a sum which the Court could not consider so unreasonable as to constitute evidence of an intention to evade the duty imposed by the Legislature, but the Board of Commissioners of Police, thinking it insufficient, had increased the salary by $300—a mandamus to the city requiring them to pay the difference was refused.

Under "*The Public Schools Act*" (*c*), municipal councils are required to raise "such sums as may be required by the trustees for school purposes." These sections do not (nor does the present section) require the submission to the council of the estimates according to which the amount stated in the requisition is made up (*d*).

And Council must provide.

(b) The duty of the council is imperative; "they shall appropriate and pay," . . . . "shall provide and pay." It may be enforced by mandamus (*e*). But the Board of the Commissioners of Police cannot dictate to the Council the mode in which the money is to be procured (*f*).

Police benefit funds.

(c) See also s. 591 (9) as to aiding by money grants or otherwise the establishment and maintenance of superannuation and benefit funds for the benefit of members of the police force in cities and towns.

(*a*) See C. S. U. C. c. 54, s. 402. (*b*) 25 U. C. R. 175 (1866).

(*c*) R.S.O. c. 292, s. 67 (1). And see "*The High Schools Act*," R.S.O. c. 293, s. 33 (1).

(*d*) See *Trustees of Port Rowan High School and Township of Walsingham*, 22 C.P. 11 (1873). The cases of *School Trustees of Town of Brockville and Town of Brockville*, 9 U.C.R. 302 (1851); *School Trustees of Town of Port Hope and Town of Port Hope*, 4 C.P. 418 (1854); *School Trustees of City of Toronto and City of Toronto*, 23 U.C.R. 203 (1863); *Re Coleman v. Kerr*, 27 U.C.R. 5 (1867) and *Re School Trustees of Mount Forest and Village of Mount Forest*, 29 U.C.R. 422 (1869), cited in previous editions of the MUNICIPAL MANUAL as authority for the statement that such an estimate should be submitted, are no longer authorities, having all been decided under Statutes which expressly required the trustees to "lay before the council *an estimate* of the sums which they think requisite." See 13-14 V. c. 48, s. 24 (6); C.S.U.C. c. 64, s. 79 (11).

(*e*) See *School Trustees of Town of Brockville and Town of Brockville*, 9 U.C.R. 302 (1851); *Re School Trustees of City of Toronto and City of Toronto*, 23 U.C.R. 203 (1863).

(*f*) *Re School Trustees of Village of Galt and Village of Galt*, 13 U.C.R. 511, 521 (1855); *Re School Trustees of City of Toronto and City of Toronto*, 23 U.C.R. 203, 205 (1863).

(2) The council may in its discretion appropriate any sum necessary for and may pay for the protection, defence or indemnification of members of the police force in proper cases, where suits or prosecutions are brought against members of the force, and costs are necessarily incurred and damages recovered, and where the Board of Commissioners of Police certify to the council that the case is a proper one for such payment or indemnity. 59 V. c. 51, s. 10.

Indemnifying police officers.

Added in 1896 by 59 V. c. 51, s. 10.

(d) As to the liability of municipal corporations for the acts of policemen and as to the effect of using corporate funds in the manner here authorized, see the note under s. 537 on the "Liability of Municipal Corporations for acts or defaults of Agents or Officers."

493. The council of every town not having a Board of Commissioners of Police shall and the council of every village may, appoint one chief constable and one or more constables for the municipality; and the persons so appointed shall hold office during the pleasure of the council. 55 V. c. 42, s. 445.

Constables in towns and villages.

Taken from 37 V. c. 16, s. 12; *Cf.* 12 V. c. 81, s. 74; 22 V. c. 99, s. 370; 29-30 V. c. 51, s. 390; 36 V. c. 48, s. 344.

(a) As to tenure of office see note (a) to s. 321. As to the liability of the municipality for the acts of constables see the note under s. 537 on the "Liability of Municipal Corporations for acts or defaults of Agents or Officers." As to the appointment of constables under the *Act respecting Constables* (R.S.O. c. 99), see note (a) to s. 495.

494. Where in a town there was on the 24th day of March, 1874, a Board of Commissioners of Police, constituted under the Acts then in force respecting municipal institutions in this Province, the council of the said town may, by by-law, dissolve and put an end to the Board, and thereafter the council shall have and exercise all powers and duties which might, under said Acts, have been had or exercised by the Board; and unless and until so dissolved and put an end to, the Board shall have and exercise all the powers and duties which, but for this section, would have been exercised or had by the Board. 55 V. c. 42, s. 446.

Dissolution of Boards of Police Commissioners in towns.

Taken from 37 V. c. 16, s. 13. The date named is that on which the Act came into force.

495. The council of every county and township may appoint one or more salaried constables for the municipality, to hold office during the pleasure of the council. Every such constable, and any city, town or village constable, shall have the same powers and privileges and be subject to the same liability and to the performance of the same duties, and shall be subject also to suspension by the Judge of the County Court in the same manner, and may act within the same limits, as a constable appointed by the Court of General Sessions. 55 V. c. 42, s. 447.

County and township constables.

Their powers.

Taken from "*The Municipal Amendment Act, 1884*": 47 V. c. 32, s. 23 (1).

Sec. 495.

Note (a).

(a) **County etc., Constables.** Constables may also be appointed under R.S.O., c. 99 entitled "*An Act respecting Constables.*" By s. 1 of that Act:—

Appointment by the General Sessions.

1. "The Justices of the Peace may from time to time, at any sitting or adjourned sitting of the Court of General Sessions of the Peace, but not at any special sessions, appoint a sufficient number of fit and proper persons to act as constables in each township, incorporated village, police village and place within their county, and may, in like manner, from time to time, in their discretion, dismiss any constable so appointed."

Sections 2 and 3 prescribe the oath to be taken by constables so appointed and the term of their office.

Sections 12-15 provide for the appointment of County Constables by the County Court Judge, and s. 16 for such appointment by County or District Police Magistrates. They are as follows:—

Appointment by County Judge.

12. To prevent injurious delay in appointing county constables, arising from the long intervals between the sittings of the Courts of General Sessions of the Peace, any Judge of a County Court of any County, may from time to time, appoint constables for the county.

13. The Judge making the appointment shall forthwith notify the Clerk of the Peace thereof.

Clerk to report to the General Sessions.

14. The Clerk of the Peace shall report every such appointment to the next Court of General Sessions of the Peace which is holden after he receives notice thereof from the Judge, and unless at such Court the appointment is revoked by order duly passed in Sessions, the same shall continue as if it had been made at such Court.

Authority of Constables appointed by Judge.

15. A constable so appointed by a Judge as aforesaid shall, during the continuance of the appointment, have the same authority and privileges and be subject to the same liability and the performance of the same duties as if appointed by the Court of General Sessions of the Peace, and every Constable appointed by any authority under this Act shall while he holds office be a County Constable.

Certain Police Magistrates may appoint temporary Constables.

16.—(1) A salaried County or District Police Magistrate shall have power from time to time to appoint a Constable for the county or union of counties or district of which he is a Police Magistrate, such constable to hold office for not more than thirty days.

Appointment by Police Magistrates.

(2) The Police Magistrate making any such appointment shall forthwith notify the Provincial Secretary thereof.

(3) The appointment may be revoked by the Police Magistrate, or by the Provincial Secretary, before the expiration of thirty days.

(4) A constable appointed by a Police Magistrate shall have the same authority and privileges, and be subject to the same liability and the performance of the same duties, as if appointed by the Court of General Sessions of the Peace.

County High Constables.

As to the appointment, oath, duties and tenure of office of county high constables, it is provided by ss. 4-11 of the Act that:

Appointment, remuneration and equipment.

4. The municipal council of every county shall, where a High Constable has not been appointed, or where the office is vacant, appoint a fit and proper person to be high constable for the county, and may fix his remuneration by salary or otherwise, and may allow him such sums for expenses, and may supply him with such arms, accoutrements, clothing and other necessaries as may be deemed proper.

When council neglects to appoint.

5. In case of a vacancy, if the council does not within three months after such vacancy occurs fill the same, the appointment may be made by the County Judge, the Warden, the Sheriff and the County Crown Attorney, or any three of them, and the person so appointed shall hold the office of high constable until his appointment is confirmed or a new appointment made by the council under the authority of this Act.

Existing officers continued.

6. In counties where there is now a high county constable duly appointed, he shall continue to be high constable under the same tenure of office, and shall have the same powers and privileges, and be subject to the same liability, and to the performance of the same duties.

and shall be subject also to suspension by the Inspector of Legal Offices, in the same manner as if he had been appointed under this Act.

Oath of County High Constables.

7.—(1) Every person who may hereafter be appointed under this Act to be a high constable shall, before entering on the duties of office, take and subscribe the following oath, which any Justice of the Peace may administer:

"I, , do swear that I will well and truly serve Our Sovereign Lady the Queen in the office of high constable for the county (*or* united counties) of without favour or affection, malice or ill-will; and that I will, to the best of my power, cause the peace to be kept and preserved, and will prevent all offences against the person and properties of Her Majesty's subjects; and that while I continue to hold the said office, I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law: So help me God."

(2) The oath, together with a copy of the by-law, resolution or other writing by which the high constable was appointed, shall be by him deposited in the office of the Clerk of the Peace, who shall immediately notify the Inspector of Legal Offices of the appointment.

Tenure of office.

8. All persons appointed to be high constables shall hold office during the pleasure of the council of the county or united counties for which they are appointed.

Duties.

9. Every high constable so appointed or continued in office under this Act shall have the supervision of all the constables in his county, and he shall be charged with the special duties of preserving the peace, preventing robberies and other crimes, and apprehending offenders; and shall have generally all the powers and privileges and be liable to all the duties and responsibilities, which belong to constables duly appointed.

May be appointed Provincial Constables.

10. The high constable of any county may upon the recommendation of the Sheriff and County Crown Attorney, be, by the Lieutenant-Governor in Council, appointed to be or authorized to exercise the powers of a provincial constable.

Fees.

11. Every high constable shall for services rendered by him be entitled to the fees allowed by law, unless the council otherwise provides for payment therefor."

Provincial and District Constables.

Provincial Constables, (who have authority to act in any part of the Province) and Constables for any District, or Provisional County, or for any part of the unorganized territory of the Province may be appointed by the Lieutenant-Governor under R. S. O. c. 99, s. 21, and R. S. O. c. 109, s. 48.

Special Constables.

As to the appointment (by any two or more Justices of the Peace) of Special Constables in case of actual or apprehended tumult, riot or felony, and as to the powers and duties of such special constables and the penalties imposed upon such as refuse to take the oath or to act or to obey orders, see R. S. O. c. 99, ss. 23-43, and as to the protection of such officers against vexatious actions, ss. 44, 45.

As to the appointment of special constables at municipal elections or at the voting on a by-law, see s. 110 of "*The Municipal Act*;" as to the appointment of special constables at public meetings held under R. S. O. c. 230, see s. 13 of that Act.

As to the payment of special constables see the note under s. 530 on the "Expenses of the Administration of Justice."

Section 22 of R. S. O. c. 99 provides that:

Exemption of volunteers from serving as constables.

"The officers, non-commissioned officers and men of corps of volunteers shall, while they continue such, be exempt from serving as constables (except as special constables); and a certificate under the hand of the officer commanding any such corps shall be sufficient evidence of the service in his corps of any officer, non-commissioned officer or man for the then current year, and of his exemption as aforesaid."

Section 17 and 20 provide that:

Suspension of constables by County Court Judge.

17. "The Judge of the County Court may suspend from office a High Constable or any County Constable for any period in the discretion

Sec. 495.

Note (a).

Suspension of High or County Constables.

of the Judge, but not beyond one week after the time appointed for the next sittings of the General Sessions of the Peace; the suspension shall be by notice in writing, and in case the Judge considers the suspended officer deserving of dismissal, the Judge shall, immediately after suspending him, report the case fully to the Clerk of the Peace for submission to the Justices at the next General Sessions of the Peace; and the Justices may dismiss the officer, or direct him to be restored to his office, after the period of his suspension has expired, or after such further period of suspension as they may order."

20. "The Inspector of Legal Offices may suspend any Constable for any period not beyond one week after the next meeting of the county council. The suspension shall be by notice in writing, and in case the Inspector considers the suspended officer deserving of dismissal, the Inspector shall immediately after suspending him report the case fully to the county clerk for submission to the county council at its next meeting; and the council may dismiss the officer, or direct him to be restored to his office after the period of his suspension has expired, or after such further period of suspension as the council may order."

Fees of salaried constables.

496. Where any salaried constable is appointed for any municipality, whether by the municipal council or by the Board of Commissioners of Police, the council may agree that such constable shall keep for his own use his fees of office; or may require that the said fees shall be paid to the municipal treasurer for the use of the municipality. 55 V. c. 42, s. 448.

Taken from "*The Municipal Amendment Act, 1884*" (47 V. c. 32), s. 23 (2).

(a) See *Town of Stratford* v. *Wilson* (*a*) referred to in note (a) to s. 320.

Arrests by constables for alleged breaches of the peace not committed in their presence.

497. In case any person complains to a chief of police or to a constable in a town or city of a breach of the peace having been committed, and in case such officer has reason to believe that a breach of the peace has been committed, though not in his presence, and that there is good reason to apprehend that the arrest of the person charged with committing the same is necessary to prevent his escape, or to prevent a renewal of a breach of the peace, or to prevent immediate violence to person or property, then, if the person complaining gives satisfactory security to the officer that he will, without delay, appear and prosecute the charge before the Police Magistrate or before the Mayor or sitting Justice, the officer may, without warrant, arrest the person charged, in order to his being conveyed as soon as conveniently may be before the Police Magistrate, Mayor or Justice, to be dealt with according to law. 55 V. c. 42, s. 449.

Taken from the Act of 1858 (22 V. c. 99), s. 371.

(a) The provisions of this section are now in effect superseded by those of Articles 38 and 39 of "*The Criminal Code, 1892*," quoted in note (a) to s. 491 *ante*. See also Articles 31 and 33 of the Code quoted in the same note.

Until a Board of Commissioners of Police is organized, mayor, etc., may suspend chief constable, etc., from office, etc.

498. Until the organization of a Board of Commissioners of Police in a town, the mayor or Police Magistrate thereof may suspend from office, for any period in his discretion, the chief constable or any constable of the town, and may, if he chooses, appoint some other person to the office during such period;

(*a*) 8 O.R. 104 (1884).

and in case he considers the suspended officer deserving of dismissal, he shall, immediately after suspending him, report the case to the council, and the council may dismiss such officer, or may direct him to be restored to his office after the period of his suspension has expired. 55 V. c. 42, s. 450; 60 V. c 3, s. 3; c. 15, *Sched.* C. (79).

Taken from s. 372 of the Act of 1858, (22 V. c. 90), which was based upon s. 71 of the Act of 1849. The words, "and the city council shall have the like powers as to the high bailiff of the city," were struck out in 1897 by 60 V. c. 15, Sched. C (79).

Incapacity of such officer to act.

499. During the suspension of such officer he shall not be capable of acting in his office, except by the written permission of the mayor or Police Magistrate who suspended him; nor during such suspension shall he be entitled to any salary or remuneration. 55 V. c. 42, s. 451.

Salary to cease.

Taken from s. 373 of the Act of 1858, the orighal of which was s. 71 of the Act of 1849 (12 V. c. 81).

DIVISION IV.—COURT HOUSES, GAOLS, REFORMATORIES AND PLACES OF CORRECTION OR IMPRISONMENT. (SECS. 500-529).

Court Houses and Gaols.

Court houses and gaols.

The Act 32 Geo. III. c. 8—which was passed at the first Session of the First Parliament of Upper Canada (1792)—provided (s. 1) that a gaol and court house should be erected in each and every District throughout the Province. The erection and control of these buildings was at first committed to the District Magistrates "at their General Quarter Sessions assembled," but by "*The District Councils Act*," (a) the powers and duties of the Quarter Sessions were transferred to the District Councils to be elected under that Act; and by 12 V. c. 79 the District Gaols and Court Houses, etc., were vested in the counties and unions of counties mentioned in the Schedule to the Act. (b). The Lieutenant-Governor in Council may set aside and appropriate Crown lands for the sites of court houses and gaols. (c) Before a provisional county can be erected into a separate municipality it must have procured the necessary land at the county town, and erected thereon the proper buildings for a court house and gaol (d) which must be built according to plans approved by the Inspector of Prisons and Public Charities and sanctioned by the Lieutenant-Governor (e). The Act 61 V. c. 36 (1898) authorizes (under the circumstances therein mentioned) (f) an arrangement by a county council for keeping and maintaining in its county gaol the prisoners committed to the gaol of an adjoining county (s. 1) and the Lieutenant-Governor may by proclamation declare such gaol to be the common gaol of such adjoining county (s. 2).

Lock-up Houses.

Lock-up houses.

The Act 10 & 11 V. c. 41 (1847), reciting that "it is requisite for the safe-keeping of prisoners under examination before magistrates and for the more effectual punishment of disorderly persons and other offenders, that there should be in Upper Canada places, other than the District Gaols, in which such persons may be confined," empowered (s. 2) any District Council, upon the petition of two-thirds of the inhabitant householders of any incorporated town or village, to authorize the expenditure, under the direction of two Justices of the Peace, of a sum not exceeding £100 in the purchase of land and the erection of a lock-up house in such town or village, (s. 3) and to establish a lock-up house in any such town or village containing not less than 100 adult inhabitants and distant at least ten miles from the county town. Every such lock-up house was to be placed in the charge and keeping of a constable specially appointed for that purpose by the Quarter Sessions (s. 3); and s. 5 provided that:

> "It shall be lawful for any Justice of the Peace, residing near any town or village where a lock-up house may have been established, or nearer to the same than to the district town, to authorize by written order the confinement or detention therein of any person or persons who may be charged on oath with having committed any criminal offence, and whom it may be lawful and necessary to detain until such person may be examined and fully committed for trial to the common gaol. [illegible] dismissed

(a) 4 & 5 V. c. 10, s. 39.
(b) See now R. S. O. c. 3, s. 6.
(c) R. S. O. c. 28, s. 13.
(d) See *ante* ss. 44, 46 and notes thereon.
(e) R. S. O. c. 321, ss. 22, 26.
(f) See ss. 3-5 of the Act.

Lock-up houses.

as the case may be, so as such confinement or detention shall not exceed the period of two days; and also all persons found in the streets or highways in a state of intoxication, and all persons who may have been convicted of unlawfully desecrating the Sabbath, and generally, all persons convicted, on view of such Justice of the Peace, or on the oath of one or more credible witnesses, of any offence cognizable by the law of Upper Canada, so as such detention or confinement in any of the last mentioned cases shall not exceed the period of twenty-four hours; and to authorize the detention therein of any person committed to the common gaol, until such person can be conveyed to such gaol."

By the Municipal Act of 1849, (12 V. c. 81) s. 60 (11), the council of every village was empowered to pass by-laws:

"For establishing, maintaining and regulating one or more public lock-up houses in and for such village for the detention and imprisonment of all persons sentenced to an imprisonment of not more than ten days, under any of the by-laws of such village, and of all other persons lawfully detained in custody for examination before a Justice of the Peace or other competent authority on any charge of having committed any offence against the law or the by-laws of such village, or detained for the purpose of his transmission to any common gaol or house of correction upon commitment or otherwise either for trial or in the execution of any sentence that may have been passed upon him either by a Justice of the Peace or other competent authority in that behalf."

And ss. 71 and 82 gave similar powers to the councils of cities and towns.

The Act of 1850, (13 & 14 V. c. 64), s. 16, provided for the establishment by any county council of a lock-up house in any town, village, or police village within the county, and for payment out of county funds to the constable in charge thereof (who was to be appointed by the Quarter Sessions) of such salary as the county council might deem just and reasonable.

See now ss. 518-520 and 522-523 of this Act. *Cf.* also s. 5 of 10 & 11 V. c. 11 with s. 109 of 29 & 30 V. c. 51, printed *post* p. 598.

Houses of Industry.

Houses of Industry.

The establishment of Houses of Industry was first authorized in 1837 by 7 Wm. IV. c. 24, which enacted (s. 1) that it should be the duty of the Court of General Quarter Sessions of the Peace in each District, after the presentment of three successive Grand Juries recommending the same, to erect a House of Industry for the reception and employment of the poor and the indigent and of the idle and destitute, and to appoint five Inspectors to manage the same. See ss. 524-526 of this Act.

Houses of Correction.

Houses of Correction.

As to Houses of Correction, see *post*, s. 528.

Registry Offices

Registry offices.

As to Registry Offices—"*The Registry Act*," (R.S.O. c. 136) provides that

"Whenever any county is separated for judicial purposes from a union of counties, or a new county is formed and set apart for judicial purposes, there shall be a separate Registry Office established therein by the Lieutenant-Governor in Council, which office shall be kept in the county town in like manner as in other county towns," (s. 3), and that for the safe-keeping and protection of all books, memorials, duplicates, and other instruments of whatever description, and plans, belonging to the office of Registrar, the council of every county where at any time there are no safe and proper fire-proof offices and vaults provided by the council, or where hereafter any Registry Office is established, shall provide, furnish and maintain, and keep in good repair, a safe and fire-proof Registry Office, fire-proof vaulted, upon a plan and on a site to be approved by the Lieutenant-Governor in Council; and the said council shall keep the said Registry Office furnished with fuel and furniture and in good repair; and towns separated from counties for municipal purposes, and cities in which no separate Registry Offices exist, shall bear a rateable proportion of the expense thereof, based on the assessment of all the municipalities within the jurisdiction of the county. (s. 9.)

A by-law by the council of a union of counties, levying an assessment on one only of the counties for building a registry office therein was quashed (*a*).

COURT HOUSES, GAOLS, ETC.

Establishment.

County council may pass by-laws as to county buildings.

500. Every county council may pass by-laws for erecting, improving and repairing a court house, gaol, house of correction and house of industry, upon land being the property of the municipality, and shall preserve and keep the same in repair and provide the fo d, fuel and other supplies required for the same. 55 V. c. 42, s. 452

Taken from the Act of 1858, (22 V. c. 99,) s. 381. *Cf.* 12 V. c. 81, ss. 36, 41 (2).

(*a*) *Smith* v. *United Counties of Prescott and Russell*, 10 U.C.R. 282. (1852).

Notes (a) to (d).

(a) As to the acquisition of the land required for these purposes see ss. 501, 524 (1) (2), 534 (1): R.S.O., c. 28, s. 13.

(b) "Every county council." This includes a provisional municipal council (*a*). In *Pim* v. *County of Ontario*, (*b*) the defendants were held liable for the price of work done in erecting a gaol and court house for a provisional county, although there was no contract under seal (*c*). But in *Silsby* v. *Village of Dunnville*, (*d*), it is said by BURTON, J. A., at p. 529 that

> "Some of the cases referred to in *Pim* v. *County of Ontario* have lost much of their weight as authorities since the decision of the Lords Justices of Appeal in *Hunt* v. *Wimbledon Local Board*, 4 C.P.D. 48,".

And it is to be noted that the power given by this section is "to pass *by-laws*," thus implying the possession and use of a corporate seal (*e*).

It seems that the court house and gaol may only be erected at the county town (*f*).

(c) "May pass by-laws for erecting." The exercise of the power seems to be discretionary (*g*).

(d) "Shall keep the same in repair." In order to secure the keeping of gaols and court houses in repair it is provided by ss. 24-26 of "*The Prison and Asylum Inspection Act*," R. S. O. c. 721 that

Liability of municipalities for accidents arising from non-repair of municipal buildings etc.

> "In case an Inspector at any time finds that the common gaol in any county or city in this Province is out of repair—or is or has become unsafe or unfit for the confinement of prisoners, or is not constructed or maintained in conformity with the provisions of the next preceding section, or that the same does not afford sufficient space or room for the number of prisoners usually confined therein—he shall forthwith report the fact to the Lieutenant-Governor, and shall at the same time furnish a copy of such report to the council of the county or city to which such common gaol belongs, and the council shall thereupon appoint a special committee to confer with the Inspector, and to arrange with him as to the repairs, alterations or additions that may be deemed necessary to remedy the defect so reported upon by the Inspector, and to report the same to the council, and in case the Inspector and the committee do not agree upon the repairs, alterations and additions the matter shall then be referred to the Lieutenant-Governor in Council to decide between them, which decision shall be reported to the council; and it shall be the duty of the council in either case, by by-law, to order and provide for the making of the repairs, alterations or additions, and for the appropriation of any money that may be required for that purpose, and in default thereof the council may be proceeded against by *mandamus* issued out of the High Court at the instance and prosecution either of the Attorney-General for Ontario or any private prosecutor, to compel the making by the council of such repairs, alterations or additions, and the council and the members and officers thereof shall be subject to all the process of the Courts for contempt of the orders or process thereof," (s. 24).
>
> "The Inspector and the special committee of the county or city council shall, in arranging the particulars of the necessary repairs, alterations or additions, as aforesaid, have due regard to the plan of the gaol, and to the ability of the council to meet the expense thereof, and in the case of alterations or additions, shall make the same as few and inexpensive as, in their opinion, the requirements of this Act and of the public service will admit." (s. 25).

(*a*) S. 2 (1).

(*b*) 9 C. P. 304 (1849).

(*c*) See also *Keating* v. *District of Simcoe*, 1 U.C.R. 28 (1844).

(*d*) 8 A. R. 524 (1883).

(*e*) See note **(cc)** to s. 9, *ante*, p. 41 and notes **(a)** and **(b)** to s. 333, *ante*, p. 347.

(*f*) See note **(c)** to s. 44. *Municipality of Lunenburg* v. *Attorney General of Nova Scotia*, 20 S. C. R. 596, (1892).

(*g*) *Cf.* s. 45 with s. 479 (1), and see *Justices of District of Huron* v. *Huron District Council*, 5 U.C.R. 574, (1848): *Reg.* v. *Municipal Council of County of Bruce*, 11 C. P. 575, (1871). But see next note.

SEC. 66

Note (d).

"The provisions of this Act as to the inspection, construction, and repairing of gaols shall, so far as may be, apply to court houses (s. 20.)

Liability of municipalities for accidents arising from non-repair of municipal buildings.

Under "*The District Councils Act*," (*a*) which provided that no District Council should pass a by-law for performing any public work . . . without having first received an estimate of such work prepared or examined and reported upon by the District surveyor, an officer appointed by the warden (*b*) who was himself appointed by the Crown (*c*), it was held that the council could not be made liable in damages for an injury resulting in death, occasioned to an individual in walking up the court house steps, which had been allowed to fall into an unsafe and dangerous condition (*d*). But now, in case of such an accident, the municipal corporation would be liable, (*e*) the responsibility of the corporation being precisely the same as that of any other property owner (*f*). In *Earle* v. *City of Victoria*, (*g*) the municipality was held liable for damages caused by a broken wire belonging to the city fire alarm system falling upon the electric wires of a private corporation. But in *Lazarus* v. *City of Toronto*, (*h*) it was held that the defendants, occupants of part of a public building in Toronto and owners of the land upon which it stood, were not liable for injury caused by a fall of snow from the roof, there being no evidence of negligent construction of the house or roof and no by-law regulating the removal of snow. In *Schmidt* v. *Town of Berlin*, (*i*) a municipal corporation, owners of a public park and a building therein, were held not to be liable to a mere licensee for personal injuries sustained owing to the want of repair of the building, knowledge by them of such want of repair not being shewn. (*j*) Still less would they be liable in the case of a mere volunteer who for his own purposes and without invitation from or notice to the corporation goes upon such premises or into such a building (*k*).

In *McCann* v. *City of Toronto* (*l*) the facts were as follows:—A fire hall was in course of erection for the defendants by competent contractors. Before it had been taken over by the city, a trap-door in the roof, the construction of which was expressly required by the specifications, was blown off, on account of the want of proper fastenings, and fell, injuring the plaintiff. The contract provided that all work should be done in a good and workmanlike manner, and that the contractors should be responsible "for injury to any person or persons, either workmen or the public, from any cause which might have been prevented by them." Damages were recoverred in an action by the plaintiff against the city, on the findings of the jury that there had been negligence on the part of the city and that the specifications did not stipulate for fastenings. The city (on the same evidence) sought to recover from the contractors, brought in as third-parties defendant on the terms that the findings in the action should be binding on them only as to the amount of damages, and that the question of their liability should be afterwards tried:—*Held*, that, under the circumstances the corporation could not recover over against the contractors.

Per STREET, J., (p. 652):—

"The corporation have been made liable to pay damages, because the jury have found that they did not stipulate that the work should

(*a*) 4-5 V. c. 10, s. 46.

(*b*) S. 37. (*c*) S. 4.

(*d*) *Hawkshaw* v. *Dalhousie District Council*, 7 U.C.R. 590, (1850)

(*e*) *Cassidy* v. *City of Belleville*, *coram* FALCONBRIDGE, J., 19th Oct., 1892, (not reported.)

(*f*) See s. 9, note (aa) *ante*, p. 39: Beven on Negligence, p. 195: Jones on Municipal Negligence, ss. 156, 159: Wharton on Negligence (2nd Ed.) ss. 829, 831: Dillon ss. 985, 986: Fiedeman s. 336 *a*: *Roberts* v. *Mitchell*, 21 A. R. 433 (1894), referred to more fully in note (a) to s. 559.

(*g*) 2 B. C. R. 156 (1892)

(*h*) [illegible] R. 9 (1859).

(*i*) 2[illegible] R. [illegible] (1894).

(*j*) See also *Moore* v. *City of Toronto*, 26 O. R. 59, (1893) *note*.

(*k*) *Page* v. *Toronto Public School Board*, 23 A. R. 597 (1896), 27 S.C.R. 448, (1897): *Wetzler* v. *Richelieu and Ontario Navigation Co.*, Q. R. 13 S. C. 336 (1898): and *cf. Grand Trunk R.W. Co.*, v. *Anderson*, 27 O. R. 441: 24 A. R. 672 (1897), 28 S.C.R. 541 (1898).

(*l*) 28 O. R. 650 (1897).

Sec. 500.

Note (d).

Liability of municipalities for accidents arising from non-repair of municipal buildings, etc.

be done in a safe manner. In now seeking to recover these damages over from the contractors they appear . . . to be confronted by a dilemma from which there seems no escape. If the finding of the jury was right, then the corporation cannot ask that the result of its own negligence should be visited upon the innocent contractors. If, on the other hand, the finding of the jury was wrong (as I think it was), and the accident was due to the negligence of the contractors, then I must hold that the corporation was never liable to the plaintiff at all, that the contractors alone are liable, and therefore that the corporation cannot recover over from them.

"I do not see that the covenant of the contractors . . helps the city . . It is an agreement . . that they and not the corporation shall be responsible *to third parties* for injuries arising from causes which the contractors might have prevented . . There has been no breach of it, for the contractors have never been asked by any third person to pay damages; and they still remain technically liable to any third person who has been injured by their negligence."

(e) As to an arrangement for keeping and maintaining in the gaol of an adjoining county the prisoners committed to a county gaol, see 61 V. c. 36 (1898).

Acquiring land for court houses in cities.

501. Every county council may, when a court house is required to be erected within the limits of a city, pass by-laws for entering upon, taking, using and acquiring such land as may be necessary or convenient for the purposes of such court house. 55 V. c. 42, s. 453.

Taken from 43 V. c. 24, s. 20 (1880).

(a) See *ante*, s. 325, note (b).

Gaols and court houses in counties and cities, etc., not separated.

502. The gaol, court house and house of correction of the county in which a city or town not separated for all purposes from a county, is situate, shall also be the gaol, court house and house of correction of the city or town, and shall, in the case of such city, continue to be so until the council of the city otherwise directs; and the sheriff, gaoler and keeper of the gaol and house of correction shall receive and safely keep, until duly discharged, all persons committed thereto by any competent authority of the city or town. 55 V. c. 42, s. 454.

Taken from the Act of 1858, (22 V. c. 99), s. 382. *Cf.* 12 V. c. 81, ss. 68, 92.

(a) "Not separated for all purposes from a county." There is at present no city or town in Ontario which for all purposes is separated from its county (*a*).

City councils may erect, etc., certain public buildings.

503. The council of any city may erect, preserve, improve and provide for the proper keeping of a court house, gaol, house of correction and house of industry, upon lands being the property of the municipality, and may pass by-laws for all or any of such purposes. 55 V. c. 42, s. 455.

Taken from the Act of 1858, (22 V. c. 99), s. 385. *Cf.* 12 V. c. 81, s. 107 (1).

(a) This power must be exercised by by-law (*b*).

(*a*) See R. S. O. c. 3, ss. 1 and 2; 55 V. c. 92, (City of Windsor); 58 V. c. 65 (City of Chatham), and *per* OSLER, J. A., in *Re County of Carleton and City of Ottawa*, 24 A. R. 409 (1897), at foot of p. 413.

(*b*) S. 325. *Cf.* s. 500.

Sec. 504 (1).

Care of Court Houses and Gaols.

Custody of gaols.

Keepers.

504.—(1) The sheriff shall have the care of the county gaol, gaol offices and yard, and gaoler's apartments, and the appointment of the keepers thereof, whose salaries shall be fixed by the county council, subject to the revision or requirement of the Inspector of Prisons and Public Charities.

The first part of this subsection is taken from the Act of 1858, (22 V. c. 99). The rest of the subsection—"whose salaries shall be fixed by the county council"—was added in 1873 by 36 V. c. 48, s. 358.

(a) Under the Act of 1792 (*a*), it was provided (s. 14) that the sheriff should appoint and remove the gaoler and keeper of the gaol and court house, and (s. 17) that the salary of the gaoler should be fixed by the General Quarter Sessions. After the jurisdiction of the Quarter Sessions had been transferred (*b*) to the District Councils, disputes arose as to whether the sheriff or the council had a right to the control of the court house when it was a building separate from the gaol (*c*). The object of this section and of sections 506 and 507 was to make clear the relative rights of the parties.

So long as there is but one gaol for the City of Toronto and the County of York, the control of such gaol is vested in the Sheriff of the City (*d*).

The appointment and removal of surgeons of the gaol and other institutions under the charge of any municipality belong to the council thereof (*e*).

(b) **"Whose salaries shall be fixed by the county council subject to the revision or requirement of the Inspector of Prisons and Public Charities."** It is apparently intended that the Inspector of Prisons and Public Charities shall have power under s. 12 of "*The Prison and Asylum Inspection Act*" (*f*), to revise the salaries fixed by the County Councils and to require that they shall be such as to enable the Sheriff to secure fit men for the office.

Appointment and dismissal of gaolers.

(2) Every appointment or dismissal of a gaoler shall be subject to the approval of the Lieutenant-Governor. 55 V. c. 42, s. 464.

Added by 43 V. c. 24, s. 27 (1880).

(a) As to cases in which the sheriff may make a temporary appointment of a gaoler, or may himself become *ex officio* the gaoler, see 61 V. c. 36 (1898), ss. 8-12.

Gaoler to have yearly salary in lieu of all fees, etc.

505. The salary of the gaoler shall be in lieu of all fees, perquisites or impositions of any sort or kind whatever; and no gaoler or officer belonging to the gaol shall demand or receive any fee, perquisite or other payment from any prisoner confined within the gaol or prison. 55 V. c. 42, s. 465.

Taken from 32 Geo. III. c. 8, s. 17 (1792). *Cf.* C.S.U.C. c. 127, s. 5.

County council to have care of court house, etc.

506—(1) The county council shall have the care of the court house and of all offices and rooms and grounds connected therewith, whether the same forms a separate building or is connected with the gaol, and shall have the appointment of the keepers thereof, whose duty it shall be to attend to the proper lighting, heating and cleaning thereof; and they shall from time to time provide all necessary and proper accommo-

(*a*) 32 Geo. III, c. 8.

(*b*) By "*The District Councils Act*," (4-5 V. c. 10), s. 39. See *ante*, p. 6.

(*c*) *Municipal Council of Huron and Bruce* v. *Macdonald*, 7 C. P. 278 (1857).

(*d*) R. S. O. c. 17, ss. 3, 5.

(*e*) S. 538 (7).

(*f*) R. S. O. c. 321.

Sec. 506 (1).

Notes (a) (b).

County council to have care of court house, etc.

dation, fuel, light, stationery and furniture for the Courts of Justice other than the Division Courts, and for the library of the Law Association of the county (such last mentioned accommodation to be provided in the court house), and shall provide proper offices, together with fuel, light, stationery and furniture, for all officers connected with such Courts other than (1) officers of the Maritime Court of Ontario (not being in the County of York) and (2) official assignees. 55 V. c. 42, s. 466; c. 43, s. 26; 60 V. c. 3, s. 3.

Based upon s. 399 of the Act of 1858 (22 V. c. 99), the words of which, after the words "keepers thereof," in line 5, were as follows:

> "and shall from time to time provide all necessary and proper accommodation for the Courts of Justice other than the Division Courts and for all officers connected with such Courts of Justice."

So in the Act of 1866, (29-30 V. c. 51), s. 419.

The Act of 1873 (36 V. c. 48), s. 359, defined the duties of the keepers of the court house as above, and added after the word "accommodation" the words "fuel, light and furniture."

The Act 42 V. c. 31, s. 16 (1879), struck out all the words after "Division Courts," and substituted

> "and shall provide proper offices, together with fuel, light and furniture for all officers connected with such Courts other than official assignees."

The words referring to the library of the County Law Association and to the officers of the Maritime Court (as to which latter see foot note (*d*), p. 548,) were inserted in 1885 by 48 V. c. 39, ss. 11, 13. The word "stationery" was inserted in line 8 by 55 V. c. 43, s. 26, and in line 12 by the Statute Commissioners in the revision of 1897 (60 V. c. 3, s. 3).

(a) "**The county council shall have the care of the court house,**" etc. See note (a) to s. 504.

(b) "**Shall provide all necessary and proper accommodation . . . . for the gaol and Courts of Justice.**" As to the gaol, see 61 V. c. 36, ss. 1 to 7, authorizing an arrangement by which the common gaol of an adjoining county may be substituted for that of a county in which a gaol is no longer required.

> "The court house, from its very name—as well as from the provisions of law requiring the erection of a gaol and court house in every county or union of counties before these can be constituted separate municipal authorities,—is a building devoted to and intended for certain public uses; and the municipal council may be considered as holding this building for and subject to these uses." (*a*)

"*The Judicature Act*" (*b*) provides that

> "The sittings of the High Court for the trial of civil causes, matters and issues in any County may, at the discretion of the Court or of the Judge who is to hold the same, be held in the court house of the county town in which the same are appointed to be held, or in such other place in the county town as the Judge selects, and the Judge shall in all respects have the same authority as a Judge formerly had when sitting at *nisi prius* in regard to the use of the court house, gaol and other buildings or apartments set apart in the county for the administration of justice."

The (Ontario) *Act respecting the Supreme Court of Canada and the Exchequer Court of Canada*, (*c*) s. 3, provides that:

> "In case sittings of the Court of Exchequer of Canada are appointed to be held in any city, town or place in which a court house is situated, the Judge presiding at any such sittings shall have in all respects the same authority as a Judge of the High Court in regard to the use of the court house and other buildings or apartments set apart in the county for the administration of justice."

And the *Act respecting the Maritime Court of Canada*, (*d*) s. 1, that

(*a*) *Per* DRAPER, C. J., in *The Municipal Councils of Huron and Bruce* v. *Macdonald*, 7 C.P. 278 (1857), at p. 280.

(*b*) R.S.O. c. 51, ss. 85, 86.

(*c*) R.S.O., c. 49.

(*d*) R.S.O., c. 50.

Sec. 506 (1).

Note (b).

Use of court house.

"In case sittings of the Maritime Court of Ontario, or of any Judge thereof, are appointed to be held in any city, town or place in which a court house is situated, the Court or Judge shall for all purposes connected with the said Maritime Court and its process, have the same authority as the County Court or a Judge thereof in regard to the use of the court house, gaol and other buildings or apartments set apart in the county for the administration of justice." (*a*)

"*The Ontario Voters' Lists Act*," (*b*) in making provision for the holding of a Court by the County Judge for the revision of the voters' lists, enacts (*c*) that:

"(1) It shall be the duty of the municipality within which [such] a court is held, to provide some suitable and convenient place, properly furnished, heated and lighted for the holding of the Court, and in case the same is not done the Judge may hold the Court at such other place in the county as he may deem proper: and if the Court is held elsewhere than in the county court house, the proprietor of the building in which it is held may recover from the municipality which should have made such provision the sum of $5 for each and every day during which the building is used for the purposes of the Court;

"(2) Every Court held in the county town shall be held in the county court house, or in such other place in the county town as the Judge may deem proper."

As to Division Court sittings in the court house, it is provided by s. 12 of "*The Division Courts Act*," (*d*) that

"The sittings of the Division Court in a county town may be held in the county court house, and in the cases of cities and towns separated from the county, the use of the court house for such purpose may be taken into account in settling the proportion of the charges to be paid by the city or town for the maintenance of the court house."

See ss. 509, 516, as to the adjustment and settlement of the charges referred to in this section.

The right of a police magistrate to use the court room is regulated by R.S.O. c. 87, s. 28, which is as follows:

"Every Police Magistrate shall, whenever he deems that there is occasion therefor, have a right to use any court room or town hall belonging to the county or to any municipality therein (which has no Police Magistrate of its own), for the hearing of cases brought before him; provided the magistrate in so using the court room or town hall shall not interfere with the ordinary use of the court rooms for the other courts, or with the use of the town hall for the purposes for which the same was built."

In *Dark* v. *Municipal Council of Huron and Bruce*, (*e*) a case under the Act of 1849 (*f*), the plaintiff claimed payment for the use of a room in his hotel as a court room, and proved that the room had been engaged by the Sheriff, and that the Chairman of the Quarter Sessions had signed an order on the District Treasurer for the amount claimed. Held, that these facts established no legal liability on the part of the defendants, and the action was dismissed. (*g*)

(*a*) The Legislature apparently overlooked the fact that by 54-55 V. c. 29 (Ca.) s. 23, and by the proclamation of October 10th, 1891, which brought that Statute into effect, the Maritime Court of Ontario was abolished, and the Judge of that Court invested with "all the jurisdiction, powers and authority of a local Judge in Admiralty" within and for "the Toronto Admiralty District," of which District the registrar and marshal of the (former) Maritime Court of Ontario were to be respectively registrar and marshal during the pleasure of the Governor-General in Council. No express statutory provision seems to have been made regarding the accommodation of the Admiralty Court.

(*b*) R.S.O., c. 7. (*c*) S. 25. (*d*) R. S. O. c. 60.

(*e*) 7 C.P. 378 (1857). (*f*) 12 V. c. 81, ss. 36, 40 and 41.

(*g*) *Cf. Coombs* v. *County of Middlesex*, cited in note (e) *infra*.

(c) "Other than the Division Courts."

Section 11 of "*The Division Courts Act*" (*a*) provides that :

Accommodation for Division Court sittings.

"The municipality in which a Division Court is held shall furnish a Court room and other necessary accommodation for holding said Court, not in connection with an hotel.

(2) In case a proper Court room and other necessary accommodation for the holding of the Division Court are not furnished by the municipality in which the Court is held, the Judge may hold the Court in any suitable place in the division, or in any other division of the County in which suitable accommodation is provided ; and the owner, lessee or tenant of the building in which the Court is so held, shall for the use of the building be entitled to receive from the municipality whose duty it was to provide proper accommodation for the Court, the sum of $5 for every day on which the Court is held in the building.

(3) Where a municipality, not being a town or city, furnishes a court room and other necessary accommodation for a Division Court as aforesaid, or pays any owner, lessee or tenant for the use of any building, it shall be entitled to recover from any other municipality wholly or partly within the division for which such Court is held, such reasonable share of the cost of providing accommodation for holding the Court as shall in that behalf be decided and ordered by the Judge of the said Court, to be paid and contributed by the latter municipality, and in every such case the total cost of providing such accommodation for holding the Court shall be deemed to be $5 for every day on which the Court is held."

(d) "Shall provide proper offices for all officers connected with such Courts," etc.

Accommodation for officers of Courts.

This includes the County Attorney and Clerk of the Peace who is "an officer connected with the General Sessions, which is a Court of Justice within the meaning of the Statute." (*b*). Accordingly it was held in that case, under the corresponding section of the Act of 1866 (*c*) ; that the plaintiff could maintain an action against the council for breach of duty in not providing necessary and proper accommodation for him as such County Attorney and Clerk of the Peace, and could recover by way of damages the rent paid by him in securing such accommodation elsewhere. (*d*)

But as to the Clerk of the Division Court there is no such obligation, and money paid by him for office accommodation cannot be recovered from the municipality. (*e*)

(e) "Fuel, light, stationery and furniture."

"Stationery" includes the articles usually sold by stationers, *e.g.*, paper, pens, ink, pencils, blank books, etc. Even before this word was inserted here by the Statute Commissioners of 1897 it had been held by ROSE, J., (*f*) that under the word "furniture" is included everything necessary for the furnishing of the offices referred to for the transaction of such business as might properly be there transacted, and (*inter alia*) stationery and printed forms in use in the Courts. A county council was held not to be liable for the price of curtains, carpets and chairs supplied to a court house upon an order given by the Sheriff on the authority of the magistrates in Quarter Sessions, though the county council, meeting in the court house, had made use of such furniture. (*g*)

(*a*) R.S.O. c. 60.

(*b*) *Lees* v. *County of Carleton*, 33 U.C.R. 409 (1873), *per* RICHARDS, C. J., at p. 419.

(*c*) 29-30 V. c. 51, s. 419 (see references *supra*.)

(*d*) As to the Crown Attorney of the City of Toronto, see *infra*, sub.-section 2.

(*e*) *Griffin* v. *City of Hamilton*, 37 U.C.R. 519 (1875). See R.S.O. c. 60, ss. 10, 27, 31, 44, 53.

(*f*) *Newsome* v. *County of Oxford*, 28 O.R. 422 (1895), following *Exp. Turquand*, 14 Q.B.D. 636 (1885) at page 643.

(*g*) *Coombs* v. *Municipal Council of County of Middlesex*, 15 U.C.R. 367 (1857). *Cf. Dark* v. *Municipal Council of Huron and Bruce*, cited in note (b) *supra*.

Sec. 506 (2); 507.

(2) In the case of the Crown Attorney of the City of Toronto, the city council of the City of Toronto shall provide proper offices, together with fuel, light, stationery and furniture. 61 V. c. 23, s. 17.

City gaols to be regulated by by-laws of city council.

507. In any city not being a separate county for all purposes, but having a gaol or court house separate from the county gaol or court house, the care of such city gaol or court house shall be regulated by the by-laws of the city council. 55 V. c. 42, s. 467.

Taken from the Act of 1858 (22 V. c. 99), s. 400.

(a) There is at present no city in Ontario to which this section applies. See note (a) to s. 502.

Upon separation of union of counties, gaol and court house regulations to continue.

508. In case of a separation of a union of counties, all rules and regulations, and all matters and things in any statute for the regulation of, or relating to court houses or gaols, in force at the time of the separation, shall extend to the court house and gaol of the junior county. 58 V. c. 42, s. 468.

Taken from the Act of 1858 (22 V. c. 99), s. 386.

(a) This is similar to the provision with regard to by-laws contained in s. 55. See s. 504 and "*The Prison and Asylum Inspection Act*," (R. S. O. c. 321) s. 12.

Cost and Expenses of Court Houses and Gaols.

Liability of cities and towns separated from counties for erection and maintenance of court house, etc.

509.—(1) Cities and separated towns shall, as parts of their respective counties for judicial purposes, bear and pay their just share or proportion of all charges and expenses from time to time incurred in erecting, building and repairing and maintaining, enlarging or improving the court house and gaol of their respective counties, and of the proper lighting, cleansing and heating thereof, and of providing all necessary and proper accommodation, fuel, light, stationery and furniture for the gaol and Courts of Justice, other than the Division Courts, and for the library of the Law Association of the county and of providing proper offices, together with fuel, light, stationery and furniture for all officers connected with such Courts, where the same are required to be provided by the county council, and all other charges relating to criminal justice, payable by the county in the first instance, except constables' fees and disbursements, and charges connected with coroners' inquests, and such other charges as the counties are entitled to be repaid by the Province. 55 V. c. 42, s. 469 (1), *part*; c. 43, s. 27; 60 V. c. 3, s. 3; c. 45, s. 9

This section is based upon s. 303 of the Act of 1873 (36 V. c. 48): but it has been much and often amended. For the circumstances which led to its enactment see note (a) to s. 516. For its successive amendments see 39 V. c. 34, s. 1 (1876),—section recast:—45 V. c. 31, s. 17 (1882),—charges relating to criminal justice:—43 V. c. 24, ss. 10, 11 (1880),—accommodation, etc., for officers connected with the Courts:—48 V. c. 39, s. 12 (1885),—Library of County Law Association to be provided for—: 52 V. c. 36, s. 18 (1889),—sub. section 3 added:—: 55 V. c. 43, s. 27 (1892),—"stationery" inserted after "light" in line 8—: 60 V. c. 45, s. 9 (1897),—the words "enlarging or improving" inserted in line 5. The Statute Commissioners of 1897, under the authority of 60 V. c. 3, s. 3, have repeated the word "stationery" in line 12.

Sec. 509 (1).

Notes (a)-(d).

(a) "Charges and expenses . . . incurred in erecting, etc. . . . the court house and gaol," etc. See ss. 27 (1) and 516.

(b) "Necessary and proper accommodation . . . for the gaol and Courts of Justice," etc. "Proper offices . . . . for all officers connected with such Courts." "Fuel, light, stationery and furniture." See notes (b), (c) and (d) to s. 506. In addition to the matters therein mentioned, reference may be made to ss. 26 and 27 of "*The Local Courts Act*" (R. S. O. c. 54), which provide that—

Interpreters.

"In case the municipal council of any county pass a resolution requesting or approving of the appointment of an official interpreter to act at the Courts held in that county, an appointment may be made accordingly in the same manner, and subject to the same terms and conditions, as provided in regard to shorthand writers by the next section and the said section shall apply as nearly as may be to the official interpreters." (s. 26).

Shorthand writers.

"In case the municipal council of any county or the municipal councils of any county and a city or town united with the county for judicial purposes and not within the jurisdiction of the county council, pass a resolution or resolutions, as the case may be, requesting or approving of the appointment of a shorthand writer to and for the Local Courts of the county, the Lieutenant-Governor may from time to time appoint a person to fill the office of shorthand writer for the said Courts, and such person shall be subject to the direction of the Senior Judge, or, in his absence, to the direction of the Junior Judge, and shall be entitled to such remuneration, either by salary or by fees, or partly by salary and partly by fees, as the Lieutenant-Governor in Council may from time to time direct; and if paid by salary only, the fees payable in respect of his duties as a shorthand writer shall go in reduction of his salary, and the balance, if any, shall be paid by the county quarterly, on the first day of January, April, July and October of every year.

(2) The fees, and all matters relating to the duties of the said officer shall be determined and regulated from time to time by the Judges of the said County Court, subject to the approval of the Lieutenant-Governor in Council.

(3) The city or town aforesaid, shall bear and pay the county for a proper proportion of the salary, and the proportion, in case the city or town and county disagree, shall be determined by arbitration, according to the provisions of "*The Municipal Act*"; and, subject to such agreement or arbitration, and until and unless the same determines a different proportion, the city or town shall pay to the county one-half, and the county's share shall be one-half of said salary." (s. 27).

Section 27 does not apply to the County of York; but similar provisions relating to that county are contained in s. 28 of the Act.

As to cases in which the sittings of the Division Court for a city or separated town are held in the court-house of a county, see s. 12 of "*The Division Courts Act*" quoted in note (b) to s. 506.

(c). "Charges relating to criminal justice payable by the county in the first instance," etc.

See note "**A**" under s. 530, "Expenses of the Administration of Justice in Ontario."

Reference to arbitration in case of disagreement.

(2) In case the council of the city or separated town and the council of the county in which, for judicial purposes, such city or town is situate cannot, by agreement from time to time, settle and determine the amount to be so payable by such city or town respectively, then the same shall be determined by arbitration, according to the provisions of this Act. 55 V. c. 42, s. 469 (1), *part*.

(d). "By agreement." See note (f) to s. 27.

Sec. 509 (2).

(e). "By arbitration according to the provisions of this Act." See note (g) to s. 27, and ss. 449, 450, 455,—467. A by-law should be passed by each of the municipalities concerned specifying the matters thus referred to arbitration. (a)

Purchase of lands and erection of buildings for municipal and judicial purposes.

(3) It shall be lawful for the council of any county and the council of any city or town situate in such county, but separated therefrom for municipal purposes, to enter into any agreement,

(a) For the purchase or acquisition of land within the county town for the purpose of erecting thereon buildings for the use of such county and city or town, for municipal and judicial purposes; and

(b) For the erection, maintenance, use, management and control of such buildings; and

(c) For fixing or ascertaining the amount which each municipality shall pay or contribute for the purpose aforesaid; and

(d) For the subsequent disposition of such land and buildings, and of any insurance or other moneys that may be received in respect thereof;

and to acquire such land as may be necessary for the erection thereon of such buildings;

and to pass all such by-laws as may from time to time be necessary for the purchasing of such land, and the carrying out of any such agreement. 55 V. c. 42, s. 469 (2).

Added in 1889 by 52 V. c. 43, s. 27.

When county has paid amount of town's interest in county buildings.

510. Where a city or separated town has before July 1st, 1897, been paid by the county after the separation for its interest in such court house and gaol, or in a house of correction or registry office, and where the city or town has not erected separate buildings, the award may determine what sum (if any) shall be annually paid to the county as the share or contribution of the city or town for or in respect of any enlargement or improvement made by the county after the separation. But no award shall provide for the purchase by the county from a city or town not separated from the county for judicial purposes of the interest of such city or town in such buildings or in the enlargement or improvement thereof. 60 V. c. 3, s. 3; c. 45, s. 10, (469*a*).

This and the two next following sections were added to the Act in 1897, by 60 V. c. 45, s. 10, in order to avoid in future cases certain difficulties which arose in relation to these matters between the City of Chatham (incorporated by 58 V. c. 65) and the County of Kent. See also s. 516 (3) which arose out of the same dispute. Sec. 512 was repealed and re-enacted with a slight verbal alteration by 62 V., (2nd Session) c. 36, s. 39 (2).

When city or town to pay 5 per cent. per annum upon sum received for its interest in the court house, gaol, etc.

511. Where under an agreement or award made before July 1st, 1897, upon the separation of a town from a county for municipal purposes, or under an award made or agreement entered into thereafter between the city or town and the county, the corporation of the county has paid to the corpora-

(a) *Re County of Carleton and City of Ottawa*, 24 A. R. 409, 411 (1897). See this case more fully cited in note (a) to s. 516.

tion of the separated town or city compensation for the amount contributed by the separated town or city prior to its separation from the county for municipal purposes, towards the erection, enlargement or improvement of the court house, gaol or house of correction, or registry office, or any of them, and in case the town or city has not erected separate buildings, the corporation of the city or town shall annually pay to the county an amount equal to five per centum of the amount so paid to the city or town. and the amount so to be paid by the city or town shall be in addition to the amount to be contributed by the city or town under section 509 of this Act. 60 V. c. 45, s. 10 (469*b*).

Secs. 511-515 (1). When city or town to pay 5 per cent. per annum upon sum received for its interest in the court house, gaol, etc.

See the note to s. 510.

512. Nothing in sections 510, 511 or 511*a* shall affect any agreement or award in force on July 1st, 1897, or any action or proceeding at law pending on said date; but the said sections shall apply in case of any agreement or award thereafter made between any such county and city or separated town. 60 V. c. 45, s. 10 (469*c*); 62 V. (2nd Session) c. 26, s. 30 (2).

Pending actions not affected.

See the note to s. 510.

(a) The reference in s. 30 (2) of "*The Municipal Amendment Act, 1899,*" to s. 511*a* is evidently a mistake. Sec. 516 (3) was no doubt intended.

513. The council shall not be liable to pay for any furniture which they are required to provide under the provisions of sections 506 and 509 of this Act, unless the same has been ordered by the council or by some person duly authorized by them so to do. 55 V. c. 42, s. 470.

Liability for furniture for use of county officials.

This section was inserted in 1880 by 43 V. c. 24, s. 12. See 42 V. c. 31, s. 17 (1), and 43 V. c. 24, ss. 10, 11.

(a) See *Coombs* v. *Municipal Council of County of Middlesex* (*a*), quoted in note (e) to s. 506.

514. The corporation of any county, city or town separated from the county, are hereby declared to have, respectively, insurable interests in the court house and gaol of the county, and the furniture thereof, in the proportions in which they shall, for the time being, be liable to contribute towards the erection, building, repairing and maintaining the same, and towards providing necessary accommodation and furniture for the said gaol and Courts of Justice, and for the officers connected with such Courts; and any such corporation may insure its said interest accordingly. 55 V. c. 42, s. 471.

Insurable interests of corporations in certain cases.

Taken from 42 V. c. 13, s. 17 (2), (1879). The amendment of this subsection by 43 V. c. 24, s. 11, seems to have been an error; see 43 V. c. 31, s. 16, and 43 V. c. 24, s. 10.

515.—(1) In all cases in which any city is required to contribute to the cost of erecting or building a court house or gaol, not commenced before the 5th day of March, 1880, the council of such city shall not be bound to pay for any part of

Liability of city to contribute to cost of erecting court houses and gaols.

(*a*) 15 U.C.R. 367 (1857).

Sec. 515 (1).

Compensation by city or town for use of court house, etc.

the expenditure thereafter incurred in respect thereof, unless the same has been concurred in by the council of the city, or, in case of dispute, has been determined by arbitration, according to the provisions of this Act; and the council of the city shall have a voice in the selection of the site of the court house and gaol.

(2) In case the council of the county and city fail to agree upon the selection of such site, the same shall be settled and determined by arbitration, according to the provisions of this Act. 55 V. c. 42, s. 472.

Taken from 43 V. c. 24, s. 19 (1880). Inserted at the instance of the Corporation of the City of Toronto. Sec. 501 was added at the same time.

Matters to be considered in determining compensation.

516.—(1) While a city or town uses the court house, gaol or house of correction of the county, the city or town shall pay to the county such compensation therefor, and for the care and maintenance of prisoners, as may be mutually agreed upon, or settled by arbitration under this Act.

(2) In case of arbitration under this section, in determining the compensation to be paid for the care and maintenance of prisoners confined in the gaol, the arbitrators shall, so far as they deem the same just and reasonable, take into consideration the original cost of the site and erection of gaol buildings, and of repairs and insurance, so far as the same have been borne or sustained by one or other of the municipalities, and they shall also take into consideration the cost of maintaining and supporting the prisoners as well as the salaries of all officers and servants connected therewith; but the provisions of this subsection shall apply only to the determining of the compensation to be paid for the care and maintenance of any such prisoners subsequent to the 1st day of January, 1886. 55 V. c. 42, s. 473.

Settlement of amount payable by city or town for use of court house in certain cases.

(3) Where in any city or town the court house and gaol have been erected at the expense of the county after the separation of such city or town from the county and before the 29th day of March, 1873, and such city or town has not erected separate buildings, in default of any agreement between the city or town and county, the arbitrators shall, in making their award, take into account the use of the court house by the inhabitants of such city or town in common with the inhabitants of the county, and apart from and in addition to any amount payable under this Act for the use of the said buildings by the city or town as a municipal corporation or for municipal purposes, and to the extent of the use of the said buildings by the inhabitants of the said city or town and of the county respectively or by the municipal corporation of the said city or town and the municipal corporation of the county respectively, for any or all purposes jointly or severally as well connected with the general administration of justice of the entire county and city or town as for the separate use for municipal purposes by

Sec. 516 (3).

Compensation by city or town for use of court house, gaol, etc., of county.

either the county or the city or town, and in estimating the amount to be paid by the city or town to the county, the arbitrators shall award a proportion of the annual interest upon the cost incurred prior to the said date in the erection of such buildings, which interest shall be computed at the rate of five per centum per annum, and the amount so awarded to be paid by the city or town shall be in addition to the amount payable by such city or town under section 509 and the preceding subsections of this section. 62 V. (2nd Session) c. 26, s. 30 (1).

Subsection 1 is taken from s. 383 of the Act of 1858 (22 V. c. 99), which is based upon s. 200 of the Act of 1849 (12 V. c. 81). Subsection 2 was added in 1886 by 49 V. c. 37, s. 10; subs. 3 in 1899 by 62 V. (2nd Session) c. 26, s. 30 (1). See *ante* s. 510, note and s. 512 note (a).

(a) The word "town" here means a separated town (a). The Act of 1849 (b), provided that

Former law.

> "So long as a city or town . . . shall use or continue to use the court house, gaol and house of correction of any county . . . or any of them . . . the municipal corporation of such city or town shall pay to the municipal corporation of such county *such annual sum of money* as shall be mutually agreed upon between them as a fair compensation *for the use of such buildings, or any of them*, and in the event of such corporations being unable to agree as to the amount of such compensation, then the same shall be settled by arbitration."

Arbitrators were appointed under that Act by articles of agreement, dated 28th December, 1855, to settle certain differences recited as pending between the City of London and the County of Middlesex, respecting the compensation to be paid by the city to the county for the use of the county court house and gaol, and concerning certain financial matters then depending between the respective municipalities. They awarded, . . . (4) that in future each of the municipalities should pay the expense of all prisoners committed to the county gaol by each of them respectively, and that the portion of such expense incurred by the city should be paid over by them in January of each year; (5) that in future the city should pay to the county one-third of all the incidental expenses connected with the court house and gaol, including repairs and insurance, together with one-third of all expenses connected with the administration of justice not paid by Government, such payment to be made in the month of January in each year; (7) that the award should take effect on the 1st January, 1855, and remain in force until the 1st January, 1860. Held, that the giving to the award a retrospective effect—to the 1st January, 1855, being the time when London was declared a city—was not objectionable, but proper; that the arbitrators had authority to give time for payment; that the limiting the continuance of the award till 1st January, 1860, was inconsistent with the terms of the Act (see now s. 517) and rendered bad the fourth and fifth clauses of the award respecting the court house and gaol; that the fourth clause of the award was also bad, because it authorized a rateable division of the expenses, instead of awarding the payment of an "annual sum;" that the fourth and fifth clauses might be separated from the rest, and the award was set aside as to them only. (c)

Subsection 1 was amended in 1858 (d), by substituting for the words "such annual sum of money," etc., the words "such compensation therefor and for the care and maintenance of prisoners as may be mutually agreed upon or be settled by arbitration under this Act," and was re-enacted in this form in the Act of 1866 (e) as s. 403 thereof.

Up to that time, and subsequently, until the coming into effect of "*The Law Reform Act of 1868*" (f), there was at least one instance,—viz., that of

(a) See s. 521 (2). (b) 12 V. c. 81, s. 200.
(c) *Re County of Middlesex and City of London*, 14 U.C.R. 334 (1856).
(d) 22 V. c. 99, s. 383.
(e) 29-30 V. c. 51. (f) 32 V. c. 6.

Sec. 516 (3).

Note (a) Compensation by city or town for use of court house, gaol, etc., of county.

Toronto,—where a city *as such* used the court house of a county, of which, for judicial purposes, it formed no part; and its use thereof for such purposes,—viz., by the Recorder's Court, the city Quarter Sessions, etc.,—was intended to be, and was in fact provided for under this section (*a*). "*The Law Reform Act of 1868*," however, abolished Recorder's Courts and re-united the city to the county for judicial purposes, whereupon it was held in a second action between the same parties (*b*), that there was no longer any liability on the part of the city to pay the county for the use of the court house. HAGARTY, C.J., after quoting s. 403 of the Act of 1866 (*c*), says (p. 517):

> "This expression—("uses the court house," etc.)—must surely mean some user independent of the general user as a county court house some user by the city or town municipality *as such*. Here the city makes no *special user* of the court house apart from the county. It can hold no courts of its own. Its user is the same in a larger degree as the user by the village of Newmarket or the town of Yorkville, and unless there be some express provision in the Statute law I do not see how any liability can be created."

In consequence of this decision, such express provision was accordingly made at the next Session of the Legislature by 36 V. c. 48, s. 363, which forms the basis of s. 509 of the present Act.

In *Re County of Carleton and City of Ottawa* (*d*), OSLER, J.A. said (p. 414):

> "Speaking of court houses erected before 1873, the Legislature, notwithstanding the decision in *County of York* v. *City of Toronto*, have made no provision for ascertaining how cities not judicially separated from their counties can be said to make any user of them *qua* city, other than as they may happen to do so by holding some city court therein."

And—as to the court houses erected since 1873—he further remarked (pp. 414, 415):

> "I see nothing in the Act which would warrant the arbitrators in making a charge for user based upon cost of site, erection of buildings, etc. The Act of 1873, s. 363 (*e*), provided for future cases, in which there seems no room to put forward a claim for user by the city of a building to which (though the property of the county) the city contributed its just proportion of the cost of erection, maintenance and repairs, as well as of its equipment."

In consequence of these decisions subs. 3 was added to the Act in the Session of 1899.

(b) As to cases in which a county town (not separated) uses the county gaol as a lock-up house, see s. 521.

(c) "The care and maintenance of prisoners." A large part of the expense of the care and maintenance of prisoners, though payable in the first instance out of county funds, is repaid to the counties by the Provincial Government (*f*).

It is only as to the residue not so re-payable, that a city or separated town is liable to contribute under this section and s. 509. As to the basis upon which the respective shares of the contributing municipalities should be determined see note **(g)** to s. 27 and note **(e)** to this section.

(d) "Such compensation as may be mutually agreed upon." See note **(f)** to s. 27. It is not necessary that the compensation shall be a fixed annual amount; it may be a proportionate share (*g*).

(*a*) See *County of York* v. *City of Toronto*, 21 C.P. 95 (1870).

(*b*) 22 C.P. 514 (1872).

(*c*) Identical with subsection 1 of this section.

(*d*) 24 A.R. 409 (1897). The judgment of the Court of Appeal was affirmed by the Supreme Court, but without giving any written reasons. 28 S.C.R. 606 (1898).

(*e*) Now s. 509 of this Act.

(*f*) See note **(A)** under s. 530, "Expenses of the Administration of Justice in Ontario."

(*g*) *County of Wentworth* v. *City of Hamilton*, 34 U.C.R. 585 (1874).

(e) "**Or settled by arbitration under this Act.**" As to procedure see ss. 449, 450, 455-467. As to the matters to be considered in determining the amount of compensation payable for the care and maintenance of prisoners see note (**b**) supra, note (**g**) to s. 27 and subsections 2 and 3 of this section.

Compensation by city or town for use of court house, gaol, etc., of county.

Before subs. 3 had been enacted it was suggested by OSLER, J.A., (*a*) that if the arbitrators in fixing this compensation should "deem it just and reasonable to take into consideration the original cost of the site and erection of the gaol buildings and of repairing and insurance," etc. (as they might have done under subs. 2), compensation for the user of the gaol must be substantially included in the amount of compensation thus arrived at.

In *Re City of St. Catharines and County of Lincoln* (*b*) it was suggested by the same learned Judge that in an arbitration between a county and a separated city or town under s. 27 (1) of this Act, the relative population of the two municipalities interested is a safer guide than their relative assessment, in determining the share to be borne by each of expenses connected with the administration of justice; and in *Re County of Carleton and City of Ottawa*, he says (*c*)

> "The controlling element must, as it seems to me, be the number of prisoners sent up by the city authorities (s. 502) and perhaps,—though this is very doubtful,—for offences committed in the city."

When the amount of compensation may be reconsidered.

517. In case after the lapse of five years from such compensation having been so agreed upon or awarded, or having been settled by Statute, it appears reasonable to the Lieutenant-Governor in Council, upon the application of either party, that the amount of the compensation should be reconsidered, he may, by an Order in Council, direct that the then existing arrangement shall cease after a time named in the Order; and after such time the councils shall settle anew, by agreement or by arbitration under this Act, the amount to be paid from the time so named in the Order. 55 V. c. 42, s. 474.

Taken from the Act of 1858, (22 V. c. 99,) s. 384 : *Cf.* 12 V. c. 81 s. 200.

Lock-up Houses.

Lock-up houses may be established by county councils.

518. The council of every county may establish and maintain a lock-up house, or lock-up houses, within the county, and may establish and provide for the salary or fees to be paid to the constable to be placed in charge of every such lock-up house; and may direct the payment of the salary out of the funds of the county. 55 V. c. 42, s. 456.

Taken from the Act of 1858, (22 V. c. 99), s. 387 ; *Cf.* 13-14 V. c. 64, s. 10 referred to in the note preceding s. 500.

(**a**) A "lock-up house" is still a place for the temporary detention of a prisoner, or for the imprisonment of one who is to be confined for but a short time. As to lock up houses in Territorial Districts, see R. S. O. c. 22, s. 38. Commitments to lock up houses may be made under ss. 520, 527 (2), 704 and 706 of this Act and under 29-30 V. c. 51, s. 409 printed *infra* under s. 519. See the form of a conviction under a municipal by-law given in s. 707. A municipal corporation may be responsible in damages to one who sustains injury owing to the improper condition of a lock-up house in which he is confined (*d*).

(*a*) In *Re County of Carleton and City of Ottawa*, 24 A.R. 409 (1897).

(*b*) 46 U. C. R. 425, 430, (1881).

(*c*) P. 414.

(*d*) See *Crawford* v. *Beattie*, 39 U. C. R. 13 (1876) *per* HARRISON, C. J., at p. 31, and also note (**d**) to s. 500. As to the responsibility of magistrates and constables on commitments to lock-up houses, see the same case and note (**a**) to s. 520.

Sec 518. Note (a)

By 61 V. c. 36, s. 5 it is made the duty of the sheriff at the cost of the county to keep in a proper condition for the reception of prisoners any lock-up used under that Act.

A constable to be placed in charge.

519. Every lock-up house shall be placed in the charge of a constable specially appointed for that purpose by the magistrates of the county at a General Sessions of the Peace therefor. 55 V. c. 42, s. 457.

Taken from the Act of 1858 (22 V. c. 99,) s. 388; *Cf.* 10-11 V. c. 41, s. 3 and 13-14 V. c. 64, s. 10 referred to in the note preceding s. 500.

(a) Section 409 of 29-30 V. c. 51,—which is still in force (*a*)—provides that

Who liable to confinement in lock-up.

"409. Any Justice of the Peace of the county may direct by warrant in writing under his hand and seal, the confinement in a lock-up house within his county, for a period not exceeding two days, of any person charged on oath with a criminal offence, whom it may be necessary to detain until examined, and either dismissed or fully committed for trial to the common gaol, and until such person may be conveyed to such gaol; also the confinement in such lock-up house not exceeding twenty-four hours, of any person found in a public street or highway in a state of intoxication, or any person convicted of desecrating the Sabbath; and generally may commit to a lock-up house instead of the common goal or other house of correction, any person convicted on view of the justice, or summarily convicted before any justice or justices of the peace of any offence cognizable by him or them, and liable to imprisonment therefor under any statute or municipal by-law."

Establishment of lock-up houses by local municipalities.

520.—(1) The council of every city, town, township, and village may, by by-law, establish, maintain and regulate lock-up houses for the detention and imprisonment of persons sentenced under any by-law of the council to imprisonment for not more than ten days; and of persons detained for examination on a charge of having committed any offence; and of persons detained for transmission to any common gaol or house of correction, either for trial or in the execution of any sentence; and such councils shall have all the powers and authorities conferred on county councils in relation to lock-up houses. 55 V. c. 42, s. 458.

Joint lock-up houses.

(2) Two or more municipalities may unite to establish and maintain a lock-up house. 55 V. c. 42, s. 459.

Taken from the Act of 1866, (29-30 V. c. 51) s. 412. *Cf.* 12 V. c. 81, ss. 60 (11) 71, 82 (referred to in note in "Lock-up Houses," preceding s. 500—22 V. c. 99, s. 392.

(a) See also s. 409 of 29-30 V. c. 51, printed *supra* in note (a) to s. 519. The detention of any person in a lock-up house for a cause not covered by these sections, or for a period not therein authorized, may subject those concerned to an action of trespass (*b*).

(b) "**All the powers and authorities conferred on county councils in relation to lock-up houses.**" *i. e.*, power to fix the salary or fees of the constable appointed to take charge thereof and to pay his salary out of municipal funds (*c*) to keep the lock-up houses in proper condition for the reception of prisoners (*d*).

(*a*) See 36 V. c. 48, s. 367; R. S. O. 1877, c. 174, s. 449; 46 V. c. 18, s. 476 and R. S. C. Sched. B.

(*b*) See *Atkins* v. *Kilby*, 11 A. & E. 777 (1840), but *cf. Reg.* v. *King*, 18 O. R. 566 (1889).

(*c*) s. 518. (*d*) 61 V. c. 36, s. 5.

Payment to to be made to county when gaol used by the county town as a lock-up.

521.—(1) In case a county town has not a lock-up approved by the Inspector of Prisons and Public Charities, and the county gaol is used for the purposes of a lock-up, the municipal corporation of the county town shall pay yearly to the county treasurer for the use of the county a reasonable amount for the use of the gaol as a lock-up, and for the expenses incurred thereby and in connection therewith; and in the event of any dispute arising as to the amount which should be paid to the county as aforesaid, the same shall be settled by arbitration as provided for under this Act.

(2) This section shall not apply to cities or separated towns for which provision is made by section 516 of this Act. 55 V. c. 42, s. 474*a*.

This section was added to the Act in 1889 by 52 V. c. 36, s. 14.

(a) "**A lock-up approved by the Inspector of Prisons.**" And see 61 V. c. 36, s. 3 (2). Under "*The Prison and Asylum Inspection Act*," (*a*) as amended in 1899 (*b*) it is the duty of one of the Inspectors once in each year, and more frequently if necessary or if so directed etc., to view and inspect every gaol, house of correction . . . . or place kept or used for the confinement of persons in any part of the Province.

(b) "**A reasonable amount for the use of the gaol as a lock-up and for the expenses incurred thereby, and in connection therewith.**"

As to the matters to be considered in determining what amount of compensation is reasonable, see s. 516 and note (**e**) thereto.

Existing lock-up houses to continue.

522. Nothing herein contained shall affect any lock-up house heretofore lawfully established, but the same shall continue to be a lock-up house as if established under this Act. 55 V. c. 42, s. 475.

Taken from the Act of 1858, (22 V. c. 99, s. 39)—a re-enactment of 13-14 V. c. 64, s. 10 which referred to lock-up houses established under 10-11 V. c. 41. See the note preceding s. 500.

Expense of conveying and maintaining prisoners.

523. The expense of conveying any prisoner to, and of keeping him in a lock-up house, shall be defrayed in the same manner as the expense of conveying him to and keeping him in the common gaol of the county. 55 V. c. 42, s. 476.

Taken from the Act of 1858, 22 V. c. 99, s. 390. *Cf.* 10-11 V. c. 41, s. 6, which is the original of this section.

(a) "**In the same manner as the expense of conveying him to and keeping him in the common gaol of the county.**"

See ss. 509 and 516 and note (**A**) under s. 530 on the "Expenses of the Administration of Justice in Ontario." As to cases under 61 V. c. 36, see s. 4 of that Act.

Industrial Farms, etc.

Land may be acquired for industrial farms, houses of industry, refuge, etc.

524.—(1) The council of every county, city or town separated from a county may acquire an estate in landed property for an industrial farm, and may establish a house of industry and a house of refuge, and may provide, by by-law, for the erection and repair thereof, and for the appointment, payment and duties of inspectors, keepers, matrons and other servants

(*a*) R. S. O. c. 321, s. 10.

(*b*) See 62 V. (2nd Session) c. 38, s. 1.

Sec. 524 (1).

for the superintendence, care and management of such houses of industry or refuge, and may in like manner make rules and regulations (not repugnant to law) for the government of the same.

Proviso as to united or contiguous counties.

(2) Two or more united counties, or two or more contiguous counties, or a city and one or more counties, or a town and one or more counties, may agree to have only one house of industry or refuge for such united or contiguous counties, or city and counties, or town and counties, and may maintain and keep up the same in the manner herein provided.

Power to compel persons sent to industrial farms, etc., to work thereon.

(3) The council may provide, by by-law, for requiring persons sent to such industrial farm or other place, to work on the said farm, or at any work or service for the said municipality, at such times, and for such hours, and at such trade or labour as they may appear to be fit for, and for buying and selling material therefor, and for applying the earnings, or part of the earnings of such persons for their maintenance or the maintenance of the wife and child or wife and children (if any) of such persons, or for the general maintenance of the farm or other place as aforesaid, or towards aiding such persons to reach their friends (if any) or any place to which it may be deemed advisable to send them.

Industrial farms and houses of refuge for two or more municipalities.

(4) Any two or more local municipalities shall have the same powers and rights as to acquiring, holding and maintaining an industrial farm, or acquiring, erecting and maintaining a house of industry or refuge as any county or city or united or contiguous counties or city or town and county have under and by virtue of this Act or otherwise, and may arrange with any other local municipality or municipalities for the admission (upon such terms and conditions as may be agreed upon between them), of such other local municipality or municipalities to a joint ownership or occupancy or right of user by said other municipality or municipalities in or of said farm, house of industry or house of refuge. Any purchase or grant to or requisition by two or more local municipalities of any such farm, or the erection of any such house of industry or house of refuge, or any agreement or by-law therefor, or any agreement or by-law for the admission of any other local municipality to such joint ownership or right of user or occupation made, entered into or passed before the 23rd day of March, 1888, shall be as valid and binding for all purposes as though made, entered into or passed after the passing hereof.

(5) All the provisions of this Act relating to industrial farms, houses of industry or houses of refuge respectively, shall apply to any such local municipalities and to any industrial farm, house of industry or house of refuge acquired, erected, occupied or maintained thereby as fully as to any other municipality or municipalities in the preceding subsection mentioned, or to any industrial farm, house of industry

or house of refuge acquired, owned, erected, occupied or maintained by them, or any of them.

Maintenance of patients sent by local municipalities to house o refuge.

(6) The county council may provide by by-law that each local municipality within the county shall be required to pay a sum not exceeding the rate of one dollar and fifty cents per week for the maintenance and support of each person sent to the house of refuge by or from such local municipality and received therein. 55 V. c. 42, s. 460.

Detention o indigent persons.

(7) The county council may pass by-laws for committing to and detaining at any house of industry, indigent persons, for a period of not more than twelve months; and the warrant under the seal of the corporation of the warden or head of a council passing such by-law shall be sufficient authority to the keeper of such house of industry to detain the person therein mentioned for a period stated in such warrant not to exceed twelve months; but this shall not affect the powers of committal by law conferred on any other person or officer. 58 V. c. 42, s. 17.

This section has been much altered since the establishment of houses of industry by the Quarter Sessions of each District was authorized in 1837 by 7 Wm. IV. c. 24. See the note preceding s. 500, *ante*, p. 542. *Cf.* 12 V. c. 81, s. 41 (1) (2);—counties—; ss. 81 (1) (2), 82, 107 (1), 139;—cities and towns—; 22 V. c. 99, s. 393;—counties only. These sections (like the present one) were simply permissive, but the Act of 1860, (29-30 V. c. 51), s. 413 made it the duty of every county, city and separated town to establish a house of industry and a house of refuge within two years, *i.e.*, before Aug. 15th, 1868, subject,—in the case of united or contiguous counties having each a population of less than 20,000 inhabitants,—to a proviso similar to that now contained in sub-section 2.

In 1868, however, by 31 V. c. 30, s. 42 the section was again made permissive, the time extended to August 15th, 1870 and sub-section 2 re-cast in its present form. *Cf.* the Act of 1873, (36 V. c. 48, s. 355) which omitted the (now unnecessary) time-limit, and is re-enacted without alteration in sub-sections 1 and 2 as they now stand.

Sub-section 3 was added in 1881 by 44 V. c. 24, s. 9; sub-sections 4 and 5 in 1888 by 51 V. c. 28, s. 18; sub-section 6 in 1889 52 V. c. 36, s. 17, and sub-section 7 in 1895 by 58 V. c. 42, s. 17. As to cities and towns see also s. 576 (3-5).

(a) Owing to the manner in which this section has been from time to time amended it has become impossible to state with certainty its precise effect. Apparently, however, it is intended to provide:

(1) That the powers given by sub-sections 1 and 3 may be exercised (*a*) by the council of any county, city or separated town, or (*b*) by the councils of any such combination of these as is mentioned in sub-section 2, or (*c*) by the councils of any two or more municipalities neither of which is a county (s. 2 (9)).

(2) That in the case last mentioned, other local municipalities may become by agreement entitled to joint ownership or occupancy or right of user in any land and buildings held under sub-section 4; but whether this carries with it the right to a share in the management seems to depend upon the terms of the agreement.

(3) It is not clear whether the powers conferred upon county councils in regard to houses of refuge by sub-section 6, and in regard to houses of industry by sub-section 7, are intended to be exercisable in any case where such houses are wholly maintained by local municipalities. Though the wording of sub-section 3 would seem to warrant an affirmative conclusion, it cannot be intended that the county council should have any jurisdiction over property belonging wholly or in part to a city or separated town. (*a*)

(b) As to Provincial aid towards the establishment of houses of industry or houses of refuge see R. S. O. c. 312, and as to the inspection of such houses by the Inspector of Prisons and Public Charities appointed under "*The Prison and Asylum Inspection Act*," (R. S. O. c. 321) see s. 11 of that Act and ss. 4 and 6 of R. S. O. c. 312. See also R. S. O. c. 311, "*An Act respecting Houses of Refuge for Females*" and the corresponding Dominion Statute, 57-58 V. c. 60.

(*a*) See also s. 527 as to industrial farms, houses of industry or houses of refuge maintained by a city or separated town.

Sec. 524 (7).

Inspectors to keep and render accounts of expenses, etc.

525. The inspector of a house of industry or refuge appointed as aforesaid shall keep an account of the charges of erecting, keeping and maintaining the house of industry or house of refuge, and of all materials found and furnished therefor, together with the names of the persons received into the house, as well as of those discharged therefrom, and also of the earnings; and such account shall be rendered to the council or councils maintaining such house every year, or oftener when required by a by-law of the council; and a copy thereof shall be presented to the Legislature. 55 V. c. 42, s. 461.

Taken from the Act of 1858 (22 V. c. 99,) s. 396. *Cf.* 7 Wm. IV. c. 24, s. 5.

(a) The last clause of this section has become a dead letter and might well be repealed.

Justices, etc., may commit certain persons to house of industry, etc.

526.—(1) Any two of Her Majesty's Justices of the Peace or of the Inspectors appointed as aforesaid, may, by writing under their hands and seals, commit to the house of industry or of refuge to be employed and governed according to the rules, regulations and orders of the house:

1. All poor and indigent persons who are incapable of supporting themselves,
2. All persons without means of maintaining themselves and able of body to work, and who refuse or neglect to do so,
3. All persons leading a vagrant life, and exercising no ordinary calling or lawful business sufficient to gain or procure an honest living,
4. And all such as spend their time and property in public houses to the neglect of any lawful calling, and
5. Idiots.

46 V. c. 18, s. 479 *part*; 62 V. (2nd Session) c. 26, s. 32 (1).

Punishment of refractory inmates.

(2) Every person committed to the house of industry or refuge, if fit and able, shall be kept diligently employed at labour during his confinement therein, and in case any such person is idle, and does not perform such reasonable task or labour as may be assigned, or is stubborn, disobedient, or disorderly, such person shall be punished according to the rules and regulations of the house of industry or refuge in that behalf. 46 V. c. 18, s. 479 *part*.

Commitments to be approved by or on behalf of county council.

(3) But before any such person is actually received into such house of industry or refuge the commitment shall be approved by the municipality in which such commitment takes place or by a member of the county council in writing. 62 V. (2nd Session) c. 26, s. 32 (2).

Sub-secs. 1 and 2 are taken from the Act of 1858, (22 V. c. 99) ss. 394, 395. *Cf.* 7 Wm. IV. c. 24, ss. 3, 4. The words "lewd, dissolute and" which preceded the word "vagrant" in clause 3 of subs. 1, were struck out in 1899 by 62 V. (2nd Session) c. 26, s. 32 (1), and subs. 3 was added by s. 32 (2) of the same Act.

(a) Sub-secs. 1 and 2—which until 1899 constituted the whole section—were retained (as being within the jurisdiction of the Province) in the consolidation of *The Municipal Act* in 1873, (*a*) and also in that of 1877 (*b*). In the latter they were printed in bourgeois type and noted by the Statute Commissioners in Appendix B. Vol. II, p. 2394 as "*Part Dom.*" (*c*) They appear in the Act of 1883 (*d*), but were omitted in the Revision of 1887 and are marked "effete" in Appendix B to Vol. II of R. S. O. 1887, p. 2749. The original section was restored to its former position by the Statute Commissioners of 1897. (*e*)

(b) **'Subsec. 1, clauses 2-4.'** See also s. 527 (2), and for other statutory provision as to the punishment of "loose, idle or disorderly persons or vagrants," Articles 207 and 208 of "*The Criminal Code, 1892.*"

(c) **"Idiots."** "An idiot or natural fool is one without understanding from his nativity, and therefore is by the law presumed never likely to attain understanding. He differs from a lunatic in this, that a lunatic has lucid intervals of reason" (*f*).

Houses of Correction.

527. The council of every city and town may respectively pass by-laws:

By-laws may be passed establishing workhouses and houses of correction.

1. For erecting and establishing within the city or town or on such industrial farm, or on any ground held by the corporation for public exhibitions, a workhouse or house of correction and for regulating the government thereof.

Who liable to be committed thereto.

2. For providing that the mayor, Police Magistrate, or any Justice of the Peace having jurisdiction in the municipality, may commit and send, with or without hard labour, to the workhouse or house of correction, or to the industrial farm, house of industry, house of refuge, or house for the poor, aged, and infirm, or lock-up, or to any work or service for the municipality as aforesaid, such disorderly persons, drunkards, vagrants, indigent persons, and such description of persons as are set forth or referred to in section 526 and as may by the council be deemed, and by by-law be declared expedient; and such farm, house of correction, house of industry, house of refuge, or house for the poor, aged, or infirm, lock-up house, or ground held as aforesaid, shall, for the purposes in this subsection mentioned, be deemed to be within the municipality and the jurisdiction thereof. 55 V. c. 42, s. 462 (1, 2).

Subsection 1 is taken from the Act of 1858, (22 V. c. 99) s. 397 (1). *Cf.* 12 V. c. 81, s. 61 (1), 82, 107 (1). Subsection 2 is taken (with some verbal alteration) from 44 V. c. 24, s. 10. *Cf.* 22 V. c. 99, s. 397 (2); re-enacted as 29-30 V. c. 51, s. 417 (2), and 36 V. c. 48, s. 357.

(a) **"On such industrial farm or on any ground held by the corporation for public exhibitions."** See ss. 524, 576 (3).

(b) **"Or house for the poor, aged and infirm."** This seems to be only another way of describing the buildings already referred to by their proper designations.

(c) **"Or to any work or service for the municipality as aforesaid."** The reference is to s. 524 (3).

(*a*) 36 V. c. 48, s. 369. (*b*) R. S. O. (1877) c. 174, s. 451.
(*c*) See however p. 2422. (*d*) 46 V. c. 18, s. 479.
(*e*) See *Scottish American Investment Co.* v. *Village of Elora*, 6 A. R. 628 (1881) at pp. 637-638; 60 V. c. 3; 61 V. c. 2, s. 1.
(*f*) 4 Co. 125; Co. Litt. 247.

Sec. 527 (2).

Who may be committed to house of correction, etc.

(d) "And such description of persons . . . as may by the council be deemed and by by-law be declared expedient." The language is taken from the Act of 1858, (22 V. c. 99,) s. 397 (2). The discretion originally given to the council was of the widest possible character and is now controlled only by the well known rule that the persons referred to must be of the same class with those more particularly described in the preceding words of the section.

Until houses of correction erected, the common gaols are constituted houses of correction.

528. Until separate houses of correction are erected in the several counties in Ontario, the common gaol in each county respectively shall be a house of correction; and every idle and disorderly person, or rogue and vagabond, and incorrigible rogue, and any other person by law subject to be committed to a house of correction, shall, unless otherwise provided by law, be committed to any such common gaol respectively. 55 V. c. 42, s. 463.

Taken from C. S. U. C., c. 127, s. 11, the original of which is 50 Geo. III, c. 5. First inserted in the Municipal Act as s. 439 of R. S. O. (1877) c. 174.

(a) See also Articles 207 and 208 of "*The Criminal Code, 1892*," under the title "Vagrancy."

Inebriate Asylums.

Institutions for reclamation of habitual drunkards.

529. The council of every city having a population of 50,000 or over may pass by-laws:

1. For erecting and establishing within the city an institution for the reclamation and cure of habitual drunkards.

2. For providing that the mayor, Police Magistrate or any Justice of the Peace having jurisdiction in the municipality, may commit or send, with or without hard labour, to the institution for the reclamation and cure of habitual drunkards, such drunkards as are also persons set forth or referred to in section 526 and as may by the council be deemed, and by by-law be declared to be expedient.

Rev. Stat. c. 318, ss. 97-108 to apply.

3. In the event of an institution for the reclamation and cure of habitual drunkards being established in any city, sections 97 to 108, both inclusive, of chapter 318 of the Revised Statutes shall be applicable thereto as if such institution had been named in said Act. 55 V. c. 42, s. 462, *part*; 60 V. c. 15, *Sched.* C (80, 81).

Added to the Act in 1888 by 51 V. c. 28, s. 18. The amendments made by 60 V. c. 15, Sched. C. (80, 81) are not of a substantial character.

(a) "Such drunkards as are also persons set forth or referred to in s. 526 and as may by the council be deemed and by by-law declared to be expedient." The philanthropy of the draftsman is more to be commended than his English. The intention apparently is that—under the circumstances which may be specified in the by-law—drunkards who come within the description of classes 2, 3 or 4 of s. 526 (1) may be declared to be habitual drunkards, and liable as such to be sent to an inebriate asylum established under sub-section 1.

(b) "Sections 97 to 108 both inclusive of Chapter 318 of the Revised Statutes," entitled "*An Act respecting Private Lunatic Asylums*" provide for the admission of commitment to an institution licensed under that Act of any inebriate who voluntarily applies for admission thereto, or of any habitual drunkard, so found to be upon an enquiry by the County Court Judge and committed by order of the Provincial Secretary.

Secs. 529, 530.

Inebriate Asylums.

DIVISION V.—BOARD OF AUDIT—CRIMINAL JUSTICE: ETC. (SEC. 530.)

530.—(1) Every county council at its first meeting in each year shall appoint two persons, not more than one of whom shall belong to the council, to be members of the Board of Audit for auditing and approving accounts and demands preferred against the county, the approving and auditing whereof previous to the 19th day of December, 1868, belonged to the General Quarter Sessions. 55 V. c. 42, s. 513.

(2) The council may pay the members of the said Board of Audit any sum not exceeding $4 each per day for their attendance at such audit, and five cents for each mile necessarily travelled in respect thereof in going to and from such audit. 55 V. c. 42, s. 514.

Taken from the Act of 1873 (36 V. c. 48,) ss. 323, 324; *Cf.* 7 Wm. IV, c. 18, ss. 1, 2; C.S.U.C. s. 121; 32 V. c. 6, s. 9, (2); 33 V. c. 8, ss. 1-3.

(A). Expenses of the Administration of Justice in Ontario.

The Schedule appended to R. S. O. c. 101 contains a table of the fees which (subject to any Rules which may be made by the Judges authorized to make Rules under "*The Judicature Act*") (*a*) may be taken by Sheriffs, Coroners, Clerks of the Peace, constables (*b*) and criers in respect of any business done by them in criminal prosecutions in the High Court, and in all matters, causes and proceedings which relate to the Queen's Revenue, and in all prosecutions, matters and proceedings under any Commission or Court of Oyer and Terminer and General Gaol Delivery, or under any Special Commission or Court of Oyer and Terminer, and in proceedings in the County Judge's Criminal Court, and before Coroners or Justices of the Peace.

The "Fees of Public Officers Act" R.S.O. c. 101.

Section 9 of the Act provides that a fee of $1 may be paid to any gaol surgeon for the examination of every prisoner eligible for removal, or sentenced to the Central Prison, and for the examination of every prisoner whom it is proposed to sentence or remove to the Female Reformatory, including certificate. [This does not extend to children sent to the Ontario Reformatory for Boys or to an Industrial School or Industrial Refuge. (See R. S. O. cc. 304, 310, 313.)]

Sections 10 and 11 relate to the fees of Sheriffs in certain cases. [See the notes on items 14, 16, 32, 33, 35, 40, 41, 42, 43, 44, 45, *post* pp. 566-568.

Sections 12 and 13 provide for allowances to High Constables, Constables or other persons for special services in the detection of crime or the arrest of suspected criminals.

(*a*) See "*The Judicature Act*," R. S. O. c. 51, ss. 122-128.

(*b*) But see, as to the Clerks of the Peace, sec. 3 of the Statute, quoted *ante* in note (a) to sec. 320, and as to constables, s. 496 of this Act.

Sec. 530.

The "Act for regulating the payment by counties of certain expenses of Criminal Justice," R.S.O. c. 102.

R. S. O. c. 102, entitled "*An Act for regulating the payment by Counties of certain expenses of Criminal Justice,*" provides (*a*) that—except fees payable on services in the nature of a civil remedy for individuals at whose instance and for whose private benefit the same are performed, (which are to be paid by such individuals) and except where otherwise provided by law (*b*) all fees payable under R. S. O. c. 101, and all other fees payable to the officers named in that Act for services connected with the administration of justice or for county purposes shall be payable in the first instance out of county funds: (*c*) but under R. S. O. cc. 103 and 104, a large part of the expense of the administration of justice in criminal matters thus payable in the first place by the counties is repaid to them by the Provincial Government.

R. S. O. cc. 103, 104, Criminal Jus-acc'ts payable by Provincial Government.

In the following Tariff (taken from the Schedule appended to R. S. O. c. 101) the items thus repayable to the counties by the Provincial Government are indicated by an asterisk (*) prefixed thereto.

Table of Fees to be Received by Sheriffs, Coroners, Clerks of the Peace, Constables and Criers.

SHERIFFS.

*1. Attending the Assizes, *per diem*	$85 00

[Sec. 14 of R. S. O. c. 101, provides that :—

Where any sittings of the High Court, County Court, or General Sessions of the Peace, is continued after eight o'clock in the evening, an additional allowance, not exceeding one day's pay, may, upon the certificate of the presiding Judge, be made to any officer in attendance upon such Court who is paid for services by a *per diem* allowance.]

*2. Attending the General Sessions, *per diem*	85 00
*3. Summoning each Grand Jury for the Assizes or General Sessions	12 00
*4. Summoning each Petit Jury for the Assizes or General Sessions	24 00
*5. For every prisoner discharged from gaol, having been committed by warrant for trial at the Assizes or General Sessions	1 00
*6. For the discharge from gaol of every prisoner convicted by a Police or Stipendiary Magistrate under Part LV. of "*The Criminal Code, 1892*"	1 00
*7. Bringing up each prisoner for arraignment, trial and sentence—in all, for each prisoner, whether convicted or acquitted	2 00
*8. For arraignment, trial and sentence, in all for each prisoner, whether convicted or acquitted, who has been out on bail	2 00
*9. Drawing calendar of prisoners for trial at the Assizes, including copies	5 00
*10. Advertising the holding the Assizes	4 00
*11. " " the General Sessions	4 00
*12. Every Annual or General Return, required by law or by the Government, respecting the gaol or the prisoners therein	5 00
*13. Every other Return made to the Government	4 00
*14. Every Return made to the Legislature (*d*)	4 00
*15. Every Return to the Sessions required by Statute or by order of the Court	2 00
16. *Every return which may be required by the county or county council* (*d*) (*e*)	1 00
*17. For every return to the Inspector of Legal Offices	2 00
*18. Drawing calendar of prisoners for trial at the General Sessions, including copies	4 00
*19. Returning Precepts to the Assizes or Sessions	4 00
*20. Conveying prisoners sentenced at Assizes or Sessions, to the Penitentiary or Reformatory, or to another county (exclusive of disbursements), for each day necessarily employed	6 00
*21. Arrest of each individual upon a warrant, (*to be paid out of the county funds, or by the party, as the case may be*)	3 00

(*a*) S. 1.

(*b*) *E.g.*, see *infra*, pp. 574-5, as to coroner's inquests and crown witnesses.

(*c*) See *County of Lambton v. Poussett*, 21 U.C.R. 472 (1862); *Re Poussett and County of Lambton*, 22 U. C. R. 80 (1862); *Re Sheriff, etc., County of Lincoln*, 34 U. C. R. 1 (1873); *Re Fenton and Board of Audit of County of York*, 31 C. P. 31 (1880).

(*d*) Payable only where Sheriff's net income during preceding year did not exceed $2,000; R. S. O. c. 101, s. 11.

(*e*) Not applicable to the County of York or the City of Toronto.

*22. Serving subpœna upon each person, (*to be paid out of the county funds, or by the party, as the case may be*)	
*23. Travelling in going to execute warrant or serve subpœna, or in returning with a prisoner in the case of the sheriffs of Algoma, Bruce, Carleton, Essex, Grey, Hastings, Huron, Kent, Lambton, Leeds and Grenville, Lincoln, Middlesex, Northumberland and Durham, Oxford, Perth, Simcoe, Thunder Bay, Toronto, Victoria, Welland, Wellington, Wentworth and York, *per mile actually travelled*	$1 00
Other Sheriffs	10
(*To be paid out of the county funds, or by the party, as the case may be; where the service has not been effected, the Board of Audit is to be satisfied that due diligence has been used.*)	13
*24. Conveying prisoners on attachment, Judge's Order or *Habeas Corpus* to another county, exclusive of disbursements, where no charge allowed by law, for each day necessarily employed, (*to be paid out of the County funds, or by the party, as the case may be*)	6 00
*25. Making return upon attachment or writ of *Habeas Corpus, to be paid out of the County funds, or by the party, as the case may be*)	2 00
*26. Levying fines or issues on recognizances estreated, or other process (*to be levied under 5 of Rev. Stat. c. 83*) ....$5 per $100 on the first $400 of the sum levied, exclusive of mileage at 10 cents per mile, and on all sums above $400 the same allowance as on executions in civil proceedings.*	
*27. Carrying into execution the sentence of the Court in capital cases. *All such sums as are unavoidably disbursed, (See 62 V. (2nd Session) c. 7, s. 10.)*	
*28. Attending and superintending the execution in such cases	20 00
*29. Summoning each Constable to attend the Assizes or General Sessions, exclusive of mileage at 10 cents a mile	50
*30. Keeping a record of Jurors who have served each Court	2 00
*31. Disbursements actually and necessarily made in guarding prisoners, or in their conveyance to the Penitentiary or Reformatory, to any other county or elsewhere, or for other purposes in the discharge of the duties of his office (where not provided for by law, nor hereinbefore specifically provided); to be rendered in account in detail, with proper vouchers, to the satisfaction of the Board of Audit, and to be by the Board allowed	
32. *Disbursements actually and necessarily incurred while in attendance upon a Judge of the High Court, when holding a sitting of the High Court, or incurred in obedience to his order, the amount to be paid by the Treasurer of the county upon the order of the Sheriff. (a) (b)*	
*33. *Keeping a record of Constables at the Assizes or Sessions, each (b)*	2 00

For Services in the County Judge's Criminal Court.

*34. Notification to Judge, in all for each prisoner	
*35. Bringing up prisoner before Judge, to elect as to mode of trial, including attendance at Court, each person (a)	1 00
*36. Bringing up prisoner for arraignment on trial, and for sentence, including attendances at Court—In all for each prisoner, whether convicted or acquitted	2 00
*37. For serving subpœnas, arrest under warrant, travel to serve or execute a process, and conveying prisoner to Penitentiary or Reformatory—the like sum as is allowed for like services in other cases under this Act.	2 00

For services in connection with offenders sentenced, or liable to be removed to the Central Prison.

*38. For making special return of prisoners sentenced to Central Prison, and of such prisoners eligible for removal to Central Prison, as the Inspector may direct (each prisoner) (c) (*No more than $5 to be allowed for any one return, and each return must cover all prisoners in gaol when the same is made*).	$1 00
*39. Certified copy of sentence (c)	
*40. Taking prisoner to railway station to be delivered to Central Prison Bailiff, in addition to other necessary expenses incurred in such duty (c)	50
	1 00

(*a*) Payable only where Sheriff's net income during preceding year did not exceed $2,000; R.S.O. c. 101, s. 11.

(*b*) Not applicable to the County of York or the City of Toronto.

(*c*) Items 38 to 40 inclusive apply also to offenders sentenced or liable to be removed to the Female Reformatory, or to the Reformatory for Boys; the fees shall, in the first instance, be paid out of county funds, unless the gaol is owned and maintained by a city municipality, in which case the fees in respect of prisoners convicted for offences committed within the city limits, shall be paid in the first instance out of the city funds, and so far as they relate to prisoners convicted for offences committed in the county without the limits of the city, shall be paid in the first instance out of the county funds; and the county or city may be subsequently repaid from the Consolidated Revenue such proportion thereof as relates to prisoners convicted of indictable offences at the Assizes, General Sessions or County Judge's Criminal Court, or convicted by Police or Stipendiary Magistrates, under Part LV. of "*The Criminal Code, 1892*," entitled "*Summary Trials of Indictable Offences.*" R. S. O. c. 101, s. 10.

Sec. 530.

For Other Services. (a)

41. *Return and services in respect of inquisition on body of prisoner dying in gaol (b).* $4 00
*42. For general supervision over the gaols and prisoners therein, and the books kept in connection with the gaol, in addition to any other allowance, and for stationery and postage, per quarter (b) 25 00
*43. For every prisoner discharged from gaol other than prisoners committed by warrant for trial at the Assizes or General Sessions (c) 1 00
*44. For services performed under 55-56 V. c. 29, s. 960 (Dom.), in each case disposed of under that section (c) 2 00
*45. For each day's attendance at an adjournment of the County Judge's Criminal Court, in each case 2 00
Provided that the Sheriff shall not be allowed more than $4 in respect of the same day's service. (c)

R. S. O. 1887, caps. 83 & 86, Sched. "Sheriffs"; 52 V. c. 6, s. 1; 56 V. c. 5, ss. 16, 19; 59 V. c. 18, Sched. (43).

Coroners.

*1. Precept to summon Jury $0 50
*2. Empanelling a Jury 1 00
*3. Summons for witnesses each 25
*4. Information or examination of each witness 25
*5. Taking every recognizance 50
*6. Necessary travel to take an inquest, per mile 20
*7. Taking inquisition and making return 4 00
*8. Every warrant 1 00

R.S.O. 1887, caps. 83 & 86, Sched. "Coroners."

Clerks of the Peace. (d)

*1. Drawing precepts to summon the Grand and Petit Juries; attending Justices to sign same; and transmitting to the Sheriff $6 00
*2. Attending each General Session for the first day 6 00
*3. For each additional day, not including the time occupied by County Court (See 62 V. (2nd Session) c. 11, s. 25) 4 00
*4. Making up records of each General Sessions (when completed), including quarterly record of returns of convictions required by sec. 6, R. S. O. ch. 93 ..... 15 00
*5. Notice of every appointment of a constable under R. S. O. c. 99, or other officer appointed by the Justices in Session, or by the Chairman 25
6. *Drawing every special order of the Court of General Sessions necessary to be communicated to any party, and entering it on record* 1 00
*7. *Notice of an order made by the General Sessions, and letter transmitting same, when required to be notified to any party or person* 50
8. *Copying orders of the Court, and causing the same to be published where it is requisite; for each order, exclusive of the expense of publication, per folio* 10
*9. For issuing subpœna 75
10. *For every subpœna ticket, or copy of a subpœna (when necessary and when not made out or charged by the County Crown Attorney)* 25
*11. For issuing Bench warrant 1 00
*12. For drawing out and taking every recognizance of the peace, or for good behavior if the person to be bound is in indigent circumstances 1 00

(a) The Act 62 V. (2nd Session) c. 7, s. 6 (1899) further provides that:—

"6. Where a Sheriff is directed by the Judge to perform any service or do any act for which no fee is provided the Sheriff may be allowed such fees as the Judge may think adequate and may direct, and the same shall be payable by the Province or by the County or part by Province and part by the County as the Judge may direct."

(b) Payable only where Sheriff's net income during preceding year did not exceed $2,000.

(c) Not applicable to County of York or City of Toronto.

(d) But see as to fees not repayable by the Province, R. S. O. c. 101, s. 3, quoted in note (a) to s. 320.

*13. For drawing out and taking every recognizance to appear, whether of a prosecutor, prisoner, or defendant, witness or other person	$0 50
*14. For calling parties on their recognizance and recording their non-appearance, for each person called	
15. *For discharging a recognizance*	25
*16. Drawing order of the Sessions or Chairman to estreat and put in process (on the whole list)	50
*17. Entering any order of the Sessions, or of the Chairman who presided at the Sessions, to remit any estreat, and recording an entry of the same	1 00
*18. Preparing list each Session; specifying names of persons making default under R. S. O. ch. 106, sec. 7	50
*19. Entering and extracting upon a roll, in duplicate, the fines, issues, amercements and forfeited recognizances recorded in each session, making oath to the same, and transmitting to the sheriff	50
*20. Making out and delivering to the sheriff the writ of *fieri facias* and *capias* thereon.	2 00
*21. Making out and certifying copy of roll and return of the sheriff, and transmitting it to the Provincial Treasurer	75
*22. Copies of depositions or examinations furnished to prisoners accused of felony, or their counsel, per folio of 100 words (when required by the accused, or his counsel, and ordered by the Court. This fee is not to be charged when copies are furnished by the Crown Attorney)	1 00
23. *Receiving and filing each indictment, when bill returned by the Grand Jury*	10
*24. Receiving and filing each presentment of the Grand Jury	50
25. *For a copy of presentment of the Grand Jury, forwarded by order of the Court of General Sessions to the Government, or to the Inspector of Prisons, or to County Council, per folio*	50
*26. Arraigning each prisoner, or defendant indicted	10
*27. Recording plea, or receiving and filing demurrer	75
28. *Empanelling and swearing the Grand Jury*	50
*29. Empanelling and swearing the Petit Jury in every case	1 00
*30. Swearing each witness to go before, or sworn before, the Grand Jury	75
*31. Charging the Jury with prisoner or defendant upon each indictment	20
*32. For filing each exhibit, list, return, or other paper connected with the proceedings of the Court of General Sessions where no charge therefor is specially provided	1 00
*33. Swearing each witness upon any trial or proceeding before the Court	10
*34. Receiving and recording verdict of Petit Jury	20
*35. Recording each judgment of sentence of the Court upon a verdict or confession	50
*36. Making out and delivering to the Sheriff a calendar of the sentences at each Court.	1 00
*37. Making out a certified copy or abstract of sentences sent with the prisoners to the Penitentiary, Central Prison, or Reformatory after each session	1 50
*38. Making up record of conviction or acquittal in any case where it may be necessary.	1 00
*39. Discharging prisoner by proclamation, each	1 00
40. *Every allowance of Certiorari to be paid by the party applying, except when he is in indigent circumstances*	50
*41. Furnishing to Sheriff and each of the Coroners revised lists of constables, when a revision has been made and when ordered to be done by the Justices in General or Adjourned Sessions, for each list	1 00
42. *Reading Statute or public proclamation, when required to be done by law*	1 00
43. *Making every copy or extract of a record, or paper, or document of any kind, required to be made by law, or by the order of the Justices in Session, or by the order of the Government, in any of its Departments, or for the information and use of the Government, when required, and when no charge is fixed by law, per folio*	25
44. *Causing public notice to be proclaimed in open Court of the General Sessions, of an intention to alter or rescind previous orders respecting the number and extent of any one or more of the Division Court limits, under section 15 of the Division Courts Act*	10
*45. Drawing out such orders of Sessions, for altering the limits of Division Courts, per folio	50
*46. Making out and transmitting copies of such orders to the Government, per folio	20
*47. Making out and transmitting copies of such orders to each Clerk of a Division Court affected by such alterations, per folio	10
*48. Making up books of orders of Sessions, declaring the limits of Division Courts	10
*49. Making out and transmitting copies (with letter) to the Clerk of each Division Court	1 50
*50. Making out and transmitting a copy thereof to the Government	1 00
51. *For every necessary certificate, per folio*	1 00
52. *Making out and transmitting to the Provincial Treasurer, a return or schedule of all convictions which have taken place before the Court, each list including letter*	20
53. *Causing notice to be published of any special or adjourned Sessions, when directed by the Chairman, or other two Justices, so to do, besides amount paid for publication*	1 00
	1 00

Sec. 530.

54. *Sending notice of any such Session to the Justices individually, when it is directed by the Chairman, or other two Justices, for each notice* $0 20

55. *Attending each adjourned or Special Sessions, and making up record of same, when completed* 5 00

56. *Making out warrant of distress or commitment, in any case where no fee is specially assigned therefor by any Statute, or by this Tariff* 1 00

57. *Swearing constable in open Court* 20

58. *Receiving, filing, and recording each oath of qualification of a Justice of the Peace* 25

59. *Every letter written by direction of the Justices in Sessions to the Government, or Justices, or coroners, or constables, or others upon matters connected with the business of the Court or the Administration of Justice* 25

60. *All necessary outlays for postage and publishing to be added in all cases* .....

The above Tariff of Fees and Costs shall also be applicable in all proceedings where costs are chargeable or ordered to be paid by private parties, together with the following additional items:

61. *Certifying the result of each appeal heard and determined by the Court to the convicting Justice or to any party requesting the same under any Statute* 50

62. *For every single search* 20

63. *For every general search* 50

64. *Receiving and filing notices of Appeal and the Appeal from any judgment or conviction by one or more Justices when an appeal is given by law to the Court of General Sessions of the Peace* 50

65. *When the appeal called,—on reading the conviction, notice of appeal and recognizance* 50

66. *For all other services upon the trial of such appeal case, when tried by jury, the same charges as hereinbefore specified in other trials* .....

67. *Issuing process to enforce the order of the Court in appeal case when required by law* 1 00

*68. For each copy of Schedule of the times and places of holding the Division Courts with the order of Sessions and forwarding the same to each Division Court Clerk 50

69. *Drawing bill of costs, including taxation and filing the same where necessary to be made and filed, as in cases of assault, nuisances or the like, and in appeals, (to be paid by the party)* 50

70. *For every certificate required of proof of a deed, (to be paid by the party applying for the same)* 1 00

71. *Receiving and filing affidavit of bastardy, (see Rev. Stat. c. 169, s. 3) (to be paid by the party producing it)* 25

72. *Receiving and filing each tender for any public work, or supply, or printing, or other service* 25

73. *Making out a list of the several tenders on each occasion, as they are opened, specifying the names, prices, and other particulars, and filing the same, when required to be done by the Justices* 50

74. *Drawing bonds or agreements for the delivery of articles, or for doing the work for the gaol or other county purposes, and attending execution, when required by the Justices* 1 00

75. *Receiving and filing accounts and demands, preferred against the county, numbering them, and submitting them for audit, and making out the cheques* 1 00

76. *Making out and delivering lists of orders on the treasurer, made at each audit* 2 00

77. *For every report or return required by Statute, or by the Government, where no remuneration has been provided by this table or by Statute* 1 00

78. *Making out and transmitting a return to the Government of Justices and Coroners who have taken the oaths, when required to be done, for each return* 1 00

*79. Swearing each party to an affidavit, where no charge is elsewhere provided for it, (to be paid out of the county funds, or by the party for whom the affidavit is sworn, according to the nature of the case) 20

80. *Drawing certificate of approval by the Justices in Sessions, of sureties tendered by the sheriff (to be paid by sheriff)* 50

81. *Administering oaths to any public officer, when authorized so to do (to be paid by the officer)* 25

82. *For distributing the Statutes to the Justices and county officers, or others, when directed by the Statute or the Government so to do, and taking receipts therefor; from each Justice or officer* 10

83. *For accounting to the County Member for the copies of Statutes not called for by the Justices and county officers, and delivering the same to him, wherever such duty is required by Statute or by the Government, and no other fee allowed* 1 00

84. *For receiving and filing Voters' Lists under Rev. Stat. c. 7, ss. 20 and 21, each list* 25

85. *For filing each list, return or other paper, where no charge is specially provided for, except accounts and claims against the county, and papers connected with matters to be charged against private individuals (to be paid out of the county funds, or by the party for whom the service is rendered, according to the nature of the case)* 08

NOTE.—When the offices of the Clerk of the Peace and County Crown Attorney are held by the same individual and there is a similar or the same fee provided for the same service to each officer, only one fee is charged or allowed.

The items numbered from 1 to 67 in the foregoing tariff only apply to proceedings in the Courts of General Sessions of the Peace, and do not supersede any existing Tariff of Fees for services rendered by the Clerk of the Peace out of Sessions.

For Services in County Judges' Criminal Court (*a*).

*86. Attending and service in Court, and making all necessary entries; for each prisoner brought before the Judge, and not consenting to be tried—in all	$0 50
*87. For attendance in Court, and services rendered at trial, making necessary record of proceedings and all necessary entries, including calendar of conviction; for each prisoner	2 00
*88. Preparing Judge's warrant to bring up the body of prisoner, and delivering the same to sheriff—for each prisoner	50
*89. Issuing writ of summons to witness when necessary	40
*90. Copy of Summons, each	20
*91. Warrant of remand, when issued and delivered to Sheriff	50
*92. For warrant to arrest, taking and estreating recognizances and proceedings to enforce same....(*the same fees as allowed for like services at the General Sessions of the Peace.*)	

R. S. O. 1887, Caps. 83 and 86, Sched. "Clerks of the Peace;" 58 V. c. 18, s. 1; 59 V. c. 39, s. 25 (6). Tariff of Board of Judges, 5th January, 1887.

CONSTABLES (*b*).

*1. Arrest of each individual upon a warrant	$1 50
*2. Serving summons or subpœna	25
*3. Mileage to serve summons, subpœna or warrant	13
*4. Mileage when service cannot be effected, upon proof of due diligence to the satisfaction of the Board of Audit	13
*5. Mileage taking prisoner to gaol, exclusive of disbursements necessarily expended in his conveyance	10
*6. Returning with prisoner after arrest—conveyance or railway fare for prisoner. Only reasonable disbursements to be allowed, and public conveyance to be used when practicable.	
*7. Attending Justices on summary trials, or on examination of prisoners charged with crime, for each day necessarily employed in one or more cases	1 50
*8. Attending Assizes or Sessions, each day	1 50
*9. Mileage travelling to attend Assizes, Sessions or before Justices, (*When public conveyance can be taken, only reasonable disbursements to be allowed*)	10
*10. Summoning jury for coroner's inquest, including attending at inquest, and all services in respect thereof, if held on same day as jury summoned	3 00
*11. Attending each adjournment thereof	1 50
*12. Serving summons or subpœna to attend before coroner, (subject to No. 10)	25
*13. Mileage serving same	13
14. *Exhuming body under coroner's warrant*	4 00
15. *Re-burying same*	2 00
16. *Serving distress warrant and returning same*	1 50
17. *Advertising under distress warrant*	1 00
18. *Travelling to make distress or to search for goods to make distress when no goods are found*	13
19. *Appraisements, whether by one appraiser or more*	*two cents in the dollar on the value of the goods.*
20. *Catalogue, sale and commission, and delivery of goods*	*five cents in the dollar on the net produce of the goods.*
21. *Executing search warrant*	1 50
*22. Serving notices on constables, when personally served	50

R. S. O. 1887, c. 80, Sched. "Constable"; 59 V. c. 26, s. 17 and Sched.

(*a*) The references appended to items 38-44 of the Schedule headed "Clerks of the Peace"—which is appended to R.S.O. c. 104, at p. 1060—are incorrect. These numbers are there given as "Tariff, item 87," etc., instead of "Tariff, item 86," etc.

(*b*) Constables' fees may be payable either by individuals, by the counties or by the Government—*i.e.*, by individuals or by the public. If a person arrested upon a charge which is indictable is not sent for trial the fees of the constable are paid by the county, city or separated town; if the case is sent for trial the fees are paid by Government.

Sec. 530

The Board of Audit may, in proper cases, upon the written recommendation of the Magistrate and High Constable allow a reasonable amount to a County Constable in addition to the above fees (R.S.O. c. 102, s. 12).

As to payment of a percentage of a constable's account on the recommendation of the County Judge without waiting for a meeting of the Board of Audit, see R.S.O. c. 102, s. 11.

CRIERS.

*1. Making proclamation for opening or adjourning the Court of Assize and Nisi Prius, Oyer and Terminer, and General Gaol Delivery and General Sessions	$0 20
*2. Making every other proclamation	20
*3. Calling and swearing grand jury	50
*4. Calling and swearing every petit jury	50
*5. Calling and swearing every witness or constable	10
*6. Attending Assizes and General Sessions, *per diem*	1 00

R. S. O. 1887, caps. 83 and 86, Sched. "Crier."

COUNTY CROWN ATTORNEY AT GENERAL SESSIONS.

In all criminal cases tried at the Courts of General Sessions of the Peace, in which no costs have been ordered to be paid, or, if ordered to be paid, cannot be made of the defendant, the County Crown Attorney is entitled to receive for the services rendered by him in each such case, the following fees to be paid upon the certificate of the Chairman, and to be taken in lieu of, and not in addition to, the fees which have been heretofore payable for services rendered in such cases (*a*), viz.:

1. For receiving and examining all informations, depositions, documents, and papers connected with a criminal charge	$2 00
2. For preparing draft and engrossed copy of every indictment, or charge	2 00
3. For all business (except items 1 and 2 *supra*, and the following) in conducting the prosecution to judgment, as well before as after trial	10 00
4. For every copy of subpœna	20
5. For every other service not specified above, and for reports on cases of unusual and important character, a *quantum meruit* to be determined by the Attorney-General, on a consideration of the particular circumstances	

NOTE.—Where a number of charges are pending against the same person and a conviction has been obtained on one or more indictments, fees, and costs on the further proceedings upon the other charges are not to be made or allowed on taxation, unless in cases where the Chairman would, in the event of additional convictions, impose a heavier sentence, or unless there are special circumstances, which, in the opinion of the Chairman, render it expedient that the other cases, or some of them, should be proceeded with and tried. (*b*)

In cases of indictment for the obstruction, or the non-repair of a highway or bridge, or of indictment for nuisance (where there is a *bona fide* dispute as to boundary, or title, or claim of right, and where no present public inconvenience is being suffered from what is complained of) the County Crown Attorney is not entitled to charge costs to the public, without the special sanction of the Attorney-General, but will collect his fees and costs from the parties only.

When the offices of the County Crown Attorney and Clerk of the Peace are held by the same individual, and a similar, or the same fee is provided for the same service to each officer, only one fee is to be charged or allowed. (*c*)

The County Crown Attorney is also entitled under R.S.O. c. 105, s. 14 to a fee of $1 for each certificate or inquiry as to whether a certificate should be granted to a Crown witness examined on a trial or prosecution of the class mentioned in s. 3 of that Act, and one-third of the said fee is repayable by the Province (s. 15)

(*a*) Tariff of the Board of Judges, 5th Jan., 1887.

(*b*) See *Re Stanton & Board of Audit of County of Elgin*, 3 O.R. 86 (1883).

(*c*) See *Re Fenton & Board of Audit of County of York*, 31 C.P. 31 (1880).

Sec. 530.

Further expenses repayable by Provincial Government under R.S.O. c. 104.

In addition to the items indicated by an asterisk in the above Tariff the Provincial Government (*a*) repays to the counties the expenses of

1. The maintenance of prisoners confined upon *criminal charges* (which extends to and includes the maintenance of prisoners convicted by police magistrates, under Part LV. of "*The Criminal Code, 1892*," for indictable offences, and confined upon such conviction in any common gaol within the Province).

2. A proportion of the salary of the gaoler of each county gaol, and of the payment of turnkeys—

3. Medicines, fuel and other similar necessaries for the gaol, and the prisoners confined on criminal charges.

4. Disbursements in transporting prisoners to the penitentiary, or reformatory and for carrying other sentences of the Courts into effect—

5. Fee to Gaol Surgeon for the examination of each prisoner eligible for removal or sentenced to Central Prison. (*b*)

6. Together with all other charges relating to Criminal Justice payable to the foregoing officers specially authorized by any Act of the Legislature, and immediately before the 9th day of June, 1846, payable out of the County funds.

The reference in the last clause (6) is to the Tariff of Fees fixed by the Judges of the Queen's Bench in November, 1845 (M.T. 9 Vic.) and referred to in the Act 9 V. c. 58 (1846), afterwards C.S.U.C. c. 120, (*c*)

All the allowances authorized by the Tariff of M.T. 9 Vic. and referred to in C.S.U.C. c. 120, have now been superseded by the Tariff contained in R.S.O. cc. 101 and 104.

Under "*The Jurors' Act*," (*d*) the county is also required to pay:

(1) To Grand and Petit Jurors attending the High Court, General Sessions or County Court, $2 a day with mileage. (*e*)

Fees payable under "Juror's Act," R.S.O. c. 61.

(2) To the Sheriff for making out, checking (each day), certifying and returning to the county treasurer such sum as the county council fixes by by-law, (*f*) and (where county council has not passed by-law) $1 per day for checking each jury panel, and $1 each for certifying and returning the lists to the treasurer.

(3) To the County Selectors of jurors, $4 a day, not to exceed $16 unless the number of grand and petit jurors to be selected exceeds 500, in which case $4 more is allowed for each additional 200 names. (*g*)

(4) To the Clerk of the Peace (*h*)

1. For receiving and examining the reports of selectors for each city, town, village and township, causing any deficiency which may be found therein to be supplied, and filing the same in his office	$0 50
2. For giving certificates to selectors of jurors, of duties having been performed; but one certificate for all the selectors for each municipality shall be given	0 50
3. For preparing in proper form each juror's book, and superintending the making up of the same (besides actual disbursements for stationer's charges)	3 00
4. For making up juror's books, entering all the names and numbers, and all other matters required to be entered therein, per one hundred names	2 00
5. For each copy of the juror's book required by this Act, per one hundred names	2 00
6. For each certificate required to be entered in the juror's book to verify same	1 00
7. For copy of jury list requiring to be entered, per one hundred names	2 00
8. For each panel of jurors drafted from the jury list, per one hundred names on each jury list	2 00
9. For entering each panel in the juror's book, with the numbers corresponding to the jury list	2 00
10. For making up aggregate return in detail of jurors	2 00
11. For copy thereof and transmitting same to Provincial Secretary when required, and for office copy of the same, each	5 00
	2 00

(*a*) Under R.S.O. c. 104, Sched. "Other matters."

(*b*) See *ante*, p. 565, the reference to R.S.O. c. 101, s. 9.

(*c*) See *Re Pousette and County of Lambton*, 22 U.C.R. 80 (1862), where BURNS, J., in his judgment at pp. 81-85 reviews the earlier legislation as to the audit and payment of accounts connected with the administration of criminal justice.

(*d*) R.S.O. c. 61. (*e*) S. 142. (*f*) S. 146. (*g*) S. 160.

(*h*) Unless there is an agreement with him under R.S.O. c. 101, s. 3, for payment to him of a gross annual sum in lieu of all fees chargeable by him to the county and which are not repayable to the County by the Province.

Sec. 530

In computing the number of jurors after the first hundred, any number less than 50 is not to be counted, but any number exceeding 50 is counted as a full 100. (*a*)

5. To each of the two Justices of the Peace who attend, upon notice from the Sheriff, at the drafting of a Grand or Petit Jury panel, $1 for each panel drafted. (*b*)

6. And to the Sheriff, "exclusive of such fees as he may be entitled to from the parties in any action," (*c*)

1. For each panel of Jurors, whether Grand or Petit, returned and summoned by him in obedience to any general precept for the return of the Grand or Petit Jurors for any sittings of the High Court or General Sessions of the Peace or County Court respectively, under this Act	$4 00
2. For copies of such panel to be transmitted to the proper officers, each	1 00
3. For every summons served upon the jurors on any panel	0 25
4. For every mile which the Sheriff or his deputy or bailiffs necessarily and actually travelled from the county town for the purpose of serving such summons (such mileage to be allowed for going only, and not for returning)	0 13
5. Advertising drafting of Jury panels	1 00
6. Notices to Clerk of the Peace, and Justices, each	0 50
7. Attending to draft jury panels	4 00
8. Travelling to serve summons, per mile	0 13
9. Writing names of jurors on cards	2 00 ( )

Sections 156 to 158 of the Act provide that :—

> "The municipal corporation of any county in Ontario of which a city or town withdrawn from the jurisdiction of the county council forms part for judicial purposes, may demand and recover from the municipal corporation of the city or town a portion of the expenses incurred by the county, in any year, for the payment, summoning, drafting, selecting and enrolling of jurors." (s. 156.)
>
> "In case the councils of counties and of cities or separated towns do not agree as to the shares of the fees and disbursements for jurors to be borne by the counties, cities and towns respectively, the same shall be determined by arbitration under the provisions of *The Municipal Act*, and the portion to be borne by the city or town shall be payable to the county immediately after the close of each year." (s. 157.)
>
> "The council of the city or town shall raise by assessment the sum of money required by the city or town for the purposes of this Act, or shall pay such sum out of any moneys belonging to the city or town, and applicable to municipal purposes generally." (s. 158.)

No portion of the expenses for which municipalities are liable under "*The Jurors' Act*" is repayable by the Provincial Government.

Special Constables.

R. S. O. c. 99 "*respecting Constables*" provides for the payment at a rate not exceeding $1 per day of special constables appointed under s. 23 of that Act. Such payment is to be made upon the order of the Magistrates at a Special Session (s. 30) by the treasurer of the territorial or other municipal division within which the special constables have been called out to serve. (s. 31.)

Coroners Inquests.

As to Coroners' Inquests (*d*) it is provided (*e*) that the fees of the Coroner shall be payable in the first instance by the county and (*f*) shall be repayable by the Government. The fees of the jurors are, upon the order and certificate of the Coroner, to be paid by the county treasurer, unless the death occurred in a city or separated town, in which case the order is to be made upon, and is payable by the treasurer of such city or separated town. (*g*) The fees of

(*a*) S. 163. (*b*) S. 88. (*c*) S. 162.

(*d*) The Coroners' Court is a Criminal Court ; *Reg* v. *Hammond*, 29 O.R. 211 (1898.)

(*e*) By R. S. O. c. 101, Sched. and c. 102, s. 1.

(*f*) By R. S. O. c. 104, Sched. "Coroner."

(*g*) R. S. O. c. 97, s. 16.

Sec. 530.

medical witnesses are, in like manner payable by the treasurer of a county or of a city, (*a*) no provision being made for their payment by the treasurer of a separated town, and expenses relating to coroners' inquests being expressly excluded by s. 509 of "*The Municipal Act*" from the "charges relating to criminal justice," a proportion of which is to be borne by separated towns. (*b*)

Crown Witnesses.

Payment of Crown witnesses is regulated by R. S. O. c. 105, and is to be made (in the cases therein provided for) by the treasurer of the county, city or separated town in which the offence (*c*) was committed or was supposed to have been committed (*d*) upon the order of the presiding Judge (*e*) made out and delivered by the proper officer of the Court.

In all cases one-third—and in cases sent from the unorganized districts of Ontario the whole amount—thus paid to Crown witnesses is repayable by the Province. (*f*) See also under "County Crown Attorney," *ante*, p. 572.

Provincial Bailiffs.

In addition to the fees of the officers mentioned in the above Statutes, the county is liable to pay to the Provincial Treasurer on demand, the expenses incurred in the removal by any Provincial Bailiff from the county gaol or other place of custody within the county, of any person removed therefrom to any asylum or institution for the insane in this Province, or to the "Ontario Reformatory for Boys," or the "Andrew Mercer Reformatory," or the "Industrial Refuge for Girls," together with an addition to such expenses of 60 per cent. thereof towards payment of the salary of such Provincial Bailiff; cities and separated towns forming part of the county for judicial purposes, are liable for their just proportion of moneys so paid. (*g*)

County Boards of Audit.

Previous to the 19th day of December, 1868, the date of the passing of "*The Law Reform Act of 1868*," (*h*) all accounts and demands preferred against a county for services and disbursements connected with the administration of justice were required to be audited and passed at a Court of General Quarter Sessions. (*i*) By 32 V. c. 6, s. 9 (2, 3) and 33 V. c. 8, s. 1, this duty was transferred to a "Board of Audit," composed of the Chairman of the Court of General Sessions of the Peace and two other persons to be appointed by the county council at their first meeting in each year, and of whom not more than one was to be a member of that body.

This is practically the present composition of the County Board of Audit which, under s. 6 of R.S.O. c. 102, is to be composed of the Judge, or Junior Judge, of the County Court, and two other persons appointed annually for that purpose by the county council, not more than one of such persons being a member of the county council for the time being.

The Board is to be convened by the Clerk of the Peace quarterly between the first and fifteenth days of January, April, July and October in each year, and, at the completion, in October, of the audit for the year, is to make a report to the county council of any irregularity in the accounts presented to them, or of any claim made contrary to law or of any other matter which they may consider it desirable to bring under the notice of the council. (*j*) S. 8 provides that:—

> "Where the accounts of constables preferred against the county for services performed in any local municipality in connection with the arrest and detention of vagrants are deemed unreasonable, or where the arrests appear to have been unnecessary or appear to have

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(*a*) R. S. O. c. 97, s. 14.

(*b*) Claims under R. S. O. c. 97, ss. 14 and 16 do not come before the Board of Audit.

(*c*) As to the meaning of the words "felony" and "misdemeanour" used in this Act, see Art. 535 of "*The Criminal Code, 1892*," and s. 13 of "*The Interpretation Act*," R.S.O. c. 1.

(*d*) R.S.O. c. 105, s. 7. (*e*) S. 3. (*f*) *Ibid*, ss. 10, 11.

(*g*) R.S.O. c. 314, s. 5. (*h*) 32 V. c. 6.

(*i*) 7 Wm. IV., c. 18, ss. 1, 2; C. S. U. C. c. 121.

(*j*) R. S. O. c. 102, ss. 6, 7.

Sec. 530.

County Boards of Audit.

been made for the purpose of making fees, the Board of Audit may refuse to certify the accounts for such fees, in whole or in part, or may certify the facts and their opinion thereon to the county council which may, by resolution, refuse payment of such accounts in whole or in part."

See further as to the powers of the Board, ss. 12 and 13 of the Statute.

In 1886 (*a*) provision was made for relieving the County Boards of Audit of a part of the duties formerly discharged by them. That Act (*b*) provides that:

"The Lieutenant-Governor in Council may appoint the Local Registrar or Deputy Clerk of the Crown of the county, or some other public officer resident in the county town of the county to be the Auditor of those accounts relating to the administration of justice in the county, for which the Province is liable." (S. 1.)

"Where such an appointment is made it shall not be requisite for the Board of Audit appointed under [R.S.O. c. 102,] to approve or audit any accounts in respect of items set out in the [Tariff of Fees printed *ante* at pp. 576-572] under any of the following headings, namely:—"Sheriff," "Coroner," "Clerk of the Peace" and "Crier"; nor in respect of the items under the heading of "Constables" where the accounts rendered under these headings are in respect of offences belonging to any of the following classes;

(*a*) Offences for which the parties charged had been committed or held to bail for trial at the Assizes or General Sessions.

(*b*) Offences for which the parties charged had been convicted before a Police or Stipendiary Magistrate, under Part LV. of "*The Criminal Code, 1892.*"

Nor in respect of fees to gaol surgeons under the heading "Other Matters" in the said Tariff." (S. 2.)

All other accounts in connection with the administration of civil or criminal justice which are payable out of county funds must still be audited by the Board of Audit.

Section 14 of R. S. O. c. 102, provides that:—

"The treasurer of every county shall, without further authority, pay the amount of the fees which are payable out of county funds, when duly allowed by the Board of Audit, in the following order and in preference to all other charges unless otherwise provided by law—that is to say, after the expenses of levying and collecting and managing the rates and taxes imposed in the county are paid;

1. All sums of money payable to the sheriff, coroner, gaoler, surgeon of the county gaol, or to any other officer or person, for the support, care or safe keeping of the prisoners in the county gaol, or for the repairing and maintaining of the court house or gaol;

2. The accounts of public officers and officers of the Court of General Sessions;

3. All sums of money payable for any other purpose whatever connected with the administration of justice within the county;

4. All other sums of money allowed by the Board of Audit in the order in which the same were allowed.

And sec. 11 of R. S. O. c. 104, authorizes the county treasurer upon the recommendation of the County Judge, without waiting for a meeting of the Board of Audit, to pay 75 per cent. of the amount of a duly certified or verified account by a High or County Constable for services rendered by him.

(*a*) By 49 V. c. 18.

(*b*) Now R. S. O. c. 103.

PART VII.

POWERS OF MUNICIPAL COUNCILS.

TITLE I.—IN GENERAL.
TITLE II.—AS TO HIGHWAYS AND BRIDGES.
TITLE III.—AS TO WORKS PAID FOR BY LOCAL RATE.
TITLE IV.—AS TO RAILWAY AND STREET RAILWAY COMPANIES.
TITLE V.—AS TO MINING IRON SMELTING WORKS.
TITLE VI.—AS TO MEANING THE ESTABLISHMENT OF GRAIN ELEVATORS.

TITLE I.—POWERS IN GENERAL.

DIV. I.—AS TO THE MUNICIPALITY ITSELF. (Secs. 531-534.)
DIV. II.—AS TO MUNICIPAL ELECTIONS. (Secs. 535-536.)
DIV. III.—AS TO MUNICIPAL OFFICERS. (Sec. 537.)
DIV. IV.—AS TO PAYMENT OF MEMBERS OF THE COUNCIL. (Sec. 538.)
DIV. V.—AS TO FINANCE. (Sec. 539.)
DIV. VI.—AS TO THE PROTECTION OF LIFE AND PROPERTY. (Secs. 540-548.)
Sub-Div. I.—Prevention of Accidents, etc. (Sec. 540.)
Sub-Div. II.—Erection of Buildings and Elevators. (Sec. 541.)
Sub-Div. III.—Prevention of Fires. (Secs. 542-544.)
Sub-Div. IV.—Fences. (Sec. 545.)
Sub-Div. V.—Pounds. (Sec. 546.)
Sub-Div. VI.—Miscellaneous. (Sec. 547.)
Sub-Div. VII.—Police and Night Watchmen. (Sec. 548.)
DIV. VII.—PUBLIC MORALS. (Sec. 549.)
DIV. VIII.—PUBLIC HEALTH. (Secs. 550-556.)
Sub-Div. I.—Food and Drink. (Sec. 550.)
Sub-Div. II.—Sanitary Measures. (Secs. 551-553.)
Sub-Div. III.—Sewers and Drains. (Secs. 554-555.)
Sub-Div. IV.—Purchasing Wet Lands. (Sec. 556.)
DIV. IX.—HIGHWAYS AND BRIDGES. (Secs. 557-560.)

Div. X.—Statute Labour. (Sec. 561.)
Div. XI.—Wharfs, Harbours, Rivers and Streams, etc. (Secs. 562-563.)
Div. XII.—Water, Light and Heat. (Secs. 564-568.)
Div. XIII.—Street Railways, Telephone Service. (Secs. 569-573)
Div. XIV.—Trees, Planting, Protection and Removal of. (Secs. 574-575.)
Div. XV.—Public Parks and Industrial Farms. (Sec. 576.)
Div. XVI.—Cemeteries. (Sec. 577.)
Div. XVII.—Fairs and Markets. (Secs. 578-582.)
Div. XVIII.—Regulation of Trade. (Secs. 583-585.)
Div. XIX.—Nuisances. (Sec. 586,)
Div. XX.—Education. (Sec, 587.)
Div. XXI.—Charities. (Secs. 588-590.)
Div. XXII.—Aids, Bonuses and Loans. (Sec. 591.)
Div. XXIII.—Bounties and Rewards. (Secs. 592-595.
Div. XXIV.—Entertaining Guests, Travelling Expenses, Diffusing Information. (Secs. 596-597.)

Div. 1.—Powers as to the Municipality itself. (Secs. 531-534.)

Landmarks and monuments. Sec. 531.
Establishing boundaries. Sec. 532 (1.)
Surveying and naming streets. Sec. 532 (2).
Numbering houses and lots. Sec. 532 (3).
Keeping a record of streets and numbers. Sec. 532 (4).
Census. Sec. 533 (1).
Mortuary statistics, etc. Sec. 533 (2).
Acquiring property for public purposes. Sec. 534 (1).
Acquiring land outside of municipalities. Sec. 534 (2).
Town Halls in townships. Sec. 534 (3).

Landmarks and Monuments.

Placing landmarks and monuments or marking boundaries of concessions, lots, etc.

531.—(1) In case the council of any township, city, town or village adopts a resolution on the application of one-half of the resident land-holders to be affected thereby, or upon its own motion, that it is expedient to place durable monuments at the front or rear of any concession or range or part thereof in the municipality, or at the front or rear angles of the lots therein, the council may apply to the Lieutenant-Governor, in the manner provided for in sections 14, 15 and 16 of *The Surveys Act*, praying him to cause a survey to be made of such concession or range, or such part thereof, and to cause such monuments to be placed under the authority of the Commissioner of Crown Lands.

R. S. O. c. 181, ss. 14-16.

(2) The person or persons making the survey shall accordingly plant stones or other durable monuments at the front or at the rear of such concession or range, or such part thereof as aforesaid, or at the front and rear angles of every lot therein (as the case may be); and the limits of each lot so ascertained and marked shall be the true limits thereof; and the cost of the survey shall be defrayed in the manner prescribed by the said statute. 55 V. c. 42, s. 491.

Sec. 531 (1). Mode and cost of survey.

Taken from 18 V. c. 83, s. 8 (1855); 22 V. c. 99, c. 258; the words "or upon its own motion" in lines 3 and 4 of sub-s. 1 added in 1873 by 36 V. c. 48, s. 380. *Cf.* 12 V. c. 35, s. 31; C. S. U. C. c. 93, s. 6. See also 12 V. c. 81, s. 30.

(a) "*The Surveys Act*," (*a*) provides for the re-survey (*b*) upon application to the Lieutenant Governor by any township council, of any concession lines or side-road lines not run in the original survey under competent authority or which have become obliterated, and (*c*) on the application of the council of any township, city, town or village, of any concession, range or block or any part thereof in the municipality; and in either case for the placing of stone, iron or other durable monuments to mark such re-surveyed lines or the front or rear boundaries or angles of the lots in such re-surveyed concession, range or block or part thereof. The expenses incurred in making such surveys, etc., are to be paid by the municipality, (*d*) and may be levied upon the proprietors of the lands thus re-surveyed in proportion to their respective holdings in the same manner as any sum required for any other purposes authorized by law may be levied. (*e*)

The resolution of the council should recite the application (if any) of the "land-holders to be affected," should state (in the words of this section) that it is expedient that durable monuments should be placed, etc., specifying the lines to be run or the concessions, ranges or blocks or parts thereof to be re-surveyed, etc., and it should be forwarded to the Commissioner of Crown Lands with a petition from the council to the Lieutenant-Governor, praying him to cause the desired survey to be made and boundaries planted.

Forms of applications by land-holders to the council and of the necessary resolution and petition of that body will be found in *Cooper* v. *Wellbanks*, 14 C. P. 364 (1864) and *Reg.* v. *McGregor*, 19 C. P. 69 (1868) the latter of which was an application by a county council under C. S. U. C. c. 93, s. 6; 12 V. c. 35, s. 31.

In order to the validity of the survey and to the right of the council to recover the expenses of it from the land-holders affected thereby, it is necessary that the procedure prescribed by this section and ss. 14 and 15 of "*The Surveys Act*" should be strictly adhered to by the council; (*f*) and also that the surveyor entrusted with the work should follow the directions contained in "*The Surveys Act*." (*g*) as to the mode of survey.

532. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

Ascertaining and Establishing Boundaries.

By the councils of townships, cities, towns, and villages:—

1. For procuring the necessary estimates, and making the

Establishing boundaries of municipalities.

(*a*) R.S.O. c. 181. (*b*) S. 14. (*c*) S. 15. (*d*) S. 16 (*e*) Ss. 14 (5), 15 (3).

(*f*) *Re Walker* v. *Township of Burford*, 15 U. C. R. 82 (1857); *Cooper* v. *Wellbanks*, supra; *Re Scott and County of Peterborough*, 25 U. C. R. 453 (1866), 26 U. C. R. 36 (1866); *Re Scott and Township of Harvey*, 26 U. C. R. 32; (1866); *County of Peterborough* v. *Township of Smith*, 26 U. C. R. 40 (1866); *Re Fairbairn and Township of Sandwich East*, 32 U. C. R. 573 (1872); *Boley* v. *McLean*, 41 U. C. R. 260 (1877); but see *Reg.* v. *McGregor*, supra.

(*g*) *Tanner* v. *Bissell*, 21 U. C. R. 553 (1862); *Boley* v. *McLean*, supra, and see *Ardley* v. *Curry*, 29 Grant 243 (1881).

Sec. 532 (1).

Ascertaining and establishment of boundaries.

proper application for ascertaining and establishing the boundary lines of the municipality, according to law, in case the same has not been done; and for erecting and providing for the preservation of the durable monuments required to be erected for evidencing the same. 55 V. c. 42, s 489 (56).

Taken from the Act of 18. s, (22 V. c. 99,)s. 259 (1): *Cf.* 12 V. c. 81, s. 31 (26) 52, 59, 61, 67, 80, 82, 106, and the Statutes referred to under s. 531.

(a) See note (a) to s. 531 and note (c) to s. 5.

(b) "For providing for the preservation of the durable monumente required to be erected." etc.

"*The Criminal Code, 1892*," provides that

"Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully pulls down, defaces, alters or removes any mound, land-mark, post or monument, lawfully erected, planted or placed to mark or determine the boundaries of any Province, county, city, town, township, parish or other municipal division;" (*a*) and

"Every one is guilty of an indictable offence and liable to five years' imprisonment who wilfully defaces, alters or removes any mound, land-mark, post or monument lawfully placed by any land surveyor to mark any limit, boundary or angle of any concession, range, lot or parcel of land.

2. It is not an offence for any land surveyor in his operations to take up such posts or other boundary marks when necessary, if he carefully replaces them as they were before." (*b*)

The intention of this sub-section of "*The Municipal Act*" is probably that the duty of caring for the preservation of these lands marks should be entrusted by the by-law to some officer of the municipality (*c*).

Surveying and Naming Streets.

By the councils of cities, towns and villages:—

For marking the boundaries of and naming streets, etc.

2. For surveying, settling, and marking the boundary lines of all streets, roads, and other public communications, and for giving names thereto, and for affixing such names at the corners thereof, on either public or private property: but no by-law for altering the name of any street, square, road, lane, or other public communication, shall have any force or effect unless passed by a vote in favour thereof of at least three-fourths of the whole council, nor unless and until the by-law has been registered in the registry office of the proper registry division; and the registrar shall be entitled to a fee of $1 for every by-law so registered, and for the necessary entries and certificates in connection therewith.

(*a*) Every by-law changing the name of a street in a city or town, shall state the reason for the change, and shall not be finally passed until the same has been approved by the County Judge.

(*b*) The Judge, on an application by or on behalf of the municipal council, shall name a day, hour and place for considering the same, and for hearing the

(*a*) Art. 505. (*b*) Art. 506.

(*c*) *Cf.* the language of 12 V. c. 81, s. 31 (26),—"providing for the periodical inspection and preservation of the durable monuments, etc."

Changing names of streets.

advocates of the change, and also any persons who deem themselves aggrieved thereby and desire to be heard, and any other persons as the Judge may think fit.

(*c*) A copy of the by-law and of the Judge's appointment shall be served on the registrar or deputy registrar of the registry division at least two weeks before the time named, and shall be published once in the *Ontario Gazette* at least two weeks before the time so named, and at least weekly for four weeks in such other newspaper or newspapers as the Judge directs.

(*d*) If the Judge approves of the change he shall certify to that effect, and his certificate shall be filed with the by-law in the registry office of the registry division in which the territory lies. The change shall take effect from the date of the registration of the certificate and not before. 55 V. c. 42, s. 496 (31).

The first clause is taken from the Act of 1858, (22 V. c. 99,) s. 324 (5). *Cf.* 12 V. c. 81, s. 60 (4). The remainder of the first paragraph was added in 1877 by 40 V. c. 7, Sched. (180), and the words "unless passed by a vote in favour thereof of at least three-fourths of the whole council" were inserted in 1885 by 48 V. c. 39, s. 18. Clauses (*a*) to (*d*) inclusive were added in 1887 by 50 V. c. 29, s. 26, clause (*a*) having been since recast into its present form by 54 V. c. 42, s. 20 (1891).

(c) Some limitation of the power of municipal councils in regard to altering the names of streets became necessary in consequence of the frequent and unnecessary changes made by certain councils without any respect for historical associations and to the great inconvenience of those engaged in searching the titles to property (*a*).

(d) **"By a vote of at least three-fourths of the whole council."** *Cf.* ss. 24, 102. It is advisable that some evidence of the fulfilment of this condition should appear either by recital in the by-law itself, or in the certificate attached to the copy for registration. This is not, however, essential to the validity of the by-law (*b*).

Numbering Houses and Lots.

Numbering houses, etc.

3. For numbering the houses and lots along the streets of the municipality, and for affixing the numbers to the houses, buildings, or other erections along the street, and for charging the owner or occupant of each house or lot with the expense incident to the numbering of the same. 55 V. c. 42, s. 496 (29).

Taken from the Act of 1858, (22 V. c. 99) s. 290 (43), which applied only to cities and towns; extended to villages by the Act of 1866 (29-30 V. c. 51,) s. 296 (48).

Record of Streets and Numbers.

Record of streets, numbers, etc.

4. For keeping (and every such council is hereby required to make and keep) a record of the streets and numbers of the

(*a*) See on this point the remarks of HAGARTY, C. J. O. in *Van Koughnet* v. *Denison*, 11 A. R. 699 (1885) at pp. 705-706. As to the altering the names of streets in London under the Imp. Statutes 11-12 V. c. 163, s. 145 and 18 V. c. 120, s. 141, see *Daw* v. *Metropolitan Board of Works*, 12 C. B. N. S. 161, 164-5 (1862).

(*b*) See the cases cited in last paragraph of note (a) to s. 326.

Secs. 533(4)-534.

Record of streets and numbers.

houses and lots numbered thereon respectively, and for entering therein, (and every such council is hereby required to enter therein) a division of the streets with boundaries and distances for public inspection. 55 V. c. 42, s. 496, (30).

Taken from 22 V. c. 99, s. 290 (14) which applied only to cities and towns; extended to villages by 29-30 V. c. 51, s. 296 (49).

(e) The directions of this section are imperative. The object, no doubt, is "to insure the avoidance of the inconvenience of having several streets of the same name, or several houses in the same street or place bearing the same number." (a)

533. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

Census.

By the councils of counties, townships, cities, towns and villages:—

Local census.

1. For taking a census of the inhabitants, or of the resident male freeholders and tenants in the municipality. 55 V c. 42, s. 479 (13); 60 V. c. 3, s. 3.

Taken from 22 V. c. 99, s. 242 (5), the word "tenants" being substituted for "householders." See s. 2 (7).

(a) See also s. 20, giving the council of a town or village power to pass a by-law for taking a census of the municipality (b). A census of Canada was required by s. 8 of "*The British North America Act, 1867*," to be taken in 1871 and in every tenth year thereafter. Provision therefor is now made by R.S.Ca. c. 58, s. 2.

Mortuary Statistics.

By the councils of cities, towns and villages:—

Bills of mortality.

2. For directing the keeping and returning of bills of mortality; and for imposing penalties on persons guilty of default 55 V. c. 42, s. 496 (8).

Taken from 22 V. c. 99, s. 287 (30). *Cf.* 12 V. c. 81, ss. 60 (15), 61, 67, 80, 82, 106.

(b) "**Bills of mortality**" are returns of the deaths which occur within a certain district. Such returns were first required in London in 1592, after a visitation of the plague, the object of their publication being to check exaggerated returns, and also to warn those who could conveniently do so to leave London when the pestilence became more fatal than usual. In Ontario these statistics are now secured by the "*Act respecting the Registration of Births, Marriages and Deaths*" (c).

534. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

(a) *Per* WILLES, J., in *Daw* v. *Metropolitan Board of Works*, 12 C. B. N. S. 161 (1862) at p. 167.

(b) *Cf.* ss. 4, 11, 21, 41 of this Act, and ss. 13-17 of "*The Assessment Act*."

(c) R.S.O. c. 44.

Obtaining Property.

Sec. 534 (1).

By the councils of counties, townships, cities, towns and villages:—

1. For obtaining such real and personal property as may be required for the use of the corporation; and for erecting, improving and maintaining a hall, and any other houses and buildings required by and being upon the land of the corporation; and for disposing of such property when no longer required. 55 V. c. 42, s. 479, (1).

Obtaining property, real and personal, etc.

Taken from the Act of 1858 (22 V. c. 99,) s. 242 (1). *Cf.* 12 V. c. 81, s. 31 (1), townships; s. 41 (1), counties; ss. 52, 59, villages; ss. 61, 67, 80, towns; ss. 82, 106, cities.

(a) The words "obtaining" used here and in s. 587 (1), and "acquiring" in subs. 2 and 3, in sections 524, 576 (3) and elsewhere throughout the Act, do not seem to confer the power of taking land compulsorily. When it is intended to confer such power apt words therefor are employed (*a*).

As to personal property, a corporation not expressly restricted therefrom may acquire, hold and deal with personal property required for corporation purposes in like manner as an ordinary individual (*b*). But as to real property the case is otherwise, for the Statutes of Mortmain, restricting the right of corporations to hold lands and tenements without authority of Parliament or due license for that purpose (*c*), are in force in this Province (*d*), and municipal corporations are within their operation (*e*). A conveyance of lands to a corporation not authorized to hold lands is, therefore, voidable, and such lands may be forfeited, but only by the Crown (*f*). The real property which may be acquired by a municipal corporation under this section is only such as is "required for the use of the corporation," *i.e.*, such as it is expressly authorized to hold and use for corporate purposes (*g*). The words "for the use of" do not mean "for the benefit of," and a municipality cannot pass a by-law to raise money for the purchase of land to be presented to the Dominion Government for the site of a post office and custom house (*h*).

In *Township of Oxford* v. *Bailey* (*i*), a municipal corporation, having invested surplus clergy reserve moneys on mortgage, was held to be entitled to a decree of foreclosure, and not to be restricted to a sale of the property, notwithstanding the Statutes of Mortmain; but in that case the investment had been expressly validated by the Act 27 V. c. 17, s. 2.

In *Town of Belleville* v. *Judd* (*j*), the plaintiffs, having taken a mortgage for $500 to secure a balance of corporation moneys due them by a defaulting treasurer, sued the mortgagor upon his covenant to pay that amount. It was pleaded that being a corporation they had no power to take the mortgage and could not, therefore, recover; but the Court held that the question of the

(a) *Cf.* the language of ss. 58 (2), 501, 554 (1), 576 (1), 577 (2) with that of ss. 564, 565, 587 (1).

(b) See note (ee) to s. 10, *ante*, p. 43.

(c) Steph. Com. (3rd Ed.) Vol. I., p. 435; Vol. III., p. 126.

(d) *Doe d. Anderson* v. *Todd*, 2 U.C.R. 82 (1846); *Doe d. Vancott* v. *Read*, 3 U.C.R. 244 (1846); *Hallock* v. *Wilson*, 7 C.P. 28 (1857); *Mercer* v. *Hewston*, 9 C.P. 349 (1859); *Hamby* v. *Fuller*, 22 C.P. 141 (1872); *Town of Whitby* v. *Liscombe*, 22 Grant 203, 23 Grant 1 (1875); *Macdonell* v. *Purcell*, 23 S.C.R. 101 (1893).

(e) *Brown* v. *McNab*, 20 Grant 179 (1873).

(f) *McDiarmid* v. *Hughes*, 16 O.R. 570 (1888), and see *Becher* v. *Woods*, 16 C.P. 29 (1865).

(g) See, for examples, ss. 44, 266, 501, 509, 524, 527, 534, 543 (17) and 554. A still more extensive power is conferred by s. 556 upon township councils in regard to the purchase of wet lands situate within the township.

(h) *Jones* v. *Town of Port Arthur*, 16 O.R. 474 (1888). *Per* FERGUSON, J., "It might as well be said that the corporation could buy a farm, . . . rent it and apply the rent to some charitable purpose."

(i) 12 Grant, 276 (1866). (j) 16 C.P. 397 (1866).

Sec. 534 (1-2).

Notes (b)-(c).

plaintiffs' power to take a conveyance of land did not arise upon the pleadings, and that the action being one upon a covenant to pay an indebtedness which arose in the course of the legitimate business of the corporation, they were entitled to recover.

Obtaining property for corporate purposes.

In *Brown* v. *McNab* (*a*), where a mortgage had been executed to a municipal corporation under similar circumstances (viz., to secure a debt due by a defaulting treasurer), and, by mutual mistake, a part of the land intended to be mortgaged was omitted from the description of the parcels, it was *Held*, that although a private person would have been entitled to a decree rectifying the conveyance, the plaintiffs, being a municipal corporation, were within the Statutes of Mortmain, and were, therefore, not so entitled. The earlier cases of *Township of Orford* v. *Bailey* and *Town of Belleville* v. *Judd* are referred to and distinguished by STRAGE, C. (*b*).

Erecting buildings.

(b) "**And for erecting, improving and maintaining a hall,**" etc. See also ss. 500, 503, 509 (b), 518, 524, 527, 529, 576 (4), etc.

A contract by which a private person agrees with a municipality to put up a saw mill on his own land is apparently *ultra vires* of the corporation. (*c*)

As to the responsibility of municipal corporations for accidents arising from negligence in the management of land and buildings held by them under their corporate powers, see the authorities collected *ante* in note (**d**) to s. 500.

Disposing of real property.

(c) "**And for disposing of such property when no longer required.**" A township council may dispose of a town hall and the site upon which it stands when they consider that a new town hall in another situation would be more convenient for the public. (*d*) And the Court has no power to interfere with the discretion of a municipal council as to the advisability of disposing of a site purchased for a town hall, etc., and acquiring a new site therefor, it not being shewn that persons have purchased lands on the faith of the dedication of the site first purchased or that any corrupt or selfish motives influenced the council in making the change. (*e*) Express authority is given for the sale of lands acquired by local municipalities for the erection of powder magazines thereon (*f*) or for industrial farms, or park or exhibition grounds. (*g*)

But if the land has been conveyed to the municipal corporation as to constitute them trustees thereof for the public, they cannot without statutory authority, alienate it even for another public purpose. An attempt to do so will be restrained by injunction, and if the land has been actually alienated, a reconveyance will be ordered. (*h*) In *City of Hamilton* v. *Morrison* (*i*) it was held that no part of a block of land conveyed to the plaintiffs "for the purposes of a public market" could be dedicated by them for a highway. As to land dedicated for public parks, see s. 576, and as to land dedicated for streets, squares, etc., s. 637 (1) and notes thereto.

Acquiring Lands outside the limits for public purposes.

By the councils of townships, cities, towns and villages:—

Acquiring land outside of municipality.

2 For acquiring and holding by purchase or otherwise, for the public use of the municipality, lands situate outside the limits of the municipality; but such lands so acquired shall not form part of the municipality, but shall continue and remain

(*a*) 20 Grant 179 (1873). (*b*) Page 183.

(*c*) *Township of Kinloss* v. *Stauffer*, 15 U.C.R. 414 (1859).

(*d*) *Re Hawke and Township of Wellesley*, 13 U.C.R. 636 (1856).

(*e*) *Little* v. *Village of Wallaceburgh*, 23 Grant 540 (1876), and see the cases collected in foot note (*a*) on p. 45, *ante*.

(*f*) S. 543 (17). (*g*) S. 576 (3).

(*h*) *Attorney General* v. *Town of Goderich*, 5 Grant 402 (1856), where part of a block of land granted to the defendants by the Canada Company "as and for a market place for the use of the inhabitants of the said town" had been conveyed by the town to the corporation of the United Counties of Huron and Bruce for the site of a court house.

(*i*) 18 C.P. 228 (1868).

Sec. 534 (2-3).

Acquiring lands outside limits of the municipality.

as of the municipality where situate; and all by-laws passed by township councils for the purpose of acquiring land as provided by this subsection, are hereby declared as legal and binding where the by-laws have not been contested or impeached before the 23rd day of April, 1887, as if the lands were within the limits of the municipality the council of which passed the by-law. 55 V. c. 42, s. 489 (57).

Taken from 50 V. c. 29, s. 25 (39) (1887). A similar enactment, 40 V. c. 25 (1877), applying only to cities, towns and villages and ending at the words "where situate," was repealed by 50 V. c. 25, s. 27.

(c) It is not easy to see why the by-laws of a corporation which has thus acquired land "for the public purposes of the municipality" should not apply thereto (*a*) as they do to land acquired by cities and towns for an industrial farm or for exhibition purposes (*b*) by townships, cities, towns and villages for cemetery purposes (*c*), and as the by-laws of the Board of Park Management of any municipality apply (*d*) to lands acquired for parks, although these may be outside the limits of the municipality to which they belong. (*e*)

Town Halls.

By the councils of townships:—

Acquiring land for a town hall in a town or village.

3. For acquiring lands in any town or village within or partly within the original boundaries of the township, for the purpose of erecting thereon a town hall, or for renting or acquiring a hall, within such town or village, for the purpose of a town hall.

Township and other meetings may be held and notices posted at such hall.

(*a*) Any township owning, renting or otherwise acquiring a town hall in any such town or village may hold at such town hall any meeting, nomination or election, or may post at such town hall any notice, assessment roll, or voters' list, or may do thereat any other act required by law to be held, posted or done in the township at the town hall; and any meeting of any mutual insurance company, or upon the formation thereof, which is required by any statute to be held in the municipality, may lawfully be held in such hall. 55 V. c. 42, s. 521 (9) (10).

Taken from 42 V. c. 31, ss. 29, 30 (1879).

(d) The formation of mutual insurance companies was formerly a quasi-municipal matter (*f*). The company was styled "The Mutual Fire Insurance Company of the [District or] Municipality of ——" (*g*), and certain of its meetings were required by Statute to be held within the municipality (*h*), but this is now no longer necessary (*i*).

(*a*) S. 325. (*b*) Ss. 527 (2); 576 (3).

(*c*) S. 577 (1). (*d*) R.S.O. c. 233, s. 11. (*e*) *Ibid.*, ss. 13-15.

(*f*) 6 Wm. IV c. 18, s. 1; 18 V. c. 12, s. 2; 20 V. c. 74, s. 1; *Hughes* v. *Mutual Fire Ins. Co. of the District of Newcastle*, 9 U.C.R. 387 (1851).

(*g*) C.S.U.C. c. 52, s. 7.

(*h*) *Ibid.*, s. 15.

(*i*) See R.S.O. c. 203, ss. 9, 112, and *cf.* 36 V. c. 44, ss. 2, 8.

DIVISION II.—MUNICIPAL ELECTIONS. (Secs. 535-536).

Disqualification of electors for not paying taxes. Sec. 535 (1)
Polling subdivisions. Sec. 535 (2), 536.

535. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:—

Disqualification of Electors not Paying Taxes.

By the councils of townships, cities, towns and villages:—

Disqualifying electors in arrear for taxes.

(1) For disqualifying any elector from voting at municipal elections who has not on or before the 14th day of December next preceding the election paid all municipal taxes due by him. 55 V. c. 42, s. 489 (2).

Taken from the Act of 1873, (36 V. c. 48) s. 379 (2).

(a) Income voters (s. 86) (3) whose names appear on the return to be made to the clerk under s. 137 (1) as not having paid their taxes by December 14th are *ipso facto* disqualified from voting (a); all other voters whose names appear upon such return are so disqualified if the council of the local municipality in which they are assessed has passed a by-law under this sub-section. (b)

Polling Subdivisions.

Dividing townships and villages and wards of cities or towns into polling subdivisions.

(2) For dividing the wards of the city or town, or for dividing the township or village into two or more convenient polling subdivisions, and for establishing polling places therein; and for repealing or varying the same from time to time.

Taken from the Act of 1873, (36 V. c. 18), s. 379 (1); 55 V. c. 42, s. 489 (1). *Cf.* 22 V. c. 99, s. 268 (townships); 29-30 V. c. 51, s. 278; 32 V. c. 21, s. 25.

(b) This is obligatory. See s. 536 and s. 16 (2) of "*The Election Act*," (c).

Boundaries of polling subdivisions, etc.

536.—(1) Polling subdivisions shall have well defined boundaries, such as streets, side lines, concession lines or the like, in the most convenient manner, and in such manner that the number of qualified electors in the several polling subdivisions shall be as nearly equal as may be; and such polling subdivisions shall be made or varied whenever the electors in any ward, township, village, or polling subdivision exceed 200, and shall be made and varied in such a manner that the number of electors in any polling subdivision shall not exceed at any time 200. 55 V. c. 3, s. 8 (1); c. 42, s. 489 (1).

Based upon "*The Election Law of 1868*" (32 V. c. 21), s. 25, which was extended to villages by 33 V. c. 4, s. 1 (1869).

Alteration of subdivisions.

(2) Where a municipality embraces parts of two or more electoral districts, a polling subdivision shall only include territory in one electoral district. 60 V. c. 15, *Sched.* A (48).

(a) S. 88.

(b) See ss. 88, 137, 151 (2), 152, 154, 292 and 295 (5).

(c) R.S.O. c. 9.

Sec. 536 (3-8).

When to be made.

(3) Any alteration of existing polling subdivisions, or creation of new polling subdivisions, shall be made before the publication of the voters' lists. 55 V. c. 3, s. 8 (3).

Taken from "*The Election Amendment Act, 1883*," (46 V. c. 2, s. 2 (3). *Cf.* 32 V. c. 21, s. 25 (1869) last clause.

(a) "**Before the publication of the voters' lists.**" The time allowed for the publication of the voters' lists under R.S.O. c. 7 is, in municipalities to which Part I. of that Act applies, (*a*) forty days in cities, and in other municipalities 30 days, after the final revision and correction of the assessment roll of the municipality (*b*); in cities coming under the operation of Part II. fifteen days after the revision of the roll for any ward or sub-division of a ward (*c*). As to the date on which the assessment roll is to be considered as finally revised, see s. 3 of this Act.

Duty of clerk.

(4) For the purpose of enabling the council to make the required alterations, the clerk of the municipality, as soon as he finds that the number of qualified voters in a subdivision exceeds 200, shall call the attention of the council to the fact. 55 V. c. 3, s, 8 (8).

Taken from 46 V. c. 2, s. 2 (4), (1883).

If not made before voters lists published.

(5) In case, through oversight or from other cause, such alterations have not been made prior to the publication of the voters' lists, the alterations in the polling subdivisions shall be made forthwith thereafter, but shall not take effect until the next voters' lists are being made out, and shall not affect the voting on or with respect to any previous voters' lists. 55 V. c. 3, s. 8 (5).

Taken from 46 V. c. 2, s. 2 (5), (1883).

New subdivision to be made when necessary.

(6) Whenever the number of qualified voters in a polling subdivision increases so as to exceed 200 or whenever the municipal council consider that the convenience of the electors would be promoted by a new and different subdivision, the city, town, ward, township or village, shall be again in like manner divided into polling subdivisions so as to conform to the intent and meaning of this Act, and so again, from time to time, as like occasion shall require. 55 V. c. 3, s. 9.

Taken from s. 26 (1) of "*The Election Law of 1868*"; (32 V. c. 21).

Subdivisions to be based on assessment roll.

(7) Every division made under this section shall be based upon the then last revised and corrected assessment roll of the city, town, ward, township, or village. 55 V. c. 3, s. 10.

Founded upon ss. 25 and 26 of 32 V. c 21.

(b) "**Shall be based upon the . . . assessment roll.**" Since the division is to be made before the voters' lists are published (*d*), the assessment roll must furnish the information required. It is not, however, the number of persons assessed, but the number of those entitled to be entered upon the voters' lists which in reality forms the basis of subdivision.

Appeal.

(8) At any time within two months after the filing of the by-law, an appeal shall lie from any subdivision, at the instance of five of the electors, to the Judge of the County Court, who shall promptly correct the division so as to conform to the true intent and meaning of this Act. 55 V. c. 3, s. 11.

Taken from 32 V. c. 21, s. 26 (1), last clause.

(*a*) S. 5. (*b*) S. 8. (*c*) 62 V. (2nd Session) c. 3, s. 3. (*d*) Subs. 3.

Sec. 536 (8-10).

(c) "**After the filing of the by-law.**" See sub-s. 9.

Appeal as to polling subdivisions.

(d) No procedure on such an appeal has been prescribed. A notice of a motion, signed by or on behalf of any five persons entitled to vote either at municipal elections or at elections to the Legislative Assembly, and specifying the grounds of objection to the by-law should be served upon the municipal corporation, and an affidavit filed verifying these grounds and showing the status of the applicants. The affidavit and notice and the order of the Judge may be entitled as in an application to quash a by-law (a).

Subdivisions to be numbered.

(9) The polling subdivisions shall be numbered consecutively in and by the by-law by which they are established, and a copy of the by-law, certified under the seal of the corporation to be a true and correct copy, and signed by the head or clerk of the municipality, shall be, forthwith after the making thereof, transmitted to and filed in the office of the Clerk of the Peace of the county or union of counties within which the municipality is situate. 55 V. c. 3, s. 12.

Taken from 32 V. c. 21, s. 26 (2).

Polling subdivisions to be the same for elections to Legislative Assembly and for municipal elections.

(10) Where a municipality is divided into polling subdivisions, the same polling subdivisions shall be used both for the election of members of the Legislative Assembly and for municipal elections, except that the municipal council of every city, town or village, may by by-law unite, for the purpose of municipal elections, any two adjoining polling subdivisions: and the polling subdivisions for elections to the Legislative Assembly and for municipal elections shall hereafter be made the same in all cases. 55 V. c. 42, s. 489 (1a); c. 3, s. 8 (2).

Taken from 40 V. c. 12, ss. 2, 3 (1877).

(e) "**The same polling subdivisions shall be used both for the election of members of the Legislative Assembly and for municipal elections.**"

As to elections for the Legislative Assembly, it is further provided by "*The Election Act*," (b) that

> "The returning officer shall, on receiving the writ of election, fix one polling place for each subdivision into which a city, town or other local municipality is subdivided, in the most central and convenient place for the electors of such subdivision" (c).
>
> "A returning officer may in his discretion grant such additional polling places in any polling subdivision as the extent of the subdivision and the remoteness of any body of its voters from the polling place render necessary" (d).
>
> "In cities, the returning officer may in his discretion unite two or more adjoining polling subdivisions and fix one polling place for the united subdivisions; provided always that such united polling subdivision shall not contain more than 200 voters" (e).
>
> "In case of failure on the part of a municipal council to divide a city, town or other local municipality into polling subdivisions proportioned to the number of electors, as provided by *The Municipal Act*, or in case the time to appeal from the division should not have expired before the receipt of the writ, the returning officer shall provide as many polling places for polling the votes of the electors in the city, town or other local municipality, as shall correspond (as nearly as may be), with the number of polling places which would have been required if the city, town or other local municipality had been subdivided into the proper number of polling subdivisions" (f).

(a) See s. 378, note (j). (b) R. S. O. c. 9. (c) S. 43 (1).
(d) S. 43 (2). (e) S. 43 (3). (f) S. 18.

and by the amending Act of 61 V. c. 5, s. 4, that

"In cities the returning officers shall provide suitable polling places, but shall before so doing, when practicable, confer with the city clerk or treasurer; and the expense thereof, not including six dollars for each polling place, shall be paid by the treasurer of the city on the order of the returning officer."

In certain cases clerk may choose polling place.

(11) Where a polling place has been fixed by by-law for the holding of any election, or for the taking of any vote in any township, city, town or village, and it is afterwards found that the building named as such polling place cannot be obtained, or is unsuitable for the purpose, the clerk of the municipality may choose in lieu thereof as a polling place the nearest available building suitable for the purpose, and he shall post up, and keep posted up, a notice on the building fixed by the by-law, and in two other conspicuous places near by, directing the voters to the place chosen as aforesaid. 55 V. c. 42, s. 489 (1*b*).

Added in 1887 by 50 V. c. 29, s. 22; extended to townships by 54 V. c. 42, s. 17 (1891).

Election not to be voided if subdivision is wrongly formed.

(12) An election shall not be irregular or void or voidable for the reason that a polling subdivision which contains more than 200 voters has not been divided, provided it does not contain more than 300 voters. 55 V. c. 42, s. 489 (1*c*).

Added in 1889 by 52 V. c. 36, s. 23.

(f) As to elections for the Legislative Assembly, it is further provided by "*The Election Act*," (*a*) that

"It shall not be necessary for a returning officer to re-divide a polling subdivision, on account of the same containing more than two hundred voters, so long as it does not contain more than three hundred; but if it contains more than three hundred, he shall divide it into two subdivisions. Nothing in this section contained shall be held to relieve the council of a municipality from the duty of making a new division of the municipality or any part thereof into polling subdivisions, or re-dividing a subdivision as often as the number of qualified voters in a polling subdivision exceeds two hundred" (*b*).

"In case it is necessary for a returning officer to divide a municipality or any part thereof into polling subdivisions, he shall be paid by the treasurer of the municipality a reasonable allowance therefor" (*c*).

Uniting polling subdivisions in certain cities.

(13) The council of any city having a population of 100,000 or over, may, by by-law, amalgamate for voting at municipal and school trustee elections and upon questions submitted to the electors by the council, two polling subdivisions into one division, with one polling place therefor; and may by such by-law provide that three or less of such polling places shall be in a public school house or public building belonging to or controlled by the municipality in, or conveniently near to, such polling subdivisions.

Payment therefor.

(14) Where any school house is so used, the council shall forthwith pay to the public school board of the city a sufficient sum to cover any damage to the same and any expense for cleaning or otherwise, caused by such use.

(*a*) R. S. O. c. 9. (*b*) S. 16. (*c*) S. 17.

Sec. 537.

Consent of public school board.

(15) No school house shall be so used or taken without the consent of the public school board first had and obtained.

Constable to attend each such polling place.

(16) The Board of Commissioners of Police or the chief of police for the city shall cause a police constable to attend at each such polling place in a school house or public building where an election is being held, to perform the duties required by this Act of a constable appointed for that purpose by the returning officer. 59 V. c. 51, s 14; 60 V. c. 15, *Sched.* C. (120).

Added by "*The Man. Amendment Act of 1896*," (59 V. c. 51) s. 14, the words "over 100,000" being altered to "100,000 or over" by 60 V. c. 15, Sched. C. (120).

Division III.—Municipal Officers. (Secs. 537-538).

Officers generally. Sec. 537 (1), (2).
Overseers of highways and pathmasters. Sec. 537, (3).
Inspectors of weeds and thistles. Sec. 537, (4).
Corporation surveyor. Sec. 537, (5).
Fire wardens, etc. Sec. 537, (6).
Engineers—Inspectors of House of Industry—Gaol surgeons. Sec. 538, (7).

537. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

Appointing Certain Officers.

Appointing certain officers.

By the councils of counties, townships, cities, towns and villages:—

1. For appointing such—
   Pound-keepers,
   Fence-viewers,
   Overseers of Highways,
   Road Surveyors,
   Road Commissioners,
   Valuators,
   Inspectors of sheep worried or killed by dogs,

and other officers as are necessary in the affairs of the corporation, or for carrying into effect the provisions of any Act of the Legislature or any by-law of the corporation; and for the removal of such officers.

Based upon s. 242 of the Act of 1858 (22 V. c. 99). *Cf.* the Act of 1849 (12 V. c. 81), s. 31 (5), (townships), s. 41 (6) as amended by 13-14 V. c. 64 Sched. (A) (8) (counties); ss. 52, 59, (villages); ss. 61, 67, 80, (towns), and ss. 82, 106, (cities).

(a) The power conferred is to appoint not only the officers named, but "such other officers as are necessary," etc. The list has grown considerably since the Act of 1849, and will continue to increase in length as the matters with which municipal councils have to deal become more numerous. Section 31 (5) of the Act of 1849 expressly directed that the officers therein named should be appointed "under the corporate seal" of the municipality; and since many of these officers have to perform statutory duties the appointment should in every case be made by by-law, as is authorized by this section and required by s. 325.

In British Columbia an appointment by mere resolution is sufficient (*a*).

(*a*) *See* note (a) to s. 321, citing *Tuck* v. *City of Victoria*, 2 B.C.R. 179 (1892).

For further provisions relating to the officers specially named in the sub-section see—as to pound-keepers, R.S.O. c. 272,—as to fence viewers, R.S.O. c. 269 (forest fires); c. 272, ss. 20, 22 and 24, (lawful fences); c. 284, "*The Line Fences Act*";—as to overseers of highways or pathmasters, s. 537 (3); R.S.O. c. 224, ("*The Assessment Act*,") ss. 109, 110; c. 237, s. 5 (double tracks in snow roads); c. 269 ss. 1, 2 (forest fires); c. 279, ss. 8, 9 (3), 11 (noxious weeds), etc.,—as to road commissioners (in incorporated townships) R.S.O. c. 224, ("*The Assessment Act*,") ss. 111, 128;—as to valuators (appointed by counties only) s. 310 and R.S.O. c. 224, ss. 87-92.

Officers appointed under "The Municipal Act."

Road surveyors—(formerly appointed by township councils under 12 V. c. 81, s. 31 (5), and by county councils under 13-14 V. c. 64, Sched. A (8)—are not elsewhere referred to.

"Inspectors of sheep worried and killed by dogs" were added to the list in 1893 by 56 V. c. 35, s. 12, but are not referred to in R.S.O. c. 271. "*The Con. Municipal Act, 1892*," also mentions "game inspectors"; but these officers, formerly appointed by the municipalities, (*a*) are now appointed by the Lieutenant-Governor in Council, (*b*) except such of them as are authorized *ex officio* to enforce the provisions of "*The Ontario Game Protection Act*." See s. 24 (2) of that Statute. (*c*).

"*The Ontario Tree Planting Act*" (*d*) provides (*e*) that the council of any municipality may pass a by-law for paying out of municipal funds a bonus for trees planted under the provisions of the Act, and "such by-law shall provide for the appointment of an inspector of the trees so planted."

Under R.S.O. c. 243.

"*The Public Health Act*" (*f*) provides that

> "Every municipal council may appoint a medical health officer and a sanitary inspector or inspectors for the municipality,"

Under R.S.O. c. 248.

and (*g*) that

> "Any county council may appoint one or more county or district medical health officers."

County and township councils may by by-law appoint an officer to enforce the provisions of the "*Act to regulate the means of egress from Public Buildings*" (*h*) In cities, towns and villages the enforcement of the Act is the duty of the high bailiff, chief constable or chief of police. (*i*) Under "*The Yellows and Black Knot Act*," (*j*)

Under R.S.O. c. 263.

> "Every municipal council may, and upon a petition of fifteen or more ratepayers shall, appoint at least one inspector to enforce the provisions of the Act in the municipality;"

Under R.S.O. c. 280.

And "*The Ditches and Watercourses Act*," (*k*) enacts that

> "Every municipal council *shall* name and appoint by by-law (Form A) one person to be engineer" to carry out the provisions of that Act.

Under R.S.O. c. 285.

As to officers appointed only by certain classes of municipalities, see the remaining sub-sections of this section and the notes thereto.

(b) "**And for the removal of such officers.**" The right to remove is involved in the power to appoint. (*l*) As to the mode of removal from and tenure of office (unless where otherwise specially provided, as in R.S.O. c. 285, s. 4 (1) and as to the right of the Legislature or the council to impose new duties upon municipal officers, see s. 321 and the notes thereto.

(*a*) 49 V. c. 45, s. 15: R.S.O. 1887, c. 221, s. 14.

(*b*) R.S.O. c. 287, s. 22.

(*c*) In addition to the officers here mentioned, see as to appointments of municipal clerks, s. 282; treasurers, s. 288; auditors, ss. 299, 301, 309; inspectors of scaffolding, s. 537 (4); of cranes, elevators and hoists, s. 541 (5-6); harbour masters, s. 562 (7). As to constables, ss. 488, 493, 494, 495.

(*d*) R.S.O. c. 243. (*e*) S. 3. (*f*) R.S.O. c. 248, s. 31. (*g*) S. 43.

(*h*) R.S.O. c. 263, s. 5. (*i*) S. 4.

(*j*) R.S.O. c. 280, s. 3. (*k*) R.S.O. c. 285, s. 4.

(*l*) See "*The Interpretation Act*," R.S.O. c. 1, s. 8 (26).

Sec. 537 (1-4.)

Member of corporation may be appointed.

Remuneration.

(*a*) Nothing in this Act shall prevent any member of a corporation from acting as commissioner, superintendent or overseer, over any road or work undertaken and carried on, in part or in whole, at the expense of the municipality; and it shall be lawful for the municipality to pay such member of the corporation acting as such commissioner, superintendent or overseer. 55 V. c. 42, s. 479 (2); 56 V. c. 35, s. 12.

Taken from 31 V. c. 30, s. 25 (1868) which contained the additional words "in the same manner as councillors are paid," omitted in the Act of 1873 (36 V. c. 48), s. 372 (2), and in all the subsequent Acts.

(**c**). This proviso was substituted in 1868 by 31 V. c. 30, s. 25 for one made two years before by the last clause of 29-30 V. c. 51, s. 246 (2), viz.,—

"No member of the corporation shall be eligible to act as commissioner, superintendent or overseer over any work undertaken and carried on in part or in whole at the expense of the municipality, nor shall any member of a corporation be a valuator." (*a*)

Fixing fees, duties and securities.

2. For regulating the remuneration, fees, charges and duties of such officers, and the securities to be given for the performance of such duties. 55 V. c. 42, s. 479 (3).

Taken from the Act of 1858 (22 V. c. 99), s. 241 (3). *Cf.* 12 V. c. 81, s. 31 (6-8) 41 (7), etc., as under subsec. 1.

(**d**) See also the provisions of ss. 320-323 and notes thereto, and as to the treasurer, s. 288.

By the councils of townships:—

Overseers of Highways and Pathmasters.

3. For appointing overseers of highways or pathmasters to perform the duty of making and keeping open township roads during the season of sleighing in each year. Such overseers and pathmasters shall have full power to call out persons liable to perform statute labour within their respective municipalities, to assist in keeping open such roads, and they may give to persons so employed certificates of having performed statute labour to the amount of the days' work done; and such persons shall be allowed for such work in their next season's statute labour. 55 V. c. 42, 521 (7) *part.*

Taken from 48 V. c. 39, s. 20 (1885).

(**e**). As to the other duties imposed by law upon these officers, see the statutory provisions relating to overseers of highways or pathmasters cited in note (**a**) *supra.*

Fire Guardians.

(**f**). Township councils may also upon the petition of one-third of the ratepayers of the municipality pass a by-law before April 1st in any year appointing two or more freeholders resident in each polling sub-division to enforce the provisions of "*The Act for the Prevention of Bush Fires.*" (*b*)

By the councils of cities, townships, towns and villages:—

Inspectors of Highways, etc.

4. For the appointment of an inspector with power to enforce the provisions of any by-law of the municipality for preventing the growth of Canada thistles and other weeds detrimental to husbandry and compelling the destruction thereof; for regu-

(*a*) See s. 290, note (**b**). s. 538 (1), and s. 596.

(*b*) See R. S. O. c. 268, s. 1, and as to the duties, etc., of the fire guardians so appointed, R. S. O. c. 268, ss. 4, 5; c. 269, ss. 1, 2.

lating his duties, and determining the amount of remuneration, fees or charges he is to receive for the performance of such duties. 55 V. c. 42, s. 489 (22) *part.* Sec. 537 (4-6). Inspectors of Highways.

Taken from 37 V. c. 16. s. 15 (1874). See also s. 547 (2).

(g). The Statutes in force at the time of this enactment—viz., 29 V. c. 40 and 32 V. c. 41—applied only to Canada thistles. The Act now in force, entitled "*An Act to prevent the spread of Noxious Weeds and of Diseases affecting Fruit Trees*" (a) extends also to ox-eye daisy, wild oats, rag-weed, burdock and any other weeds or any disease of grain or of fruit trees or fruit (other than "yellows" and "black-knot" in fruit trees) which the council of the city, town, township or village may by by-law declare to be noxious to husbandry or gardening in the municipality. (b)

(h). As to assessors and collectors, see s. 295; as to the appointment of inspectors, keepers, matrons, etc., of Houses of Industry or Houses of Refuge maintained by two or more local municipalities, s. 524 (4), (5); and as to the power of cities, townships, towns and villages to pass by-laws for appointing inspectors of slaughter houses, s. 583 (4), of milk, meat, poultry, fish, etc., offered for sale for human food or drink, s. 550 (1). Officers of House of Industry, etc.

"*The Adulteration Act*," (c) further provides that the council of any city, town, county or village may appoint one or more inspectors of food, drugs, and agricultural fertilizers for the purposes of that Act. (d) Inspectors of Food, etc.

(i). The "*Act respecting Truancy and Compulsory School Attendance*" provides (e) that the Police Commissioners, or, where there are no Police Commissioners, the municipal council of every city, town, and village shall, and the council of every township may, appoint one or more truant officers for the enforcement of the Act. (f) Truant Officers.

By the councils of cities and towns:—

5. For appointing any Ontario land surveyor to be the corporation surveyor. 55 V. c. 42, s. 504 (12). Corporation surveyor.

Taken from the Act of 1873, (36 V. c. 48,) s. 385 (12). The Act of 1858, (22 V. c. 99,) s. 291, authorized the appointment of any person as corporation surveyor and provided that after appointment he should be examined by the Board of Examiners of Provincial Land Surveyors for Upper Canada and if found competent should be granted a certificate as a Deputy Provincial Surveyor without the usual service. See C. S. Ca. c. 77, ss. 1-26.

(j). As to the appointment by cities and towns of an assessment commissioner see s. 296. Assessment Commissioner.

By the councils of cities, towns and villages:—

6. For appointing fire wardens, fire engineers and firemen and for promoting, establishing, and regulating fire companies, hook-and-ladder companies, and property-saving companies. 55 V. c. 42, s. 496 (11). Fire Wardens, Fire Engineers, Firemen etc.

Taken from the Act of 1858, (22 V. c. 99) s. 287 (33).

(k). See also s. 542 (11) as to by-laws of cities, towns and villages authorizing appointed officers to enter upon property in the municipality and enforce compliance with by-laws relating to protection against fire: s. 592 (2) as to medals and rewards for persons who distinguished themselves at fires, gratuities to injured firemen and pecuniary aid to widows of firemen killed in the discharge of their duty or dying from injuries received or sickness contracted in such service. Cities and towns may also aid by money grant or otherwise, the establishment of superannuation and benefit funds for the members of fire

(a) R. S. O. c. 279.

(b) R. S. O. c. 279, ss. 2-3 (1). See further as to the appointment, remuneration and duties of the inspector or inspectors, ss. 3 (2) (4), 4-6 and 9 (3) of the Act.

(c) R. S. Ca. c. 107, s. 6.

(d) See also 53 V. c. 26, and 59 V. c. 42 (Ca).

(e) R. S. O. c. 296, s. 6.

(f) See ss. 7 and 8 as to the duties of such officers.

Sec 537 (7).

brigades and their families. (a) As to the exemption of firemen from service in municipal offices or as jurymen or constables, and also from payment of personal statute labour tax, see s. 84 and R.S.O. c. 61, s. 6 (31); c. 231, ss. 2, 5, 6.

By the councils of counties, cities and separated towns:—

Engineers, Inspectors, Gaol Surgeons, etc.

7. For appointing, in addition to other officers, one or more engineers, and also one or more inspectors of the house of industry; also one or more surgeons of the gaol and other institutions under the charge of the municipality: and for the removal of such officers. 55 V. c. 42, s. 495 (1).

Taken from the Act of 1858 (22 V. c. 99,) s. 277 (1). *Cf.* 42 V. c. 81, s. 41 (6), as amended by 13-14 V. c. 64, Sched. A (8).

(l). The engineers referred to are civil engineers. (b) As to inspectors of the House of Industry, see also ss. 524 (1), 525, 526. Keepers of the court-house are appointed by the councils of counties, (s. 506) or of cities (s. 507).

Managers of Public Fairs, Veterinary Surgeons.

(m). Section 578 provides that the councils of counties, cities and separated towns may pass by-laws authorizing the holding of public fairs, which by-laws shall establish rules and regulations for the government of the same and appoint a person whose duty it shall be to have them carried out; and R.S.O., c. 274 entitled "*An Act to make provision for preventing the spread of certain malignant diseases among horses,*" enacts (s. 9) that:—

(1) "The council of any county, city, or separated town may, by by-law, make provision for the inspection and examination by competent veterinarians of all horses, or may limit the operation of such by-law to stallions alone intended for breeding purposes during any year, in such county, city or town: the examination being for the purpose of ascertaining whether such horses or stallions are free from disease. The said council may also prescribe such regulations as may seem desirable in connection with the examination, and also direct how the expenses of the examination shall be paid.

(2) "Where no by-law has been passed by any county under the preceding subsection the council of any township or village situate in such county may pass a by-law for the purposes mentioned in said subsection; provided that if the county council shall afterwards pass such by-law, the by-law in force in any township or village in said county shall become inoperative."

(n). Besides the officers referred to in the preceding sub-sections and the notes thereto, by-laws may by passed:—

By the councils of counties:

Members of Board of Audit.

1. For appointing at the first meeting in each year two persons to be members of the Board of Audit. (c)

Road Engineer.

2. For appointing a civil engineer, land surveyor or such other person as the council may deem competent to carry out the provisions of ss. 105 to 115 of "*The General Road Companies Act.*" (d)

Road Masters.

3. For appointing road masters under R.S.O. c. 237, s. 5.

County Medical Health Officers.

4. For appointing one or more county or district medical health officers. (e)

By the councils of cities:—

High Bailiff.

1. For appointing a high bailiff. (f)

Auditor.

2. For appointing an auditor in case of a vacancy in that office during the year. (g)

(a) S. 591 (9).
(b) *Cf.* 13-14 V. c. 64, Sched. A (8).
(c) S. 530 (1).
(d) R.S.O. c. 193, s. 104.
(e) R.S.O. c. 248, s. 43. See note (a). As to county valuators see s. 537.
(f) S. 487.
(g) S. 303.

A—Liability of Municipal Corporations for Acts and Defaults of Agents or Officers.

Sec. 537.

Liability for acts, etc., of officers.

It scarcely requires authority to prove that any one is responsible for a wrongful act which has been done according to his command or request, (*a*) or which, having been done on his account or for his benefit, (*b*) he has adopted as his own (*c*).

But more difficult questions arise when it is sought to make one liable for the act of another which he has not specially authorized, and for which he must be answerable, if at all, by virtue of the relation in which he stands to the doer of the act. The rule governing such cases has been thus expressed in a judgment "which may now be regarded as a classical authority."

> "The master is liable for every such wrong *of the servant or agent* as is committed in *the course of the service* and *for the master's benefit*, though no express command or privity of the master is proved." (*d*)

There is a wide difference (as to the responsibility of the principal or master) for the wrongful or negligent act of a servant or agent who is "under the control and bound to obey the orders of his master," (*e*) and for that of an independent contractor, *i. e.* "one who undertakes to produce a given result, but so that in the actual execution of the work he is not under the order or control of the person for whom he does it, and may use his own discretion in things not specified beforehand." (*f*)

In the first case—viz.,—where power to control and direct the work is retained—the rule *respondeat superior* applies; (*g*) in the latter it does not, (*h*) unless (a) the contractor is employed to do an unlawful act, (*i*) or (b) the work contracted for is such that in the natural course of things it will occasion injury unless precautions are taken to prevent this, (*j*) or (c) the principal is under a legal obligation to do the work properly, (*k*) or (d) he personally interferes and assumes control. (*l*)

(*a*) As in *McNab* v. *Township of Dysart*, 22 A. R. 508 (1895).

(*b*) *Wilson* v. *Tumman*, 6 M. & G. 236 (1843).

> "I think it clear law that a party cannot be made a trespasser by ratification unless the trespassing was originally done on his behalf and for his benefit." *Per* Sir Wm. Ritchie, C. J., in *McSorley* v. *City of St. John*, 6 S. C. R. 531 (1882) at p. 550.

(*c*) See *Barker* v. *Braham*, 2 W. Bl. 866 (1773), *per* De Grey, C. J.

(*d*) *Per* Willes, J., in *Barwick* v. *English Joint Stock Bank*, L. R. 2 Ex. 259 (1867) at p. 265.

(*e*) *Per* Blackburn, J. in *Reg.* v. *Negus*, L. R. 2 C. C. 34 (1873), at p. 37.

(*f*) Pollock on Torts, (5th Ed.) 75.

(*g*) *Sadler* v. *Henlock*, 4 E. & B. 570 (1855) *per* Crompton, J., at p. 577; *Farrell* v. *Mayor, etc., of London*, 12 U. C. R. 343 (1855); *Reeves* v. *City of Toronto*, 21 U. C. R. 157 (1861); *Nevill* v. *Township of Ross*, 25 C. P. 48 (1872); *Grassick* v. *City of Toronto*, 39 U. C. R. 306 (1876); *Penny* v. *Wimbledon Council*, [1898] 2 Q. B. 212, [1899] 2 Q. B. 72; *Jones* v. *Scullard* [1898] 2 Q. B. 565; *Caston* v. *Consolidated Plate Glass Co.* 26 A. R. 63, 29 S.C.R. 624 (1899).

(*h*) *Milligan* v. *Wedge*, 12 A. & E. 737 (1840); *Quarman* v. *Burnett*, 6 M. & W. 499 (1840); *Rapson* v. *Cubitt*, 9 M. & W. 709 (1842); *Reedie* v. *L. & N. W. R. W. Co.* 4 Ex. 244 (1849); *Carroll* v. *Township of Plympton*, 9 C. P. 345 (1860); *Murray* v. *Currie*, L. R. 6 C. P. 24 (1870); *Stephen* v. *Thurso Police Commissioners*, 3 Ct. of Sess. Cas. (4th Ser.) 535 (1876); *Rourke* v. *The White Moss Colliery Co.*, 2 C.P.D. 205 (1877); *Jones* v. *Corporation of Liverpool*, 12 Q. B. D. 890 (1885); *Murphy* v. *City of Ottawa*, 13 O. R. 334 (1887); *Donovan* v. *Laing*, [1893] 1 Q. B. 629; *Claridge* v. *Union S. S. Co.* [1894] A. C. 185; *Saunders* v. *City of Toronto*, 26 A. R. 265 [1899] reversing *S. C.* 29 O. R. 373 (1898).

(*i*) *Ellis* v. *Sheffield Gas Consumers Co.*, 22 Q. B. 767 (1853).

(*j*) *Bower* v. *Peate*, 1 Q. B. D. 321 (1876); *Hughes* v. *Percival*, 8 App. Cas. 443 (1883); *Black* v. *Christ Church Finance Co.*, [1894] A. C. 48; *Holliday* v. *National Telephone Co.*, (1899) 1 Q. B. 221, 2 Q. B. 392.

(*k*) *Hole* v. *Sittingbourne, etc. R. W. Co.*, 6 H. & N. 488 (1861); *Gray* v. *Pullen*, 5 B. & S. 970 (1865); *Hardaker* v. *Idle District Council*, [1896] 1 Q. B. 335; *The Snark*, (1899) P. 74. And see *Turry* v. *Ashton*, 1 Q. B. D. 314 (1876).

(*l*) *Burgess* v. *Gray*, 1 C. B. 578 (1845).

Sec. 537.

Liability for acts, etc., of officers.

If the evidence is not clear as to whether or not the right of interference has been retained, the *onus* is on the defendant to make out that he had no control. (*a*)

2. The act of the servant or agent must be one within the scope of his authority or employment, (*b*) and must have been done "in the course of his service or employment." (*c*)

It may be (a) the natural consequence of some thing done with ordinary care in the execution of specific orders (*d*); or (b) due to the negligence of the servant or agent while engaged about his master's business (*e*).

> "Not every deviation of the servant from the strict execution of duty, nor every disregard of particular instructions will be such an interruption of the course of employment as to determine or suspend the master's responsibilities. But when there is not merely deviation but a total departure from the course of the master's business, so that the servant may be said to be "on a frolic of his own" (*f*) the master is no longer answerable." (*g*)

(c) Or it may be done in the excessive or erroneous execution of a lawful authority,—in which case the rule will not apply unless the servant intended to do on behalf of his master something of a kind which he was in fact authorized to do, and the act, if done in a proper manner, would have been lawful under the circumstances which the doer of it erroneously supposed to exist. (*h*)

(3) Even where the servant acts wilfully, yet "for the benefit of the master," (*i. e.*, with a view to advancing his interest) the master may be liable if the act was done on his account and for his purposes, (*i*) and this although the act was done contrary to the master's orders, (*j*) or is punishable criminally (*k*).

(*a*) *Cahalane* v. *North Metropolitan R. W. etc., Co.*, 12 Times L. R. 611 (1896).

(*b*) *Per* Lord HERSCHELL, L. C., in *Baumwoll Manufactur etc.*, v. *Furness*, [1893] A. C. 8 at p. 16. See *Lamarre* v. *Woods*, Q. B. 13 S. C. 466 (1898); *City of Montreal* v. *Mulcair*, 28 S. C. R. 458 (1898).

(*c*) *Per* WILLES, J., *supra*.

(*d*) *Gregory* v. *Piper*, 9 B. & C. 591 (1829).

(*e*) *North* v. *Smith*, 10 C. B. N. S. 572 (1861); *Whatman* v. *Pearson*, L. R. 3 C. P. 422 (1868); *Gilchrist* v. *Township of Carden*, 26 C. P. 1 (1876); *Engelhardt* v. *Farrant*, [1897] 1 Q B. 240; *Stalker* v. *Township of Dunwich*, 15 O. R. 342 (1888). And see *Stratton* v. *City of Toronto*, 23 C. L. J. N. S. 130, 7 C. L. T. 192 (1887.)

(*f*) *Per* PARKE, B., in *Joel* v. *Morrison*, 6 C. & P. 503 (1834).

(*g*) Pollock on Torts (5th Ed.) 81. See *Mitchell* v. *Crassweller*, 13 C. B. 237 (1853); *Storey* v. *Ashton*, L. R. 4 Q. B. 476 (1869); *Raynor* v. *Mitchell*, 2 C. P. D. 357 (1877); *Hatch* v. *L. & N. W. R. W. Co.*, 15 Times L. R. 246 (1899); *Holliday* v. *National Telephone Co.*, [1899] 1 Q. B. 221, 2 Q. B. 392, and *Williams* v. *Jones*, 3 H. & C. 256, 602 (1865), *per* BLACKBURN, J., at p. 609.

(*h*) *Seymour* v. *Greenwood*, 7 H. & N. 355 (1861); *Goff* v. *Great Northern R. W. Co.*, 3 E. & E. 672 (1861); *Poulton* v. *L. & S. W. R. W. Co.*, L. R. 2 Q.B. 534 (1867); *Edwards* v. *L. & N. W. R. W. Co.*, L. R. 5 C. P. 445 (1870); *Moore* v. *Metropolitan R. W. Co.*, L. R. 8 Q. B. 36 (1872); *Bayley* v. *Manchester, Sheffield, etc., R. W. Co.*, L R. 7 C. P. 413, L. R. 8 C. P. 148 (1872-3); *Edwards* v. *Midland R. W. Co.*, 6 Q. B. D. 287 (1880); *McSorley* v. *City of St. John*, 6 S. C. R. 531 (1882); *Main* v *Town of St. Stephen*, 26 N. B. Rep. 330 (1887); *Smith* v. *North Metropolitan R. W. Co.*, 7 Times L. R. 459 (1891); *Hodgins* v. *City of Toronto*, 19 A. R. 537 (1892); *Adams* v. *National Electric, etc. Co.*, 3 B. C. R. 199 (1893); *Coll* v. *Toronto R. W. Co.*, 25 A. R. 55 (1898).

(*i*) *Croft* v. *Alison*, 4 B. & Al. 590 (1821); *Limpus* v. *London General Omnibus Co.*, 1 H. & C. 526 (1860). See *Seymour* v. *Greenwood*, supra; *Ward* v *London General Omnibus Co.*, 42 L. J. C. P. 265 (1873); *Lewis* v. *City of Toronto*, 39 U. C. R. 343 (1876); *Ferguson* v. *Robbin*, 17 O. R. 167 (1888); *Dyer* v. *Munday* [1895] 1 Q. B. 742.

(*j*) See *per* WILLES, J., in *Limpus* v. *London General Omnibus Co.*, 1 H. & C. 526 (1862) at p. 539.

(*k*) *Dyer* v. *Munday*, [1895] 1 Q. B. 742.

Sec. 537.

Liability for acts, etc., of officers.

It is said, upon eminent American authority, that (*a*) "a municipal corporation is not responsible for the unlawful or negligent acts of officers appointed in obedience to an Act of the Legislature to perform public services in which the corporation has no particular interest, and from which it derives no special benefit or advantage in its corporate capacity."

And that "when the duties of an officer are prescribed by law and are independent in their character, and he is not subject to the control and direction of the corporation as to time, place or manner of their discharge, he is a public officer and not in any sense a servant or agent of the corporation." (*b*)

Accordingly it has been held that a municipal corporation is not liable for a tort committed in the course of the performance of his statutory duties by the medical health officer of a city, appointed by the council under what is now s. 31 of "*The Public Health Act*," R.S.O. c. 248; (*c*) nor for an illegal arrest made by a member of a city police force which though paid by the municipality is appointed and controlled by a Board of Police Commissioners. (*d*) But in the Province of Quebec—where authority is given to the cities of Montreal, Quebec, etc., by special charters, and to every town and village by Art. 668 of the Municipal Code, "to maintain and lodge and clothe a police force in the municipality and to fix the duties of such force"—municipal corporations have been held responsible in damages for the acts or defaults of members of a police force thus appointed and maintained (*e*) but not for the unauthorized acts of policemen whom the corporation was authorized by a local Act "to appoint, remove and replace" but not to control (*f*).

The rule which exempts a municipality for the torts of officers appointed to perform a public duty has in the United States been extended to firemen (*g*) but the reasoning of these cases has not been adopted by our Courts (*h*).

(*a*) *Per* BIGELOW, C. J. in *Hafford* v. *New Bedford*, 16 Gray 297 (1860), cited and followed by FOLGER, J., in *Maxmillian* v. *City of New York*, 62 N. Y. 160 (1875) at p. 165, and quoted with approval by Sir WM. RITCHIE, C. J. in *McSorley* v. *City of St. John*, 6 S. C. R 531 (1882), at p. 544.

(*b*) Wood on Master and Servant (2nd Ed.) s. 458; Dillon, ss. 974-976; Fiedeman, ss. 333, 333*a*; Shearman and Redfield on Negligence (4th Ed.) s. 260; Jones on Municipal Negligence, pp. 39-48. Upon examination these propositions appear to be no more than a particular application of the rules above stated, for the officers thus appointed are not — in respect of their public (and usually statutory) duties —subject to the direction and control of the municipal council, nor is their authority derived from that source.

(*c*) *Forsyth* v. *Canniff and City of Toronto*, 20 O. R. 478 (1890). And see *Re Macfie* and *Hutchinson*, 12 P. R. 167 (1887).

(*d*) *Wishart* v. *City of Brandon*, 4 Man. Rep. 453 (1885). See *Kelly* v. *Barton*, 26 O. R. 608; 22 A. R. 522 (1895), where it was conceded that the municipality could not be held liable for an illegal arrest by a city policeman without some evidence of ratification by the municipal council. So in the United States municipal corporations have been held not to be liable for the negligence, misconduct or unlawful acts of their police officers; *Dargan* v. *Mobile (Mayor of)*, 31 Al. 469 (1858); *Buttrick* v. *City of Lowell*, 1 Allen 172 (1861), and the cases collected in the "American & English Encyclopedia of Law" under "Public Officers" Vol. 19, p. 558.

(*e*) *City of Montreal* v. *Doolan*, 1 Revue Legale 84 (1868). 3 Revue Legale 433 (1870); *Laviolette* v. *Thomas*, M. L. R. 1 S. C. 350 (1881); *Latreille* v. *La Ville de St. Jean Baptiste*, 20 Revue Legale 351 (1886); *Viau* v. *City of Montreal*, 17 Revue Legale 511 (1889); *Gagnon* v. *City of Montreal*, 34 L. C. J. 212 (1890); *Noel* v. *City of Montreal*, 19 Revue Legale 704 (1890); *Pratt* v. *Charbonneau*, M. L. R. 7 Q. B. 24 (1890). And see *Main* v. *Town of St. Stephen*, 26 N. B. Rep. 330 (1887).

(*f*) *Rousseau* v. *Corporation of Levis*, 14 Q. L. R. 376 (1888).

(*g*) *Hafford* v. *New Bedford*, 16 Gray 297 (1860); Am. & Eng. Encyc. of Law, Vol. 19, p. 558.

(*h*) *Hesketh* v. *City of Toronto*, 25 A. R. 449 (1898); *Gadbois* v. *City of Montreal*, M.L.R. 5 S. C. 43 (1889); *McPherson* v. *City of St. John*, 32 N. B. Rep. 423 (1898). In the last case, the truck-waggon which caused the injury being the property of the city, and the salvage corps being under their control, it seems to have been conceded that if negligence could be proved the city was liable.

Secs. 537-538.

Liability for acts, etc., of officers.

The case of a pathmaster or overseer of highways seems to stand very near the line.

In a recent case the Chief Justice of the Supreme Court of Canada thought it open to consideration how far a municipal corporation is responsible for the acts of a statutory officer such as a pathmaster (*a*) but in earlier cases (*b*) the liability of the corporation for the torts or negligence of such an officer seems to have been taken for granted, even though there was no evidence of express prior authority (*c*) or of subsequent ratification by the council (*d*).

It is submitted that the corporation, being (by s. 606 of this Act) under a statutory obligation to keep its highways in repair, cannot escape liability for the acts or defaults of an officer appointed for the purpose of fulfilling this duty (*e*).

As to the officers referred to in subsections 4-7, the American rule above quoted would seem to exempt the municipal corporation from liability unless where the officer has acted under direct instructions or the acts done by him on behalf of the corporation have been ratified by the council. Whether there is sufficient evidence of such ratification must be in every case a question of fact.

In *Stalker* v. *Township of Dunwich*, (*f*) the fact that the defendants had kept and maintained the ditch made by the pathmaster, and had refused to alter it in spite of frequent complaints, was held to be an adoption of the act of the officer.

In *Kelly* v. *Barton*, and *Kelly* v. *Archibald*, (*g*) it was contended that the defence by the city solicitor, under the authority of a resolution of the council, and at the expense of the municipality, of an action against police constables was sufficient evidence of ratification to render the municipality liable for the trespass complained of; but the Divisional Court held otherwise, (*h*) and in the Court of Appeal the question was not raised.

DIVISION IV.—PAYMENT OF MEMBERS OF THE COUNCIL (SEC. 538).

In Townships and Counties. Sec. 538 (1).
In Cities of 100,000 or over. Sec. 538 (2).

538. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

(*a*) *McGregor* v. *Township of Harwich*, 29 S. C. R. 443 (1899), *per* Sir HENRY STRONG, C. J., at p. 444.

(*b*) *E. g.*, *Gilchrist* v. *Township of [illegible]en*, [illegible] C.P. 1 (1876). In *H[illegible]ll* v. *Taylor*, 16 U. C. R. 279 (1857) and [illegible] v. [illegible]iams, 39 U. C. R. [illegible] (1876) the question of the liability of the m[illegible]pali[illegible] was not raised.

(*c*) As in *Nerill* v. *Tp. of Ross*, [illegible] C. P. 487 (1872). And see *Hill* v. *Middagh*, 16 A. R. 356 (1889).

(*d*) As in *Darby* v. *Tp. of Crowland*, 38 U. C. R. 338 (1876) and *Stalker* v. *Tp. of Dunwich*, 15 O. R. 342 (1888).

(*e*) *Colbeck* v. *Township of Brantford*, 21 U. C. R. 276 (1861).

(*f*) 15 O. R. 342 (1888).

(*g*) 26 O. R. 608; 22 A. R. 522 (1895).

(*h*) *Per* BOYD, C., 26 O. R. at p. 623 citing and following *Perley* v. *Georgetown*, 7 Gray 404 (1856), and *Buttrick* v. *City of Lowell*, 1 Allen 172 (1861). But see *Wilson* v. *City of Winnipeg*, 4 Man. Rep. 193 (1887) referred to *ante* in the note at foot of p. 40.

Sec. 538.

By the councils of counties and townships :—

Remuneration to councillors.

1. For paying the members of the council for their attendance in council, or for paying any member while attending on committee of the council, at a rate not exceeding $3 *per diem*, and five cents per mile necessarily travelled (to and from), for such attendance. 55 V. c. 42, s. 231.

Until 1858, (22 V. c. 99, s. 262), only county councillors were paid for attendance (*cf.* 12 V. c. 81, s. 41 (6); 16 V. c. 181, s. 9 (4). The *Act of 1858* authorized an allowance to both county and township councillors at the rate of $1.50 for each day's attendance at meetings of the council. This was increased by the Act of 1866 to $2 a day and five cents per mile for travelling expenses, (29-30 V. c. 51, s. 271); the provision as to meetings of committees was added in 1868, (31 V. c. 30, s. 26,) and the *per diem* allowance fixed at $3 by 40 V. c. 7, Sched. 171 (1877).

(a) Township by-laws passed under 12 V. c. 81, for the remuneration of councillors as "township officers," were quashed (*a*).

Under the Act of 1858, and the C. S. U. C., c. 54, s. 269, by-laws authorizing payment to members of a county council of money for travelling expenses (*b*), and to members of a township council of "$20 for services as councillors and $10 for services for letting and superintending repairs of roads (*c*)," were held bad; and the applicant in that case having brought an action against the township councillors who had received $20 in each year from 1854 to 1858 and the additional $10 in each year from 1860 to 1865 inclusive they were ordered to repay the $10 a year paid to them for their services in letting and superintending repairs of roads, and so much of the $20 as would exceed the amount of $1.50 per day allowed by Statute for attending council meetings (*d*).

The allowances authorized by the Statute must not be exceeded, and any overpayments may be recovered back by the municipality (*e*).

A municipal councillor, like any other trustee (see note (b) to s. 10), is entitled to be re-imbursed out of corporate funds any legitimate expenses necessarily incurred by him by reason of his fiduciary position (*f*).

By the councils of certain cities :—

Remuneration of aldermen in certain cities.

2. In cities having a population of 100,000 or over the council may by by-law determine that an annual remuneration, not exceeding $300, may be paid to aldermen, and that an annual remuneration not exceeding $100 in addition may be paid to the chairman of the standing committees and of the Court of Revision and the Local Board of Health, and it shall be thereby provided that in the case of such aldermen or chairmen there shall be deductions from such remuneration on account of absence from meetings of the council or committees or of the Court of Revision or the Local Board of Health. 57 V. c. 50, s. 3.

(b) As to payment in such cities of members of the Board of Control, see s. 276 (4); of members of the Board of Commissioners of Police, s. 481 (3).

(*a*) *Re Wright and Township of Cornwall*, 9 U. C. R. 442 (1852); *Daniels* v. *Township of Burford*, 10 U. C. R. 478 (1853). See *Re Bell and Township of Manvers*, 2 C. P. 507 (1852), 3 C. P. 400 (1853); *Township of East Nissouri* v. *Horseman*, 16 U. C. R. 576 (1858), and a second case between the same parties, 9 C. P. 189 (1859).

(*b*) *Re Patterson and County of Grey*, 18 U. C. R. 189 (1859).

(*c*) *Re Blaikie and Township of Hamilton*, 25 U. C. R. 469 (1866).

(*d*) *Blaikie* v. *Staples*, 13 Grant 67 (1867). But see now s. 537 (1*a*), *ante*.

(*e*) *Township of St. Vincent* v. *Grier*, 13 Grant 173 (1867), and see *Township of East Nissouri* v. *Horseman*, 16 U. C. R. 576 (1858); *Blaikie* v. *Staples*, supra. So also in Nova Scotia: *Town of Amherst* v. *Fillmore*, 34 C. L. J. N. S. 41 (1897).

(*f*) *Township of St. Vincent* v. *Grier*, 13 Grant 173 (1867); *Rex* v. *Essex*, 4 T. R. 591 (1792); *Rex* v. *Commissioners of Sewers for the Tower Hamlets*, 1 B. & Ad. 232 (1830); *Attorney-General* v. *Mayor of Norwich*, 2 M. & C. 406 (1837); *Reg.* v. *Mayor of Sheffield*, L. R. 6 Q. B. 652 (1871); *Reg.* v. *White*, 14 Q. B. D. 358 (1884).

DIVISION V.—AS TO FINANCE. (SEC. 539).

539. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

Borrowing Money for Drainage Purposes.

By the councils of townships, towns and villages:—

Drainage.

1. For borrowing money and issuing debentures therefor, for the purpose and subject to the provisions of *The Tile, Stone and Timber Drainage Act.* 55 V. c. 42, s. 509 (1).

Taken from "*The Con. Mun. Act*, 1883," (46 V. c. 18,) s. 509.

(a) See "*The Tile, Stone and Timber Drainage Act*," R. S. O. c. 41.

Sewer Rents.

By the councils of cities, towns and villages:—

Charging rent for sewers.

2. For charging all persons who own or occupy property which is drained into a common sewer, or which by any by-law of the council is required to be drained into such sewer, with a reasonable rent for the use of the same; and for regulating the time or times and manner in which the same is to be paid. 55 V. c. 42, s. 496 (34).

Taken from the Act of 1858, (22 V. c. 99,) s. 290 (20), which applied only to cities and towns and was based upon 16 V. c. 181, s. 15 (1). Extended to villages by the Act of 1866, (29-30 V. c. 51,) s. 290 (55).

(b). See also s. 551 (1-3). The sewer rents which may be charged under this sub-section must be distinguished from the special rates now leviable under ss. 664 *et seq.*, for the cost of constructing common sewers as local improvements, a procedure unknown at the time of this enactment. The original sub-section (*a*) applied to sewers then already constructed out of the proceeds of the general rates. (*b*)

A form of by-law fixing and imposing sewer rents under the authority of that clause, re-enacted as C.S.U.C. c. 64, s. 287 (20) will be found in *Moore* v. *Hynes*. (*c*) It was there held, upon the language of the section—"for charging . . . persons,"—that the rents payable under such a by-law were not a tax or charge upon the land itself but only upon the occupant or owner. (*d*)

And in *Re McCutchon and City of Toronto*, it was decided in the same year that payment of these rents could not therefore be enforced in the same manner as ordinary assessments. (*e*) But see now s. 357, *ante*.

(c). "**A common sewer.**" See note (a) to s. 554.

(d). "**A reasonable rent.**"

A by-law passed in 1856 under 16 V. c. 181, s. 15 (1) imposing a uniform rate of five shillings per foot frontage for draining into the common sewers of a city

(*a*) 22 V. c. 99, s. 290 (20).

(*b*) *Re McCutchon and City of Toronto*, 22 U.C.R. 613 (1863).

(*c*) 22 U.C.R. 107 (1862) at pp. 109, 111.

(*d*) Pp. 116, 117; and see *Re Armstrong*, 12 O.R. 457 (1886).

(*e*) But see now s. 387 of this Act and note (a) thereto.

was quashed, on the ground that the rate was an arbitrary one and not one in proportion to the assessed value of the property, as required in the case of local or direct taxes by 16 V. c. 181, s. 13, now s. 6 of "*The Assessment Act*." (*a*)

Sec. 539 (2-4). Sewer rents.

(c). "**For regulating the time or times, and the manner in which the same is to be paid.**" *Semble*, the by-law may legally provide for commutation of the annual rent by the payment in gross of a fixed sum. (*b*)

Reduction of Sinking Fund on By-Laws passed before March 17th, 1879.

By the councils of townships, cities, towns and villages :—

3. For authorizing the reduction of the annual sinking fund rate, or amount required to be collected under local improvement by-laws passed by the council prior to the 11th day of March, 1879 ; and for making allowance for the interest accrued from the investment of the amounts of sinking fund theretofore collected under such by-laws.

Reduction of sinking fund.

Provided that in settling the sum to be raised annually for the remaining years which any such by-law has to run for the payment of the debt, in lieu of the sinking fund rate fixed by the original by-law, the rate of interest on future investments shall not be estimated at more than four per cent. per annum, to be capitalized yearly.

Provided also that no by-law reducing the sinking fund rates fixed by any such local improvement by-law shall become valid or effectual until assented to by the Lieutenant-Governor in Council. 55 V. c. 42, s. 489 (5) ; 62 V. c. 2.

Taken from 49 V. c. 37, s. 38, which applied to cities, towns and villages. Extended to townships by 50 V. c. 29, s. 48. The word "four" substituted for "five" in line 12 by 62 V. c. 2 (1898). See s. 384 (8).

(f). See also ss. 412, 413. This matter is fully dealt with in note (**a**) to s. 412 and in notes (**e**) and (**h**) to s. 384.

Guaranteeing Debentures.

By the councils of counties :—

4. For guaranteeing debentures of any municipality within the county, as the council may deem expedient. 55 V. c. 42, s. 511 (2).

Guaranteeing Debentures.

Taken from 43 V. c. 24, s. 25 (1850).

(g) The assent of the electors is not required to make valid a by-law passed under this subsection.

At the time such a county by-law was passed, the by-law of the minor municipality authorizing the issue of the debentures had not been finally passed, but had been provisionally adopted and had received the assent of the electors, in accordance with s. 338, and the form that the guarantee of the county was to take was such that it could not be actually given until after the final passing of the by-law of the minor municipality ;

(*a*) *Ex p. Aldwell v. City of Toronto*, 7 C. P. 104 (1857). But see the later decisions in *Moore* v. *Hynes*, 22 U.C.R. 107 (1862) and *Re McCutchon and City of Toronto*, 22 U. C. R. 613 (1865), referred to in note (**b**) *supra*. See also the third section (which is still in force in the City of Toronto) of the by-law quoted in the report of *Moore* v. *Hynes*, at page 110.

(*b*) *Moore* v. *Hynes*, 22 U. C. R. 107 (1862) ; *Re McCutchon and City of Toronto*, *Ib.* 613, 619 (1863). The fourth section of the by-law quoted in *Moore* v. *Hynes* is still in force in Toronto.

Secs. 539 (4), 540.

Guaranteeing Debentures.

Held, that, under the circumstances, the county by-law was not prematurely passed.

The by-law in question enacted: (1) that the county corporation "do hereby guarantee the due payment of the debentures" etc; (2) that upon each debenture should be written "payment hereof guaranteed by the corporation of the county," etc: (3) that the warden and clerk should sign and seal such guarantee on each debenture: (4) that when so signed the corporation shall be liable to the holders of the debentures and responsible for the due payment thereof.—

Held, that the by-law did not impose upon the county corporation any greater liability than that of guarantors. (a)

DIV. VI.—PROTECTION OF LIFE AND PROPERTY, (Secs. 540-548.)

Sub-Division i.—Prevention of Accidents, etc. (Sec. 540).

Dogs running at large. Sec. 540 (1) (2).
Tax on dogs. Sec. 540 (3).
Cruelty to animals. Sec. 540 (4).
Children running behind vehicles. Sec. 540 (5).
Tobogganing. Sec. 540 (6).
Bicycles. Sec. 540 (7).

540. By-laws may be passed by the councils of the municipalities or Boards of Commissioners of Police and for the purposes in this section respectively mentioned, that is to say:

Dogs.

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

Regulations as to dogs.

1. For restraining and regulating the running at large of dogs; and for seizing, and impounding dogs running at large contrary to the by-laws; and for selling the dogs so impounded or any of them at such time or times and in such manner as may be directed by any by-law in that behalf. 55 V. c. 42, s. 489 (15); 56 V. c. 35, s. 17.

The first clause of this subsection is taken from the Act of 1873, (36 V. c. 48,) s. 379 (10); the two remaining clauses were added in 1893 by 56 V. c. 35, s. 17.

Killing dogs.

2. For killing dogs running at large contrary to the by-laws. 55 V. c. 42, s. 489 (16).

Tax for dogs.

3. For imposing a tax on the owners, possessors or harbourers of dogs. 55 V. c. 42, s. 489 (15) *part*.

Taken from the Act of 1858, (22 V. c. 99), s. 259 (6) (7). *Cf.* 12 V. c. 81, s. 31 (29), (townships) ss. 52, 59, (villages), ss. 64, 67, 80 (towns), ss. 82, 106, (cities).

(b). See also R. S. O. c. 271, "*An Act for the protection of Sheep and to impose a tax on Dogs.*" and s. 6 (2) of "*The Ontario Game Protection Act*," (R. S. O. c. 287).

(a) *Re Kerr and County of Lambton*, 27 O. R. 334 (1896).

(b). The power is not merely to "regulate," but to "restrain" the running at large of dogs. This may be read in connection with the next sub-section, which provides for killing dogs running at large contrary to the by-laws. The validity of laws providing for the forfeiture or destruction of property without compensation to the owners, has been doubted. See note (a) to sec. 437. But it is now settled that all rights of property are held subject to such reasonable control and regulation as the Legislature may think necessary for the preventing of injuries to the rights of others, and the security of the public health and welfare. In the exercise of this power, the Legislature may not only provide that certain kinds of property, either absolutely or when held in such a manner or under such circumstances as to be injurious, dangerous or noxious, may be seized and confiscated upon legal process, after notice and hearing, but may also, when necessary to insure the public safety, authorize such property to be summarily destroyed by the municipal authorities, without previous notice to the owner. (a) A familiar example given is that of pulling down buildings to prevent the spreading of conflagration, or the impending fall of the buildings themselves (b). Other examples are the seizure and destruction of instruments used for gambling (c); of tainted and unwholesome articles of food (d); of bread containing deleterious ingredients (e), of adulterated foods, drugs etc. (f)

Dogs have always been entitled to less regard and protection than more harmless and useful domestic animals (g) In the view of the common law, they had no intrinsic value, and the owner was held to have so little property in them that the stealing of them was not larceny (h). In the case of a by-law against the running at large of dogs, the object is not to prevent or punish trespasses upon property, but to protect the people of a city or town against danger to their lives—against threatened death in perhaps its most distressing form. The most effective means of protecting people from such a danger is the annihilation of the cause of danger; and so, under a Statute which merely authorized the corporation to pass by-laws for "preventing and regulating" dogs running at large, it was held that the corporation had power to pass a by-law for the killing of dogs running at large in violation of the provisions of the by-law (i). In the present Act, the Legislature have not left the power to inference, but have conferred it in express language.

(c) **Sub-s. 2.** It is to be observed that the power to restrain, regulate, impound or kill is only to be exercised as to "dogs running at large." The question whether a dog is under the control of any person is one of fact, to be determined, if necessary, by a magistrate. (j)

(d) **Sub-s. 3.** Besides the power to restrain, regulate and, if necessary, kill dogs, additional power is here conferred to provide by by-law for imposing a tax on the owners, possessors or harbourers of dogs.

> "The imposing a tax is to be looked upon rather as a measure of revenue than as a mode intended to be pointed out for indirectly restraining or prohibiting the keeping of dogs by imposing a tax on them." (k)

Cruelty to Animals.

Preventing cruelty to animals, and destruction of birds.

By the councils of townships, cities, towns and villages:—

4. For preventing cruelty to animals; and for preventing the destruction of birds; the by-laws for these purposes not

(a) Dillon, s. 955 *et seq.* (b) See note (o) to s. 542.
(c) S. 549 (4) and Art. 575 of "*The Criminal Code, 1892*".
(d) S. 550 (2). (e) S. 550 (4). (f) R. S. Ca. c. 107, s. 21.
(g) *Reg.* v. *Rymer*, 2 Q. B. D. 136 (1877).
(h) *Reg.* v. *Robinson*, 8 Cox C. C. 115; *Mason* v. *Keeling*, 1 Ld. Rayd. 608; *Read* v. *Edwards*, 17 C. B. N. S. 245 (1864).
(i) *McKenzie* v. *Campbell*, 1 U. C. R. 241 (1844).
(j) *Wren* v. *Pollock*, 34 L.T.N.S. 697 (1877); *Reg.* v. *Justices of Huntingdon*, 4 Q. B. D. 522 (1879).
(k) *Per* ROBINSON, C. J., in *McKenzie* v. *Campbell*, 1 U C.R. 241, 246 (1844). See further R. S. O. c. 271; *Re Richmond and Front of Leeds & Lansdowne*, 8 U. C. R. 567 (1852), and *Williams* v. *Town of Port Hope*, 27 C. P. 548 (1877).

Sec. 540 (4-7). being inconsistent with any Statute in that behalf. 55 V. c. 42, s. 489 (14).

Taken from the Act of 1858, (22 V. c. 99,) s. 259 (5). *Cf.* 12 V. c. 81, s. 60 (9), villages; ss. 61, 67, 89, (towns), ss. 22, 166, (cities) 16 V. c. 181, s. 9 (3), (townships).

(d). As to cruelty to animals, see also "*The Criminal Code, 1892*," Articles 512 to 515, as amended by 58-59 V. c. 40 (Ca.). As to the protection of insectivorous and other birds, R.S.O. c. 289, and as to game birds, ss. 7 and 8 of "*The Ontario Game Protection Act*," (R.S.O. c. 287.)

Children Riding Behind Vehicles.

By the councils of cities, towns and villages:—

Preventing children from riding behind waggons, etc.

5. For preventing children from riding on the platforms of cars, or behind waggons and other vehicles, and for preventing accidents arising from such causes. 55 V. c. 42, s. 496 (40).

Taken from 44 V. c. 24, s. 14 (1891).

(e). "**Children.**" See note (8) to s. 484. See also as to street railways, R. S. O. c. 208, s. 25 (6)—"by-laws for providing for the safety of passengers."

Tobogganing.

Coasting and tobogganing.

6. For prohibiting or regulating the practice of coasting or tobogganing on the public streets. 55 V. c. 42, s. 496 (37).

Taken from 48 V. c. 39, s. 19 (1885).

(f). Questions as to the liability of municipal corporations for accidents caused by the practice of coasting or tobogganing on public streets have frequently been considered in the United States,—(1) where (no permission having been given) recovery was sought on the ground that to allow coasting is a breach of the statutory duty of the municipality to keep the streets "safe and convenient" for passengers, and (2) where a city has licensed coasting generally or on particular streets.

The weight of authority is in favour of holding that in neither of these cases would the corporation be liable. In the first case, because, unless expressly given by Statute, no action lies for failure to perform a public (governmental) duty; and in the second, on the ground that a municipal corporation is not liable for the acts of licensees unless these acts are dangerous *per se*, or unless the corporation derives some benefit from them, and must on this account be held answerable for their results (*a*).

Bicycles.

By the councils of cities having 100,000 inhabitants or more:—

Regulating bicycles.

7. For regulating and governing (but not licensing) persons using bicycles and other vehicles not drawn by horses. 58 V. c. 42, s. 24.

Taken from 58 V. c. 42, s. 24 (1891).

(g). A portion of any highway may be set apart as a bicycle path, (*b*) and the use of bicycles on sidewalks or in avenues, parks, gardens, etc., may be prohibited (*c*). As to the "rule of the road" in regard to bicycles, etc., see R. S. O. c. 236, ss. 1 (2), 2 (3) (4), 7. The sub-section will apply also to tricycles and to auto-motors.

(*a*) See the cases collected in Jones on Municipal Negligence, s. 86; Morrill on City Negligence, pp. 160, 161; Dillon, s. 980; Tiedeman, s. 331.

(*b*) S. 640 (1). (*c*) S. 560.

Sec. 540 (7). Note (g).

A tricycle has been held to be "a locomotive" and subject as such to the statutory regulations respecting the use of locomotives on highways in England (*a*).

Tricycles.

It is apprehended that the by-law may regulate the speed at which bicycles or tricycles, etc. may be driven along streets and in public places (*b*).

A constable has no right to arrest without a warrant one who is violating even a statutory regulation as to the riding of bicycles (*c*).

Other subjects of legislation for protection of life, etc.

(**h**) In addition to the by-laws for the protection of life and the prevention of accidents authorized by the above sub-sections, by-laws may be passed:—

1. By the councils of all municipalities:—

(a) For regulating the riding and driving of horses and cattle on highways and public bridges, and

(b) For preventing racing or immoderate or dangerous driving thereon (*d*).

2. By the councils of cities, towns and villages:—

For preventing the leading, riding or driving of horses and cattle on sidewalks, etc. (*e*).

3. By the councils of cities:—

For compelling electric street railway companies operating in the municipality to provide enclosed vestibules upon their street cars for the protection of motormen during the winter months (*f*).

And see ss. 541, 542 (14) (15), 545 (4).

DIVISION VI.—PROTECTION OF LIFE AND PROPERTY.

Sub-Division ii.—Erection of Buildings. Hoists and Elevators. (Sec. 541).

Erection of hoists and scaffolding. Sec. 541 (1).
Egress from and construction of buildings, etc. Sec. 541 (2) (3).
Size and strength of walls, etc. Sec. 541 (4).
Hoists and elevators. Sec. 541 (5) (6).

541. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

By the councils of townships, cities, towns and villages:—

Construction of hoists, scaffolding, etc.

1. For inspecting and regulating the construction and erection of hoists, scaffoldings and other constructions used in erecting, repairing, altering or improving buildings, chimneys, or other structures; and for making all necessary regulations for the protection and safety of workmen and other persons employed thereon; and for appointing inspectors of scaffolding. 55 V. c. 42, s. 489 (16*a*).

Taken from 54 V. c. 42, s. 18 (1890).

(*a*) See *Parkyns* v. *Priest*, 7 Q. B. D. 313 (1881) referred to in note (**f**) to s. 559, *post*.

(*b*) See *Taylor* v. *Goodwin*, 4 Q. B. D. 228 (1879) cited in note (**i**) to s. 559.

(*c*) *Hatton* v. *Treesby*, 13 Times L. R. 556 (1897).

(*d*) S. 559 (7-8). (*e*) S. 559 (9). (*f*) S. 569 (4).

Sec. 541 (2-3).

Egress from and Construction of Buildings.

By the councils of counties, townships, cities, towns and villages :—

Doors, of public buildings.

2. For regulating the size and number of doors in churches, theatres, halls, or other buildings used for places of worship, public meetings or places of amusement, and the street gates leading thereto ; and the construction and width of stairways in churches, theatres, halls or other places used for public worship, public meetings or places of amusement, and in factories, warehouses, hotels, boarding and lodging-houses ; and also the size and number of doors, halls, stairs and other means of egress from all hospitals, schools, colleges and other buildings of a like nature, and also the structure of stairs and stair-railings in all such buildings, and the strength of walls, beams and joists and their supports, and for compelling the production of the plans of all such buildings for inspection and for enforcing observance of such regulations. 55 V. c. 42, s. 479 (16).

Based upon s. 4 of 29-30 V. c. 22, "*An Act to regulate the means of Egress from Public Buildings*," now R. S. O. c. 263. First incorporated into *The Municipal Act* as s. 454 (11) of R. S. O. (1877) c. 174, which was recast and extended by 50 V. c. 29, s. 20 (1887.) The second clause (relating to the construction and width of stairways) added in 1891 by 54 V. c. 24, s. 11

(a). R. S. O. c. 263 requires that in all churches theatres, halls or other buildings used for holding public meetings, etc., all doors shall be so hinged that they may open freely outwards (*a*) The Act does not apply to convents or private chapels connected therewith. (*b*)

(b). "**Strength of walls, beams and joists**" etc., See sub-section 4.

(c). "**Compelling the production of plans.**" See sub-section 4 and s. 554 (3). See also s. 542 (1) notes (e), and (g) and the cases therein cited, especially *Hall* v. *Nixon*, (*c*) and *Fielding* v. *Rhyl Improvement Commissioners*. (*d*)

Regulating means of egress, etc., from public buildings.

3. For preventing the obstruction of the halls, aisles, passage-ways, alleys or approaches in any such building or leading thereto during the occupation of the same by any public assemblage. 58 V. c. 42, s. 18.

Powers of public officers as to seeing that by-laws enforced.

(*a*) During the time that any church, theatre, hall, or other building situated in any city or town and used for a place of worship, public meeting or place of amusement is occupied by an assemblage of persons, the chief constable or any police officer or member of the police force of the city or town may enter any such church or other building to see that the by-laws of the municipality for preventing the obstruction of the halls, aisles, passage-ways, alleys or approaches in such building or leading thereto are not being violated, and to require the removal therefrom of any obstructions which may be placed in such halls, aisles, passage ways, alleys or approaches thereto. 58 V. c. 42, s. 19.

(*a*) S. 1.
(*b*) S. 6.
(*c*) L. R. 10 Q. B. 152 (1875).
(*d*) 3 C. P. D. 272 (1878).

Sec. 541 (4-6).

Size and strength of walls, etc., and production of plans.

4. For regulating the size and strength of brick walls, beams, joists, rafters, roofs and their supports of all buildings to be erected or repaired within the municipality, and for compelling the production of the plans of all buildings for inspection: and for enforcing observance of such regulations. 55 V. c. 42, s. 479 (16*a*).

Taken from 51 V. c. 28, s. 21 (1888).

Hoists and Elevators.

Licensing and inspecting hoists, elevators, etc.

5. For licensing and inspecting elevators and hoists for passengers or freight, used by the public or by employees, and for imposing and enforcing penalties for infringement of such by-laws, and for prohibiting and preventing the use of elevators or hoists contrary to the provisions of such by-law. But the provisions in this clause contained shall be subject to those of *The Ontario Factories Act* and of any other Act making provisions applicable to elevators and hoists. 60 V. c. 45, s. 11.

Rev. Stat. c. 256.

By the councils of cities, towns and villages:—

Erection of hoists and elevators.

6. For regulating the construction of cranes, hoists and elevators, and for determining the manner in which elevators in buildings shall be constructed and worked (whether automatically or otherwise) and for providing for the inspection of all cranes, hoists and elevators: but none of the provisions of such by-laws shall be inconsistent with *The Ontario Factories Act* so far as the same provides for the regulation or construction of cranes, hoists and elevators. 55 V. c. 42, s. 496 (9*a*).

Rev. Stat. c. 256.

Taken from 53 V. c. 50, s. 22 (1890).

(d). The existence of this subsection (6) was probably overlooked by the draftsman of sub-section 5, otherwise the latter might have been worded so as to include "cranes" and to apply as well to construction as to operation.

The Ontario Factories Act, (*a*) provides (*b*) that—

"In every factory,

(*a*) All dangerous parts of mill gearing, machinery, vats, pans, caldrons, reservoirs, wheel-races, flumes, water channels, doors, openings in the floors or walls, bridges, and all other like dangerous structures or places shall be as far as practicable securely guarded.

(*b*) No machinery other than steam engines shall be cleaned while in motion if the inspector so directs by written notice.

(*c*) The openings of every hoistway, hatchway, elevator or well-hole shall be at each floor provided with and protected by good and sufficient trap-doors or self-closing hatches, and safety-catches, or by such other safeguards as the inspector directs, and such trap-doors shall be kept closed at all times except when in actual use by persons authorized by the employer to use the same.

(*d*) All elevator-cabs or cars, whether used for freight or passengers, shall be provided with some suitable mechanical device to be approved by the inspector, whereby the cab or car will be securely held in the event of accident to the shipper, rope or hoisting machinery, or from any similar cause.

(*e*) Any other particulars which any inspector from time to time considers dangerous, and in regard to which he gives notice to that effect to the employer, shall likewise as far as practicable be secured or securely guarded."

(*a*) R. S. O. c. 256.

(*b*) S. 20.

Sec. 542.

Note (a).

DIV. VI.—PROTECTION OF LIFE AND PROPERTY.

Sub-Div. iii.—Prevention of Fires. (Secs. 542-544).

Regulating erection of buildings. *Sec.* 542 (1*a*).
Preventing erection of wooden buildings and fences. *Sec.* 543 (1*b*).
Establishing fire limits. *Sec.* 542 (1*b*), (1*c*).
Repairs of existing buildings. *Sec.* 542 (1*d*).
Pulling down buildings, etc., illegally erected. *Sec.* 542 (1*e*).
Fire and lights. *Sec.* 542 (2).
Dangerous trades. *Sec.* 542 (3).
Chimneys, ovens, boilers, etc. *Sec.* 542 (4).
Cleaning chimneys. *Sec.* 542 (5).
Safe-keeping of ashes. *Sec.* 542 (6).
Party walls. *Sec.* 542 (7).
Scuttles, stairs and ladders. *Sec.* 542 (8).
Fire protection. *Sec.* 542 (9).
Fire buckets. *Sec.* 542 (10).
Inspection of premises. *Sec.* 542 (11).
Pulling down buildings. *Sec.* 542 (12).
Assistance of inhabitants at fires, etc. *Sec.* 542 (13).
Fire escapes. *Sec.* 542 (14) (15).
Burning stumps, etc. *Sec.* 542 (16).
Manufacturing, storing and transporting gunpowder, etc. *Sec.* 542 (17-17*d*).
Portable steam engines. *Sec.* 542 (18) (19).
Water for fire purposes. *Sec.* 543.
Fire engines and water therefor. *Sec.* 544.

542. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

By the councils of cities, towns and villages:—

Erection of buildings, etc. Fire limits.

1. (*a*) For regulating the erection of buildings;

(*b*) For preventing the erection of wooden buildings, or additions thereto, and of wooden fences in specified parts of the city, town or village;

(*c*) For prohibiting the erection or placing of buildings, other than with main walls of brick, iron or stone, and roofing of incombustible material within defined areas of the city, town or village;

Repairs to existing buildings.

(*d*) For regulating the repairing or alteration of roofs or external walls of existing buildings within the said areas, so that the said buildings may be made more nearly fire-proof;

Pulling down, etc., buildings illegally erected.

(*e*) For authorizing the pulling down or removal, at the expense of the owner thereof, of any building or erection which may be constructed, repaired or placed in contravention of any by-law. 55 V. c. 42, s. 496 (10).

Taken from 47 V. c. 13, s. 16 (1884). See more fully in note (2).

(a). Under the Act of 1849, (*a*) towns were empowered to pass by-laws "for regulating the erecting of buildings and preventing wooden buildings from being erected in thickly built parts of such towns" (*b*) and cities "for regulating . . . the erecting of buildings and preventing wooden buildings

(*a*) 12 V. c. 81. (*b*) S. 81 (1).

Sec. 542 (1) Note (a).

and wooden fences from being erected in such cities." (*a*) Under the Acts of 1858, 1859 and 1866, both cities and towns had power to regulate the erection of buildings and to prevent the erection of wooden buildings and wooden fences in specified parts of the city or town. (*b*)

Erection of buildings.

A by-law passed by the City of Toronto in 1869, under the last of these Statutes, required that all buildings theretofore begun or which should thereafter be begun or built within certain defined limits should be erected and built of stone, brick, iron or other materials of an incombustible nature. *Held*, that the by-law was *ultra vires* and void, and therefore that the Court could not decree the abatement as a nuisance of a building erected in contravention thereof (*c*). In consequence of this decision, clauses (*c*) and (*e*) were added to the subsection by the Act of 1873. (*d*)

In *Reg.* v. *Howard*, (*e*) the defendant was convicted under a by-law of the City of Hamilton which provided that

> "All roofed buildings within the said fire limits shall be finished externally with tin, tile or felt and gravel, or shingles laid in hair mortar, etc., and no roof of any building already erected within such fire limits shall be relaid or recovered except with materials before enumerated."

The conviction having been quashed on the ground that the by-law was *ultra vires* in so far as it referred to existing buildings, or ordinary repairs, (not being "additions" within the meaning of clause (**b**), the sub-section was recast in its present form at the next Session by the addition of clause (*d*) and the extension of these powers to villages.

When a by-law has been passed regulating the erection of buildings, the council has no power to approve of plans or to authorize the construction of buildings which do not conform to the requirements of the by-law. (*f*)

Removal, repair.

(b). "**The erection or placing of buildings**" includes the removal of a building to a site within the prohibited area but does not affect ordinary repairs not amounting to an "erection" or "addition." (*g*)

Fire limits.

(c). "**Specified parts of the city, town or village.**" "**Defined areas of the city, town or village.**" The boundaries of these "fire limits" (*h*) should be clearly set forth in the by-law.

Existing buildings not affected.

(d) "**The erection or placing of buildings.**" This seems clearly meant for future erecting or building, not to affect existing structures." (*i*) Clause (*d*) applies to existing buildings, but its operation is limited to the external walls thereof, and municipal councils have no power to prescribe the materials or thickness of the internal walls of such buildings. (*j*) Nor does this clause authorize the passing of a by-law which requires "that all buildings damaged by fire if rebuilt or partially rebuilt shall be made fire proof." (*k*)

(*a*) S. 107 (2).

(*b*) 22 V. c. 99, s. 290 (6); C.S.U.C. c. 54, s. 297 (6); 29-30 V. c. 51, s. 299 (6).

(*c*) *Attorney General* v. *Campbell*, 19 Grant 299 (1872).

(*d*) 36 V. c. 48, s. 385 (6) re-enacted as R.S.O. (1877) c. 174, s. 467 (6); 46 V. c. 18, s. 504 (6).

(*e*) 4 O.R. 377 (1883).

(*f*) *Yabbicom* v. *King*, [1899] 1 Q.B. 444.

(*g*) *Per* HAGARTY, C.J., in *Reg.* v. *Howard*, 4 O.R. at p. 380. Dillon, s. 405 n. See *Hobbs* v. *Dance*, L.R. 9 C.P. 30 (1873); *Williams* v. *Wallasey Local Board*, 16 Q.B.D. 718 (1886). As to what is a "building" see the cases cited in note (e): what is an "addition" *Meadows* v. *Taylor*, 24 Q.B.D. 717 (1890).

(*h*) Dillon, ss. 143, 405.

(*i*) *Per* HAGARTY, C.J., in *Reg.* v. *Howard*, supra.

(*j*) *Reg.* v. *Copp*, 17 O.R. 738, (1889), and see *post* under subsection 7.

(*k*) *Quinn* v. *Town of Orillia*, 28 O.R. 435 (1897).

Sec. 542 (1e).

Note (e).

Pulling down buildings erected in contravention of municipal by-laws.

(e). "For authorizing the pulling down or removal . . . of any building or erection which may be constructed, repaired or placed in contravention of any by-law."

The power conferred by this clause extends to the enforcement not only of by-laws passed under this section but of "any by-laws." (*a*) Under a somewhat similar section of "*The Local Government Act, 1858*," (*b*) it was held that the power to provide for pulling down or removing buildings was not confined to cases in which there had been a contravention of by-laws relating to structure, but might be extended to and incorporated in by-laws requiring persons to give notice of their intention to build and to deposit plans. (*c*) But where a building has been erected in contravention of a by-law, the extreme measure of demolition must not be resorted to until the guilty party has had notice and an opportunity of shewing cause. (*d*)

> "In condemning a man to have his house pulled down, a judicial act is as much implied as in fining him £5 . . . The party to be affected should have a notice given him; and there is no notice unless notice is given of time when and place at which the party may appear and show cause . . . Justice requires that the man should be heard." (*e*)

And on appeal, (*f*)

> "The power is a highly penal one and those who exercise such a power are bound to act strictly within it . . . Where there is power to enter and pull down buildings which have been erected contrary to by-laws it would be contrary to fundamental justice to allow that course to be taken without giving the owner notice and an opportunity to show cause."

Where a local authority attempts to exercise this power in a case to which the Statute does not apply, its action may be restrained (*g*); but in a case clearly within the Act the decision of the local authority is final, (*h*) and a Court of Equity will not interfere. (*i*)

By-laws under the English "*Public Health Act, 1848*" (*j*), s. 115, and the "*Local Government Act, 1858*" (*k*), s. 34, were made by the local board of Sunderland, by one of which (No. 12) all party walls except in houses of one storey, were required, under a penalty of 40s., to be nine inches at least in thickness, and by another of which (No. 42) it was provided "That in case any offence under any of the foregoing by-laws shall continue, the person offending shall be liable to a further penalty not exceeding 40s. for each day during which such offence shall continue after written notice of the offence has been given by the local board to the offender." A person having been convicted and fined for an offence against the by-law No. 12, in building a party-wall four and a half inches in thickness instead of nine inches, was convicted upon an information charging him, under by-law No. 42, with *continuing* the offence, and was again fined. Held, that suffering the party-wall to remain unaltered was not a continuing offence within by-law No. 42, or if it was that the by-law was unreasonable—the appropriate remedy being the removal of the structure by the board as authorized by sec. 34 of "*The Local Government Act, 1858*" (*l*).

(*a*) See ss. 541 (1), (2), (4); 542 (7); 554 (3); 557 (2).

(*b*) Imp. Stat. 21-22 V. c. 98, s. 34

(*c*) *Baker* v. *Mayor of Portsmouth*, 3 Ex. D. 4, affirmed in the Court of Appeal, 3 Ex. D, 157, (1877); and see *Hall* v. *Nixon*, L.R. 10 Q.B. 152 (1875). more fully referred to in note (d) to s. 325.

(*d*) *Cooper* v. *Wandsworth Board of Works*, 14 C.B.N.S. 180 (1863); *Masters* v. *Pontypool Local Government Board*, 9 Ch. D. 677 (1878); *Hopkins* v. *Smethwick Local Board*, 54 J.P. 693; affirmed on appeal, 24 Q.B.D. 712 (1890).

(*e*) *Per* WILLS, J., in *Hopkins* v. *Smethwick Local Board*, 24 Q.B.D. at pp. 714, 715.

(*f*) *Per* LORD ESHER, M. R., at p. 716.

(*g*) *Auckland* v. *Westminster Local Board*, L. R. 7 Chy. 597 (1872); *Barlow* v. *Kensington Vestry*, 27 Ch. D. 362 (1884), 11 App. Cas. 257 (1886); *Newhaven Local Board* v. *Newhaven School Board*, 30 Ch. D. 350 (1885).

(*h*) *Cheetham* v. *Mayor of Manchester*, L.R. 10 C. P. 249 (1875).

(*i*) *Kerr* v. *Corporation of Preston*, 6 Ch. D. 463 (1876); *St. Mary's (Islington) Vestry* v. *Goodman*, 23 Q. B. D. 154, 163 (1888); *Worley* v. *St. Mary Abbotts, Kensington*, [1892] 2 Ch. 404.

(*j*) Imp. Stat. 11-12 V. c. 63. (*k*) Imp. Stat. 21-22 V. c. 98.

(*l*) *Marshall* v. *Smith*, L. R. 8 C. P. 416 (1873); see, however, the Imp. Stats. 37-38 V. c. 89, s. 43; 38-39 V. c. 55, s. 158; *London County Council* v. *Worley*, (1894), 2 Q. B. 826; 25-26 V. c. 102, s. 85; 57-58 V. c. 213, s. 49.

Sec. 542 (1e).

Note (e).

Pulling down buildings erected in contravention of municipal by-laws.

In *Tompkins* v. *Brockville Rink Co.*, (*a*) MEREDITH, C. J. dismissed an action for an injunction and damages against persons who were erecting a wooden building contrary to a by-law passed under subs. 1 (*b*) brought by the owner of contiguous property who would be injuriously affected thereby. He held that the prohibition authorized by the statute and imposed by the by-law vested no specific right in the plaintiff for his own benefit and advantage, and imposed no specific duty in his favour (*b*) and that contravention of the by-law being punishable by a penalty imposed in the general interest of the public at large, an action by a person injured was *prima facie* not maintainable.

(*f*) **"At the expense of the owner thereof."** See ss. 387, 703 and the notes thereto.

(*g*) **"Building or erection."** "*The Local Government Act, 1858*," s. 34, empowered local boards to pass by-laws "with respect to the structure of walls of new buildings for securing stability and the prevention of fires"; and by s. 157 of "*The Public Health Act, 1875*" (*c*), similar powers were given to urban sanitary authorities. The following were held to be "buildings" or "new buildings" within the meaning of these Statutes: a stable erected chiefly out of old materials (*d*); a structure put on small wheels, dragged along the street and deposited on a site where it was used as a butcher's shop (*e*); a pig-stye (*f*); and a wooden frame covered with corrugated iron and used as a sanatorium (*g*), but otherwise as to temporary brick structures (*h*); hoardings for advertisements (*i*); a new boiler substituted for an old one (*j*). An iron and glass conservatory projecting beyond the wall of a house was held not to be an "erection" under an Act which prohibited "any building, structure or erection" without the consent of the Metropolitan Board of Works (*k*). In *Lavy* v. *London County Council* (*l*) it was held that a dwarf wall three feet high forming the boundary of a courtyard was not, but that a new wall eleven feet high on the same foundation was, "a building, structure or erection" within the meaning of a similar section (*m*). Bay-windows may be "buildings" within the meaning of a covenant not to erect any building beyond a certain frontage line (*n*).

Fire in stables, etc.

2. For preventing or regulating the use of fire or lights in stables, cabinet makers' shops, carpenters' shops, and combustible places. 55 V. c. 42, s. 496 (13).

Dangerous manufactories.

3. For preventing or regulating the carrying on of manufactories or trades dangerous in causing or promoting fire. 55 V. c. 42, s. 496 (14).

Chimneys, stoves, etc.

4. For preventing, and for removing, or for regulating the construction of any chimney, flue, fire-place, stove, oven, boiler, or other apparatus or thing which may be dangerous in causing or promoting fire. 55 V. c. 42, s. 496 (15).

(*a*) 31 O.R. 124 (1899).

(*b*) See Addison on Torts, (7th Ed.) 74.

(*c*) Imp. Stat. 38-39 V. c. 55.

(*d*) *Hobbs* v. *Dance*, L. R. 9 C. P. 30 (1873).

(*e*) *Richardson* v. *Brown*, 49 J. P. 661 (1885).

(*f*) *Walker* v. *Basildon Local Board*, 37 Sol. Jour. 217 (1890).

(*g*) *Badley* v. *Cuckfield Union, etc.* [1895], 43 W. R. 663.

(*h*) *Fielding* v. *Rhyl Improvement Commissioners*, 3 C. P. D. 272 (1878).

(*i*) *Slaughter* v. *Mayor of Sunderland*, 65 L. T. N. S. 250 (1891); *Foster* v. *Fraser*, [1893], 3 Ch. 158.

(*j*) *Gery* v. *Black Lion Brewery*, 55 J. P. 711 (1891).

(*k*) *St. George's, Hanover Square* v. *Sparrow*, 16 C. B. N. S. 209 (1864).

(*l*) [1895] 1 Q. B. 915; [1895] 2 Q. B. 577.

(*m*) See now "*The London Building Act, 1894*," 57-58 V. c. 213, s. 22, and *London County Council* v. *Pearce*, [1892] 2 Q. B. 109; *London County Council* v. *Humphreys*, [1894], 2 Q. B. 755.

(*n*) *Lord Manners* v. *Johnson*, 1 Ch. D. 673 (1875).

Sec. 542 (5-13).

Note (h)

Regulating construction, etc., of chimneys.

5. For regulating the construction of chimneys as to dimensions and otherwise, and for enforcing the proper cleaning of the same. 55 V. c. 42, s. 496 (16), *part*.

Ashes.

6. For regulating the mode of removal and safe keeping of ashes. 55 V. c. 42, s. 496 (17).

Party walls.

7. For regulating and enforcing the erection of party walls. 55 V. c. 42, s. 496 (18).

Scuttles, ladders, etc., to houses.

8. For compelling the owners and occupants of houses to have scuttles in the roof thereof, with approaches; or stairs or ladders leading to the roof. 55 V. c. 42, s. 496 (19).

Guarding buildings against fire.

9. For causing buildings and yards to be put in other respects into a safe condition to guard against fire or other dangerous risk or accident. 55 V. c. 42, s. 496 (20).

Fire buckets.

10. For requiring the inhabitants to provide as many fire buckets, in such manner and time as may be prescribed; and for regulating the examination of them, and the use of them at fires. 55 V. c. 42, s. 496 (21).

Inspection of premises.

11. For authorizing appointed officers to enter at all reasonable times upon any property subject to the regulations of the council, in order to ascertain whether such regulations are obeyed, and to enforce or carry into effect the same. 55 V. c. 42, s. 496 (22).

Preventing spreading of fire.

12. For making regulations for suppressing fires: and for pulling down or demolishing adjacent houses or other erections, when necessary to prevent the spreading of fire. 55 V. c. 42, s. 496 (23).

Enforcing assistance at fires.

13. For regulating the conduct, and enforcing the assistance of the inhabitants present at fires; and for the preservation of property at fires. 55 V. c. 42, s. 496 (24).

Taken from the Act of 1858, (22 V. c. 99,) s. 287 (35-46). *Cf.* 12 V. c. 81, s. 60 (13), villages; ss. 61, 67, 80, (towns); ss. 82, 106, (cities).

Dangerous manufactories.

(h) **Sub-s. 3.** The corporation of the town of P. passed a by-law to "regulate or prevent the carrying on of manufactures or trades dangerous in causing or promoting fire," whereby it was provided that no such manufacture or trade should be allowed to be carried on within 300 feet of any other building, and a fine of from $5 to $20 was imposed for each day that a violation of the law continued with distress on default of payment, and imprisonment in default of sufficient distress. Afterwards they passed another amending by-law, providing that the restriction should not exist if the owners of such buildings within 300 feet consented in writing, the said consent, however, to be submitted to the Chairman of the Board of Works for approval.

Held, that the by-law as amended was invalid within the principles laid down in *Re Kiely* (*a*), and in *Re Nash* and *McCracken* (*b*), because, by requiring the consent of the owners of the adjoining buildings to be obtained, it delegated to these persons the right to determine the advisability of granting the privilege asked for, and divested the council of the power they should personally exercise in respect thereof,—and by requiring the approval of the Chairman of the Board of Works it permitted favouritism, and all persons who desired to follow the same trade were not placed on the same footing. It was also bad because it delegated in part the exercise of the judgment and discretion that should be exercised by the enacting body alone.

(*a*) 13 O. R. 451 (1887), at page 457. (*b*) 33 U. C. R. 181 (1873).

The council also passed a by-law making it unlawful to erect a steam-engine, etc., within the village limits without the leave of the council.

Held, that this by-law was also bad, and unauthorized by the above sub-sections, since it applied to all cases whether there was danger in causing or promoting fire or not (*a*).

Sec. 542 (5-13). Notes (h)-(o). Dangerous manufactories.

(h) **Sub-s. 5.** A by-law providing that no persons other than chimney inspectors appointed by the council shall sweep or cause to be swept for hire or gain any chimney or flue in the municipality, is bad (*b*).

Sweeping chimneys.

(j). **Sub-s. 8.** Under corresponding English Statutes it has been held that coal partially consumed but still available for commercial or manufacturing purposes is not "ashes." (*c*) As to the meaning of "dirt, ashes or rubbish" see *Lyndon* v. *Stanbridge*, (*d*) of "refuse of a trade, business, or manufacture," *Gay* v. *Cadby*, (*e*) *St. Martin's Vestry* v. *Gordon* (*f*). As to recovering the costs of removal by the local authorities upon default of the owners or occupants of property, see *Holborn Union* v. *St. Leonards, Shoreditch*, (*g*).

Removal of ashes.

(k). **Sub-s. 7.** A "party wall" is a wall separating one house or building from the adjoining one. (*h*) External walls are not party walls (*i*) nor are the internal (partition) walls of a building which all belongs to the same owner. (*j*)

> "The question as to whether a wall is a party wall or not can only arise where a wall separating adjoining lands belonging to different owners is claimed by them as tenants in common." (*k*)

A wall may be a party wall so far as it belongs in common to two buildings, and may yet cease to be a party wall for the rest of its height, (*l*) or of its length. (*m*) Power to pass by-laws "to authorize the erection of party walls" etc., includes power to authorize their erection upon the application of either owner and without the consent of the other. (*n*)

Party walls.

(l). **Sub-s. 8.** "**Scuttles.**" A scuttle "is a small opening in the roof or outside wall furnished with a lid." (*o*)

Scuttles.

(m). **Sub-s. 11** As to the responsibility of the municipality for the acts of officers appointed under this subsection, see note **A** under s. 537, *ante* p. 535.

Inspectors as to fire regulations.

(n). "**To enforce or carry into effect the same.**" As to the expenses thus incurred see ss. 387, 703 and the cases there cited.

(o). **Sub-s. 12.** The rights of private property are subordinate to the higher demands of public welfare; and therefore in cases of imminent and urgent public necessity any individual or municipal officer may independently of any

Pulling down buildings to prevent spread of fire.

(*a*) *Reg.* v. *Webster*, 16 O. R. 187 (1888).

(*b*) *Reg.* v. *Johnson*, 38 U. C. R. 549 (1876). See *ante*, note (**b**) to s. 330.

(*c*) *Filbey* v. *Combe*, 2 M. & W. 677, (1837); *Law* v. *Dodd*, 1 Ex. 845, (1848).

(*d*) 2 H. & N. 45, (1857).

(*e*) 2 C. P. D. 391, (1877).

(*f*) 62 L. T. N. S., 836, (1890); [1891], 1 Q. B. 61.

(*g*) 2 Q. B. D. 145, (1876). See also ss. 386, 703.

(*h*) *Per* MELLISH, L. J., in *Weston* v. *Arnold*, L. R. 8 Ch. 1084 (1873), at p. 1092.

(*i*) *Sims* v. *Estate Co.*, 14 L. T. N. S. 55, (1866).

(*j*) *Reg* v. *Copp*, 17 O. R. 738, (1889).

(*k*) *Per* MACMAHON, J., in s. c. at p. 742. See also Woodfall, Landlord and Tenant, c. xii, s. 6; *Walker* v. *McMillan*, 6 S. C. R., 241 (1881); *Ross* v. *Hunter*, 7 S. C. R. 289 (1881); *Sproule* v. *Stratford*, 1 O. R. 335, (1882); *Brooke* v. *McLean*, 5 O. R. 209 (1884); *Kenny* v. *Mackenzie*, 12 A. R. 346 (1885); *Imperial Bank* v. *Metcalfe*, 11 O.R. 467, (1886); *James* v. *Clement*, 13 O. R. 115, (1887).

(*l*) *Weston* v. *Arnold*, supra.

(*m*) *Knight* v. *Pursell*, 11 Ch. D. 412, (1879).

(*n*) Dillon, s. 151.

(*o*) Webster's Dict.

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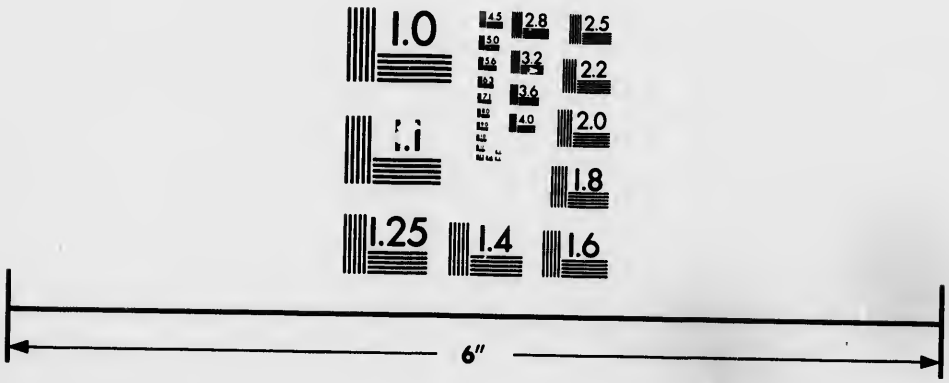

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Sec. 542 (13-15). Note (o).

Statute or by-law, and without responsibility to the owner for damages, pull down or demolish houses or other combustible structures in a city or compact town in order to prevent the spread of an existing conflagration. (*a*) This right has long been recognized by the law of England. (*b*) As to compensation see s. 437.

Fire escapes.

By the councils of townships, cities, towns and villages:—

14. For making provision,

Providing against accidents by fire.

(*a*) For securing the inmates and employees in all factories, hotels, boarding and lodging houses, warehouses, theatres, music halls, opera houses and other public building and places of amusement, against accident by fire;

Compelling use of fire escapes.

(*b*) For the adoption and erection of proper fire escapes upon all such buildings more than two storeys in height 55 V. c. 42, s. 493 (2); 60 V. c. 15, *Sched.* C. (86.)

Taken from 49 V. c. 37, s. 37 (1886), which applied only to cities and towns; extended to townships by 50 V. c. 29, s. 48, to villages by 60 V. c. 15, Sched. C. (86).

Rev. Stat. cc. 256, 257, 264.

15. (*a*) For compelling the owners of, and other persons interested in all buildings more than two storeys in height (except private dwellings and buildings in respect of which provision is made for requiring the construction of fire escapes thereon or in connection therewith in *The Ontario Factories Act, The Ontario Shops Regulation Act* or *The Act for the Prevention of Accidents by Fire in Hotels, and other like Buildings* or any other Act of the Legislature now in force or hereafter to be passed) to provide proper fire escapes thereon;

(*b*) For preventing the occupation of such buildings unless such fire escapes are provided. 60 V. c. 45, s. 13; 62 V. (1st Session) c. 2.

(p) "*The Ontario Factories Act.*" (*c*) provides that:

Requirements of "The Ontario Factories Act."

"In every factory.

(*a*) There shall be such means of extinguishing fire as the inspector, acting under the regulations made in that behalf, directs in writing.

(*b*) The main inside and outside doors shall open outwardly, and any door leading to or being the principal or main entrance to the factory or to any tower stairways, or fire-escapes therein or belonging thereto, shall not be bolted, barred, or locked at any time during the ordinary and usual working hours in the factory.

(2) In the case of factories over two storeys in height, there shall be provided in every room which is above the ground floor, or in so many of the rooms above the ground floor as the inspector in writing

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(*a*) Dillon, s. 955 *et seq*; 2 Kent's Com. 388.

(*b*) See 12 Co. Rep. 13, where Lord Coke says "For the commonwealth, a man shall suffer damage; as, for saving of a city or town, a house shall be plucked down if the next be on fire. A thing for the commonwealth every man may do without being liable to an action." See also 15 Vin. Abr. Tit. "Necessity" pl. 8; *Mouleverer* v. *Spink*, 1 Dyer 36 *b*; *Mouse's Case*, 12 Co. Rep. 63; and *per* BULLER, J., in *Governor, etc., of British Cast Plate Manufacturers* v. *Meredith*, 4 T. R. 794, (1792), at p. 797; also (as to firemen) *Dewey* v. *White*, M. & M. 56.

(*c*) R. S. O. c. 256, s. 21.

Sec. 542 (15).

Note (p).

Fire escapes.

Requirements of "The Ontario Factories Act."

certifies to be in his judgment sufficient, a wire or other rope for every window in the room, or for as many windows in the room as the inspector certifies in writing to be sufficient.

(a) Every such rope shall be not less than three-quarters of an inch in thickness, and of sufficient length to reach from the room in which it is kept to the ground below; and every such window of every room shall be provided with proper, convenient and secure fastenings and appurtenances to which one end of the rope may be safely secured or fastened.

(b) The said wire or other ropes shall be kept in a coil or other convenient position in the room.

(3) Every factory three or more storeys in height, in which persons are employed above the second storey, unless supplied with a sufficient number of tower stairways with iron doors, shall be provided with a sufficient number of fire escapes; such fire-escapes shall consist of an iron stairway with a suitable railing, and shall be connected with the interior of the building by iron doors or windows, with iron shutters, and shall have suitable landings at every storey above the first, including the attic if the attic is occupied as a workroom, and such fire-escapes shall be kept in good repair and free from obstruction or incumbrance of any kind; but any of the requirements of this subsection may be dispensed with in any factory if the inspector so directs."

"*The Ontario Shops Regulation Act*," (a) provides that:—

Of "The Ontario Shops Regulation Act."

"(1) Besides the present requirements as to fire-escapes, there shall, in the case of shops over two storeys in height, be provided in every room which is above the ground floor, or in so many of the rooms above the ground floor as the inspector shall in writing certify to be in his judgment sufficient, a wire or other rope for every window in the room, or for as many windows in the room as the inspector shall certify in writing to be sufficient.

(2) Every such rope shall be not less than three-quarters of an inch in thickness, and of sufficient length to reach from the room in which it is kept to the ground below, and every such window of every room shall be provided with proper, convenient and secure fastenings and appurtenances to which one end of the rope may be safely secured or fastened.

(3) The said wire or other ropes shall be kept in a coil or other convenient position in the room.

(4) In cases of particular danger from fire in any shop more than three storeys in height, the Lieutenant-Governor in Council may by regulation require the construction of fire-escapes, consisting of iron stairways on the outside of the building with suitable railings and with landings at every storey, including the attic when used as part of the shop, and with proper means of access to such stairway from the interior of the building."

As to hotels, R.S.O. c. 264.

R. S. O. c. 264, entitled "*An Act for the Prevention of Accidents by Fire in Hotels and other like Buildings*," provides that

"2.—(1) Every owner, lessee, or proprietor of an hotel exceeding two storeys in height, shall erect or cause to be erected at least one permanent outside stairway or ladder, from the landings or floors, landing or floor above the first storey of such hotel and extending to at least said first storey, such stairway or ladder to be built of iron and to be firmly attached to the wall of the building and to be supplied with a hand rail on either side, and to be of sufficient strength to sustain the weight of at least six full grown persons at the same time; and every such lessee or proprietor shall at all times keep the way or passage to such stairway or ladder unobstructed and free of access.

(a) R. S. O. c. 257, s. 15.

Sec. 542 (15-16).

Note (p).

Fire escapes.

Requirements of R.S.O. c. 264, as to fire escapes in hotels.

(2) If by reason of the default of any owner, upon reasonable notice in this behalf, any lessee or proprietor is compelled to erect a ladder or stairway under the provisions of this Act, then said lessee or proprietor shall have a right of action or set-off against the owner for all actual necessary and reasonable disbursements by him made or incurred by reason of the default of the owner.

3.—(1) The keeper of every hotel shall, where the same is more than two storeys in height, provide and keep in each of the sleeping apartments or bed-rooms which are situate above the ground floor, a fire escape for the use of guests occupying the same.

(2) Such fire escape shall be sufficient within the meaning of this Act if it consists of a rope not less than three-quarters of an inch in thickness, and of sufficient length to reach from the room or apartment in which it is kept to the ground below, and is kept in a coil or other convenient position in each of the said bed-rooms or sleeping apartments; and if the outside window or opening of such sleeping apartments or bed-rooms is provided with proper, secure and convenient fastenings or appliances to which one end of the rope may be safely secured or fastened.

4. In case any hotel is provided with outside stationary or other fire escapes, differing from what is herein provided for, by means of which, in the opinion of the inspector of the license district in which any such hotel is situated, a reasonably safe and convenient means of egress from the sleeping apartments or bed-rooms is provided in case of fire, the same shall be deemed a compliance with this Act, so far as relates to all sleeping apartments or bed-rooms from the outside windows or openings of which there is access to the said fire escapes. But the keeper of such hotel shall procure a certificate from the inspector, certifying to the sufficiency of such stationary or other fire escapes; and a copy of such certificate shall be transmitted by the inspector to the clerk of municipality in which the hotel is situate.

5. The keeper of every hotel shall, in addition to the notices which he is now required by law to keep posted up in each of sleeping apartments or bed-rooms, also keep posted up therein e calling attention to the said fire escapes, and containing ful ions for the use of the same, as well as a description of the outside stairway and the situation and means of egress to the same."

Burning Stumps, Brush, etc.

By the councils of townships, cities, towns and villages:

Regulating the burning of stumps, trees, brush, etc.

16. For regulating the times during which stumps, wood logs, trees, brush, straw, shavings or refuse may be set on fire or burned in the open air, and for prescribing precautions to be observed during such times, and for preventing such fires from being kindled at other times. 55 V. c. 42, s. 489 (24);

Taken from the Act of 1873, (36 V. c. 48) s. 378 (10).

(q) An owner of land, who without wilfulness or negligence, uses his land in the ordinary manner will not be liable to damages though mischief is thereby occasioned to his neighbour. But if he brings upon his land anything which would not naturally come upon it, and which in itself is dangerous, and may become mischievous if not kept under proper control, he will be liable to damages for any mischief thereby occasioned, though in so doing he may act without personal wilfulness or negligence (a). But as to fire set out for the purpose of husbandry the law appears to stand upon a different footing, and it is

(a) *Fletcher* v. *Rylands*, L. R. 1 Ex. 265, 279 (1866); L. R. 3 H. L. 330 (1868); *Carstairs* v. *Taylor*, L. R. 6 Ex. 217 (1871); *Smith* v. *Fletcher*, L. R. 7 Ex. 305 (1872); *Ross* v. *Fedden*, L. R. 7 Q. B. 661 (1872); *National Telephone Co.* v. *Barker*, [1893] 2 Ch. 186.

Sec. 542 (16-17 V.).

Note (a).

Burning stumps, brush, etc.

necessary that negligence should be shown in order that damages may be recoverable (*a*). It is not very long since this country was altogether a wilderness. Till the land is cleared it can produce nothing, and burning the wood is a necessary part of the operation of clearing. If it could be shewn that this business of clearing land could, by means within the reach of those employed in it, be done at a time or in a manner that would make it wholly independent of any accident beyond the control of the party, then perhaps, the bare fact of not having used those means might be held to constitute negligence (*b*).

The above decisions apply only to fire set out for the purpose of husbandry; and a railway company has been held responsible for damages caused by sparks from its engines setting fire to dried grass and leaves allowed to accumulate along the sides of the track (*c*). This is in accordance with the rule of the common law that an action lies against the party if by his negligence or that of his servants a fire arises on his premises and damages the property of another (*d*). The kindling of a fire, in a municipality where a by-law passed under this subsection is in force at a time other than prescribed by the by-law, or in disregard of the precautions made necessary by the by-law, would be strong, if not conclusive evidence of negligence. See also the provisions as to townships of R.S.O. c. 268 "*to authorize the appointment of Fire Guardians and for the Prevention of Bush Fires.*"

Manufacturing, Storing and Transporting Gunpowder, etc.

Storing and transportation of gunpowder.

17. For regulating the keeping and transporting of gunpowder and other combustible or dangerous materials; for regulating and providing for the support by fees, of magazines for storing gunpowder belonging to private persons; for compelling persons to store therein; for acquiring land, as well within as without the municipality, for the purpose of erecting powder magazines; and for the selling and conveying such land when no longer required therefor. 55 V. c. 42, s. 489 (24*a*); c 43, s. 32.

Taken from the Act of 1858 (22 V. c. 99) s. 287 (32) which applied only to cities, towns and villages; extended to townships by "*The Municipal Amendment Act of 1892*," (55 V. c. 43) s. 32. *Cf.* 12 V. c. 81, ss. 60 (13), villages, ss. 61, 67, 80, (towns,) ss. 82, 106, (cities) and s. 142.

Storing explosives.

17*a*. For limiting the quantity of gunpowder or of any other explosive substance to be kept in any place other than a powder magazine, and to regulate the manner in which such gunpowder or other explosive substance must be stored;

Regulating the establishment of factories for explosives, etc.

17*b*. For regulating the establishment within the municipality of factories or other places for the manufacture or storage of gunpowder or any explosive substance, and for providing for the submission of plans of the premises in which it is proposed to carry on such manufacture or storage and their

(*a*) *Wilkins* v. *Row*, 15 C. P. 325 (1865); *Buchanan* v. *Young*, 23 C. P. 101 (1873); *Gilson* v. *North Grey R. W. Co.*, 33 U. C. R. 128 (1872), 35 U. C. R. 475 (1874); *Murphy* v. *Dalton*, 5 O. R. 541 (1884); *Furlong* v. *Carrol*, 7 A. R. 145 (1882); *Booth* v. *Moffat*, 11 Man. R. 25 (1896); *Owens* v. *Burgess*, Ibid. 75; *Beaton* v. *Springer*, 24 A. R. 297 (1897); *Chaz* v. *Les Cistercieus Reformes*, 12 Man. Rep. 330 (1898). And see *National Telephone Co.* v. *Baker*, [1893] 2 Ch. 186

(*b*) *Per* ROBINSON, C. J., in *Dean* v. *McCarty*, 2 U. C. R. 448, 450 (1846).

(*c*) *Rainville* v. *Grand Trunk R. W. Co.*, 25 A. R. 242 (1898).

(*d*) *Filliter* v. *Phippard*, 11 Q. B. 347 (1847); *Black* v. *Christ Church Finance Co.*, [1894] A. C. 48.

Sec. 542.

Factories for making explosives.

approval by the council before the business of manufacturing or storing is commenced, and for making regulations respecting the walls or fences by which such buildings are to be surrounded at a fixed height and distance, and for regulating the distance from any other building as which such manufacture or storage may be carried on;

Regulating business of manufacturing and storing explosives.

17*c*. For regulating the carrying on of the business of manufacturing or storing gunpowder or any explosive in the municipality, whether such business has been heretofore or shall be hereafter established, and for providing for the precautions to be taken for the prevention of accidents arising therefrom;

Licensing manufacturers and storage of explosives.

17*d*. For granting licenses for carrying on the business of manufacturing or storing of gunpowder or other explosive substance in quantities of more than twenty-five pounds and for providing for the length of time, not exceeding five years, during which such licenses shall be in force, and that the renewal of the same shall be in the discretion of the council, but no license fee imposed under this section shall exceed the sum of $25 per month for every month during which the business is carried on.

Sub-secs. 17*a* to 17*d* inclusive were added in 1899 by 62 V. (2nd Session) c. 26, s. 34.

(r) It was an indictable offence at common law to manufacture and keep large quantities of gunpowder in towns or closely inhabited places. (*a*)

Portable Steam Engines.

By the councils of townships:—

Portable steam engines.

18. For fixing the distance from any public highway within the municipality within which unenclosed portable steam engines may not be used for running a saw mill or shingle mill; and for preventing the use of the same for either of such purposes within such distance. 55 V. c. 42, s. 521 (19).

Penalties.

19. For imposing penalties on persons setting up or operating a portable steam-engine for either of such purposes in contravention of such by-law. 55 V. c. 42, s. 521 (20).

Sub. secs. 18 and 19 were added to the Act in 1888 by 51 V. c. 28, s. 27.

Establishment of fire limits in unincorporated villages.

542*a*. The council of any township may by by-law set apart any unincorporated village or settlement and its immediate neighbourhood in the township, and may pass by-laws applicable within the limits of the territory so set apart for any or all of the purposes mentioned in subsection 1 of section 542 of this Act. 62 V. (2nd Session) c. 26, s 33.

(a) See also s. 37 (3), *ante*.

(*a*) *Rex* v. *Williams*, 1 Russ. 321; *Rex* v. *Taylor*, 2 Str. 1167; and see *Crowder* v. *Tinkler*, 19 Ves. 617 (1816). As to the Imperial Statutes regulating the keeping of gunpowder see *Biggs* v. *Mitchell*, 2 B. & S. 523 (1862); *Bliss* v. *Lilly*, 3 B. & S. 128 (1862); *Rex* v. *Smith*, 5 M. & S. 133 (1816); *Webley* v. *Woolley*, L. R. 7 Q. B. 61 (1871); *Eliott* v. *Majendie*, L. R. 7 Q. B. 429 (1872). The Imperial Act, 29-30 V. c. 98 extends the provisions of these Statutes to nitro-glycerine and all other substances which may by Order in Council be declared to be specially dangerous. American cases on this subject are cited in Dillon, s. 404.

Water for Fire Purposes.

Secs. 543 (1) 544 (1).

Council may contract for supply of water.

543.—1. Every municipal council shall have power to contract for a supply of water within the municipality for fire purposes and other public uses, from hydrants or otherwise as may be deemed advisable; and for the renting of such hydrants for any number of years not, in the first instance, exceeding ten; and for renewing such contract from time to time for such period, not exceeding ten years, as the council may desire; and every council shall also have power to purchase hydrants necessary for any of the purposes or uses aforesaid; and also to erect the same; and to purchase or rent for a term of years or otherwise, fire apparatus of any kind, and fire appliances and appurtenances belonging thereto respectively. 55 V. c. 42, s. 480 (1) *part.*

Added to the Act in 1882 by 45 V. c. 18, s. 13 and 45 V. c. 23, s. 7 (2) which are identical except that the latter alone contains the last clause of the present subsection. Until the Con. Mun. Act, 1892, the words were, "to contract *with any water works or water company*" etc.

(a) "Shall have power to contract . . . and to purchase hydrants . . . and to purchase or rent fire apparatus."

The contract must be under the corporate seal (*a*) and must have been authorized by by-law. (*b*)

Any local municipality may construct and maintain its own system of waterworks, see s. 566, and "*The Municipal Waterworks Act*," (R.S.O. c. 235.)

Fire Engines and Water therefor.

Fire protection in defined area in towns or incorporated villages.

544.—(1) Upon a petition of a majority of the ratepayers entitled to vote on money by-laws in any defined area or portion of a town or village representing in value more than one-half of the assessed real property within such portion or area, the council of every town and village may pass a by-law or by-laws for the purchase of a fire engine and other appliances, and the supply of water therefor, for the purposes of fire protection; and they may by the same or any subsequent by-law define, by metes and bounds or otherwise, what real property within such area will be benefited by the proposed fire protection and is to be charged with the cost thereof; and may also by such by-law or any subsequent by-law, make provision for assessing and levying on the real property so defined by the by-law the cost of managing and maintaining the said fire engine and appliances and of providing the necessary water supply. 58 V. c. 42, s. 28 (3).

Issuing debentures.

(2) Debentures issued under this section shall be issued in conformity with section 386 of this Act. 58 V. c. 42, s. 28 (4).

Costs of such engine, etc.

(3) The said council may levy in any one year upon the real property to be benefited the cost of such engine and appliances and of the water supply, or may issue the debentures of the town or village payable in annual proportions during a period

(*a*) *Silsby* v. *Village of Dunnville*, 31 C.P. 301 (1880), 8 A.R. 524 (1883).

(*b*) *Waterous Engine Works Co.* v. *Town of Palmerston*, 20 O.R. 411 (1890), 19 A.R. 47, 21 S.C.R. 556 (1892).

Sec. 544 (3); 545.

Cost of fire engine, etc.

not exceeding ten years, with interest as to the said council may seem meet and proper; and may levy the amount payable thereon from time to time upon the real property to be benefited as aforesaid. 58 V. c. 42, s. 28 (5).

Assent of electors not required.

(4) It shall not be necessary to submit any of the said by-laws to a vote of the electors, nor to comply with the formalities required only for the purposes of such submission. 58 V. c. 42, s. 28 (6).

(a) This section should be read with s. 687, *post*.

DIVISION VI.—PROTECTION OF PROPERTY.

Sub-Div. iv.—Fences. (Sec. 545).

Enclosure of vacant lots. Sec. 545 (1).
Lawful fences. Sec. 545 (2).
Division fences. Sec. 545 (3).
Barbed wire fences. Sec. 545 (4).
Snow fences. Sec. 545 (5).
Water gates. Sec. 545 (6).
Marking boundaries of marsh lands. Sec. 545 (7).
Powers of counties as to fences. Sec. 545 (8).

545. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

When and why fences are required.

(a) Fences and Pounds.—With s. 545 relating to fences and s. 546 to pounds, should be read "*The Act respecting Pounds*" (*a*), "*The Line Fences Act*" (*b*), and s. 94 of "*The Unorganized Territory Act*" (*c*).

> "The only general obligation with respect to fences imposed by the common law is that every proprietor of land should prevent, by fences or other means, his cattle from trespassing upon the lands of his neighbour" (*d*).

Except for this purpose (and in the case referred to in note (a) to s. 545) a land-owner was under no common law obligation to erect or maintain fences (*e*), and the fact that his land was unfenced did not affect his right to distrain animals trespassing thereon, or to recover damages for such trespass (*f*).

But by c. 2 of the Acts passed at the second Session of the First Parliament of Upper Canada (1793), authority was conferred upon the "town-meeting" of each township (*g*) to determine "What shall be a lawful fence," and "What animals shall be free commoners in the township for the year," and to appoint fence-viewers and a township pound-keeper, the latter of whom was authorized to impound cattle, etc., trespassing upon lands enclosed by a lawful fence.

(*a*) R. S. O. c. 272. (*b*) R. S. O. c. 284. (*c*) R. S. O. c. 109.

(*d*) Gale on Easements, (6th Ed.) 455. See *per* ROBINSON, C. J., in *Jack* v. *Ontario, Simcoe & Huron R. R. Union Co.*, 14 U. C. R. 328 (1856), at foot of p. 330, and *per* HAGARTY, C. J., in *Crow* v. *Steeper*, 46 U. C. R. 87 (1881), at p. 92.

(*e*) *Hilton* v. *Ankesson*, 27 L. T. N. S. 519 (1877); *Erskine* v. *Adeane*, L. R. 8 Ch. 756 (1873).

(*f*) See *per* HAGARTY, C. J., in *Crow* v. *Steeper*, 46 U. C. R. 87 (1881), at pp. 91-92, referring to *Mason* v. *Morgan*, 24 U. C. R. 328 (1865).

(*g*) See the Prefatory Chapter to this Manual, *ante*, p. 4.

Sec. 545.

Note (d).

Accordingly, whenever and wherever the regulations or by-laws of the municipality permitted cattle to run at large, or did not forbid their running at large, "they could not be taken for damage feasant unless the owner of the land trespassed upon had a sufficient lawful fence" (*a*).

See now s. 546 (2), as to the power of the councils of local municipalities to pass by-laws restraining and regulating the running at large or trespassing of any animals. For cases decided under "*The Act respecting Pounds*" and "*The Line Fences Act*," see the notes to these Statutes. As to the duties of railway companies in regard to fencing, *Williams* v. *Manitoba and North Western R. W. Co.*, (*b*) *Duncan* v. *Canadian Pacific R. W. Co.* (*c*) Where the obligation to erect or maintain fences exists, whether by Statute, by-law, agreement or prescription, it is in general absolute, the act of God or *vis major* excepted; and it is no answer to an action for damages that the defendant did not know of the want of repair (*d*).

Enclosure of Vacant Lots.

By the councils of cities, towns, and villages :—

Vacant lots.

1. For causing vacant lots to be properly enclosed. 55 V. c. 42 s. 496 (4).

Taken from the Act of 1858, (22 V. c. 99) s. 287 (22). *Cf.* 12 V. c. 81, s. 60 (10), villages; ss. 61, 67, 80, (towns); ss. 82, 106, (cities).

(b) The words used in the original clause (*e*) were, "For causing vacant lots in central situations to be properly enclosed *when they become nuisances*," *e.g.*, where there is a pit or excavation so near the highway that a person lawfully using the latter may, if he steps thereon, fall into the hole (*f*).

It is a common law duty of the owner of land to prevent it from becoming a public nuisance (*g*).

Fences.

By the councils of townships, cities, towns, and villages :—

Fences.

2. For settling the height and description of lawful fences, and for regulating and settling the height, description and manner of maintaining, keeping up and laying down fences along highways or any part or parts thereof; and for making compensation for the increased expenses, if any, to persons required so to maintain, keep up or lay down such last mentioned fences or any part thereof. 55 V. c. 42, s. 489 (17).

The first clause is taken from the Act of 1858, (22 V. c. 99), s. 259 (8); *Cf.* 12 V. c. 81, s. 31 (25) (townships); ss. 52, 59 (villages); 61, 67, 80 (towns); 82, 106 (cities). The rest of the sub-section was added in 1876 by 39 V. c. 34, s. 2.

(c) **"Lawful fences."** See "*The Act respecting Pounds*," (R. S. O. c. 272,) ss. 20, 22.

(d). **"Fences along highways."** See sub-sections (5) and (8) of this section, and "*The Act respecting Snow Fences*," (R. S. O. c. 240).

(*a*) *Per* WILSON, C. J., in *Buist* v. *McCombs*, 8 A. R. 598, 600 (1882), referring to the earlier cases of *Ives* v. *Hitchcock*, Draper's Reports 239 (1830); *Spafford* v. *Hubbell*, M. T. 2 Vic., R. & J. Dig. 1517. See also *Blacklock* v. *Millikan*, 3 C. P. 34 (1852).

(*b*) 4 Man. Rep. 220 (1887).

(*c*) 21 O. R. 355 (1891).

(*d*) *Lawrence* v. *Jenkins*, L. R. 8 Q. B. 274 (1873).

(*e*) 12 V. c. 81, s. 60 (10).

(*f*) *Hounsell* v. *Smyth*, 7 C. B. N. S. 731 (1860); *Binks* v. *South York and River Dun Co.*, 3 B & S. 244 (1862); *Hadley* v. *Taylor*, L. R. 1 C. P. 53 (1865); *Gully* v. *Smith*, 12 Q. B. D. 121 (1883); *Davis* v. *Commercial Bank of Windsor*, 32 Nova Scotia Rep. 366 (1899), and see *Hawken* v. *Shearer*, 56 L. J. Q. B. 284 (unfenced quarry).

(*g*) *Atty.-Gen* v. *Tod-Heatly*, 13 Times L. R. 220 (1897).

Sec. 545. Notes (e)-(h).

(e). "Compensation for the increased expenses," etc. The amount is to be determined by agreement or arbitration. (a)

Division Fences.

Division fences, and cost thereof.

3. For regulating the height, extent and description of lawful division fences; and for determining how the cost thereof shall be apportioned; and for directing that any amount so apportioned shall be recovered in the same manner as penalties not otherwise provided for may be recovered under this Act, but until such by-laws are made *The Line Fences Act* shall continue applicable to the municipality. 55 V. c. 42, s. 489 (18); 62 V. (1st Session) c. 2.

Provisions until by-laws made. Rev. Stat. c. 284.

Taken from the Act of 1858, (22 V. c. 99), s. 258 (9), as amended by 62 V. (1st Session) c. 2

(f). "As penalties . . . may be recovered under this Act." See s. 704.

(g). "The Line Fences Act" "shall continue applicable."

The reference in the Revised Statutes to "*The Ditches and Watercourses Act*" was a mistake. Until the passing in 1874 of "*The Ontario Line Fences Act*," (37 V. c. 25) the provisions of both Acts were contained in one Statute. (b) The error was corrected by the Act of 1898, 62 V. c. 2.

Barbed Wire Fences.

Barbed wire fences.

4. For providing proper and sufficient protection against injury to persons or animals by fences constructed wholly or in part of barbed wire or any other material; and in towns and cities for wholly prohibiting the construction or erection, along streets and public places, of fences made wholly or in part of barbed wire or any other barbed material. 55 V. c. 42, s. 489 (19).

The first clause is taken from 45 V. c. 23, s. 10 (1882): the rest of the sub-section was added in 1890 by 53 V. c. 50, s. 18.

(h). In *Hillyard* v. *Grand Trunk R. W. Co.* (c) it was held by WILSON, C.J., and ARMOUR, J., (O'CONNOR J., dissenting) that in view of this sub-section, which seemed to sanction the use of barbed wire fences, such fences, constructed by the defendants along a country road, could not be treated as a nuisance, no by-law of the municipality having been passed respecting them, also that evidence of the common use of such fences in other townships, and that municipalities held out inducements and offered bonuses to persons who put up such fences, was admissible to shew that they were not considered dangerous or a nuisance. Several English and American cases are reviewed in the judgment of WILSON, C. J. (d)

(a) R. S. O. c. 240, s. 1, and see s. 3 of the same Act as to compensation if snow fences are erected and maintained by the municipality on private property.

(b) See 4 Wm. IV. c. 13: 8 V. c. 20: 18 V. c. 137: C. S. U. C. c. 57: 32 V. c. 46.

(c) 8 O. R. 583 (1885).

(d) See also articles in 28 C. L. J. N. S. 169 and 39 Sol. Jour. 757, "*The Barbed Wire Act*," 1893, (Imp. Stat. 56-57 V. c. 32), and the case of *Fenna* v. *Clare & Co.*, [1895] 1 Q. B. 199, where a row of sharp spikes on the top of a wall 18 inches high adjoining a highway was found by a jury to be undoubtedly a dangerous nuisance.

Snow Fences.

Sec. 545 (5 8)

5. For requiring the owners or occupiers of lands bordering upon any public highway, to take down, alter, or remove any fence or fences, subject to the provisions of *The Act respecting Snow Fences* 55 V. c. 42, s. 489 (20). Snow fences. Rev. Stat. c. 240.

Taken from the Con. Mun. Act of 1883, (46 V. c. 18,) s. 490 (17).

(i). See sub-sections 2 and 8 of this section and the provisions of R. S. O. c. 240 (originally 44 V. c. 26).

Water Gates.

6. For compelling the owners of lands through which any open drain or water-course passes to erect and keep up water gates where fences cross such drain or water course. 55 V. c. 42, s. 489 (21) *part.* Water courses.

Taken from the Act of 1873. (36 V. c. 48,) s. 379 (14). The rest of the sec. now forms subsec. 11 of s. 552, *post.*

Boundaries of Marsh Lands.

By the councils of townships:—

7. For declaring that in the case of any lands, the boundary line, or any part of the boundary line whereof passes through a marsh or swamp, or any land covered with water, the same shall, so far as respects that part of such boundary line which so passes through a marsh or swamp, or land covered with water, be deemed to be wholly enclosed within the meaning of section 1 of *The Act respecting Petty Trespasses,* if posts are put up and maintained along such part of such line at distances which will permit of each being clearly visible from the adjoining post. 55 V. c. 42, s. 521 (13). Boundaries of marsh lands. Rev. Stat. c. 120.

Taken from 50 V. c. 29, s. 50 (1887).

(j). The Act referred to (*a*) subjects to a penalty of $1 to $10 any person who unlawfully enters into, comes upon, or passes through or in any way trespasses upon any land or premises "*being wholly enclosed*" etc.

Fences.

By the councils of counties:—

8. For the exercise, in respect of fences along highways, or parts thereof which it is the duty of the council to maintain of the powers conferred upon the councils of townships, cities, towns and villages, by subsections 2 and 5 of this section. Fences.

Taken from 48 V. c. 39, s. 14 (1885).

(k). "Highways or parts thereof which it is the duty of the (county) councils to maintain." See ss. 613-618, 622-624, 626.

(*a*) R. S. O. c. 120, s. 1.

Sec. 546

Powers of County Councils as to erection and removal of fences.

(*c*) The council of every county shall be deemed and held to have had and possessed on, from, and since the first day of February, 1883, the powers conferred by the preceding clause 8, and also the power to assist, aid, and compensate, either by payment of money or otherwise, any owner or occupier of land bordering upon any public highway within the county, for the taking down, altering or removing any fence or fences, which in the opinion of the council would be likely to cause such an accumulation of snow or drift as would impede or obstruct travel on such highway or any part thereof, or for the erection and construction of some other description of fence, approved of, or designated by the council, and subject to such terms and conditions in that behalf as by such council may be fixed and prescribed. 55 V. c. 42, s. 511 (3).

Taken from 49 V. c. 37, s. 35 (1886).

(1) Compare the powers conferred upon local municipalities by R. S. O., c. 240 respecting snow fences. The date mentioned is that on which "*The Consolidated Municipal Act, 1883*," came into force.

Div. VI.—PROTECTION OF PROPERTY.

Sub-Div. v. Pounds. (Sec. 546).

546. The council of every township, city, town and village, may pass by-laws (not inconsistent with the Statutes of Canada respecting Cruelty to Animals):—

(a) "The Statutes of Canada respecting Cruelty to Animals" are now Articles 512 to 515 of "*The Criminal Code, 1892*," as amended by 58-59 V. c. 40 (Ca.)

See also *post*, s. 742a and R. S. O. c. 272, "*An Act respecting Pounds*."

Pounds, etc.

Providing pounds.

1. For providing sufficient yards and enclosures for the safe keeping of such animals as it may be the duty of the pound-keeper to impound. 55 V. c. 42, s. 490 (1).

Animals running at large.

2. For restraining and regulating the running at large or trespassing of any animals, and for providing for impounding them; and for causing them to be sold, in case they are not claimed within a reasonable time, or in case the damages, fines and expenses are not paid according to law. 55 V. c. 42, s. 490 (2).

Appraising the damages.

3. For appraising the damages to be paid by the owners of animals impounded for trespassing, contrary to the laws of Ontario or of the municipality. 55 V. c. 42, s. 490 (3).

Sec. 547.

Note (b).

Compensation with respect to impounding animals.

4. For determining the compensation to be allowed for services rendered in carrying out the provisions of any Act, with respect to animals impounded or distrained and detained in the possession of the distrainor. 55 V. c. 42, s. 490 (4).

Taken from the Act of 1858, (22 V. c. 99), s. 337. *Cf.* 12 V. c. 81, s. 31, (4) (19) (23) (24), (townships), 52, 59, (villages), 61, 67, 80, (towns), 82, 106, (cities).

(b) It was in respect to the matters referred to in this section that the right of local self-government by regulations adopted in "town-meeting" was first conferred upon the inhabitants of each township, etc., in Upper Canada. (a)

DIV. VI.—PROTECTION OF PROPERTY.

Sub-Div. vi.—Miscellaneous. (Sec. 547).

Protection of graves. Sec. 547 (1).
Weeds and Canada thistles. Sec. 547 (2).
Shade and ornamental trees. Sec. 547 (3).
Posters. Sec. 547 (4).
Sign boards and notices. Sec. 547 (5).
Protection of booms. Sec. 547 (6).

547. By-laws may be passed by the councils of the municipalities and for the purpose in this section respectively mentioned, that is to say:

Protection of Graves.

By the councils of townships, cities, towns and villages:—

Protecting graves.

1. For preventing the violation of cemeteries, graves, tombs, tombstones, or vaults where the dead are interred. 55 V. c. 42, s. 489 (13).

Taken from the Act of 1858, (22 V. c. 99), s. 259 (12)

(a) It is an indictable offence at common law to disinter a dead body, (b) and s. 28 of *An Act respecting Cemetery Companies*, [R. S. O. c. 213], declares that:—

"Any person who:—

Penalty on persons defacing tombstones, etc.

1. Wilfully destroys, mutilates, defaces, injures or removes any tomb, monument, grave-stone or other structure placed in a cemetery, or any fence, railing or other work for the protection or ornament of a cemetery, or of any tomb, monument, gravestone, or other structure aforesaid or of any cemetery lot within a cemetery; or,

2. Wilfully destroys, cuts, breaks or injures any tree, shrub or plant in a cemetery; or,

3. Plays at any game or sport in a cemetery; or,

4. Discharges fire-arms (save at a military funeral) in a cemetery; or who,

5. Wilfully and unlawfully disturbs persons assembled for the purpose of burying a body therein; or who

6. Commits a nuisance in the cemetery;

shall upon conviction thereof before a Justice of the Peace or other Court of competent jurisdiction, be punished by a fine of not less than $4 nor more than $40, according to the nature of the offence."

(a) See the Prefatory Chapter to this Manual, p. 4. See also note (a) under s. 545 and cases cited in the notes to the Statutes therein referred to.

(b) *Rex* v. *Lynn*, 2 T. R. 733, (1788); *Reg.* v. *Sharpe*, 7 Cox C. C. 214 (1859).

Sec. 547 (1). Note (a).

"*The Criminal Code, 1892*," Article 206 (b) provides for the punishment of "any person who improperly . . interferes with . . any dead human body."

Protection of graves, etc.

In *Re the Widening of Beekman Street*, (*a*) it was held by the Supreme Court of New York that the right to bury a corpse and to preserve its remains is a legal right which the Courts will recognize and protect; that this right, in the absence of testamentary disposition, belongs to the next of kin and includes the right to select the place of sepulture and to change it at pleasure; that if the place of sepulture is taken for public use, the next of kin may claim to be indemnified for the expense of removing and re-interring the remains. (*b*)

Weeds.

Prevention of growth of thistles and weeds.

2. For preventing the growth of Canada thistles and other weeds detrimental to husbandry and for compelling the destruction thereof. 55 V. c. 42, s. 489 (22) *part*.

Taken from 37 V. c. 16, s. 15 *part* (1874); see also s. 537 (4). *Cf.* 12 V. c. 81, s. 31 (21), (townships); ss. 52, 59, (villages); ss. 61, 67, 80, (towns); ss. 82, 106, (cities).

(**b**) See also note (**g**) to s. 537; R. S. O. c. 279, entitled "*An Act to prevent the spread of Noxious Weeds*," etc.; *Patterson* v. *Central Canada Loan, etc. Co.* (*c*)

Ornamental and Shade Trees.

Ornamental trees.

3. For preventing the injuring or destroying of trees or shrubs planted or preserved for shade or ornament. 55 V. c. 42, s. 489 (28), *part*.

Taken from the Act of 1858, (22 V. c. 99) s. 259 (13). *Cf.* 12 V. c. 81, ss. 60 (20), villages; 61, 67, 80 (towns); 82, 106 (cities).

(**c**). As to the planting, protection, trimming and removal of shade or ornamental trees, see also s. 574 (as amended in 1898 by 61 V. c. 23, s. 19) and "*The Ontario Tree Planting Act*." (*d*)

Section 6 and 7 of that Act impose penalties upon any person who ties or fastens any animal to, or injures or destroys, or suffers or permits any animal in his charge to injure or destroy, or who, without permission given by resolution of the municipal council, cuts down or removes any tree to which the Act applies; and "*The Criminal Code, 1892*," makes it an offence punishable on summary conviction wilfully to destroy or damage to the amount of twenty-five cents the whole or any part of any tree, sapling or shrub or any underwood wheresoever the same is growing, (*e*) and an indictable offence, punishable by five years imprisonment wilfully to destroy or damage to an extent exceeding in value $5, a tree, shrub or underwood growing in a park, pleasure ground, or garden or in any land adjoining or belonging to a dwelling house. (*f*) As to the meaning of the word "wilfully" see note (**a**) to s. 194, *ante*.

Posters.

Posters.

4. For preventing the defacing of private or other property by printed or other notices. 55 V. c. 42, s, 489 (28).

Taken from the Act of 1873, (36 V. c. 48) s. 379 (21).

(**d**). It is to be regretted that councils (especially townships councils) do not avail themselves more and more fully of the powers conferred by this sub-section. The nuisance which it is intended to prevent is becoming a serious one, and destructive of the beauty of much fine scenery on this continent. See also the prohibition contained in s. 636 as to advertisements, etc., on the sign posts, mile posts, etc., erected by the Canadian Wheelmen's Association under the authority of that section.

(*a*) 4 Bradf. (N. Y. Surrogate Reports) Appx. 502.

(*b*) See *Lowry* v. *Pfitt*, 13 C. L. J. N. S. 112, (1877) where is reprinted a note on the law of burials from the American Law Register; also Dillon, s. 444, note.

(*c*) 29 O.R. 134 (1898). (*d*) R.S.O. c. 243. (*e*) Art. 508. (*f*) Art. 499 (*D*) (a).

Sign-boards, etc. Secs. 547-548.

5. For preventing the pulling down or defacing of sign-boards, or of printed or written notices lawfully affixed. 55 V. c. 42, s. 489 (29). Sign-boards and notices.

Taken from the Act of 1858, (22 V. c. 99) s. 259 (14) "lawfully affixed" having being added in 1873 by 36 V. c. 48, s. 379 (22). *Cf.* 12 V. c. 81, s. 60 (20) (villages); 61, 67, 80 (towns); 82, 106 (cities).

(e). "Every one is a loose, idle or disorderly person or vagrant . . . who tears downs or defaces signs," etc., (a) and every such person is liable on summary conviction to fine and imprisonment or to both. (b)

Protecting Booms.

By the councils of counties :—

6. For protecting and regulating booms on any stream or river for the safe keeping of timber, saw-logs and staves within the municipality. 55 V. c. 42, s. 511 (1). Protecting booms.

Taken from the Act of 1866, (29-30 V. c. 51) s. 314 (4).

(f). The right to float timber, saw-logs and staves down rivers, creeks and streams is an ordinary right of navigation and is recognized and established in this Province by Statute. (c) Such timber is usually kept for a time in booms, the protection and regulation of which is therefore a matter of municipal concern. In *McMillan* v. *Southwest Boom Co.*, (d) the New Brunswick Supreme Court held that Provincial Acts authorizing a local company to erect and maintain booms in a navigable river were *intra vires*; and that the words "navigation and shipping" in sec. 91 (10) of the B.N.A. Act are to be construed as conferring upon the Parliament of Canada exclusive jurisdiction to prescribe rules and regulations for vessels navigating the waters of the Dominion, but not as excluding for all purposes Provincial jurisdiction over navigable waters. But in a later case from the same Province, it was held by the Supreme Court of Canada that although a Provincial Legislature may incorporate a boom company it cannot give it power to obstruct a tidal navigable river, and that the power in respect to "navigation" conferred upon the Parliament of Canada by sec. 91 (10) of the B.N.A. Act "includes the exclusive right to legislate so as to authorize an obstruction in a navigable public river where the tide ebbs and flows." (e)

DIV. VI.—PROTECTION OF LIFE AND PROPERTY.

Sub-Div. vii.—Police and Night Watchmen. (Sec. 548).

548. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say;

(a) "*The Criminal Code, 1892*," Art. 207 (*h*). (*b*) Art. 209.

(c) See R.S.O. c. 142, "*An Act for protecting the Public Interest in Rivers, Streams and Creeks*," s. 1 of which is quoted in note (i) to s. 562, *post*; *Little* v. *Lee*, 3 C.P. 528, 4 C.P. 95 (1853); *Township of Thurlow* v. *Bogart*, 15 C.P. 9, 601 (1865); *Whelan* v. *McLachlan*, 16 C. P. 102 (1865); *Plewes* v. *Hall*, 29 U.C.R. 472 (1869); *McLaren* v. *Buck*, 26 C.P. 539 (1876); *Reg.* v. *Robertson*, 6 S.C.R. 52 (1882); *Caldwell* v. *McLaren*, 5 A. R. 363 (1880), 8 S. C. R. 435 (1882), 9 App. Cas. 392 (1884); *Mackey* v. *Sherman*, 8 O.R. 28 (1885); *Langdaff* v. *McRae*, 22 O. R. 78 (1892); *Re Dam and Slide on Little Bob River*, 23 A.R. 177 (1896); *Farquharson* v. *Imperial Oil Co.*, 29 O.R. 206 (1898).

(d) 2 Cartwright 542 (1878).

(e) *Queddy River Driving Boom Co.* v. *Davidson*, 10 S.C.R. 222 (1883).

Sec. 548 (1-2).

Police.

By the councils of cities and towns:—

Police.

1. For establishing, regulating and maintaining a police but subject to the other provisions of this Act. 55 V. c. 42, s. 504 (6).

Taken from the Act of 1858, (22 V. c. 99) s. 200 (7). *Cf.* 12 V. c. 81, s. 81 (1), (towns); ss. 82, 106 (cities.)

(a) "**But subject to the other provisions of this Act.**" See ss. 488-494 and the notes thereon.

Night Watchmen.

By the councils of cities, towns and villages:—

Appointment of night-watchmen.

(2) For appointing, employing and paying a night-watchman or watchmen, for the purpose of patrolling at night or between certain hours of the night, any street or any portion thereof within the municipality to be defined by such by-law, and of guarding and protecting the property, real and personal, within the limits thereby defined.

Special rate to be levied.

(*a*) For levying in the same manner and at the same time as payment of the other rates or taxes within the municipality is enforced, by special rate upon all the real property within the limits defined by the by-law, except vacant lots, all the expenses of or incidental to such employment of such night-watchman or watchmen;

Petition by ratepayers.

(*b*) No such by-law shall be passed except upon petition therefor by two-thirds of the freeholders and householders who, upon the passing thereof, would become liable to be charged with the expenses to be incurred thereunder, and who represent in value at least two-thirds of the assessed real property on the street or portion thereof liable to be charged with such expenses;

Proof of signatures.

(*c*) No such petition shall be received or acted on by the council unless, and until all the signatures thereon are proved by the affidavit of a reliable and competent witness to be the genuine signatures of the persons whose signatures they purport to be, and that the contents thereof were made known to each person signing the same before signature;

Liability of tenant.

(*d*) As between the landlord and tenant of any premises comprised within the limits defined by the by-law, the tenant shall be liable for the expenses to be levied thereunder, for the period or time of his occupation, unless there is an express agreement to the contrary. 55 V. c. 42, s. 496 (43).

Taken from 52 V. c. 36, s. 25 (1889).

(b) "**Householders.**" See the definition of this word, s. 2 (7).

DIVISION VII.—PUBLIC MORALS.

Note (a).

(SEC. 549).

Indecent placards, etc., on walls and fences. Sec. 549 (1).
Vice, drunkenness, profanity, etc. Sec. 549 (2).
Disorderly and bawdy houses. Sec. 549 (3).
Gambling houses, faro-banks, roulette tables, etc. Sec. 549 (4).
Horse racing. Sec. 549 (5).
Vagrants and persons drunk and disorderly in public places. Sec. 549 (6).
Indecent exposure. Sec. 549 (7).
Bathing in public water. Sec. 549 (8).
Giving liquor to minors. Sec. 549 (9).
Inspection of bathing- and boat-houses. Sec. 549 (10).

549. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

Public Morals.

Extent of municipal jurisdiction as to criminal offences.

(a) Any practice which has a tendency to injure the public morals is an offence at common law (a). In the United States many of the powers expressly mentioned in this section have been held to be conferred by charters empowering municipalities to pass "such ordinances as the council may deem expedient to maintain the peace, good government and order of the city," or "to ordain and publish such acts, laws and regulations . . . as shall be needful to the good order of the city," or other like expressions, constituting what is commonly called a "general welfare clause" (b).

The words of s. 23 of "*The Municipal Corporations Act, 1882*" (c), "The council may, from time to time, make such by-laws as to them seem meet for the good rule and government of the borough," have received a less extensive construction, being held not to enable the council to carry out any peculiar ideas of general good government, or to impose penalties for the doing of acts not prohibited by Statute or common law, but to refer wholly to the government of the borough as a corporation, and to by-laws for carrying into effect the purposes for which it was incorporated (d); and it is to be observed that the power conferred by that section in regard to by-laws for the suppression of nuisances is limited to the prevention and suppression of such nuisances as are "*not already punishable* in a summary manner *by virtue of any Statute.*"

In the United States, questions have frequently arisen as to the validity of charters empowering municipal corporations to make by-laws in relation to matters which are already regulated by Statute and which (if criminal) are punishable under the general law of the State or of the Union; and it has been doubted whether it can be legal to authorize the passing of ordinances under which the same act may subject the offender to two separate and different punishments, one prescribed by merely local authority, and the other by the general law of the land. The same question has also been suggested in Canada.

In *Winslow* v. *Gallagher*, (e) the defendant having been convicted under a municipal by-law of being "intoxicated, drunk and disorderly" on the public streets of a town, it was urged that the conviction must be quashed on the ground that since the by-law was passed the Dominion Act, 32-33 V. c. 28, s. 1, (now embodied in Art. 207 of "*The Criminal Code, 1892*") had made the offence a misdemeanour and punishable as such under the criminal law of Canada, but it was held that the conviction was good, since there was no evidence that the defendant belonged to one of the classes of persons to whom the Statute was intended to apply, or that he could have been convicted under it.

(a) *Rex.* v. *Rogier*, 1 B. & C. 272, 2 D. & R. 431 (1823).

(b) See the American and English Encyclopedia of Law, Vol. XV, pp. 1187-1192, under the title, "Municipal Corporations." "General Welfare Clause"; Dillon, ss. 396 *et seq.*; Tiedeman, s. 135.

(c) Imp. Stat. 45-46 V. c. 50.

(d) *Reg.* v. *Rose*, 24 L. J. M. C. 130; *S. C. sub nom. Reg.* v. *Wood*, 5 E. & B. 49 (1855).

(e) 27 N. B. Rep. 27 (1888).

Sec. 549.

Note (a).

Can municipalities pass by-laws as to criminal offences?

Reg. v. *Shaw* (*a*) was a case in which the defendant had been convicted of unlawfully keeping a gambling house in the City of Winnipeg contrary to a municipal by-law passed under the Provincial Act, 53 V. c. 51, s. 375 (39), (*b*) the language of which is identical with that of sub-section 4 of this section. KILLAM, J. quashed the conviction on the ground that since the keeping of a common gambling house was an indictable offence at common law, the provisions of the Municipal Act empowering municipal councils to pass by-laws for suppressing gambling houses must be held to be *ultra vires*, "the criminal law" being one of the subjects in respect of which the Parliament of Canada has exclusive jurisdiction.

On appeal this decision was affirmed by the full Court.

Per TAYLOR, C. J., (p. 537).

> "In my opinion the keeping of a gambling house, being an offence against the general criminal law to be dealt with by the Parliament of Canada, cannot be made an offence against a Provincial law or by a municipal by-law passed under the authority of such an Act. To hold otherwise would seem to render the defendant liable to be punished twice for the same offence, contrary to all principles of law."

See also the remarks of the late Sir MATTHEW CAMERON in *McLellan* v. *McKinnon*, quoted in note (**b**) *infra*.

The question is certainly not free from difficulties, but the weight of argument and of authority seems to support the conclusion arrived at by the Court of Queen's Bench for the Province of Quebec in *Pillow* v. *The Recorder's Court of the City of Montreal* (*c*) that although the Parliament of Canada has exclusive jurisdiction over "the criminal law," a Provincial Legislature may nevertheless authorize municipal councils to pass by-laws for the suppression of nuisances; and therefore that, as stated by CHIEF JUSTICE COOLEY, (*d*) "the same act may constitute an offence both against the State and against the municipality, and both may punish it." Thus the same act which renders a member of a municipal council a criminal, imposes upon him the further punishment of forfeiture of his office, (*e*) and in England a by-law imposing a penalty upon a corporator for refusing to serve in a corporate office is good, although the recalcitrant member may also be indicted for his refusal. (*f*)

By the councils of townships, cities, towns and villages:—

Indecent placards, etc.

1. For preventing the posting of indecent placards, writings or pictures, or the writing of indecent words, or the making of indecent pictures or drawings, on walls or fences in streets or public places. 55 V. c. 42, s. 489, (33).

Taken from the Act of 1858, (22 V. c. 99), s. 275 (3), which applied to counties, cities and towns, but by the Act of 1873, (36 V. c. 48), s. 370 (32) was made applicable to all local municipalities. *Cf.* "*The Indecent Advertisements Act*," Imp. Stat. 52-53 V. c. 18.

(**b**). In *McLellan* v. *McKinnon*, (*g*) it appeared that the plaintiff had been convicted under a village by-law for posting up indecent placards in public places in the village. CAMERON, J., in giving judgment, says: (*h*)

> "The by-law is that no person shall post any indecent placards . . . on walls or fences *or* public places making a more extensive prohibition than the words of the Act would sanction. Under the by-law the posting of an indecent picture or placard in a public hall, though not on a public street, would be an offence, whereas under the Act, no authority is given to prevent the posting of an indecent picture or placard except on a wall or fence *in a street or public place*."
>
> * * *

(*a*) 7 Man. Rep. 519 (1891).
(*b*) Now R. S. M. (1891) c. 100, s. 594 (8).
(*c*) 30 L. C. J. 1 (1885).
(*d*) Constit. Limitations, s. 199, quoted in note (**b**) to s. 326, *ante*.
(*e*) See *ante*, s. 207.
(*f*) Grant on Corporations, 82.
(*g*) 1 O. R. 219 (1882).
(*h*) Pp. 236, 237.

Sec. 549 (2), (3).

Notes (b), (d).

"There is no doubt that the placard which the plaintiff was convicted of posting was a criminal libel. *It is a grave question . . . whether a municipality has power to make a new offence, and award a new punishment or add an additional one to that which is a criminal offence, and may be punished as such under the criminal law.*"

Vice, drunkenness, etc.

2. For preventing vice, drunkenness, profane swearing, obscene, blasphemous or grossly insulting language, and other immorality and indecency. 55 V. c. 42, s. 489, (34).

Taken from 33 V. c. 26, s. 4 (1869). *Cf.* 12 V. c. 81, s. 60 (9), (villages); 61, 67, 80, (towns); 82, 106, (cities); also 22 V. c. 99, s. 375 (4) and 29-30 V. c. 51, s. 284, (3), which applied only to counties, cities and towns, and in which the power was limited to the prevention of the specified acts "in streets, highways or public places." See also Art. 207 (e), (f), of "*The Criminal Code, 1892*," and the definition of a "public place" in 57-58 V. c. 57 (Can).

Under the Act of 1866.

(c) Where a city by-law enacted that no person should make use of any profane swearing, etc., or be guilty of any other immorality or indecency "in any street or public place" and the defendant (who was an officer of Her Majesty's Customs) had used profane and insulting language to and of the complainant in a private room in the Custom House, though in the presence of a third person, his conviction therefor under the above by-law was quashed (*a*). The object of such a by-law is to prevent injury to public morals, and the "public place" referred to is one *ejusdem generis* with a street (*b*).

Under the Act of 1873.

A section in a town by-law providing that "no gambling, profane swearing, blasphemous or grossly insulting language or any indecency or disorderly conduct shall be permitted in any licensed tavern or shop" was held valid (*c*).

See also the provisions of clauses (e) and (f) of Art. 207 of "*The Criminal Code, 1892*," as to vagrancy, and notes (j) and (k) *infra*.

Lewdness.

3. For suppressing disorderly houses and houses of ill-fame. 55 V. c. 42, 489, (35).

Taken from the Act of 1866, (29-30 V. c. 51), s. 284 (4) which applied only to counties, cities and towns, but was made applicable by the Act of 1873, (36 V. c. 48), s. 379 (34) to local municipalities only. *Cf.* 12 V. c. 81, ss. 60 (9), (villages); 61, 67, 80, (towns); 82, 106, (cities); 22 V. c. 99, s. 275, (5).

Disorderly houses.

(d) **"Disorderly houses."** These words were substituted in 1866 for the words "tippling houses" used in the Act of 1858. The Act of 1849 reads:—

"For suppressing and imposing penalties on the keepers of low tippling houses and houses of ill-fame visited by dissolute and disorderly characters."

A "disorderly house" is declared by "*The Criminal Code, 1892*," Art. 198, to be "any common bawdy house, common gaming house, or common betting house as hereinbefore defined," (*d*) and the keeping of any disorderly house is declared to be an indictable offence.

In *Reg.* v. *Rice*, (*e*) the defendants acted as master and mistress of a house to which men and women resorted for the purpose of prostitution, but no indecency or disorderly conduct was perceptible from the exterior of the house. *Held*, that upon these facts the defendants were guilty of keeping a disorderly house, which is an indictable offence at common law (*f*). That a *house* may have a character as a disorderly house, (*g*) and that evidence of general reputation is admissible to prove that character, see the authorities cited by ROSE, J., in *Reg.* v. *Macnamara* (*h*).

(*a*) *Reg.* v. *Bell*, 25 O. R. 272 (1894) and see *Strickland* v. *Hayes*, [1896] 1 Q. B. 290.

(*b*) *Ibid. per* ROSE, J.

(*c*) *Re Brodie and Town of Bowmanville*, 38 U. C. R. 580 (1876). See now s. 32 (1) of "*The Liquor License Act*," (R.S.O. c. 245).

(*d*) By Articles 195, 196, and 197 of the Code.

(*e*) L. R. 1 C. C. R. 21 (1866).

(*f*) See *Rex* v. *Higginson*, 2 Burr. 473 (1761).

(*g*) See *Reg.* v. *Justices of Miskin Higher*, [1893] 1 Q. B. 275.

(*h*) 20 O. R. 489, 491-496 (1891).

Sec. 549 (3).

Note (e).

(e) "**Houses of ill-fame.**" See s. 702 (3), which confers power to impose six months (instead of 21 days) imprisonment under a by-law for the suppression of houses of ill-fame.

Houses of ill-fame.

It has been held in the United States that authority to pass ordinances for the suppression of nuisances includes the power to impose penalties upon the keepers of bawdy houses and upon owners who knowingly allow their property to be used for such purpose; but, though the destruction of the house would be one means of suppressing the nuisance, power to demolish is not to be inferred from the grant of power to suppress, for the *building* in which a particular trade is carried on, or the *house* which may be kept as a disorderly house or used for improper purposes is not *per se* a nuisance; it is the misuse or abuse of it which may be prohibited (*a*).

Under s. 23 of the English "*Municipal Corporations Act, 1882*," no such questions can arise, since the power there conferred is to make by-laws "for prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act," etc., and the keeping of a brothel is so punishable under 48-49 V. c. 69, s. 13. Under that Act it was held by a Divisional Court (*b*) that a woman who occupies a house and is there visited by men who have improper intercourse with her cannot be convicted of keeping a brothel if she is the only woman so occupying and using the house.

The C. S. C. c. 105, s. 1, authorized the summary trial of any person charged with keeping or being an inmate or habitual frequenter of any disorderly house, house of ill-fame or bawdy house. A conviction under that Act that "the defendant did, on, etc., in the City of Toronto, keep a common disorderly bawdy house on Queen Street in said city, a place of resort for both men and women of lewd character for the purposes of prostitution" was held to be sufficient (*c*).

32-33 V. c. 28 (Ca.) (*d*) authorized the summary conviction as vagrants of "common prostitutes or night walkers wandering in the . . . public streets . . . and not giving a satisfactory account of themselves." A conviction under that Act was held bad for not showing sufficiently a request made to the woman at the time of her arrest to give an account of herself, and that she did not give a satisfactory account, and that therefore the arrest was made (*e*).

When a conviction for keeping a house of ill-fame "contrary to a certain by-law of the corporation" was amended by the magistrate after notice of appeal to the Sessions had been given and the time for hearing the appeal had arrived, by substituting the words "contrary to the Statute," referring to a Statute (*f*) under which there was no appeal,—it was held that the amendment could not be made. (*g*)

Bawdy houses.

Article 195 of "*The Criminal Code, 1892*," defines "a common bawdy house" as "a house, room, set of rooms or place of any kind kept for purposes of prostitution." And Art. 198 declares that any one who appears, acts or behaves as master or mistress or as the person having the care, government or management of any disorderly house (which includes any common bawdy house, common gaming house or common betting house) shall be deemed to be the keeper thereof.

Art. 207 of the Code further provides for the summary conviction of any person who,—

> "(j) Is a keeper or inmate of a disorderly house, (*h*) bawdy-house, or house of ill-fame, or house for the resort of prostitutes, or
>
> (k) Is in the habit of frequenting such houses and does not give a satisfactory account of himself or herself, or
>
> (l) Having no peaceable profession or calling to maintain himself by, for the most part supports himself by gaming or crime, or by the avails of prostitution."

) Dillon, ss. 376, 378. (*b*) *Singleton* v. *Ellison*, [1895] 1 Q. B. 607.

(*c*) *Reg.* v. *Munroe*, 24 U. C. R. 44 (1864).

(*d*) Now embodied in Art. 207 of "*The Criminal Code, 1892*."

(*e*) *Reg.* v. *Levecque*, 30 U. C. R. 509 (1870). (*f*) 32 V. c. 32 (Ca.)

(*g*) *Reg.* v. *Smith*, 35 U. C. R. 518 (1874). See now Arts. 882, 883 of "*The Criminal Code, 1892*."

(*h*) An information charging that the defendant "unlawfully kept a disorderly house, that is a common gaming house" is good: *Reg.* v. *France*, Q. R. 7 Q. B. 83 (1897).

In *Reg.* v. *Rehe* (*a*) it was held that the last clause of the above Article does not apply to a woman who is kept by a married man and who surrenders herself to sexual intercourse with him alone.

Bawdy-house.

That evidence of general reputation may be given to show that a house is a house of ill-fame or a bawdy-house, see the authorities referred to by ROSE, J. in *Reg.* v. *Macnamara* (*b*).

Gaming.

4. For suppressing gambling houses, and for seizing and destroying faro-banks, *rouge et noir*, roulette tables, and other devices for gambling found therein. 55 V. c. 42, s. 489, (36).

Taken from the Act of 1858, 22 V. c. 99, s. 275 (8), which applied to counties, cities and towns; made applicable to all local municipalities in 1873 by 36 V. c. 48, s. 379 (36).

What is gambling.

(f). "The playing of dice and cards is not prohibited by the common law," (*c*) nor is it unlawful, if money or money's worth is not at stake, to play dominoes, (*d*) or billiards (*e*). But playing *for money* is gaming, whether it be at cards (*f*) or at any game of chance or mixed chance and skill (*g*). So, playing at tenpins for a pint of beer on each game, (*h*) or at skittles for beer, though the beer is not drunk on the skittle ground (*i*).

The Imp. Stat. 12 Geo. II, c. 28, "for the more effectual prevention of excessive and deceitful gaming" prohibited, under a penalty of £50, the games of "the ace of hearts, pharaoh, (*sic*) basset and hazard." In *Reg.* v. *Matheson* (*j*) the defendant was convicted under this Statute by the Police Magistrate of the City of Toronto and sentenced to pay the above penalty. On a motion to quash the conviction, it was held that the jurisdiction of Justices of the Peace in such cases having been taken away by 27 Geo. III, c. 1, s. 2, the penalty could only be recovered by civil action under that Act; but *semble*, *per* WILSON, C. J., the defendant might have been convicted under a municipal by-law passed under the above sub-section (*k*).

"All common gaming houses are nuisances in the eye of the law." (*l*)

What is a gambling house.

"*The Criminal Code, 1892*," defines "a common gaming house" as

> "(a) A house, room or place kept by any person for gain, to which persons resort for the purpose of playing at any game of chance, or at any mixed game of chance and skill; or
>
> (b) A house, room or place kept or used for playing therein at any game of chance or any mixed game of chance and skill in which—
>
> (i) a bank is kept by one or more of the players exclusively of the others; or
>
> (ii) in which any game is played the chances of which are not alike favorable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the game is managed, or against whom the other players stake, play or bet;

(*a*) Quebec Rep. 6 Q. B. 274 (1897). (*b*) 20 O. R. 489, 491-496 (1891).

(*c*) 11 Co. Rep. 87; *Sherbon* v. *Colebach*, 2 Vent. 175 (1690).

(*d*) *Reg.* v. *Ashton*, 1 E. & B. 286 (1852).

(*e*) *Ovenden* v. *Raymond*, 34 L. T. N. S. 698 (1876).

(*f*) *Patten* v. *Rhymer*, 3 E. & E. (1860); *Redgate* v. *Haynes*, 1 Q. B. D. 89 (1876); *Hare* v. *Osborne*, 34 L. T. N. S. 394 (1877); *Jenks* v. *Turpin*, 13 Q.B. D. 505 (1884); *Fairlough* v. *Whitmore*, (1895) W. N. 52.

(*g*) *Bew* v. *Harston*, 3 Q. B. D. 454 (1878); *Re Summerfeldt* v. *Worts*, 12 O. R. 48 (1886); *Dyson* v. *Mason*, 16 Cox c. c. 575, 22 Q. B. D. 351, (1889).

(*h*) *Danford* v. *Taylor*, 20 L. T. N. S. 483 (1869).

(*i*) *Luff* v. *Leaper*, 36 J. P. 54 (1872). (*j*) 4 O. R. 559 (1884).

(*k*) See on this point *Reg.* v. *Shaw*, 7 Man. Rep. 219 (1891) referred to in note (a) *supra*.

(*l*) Hawkins, P. C. Bk. 1, c. 76, s. 6; *Rex.* v. *Dixon*, 10 Mod. 336; *Rex.* v. *Rogier*, 1 B & C. 272 (1823), better reported, 2 D. & R. 431.

Sec. 549 (4), (5).

Notes (f), (h).

Gambling.

2. Any such house, room or place shall be a common gaming house although part only of such a game is played there and any other part thereof is played at some other place, either in Canada or elsewhere, and although the stake played for, or any money, valuables or property depending on such game, is in some other place, either in Canada or elsewhere." (*a*)

Clause (b) of sub-sec. 1 is taken from the judgment of Sir A. L. SMITH, J., in *Jenks* v. *Turpin*, (*b*) and sub-section 2 was added in consequence of the decision in *Reg.* v. *Wettman* (*c*).

By Article 198 of the Code it is declared to be an indictable offence to keep a common gaming house (*d*) and by Article 199 it is an offence to play or to look on while any other person is playing in a common gaming house, (*e*).

Sections 28 (2) of "*The Agriculture and Arts Act*," (R.S.O. c. 43), referring to exhibitions held by Agricultural, Horticultural, etc. Societies and Associations, enacts that:

> "The officers of any such Association or Society shall prevent all kinds of gambling and all games of chance at the place of holding the exhibition or fair, or within three hundred yards thereof, and any Association or Society permitting the same shall forfeit all claim to any Legislative grant during the year next ensuing."

Destruction of instruments of gaming.

(g) "And for seizing and destroying faro banks . . . and other devices for gambling."

See also as to the right to destroy private property for the public good, note (**b**) to s. 540 and note (**o**) to s. 542. Statutory authority to search any place believed to be a common gaming house, and to seize and destroy cards, dice, balls, counters, tables or other instruments of gaming found therein, is given by Article 575 of "*The Criminal Code, 1892*." (*f*)

Horse-racing.

5. For preventing horse racing. 55 V. c. 42, s. 489, (37).

Taken from the Act of 1866, (29-30 V. c. 51), s. 284 (5), which applied only to counties, cities and towns; made applicable to all local municipalities by the Act of 1873, (36 V. c. 48), s. 379 (37). *Cf.* 12 V. c. 81, s. 69 (9) "for regulating or preventing, restraining or suppressing horse-racing," and 22 V. c. 99, s. 275 (6) "for preventing or regulating horse-racing."

At agricultural exhibitions

(**h**) "*The Agriculture and Arts Act*," enacts (s. 29) that

> "(1) It shall not be lawful to carry on any horse-racing *other than trials of speed under the control and regulation of the officers of the Society* during the days appointed for holding any exhibition by any District or Township Society, at the place of holding the exhibition or within five miles thereof.
>
> (2) Any person who is guilty of a violation of this section shall be liable, upon summary conviction before a Justice of the Peace, to a fine not exceeding $50, or imprisonment in the common gaol of the county for a period not exceeding thirty days."

(*a*) Art. 196; 58-59 V. c. 40, s. 3.

(*b*) 13 Q. B. D. 505, 530 (1884).

(*c*) 25 O. R. 459 (1894).

(*d*) See note (**d**) *supra*; and *Reg.* v. *Brady*, Q. R. 10 S. C. 539 (1897); *Reg.* v. *France*, Q. R. 7 Q. B. 83 (1897).

(*e*) See *Reg.* v. *Murphy*, 17 O. R. 201 (1888). As to municipal by-laws prohibiting gambling in licensed taverns and shops, see *Re Brodie and Town of Bowmanville*, 38 U. C. R. 580 (1876) referred to in note (**c**), *supra*. As to "common betting houses," Articles 197 (gambling in public conveyances), Article 203, (betting and pool selling), and Article 204 of "*The Criminal Code, 1892*"; *Reg.* v. *Giles*, 26 O. R. 586 (1895); *Reg.* v. *Osborne*, 27 O. R. 185 (1895). *Cf. Forget* v. *Ostigny*, (1895) A. C. 318; *Marcotte* v. *Perras*, Q. R. 6 Q. B. 400 (1897); *Brand* v. *Metropolitan Stock Exchange*, Q. R. 10 S. C. 523, 11 S. C. 303 (1898).

(*f*) As to what officers may make the report therein referred to, see *O'Neil* v. *Attorney General of Canada*, 26 S. C. R. 122 (1896).

The words in italics were not in the original Act, 35 V. c. 32, s. 10 (1872), but were inserted when "*The Agriculture and Arts Act*" was amended and consolidated in 1895 by 58 V. c. 11.

Horse-racing.

Horse-racing is not *per se* illegal (*a*). By the Imp. Stat. 13 Geo. II. c. 19, s. 1, no person is permitted to run a horse at a race unless it is his own; nor to enter more than one horse for the same "plate" on pain of forfeiting the horses. The amount of a wager upon a horse race made illegal by this Statute if it has been paid by the loser, may be recovered back (*b*). But where the horse race was not rendered illegal by 13 Geo. II. c. 19 and 18 Geo. II. c. 34, the winner of the wager was held to be entitled to retain the amount thereof received by him (*c*).

Vagrants.

6. For restraining and punishing vagrants, mendicants, and persons found drunk or disorderly in any street, highway or public place; and in cities and towns any such by-law may provide that the chief constable of the municipality, or the inspector or other member of the police force in charge of any police station to which any person is brought on the charge of being drunk without being disorderly, may release such person without bringing him before a Justice of the Peace or Police Magistrate. 55 V. c. 42, s. 489, (38): c 43, s. 34; c. 14, s. 1; 58 V. c. 42, s. 23; 59 V. c. 51, s. 15.

Release without trial of persons arrested for drunkenness.

The first clause is taken from the Act of 1858, (22 V. c. 99), s. 275 (9), which applied to counties, cities and towns, and was made applicable to all local municipalities by 36 V. c. 48, s. 379 (38). *Cf.* 12 V. c. 81, s. 60 (9) (villages); 61, 67, 80 (towns); 82, 106 (cities). The rest of the subsection was added in 1892 by 55 V. c. 43, s. 34, but has been since amended by the Statutes cited in the reference appended thereto. *Cf.* R. S. O. c. 100, "*An Act to authorize Police Constables to take Bail*," quoted *ante*, p. 535.

(i) "**Vagrants.**

See as to "Vagrancy," Articles 207, 208 of "*The Criminal Code, 1892*," referred to in notes (e) and (f) *supra* and notes (j) (k) (m), *infra*. There must be positive evidence of vagrancy (*d*). When a son lives at home and is supported by his parents the fact of his being without employment does not constitute him a vagrant under Art. 207 (a) of "*The Criminal Code, 1892*." (*e*)

Vagrants.

(j) "**Mendicants.**" See also ss. 526 and 586 (10). Article 207 of "*The Criminal Code, 1892*," classes among vagrants every one who:

Mendicants.

> "(d) Without a certificate signed, within six months, by a priest, clergyman or minister of the Gospel, or two Justices of the Peace, residing in the municipality where the alms are being asked, that he or she is a deserving object of charity, wanders about and begs, or goes about from door to door, or places himself or herself in any street, highway, passage or public place to beg or receive alms."

And under Article 208 every such person is liable upon summary conviction to fine or imprisonment or both (*f*).

(*a*) Oliphant on Horses, (5th Ed.) pp. 371, 425.

(*b*) *Sheldon* v. *Law*, 3 O. S. 85; *Anderson* v. *Galbraith*, 16 U. C. R. 57 (1857); *Buttersby* v. *Odell*, 23 U. C. R. 482 (1864). And see *Davis* v. *Hewitt*, 9 O. R. 435 (1885).

(*c*) *Fulton* v. *James*, 5 C. P. 182 (1855). See now Article 204 of "*The Criminal Code, 1892*"; *Reg.* v. *Smiley*, 22 O. R. 686 (1892); *Walsh* v. *Trebilcock*, 23 S. C. R. 695 (1894), (reversing *S. C.* 21 A.R. 55, and overruling *Reg.* v. *Dillon*, 10 P. R. 352 (1884)); *Stratford Turf Association* v. *Fitch*, 28 O.R. 579 (1897).

(*d*) *Reg.* v. *Bassett*, 10 P. R. 386 (1884); *Reg.* v. *Organ*, 11 P. R. 497 (1886); *Reg.* v. *Herman*, 8 Man. Rep. 330 (1892); *Reg.* v. *Davidson*, 8 Man. Rep. 325 (1892).

(*e*) *Reg.* v. *Riley*, Q. R. 7 Q. B. 198 (1898).

(*f*) See as to the corresponding section of the English *Vagrant Act*, *Pointon* v. *Hill*, 12 Q. B. D. 306 (1884) referred to in note (i); s. 586, under sub-sec. 10, which refers to street-beggars.

Sec. 549 (6), (7).

Notes (k), (l).

Drunkenness or disorderly conduct in public places.

(k) "**Drunk or disorderly in any street, highway or public place.**"

Articles 207 and 208 of "*The Criminal Code, 1892*," apply also to every person who

> "(e) Loiters on any street, highway or public place, and obstructs passengers by standing across the foot path or by using insulting language or in any other way," or who
>
> "(f) *Causes a disturbance* in or near any street, road, highway or public place, by screaming, swearing or singing, *or by being drunk, or by impeding or incommoding peaceable passengers.*"

And 57-58 V. c. 57 (Ca.) declares that the words "public place," in Art. 207 include any open place to which the public have or are permitted to have access, and any place of public resort (*a*).

Sub-sec. (e) of Art. 207 does not apply to the case of a person using insulting language to a passer-by from the window of a dwelling house (*b*); and a person cannot be arrested for being drunk in his own house, unless his conduct is such as to make him a public nuisance, *i. e.*, by his creating a public disturbance (*c*).

This sub-section, and also s. 409 of 29-30 V. c. 51 (consolidated *ante* under s. 519), apply to any person who is drunk in a public highway, though he may not be disorderly; but under Article 207 of the Code there can be no conviction unless the person charged is also proved to have "caused a disturbance in or near the street," etc. (*d*); and where the evidence showed that the defendant was drunk and that he was guilty of "impeding and incommoding peaceable passengers," but negatived his having caused a disturbance in the street by being drunk, the conviction was quashed (*e*).

A person was convicted for being drunk on a public street "contrary to law" and sentenced to pay a fine of $50 or to be imprisoned for six months at hard labour. There was power to impose this punishment under a city by-law, but the by-law was not referred to in the conviction. *Held*, that the omission was fatal, there being no common law right to award imprisonment for the offence (*f*).

Indecent exposure.

7. For preventing indecent public exposure of the person, and other indecent exhibitions. 55 V. c. 42, s. 489, (39).

Taken from the Act of 1858, (22 V. c. 99), s. 275 (10), which applied to counties, cities and towns; made applicable to all municipalities by 36 V. c. 18, s. 379 (39). *Cf.* 12 V. c. 81, ss. 60 (10) (villages); 61, 67, 80 (towns); 82, 106 (cities).

(l) "**Indecent public exposure of the person.**"

See also Article 177 of "*The Criminal Code, 1892*," as to the wilful commission of indecent acts "(a) in the presence of one or more persons in any place to which the public have or are permitted to have access, or (b) in any place, intending thereby to insult or offend any person" Section 6 of 53 V. c. 37 (Ca.) (which is still in force) provides that:

> "Everyone who wilfully commits any indecent exposure of the person or act of gross indecency *in any public place* in the presence of *one* or more persons, is guilty of a misdemeanour, and liable, on summary conviction before two Justices of the Peace to a fine of fifty dollars or to six months imprisonment with or without hard labour, or to both fine and imprisonment."

At common law an indecent exposure in a place of public resort, if actually seen by only one person, no other person being in a position to see it, was not an indictable offence (*g*), and in order to render a person liable to an indict-

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(*a*) See also Art. 177 and note (e), *infra*.

(*b*) *Reg.* v. *Poulin*, 5 Legal News 357 (1882).

(*c*) *Reg.* v. *Blakeley*, 6 P. R. 244 (1875). See *Lester* v. *Torrens*, 2 Q. B. D. 403 (1877); *Warden* v. *Tye*, 2 C. P. D. 74 (1877).

(*d*) *Ex p. Despatie*, 9 Legal News 387 (1886).

(*e*) *Reg.* v. *Daly*, 12 P. R. 411 (1888). See *Martin* v. *Pridgeon*, 1 E. & E. 778 (1859).

(*f*) *Re Livingstone*, 6 P. R. 17 (1872). But see now s. 707, *post*.

(*g*) *Reg.* v. *Watson*, 2 Cox C. C. 376 (1847); *Reg.* v. *Webb*, 3 Cox C. C. 183 (1848); *Reg.* v. *Farrel*, 9 Cox C. C. 446 (1862).

ment for indecently exposing his person in a public place, it was not necessary that the exposure should be made in a place open to the public. If the act was done where a great number of persons might be offended by it, and several saw it, it was sufficient (*a*).

Indecent exposure.

A person was indicted for an indecent exposure in an omnibus, several passengers being therein. *Held*, a public place (*b*). In *Reg.* v. *Orchard*, (*c*) a urinal, with boxes or divisions for the convenience of the public, though situated in an open market, was held not to be a public place; but in *Reg.* v. *Harris*, (*d*) where the prisoners had been convicted of indecently exposing their persons in a urinal, open to the public, which stood on a public footpath in Hyde Park, and the entrance to which was from the footpath, it was held that the jury might properly find that the urinal was a public place, and they having found the prisoners guilty, the conviction was unanimously sustained by the Court.

Indecent exhibitions.

(m) "**Indecent exhibitions.**" Under Article 207 of "*The Criminal Code, 1892*," every person is liable to summary conviction who "(e) openly exposes in any street, road, highway, or public place any indecent exhibition." Keeping a booth in a public place containing an indecent exhibition for hire was an indictable offence at common law (*e*). A herbalist who publicly exposed in his shop on a highway a picture of a man naked to the waist and covered with eruptive sores, was held to be guilty of a nuisance, though there was nothing immoral or indecent in the picture and his motive was innocent (*f*).

Bathing in public places.

8. For preventing or regulating the bathing or washing the person in any public water in or near the municipality. 55 V. c. 42, s. 489 (40).

Taken from the Act of 1858, (22 V. c. 99), s. 287 (19), which applied to cities, towns and villages, and was extended to townships in 1873 by 36 V. c. 48, s. 379 (40). *Cf.* 12 V. c. 81, s. 60 (10), (villages); 61, 67, 80, (towns): 82, 106, (cities): 22 V. c. 99, s. 275 (11): 29-30 V. c. 51, ss. 284 (10), 296 (19).

(n) Bathing on the sea-beach near inhabited houses from which the person may be distinctly seen, is an indictable offence, although the houses have been recently erected and until then it was usual for men to bathe in great numbers at the place. "Whatever place becomes the abode of civilized men, there the laws of decency must be enforced." (*g*) Men who bathe, without any screen or covering, so near to a public footpath that exposure of their persons must necessarily occur, are guilty of an indictable nuisance (*h*).

Sale of intoxicating drink to children, etc.

9. For preventing the sale or gift of intoxicating drink to a child, apprentice or servant, without the consent of a parent, master or legal protector. 55 V. c. 42, s. 489 (32).

Taken from the Act of 1858, (22 V. c. 99), s. 275 (2), which applied only to counties, cities and towns; made applicable to all local municipalities by 36 V. c. 48, s. 379 (31). *Cf.* 12 V. c. 81, ss. 60 (9) (villages); 61, 67, 80 (towns); 82, 106 (cities).

(o). Under the Act of 1849, cities, towns and villages were authorized to pass by-laws:—

> "For preventing the sale of any intoxicating drink to children, apprentices and servants, without the consent of their legal protectors."

(*a*) *Reg.* v. *Thallman*, 9 Cox C. C. 388, 9 L. T. N. S. 425 (1863).
(*b*) *Reg.* v. *Holmes*, 3 C. & K. 360, 6 Cox 216 C.C. (1852).
(*c*) 3 Cox C. C. 248 (1848).
(*d*) L. R. 1 C. C. 282; 11 Cox C. C. 659 (1871).
(*e*) *Reg.* v. *Saunders*, 1 Q. B. D. 15; 13 Cox C. C. 116 (1875).
(*f*) *Reg.* v. *Grey*, 4 F. & F. 73 (1864).
(*g*) *Rex* v. *Crunden*, 2 Camp. 89 (1809).
(*h*) *Per* COCKBURN, C. J., in *Reg.* v. *Reid*, 12 Cox C. C. 1 (1871).

Sec. 498 (9), (10)

Notes (o), (q).

Sales of intoxicating liquor to children, etc.

In *Re Barclay and Township of Darlington*, (*a*) a township by-law forbidding such sales was held *ultra vires*, the power being then limited to cities, towns and villages; but in *Re Ross and United Counties of York and Peel*, (*b*) after this subsection had been made applicable to counties, a county by-law was held good, which provided that:—

> "It shall not be lawful to sell or sell or give intoxicating drinks . . . to any child, apprentice, *idiot or insane person* . . . without the consent of the parent or legal protector of such person or child, nor shall any person sell or give intoxicating liquors to any servant when notified . . . by his employer to that effect."

The Liquor License Act of 1874, (*c*) which created the Boards of License Commissioners, did not transfer this power from the municipal councils to such Boards. (*d*) The by-law may require a written order from the parent, master or legal protector. (*e*)

Section 78 of "*The Liquor License Act*," (*f*) imposes penalties upon:

"(a) Any licensed person who allows to be supplied in his premises by purchase or otherwise any description of liquor to any person of either sex apparently or to the knowledge of the licensed person or of the person supplying the same, under 21 years of age, except upon the written order of the parent, guardian or master of such minor,

(b) Any society, club, corporation or association etc., or any servant thereof or person resorting thereto, that sells liquor to any such minor, and

(c) Any licensed person who without proper cause suffers any such minor person, not being a resident on the premises, to linger or loiter in or about the bar-room, etc., unaccompanied by a parent or guardian."

Inspection of bathing-and boat-houses

By the councils of cities, towns and villages:—

10. For inspecting public bathing-houses and boat-houses or premises wholly and partly used for boat-house purposes; and for preventing the use thereof for illegal or immoral purposes. 55 V. c. 42, s. 496 (42).

Taken from 50 V. c. 29, s. 28 (1887).

(p) The reason for this enactment is sufficiently obvious.

Children on the streets after night fall.

(q) Section 21 of "*The Children's Protection Act of Ontario*," (*g*) provides that:

> "Municipal councils in cities, towns, and incorporated villages shall have power to pass by-laws for the regulation of the time after which children shall not be in the streets at nightfall without proper guardianship, and the age or apparent age of boys and girls respectively, under which they shall be required to be in their homes at the hour appointed; and such municipal council shall in such case cause a bell or bells to be rung at or near the time appointed as a warning, to be called the "curfew bell," after which the children so required to be in their homes or off the streets shall not be upon the public street except under proper control or guardianship or for some [illegible] cause.
>
> (2) Any child so found after the time appointed shall be liable to be warned by any constable or peace officer to go home, and if after such warning the child is found loitering on the streets, such child may be taken by such constable to its home.
>
> (3) Any parent or guardian may be summoned for permitting his child to habitually break said by-law, after having been warned in writing, and may be fined for the first offence $1, without costs, and for the second offence $2, and for a third or any subsequent offence, $5."

As to the meaning of "child," "children," see *ante*, note (g) to s. 484. "Girl" or "girl" generally means one under the age of puberty.

(*a*) 13 U.C.R. 86 (1854). (*b*) 14 C.P. 171 (1864). (*c*) 37 V. c. 32.

(*d*) *Re Brodie and Town of Bowmanville*, 38 U.C.R. 580, 590 (1876).

(*e*) *Re Arkell and Town of St. Thomas*, 38 U.C.R. 594 (1876).

(*f*) R.S.O. c. 245. (*g*) R.S.O. c. 259.

DIVISION VIII.—PUBLIC HEALTH.

(SECS. 550-556).

Sub-Div. 1.—Food and Drink. (Sec. 550.)

Inspection of milk, meat, etc. Sec. 550 (1).
Seizing and destroying if unfit for food. Sec. 550 (2).
Seizing carcasses of cattle unfit for food. Sec. 550 (3).
Bread made of deleterious materials, seizing, etc. Sec. 550 (4).
Pure well-water, examining. Sec. 550 (5).
" " compelling use of. Sec. 550 (6).

550. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

Other Statutes relating to food and drink.

(a) With this section should be read ss. 74, 108, 109, and 122 of "*The Public Health Act*" (*a*), "*An Act respecting the Slaughtering of Cattle and the Inspection of Meat and Milk Supplies of Cities and Towns*" (*b*), "*An Act to prevent Fraud in the Manufacture of Cheese and Butter*" (*c*), and "*An Act to prevent Fraud in the Sale of Milk in Cities and Towns*" (*d*); also R. S. Ca. c. 100, which prohibits the manufacture or sale in Canada of oleomargarine, butterine or other substitute for butter manufactured from any animal substance other than milk; "*The Adulteration Act*" (*e*), which forbids the adulteration of "food,"—including therein every article used for food or drink by man or by cattle and (*f*) every ingredient intended for mixing with the food or drink of man or cattle for any purpose whatever (*g*)—"*An Act to provide against Frauds in the Supplying of Milk to Cheese, Butter and Condensed Milk Manufactories*" (*h*), "*The Dairy Products Act*" (*i*), "*The Dairy Act, 1897*" (*j*), and s. 194 of "*The Criminal Code, 1892*," which provides that

> "Every one is guilty of an indictable offence and liable to one year's imprisonment who knowingly and wilfully exposes for sale, or has in his possession with intent to sell for human food, articles which he knows to be unfit for human food."

Corresponding English Statutes are *The Public Health Acts*, the principal of which are the Acts of 1875 (*k*), of 1890 (*l*), of 1896 (*m*), "*The Public Health (London) Act, 1891*" (*n*), "*The Nuisances Removal Act, 1863*" (*o*), and "*The Sale of Food and Drugs Act, 1875*" (*p*).

In *Re Workman and Town of Lindsay* (*q*), ROSE, J. considered it doubtful whether the powers formerly exercisable by municipal councils in respect of public health had not been transferred to the Local Boards of Health by 47 V. c. 38, s. 12; but under the language now used in R. S. O. c. 248, s. 48 that question can no longer arise.

By the councils of townships, cities, towns and villages:—

Inspection of milk and provisions.

1 For appointing inspectors, and for providing for the inspection of milk, meat, poultry, fish and other natural products offered for sale for human food or drink, whether on the streets or in public places, or in shops. 55 V. c. 42, s. 489 (53).

Taken from 45 V. c. 23, s. 12 (1882), which applied only to cities, towns and villages; extended to townships in 1884 by 47 V. c. 32, s. 13 (10).

(*a*) R. S. O. c. 248. (*b*) R. S. O. c. 250. (*c*) R. S. O. c. 251.
(*d*) R. S. O. c. 252. (*e*) R. S. Ca. c. 107. (*f*) By 53 V. c. 26, s. 2 (a).
(*g*) See also 59 V. c. 12 (Ca.). (*h*) 52 V. c. 43 (Ca.). (*i*) 56 V. c. 37 (Ca.).
(*j*) 60-61 V. c. 21 (Ca.).
(*k*) 38-39 V. c. 55. (*l*) 53-54 V. c. 59.
(*m*) 59-60 V. c. 19. (*n*) 54-55 V. c. 76.
(*o*) 26-27 V. c. 117. (*p*) 38-39 V. c. 63, amended in 1879 by 42-43 V. c. 30.
(*q*) 7 O. R. 425 (1885).

Sec. 550 (1)-(4).

Notes (b), (c), (d).

Inspectors under "*The Adulteration Act*."

(b) "*The Adulteration Act*" (*a*), s. 6, further provides that the council of any city, town, county or village may appoint one or more inspectors of food, drugs and agricultural fertilizers for the purposes of that Act. See note (g) to s. 537, also 53 V. c. 26 (Ca.) and 59 V. c. 12 (Ca.), and s. 11 of Sched. B. to "*The Public Health Act*" (*b*).

Tainted provisions.

(2) For seizing and destroying all tainted and unwholesome meat, poultry, fish, or other articles of food. 55 V. c. 42, s. 489, (50).

Taken from the Act of 1858, (22 V. c. 99), s. 287 (17), which applied only to cities, towns and villages. Extended to townships by 47 V. c. 32, s. 13 (2). *Cf.* 12 V. c. 81, s. 60 (6) (villages), 61, 67, 80 (towns); 82, 106 (cities).

(c) See note (b) to s. 540 and note (o) to s. 542. Apart from any statutory provision such as is now made by Article 194 of "*The Criminal Code, 1892*," quoted *supra*, note (a), it was held to be a nuisance at common law, and therefore an indictable offence, to expose for sale or to have in one's possession with intent to sell, articles intended to be used as food, but which, to the knowledge of the defendant, were unfit to be so used (*c*).

But, *semble*, it is not necessary to prove such knowledge in order to authorize the exercise of the powers conferred by s. 108 (1) of "*The Public Health Act*" (*d*), or by a by-law passed under this sub-section (*e*).

By the councils of cities having 100,000 inhabitants or more:—

Seizure of cattle, etc., unfit for human food.

3. For authorizing the seizure of unslaughtered cattle, sheep, calves and hogs which have died on any railway car, or on any market, or within the municipality, in order to prevent such animals from being used as food, and for disposing of the carcasses of such animals in such a way as not to produce any harm to the public health, and to secure to the owner such value as remains over and above the expenses incurred in disposing of such carcasses. 59 V. c. 51, s. 30; 60 V. c. 15, *Sched. C.* (122).

By the councils of townships, cities, towns and villages:—

Bread.

4. For preventing the use of deleterious materials in making bread; and for providing for the seizure and forfeiture of bread made contrary to the by-law. 55 V. c. 42, s. 489 (52).

Taken from the Act of 1858 (22 V. c. 99) s. 287 (16), cities and towns and villages; extended to townships in 1874 by 47 V. c. 32, s. 15. *Cf.* 12 V. c. 81, s. 60 (8), villages; 61, 67, 80, towns; 82, 106, cities.

(d) Under "*The Food and Drugs Act, 1875*," (*f*)—which provides that "food" shall include every article used for food or drink by man—other than drugs or water—it was held that baking powder, at the time it is sold, is not food, and that it was not an offence under s. 3 of the Act to sell baking powder containing alum, etc., although the alum remains in articles of confectionery, etc., in

(*a*) R. S. Ca. c. 107.

(*b*) R. S. O. c. 248.

(*c*) *Reg.* v. *Stevenson*, 3 F. & F. 106 (1861); *Reg.* v. *Jarvis*, 3 F. & F. 108 (1862); *Reg.* v. *Crawley*, 3 F. & F. 109 (1862); *Newton* v. *Monckom*, 58 L. T. N. S. 231 (1888); *Shillito* v. *Thompson*, 1 Q. B. D. 12 (1875)

(*d*) R. S. O. c. 248.

(*e*) *Shillito* v. *Thompson*, supra; *Blaker* v. *Tillstone*, [1894] 1 Q. B. 345; and see *White* v. *Redfern*, 5 Q. B. D. 15 (1879); *Vintner* v. *Hind*, 10 Q. B. D. 63 (1882); *Mallinson* v. *Carr*, [1891] 1 Q. B. 48 (1890); *Barlow* v. *Terrett*, [1891] 2 Q. B. 107; *Reg.* v. *Dennis*, [1894] 2 Q. B. 458.

(*f*) Imp. Stat. 38-39 V. c. 63, s. 2.

a form injurious to health (*a*). But such an article would be within the definition of "food" now contained in "*The Adulteration Act*" (*b*). Adulterated foods may be seized and confiscated (*c*). Bread may also be seized and forfeited if short of the proper weight (*d*).

Secs. 550 (4)-(6), 661.

Notes (d)-(g).

5. For establishing, protecting, regulating and cleansing public and private wells, reservoirs and other public and private conveniences for the supply of water; and for closing public and private wells; for preventing the fouling of the same and the wasting of water therein or therefrom; for procuring an analysis of such water, and for providing for the payment of the expense thereof, and for making reasonable charges for the use of public water. 55 V. c. 42, s. 489 (42).

By-laws for cleansing wells, etc.

Taken from 47 V. c. 32, s. 13 (1) (1884). *Cf.* 12 V. c. 81, s. 60 (12); 22 V. c. 99, s. 287 (5); 46 V. c. 18, s. 496 (1), which applied only to cities, towns and villages.

(*e*) "For establishing . . . reservoirs and other public and private conveniences for the supply of water . . . and for making reasonable charges for the use of public water." See also s. 566 (1), (4), and s. 20 of "*The Municipal Waterworks Act*" (*e*).

(*f*) "For cleansing . . . for closing private wells." See "*The Public Health Act*." (*f*)

(*g*) "For procuring an analysis of such water." Water is "food" within the definition contained in "*The Adulteration Act*," see note (a) *supra*.

6. For compelling the use of water, supplied by the waterworks of the city, town, township or village, for drinking and domestic purposes, within certain areas to be defined by by-law; and for prohibiting the use of spring or well water within such areas for such purposes. 55 V. c. 42, s. 489 (4).

For compelling use of water supply.

Taken from 49 V. c. 37, s. 38 (1) (1886), which applied only to cities, towns and villages, extended to townships by 50 V. c. 29, s. 48 (1887).

Sub-Div. ii.—Sanitary Measures. (Secs. 551-553).

Drainage of cellars, privies, etc. Sec. 551 (1), (2), (3).
Filling up water-closets, privies, etc Sec. 551 (4).
Dry earth closets. Sec. 551 (5).
Lavatories and urinals. Sec. 552.
Dwellings on narrow streets. Sec. 553 (1).
Contagious diseases, Notices and precautions to prevent spread of. Sec. 553 (2).
Interments. Sec. 553 (3).

551. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

See also s. 554 (2), (3), as to the levels of cellars and the deposit of plans shewing the levels of the cellars or basements of new buildings,; s. 562 (11), obstruction of drains, and s. 586 (1) "for preventing and abating public nuisances." As to the construction of cellars, privies, private drains, *etc.*, *cf.* "*The Public Health Act*," (R. S. O. c. 248), Sched. B., s. 14, Rules 1 and 2, ss. 15, 16: as to cleaning cellars, privies, cess-pools, yards, etc., and preventing and abating nuisances dangerous to health, ss. 65, 71, 75, 76, 80, 113, 115-120 of that Act, and Sched. B. thereto, s. 14, Rules 2-5, 7, 8; as to the disposal of sewage, garbage, night-soil, etc., s. 14, Rules 1, 2, 4, 6.

(*a*) *James* v. *Jones*, [1894] 1 Q. B. 304. See also *Warren* v. *Phillips*, 68 L. T. N. S. 246 (1893).

(*b*) R. S. Ca. c. 107, s. 2 as amended by 53 V. c. 26, s. 2 (a). See note (a), *supra*.

(*c*) R. S. Ca. c. 107, ss. 20, 21.

(*d*) See *post*, s. 580 (11).

(*e*) R. S. O. c. 235.

(*f*) R. S. O. c. 248, Sched. B., ss. 11, 12.

Sec. 551 (1)-(5).

By the councils of townships, cities, towns and villages:—

Construction of cellars, drains, etc.

1. For regulating the construction of cellars, sinks, cess-pools, water closets, earth closets, privies and privy vaults; and for compelling and regulating the manner of draining, cleaning, clearing, and disposing of the contents of the same. 55 V. c. 42, s. 489 (47).

Filling up, draining, etc., grounds, yards, etc.

2. For compelling or regulating the filling up draining, cleaning, clearing, altering, relaying or repairing of any grounds, yards, vacant lots and private drains. 55 V. c. 42, s. 489 (48).

Regulations for sewerage, etc.

3. For making any other regulations for sewerage or drainage that may be deemed necessary for sanitary purposes. 55 V. c. 42, s. 489 (49).

Closing and filling up water-closets, privy vaults, cess-pools, etc.

4. For compelling owners, lessees and occupants of real property within any defined area to fill up or close any water-closets, privies, privy vaults, wells or cess-pools, the continuance of which may, in the judgment of the council, be dangerous to health. 55 V. c. 42, s. 489 (43).

By the councils of townships:—

Dry earth closets.

5. For regulating the construction of dry earth closets and compelling the use of the same within such limits within the municipality as may be defined by the by-law. 55 V. c. 42, s. 521 (15).

Sub-sections 1-3 are taken from 47 V. c. 32, s. 13 (7), (8), (9) (1884), which enlarged and extended to townships the powers conferred by the earlier Acts upon cities, towns and villages. *Cf.* 12 V. c. 81, s. 60 (villages): ss. 61, 67, 80 (towns); ss. 82, 106 (cities): 22 V. c. 99, s. 290 (17-19) (cities and towns only): 29-30 V. c. 51, s. 296 (21) (52-54), and the succeeding Municipal Acts down to 1883, (46 V. c. 18), s. 496 (6) (39-41), (cities, towns and villages).

Sub-section 4 is from 47 V. c. 32, s. 13 (4) (1884). *Cf.* 22 V. c. 99, s. 287 (21) and the sections above cited from 29-30 V. c. 51 (1866) to 46 V. c. 18 (1883).

Sub-section 5 was added in 1887 by 50 V. c. 29, s. 31.

Drainage of privies, etc.

(a) These powers are conferred upon municipal councils to be exercised "for sanitary purposes," *i.e.*, "to prevent the creation or to secure the abatement of nuisances which may in the judgment of the council be dangerous to health" (*a*). If by-laws passed under this section are disobeyed by the owners or occupants of real property, the remedy authorized by s. 703 will be found most effective.

In *Reg.* v. *Osler* (*b*), a city by-law passed under the Act of 1866 (*c*), for preventing and abating public nuisances and for preventing and regulating the construction of privy vaults was held valid, which provided that:

> "27. The owner, agent, occupant or other person having the care of any tenement used as a dwelling house, or of any other building with which there is a privy connected and used, shall furnish the same with a sufficient drain under ground, whenever practicable, to carry off the waste water.
>
> "28. All vaults and privies shall be made tight so that the contents thereof cannot escape therefrom.
>
> "29. In case any privy or privy vault is not properly drained, the committee . . . may give notice to the occupant or owner of the premises upon which such privy or privy vault is situate, requiring such occupant or owner to cause the same to be properly drained

(*a*) *Cf.* R. S. O. c. 248, s. 65.

(*b*) 32 U. C. R. 324 (1872).

(*c*) 29-30 V. c. 51, s. 296 (20-21). See now ss. 551 (1-4), 586 (1) of the present Act.

Sec. 551 (5).

Note (a).

Drainage of privies, etc.

within a time to be limited by such notice, and in case such privy or privy vault has not been properly drained within the time limited by such notice, the said committee, ... may enter upon the premises and cause a proper and sufficient drain to be constructed for such privy or privy vault, and the expense of constructing such drain may be recovered with costs by action or distress from the occupant or the owner of such premises, and in case of non-payment thereof the same may be recovered in the same manner as the municipal taxes of the year, and such occupant or owner shall also be liable to the penalties of this by-law.

"30. Whenever any privy vault or drain shall become offensive or obstructed, the same shall be cleansed and made free, and the owner, agent, occupant or other person having charge of the land in which any privy vault or drain may be situated, the state or condition of which shall be in violation of the provisions of this by-law, shall remove, cleanse, alter, amend or repair the same within such reasonable time after notice in writing to that effect given, etc., and in case such privy vault or drain has not been properly removed, cleansed, altered or repaired within the time limited by such notice the said committee, etc., may enter upon the premises and cause the said privy vault or drain to be removed, cleansed, altered or repaired, and the expense of such removal, cleansing, alteration or repairs may be recovered with costs by action or distress from the occupant or owner of such premises and in case of non-payment thereof the same may be recovered in the same manner as the municipal taxes of the year, and such occupant or owner shall also be liable to the penalties of this by-law."

But in *Re Mackenzie and City of Brantford* (*a*) a by-law was held objectionable in which the powers conferred upon "the committee" by ss. 29 and 30 of the by-law above quoted were delegated to persons not members of the council, viz.: the Local Board of Health.

As between landlord and tenant.

The cleaning and repairing of drains, etc., is *prima facie* the duty of him who occupies the premises, and does not devolve upon the owner merely as such. (*b*) The occupier of a house is liable for damage done by the escape of sewage in consequence of a defect in his drains (*c*) and he is so liable independently of any proof of negligence or even of his knowledge of the existence of the drains. (*d*)

An owner who lets premises with a nuisance upon them, (*e*) one who re-lets them and (perhaps) one who continues an existing tenancy (*f*) after the user of the buildings has created a nuisance, or after he has undertaken the cleansing of them but has not performed it (*g*) is liable for the continuance of the nuisance. So, one who lets premises for a fixed and definite purpose is liable for a nuisance arising naturally and necessarily from their use for that purpose. (*h*)

In *Reg.* v. *Oster*, (*i*) where the defendant had, as agent for the owner, let to one D., a house in the City of Toronto having a drain from a privy vault which was obstructed and offensive, and had refused and neglected to clean, alter, amend or repair the same after notice, it was held that if the nuisance existed at the time of the letting, both the owner and the tenant were liable therefor, (*j*) but that if it arose after the tenancy was created, the tenant only was

(*a*) 4 O. R. 382 (1884). Acc. *Forster* v. *City of Hamilton*, (Dec. 1899,) not yet reported.

(*b*) *Russell* v. *Shenton*, 3 Q. B. 449 (1842); *Wood* v. *Waud*, 3 Ex. 748, 773 (1849); *Chauntler* v. *Robinson*, 4 Ex. 163 (1849).

(*c*) *Foster* v. *Cameron*, 19 U. C. R. 224 (1860).

(*d*) *Humphries* v. *Cousins*, 2 C.P.D. 239 (1877), (distinguishing *Carstairs* v. *Taylor*, L. R. 6 Ex. 217 (1871), and *Ross* v. *Fedden*, L.R. 7 Q. B. 661 (1872)); *Hammond* v. *St. Pancras Vestry*, L. R. 9 C. P. 316 (1874).

(*e*) *Todd* v. *Flight*, 9 C. B. N. S. 377 (1860); *Gandy* v. *Jubber*, 5 B. S. 78, 439, 485 (1865).

(*f*) *Marcotte* v. *Henault*, Q. R. 13 S. C. 453 (1898).

(*g*) *Rich* v. *Basterfield*, 4 C. B. 783, 805 (1847).

(*h*) *Harris* v. *James*, 45 L. J. Q. B. 545 (1876).

(*i*) 32 U. C. R. 324 (1872).

(*j*) See *McCallum* v. *Hutchison*, 7 C. P. 508 (1858).

Sec. 551 (5).

Note (a)-(b).

responsible; also that the defendant, (who was merely an agent to let and to receive the rents), could not properly be convicted under the by-law. (*a*).

Drainage of privies, etc. As between landlord and tenant.

In *Smith* v. *Robinson*, (*b*) a lessee who had covenanted with his landlord to repair and to pay "all charges imposed upon the demised premises or upon the lessor for or in respect thereof," allowed a drain on the demised premises to get out of repair and to cause a nuisance. The landlord, having been compelled by the sanitary authority to put the drain in repair, sued the lessee on his covenant for the money so disbursed. It was held that the expenses thus incurred were a "charge imposed upon the lessor in respect of the premises" and that he was entitled to recover them from the lessee. (*c*) But the tenant of a house in which a nuisance arose by the stoppage of the drains *owing to structural defects therein* was held entitled under s. 11 (1) of "*The Public Health (London) Act, 1891*" (*d*) to recover from his landlord the costs and expenses incurred in abating the nuisance, and (*per* CHARLES, J.), apart from the provisions of that section he would have been entitled to recover at common law on the ground that he had been compelled to expend money upon work for which the defendants were legally responsible. (*e*)

In *Thompson & Norris Manufacturing Co.* v. *Hawes* (*f*) where the occupier of premises on being served with a notice under "*The Public Health (London) Act (1891)*" that if certain works were not completed proceedings would be taken by the service of a statutory notice, went on and did the work without communicating with his landlord, it was held that not being himself compellable to do the work, he had acted as a mere volunteer and had no right to reimbursement. The Court distinguished *Gebhardt* v. *Saunders* on this ground and its authority has been further shaken by *Farlow* v. *Stevenson* (*g*).

The owner of houses occupied by tenants may maintain an action in his own name for damages and to restrain the continuance of a nuisance arising from privy pits upon the lands of an adjoining owner if the nuisance is of such a nature as to be practically continuous and permanent; and the owner of the adjoining land, (although it also may be occupied by tenants), is liable for the nuisance caused by them if the pits are so constructed that the constant use of such pits will necessarily result in the creation of a nuisance, or if they are allowed by the owner to remain in an unsanitary condition when there is power to remedy the grievance (*h*).

(b) Sub-section 2.

"For compelling the . . . draining . . . of any grounds, yards, vacant lots, etc."

Compelling drainage of yards, etc.

A by-law passed under the authority of similar words in the Act of 1858, (*i*) required that all grounds not already drained, abutting on any street in which there was a common sewer, should be drained into the same *within fourteen days* from the advertisement of the by-law, imposed a penalty in case of omission of not less than $1 nor more than $10 for each month, and provided for its recovery by distress or imprisonment: *Held*, that the by-law was unauthorized, for the clause requiring drainage within fourteen days was unreasonable, and the Act showed how the persons were to be "compelled" to drain, viz., by the council doing the work and assessing them for the cost. (*j*)

(*a*) See however on this point, *Peek* v. *Waterloo and Seaforth Local Board*, 2 H. & C. 709 (1863); *St. Helen's (Mayor of)* v. *Kirkham*, 16 Q. B. D. 403 (1885).

(*b*) [1893] 2 Q. B. 53.

(*c*) *Sweet* v. *Seager*, 2 C. B. N. S. 119 (1857); *Budd* v. *Marshall*, 5 C. P. D. 481 (1880), and *Tidswell* v. *Whitworth*. L. R 2 C. P. 326 (1867) are to the same effect. See R.S.O. c. 125. Sched. B. See also *Brett* v. *Rogers*, [1897] 1 Q.B. 525, where the words of the covenant were "all . . duties . . imposed," and *Farlow* v. *Stevenson*, 15 Times L. R. 249 (1899).

(*d*) Imp. Stat. 54-55 V. c. 76.

(*e*) *Gebhardt* v. *Saunders*, [1892] 2 Q. B. 452.

(*f*) 73 L. T. N. S. 369 (1895).

(*g*) 15 Times L. R. 249 (1899).

(*h*) *Park* v. *White*, 23 O. R. 611 (1893). See also *Foster* v. *Cameron*, supra.

(*i*) 22 V. c. 99, s. 290 (18).

(*j*) *Re McCutchon and City of Toronto*, 22 U. C. R. 613 (1863), and see now s. 703.

Per DRAPER, C. J., (p. 620).

Sec. 551 (5). Notes (b)-(e).

"We do not think that the continued omission to do an act which the council on such default are authorized to do and to assess the owner for the cost thereof, authorized the infliction of a penalty or of imprisonment. If there can be a penalty for each month, *pari ratione* there can be imprisonment also for non-payment of each penalty, a consequence sufficiently monstrous to prevent a construction of the Statute which would give such powers." (*a*)

Compelling drainage of yards, etc.

(c) Sub-section 3. "Regulations for sewerage and drainage."

As to the difference between "drains" and "sewers," see note (**a**) to s. 554 (1); as to the power of the councils of cities, towns and villages to pass by-laws imposing sewer rents, s. 539 (2).

Regulations as to sewerage and drainage.

In *Reeves* v. *City of Toronto*, (*b*) Sir JOHN ROBINSON, C. J., refers with approval to a "regulation" adopted under the authority of this subsection, viz., that any person desiring to drain his premises into a public sewer shall make application to the council, or to one of its committees, stating such particulars as will enable the proper officer to compute the cost of constructing the connection required. The applicant, upon receiving permission to drain into the sewer, pays to the treasurer the cost of the necessary connection, which is thereupon made by the municipality itself in the manner prescribed by its regulations and under the direction and inspection of its street surveyor or engineer.

In *Re Workman and Town of Lindsay*, (*c*) a municipal corporation had passed a by-law for the construction of a sewer without limiting the purposes for which it was to be used, and (subsequently) another by-law regulating how it might be tapped for drainage purposes, enacting that no one should drain into it without permission from the municipal council first obtained, and specifying a certain rate of payment for its use when so permitted. The applicant had obtained no leave from the council or any committee thereof to u the sewer, but several members of the council had given him permission to connect some water-closets with it on condition of paying when called upon, whatever sum was reasonable. It was held, (1) that the sewer was constructed for general drainage purposes, including that of water-closets; but (2) that the permission given to the applicant so to use it did not bind the council; (3) that the council could compel him to cut off the connection, since he had never obtained their consent to make the same, nor paid the rate fixed by the by-law; and (4) that the fact of his having enjoyed the privilege for several years placed him in no better position than he was in at first.

Semble, that even if he had the legal right to use the sewer, either the corporation, under this section, or the Local Board of Health, under 47 V. c. 38, s. 12, could, upon the facts stated, have passed a by-law compelling him to cut off the connection.

(d). Sub-section 4. "Within any defined area." Sub-section 5.—"Such limits as may be defined by the by-law." See note (**c**) to s. 542.

Areas may be defined.

(e). Sub-section 4.

"For compelling owners . . . to fill up or close any water closets . . . wells . . . the continuance of which may, *in the judgment of the council,* **be dangerous to health."** See also as to closing wells, s. 550 (5), and as to "compelling," note (**b**), *supra*.

Closing of wells, water closets, etc., which are dangerous to health.

"*The Metropolis Local Management Act*," (*d*) prohibited the erection or rebuilding of any house in certain localities without a sufficient water-closet or privy and ash-pit, etc., and empowered the local authorities "*if it appeared to them* that any house was without a sufficient water-closet or ash-pit, etc.," to notify the owner to provide them, and upon his default to cause a sufficient water-closet or privy and ash-pit, etc., to be constructed and to recover the expense so incurred. *Held*, that under this section the local authority could

(*a*) See also *Marshall* v. *Smith*, L. R. 8 C. P. 416 (1873), cited in note (**e**) to s. 542; *Reg.* v. *Huber*, 15 U. C. R. 589 (1857), and *Coggins* v. *Bennett*, 2 C. P. D. 568 (1877), cited in note (**d**) to s. 557.

(*b*) 21 U.C.R. 157 (1861), at p. 158.

(*c*) 7 O.R. 425 (1885).

(*d*) Imp. Stat. 18-19 V. c. 120, s. 81.

Secs. 551 (5), 552.

Notes (e); (a).

not lay down a general rule substituting water-closets for privies throughout the district, but was bound to exercise its discretion with reference to the circumstances of each particular case. (*a*)

But when the local authorities have decided what should be done in any particular case, they may make the necessary order; (*b*) and their discretion, if exercised *bona fide*, is not subject to review by the Court. (*c*)

Earth closets.

(f). Sub-section 6.

"Compelling the use of dry earth closets within . . . limits . . . defined by the by-law."

It is somewhat difficult to see how any one can be "compelled to use" a closet of any kind, but the sub-section may authorize the passing of a by-law forbidding any person to keep or have in any privy situate on premises owned or occupied by him within a defined area of the township, any receptacle for urine and night-soil other than a dry earth closet to be constructed and used as directed by the by-law. (*d*)

Maintaining public conveniences in cities and towns.

552. The councils of cities or towns may provide and maintain lavatories urinals and water-closets and like conveniences in situations where they deem such accommodation to be required, either upon the public streets or elsewhere, and may supply the same with water, and may defray the expense thereof and of keeping the same in repair and good order. 59 V. c. 51, s. 37.

(a). This section was passed in 1896 (see the references appended thereto) in consequence of an unreported case of *Scottish Ontario & Manitoba Land Co.* v. *City of Toronto* (1895), in which an interlocutory injunction was granted by MacMahon, J., and continued by Boyd, C., restraining the defendants from erecting a public lavatory, etc., on a street in Toronto.

The words of the section are almost identical with those of s. 88 of "*The Metropolitan Management Act*," (*e*) under which, the local authorities having passed a resolution to erect a urinal in Grosvenor Place adjacent to the wall of Buckingham Palace, were restrained from so doing by Stuart, V. C., on the ground that it would be a serious injury to the neighbouring property. But on appeal this order was set aside, the Lords Justices holding the evidence insufficient to show that the proposed urinal would be a legal nuisance, or that the local authorities were exceeding their statutory powers or were influenced by improper motives. (*f*)

But while the local authorities have a discretion as to the site, the section does not empower them to erect these conveniences where they would be a nuisance to the owners of adjoining property; for such conveniences are not necessarily nuisances, and the section does not expressly or by necessary implication authorize the creation of a nuisance. (*g*).

(*a*) *Tinkler* v. *Wandsworth District Board of Works*, 2 De G. & J. 261 (1858); acc. *Wood* v. *Widnes* (*Mayor of*), 13 Times L. R. 537, 14 Times L. R. 192 (1898).

(*b*) *Vestry of St. Luke's* v. *Lewis*, 1 B. & S. 865 (1862); *Sherborne Local Board* v. *Boyle*, 46 J.P. 675 (1882).

(*c*) *Hargreaves* v. *Taylor*, 3 B. & S. 613 (1863); *Ex p. Whitchurch*, 6 Q.B.D. 545 (1881), *per* Pollock, C.B.; *Vestry of St. James & St. John, Clerkenwell* v. *Feary*, 24 Q. B. D. 703 (1890); *Nicholl* v. *Epping Urban District Council*, [1899] 1 Ch. 844; and see note (e) to s. 542.

(*d*) See "*The Public Health Act*," (R. S. O. c. 248) s. 122, Sched. B., s. 14, Rules 1 and 2, s. 15; Sched. C.

(*e*) Imp. Stat. 18-19 V. c. 120.

(*f*) *Biddulph* v. *Vestry of St. George's, Hanover Square*, 3 De G., J. & S. 493, 8 L.T.N.S. 558 (1863); followed by Jessel, M.R., in *Mason* v. *Wallasey Local Board*, L. J. Notes of Cases (1876), p. 212, and by Pollock, B., in *Spicer* v. *Margate*, 24 Sol. Jour. 821 (1880).

(*g*) *Vernon* v. *St. James, Westminster*, 16 Ch. D. 449 (1880), followed in *Sellors* v. *Matlock Bath Local Board*, 14 Q. B. D. 928 (1885).

See also the (more limited) powers conferred upon urban sanitary authorities by s. 39 of "*The Public Health Act, 1875*," (*a*) and the cases of *Sellors* v. *Matlock Bath Local Board*, (*b*) and *Baird* v. *Tunbridge Wells* (*Corporation of*), (*c*) decided thereunder.

If real property is entered upon, taken, used or injuriously affected by reason of the exercise of the powers conferred by this section compensation must be made as provided by s. 437.

553. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

Dwellings on Narrow Streets.

By the councils of cities, towns and villages:—

1. For regulating the erection or occupation of dwellings on narrow streets, lanes or alleys, or in crowded or unsanitary districts. 55 V. c. 42, s. 496, (10*a*). See secs. 630, 631. Dwellings on narrow streets.

Taken from 52 V. c. 36, s. 24 (1889).

(a). Under the power to pass by-laws "with respect to the sufficiency of space about buildings to secure a free circulation of air" conferred upon local authorities in England by "*The Local Government Act, 1858*," (*d*) and "*The Public Health Act, 1875*," (*e*) a by-law was held valid which provided that every building to be erected and used as a dwelling house should have an open space exclusively belonging thereto to the extent of at least 500 feet free from any erection thereon above the level of the ground. (*f*) But a section in a similar by-law providing that wherever an open space had been left belonging to any building it should never be built upon without consent of the council and without leaving an open space of specified dimensions, was held bad as to existing buildings though it might be good as to new buildings. (*g*) It is apprehended that although the power therein given to regulate the *erection* of dwellings applies only to new buildings, the power to regulate the *occupation* of dwellings on narrow alleys, etc., is not so limited, and that the by-law may prescribe the maximum number of persons who shall be permitted to occupy a dwelling house having a certain air space. (*h*)

Contagious Diseases.

By the councils of townships, cities, towns and villages:—

2. For making provision for supplying blanks for the notification and recording of cases of contagious or infectious disease; for giving public notice of houses wherein such cases exist; and for taking such measures as by *The Public Health Act*, or any other Act, are required to be taken in that behalf, and such other measures as may be necessary for preventing the spread of such diseases. 55 V. c. 42, s. 489, (55). Contagious diseases. Rev. Stat. c. 248.

Taken from 47 V. c. 32, s. 13 (11), 1884. *Cf.* 12 V. c. 81, s. 60 (15), (villages); ss. 61, 67, 80 (towns); ss. 82, 106 (cities); and the Acts from 22 V. c. 99, s. 287 (28) to 46 V. c. 18, s. 496 (13) all of which applied only to cities, towns and villages.

(*a*) Imp. Stat. 38-39 V. c. 55.

(*b*) 14 Q.B.D. 928 (1885).

(*c*) [1894] 2 Q.B. 867.

(*d*) 21-22 V. c. 98, s. 34.

(*e*) 38-39 V. c. 55, s. 157 (3) (4).

(*f*) *Adams* v. *Bromley Local Board*, 37 J. P. 662 (1877).

(*g*) *Tucker* v. *Rees*, 7 Jur. N.S. 629 (1861); and see *Simmons* v. *Mailing R.D. Council*, 13 Times L.R. 447 (1897) as to drainage by-laws.

(*h*) See also s. 78 of "*The Public Health Act*," (R.S.O. c. 248). *Cf.* "*The Ontario Factories Act*" (R.S.O. c. 256) s. 15 (2); "*The Ontario Shops Regulation Act*," (R.S.O. c. 257) s. 13 (1), and s. 91 (5) of "*The Public Health Act, 1875*," (Imp. Stat. 38-39 V. c. 55) which might with advantage be re-enacted in Ontario.

Secs. 553 (2), (3). 554.

Notes (a)-(e).

(a) "**Blanks for the notification, etc., of cases of contagious or infectious diseases** See R.S.O. c. 248, Sched. B., s. 17, Rules 1 and 2.

(c). "**Giving public notice of houses wherein such diseases exist.**" See R.S.O. c. 248, Sched. B., s. 17, Rules 4 and 5.

(d). "**Such other measures as may be necessary.**" See R.S.O. c. 248, ss. 77-79, 81-107, Sched. B., s. 17, Rule 6; R.S.O. c. 249, ss. 4-6; R.S.O. c. 273.

Interments.

By the councils of cities, towns and villages:—

Interments.

3. For regulating the interment of the dead, and for preventing interments from being made within the municipality. 55 V. c. 42, s. 496, (7).

Taken from the Act of 1858, (22 V. c. 99), s. 287 (29). *Cf.* 12 V. c. 81, s. 60 (15) (villages) ss. 61, 67, 80 (towns); ss. 82, 106 (cities).

(e). A by-law made in pursuance of a colonial Act empowering municipal councils to make by-laws for regulating the interment of the dead was held not to be *ultra vires* by reason of its prohibiting interment altogether in a particular cemetery and thereby destroying the private property of the owners of burial places therein (*a*).

Sub-Div. III.—Sewers and Drains. (Secs. 554-555).

Drainage—General powers as to. Sec. 554 (1).
Ascertaining levels of cellars. Sec. 554. (2).
Plans of buildings to be furnished. Sec. 554. (3).
Acquiring lands in other municipalities for drainage purposes. Sec. 554. (4).
Extension of sewers into or through adjoining municipality. Sec. 555.

554. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

Drainage.

By the councils of counties, cities, towns, townships and villages:—

Opening or stopping up drains and water-courses, etc.

1. For opening, making, preserving, improving, repairing, widening, altering, diverting, stopping up and pulling down drains, sewers or water-courses, within the jurisdiction of the council; and for entering upon, breaking up, taking or using any land in or adjacent to the municipality in any way necessary or convenient for the said purposes; and for entering upon, taking or using any land in or adjacent to the municipality for the purpose of providing an outlet for any sewer or of establishing works or basins for the interception or purification for sewage; and for making all necessary connections therewith: but subject always to the payment of compensation to persons who may suffer injury therefrom and to any restrictions and liabilities imposed by this Act in that respect or otherwise. 55 V. c. 42, s. 479, (15); 59 V. c. 51, s. 11; 62 V. c. 2.

The first two clauses are taken from s. 317 (6) of the Act of 1858, (22 V. c. 99) the words "in or adjacent to the municipality" in line 5 having been inserted in 1888 by 51 V. c. 28, s. 20. *Cf.* 12 V. c. 81, s. 30 (9), (townships); 60 (1), (villages), 61, 67, 80, (towns); 82, 106, (cities); 16 V. c. 181, s. 35, (cities, towns and villages).

The remainder of the sub-section, after the words "for the said purposes" in line 6, was added by 51 V. c. 28, s. 20, as amended in 1896 by 59 V. c. 51, s. 11 and in 1898 by 62 V. (1st Session), c. 2.

(*a*) *Slattery* v. *Naylor*, 13 App. Cas. 446 (1888).

Sec. 554 (1). Notes (a)-(d).

(a) "**Drains, sewers.**" (*a*) In "*The Public Health Act, 1875.*" (*b*) the word "drain" is confined to a drain used for one building only, or for premises within the same curtilage (*c*) while the word "sewer" has "a much more extended signification, embracing works on the largest scale, such as draining the fens of Lincolnshire by means of canals" etc. (*d*) "*Sewer* . . . . may mean the whole apparatus, and in its specific sense a drain as part of that apparatus." (*e*).

"Drain," "Sewer," meaning of.

In these Revised Statutes, on the contrary, "drain" is the generic term, applying not only (as in the English Act) to a private drain, (*f*) or a branch drain, (*g*) but also to a common or public drain or sewer, (*h*) or to part of a system of drainage works, (*i*) while the word "sewer" is specifically used in the second only of these senses, viz., to indicate a public (usually covered) drain intended to receive and carry away fluid and faculent matter from streets and houses in a closely inhabited locality.

Under the English Act, a drain becomes a "sewer" as soon as more than one house is connected with it (*j*).

(b) "**Water-courses.**"

What is a water-course.

In order to constitute a water-course there must be a natural and accustomed flow of water from a permanent source forming and maintaining a distinct and defined channel. It is not essential that the supply of water should be continuous and from a perennial living source. The volume of the stream may be occasional or temporary, but its "course" must be permanent and defined, (*k*) and that cannot be called a definite channel which has no visible banks or margins within which the water can be confined (*l*).

(c) "**Entering upon . . . . taking or using.**"

Powers of council.

In *Roderick* v. *Aston Local Board*, (*m*) words empowering a local authority to carry a sewer "into, through or under" any lands within its district, were held to authorize the construction of a sewer across the plaintiff's pleasure grounds at such a level that the bottom of the sewer would be only slightly below the surface of the ground, and a permanent embankment about six feet high would be necessary to cover it. "The words "into, through, or under" do not mean that it must be wholly under ground."

(d) "**Necessary or convenient for the said purposes.**"

Their discretion will not be reviewed.

"The necessity for making a new sewer being ascertained as a matter of fact, it was for the local authority to exercise their judgment in what direction that sewer should be made . . . . and so long as they exercise an honest discretion without misconduct or negligence, they are not liable to have their judgment overruled in a Court of law." (*n*)

(*a*) Refer also to ss. 556, 608, 664 (2), (5), (6), 668 (4), 673 (1), (2) and the Drainage Acts.

(*b*) Imp. Stat. 38-39 V. c. 55.

(*c*) S. 4.

(*d*) *Per* KINDERSLEY, V. C. in *Sutton* v. *Norwich* (*Mayor of*), 31 L. T. N. S. 389 (1874).

(*e*) *Per* Lord CAMPBELL, C. J., *Poplar District Board of Works* v. *Knight*, E. B. & E. 408; 5 Jur. N. S. 196 (1858).

(*f*) *E. g.*, s. 551 (2).

(*g*) S. 673 (1).

(*h*) Ss. 554 (4), 555 (2), 562 (8), (9), (11), 668 (4), 673 (1); R. S. O. c. 241, "*The Railway Streets and Drains Act.*"

(*i*) R. S. O. c. 226, ("*The Municipal Drainage Act.*")

(*j*) *Acton Local Board* v. *Batten*, 28 Ch. D. 283 (1884); *Bateman* v. *Poplar District Board of Works*, 33 Ch. D. 360 (1886); *Travis* v. *Uttley*, [1894] 1 Q. B. 233; *Kershaw* v. *Taylor*, [1895] 2 Q. B. 203, 471; *Florence* v. *Paddington Vestry*, [1895] W. N. 143 (9); *St. Martin-in-the-Fields*, (*Vestry*) v. *Bird*, [1895] 1 Q. B. 428; *Appleyard* v. *Lambeth Vestry*, 13 Times L. R. 289 (1896).

(*k*) *Beer* v. *Stroud*, 19 O. R. 10 (1888); *Arthur* v. *Grand Trunk R. W. Co.*, 25 O. R. 37 (1894), 22 A. R. 89 (1895).

(*l*) *Williams* v. *Richards*, 23 O. R. 651 (1893); approved and followed in *Wilton* v. *Murray*, 12 Man. Rep. 35 (1898).

(*m*) 5 Ch. D. 328 (1877)

(*n*) *Derby* (*Earl of*) v. *Bury Local Improvement Commissioners*, L. R. 4 Ex. 222 (1869), *per* WILLES, J., at p. 225.

Sec. 554 (1).

Notes (e)-(h).

(e) "**Any land.**" includes "any estate or interest therein or right or easement affecting the same," (*a*) *e. g.*, a right to support for the sewer, (*b*) and (by s. 1 (9) of "*The Assessment Act*") "all minerals" (*e. g.*, water) "under the same." (*c*)

Sewerage and drainage.

(f) "**Land . . . . adjacent to the municipality for the purpose of providing an outlet for any sewer.**" See the proviso to sub-sec. 4, s. 555 and *Township of Barton* v. *City of Hamilton*, cited in notes (**b**) and (**c**) to that section.

Compensation.

(g) "**Subject . . . . to the payment of compensation.**" See s. 437. Compensation may be claimed in respect of any right or easement which is necessarily acquired in the construction of the drain, *e. g.*, the right to subjacent support, (*d*) and to lateral support (if this is necessary for the safety of the work) (*e*). The arbitrators may consider the impossibility of building over the sewer, the possibility of its defective construction, and the annoyance likely to arise from the opening of manholes and from stenches caused thereby (*f*). The rules and principles laid down in the notes to s. 437 are of course applicable to claims for compensation under this sub-section.

As to the time when the claim must be made, see s. 438.

Restrictions and liabilities.

(h) "**To any restrictions and liabilities imposed by this Act or otherwise.**"

"The restrictions contemplated were that pertaining to the expropriation of private lands, and those prescribed by [s. 325], which are intended to safeguard the interest of the adjacent municipality." (*g*).

The Act does not authorize the creation of a nuisance (*h*); and a municipal corporation has no right, any more than a private individual, (*i*) to collect surface water, sewage, etc., and discharge it upon the lands of another instead of making proper provision for its disposal. The remedy of a person thus injured is by action and not by arbitration under s. 437 (*j*). If it was the act of others which really caused the damage the corporation cannot be held liable (*k*); but the fact that others were associated with the municipality in committing the trespass is no defence (*l*); and persons who lawfully,—*i.e.*, with the consent

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(*a*) *Ante*, s. 2 (8). (*b*) *Re Dudley* (*Corporation of*), 8 Q. B. D. 86 (1881).

(*c*) *Bush* v. *Trowbridge Water Works Co.*, L. R. 10 Ch. 459 (1875); *Page* v. *Kettering Waterworks*, 8 Times L. R. 228 (1891); *Errington* v. *Metropolitan District R. W. Co.*, 19 Ch. D. 559 (1882).

(*d*) *Re Dudley* (*Corporation of*), 8 Q. B. D. 86, (1881).

(*e*) *Roderick* v. *Aston Local Board*, 5 Ch. D. 328 (1871), *per* JESSEL, M. R., at p. 333.

(*f*) *Uttley* v. *Todmorden Local Board*, 31 L. T. N. S. 445 (1874). See further as to man-holes on private property, *Swanston* v. *Twickenham Local Board*, 11 Ch. D. 838 (1879).

(*g*) *Per* BOYD, C., in *Township of Barton* v. *City of Hamilton*, 18 O. R. 199 (1889) at p. 203.

(*h*) *Attorney-General* v. *Hackney Local Board*, L. R. 20 Eq. 626 (1875); *Lamacraft* v. *St. Thomas*, 42 L. T. N. S. 365 (1880); *Wheatcroft* v. *Matlock Local Board*, 52 L. T. N. S. 356 (1885); *Vernon* v. *St. James Westminster*, 16 Ch. D. 449 (1880).

(*i*) See note (**k**) *infra*.

(*j*) *Brown* v. *Township of Sarnia*, 11 U. C. R. 87 (1853); *Perdue* v. *Township of Chingucousy*, 25 U. C. R. 61 (1865); *Rowe* v. *Township of Rochester*, 29 U. C. R. 590, 22 C. P. 319 (1872); *Stonehouse* v. *Township of Enniskillen*, 32 U. C. R. 562 (1872); *Northwood* v. *Township of Raleigh*, 3 O. R. 347 (1882); *Van Egmond* v. *Town of Seaforth*, 6 O. R. 599 (1884); *Mulott* v. *Township of Mersea*, 9 O. R. 611 (1885); *Re Nickle and Township of Walkerton*, 11 O. R. 433 (1886); *Derinzy* v. *City of Ottawa*, 15 A. R. 712 (1887); *Stalker* v. *Township of Dunwich*, 15 O. R. 342 (1888); *Close* v. *Town of Woodstock*, 23 O. R. 99 (1892); *Township of Ellice* v. *Hiles*, 23 S. C. R. 429 (1894); *Roy* v. *St. Louis du Mile End*, Q. R. 10 S. C. 503 (1896).

(*k*) *Law* v. *Town of Niagara Falls*, 6 O. R, 467 (1884); *Gray* v. *Town of Dundas*, 11 O. R. 317 (1886), 13 A. R. 588 (1887); *Bryce* v. *Loutit*, 21 A. R. 100 (1894).

(*l*) *Close* v. *Town of Woodstock*, supra.

and approval of the municipal authorities,—use as a common sewer a drain which was originally constructed for surface water only, are not responsible for a nuisance created by the disposal of such sewage (*a*).

Liabilities of municipal corporations in respect to drains and sewers.

So,—although municipal corporations are not bound to make drains or sewers (except where and so far as these may be necessary to keep their highways in repair) (*b*), and although no action lies against them for not exercising their (discretionary) powers in reference thereto (*c*)—they are held liable, if they do undertake the task, for any damages arising by reason of their negligent or improper performance thereof (*d*), or by reason of their negligently permitting drains or sewers under their jurisdiction to become obstructed or out of repair (*e*).

But the mere fact that flooding has taken place is not *per se* evidence that the corporation have been guilty of negligence (*f*). There must be evidence that by the exercise of reasonable care and diligence ("ordinary human foresight") they could have foreseen and prevented the occurrence of the injury (*g*). Accordingly, where a sewer is free from structural defects and is of sufficient capacity to answer all ordinary needs, the municipal corporation are not liable for damages caused, as the result of an extraordinary rainfall, by water backing into the cellar of a person who is compelled by by-law to drain into the sewer (*h*). And such a rainfall, though not unprecedented, may be treated as an act of God or *vis major*, if there has been nothing in previous experience to make its recurrence probable (*i*).

But where a drain is out of repair and lands are injured by water overflowing from it, the municipality cannot escape liability on the ground that the injury was caused by an extraordinary rainfall, unless it is shewn that even if the drain had been in repair the same injury would have resulted (*j*).

Levels of Cellars—Plans.

By the councils of cities, towns and villages:—

Ascertaining level of cellars, etc.

2. For ascertaining and compelling owners, tenants and occupants to furnish the council with the levels of the cellars

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(*a*) *Lewis* v. *Alexander*, 21 A. R. 613 (1894). (*b*) S. 606.

(*c*) *Darby* v. *Township of Crowland*, 38 U. C. R. 338 (1876), (where many authorities are cited by HARRISON, C. J., at pp. 343-344); *Damaher* v. *Township of Chatham*, cited in note (i) to s. 562; *Bryce* v. *Loutit*, supra; Dillon, s. 1046. See also note (j) *infra*.

(*d*) *Farrell* v. *City of London*, 12 U. C. R. 343 (1854); *Reeves* v. *City of Toronto*, 21 U. C. R. 157 (1861); *Grassick* v. *City of Toronto*, 39 U. C. R. 306 (1876); *Coghlan* v. *City of Ottawa*, 1 A. R. 54 (1876); *Noble* v. *City of Toronto*, 46 U. C. R. 519 (1882); *Duck* v. *City of Toronto*, 5 O. R. 295 (1884); *McArthur* v. *Town of Collingwood*, 9 O. R. 368 (1885); *Papineau* v. *Town of Longueuil*, Q. R. 11 S. C. 98. See *Ruck* v. *Williams*, 3 H. & N. 308 (1858) and note (a) to s. 586, *post*.

(*e*) *Scroggie* v. *Town of Guelph*, 36 U. C. R. 534 (1875); *Sullivan* v. *Town of Barrie*, 45 U. C. R. 12 (1880); *McArthur* v. *Town of Collingwood*, *supra*, and see *White* v. *Township of Gosfield*, 2 O. R. 287; 10 A. R. 555 (1884); and *Bathurst (Borough of)* v. *Macpherson*, 4 App. Cas. 256 (1879), as explained by Lord HOBHOUSE in *Municipality of Pictou* v. *Geldert*, [1893] A. C. 524 at p. 531, and referred to by STRONG, C. J., in *City of St. John* v. *Campbell*, 26 S. C. R. 1, at p. 4 (1895). As to the general principle governing such cases—*cf. Johnston* v. *Consumers' Gas Co.*, [1898] A. C. 447.

(*f*) *Noble* v. *City of Toronto*, *supra*; *per* HAGARTY, C. J., *Garfield* v. *City of Toronto*, 22 A. R. 128 (1895), at p. 130.

(*g*) *Bateman* v. *City of Hamilton*, 33 U. C. R. 244 (1873); *McConkey* v. *Town of Brockville*, 11 O. R. 322 (1886); *Welsh* v. *City of St. Catharines*, 13 O. R. 369 (1887).

(*h*) *Garfield* v. *City of Toronto*, 22 A. R. 128 (1895).

(*i*) See *McArthur* v. *Town of Collingwood*, 9 O. R. 368 (1885), *per* ROSE, J., at p. 375; *Garfield* v. *City of Toronto*, 22 A. R. 128 (1895), *per* HAGARTY, C. J. O., at p. 131.

(*j*) *Mackenzie* v. *Township of West Flamborough*, 26 A. R. 202 (1899).

Sec. 554 (2)-(4). Notes (i)-(k).

heretofore dug or constructed, or which may hereafter be dug or constructed along the streets of the municipality; such levels to be with reference to a line fixed by the by-laws. 55 V. c. 42, s. 496 (32).

Compelling the furnishing of ground or block plan of buildings to be erected.

3. For compelling to be deposited with an officer to be named in the by-law, before commencing the erection of any building, a ground or block plan of such building, with the levels of the cellars and basements thereof, with reference to a line fixed by the by-laws. 55 V. c. 42, s. 496 (33).

Taken from the Act of 1858, (22 V. c. 99), s. 290 (49), (49), which applied only to cities and towns; extended to townships by 29-30 V. c. 51, s. 296 (50), (51).

(i) "**For ascertaining the levels of the cellars heretofore dug,**" etc. The object is apparently to enable the council to determine the depth at which a sewer will require to be constructed.

(j) **Sub-section 3.** As to the means of "compelling," see note (e) to s. 542.

The duties of municipal corporations in adopting a plan of drainage and determining when, where, of what size, and at what level sewers shall be built, are of a quasi-judicial character,—and the *bona fide* exercise of their discretion in regard to such matters is not subject to revision by a Court (a). Accordingly a municipality, having properly constructed a sewer along a street in pursuance of a general plan of drainage adopted for that locality, will not be liable to the owner of houses subsequently erected on the street for damage occasioned because the sewer is not deep enough to drain the cellars of such houses (b).

Acquiring land in another municipality for drainage purposes.

4. For accepting or purchasing any land in any other municipality which may be required for preventing such city, town or village, or any part thereof, from being flooded by the surface or other waters flowing from such other municipality into such city, town or village (c); and for providing an outlet for such waters through any other municipality; and for opening, making, preserving and improving drains, sewers and water-courses in the lands so acquired;

Proviso.

Provided always that the consent of the municipality in which the lands to be taken are situate shall be obtained before the powers conferred by this clause are exercised. 55 V. c 42, s. 496 (35).

Taken from 43 V. c. 24, s. 21 (1880).

(k) "**For preventing such city, ... from being flooded by . . . surface . . . waters.**" "The flood is a common enemy against which every man has a right to defend himself" (d). In so doing he may take all reasonable measures, which do not infringe upon his neighbour's rights, to prevent the flood coming upon his land, although as a necessary consequence it passes on to his neighbour's land instead of his own (e). He may fill up low places on his land, build walls, etc., though by so doing he keep back the surface water to to the injury of the owners of the land of higher level (f).

(a) Dillon, s. 1051; Am. & Eng. Ency. of Law (1st Ed.), vol. 6, p. 26.

(b) *Johnston* v. *City of Toronto*, 25 O. R. 312 (1894).

(c) See also the Act 62 V. (1st Session) c. 5, printed in this volume as s. 563a of "*The Municipal Act*."

(d) *Per* BRAMWELL, B., in *Nield* v. *London & North Western R. W. Co.*, L. R. 10 Ex. 4 (1874), at p. 7.

(e) Garrett on Nuisances, p. 126.

(f) *Ostrom* v. *Sills*, 24 A. R. 526; 28 S. C. R. 485 (1898); *McBeath* v. *Canadian Pacific R. W. Co.*, 29 S. C. R. 359 (1899). See Domat, "*Les Lois Civiles*," s. 1581, cited by BURNS, J., in *L'Esperance* v. *Great Western R. W. Co.*, 14 U. C. R. 173 (1856), at pp. 177-8.

But the owner of land has not, as an incident of his estate therein, the legal right to have the surface water which falls on his lands discharged over another's lands of lower level, even though it would naturally find its way there (*a*). As to natural watercourses the case is otherwise (*b*).

Secs. 554 (5), 555 (1)-(3).

Notes (k)-(d).

(d) "**Provided always that the consent of the municipality shall be obtained before the powers conferred by this clause are exercised.**" But in *Kerfoot* v. *Village of Watford* (*c*), MEREDITH, J., refused to restrain the defendants from acting and from expending corporate funds under a by-law for raising money to maintain, improve and repair a drain which ran through lands in an adjoining municipality, the council of which had not consented to its construction (*d*).

Extension of Sewers.

Extension of sewers into adjoining municipality

555.—(1) In case any township, city, town or village is so situated that in the construction of any sewer therein it becomes necessary in order to procure an outlet therefor, to extend the same into or through a contiguous municipality, the township, city, town or village so situated, shall have power subject as hereinafter provided, to so extend such sewer into or through such contiguous municipality, and shall have power to unite and connect the same to any already existing sewer or sewers of such contiguous municipality, upon such terms and conditions as may be agreed upon between the respective municipalities, and, in case of a difference, then upon such terms and conditions as may be determined by arbitration, under the provisions of this Act.

(2) In any case where the council of any municipality objects to allow an adjoining municipality to connect a sewer with any existing sewer, or to extend a sewer through its territory as above provided, the arbitrators shall not only determine the terms and conditions upon which the connection or extension is to be made, but also whether the connection or extension should, under the circumstances, be permitted or allowed to be made; but nothing in this section contained shall authorize the making of an open drain or sewer, nor shall anything herein contained affect the provisions of *The Ditches and Watercourses Act.* Rev. Stat. c. 285.

(3) Nothing in this section contained shall be construed as

(*a*) *McGillivray* v. *Millin*, 27 U. C. R. 62 (1867); *Creerson* v. *Grand Trunk R. W. Co.*, Ibid, 68 (1867); *Darby* v. *Township of Crowland*, 38 U. C. R. 338, 343 (1876); *Whalley* v. *Lancashire and Yorkshire R. W. Co.*, 13 Q. B. D. 131 (1884), *Ostrom* v. *Sills*, 24 A. R. 526, 539, 28 S. C. R. 485 (1898). See the rule differently stated and the United States cases collected in the Am. and Eng. Encyc. of Law, *Tit.* "Surface Water."

(*b*) *Beer* v. *Stroud*, 19 O. R. 10 (1888); *Williams* v. *Richards*, 23 O. R. 651 (1893); *Arthur* v. *Grand Trunk R. W. Co.*, 25 O. R. 37, 22 A. R. 89 (1895).

(*c*) 24 O. R. 235, 242-3 (1893).

(*d*) See s. 555 and notes (**a**), (**b**) and (**c**) thereto.

Secs. 555 (3), 556 (1).

Notes (a)-(e).

limiting or abridging any of the powers conferred on township councils by this Act. 55 V. c. 42, s. 492.

Taken from 48 V. c. 39, s. 39 (4) (1885).

Extension of sewers into an adjoining municipality.

(a) This section and s. 554 (1) *supra*, "are, upon their face, in *pari materia* and their provisions should not be divorced. The two together form a complete provision to secure proper drainage from one municipality into and through another, and for acquiring all lands of private proprietors necessary for the work to be done" (*a*).

(b) **"Subject as hereinafter provided,"** *i.e.*, subject to such terms and conditions as may be agreed upon *between the respective municipalities*, or may in case of difference or opposition, be determined by arbitration. It is not enough that the land necessary for the extension into and through the contiguous municipality has been acquired from the private owners thereof; the council of the servient municipality are still to be dealt with and their consent to the extension obtained or the right secured by means of an arbitration with them (*b*).

(c) "**In . . . case . . . the council . . . objects to allow an adjoining municipality to extend a sewer through its territory as above provided.**" "The word 'territory' is not here used to signify land belonging to the corporation as owners, but land within their territorial ambit, over which they have territorial jurisdiction. This is the primary and proper meaning of the word as used in the Statutes" (*c*).

(d) "**Nor shall anything herein contained affect the provisions of "The Ditches and Watercourses Act."** S. 19 of that Act (*d*) authorizes the extension (within the limit of length provided by s. 5), of any ditch constructed under the Act "into or through so much of the lands in any other municipality as may be found necessary without the consent of the council of such municipality."

(e) **Sub-section 3.** The object of this sub-section is not apparent. It may be that the reference is to the powers conferred by s. 556.

Sub-Div. iv.—Wet Lands. (Sec. 556) (1).

556 By-laws may be passed by the councils of townships.

Purchasing Wet Lands.

Purchase of wet lands from Government, etc.

1. For purchasing from the Government or from any corporation or person, at a price (in case of Crown Lands, to be fixed by the Lieutenant-Governor in Council, and which price the Lieutenant-Governor in Council is hereby authorized to fix), all the wet lands at the disposal of the Crown or of such corporation or person in such township; and such lands may be sold accordingly to the corporation of such township;

(*a*) *Township of Barton* v. *City of Hamilton*, 18 O. R. 199 (1889), *per* BOYD, C., at p. 203.

(*b*) *Township of Barton* v. *City of Hamilton*, 18 O. R. 199, 17 A. R. 346, 20 S.C.R. 173 (1891). But *contra*, *per* PROUDFOOT, J., 18 O.R. 200, and *per* BRETON, J.A., 17 A. R. 359. See also *Kerfoot* v. *Village of Watford*, cited in note (1) to s. 554.

(*c*) *Per* BOYD, C., in *Township of Barton* v. *City of Hamilton*, 18 O. R. 199, at p. 204, citing examples from the Revised Statutes. See also *per* OSLER, J.A., in *S. C.* 17 A. R. at pp. 352-353; and *contra*, *per* PROUDFOOT, J., 18 O. R. at p. 200.

(*d*) R. S. O. c. 285.

Secs. 558 (1). 557 (1).

Notes (a), (b).

(*a*) The purchase and draining of such lands shall be one of the purposes for which any such corporation may raise money by loan or otherwise, or for which they may apply any of their funds not otherwise appropriated. Raising money for purchasing and draining same.

(*b*) The township may possess and hold the land so purchased, and may, whenever they deem it expedient, sell or otherwise depart with or dispose of the same by public auction, in like manner as they may by law sell or dispose of other property, and upon such terms and conditions, and with such mortgages upon the land so sold, or such other security for the purchase money or any portion thereof, as they may think most advantageous. May hold or dispose of such land.

(*c*) The proceeds of the sale of such lands shall form part of the general funds of the municipality. 55 V. c. 42, s. 521 (12). Proceeds of sale.

Taken from the Act of 1866 (29-30 V. c. 51) s. 345 (5-8).

(a) This is a large extension of the general power conferred by s. 534 (1) to pass by-laws "for obtaining such real . . . property as may be required for the use of the corporation." See note (a) to that section; also "*The Ontario Drainage Act*" (*a*), the Drainage Acts in the Revised Statutes, 1897, and s. 664 *et seq.* of this Act.

(b) "With such mortgages upon the lands so sold, etc. . . . . as they may deem most advantageous." This apparently carries with it the right to foreclose such mortgages (*b*).

Division IX.—HIGHWAYS AND BRIDGES.

(Secs. 557-560).

Incumbering, injuring or fouling roads, bridges, etc. Sec. 557 (1).
Removal of obstructions from highways. Sec. 557 (1-3).
Expense of removal. Sec. 557 (2) (4).
Pathmaster to enforce by-laws for removal. See 557 (5).
Depositing rubbish, etc., on streets. Sec. 557 (6).
Interference with sleighing. Sec. 558.
Removal of snow, ice and dirt. Sec. 559 (1)
Removal of snow, ice and dirt in cities having 100,000 inhabitants or more. Sec. 559 (2).
Cab-stands and booths. Sec. 559 (3).
Electric light, telegraph and telephone poles. Sec. 559 (4).
Conveyance of traffic, driving of cattle, etc. Sec. 559 (5).
Width of sleigh runners. Sec. 559 (6).
Driving or riding horses and cattle on roads and bridges. Sec. 559 (7).
Racing and immoderate driving. Sec. 559 (8).
Horses and cattle on sidewalks. Sec. 559 (9).
Vehicles on sidewalks. Sec. 560.

[See also ss. 598-603 of this Act, and Section XIV. (3) of the Revised Statutes, including Caps. 236-243 inclusive.]

557. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

(*a*) R. S. O. (1887) c. 36.

(*b*) *Township of Orford* v. *Bailey*, 12 Grant 276 (1866), cited in note (a) to s. 534

Sec. 557.

Note (a).

Obstruction of Roads or Streets.

(a) "Every unauthorized obstruction of the King's highway to the annoyance of his subjects is a nuisance." (a).

What is a lawful and what an unlawful use of a highway.

"The primary object of the streets is for the free passage of the public, and anything which impedes that free passage without necessity is a nuisance." (b). A municipal corporation, though it has statutory power (c) to close, stop up, lease or sell roads, streets and other highways, etc., may not place or authorize the placing of obstructions upon highways still retained as such, *e. g.*, weigh-scales upon a street in a town (d).

The right of any one person lawfully to use the street is subject to the right of every other person to make a corresponding use thereof. Thus the carriage and delivery of goods, &c., is the legitimate use of a street, although it may result in the temporary obstruction of public transit. No man has a right to throw wood or stones into the street at pleasure. But, inasmuch as fuel is necessary, a man may throw wood into the street for the purpose of having it carried into his house, and it may lie there a reasonable time. So because building is necessary, stones, bricks, lime, sand and other materials may be placed on the street, provided it is done in the most convenient manner (e). A stage coach may set down or take up passengers in the street, but it must be done in a reasonable time (f). "A cart or waggon may be unloaded at a gateway, but this must be done with promptness. So as to the repairing of a house: the public must submit to the inconvenience occasioned necessarily in repairing the house; but if this inconvenience is prolonged for an unreasonable time, the public have a right to complain." (g)

Obstructing the highway.

A man has no right to occupy one side of a street before his warehouses in loading and unloading his waggons, for several hours at a time, both day and night, so that no carriage can pass on that side of the street, although there be room for two carriages to pass on the opposite side of the street (h). If a man does anything or permits anything on his premises in view of the public, and crowds of persons are thereby attracted to it, to the inconvenience of the public, that thing he cannot be allowed to do. A bookseller in Fleet street took out the frames of his first-floor windows, and put figures into the windows. These figures attracted such crowds to gaze at them that the bookseller was convicted of obstructing the highway (i). Where the private right of the owner of a house adjoining a highway to access from his house to the highway is interfered with by an unreasonable use of the highway, he is entitled to recover damages from the wrongdoer, in respect of loss of custom in the business which he carries on in his house. He is entitled also to recover damages on the ground that he has suffered a particular injury from a public nuisance (j). The right of a landowner to use a public highway for the purpose of bringing materials for the building of a house on his land must be exercised reasonably. If there are several ways of access to the land there is no absolute right to use the most convenient way exclusively without regard to the convenience of neighbouring landowners (k).

The obstructions referred to in sub-section 1 and in s. 560 are temporary in their character, and incidental to the use by the public of the highway as such —those referred to in sub-section 2 are in the nature of encroachments upon

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(a) Bac. Abr., 'Highways" D.

(b) *Per Curiam* in *Rex* v. *Russell*, 6 East 427, 430 (1805).

(c) Ss. 637, 629, 632.

(d) *Cline* v. *Town of Cornwall*, 21 Grant 129 (1874).

(e) Dillon, s. 730, citing *Commonwealth* v. *Passmore*, 1 Serg. & Rawle 217 (1814).

(f) *Rex* v. *Cross*, 3 Camp. 224 (1812).

(g) *Per* Lord ELLENBOROUGH, in *Rex* v. *Jones*, 3 Camp. 230 (1812).

(h) *Rex* v. *Russell*, 6 East 427 (1805). See also on this point, *Reg.* v. *Longton Gas Co.*, 2 E. & E. 651, 666-7 (1860); *Thorpe* v. *Brumfitt*, L. R. 8 Chy. 650 (1873); *Benjamin* v. *Storr*, L. R. 9 C. P. 400 (1874); *Original Hartlepool Collieries Co.* v. *Gibb*, 5 Ch. D. 714, 721-2 (1877).

(i) *Rex* v. *Carlile*, 6 C. & P. 636 (1834).

(j) *Fritz* v. *Hobson*, 14 Ch. D. 542 (1880).

(k) Ibid, p. 552.

Sec. 557 (1).

Note (a).

the highway by owners or occupants of adjoining land; while sub-sections 3 and 6 deal with obstructions such as may, if permitted, amount to non-repair of the highway, a subject more fully considered in the notes to s. 606.

Obstructions to highways.

Certain obstructions upon highways have been permitted and made legal by Statute,—*e. g.*, (unless otherwise provided by by-law), worm-fences not more than half of which are upon the road allowance, (*a*) cab-stands, (*b*) telegraph, telephone and electric light poles, in certain cases, (*c*) ornamental and shade trees, etc. (*d*)

As to the occupation of highways by railways, tramways, etc., see ss. 569, 697, *post*, and "*The Railway Act of Ontario*," (*e*) "*The Railway Act*" (of Canada) (*f*): "*The Street Railway Act*," (*g*): "*The Electric Railway Act*," (*h*) As to railway signal poles erected under statutory authority, *Soule* v. *Grand Trunk R. W. Co.* (*i*); also Dillon, s. 698.

Section 636 of this Act, which permits the Canadian Wheelmens' Association to erect sign posts, mile posts, danger signals, etc., upon the public roads, etc', provides that these shall be "so placed as not to be an obstruction to the highway or to endanger the safety of any person travelling thereon."

When a magistrate may adjudicate summarily.

Subject to the rule of law that where a *bona fide* question of title is raised, the summary jurisdiction conferred by section 705 upon a Justice of the Peace is ousted, (*j*) the question whether the place alleged to have been obstructed, incumbered, injured, etc., is or is not a highway, road, street, square, etc., is one to be determined by the magistrate upon a prosecution under a by-law (*k*). But the mere assertion by the defendant of a claim of right, even though made *bona fide*, will not oust the magistrate's jurisdiction (*l*). It is for him to determine whether or not the case involves a *bona fide* question of title or property, (*m*) and his decision on this point is conclusive and not subject to review, (*n*) provided there is any evidence (or any reasonable evidence) on which it could have been arrived at, but, *semble*, not otherwise (*o*).

As to proceedings by indictment or by civil action, see *post*, s. 586, note (b), and s. 600, note (b).

By the councils of cities, towns and villages:—

Preventing obstruction and fouling of streets, etc.

1. For regulating or preventing the incumbering, injuring or fouling, by animals, vehicles, vessels or other means, of any road, street, square, alley, lane, bridge or other communication. 55 V. c. 42, s. 496 (27).

(*a*) Sub-sec. 5 *infra*.

(*b*) S. 559 (4).

(*c*) See the Statutes referred to in note (e) to s. 559.

(*d*) S. 574 (1) and note (a) thereto. In the U. S.-*Everett* v. *Council Bluffs*, 46 Iowa 66 (1877); but see *Gilchrist* v. *Township of Carden*, 26 C. P. 1 (1876) and *Ferguson* v. *Tp. of Southwold*, 27 O.R. 66 (1896), both referred to in note (a) to s. 557.

(*e*) R. S. O. c. 207, s. 29.

(*f*) 51 V. c. 29, ss. 183-185.

(*g*) R. S. O. c 208, ss. 20-21.

(*h*) R. S. O. c. 209, ss. 36-41.

(*i*) 21 C. P. 308 (1871).

(*j*) Paley on Convictions, (7th Ed.), 145; *Reg.* v. *Taylor*, 8 U. C. R. 257 (1850); *Reg.* v. *Harshman*, 14 N. B. Rep. 346 (1873).

(*k*) *Brittain* v. *Kinnaird*, 1 Br. & Bing. 432 (1819); *Mould* v. *Williams*, 5 Q. B. 469 (1844); *Williams* v. *Adams*, 2 B. & S. 312 (1862); *Reg.* v *Young*, 52 L. J. M. C. 55 (1883); *Leicester Urban Sanitary Authority* v. *Holland*, 57 L. J. M. C. 75 (1888); *Reg.* v. *Bradley*, 63 L. J. M. C. 183 (1894).

(*l*) *Simpson* v. *Wells*, L. R. 7 Q. B. 214 (1872); *White* v. *Feast*, L. R. 7 Q. B 351 (1872); *Leicester Urban Sanitary Authority* v. *Holland*, *supra*.

(*m*) *Reg.* v. *Musset*, 26 L. T. N. S. 429 (1872); *Reg.* v. *Critchlow*, 26 W. R. 681 (1878); *Reg.* v. *Malcolm*, 2 O. R. 511 (1883); *Reg.* v. *McDonald*, 12 O. R. 381 (1886).

(*n*) *Reg.* v. *Malcolm*, supra.

(*o*) *Reg.* v. *Howarth*, 33 U. C. R. 537 (1873); *Reg.* v. *Cuthbert*, 45 U C. R. 19, 24 (1880); *Reg.* v. *McDonald*, 12 O. R. 381, 389 (1886); *sed contra*, *Reg.* v. *Urquhart*, (Q. B. D.) Dec., 1899, not yet reported. And see *Reg.* v. *Walsh*, 29 Nova Scotia Rep. 521 (1897), reversing *Reg.* v. *E. McDonald*, 19 Nova Scotia Rep. 336 (1886).

Sec. 557 (2).

Notes (b), (c).

Removal of door-steps, etc.

2. For directing the removal of door-steps, porches, railings or other erections, or obstructions projecting into or over any road or other public communication, at the expense of the proprietor or occupant of the property connected with which such projections are found. 55 V. c. 42, s. 496 (28).

Taken from the Act of 1858 (22 V. c. 99 s. 324 (3-4). *Cf.* 12 V. c. 81, s. 69 (23) (villages) ss. 61, 67, 80 (towns); ss. 82, 106 (cities).

Incumbering, injuring or fouling highways.

(b) **"For regulating or preventing the incumbering, injuring or fouling . . . of any road . . ."** This clause relates to acts incidental to the use of the highway, etc., as such. As to "incumbering" or obstructing, see more fully the next note and Dillon, s. 680, note 3, citing *Grand Rapids* v. *Hughes*, 16 Mich. (54); as to "fouling" see sub-section 6, and note (g). As to "injuring," an instructive case is *St. Mary, Newington (Vestry of)* v. *Jacobs* (*a*), in which the respondent was the owner and occupier of premises consisting of a warehouse and yard adjoining a public highway, part of which highway, extending along the front of the premises, was a flagged foot pavement. The premises were used for the deposit of heavy machinery, etc., which was at first unloaded on the roadway and then moved by means of rollers and levers across the pavement into the premises. This occupied much time and was objected to as causing a nuisance by the obstruction of the foot-pavement. The respondent accordingly applied to the appellants (the local authority) for permission to take up the flags and make a proper paved carriage access across the footway; but they refused the permission. He then conveyed his machinery across the footway in waggons or trolleys, the weight of which crushed and injured the flags, whereupon the appellants summoned him under s. 72 (1) of "*The Highway Act, 1835*," before a magistrate for "causing injury to be done to the highway." The magistrate dismissed the summons, finding that the premises in question could not reasonably be enjoyed without access across the footpath, and that the rights of ownership and those of the public might be jointly exercised consistently with the general welfare; and the Court of Queen's Bench upon a stated case affirmed this decision.

What is a "vehicle."

(c) **"By animals, vehicles, vessels or other means"** (*b*). A bicycle is a "vehicle" (*c*), and a conviction for obstructing a highway by riding one on a sidewalk, contrary to a municipal by-law passed under this section, is good, though no person was near at the time (*d*). So a conviction under a similar by-law for unlawfully incumbering a street by placing and leaving thereon a cart used for taking likenesses was held good (*e*). But a perambulator in which a child is being pushed or pulled along is not a carriage in the ordinary sense of that word, and such a vehicle may reasonably be used on a footway, provided it is of such a size and weight as not to injure the footway or to be a nuisance to other passengers thereon (*f*).

As to "vessels" see now s. 562 (8), which in the Act of 1849 formed part of this section.

(*a*) L. R. 7 Q. B. 47 (1871).

(*b*) See also as to blocking up streets by vehicles used for market purposes, s. 579 (9), and as to regulating traffic and the conveyance of traffic, that clause and s. 559 (5), and *cf. Rex* v. *Jones*, *Rex* v. *Russell*, etc., cited in note (a) *supra*, also *Ball* v. *Ward*, 33 L. T. N. S. 170 (1875), decided under the corresponding section of "*The Town Police Clauses Act*," (Imp. Stat. 10-11 V. c. 89, s. 28).

(*c*) *Ellis* v. *Nott-Bower*, 13 Times L. R. 35 (1896). See an interesting article on "Bicycle Law" in 35 C. L. J. N. S. 130.

(*d*) *Reg.* v. *Plummer*, 30 U. C. R. 41 (1875), and see *Reg.* v. *Justin*, 24 O. R 327 (1893). *Cf.* foot-note (*b*), p. 661.

(*e*) *Reg.* v. *Davis*, 24 C. P. 575 (1875); and see *Ridley* v. *Lamb*, 10 U. C. R. 354 (1852), (waggon); *Vars* v. *Grand Trunk R. W. Co.*, 23 C. P. 143 (1873), (hand-car); *Mott* v. *Shoolbred*, L. R. 20 Eq. 22 (1875), (carts and vans); *Harris* v. *Mobbs*, 3 Ex. D. 268 (1878), (house-van attached to a steam plough); *Wilkins* v. *Day*, 12 Q. B. D. 110 (1883), (agricultural roller); *Reg.* v. *Chitteaden*, 15 Cox C. C. 725 (1885), (traction engine); *Smith* v. *Hayes*, 29 O. R. 283 (1898), (hoisting machine); see also note (b) to s. 600.

(*f*) *Reg.* v. *Mathias*, 2 F. & F. 570 (1861).

Among other modes of incumbering highways *ejusdem generis* with the foregoing may be mentioned— **Sec. 557 (1), (2).**

Notes (c), (d).

(a) Sawing lumber on the highway (*a*).

(b) The deposit of building material thereon, which is a matter for regulation under this clause (*b*). Under similar words in s. 22 of the Act, incorporating the City of Toronto, (*c*) a city ordinance allowing persons building houses to occupy a certain portion of the street with their building materials, was held good (*d*). Incumbering, or obstructing highways.

(c) The removal of buildings from one site to another along the highways of a municipality (*e*).

(d) Exposing articles for sale on the highway where there is no established market (*f*).

(e) Collecting a crowd by an exhibition or performance either upon the highway or upon adjoining premises (*g*).

So a highway may be unlawfully obstructed by making speeches or holding public meetings upon it; for such a proceeding "is in its nature irreconcileable with the right of free passage, and there is no authority whatever in favour of it" (*h*).

"*The Criminal Code, 1892*," declares every person to be a loose, idle or disorderly person or vagrant, punishable on summary conviction, who—

> "(e) loiters on any street, road, highway or public place, and obstructs passengers by standing across the footpath, or by using insulting language, or in any other way."

As to this mode of "obstructing" see *per* WILSON, C.J., in *Reg.* v. *Plummer* (*i*).

(d) Sub-section 2. See also ss. 637 (4) (obstructions), and 639 (areas). Obstructions of the class here referred to are best dealt with in the summary manner pointed out by this sub-section and s. 703, and not by fine, distress and imprisonment under s. 702 (*j*). Encroachments upon highways.

(*a*) *Rex* v. *Jones*, 3 Camp. 229 (1812).

(*b*) Dillon, ss. 731, 732. (*c*) 4 Wm. IV. c. 23.

(*d*) *Herrey* v. *French*, E. T. 3 Vic., R. & J. Dig. p. 4037; and see *per* ADAM WILSON, J., in *Reynolds* v. *City of Toronto*, 15 C. P. 276 (1865) at pp. 280-1. *Cf.* the provisions of s. 72 (1) of "*The Highway Act, 1835*" (Imp. Stat. 5 & 6 Wm. IV. c. 50) and ss. 79-82 of "*The Towns Improvement Clauses Act*," (Imp. Stat. 10-11 V. c. 34).

(*e*) See Dillon, s. 730, citing *Graves* v. *Shattuck*, 35 N. H. 257 (1857); *Toronto Street R. W. Co.* v. *Dollery*, 12 A. R. 679 (1886); *Howard* v. *City of St. Thomas*, 19 O. R. 719 (1889); *Rice* v. *Town of Whitby*, 28 O. R. 598, 25 A. R. 191 (1895).

(*f*) Dillon, ss. 387, 680, note 1; *Summers* v. *Holborn District Board of Works*, [1893] 1 Q. B. 612; *Keep* v. *St. Mary, Newington (Vestry)*, [1894] 2 Q. B. 524; but otherwise when the highway is so used under statutory or other lawful authority, *Davidson* v. *City of Montreal*, Q. R. 7 Q. B. 1, 28 S. C. R. 421 (1898), and see *Warner* v. *Wandsworth Board of Works*, 53 J. P. 471 (1889).

(*g*) *Rex.* v. *Moore*, 3 B. & Ad. 184 (1832), (shooting ground); *Rex* v. *Carlile*, 6 C. & P. 636 (1834), see note (**a**); *Walker* v. *Brewster*, L. R. 5 Ex. 25 (1867), (fireworks and band); *Bellamy* v. *Wells*, 39 W. R. 158 (1890), (boxing matches); and *Barber* v. *Penley*, [1893] 2 Ch. 447, where the cases are reviewed by NORTH, J.

(*h*) *Ex p. Lewis*, 21 Q. B. D. 191 (1888), *per* WILLS, J., at p. 197; *Hornor* v. *Cadman*, 54 L. T. N. S. 421 (1886); *Reg.* v. *Graham and Burns*, 4 Times L. R. 212 (1888).

(*i*) 30 U. C. R. p. 42 (1870); but see *Reg.* v. *Long*, 59 L. T. N. S. 33 (1888).

(*j*) See *Marshall* v. *Smith*, L. R. 8 C. P. 416 (1873), cited in note (**e**) to s. 542; *Re McCutchon* v. *City of Toronto*, 22 U. C. R. 613 (1863), cited in note (**b**) to s. 551 and *Reg.* v. *Huber*, 15 U. C. R. 589 (1858), where a conviction for obstructing a highway by placing a rail-fence thereon, coupled with an order that the defendant should pay a fine of ten shillings, should remove the fence within one week, and in default thereof should pay an additional fine of $5 for every week the said fence should obstruct the road, was quashed as "having nothing to warrant it in any Act of Parliament." See also *Coggins* v. *Bennett*, 2 C. P. D. 568 (1877), where it was held that an encroachment upon a highway is not a continuing offence.

Sec. 557 (1), (2).

Note (d).

But the summary procedure authorized by the Statute should not be resorted to until the offending party has had notice and an opportunity to show cause. (*a*) And the authority to remove must be given by by-law, not by a mere resolution. (*b*)

Encroachments upon highways.

Among corresponding English Statutes relating to encroachments on highways are, 57 Geo. III. c. 29, s. 72, ("Michael Angelo Taylor's Act")—which empowers paving authorities in the metropolis to regulate or remove from the front or sides of houses all fixed or moveable projections which in their judgment are inconvenient or incommodious to passengers along the carriage or foot ways; (*c*)—"*The Highway Act, 1835*," (*d*)—which prohibits encroachments on any carriage or cart-way, and under which it was held that a conviction of the offending party is a condition precedent to the right to remove such encroachments, (*e*) and is a sufficient warrant and justification therefor, although it subsequently turns out to have been an erroneous conviction, (*f*)—and "*The Highway Act, 1864*," (*g*) as to which see *Easton* v. *Richmond Highway Board*. (*h*)

"*The Metropolitan Police Act*," (*i*) imposed a penalty upon every person "who shall set up or continue . . . any projection . . . from any . . . part of any . . . shop . . . so as to cause any . . obstruction in any . . . thoroughfare."

Under that Act a person was convicted upon evidence that he used (affixed to the front of his shop) a showboard 11½ inches of which projected over a street 36 feet 8 inches wide at a height of 2 ft. 3 inches across the footway. Evidence that the public were not incommoded was tendered but refused. *Held*, that the conviction was right, as upon the above facts the magistrate could lawfully find that an obstruction was caused. (*j*)

"*The Towns Improvement Clauses Act, 1847*," (*k*) and "*The Metropolitan Local Management Act, 1855*," (*l*) provided (in words almost identical) for the removal or alteration after notice to the owner or occupant, of "any porch, shed, projecting window, step . . . lamp . . . sign . . . showboard, gate, fence or any other obstruction or projection . . . in front of any . . . building . . . which is ["an obstruction to the safe and convenient passage along any street" (*T. I. C. Act*)] an annoyance by reason of projecting into or endangering or rendering less commodious the passage along any street" (*M. L. M. Act*, s. 119).

These sections (as well as s. 72 of Michael Angelo Taylor's Act) are limited to actual encroachments upon a highway and do not extend to area railings (*m*); or other erections close to but not upon the highway. (*n*) But "a rotten fence near a highway is an obvious nuisance," (*o*) and may therefore be abated under the authority of s. 583 (1) of this Act. (*p*)

It is for the magistrate to determine whether the thing complained of is "an obstruction" or "an annoyance;" (*q*) and he need not, either under these sections or under the corresponding section (28) of "*The Town Police Clauses*

(*a*) See note (**e**) to s. 542. (*b*) See note (**e**) to s. 325, and s. 583.

(*c*) *St. Mary, Islington (Vestry of)* v. *Goodman*, 23 Q.B.D. 154 (1889).

(*d*) 5-6 Wm. IV. c. 50, ss. 64-70 (already referred to in notes (**b**) and (**c**).

(*e*) *Cooper* v. *Wandsworth Board of Works*, 14 C.B.N.S. 180 (1863).

(*f*) *Keane* v. *Reynolds*, 2 E. & B. 748 (1853).

(*g*) 27-28 V. c. 101, s. 51. (*h*) L.R. 7 Q.B. 69 (1871).

(*i*) 2 & 3 V. c. 47, s. 60.

(*j*) *Read* v. *Perrett*, 1 Ex. D. 349 (1876).

(*k*) Imp. Stat. 10-11 V. c. 34, s. 69, (incorporated as to urban districts into "*The Public Health Act, 1875*" by s. 160 thereof).

(*l*) Imp. Stat. 18-19 V. c. 120, ss. 119-120.

(*m*) *Bouverie* v. *Miles*, 1 B. & Ad. 38 (1830).

(*n*) *Le Neve* v. *Mile End Old Town*, 8 E. & B. 1054 (1858); *Wyatt* v. *Gems*, [1893] 2 Q.B. 225.

(*o*) *Per* Sir A. L. Smith, L. J., in *Horrold* v. *Watney*, [1898] 2 Q.B. 320 at p. 332.

(*p*) See note (**b**) to that section.

(*q*) *Gabriel* v. *St. James, Westminster*, 53 J.P. 372 (1889).

Act, 1847," (*a*) require evidence that any person has actually been obstructed or annoyed. (*b*) The mere fact that there is a bona fide claim of right will not oust the magistrate's jurisdiction. See note (**a**) supra.

Encroachments upon highways.

As to the liability of the occupier of premises adjoining a street for accidents caused by things projecting into or over it, see *Tarry* v. *Ashton*, 1 Q. B. D. 314 (1876) (lamp); *Watson* v. *Ellis*, 1 Times L. R. (1885) (carpet); *De Teyron* v. *Waring*, Ibid. 414 (1885) (do.); *Hoare* v. *Kearley*, Ibid. 426 (hoarding); *Strutt* v. *Southwark and Vauxhall Water Works Co.*, 5 Times L.R. 638 (1889) (uncovered stopcock box); *Braithwaite* v. *Watson*, 5 Times L.R. 331 (1889) (coal cellar plate); *Roberts* v. *Mitchell*, 21 A.R. 433 (1894) (cornice).

"*The Metropolis Local Management Act, 1862*," (*c*) which repealed and took the place of s. 143 of "*The Metropolitan Local Management Act, 1855*," and was in its turn superseded by corresponding provisions of "*The London Building Act, 1894*," (*d*) prohibited the erection without the consent in writing of the Metropolitan Board of Works (now the London County Council) of any building, structure or erection *beyond the general line of buildings in any street*, etc.; but the numerous decisions under these successive sections afford no aid in the interpretation of the sub-section now under consideration. *City of Halifax* v. *Reeves* (*e*) was decided under a somewhat similar provision in a Nova Scotia Act, the charter of the plaintiffs.

Expenses of abatement.

(e). "At the expense of the proprietor or occupant of the property connected with which such projections are found."

This applies although he may claim that the nuisance was not created by him or exists with his consent. A person who merely suffers a tree to grow so that it projects over a bridle-way does not "wilfully obstruct" the road within the meaning of s. 72 of "*The Highway Act, 1835*;" (*f*) but in order to constitute a wilful obstruction it is not necessary that there should be any act of commission. The offence may be complete by the omission of some person, whose duty it is to remove an obstruction, to do so after notice. (*g*)

The expense incurred in abating the encroachments may be recovered by action or distress, and in case of non-payment (or of no distress being found), in the same manner as municipal taxes. See ss. 387,703. In England the only mode of recovering them is by action, (*h*) and it must be therein established that an obstruction or encroachment did in fact exist. (*i*)

By the councils of townships, cities, towns and villages :—

By-laws for removal of certain obstructions from roads.

3. For directing the removal of any fence, timber, stone, firewood, or any other obstruction placed upon any highway under the control of the council, excepting material that is to be used for road or bridge purposes.

Preventing throwing of dirt, etc., upon streets, etc.

4. For providing that the person placing any such obstructions or materials upon any highway shall, after notice to remove the same, and upon default for five days after such notice, be liable for the expense of the removal of the same.

Duties of pathmasters.

5. For providing that the pathmasters, in their several road divisions, or other officers appointed for the purpose, shall enforce the provisions of such by-law.

Worm fences.

Provided always that, unless the by-law otherwise expressly provides, a worm fence which is not for more than one-half

(*a*) Imp. Stat., 10-11 V. c. 89.

(*b*) See *Read* v. *Perrett*, *supra*; *Reg.* v. *Fermanagh* (*Justices of*) 14 L.R. Ir. 59; *Leisk* v. *Galloway*, 12 Ct. of Sessions Cas. 4th Series, (J.C.) 5.

(*c*) Imp. Stat. 25-26 V. c. 102, s. 75. (*d*) 57-58 V. c. 213, s. 22.

(*e*) 23 S.C.R. 340 (1894). (*f*) *Walker* v. *Horner*, 1 Q.B.D. 4 (1875).

(*g*) *Gully* v. *Smith*, 12 Q.B.D. 121 (1883).

(*h*) *Louth Rural District Council* v. *West*, 12 Times L.R. 477 (1896).

(*i*) *Reynolds* v. *Presteign Urban Dist. Council*, [1896] 1 Q.B. 604.

Secs. 557 (5), (6); 558; 559 (1).

Notes (f); (a).

its width upon a road allowance, shall not be deemed an obstruction within the meaning of the three preceding clauses 3, 4 and 5. 57 V. c. 50, s. 15.

Added in 1894. See the reference.

Removal of obstructions from highways.

(f). Since the matters dealt with by these sub-sections are already elsewhere provided for (a) and the period which they allow for the removal of obstructions is a dangerously long one, it would seem that the chief result of the enactment is to render legal the occupation of part of the highways in rural municipalities by worm fences.

6. For preventing persons from throwing any dirt, filth, carcasses of animals, or rubbish, upon any street, road, lane or highway. 55 V. c. 42, s. 489 (23).

Taken from 31 V. c. 30, s. 36 (1868).

(g). This is a fuller statement of the power contained in s. 60 (2) of the Act of 1849 to "prevent . . . the fouling of any . . . highway." (b) The words used in s. 72 of "*The Highway Act, 1835*," (c) are "lay any . . . hay, straw, dung, manure, lime, soil, *rubbish*, etc., on, or suffer any *filth*, *dirt*, lime or other offensive matter or thing . . . to run or flow into or upon any highway from any house, etc.," ; under which it was held in *Crossdill* v. *Ratcliffe*, (d) that water flowing upon a highway from the eaves of a building was not within the clause, not being "filth, etc.," or a thing *ejusdem generis* therewith. See also s. 28 of "*The Town Police Clauses Act*." (e)

Repair of Roads.

Stone or gravel on roads.

558. No stone, gravel or other material shall be put upon the roads for repairs during the winter months so as to interfere with sleighing. 55 V. c. 42, s. 523.

Taken from "*The Municipal Amendment Act, 1885*," (48 V. c. 39) s. 20 (66).

(a). Any one who without lawful excuse wilfully does the act forbidden by this section is guilty of an indictable offence and liable to one year's imprisonment. See note (a) to s. 393.

559. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

Removal of Snow, Ice and Dirt.

By the councils of towns, villages and cities, except cities having 100,000 inhabitants or more.

Removal of snow, etc.

1. For compelling persons to remove all snow and ice from the roofs of the premises owned or occupied by them; and to remove and clear away all snow, ice and dirt and other obstructions, from the sidewalks, streets and alleys adjoining such premises; and also to provide for the cleaning of sidewalks and streets adjoining vacant property, or the property of persons who, for twenty-four hours, neglect to clean the same; and to remove and clear away all snow and ice, and other obstructions, from such sidewalks and streets, at the expense of the owner or occupant in case of his default; and in case of

Cleaning of sidewalks, streets, etc.

(a) See sub-section 1 and ss. 600 (note (b)), 609-611, 637 (4) 703.

(b) See sub-section 1, *supra*.

(c) Imp. Stat. 5-6 Wm IV. c. 50.

(d) 5 L.T.N.S. 834 (1862).

(e) Imp. Stat. 10-11 V. c. 89.

non-payment, to charge such expenses as a special assessment against such premises, to be recovered in like manner as other municipal rates.

Removal of snow, ice and dirt from roof and sidewalks.

(*a*) The council may, in the by-law passed for the purposes of the preceding clause, define certain areas or streets within the municipality, within or upon which the by-law shall be operative. 55 V. c. 42, s. 496 (25), 57 V. c. 50, s. 10.

The Act of 1858, (22 V. c. 99, s. 299 (12) authorized cities and towns to pass by-laws "for compelling, etc.," (as in the first clause of this sub-section) "and also to remove the same from the sidewalks, streets or alleys in front of such premises; and for removing the same at the expense of the owner or occupant in case of his default." This was extended to villages by the Act of 1866, (29-30 V. c. 51), s. 296 (47). The present form of the sub-section is taken from the Act of 1873, (36 V. c. 48), s. 384 (11) clause (*c*) having been added in 1885 by 48 V. c. 39, s. 17 and a slight verbal amendment made in 1894 by 57 V. c. 50, s. 10. By 58 V. c. 42, s. 26 (1895), cities containing over 100,000 inhabitants were excepted from the operation of this section; see also 60 V. c. 15, Sched. C (117).

(a). **"For compelling persons to remove all snow and ice from the roofs of the premises owned or occupied by them."** The powers conferred by this and the following sub-section are intended to aid municipal corporations in the fulfilment of their duty to keep the highways in repair, and must be interpreted in the light of this intention (*a*).

In *Lazarus* v. *City of Toronto*, (*b*) where the plaintiff, while walking along a street in the city of Toronto, was injured by snow falling from the roof of a building erected by one H. upon land of the defendants, and occupied by the defendants as tenants of H., it was held that at common law there is no duty incumbent upon the owners or occupiers of buildings adjoining public highways to clear away snow from the roofs of such buildings; and that, there being in this case no evidence of improper construction of the building or its roof, or of any municipal by-law requiring the removal of snow from the latter, the defendants were not liable for the accident. The statement that there is no common law liability on the part of a property owner to remove snow, etc., from the roof of a building abutting upon a highway may fairly be questioned; but, as was said by CAMERON, C. J., in *Landreville* v. *Gonin*, (*c*) "The case of *Lazarus* v. *Toronto* was well decided on the facts, as there was no evidence whatever of negligence on the part of the defendants."

There must be some evidence of negligence to fasten upon the owner or occupant of a building, liability for damage arising from the falling of ice, snow or other things therefrom. The leading American case on this point is *Shipley* v. *Fifty Associates*, (*d*) where it was held that "for an injury resulting from the sliding of a mass of ice or snow from a roof upon a person travelling with due care upon a highway, the owner of the building is liable if he suffered the ice and snow to remain an unreasonable time after he had received notice of its accumulation and ought to have removed it." And this exposition of the law is quoted with approval by HAGARTY, C.J., in *Skelton* v. *Thompson*, (*e*) and by CAMERON, C.J., in *Landreville* v. *Gonin*, (*f*) where the facts that there was a by-law of the municipality requiring persons to remove snow and ice from the roofs of their buildings, and that the defendant had been notified about half an hour before the accident that there was danger of snow and ice falling from his roof, were held to be evidence of negligence which should have been submitted to the jury. In *Roberts* v. *Mitchell*, (*g*) the defendant, who owned and resided in a building from which a cornice overhanging the sidewalk had fallen upon the plaintiff because of the nails by which it was fastened having become loosened by ordinary decay, was held liable for the injury, without proof of his knowledge of the dangerous condition, the defect being one which he could have ascertained by inspection.

(*a*) See *Stinson* v. *Browning*, L.R. 1 C.P. 321 (1865).
(*b*) 19 U.C.R. 9 (1859).
(*c*) 6 O.R. 455 (1884), at p. 461.
(*d*) 101 Mass. 251 (1869).
(*e*) 3 O.R. 11 (1883), at p. 14.
(*f*) 6 O.R. 455 (1884), at p. 460.
(*g*) 21 A.R. 423 (1894).

Sec. 559 (1)

Notes (a) (b).

Liability for damage done by objects falling into the highway.

The Court of Appeal in that case adopted Sir Frederick Pollock's statement of the law, viz.,

> "Where damage is done by the falling of objects into a highway from a building, the modern rule is that the accident, in the absence of explanation, is of itself evidence of negligence . . . . . In other words, the burden of proof is on the occupier ("owner") of the building. If he cannot show that the accident was due to some cause consistent with due repair and careful management of the structure, he is liable" (*a*) "The owner of property abutting upon a highway is under a duty to keep it from being a cause of danger to the public by reason of any defect either in structure, repair, use or management which reasonable care and skill can guard against." (*b*)

In the Province of Quebec the proprietor of a house fronting on a public street is responsible for accidents caused by snow or ice falling from the roof.(*c*) In that Province it is the duty of the tenant to remove snow and ice from the roof of the building which he occupies, and if he makes default the landlord may do the work and recover from him the expense so incurred. (*d*)

According to most of the American decisions, municipal corporations are not liable for accidents arising by reason of the falling of objects from adjoining buildings into highways. As to snow and ice sliding from roofs, their exemption from liability is unquestioned; but as to cornices, signs, awnings, and as to trees, telegraph poles, etc., so falling, there is authority for holding the corporation responsible if the highway has been allowed to become unsafe from want of proper supervision. (*e*)

In *Thibault* v. *City of Montreal*, (*f*) it was determined that the defendants, having no power beyond that of punishing the occupant of a building who neglects to remove snow, etc., from the roof, could not be held responsible for an accident occurring by reason of the sliding of the snow therefrom into the adjoining street.

But it is to be noted that in Ontario the municipality in addition to the power conferred by the sub-section now under consideration to pass by-laws compelling persons to remove and clear away snow and ice from roofs, may, under s. 703, direct that this shall be done at the expense of the owner or occupant in case of his default.

(b). **"To remove and clear away all snow, ice. . . . dirt and other obstructions from the sidewalks."** Under the General Paving Act of 1817, (*g*) every occupant of a "building" in the metropolis is bound during the continuance of frost and after the fall of snow to sweep and clean once every day, excepting Sunday, before 10 a. m., the footway adjoining his premises. But a by-law "that all occupiers of premises . . . shall properly clean and remove all *snow* . . . from the footpath opposite their respective premises," etc., was held to be unauthorized by *s.* 55 of the Public Health Act of 1848, which empowered Local Boards to compel the removal of "dust, ashes, rubbish, filth, manure, dung and soil" (*h*).

In the United States an ordinance requiring the occupant (or in case there is no occupant, the owner) of every building bordering upon certain streets to clear the snow from the sidewalks adjoining their respective buildings was held to be authorized by a "general welfare clause" empowering a municipal corporation to make "needful and salutary by-laws" (*i*).

(*a*) Pollock, Law of Torts, (3rd Ed.) 459.

(*b*) *Ibid*, p. 461. See *Daniels* v. *Potter*, 4 C. & P. 262 (1830); *Nordheimer* v. *Alexander*, M. L. R. 6 Q. B. 402, 3 S. C. 283, 19 S. C. R 248 (1889-90); *Ferrier* v. *Trepannier*, 24 S. C. R. 86 (1894) at pp. 91, 101.

(*c*) *Rancour* v. *Hunt*, Q. R. 1 S. C. 74 (1892).

(*d*) *Hudson* v. *Baynes*, 18 Revue Legale 81 (1888); *Hudson* v. *Russell*, Ibid 134 (1888).

(*e*) Dillon, s. 1013; Tiedeman, s. 345; American & English Encyclopedia of Law, *Tit.* "Highways" VIII. 4; and *cf. Gilchrist* v. *Township of Carden*, 26 C.P. 1 (1876), (falling tree), and *Ferguson* v. *Township of Southwold*, 27 O.R. 66 (1895), (overhanging tree).

(*f*) Q.R. 5 S.C. 45 (1894). (*g*) Imp. Stat. 57 Geo. II., c. 29, s. 63.

(*h*) *Reg.* v. *Wood*, 5 E. & B. 49; *S. C.*, *sub nom. Reg.* v. *Rose*, 1 Jur. N. S. 803 (1855).

(*i*) Dillon, s. 394; Am. & Eng. Encyc. of Law, *Tit.* "Municipal Corporations," XVII.

Sec. 559 (1)-(2). Notes (b)-(c).

Even where such a by-law exists, neglect to comply with its requirements will not *per se* render such adjoining owners or occupants liable for accidents caused by an accumulation of snow, ice or rubbish on the highway or sidewalk (*a*). But where the accumulation of snow, ice or dirt is due not only to natural causes (*b*) but to some wrongful act on the part of the owner or occupant of adjoining property, *e. g.*, to his having deposited it upon the highway (*c*); or to his having wrongfully discharged thereon water which froze and caused the mischief (*d*), such owner or occupant will be liable for any damage *thus occasioned* (*e*), and the action may be brought either directly against him (*f*) or, (if the defect has continued long enough to make it incumbent upon the municipal authorities to remove it), then against the municipal corporation, which may in that case avail themselves of the remedy over given by s. 609. See the notes to that section.

(c). "**To charge such expenses as a special assessment against such premises.**" An account is usually kept of the expense incurred in each removal of snow, etc. This is divided among the properties benefited *pro rata* according to their frontage, and at the end of the winter a statement shewing the total amount thus expended in respect of each parcel of land is made up by the clerk or treasurer, who demands payment thereof from the occupant, or the owner (if there is no occupant), and, upon his default in payment, enters it upon the collector's roll in a separate column.

By the councils of cities having 100,000 inhabitants or more:—

Removal of snow, etc.

2. For compelling persons to remove all snow and ice from the roofs of the premises owned or occupied by them; and to remove and clear away all snow, ice and dirt and other obstructions from the sidewalks, streets and alleys adjoining such premises; and also to provide for the cleaning of sidewalks and streets adjoining vacant property or the property of persons who neglect to clean the same within five hours after eight o'clock in the morning where the storm ceased at any time before the hour of eight o'clock in the morning; and to remove and clear away all snow and ice and other obstructions from such sidewalks and streets at the expense of the owner or occupant in case of his default; and in case of non-payment to charge such expenses as a special assessment against such premises, to be recovered in like manner as other municipal rates. 58 V. c. 42, s. 26; 60 V. c. 15, *Sched.* C (117)

Hours within which sidewalks must be cleaned.

Added in 1895. See the references appended to the subsection. The amendment made by 60 V. c. 15, Sched. C (117) is noted under sub-section 1.

(*a*) Dillon, ss. 1006, 1012; *City of St. Louis* v. *Connecticut Mutual Life Ins. Co.*, 17 South-Western Reporter 637 (1891), quoted by MacMahon, J., in *Oryan* v. *City of Toronto*, 24 O. R., at p. 322 (1893).

(*b*) *Skelton* v. *Thompson*, 3 O. R. 11 (1883).

(*c*) *Ibid*, *per* Armour, J., at p. 17; *Bliss* v. *Boeckh*, 8 O. R. 451 (1885).

(*d*) *Oryan* v. *City of Toronto*, supra.

(*e*) *Sharpe* v. *Powell*, L. R. 7 C. P. 253 (1872), ; *Bliss* v. *Boeckh*, supra.

(*f*) *Cf. Vars* v. *Grand Trunk R. W. Co.*, 23 C. P. 143 (1873); *Skelton* v. *Thompson*, supra; *Hopkins* v. *Town of Owen Sound*, 27 O. R. 43 (1895); *O'Neil* v. *Township of Windham*, 24 A. R. 341, 344 (1897); *Brousseau* v. *Bourdon*, Q. R. 13 S. C. 46 (1897); *Mallet* v. *Martineau*, Ibid 510 (1898).

Sec. 559 (3), (4).

Notes (d), (e).

Cab-stands and Booths.

By the councils of cities, towns and villages :—

Cab stands.

3. For authorizing, and for assigning stands for vehicles kept for hire on the public streets and places; and for authorizing the erection and maintenance of covered stands or booths on the streets, highways and public places, for the protection or shelter of the drivers of such vehicles;

Proviso.

Provided that no such booth or covered stand shall be placed upon any sidewalk without the previous consent of the owner or lessee of the property fronting, abutting or adjoining such stand or booth. 55 V. c. 42, s. 496 (38).

Taken from 43 V. c. 24, s. 15 (1880).

(d) It had been held by MORRISON, J., in *Re Davies and Village of Clifton*, (a) that a by-law authorizing a cab-stand to be kept on a public highway was illegal, since the result would be to license the creation of a nuisance, which is *ultra vires* of a municipal corporation (b); but in *Re Colborne and Town of Niagara Falls*, (c) ROSE, J. refused to quash a by-law authorizing hacks to stand on the street in front of the applicant's hotel, though it was urged that the stand interfered with the view of the Falls from the ground floor of the hotel, that the manure on the stand was offensive, and that the noise of the hackmen amounted to a nuisance.

Per CURIAM :—

> "The two latter objections do not necessarily arise from the stand being allowed. . . . Under proper regulations, it ought to be kept clean, and the drivers not allowed to make an excessive noise. This is a matter for municipal regulation. If the stand proves a nuisance, the proper steps may be taken to abate the nuisance."

Electric Light, Telegraph and Telephone Poles and Wires

Poles and Wires.

4. For regulating the erection and maintenance of electric light, telegraph and telephone poles and wires within their limits. 55 V. c. 42, s. 496 (39).

Taken from 44 V. c. 24, s. 14 (1881); "electric light" added in 1891 by 54 V. c. 42, s. 21.

What companies are, and what companies are not, subject to municipal control.

(e) It is evident from the position of this subsection that the powers here conferred are intended to enable the councils of cities, towns and villages to protect public highways from being obstructed or interferred with by poles and wires. But owing to the fact that there are several telegraph and telephone companies doing business in Ontario in respect of whose lines it is claimed that the Province has no jurisdiction thus to legislate (d), questions of considerable difficulty may arise in such cases as to the scope of the powers exercisable by the municipality.

Provincial companies.

As to companies within the jurisdiction of the Provincial Legislature,—such, for example, as have been incorporated by Provincial statutes or letters patent—

(a) June, 1877, not reported.

(b) Dillon, s. 660; *Rex* v. *Cross*, 3 Camp. 224 (1812). See note (a) to s. 557.

(c) 9 O. R. 168 (1885).

(d) See *Monkhouse* v. *Grand Trunk R. W. Co.*, 8 A. R. 637 (1883), *per* SPRAGGE, C. J. O., at pp. 639-641; *Washington* v. *Grand Trunk R. W. Co.*, 24 A. R. 183 (1897); [1899] A. C. 604; *Canadian Pacific R. W. Co.* v. *Parish of Notre Dame de Bonsecours*, Q. R. 7 Q. B. 121; [1899] A.C. 367; *Madden* v. *Nelson and Fort Sheppard R. W. Co.*, 5 B. C. R. 541, 670 (1897); [1899] A. C. 626.

no such difficulty arises (*a*); and, in the absence of express exemption therefrom, the right of such companies to place poles and wires upon the highway is clearly subject to municipal regulation and control under this subsection.

Dominion companies.

Section 92 (10) of "*The B. N. A. Act, 1867*," exempts from Provincial jurisdiction, and places within the exclusive legislative authority of the Parliament of Canada "(a). Telegraphs, etc., connecting the Province with any other or others of the Provinces or extending beyond the limits of the Province," and "(c). Such works as, though wholly situate within the Province, are . . . declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces." It has been claimed that this description applies to the lines of the Montreal Telegraph Co. (*b*), the Great North Western Telegraph Co. (*c*), the Dominion Telegraph Co. (*d*), the Canada Mutual Telegraph Co. (*e*), the Canadian Pacific Railway Company's telegraph and telephone lines (*f*), and the lines of the Bell Telephone Company of Canada (*g*).

Their statutory powers.

All these companies have, under their charters, the right to erect and maintain telegraph lines along or across public highways, but only on condition that they do not interfere with the public right of travelling thereon (*h*); and in the

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(*a*) See R. S. O. cc. 189-191 (the Companies Acts); R. S. O. c. 192, s. 1 (telegraph companies); R. S. O. c. 200, s. 3 (electric light companies); "*The Interpretation Act*," R. S. O. c. 1, s. 8 (45); *Hodge* v. *Reginam*, 9 App. Cas. 117 (1883). In *Sherbrooke Telephone Association* v. *Corporation of Sherbrooke*, 12 Leg. News 354, M. L. R. 6 Q. B. 100 (1890), it was held that letters patent issued by the Lieutenant-Governor of the Province of Quebec in Council incorporating a telephone company with power to carry on business in that Province under R. S. Q. Art. 4705,—viz., "to construct and operate telephone lines through, under, along the sides of and across streets and highways of towns and cities therein, provided that passage or traffic thereon shall not be impeded or interfered with by the location of the poles and wires of the company," did not confer upon the company power to plant poles upon or to carry wires along and across the streets of a city without first having obtained permission of the city corporation, in whom, by Articles 752 and 757 of the Municipal Code, the ownership of the street is vested. And see *Hull Electric Co.* v. *City of Ottawa Electric Co. et al.*, Q. R. 14 S. C. 124 (1898), cited in note (**a**) to s. 568, *post*.

(*b*) See 10-11 V. c. 83; 18 V. c. 20; 20 V. c. 175; 45 V. c. 64 (Ca.) s. 2; 45 V. c. 93 (Ca.) s. 3.

(*c*) 43 V. c. 60 (Ca.).

(*d*) 34 V. c. 52 (Ca.).

(*e*) 45 V. c. 94 (Ca.).

(*f*) 44 V. c. 1 (Ca.).

(*g*) 43 V. c. 67 (Ca.); 45 V. c. 71 (O.); 45 V. c. 95 (Ca.). In *Reg.* v. *Mohr*, 7 Q. L. R. 183 (1881), it was held that under its original charter (43 V. c. 67 (Ca.)), the Bell Telephone Company, although authorized to establish telephone lines in the several Provinces of the Dominion, had no power to connect two or more Provinces by such lines, and—(the undertaking not having (then) been declared to be for the general advantage of Canada),—that s. 4 of the Act, conferring power upon the company to extend its lines across or under highways, etc., was invalid. The company accordingly obtained in 1882 a further Act (45 V. c. 95 (Ca.)), by s. 4 of which its works were declared to be for the general advantage of Canada. See *Bell Telephone Co.* v. *Belleville Electric Light Co.*, 12 O. R. 571 (1886). The same principles may apply to companies incorporated by Dominion letters patent under "*The Electric Telegraph Companies' Act*" (R. S. Ca. c. 132).

(*h*) See, as to the Montreal Telegraph Co., 45 V. c. 93 (Ca.), s. 3; as to the Dominion Telegraph Co., 34 V. c. 52 (Ca.), s. 4; as to the Canada Mutual Telegraph Co., 45 V. c. 94 (Ca.), s. 5; as to the Great North Western Telegraph Co., 43 V. c. 66 (Ca.), s. 5; as to the Bell Telephone Co., 43 V. c. 67 (Ca.), s. 3; 45 V. c. 71 (O.) As to companies incorporated under "*The Electric Telegraph Companies' Act*" (R. S. Ca. c. 132), it is provided by s. 3 that the lines of such companies along and upon public roads and highways, etc., shall be so constructed as not to incommode the public use of such roads or highways, or to impede free access to any house or other building in the vicinity of the same. Independent of any such statutory provisions, "the dominant purpose and use of a street being for public passage, any appropriation of it to other objects, [*e.g.* telephone poles and wires)] will be in subordination to this, unless the Legislature clearly expresses a contrary intention": *Bell Telephone Co.* v. *Montreal Street R. W. Co.*, Q. R. 10 S. C. 162; Q. R. 6 Q. B. 223 (1896-7).

Sec. 559 (4).

Note (e).

Telegraph poles, etc.

Dominion companies.

cases of the Bell Telephone Company (*a*), and the telephone lines of the Great North Western Telegraph Company (*b*), and of the Montreal Telegraph Company (*c*), further statutory provision is made relative to the height of poles and wires in cities, towns and villages, the location of poles and the opening up of streets for the erection of poles or for carrying wires underground; and it is provided that this shall be done under the direction and supervision of the city, town, or village engineer, or of such other officer as the council or corporation may appoint, and in such manner as the council or corporation may direct.

If it be assumed that the Dominion Parliament, in incorporating these companies, had power to confer upon them the right to occupy public highways within a Province, the authority delegated to municipalities by the Provincial Legislature in enacting the present subsection would seem to be limited to the enforcement of the charter conditions prescribed as above.

Their liabilities.

It is clear that if the poles or wires of any of the above companies are so placed or maintained upon a highway as to interfere with the public right of travelling thereon, they are public nuisances. The company so placing them is liable to indictment (*d*); and the obstruction would be removable under an order of the Court, or by means of a writ *de nocumento amovendo* (*e*), or by any person specially injured thereby (*f*), or by a municipal officer acting on the authority of a by-law passed under s. 586 (1) or 637 (3) of this Act. The company by which such an obstruction was placed and maintained would also be liable in damages to any person specially injured by reason of the highway being thereby out of repair (*g*); and it would be no defence that the location of the poles had been determined, and the poles themselves erected under the direction and supervision of an officer appointed by the municipality (*h*), though this, if established, might render the municipality liable as well as the company (*i*). But it would seem that in such cases the municipality is entitled, under s. 609, notwithstanding such assent, to a remedy over against the company for the full amount of damages and costs recovered (*j*).

Effect of municipal action in locating poles.

In *Bonn* v. *Bell Telephone Co.* it was argued on behalf of the defendants that the action of the municipal authorities, in supervising and directing the place on the street where the pole was planted, legalized the act, so that it could not, as against the telephone company, be made unlawful or declared to be a nuisance by the verdict of a jury.

Bonn v. *Bell Telephone Co.*

The case was thus put by the defendants' counsel:—"The telephone company have the right to plant poles along the side of any highway. In incorporated villages, the particular spot is to be located by the municipal authorities through their officer appointed for the purpose. This being done, the company is shut down to that very spot and must plant their poles there and nowhere else. The pole so erected is lawfully there, and cannot become unlawful because a runaway horse rushes against it."

In this instance the pole had been placed on the slope of a hollow ditch or watercourse at the side of the road, and was well off the usual travelled part of the road. There was a space of twenty-one feet between the track and the pole, and the latter was fourteen feet from the side of the street.

In delivering the judgment of a Divisional Court, refusing to disturb the verdict and judgment entered against the defendants at the trial, Boyd, C., says (p. 702):—

> "The liability of the telephone company turns upon the proper construction of the original Statute 43 Vict. ch. 67, sec. 3 (O.). The company has not an absolute right to use the highways. It is only a permission—they may construct, provided that it shall not interfere with the public right of travelling on or using the highways. That is a general and all-controlling provision which has a paramount place as to the use of all highways. Superadded is a provision when the

(*a*) By 43 V. c. 67 (Ca.), s. 3; 45 V. c. 95 (Ca.), s. 2; 45 V. c. 71 (O.), s. 2.

(*b*) 43 V. c. 66 (Ca.), s. 3. (*c*) 45 V. c. 93 (Ca.), s. 15.

(*d*) See *Reg.* v. *United Kingdom Electric Telegraph Co.*, 31 L. J. M. C. 166 (1862). (*e*) See note (**b**) to s. 600. (*f*) See note (**b**) to s. 586.

(*g*) *Bonn* v. *Bell Telephone Co.*, 30 O. R. 696 (1899); and see note (**b**) to s. 586.

(*h*) *Ibid.* (*i*) *Atkinson* v. *City of Chatham*, 29 O. R. 518 (1898). And see *Prevost* v. *City of Montreal*, Q. R. 15 S. C. 39 (1898).

(*j*) *Per* Maclennan and Moss, JJ. A. in *S. C.* 26 A. R.—(1899) (not yet reported). See *post*, s. 609, note (**a**).

company seeks to go through towns and incorporated villages, the streets of which are suffered to be subject to more and more varied easements and uses than the roads in rural districts. In these more crowded highways the choice of location is supervised or controlled by the action of the municipal authorities—the location of the line and the opening up of the street for the erection of poles shall be done under the direction and supervision of the engineer or other officer in that behalf appointed by the council. That further safeguard, however, does not nullify the provision placed first in the Statute that the company is not to interfere with the public right of travel. The company does not acquire absolute rights on the street because the locality of the line has been determined under the direction of the civic or municipal officer. It is still open for inquiry as to whether the public user has been interfered with—and by that I mean appreciably interfered with—interfered with so as to render the way in some sense dangerous to travel. Theoretically, there is some interference with the public right in the highway wherein the poles may be placed even though close along either side. In every case of accident, where injury has been caused by the poles, the question will arise as to whether there has been any undue interference with the free use of the road.

This question is not foreclosed, in my opinion, as to cities, towns and villages, because the poles have been planted under municipal direction. It is for the forum of trial—whether before Judge or jury—to determine whether the poles, situated as they are, unreasonably interfere with the free use of the highways, so as to become an element of danger to the public.

According to our law (based on that of England) the telephone company has no right to use the streets without having received legislative sanction, either directly, or indirectly through the action of properly authorized municipal bodies (*a*). The right of the public is to have the whole width of the road preserved free from obstructions, and it is not confined to that part which is used as the *via trita*. (*b*) So that the effect of Canadian legislation is to legalize the obstruction created by the poles so far that they cannot be abated or complained of as a public nuisance (*c*), but it still leaves open the question whether the company may not suffer in damages for particular injury to a traveller, if the obstruction is found to be dangerous (*d*).

Such seems to be the present case. The jury have found that the public right is sensibly interfered with by the location of the pole, and that it forms a place of danger owing to the proximity to the railway track which laterally encroaches on a great part of the street.

This decision is in accord with *Atkinson* v. *City of Chatham* (*e*), and with some American authorities (*f*), though it is at variance with rulings in the Massachusetts Courts which go to exempt from all liability whether as regards company or municipality. In New York State both may be answerable for maintaining a dangerous pole (*g*) if the pole was placed by direction of the council—though they need not have given very minute directions (*h*)."

(*a*) *Regina* v. *United Kingdom Electric Telegraph Co.*, 31 L. J. M. C. 166, S. C., 9 Cox C. C. 174 (1862).

(*b*) *Turner* v. *Ringwood Highway Board*, L. R. 9 Eq. 418, 422 (1870); and see *Locke King* v. *Urban Dist. Council of Woking*, 77 L. T. N. S. 790 (1897).

(*c*) *Sherbrooke Telephone Association* v. *Corporation of Sherbrooke*, cited *supra* in foot note (*a*) on p 667.

(*d*) See *People* v. *Metropolitan Telephone Co.*, 31 Hun (N.Y.) 596 (1884).

(*e*) 29 O. R. 518 (1898).

(*f*) Such as *Wolfe* v. *Erie Telegraph and Telephone Co.*, 33 Fed. R. 320 (1887).

(*g*) *Trustees of the Village of Geneva* v. *Brush Electric Company of Cleveland*, 50 Hun 581 (1889).

(*h*) *State* v. *City of Bayonne*, 34 Atlantic R. 1080 (1896). See also *Sheldon* v. *Western Union Telegraph Co.*, 51 Hun 591 (1889), affirmed 121 U. S. 697 (1890); and *Cleveland* v. *City of Bangor*, 87 Maine (259), a case not unlike *Bonn* v. *Bell Telephone Co.*

Sec. 559 (5).

Note (f).

Conveyance of Traffic, Driving of Cattle, etc.

Regulating traffic on streets and width of tires and wheels.

5. For regulating the conveyance of traffic in the public streets and the width of the tires and wheels of all vehicles used for the conveyance of articles of burden, goods, wares or merchandise; and for prohibiting heavy traffic, and the driving of cattle, sheep, pigs and other animals in certain public streets and places to be named in the by-law. 55 V. c. 42, s. 496 (36).

The first part of the sub-section down to and inclusive of the word "merchandise" is from the Act of 1873, (36 V. c. 48), s. 384 (54); the remainder was added in 1884 by 47 V. c. 32, s. 14.

(f) "For regulating the conveyance of traffic in the public streets . . . and for prohibiting heavy traffic in certain public streets and places to be named," etc.

Object of this power.

This sub-section, like sub-sec. 1, confers powers intended to aid municipalities in the discharge of their statutory duties in regard to highways; and the object of regulating the conveyance of traffic, (*i. e.*, of "articles of burden, goods, wares or merchandise,"—for the words seem to be used in an equivalent sense) is, apparently, that the highway shall not be injured, or the public right of passage unnecessarily impeded or interfered with (*a*).

"An ordinance which would operate as a total exclusion of the right of the citizen to pass over the streets with his loaded waggon and team would be unreasonable and void as against common right;" but one limiting the weight which waggons and other vehicles employed in the transportation of goods, wares or produce of any kind may carry through the streets of a city, merely regulates the enjoyment of the right, and is valid (*b*).

Heavy traffic.

It was a nuisance at common law to convey an unreasonable weight along the highway with an unusual number of horses (*c*).

Traction engines.

The use of traction engines on highways is regulated by Statute both here (*d*) and in England (*e*). Our Statute provides (*f*) how the use of such engines on certain streets of a city or town may be prevented or regulated by an order of the County Judge; and the Imperial Statute declares (*g*) that nothing therein contained "shall authorize any person to use a locomotive which may be so constructed or used as to be a public nuisance at common law." (*h*)

McMillan v. *Portage la Prairie.*

Section 393 of the Municipal Act of Manitoba (as amended by 58 V. c. 32, s. 14 (Man.)) empowers rural municipalities to pass by-laws "for *regulating or prohibiting* the passage of traction engines, threshing machines or other heavy vehicles over highways, or bridges upon highways, and for providing the penalty in case of violation of the provisions of such by-law." The defendants passed a by-law providing that no traction engine, steam engine, threshing machine or water tank should be transported over any of the highways of their municipality *except at the sole risk of the owner* of such engine, machine, etc. *Held*, that this was not a *bona fide* exercise of the power conferred by the Statute, since it neither regulated nor prohibited the passage of such engines, etc., and that the by-law was *ultra vires* (*i*).

(*a*) See note (**b**), *supra*, citing *Vestry of St. Mary, Newington* v. *Jacobs*, L.R. 7 Q. B. 47 (1871). (*b*) Dillon, s. 682.

(*c*) Com. Dig. "Chimin" A (3): *Egerly's Case*, 3 Salk. 183 (1709).

(*d*) R. S. O. c. 242.

(*e*) Imp. Stats. 24-25 V. c. 70; 28-29 V. c. 83; 41-42 V. c. 77. (*f*) S. 4.

(*g*) 28-29 V. c. 83, s. 12.

(*h*) See *Reg.* v. *Chittenden*, 15 Cox C. C. 725 (1885): *Goler* v. *Rawson*, 58 L. T. N. S. 24 (1888). A tricycle capable of being propelled by the feet of the rider or by steam or by both together was held to be a "locomotive" within the definition given in s. 38 of the Imp. Stat. 41-42 V. c. 77, and to be therefore subject to the regulations prescribed by 24-25 V. c. 70 and 28-29 V. c. 83. *Parkyns* v. *Preist*, 7 Q. B. D. 313 (1881).

(*i*) *McMillan* v. *Portage la Prairie*, 11 Man. Rep. 216 (1896).

By-laws regulating the use of streets for loading and unloading goods may be passed under s. 557 (1), and by-laws regulating the conveyance along highways of night-soil, swill or other offensive substances, under "*The Public Health Act*" (*a*).

Sec. 559 (5), (6). Notes (f), (g).

(g) "For regulating the width of the tires and wheels of all vehicles used for the conveyance of articles of burden, goods, wares and merchandise."

Width of tires and wheels.

Again the object is the keeping of the highways in repair. The sub-section therefore applies to all vehicles (of the character referred to) which use the roads or streets of the municipality, whether or not their owners reside within its corporate limits (*b*).

A by-law for regulating the width of the tires of vehicles used upon any of the streets of a town for drawing . . . articles of burden, when the weight of the load exceeded a specified limit, enacted that its provisions should not apply "to any waggon laden with lumber or goods, and used for the purpose of conveying the same from the mill or place of manufacture thereof into the town, provided the mill, etc., is more than two miles from the limits of the town; nor to any person passing through the town with vehicles loaded with the articles aforesaid." *Held*, bad as unreasonable (*c*), since it discriminated against residents of the town in favour of others (*d*).

It has been ingeniously suggested that although "width of *tires*" undoubtedly refers to a transverse section thereof across the felloe parallel with the axle, "width of *wheels*" means their diameter from tire to tire through the centre of the hub, [illegible] the draftsman had in mind the fact that the larger the wheel the gre[illegible] be the bearing surface in contact with the highway, and consequently [illegible] the pressure per square inch. Bearing in mind that one object of this sub-section is the protection of the highway from injury, a by-law regulating the diameter as well as the width of wheels used on vehicles conveying heavy burdens might fairly be claimed to be within the powers of the council. *Cf.* on this point the different language used in s. 584 (e), *post*.

(g) "For prohibiting the driving of cattle, sheep, pigs, etc., in certain public streets, etc." See also sub-sections 7 and 9. A local Act for a parish in which there was a large cattle market, enacted that no drover or other person should conduct or drive "any oxen, sheep or cattle through any of the streets of the parish during Sunday." *Held*, that a person driving a van in which were fourteen calves for market, was not "driving or conducting" cattle within the meaning of the Statute (*e*). The owner is not liable, in the absence of negligence, for damages done by his cattle while they are being lawfully driven along the highway (*f*).

Driving of cattle, etc.

Width of Sleigh Runners.

By the councils of counties:—

6. For providing that no sled, sleigh, or other vehicle upon runners (except cutters or pleasure sleighs) drawn by horses or other animals, shall be used by any person residing within the county for the conveyance of persons or goods on any of the roads or highways within the county, unless the runners thereof are apart from each other at the bottom 3 feet 9 inches at least;

Width of sleigh-runners.

(*a*) R. S. O. c. 248, s. 122. See Sched. B. s. 14, rule 4 and see also ss. 551 (1); 586 (1), (2), *post*.

(*b*) See note (**d**) to s. 325, citing *Reg.* v. *Osler*, 32 U. C. R. 324 (1872) and *Cudden* v. *Estwick*, 6 Mod. 124 (1704).

(*c*) See note (**d**) to s. 325.

(*d*) *Reg.* v. *Pipe*, 1 O. R. 43 (1882).

(*e*) *Triggs* v. *Lester*, L. R. 1 Q. B. 259 (1866).

(*f*) *Tillett* v. *Ward*, 10 Q. B. D. 17 (1882). But see *Hudson* v. *Roberts*, 6 Ex. 697 (1851)—evidence as to *scientia*: *Goodwyn* v. *Cheveley*, 4 H. & N. 631 (1859)—negligence.

Sec. 559 (6)-(8). Notes (h), (i).

Not to apply to non-residents.

Provided that no such by-law shall apply to any sled, sleigh or other vehicle upon runners owned or used by any person not resident within the said county.

Power to exempt from by-law.

(a) The council in passing such by-law may exempt from its operation all sleds, sleighs or vehicles on runners owned at the time of the passing of such by-law, by persons resident within the county.

When by-law to come in force.

(b) The by-law shall not come into force until the expiration of one year from the time of the passing thereof, or of such further time as the council may determine upon. 55 V. c. 42, s. 511*a*.

Taken from 51 V. c. 28, s. 26 (1888).

(**h**). The Legislature having in this case expressly authorized the passing of a by-law discriminating against residents of the county, the objection which was held fatal in *Reg.* v. *Pipe* (*a*), and in the other cases cited therewith in note (**d**) to s. 325, would not apply to a by-law passed under this sub-section.

Driving or Riding on Roads and Bridges.

By the councils of counties, townships, cities, towns and villages :—

Driving on roads and bridges.

7. For regulating the driving and riding of horses and other cattle on highways and public bridges.

8. For preventing racing, immoderate or dangerous driving or riding on highways or public bridges. 55 V. c. 42, s. 479 (14).

Setting apart streets for fast driving.

Provided that in cities having 100,000 inhabitants or more, the council thereof may by by-law set apart a street or streets on which horses may be driven or ridden more rapidly than is permitted upon the other streets of the city; and may pass by-laws for regulating and governing the use of such street for the aforesaid purposes. But if a majority of the property owners on any such street petition against such by-law, it shall repealed. 59 V. c. 51, s. 32.

Sub-sections 7 and 8 are taken from the Act of 1873, (36 V. c. 48) s. 372 (9). *Cf.* 12 V. c. 81, s. 31 (13), (townships); s. 41 (13-14) (counties); s. 60 (17), (villages); ss. 61, 67, 80, (towns); ss. 82, 106 (cities); 22 V. c. 99, s. 287 (26) (cities, towns and villages), s. 317 (8) all councils, s. 328 (2), (counties). The proviso was added in 1896. See the reference appended thereto. See also sub-section 5, (note (**g**)), and sub-sec. 9.

R.S.O. c. 236.

(i) R.S.O. c. 236, entitled "*An Act to regulate Travelling on Public Highways and Bridges*," provides (s. 5) that "No person shall race with or drive furiously any horse or other animal upon any highway"; and see, as to bridges, ss. 8-10 of that Act.

As to bicyclists.

Although "racing, immoderate or dangerous driving or riding" with bicycles was not contemplated in 1849 when the original of sub-s. 8 was passed, *semble*, its provisions would, nevertheless, apply to bicycles. In *Taylor* v. *Goodwin* (*b*) it was

(*a*) See *supra*, note (**g**).

(*b*) 4 Q.B.D. 228 (1879).

held that section 28 of "*The Town Police Clauses Act*," (*a*) which applies in terms to "every person who rides or drives furiously any horse *or carriage*", justified a conviction for riding a bicycle upon a highway at such a pace as to be dangerous to passers-by; and although it had been held that a bicyclist who, while riding furiously and recklessly, unintentionally knocked down and injured a pedestrian, could not be convicted of an assault, (*b*) yet a person who knocked down and injured another by furiously riding a bicycle, was convicted and sentenced under s. 35 of "*The Offences Against the Person Act, 1861*," (*c*) (identical with Art. 253 of "*The Criminal Code, 1892*") which provides that,—

Secs. 549 (8), (9); 560.

Notes (i), (j).

"Scorching."

> "Every one is guilty of an indictable offence and liable to two years' imprisonment who, having the charge of any *carriage or vehicle*, by wanton or furious driving or other wilful misconduct or by wilful neglect does or causes to be done any bodily harm to any person." (*d*)

It is apprehended that this Article of the Code would apply also to motor-men on electric street railways.

Motor-men, etc.

Horses and Cattle upon Sidewalks.

By the councils of cities, towns and villages:—

9. For preventing the leading, riding or driving of horses or cattle upon sidewalks or other places not proper therefor. 55 V. c. 42, s. 496 (5).

Horses and cattle upon sidewalks, etc.

Taken from the Act of 1858, (22 V. c. 99) s. 287 (26). *Cf.* 12 V. c. 81, s. 60 (1), (villages); ss. 61, 67, 80 (towns); ss. 82, 100 (cities).

(j). See also ss. 576 (4), 637 (3), 638 (5), 640 (1). Obstruction of highways by swine held to be a nuisance,—*Commonwealth* v. *Curtis*, (*e*) cited by Dillon, s. 680 n.

Vehicles on Sidewalks.

560. The council of every municipality may, by by-law, prohibit carriages, waggons, bicycles, sleighs, and other vehicles and conveyances of every description, and whatever the motive power, or any particular kind or class of such vehicles and conveyances, from being upon, or being used, drawn, hauled or propelled along or upon any sidewalks, pathways or footpaths, used by or set apart for the use of pedestrians, and forming part of any street, avenue, boulevard, bridge or other means of public communication or in or upon any avenue, boulevard, park, park-plot, garden or other place set apart for ornament or embellishment of the municipality, or for public recreation. 60 V. c. 45, s. 51.

Vehicles on sidewalks, etc.

(a) See note (c) to s. 557, and ss. 576 (4), 637 (3), 638 (5).

(*a*) Imp. Stat. 10-11 V. c. 89 (1847).

(*b*) *Ackroyd* v. *Barrick*, 11 Times L.R. 115 (1894). See Clementson on the Road Rights and Liabilities of Wheelmen, (Chicago, 1895).

(*c*) Imp. Stat. 24-25 V. c. 100.

(*d*) *Reg.* v. *Parker*, 59 J.P. 793 (1895). As to the right of a constable to arrest a bicyclist riding without a light, contrary to Imp. Stat. 51-52 Vic. c. 41, s. 85, see *Tatton* v. *Treeby*, [1897] 2 Q. B. 452.

(*e*) 9 Allen (Mass.) 266 (1864).

Sec. 561.

DIVISION X.—STATUTE LABOUR.

Commutation of. Sec. 561 (1).
Rate of. Sec. 561 (2).
Fixing the number of days of statute labour. Sec. 561 (3).
Enforcing its performance or payment of commutation. Sec. 561 4
Regulating mode and place of performance. Sec. 561 (5).
Reducing or abolishing statute labour. Sec. 561 (6).
Reducing or varying within defined areas. Sec. 561 (7).
Keeping township roads open during sleighing. Sec. 561 (8).
Application of Statute Labour Commutation Fund therefor. Sec. 561 (9).

561. The council of every township may pass by-laws.—

Commutation of statute labour.

1. For empowering any person (resident or non-resident) liable to statute labour within the municipality, to compound for such labour, for any term not exceeding five years, at any sum not exceeding $1 for each day's labour;

Rate of commutation.

2. For providing that a sum of money, not exceeding $1 for each day's labour, may or shall be paid in commutation of such statute labour;

Fixing number of days of statute labour.

3. For increasing or reducing the number of days' labour, to which the persons rated on the assessment roll or otherwise shall be liable, in proportion to the statute labour to which such persons are liable in respect of the amounts at which they are assessed, or otherwise respectively;

Enforcing statute labour.

4. For enforcing the performance of statute labour, or the payment of a commutation in money in lieu thereof, when not otherwise provided by law;

Regulating performance, etc.

5. For regulating the manner and the divisions in which statute labour or commutation money shall be performed or expended;

Reducing or abolishing.

6. For reducing the amount of statute labour to be be performed by ratepayers or others within the municipality, or for entirely abolishing such statute labour. 55 V. c. 42, s. 521 (1-6).

Reducing or varying statute labour in defined localities.

7. For reducing or varying the amount of statute labour to be performed by the ratepayers or others within certain defined areas in the municipality when, in the opinion of the council, exceptional circumstances exist rendering such reduction or variation equitable, and upon such conditions as may be imposed by the by-law. 58 V. c. 42, s. 29.

Keeping roads open in winter.

8. For providing for the making and keeping open of township roads during the season of sleighing in each year;

Application of commutation.

9. For providing for the application of so much of the commutation of the Statute Labour Fund, as may be necessary for keeping open such roads as last aforesaid, within such respective municipalities. 55 V. c. 42, s. 521 (7, *part*, 8).

The above section is fully discussed in the notes to ss. 100 *et seq.* of "*The Assessment Act*," *post*, Vol. II.

DIV. XI.—WHARFS, HARBOURS, RIVERS, STREAMS, ETC.

Sec. 562 (1)-(4).

Wharfs, docks, slips, etc. Sec. 562 (1).
Regulating harbours. Sec. 562 (2).
Preventing incumbering and filling up of. Sec. 562 (3).
Beacons. Sec. 562 (4).
Wharfs, piers, docks, elevators, etc. Sec. 562 (5).
Regulating vessels and rafts. Sec. 562 (6).
Harbour dues. Sec. 562 (7).
Incumbering wharfs, docks, slips, etc. Sec. 562 (8).
Removal of obstructions therefrom. Secs. 562 (9), (10).
Obstruction of drains, streams and watercourses. Secs. 562 (11-14).
Notice to adjoining municipality in such cases. Sec. 563.
Works, etc., to prevent damage by flooding. Sec. 563a.

562. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say :—

(a) "*The British North America Act, 1867,*" confers upon the Parliament of Canada exclusive jurisdiction in reference to "beacons, buoys, lighthouses . . . navigation and shipping" (*a*) and enumerates (*b*) among the public works and properties of the several Provinces which shall be the property of Canada;—"(2) public harbours ; (3) lighthouses and piers ; (5) rivers and lake improvements." In view of the interpretation placed upon these words in *Holman v. Green*, (*c*) and *Re Provincial Fisheries*, (*d*) it is manifest that there may be grave doubt as to the right of a Provincial Legislature to deal with some of the matters referred to in subsections 1-10 of this section. Within the limits of these notes it is impossible to discuss, and it would be presumptuous to decide many of the questions which thus suggest themselves. For the present purpose, these enactments will therefore be treated as within the legislative authority of the Province (*e*).

Wharfs, Harbours, Rivers, etc.

[See also R. S. Ca. c. 91, "*An Act respecting the Protection of Navigable Waters,*" and R. S. Ca. c. 92, "*An Act respecting certain works constructed in or over Navigable Waters.*"]

By the councils of counties, townships, cities, towns and villages :—

1. For making, opening, preserving, altering, improving and maintaining public wharfs, docks, slips, shores, bays, harbours, rivers or waters and the banks thereof. 55 V. c. 42, s. 479 (6). Making, etc., of wharfs, docks, etc.

2. For regulating harbours. 55 V. c. 42, s. 479 (7) *part.* Regulating harbours.

3. For preventing the filling up or incumbering of harbours. 55 V. c. 42, s. 479 (7) *part.*

4. For erecting and maintaining necessary beacons. 55 V. c. 42, s. 479 (7) *part.* Beacons.

(*a*) S. 91 (9-10). (*b*) S. 108, Sched. III.

(*c*) 6 S. C. R. 707 (1881).

(*d*) 26 S. C. R. 444 (1895); *S. C. sub nom. Atty. Gen. for Canada* v. *Attys. Gen. for Ontario et al.*, [1898] A. C. 700.

(*e*) See s. 49 of "*The Public Lands Act*" (R. S. O. c. 28); and *cf.* the provisions of R. S. O. c. 195 with those of R. S. Ca. c. 92.

Sec. 562 (5) (9)

Notes (b)-(d).

Wharfs, elevators.

5. For erecting and renting wharfs, piers and docks in harbours, and also floating elevators, derricks, cranes, and other machinery suitable for loading, discharging or repairing vessels. 55 V. c. 42, s. 479 (7) *part.*

Vessels, etc.

6. For regulating vessels, craft and rafts arriving in any harbour. 55 V. c. 42, s. 479 (7) *part.*

Harbour dues.

7. For imposing and collecting such reasonable harbour dues thereon as may serve to keep the harbour in good order, and to pay a harbour master. 55 V. c. 42, s. 479 (7) *part.*

Incumbering, etc., of wharfs, docks, etc.

8. For regulating or preventing the incumbering, injuring or fouling, by animals, vehicles, vessels or other means, of any public wharf, dock, slip, drain, sewer, shore, bay, harbour, river or water. 55 V. c. 42, s. 479 (4).

Removal of obstructions to wharfs, etc.

9. For directing the removal of door-steps, porches, railings or other erections, or obstructions projecting into or over any wharf, dock, slip, drain, sewer, bay, harbour, river or water, or the banks or shores thereof, at the expense of the owner or occupant of the property connected with which such projections are found. 55 V. c. 42, s. 479 (5).

Taken from the Act of 1858, (22 V. c. 99), s. 287 (1-4), which applied only to cities, towns and villages; extended to counties in 1867 by 31 V. c. 30, s. 43 and to townships in 1870 by 42 V. c. 31, 19. *Cf.* 12 V. c. 81, ss. 60 (1) (2) (3) (7), villages; ss. 61, 67, 80, (towns); ss. 82, 106, (cities).

Aid to harbours, wharfs, docks, etc.

(b) See s. 591 (6), authorizing municipal councils to pass by-laws for granting aid by way of bonus towards the construction of harbours, wharfs, docks, slips and beacons, and s. 591 (8), for taking stock in, or lending money or granting bonuses to any incorporated company in respect of any harbour within or near the municipality.

Public wharfs.

(c) **Public Wharfs.**—While a riparian owner has at common law the right to establish on his own land a wharf which the public are not at liberty to use without his consent, (express or implied), the right to erect public wharfs and to demand tolls or fixed rates of wharfage appears to be a franchise which must have its origin in a legislative grant. But where streets have been established terminating or fronting on navigable waters, the municipality, under legislative authority to establish and regulate wharfs, may cause public wharfs to be constructed at the ends or in front of such streets and may receive wharfage from the same (*a*). A municipal corporation possessing and controlling a public wharf and receiving toll for its use, is liable, without statutory enactment to that effect, for injuries caused by its failure to keep the wharf in a proper and safe condition (*b*).

Public Harbours.

(d) **Public Harbours.**—It is the duty of those who have the possession and control of a public harbour and who receive tolls or harbour dues levied for its use, so to maintain and manage their property that it shall not become a source of danger to those who are invited to use it (*c*). This rule applies to a corporation entrusted by Statute with the performance of a public duty, although they receive therefrom no profit or emolument,—*e. g.*, where the tolls are devoted entirely to the maintenance of the public works, (*d*)—and even

(*a*) Dillon, ss. 103-113.

(*b*) Dillon, s. 113. See note (**d**), *infra*, note (**h**) to s. 554, and note (**e**) to s. 606.

(*c*) Addison on Torts, (6th Ed.) 725; *Gibbs* v. *Liverpool Docks Trustees*, 3 H. & N. 164 (1858); *S. C. sub nom. Mersey Docks, etc., Trustees* v. *Gibbs*, L. R. 1 H. L. 93 (1864-5); *Webb* v. *Port Burwell Harbour Co.*, 19 U. C. R. 615; affirmed on appeal, 19 U. C. R. 623 (1860); *Berryman* v. *Port Burwell Harbour Co.*, 24 U. C. R. 34 (1864); *Sweeney* v. *Port Burwell Harbour Co.*, 17 C. P. 574; 19 C. P. 376 (1869).

(*d*) *Mersey Docks, etc., Trustees* v. *Gibbs*, supra; *Winch* v. *Conservators of the Thames*, L. R. 7 C. P. 458 (1872).

where no tolls are imposed, reasonable care must be exercised by those in charge of a harbour so that vessels using it in the ordinary way may do so without sustaining damage. (a) But where the removal of obstructions and impediments to navigation is wholly discretionary, it seems that unpaid trustees in charge of a public work cannot be held liable for injury arising because such obstructions have not been removed (b).

(e). **Sub-section 7.** This sub-section authorizes the imposition of tolls on vessels and other craft, but only for the purpose of cleaning and repairing harbours and paying a harbour master. It does not sanction the levying of such dues for the revenue purposes of the municipality to which the harbour belongs. Accordingly it was held that a section of a market by-law which enacted that every vessel . . . arriving in the harbour of Kingston . . . containing firewood brought to the city for sale or market, and all boats . . . bringing into the harbour, for delivery or consumption in the city, firewood, coal, charcoal, lumber, potatoes, fruit, butter, cheese or vegetables, should be liable to a toll of 25 cents for every ton's capacity, could not be sustained either under this section or under s. 580 (12). (c)

Harbour dues.

In *Re Hagaman and Town of Owen Sound*, (d) the Court held *ultra vires* a by-law (passed under this sub-section) which authorized individuals to erect wharfs, and to remunerate themselves by imposing on all goods landed upon or passing over such wharfs, whether shipped from or "arriving in" the harbour, tolls according to a scale to be fixed by a by-law, two-thirds of which were to be payable to the municipality. But power to pass by-laws imposing such tolls during a period of ten years was afterwards conferred upon the town by 24 V. c. 63.

The Bronte Harbour Company, having been authorized by their Act of incorporation (e) to detain any goods on which the tolls imposed by them thereunder were due and payable, until such tolls should be paid, were held not to be confined to their remedy by distress, but authorized to recover such harbour dues by action. (f) This subsection, however, authorizes the imposition of harbour dues only upon "vessels, and rafts" and not upon their cargoes.

In *Bogart* v. *Town of Belleville*, (g) DRAPER, C. J., thought that the use of the word "rafts" in this sub-section would authorize a charge on lumber and saw-logs coming into the harbour, but a provision in the by-law that timber (in the removal of which by the harbour master from one part of the harbour to another expense had been incurred) should not be allowed to leave the port till payment had been made in full, was held not to be expressly authorized by the Statute, and therefore, though not unreasonable, to be *ultra vires* (h).

In *Re McLeod and Town of Kincardine*, (i) the Court set aside with costs so much of a by-law (passed under the section of the Act of 1873 corresponding to subsections 1-8 of this section) as enacted (1) that the consignees of goods, etc., should be chargeable with harbour dues or wharfage rates, (2) that the harbour master might seize, distrain and sell the goods for these dues, (3) that the dues might be recovered by action, and (4) that any person evading or attempting to evade or assisting in such evasion or attempt should be punished, etc.

(f) **Subsection 8.** As the corresponding words in s. 557 (1) relate to the incumbering, injuring or fouling of roads, streets, etc., by acts incidental to their use *qua* highways, so this section primarily refers to the obstruction of public wharfs, docks, slips, bays, harbours, rivers, etc., by acts incidental to the public right of navigation. Since legislative jurisdiction in reference to

Incumbering wharfs, docks, harbours, etc.

(a) *Reg.* v. *Williams*, 9 App. Cas. 418 (1884).

(b) *Hood* v. *Toronto Harbour Commissioners*, 34 U. C. R. 87; 37 U. C. R. 72 (1876): *Forbes* v. *Lee Conservancy Board*, 4 Ex. D. 116 (1879).

(c) *Re Campbell and City of Kingston*, 14 C. P. 285 (1864).

(d) 20 U. C. R. 583 (1861).

(e) 3 V. c. 33.

(f) *President, etc. of Bronte Harbour Co.* v. *White*, 23 C. P. 164 (1873).

(g) 6 C. P. 425 (1856).

(h) But see now s. 703.

(i) 38 U. C. R. 617 (1876).

Sec. 562 (8).

Note (f).

Obstructions to navigation.

"navigation and shipping" belongs exclusively to the Parliament of Canada (a) the validity of a Provincial Statute relating thereto, and of municipal by-laws passed under its authority, must be considered as more than doubtful. Assuming, however, that the section does confer power to pass such by-laws, the principles governing the rights of the public in respect to navigable waters are clearly established.

A navigable river, dock, slip, bay or harbour is a public highway navigable by all Her Majesty's subjects in a reasonable manner and for reasonable purposes and (b); no person has a right to obstruct such a highway without necessity or for an unreasonable time (c). "You cannot lay down *a priori* what is reasonable. You must know all the circumstances. It must be reasonable user and nothing else (d)." In *Gibbs's* case the defendant was perpetually restrained from interfering, by obstructions placed in a river, with the access to the plaintiff's wharf, of vessels which on account of their length extended beyond the end of the wharf so as to overlap the defendant's adjoining premises, although the plaintiffs would not have been allowed to interfere with the access to defendant's premises if used as a wharf, or with a free entrance to or exit from such premises by other vessels.

In *Rex.* v. *Russell* (e) it is said :—

> "For traffic, there are rights, not only of navigation,—*i.e.* of going and returning,—but also of remaining (so far as necessary or reasonable) for loading or unloading, or for a wind, etc. The enjoyment of each of these rights by some is frequently and necessarily an obstruction to the free and complete enjoyment by others either of the same right or of some other of the above rights,—*e.g.*, ships at anchor in the channel of a river are an obstruction to ships sailing, boats and wherries plying, etc. But such obstruction is not necessarily, or as a matter of law, a public or private nuisance. Each of the rights above mentioned must occasionally yield and become subordinate, as may be necessary and reasonable, at least in part, to some of the others." (f)

These principles were applied in *Hall* v. *Ewart*, (g) where it was held that an action for obstructing a navigable river by tying up a vessel so near its mouth that the plaintiff's vessel could not get out, must fail for want of an allegation that the stream was unreasonably obstructed after the defendant knew that plaintiff had loaded his vessel and had required the defendant to move the obstruction (h).

A public waterway may be unreasonably "incumbered, injured or fouled", within the meaning of this section, by the abutments of a bridge, (i) by placing a boom across the stream, (j) or by throwing sawdust and mill-refuse into a

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(a) See note (a).

(b) *Mayor of Colchester* v. *Brooke*, 7 Q. B. 339 (1845), *per* Lord DENMAN, C.J., at p. 373; and see *Macdonald* v. *Lake Simcoe Ice, etc., Co.*, 29 O. R. 247; 26 A. R. 411 (1899).

(c) See *Anon*, 1 Camp. 517 n (1808), and the instructive judgment of Sir GEORGE JESSEL, M. R., in *Original Hartlepool Collieries Co.* v. *Gibbs*, 5 Ch. D. 713, 720 (1877).

(d) *Ibid*, pp. 721-722.

(e) 6 B. & C. 566 (1827), at p. 586.

(f) In *Attorney General* v. *Terry*, L. R. 9 Ch. 423 (1874) at p. 426, Sir GEORGE JESSEL, M. R., comments unfavourably on the decision in *Rex* v. *Russell*, but not so as to affect the correctness of the above *dictu*.

(g) 33 U. C. R. 491 (1873).

(h) And see *Northwest Navigation Co.* v. *Walker*, 3 Man. Rep. 25; 4 Man. Rep. 406; 5 Man. Rep. 37 (1888).

(i) *Tremblay* v. *North Shore Turnpike Road Trustees*, Q. R. 13 S. C. 329 (1898).

(j) *Brace* v. *Union Forwarding Co.*, 32 U. C. R. 43 (1871); *Crandell* v. *Mooney*, 23 C. P. 212 (1873); *Drake* v. *Sault Ste. Marie Pulp & Paper Co.*, 25 A. R. 251 (1898).

river so as to impede its free use by vessels (*a*). See further as to booms in navigable waters, s. 547, note (**f**).

Sec. 562 (9).

Notes (f), (g).

How illegal obstructions to rivers, etc., may be removed.

An unlawful obstruction to a navigable highway, being a common nuisance, is indictable (*b*), and may be abated, (*c*) or its abatement may be ordered on information at the suit (in all cases) of the Attorney General of the Province (*d*),—(in certain cases affecting a navigable tidal river or a harbour the Attorney-General of Canada seems to have a concurrent right,) (*e*)—or it may be so abated (*f*), or an action against those who have created it may be maintained, by any one to whom it has occasioned special damage (*g*).

Access to waterways from riparian land.

The right of access to the waterway from riparian land is a private right which the owner of such land enjoys *qua* owner, (*h*) and an action will lie for interference therewith,—*e.g.*, by barges and planks, (*i*) or floating timber, etc. (*j*),

> "In these cases it is the right of access to and from the highway not the right of access by means of the highway which is regarded as a private right . . . In other words, the distinction is between rights of immediate access from a man's property to a highway, and the power to complain of a mere obstruction in the highway" (*k*).

But the title of the riparian owner must be clear (*l*).

As to injuring a public wharf, see *Condenning* v. *Turner* (*m*).

(g) **Sub-section 9.** The ground of jurisdiction over minor encroachments of the character referred to in this sub-section is thus stated by Sir GEORGE JESSEL, M.R., in *Attorney-General* v. *Terry* (*n*), "You have a right to prevent that which may hereafter, under altered circumstances, become a nuisance, without proving that it is likely to become so." Accordingly in *Bickett* v. *Morris* (*o*), the Court prohibited by perpetual interdict an encroachment upon the bed of a running stream by taking in a small strip 2½ feet wide at one end and narrowing to nothing at the other, without its being established that damage had been, or was likely to be occasioned thereby. In *Attorney-General* v. *Lonsdale* (*Earl of*) (*p*), the same principle was applied in the case of a navigable river in which the defendant had been in the habit of erecting "bulwarks,"—*i.e.*, protective works on his own land but which projected into the channel of the river so as to interfere with navigation. And in *Attorney-General* v. *Terry* (*q*), a wharf owner having driven poles into the bed of the river, extending his wharf so as to occupy 3 feet out of a breadth of about 60 feet available for navigation, it was held that this was an obstruction which would be restrained at the suit of a municipal corporation empowered by Act of Parliament to remove obstructions from the river.

Minor encroachments upon public harbours, wharfs, rivers, etc.

(*a*) *Attorney General* v. *Harrison*, 12 Grant 466 (1866); *Batté* v. *Booth*, 10 O. R. 351 (1886), 11 O. R. 491, 14 A. R. 419; *S. C., sub nom. Booth* v. *Batté*, 15 App. Cas. 188 (1890).

(*b*) *Rex* v. *Russell*, 6 B. & C. 566 (1827); *Reg.* v. *Meyers*, 3 C. P. 305 (1853).

(*c*) See note (**b**) to s. 586 and note (**b**) to s. 600.

(*d*) *Attorney General* v. *Harrison*, supra. See *Attorney-General of Ontario* v. *Niagara Falls International Bridge Co.*, 20 Grant 34 (1873).

(*e*) *Attorney General of Canada* v. *Ewen*, 3 B. C. R. 468 (1895); *Rex* v. *Fisher*, 2 Ex. C. R. 365 (1891).

(*f*) *Eastern Counties R. W. Co.* v. *Dorling*, 5 C. B. N. S. 821 (1859); *Wood* v. *Esson*, 9 S. C. R. 239 (1884).

(*g*) *Rose* v. *Miles*, 4 M. & S. 101 (1815); *Watson* v. *City of Toronto Gas Light & Water Company*, 4 U. C. R. 158 (1847); *White* v. *Phillips*, 15 C. B. N. S. 245 (1863); *Crandell* v. *Mooney*, supra; *Drake* v. *Sault Ste. Marie Pulp & Paper Co.*, 25 A. R. 251 (1898).

(*h*) *Lyon* v. *Fishmongers' Co.*, 1 App. Cas. 662 (1876); *Bell* v. *Corporation of Quebec*, 5 App. Cas. 84, 100-101 (1879); *Pion* v. *North Shore R. W. Co.*, 14 App. Cas. 612 (1889).

(*i*) *Dobson* v. *Blackmore*, 9 Q. B. 991 (1847).

(*j*) *Rose* v. *Groves*, 5 M. & G. 613 (1843).

(*k*) Gould on Waters, (2nd Ed.) 247, quoted by ROSE, J., in *Culleton* v. *Miller*, 26 O. R. 36, 39 (1894).

(*l*) *Giles* v. *Campbell*, 19 Grant 226 (1872).

(*m*) 9 O. R. 34, 38 (1885).

(*n*) L. R. 9 Ch. 423 (1874), at p. 430.

(*o*) L. R. 1 Sc. App. 47 (1866). (*p*) L. R. 7 Eq. 377 (1878). (*q*) *Vide supra.*

Sec. 42 (9-11).

Notes (g), (h).

Encroachments upon public harbours, rivers, etc.

But in *Orr Ewing* v. *Colquhoun* (*a*), Lord BLACKBURN says (*b*):

> "I think it clear law in England, that except at the instance of a person (including the Crown) whose property is injured, or of the Crown in respect of a injury to a public right, there is no power to prevent a man making an erection on his own land (though covered by water), merely on a speculation that some change might occur which would render that piece of land, though not now part of the waterway, available as part of it at some future period. I think that the land being covered be water is in such a case a mere accident,—and that the defendants are as much at liberty to build on the bed of the river (*if they thereby occasion no obstruction*) as they would be to build on an island which might at some future period be swept away."

And in *Ratté* v. *Booth* (*c*), the plaintiff, being in lawful possession of a water lot extending out two chains into the River Ottawa at a distance of 700 feet from the main channel and in a part of the river where outside of this strip there were ample facilities for shipping, was held entitled to construct and moor to his bank a floating wharf and boat house 40 x 140 feet in size, "the same not being an obstruction to the navigation."

Removal of Obstructions from Wharfs, Waters, etc.

By the councils of cities, towns and villages:—

Removal of obstructions from wharfs, harbours, etc.

10. For regulating and compelling the removal from any public wharf, dock, slip, drain, sewer, shore, bay, harbour, river or water, of all sunken, grounded or wrecked vessels, barges, craft, cribs, rafts, logs or other obstructions or incumbrances, by the owner, charterer or person in charge, or any other person who ought to remove the same: 55 V. c. 42, s. 496 (26).

Taken from 47 V. c. 32, s. 12 (1880).

(h) This enactment was suggested by the decision in *Hood* v. *Toronto Harbour Commissioners* (*d*). At common law no indictment lay against the owner of a vessel sunk by accident or misfortune in a navigable river, for not removing it (*e*), nor, if the sunken vessel was abandoned by her owners, was a duty ordinarily cast upon such owners to use any precaution by placing a buoy over the wreck or otherwise to prevent other vessels from striking against it (*f*).

The by-law may also direct that upon default of the person liable to remove the obstruction, the work may be done by an officer of the corporation at the expense of the person in default (*g*).

Obstructions to Streams and Watercourses.

By the councils of townships, cities, towns and villages:—

Obstruction of drains.

11. For preventing persons from obstructing any drain or watercourse. 55 V. c. 42, s. 489 (21) *part*.

Taken from the Act of 1873, (36 V. c. 48), s. 370 (14), in which, and until the present Act, it formed part of the clause, now s. 545 (6), which authorizes local municipalities to pass by-laws "for compelling owners of lands through which any open drain or watercourse passes to erect and keep up water-gates where fences cross such drain or watercourse and" etc.,—as in this subsection.

(*a*) 2 App. Cas. 839 (1877). (*b*) Pp. 861-2.

(*c*) 10 O. R. 351, 11 O. R. 491, 14 A. R. 419, ; 15 App. Cas. 188 (1886-1890).

(*d*) 34 U. C. R. 87 (1873); afterwards affirmed in appeal, 37 U. C. R. 72 (1876).

(*e*) *Rex* v. *Watts*, 2 Esp. 675 (1798).

(*f*) *Brown* v. *Mallett*, 5 C. B. 599 (1848), in which WILDE, C. J., at p. 611, questions the authority of a contrary decision in *Harmond* v. *Pearson*, 1 Camp. 515 (1808). And see *The Douglas*, 7 P. D. 151 (1882); *The Snark*, [1899] P. 74.

(*g*) S. 703. See as to the right to a lien for these expenses on any property recovered, note (d), *supra*; *Bogart* v. *Town of Belleville*, 6 C. P. 425 (1856); *Vivian* v. *Mersey Docks, etc., Board*, L. R. 5 C. P. 19 (1869); *Re McLeod and Town of Kincardine*, 38 U. C. R. 617 (1876).

(f) The object is indicated by the wording of the original section, viz., to prevent drains and watercourses from being obstructed by fences. As to the meaning of the words "drain" and "watercourse" see notes (a) and (b) to s. 554.

Sec. 562 (11)-(14). Notes (b), (g).

By the councils of townships :—

12. For preventing the obstruction of streams, creeks and watercourses, by trees, brushwood, timber or other materials, and for clearing away and removing such obstructions at the expense of the offenders or otherwise. 55 V. c. 42, s. 521 (16). Preventing obstruction of streams, etc.

13. For levying the amount of such expense, in the same manner as taxes are levied. 55 V. c. 42, s. 521 (17). Levying expenses.

14. For imposing penalties on persons causing such obstructions. 55 V. c. 42, s. 521 (18) Penalties.

Taken from the Act of 1858, (22 V. c. 99), s. 270.

(g). "**For preventing the obstruction . . . of streams, etc. . . . and for clearing away and removing such obstructions.**"

"This provision seems to point at obstructions actually caused by parties ("the offenders") rather than at the ordinary accumulation of drift-wood." (a) In *Danard's* case the defendants, having passed a by-law under the section of C.S.U.C. c. 54 corresponding with the above sub-sections, cleared out a stream on and above plaintiff's land and assessed him $75 for the expenses thereof, which he paid. They did not, however, clear out the stream on the lot below, nor did they cause the occupant of that lot to do so, and consequently in times of freshet increased quantities of water were brought down and dammed back on plaintiff's land, instead of (as before) lying in the woods above and gradually passing away without doing any injury. In an action for breach of duty in not clearing the creek throughout, or not clearing it below plaintiff's lot, and for consequent damages, it was held that the plaintiff could not recover. *Danard v. Tp. of Chatham.*

Per HAGARTY, C. J.:—

"The whole claim is for a nonfeasance . . . It is not suggested that any Statute requires them [the township] to do the work, or makes them responsible for omitting to do it, nor is it alleged that an unreasonable time has elapsed, etc. I cannot see how the mere levying of a rate for the removal of a nuisance does by itself create a cause of action for injuries caused by the continuance of the unabated nuisance. It is urged, however, that the defendants had undertaken the general duty of clearing out the stream, and that their partial performance of that duty caused the injury. . . . We cannot hold that a proprietor of land can be a wrongdoer . . . in removing fallen timber, driftwood, etc., from a natural stream. . . . He has a right to clear and cultivate his own land; and, so long as he does not alter or interfere with the natural flow of the stream, I do not see how he can be liable for the consequences of his merely (without negligence or want of due care) removing the casual and accidental obstructions to that ordinary flow. . . . I cannot understand how the plaintiff can acquire any higher or larger right against [these defendants] . . . than the latter could have against the owners of the lands had they thought proper to exercise their clear right."

R. S. O. c. 142, entitled "*An Act for protecting the Public Interest in Rivers, Streams and Creeks,*" further enacts (ss. 1, 2) that (subject to the other provisions of that Act) :— R. S. O. c. 142.

"1. All persons shall have, and are hereby declared always to have had, during the spring, summer and autumn freshets, the right to, and may float and transmit saw-logs and all other timber of every kind, and all rafts and crafts, down all rivers, creeks and streams;

(a) *Per* HAGARTY, C.J., in *Danard* v. *Township of Chatham*, 24 C. P. 590, 597 (1875).

Secs. 562 (14), 563.

Notes (j)-(m).

"*The Rivers and Streams Act.*"

and *no person shall by felling trees or placing any other obstruction in or across any such river, creek or stream, prevent the passage thereof*; and in case it may be necessary to remove any obstruction from such river, creek or stream, or construct any apron, dam, slide, gate-lock, boom, or other work therein or thereon, necessary to facilitate the floating and transmitting such saw-logs and other timber, rafts or crafts, down the same, then it shall be lawful for the person requiring so to float and transmit such saw-logs and other timber, rafts and crafts, and it is hereby declared always to have been lawful to remove such obstruction, and to construct such apron, dam, slide, gate-lock, boom or other work necessary for the purposes aforesaid, doing no unnecessary damage to the said river, creek or stream, or to the banks thereof.

2. In case there is a convenient apron, slide, gate, lock, or opening in any such dam or other structure made for the passage of saw-logs and other timber, rafts and crafts authorized to be floated down such stream as aforesaid, no person using any such stream in manner and for the purposes aforesaid, shall alter, injure or destroy any such dam or other useful erection in or upon the bed of or across the stream, or do any unnecessary damage thereto or on the banks thereof.

It is, however, provided by s. 5 of the Act that the above provisions shall not apply to a dam, weir or bridge erected in or over such river, rivulet or watercourse, or to anything done *bona fide* in or for erecting the same, or to any tree cut down or felled across such river, rivulet or watercourse, for the purpose of being used as a bridge from one side thereof to the other; provided such tree does not impede the flow of water or the passing of rafts.

"Obstructions," meaning of.

In *Farquharson* v. *Imperial Oil Co.* (*a*), it was held by a Divisional Court that the words "any other obstruction," used in s. 1, do not prohibit a person who owns the bed of a creek and the land on both sides of it, from erecting a dam across the stream so as to interfere with the passage of logs by lowering the water, and that they refer only to obstructions resulting from by acts *ejusdem generis* with "felling trees;" but this decision was reversed by the Supreme Court of Canada (*b*).

See a number of the earlier cases upon this section referred to in note (**f**) to s. 547, *ante*.

"Streams" and "creeks."

(**k**) "**Streams, creeks and watercourses.**" In *McHardy* v. *Township of Elice* (*c*), it is pointed out by HAGARTY, C.J.C.P., that the Legislature seems throughout the Statutes to have used "stream" and "river" as synonymous terms; and in *Township of North Dorchester* v. *County of Middlesex* (*d*), FERGUSON, J., concurs in this statement.

"Watercourses."

As to the meaning of "watercourses" see note (**b**) to s. 554. The above words seem therefore wide enough to include all water courses, except such "little rills" as are referred to by Lord BLACKBURN in *Caldwell* v. *McLaren* (*e*).

Levying expenses.

(**l**) **Sub-section 13.** See s. 703.

Penalties.

(**m**) **Sub section 14.** See s. 702.

When stream in any township cleared of obstructions, notice may be served on council of adjoining municipality requiring them to clear such stream within their municipality.

563. Wherever any stream or creek in any township is cleared of all logs, brush or other obstructions to the town line between such township and any adjoining township into which such stream or creek flows, the council of the township in which the creek or stream has been cleared of obstruction may serve a notice in writing on the head of the council of the adjoining township into which the stream or creek flows, requesting such council to clear such stream or creek through their municipality; and it shall be the duty of such last named

(*a*) 29 O. R. 206 (1898).
(*b*) 31 S. C. R.—(1899), not yet reported.
(*c*) 1 A. R. 628 (1877).
(*d*) 16 O. R. 658 (1889), at pp. 664-665.
(*e*) 9 App. Cas. 392 (1884), at p. 409.

council, within six months after the service of the notice as aforesaid, to enforce the removal of all obstructions in such creek or stream within their municipality, to the satisfaction of any person whom the council of the county in which the municipality whose council served the notice is situate, shall appoint to inspect the same; and if the council receiving such notice neglects the said duty, and by reason of such neglect any public road, street, bridge or highway in either of the said townships becomes out of repair, the corporation in default, but not the corporation which served the notice, shall, (besides being subject to any punishment or proceeding provided by law), be civilly responsible for all damages sustained by any person by reason of such want of repair; but the action shall be brought within three months after the damages have been sustained. 55 V. c. 42, s. 522.

Clearing streams in townships of logs, brush, etc.

Notice to adjoining municipality.

Liability of such municipality after notice.

The first part of the section down to the words "inspect the same" is taken from 34 V. c. 30, s. 14 (1871). *Cf.* 31 V. c. 30, s. 29 (1868). The remainder of the section,—"and if the council receiving such notice neglects the said duty," etc., was added in 1888 by 51 V. c. 28, s. 28.

(a) "It shall be the duty of such last named council."

It is apprehended that the performance of this duty would be enforceable by mandamus. See note (a) to s. 617. See also s. 619 as to the removal of accumulations of drift-wood and fallen timber from rivers or streams forming boundary lines between two or more municipalities.

Mandamus.

(b) "*An Act to amend the Municipal Act*" passed in August, 1898, (62 V. (1st Sess.) c. 5), provides that:—

563a. (1) In the case of any river, stream or creek flowing through or in the neighbourhood of a municipality, the municipal corporation thereof, for the purpose of preventing damage to property within the municipality by floods arising from the overflowing or damming back of such river, stream or creek, may acquire by purchase, lease or otherwise land in such municipality or in any adjoining or neighbouring municipality, and may construct such works thereon, or perform such work in respect thereof as they may deem necessary, and may also, for the purpose aforesaid, deepen, widen, straighten or otherwise improve such river, stream or creek upon the land so acquired, or remove therefrom islands, rocks or other natural obstructions to the free flow of the water in such river, stream or creek; and may expend such moneys for all such purposes as may lawfully be appropriated therefor by the municipality, or may make such contracts in respect thereof as in the opinion of the council may be necessary for the purpose aforesaid; and the council of any municipality may from time to time pass by-laws for any or all of the said purposes, in the manner provided by *The Municipal Act* as to the passing of by-laws.

Works for prevention of damage by flooding.

2. In case other lands than those so acquired are injuriously affected by any works undertaken under this section the owners or occupiers, or other persons interested in such lands shall be entitled to compensation, and sections 437 to 447 of *The Municipal Act* shall apply thereto.

Compensation for lands injured.

Secs. 564, 565(1).

Notes (a), (b).

DIV. XII.—WATER, LIGHT AND HEAT.

Acquiring water rights. Sec. 564, 565.
Constructing and maintaining waterworks. Sec. 566 (1).
Supplying light and heat. Sec. 566 (2).
Authorizing gas or water companies to use streets. Sec. 566 (3).
Constructing gas, electric light or water works. Sec. 566 (4).
Acquiring gas, electric light and water works. Sec. 566 (4) (a-a5), 567.
Contracts for supply of gas, water, electric light or power. Sec. 566 (4) (a6).
Arbitration as to price of electric light. Sec. 566 (4) (a7).
Where an individual supplies gas, etc. Sec. 566. (4) (a8.)
When official arbitrator may act. Sec. 566 (4) (a9).
Term of contracts with gas and electric light companies. Sec. 568.

Acquiring Water Rights.

[See also s. 563*a*, *supra*.]

Power to acquire water rights.

564. In addition to the powers given by *The Municipal Waterworks Act* and subject to all the provisions of the said Act, including those relating to the making of compensation and otherwise, every municipal corporation may acquire by purchase, demise or gift the right or title to any stream, river, creek, waters, waterpower, watercourse or lands, situate, being or flowing in or through any such municipality, or within three miles thereof; and may build, erect, make, preserve, improve, renew, widen or alter any dam or dams, water gates, waste gates, weirs or flumes upon, over or across any such stream, river, creek, waters, watercourse or lands, and make, dig, widen, preserve, alter or improve any raceway or raceways leading to or from any such dam or dams for the purpose of obtaining power to run or drive the necessary machinery for supplying electric light within the municipality. 55 V. c. 42, s. 479*a*.

Taken from 51 V. c. 28, s. 38 (1888).

Object of this power.

(a). "Every municipal corporation may acquire . . . for the purpose of obtaining power . . . for supplying electric light."

The latter words apparently control the whole section. The powers conferred by s. 3 of "*The Municipal Light and Heat Act*," (*a*) "to manufacture and supply electric . . . or . . . other artificial light" are limited to cities, towns and villages (*b*).

Powers under R.S.O. c. 235.

(b). "Being or flowing in or through any such municipality or within three miles thereof."

"*The Municipal Waterworks Act*" authorizes local municipalities to divert and appropriate for the purposes of that Act, ponds, streams or springs of water on any lands within ten miles and to take water from any lake or river within 15 miles of the municipality (*c*).

Town or village may acquire water privileges and lands adjacent.

565.—(1) The corporation of any town or village may acquire by lease or purchase any water privilege or water privileges situate within its limits, together with sufficient lands adjacent thereto, for the proper user of such water privileges or water privileges, and may from time to time expend thereon such sums of money as are necessary for the development, repairs and user of such water privilege or

(*a*) R. S. O. c. 234. (*b*) s. 566 (2) *infra*. (*c*) R. S. O. c. 235, ss. 3, 4.

water privileges and lands, including the erection, improvement and repair of buildings in connection therewith, and they may for the purposes aforesaid borrow upon the debentures of the corporation such sums as are required for the same, for such periods and at such rates of interest as the corporation may by by-law determine.

Sec. 565 (1)-(4), 566 (1).

Acquiring and improving water privileges.

(2) Before acquiring any such water privilege or water privileges and lands, a by-law shall be submitted to the ratepayers of the municipality setting forth, (1) the agreement for such acquisition, which shall have been previously entered into subject to ratification by the ratepayers, (2) the amount required to be borrowed for the purpose of such acquisition, and containing generally all such matters as are required by this Act in relation to money by-laws.

By-law to be submitted to ratepayers.

(3) The vote of the ratepayers upon such by-law shall be taken in the manner provided by sections 338 to 365, both inclusive, of this Act, and the persons entitled to vote thereon shall be the persons named in the said sections, and in case a majority of such persons vote in favour of the by-law the council shall pass the same.

Proceedings for taking vote.

(4) Upon the acquisition of such water privilege or water privileges the corporation may use the same for their own purposes, and may grant leases of the whole or any parts thereof upon such terms and conditions as may be agreed upon and may otherwise deal with the same as fully and effectually to all intents and purposes as might be done by an individual; but no sale of any part of the said water privileges or lands so acquired shall be made until a by-law authorizing the same has been submitted to the ratepayers and passed by a vote of the same class of persons as voted upon the by-law authorizing the acquisition of said water privileges and lands; and no lease shall be granted for a longer period than thirty years with right of renewal and renewals. 60 V. c. 45, s. 14.

Power to use water privileges and lease same.

Taken from 60 V. c. 45, s. 14 (1897), here printed as amended by 61 V. c. 23, s. 18 (1898).

566. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say;

Water and Waterworks.

By the councils of townships, cities, towns and villages :—

1. For constructing, building, purchasing, improving, extending, holding, maintaining, managing and conducting water-

Constructing and managing waterworks.

Sec. 565 (1-3). Notes (a)-(b).

works and all buildings, materials, machinery and appurtenances thereto belonging in the municipality and in the neighbourhood thereof, subject to the provisions contained in *The Municipal Waterworks Act.* 55 V. c. 42, s. 489 (3).

R.S.O. c. 235.

Taken from 45 V. c. 25, s. 2 (1882). "*The Municipal Waterworks Act,*" (R. S. O. c. 235), which applied only to cities, towns and villages, was extended to townships in 1886 by 50 V. c. 29, s. 48.

Acquiring existing waterworks.

(a) As to acquiring the works of an existing company, see subsection 4(*a*—*a5*,) *infra*, ss. 567 and 569 (5) of this Act, and ss. 59-67 inclusive of R. S. O. c. 199 entitled "*An Act respecting Joint Stock Companies for supplying Cities, Towns and Villages with Gas and Water*)."

Light and Heat.

By the councils of cities, towns and villages :—

Light and heat.

2. For manufacturing and supplying light and heat under *The Municipal Light and Heat Act.* 55 V. c. 42, s. 496 (1).

See 46 V. c. 21, s. 2 (1), "*The Municipal Light and Heat Act, 1883,*" now R. S. O. c. 234.

Gas, Electric Light and Water.

By the councils of townships, cities, towns and villages :—

Authorizing gas and water companies to lay down pipes, etc.

3. For authorizing any gas or water company to lay down pipes or conduits for the conveyance of water or gas under streets or public squares, subject to such regulations as the council sees fit. 55 V. c. 42, s. 489 (30).

Taken from the Act of 1858, (22 V, c. 99), s. 259 (15).

(b) Nearly all the charters of gas and water companies incorporated by special Acts authorize the company "to break up, dig and trench . . . streets, squares and public places," etc., after giving notice to the local authorities of intention to do so and without requiring the authority of a by-law under this subsection (*a*). Companies incorporated under the general "*Act respecting Joint Stock Companies for supplying Cities, Towns and Villages with Gas and Water*" (*b*) have similar powers under ss. 22 and 25 of that Act; but, upon an application for the incorporation of such a company, evidence must be given that the council of the municipality in which the operations of the company are to be carried on has passed a by-law under this section empowering the applicants, when incorporated, to lay down pipes under the streets, squares and other public places of the municipality (*c*); and after incorporation the consent of the council is necessary to the exercise by the company of any compulsory power to take land. (s. 17).

The powers conferred as aforesaid by ss. 22 and 25 of R. S. O. c. 199 upon gas and water companies are extended by R. S. O. c. 200, s. 4 to companies incorporated under that Act or its predecessors (*d*), so as to authorize

(*a*) See 6 Wm. IV, c. 9, s. 14, (City of Toronto Gas Co.),—no notice required; 4-5 V. c. 65, s. 8, (City of Toronto Gas Light and Water Company); 11 V. c. 13, s. 13, (City of Kingston Gas Light Co.); 11 V. c. 14, s. 13 (Cons. mers Gas Co.); 12 V. c. 158, s. 3, (City of Kingston Water Works Co.). 14 V. c. 136, s. 12, (Hamilton Gas Light Company); 16 V. c. 66, s. 3, (Hamilton Water Works Co.)—no notice necessary—; 16 V. c. 108, s. 13, (Brockville Gas Company); 16 V. c. 250, s. 14 (Metropolitan Gas and Water Company), etc., etc.

(*b*) Originally 16 V. c. 173; now R. S. O. c. 199.

(*c*) R. S. O. c. 199, s. 5. *Cf.* 16 V. c. 173, s. 1.

(*d*) *Cf.* 42 V. c. 24; 45 V. c. 19; R. S. O. (1887), c. 165; 54 V. c. 36; 60 V. c. 28, s. 3.

such companies to supply steam, hot air or hot water, for power or for heating purposes, or electricity or natural gas for the purposes of light, heat or power, in any city, town, village, township or other municipality; and by s. 3 of the latter Act it is provided that :—

Sec. 566 (4 a). Powers of gas, water and lighting companies to break up streets, etc.

"3. Every such company may construct, maintain, complete and operate works for the production of steam, hot air or hot water, for purposes of power and heating, or for the production, sale and distribution of electricity or natural gas for purposes of light, heat and power, and may conduct the same by any means, through, under and along the streets, highways and public places of the city, town or other municipality; but as to such streets, highways and public places, only upon and subject to such agreement in respect thereof as shall be made between the company and the municipality, and under and subject to any by-law of the council of the municipality passed in pursuance thereof." (a)

As to the liability of municipalities for injuries caused by the acts or defaults of corporations having statutory powers in respect of highways, and over which the municipal council have no control, see s. 611.

By the councils of cities, towns and villages :—

Constructing gas, electric lighting and waterworks.

4. For constructing gas, electric light or water works, and for levying an annual special rate to defray the yearly interest of the expenditure therefor and to form an equal yearly sinking fund for the payment of the principal within a time not exceeding thirty years and not less than five years for gas or waterworks, in the case of any such city, town or village, or for electric light works in towns having a population of 5,000 or less, as ascertained by the latest census of Canada, and in villages, and not exceeding twenty years or less than five years for electric light works in cities and towns having a population of over 5,000 as ascertained by such latest census. 62 V. (2nd Session) c. 26, s. 35 (1).

Council to buy out works of existing companies.

(a) In case there is any gas, electric light or water company incorporated for or in the municipality, the council shall not levy any such special rate, or construct works for lighting the public streets, until such council has, by by-law, fixed a price to offer for the works and property of the company or companies, nor until after thirty days have elapsed after notice of such price has been communicated to the company or companies, without the company or companies having accepted the same, or without the company or companies having, under the provisions of this Act as to arbitrations, named and given notice of an arbitrator to determine the price, nor until the price accepted or awarded has been paid, or has been secured to the satisfaction of the company or companies, and in case the company or companies and the municipality do not agree, the said price shall be determined by arbitration under this Act: and where there is more than one such company in the municipality the arbitrators shall determine the share or proportion of the price paid to each company. This clause (a) shall only apply to a gas or electric light company that has supplied or shall supply gas or electric light for street lighting

(a) See also note (h) to s. 591.

Secs. 566 (a1), (a4).

in the municipality, or to a water company that has supplied or shall supply water for street hydrants in the municipality.

How value of property is to be determined.

(*a*2) In any arbitration under clause (a) hereof to determine the price to be paid for the works and property of a gas or water company, the arbitrators shall determine the actual value of such works and property having regard to what the same would cost if the works should be then constructed or the property then bought making due allowance for deterioration and wear and tear, and making all other proper allowances, but not allowing anything for prospective profits or franchise and shall increase the amount so ascertained by ten per cent. thereof, and such increased amount shall be the amount which the arbitrator or arbitrators shall award as the price to be allowed for the said works and property.

And price fixed by arbitrators.

(*a*3) In any arbitration under clause (a) hereof to determine the price to be paid for the works and property of an electric light company the arbitrators shall determine the actual value of such works and property having regard (1) to what the same would cost if the works should be then constructed or the property then bought; (2) to the condition of the works and to any deterioration thereof from use and wear and tear or by reason of the system or appliances having become in whole or in part obsolete; (3) to the value of such works and property to the municipal corporation for the purposes and to the extent to which the municipality can make use of the same and to such value for commercial and such other purposes as a company could use them for; and (4) to the cost of procuring more valuable or modern improvements or appliances therefor, if any, and the cost of acquiring the right to use and of adapting such improvements, the arbitrators making all proper allowances but not allowing anything for prospective profits or franchise, and such amount so ascertained shall be the amount which the arbitrators shall award as the price to be allowed for the works and property.

Where the proposed works are not intended to supply light or water for commercial purposes.

(*a*4) Where in any of the said municipalities the municipal council desires to construct works as aforesaid to supply light for street lighting and other public uses on highways, or to supply water for street hydrants and other public uses on highways, but not for commercial purposes, the council may by the said by-law, limit the price to be offered as aforesaid to a price for part only or for the use of part or for the purchase of certain parts and the use of other parts of the works of a company, that is to say, to so much thereof as may be required for such public uses, and in the event of an arbitration hereinafter thereafter held to determine as to such offer and price, the arbitrator or arbitrators shall have power, after taking into consideration the effect of severance, if any, or user on the remaining property and business of the company, to award a severance of the works, if the arbitrator or arbitrators shall determine that after severance, if any, or user the

company will be in all probability, having regard to the nature of the business, and all the circumstances, in a position to successfully carry on that part of their business which consists in supplying private consumers at rates not less favourable to the consumers, the company to have the right to continue to operate the balance of their works for that purpose, and if the arbitrator or arbitrators shall so award a severance, they shall, by their award, determine what part of the works the municipality shall acquire for said purposes before levying the said special rate, as well as the price thereof, but nothing herein contained shall affect the right of the council at any subsequent time to offer a price for the said balance of the said works under the provisions of this Act.

Sec 566 (a4),—(a7).

Acquiring existing light or waterworks.

When proposed works are not intended to supply light or water for commercial purposes.

(*a*5) And if within one month after the publication of any award made under article (*a*) or (*a*4) hereof the municipality shall give notice in writing to the company that they will not accept the terms thereof their offer may be withdrawn provided they first pay all costs of the reference and award and provided also that in the event of such withdrawal the municipality shall not until after the expiration of two years from such withdrawal be entitled to again avail themselves of the provisions of the clause under which the award was made.

Municipality may withdraw from purchase.

(*a*6) In case there is any gas or electric light company supplying gas, electric energy or light or water company supplying water in any municipality, the council may, by-law, fix a price and terms to offer for the supply by contract by such gas or electric light company of gas or electric energy or light for street lighting and other public uses, or for the supply by contract by such water company of water for street hydrants and other public uses for a term of not less than five years and not more than ten years, and after thirty days have elapsed after notice of such price and terms has been communicated to the company without the company's having accepted the same, the council may, under the provisions of this Act as to arbitration name and give notice of an arbitrator to determine the price and terms of the contract for such supply of gas or electric light as aforesaid, and in case the company and the municipality do not agree the said price and terms shall be determined by arbitration under this Act.

Arbitration to fix price for supply of gas, etc., by contract.

(*a*7) Upon an application in writing signed by not less than five ratepayers of the municipality, the council of any municipality may in its discretion by by-law permit the persons making such application to use the name of the municipal corporation for the purpose of taking proceedings to determine the price at which electric light shall be supplied to inhabitants of the municipality for domestic and other purposes provided that no such by-law shall be passed until the persons making such application have given satisfactory security to the council to indemnify the municipal corporation against all costs which may be incurred in the arbitration proceedings. After the passing of such by-law, the said applicants may in the name of

When ratepayers may use name of municipality for this purpose.

Sec. 566 (a7), (a9).

Notes (c), (d).

When ratepayers may use name of municipality in arbitration to fix price of electric light, etc., for domestic and lighting purposes.

the municipal corporation name and give notice of an arbitrator to determine the price and terms of the contract for the supply of electric light or energy to the inhabitants of the municipality for domestic and all other lighting purposes; and for the purposes in this paragraph set forth, the said applicants so acting in the name of the municipal corporation shall have the power to do all necessary things and take all necessary steps, and their acts shall be as binding upon the municipal corporation, as if the said proceedings were taken by the municipal council thereof, and in case the company and the applicants so acting in the name of the municipal corporation do not agree, the said price and terms shall be determined by arbitration under this Act. The municipal corporation shall have the right and is hereby authorized to take proceedings by arbitration in its own name for the purposes in this subsection mentioned and shall have all necessary powers for that purpose whether on its own motion or when used as in this sub-section is provided.

Where an individual supplies gas, etc.

(*a*8) All the provisions of this section shall apply where an individual supplies electric light or electrical energy, or gas or water for municipal and public purposes. In all such cases the municipal corporation and the individual shall proceed hereunder, and be subject to the provisions hereof in the same manner as if the individual were a company.

When official arbitrator may act.

R. S. O. c. 227.

(*a*9) Any municipal corporation and company or individual may agree that the official arbitrator appointed under *The Act respecting Municipal Arbitrations* shall determine any matters in difference hereunder, and in such case his award shall be final and binding upon the parties as if such award had been made by arbitrators appointed under this Act.

Sub-s. 4 (in so far as it relates to gas and waterworks) is based on s. 291 (4) of the Act of 1858 (22 V. c. 99.) The provision as to electric light works was added in 1897 by 60 V. c. 15, ss. 3, 85, and the whole sub-section recast in its present form by s. 35 of 62 V. (2nd Sess.) c. 26 (1899).

The first part of clause (a), down to the words "satisfaction of the company" in line 13, has a similar history; the words "and in case the company and the municipality do not agree, the said price shall be determined by arbitration under this Act" were added in the Revision of 1897 by 60 V. c. 15, Sched. C 188.

The rest of clause (a) and the whole of clauses a2—(which is copied from s. 60 of R. S. O. c. 199, respecting Gas and Water Companies)—and a4 to a9 inclusive were added when this clause was re-enacted in 1899 by 62 V. (2nd Sess.) c. 26, s. 35, which further provided that nothing therein contained should apply to or affect any by-law then (April 1st, 1899) in force, or which had theretofore come into effect, or to any contract theretofore made or entered into between a municipal corporation and any gas, electric light or water company, and that nothing in the Act contained should be deemed to prevent (1) any contract being thereafter entered into between a municipal corporation and any such company, or (2) any by-law being passed by a municipal council not inconsistent with the Act in the same manner and for the same purpose and to the same extent as before the amendment of the sub-section.

(c) **"For constructing gas and water works."** See also "*The Municipal Light and Heat Act*" (*a*), with which is incorporated (*b*) ss. 14 and 15 of R. S. O. c. 199, respecting gas and water companies (*c*).

(d) The Act of 1858 (22 V. c. 99) s. 291 (7), which applied only to cities and towns, provided that the power, now conferred by sub-s. 4, of levying rates to defray the cost of constructing gas or water works, should not be exercisable until the works and stock of any gas or water company already incorpor-

(*a*) R. S. O. c. 234. (*b*) By clause (c), *infra*.
(*c*) See also R. S. O. c. 234, s. 13.

ated in the municipality under "*The Act respecting Joint Stock Companies for Supplying Cities, Towns and Villages with Gas and Water*," had been acquired by the municipality.

Acquiring works and stock of existing companies.

By 45 V. c. 18, ss. 3-11 (1882) (*a*), more detailed provision was made as to the procedure to be adopted for the acquisition by a city, town or village of the works of any such company thereafter incorporated or which might agree to come within the purview of the Act; but the directions of the Statute (*b*) as to the basis upon which the arbitrators should determine the value of the company's property, having been found not to be sufficiently clear or definite, (*c*), fuller provision on this point has now been made by clauses a3-a5, *supra*, and additional powers have been conferred upon the municipality by clauses a6 to a9 inclusive.

It is apprehended, however, that ss. 59-67 of R. S. O. c. 199 still remain in force, and that the municipality may, in the cases and under the circumstances therein mentioned, take possession of works intended to be thus acquired before actually paying the amount of the award. (*d*)

Proviso as to provisions in special Acts.

(*b*) The provisions of the two preceding clauses 3 and 4 shall not be construed to apply to, or affect the provisions contained in any special Act obtained, or to be obtained, by any company or municipal corporation, or the provisions contained in any contract existing on the 1st day of April, 1899, between any municipal corporation and any company. 55 V. c. 42, s. 508; 62 V. (2nd Sess.), c. 26, s. 35 (2).

Taken from the Act of 1873, (36 V. c. 48), s. 389, except the last clause, which was added in 1899 by 62 V. (2nd Sess.) c. 26, s. 35 (2).

Powers in respect of lighting and construction of gas works.

(*c*) Subject to the provisions of this Act, or of any special Act, so far as the same may be applicable, the powers of a municipal corporation for lighting the municipality, or for constructing gas works, whether by this or any special Act, shall include the powers conferred on gas companies by sections 14 and 15 of *The Act respecting Joint Stock Companies for supplying Cities, Towns and Villages with Gas and Water.* 55 V. c. 42. s. 480 (2).

Rev. Stat. c. 199.

Taken from 42 V. c. 23, s. 3 (1879). Note that by s. 567 (1) the section is extended to electric light works in the case of certain towns.

(e) The powers conferred upon gas companies by the Act referred to, (and which are by this clause extended to municipal corporations,) are now substantially covered by s. 3 of "*The Municipal Light and Heat Act.*" (*e*) Since this clause was first passed they have been still further enlarged by 56 V. c. 29, s. 1, so as to include the power "to manufacture and supply electricity for the purpose of generating heat or power and for all other purposes for which electricity is capable of being used."

Municipal corporation constructing works to supply buildings on line of supply on request.

(*d*) Where any municipal corporation has constructed any gas, electric light or waterworks for supplying the municipality with gas, electric light or water, and

(*a*) Now consolidated as ss. 59-67 of R. S. O. c. 199.

(*b*) 45 V. c. 18, s. 4; R. S. O. c. 199, s. 60, re-enacted in 1899 as clause (a2) of this sub-section.

(*c*) See *Re Town of Cornwall and Cornwall Waterworks Co.*, 29 O. R. 350 (1898).

(*d*) See *Cornwall Waterworks Co.* v. *Town of Cornwall*, 29 O. R. 605 (1898). As to payment into Court under s. 448, *ante*, see *Re Town of Cornwall and Cornwall Waterworks Co*, 30 O. R, 81 (1899); affirmed 27 A. R.—, (16th Jan. 1900,) not yet reported.

(*e*) R. S. O. c. 234. See this section quoted *supra* in note (b).

Sec. 566 (4).

Note (f).

Municipal gas, electric light and water to be supplied on request to buildings on line of supply pipes or wires.

where there is a sufficient supply thereof, it shall be the duty of the corporation to supply with gas, electric light or water all buildings within the municipality situate upon land lying along the line of any supply pipe or wires of the said corporation, upon the same being requested by the owner, occupant, or other person in charge of such building.

Corporation may require security from consumer.

(*e*) The corporation, before supplying gas, electric light or water to any building, or as a condition of continuing to supply the same, may require any consumer to give reasonable security for the payment of the proper charges of the company therefor or for carrying the gas, electric light or water into such building.

Liability for failure of supply not affected.

(*f*) Nothing in the preceding two clauses (*d*) and (*e*) contained shall be construed in any way to affect the liability of any corporation in respect of damages on account of any failure of supply through mischance, accident or mismanagement, but the position of the corporation in respect thereto shall remain as if said two clauses had not been enacted. 55 V. c. 42, s. 480 (3-5); 62 V. (2nd Sess.) c. 23, s. 35 (3).

Taken from 47 V. c. 26, ss. 1, 3, 4 (1884), as amended in 1899, ("electric light.") See the reference.

Duty of corporation to supply gas water etc.

(f) Clause (d). The effect of this clause was considered in *Attorney-General of Canada* v. *City of Toronto* (*a*). In that case a by-law of the defendants, passed under a local Act containing language similar to that of ss. 20 and 21 of "*The Municipal Waterworks Act*" (*b*), allowed a discount of 50 per cent. on all water rates paid within the first two months of each half year, but excepted from the benefit of this discount "government or other institutions exempt from city taxes." The trial Judge held the by-law valid on the ground that the water-rates were not taxes, but the price paid for a commodity (water) sold by the city to the consumers, and his view was unanimously concurred in by the Court of Appeal; but the Supreme Court reversed this decision and declared the by-law invalid, holding that the effect of the clause now under consideration is to treat the corporation "not as a mere commercial vendor of a commodity, but as a public body entrusted with the management of the water for the benefit of the whole body of inhabitants, and as such compelled to supply this element, necessary not merely for the private purposes of individuals, but indispensable for the preservation of the public health," etc., (*c*). PATTERSON, J., dissented on the ground that the section does not compel a municipal corporation to supply the water free of charge, or free from restrictions as to the quantity to be used, or the mode in which or the purpose for which it may be used (*d*). An application for leave to appeal to Her Majesty in Council was refused with costs.

Not a contractual relationship.

In *Scottish Ontario and Manitoba Land Co.* v. *City of Toronto* and in *Dejoe* v. *City of Toronto* (*f*), both of which were actions by consumers of water against a municipal corporation for not providing a proper supply of pure water for the plaintiffs' elevators according to agreement, and for negligently and knowingly allowing the water supplied by them to become impregnated with sand

(*a*) 20 O. R. 19; 18 A. R. 622; 23 S. C. R. 514 (1892.)

(*b*) R. S. O. c. 235.

(*c*) *Per* STRONG, C.J., 23 S.C.R. at p. 520.

(*d*) See R.S.O. c. 235, s. 20 (1).

(*e*) 29 C.L.J.N.S. 601 (1893).

(*f*) 29 O. R. 459 (1898).

Sec. 566 (4).

Note (f).

No contractual relationship.

which greatly damaged the elevators,—it was held by ROSE, J., before whom the case was tried; (1) that there was no right of action in the plaintiffs by reason of any statutory obligation on the part of the defendants arising upon the (special) Acts under which the defendant's waterworks had been established; (2) that upon the evidence there was no contract between the plantiffs and defendants by which the latter were bound to supply the former with water free from sand, and (3), *semble*, that the relation between the parties was rather that of licensor and licensee than one founded upon contract.

The learned Judge says (p. 464):—

> "I find nowhere in the (special) Act, and certainly not in the general Waterworks Act, anything which would imply that the supply of water by the corporation to any individual is on the basis of a contract between the parties, by which the corporation undertakes to supply water in any particular quantity or of any particular quality. It would seem to be against the reason of the thing. The powers given are for the benefit of the public generally; and the needs and requirements of different individuals vary. Most would require water for domestic purposes, some for manufacturing purposes, and some for scientific purposes. The inhabitants as a whole would require water for municipal purposes, such as putting out fires, laying the dust upon the streets, etc. Is it intended to enable or compel the corporation to enter into a contract with each taker according to his particular need or requirement? If a contract was made, then there was a contractual obligation to furnish the taker with water fit for the purposes for which he might reasonably require it. And if, without any fault on the part of the city, there was a breach of such contract, the liability for damages would exist. If, by reason of the supply having failed, the householder suffered damages,—as for instance in winter, by the bursting of pipes, or, in the case of a manufacturer, by the destruction of machinery, or in any other way that loss might come to any individual taker,—then an action would lie for breach of contract, and damages almost without limit might be recovered from the corporation in actions almost without number. The reason of the thing is against such conclusion."

And no warranty as to quality of water, etc. supplied.

This judgment was affirmed in appeal (*a*), OSLER, and LISTER, JJ. A., holding that the city being bound by law to supply water from their system of waterworks to any inhabitant of the city who applies therefor and complies with the statutory conditions, no contractual relationship arose between the city and plaintiffs by reason of the application for water and the city's compliance therewith, and that the city were not liable, as upon a breach of contract to supply pure water, for injuries caused to the elevators; and, *per* Sir GEORGE BURTON, C. J. O., (p. 348):—

> "It surely cannot be said that there was any warranty that the water was fit for the purpose for which it was required. Here was a sale of an existing article upon which the purchaser had the opportunity of exercising his own judgment, and there was no fraud on the part of the sellers; and even though the defect might not have been discoverable until after the water was in use, whenever it was ascertained, it was open to the plaintiffs to cease to take it, and thus to prevent the damage which subsequently occurred. I think the learned Judge was right in holding that the action was not maintainable."

Unless negligence, no damages recoverable on account of water not being pure.

In *Milnes* v. *Huddersfield* (*Mayor of*) (*b*) the defendants, being empowered by their special Act to prescribe the materials to be used for service pipes, prescribed that the material might be either lead or cast-iron, and upon the application of the plaintiff and at his expense laid into his premises a leaden service pipe, which thereupon became the plaintiff's property, but continued to be under the control of the defendants, and could not without their consent be interfered with by the plaintiff. Through these pipes they supplied to the plaintiff water which was pure and wholesome in the mains, but which, in its passage through the service pipes, became contaminated by the lead, and poisoned the plaintiff. In an action by plaintiff for breach of defendants' duty under s. 35

(*a*) 26 A. R. 345 (1899).

(*b*) 10 Q. B. D. 124; 12 Q. B. D. 443; 11 App. Cas. 511 (1886).

Secs. 566 (4), 567 (1-3). Notes (f)-(h).

of "*The Waterworks Clauses Act, 1847*" (*a*) to provide, etc., pure and wholesome water, it was held that the statutory obligation of the defendants was only to supply water which was pure and wholesome *in the mains*, and that this obligation having been complied with, and no negligence having been alleged or proved, the defendants were not liable.

Security may be required before supplying gas, water, etc.

(g). **Clause (e).** As to the right to cut off the supply of gas or water for non-payment of rates, see, as to gas, *Cadieux* v. *Montreal Gas Co.*, (*b*) and as to water, *Lindbery* v. *City of Halifax*, (*c*) and s. 21 (2) of "*The Municipal Waterworks Act*," (R. S. O. c. 235).

Under s. 35 of "*The Waterworks Clauses Act, 1847*," (*d*) any company authorized to construct waterworks under that Act is compellable to lay down pipes and bring water to any part of the town, etc., provided a binding agreement to take a supply of water for three successive years is executed by so many owners and occupiers of houses in the district to be served that the aggregate water-rates payable by them annually shall amount to one-tenth of the expense of providing and laying down such pipes, and (*e*) to lay in service pipes and supply water to any house in a street in which pipes have been laid, provided the owner of such house (or the occupier with the written consent of the owner) so requests and pays or tenders the proportion of the water-rate which is payable in advance in respect of such house.

Liability for failure of supply through accident, not affected.

(h). **Clause (f).** See also R. S. O., c. 235, s. 26.

A private Act provided that a water company should,—at the request of the owner or occupier of any premises situate in or adjoining any street in which any main or service pipe of the company was laid,—furnish a supply of water if required by such owner or occupier. In an action by a person so entitled, alleging that the company had made default, by reason whereof the plaintiff had been unable to extinguish a fire which destroyed his premises, the company pleaded,—(1) that the default was occasioned by the fact that the fire-plug was opened for the purpose of extinguishing another fire, and (2), that they were prevented from affording the said supply of water from unavoidable cause or accident. *Held*, that the first plea was good but the second bad (*f*).

Construction of electric light works in towns of 5,000 inhabitants or less.

567.—(1) In the case of towns having a population of 5,000 or less as ascertained by the latest census of Canada, the clause numbered 3 of section 384, subsection 1 of section 386, *clause 4 of section 566*, and subsection 5 of section 569, shall be read as if the words "electric light" were added after the word "gas" wherever it appears in the said clause and subsections.

By-laws passed before July 1st, 1897, for creating debts for electric light works.

(2) No by-law of any such town creating or intended to create a debt for the erection or purchase of, or for otherwise acquiring an electric light plant, passed before the 1st day of July, 1897, and otherwise legal, shall be quashed or shall be deemed to be invalid or illegal by reason only that the period fixed in and by the said by-law for the repayment of the debt thereby created exceeds twenty years; provided always that such period does not exceed the period of thirty years.

One by-law may include gas, electric light and waterworks.

(3) It shall not be necessary for the council of any such town to pass separate by-laws creating debts for the acquire-

(*a*) Imp. Stat. 10 V. c. 17.
(*b*) 28 S. C. R. 382 (1898); reversed, [1899] A. C. 589.
(*c*) 31 Nova Scotia Reports 154 (1898).
(*d*) Imp. Stat. 10 V. c. 17.
(*e*) S. 44.
(*f*) *Campbell* v. *East London Waterworks Co.*, 26 L. T. N. S. 475 (1872).

Sec. 568.

Note (a).

By-law of town for acquiring gas, electric light or water-works.

ment of gas, electric light or water works in case the town desires to acquire at the same time more than one of the said conveniences, but all or any two thereof may be united in one by-law and one debt, or separate by laws creating separate debts, in respect of the said subject matters, may at the option of the council be submitted and passed, subject to the provisions of this Act; and in case the by-law embraces two or more subject matters, the procedure shall be that of this Act and not that of *The Municipal Water Works Act.* 60 V. c. 45, ss. 3, 85; 60 V. c. 3, s. 3.

Rev. Stat. c. 235.

See references at end of section. (60 V. c. 45, s. 85 merely fixes the date (July 1st, 1897). Since clause 4 of s. 566 has been repealed and re-enacted by 62 V. (2nd Session), c. 26, s. 35 (1), the words (in italics) in line 4 relating thereto have become unnecessary.

(a) Sub-section 2 was passed in consequence of the decision in *Re Hay and Town of Listowel*, (a) where a by-law of that municipality "to raise $15,000 for the purpose of acquiring and constructing a system of waterworks and gas or electric light works," etc., was quashed on the ground that the debentures to be issued thereunder were made payable in thirty years from the date on which the by-law took effect, instead of being limited to twenty years, as was then required by 55 V. c. 42, s. 340 (2), (now superseded by s. 384 (4)).

(b) Sub-section 3. "And in case the by-law embraces two or more subject matters, the procedure shall be that of this Act and not that of "The Municipal Water Works Act."

Procedure.

The procedure of "*The Municipal Water Works Act*" is defined by ss. 51-53 of that Act, under which the council are bound to submit the by-law to the vote of the rate-payers on receiving a sufficiently signed petition and a deposit to cover the expense of taking the vote. The procedure of this Act has been already described. (b) Section 569 (5) applies to by-laws for constructing, but not to by-laws for acquiring water works.

Contracts for the supply of gas or electric light for street lighting, etc.

568. Every municipal council shall have power to contract for a supply of gas or electric light for street lighting and other public uses for any number of years not in the first instance exceeding ten, and for renewing such contract from time to time for such period not exceeding ten years, as the council may desire. 55 V. c. 42, s. 480 (1) *part.*

Taken from 52 V. c. 36, s. 20 (1889).

(a) By making contracts of this sort, extending over a term of years, municipalities are often enabled to secure cheaper lighting, but doubts having been expressed as to the power of a council thus to tie the hands of its successors, express statutory authority for such contracts was considered to be desirable.

In *Hull Electric Co. v. City of Ottawa Electric Co. and City of Hull*, Q. R. 14 S. C. 124 (1898), it was held that a resolution of a municipal council granting to an individual or a company the exclusive privilege of lighting the municipality for a term of thirty years was invalid, and that the confirmation thereof by a Provincial Act was also invalid and *ultra vires* of the Legislature as being a restriction upon "trade and commerce" which, under s. 91 (2) of "*The B. N. A. Act, 1867*," the Dominion Parliament has exclusive jurisdiction to regulate. An exclusive permission to the defendant company to plant poles and put up wires along the streets of the town was held to be ancillary to the foregoing grant, and, therefore, to be also *ultra vires*. (c)

(a) 28 O. R. 332 (1898).

(b) Ss. 338-374.

(c) But see *Bell v. Town of Westmount*, Q. R. 15 S. C. 580, cited in note (a) to s. 569.

Sec. 569 (1-3). DIV. XIII.—STREET RAILWAYS. TELEPHONE SERVICE.

Building, equipping, maintaining and operating street railways. Sec. 569 (1).
Powers and liabilities of municipality so doing. Sec. 569 (1) (2).
Extensions into adjoining municipality. Sec. 569 (3).
Vestibules for motor-men etc. Sec. 569 (4).
By-laws relating to street railways or gas or water works, how to be passed. Sec. 569 (5) (6).
Special Acts not affected. Sec. 569 (7).
Municipal telephone service. Secs. 570-573.

569.—(1) By-laws may be passed by the councils of cities and towns:—

Street Railways.

Power to build, maintain and operate street railways.

For building, equipping, and maintaining and operating street railways in, along and over such streets of the city or town and subject to and upon such terms as the Lieutenant-Governor in Council may approve; and for leasing the same from time to time on such terms as may be determined on; and for levying an annual special rate to defray the yearly interest on the expenditure therefor, and to form an equal yearly sinking fund for the payment of the principal within a time not exceeding 30 years.

But not where there is a street railway in operation.

Provided that the powers conferred by this subsection shall not apply to a municipality in which there is an existing street railway constructed or operated under any agreement or contract between the municipality and any street railway company. 55 V. c. 42, s. 504 (14).

Rights and liabilities of municipality.

(2) A municipal corporation which builds, constructs, owns, or manages a street railway shall have and exercise the same rights and powers and be subject to the same liabilities as street railways and companies under *The Street Railway Act*, except where the same conflict or are inconsistent with or are repugnant to the rights, powers, liabilities or duty of a municipal corporation as provided by law. Nothing herein contained shall relieve any municipality from its obligations and liabilities in respect of roads, streets, highways or bridges as provided by this Act. 55 V. c. 42, s. 504 (15).

Taken from 53 V. c. 50, s. 25 (1890). See also the power conferred upon a municipal council by ss. 41-45 of "*The Street Railway Act*," R. S. O. c. 208, (originally 46 V. c. 18, ss. 18-21) to acquire, operate and dispose of a street railway incorporated since February 1st, 1883, and operating its lines (or the greater part thereof) in the municipality.

Power to build and operate extensions of street railway in adjoining municipality.

(3) In addition to the powers given and contained in subsection 1 of this section any city or town operating or proposing or intending to build or operate a street railway within its own limits may also pass by-laws for building, equipping, maintaining and operating any extension of any such street railway in any adjoining municipality (with the consent of such adjoining municipality by by-law, and subject to and upon such terms as the Lieutenant-Governor-in-Council may approve) upon the same terms and subject to the same conditions and provisions of law as any street railway company may

build, maintain or operate any street railway under *The Street Railway Act*; and such city or town building, constructing, owning or managing a street railway extending beyond its territorial limits (and authorized as aforesaid and with the consent aforesaid) shall not be held to be illegally expending money, merely because it is expended upon or in connection with such portion of said street railway as extends beyond its territorial limits. 55 V. c. 42, s. 504 (16).

Sec. 569 (4) Note (a).

Extensions of municipal street railway into adjoining municipality.

Taken from 54 V. c. 42, s. 23 (1891).

(a). The difference between railways for general traffic and street railways consists in their use and not in their motive power.

What is a street railway?

> "A railroad, the rails of which are laid to conform to the grade and surface of the street and which is otherwise so constructed that the public is not excluded from the use of any part of the street as a public way, which runs at a moderate rate of speed, which carries no freight, but only passengers from one part of a thickly populated district to another . . . and for that purpose runs its cars at short intervals, stopping at street crossings to receive and discharge its passengers, is a street railway, whether the cars are propelled by animal or mechanical power." (a)

A street railway constructed on a public highway without authority is a public nuisance (b) and, *semble*, a municipal corporation cannot, without express legislative authority, (c) legalize the construction or operation of a street railway on any of the highways of the municipality. (d) In *Reg.* v. *Train et al.* (e) the defendants under a contract with the local authority, (the vestry of a parish), laid down in one of the streets of London a double line of tramways on which omnibusses of a peculiar construction plied for hire, but they were dangerous and inconvenient for ordinary vehicular traffic. It was held that, although these tramways might (in a sense) be for the convenience of the public, they were a public nuisance, and the contract was *ultra vires* of the vestry. *Winnipeg Street R. W. Co.* v. *Winnipeg Electric R. W. Co. and City of Winnipeg* (f) turned upon the construction of the contract between the plaintiffs and defendant municipal corporation; but in giving the judgment of the Judicial Committee of the Privy Council, Lord WATSON expresses doubt as to whether, if the city had by its agreement with the plaintiffs given them an *exclusive* right to use the streets of the municipality for street railway purposes, such a contract would not have been *ultra vires* of the city council.

Legislative authority necessary to legalize occupation of highways by a street railway.

Electric Street Railways.

(4) By-laws may be passed by the councils of cities:—

Bylaws compelling street railway companies to provide shelter for motormen.

For compelling every electric railway company, operating its railway within the limits of such city, to provide proper and sufficient enclosed vestibules upon its street cars to protect the motormen and persons in charge of such cars, from expo-

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(a) *Per* CALDWELL, J., in *Williams* v. *City Electric Street R. W. Co.*, 41 Fed. Rep. 556 (1890); and see *Re New York District R. W. Co.*, 42 Hun (N.Y.) 621 (1886), 107 N.Y. 42, 52 (1887).

(b) Booth on Street Railway Law, (1892), s. 3. See note (a) to s. 557; *Rex* v. *Morris*, 1 B. & Ad. 441 (1830); *Reg.* v. *Charlesworth*, 16 Q. B. 1012 (1850).

(c) Such authority is conferred by s. 697 of this Act upon township councils. See also "*The Street Railway Act*," (R.S.O. c. 208), s. 11 *et seq.*, and "*The Electric Railway Act*," (R.S.O. c. 209), s. 9 (c); and as to tramways in Great Britain, "*The Tramways Act, 1870*," (Imp. Stat., 33-34 V. c. 78) s. 4.

(d) This question is discussed and the American authorities cited in Dillon, ss. 715-720. See also *Bell* v. *Town of Westmount*, Q. R. 15 S. C. 580 (1899).

(e) 2 B. & S. 640 (1862). (f) 9 Man. Rep. 219 (1893); [1894] A.C. 615.

Sec. 569 (4), (5).
Notes (b), (c).

sure to cold, snow, rain or sleet, during the months of November, December, January, February and March in every year, while engaged in operating the cars. 57 V. c. 50, s. 11.

Added in 1894. See reference appended to the sub-section.

Scope of section. Prosecutions for disobedience to by-law.

(b) In *Reg.* v. *Toronto Railway Co.*, 35 C. L. J. N. S. 422 (1899), McDougall, Co. J. of York, held that the words "persons in charge," etc., refer to other persons than motormen, and apply to the conductors of electric street cars. As to the right to proceed by summary prosecution under s. 705 of this Act for contravention of a by-law passed under this subsection, see *Reg.* v. *Toronto Railway Co.*, 30 O. R. 214 (1898), 26 A. R.—(1899), not yet reported.

By-laws Relating to Street Railways or to Gas, Electric Light or Water-works.

(5) No by-law under clause 4 of section 566 or under sub-section 1 of this section shall be passed :—

Estimates and notice of holding poll on by-law to be published.

Firstly :—Until estimates of the intended expenditure have been published for one month, and notice of the time appointed for holding a poll of the electors on the proposed by-law has been published for two months and until a copy of the proposed by-law at length, as the same is to be ultimately passed, and a notice of the day appointed for finally considering the same in council, have been published for one month in some newspaper in the municipality, or (if no newspaper is published therein, then) in some newspaper in the county in which the municipality is situate ; nor,

Poll to be held and majority of votes in favour of by-law.

Secondly :—Until, at a poll held in the same manner and at the same places and continued for the same time as at elections for councillors, a majority of the electors voting at the poll vote in favour of the by-law ; nor,

By-law to be passed within three months.

Thirdly :—Unless the by-law is passed within three months after holding the said poll.

The above clauses of this sub-section (and also sub-section 6, *infra*) are taken from the Act of 1858 (22 V. c. 99) s. 291 (5-6), which applied only to by-laws under what is now s. 566 (4). Its application was extended in 1890, by 53 V. c. 50, s. 26, to by-laws relating to the building, etc., of street railways (s. 569 (1)), and in 1899, by 62 V. (2nd Session) c. 26, s. 35 (4), to by-laws relating to electric light works. By 59 V. c. 51, s. 18 (1896), the time during which the proposed by-law is required to be published was reduced from three months to one month ; and in the Revision of 1897 the words "as the same *is to be* ultimately passed" were substituted for "as the same *may be* ultimately passed." See 60 V. c. 3, s. 3, and *Re Bryant and Township of Pittsburg*, 13 C. C. R. 347 (1855).

The last clause, which in the earlier Acts provided that the by-law should "be passed at the special meeting mentioned in the published notice" was altered to its present form in 1873 by 36 V. c. 48, s. 389.

"Electors," meaning of.

(c) "**A majority of the electors voting at the poll.**" See note (b) to s. 338, and ss. 353-355, *ante*.

Extension or improvement of gas, electric light or waterworks in certain cities and towns.

Provided always that where any city or town has constructed gas, electric light or water works under the authority of this Act, or under the authority of *The Municipal Water Works Act*, or under the authority of any special Act or Acts, or hereafter constructs such works under the authority of the said Acts or any future amendments of the same, and has raised the money for the purchase or construction of such works, or hereafter so raises the same by a general rate on the whole of the assessable property of the said corporation under a by-law or by-laws lawfully passed or to be passed, it shall be lawful for the council of the city or town

Secs. 569 (5-7), 570.

Extension or improvement of gas, electric light or waterworks in certain cities and towns.

from time to time to raise on the credit of the said corporation such further sums as may be necessary to extend or improve the said works or to pay the expense of any extensions or improvements thereof already made or completed, wholly or in part, and to pass by-laws for levying on the whole rateable property of the said corporation an annual special rate sufficient to defray the yearly interest upon the sums so expended, and to form an equal yearly sinking fund for the payment of the principal within a time not exceeding thirty years nor less than five years; and in such cases it shall not be necessary to comply with the preceding requirements of this section, or to obtain the assent of the electors or ratepayers to such by-law or by-laws, provided the same are first approved of by the Lieutenant-Governor in Council, it being first shewn to the satisfaction of the Lieutenant-Governor in Council that the said extensions are or were necessary, and that a sufficient additional revenue will be derived therefrom to meet the annual special rate required to pay the new debt and interest; and provided also that on the final passing of such by-law or by-laws, three-fourths of all the members of the council vote in favour of the same. 55 V. c. 42, s. 505; 59 V. c. 51, s. 18; 60 V. c. 15, *Sched.* C (87); 62 V. (2nd Session), c. 26, s. 35 (4).

This proviso, as first added to the sub-section in 1888 by 51 V. c. 28, s. 24, applied only to the case of a city having a population exceeding 50,000. By 55 V. c. 36, s. 26, it was made applicable to all cities and towns; and by 53 V. c. 50, s. 28, the last mentioned section was repealed, re-enacted, and declared to have been in force at and from the date of the original enactment of the proviso in 1888. "*The Municipal Amendment Act of 1891*," (54 V. c. 42), s. 32, extended the power of the council by enabling them to raise moneys under this section to pay the expense of extensions or improvements "already made or completed wholly or in part," and (without altering the effect of the clause) its wording was made more clear by 60 V. c. 15, Sched. C. (87). The words "electric light" were inserted by 62 V. (2nd Sess.), c. 26, s. 35 (5), passed on April 1st, 1899, which further provided that:—

"(5) Nothing in this section contained shall apply to or affect any by-law now in force or which had at the time of the passing of this section come into effect, nor to any contract heretofore made or entered into between a municipal corporation and any gas, electric light or water company, nor shall anything in this Act contained be deemed to prevent any contract being entered into hereafter between a municipal corporation and any such company, or any by-law being passed by a municipal council not inconsistent with this Act, in the same manner and for the same purpose and to the same extent as heretofore."

If by-law rejected.

(6) If the proposed by-law is rejected at such poll, no other by-law for the same purpose shall be submitted to the electors during the current year. 55 V. c. 42, s. 506.

Taken from the Act of 1858 (22 V. c. 99) s. 291 (6). See references *supra*.

Provisions in special Acts.

(7) The foregoing sub sections or any of them shall not be construed to apply or to affect the provisions contained in any special Act obtained, or to be obtained, by any company or municipal corporation, or the provisions of any contract existing on the 1st day of April, 1899, between any municipal corporation and any company. 55 V. c. 42, s. 508; 62 V. (2nd Session) c. 26, s. 35 (2).

Taken from the Act of 1873, (36 V. c. 48), s. 389, as amended by 62 V. (2nd Sess.) c. 26, s. 35 (2). See *supra* under s. 569 (4) (b).

Telephone Service.

Cities and towns empowered to carry on telephone service.

570. The council of every city and town shall have power to construct, build, own, purchase, lease, rent, improve, extend, maintain, manage, conduct and carry on a telephone business and service, and all works, land, buildings, plant,

Secs. 570-572.

Cities and towns may establish a telephone service.

machinery, conduits, materials, equipment, apparatus and appurtenances necessary therefor or thereto belonging or appertaining or that may be properly used therewith in the municipality or within two miles thereof, and for supplying the corporation or persons in the municipality or in the neighbourhood thereof with a telephone service and connection therewith, and may make a rate, charge or rent for such service and connections and for the use of transmitters and other apparatus therewith, and may require such payment to be made in advance, and may discontinue such service or the subscriber's connection therewith in default of such payment and may forthwith thereafter remove all transmitters, wires and other apparatus from the premises of such subscriber; and such rate, charge or rate may be collected by action as an ordinary debt, against the person owing the said rate, rent or charge, or may be collected in the same manner as municipal taxes are collected against the person liable to pay the same; and the council may pass by-laws for levying an annual special rate to defray the yearly interest of the expenditure therefor and to form an equal yearly sinking fund for the payment of the principal at any time within a time not exceeding thirty years nor less than five years. 60 V. c. 45, s. 16, *part.*

This and the next three sections were added to the Act in 1897, by 60 V. c. 45, s. 16, passed at the instance of the Corporation of the City of Toronto.

Carrying works over streets and private property.

571. Such corporations, or their servants under their authority, may for the purpose of laying down, taking up, erecting, constructing, examining or keeping in repair the plant, machinery, conduits, materials, poles, wires, rods, equipment, apparatus or other appliances for conducting, distributing or otherwise carrying on the said telephone business or service or connections therewith, break up, dig and trench in, upon, through, over, under and along the highways, streets lanes, roads, squares and other public ways, passages and places in the munipality, or in, upon, through, over, under and along any private property, or may by means of conduits or upon poles or otherwise conduct or carry such plant, materials, equipment, apparatus, wires or rods through, over, under, along or across such streets, lanes, roads, squares and other public ways, passages and places in the municipality or upon private property, and may also break up, dig and trench all passages common to adjoining owners or tenants for the purpose of laying down conduits or erecting poles therein. But such corporations shall make satisfaction or compensation to the owners or proprietors of buildings or other property for all damages by them sustained in or by the exercise of any of the powers by this section granted. 60 V. c. 45, s. 16, *part.*

By-laws, etc., for management.

572. Such corporations may from time to time make and enforce all necessary by-laws, rules and regulations for the general maintenance and management of all works, plant, machinery, conduits, materials, equipment, apparatus and

By-laws respecting municipal telephone service.

appliances constructed, maintained and used for or with such telephone business and service, and of the connection therewith, and designating or limiting the amount or extent of transmitters, apparatus or other appliances to be furnished to persons desiring connection with the said telephone service, and for regulating and defining the duties of the officers and others employed in connection with such business or service, and for the imposition and collection of the rates or charges for supplying such service or for connection therewith and for the rent of fittings, machines, apparatus, transmitters or other things leased or supplied to subscribers, and for fixing such rates, charges and rents and the times and places when and where the same shall be payable; and the corporation may allow for prepayment or punctual payment such discount as they deem expedient. 60 V. c. 45, s. 16, *part.*

Protection of corporation and officers and limitation of actions.

573. Such corporations and their officers and agents shall in such telephone business and service have the like protection in the exercise of their respective offices and in the execution of their duties as municipalities or their officers now have under the laws of this Province, and if any action is brought or claim made by way of arbitration or otherwise against such corporations or against any person or persons for anything done in pursuance of such telephone business or service or the powers given for the purposes thereof, whether tort or contract, the same shall be brought within six calendar months next after the committing of the act or the discovery of the injury or damage by the injured party or the owner of the property damaged, or in case there is a continuation of damage, then within one year after the first committing of the said act or the discovery as aforesaid. 60 V. c. 45, s. 16, *part.*

DIV. XIV.—TREES,—PLANTING, PROTECTION AND REMOVAL OF.

Encouraging planting of fruit or shade trees. Sec. 574 (1).
Encouraging planting of shade trees on highways. (R.S.O. c. 243, s. 8). Note (a).
Property in trees so planted. (R.S.O. c. 243, s. 2). Note (e).
Municipal bonuses for shade trees planted under R.S.O. c. 243. Note (a).
Removal of trees growing on streets, etc. Sec. 574 (2).
Trees on boundary lines. Sec. 574 (3).
Authorizing planting and trimming of trees in certain cities. Sec. 574 (4).
Compensation to owners of trees trimmed or removed. Sec. 575.

574. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

Fruit and Shade Trees.

By the councils of townships, cities, towns and villages:—

Encouraging planting of certain trees, etc.

1. For allowing to any person who plants fruit trees or trees, shrubs or saplings suitable for affording shade on any highway within the municipality, in abatement of statute

Sec. 574 (1-2). Notes (a)-(d)

labour, or out of the general fund, a sum of not less than twenty-five cents for every tree so planted. 55 V. c. 42, s. 489 (27).

Taken from the Act of 1873, (36 V. c. 48), s. 379 (20).

"*The Ontario Tree Planting Act.*"

(a) The first step toward encouraging the planting of trees on highways was taken in 1871 by the Act 34 V. c. 31, entitled "*An Act to encourage the planting of trees upon the highways of this Province and to give a right of property in such trees to the owners of the soil adjacent to such highways.*" S. 1 of that Act declared shade trees, etc., then growing on the sides of the highways to be the property of the owners of the adjacent land; and s. 2 gave such owners the right to plant trees upon the contiguous portion of the highway and a right of property in trees so planted. (*a*)

This Statute (consolidated in 1877 as R.S.O. c. 187), was repealed and re-enacted with modifications in 1883 by 46 V. c. 26, which became R.S.O. (1887) c. 201, and (as amended by 53 V. c. 60) was in its turn repealed and superseded by 59 V. c. 60, which now forms R.S.O. c. 243, "*The Ontario Tree Planting Act.*"

Municipal by-laws.

See. 8 of that Act provides that :—

"The council of every municipality may pass by-laws :—

1. To regulate the planting of trees upon the public highway ;

2. To prohibit the planting upon the public highways of any species of trees which they may deem unsuited for that purpose ;

3. To provide for the removal of trees which may be planted on the public highway contrary to the provisions of any such by-law."

and s. 3 that :—

Municipal bonuses.

"(1) The council of any municipality may pass a by-law for paying out of municipal funds a bonus or premium not exceeding twenty-five cents for each and every ash, basswood, beech, birch, butternut, cedar cherry, chestnut, elm, hickory, maple, oak, pine, sassafras, spruce, walnut or whitewood tree, which shall, under the provisions of this Act, be planted within such municipality on any highway, or on any boundary line of farms, . . . or within six feet of such boundary.

Inspector of shade trees.

(2) Such by-law shall further provide for the appointment of an inspector of trees so planted ; for their due protection against injury and against removal by any person or persons, including the owner, excepting as authority may be given therefor by special resolution of the council ; for the conditions on which bonuses may be paid, and generally for such regulations as are authorized by sub-sections 2 and 3 of section 574 of "*The Municipal Act.*" (*b*)

See also 62 V. (2nd Sess.), c. 30, here consolidated as s. 746*a* of this Act.

(b) "**In abatement of statute labour.**" See "*The Assessment Act,*" (R.S.O. c. 224) ss. 96-110.

Provincial refund of municipal bonuses.

(c) "**Or out of the general fund.**" *i.e.*, out of municipal funds. See R.S.O. c. 243, s. 3, quoted *supra*. Sec. 5 of the same Act authorizes the Provincial Treasurer, under the circumstances and upon the terms therein mentioned, to refund to the municipality one-half the amount of any bonuses thus paid.

(d) "**Not less than twenty-five cents for each tree so planted.**" Sections 3 of R.S.O. c. 243, (*c*) says "*not exceeding* 25 cents" in the case of the species of trees therein mentioned.

By the councils of counties, cities, townships, towns and villages :—

Removal of trees planted on streets, etc.

2. For causing any tree, shrub or sapling, growing or planted on any public place, square, highway, street, lane, alley

(*a*) As to ss. 3 and 5, see the small-print references under subsec. 2, *infra*.

(*b*) S. 2 of the Act is quoted *infra* in note (**e**) and ss. 6 and 7 are referred to in note (**c**) to s. 547 (3), *ante*.

(*c*) See *supra*, note (**a**).

or other communication under its control, to be removed, if and when such removal is deemed necessary for any purpose of public improvement; but

Notice and compensation to adjoining owner.

(*a*) Any owner of adjoining property shall be entitled to ten days' notice of the intention of the council to remove such tree, shrub or sapling, and shall be entitled to be recompensed for his trouble in planting and protecting the same.

Resolution of council necessary.

(*b*) No owner of adjoining property nor any pathmaster or other public officer, nor any other person, shall remove or cut down or injure such tree, shrub or sapling, on pretence of improving the public place, square, highway, street, road, lane, alley or other communication or otherwise, without the express permission of the municipal council having the control of the public place, square, highway, street, road, lane, alley or other communication.

Council may plant or preserve shade, etc., trees, or may grant money for that purpose.

(*c*) Any council may expend money in planting or preserving shade and ornamental trees upon any public place, square, highway, street, road, lane, alley or other communication within the municipality, and may grant sums of money to any person or association of persons to be expended for the same purposes. 55 V. c. 42, s. 479 (20).

This sub-section is based upon ss. 3 and 5 of the Act 34 V. c. 31, referred to in note (a). It was incorporated into "*The Con. Mun. Act of 1873*", (36 V. c. 48), as 5. 372 (19), and has been repeated without alteration in each successive consolidation down to 1887, when it formed s. 479 (20) of R.S.O. c. 174, "*The Municipal Amendment Act of 1891*" repealed and re-enacted the whole sub-section with the substitution of "ten days' notice" for "one month's notice" in clause (a) thereof.

(e) Section 2 of R.S.O. c. 243 provides that:—

Adjoining owners may plant trees on highways, etc.

"2.—(1) A person owning land adjacent to any highway, public street, lane, alley, place or square in this Province, may plant trees on the portion thereof contiguous to his land; but no tree shall be so planted that the same is or may become a nuisance in the highway or other public thoroughfare, or obstruct the fair and reasonable use of the same.

Trees on boundary lines.

(2) Any owner of a farm or lot may, with the consent of the owner or owners of adjoining lands, plant trees on the boundaries of the adjoining lot.

Property in trees planted by owners.

(3) Every tree so planted on such highway, street, lane, alley, place or square, shall be deemed to be the property of the owner of the lands adjacent to such highway, street, lane, alley, place or square, and nearest to such tree; and every such tree so planted on a boundary line aforesaid shall be deemed to be the common property of the owners of the adjoining farms or lots.

Property in all shade and ornamental trees.

(4) Every growing tree, shrub or sapling whatsoever planted or left standing on either side of any highway for the purposes of shade or ornament shall be deemed to be the property of the owner of the land adjacent to the highway and nearest to such tree, shrub or sapling."

Sec. 574 (2.) (3), (4).

Notes (e), h).

Adjoining owner may sue wrongdoer cutting shade trees on highway.

In *Douglas* v. *Fox* (*a*) it was held that under the Act then in force (*b*) the owner of land adjoining a township highway had such a special property in the shade and ornamental trees growing on the highway opposite to his land (though not planted by him) that he might maintain an action against a wrongdoer for cutting and removing them, and was not restricted to recovering the penalty given by s. 5 (now s. 6) of the Act (*c*).

But (formerly) not in cities unless by-law passed making R.S.O. c. 243, s. 2, apply thereto.

All the Tree Planting Acts prior to the one now in force provided that the section thereof which declared trees growing on a highway to be the property of the owner of the adjoining land, should not apply to the highways in any city, town or village unless the council thereof should so enact by by-law; and in *Hodgins* v. *City of Toronto*, (*d*) it was held that the subsection now under consideration had no force in a city where such a by-law had not been passed. In that case the Bell Telephone Company, under an arrangement with the other defendants, the Corporation of the City of Toronto, maintained a police patrol telephone system in the city. The wires belonging to this telephone system being interfered with by the branches of trees, the two defendants sent men to put them right, in doing which these men cut off branches of trees, some of which grew within the plaintiff's grounds and others in the adjoining boulevard. None of the trees or branches so cut had interfered with the ordinary use of the highway, and there was no by-law or resolution of the council authorizing the acts complained of. The trial Judge, finding as a fact that the cutting was not judiciously done and that the trees had been injured, gave judgment for the plaintiff, but on appeal it was held that although in respect of the trees growing upon his own land the plaintiff was entitled to recover, as to those growing upon the highway he had no such right, for the reason above stated.

And where no such by-law, s. 574 (2) did not apply.

R.S.O. c. 243, applies only to travelled highways.

In *Connor* v. *Midlagh*, (*e*) OSLER, J. A., in giving judgment, says, (p. 390) "I doubt . . . whether the Act applies . . . except to the case of trees on the side of a *travelled* highway." (*f*)

Notice and compensation.

(f). **Clause (a).** See as to cities, towns and villages, s. 575, *infra*.

Rights and liabilities of adjoining owner.

(g). **Clause (b).** The property of an adjoining owner in trees growing upon a highway is of a somewhat peculiar character. Such trees cannot be cut down without notice to him, nor (if he has planted or protected them) without his being entitled to compensation, yet he cannot himself cut down or remove them, unless under a special resolution of the council, without becoming liable to fine and possibly to imprisonment. (*g*)

Regulations as to trees on boundaries between private properties.

3. For regulating the planting of trees, shrubs or saplings upon or near the boundary lines between the lands of different owners or occupants, and the distance from said boundary lines at which trees, shrubs or saplings may without the consent of the owner or occupant of the adjoining land be planted. 55 V. c. 42, s. 479 (20*a*).

Taken from 53 V. c. 50, s. 16 (1890).

(h) Section 8 of R. S. O. c. 243 (quoted *supra* note in (a)) applies only to by-laws respecting the planting of trees *on highways*.

By the councils of cities having a population of 40,000 or more, towns and villages:—

Authorizing the park commissioner to plant and trim trees on streets.

4. For authorizing the park commissioner, or other officer appointed by the council in that behalf, to plant trees upon the streets of the municipality and to trim all trees, the branches

(*a*) 31 C. P. 140 (1880).

(*b*) R. S. O. (1877), c. 187, s. 3, which was substantially the same as s. 24 of the present Act, quoted *supra*.

(*c*) See *ante*, s. 547 (3), note (c). (*d*) 19 A. R. 537 (1892).

(*e*) 16 A. R. 356 (1889), more fully referred to in note (a) to s. 468.

(*f*) See *Turner* v. *Ringwood Highway Board*, L. R. 9 Eq. 418 (1870).

(*g*) R. S. O. c. 243, ss. 6, 7, see *ante*, note (c) to s. 547.

Secs. 547 (4-5), 575.

Notes (i)-(j).

of which extend over the streets thereof; and no such municipality shall be liable for injury to trees occasioned thereby, when reasonable care, skill, and judgment have been exercised in such trimming. 60 V. c. 45, s. 12.

Added in 1897. See references.

Nuisances caused by overhanging boughs, etc.

(i). This sub-section was passed at the instance of the Corporation of the City of Toronto in consequence of the decision in *Hodgins* v. *City of Toronto*, *supra*, note (e). By the common law of England any traveller along a highway may lop off overhanging boughs which create a nuisance by obstructing his free passage thereon (*a*); and every landowner possesses the same right in regard to branches of trees growing upon his neighbour's land, but which overhang his own (*b*).

As to the meaning of the word "trim," *Unwin* v. *Hanson* (*c*) may be referred to. It was an action of trespass against a surveyor of highways, in which the plaintiff claimed damages for the cutting and mutilation of trees in and near the hedges on his lands adjoining a highway. The defendant had cut off the tops of the trees, acting (as he claimed) upon an order of Justices made under the authority of s. 65 of "*The Highway Act, 1835*," (*d*) which directed that the trees in question should be "pruned or lopped so that the carriage- or cart-way shall not be prejudiced by the shade thereof, and so that the sun and wind may not be excluded from such carriage-way to the damage thereof." It was held that the word "lop," as used in the section, meant to cut off the branches laterally, and that neither the surveyor nor the Justices had any authority to cut off the tops of trees, or to order them to be cut off (*e*).

As to the city of Toronto.

5. For authorizing the park commissioner or other officer appointed by the council of any city of over 100,000 inhabitants to cut down and remove all decayed trees, and remove and transplant any trees, shrubs or saplings growing or planted in any public place, square, highway, street, lane or alley, or other means of communication under its control, after giving forty-eight hours' notice of the intention so to do; and the corporation shall not be liable to any owner or owners of adjoining property for any act so performed.

Provided that no live tree, unless within 20 feet of other trees, shall be removed without the consent of the owner of the property in front of which such tree is situate.

Added in 1898 by 61 V. c. 23, s. 19.

(j). This sub-section also was passed at the instance of the Corporation of the City of Toronto, and for the same reason as the preceding one. As to the liability of municipal corporations for accidents occasioned by trees, telegraph poles, etc., falling into the highway, see the authorities cited in note (a) to s. 559.

Limit of compensation to be paid to owners of adjoining lands for cutting or removing trees from highways.

575. Nothing contained in *The Ontario Tree Planting Act* shall render the municipal corporation of any city, town or village, liable to compensate the owner of property adjoining any public highway in the city, town or village for the cutting

(*a*) 1 Hawk. P. C. c. 76, s. 52; Bac. Abr., *Tit.* "Highway" (E).

(*b*) *Lemmon* v. *Webb*, [1894] 3 Ch. 1; [1895] A. C. 1.

(*c*) [1891] 2 Q. B. 115.

(*d*) 5-6 Wm. IV. c. 50.

(*e*) See also *Brook* v. *Jenney*, 2 Q. B. 265, 274, (1841); 6 Q. B. 323 (1844); and as to overhanging branches of trees which are nuisances, or in themselves dangerous, *Crowhurst* v. *Amersham Burial Board*, 4 Ex. D. 5 (1878); *Ponting* v. *Noakes*, [1894] 2 Q. B. 281,—or which form obstructions to a highway, *Walker* v. *Horner*, 1 Q. B. D. 4 (1875) (cited in note (e) to s. 557); *Ferguson* v. *Township of Southwold*, 27 O. R. 66 (1895).

Sec. 575, 576 (1-2).

Notes (a)-(a).

or trimming or removal of any tree upon such highway, further than as provided by subsection 2 of section 574 of this Act, provided that such cutting, trimming or removal is done under the provisions of a by-law duly passed in accordance with the powers by this Act conferred. 59 V. c. 51, s. 36.

Passed in 1896. See the references.

(a). See the case of *Hodgins* v. *City of Toronto*, referred to in note (e) to s. 574. Since the rights, as well as the remedies, of the adjoining land owners in respect to trees growing upon highways are created and limited by statute, it is difficult to see what effect this section can have, beyond the not undesirable one of emphasizing the rule that a municipal corporation should, as a rule, express its will by means of a by-law.

DIV. XV.—PUBLIC PARKS AND DRIVES, INDUSTRIAL FARMS, ETC.

Acquiring land for parks, boulevards, drives, etc. Sec. 576 (1).
When lands so acquired are in an adjoining municipality. Sec. 576 (2).
Lands for industrial farms, walks, gardens, etc. Sec. 576 (3).
Erecting buildings, etc., thereon. Sec. 576 (4).
Management thereof. Sec. 576 (5).
Power to lease. Sec. 576 (6).

576. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

By the councils of counties, cities, townships, towns and villages:—

Public parks.

(a) See also "*The Public Parks Act*" (*a*), and as to the establishment of public parks, etc., by police villages, s. 746 *post*. Parks belonging to a municipality and in use as such are exempt from taxation (*b*). Parks may also be established by street railway companies (*c*), or electric railway companies (*d*).

Acquiring Land for Parks, etc.

Acquiring land for parks, etc.

1. For entering upon, taking and using and acquiring so much real property as may be required for the use of the corporation, for public parks, squares, boulevards, and drives in the municipality and adjoining local municipalities, without the consent of the owners of such real property, making due compensation therefor to the persons entitled thereto, to be determined, under the provisions of this Act, by arbitration where the parties do not agree. 55 V. c. 42, s. 479 (22).

Where land expropriated is in an adjoining municipality.

2. In every case in which any municipality expropriates lands in an adjoining municipality, the municipality so expropriating such lands shall put the same in an efficient state to be used as, and shall open the same to the general public, for the purposes of such public parks, squares, boulevards and drives, within a reasonable time after such expropriation, and shall maintain and keep the same in an efficient state of repair, and shall provide and maintain such police protection for such

(*a*) R. S. O. c. 233. (*b*) R. S. O. c. 224, s. 7 (8).
(*c*) R. S. O. c. 208, s. 14 (1*e*), (2), (3). (*d*) R. S. O. c. 209, s. 9 (1*k*), (2), (3).

public parks, squares and drives as shall be necessary for the safety of the public frequenting and using the same and the residents whose lands adjoin the lands so expropriated. 55 V. c. 42, s. 479 (23).

Sec. 576 (2-5) Notes (b), (c).

Taken from 50 V. c. 29, s. 21 (1887).

(b) "**Entering upon, taking and using.**" These words confer upon al[illegible]ici-palities the right to expropriate lands for the purposes mentioned, [illegible]ght not theretofore enjoyed, under sub-section 3, even by cities and town[illegible]

Land may be expropriated.

(c) "**Public parks, squares, boulevards and drives.**"

Section 603 authorizes the acquisition by cities and towns "for a public avenue or walk" of any public highway or road in an adjacent municipality, but only with the consent of such municipality. See the similar provision in the case of sewer extensions through an adjoining municipality, (s. 555), and *Township of Barton* v. *City of Hamilton*, referred to in note (b) to that section. The words "boulevards" and "drives" used here and in s. 560, 637 (3), 673 (7) may yet require judicial interpretation. A "boulevard" is defined by the Imperial Dictionary as "a public walk or street occupying the site of demolished fortifications" (*cf.* "bulwark"); but in s. 638 it is employed to indicate that portion of a (usually residential) street between the street boundaries and the carriage way, which is not occupied by sidewalks, and on which grass and shade trees may be grown.

For what purposes.

"Boulevards," meaning of.

(d) "**Shall provide and maintain . . . police protection . . . necessary for the safety of the public . . . and the residents whose lands adjoin.**"

This is a new statutory duty, and may yet give rise to some interesting questions of municipal liability. A municipality is not, in the absence of some such express provision, liable for failure to provide police protection. (*b*) S. 560 empowers the council of every municipality to make provision for the safety of the public in parks, gardens, etc., by prohibiting the use of certain vehicles on sidewalks, pathways or footpaths "in or upon any avenue, boulevard, path, park plot, garden," etc.

Police protection.

Vehicles on sidewalks, footpaths, etc.

Industrial Farms.—Exhibition Grounds.

By the councils of cities and towns:—

3. For acquiring any estate in landed property within or without the city or town for an industrial farm, or for a public park, garden or walk or for a place for exhibitions, and for the disposal thereof when no longer required for the purpose; and for accepting and taking charge of landed property, within or without the city or town, dedicated for a public park, garden or walk for the use of the inhabitants of the city or town. 55 V. c. 42, s. 504 (8).

Industrial farms, parks, exhibition grounds, etc.

4. For the erection thereon of buildings and fences for the purposes of the farm, park, garden, walk or place for exhibitions as the council deems necessary. 55 V. c. 42, s. 504 (9).

Buildings, etc., thereon.

5. For the management of the farm, park, garden, walk or place for exhibitions and buildings. 55 V. c. 42, s. 504 (10).

Managing the same.

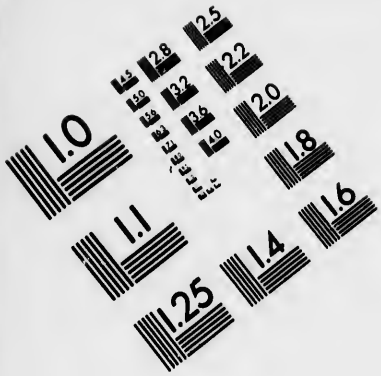
Taken from the Act of 1858, (22 V. c. 95), s. 290 (8-10.)

(e). "**For acquiring any estate in landed property.**" See notes (b) and (c) *supra* and s. 534, note (a).

Expropriation.

(*a*) See note (a) to s. 534.

(*b*) Shearman and Redfield on Negligence, (4th Ed.) 260; Jones on Municipal Negligence, pp. 39-48.



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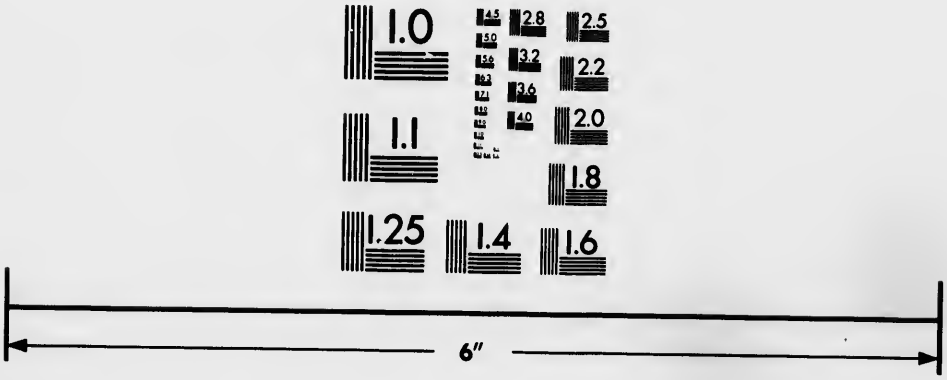

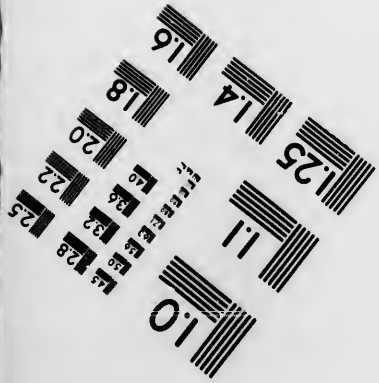

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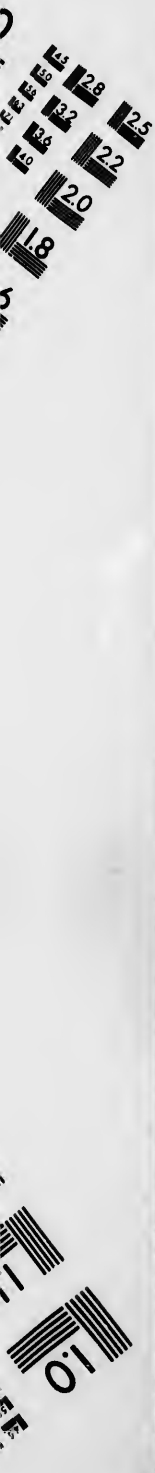
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Sec. 576 (3-5). Notes (f)-(l).

(f). "**For the disposal thereof when no longer required for the purpose.**" See also note (c) to s. 534. *Quære*, however, as to the right of a municipal creditor to restrain such a sale if his security would be thereby impaired. See *Brooklyn Park Commissioners* v. *Armstrong* (*a*). In that case it was held that the owners of adjoining property had no equity which would entitle them to prevent such a transaction, but this seems to have been doubted by OSLER, J., in *Re Peck and Town of Galt*, cited in note (h) *infra*. As to leases of park lands, see subsection 6, *infra*.

Sale of park lands.

What is a "dedication" for park, etc., purposes.

(g) "**Dedicated . . . for the use of the inhabitants.**" For American authority as to what amounts to a dedication to the public for purposes of recreation, etc., see Dillon, s. 348, note 6.

City of Toronto v. *McGill* (*b*) was an action to restrain the owner of a block of land in Toronto from selling it or building upon it. The land had always been enclosed by fences, and formed the garden and grounds attached to the residence of the proprietor or his tenants. On the opposite side of streets surrounding this property the same proprietor had laid out and sold building lots according to a plan on which this block (delineated as within fences) was marked, "McGill's Square," and it was alleged that upon the sale of these lots McGill by his agents had represented that the block in question was intended to be a public square for the use and benefit of the inhabitants of the city and would never be built upon. *Held*, that what had been done did not amount to a dedication of the block to the public. (*c*)

Dedicated lands may not be sold.

(h) It is to be noted that the express authority to dispose of lands acquired for a public park, etc., does not extend to lands "dedicated for a public park, garden or walk for the use of the inhabitants of the city or town;" which the municipal council has accepted and taken charge of as such. In *Re Peck and Town of Galt* (*d*) the owner of property had registered in 1849 a plan showing an open square bearing the words "Square to remain always free from any erection or obstruction"; and thenceforward until 1881 the square had been open to and used by the public. *Held*, that the municipality had not power to close up part thereof and sell it to the trustees of a church. OSLER, J., points out that this sub-section "clearly distinguishes between the power of a municipal corporation to dispose of property acquired by dedication and that acquired by purchase," and expresses the opinion that although "a square or park which they lay out upon lands acquired by them for that or other purposes . . . may be dealt with under the ample powers conferred upon them (*e*) *at least where no one has acquired any rights in consequence of their action*, yet that section does not authorize them . . . so to deal with property dedicated by the owner for a special purpose."

Without express legislative authority.

It is, however, clear that the Provincial Legislature may authorize the sale, lease or diversion to other uses of lands expressly dedicated or granted by the owner thereof to a municipal corporation for the purpose of being used as a public park, garden or walk. (*f*) In the United States the power, even of the Legislature, to confer such authority in the case of lands accepted and held by municipalities upon trust for a specific purpose has been doubted, (*g*) especially where private rights have arisen by reason of the purchase and improvement of adjoining lands. (*h*)

Buildings in parks, etc.

(i) **Sub-section 4.** "**For the erection thereon of buildings,**" etc. See also ss. 524, 527.

As to the liability of the corporation for accidents arising from the negligent management of its property, see note (d) to s. 500, note (a) to s. 559, and the authorities there cited.

(*a*) 45 N. Y. 234, (1871). (*b*) 7 Grant 462 (1859).

(*c*) See also note (c) to s. 534; *Grand Hotel Co.* v. *Cross*, 44 U. C. R. 153, (1879) (public square); *Village of Wyoming* v. *Bell*, 24 Grant 564, (1877) (reserve for school ground), and, as to the dedication of land for public highways, etc., note (a) to s. 598, *post*.

(*d*) 46 U.C.R. 211 (1881). (*e*) *E.g.* by section 637 (1).

(*f*) *Attorney-General* v. *City of Toronto*, 10 Grant 436 (1864); *Kennedy* v. *City of Toronto*, 12 O.R. 211 (1886).

(*g*) Dillon, ss. 651, 651a. And *cf. Atty. Gen.* v. *Hanwell Urban Dist. Council*, [1900] 1 Ch. 51.

(*h*) See *Franklin County Commissioners* v. *Lathrop*, 9 Kan. 309, (1872); *Newark* v. *Stockton*, 42 N.J. Eq. 531; 44 N.J. Eq. 179, (1886-8).

(j) **Sub-section 5. "For the management of the . . . park," etc.**

See also s. 500, note (**d**) and s. 560. The words have been held to authorize the passing of a by-law that "no person shall on the Sabbath day in any public park, etc., in the City of Toronto publicly preach, lecture, or declaim" (*a*).

Secs. 576 (5-6), 577 (1).

Notes (j), (k).

Management of parks, etc.

6. For the granting of any lease or leases to any person, firm or corporation for any period not exceeding three years from the making of any such lease, of any portion of the lands so acquired, under the next preceding three clauses numbered 3 4 and 5, but not immediately required for the purposes therein set forth. 56 V. c. 35, s. 21.

Leasing property acquired for industrial farms, etc.

Added in 1893. See the reference.

(**k**) Section 45 (3) of "*The Agriculture and Arts Act*" (*b*) provides that :-

Agreements with Agricultural or Horticultural Associations or Exhibition Building Co's.

"Any municipality owning lands or buildings for public purposes shall have power to make agreements on such terms and for such periods as they may deem expedient with any company now formed or hereafter to be formed, under the provisions of chapter 196 of the Revised Statutes of Ontario, 1897, or of any amendment which may be made thereto, or with any Agricultural or Horticultural Association, for the use of such lands or buildings, or either of them, or for the privilege of erecting on said lands (subject to such terms as may be agreed on) such buildings as they may require for agricultural or industrial shows, and to give the said companies the power of renting said grounds and buildings when owned by said company to any Agricultural or Horticultural Association formed under this Act or any amendment thereto, to, and for the purposes of the annual show or shows of said Association, and to grant to such company or Association the power to collect during said show, or at other times, as may be agreed, from any person wishing to go into or upon any such grounds or buildings, or for any privileges thereon, or for any carriage, waggon or other vehicle, or for any horse or other animal which may be taken thereon, such entrance fee or other charge as the said company or Association may deem necessary or expedient."

Division XVI.—CEMETERIES

Accepting or purchasing land for. Sec. 577 (1).
Selling or leasing lots. Sec. 577 (1).
As to cemeteries in villages. Sec. 577 (1) (b).
Expenses of Provincial Board of Health to be paid. Sec. 577 (1) (c).
Enlargement of cemeteries. Sec. 577 (2).
In case owners of land refuse to sell. Sec. 577 (2) (a).
Powers of arbitrators. Sec. 577 (2) (b).
Award to become a title deed. Sec. 577 (2) (c).
Certain lands not to be compulsorily taken. Sec. 577 (2) (d).
Award, requisites of. Sec. 577 (2) (e).
Section 547 (1) to apply to such lands. Sec. 577 (2) (f).

577. By-laws may be passed by the councils of townships, cities, towns and villages :—

Cemeteries.

1. For accepting or purchasing land for public cemeteries as well within as without the municipality, but not within any city, town or village, except as hereinafter provided, and

Acquiring land for cemeteries, etc.

(*a*) *Re Cribbin and City of Toronto*, 21 O. R. 325 (1891).
(*b*) R. S. O. c. 43.

Sec. 577 (9).

Notes (a)-(g).

Acquiring, etc., land for public cemeteries.

for laying out, improving and managing the same; but no land shall be accepted or purchased for such purpose except by a by-law declaring in express terms that the land is appropriated for a public cemetery, and for no other purpose; and thereupon such land, although without the municipality, shall become part thereof, and shall cease to be a part of the municipality to which it formerly belonged; and such by-law shall not be repealed; and the trustees of any burying-ground or cemetery, or the cemetery company owning any burying-ground or cemetery, may agree for the sale or transfer thereof to the municipality which desires to acquire the same; and in cases where such grounds have not been used for burials, the municipality may dispose thereof, and acquire other ground instead thereof:

The first part of the subsection, down to and inclusive of the words "and such by-law shall not be repealed," is based upon s. 259 (9) of the Act of 1858, (22 V. c. 99). In the re-enactment of the clause by the Act of 1873, (36 V. c. 48, s. 379) (7), the words "but not within any city, town or incorporated village," were inserted, and so much of the last clause was added as refers to "the trustees of any burial ground." 50 V. c. 29, s. 23 (1887) inserted the words "except as hereinafter provided" in line 3; and by 51 V. c. 28, s. 228, (1888) the last paragraph was amended by inserting the words "or cemetery, or the cemetery company owning any burying ground or cemetery." *Cf.* the Act of 1849, (12 V. c. 81), s. 60 (16), (villages); ss. 61, 67, 80, (towns); ss. 82, 106, (cities).

(a) The proper interment of the dead is a matter which concerns the health of the living, and is therefore a proper subject for municipal management and control (*a*). A cemetery is not *per se* a nuisance (*b*).

(b) "**But not within any city, town or village, except as hereinafter provided.** As to cities and towns the prohibition is absolute; as to villages it is qualified by clause (b). As to the enlargement of existing cemeteries, see sub-s. 2. See also s. 553 (3) and note (e) thereto.

(c) "**It shall become part thereof and shall cease to be a part of the municipality to which it formerly belonged.**" So in ss. 527 (2) and 576 (3); but *cf.* s. 534 (2), and see note (c) thereto.

Power to alienate land so acquired.

(d) "**By-laws . . . for managing the same.**" s. 547 (1), note (a) thereto, and note (j) to s. 576, *supra*.

(e) "**And such by-law shall not be repealed,**" *i.e.* the land so accepted or purchased shall not (without express legislative sanction) be disposed of or appropriated to other uses. See notes (f) and (h) to s. 576 and *Newark* v. *Stockton*, cited in foot note (h) on p. 708. It is otherwise as land acquired under the latter part of the sub-section, but which has not already been used for burials.

(f) "**The trustees of any burying ground or cemetery.**" See R. S. O. c. 214.

"**The cemetery company owning any burial ground or cemetery.**" See R. S. O. c. 213, especially s. 31 thereof.

(g) "**And may acquire other land instead thereof.**" which land (it is apprehended) must be held for the same purposes.

Selling portions of such land for certain purposes.

(a) For selling or leasing portions of such land for the purpose of interment, in family vaults or otherwise, and for declaring in the conveyance the terms on which such portion shall be held:

Taken from the Act of 1858 (22 V. c. 99,) s. 259 (4).

As to cemeteries in villages.

(b) Provided, however, that the municipal council of a village may pass a by-law for accepting or purchasing land for a public cemetery within the territorial limits of the village upon the by-law

(*a*) See Dillon, s. 372. (*b*) *Ibid*, s. 373.

being first approved of by the Local Board of Health, and ratified by the Provincial Board of Health; and the by-law shall thereupon be as valid and effectual as if the land was situated without the municipality; Sec. 577 (1) (b) (c), (2). Cemeteries in villages.

(c) All expenses incurred by the Provincial Board of Health in respect of and incidental to the by-law, and whether the by-law be ratified by the Board or not, shall be paid by the village municipality to the Secretary of the Board. 55 V. c. 42, s. 489 (11). *See also cap. 213.* Expenses of Provincial Board of Health.

Added in 1887 by 60 V. c. 29, s. 23 (a) (b).

Enlargement of Cemeteries.

2. For the acquiring and expropriation of lands to be used for enlarging any existing public cemetery or burying-ground; but no expropriation of any land within the limits of a city shall be authorized, and as to any such enlargement in a village or town the consent of the Provincial Board of Health shall be first obtained; For taking lands for enlarging cemeteries.

(a) In case the owner of the land required refuses to sell the same, or refuses to take the price the council of the municipality is willing to pay, then in either of such cases the matter in dispute shall be referred to arbitration, and shall be proceeded with under the provisions of this Act respecting arbitrations as to compensation for lands taken. Reference to arbitration.

(b) The arbitrators shall decide whether it is necessary in the public interests that the lands should be expropriated for the aforesaid purposes or any of them, and if so decided they shall award as to the price to be paid to the owner of said lands, but the costs shall be in the discretion of the arbitrators. Powers of arbitrators.

(c) If the arbitrators award that the lands shall be taken for such cemetery, or burying-ground, one copy of the award shall be deposited with the registrar of the county or city, as the case may, in which the lands are situate, and shall be a valid title to the said lands. Registration of award.

(d) Lands used as an orchard, pleasure ground or garden, and lands within two hundred yards of any dwelling house, shall not be expropriated without the consent of the owner or owners. Certain lands not to be taken except with consent of owner.

(e) The award shall be in writing and the boundaries of the lands or premises taken shall be fully described therein. Boundaries to be described in award.

Certain sections to apply.

(f) All the provisions of clause 1 of section 547 and of the clause 1 of this section shall, as far as applicable, apply to the lands acquired under this clause. 55 V. c. 42, s. 489 (12).

Taken from ss. 1-5 of 48 V. c. 38, "*An Act respecting the Expropriation of land for Public Cemeteries.*"

Expropriation.

(h) "**For the acquiring and expropriation of lands,**" etc. See note (a) to s. 534. As the cemetery itself may be outside the municipality (*a*), the lands thus expropriated would in that case be part of another municipality. Hence, perhaps, the special jurisdiction conferred upon the arbitrators by clause (b). *Cf.* s. 555 (2).

Costs of arbitration.

(i) "**The costs shall be in the discretion of the arbitrators.**" As to the power of the arbitrators in regard to costs, see ss. 447-460, and *Re Pattullo and Town of Orangeville*, 31 O. R. 192 (1899).

What lands may not be expropriated.

(j) **Clause (d).** The Municipal Acts of 1849, 1858 and 1866 provided that no council, in the exercise of its powers to open, widen, or divert highways, should authorize an encroachment on any dwelling-house, barn, stable, outhouse, orchard, garden, yard or pleasure ground without the written consent of the owner. In *Wilson* v. *Town of Port Hope* (*b*), a case under the Act of 1849, the defendants were restrained by injunction from opening a proposed street without the written consent of the owners of certain houses standing on the line thereof, the action being brought by a person whose land lay in the line of the proposed street, but was not within the scope of the prohibiting clause; but in *Re Lafferty and Municipal Council of Wentworth and Halton* (*c*), the Court refused to quash a by-law for opening a road intended to run through an orchard which had been planted 18 months after the applicant knew that it was intended to lay out the road there, and after it had been actually selected and surveyed. *Per* ROBINSON, C. J., "It seems but too probable that the trees were planted there merely to obstruct the change of road." (*d*)

DIVISION XVII.—FAIRS AND MARKETS.

When by-laws may be passed authorizing fairs. Sec. 578 (1).
urposes for which fairs may be held. Sec. 578 (1) (a).
Rules and regulations governing. Sec. 578 (1) (b).
Appointment of an officer to carry these out. Sec. 578 (1) (b).
Fixing fees to be paid. Sec. 578 (1) (b)
Notice of by-law to be given. Sec. 578 (1) (c).
Market fees not to be levied on certain articles. Sec. 579 (1), (2).
Market fees not to be levied in certain cases. Sec. 579 (3), (4).
By-laws respecting weighing and measuring, when not to apply. Sec. 579 (5).
Limit of time for compulsory attendance at market. Sec. 579 (6).
Limit of fees which may be imposed. Sec. 579 (7), (8), (14).
Sales by retail, and traffic on streets, etc. Sec. 579 (9). Sec. 580 (4).
Subsections 1-9 not to apply in certain cases. Sec. 579 (10-13).
Further restriction as to fees which may be imposed. Sec. 579 (14).
See sec. 579 (7), (8).
Fees not to be charged for markets on public streets. Sec. 579 (15).
Subsection 10-15 not to apply in certain municipalities. Sec. 579 (16).
Power to regulate sales when no market fees imposed. Sec. 579 (17).
Inconsistent enactments to be of no effect. Sec. 579 (18).
Right to sell or lease market fees. Sec. 579 (19).
Establishing markets. Sec. 580 (1).

(*a*) See sub-section 1. (*b*) 2 Grant 370 (1851).

(*c*) 8 U. C. R. 232 (1850).

(*d*) See also *Scarlett* v. *Township of York*, 14 C. P. 161 (1864) (hen-house). As to the corresponding provision, which is still retained in "*The Public Schools Act*," (R. S. O. c. 292), s. 34 (1) and "*The High Schools Act*," (R.S.O. c. 293), s. 16, see *Johnson* v. *S. S. No. 1, Howard*, 26 Grant 204 (1879).

Regulating existing markets. Sec. 580 (2).
Regulating buying and selling of articles or animals. Sec. 580 (3).
Preventing or regulating sales in streets, etc. Sec. 579 (9); Sec. 580 (4).
Regulating sale of grain, meat, farm produce, etc. Sec. 580 (5).
Criers and vendors of small ware. Sec. 580 (6).
Forestalling and regrating of certain articles. Sec. 580 (7).
Hucksters, grocers, butchers and runners. Sec. 580 (8).
Measuring and weighing lime, shingles, laths and fuel. Sec. 580 (9).
Penalties for light weight and short count. Sec. 580 (10).
Seizing bread, etc., when of light weight or short measure. Sec. 580 (11).
Regulating vehicles, vessels, etc. used in markets. Sec. 580 (12).
Selling butchers' meat distrained for rent of stalls Sec. 580 (13).
Sale of fresh meat by retail. Sec. 581 (1).
Power to carry on cold storage business. Sec. 581*a*.
Weighing machines. Sec. 582.

Sec. 578, 579 (1).
Notes (a) b).

578. By-laws may be passed by the councils of counties, cities and separated towns:—

Public Fairs.

1. For authorizing, on petition of at least fifty qualified electors of the municipality, the holding of public fairs at one or more of the most public and convenient places not separated from the municipality for municipal purposes; — Authorizing the holding, etc., of public fairs.

(*a*) The purposes for which such fairs may be held shall be restricted to the sale, barter and exchange of cattle, horses, sheep, pigs and articles of agricultural production or requirement. — Purpose of such fairs restricted.

(*b*) The by-law to authorize the establishment of any such fair shall establish rules and regulations for he government of the same, and appoint a person whose duty it shall be to have them carried out, and shall also fix the fees to be paid him by persons attending the said fair. — Rules to be made for governing fair. — Fees.

(*c*) The council authorizing the establishment of a public fair shall, immediately after the passing of a by-law for that purpose, give public notice of the same. 55 V. c. 42. s. 495 (10). — Public notice of by-law establishing same.

Taken (except the last 16 words of clause (*b*)) from 34 V. c. 21 (1897), "*An Act to facilitate the Establishment of Public Fairs*," *etc.*, which applied only to counties and separated towns. The Act of 1873, (36 V. c. 48) s. 383 (10) extended its provisions to cities, and added the words at the end of clause (*b*) relating to fees.

(a) A "fair" is a greater species of market recurring at more distant intervals (*a*).

(b) "**Fifty qualified electors.**" The word "electors" as here used means persons entitled to vote at a municipal election. See s. 2 (5); *cf.* note (b) to s. 338, note (c) to s. 569, and the cases of *Re Croft and Town of Peterborough*, 17 O. R. 22; 17 A. R. 21 (1889-90); followed in *Re Pounder and Village of Winchester*, 19 A. R. 684 (1892) and in *Re Young and Township of Binbrook*, 31 O. R. 108 (1899), which interpret similar language in R. S. O. c. 245, s. 141. — "Electors," meaning of.

Markets, etc.

579.—(1) No municipality shall impose, levy or collect a market fee upon any wheat, barley, rye, corn, oats, or upon any other grain, or upon any hay or other seed, or wool, lumber, — No market fees to be imposed on certain products.

(*a*) Wharton's Law Lexicon, *ad verb.*

Sec. 579 (1-7).

lath or shingles, or cordwood or other firewood, or upon dressed hogs, or cheese, or upon hay, straw or other fodder, that may be brought to market, or to the market place, for sale or other disposal, or upon the person bringing, or the vehicle in which the same is or shall be brought. 55 V. c. 42, s. 497 (1).

When fees may be charged on butter, etc. brought to market.

(2) No market fee shall be charged, levied, or imposed upon or in respect of butter, eggs or poultry, *honey, celery, small fruits, or other articles in hand basket* brought to market, or upon the market place, for sale, unless a convenient and fit place in which to offer or expose the same for sale shall be provided by the municipality, which shall afford shelter in summer, and shelter and reasonable protection from the cold in winter. 55 V. c. 42, s. 497 (2): 62 V. (2nd Session) c. 26, s. 36 (1).

Fees not to be charged on articles delivered in pursuance of prior contract.

(3) Where the vendor of any article brought within the municipality in pursuance of a prior contract for the sale thereof, proceeds directly to the place of delivery thereof, under such contract, without hawking the same upon the streets or elsewhere in the municipality, it shall not be lawful to impose, levy or collect a market fee thereon, or in respect thereof, or on the vehicle in which the same is so brought. 55 V. c. 42, s. 497 (3).

When fees not to be charged, though no prior contract.

(4) Where there is no prior contract as mentioned in the preceding subsection, no market fee shall be imposed, levied or collected upon or in respect of any article brought into any municipality after the hour of ten o'clock in the forenoon, nor on or in respect of any vehicle in which such article is so brought, unless such article is offered or exposed for sale upon the market place of the municipality. 55 V. c. 42, s. 497 (4).

Restriction as to by-laws requiring articles to be weighed or measured.

(5) No by-law shall require hay, straw or other fodder to be weighed, or wood to be measured, where neither the vendor nor purchaser desires to have the same so weighed or measured. 55 V. c. 42, s. 497 (5).

Limit of time for enforced attendance to sell goods on market.

(6) After nine o'clock in the forenoon between the 1st day of April and the 1st day of November and after ten o'clock in the forenoon between the 1st day of November and the 1st day of April, no person shall be compelled to remain on any market place with any article which he may have been exposing or offering for sale in such market place, but may, after the expiration of such hour, proceed to sell such article elsewhere than in or on said market place, provided that such person has paid the market fee on or in respect of such article, or the vehicle in which the same is contained. 55 V. c. 42, s. 497 (6).

Scale of market fees.

(7) No market fees shall be imposed by any municipality higher than those contained in the following scale:

Upon articles brought to the market place in a vehicle drawn by two horses, upon which fees may be imposed, not more than.....10 cents.

Scale of market fees.

Upon articles brought to the market place in a vehicle drawn by one horse, not more than .....5 cents.

Upon articles brought to the market place by hand or in any basket or vessel, not more than .....2 cents.

Upon or in respect of live stock driven to or upon the market place for sale, as follows:

Every horse, mare, or gelding not more than ...10 cents.

Every head of horned cattle, not more than.....5 cents.

Every sheep, calf, or swine, not more than .....2 cents.

55 V. c. 42, s. 497 (7).

Scale of fees for weighing or measuring.

(8) No fees shall be imposed or levied by any municipality for weighing or measuring greater than as follows:

For weighing a load of hay .....15 cents.

For weighing slaughtered meat, or grain, or other articles exposed for sale, under one hundred pounds.....2 cents.

Over one hundred pounds, and up to one thousand pounds.....5 cents.

Over one thousand pounds .....10 cents.

For weighing live animals, other than sheep or pigs, per head .....3 cents.

Sheep or pigs, if more than five, per head.....1 cent.

If less than five, for the lot. ..... 4 cents.

For measuring a load of wood .....5 cents.

55 V. c. 42, s. 497 (8).

Regulation of sale by retail in or near streets.

Regulation of traffic on streets.

(9) Subject to the other provisions of this section, the municipality may regulate the sale by retail in the public streets, or on vacant lots adjacent thereto, of any of the articles herein mentioned, and may regulate traffic in the streets, and may prevent the blocking up of the same by vehicles or otherwise. 55 V. c. 42, s. 497 (9); and *see* s. 515 (4).

Subss. 1-9 not to apply where by-law in force allowing sale, except at the market place, without payment of fees;

(10) The preceding nine subsections shall not apply to any municipality which passes, and so long as it keeps in force, a by-law providing that the vendors of any articles in respect of which a market fee may, under this Act, be lawfully imposed, may, without paying market fees, offer for sale and sell or otherwise dispose of any such articles, at any place within the municipality, excepting only at and upon the market place or places thereof. 55 V. c. 42, s. 498 (1).

but such by-law may impose fees on persons voluntarily using market;

(11) Such by-law may, nevertheless, provide for the imposition and collection of market fees from such vendors of articles in respect of which a market fee may now be imposed, under this Act, as voluntarily use the market place for the purpose of selling such articles. 55 V. c. 42, s. 498 (2).

Sec. 579 (12-16).

And on others taking advantage of market.

(12) The by-law may also provide for the imposition upon and collection of market fees from any person who shall remain, or cause his vehicle to remain upon that part of any street immediately adjoining or surrounding or being within 100 yards of the market place, for the purpose of selling upon such street or streets such articles, so as to obtain the advantages of the said market place; but driving through or across such portions of streets shall not of itself be deemed sufficient ground for the imposition of any fee; but this subsection shall not apply to grain, seeds, dressed hogs or wood. 55 V. c. 42, s. 498 (3).

By-law not to interfere with sales to persons carrying on business in vicinity of market.

(13) The by-law shall not prevent the sale of any such articles to any person carrying on business and having an actual and *bona fide* store, shop or other similar place of business, on those portions of the streets in the next preceding sub-section mentioned; nor shall the by-law authorize the imposing or levying of any fee in respect of any article so sold, or of any vehicle in which the same is contained. 55 V. c. 42, s. 498 (4).

Restriction n fees.

(14) It shall not be lawful for any municipality passing such by-law to impose a higher tariff or greater fee upon any article or vehicle than is provided for in subsection 7 of this section. 55 V. c. 42, s. 498 (5); 60 V. c. 45, s. 15 (1).

Where municipality had sold or leased market fees.

(*a*) In any municipality which under subsection 19 of this section, has, on or before the 30th day of March, 1897, leased, assigned or sold its market fees, the preceding subsection 14 shall come into force and operation only upon the termination of the period for which such fees have been leased, assigned or sold. In all other municipalities the said subsection shall come into force and operation on the 1st day of January, 1898. 60 V. c. 45, s. 15 (2).

Fees not to be charged on markets made in streets.

(15) No market fee shall be levied, collected or imposed by any municipality in respect of any market place or market, or any portion of any such market place or market hereafter established, declared or made in, on, or out of any street or part of any street within said municipality:

Proviso.

Provided always that this subsection shall not apply to so much of any street as immediately adjoins and abuts upon any market square, either now or hereafter established as a market place. 55 V. c. 42, s. 498 (6).

Subss. 10-15. not to apply where no fees were charged on March 10th, 1882.

(16). The preceding 6 subsections shall not apply to any municipality where no market fees were charged or imposed on the 10th day of March, 1882, but subsections 1 to 9 and 17 and 18 of this section shall apply to such municipality in the event of market fees being thereafter charged or imposed therein. 55 V. c. 42, s. 499.

Secs. 579 (17-19).

(17) Nothing in the preceding 16 subsections contained shall prevent any municipality wherein no market fees are imposed or charged from regulating the sale and the place of sale of any articles within the municipality to the same extent as it might do before the 10th day of March, 1882;

Power to regulate sales where no fees were charged on March 10th, 1882.

Provided always that market fees within the meaning of this subsection shall not include fees for weighing or measuring;

"Market fees," meaning of.

Provided further, that after nine o'clock in the forenoon between the 1st day of April and the 1st day of November, and after ten o clock in the forenoon between the 1st day of November and the 1st day of April, no person shall be compelled to remain on, or resort to, any market place with any articles which he may have for sale, but may, after the expiration of such hour, sell or dispose of such articles elsewhere than in or on said market-places. 55 V. c. 42, s. 500.

Market hours limited.

(18) When and so long as subsections 1 to 9 or subsections 10 to 15 of this section are in force and apply to any municipality, so much of any Act or law as may be contrary to, and as conflicts with the same, shall not be in force in or apply to such municipality. 55 V. c. 42, s. 501.

Inconsistent enactments to be of no effect.

Taken (except sub-s. 14) from 45 V. c. 24, "*An Act respecting Market Fees*," which came into force on April 2nd, 1882. Since amended as follows:—

Sub-sec. 2.—The words in italics were inserted by 62 V. (2nd Session), c. 26, s. 36(1) (1899), the amendment to come into effect in municipalities where the market fees were then sold or leased only at the expiry of the period of such lease or sale.

Sub-sec. 12.—Last clause added in 1883 by 46 V. c. 17, s. 1.

Sub-sec. 14.—Before the passing of 60 V. c. 45, s. 15 (1897) the tariff was limited to that which "was in force or imposed by such municipality on March 1st, 1882."

Sub-sec. 17.—The second proviso was added in 1883 by 46 V. c. 17, s. 2.

(b) The effect of these somewhat involved provisions is not easy to apprehend at a glance; but upon examination their general scheme appears to be fairly intelligible. The object of the Statute 45 V. c. 24 (as amended by 46 V. c. 17) was apparently:—

Objects of s. 579.

(1) To limit (*a*) the powers which, for the purpose of increasing their revenues, had been in many cases assumed by cities, towns and villages in the matter of market fees, and, in return, to confirm and extend the authority of municipalities to regulate traffic outside their market limits (*b*) and to sell, lease or assign their market fees. (*c*)

(2) To provide for the cases (*a*) of such municipalities as should elect to abolish or dispense with fees on marketable articles sold elsewhere than at the market place of the municipality, (*d*) and (b) of municipalities in which, at the date of the passing of the Act, no market fees were imposed (*e*).

The right of a municipality which imposes no market fees, to pass by-laws "for regulating the sale and place of sale of any articles within the municipality to the same extent as it might do before March 10th, 1882,"—*i.e.* to exercise all the powers enumerated in ss. 580 and 581—is continued by sub-s. 17, subject to the conditions mentioned in the provisoes thereto.

(c) **Sub-section 9.** Compare the powers then (1882), already enjoyed by cities, towns and villages under s. 580 (4) with respect to the articles therein enumerated, and under s. 580 (6) with respect to criers and vendors of small wares; and see notes (e) and (g) to that section.

Sales by retail in or near streets.

(d) **Sub-section 10.** A by-law passed under this subsection was construed by ROSE, J., in *Re Borthwick and City of Ottawa* (*f*).

Where by-law allows sales without fees, except at market place.

(*a*) Sub-ss. 1-8. (*b*) Sub-s. 9. (*c*) Sub-s. 19.
(*d*) Sub-ss. 10-15. (*e*) Subs. 16. (*f*) 9 O. R. 114 (1885).

Secs. 579-580 (1).

Notes (f), (g), (a).

Where fees are imposed upon certain vendors voluntarily using the market place.

(e) **Sub-section 11.** In *Reg.* v. *Reed*, (*a*) a by-law, intended to have effect under this sub-section, enacted that: "Any person who shall voluntarily come upon the said market-place for the purpose of selling upon said market-place any grain, meat," etc., shall pay market fees; and that: "All butchers' meat . . . exposed for sale or disposed of in the market shall be subject to the following charges," etc. The defendant was convicted for refusing to pay the market fees on eight quarters of beef exposed for sale on the market. *Held*, (by O'CONNOR, J.) that the words (of the Statute), "such vendors . . . as voluntarily *use* the market-place for the purpose of selling" were not identical with or equivalent to the expression (in the by-law) "persons who shall voluntarily *come* upon the said market-place," etc., (as above) but were broader and much more comprehensive; for all *persons* are not *vendors*, and one may *come* upon the market-place for the purpose of selling and yet not *use* it, *i.e.*, he may not sell or even offer for sale. (*b*) *Held*, also, that the conviction was bad in that it differed from both the Statute and the by-law.

No fees chargeable in market places established in streets.

(f) **Sub-section 15.** Although municipalities have in many cases appropriated portions of their highways to the purposes of a public market (*c*) their right to do so under the authority of "*The Municipal Act*" has been doubted; but see note (**a**) to s. 580.

Right to sell or lease market fees.

(19) Subject to the provisions of the last preceding 18 sub-sections, every municipality shall have the power to sell, assign, or lease its market fees. 55 V. c. 42, s. 502.

Taken from 46 V. c. 17, s. 3 (1883), which relates back to the date (April 2nd, 1882) when the principal Act, (45 V. c. 24), came into force.

(g) See *Board of Police of London* v. *Talbot* (*d*); plea by a lessee of market fees that his lessors had no right to establish a market or to impose market fees: demurrer. See also *Pigeon* v. *Recorder's Court of Montreal*, referred to *ante* at pp. 344, 345. (*e*)

Market by-laws.

580. Subject to the restrictions and exceptions contained in the last preceding section, the council of every city, town and village may pass by-laws:

Taken (except sub-s. 6) from the Act of 1858, (22 V. c. 99), s. 287 (6-16, 18). *Cf.* 12 V. c. 81, s. 90 (6), (villages); ss. 61, 67, 80, (towns); ss. 82, 103, (cities). Alterations made in the language of the Act of 1858 are noted under the several sub-sections.

Establishing markets.

1. For establishing markets:

Markets on public streets.

(**a**) By the common law, a market could only be set up by royal grant, or by long and immemorial usage and prescription, which presupposes a grant. (*f*) Power to establish a market involves, as a necessary incident, the power to erect market buildings, and to acquire land for that purpose, (*g*) but not to erect such buildings in a public street. "Such erections upon streets are nuisances, although sufficient space be left for the passage of persons and vehicles; and they can only be legalized by an express Act of the Legislature." (*h*)

It has been doubted whether a municipal corporation has, in virtue of the power to establish markets, authority to set apart as a market-place part of a public highway, and to authorize its occupation by stalls, vehicles, etc., so as to deprive the public of its use as a highway; but subs. 4 of this section and sub-ss. 9, 12 and 15 of s. 579 seem to indicate that in Ontario such authority exists.

(*a*) 11 O. R. 242 (1886). (*b*) *Cf.* subs. 12.

(*c*) See *Reynolds* v. *City of Toronto*, 15 C. P. 276 (1865), *infra*, p. 719.

(*d*) 3 U. C. R. 311 (1846). (*e*) 17 S. C. R. 495 (1890).

(*f*) 2 Black. Com. 37; 2 Inst. 220. (*g*) Dillon, s. 382.

(*h*) Dillon, s. 383, and see note (**b**) to s. 557, note (**a**) to s. 569 and notes (**a**) and (**b**) to s. 583.

Markets on the streets.

In *Reynolds* v. *City of Toronto* (*a*) the defendants having leased to the plaintiff the fees arising from a wood market established by them on a public street, and having covenanted with him against interference by themselves or by any person on their behalf with the collection of such fees, it was held that the market, being upon a public highway, which is *prima facie* for the purpose of public travel, its use for any other purpose must be subordinate to its primary and principal use as a highway. (*b*) *Per* ADAM WILSON, J., (p. 282):—"It may not be quite clear how far the corporation had the right to create this market in the public highway for stationary waggons during nearly the whole period of daylight; . . . *probably it has such a power.*"

Compensation to adjoining owners.

In New Jersey, under the constitutional limitation providing that private property shall not be condemned for public uses without due compensation, it was held that a city, having established a market on a street under a statutory authority "to prescribe and locate . . . streets to be used as public markets for the sale of country produce," was bound to compensate an adjoining proprietor who owned the land to the middle of the street subject to the public easement (*c*).

But in *Davidson* v. *City of Montreal* (*d*), the Supreme Court of Canada affirmed a judgment of the Court of Queen's Bench for Lower Canada dismissing an action for damages brought by the owner of land near a public market on account of the street and sidewalk opposite to his place of business being obstructed by traders, hawkers, etc., licensed by the defendants to carry on business there.

Regulating markets.

Old markets continued.

Title to market reservations, etc.

2. For regulating all markets established and to be established; the places, however, already established as markets in the municipality, shall continue to be markets, and shall retain all the privileges thereof until otherwise directed by competent authority; and all market reservations or appropriations heretofore made in any such municipality shall continue to be vested in the corporation thereof. 55 V. c. 42, s. 503 (1, 2).

(b) "For regulating all markets established or to be established."

Regulating markets.

In order to have any legal force, market regulations should be made by-law, (*e*) not by the mere resolution of a committee. When adopted by the council they may be moved against under s. 378. (*f*)

> "Regulation must of necessity include the appropriation of one or more parts of the market for one purpose and other part or parts for other purposes, and of providing for free passage through the market being kept open for ready access to shops, stalls or other places where different commodities are exposed for sale, etc." (*g*).

"Regulating markets" would also fairly include fixing the market hours, making provision for lighting, watching, and cleaning, detecting false weights and unwholesome food, preserving order, enforcing obedience to the rules, and other arrangements calculated to facilitate the intercourse and insure the honesty of buyer and seller. (*h*) So in *Re Snell and Town of Belleville* (*i*) the Court sustained the validity of a by-law requiring that: "Every person selling meat or articles of provision by retail, whether by weight, count or measure

(*a*) 15 C. P. 276 (1865).

(*b*) See *Bell Telephone Co.* v. *Montreal Street Railway Co.*, Q. R. 10 S. C. 162; Q. R. 6 Q. B. 223 (1896-7), cited in foot note (**h**) on p. 667, *ante*, and the (converse) case of *City of Fredericton* v. *Municipality of York*, 1 N. B. Eq. 556 (1899), referred to in note (**a**) to s. 598.

(*c*) *State* v. *Lawrack*, 34 N. J. Law Rep. 201 (1870).

(*d*) Q. R. 7 Q. B. 1; 28 S. C. R. 421 (1898).

(*e*) S. 325. (*f*) *Re Snell and Town of Belleville*, 30 U.C.R. 81, 93 (1870).

(*g*) *Per* DRAPER, C.J., in *Re Kelly and City of Toronto*, 23 U.C.R. 425, 426 (1864); and see *Harris* v. *City of Hamilton*, 44 U.C.R. 641 (1869) referred to in note (**g**) *infra*, and the by-law which was moved against in *Re Borthwick and City of Ottawa*, 9 O.R. 114 (1885).

(*h*) See Dillon, (p. 456), s. 380, note 5. (*i*) *Supra*.

Sec. 580 (2)
Note (b).

in the town of B. shall provide himself with scales, weights and measures; but no spring balance, spring scale, spring steelyards or spring weighing machine shall be used or allowed to be used for any market purpose." (a)

May prohibit certain sales in market.

Under a general power to regulate markets, it would seem that (if their action be not unreasonable), municipal authorities may also prescribe what articles shall not be sold at the public market. (b) "*The Markets and Fairs Clauses Act*," (c) authorizes the passing of by-laws "for regulating the use of the market place and fair and the buildings . . . therein, and for preventing nuisances or obstructions therein or in the immediate approaches thereto." A by-law (passed under this authority) was held good which provided that the sale-rings at the public market should not "be used for private sales, or for sales to a limited number of persons, or for sales in which any class of the public are excluded from bidding or buying" (d).

But not the exercise of a lawful calling.

In *Bollander* v. *City of Ottawa*, (e) the plaintiff had been licensed as an auctioneer, his license containing the following condition: "This license is subject to the laws of the Province of Ontario, and to such by-laws, rules and regulations of the corporation of the city of O. as are now or may hereafter be in force."

The defendants had passed a by-law providing that "No auctioneer . . . shall practise his or her calling upon any of the public markets, or in any of the public streets contiguous thereto, or in any of the vacant lots adjoining any of such streets, or in any buildings that have been allowed frontages on the public market squares." The plaintiff having attempted to sell on one of the public markets a horse which had been impounded by a pound-keeper of the defendant corporation, the defendant H., who was the market inspector of the corporation, prevented the sale, and laid an information against the plaintiff before the police magistrate of the city for a contravention of the above by-law. The plaintiff thereupon brought this action against the city and the market inspector, claiming,—(1) damages, (2) a declaration that the above section of the by-law was *ultra vires*, and (3) an injunction restraining the defendants from interfering with him in the exercise of his calling as an auctioneer on the public markets of the city. The trial Judge, (MACMAHON, J.) dismissed the action, holding the by-law to be within the powers conferred upon municipal corporations by 57 V. c. 50, s. 8 (f),—"For prohibiting the granting of a license upon residential or other streets in which, in the opinion of the council, it is not desirable that the business of an auctioneer should be carried on"; but this judgment was reversed by a Divisional Court, on the ground that the by-law in question was not authorized either under the power of the prohibition given by 57 V. c. 50, s. 8, or under the power conferred by this section to pass by-laws for regulating markets.

Per ARMOUR, C.J., (p. 15):—

> "Where the Legislature intended to give the power to pass by-laws to prevent, it has done so in express terms. In sub-section 6 of this section of the Act express power is given to pass by-laws:—'For *preventing* criers and vendors of small wares from practising their calling in the market place, public streets and vacant lots adjacent thereto'; and this power, so given expressly, to prevent certain classes of persons from so practising their calling, excludes the inference of any power given impliedly to prevent any other classes of persons from so practising their calling.' (g)
>
> The markets established by this by-law were so established for the sale therein respectively of certain kinds of commodities; and the defendants can, of course, prevent the plaintiff or anyone else from selling therein any commodity but those for the sale of which the said markets were respectively established. The license granted to the plaintiff was made 'subject to such by-laws, rules and regula-

(a) See this case cited also in notes (f) and (h), *infra*.

(b) Dillon, s. 389: and see subs. 3 *infra*.

(c) Imp. Stat., 10-11 V. c. 14, s. 42.

(d) *Scott* v. *Glasgow* (*Provost, etc., of*) 36 Scottish Law Reporter, 458 (1898); [1899] A. C. 470.

(e) 30 O. R. 7 (1898).

(f) Now consolidated as part of s. 583 (2).

(g) See *Merritt* v. *City of Toronto*, 22 A. R. 205 (1895); *City of Toronto* v. *Virgo*, [1896] A. C. 88.

tions of the corporation of the city of Ottawa as are now and which may hereafter be in force,' but this provision did not make the license subject to by-laws, rules and regulations which the said corporation had no power to make. An injunction should go restraining the defendants from interfering with the plaintiff . . . in selling by auction upon any of the markets in the city of O. any of the commodities for the sale of which therein such markets were respectively established."

Sec. 580 (2) (3). Notes (b)-(d).

(c). "The places, however, already established as markets shall continue to be markets," etc.

Markets existing before Jan. 1st, 1850.

This and the remainder of the sub-section originally formed s. 138 of the Act of 1849. (a) Prior to the passing of that Statute, markets had been established under the authority of local Acts at certain towns and cities in Upper Canada, —*e.g.*, Kingston, (b) York, (c) Niagara, (d) Cornwall, (e) etc., and it was thought desirable to continue any special privileges which might belong to these markets; but it is probable that they are now all regulated by by-laws passed under the general law embodied in "*The Municipal Act.*"

Regulating sales, etc.

3. For preventing or regulating the buying and selling of articles or animals exposed for sale or marketed. 55 V. c. 42, s. 489 (51); 60 V. c. 15, *Sched.* (85).

Until the Act of 1866, (29-30 V. c. 51, s. 296 (99)), this sub-section applied only to cities, towns and villages, and was limited to articles exposed for sale or marketed "in the open air." *Cf.* 12 V. c. 81, 66 (6), etc.; 22 V. c. 99, s. 287 (9); and though in the Act of 1866 the sub-section reads as here, the marginal note is (as before) "Vending in open air." By 47 V. c. 32, s. 15 (1884), the power hereby conferred was extended to townships. See R.S.O. (1887), c. 174, s. 489 (51); 55 V. c. 42, s. 489 (41). By 60 V. c. 15, Sched. C. (85) it was again restricted (as in the earlier Acts) to cities, towns and villages.

May sales of marketable commodities be restricted to the market place?

(d) In previous editions of THE MUNICIPAL MANUAL the question was much discussed whether these very general words empower the council of a city, town or village to restrict within the market limits of the municipality the sale of articles usually described as "marketable commodities;" and American authorities (*f*) were quoted in which ordinances forbidding the sale by retail of such articles except at the public markets and within certain limits about the same, had been held to be valid under a general authority to the council to make by-laws "for the good of the inhabitants of the municipality." (*g*)

But—apart from the consideration that sub-s. 5 *infra* (by conferring authority to regulate the place of selling the articles therein specified) indicates that as to articles not therein enumerated this power was not intended to be conferred upon municipal councils, and that the proviso to sub-s. 7 expressly authorizes sales by farmers and other producers at stores and shops—it is to be observed that all the jurisdiction conferred by s. 580 is "subject to the restrictions and exceptions contained in s. 579." That section, as already pointed out, (*h*) refers to three classes of municipalities, viz.,—

(1) Those which impose market fees on all marketable articles wherever sold; (*i*)

(2) Those in which such fees are exacted from such vendors of marketable articles as voluntarily use the market place for the purposes of selling, etc. (*j*) and

(3) Those in which no market fees are imposed. (*k*)

(*a*) 12 V. c. 81. (*b*) 41 Geo. III. c. 3. (*c*) 51 Geo. III. c. 15.
(*d*) 57 Geo. III. c. 4. (*e*) 59 Geo. III. c. 4.

(*f*) *E.g.*:—"The fixing of the place and times at which markets shall be held and be kept open *and the prohibition to sell at other places and times* are among the most ordinary regulations of a city or town police and would naturally be included in the general power to pass by-laws relating to the public market": *Bush* v. *Seabury*, 8 Johns. (N.Y.) 418 (1811). "Power to make ordinances concerning markets, health and good order authorizes an ordinance prohibiting the sale of butcher's meat within the corporate limits except at the public market": *Winnsboro'* v. *Smart*, 11 Rich. (S.C.) Law 51 (1858): and see *Village* (sic) *of Buffalo* v. *Webster*, 10 Wend. (N.Y.) 100 (1833); Dillon, s. 386.

(*g*) See s. 326. (*h*) Note (b) to s. 579, *supra*.
(*i*) S. 579 (1-9). (*j*) S. 579 (10-15). (*k*) S. 579 (17).

Sec. 580 (3-4).

Notes (d), (e)

May sales of marketable commodities be restricted to the market-place?

In municipalities which belong to the second of these classes, no such power of restriction is possible, since their by-law must provide (*a*) that the vendors of marketable articles "may offer for sale and sell . . . such articles *at any place* within the municipality excepting only at and upon the market place;" and there also they may sell on paying market-fees.

Municipalities belonging to the first class "may regulate the sale by retail *in the public streets or on vacant lots adjacent thereto*," but (apparently) may not prohibit sales elsewhere than on the market place. In the case of these municipalities and also of those (Class 3) in which no market fees are imposed, all power to restrict sales to a particular locality *after a certain hour* is expressly taken away by sub-s. 6 and the second proviso to sub-s. 17, while sales at stores and shops of the articles and by the persons mentioned in s. 580 (5) may be made *at any hour*. Reduced within these narrow limits, the right to restrict sales of marketable articles to a particular place—even if it exists—can be of little practical value to municipal councils.

See further the cases collected in note (**f**), *infra*.

Regulating vending in streets, etc.

4. For preventing or regulating the sale by retail in the public streets, or vacant lots adjacent thereto, of any meat, vegetables, grain, hay, fruit, beverages, small-ware and other articles offered for sale 55 V. c. 42, s. 503 (3).

In the Act of 1849 (12 V. c. 81), s. 69, etc.:—"For preventing the vending or selling by retail in the public highways any meat, vegetables, fruit, cider, beer or other beverage," In 22 V. c. 99, s. 287 (8) and 29-30 V. c. 51, s. 296 (8):—"For preventing or regulating the sale by retail in the public streets of any meat, vegetables, fruit or beverages," 33 V. c. 26, s. 5 (1869) extended the power to "vacant lots adjacent," etc., (as here) and added to the list "small-ware and all other articles offered for sale."

Power limited to these articles and localities.

(**e**) *Cf.* s. 579 (9); and as to the words "adjacent thereto" and "small ware" see *Re Harris and City of Hamilton* (*b*) referred to in note (**g**) *infra*.

The by-law must be expressly limited to the articles and localities mentioned in the Statute. In *Re Fennell and Town of Guelph* (*c*) by-laws were held *ultra vires* which (1) provided that no person should expose for sale any meat, fish, poultry, eggs, butter, cheese, grain, straw, cordwood, etc., within the town of G., except at the public market, without having first paid the market fee thereon, and (2) made similar provision as to hides and skins, except the hides and skins of animals slaughtered by licensed butchers holding stalls in the market.

Per DRAPER, C.J.:—

> "We think [these provisions] exceed the powers given by the Act. . . . They prohibit the sale *within the town* of any of the articles mentioned unless a fee be paid,—thus in effect levying a tax (*d*) on all such sales made within the town, for the words "market fee" import a tax if the sales are within the market. The power to prevent or regulate sales by retail in the public streets is limited to meat, vegetables, etc, ... while the power to regulate the *place* and manner of selling is limited to [the articles now enumerated in sub-s. 5]. . . . . This by-law . . . imposes a tax for selling any of the articles mentioned in every house or shop within the town, extending to things not specified in the Statute, and over the sale of which the law gives the council no control, except when the exposure for sale is in the open air, or by retail in the public streets."

So, in *Re Kinghorn and City of Kingston*, (*e*) for reasons identical with those given in *Fennell's* case, a by-law was quashed which prohibited persons bringing "produce, articles, commodities or things" to a city market from selling or offering the same for sale within the city limits on their way to the market, or without having paid market toll, and before first offering said articles, commodities or things for sale at the proper market place.

(*a*) S. 579 (10). (*b*) 44 U.C.R. 641 (1869). (*c*) 24 U.C.R. 238 (1865).

(*d*) See s. 330, note (**d**) to s. 562, notes (**f**) and (**k**) *infra*, and note (**b**) to s. 581.

(*e*) 26 U. C. R. 130 (1866).

Sec. 580 (5).

Sale of grain, meat, farm produce, small-ware, etc.

5. For regulating the place and manner of selling and weighing grain, meat, vegetables, fish, hay, straw, fodder, wood, lumber, shingles, farm produce of every description, small-ware, and all other articles exposed for sale, and the fees to be paid therefor. 55 V. c. 42, s. 503 (4) *part.*

In the Acts of 1849, 1858 and 1866, "For regulating the place and manner of selling and weighing butcher's meat, fish, hay, straw, fodder, wood and lumber;" 12 V. c. 81, s. 60 (6), etc.; 22 V. c. 99, s. 287 (10); 29-30 V. c. 51, s. 296 (10). The sub-section in its present form is taken from 33 V. c. 26, s. 6 (1869).

Decisions prior to the passing of s. 579.

(f) Since the powers conferred by this sub-section are now "subject to the restrictions and exceptions contained in s. 579," the cases upon it, decided prior to April 2nd, 1882, when the Act 45 V. c. 24 (the original of s. 579) came into force, must be read in the light of that section, and, have, therefore, lost much of their force. See note (**d**) *supra.*

In *Peters* v. *Board of Police of London* (*a*) a local Act (*b*) which empowered the defendants "to fix upon and to appoint such days and hours for . . . selling butcher's meat, etc., and to make such other orders and regulations relative thereto as they shall deem expedient," was held to authorize the passing of a by-law prohibiting the sale of butcher's meat at certain hours, except at the public markets.

In *Ferguhar* v. *City of Toronto* (*c*) DRAPER, C. J., says:—"The power of regulating the place of selling wood authorizes the establishment of a wood market": and the Court upheld a by-law requiring that all waggons, carts or other carriages bringing wood into the city for sale should be placed on the wood market, and that any person leaving the line before disposing of his load, (unless to leave the market), or loitering about the streets with his load, should incur a penalty. But another clause providing that "all wood brought into the city for sale shall be subject to a fee or charge of five cents per cord, as if the same were brought into the market for sale" was quashed, as being an attempt to levy a tax, for the imposition of which express authority would be necessary.

In *Re Kelly and City of Toronto* (*d*) the power conferred by this sub-section to regulate "*the place* of selling butcher's meat" was held to warrant a by-law "that no butcher or other person shall put up or expose for sale any fresh meat in any part of the city except in the shops or stalls in the public markets or at such places as the standing committee on markets may appoint."

In *Re Fennell and Town of Guelph* (*e*) a clause that "meat, fish, poultry, eggs, cheese, grain, hay, straw, cordwood, shingles, lumber, flour, wool, meal, vegetables or fruit (except wild fruit) shall not be exposed for sale within the municipality before noon at any other place but the market," was held good as to the articles named in the Statute, but bad as to the others,—there being no authority so to enact with regard to them. See this case and *Re Kinghorn and City of Kingston* referred to in note (**d**) *supra.*

In *Re Snell and Town of Belleville* (*f*) a market by-law was held valid which enacted (1) that only butchers and persons occupying shops or stalls for the sale of fresh meat in the market or in two specified wards of the town should sell or expose fresh meat for sale in any less quantity than by the quarter; that such butchers and persons might so sell at these places but not elsewhere; and that no person should sell any fresh meat in the town except at the market-stalls or such place as the council should appoint, being not less than 400 yards from the market within certain defined limits in the said two wards.

Per ADAM WILSON, J.:—

> "As the council has full power to regulate the *place* of selling butcher's meat, they may restrict it to the public market and to the shops and stalls provided for that purpose beyond the market (*g*). As

(*a*) 2 U. C. R. 543 (1846); see now s. 581, and note (**a**) there to.

(*b*) 3 V. c. 31.

(*c*) 10 C. P. 379 (1861). See now s. 330, note (**d**) to s. 562, note (**k**) *infra*, and note (**b**) to s. 581.

(*d*) 23 U. C. R. 425 (1864). See now s. 581, and note (**a**) thereto.

(*e*) 24 U. C. R. 238, 242 (1865).

(*f*) 30 U. C. R. 81 (1870). See now s. 581, and note (**c**) thereto.

(*g*) *Re Kelly and City of Toronto*, 23 U. C. R. 425 (1864); *Re Fennell and Town of Guelph*, 24 U. C. R. 238 (1865).

Sec. 580 (5-6).

Notes (f), (g).

they may require the sale of all butcher's meat to be at such places, there can be no harm in their allowing it when it is by the quarter to be sold elsewhere . . . The council has undoubtedly power to say that those who are privileged to sell by less than the quarter at the specified places shall not be entitled to sell out of those places otherwise than by the quarter."

Decisions on sub-s. 5 prior to April 2nd, 1882, when s. 579 was passed.

The third section of the same by-law provided that no person should buy, sell or offer for sale any game, fish, poultry, eggs, butter [enumerating a number of articles] until the seller had paid the market fees, etc., and [? "or"] before certain specified hours; and that before noon no butcher's meat, fish, hay or straw should be bought or sold in the town except at the market and in the shops or stalls in the two wards aforesaid. This section was also held valid under what are now sub-ss. 3 and 5 (*a*).

A by-law passed by the city of Hamilton which provided that no person should upon *or after* the sale thereof deliver any stove-wood in or from any waggon, etc., otherwise than in or from a waggon of a certain capacity, the sides of which should be constructed of slats of a certain width and distance apart, was held bad, as unauthorized by this sub-section or by sub-ss. 9 or 11 (*b*).

Per HAGARTY, C. J.:—

> "For the purposes of the case I concede their right to provide for the weighing or measuring of the wood sold by the defendant, but when he has sold it, I do not see how they can force carriage and delivery in a specially sized and constructed vehicle."

A by-law enacted that "All hay, straw, grain, etc., sold . . . in the town of C. which is required to be weighed by the vendor or purchaser (*c*) shall be weighed with the public weigh scales." A conviction "for that [the defendant] brought hay into the town of C. and had the same weighed on scales other than the public scales of said town, the same being in contravention of the market by-law," was quashed, as it did not state that the hay had been sold. The costs were ordered to be paid by the weighmaster, who had, after warning, instituted the prosecution for his own benefit, instead of suing for the penalty in the Division Court. (*d*)

Criers and vendors of small ware.

6. For preventing criers and vendors of small ware from practising their calling in the market place, public streets and vacant lots adjacent thereto. 55 V. c. 42, s. 503 (4) *part*.

(g) This enactment is not *ultra vires* of the Provincial Legislature as being a regulation of trade and commerce, but is simply a provision of municipal government and within the powers of a local Legislature (*e*).

"Adjacent thereto," meaning of.

A city by-law under this sub-section enacted that no crier or vendor of small ware should practise his or her calling (*sic*) in the J. Street market, *or in the public streets adjacent thereto*. *Held*, that the prohibition contained in the phrase in italics was void for uncertainty (*f*). *Per* ARMOUR, C. J.: "Had the by-law followed the exact words of the Act it would have been good. Not having done so, it was necessary to describe particularly the streets intended."

The learned Chief Justice also expressed the opinion that the words "public streets and vacant lots adjacent *thereto*" meant vacant lots adjacent *to the public streets*. But in *City of Toronto* v. *Virgo* (*g*) Lord DAVEY, in delivering the judgment of the Judicial Committee of the Privy Council, says:—

> "Their Lordships are not required to construe this section, or to say whether the words 'adjacent thereto' do not refer to both public streets and vacant lots, and mean 'adjacent to the market.' Having

(*a*) See this case referred to *supra*, in note (e) and again in note (h) *infra*; and see further as to the power to regulate the sale of fresh meat by retail, s. 581 and the cases cited in notes (a) and (c) thereto.

(*b*) *Reg.* v. *Smith*, 4 O. R. 401 (1884).

(*c*) See s. 579 (5).

(*d*) *Reg.* v. *Hollister*, 8 O. R. 750 (1885).

(*e*) *Re Harris and City of Hamilton*, 44 U. C. R. 641 (1879).

(*f*) *Ibid.*

(*g*) [1896] A. C. 88, 92.

regard to the previous sub-sections under the same rubric, ["Markets"] they think the clause is one for the protection of the market only, and of limited application."

Sec. 580 (6)-(8). Notes (g), (h).

The term "small ware" may yet require judicial interpretation, owing to the uncertainty which must exist as to what articles are included within it. It is apprehended, however, that no by-law would be considered faulty for following the exact wording of the Statute (*a*).

"Small ware," meaning of.

The following clauses in a market by-law were held valid:

"(1) No person shall use any portion of the J. Street market for the purpose of exposing for sale or selling dry-goods, fancy goods, small wares or merchandize, pastry, confectionery, medicines, or any articles other than meat, fish, fruits, vegetables, poultry, eggs, and farm and dairy products."

(2) That a certain specified locality "shall be set apart for occupation by all criers and vendors of small wares or merchandize and such other persons as are by [clause (1)] excluded from the said market; and such criers and vendors of small wares or merchandize and such other persons shall be entirely excluded from all parts of the said J. Street market other than the portion contained within the limits in this section mentioned" (*b*).

7. For preventing the forestalling, regrating or monopoly of market grains, wood, meats, fish, fruits, roots, vegetables, poultry and dairy products, eggs and all articles required for family use, and such as are usually sold in the market. 55 V. c. 42, s. 503 (6).

Preventing forestalling, etc.

Provided always that farmers and other producers may sell such produce and articles at stores and shops in the municipality at any hour of the day. 59 V. c. 51, s. 17.

Proviso.

The first two lines (down to and including the word "vegetables") are as in the Acts of 1849 and 1858: 12 V. c. 81, s. 60 (6): 22 V. c. 99, s. 287 (11). The Act of 1866, (29-30 V. c. 51), s. 296 (11), added "poultry and dairy products" and the Act 31 V. c. 30, s. 32 the rest of the sub-section proper. The proviso was added in 1896: see the reference.

8. For preventing and regulating the purchase of such things by hucksters, grocers, butchers or runners. 55 V. c. 42, s. 503 (7).

Regulating hucksters, etc.

In the Acts of 1849, 1858 and 1866, "For preventing [In the Act of 1849," "For restraining"] the purchase of any such things by hucksters or runners living within the municipality or within one mile from the outer limits thereof." See 12 V. c. 81, s. 60 (6), etc.; 22 V. c. 99, s. 287 (12); 29-30 V. c. 51, s. 296 (12). 31 V. c. 30, s. 32 (1868) added "butchers." 34 V. c. 30, s. 32 (1871) struck out "or within one mile from the outer limits thereof," and the Act of 1873 (36 V. c. 48 s. 384 (38)) re-enacted the sub-section in its present form.

(h) These two sub-sections must be considered together, and would be more clear if they had been so printed, appending to the latter the proviso, which really governs both, and which takes away the value of the enactment itself and of the previous decisions thereon. "Forestalling,"—*i. e.*, buying up articles on their way to market, or dissuading persons from bringing goods to a market, or persuading them to enhance the price when there, and "regrating,"—*i. e.*, buying corn, dead victuals, etc., in any market and selling them again in or near the same place,—were both common law offences (*c*); at least when practised with respect to the necessaries of life (*d*). They were abolished in England by 7 & 8 V. c. 24; and in this Province a combination for the purpose of enhancing the price of an article is now "neither illegal nor against public policy" (*e*).

"Forestalling" and "regrating."

(*a*) See *per* ARMOUR, C. J., in *Re Harris and City of Hamilton*, supra, and the cases collected in foot-note (*c*) on p. 331, *ante*.

(*b*) *Re Harris and City of Hamilton*, supra.

(*c*) *Rex* v. *Waddington*, 1 East 143 (1800).

(*d*) *Pettamberdas* v. *Thackoorseydas*, 7 Moo. P. C. C. 239 (1850).

(*e*) *Per* STRONG, V. C., in *Ontario Salt Co.* v. *Merchants' Salt Co.*, 18 Grant 540, 543 (1871).

Sec. 580 (8)-(10). Notes (h), (j).

The following cases were all decided before 1896, when the proviso to sub-s. 7 came into force. The section has not since then been the subject of judicial interpretation.

Decisions prior to April 7th, 1896.

A by-law that before certain specified hours no huckster, butcher, dealer, trader, runner, agent, or retailer, or any other person purchasing for export or to sell again should buy, bargain for, engage, or offer to buy any article of household consumption brought to the market excepting pork, grain, flour, meal or wool, was held to be good as to the persons named in the Statute, but bad as to the rest. (*a*).

In *Re McLean and Town of St. Catharines* (*b*) the corporation had passed a by-law that no butcher, huckster or runner should, before certain specified hours, buy or contract for any kind of fresh meat, provisions, eggs and all (*sic*) other articles required for family use and such as are usually sold in the market, on the roads, streets or [at] any place within the town or within one mile distant therefrom. *Held*, bad, for the section as it then stood (*c*) applied only to such persons when living in the town or within one mile from the outer limits thereof (*d*). Another by-law was then passed in which the words "or within one mile distant therefrom" were omitted; but this by-law having been attacked in *Wilson v. Town of St. Catharines* (*e*) was also quashed, because it should have been limited to purchases and contracts made for the purpose of selling again. The by-law as it stood "would have the effect of fixing a personal disability on a man carrying on the trade of huckster, butcher or runner . . . so as to render him liable to . . . penalties if he purchased any of the articles mentioned . . . for the use of his family and not for the purpose of re-sale" (*f*).

A by-law that "no person shall forestall, regrate or monopolize any market grains," etc., (as in the Statute) "within the Town of B." was held good. (*g*) *Per* A. WILSON, J.:—"It repeats the obsolete English provisions enacted in the sub-section and does nothing more." See this case referred to in notes (**b**) and (**f**), *supra*.

Measuring, etc., certain articles.

9. For regulating the measuring or weighing (as the case may be) of lime, shingles, laths, cordwood, coal and other fuel. 55 V. c. 42, s. 503 (8).

In the Act of 1849, (12 V. c. 81), s. 60 (6), etc.:—"For regulating the measurement, length and weight of" these articles. In the Acts of 1858 to 1883 inclusive:—"For regulating the *mode of* measuring or weighing," etc. See 22 V. c. 99, s. 287 (13); 29-30 V. c. 51, s. 296 (13); 36 V. c. 48, s. 384 (9), etc. The words in italics were struck out in 1886 by 49 V. c. 37, s. 13.

(i) See s. 579 (5) and sub-section 5 of this section; also *Reg.* v. *Smith* (*h*) and *Reg.* v. *Hollister* (*i*) cited in note (**f**) *supra*.

Penalties for light weight, etc.

10. For imposing penalties for light weight or short count or short measurement in anything marketed. 55 V. c. 42, s. 503 (9).

As in the Acts of 1849 and 1858 and all subsequent Municipal Acts: 12 V. c. 81, s. 60 (6); 22 V. c. 99, s. 287 (14), etc.

(j) "*The Weights and Measures Act*," (*j*) provides that:—

> "When any fraud is wilfully committed in the using of any weight, measure, scale, balance, steel-yard or weighing machine, the person committing such fraud, and every person party to the fraud, shall incur a penalty of twenty-five dollars, or, in the case of a subsequent offence, of fifty dollars, and the weight, measure, scale, balance, steel-yard or weighing machine shall be forfeited and shall be forthwith seized as being so forfeited."

(*a*) *Re Fennell and Town of Guelph*, 24 U. C. R. 238 (1865).

(*b*) 27 U. C. R. 603 (1868). (*c*) See the references, *supra*, in small print.

(*d*) See *ante*, p. 330. (*e*) 21 C. P. 462 (1871). (*f*) *Per* GALT, J. at p. 463.

(*g*) *Re Snell and Town of Belleville*, 30 U. C. R. 81 (1870). See *supra*, note (**g**), and *ante*, p. 331, foot-note (e).

(*h*) 4 O. R. 401 (1884). (*i*) 8 O. R. 750 (1885).

(*j*) R. S. Ca. c. 104, s. 26.

11. For seizing and forfeiting bread or other articles when of light weight or short measurement. 55 V. c. 42, 48, s. 479 (21); 60 V. c. 15, *Sched.* C. (83). Light weight or short measure.

Taken from the Act of 1873, (36 V. c. 48), s. 379 (36), which applied only to townships, cities, towns and villages; extended to counties by 57 V. c. 16, s. 16 (1894), and restricted, as here, to cities, towns and villages by 60 V. c. 15, Sched. C. (83) (1897). *Cf.* the Acts of 1849, 1858 and 1866:—"For regulating the assize of bread . . . and for providing for the seizing and forfeiture of bread baked contrary to the by-law"; 12 V. c. 81, s. 60 (8), etc.; 22 V. c. 99, s. 287 (16); 29-30 V. c. 51, s. 296 (16); and see now ss. 550 (4), 583 (1) and note (a) to the latter section.

12. For regulating all vehicles, vessels, and all other things in which anything is exposed for sale or marketed and for imposing a reasonable duty thereon, and establishing the mode in which it shall be paid. 55 V. c. 42, s. 503 (10). Regulating vehicles used in market vending.

The words "in any ["highway" [1849]] street or public place," used in the Acts of 1849 and 1858 after the words "exposed for sale or marketed," were omitted in the Act of 1866 and ever since. See 12 V. c. 81, s. 60 (6), etc.; 22 V. c. 99, s. 287 (16); 29-30 V. c. 51, s. 296 (15); 36 V. c. 48, s. 384 (11), etc.

(k) This does not authorize the imposition, merely because they may be carrying firewood, of tonnage dues on scows, crafts, rafts, railway cars, &c., coming into the municipality, though such firewood may have been brought into the municipality for the purpose of being exposed or offered for sale or marketed for consumption within the municipality *(a)*. "What the Statute authorizes is the regulating the vehicles, vessels, etc., in which anything *is exposed for sale* or marketed, and for imposing a reasonable duty thereon. When the commodity is exposed for sale, the power to impose the duty, if it is really given, arises, and if it be intended to impose the duty on the vehicle or vessel, it must be on that in which the article is exposed for sale or marketed. . . . . The Legislature never contemplated that, under pretence of passing a by-law to regulate markets, any municipal corporation should have the power of levying a tax on the general commerce of the country merely because a particular town or city happened to be the place where forwarders are in the habit of transhipping commodities from one description of craft to another, and where merchants frequently contract that certain articles in which they deal shall be delivered, in view of this very practice of transhipment." *(b)* What vehicles are intended.

13. For selling, after six hours' notice, butchers' meat distrained for rent of market stalls. 55 V. c. 42, s. 503 (11). Sale of meat distrained.

Taken from the Act of 1858, (22 V. c. 99), s. 287 (18). *Cf.* the Act of 1849, (12 V. c. 81), s. 60 (6): "For distraining butcher's meat for the rent of market stalls and for selling the same after six hours notice."

(l) In departing (as above noted) from the original language of the section, the Revisers of 1858 seems to have overlooked the fact that without a statutory provision to that effect, butchers' meat is not distrainable for rent. *(c)*

581.– (1) Subject to the restrictions and exceptions contained in section 579, the council of every town and village, and of every city having less than 100,000 inhabitants, and the Board of Commissioners of Police in every city having 100,000 inhabitants or more, may pass by-laws :—

For granting annually, or oftener, licenses for the sale of fresh meat in quantities less than by the quarter carcass, and for regulating such sale, and fixing and regulating the places Regulating sale of fresh meat by retail.

(a) *Re Campbell and City of Kingston*, 14 C. P. 285 (1864).

(b) *Ibid, per* RICHARDS, C. J., at p. 288. See *Reg.* v. *Smith*, 4 O. R. 401 (1884) cited in note (f) *supra*, and, as to the taxing power, s. 330 note (d) to s. 562 and notes (e) and (f) *supra*.

(c) *Brown* v. *Shevill*, 2 A. & E. 138 (1834); *Morley* v. *Pincombe*, 2 Ex. 101 (1848).

Sec. 581 (1).

Notes (a)-(b)-(c).

Preventing sales except by licensed persons and at authorized places.

where such sale shall be allowed, and for enforcing the payment of the sums fixed by the by-laws of the council of the municipality to be paid for such licenses, and for preventing the sale of fresh meat in quantities less than by the quarter carcass, unless by a person holding a valid license and in a place authorized by the council; but nothing herein contained shall affect the powers conferred in clauses 5 and 6 of section 580.

Proviso.

Provided that this sub-section shall not be qualified as respects shops or stalls occupied by butchers or others, for the sale of fresh meat in quantities less than by the quarter carcass within the said municipality by anything contained in clauses 1 to 9 and 17 of section 579 of this Act. 55 V. c. 42, s. 503 (5); 59 V. c. 51, s. 31; 60 V. c. 45, s. 22; c. 15, *Sched. C.* (122)

Taken from 42 V. c. 31, s. 20, (1879), the proviso having been added in 1887 by 50 V. c. 29, s. 29. See R.S.O. (1887), c. 184, s. 503 (6); 53 V. c. 50, s. 23. These powers were transferred by 59 V. c. 51, s. 21 (repealed and re-enacted by 60 V. c. 45, s. 22) to the Boards of Commissioners of Police in cities "of over 100,000 inhabitants," altered by 60 V. c. 15, Sched. C. (122) to "cities having a population of 100,000 or over." See s. 4, *ante*, and the references appended to s. 585, *post*.

Preventing, etc.

(a) "**For regulating . . ., and for preventing.**" See note (**a**) to s. 329, note (**b**) to s. 580, notes (**a 2**) (**j**) and (**u**) to s. 583, *Re Fennell and Town of Guelph*, (*a*) and *Re Snell and Town of Belleville*, (*b*) referred to in note (**c**) to s. 330, and in notes (**b**) (**f**) and (**h**) to s. 580.

Retail sales only affected.

(b) "**Less than by the quarter carcass.**" In *Reg.* v. *Cushing* (*c*) the defendant had been convicted and fined by the police magistrate for the city of Hamilton for selling fresh meat "without a licence in less quantities than of a carcass," contrary to a city by-law which forbade any such sale in quantities less than a carcass. *Held*, (*d*) that this provision of the by-law was unwarranted by the above section; and the conviction was quashed with costs to be paid by the informants. Sections 330 and 579 (10) of the Act were quoted and considered.

By-law may fix places at which alone fresh meat may be sold by retail.

(c) **Proviso.** A by-law under this section provided (1) that every butcher or other person selling fresh meat in the city of Ottawa in quantities less, etc., should obtain a license; (2) that a person so licensed might sell in certain specified places but not elsewhere; and (3) that no person should sell fresh meat, etc., in the city of Ottawa without a license. The defendant was convicted for selling without a license and in a place not being one of those specified—a double offence—but only one fine was imposed. On a motion to quash the conviction it was held:—(1) that the by-law was not *ultra vires*, express power in regard to the subject matter (the licensing of such sales) being given by the Statute; and that the question of its reasonableness could only be considered on a direct motion to quash (*e*): (2) that the by-law was not defective for not embodying the exceptions now contained in the second proviso to s. 579 (17), nor the conviction for not showing that the sale was before the hours therein named, since the section in question does not refer to the same subject matter as this section, and is limited to municipalities "wherein no market fees are imposed or charged", whereas it appeared that such fees were charged in Ottawa; but (3) that the conviction was bad, being for two distinct offences, yet imposing only one penalty (*f*). *Per* O'Connor, J.:—"For which offence is the fine inflicted? If the defendant were prosecuted again on either of these charges separately, could he plead this conviction in answer?"

(*a*) 24 U. C. R. 238 (1865). (*b*) 30 U. C. R. 81 (1870).

(*c*) Not reported; but see 26 A. R. 248 (1899).

(*d*) By Ferguson, J., and affirmed by a Divisional Court.

(*e*) See also note (**h**) to s. 378.

(*f*) *Reg.* v. *Gravelle*, 10 O. R. 735 (1886).

Upon a subsequent motion to quash this by-law, it was held by WILSON, C.J., and affirmed by the Court of Appeal and the Supreme Court of Canada, that the by-law was valid; but (in the Supreme Court) STRONG and TASCHEREAU, JJ., dissented, holding that the section of the by-law which fixed the places where fresh meat might be sold in quantities less than a quarter and prohibited its sale elsewhere, was in excess of the powers of the council (*a*).

Secs. 581 (1),(2); 581*a*; 582 (1).

Notes (c), (a).

Per WILSON, C. J. :—"As to the objection that the by-law was unreasonable because sufficient accommodation for the sale of fresh meat in less quantities than by the quarter has not been provided by the council,—. . . I should say that the Court might quash the by-law if the accommodation is so plainly insufficient that it must be held to be utterly unreasonable, unless . . . the municipality would provide reasonably fit and full accommodation" (*b*)

(2) Subject to the restrictions and exceptions contained in section 579, the councils of every city, town and village may pass by-laws :

For fixing the sums to be paid for licenses required under by-laws passed under the preceding sub section, not exceeding $50 in cities and $25 in towns and villages for each such license. (*Ib.*)

License fees.

Taken from 42 V. c. 31, s. 20 (1879).

Cold Storage.

581*a*. The corporation of any city may establish and carry on the business of cold storage in connection with or upon the city's market property, and may pass by-laws therefor. 61 V. c. 23 s. 14 (1898).

Power to carry on cold storage business.

Weighing Machines.

582. The councils of townships, cities, towns and villages may pass by-laws :—

1. For erecting and maintaining weighing machines in villages or other convenient places, and charging fees for the use thereof, not being contrary to the limitations provided by subsection 8 of section 579 of this Act. 55 V. c. 42, s. 489 (58).

Erecting and maintaining weighing machines.

Taken from 50 V. c. 29, s. 25 (1887).

(a) As to compelling the use of such weighing machines, see s. 579 (5) (10) (17), and s. 580 (2) (5) (9). *Cf.* "*The Markets and Fairs, etc., Acts.*" (*c*).

(*a*) *Re O'Meara and City of Ottawa*, 11 O. R. 603; 15 A. R. 75 (1887); 14 S. C. R. 742 (1888).

(*b*) 11 O. R. p. 609. *Cf.* the language of DRAPER, C. J., in *Re Kelly and City of Toronto*, 23 U. C. R. 425, 426 (1864).

(*c*) Imp. Stats. 50-51 V. c. 27, ss. 5-7 : 54-55 V. c. 70, s. 2, and see *Mackintosh v. Romford Local Board*, 61 L.T.N.S. 185 (1889).

Sec. 583 (1-2).

Note (a).

DIVISION XVIII.—REGULATION OF TRADE.

Assize of bread. Sec. 583 (1).
Auctioneers. Sec. 583 (2) (3).
Bagatelle and Billiard tables. Sec. 583 (4) (5).
Bill posters. Sec. 583 (6) (7).
Exhibitions of wax-works—Menageries—Circuses—Roller-rinks, etc. Sec. 583 (8) (9).
Exhibitions for hire or profit—Bowling alleys. Sec. 583 (10) (11).
Ferries. Sec. 583 (12) (13).
Hawkers, Pedlars and Petty chapmen. Sec. 583 (14) (15)(16).
Intelligence offices. Sec. 583 (17) (21).
Junk shops. Sec. 583 (22) (22a).
Milk dealers. Sec. 583 (23) (24).
Plumbers. Sec. 583 (25) (26).
Runners for vehicles, vessels, taverns, etc. Sec. 583 (27).
Tobacconists. Sec. 583 (28) (29).
Transient traders. Sec. 583 (30-33).
Victualling houses. 583 (34-36).
Vehicles used for hire—Livery stables, etc. Sec. 583 (37) (38), 584.
As to cities of 100,000 or over. Sec. 585.

583. By-laws may be passed by the councils of the municipalities or Boards of Commissioners of Police and for the purposes in this section respectively mentioned, that is to say :—

Assize of Bread.

By the councils of cities, towns and villages :—

Assize of bread.

1. For regulating the assize of bread. 55 V. c. 42, s. 503 (12).

Taken from the Act of 1849, (12 V. c. 81), s. 60 (8) (villages); ss. 61, 67, 80 (towns); ss. 82, 106 (cities). *Cf.* 22 V. c. 99, s. 287 (16), and see references under s. 580 (11).

(a) "The apparent meaning of 'the assize of bread' seems to be the power or privilege of 'assizing' or adjusting the weight or measure of bread." (*a*). A by-law of the city of Toronto was held valid which provided that :—"(1) All bread sold or offered for sale in the city of Toronto shall be in loaves of one pound, one and a half pounds, two pounds and four pounds respectively :—(2) The weight of every loaf of bread sold or offered for sale in the city of Toronto shall be stamped thereon :—(3) All bread offered for sale of any less weight than the weight fixed by this by-law shall be forfeited" (*b*).

Auctioneers.

By the councils of counties and separated towns and of cities having less than 100,000 inhabitants, and by the Boards of Commissioners of Police in cities having 100,000 inhabitants or more :—

Auctioneers.

2. For licensing, regulating and governing auctioneers and other persons selling or putting up for sale goods, wares, merchandise or effects by public auction; and for prohibiting the

(*a*) *Per* HAGARTY, C. J., in *Reg.* v. *Nasmith*, 2 O. R. 192, 193 (1883), where the English Statutes relative to the weight and sale of bread are referred to.

(*b*) *Ibid*, and see s. 580 (11).

granting of such license to any applicant who is not of good character, or whose premises are not suitable for the business, or upon residential or other streets in which in the opinion of the council or Board it is not desirable that the business of auctioneer should be carried on, such disqualifications to be determined by such means as the by-law provides; and for determining the time such license shall be in force: but no such by-law shall apply to or affect a bailiff offering for sale goods or chattels seized as a distress for rent; and such bailiff shall not require any license to entitle him to sell such distrained goods or chattels by public auction to satisfy such rent and the cost of seizure and sale. 55 V. c. 42, s. 495 (2) *part*; 56 V. c. 35, s. 19; 57 V. c. 50, s. 8; 59 V. c. 51, s. 31; 60 V. c. 45, s. 22; c. 15, *Sched.* C. (122); *and see sec.* 585.

Auctioneers.

By the councils of counties, cities and separated towns:—

3. For fixing the sums to be paid for licenses required under by-laws passed under the preceding clause 2. *(Ib)*

License Fees.

In this Province, auctioneers were first required to take out (government) licenses by 58 Geo. III c. 6 (1818). By 16 V. c. 181, s. 3 (1) (1853), cities, towns, villages and townships were authorized to pass by-laws for regulating and governing auctioneers and other persons putting up goods for sale by auction, requiring them to take out a license, fixing the fee therefor, and the time during which the license should be in force. By the Act of 1858 the power was restricted to counties and cities; (22 V. c. 99, s. 277 (2)); but in 1860 it was extended to separated towns by 29-30 V. c. 51, s. 286 (2). The last six lines (relating to bailiffs) were added in 1893 by 56 V. c. 35, s. 19. The clause "and for prohibiting . . . by such means as the by-law provides" was added in 1894 by 57 V. c. 50, s. 8, except that in the present Revision (1897) the word "disqualifications" is substituted for "qualifications." The Statutes transferring this power in certain cities to the Boards of Police Commissioners are noted under s. 585, *post*. As to auctioneers' licenses in the Territorial Districts of the Province, see R. S. O. c. 225, s. 25.

(a 2) "Licensing, regulating and governing." There is no express power to "prevent" as in sub-ss. 8, 10 and 27. As to the limitations of the power of "regulating and governing" see note (**a**) to s. 329, notes (**j**) and (**u**) to this section and *Bollander* v. *City of Ottawa*, 30 O. R. 7 (1898), referred to *ante* in note (**b**) to s. 580.

"Regulating," etc.

(b) "Auctioneers." "Auction" (from the Lat., *augere, auctum*) signifies, generally, an increasing or enhancement. Hence the term is applied to a public sale of property, usually conducted by competitive biddings, which (except in the case of a "Dutch auction") augment the price (*a*). It is "a public sale of property to the highest bidder." (*b*) An auctioneer is one who conducts such a sale by auction, whether the property sold be his own or another's. (*c*)

What is an "auction" and an "auctioneer."

(c) "Other persons selling," etc. An agent of the assignee of an insolvent estate, who sold by public auction the stock-in-trade of an insolvent, was held to have been rightly convicted under a county by-law prohibiting any person from selling or putting up for sale any goods, etc., by public auction, although this was the only occasion on which he had so acted. (*d*)

One act of selling is sufficient.

(d). "Goods, wares, merchandise or effects." The conviction (under a by-law similar to that mentioned in note (**c**)) of one who, without an auctioneer's license, had sold land by auction under a Chancery decree for sale, was quashed with costs. (*e*)

Section does not apply to sales of lands.

(*a*) Wharton, *ad verb.* See *per* MACLENNAN, J. A., in *Ontario Natural Gas Co.* v. *Smart*, 18 A. R. 626 (1891), at p. 632.

(*b*) Imp. Dict.

(*c*) Anderson's Law Dictionary: *Merritt* v. *City of Toronto*, 22 A. R. 205 (1895), at p. 213.

(*d*) *Reg.* v. *Rawson*, 22 O. R. 467 (1893).

(*e*) *Reg.* v. *Chapman*, 1 O. R. 582 (1881). *Per* OSLER, J. (p. 584):—"No license can be demanded for the right to sell lands by auction."

Sec. 582 (3).

(e) "And for prohibiting the granting of such license to any applicant who is not of good character, etc. . . . by such means as the by-law provides."

Notes (e), (f). Auctioneers.

These words were inserted in 1894 (see references *supra*) in order to settle the question raised in *Merritt* v. *City of Toronto* (*a*).

Right to refuse license.

In that case the defendants having refused to grant the plaintiff an auctioneer's license on the ground that he was a person of notoriously bad character and ill repute, into whose hands the goods and moneys of the public should not be entrusted, it was held by Rose, J. (*b*), that the power to pass by-laws "for licensing, regulating and governing auctioneers" having been conferred under the authority of s. 92 (9) of "*The B.N.A. Act, 1867*" which expressly states that the jurisdiction over the subject of such licenses is given to the Province solely "for the purpose of raising a revenue for provincial, local or municipal purposes" the council had no power of prohibition. (*c*) The defendants were accordingly ordered to issue the license on payment of the proper fees. This decision was unanimously affirmed by the Court of Appeal. (*d*)

Bagatelle and Billiard Tables.

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

Bagatelle and billiard tables.

4. For licensing, regulating and governing all persons who for hire or gain, directly or indirectly keep, or have in their possession or on their premises, any billiard or bagatelle table, or who keep or have a billiard or bagatelle table in a house or place of public entertainment or resort, whether such billiard or bagatelle table is used or not, and for determining the time during which licenses shall be in force. 55 V. c. 42, s. 489 (6); 59 V. c. 51, s. 31; 60 V. c. 45, s. 22; c. 15, *Sched.* C. (122); *and see sec.* 585.

License fees.

By the councils of townships, cities, towns and villages:—

5. For fixing the sums to be paid for licenses required under by-laws passed under the preceding clause. (*Ib.*)

Taken from the Act of 1858, (22 V. c. 99), s. 254 (1), which applied only to billiard tables. (*Cf.* 12 V. c. 81, s. 60 (9); 16 V. c. 184, s. 3 (3). By the Act of 1873, (36 V. c. 48), s. 379 (3) the section is made to include bagatelle tables. As to the transfer of this power to the Boards of Commissioners of Police in certain cities, see the reference under s. 585. As to the power of township councils to pass by-laws under these clauses which shall apply only to a police village, see *post*, s. 712*a*.

"Regulating," etc.

(f) "**Licensing, regulating and governing.**" See note (a) to s. 324 notes (j) and (u) to this section and *Rollander* v. *City of Ottawa*, (*e*) referred to *ante* in note (b) to s. 580.

A by-law under this clause declaring that:—"It shall be unlawful to have internal means of communication between a room in which a billiard table or bagatelle table is kept, and any place in which spirituous, fermented or other manufactured liquors may be sold," was held valid. (*f*) Also a by-law that no billiard table or bowling alley should be kept in any tavern, inn or house of entertainment. (*g*)

(*a*) 25 O.R. 256; 22 A.R. 205 (1895).

(*b*) 25 O.R. 256 (1894).

(*c*) See *Russell* v. *Regina*m, 7 App. Cas. 829 (1882), at p. 837; *Hodge* v. *Reginam*, 9 App. Cas. 117 (1883).

(*d*) 22 A.R. 205 (1895). (*e*) 30 O.R. 7 (1898).

(*f*) *Re Neilly and Town of Owen Sound*, 37 U.C.R. 289 (1875).

(*g*) *Re Axkell and Town of St. Thomas*, 38 U.C.R. 594 (1876).

See also R. S. O. c. 247, entitled "*An Act to prevent Minors frequenting Billiard Rooms and other places*," which provides that :

Sec. 582 (5).

Notes (g), (h).

Bagatelle and billiard tables.

"The keeper of a licensed billiard, pool or bagatelle room, who directly or indirectly keeps the same for hire or gain, admitting a minor under the age of 16 years thereto, or allowing him to remain therein, without the consent of his parent or guardian, shall be subject to a fine of not exceeding $10, for the first, and not exceeding $20 for each subsequent offence, to be imposed by any Justice of the Peace, one half of which fine shall go to the informer. Provided always that this Act shall not apply to a minor who is a member of the family of the keeper or his servant, or who does not go to the billiard, pool or bagatelle room for the purpose of loitering, or to play billiards, pool or bagatelle therein; nor shall this Act apply to any case where the keeper, in the opinion of the Justice of the Peace, had reasonable cause to believe that such consent had been given by the parent or guardian, or that such minor was not under the age of sixteen." (a)

(g) "**A billiard or bagatelle table in a house of public entertainment or resort.**"

Regulating houses of public entertainment, etc.

The late Chief Justice SPRAGGE, when giving his judgment (b) in the case of *Reg.* v. *Hodge*, (c) called attention to the fact that there was, at the time the proceedings against the defendant were commenced, a by-law of the city of Toronto, passed under the authority of this section, which provided that "Every licensed billiard room situate in any house of public entertainment and resort shall be closed from and after the hour of 7 on Saturday night till the hour of six on Monday morning thereafter."

He expressed his "surprise and regret that the city officials concerned in the information laid against the defendant should have prosecuted as for an offence against the resolution of the License Commissioners instead of prosecution for an offence against the by-law," and proceeded :—

"The conviction and the evidence upon which it was founded both show that every fact necessary to constitute the defendant an offender against the by-law was proved; and the penalty adjudged . . . was within the penalty authorized by the same Statute for breach of the by-laws of [municipal] corporations. If this course had been pursued, *the only question that could have arisen* would have been whether the provisions of the Municipal Institutions Act in force in Upper Canada at the date of Confederation have been abrogated, *a question upon which no reasonable doubt can be entertained.*"

As to what is "a house of public entertainment or resort," see notes (r) and (ii) *infra*.

(h) Sub-section 5. "**For fixing the sums to be paid for licenses.**"

License fee, amount of.

In *Re Neilly and Town of Owen Sound*, (d) a by-law which provided that licenses for billiard tables, etc., for hire or gain, or to be had or kept in a house of public entertainment within the municipality, might be issued on payment of a fee of $300, was submitted to and approved by the electors of the town, and passed by the council. A motion to quash the by-law on the ground (among others) that it was unreasonable and oppressive, and was in fact a by-law to prohibit such tables and therefore void, was refused with costs.

Sir JOHN A. MACDONALD, arguing in support of the by-law, pointed out that so long ago as 1810 the Legislature of Upper Canada had considered £40 a proper sum to pay for a license to keep a billiard table set up for hire or gain, the fee annually payable to the Province being fixed at that amount by 50 Geo. III. c. 6, s. 1. Also that in *Church qui tam* v. *Richards* (e) the imposition by the (then) town of London, under the authority of its charter, (f) of a further license fee of £10, had been sustained, thus making the total license fee £50. It was urged that having regard to the relative value of money in 1810 and in 1875, a license fee of $300 could not under these circumstances be regarded as excessive. The Court concurred in this view, and further pointed out that "the trade or profession of keeping a billiard table for profit is not like that of buying or selling the necessaries of life . . . It is not like a license to

(a) See *Reg.* v. *Viasani*, 30 J.P. 758 (1866).

(b) 7 A.R. 246 (1882) at p. 262.

(c) See this case more fully referred to *ante* in note (a) to s. 329.

(d) 37 U.C.R. 289 (1875). (e) 6 U.C.R. 562 (1849).

(f) 10-11 V. c. 48, s. 25.

Sec. 582 (5-8). Notes (h), (i).

a butcher, or a baker, or a seller of firewood and such like articles of daily necessity. If this corporation imposed a license duty of $300 on every seller of firewood, or of meat or bread, the effect might be to prohibit the exercise of such trades. . . . We know of market prices for wood, or meat, or bread; but we have no such knowledge as to the cost properly chargeable for playing billiards. It is merely a matter, not of necessity, but of pleasure and luxury." (a)

Bagatelle and billiard tables.

And in the United States, the right of a municipal corporation to use its licensing powers as a source of revenue has been regarded as much more extensive in the case of amusements and exhibitions than in the case of useful trades and employments. (b)

Bill Posters.

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

Bill-posters.

6. For licensing, regulating, and governing bill posters, and for determining the time during which licenses shall be in force. 55 V. c. 42, s. 495 (2) *part*; 59 V. c. 51, s. 31; 60 V. c. 45, s. 22; c. 15, *Sched.* C. (122); *and see sec.* 585.

By the councils of counties, cities and separated towns :—

Fees.

7. For fixing the sums to be paid for licenses required under by-laws passed under the preceding clause 6. (*Ib.*)

Added in 1890 by 53 V. c. 50, s. 20. 59 V. c. 51, s. 31, 60 V. c. 45, s. 22, and c. 15, Sched. C. (122) relate to the transfers of these powers to the Board of Commissioners of Police in certain cities, as to which see the references under s. 585, *post*.

"Regulating," etc.

(i) "**Licensing, regulating and governing,**" See note (**a**) to s. 329, notes (j) and (**u**) to this section and *Bollander* v. *City of Ottawa*, (c) referred to in note (**b**) to s. 580.

The object of the draftsman of this enactment (the present editor) was partly to augment the power already possessed by municipalities in reference to preventing the defacement of private or other property by posters (*d*), but chiefly to secure to the local authorities a larger measure of authority to prevent the putting up of objectionable advertisements on streets and in public places (*e*).

Exhibitions, Places of Amusement, Bowling Alleys, etc.

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

Regulating and licensing public shows.

Fines for infraction.

8. For preventing or regulating and licensing exhibitions of wax work, menageries, circus-riding and other such like shows usually exhibited by showmen, and for regulating and licensing roller skating rinks and other places of like amusement; and for imposing fines, to an amount not exceeding the amount of the license fee, on persons infringing such by-laws; and for levying the same by distress and sale of the goods and chattels of such showman or belonging to or used in such

(*a*) *Per* HAGARTY, C.J., C.P., 37 U.C.R., at p. 293.

(*b*) See note (**a**) to s. 329; Dillon, s. 357; Am. & Eng. Encyc. of Law: *Tit.* "Licenses."

(*c*) 30 O. R. 7 (1898). (*d*) S. 547 (4). (*e*) S. 549 (1).

exhibition, whether owned by such showman or not, or for the imprisonment of such offenders for any term not exceeding one month.

Sec. 582 (8). Notes (j)-(o).

Based upon s. 260 (10) of the Act of 1858 (22 V. c. 99), which, however, did not fix the amount of the fine, or apply to "roller skating-rinks and other places of like amusement." These were added in 1886, (49 V. c. 37, s. 12), and "*The Mun. Amendment Act, 1892*," (55 V. c. 43), s. 33, inserted after "fines" in line 5 the words "to an amount not exceeding the amount of the license fee." As to the effect of 59 V. c. 51, s. 31; 60 V. c. 45, s. 22 and 60 V. c. 15, Sched. C. (122) see under s. 585, *post*. As to the power of township councils to pass by-laws under this section which shall apply only within a police village, see *post*, s. 742 a.

(j) "**Preventing** *or* **regulating and licensing.**"

"Preventing," etc.

The authority here conferred is more than a mere power "to regulate" as to which see note (a) to s. 329, note (b) to s. 580, and note (u) *infra*. Any such exhibition may be wholly prohibited within the municipality (*a*); and the exercise by the council of the discretion thus conferred upon them, if *bona fide*, will not be interfered with by a Court. See note (a) to s. 10, the cases cited in foot note (u), p. 45 and by ARMOUR, C. J. in *Re Pattullo and Town of Orangeville*, 31 O.R. 192 (1899).

(k) "**Exhibitions of wax work, . . . and other such like shows usually exhibited.**"

"Exhibitions" and "shows."

Under a by-law which followed the exact words of this sub-section, and absolutely prohibited such exhibitions and shows, the defendant was convicted and fined for *exhibiting* a machine called a "merry-go-round." The evidence showed that no charge was made for *looking* at the merry-go-round, but that a charge of five cents was made for *riding upon* it. *Held*, not a case within the meaning of the Statute or the by-law, and the conviction was quashed with costs (*b*).

(l). "**Roller-skating rinks,**" etc. The date of this amendment (1886) indicates the period when this was the popular amusement, just as that of s. 540 (7), viz. 1895, marks the era of the bicycle. See also *Reg.* v. *Tucker*, (*c*) referred to in note (r), *infra*.

Roller-skating rinks.

(m) "**Fines to an amount not exceeding the amount of the license fee,**" *i. e.*, not exceeding $500. This is the only case in which a fine for breach of a municipal by-law may exceed $50. See s. 702.

Amount of fine.

(n) "**For levying the same by distress of the goods . . . used in such exhibition, whether owned by such showman or not,** *or* **for the imprisonment of the offenders,**" etc.

Leviable by distress *or* imprisonment.

It is for reasons sufficiently obvious, having regard to the peripatetic character of these circuses, menageries, etc., that the by-law may authorize and may be enforced by such extensive powers of distress, or may direct imprisonment in lieu of a fine, instead of awarding it only upon non-payment thereof and default of sufficient distress. See ss. 702, 705, 707, 709, and notes thereto.

(*a*) It shall not be lawful to grant licenses or license certificates to persons having exhibitions of any work or circus-riding, or other shows of a like character, or places of gambling, or to those engaged in traffic for gain in fruits, goods, wares or merchandise of any description, on the days of the exhibition of any district or township agricultural society, either on the grounds of such society, or within the distance of 300 yards from such grounds. 55 V. c. 42, s. 489 (25): c. 43, s. 33; 59 V. c. 51, s. 31; 60 V. c. 45, s. 22; c. 15, *Sched.* C. (122). *See* 58 V. c. 11, ss. 2 (4), (5), 6 (1), 46, 47, *Sched.* B.; *and sec.* 585.

Licenses not to be granted for certain times and places.

(o) This clause first became part of the Municipal Act in 1866, in pursuance of the policy adopted by the Legislature in 31 V. c. 29, passed in 1868 "*For the encouragement of Agriculture, Horticul-*

(*d*) Certain Associations may prevent shows, etc., on or near their exhibition grounds.

(*a*) See s. 549 (7).
(*b*) *Reg.* v. *Whitaker*, 24 O. R. 437 (1894).
(*c*) 2 Q. B. D. 417 (1877).
(*d*) 29-30 V. c. 51, s. 269 (10).

Sec. 582 (8-11). Notes (o)-(r).

ture, Arts and Manufactures," by s. 58 of which—now substantially re-enacted in s. 28 of "*The Agriculture and Arts Act*", (R. S. O. c. 43),—the officers of the Associations or Societies named in s. 32 thereof, may, during the days of their exhibitions :—

> "By their rules and regulations, prohibit and prevent all kinds of theatrical or circus or acrobatic performances, exhibitions or shows, and may also regulate or prevent the huckstering or trafficking in fruits, goods, wares or merchandise on the exhibition grounds, or within 300 yards thereof; and any person who, after due notice of such rules and regulations, violates the same, shall be liable to be removed by the officers, policemen or constables of said Association or Society, and be subject to the penalty prescribed by the next preceding section."

Penalty for violating such regulations.

viz. :—to a fine of $50 or, in default of payment, to thirty days imprisonment. (*a*)

By the councils of townships, cities, towns and villages :—

License fees.

9. For fixing the sums to be paid for licenses required under by-laws passed under clause 8 not exceeding $500 for each such license. (*Ib*).

Under the Act of 1849 the maximum license fee was $20. *Cf.* 12 V. c. 81, s. 31 (22). It was increased by the Act of 1858, (22 V. c. 99), s. 260 (10) to $100 at which figure it remained until altered to $500 in 1887 by 50 V. c. 29, s. 24. See note (**a**) to s. 329 and note (**h**) to this section. In the case of travelling shows, menageries, circuses etc., a Provincial license fee is also imposed by R. S. O. c. 244.

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

Exhibitions, bowling alleys etc.

10. For preventing or regulating and licensing exhibitions held or kept for hire or profit, bowling alleys and other places of amusement. 55 V. c. 42, s. 489 (26): *and see sec.* 585.

By the councils of townships, cities, towns and villages :—

License fees.

11. For fixing the sums to be paid for licenses required under by-laws passed under the preceding clause 10. (*Ib*).

In the Act of 1849, 12 V. c. 81, s. 60 (9), etc., (which applied only to cities, towns and villages): "For licensing, regulating or preventing bowling alleys or other places of amusement." The Act of 1858, (22 V. c. 99), s. 275 (7), added, "exhibitions held or kept for hire or profit" and extended the power to counties, but took it away from villages. So in the Act of 1860, (23-30 V. c. 51), s. 284 (6). In 1873, (36 V. c. 48) s. 379 (35) the section read as now, and applied to townships, cities, towns and villages. See, under s. 585, the transfer of this power to the Board of Commissioners of Police in certain cities by 59 V. c. 51, s. 31; 60 V. c. 45, s. 22, and 60 V. c. 15, Sched. C (122).

"Preventing," etc.

(**p**) "**For preventing or regulating and licensing.**" See note (**a**) to s. 329, note (**b**) to s. 580, note (**j**), *supra*, and note (**u**), *infra*.

Bowling alleys.

(**q**) "**Bowling alleys.**" In the State of New York it has been held that a general authority to a municipal corporation to make by-laws relative to nuisances generally, authorizes an ordinance prohibiting the keeping of a bowling alley for hire or gain, and that such a place is a public nuisance at common law (*b*). But in New Jersey it was held that a ten-pin alley kept for gain and public use is not *per se* a nuisance (*c*). In Maine (*d*) and New Hampshire (*e*) authority conferred by city charters to determine whether bowling alleys should be allowed, and if so under what restrictions, was held to warrant ordinances requiring such places to be closed at a certain hour.

Places of amusement.

(**r**) "**Other places of amusement.**"

The Imp. Stat. 25 Geo. II. c. 36, s. 2 (1752) declares that any house, room, garden or other place kept for dancing, music, or other public entertainment of the like kind in London or Westminster, etc., without a license, shall be deemed a disorderly house.

(*a*) S. 57. (*b*) Dillon, s. 375, note 1.

(*c*) *State* v. *Hall*, 32 N. J. 158 (1867). (*d*) *State* v. *Hay*, 29 Me. 457 (1849).

(*e*) *State* v. *Freeman*, 38 N. H. 426 (1859).

Under that Act it has been held that the entertainment must be a public one to which all persons (*a*) have a right to go; but it is not necessary that admission should be by payment (*b*), nor (in the case of dancing) that public dancers should exhibit as performers (*c*). In *Reg.* v. *Tucker* (*d*) a skating-rink, partly covered and partly open, in which, during the evenings, a band played operatic and dance music, was held to be within the Statute.

Sec. 582 (12-14). Notes (s)-(t). Places of amusement.

Ferries.

By the councils of counties, townships, separated towns and of cities having less than 100,000 inhabitants, and by the Boards of Commissioners of Police in cities having 100,000 inhabitants or more:—

12. For licensing and regulating ferries, subject to the provisions of *The Act respecting Ferries.* 55 V. c. 42, s. 495 (4); R. S. O. c. 139 s. 521 (11); *and see c. 139, secs. 14, 15.*

Ferries.

By the councils of counties, townships, cities and separated towns:—

13. For fixing the sums to be paid for licenses required under by-laws passed under the preceding clause 12.

License fees.

The present form of these sub-sections is new. *Cf.* 55 V. c. 42, s. 494 (4), (now R.S.O. c. 139, s. 14) and s. 521 (11).

In the Act of 1849 (counties only), the corresponding section read:—

"For regulating all ferries between any two places in such county, and for establishing the rates of fare to be taken by the owners or conductors of the boats or vessels employed on such ferries; but no by-law for any such purpose shall have any force or effect until the same shall have been assented to by the Governor of this Province in Council."

The power is substantially the same in the Act of 1858, (22 V. c. 99), s. 277 (4)—(counties and cities)—and in the Acts of 1866, 1873, 1877 and 1883: 29-30 V. c. 51, s. 286 (4); 36 V. c. 48, s. 383 (4); R.S.O. (1877) c. 174, s. 465 (4); 46 V. c. 18, s. 495 (4), which applied also to separated towns; but in the Acts of 1873, 1877 and 1883 it was further provided that until the council should have passed a by-law under the section, and also in the case of ferries not between two places in the same municipality, the regulation of ferries and of the rates of ferriage should be vested in the Governor [1873]—or Lieutenant Governor [1877, 1883]—in Council. *Cf.* 12 V. c. 81 s. 145; 20 V. c. 7, s. 3; 22 V. c. 41 (1859); C. S. U. C. c. 46, s. 15; R. S. O. c. 139, s. 14. The power to license and regulate ferries between two places in the same township was transferred from the county council to the township council in 1885 by 48 V. c. 39, ss. 15, 16.

(s) **"Licensing and regulating."** See note (**a**) to s. 329, note (**j**) *supra*, note (**u**) *infra*, and *Bollander* v. *City of Ottawa*, (*e*) referred to in note (**b**) to s. 580. The sub-section would have been more clear if the words "between any two places in the municipality" had been inserted after "ferries" as in R. S. O. c. 139, s. 14. See next note. (*f*)

"Regulating," etc.

(t) **"Subject to the provisions of "The Act respecting Ferries."** Sections 1 and 4-9 inclusive of that Act, (R. S. O. c. 139), are quoted *verbatim*, and the effect of ss. 10-13 is stated in note (**a**) to s. 332, *ante*. Sections 14 and 15, which are those relating to the powers of licensing and regulation here conferred upon municipal councils, are as follows:—

Provisions of "*The Act respecting Ferries.*" (R. S. O., c. 139), ss. 14-15.

"**14.**—(1) The council of every county, city and town separated from the county for municipal purposes, may pass by-laws for licensing and regulating ferries between any two places in the municipality; and establishing the rates of ferriage to be taken thereon; but no such by-law shall have effect until assented to by the Lieutenant-Governor in Council, and the powers conferred by this section on county councils shall not extend to a ferry between any two places within the same township. . . . .

(*a*) See *Shutt* v. *Lewis*, 5 Esp. 128 (1804).

(*b*) *Marks* v. *Benjamin*, 5 M. & W. 565 (1839): *Archer* v. *Willingrice*, 4 Esp. 186 (1802).

(*c*) *Clarke* v. *Searle*, 1 Esp. 25 (1793).

(*d*) 2 Q. B. D. 417 (1877).

(*e*) 30 O. R. 7 (1898).

(*f*) As to the validity of Provincial legislation respecting ferries, see *Longueuil Navigation Co.* v. *City of Montreal*, M. L. R. 3 Q. B. 172; 15 S. C. R. 566 (1888): *Humberstone* v. *Dinner*, 2 N. W. Terr. Rep. 561; 26 S. C. R. 252 (1895-6).

Sec. 582(12)-(14).

Ferries.

(3) Until the council passes a by-law regulating such ferries, and in the case of ferries not between two places in the same municipality, the Lieutenant-Governor, by Order in Council, may from time to time regulate such ferries respectively, and establish the rates to be taken thereon subject to the provisions of this Act.

R.S.O. c. 139, ss. 14, 15.

15. A council may grant exclusive privileges in any ferry which may be vested in the corporation represented by such council; but this provision is not intended to apply to a ferry between a Province of the Dominion of Canada and any British or foreign country, or between two Provinces of the Dominion."

Hawkers and Pedlars.

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

Hawkers, pedlars, petty chapmen, etc.

14. For licensing, regulating and governing hawkers, pedlars or petty chapmen, and other persons carrying on petty trades, or who go from place to place or to other men's houses, on foot, or with any animal, bearing or drawing any goods, wares, or merchandise for sale or in or with any boat, vessel, or other craft, or otherwise carrying goods, wares, or merchandise for sale, and for determining the time during which the license shall be in force;

Proviso.

Provided always that no such license shall be required for hawking, peddling or selling from any vehicle or other conveyance any goods, wares or merchandise to any retail dealer, or for hawking or peddling any goods, wares or merchandise, the growth, produce or manufacture of this Province, not being liquors within the meaning of the law relating to taverns or tavern licenses, if the same are being hawked or peddled by the manufacturer or producer of the goods, wares or merchandise, or by his *bona fide* servants or employees having written authority in that behalf; and such servant or employee shall produce and exhibit his written authority when required so to do by any municipal or peace officer;

Proviso.

And provided also that nothing herein contained shall affect the powers of any council to pass by-laws, under the provisions of sections 579 to 582 and clause 30 of this section.

The earlier Provincial Acts relating to the licensing of hawkers, pedlars and petty chapmen are 47 Geo. III. c. 9 (1807); 51 Geo. III. c. 2 (1811); 56 Geo. III. c. 34 (1816); and 58 Geo. III. c. 5 (1818), the last of which (as amended by 9 Geo. IV. c. 8 (1828)) was made perpetual by 2 V. c. 23 (1839). 13-14 V. c. 7 (1850) exempted from the operation of these Acts persons employed by any temperance, religious or benevolent society, so far as to make a license unnecessary to authorize such persons to sell or peddle "temperance tracts and other moral and religious publications under the direction of such society." By 16 V. c. 184, s. 2 (1853), counties and cities were empowered to make by-laws for licensing, regulating and governing "hawkers and petty chapmen *and other trading persons* going from place to place or to other men's houses, or who have not become permanent householders by permanent residence within such county or city, or travelling either on foot or with a horse or horses . . . or other beasts bearing or drawing burthens, boats . . . vessels or other craft carrying to sell or exposing for sale any goods, wares or merchandise."

18 V. c. 134 (1855)—(following the precedent established by 56 Geo. III. c. 34, s. 3, and 9 Geo. IV. c. 8)—provided that no municipal duty should be imposed "upon persons hawking or peddling goods, wares and merchandise of the growth, produce or manufacture of this Province," an exception which, when the clause came to be embodied in "*The Municipal Act*,"—as s. 277 (3) of 22 V. c. 99 (1858),—was qualified by adding the words "not being liquors mentioned in the 245th section of this Act," viz.,—"spirituous, fermented or other manufactured liquors" (s. 245).

The Act of 1866 (29-30 V. c. 51, s. 286 (3)) extended to separated towns that power of licensing and regulating which had been conferred upon counties and cities by 16 V. c. 184, s. 2; but it omitted the exception in favour of domestic goods, which, however, was restored in 1869 by 32 V. c. 43, s. 19 and continued in the Act of 1873, (36 V. c. 48), s. 383 (3), but was dropped again when the section was consolidated as s. 405 (3) of R. S. O. (1877), c. 174.

In 1880 the section was re-cast and re-enacted by 43 V. c. 24, s. 13, in (substantially) its present form, except that "pedlars" are not mentioned, and the first "or," in line 5, is omitted. The provisoes are identically as now. The word "or" where it first occurs in line 5, makes its appearance in the R. S. O. (1887), c. 181, s. 495 (3); and the word "pedlars" was inserted in 1896 by 59 V. c. 51, s. 16. As to the transfer of these powers to the Board of Commissioners of Police in certain cities by 59 V. c. 51, s. 31; 60 V. c. 15, Sched. C (122), and 60 V. c. 45, s. 22, see the references appended to s. 581, *ante*, and s. 585, *post*.

Hawkers and pedlars.

(u) **"For licensing, regulating and governing."** See note (a) to s. 329, s. 580 (3-6) and note (b) to that section, also note (j) *supra*.

"Regulating," etc.

It is to be observed that these words confer no express power for "preventing" or "prohibiting" or "restraining" such as has been given by various other sections of the Act (*a*).

It was mainly because of the omission from this sub-section of any express authority "to prevent" that the majority of the Supreme Court of Canada, and (on appeal) the Judicial Committee of the Privy Council, held to be *ultra vires* and void a by-law of the city of Toronto which prohibited any of the traders herein enumerated from prosecuting his trade or calling on certain defined portions (including some 10 miles in all) of eight of the principal streets of the municipality (*b*).

In the Supreme Court, both GWYNNE, J., (p. 464), and KING, J., (p. 474), refer especially to the first proviso, as shewing that the Legislature—in thereby declaring that the business of a hawker, pedlar or petty chapman, (or certain forms of it), might be carried on with respect to certain articles and in a certain way without a license fee—could never have intended to confer upon the local authorities the power of absolutely prohibiting its exercise upon certain streets; and Mr. Justice KING, at p. 477, further observes that:—

> "As a general principle all by-laws in restrain of trade, whether general or partial, must be beneficial to the public or they cannot be supported (*c*); but the securing of any public benefit which the council are authorized to promote is strikingly absent from anything that appears likely to follow upon the enforcement of this by-law."

And Lord DAVEY, in delivering the judgment of the Privy Council (p. 94), says:—

> "The question should be regarded from the point of view as well of the public as of the hawkers. The effect of the by-law is practically to deprive the residents of what is admittedly the most important part of the city of the privilege of buying their goods from or trading with the class of traders in question. And this observation receives additional force from the very wide definition given to "hawkers" by clause (a). There was no evidence, (and it is scarcely conceivable), that the trade cannot be carried on without occasioning a nuisance; and the applicants wisely disclaim any intention to discriminate against hawkers and pedlars in favour of permanent shopkeepers."

It was therefore held that the language of the sub-section is not wide enough to authorize a by-law "making it unlawful to carry on a lawful trade in a lawful manner." See this case also referred to in note (a) to s. 329 and followed in *Bollander* v. *City of Ottawa*, (*d*) cited in note (b) to s. 580.

(*a*) See ss. 540 (1), (4), (5), (6); 542 (1-4), (15*b*); 547 (1-5); 548 (1), (2), (5-10); 550 (4); 553 (3); 557 (1), (6); 559 (5), (8), (9); 562 (3), (8), (11-12); 580 (3), (4), (6), (7), (8); 581 (1); 583 (8), (10), (27); 586 (1), (3), (4), (7-10), etc.

(*b*) *Virgo* v. *City of Toronto*, 22 S. C. R. 447 (1894); [1896] A. C. 88, reversing *S. C.*, 20 A. R. 435 (1895).

(*c*) *Bosworth* v. *Hearne*, Stra. 1085 (1737); *Gunmakers Co.* v. *Fell*, Willes, 389 (1742).

(*d*) 30 O. R. 7 (1898).

Sec. 582 (14).

Note (v).

(v) "Hawkers, pedlars or petty chapmen, and other persons . . . who go from place to place or to other men's houses . . . carrying goods . . . for sale."

These words,—"hawkers," "pedlars" and "petty chapmen",—are used in the earliest Provincial Acts relating to the subject (*a*).

Who are "hawkers," "pedlars" and "petty chapmen."

A "hawker" is said to be "one who cries goods and wares on the streets or from place to place" (*b*); and the Imperial Dictionary—after defining a "hawker" as "one who offers goods for sale by outcry in the street; one who travels about the country selling small wares," and a pedlar as "a travelling foot trader: one that carries about small commodities on his back or in a cart or waggon and sells them"—proceeds to observe that "both hawkers and pedlars are a sort of itinerant retail dealers, but the former are supposed to carry on business on a larger scale than the latter." The word "pedlar" has not been defined by Statute either here or in England; but in "*The Hawkers Act, 1888*" (*c*) a hawker means:—"Any person who travels with a horse or other beast bearing or drawing burden, and goes from place to place or to other men's houses carrying to sell or exposing for sale any goods, wares or merchandise, to be afterwards delivered," and the term includes:—"Any person who travels by any means of locomotion to any place in which he does not usually reside or carry on business, and there sells or exposes for sale any goods, wares or merchandise in or at any house, shop, room, booth, stall, or other place whatever hired or used by him for that purpose." "Petty chapman" ("cheap-men" or "cheap-men") are defined as "retail dealers, especially itinerant dealers who travel about from place to place buying and selling": (*d*) "such as carry goods from market to market, or from house to house to sell." (*e*)

In *Rex* v. *Little* (*f*) it was held that a single act of selling does not make a man a hawker so that he ought to take out a license before he trades as such. But where a person residing in London had brought drapery to Hastings, and sold it there without a license, the Court sustained his conviction under "*The Hawkers and Pedlars Act*" of 1810 (*g*) which imposes a license duty upon "every pedlar, hawker, petty chapman and every other trading person . . . going from town to town or to other men's houses and travelling either on foot or with horses or otherwise carrying to sell or exposing for sale any goods, wares or merchandise"; and they held that he was within the meaning of that Act "a trading person going from town to town." (*h*)

As will be seen by reference to the small-print note *supra* under subs. 14, our Provincial Statute of 1818, (58 Geo. III, c. 5) in reference to hawkers, pedlars and petty chapmen, adopted almost *verbatim* the language of the Imperial Act, 50 Geo. III. c. 41.

The Provincial Statute (*i*) authorized the summary arrest of "any * * * hawker, pedlar, petty chapman or other trading person as aforesaid who shall be found trading without a license"; but in an action against a constable for making such an arrest without a warrant, a plea that the plaintiff *was at the time of the arrest* a pedlar, etc., selling goods in the city of Toronto without a license, was held bad for not alleging (as required by the Statute) that the plaintiff was "found trading." (*j*)

"Persons who go from place to place," etc.

Under the Imperial Act of 1810, a licensed auctioneer, going from town to town in a public stage coach, sending goods by public waggons and selling on commission by retail or by auction, was held to be a "trading person," etc.,

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(*a*) 47 Geo. III. 9 (1807); 51 Geo. III. c. 2 (1811); 56 Geo. III. c. 34 (1816); 58 Geo. III. c. 5 (1818); 9 Geo. IV. c. 8 (1828); 2 V. c. 23 (1839).

(*b*) Standard Dict. (*c*) Imp. Stat. 51-52 V. c. 33, s. 1.

(*d*) Murray's New English Dictionary.

(*e*) Defoe, "English Tradesmen," Introd., 1. *Cf.* Imp. Stat. 5-6 Edw. VI. c. 21:—"No tinker, pedlar or petit chapman shall wander abonte the town but such as shall be licensed by two Justices of the Peace."

(*f*) 1 Burr. 609 (1757). (*g*) 50 Geo. III. c. 41.

(*h*) *Manson* v. *Hope*, 2 B. & S. 498 (1862). *Per* CROMPTON, J. (p. 501):—"I cannot see that a man may not be a hawker for one day within this Act." And see *Reg.* v. *Rawson*, 22 O.R. 467 (1893), referred to in note (**c**), and *Reg.* v. *Whitaker*, 24 O.R. 437 (1894), in note (**k**), *supra*.

(*i*) 58 Geo. III. c. 5, s. 3. (*j*) *Oviatt* v. *Bell*, 1 U.C.R. 18 (1844).

Sec. 582 (14). Note (v.) Hawkers, pedlars and petty chapmen.

who must take out a license as a hawker and pedlar (*a*); but where a licensed tea dealer sent his servant round the neighborhood to solicit orders for tea, and subsequently delivered parcels of tea thus ordered, it was held that the servant was not "carrying to sell" within the meaning of the Act, and was not subject to a penalty for trading as a hawker without a license. (*b*) This class of cases was covered, so far as respects sales by samples or patterns, by the Imp. Stat. 24-25 V. c. 21, s. 9; and see clause (a) *infra*.

In England, one who without a license goes about bartering needles, etc., for bones and other like articles, may be convicted under Imp. Stat. 55 Geo. IV. c. 83, s. 3 (1834), which relates to "petty chapmen and pedlars." (*c*)

In *Hunter* v. *Shooter* (*d*) the defendant, without a license, sold goods at B. and two days later at a neighboring town. He did not reside or usually carry on business at either place, but on each occasion he hired a room for the purpose of making his sales therein by auction. *Held*, that he should have been convicted as "a trading person . . . going from town to town."

In *Reg.* v. *Lord* (*e*) a canvasser for a sewing machine company, who travelled with a horse and cart, and sold machines for a company without a license was convicted under "*The Hawker's Act, 1888*."

The Pedlars Acts, (Imp. Stats. 34-35 V. c. 96; 44-45 V. c. 45), require an annual certificate to be taken out by: "Any hawker, pedlar, petty chapman, tinker, caster of metal, mender of chairs and other person who without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town and to other men's houses carrying to sell or exposing for sale any goods, wares or merchandise or procuring orders for goods, etc., immediately to be delivered, or selling, or offering for sale his skill in handicraft" (s. 3), but they exempt from this requirement,—commercial travellers; persons selling goods to or taking orders for goods, etc., from dealers therein; persons who buy to sell again; persons who sell or take orders for books under written authority from the publishers; sellers of vegetables, fish, fruit or *victuals* (*f*), and persons selling goods in a public market (s. 23).

One of twelve ladies who had made up aprons, chemises, handkerchiefs, wool-mats, etc., to be sold for the benefit of a village school and the furnishing of a minister's house, having gone about on foot to several houses in the village with a basket containing these articles, and sold and exposed them for sale without having taken out a pedlar's certificate, it was held that she did not come within the definition of a "pedlar" contained in the words above quoted, and that she was not liable to a penalty for selling without a certificate. (*g*) And, *semble*, a person who stands in the street to sell his goods, but does not "go . . . to other men's houses carrying to sell," etc., is not a "pedlar" within the meaning of the section. (*h*) But in *O'Dea* v. *Crowhurst* (*i*) one who without a license went about peddling oil from a cask hung on wheels so as to form a cart, and which was drawn by a horse, was held to be a "hawker" within s. 1 of the Act and liable to conviction as such.

License is personal.

In *Re Ford and McArthur* (*j*) ADAM WILSON, J., doubted whether a license under "*The Municipal Act*" to a hawker or pedlar is personal to the licensee only or extends to a servant. He inclined to the opinion that it was personal, but did not determine the question (*k*).

(*a*) *Reg.* v. *Turner*, 4 B. & A. 510 (1821); to the same effect are the cases of *Dean qui tam* v. *King*, 4 B. & A. 517 (1821); *Attorney General* v. *Tongue*, 12 Price 51 (1823); and *Attorney General* v. *Woolhouse*, 12 Price 65 (1823).

(*b*) *Rex* v. *McKnight*, 10 B. & C. 734 (1830).

(*c*) *Druce's Case*, 22 J. P. 319 (1862).

(*d*) 55 J. P. 325 (1891). (*e*) 60 J. P. 620 (1896).

(*f*) This "comprises everything which constitutes an ingredient in the food of man:" *per* Lord TENTERDEN, C.J., *Reg.* v. *Hodgkinson*, 10 B. & C. 74, 76 (1829).

(*g*) *Gregg* v. *Smith*, L.R. 8 Q.B. 302 (1873).

(*h*) 37 J.P. 316 (1873). (*i*) 15 Times L.R. 320 (1899).

(*j*) 37 U.C.R. 542 (1876).

(*k*) See, on this point *Hooper* v. *Kenshole*, 36 L. T. N. S. 111 (1877), and *Richard* v. *Corporation de Ste. Anne de Beaupré*, Q.R. 14 S. C. 432 (1899).

Sec. 582 (14). Note (v.)

Hawkers, pedlars and petty chapmen.

In *Thomas* v. *Turner* (*a*) the agent of a grocer doing business in London, Ont., went from house to house in Brantford taking orders for tea, and the defendant (another agent) afterwards delivered the tea so ordered. The defendant, having been convicted and fined for breach of a by-law of the city of Brantford (passed under this sub-section) to prevent hawkers, pedlars, etc., from exercising their calling in the municipality without a license, appealed to the General Sessions, and *Reg.* v. *McKnight* was cited on his behalf; but the County Judge upheld the conviction, observing that our Statute does not (like the English Act, 50 Geo. III. c. 41) contain the words "exposing for sale," and that the city by-law expressly prohibited sales made by taking orders *per sample*. In *Reg* v. *Coutts* (*b*), however, ROSE, J., upon precisely similar facts, came to an opposite conclusion. There the defendant, who was a traveller for a tea dealer, carried samples from house to house and took orders for tea, which orders he sent to his employer. The latter forwarded the tea in packages to the defendant, who delivered it to the customers and received the price. On these facts the defendant was convicted "for that he did . . . offer for sale and sell tea as a pedlar . . . without a license," etc., (negativing the cases excepted by the Statute). *Reg.* v. *McKnight* (*c*) was cited and discussed. *Held*:—(1) that the defendant was not a "hawker" (*d*):—(2) that if he was a "petty chapman or person carrying on a petty trade," the conviction could not be supported, for he was not "carrying goods for sale,"—and (3) that a municipality could not [then] pass a by-law prohibiting unlicensed traders from sending out agents to take orders for goods from private persons not being retail dealers and from subsequently delivering the goods ordered.

Per ROSE, J. (p. 650):—"If it is deemed desirable that such power should be given to the municipalities, the Legislature can be applied to for an Act similar to the Imp. Stat. 24-25 V. c. 21."

The Legislature accordingly at its next Session passed the Act 41 V. c. 40, which is now embodied in clause (a) of this sub-section.

Information and conviction for breach of by-law must negative the statutory exceptions.

In *Reg.* v. *McFarlane* (*e*) a conviction for breach of a by-law under this sub-section was quashed as bad upon its face for not negativing the exception of the above proviso as to the goods, wares or merchandise, the growth, produce or manufacture of this Province, etc.

This decision was followed in *Reg.* v. *Smith* (*f*) and it was held that a by-law not containing the statutory exceptions was invalid.

"Hawkers," what the term includes.

(*a*) The word "'hawkers" in this clause shall include all persons who, being agents for persons not resident within the county, sell or offer for sale tea, dry goods, watches, plated ware, silver ware, furniture, carpets, upholstery, millinery, or jewelry, or carry and expose samples or patterns of any of such goods to be afterwards delivered within the county to any person not being a wholesale or retail dealer in such goods, wares or merchandise.

By-laws passed before October 1st, 1885.

(*b*) The provisions of any by-law passed or enacted by any municipal council prior to the first day of October, 1885, shall not be held as extending to any persons who, by this clause are to be held as included within the meaning of the word "hawkers."

Taken from 48 V. c. 40, ss. 1, 2 (1885), which, however, did not extend to "watches, plated ware, silver ware" (added in 1892 by 55 V. c. 43, s. 38), or to "furniture, carpets, upholstery, millinery" (added in 1896 by 59 V. c. 51, s. 16). *Cf.* Imp. Stat. 24-25 V. c. 21, s. 9, referred to in note (v) *supra*.

(*a*) 20 C. L. J. N. S. 64 (1883). (*b*) 5 O.R. 644 (1884).

(*c*) 10 B. & C. 734 (1830).

(*d*) The word "pedlar" was not then used in the subsection.

(*e*) 33 C.L.J.N.S. 119; 17 C.L.T. 29 (1897).

(*f*) 31 O. R. 224 (1899). And see *Reg.* v. *Coutts*, *supra*.

Sec. 582 (14).

Note (w).

Hawkers and pedlars.

Agents selling by samples or patterns.

(w) The first reported decision upon this sub-section, after the addition of clause (a) by 48 V. c. 40, s 1, is *Reg.* v. *Chayter* (*a*), a motion to quash a conviction of the defendant under a by-law of the county of Huron framed in the words of the amended sub-section:—"For that he did, etc., offer for sale at the town of Seaforth, electrotype wares and other goods, wares and merchandise, as an agent by sample to have the said goods delivered at a future time," etc. *Held*, that the word "jewelry," used in the section, was not an apt term to describe electrotype wares; since "jewelry" as commonly understood, "consists of ornaments or gold or silver, precious metal, precious stones, richly cut glass or highly finished steel. Jewelry may be made of electrotype ware, but electrotype ware is not jewelry any more than the rude gold or the rough and unpolished precious stone is jewelry." (*b*) *Held also*, that the words "other goods, wares and merchandise" were too general; and on these and other grounds the conviction was set aside. Hence the amendment of clause (a) by 55 V. c. 43, s. 38.

In *Reg.* v. *McNicol*, (*c*) decided in the same year and by the same learned Judge, the defendant was convicted, under a precisely similar by-law of the county of Bruce, of having sold and delivered tea in that county "as agent for one P. W. of the City of London." On the hearing before the magistrate the defendant, notwithstanding the protest of his counsel, was called and examined as a witness for the prosecution. The evidence showed that "in order to get over this by-law," P. W. had supplied the tea to the defendant as and when he required it to fill orders; that the orders were sent to P. W., who made up the parcels for the customers, but charged the price (less a discount) to the defendant and sent the parcels to him for delivery, but that the defendant was personally liable to P. W. for the (reduced) cost of the tea, any loss or profit on the sales being the defendant's. *Held*:—(1) that upon the evidence the defendant was an independent dealer and trader, and that, not being an "agent" within the words of clause (a) nor "carrying goods for sale within the wording of sub-section 14, he required no license"; (2) that the conviction did not shew that "P. W. of the City of London" was a non-resident of the county of Bruce, and "a person may not inaptly be described as 'of the city of London' for some purposes, although he is at the time a resident within another county"; (3) that the conviction might be found open to objection for alleging only that the defendant "did sell tea and deliver the same" without mentioning any quantity; (*d*) (4) that the possession of a license was a matter of defence, and its absence need not be proved by the prosecution, and (5) that the defendant had been improperly compelled to give evidence against himself. (*e*).

In *Reg.* v. *Bassett* (*f*) the defendant was convicted under a by-law of the county of Waterloo (similar to the by-laws mentioned in the two preceding cases,) "for that he did, etc., carry and expose samples or patterns of *dry goods* to be afterwards delivered," etc. What the defendant exhibited were samples of suitings not yet made up. He sold no manufactured clothing; but he solicited orders for suits to be made up at London from materials similar to those which he shewed. *Held*, (*per* GALT, J.), that "the clothing for which he solicited orders after exposing his samples of the cloth from which it was to be manufactured, is not intended by the Act to be comprehended in the term 'dry goods.' . . . If the defendant had sold . . . imported cloths in bales and large quantities according to samples . . . he would probably have been liable to conviction under the by-law."

On a motion before the same learned Judge to quash another conviction under the same by-law, it was held that a member of a firm carrying and disposing of samples or making sales himself, is not an "agent" within the meaning of the Act (*g*).

(*a*) 11 O. R. 217 (1886). (*b*) *Per* ADAM WILSON, C. J., at p. 220.

(*c*) 11 O.R. 659 (1886).

(*d*) "The precise quantity need not be stated, but it might properly (as in an indictment) be given under a *videlicet*. The name of the purchaser of the tea should also be given if known, and if not known the fact might be so stated." (*Ibid.* pp. 663-664).

(*e*) See *Reg.* v. *Hart*, 20 O.R. 611 (1891); *sed vide* s. 711 of the present Act, and 60 V. c. 15, Sched. C. (75).

(*f*) 12 O.R. 51 (1886). (*g*) *Reg.* v. *Marshall*, 12 O. R. 55 (1886).

Sec. 582 (14-15-16).

Note (w)

Agents selling by samples or patterns.

In *Reg.* v. *Henderson* (*a*), the defendant, a wholesale and retail tea dealer residing and carrying on business in the city of Hamilton, sold tea by samples in the county of Halton to persons not being wholesale or retail dealers therein, and forwarded the orders to his own place of business at Hamilton, whence the tea, made up in parcels ready for delivery, was sent to him at Milton in the county of Halton for distribution to the purchasers. He was convicted of carrying on a petty trade. *Held*, under the authority of *Reg.* v. *Coutts*, *supra*, that he was not a hawker, "since he was not carrying goods for sale" nor did the amendment of sub-section 14 by clause (a) bring him within its purview, since the Act as amended applies only to "agents" and does not include a principal. *Reg.* v. *Marshall*, *supra*, was approved and followed (*b*).

In view of these decisions, clause (a) will require further amendment in order to accomplish the apparent object of the Legislature.

Powers of towns not separated from counties as to hawkers' and pedlars' licenses.

(*c*) The council of any town not separated from a county for municipal purposes, may pass by-laws to carry into effect the purposes or objects of this clause, and may therein declare that the county by-laws passed under this clause, shall not apply to or be in force in said town while the said by-law of the town remains in force; and thereafter no such county by-law shall have effect in the said town during such time. 55 V. c. 42, s. 495 (3); c. 43, s. 36; 56 V. c. 35, s. 20; 59 V. c. 51, ss. 16, 31, *part*; 60 V. c. 45, s. 22; c. 15, *Sched.* C. (122): *See sec.* 585.

Taken from 56 V. c. 35, s. 20 (1893).

By the councils of counties:—

Supplying licenses.

15. For providing, at the discretion of the council, either the treasurer or clerk of the county, or the clerk of any municipality within the county with licenses, required under by-laws passed under clauses 2 and 14, for sale to persons applying for the same under such regulations as may be prescribed in such by-laws. Ibid: 62 V. (1st Sess.), c. 2, *Sched.* (13).

In the Act of 1858, (22 V. c. 99), s. 277 (10):—"For providing the township clerks with licenses," etc. In 43 V. c. 24, s. 13:—"In the case of counties, for providing the clerk of each municipality within the county with licenses." In 47 V. c. 32, s. 11,—as now.

By the councils of counties, cities and towns:—

License fees.

16. For fixing the sums to be paid for licenses required under by-laws passed under clause 14; but in cities having a population of 100,000 and over, the license fee shall not be more than $50 for a two-horse waggon, $30 for a one-horse waggon, $15 for a push-cart and $1 for one carrying a basket. Ibid: 62 V. (1st Sess.), c 2, *Sched.* (14).

The limitation of the license fee in the case of Toronto was made by 59 V. c. 51, s. 16 (1896).

Intelligence Offices.

By the councils of counties, townships, towns and villages, and of cities having less than 100,000 inhabitants, and by the Board of Commissioners of Police in cities having 100,000 inhabitants or more:—

(*a*) 18 O. R. 144 (1889).

(*b*) See also *Reg.* v. *Crawford*, Dec., 1899, not yet reported.

17. For licensing and regulating suitable persons to keep intelligence offices, for registering the names and residences of, and giving information to, or procuring servants, labourers, workmen, clerks or other employees for employers in want of the same, and for registering the names and residences of, and giving information to, or procuring employment for domestic servants and labourers and any other class of servant, workman, clerk or person seeking employment, and for fixing the fees to be charged and recovered by keepers of such offices; — Licensing intelligence offices.

18. For the regulation of such intelligence offices; — Regulating them.

19. For limiting the duration of or revoking any such license; — Duration of licenses.

20. For prohibiting the opening or keeping of any such intelligence office within the municipality without license. 55 V. c. 42, s. 479 (24-28); 59 V. c. 51, s. 31; 60 V. c. 45, s. 22; c. 15, *Sched.* C (122); *and see sec.* 585. — Prohibition if unlicensed.

Sub-section 17 is taken from 50 V. c. 29, s. 30 (1887); but almost the same powers were given by the Act of 1858, (22 V. c. 99), s. 290 (1). Sub-sections 2, 3 and 4 of that section are identical with subs. 18, 19 and 20 of this section. Until 1890, these powers were restricted to the councils of cities and towns, but by 53 V. c. 50, c. 24, they were extended to counties, townships and villages. As to their transfer to the Boards of Police Commissioners in certain cities by 59 V. c. 51, s. 31; 60 V. c. 45, s. 22 and 60 V. c. 15, Sched. C (122), see the references appended to s. 585, *post*.

(y) "**For licensing and regulating suitable persons.**" See note (a) to s. 329, note (u) to this section, and *Bollander* v. *City of Ottawa* (a), referred to *ante* in note (b) to s. 580. — "Regulating," etc.

(z) **Sub-s. 19.** This sub-section is apparently intended to confer, in the case of these licenses, that power of forfeiture on breach of the regulations which in the cases of *Re Smith and City of Toronto* (b), *Re Bright and City of Toronto* (c), and *Bannan* v. *City of Toronto* (d), was held not to exist under a bare power "to regulate" or "to license and regulate." See note (a) to s. 329. — Revoking licenses.

By the councils of counties, townships, cities, towns and villages:—

21. For fixing the fee (not exceeding $10 for one year) to be paid for licenses required under by-laws passed under clauses 17 to 20. *(Ib.)* — License fees.

In the Acts of 1858 and 1866:—"Not exceeding one dollar for one year"; 22 V. c. 99, s. 290 (5); 29-30 V. c. 51, s. 299 (5). In the Act of 1873, (36 V. c. 48), s. 385 (6),—as now.

Junk and Second-hand Shops.

By the councils of counties and separated towns, and by the Board of Police Commissioners in cities:—

22. For licensing or regulating junk stores or shops, and second-hand shops and dealers in second-hand goods, and for revoking and cancelling the license of any person convicted of a second offence against such by-law or convicted of an offence against Part 25 of *The Criminal Code, 1892.* — Licensing and regulating junk shops etc.

(a) 30 O. R. 7 (1898). (b) 10 C. P. 225 (1859).
(c) 12 C. P. 433 (1863). (d) 22 O. R. 274 (1893).

Sec. 582 (22) (24).

Notes (aa), (bb) (bbb).

By the councils of counties, cities and separated towns.

License fees.

22*a*. For fixing the fee (not to exceed $20 for one year) to be paid for every license required under by-laws passed under the preceding clause 22.

Substituted by 62 V. (2nd Session), c. 26, s. 37, for the section as it stood in R. S. O. c. 223, which was taken from 45 V. c. 23, s. 11 (1882).

(aa) "**For licensing and regulating.**" See note (a) to s. 329, note (u) supra, and the cases of *Walker* v. *City of Montreal* (a), and *Pigeon* v. *City of Montreal* (b), referred to in note (c) to s. 330, and *Bollander* v. *City of Ottawa* (c) referred to in note (b) to s. 580. As to what are "junk stores or shops" see note (b) to s. 484.

(aaa) "**For revoking.**" See note (z), *supra*. "Part 25" (Arts. 314-318) of "*The Criminal Code, 1892*" relates to the receiving of stolen goods.

Milk Dealers.

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

Licensing and regulating milk dealers.

23. For licensing and regulating milk vendors and for revoking any license so granted whenever the council or Board deems such revocation desirable without stating any reason therefor, but in the case of the revocation of a license under any such by-law, the treasurer of the municipality shall refund to the licensee such proportionate part of the license fee as will represent the unexpired portion of the term for which the license was granted. 55 V. c. 42, s. 489 (54); 59 V. c. 51, s. 31; 60 V. c. 45, s. 22; c. 15, *Sched.* C. (122); 62 V. (2nd Session), c. 26, s. 37 (2); *and see sec.* 585.

By the councils of counties, townships, cities, towns and villages :—

License fees.

24. For fixing the fee (not to exceed $1 for one year) to be paid for every license required under by-laws passed under the preceding clause 23. *(Ib.)*

Added to the Act in 1884 by 47 V. c. 32, s. 13. See under s. 585 as to the transfer of these powers to the Boards of Police Commissioners in cities.

(bb) See also s. 550 (1) and the Statutes respecting the adulteration or sale of milk referred to in note (a) to that section, also *Parker* v. *Alder*, [1899] 1 Q. B. 20. The case of *Re Taylor and City of Winnipeg* (d) was a decision upon a Statute much wider in its terms than the above sub-section.

(bbb) "**Licensing . . . regulating . . . revoking.**" See note (a) to s. 329, note (b) to s. 580 and notes (j), (u) and (z), *supra*.

Plumbers.

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

(a) M. L. R. 1 Q. B. 65 (1884). (b) 17 S. C. R. 495 (1890).
(c) 30 O. R. 7 (1898).
(d) 11 Man. Rep. 420; 12 Man. Rep. 18 (1897).

25. For licensing and regulating plumbers; 55 V. c. 42, s. 493 (1); 60 V. c. 45, s. 22; c. 15, *Sched.* C. (86), (122). **Sec. 582 (25-27).**

Taken from 49 V. c. 37 s. 37 (1886), which applied only to cities and towns; extended to townships in 1887 by 50 V. c. 29, s. 48, and to villages in 1897 by 60 V. c. 15, Sched. C (86). As to the transfer of this power to the Boards of Commissioners of Police in certain cities by 59 V. c. 51, s. 31, 60 V. c. 45, s. 22, and 60 V. c. 15, Sched. C. (122), see the references appended to s. 585, *post*.

Notes (cc-dd).

Licensing plumbers.

(cc) "For licensing and regulating." See note (**a**) to s. 329, notes (**j**) and (**u**) to this section, and *Bollander* v. *City of Ottawa* (*a*), referred to in note (**b**) to s. 580. In *Re Marshall* (*b*) a by-law was held bad which provided for forfeiture of license in case of conviction for breach of regulations, (*c*) and also that the plumbing inspector should have power in his discretion to refuse a license.

"Regulating," etc.

By the councils of townships, cities, towns and villages:—

26. For fixing the sums to be paid for licenses required under by-laws passed under the preceding clause 25. (*Ib.*)

License fees.

Taken from 60 V. c. 45, s. 22.

Runners.

By the councils of cities, towns and villages:

27. For preventing persons in streets or public places from importuning others to travel in or employ any vessel or vehicle, or go to any tavern or boarding house, or for regulating persons so employed; 55 V. c. 42, s. 496 (6).

Importuning travellers.

Taken from the Act of 1858, (22 V. c. 99), s. 287 (27). *Cf.* the Act of 1849 (cities and towns): "For preventing runners, stage drivers and others in the streets or public places from soliciting and teasing passengers and others to travel in any boat, vessel, stage or vehicle": 12 V. c. 81, ss. 81 (4), 82, 196.

(dd) "For preventing." *Cf.* subss. 8 and 10, *supra*.

"Preventing," etc.

This sub-section might (perhaps more appropriately) have been inserted in Div. XIX., s. 580, under the head of "Nuisances." One reason for extending, in the Act of 1858, its then existing provisions, so as to include runners for hotels and boarding houses, may be found in *Re Davis and Town of Clifton* (*d*). The township of Stamford had obtained a special Act (*e*), which—after reciting that the rapid increase in the number of visitors to the Falls of Niagara demanded more stringent provisions for the regulation of runners, guides, etc., than those which then existed—authorized the township council to pass by-laws "to prohibit any person or persons from soliciting passengers, visitors or others to resort or go to any inn, tavern or boarding house, museum or other place of resort" without having first obtained a license so to do.

Re Davis and Town of Clifton.

By 19 V. c. 63 (1856), part of the township of Stamford was incorporated as the town of Clifton "with all the privileges and rights of an incorporated town in Upper Canada," (*f*) all former Acts, by-laws, etc., inconsistent therewith being expressly repealed (*g*). A by-law passed by the town under 12 V. c. 81, s. 81 (4) providing that:—"It shall not be lawful for any person to solicit passengers, visitors or others, except at a railway station or steamboat landing, to go to any inn, etc., or to act as a runner or guide within the limits of the municipality," was set aside as *ultra vires*, DRAPER, C.J. observing (*h*) that the Act of 16 V. c. 35 was in effect a legislative declaration that the general authority conferred upon municipal councils to make "such regulations as the good of the inhabitants of the municipality requires" (*i*) does not empower them to prohibit any particular occupation not in itself unlawful, and only a nuisance from its abuse.

A by-law passed by the Board of Commissioners of Police of the City of Toronto under the authority of s. 484 of this Act provided that no person licensed thereunder "shall solicit any person to take or use his express waggon, or shall employ or allow any runner or other person to assist or act in consort [? concert]

Soliciting passengers.

(*a*) 30 O. R. 7 (1898). (*b*) 5 B. C. R. (1897).
(*c*) See the cases cited in foot-note (a), p. 341, and *cf.* note (**z**) *supra*.
(*d*) 8 C.P. 236 (1858). (*e*) 16 V. c. 35 (1853).
(*f*) S. 10. (*g*) S. 12. (*h*) 8 C. P. at p. 238. (*i*) See now s. 326.

Sec. 582 (27-28). Notes (dd-ee).

with him in soliciting any passenger or baggage at any of the stands, railroad stations, steamboat landings or elsewhere in the said city," etc. The defendant was the president of a baggage transfer company, an employee of which, (one C.) under his directions and with the consent of the railway company, went on board an incoming passenger train at a suburban city station and while the train was on its way to the (central) Union Station, passed through the cars calling out "Baggage transferred to all parts of the city," and having in his hands transfer checks of defendant's company for delivery to passengers. The defendant having been convicted of a breach of the by-law, it was held:—(1) that C. had not solicited any *person* to take or use an express waggon; and, though he had solicited baggage, that this was not such a solicitation as was contemplated by the by-law, since "the object to be attained was to prevent passengers from being harassed by expressmen and others on their arrival," whereas there was here no personal solicitation; (2) that the words "elsewhere in the said city," used in the by-law, must be read in connection with the preceding words "at any of the stands, railroad stations, steamboat landings," etc., and could not be extended to a railway carriage, the property of the railway company, and not under the control of the Police Commissioners. The conviction was accordingly quashed with costs. (*a*)

Soliciting passengers.

Tobacconists.

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

Regulating sale of tobacco.

Rev. Stat. c. 245.

28. For licensing and regulating the owners and keepers of stores and shops (other than taverns and shops holding licenses under *The Liquor License Act*) where tobacco, cigars or cigarettes are sold by retail. 55 V. c. 42, s. 496 (41); 59 V. c. 51, s. 31; 60 V. c. 45, s. 22; c. 15, *Sched.* C (122); *and see sec.* 585.

Taken from 50 V. c. 29, s. 28 (51), which also empowers these municipalities to pass by-laws:—"For preventing the sale of tobacco, cigars or cigarettes to children under the age of 14 years except on the written order of the parent, guardian or employer of the child." This portion of the sub-section,—though embodied in R.S.O. (1887) c. 184, s. 496 (41),—was omitted from the Act of 1892 as having been superseded by the Statute of that Session, 55 V. c. 52, now R. S. O. c. 261; see *infra*. As to the transfer of these powers to the Boards of Commissioners of Police in certain cities by 59 V. c. 51, s. 21; 60 V. c. 45, s. 22, and 60 V. c. 15, Sched. C (122), see under s. 585, *post*; and as to the power of township councils to pass by-laws under this sub-section which shall apply only within the limits of a police village, see s. 742*a*, *post*.

"Regulating," etc.

(ee) "For licensing and regulating." See note (**a**) to s. 329, notes (**j**) and (**u**), *supra*, and *Bollander* v. *City of Ottawa*, 30 O.R. 7 (1898), referred to in note (**b**) to s. 580. R. S. O. c. 261, entitled "*An Act respecting the sale of Tobacco to Minors*," provides that:—

Supplying tobacco to persons under 18.

"1. Any person who either directly or indirectly sells or gives or furnishes to a minor under eighteen years of age, cigarettes, cigars or tobacco in any form, shall on summary conviction thereof before a Justice of the Peace be subject to a penalty of not less than $10, nor more than $50, with or without costs of prosecution, or to imprisonment, with or without hard labour, for any term not exceeding thirty days, or to both fine, with or without costs, and imprisonment to the said amount and for the said term, in the discretion of the convicting Magistrate. And in case of a fine, or a fine and costs being awarded, and of the same not being upon conviction forthwith paid, the Justice may commit the offender to the common gaol, there to be imprisoned for any term not exceeding thirty days, unless the fine and costs are sooner paid.

Where purchase made for the parent or guardian.

2. This Act shall not apply to a sale to the minor for his parent or guardian under a written request or order of the parent or guardian.

Presumption as to age.

3. A person who appears to the magistrate to be under 18 years of age, shall be presumed to be under that age unless it is shewn by evidence that he is in fact over that age." (*b*)

(*a*) *Reg.* v. *Verral*, 18 O.R. 117 (1889).

(*b*) See *Reg.* v. *Viasani*, 30 J. P. 758 (1866).

[N.B.—It was apparently intended that the amendment made by 62 V. (2nd Session) c. 26, s. 37 (2) should apply to this subs. (28) instead of subs. 23 (milk dealers). See the marginal note thereto in the Statutes of 1899, p. 111.] Sec. 585 (29-31)

By the councils of cities, towns and villages:—

29. For fixing the sums to be paid for licenses required under by-laws passed under the preceding clause 28. (*Ib.*) License fees.

Taken from 60 V. c. 45, s. 22.

Transient Traders.

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

30. For licensing, regulating and governing transient traders and other persons who occupy premises in the city, town, village, or township, for temporary periods, and whose names have not been duly entered on the assessment roll of the municipality in respect of income or personal property for the then current year; and who may offer goods or merchandise of any description for sale by auction, or in any other manner, conducted by themselves or by a licensed auctioneer or otherwise. Regulating transient traders.

(*a*) No such by-law shall affect, apply to, or restrict the sale of the stock of an insolvent estate which is being sold or disposed of within the county in which the insolvent carried on business therewith at the time of the issue of an attachment or of the execution of an assignment. 55 V. c. 42, s. 489 (9); 59 V. c. 51, s. 31; 60 V. c. 45, s. 22; c. 15, *Sched.* C. (122); *and see sec.* 585.

The earlier Provincial Acts relating to the licensing of hawkers, pedlars and petty chapmen, (referred to under sub-sec. 14 of this section), and also 10 V. c. 184, s. 2 and the corresponding section of the Act of 1858, (22 V. c. 99), s. 277 (3) applied, not only to the persons now within the purview of sub-section 14, but also to "other trading persons . . . who have not become permanent residents in the county or city." The Act of 1866 (29-30 V. c. 51), while retaining those words in the section relative to hawkers and petty chapmen, (s. 286 (3)), empowered the councils of cities, towns *and villages* to pass by-laws "For licensing, regulating and governing transient traders and other persons who occupy places of business in the city or town *(sic)* for uncertain periods less than a year, and whose names have not been entered in the assessment rolls for the current year," (s. 296 (56)). 33 V. c. 26, s. 7 (1869) inserted after the words "city or town" the words "or incorporated village" and struck out the word "uncertain." The Act of 1873, (36 V. c. 48) s. 384 (63), substituted "premises" for "places of business" and inserted after "assessment rolls" the words "in respect of income or personal property." See R. S. O. (1877), c. 174, s. 466 (53). In 1880 this sub-section was repealed by 42 V. c. 31, s. 22 (53) and re-enacted in substantially its present form, the power being at the same time extended to townships.

The only subsequent alteration of importance was the insertion of the words "in any other manner" made under the authority of 43 V. c. 25, s. 24 (1880), in "*The Con. Mun. Act of 1883*," (46 V. c. 18), s. 490 (6).

As to the transfer of this power to the Boards of Commissioners of Police in certain cities by 59 V. c. 51, s. 31; 60 V. c. 45, s. 22, and 60 V. c. 15, Sched. C. (122), see under s. 585, *post*.

31. For requiring all transient traders who occupy premises in the municipality, and are not entered upon the assessment roll or who may be entered for the first time upon the assessment roll of such municipality, in respect of income or personal property, and who may offer goods or merchandise of any description for sale by auction, or in any other manner, conducted by themselves or by a licensed auctioneer, or by their agent or otherwise, to pay a license fee before commencing to trade. Licensing transient traders.

Sec. 583 (31)

Notes (ff) (gg).

Transient traders.

Sale of insolvent estates.

(*a*) No such by-law shall affect, apply to, or restrict the sale of the stock of an insolvent estate which is being sold or disposed of within the local municipality in which the insolvent carried on business therewith, at the time of the issue of an attachment or of the execution of an assignment. 55 V. c. 42, s. 489 (9*a*); c. 43, s. 31; 56 V. c. 35, s. 16; 57 V. c. 50, s. 7; 58 V. c. 42, s. 21; 59 V c. 51, s. 31; 60 V. c. 45, s. 22: c. 15, *Sched.* C. (122); *and see sec.* 585.

Taken from 54 V. c. 28, s. 23 (1888), the word "local" before "municipality" in the third line of clause (a) having been since inserted by 53 V. c. 50, s. 19 (1890), and the words (in the third and fourth lines of the principal clause) "or who may be entered for the first time in the assessment roll of such municipality" by 57 V. c. 50, s. 7 (1894). As to 59 V. c. 51, s. 31; 60 V. c. 45, s. 22, and 60 V. c. 15 Sched. C. (122), see under s. 585, *post*.

Meaning of words "transient traders."

(*b*) The words "transient traders," wherever they occur in clauses 30 and 31 of this section, shall extend to and include any person commencing in the municipality the business in the said clauses mentioned, who has not resided continuously in such municipality for a period of at least three months next preceding the time of the commencement by him of such business therein. 58 V. c. 42, s. 22.

Added in 1895; see the reference.

"Regulating," etc.

(ff) **"For licensing, regulating and governing."** See note (a) to s. 329, notes (j) and (u) to this section and *Bollander* v. *City of Ottawa*, (*a*) cited in note (b) s. 580.

To whom this section applies.

(gg) **"Transient traders and other persons who occupy premises."** The occupation of premises in the municipality, though only for a temporary period, is the essential note of difference between the class of persons herein described as "transient traders" and those to whom sub-sections 14-16 are applicable. In *Reg.* v. *Cuthbert* (*b*) the defendant, who was the agent in Canada for Messrs. Thomas Russell & Sons of London, Eng., had consigned to auctioneers in London, Ont., a large quantity of jewelry to be sold by them on account of Thomas Russell & Sons at specified rates. The goods were placed in the ware rooms of the auctioneers, and were there sold, partly by auction and partly by private sale, some of them by the auctioneers and some of them by the defendant, who for that purpose had taken out an auctioneer's license; but all the sales were controlled and (as between them and purchasers) were made by the auctioneers in whose premises they were carried on. The conviction of the defendant as a transient trader selling without a trader's license was quashed.

Per OSLER, J.:—

> "The first requisite to jurisdiction over any transient trader . . . is that he shall be an occupant of premises in the municipality. Where goods are consigned (as in the present case) to be sold on commission, and they are so sold in the shop or premises of the commission merchant and by him *or on his behalf* . . . it is impossible to say that the owner of the goods is a transient trader merely because he happens to accompany the goods and assist in their sale."

In *Reg.* v. *Caton* (*c*) a by-law that:—"No transient trader or other person occupying a place of business in the town of M. for a temporary period *less than one year* and whose name has not been duly entered on the assessment roll for the current year shall . . . offer goods, wares or merchandise for sale . . . within the limits of the town of M. without a license," etc., was held good, the words "less than one year" being regarded merely as a limitation of the words "temporary periods," used in the Statute. (*d*)

(*a*) 30 O. R. 7 (1898). (*b*) 45 U. C. R. 19 (1880). (*c*) 16 O. R. 11 (1888).
(*d*) See *Re Arkell and Town of St. Thomas*, 38 U. C. R. 594, 597 (1876).

The conviction of the defendant was, however, quashed for not showing that his name had not been duly entered on the assessment roll for the current year

Sec 583 (31) (33). Note 88.

In *Reg.* v. *Banks* (*a*) a conviction for "carrying on the business of a transient trader without having obtained a license so to do, contrary to the by-law," etc., was quashed for not stating in terms that the defendant was a person who occupied premises in the municipality, etc., following the language of the Statute.

Transient traders.

So in *Reg.* v. *Appelbe* (*b*)—where the by-law provided that:—"No person not entered on the assessment roll of the city of W. . . . or who may be entered for the first time on the said assessment roll . . . and who at the time of commencing business . . . has not resided continuously in said city . . . at least three months, shall commence business . . . for the sale of goods or merchandise . . . until such person has paid to A. the sum of $—by way of license."—it was held that the by-law was invalid as not being limited to persons occupying premises in the municipality, and that clause (b) of sub-sec. 31 has not dispensed with this requirement. A conviction in the terms of the by-law was therefore quashed.

In *Reg.* v. *Langley* (*c*) the conviction of the defendant as a transient trader was quashed under the following state of facts:—

The defendant had entered into an arrangement with various retail merchants by which each of them was to receive from him a quantity of "trading stamps" (the property in which, however, was to remain in the defendant), to pay him fifty cents for every 100 of such stamps so received, and to give one of these stamps to each customer who purchased for cash ten cents worth of goods. The defendant on his part was to advertise these merchants in certain newspapers, and also in certain directories to be distributed by him. In each of these directories a blank space was left for pasting in such "trading stamps;" and every customer of any of the merchants who brought to the defendant one of the directories with 990 stamps pasted therein, was entitled to receive in exchange any article which he might select out of an assortment of goods kept in stock by the defendant. Except as aforesaid these goods were not for sale. *Held*, that—since the essence of a sale is the transfer of property from one person to another for money or money's worth,—these transactions did not constitute a selling or offering for sale of goods by the defendant within the meaning of a municipal by-law passed under the above sub-sections, the stamps delivered by the defendant in exchange for his goods being of no value to him.

By the councils of townships, cities, towns and villages:—

32. For fixing the sums to be paid for licenses required under by-laws passed under the preceding clause 30. (*Ib.*)

Fees under subs. 30.

Taken from 60 V. c. 45, s. 22.

33. For fixing the sums to be paid for licenses required under by-laws passed under the preceding clause 31, not exceeding in cities and towns $250 and in other municipalities $100 for each license; and for providing that the sum so paid for a license shall be credited to the trader paying the same upon and on account of taxes for the unexpired portion of the then current year, as well as any subsequent taxes, should such trader remain in the municipality a sufficient time for taxes to become due and payable by him, and in any other event to be taken and used by the municipality as a portion of the license fund of such municipality.

Fees under subs. 31

(*a*) 2 N. W. Terr. Rep. 77; 1 Can. Crim. Cases 370 (1894).
(*b*) 30 O. R. 623 (1899).
(*c*) Dec. 1899, not yet reported.

Sec. 583 (33) (35).

Notes (hh-ii).

In territorial districts.

Provided, nevertheless, that the license fee imposed by any by-law of any village situate within a territorial district may be a sum not exceeding $200. (*Ib.*)

Based upon 51 V. c. 28, s. 23 (1888), by which the maximum amount of the license fee was fixed at $100 in cities and $50 in other municipalities. 55 V. c. 43, s. 31, (1892), "raised the limit" in towns to $100; 56 V. c. 35, s. 16, (1893) added a proviso as to the fees in towns and villages situate in the judicial or territorial districts of the Province, fixing the maximum fees at $250 for towns and $200 for villages; but a further amendment in 1895, by 58 V. c. 42, s. 21, left the figures as they now stand.

Victualling Houses, etc.

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

Victualling houses, etc., number and regulation of.

35. For limiting the number of and regulating victualling houses, ordinaries, and houses where fruit, oysters, clams or victuals are sold to be eaten therein, and all other places for lodging, reception, refreshment or entertainment of the public:

Licensing same.

35. For licensing the same where no other provision exists therefor, and for revoking any license so granted whenever the council or Board deems such revocation desirable without stating any reason therefor; but in the case of the revocation of a license under any such by-law, the treasurer of the municipality shall refund to the licensee such proportionate part of the license fee as will represent the unexpired portion of the term for which the license was granted. 55 V. c. 42, s. 489 (7-8); 59 V. c. 51, s. 31: 60 V. c. 45, s. 22; c. 15, *Sched.* C (122): 62 V. (2nd Session), c. 26, s. 37 (2); *and sec sec.* 585.

Taken from the Act of 1858, (22 V. 99), s. 254 (2-3). The words "and for revoking," etc., to the end of sub-s. 35 were added in 1899 by 62 V. (2nd Session), c. 26, s. 37 (2). *Cf.* 12 V. c. 81, s. 60 (9) (19), (villages); ss. 61, 67, 80, (towns); ss. 82, 106, (cities). As to the transfer of these powers by 59 V. c. 51, s. 31, 60 V. c. 45, s. 22 and 60 V. c. 15, Sched. C (122) to the Board of Commissioners of Police in certain cities, see under s. 585, *post*.

Regulating, etc.

(hh) "For limiting the number . . regulating . . licensing . . revoking."

See note (**a**) to s. 329, notes (**j**), (**u**) and (**z**) *supra*, and *Bollander v. City of Ottawa*, 30 O.R. 7 (1898) referred to in note (**b**) to s. 580.

These words will not authorize the passing of a by-law which results or may result, in a total prohibition of such houses, or in such a limitation of their number as would, in effect, create a monopoly (*a*).

(ii) "Victualling houses, ordinaries, houses where . . . victuals are sold to be eaten therein, and . . . places for the . . . reception, refreshment or entertainment of the public."

"Victualling houses."

"Ordinaries."

A "victualling house" is "an eating house," (*b*); "a house where provision is made for strangers to eat." (*c*). The Imp. Stat. 9 Geo. IV. c. 61, s. 1, speaks of "licenses to persons keeping inns, alehouses *and victualling houses*." (*d*) An "ordinary" meant a regular (*table d'hote*) meal as distinguished from one cooked to order, and hence, a place where such meals are served at a fixed price. (*e*)

"Places for the refreshment or entertainment of the public."

The nearest English analogue to a house of the class intended by this sub-section is a "refreshment house," described by Imp. Stat. 23 V. c. 27, s. 6 as a "house for public refreshment, resort and entertainment," words which have been held to include any place where the public are received, sheltered

(*a*) See note (**d**) to s. 325, "*Bona fides*," and note (**q**) to s. 330.

(*b*) Standard Dictionary. (*c*) Webster's Dictionary.

(*d*) See *Reg.* v. *Wilkinson*, 10 L.T.N.S. 370 (1864).

(*e*) *Cf.*—"The place *or ordinary* where he uses to eat."—Ben Jonson, "Every Man out of his Humour."

and refreshed,—*e.g.* a "temperance" hotel, where chops, coffee and non-intoxicating ale are sold to be consumed on the premises (*a*).

Sec. 583 (35-37).

Note (ii).

"Places for the reception, refreshment, or entertainment of the public."

In *Taylor* v. *Oram* (*b*) the defendants kept a dancing saloon where liquor was not proved to have been sold, but was purchased and fetched if requested. The magistrate, conceiving that "entertainment" did not mean "diversion" or "amusement," but that it must be construed as *ejusdem generis* with "refreshment"—(*i. e.*, as meaning food and drink, etc.),—declined to convict; and, upon a special case stated by him, the Court of Exchequer held his finding as to the facts to be conclusive, and (MARTIN, B., dissenting) that his construction of the Statute was correct.

In *Muir* v. *Keay* (*c*) it was argued that the words "and entertainment" refer to something wholly different from food or drink, and that the entertainment intended must be a musical entertainment or something of a like nature; but the Court declined to accept this view. *Per* BLACKBURN, J.:—"I do not think that 'entertainment' need be something in the nature of refreshment. It is rather the co-relative of 'resort': . . . it means public reception." And *per* LUSH, J. (p. 598):—"I think 'entertainment' is something connected with the enjoyment of refreshment rooms,—tables and the like. It is something beyond refreshment, it is the accommodation provided, whether that includes a musical or other amusement or not." In that case the defendant, who kept a café where cigars, coffee and ginger beer were sold and consumed on the premises, was held to be the keeper of a refreshment house within the Imperial Statute above cited.

Howes v. *The Board of Inland Revenue* (*d*) is,—to use the expression of GROVE, J. at p. 390,—"a marginal case." The appellant's shop consisted of one room, open in front and having a counter, but no seats of any kind. Persons frequenting it bought and drank lemonade or ginger beer at the counter and then went away. The question was whether this shop was "a refreshment house" within the Statute. A Divisional Court (*e*) held that it was, and their decision was affirmed by a majority of the Court of Appeal; but CLEASBY, B., (in the Divisional Court) and BAGGALLAY, L. J., (in the Court of Appeal), dissented, holding that under *Muir* v. *Keay* the house or shop must be kept open for something more than refreshment and resort, and that there was nothing here in the nature of public reception or accommodation. The principal ground on which the majority of the Court held the case to be within the Act is thus put by MELLISH, L. J., at p. 393:—"It seems to me that 'entertainment' qualifies 'refreshment' and that the two words together mean . . . the receiving of a customer and the providing him with drink and food of an agreeable nature. . . . In my opinion a man is not the less 'entertained' because he is not asked to sit down while he takes refreshment." And *per* QUAIN, J. (p. 394):—"Refreshment was sold, and a man cannot be refreshed without being at the same time entertained."

As to the scope of the Imp. Stat. 25 Geo. II. c. 36, s. 2 (1752), referring to houses, etc., kept for public dancing, music or other public entertainment of a like sort, see note (r), *supra*, and *Guaglieni* v. *Matthews*, 34 L.J.M.C. 116 (1865).

By the councils of townships, cities, towns and villages:—

License fees.

35. For fixing the sums to be paid for licenses required under by-laws passed under the preceding clause 35, not exceeding $20 for each license. (*Ib.*)

Taken from 60 V. c. 45, s. 21 (1897).

Vehicles used for Hire.—Livery Stables.

By the councils of towns and villages:—

By-laws for regulating teamsters, etc.

37. For regulating and licensing teamsters, carters and draymen, and regulating the charges for the conveyance of goods or for other services. 55 V. c. 42, s. 510*a*; 60 V. c. 15, *Sched.* C. (89).

Taken from 53 V. c. 50, s. 29 (1890), which applied only to towns: extended to villages by 60 V. c. 15, Sched. C (89).

(*a*) *Kelleway* v. *Macdougal*, 45 J. P. 207 (1881).
(*b*) 1 H. & C. 370 (1862).
(*c*) L.R. 10 Q.B. 596, (1875).
(*d*) 1 Ex. D. 385 (1876).
(*e*) See Imp. Stat. 36-37 V. c. 66, s. 45.

Secs. 583 (38); 584.

Notes (jj), (kk), (a), (b), (c).

Regulating and licensing livery stables, cabs, etc.

38. For regulating and licensing the owners of livery stables, and of horses, cabs, carriages, omnibuses and other vehicles for hire; for establishing the rates of fares to be taken by the owners or drivers, and for enforcing payment thereof, and for defining localities or districts within the limits of which no livery or boarding stable shall thereafter be established. 55 V. c 42, s. 510.

The first part of this sub-section, down to and inclusive of the words "and for enforcing payment thereof" is taken from the Act of 1858, 22 V. c. 99), s. 287 (31), which applied to cities, towns and villages. 31 V. c. 30, s. 33 (1868) transferred this authority to the Boards of Police Commissioners in cities; and 52 V. c. 36, s. 27 (1889) added the last clause, "and for defining localities."

"Owner," meaning of.

(jj) "**Owners . . of horses . . for hire.**" In *Reg.* v. *Swalwell*, (*a*) a by-law of the town of Almonte that "Every person owning a livery stable or letting or intending to let out horses or carriages or other vehicles for hire in the said town" shall take out a license, and a conviction "that the defendant did keep horses and vehicles for hire in the said town of A. without having first paid the license fee required by by-law No. 63 of said town" were both sustained as against an objection that the Statute only mentions the *owners* of horses, cabs, carriages, and that one may *keep* horses and vehicles for hire without owning them. WILSON, C. J.—after an elaborate review of numerous English decisions upon the meaning of the word "owner"—arrives at the conclusion, (p. 401), that it is a word "having no strict legal or technical meaning, but . . . of a very flexible nature" and "manifestly used, both in the Statute and in the by-law, in its ordinary popular and colloquial sense."

Defining localities.

(kk) "**For defining localities.**" The last clause of sub-section 38 was added in consequence of the question raised in *Re Kiely*, 13 O.R. 451 (1887), referred to in note (c) to s. 484, *ante*. (*b*) See ss. 542 (1) (c); 686 (2) (4).

Regulating and licensing livery stables etc.

584. The council of every county, having county gravel or macadamized roads within its jurisdiction, and under its immediate control, which are being kept up and repaired by municipal taxation, and upon which no toll is collected, shall have power to pass a by-law or by-laws,

(*a*) For regulating and licensing the owners of livery stables, and of horses, cabs, carriages, omnibuses, and all other vehicles used or kept for hire;

(*b*) For issuing and regulating teamsters' licenses;

(*c*) For enforcing the payment of the fees for such licenses;

(*d*) For establishing and regulating the rates of fare that may be collected or taken by the owners or drivers of such vehicles for the conveyance of goods or passengers: and

(*e*) For regulating and enforcing the width of tire that may be used on such vehicles, when travelling on the aforesaid county gravel or macadamized roads. 55 V. c. 42, s. 512.

Taken from 31 V. c. 30, s. 45 (1868) the language being somewhat altered (for the better) in the Revision of 1897 under the authority of 60 V. c. 3, s. 3.

(a) "**County gravel or macadamized roads,**" etc. See ss. 613-616, 658 (2).

(b) "**For regulating and licensing.**" See note (a) to s. 329; note (u) to s. 583, and note (b) to s. 580.

(c) "**Owners of livery stables,**" etc. See note (c) to s. 484, and note (jj) to s. 583.

(*a*) 12 O. R. 391 (1886).

(*b*) See also *per* GWYNNE, J., in *Re Virgo and City of Toronto*, 22 S.C.R. at p. 469 (1894), quoted in the same note.

(d) Clause (c). This can only be done in the mode prescribed by s. 702. There is no express power of forfeiture. (a)

(e) Clause (e). See s. 559 (5) and note (f) thereon. The power here conferred relates only to the width of *tires*, not to the width (? diameter) of wheels.

Secs. 584 ; 585.

Notes (d)-(e).

Width of tires.

585. In cities having a population of 100,000 or more, the Board of Commissioners of Police shall have full power to license, regulate and govern each person engaged in any of the businesses or employments in respect to which the Board has power under this Act to pass by laws, whether the full power to license, regulate and govern was, prior to April 7th, 1896, possessed by the councils of such cities or not; but the council of every such city shall, subject to the limitations contained in this Act, have the power, by by-law, to fix the fees to be paid for licenses required under the by-laws of the Boards of Commissioners of Police passed under sections 581 and 583 of this Act; and any moneys derived from such licenses shall be handed over by such Board to the treasurer of the city to form part of the revenue thereof. 59 V. c. 51, s. 31; 60 V. c. 15, *Sched.* C. (122): c. 45, s. 22. *See also sec.* 329.

Transfer of licensing powers from councils to police commissioners.

This section is based upon 60 V. c. 45, s. 22 (1897), which repealed and re-enacted a similar enactment of the previous Session, (59 V. c. 51, s. 31 (1896)). The earlier section did not include the powers conferred by s. 540 (1 *part*), relative to seizing and impounding dogs running at large and selling dogs so impounded; s. 540 (3), tax on owners, possessors and harbourers of dogs: s. 581, sale of fresh meat by retail; s. 583 (12-13), ferries; s. 583 (25-26), plumbers, nor the general words, "and also all other powers possessed by the councils of such cities in reference to licensing, regulating or governing trades, businesses or occupations," which (although used in 60 V. c. 45, s. 22), have been omitted from this section in the Revision of 1897.

These sections applied to "cities *of over* 100,000 inhabitants;" but as most of the similar statutory provisions referred to "cities of 100,000 or more": (*Cf.* 52 V. c. 36, s. 22; 52 V. c. 50, ss. 1, 41; 54 V. c. 42, s. 37; 56 V. c. 35, s. 15; 58 V. c. 42, s. 24; 59 V. c. 51, s. 33, and c. 58, s. 3 (3)),—or "100,000 and upwards" (54 V. c. 42, s. 2,—or to "cities having a population of 50,000 or more" (53 V. c. 50, s. 44; 55 V. c. 43, s. 67)—or "of 40,000 or over" (53 V. c. 54, s. 4)—or "of 30,000 or more" (58 V. c. 47, s. 3; 59 V. c. 58, s. 3)—it was considered desirable that the language should be made uniform in all these cases; and accordingly the wording was altered by 60 V. c. 15, Sched. C. (80), (117), (120), (122) to "cities having a population of 50,000 and over," or "of 100,000 or more."

Division XIX.—NUISANCES.

Public nuisances generally. Sec. 586, (1).
Manufactures and trades which may be nuisances. Sec. 586, (2)
Slaughter houses, gas works, tanneries, distilleries. Sec. 586, (3).
Public slaughter houses. Sec. 586, (4).
Tanneries, rag, bone or junk shops, etc. Sec. 586, (5).
Smoke from manufactories, etc. Sec. 586, (6).
Keeping cows, goats, pigs, etc. Sec. 586. (7).
Bells, horns, shouting and other noises. See 586, (8).
Guns, fireworks and disturbances of the peace. Sec. 586, (9).
Beggars and lazzaroni Sec. 586, (10).

586. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

Nuisances generally.

(See also ss. 540 (1-3), dogs; 540 (6), tobogganing on streets; 542 (1), wooden buildings; 542 (2), fire or lights in stables, etc.; 542 (3), dangerous manufac-

(a) See *Re Smith and City of Toronto*, 10 C. P. 225 (1859); *Re Bright and City of Toronto*, 12 C. P. 433 (1863); *Bannan* v. *City of Toronto*, 22 O.R. 274 (1893), all referred to in note (a) to s. 329.

Sec. 586. Note (a).

tories; 542 (4), dangerous chimneys, etc.; 542 (9), (12), dangerous buildings; 542 (16), burning stumps, etc.; 542 (17-17d), manufacture, etc., of explosives; 545 (1), vacant lots; 545 (4), barbed-wire fences; 547 (2), Canada thistles, etc.; 547 (4), posters; 549, public morals; 550-553, public health; 557, rubbish on streets; 558, stone or gravel on roads; 559, snow, ice and dirt; 562 (8-10), obstructing or incumbering harbours, etc.; 583 (8, 10), exhibitions, menageries, bowling alleys, etc.; 583 (27), hotel runners, etc., etc.]

What is a nuisance.

(a) Blackstone (a) says that "nuisance (*nocumentum*) signifieth anything that worketh hurt, inconvenience or damage;" but this, (as Mr. Garrett points out (b), can hardly be termed a definition; for very many things "work hurt, inconvenience or damage" which the law does not regard as nuisances,—*e.g.*, the establishment of a rival factory or school which diminishes the profits of an existing one; the erection by my neighbour of his house so that it overlooks my private grounds (c) or interferes with the access of air to my windmill (d), or with the draught of the chimneys of my dwelling; (e) the discomfort necessarily occasioned to me by the carrying on of noisy or other trades in the locality where I live or do business (f); the interference by new buildings, etc., with the outlook from my windows (g) or with the view of my place of business (h).

It seems, indeed, impossible to formulate any satisfactory definition which shall cover all the Protean forms assumed by nuisances; and Sir Edward Coke's division of them (i) into,—"(a) *Public* or general nuisances, being to the hurt of the whole kingdom; (b) *Common* nuisances, to the hurt of the passers by, and (c) *Private* or special nuisances," cannot be considered as either a satisfactory or a scientific classification.

Mr. Garrett's classification of nuisances.

Mr. Garrett (j) arranges the several classes of nuisances under three heads somewhat as follows:—

(1) Acts (or omissions to discharge a public duty) which result in an interference with the enjoyment by the public of rights belonging to them. (k)

Examples under this head are:—The obstruction of highways or waterways (l) the interference with public safety, health or comfort, by keeping or maintaining dangerous animals, buildings, etc., (m) by carrying on dangerous trades (n), by selling, or exposing for sale) meat or drink unfit for human food (o), by exposing infected persons in public places (p) by

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(a) Bk. V. c. 8. (b) Law of Nuisances (2nd Ed.), p. 1.

(c) *Tapling* v. *Jones*, 11 H. L. C. 290 (1865).

(d) *Webb* v. *Bird*, 10 C. B. N. S. 268 (1861): 13 C. B. N. S. 841 (1863).

(e) *Bryant* v. *Lefever*, 4 C. P. D. 172 (1879): and see *Chastey* v. *Ackland*, [1895] 2 Ch. 389.

(f) *Christie* v. *Davey*, [1893] 1 Ch. 316: *Robins* v. *Dominion Coal Co.*, Q. R. 16 S. C. 195 (1899).

(g) *Atty.-Gen.* v. *Doughty*, 2 Ves. Sen. 453 (1752): *Foli* v. *Devonshire Club*, 3 Times L. R. 706 (1887).

(h) *Butt* v. *Imperial Gas Co.*, L. R. 2 Ch. 158 (1866).

(i) 2 Inst. 406. (j) Law of Nuisances (2nd Ed.), 4.

(k) *Cf.* Viner's definition:—"An offence against the public, either by doing a thing which tends to the annoyance of all the King's subjects, or by neglecting to do anything which the common good requires": Vin. Abr., *Tit.* "Nuisance" (C): Hawk. P. C. c. 32, s. 4.

(l) See *ante* s. 557, notes (a), (c), (d), (g): s. 559, notes (d), (e), (f), (g): s. 562, notes (f), (g), (h): s. 569, note (a): s. 600, note (b); *Reg.* v. *Lewis*, 72 L.T.N.S. 117 (1895)

(m) See s. 540, note (b): s. 542, notes (e), (o), etc.

(n) See s. 542 (2-4, 17-17d), etc.; *Rex* v. *Lister*, Dears & Bell C. C. 209 (1857).

(o) See s. 550, note (c).

(p) See subs. 10 *infra*; *Rex* v. *Vantadillo*, 4 M. & S. 73 (1815): *Rex* v. *Burnett*, 4 M. & S. 272 (1815).

acts or occupations which involve the discharge of refuse (*a*) or sewage (*b*), or which result in noise, (*c*) or evil smells, (*d*) or smoke, (*e*) or damp, (*f*) or which otherwise pollute air, (*g*) or water, (*h*) or both.

What are nuisances.

(2) Certain acts *contra bonos mores*—*e.g.*, the use of obscene or blasphemous language in public places; indecent pictures, posters or exhibitions; indecent exposure; the keeping of disorderly houses, etc., (*i*)

(3) Private nuisances, which interfere only with personal and proprietary rights (*j*).

"Whether anything is a nuisance or not is . . . to be determined not merely by an abstract consideration of the thing itself, but in reference to its circumstances. What would be a nuisance in Belgrave Square would not necessarily be a nuisance in Bermondsey." (*k*) A peal of bells, which may be an extreme nuisance to one who lives within a few yards of them, may be a positive pleasure to one who is farther away, yet within reach of their sound. (*l*)

A thing may be a public nuisance, within the meaning of this subsection, although it is not dangerous, or even injurious, to health (*m*). "It is enough if it renders the enjoyment of life and property uncomfortable," (*n*) or if it is,—to use the words of Lord ROMILLY, M. R.(*o*)—"an inconvenience materially interfering with the ordinary comfort, physically, of human existence."

(*a*) See *Crossley* v. *Lightowler*, L. R. 3 Eq. 279; L. R. 2 Ch. 478 (1867); *Scarborough (Mayor of)* v. *Rural Sanitary Authority of Scarborough*, 1 Ex. D. 344 (1876); *Bishop Auckland Local Board* v. *Bishop Auckland Iron & Steel Co.*, 10 Q. B. D. 138 (1882).

(*b*) *Attorney-General* v. *Luton Board of Health*, 2 Jur. N. S. 180 (1856; *Goldsmid* v. *Tunbridge Wells Improvement Commissioners*, L. R. 1 Eq. 161; L. R. 1 Ch. 349 (1866); *Attorney-General* v. *Colney Hatch Lunatic Asylum*, L. R. 4 Ch. 146 (1868); *Nuneaton Local Board* v. *General Sewage Co.*, L. R. 20 Eq. 127 (1875); *Charles* v. *Finchley Local Board*, 23 Ch. D. 767 (1883).

(*c*) See *infra*, notes (**d**) and (**k**).

(*d*) See *infra*, notes (**d**) and (**j**); *Smith* v. *Waghorn*, 27 J. P. 744 (1863),—accumulation of manure; *Doré* v. *Pecorini*, 31 Sol. J. 727 (1887)—odours from a restaurant.

(*e*) See *infra*, notes (**d**) and (**i**).

(*f*) *Broder* v. *Saillard*, 2 Ch. D. 692 (1876); *Hardman* v. *North Eastern R. W. Co.*, 3 C. P. D. 168 (1878).

(*g*) *Rudenhurst* v. *Coate*, 6 Grant 139 (1857); *Humphries* v. *Cousins*, 2 C. P. D. 239 (1877).

(*h*) *Crossley* v. *Lightowler*, L. R. 3 Eq. 279; L. R. 2 Ch. 478 (1867); *Attorney-General* v. *Borough of Birmingham*, 4 K. & J. 528 (1858); and see *infra*.

(*i*) See *ante*, s. 549, "Public Morals" and notes thereto. The definition of a "common nuisance" contained in Art. 191 of "*The Criminal Code, 1892*," is apparently intended to cover both these classes of nuisance. It will be found quoted *post* in note (**d**) to s. 606.

(*j*) These,—although they may be of the same nature as the nuisances referred to in the foregoing classes,—do not come within the purview of this section, which relates only to nuisances affecting *all* who come within the sphere of their influence: *Rex.* v. *Lloyd*, 4 Esp. 200 (1803).

(*k*) *Per* THESIGER, L. J. in *Sturges* v. *Bridgman*, 11 Ch. D. 852 (1879), at p. 865. And see *Robins* v. *Dominion Coal Co.*, Q. R. 16 S. C. 195 (1899).

(*l*) See *per* KINDERSLEY, V. C., in *Soltau* v. *De Held*, 2 Sim. N. S. 133 (1851), at p. 143.

(*m*) *Rex* v. *Neil*, 2 C. & P. 485 (1826); *Crump* v. *Lambert*, L. R. 3 Eq. 409, 17 L.T.N.S. 133 (1867); *Gaskell* v. *Bayley*, 30 L.T.N.S. 516 (1874); *Banbury Urban Sanitary Authority* v. *Page*, 8 Q.B.D. 97 (1881); *Houldershaw* v. *Martin*, 49 J. P. 179 (1885); *Malton Board of Health* v. *Malton Manure Co.*, 4 Ex. D. 302 (1879) and *Bishop Auckland Local Board* v. *Bishop Auckland Iron & Steel Co.*, 10 Q. B. D. 138, (1882), in the two last of which cases *Great Western R. W. Co.* v. *Bishop*, L. R. 7 Q. B. 550 (1872) was considered and distinguished.

(*n*) *Per* Lord MANSFIELD, C.J., in *Rex* v. *White*, 1 Burr. 333, 337 (1757).

(*o*) In *Crump* v. *Lambert*, L. R. 3 Eq. 409,412 (1867).

Sec. 586.

Note (a).

What are nuisances.

"One ought not to have so delicate a nose that he cannot bear the smell of hogs," (a) for "*lex non curat rotis delicatorum*;" and the law will not regard as a nuisance the doing of something which is not in itself noxious "unless it interferes with the ordinary enjoyment of life, or the ordinary use of property for the purposes of residence or business"; (b) and this "not merely according to elegant or dainty modes and habits of living, but according to plain, sober and simple notions among the English people." (c)

In *Christie* v. *Davey* (d) it was held not to be an actionable nuisance for members of the family of the plaintiffs (who occupied one of two semi-detached houses) to give music lessons for 2½ hours daily, to sing and practise (sometimes as late as 11 p.m.) on the piano, violin and violoncello, and to give musical performances and parties in the evening: and,—it being alleged that the defendant (who occupied the adjoining semi-detached house) had annoyed the plaintiff and his family by blowing whistles, knocking on trays and boards, hammering, etc.,—an injunction was granted restraining him from causing or permitting sounds or noises in his house so as vex or annoy the plaintiffs or either of them or the occupants of their house.

In *Llandudno Urban District Council* v. *Wood* (e) an injunction was refused to restrain the defendant from holding meetings and delivering addresses on the beach in front of a watering-place without the permission of the plaintiffs, in whom the foreshore was vested.

In *St. Margaret's Church, Toronto* v. *Stephens et al.* (f)—an action by the churchwardens and trustees of a church to restrain the proprietors of an adjoining skating-rink from disturbing their church services by the music of a band which played in the open air during the evening while public worship was going on—it was held by a Divisional Court that the plaintiffs' use of their church was ordinary, reasonable and lawful, and that the defendants' acts were such as materially interfered therewith. An injunction restraining the defendants from causing the band to play at such times or in such manner as to disturb public worship in the church, or to prevent its use for the purposes for which it had been erected, was upheld; but the Court struck out a further clause of the order by which the band had been prohibited from playing, even when no service was going on, if such playing caused rough people to congregate in the adjoining lanes (g).

Temporary annoyance, caused by the execution of works in the ordinary user of land, is not an unlawful nuisance where all reasonable care and skill have been used to avoid annoyance to the neighbours (h); nor is even permanent annoyance or damage, when caused by the exercise, according to the best known and least objectionable methods, of powers distinctly conferred by statutory (or the like) authority (i).

(a) *Argnendo* in *Aldred's Case*, 9 Co. Rep. 58 (1611).

(b) *Per* COTTON, L.J., in *Robinson* v. *Kilvert*, 41 Ch.D. 88, 94 (1889); and see *St. Helen's Smelting Co.* v. *Tipping*, 4 B. & S. 608, 616; 11 H.L. Cas. 642 (1863-5).

(c) *Per* KNIGHT BRUCE, V. C., in *Walter* v. *Selfe*, 4 De G. & Sm. 315, 322 (1851). Acc. *Scott* v. *Firth*, 4 F. & F. 349 (1864); *Fleming* v. *Hislop*, 11 App. Cas. 686 (1886), *per* Lord SELBORNE at p. 691; *Fanshaw* v. *Loudon & Provincial Dairy Co.*, 4 Times L. R. 694 (1888); *Llandudno Urban District Council* v. *Woods*, [1899] W. N. 135; High on Injunctions, (3rd Ed.), s. 773.

(d) [1893] 1 Ch. 316. (e) [1899] W. N. 135: [1899] 2 Ch. 705.

(f) 29 O. R. 185 (1898).

(g) *Christie* v. *Davey*, supra; *Inchbald* v. *Robinson*, L. R. 4 Ch. 388 (1869); *Roskell* v. *Whitworth*, 19 W. R. 804 (1871), and *Lambton* v. *Mellish*, [1894] 3 Ch. 163, are referred to and considered in the judgment of Sir WILLIAM MEREDITH, C. J., at pp. 189, 190.

(h) *Harrison* v. *Southwark & Vauxhall Water Co.*, [1891] 2 Ch. 409; *Attyen.* v. *Mayor of Preston*, 13 Times L. R. 14 (1896).

(i) *Rex* v. *Pease*, 4 B. & Ad. 30 (1832); *Vaughan* v. *Taff Vale R. W. Co.*, (Ex. Ch.), 5 H. & N. 679 (1860); *Dixon* v. *Metropolitan Board of Works*, 7 Q. B. D. 418 (1881); *McLaren* v. *Canada Central R. W. Co.*, 8 A. R. 564 (1883) at p. 583; *London, Brighton & South Coast R. W. Co.* v. *Truman*, 29 Ch. D. 89; 11 App. Cas. 45 (1885-6); *National Telephone Co.* v. *Baker*, [1893] 2 Ch. 186, where KEKEWICH, J., points out that the decision in *Cumberland Telephone etc., Co.* v. *United Electric R. W. Co.*, 42 Federal Reporter 273 (1890) does not follow the law of England as established by *Fletcher* v. *Rylands*, L. R. 3 H. L. 330 (1868). And see *Hammersmith R. W. Co.* v. *Brand*, L. R. 4 H. L. 17 (1889).

Sec. 586.

Note (a)

But if the works are so negligently or unskilfully executed as to cause unnecessary injury (*a*), or if the statute (or other authority) under which the work is done does not expressly authorize the doing of the thing which occasions the nuisance, it affords no defence to the action (*b*). In *Rapier's Case* the defendants had been authorized by an Act of Parliament to construct and operate two tramway lines "with all proper rails, plates, works and conveniences connected therewith"; but the Act did not expressly mention "stables," and it gave no power to expropriate land. Stables built by the company for their horses created a nuisance which the plaintiff sought to restrain. *Held*, that although horses were necessary for the working of the tramways, the company had no statutory warrant for creating a nuisance, and it was no sufficient defence to say that they had used all reasonable care. *Per* LINDLEY, L. J.:—"An Act of Parliament might be so worded as to be an answer. It was . . . . an answer in the case of *The London, Brighton & South Coast R. W. Co.* v. *Truman* (*c*),—and it might be an answer here, if the Act . . . went further . . . An Act of Parliament might be so worded as to cast upon them [the defendants] no greater duty than to take reasonable care. But unless . . . . so worded . . . I think the common law must prevail; that they must exercise their powers so as not to commit a nuisance." (*d*)

What are nuisances.

The jurisdiction of municipal corporations in England with regard to nuisances rests wholly upon s. 23 of "*The Municipal Corporations Act, 1882*," which enacts that "The council may . . . . make such by-laws as to them seem meet for . . . . . prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough."

As to the manner in which the Courts have interpreted the authority thus conferred, see the cases cited in note (**d**) to s. 326 and in notes (**b**) to (**l**) inclusive on this section.

The principal difference between the English Act and ours is that in the latter so many classes of nuisances are specifically mentioned as to leave little (if any) room for municipal councils to claim, under s. 326, authority to deal with unenumerated cases. See ss. 540 (1) (5) (6), 542 (1) (3) (4) (9) (16) (17-17d), 545 (1) (4), 547 (2) (4), 549, 550, 551-553, 557, 558, 559, 562, (8-10), 583 (8) (10) (27), etc., and the observations of DRAPER, C.J., in *Re Davis and Town of Clifton* (*e*), quoted in note (**u**) to s. 583, *ante*.

Public Nuisances.

By the councils of townships, cities, towns and villages :—

1. For preventing and abating public nuisances. 55 V. c. 42, s 489 (41).

Public Nuisances.

Taken from the Act of 1858, (22 V. c. 99), s. 287 (20) (23), which applied only to cities, towns, and villages. *Cf.* the Act of 1849 :—"For abating and causing to be removed all public nuisances:" 12 V. c. 81, ss. 60 (10), (villages): ss. 61, 67, 80, (towns): ss. 82, 106, (cities). Extended to townships in 1884 by 47 V. c. 32, s. 13.

(*a*) *Fremin* v. *Lewis*, 4 M. & C. 255 (1838); *Imperial Gas Co.* v. *Broadbent*, 7 De G. M. & G. 459; 7 H. L. Cas. 600 (1859): *Dunn* v. *Birmingham Canal Co.*, (Ex. Ch.), L. R. 8 Q. B. 42, 47 (1872): *Clowes* v. *Staffordshire Potteries Waterworks Co.*, L. R. 8 Ch. 125 (1872) : *Canadian Pacific R. W. Co.* v. *Parke*, 6 B. C R. 6 (1897); reversed [1899] A.C. 575 ; and the cases collected in footnotes (f) on p. 457, (f) on p. 465 and (d) on p. 651, *ante*.

(*b*) *Jones* v. *Festiniog R. W. Co.*, L. R. 3 Q. B. 733 (1868): *Rapier* v. *London Tramways Co.*, [1893] 2 Ch. 588.

(*c*) *Supra*, p. 758, foot note (i).

(*d*) *Cf. Metropolitan Asylum District* v. *Hill*, 6 App. Cas. 193, 212 (1881) with *Gaslight and Coke Co.* v. *St. Mary Abbott's, Kensington*, 15 Q. B. D. 1, 56 (1885); and see *Jordeson* v. *Sutton, Southcoates & Drypool Gas Co.*, [1898] 2 Ch. 614; [1899] 2 Ch. 217 (C. A.): *Attorney-General* v. *Johnson*, 2 Wils. C. C. 102 (1819): *Atty.-Gen.* v. *Sheffield Gas Co.*, 3 De G. M. & G. 304 (1852): *Atty.-Gen.* v. *Proprs. of Bradford Canal*, L. R. 2 Eq. 71 (1866): *Atty.-Gen.* v. *Leeds Corporation*, L. R. 5 Ch. 583 (1870); and *per* ROBINSON, C. J., in *Watson* v. *Gas Co.*, 5 U. C. R. 262 (1848), at p. 264.

(*e*) 8 C.P. 236, 238 (1859).

Sec. 586.

Note (b).

Public nuisances.

The remedy by abatement.

(b) "**For preventing and abating,**" **etc.** The power here given is to pass by-laws "for preventing and abating public nuisances",—*i. e.*, to prohibit anything which *is* (but not everything which municipal councils may happen to regard as) public nuisances; (*a*) and—in the case of nuisances actually existing—to authorize their abatement,—*i. e.*, their removal, destruction or extirpation—by duly appointed officers of the corporation, (*b*) or (it would seem) by any private individual specially injured thereby—at all events where this does not involve a breach of the peace (*c*) or a trespass. (*d*) Even without the authority of a municipal by-law, any person who is specially injured thereby may abate a public nuisance, (*e*) provided that in so doing he occasions no riot, nor any greater injury to property than is absolutely necessary. (*f*) He may enter, for that purpose, upon the land of him who, either by some positive act or by default in the performance of some legal duty or obligation (*g*) has created the nuisance; and this he may do without notice, but only where the nuisance is one immediately dangerous to life and health. (*h*).

In order to warrant a resort to the summary remedy of abatement, the nuisance must actually exist (*i*); the abatement must not go beyond what is necessary to get rid of it (*j*); and "if there are two ways of abating the nuisance he must choose the less mischievous of the two," unless "by one of these alternative methods some wrong would be done to an innocent third party or to the public," in which case "that method cannot be justified at all, although an interference with the wrongdoer himself might be justified, . . . and it may become necessary to abate the nuisance in a manner more onerous to the wrongdoer." (*k*)

The remedy by action or information.

In general, no private action can be maintained for a public nuisance, the damage being common to all the subjects of the Crown; but "if any particular person, after the nuisance made, hath more particular damage than any other, in such case, and because of his particular damage, he shall have particular action, as if he and his horse fall into a ditch dug in the highway whereby he receives hurt and loss." (*l*)

(*a*) Dillon, s. 374: *Reg.* v. *Webster*, 16 O. R. 187 (1888): *Johnson* v. *Croydon* (*Mayor of*), 16 Q.B.D. 708 (1886), *per* MATHEW, J., at p. 710.

(*b*) S. 703. See *Louth R. D. Council* v. *West*, 12 Times L. R. 477 [1896].

(*c*) *Penruddock's Case*, 5 Co. Rep., 101 (1598): *Baten's Case*, 9 Co. Rep., 53 (1611) at p. 55: *Chicester* v. *Lethbridge*, Willes 71 (1738): *Houghton* v. *Butler*, 4 T. R. 364 (1791).

(*d*) *London & South Western R. W. Co.* v. *Webb*, 15 C. B. N. S. 450 (1863): *Scarborough* (*Mayor of*) v. *Rural Sanitary Authority of Scarborough*, 1 Ex. D. 344 (1876).

(*e*) *Vide supra*, p. 679, foot note (f); also Bracton, Bk. IV. c. 43: Hawkins' P. C., Bk. I, c. 75, s. 12: *James* v. *Hayward*, Cro. Car. 184 (1630): *Day* v. *William*, 16 Q.B. 546 (1851): *Lane* v. *Capsey*, [1891] 3 Ch. 411.

(*f*) See the cases cited *infra*, in foot notes (j), (k): and *per* Lord DENMAN, C.J., in *Mayor of Colchester* v. *Brooke*, 7 Q.B. 339 (1845), at p. 377.

(*g*) *E. g.*, the owner of unoccupied land which has become a public nuisance by persons throwing refuse upon it, as in *Atty.-Gen.* v. *Tod-Heatley*, [1897] 1 Ch. 560. But see *Thames Conservators* v. *Port of London Sanitary Authority*, [1894] 1 Q.B. 647.

(*h*) *Jones* v. *Williams*, 11 M. & W. 176 (1843): *Lemmon* v. *Webb*, [1894] 3 Ch. 1; [1895] A.C. 1.

(*i*) *Morrice* v. *Baker*, 3 Bulstr. 196 (1617).

(*j*) *Cooper* v. *Marshall*, 1 Burr. 259, 268 (1757), and *Dimes* v. *Petley*, 15 Q.B. 276 (1850). Damages may be given for unnecessary injury done to property in abating a nuisance: *Truesdale* v. *McDonald*, Tay. 121 (1826).

(*k*) *Per* BLACKBURN, J. in *Roberts* v. *Rose*, L.R. 1 Ex. 82, 89 (1865): and see *Perry* v. *Fitzhowe*, 8 Q.B. 757 (1846): *Bateman* v. *Bluck*, 18 Q.B. 870 (1852.)

(*l*) Viner's Abr., *Tit.*, "Chimin Common," (D 2): Co. Litt. 56a; and see *Watson* v. *City of Toronto Gas Light, etc., Co.*, 4 U.C.R. 158 (1847): *Tucker* v. *Axbridge Highway Board*, 53 J.P. 87 (1888): *Brown* v. *Eastern and Midlands R. W. Co.*, 22 Q.B.D. 391 (1889).

Sec. 586 (1). Note (b.)

The Attorney-General may take proceedings on behalf of the public even though there is no evidence that actual injury has been inflicted. (*a*) But "in order to entitle a private person to maintain an action for damages caused by that which is a public nuisance the damage must be particular, direct and substantial." (*b*) Accordingly in *Baird* v. *Wilson* (*c*) the plaintiff failed in an action for obstructing the public highway, because he was unable to prove any substantial damage peculiar to himself beyond that suffered by the rest of the public who used the way, but only that he was obliged (like others) to travel by a less direct road.

The remedy by action or information.

If there is both public nuisance and private damage, the proceeding should be by the Attorney-General to restrain or abate the public nuisance, and by the individual specially injured, as relator and also as plaintiff in respect of his particular damage. (*d*)

Or by both.

As to how the plaintiff's right to relief may be affected by acquiescence or delay, see *Barwell* v. *Brooks*, 1 L.T.N.S. 454 (1843): *Gordon* v. *Cheltenham R. W. Co.*, 5 Beav. 229, 233 (1842): *Kelsey* v. *Dodd*, 52 L.J. Ch. 34 (1881): *Rochdale Canal Co.* v. *King*, 2 Sim. N.S. 89 (1851): *London, Chatham & Dover R.W. Co.* v. *Bull*, 47 L.T.N.S. 413 (1882): *Duke of Northumberland* v. *Bowman*, 56 L.T.N.S. 773 (1887): *Sanson* v. *Northern R. W. Co.*, 29 Grant 459 (1881): High on Injunctions, (3rd Ed.), s. 756.

Sections 67-71 and s. 73 of "*The Public Health Act*" (R. S. O. c. 248), provide that:— R.S.O., c. 248

Information of nuisances to Local Board of Health.

"**67.** Information of any nuisance or unsanitary condition under this Act within the jurisdiction of any Local Board may be given to such Local Board by any person aggrieved thereby, or by any two inhabitant householders, or by any officer of such Local Board, or by any constable or officer of the police force within the jurisdiction of the Board. (*e*)

Investigation to be made by Local Board.

68. Where such information has been so given, it shall be the duty of the Local Board of Health to investigate the cause of the complaint: and to hear the testimony of all persons who may be produced before it to testify in respect of such matter; and every Local Board or any two of its members shall have the same authority as a Justice of the Peace to require and compel the attendance of witnesses and the giving of evidence.

Local Board to serve notice requiring abatement of nuisance.

69. Wherever the Local Board of Health is satisfied of the existence of the nuisance, it shall serve a notice on the person by whose act, default or sufferance the nuisance arises or continues, or, if such person cannot be found, on the owner or occupier of the premises on which the nuisance exists or from which the same arises, requiring him to abate the same within a time to be specified in the notice (*f*) and to execute such works and do such things, as may be necessary for that purpose, (*g*) provided:

(*a*) *Atty.-Gen.* v. *Shrewsbury, etc., Bridge Co.*, 21 Ch. D. 752 (1882): and see *Atty.-Gen.* v. *Tod-Heatley*, [1897] 1 Ch. 560: *Atty.-Gen.* v. *London & Northwestern R. W. Co.*, [1899] 1 Q.B. 72; [1900] 1 Q.B. 78. *Sed vide Atty.-Gen.* v. *Manchester Corporation*, [1893] 2 Ch. 87.

(*b*) *Benjamin* v. *Storr*, L.R. 9 C.P. 500 (1874), *per* BRETT, J., at p. 406: *Hubert* v. *Graves*, 1 Esp. 148 (1794): *Soltau* v. *De Held*, 2 Sim. N.S. 133 (1851): *Winterbottom* v. *Lord Derby*, L.R. 2 Ex. 316 (1867): *Cook* v. *Mayor of Bath*, L.R. 6 Eq. 177 (1868): High on Injunctions, (3rd Ed.), ss. 761, 763.

(*c*) 22 C.P. 491 (1872). See also *Fisher* v. *Township of Vaughan*, 12 U.C.R. 55 (1854): *Magee* v. *London & Port Stanley R. W. Co.*, 6 Grant 170 (1857), and *Jarvis* v. *Great Western R. W. Co.*, 8 C.P. 115 (1858).

(*d*) *Per* KINDERSLEY, V.C., in *Soltau* v. *De Held*, supra, at p. 151, citing *Attorney-General* v. *Johnston*, 2 Wils. Ch.C. 8 (1819): *Attorney-General* v. *Forbes*, 2 M. & C. 123 (1836): and see *Attorney-General* v. *United Kingdom Tel. Co.*, 30 Beav. 287 (1861): *Atty.-Gen.* v. *Lonsdale*, (*Earl of*), L.R. 7 Eq. 377 (1868).

(*e*) Imp. Stat. 38-39 V. c. 55, s. 93.

(*f*) Or "forthwith,": *Thomas* v. *Western Trawling Co.*, 59 J.P. 232 (1894).

(*g*) See *Ex p. Whitchurch*, 6 Q.B.D. 545 (1881): *Ex p. Saunders*, 11 Q.B.D. 191 (1883): *Reg.* v. *Llewellyn*, 13 Q.B.D. 681 (1884): *Reg.* v. *Justices of Kent*, 49 J. P. 404 (1885): *Whittaker* v. *Derby*, 50 J. P. 357 (1885): *Reg.* v. *Wheatley*, 16 Q. B. D. 34 (1885)

Sec. 586 (1) Note (b.)

Public nuisances. R.S.O. c. 248, ss. 69-73.

First,—That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner; (*a*)

Second,—That where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act or default of the owner or occupier of the premises, and it is therefore improper that such owner or occupier should be required to abate the said nuisance, the Local Board of Health may abate the nuisance at the expense of the municipality or district. (*b*)

Power to proceed where cause of nuisance arises without district.

70. Where a nuisance in a municipality or district appears to be wholly or partially caused by some act or default committed or taken place outside of the municipality or district, the Board of Health of the municipality or district affected thereby may institute an inspection, and when necessary may take or cause to be taken against the person by whose act or default the nuisance is caused in whole or in part, any proceedings in relation to nuisances by this Act authorized, with the same incidents and consequences, as if such act or default were committed or took place wholly within its jurisdiction, so, however, that summary proceedings shall in no case be taken otherwise than before a Court having jurisdiction in the municipality or district where the act or default is alleged to be committed or to take place. (*c*)

Recovery of costs and expenses incurred in abating nuisances.

71. All reasonable costs and expenses incurred in abating a nuisance shall be deemed to be money paid for the use and at the request of the person by whose act, default or sufferance the nuisance was caused, and such costs and expenses shall be recovered by the municipal council or Local Board of Health or person incurring the same, under ordinary process of law; and the Court shall have power to divide costs, expenses and penalties between persons by whose acts or defaults a nuisance is caused as to it may seem just. (*d*)

Provision where abatement of nuisance involves considerations of difficulty.

73.—(1) If, on an investigation by any Local Board of Health, any nuisance or thing prejudicial to health is found to exist in a municipality in which it has jurisdiction; and if, after the Board has required the removal or abatement of the same within a specified time, the Board finds that default in such removal or abatement has been made, and the case seems to the Board one involving considerations of difficulty owing to the fact that such removal or abatement involves the expenditure or loss of a considerable sum of money, or that any trade or industry is seriously interfered with, or owing to other circumstances, the Local Board of Health may apply to the Provincial Board of Health to investigate and report upon the same, and it shall be the duty of the Provincial Board, with the approval of the Minister of the department to which the same is attached, to make a full investigation and report.

Order of the H. C. J.

(2) If the report recommends the removal or abatement of the nuisance or thing, the Local Board or any ratepayer residing in the municipality, or within a mile thereof may apply to the High Court, for an order for the removal or abatement of the nuisance or unsanitary condition, and to restrain the proprietors of any such industry from carrying on the same until the said nuisance has been abated to the satisfaction of the Provincial Board of Health; and the Court may issue such order upon the report of the Provincial Board of Health."

In the absence of some such express statutory provision as above (*e*) or of some special damage to municipal property, it would seem that, except in the case of a public highway vested in the municipality under s. 601, or over which it has the jurisdictional rights conferred by s. 600 of this Act, the right of a

(*a*) See *Parker* v. *Inge*, 17 Q. B. D. 584 (1886).

(*b*) *Cf.* Imp. Stat. 38-39 V. c. 55, s. 94.

(*c*) *Cf.* Imp. Stat. 38-39 V. c. 55, s. 108.

(*d*) *Cf.* Imp. Stat. 38-39 V. c. 55, s. 104.

(*e*) Or as in ss. 3, 10 of "*The Rivers Pollution Act, 1876*," (Imp. Stat. 39-40 V. c. 75), referred to in *Kirkheaton District Local Board* v. *Ainley*, [1892] 2 Q.B. 274; *Re West Riding York Urban Sanitary Authority*, 59 J. P. 213 (1895), and *County Council of Derbyshire* v. *Derby (Borough of)*, [1896] 2 Q. B. 297.

municipal corporation or other local authority to bring an action in its own name for the prevention (*a*) or abatement of a public nuisance is not different from or greater than that of an individual (*b*), and the proceeding must be by indictment or by an action in the nature of an information by the Attorney General, the corporation or other local authority being, if they choose, the relators (*c*). But if the nuisance is one affecting property owned by the corporation, or vested in them, or placed under their jurisdiction by statute, they may be joined as co-plaintiffs with the Attorney-General or may themselves, without him, maintain an action for an injunction or for damages or for both (*d*).

Sec. 586. (1) Note (b.)

The remedy by action or information.

An instructive case relating to this subject is *Attorney General* v. *Clerkenwell Vestry.* (*e*) It was an information and action brought against the local authority of the parish of St. James and St. John, Clerkenwell, by the urban sanitary authority of an adjoining district, for an injunction restraining the defendants from permitting sewage to flow from their parish into and through the plaintiff's district so as to cause a nuisance. It appeared that houses in the defendant parish emptied their cess-pools (by connecting pipes) into main pipe sewers, which, passing under streets in that parish, ultimately emptied sewage into certain brooks in the plaintiff's district, where it caused a nuisance which was alleged to endanger the public health. It was conceded that the plaintiffs could have put an end to the nuisance by proceeding against the persons actively committing it,—*i. e.* the occupants and owners of these houses—; but the question was as to their rights against the defendants, who had done no more than permit the sewage to pass through their drains. It was held:—(1), that the defendants (they having undertaken not to allow any new connections to be made with their sewers without the plaintiffs' consent) could not be compelled to cut off and could not legally cut off private drain connections which they had already permitted to be made (*f*); (2) that inasmuch as the sewers and cess-pools were acting properly *as such*, the defendants could not themselves successfully take proceedings against the owners or occupiers of the houses in question under s. 85 of "*The Metropolis Management Act, 1855*," which relates only to drains, etc., which "appear to be in bad order and condition,"—nor (since there was no nuisance within the district over which alone they had jurisdiction) could they proceed under "*The Nuisances Removal Act, 1855*;" (3) that even if they had power so to proceed, the Court would not compel them to exercise it for the benefit of the plaintiffs (*g*), and (4) "that it is no ground for granting an injunction against a Local Board that they are not properly exercising their powers or performing their duties." (*h*)

(*a*) "The jurisdiction of this Court [of Chancery] in relation to matters of public nuisance . . . is is in its nature a preventive rather than a remedial jurisdiction." *Per* BLAKE, C., in *Attorney General* v. *Weston Plank Road Co.*, 4 Grant 211 (1853), at p. 216.

(*b*) *Wallasey Local Board* v. *Gracey*, 36 Ch. D. 593 (1887); *Tottenham Urban District Council* v. *Williamson*, [1896] 2 Q. B. 353.

(*c*) See note (**f**) to s. 562 *ante*. p. 679: *Attorney General* v. *Cockermouth Local Board*, L. R. 18 Eq. 172 (1874): *Nuneaton Local Board* v. *General Sewage Co.*, L.R. 20 Eq. 127 (1875), referred to in the *Wallasey Case*, 36 Ch. D., at p. 598 (1887). And see *Attorney-General* v. *Shrewsbury*, etc., *Bridge Co.*, 21 Ch. D. 752 (1882); *Attorney-General* v. *London and North-Western R. W. Co.* [1899], 1 Q. B. 72; [1900] 1 Q.B. 78.

(*d*) *Attorney-General* v. *Logan*, [1891] 2 Q. B. 100: *Tottenham Urban District Council* v. *Williamson*, supra; *Atty.-Gen.* v. *Tod-Heatley*, supra p. 760 foot note (g); and see the cases collected in note (**b**) to s. 600, and in note (**d**) to s. 606, *post*.

(*e*) [1891] 3 Ch. 527.

(*f*) *Attorney-General* v. *Dorking Guardians*, 20 Ch. D. 595, 606 (1881); *Attorney-General* v. *Acton Local Board*, 22 Ch. D. 221, 232 (1882); *Charles* v. *Finchley Local Board*, 23 Ch. D. 767, 777 (1883).

(*g*) "I never heard of any one bringing an action against a person because that person did not bring an action which the plaintiff could bring himself." *Per* COTTON, L. J., in *Attorney-General* v. *Dorking Guardians*, 20 Ch. D. 595 (1881) at p. 609.

(*h*) *Per* ROMER, J., [1891] 3 Ch., at p. 537, citing and following *Glossop* v. *Heston and Isleworth Local Board*, 12 Ch. D. 102 (1879). *Cf. Gray* v. *Town of Dundas*, 11 O.R. 317 (1886).

Sec. 586. (1) (2) (3).

Notes (b), (c), (d).

Public nuisances; the remedy by indictment.

There remains, however, the remedy by indictment, (*a*) which, though in form a criminal proceeding, is really remedial in its object and therefore substantially in the nature of a civil action. (*b*)

It was held that the owner of works carried on by his agents for his profit could be indicted for a public nuisance caused by acts of his workmen in carrying on the works, although the acts causing the nuisance (viz., the deposit of the rubbish from a slate quarry in a public navigable river) were done without his knowledge, and contrary to his general orders. (*c*)

Manufactures and Trades.

Manufactures and trades.

2. For regulating manufactures or trades which may prove to be nuisances. 55 V. c. 42, s. 489 (44); 521 (14), *part*; 60 V. c. 15, *Sched.* C (84) (90).

Slaughter-houses, gas-works, distilleries, etc.

3. For preventing and regulating the erection or continuance of slaughter houses, gas works, tanneries or distilleries or other manufactories or trades which may prove to be nuisances. 55 V. c. 42 s., 589 (44).

Sub-sec. 2 is based upon 49 V. c. 37, s. 14 (1886), by which township councils were empowered to pass by-laws:—"For regulating, *within the township*, slaughter houses and *other* manufactures or trades which may prove to be nuisances." In R. S. O. (1887), c. 184, s. 521 (11) the words in italics were omitted. The effect of 60 V. c. 15, Sched. C (84) (90) was to strike out the specific reference to slaughter-houses and extend to all local municipalities the general powers conferred by the sub-section. Sub-section 3 is from the Act of 1849, (12 V. c. 81), s. 60 (10) (villages); ss. 61, 67, 80 (towns); ss. 82, 106 (cities), and was extended to townships in 1884 by 47 V. c. 32, s. 13.

(c) "**For regulating.**" "**For preventing and regulating.**" See note (**a**) to s. 329, note (**b**) to s. 580, and notes (**j**) and (**u**) to s. 583.

Extent of municipal powers.

(d) "**Which may prove to be nuisances.**" The powers here referred to do not extend to every manufacture or trade which, in the judgment of the council, may prove to be a nuisance, (*d*) but only to such as in fact come within that category (*e*). And—with regard at all events to manufactures and trades not herein specially named—it is apprehended that the power of prevention must be read as limited (*f*) to cases in which the manufactory or trade is a nuisance *per se*, or by reason of the manner by which it is carried on. (*g*)

The principal nuisances arising from the carrying on of manufactures and trades in thickly settled localities are noise, smoke, and noxious or offensive smells.

Noise.

"A nuisance by noise (supposing malice to be out of the question) is emphatically a question of degree. If my neighbour builds a house against a party wall next to my own, and I hear through the wall more than is agreeable to me of the sounds from his nursery or music-room, it does not follow,

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(*a*) See the cases as to highway obstructions collected in note (**b**) to s. 600; *Rex* v. *Robinson*, 2 Burr. 800 (1759) and *per* Lord Romilly, M. R., in *Vestry of Bermondsey* v. *Brown*, L. R. 1 Eq. 204, 212 (1865).

(*b*) *Rex* v. *Sadler*, 4 C. & P. 218 (1830); *Holmes* v. *Wilson*, 10 A. & E. 503 (1839); *Thompson* v. *Gibson*, 7 M. & W. 456 (1841); *Re Douglas*, 3 Q. B. 825 (1842); *Reg.* v. *Chorley*, 12 Q. B. 515 (1848); *Reg.* v. *Russell*, 3 E. & B. 942 (1854); *Reg.* v. *Stephens*, L.R. 1 Q.B. 702 (1866), *per* Mellor, J., at p. 708.

(*c*) *Reg.* v. *Stephens*, supra. But see the observations of Field, J., in the later case of *Chisholm* v. *Doulton*, 22 Q. B. D. 736 (1889), quoted in note (**i**), *infra*.

(*d*) *Cf.* s. 551 (4).

(*e*) *Cf.* s. 542 (3) (4): *Johnson* v. *Croydon* (*Mayor of*), 16 Q.B.D. 708 (1886), referred to in note (**k**), *infra*: *Reg.* v. *Webster*, 16 O. R. 187 (1888), in note (**b**), *supra*.

(*f*) See note (**j**), *infra*.

(*g*) See Dillon, s. 374: *Braintree Local Board of Health* v. *Boyton*, 52 L.T. N.S. 99 (1885), and *Cardiff Manure Co.* v. *Cardiff Union*, 54 J. P. 66 (1890), cited *infra*, on p. 766, footnote (f).

even if I am nervously sensitive or in ill-health, that I can bring an action or obtain an injunction. Such things, to offend against the law, must be done in a manner which beyond fair controversy ought to be regarded as exceptive (*sic*) and unreasonable." (*a*)

Sec 586 (2) (3). Note (d).

Noise.

In *Webb* v. *Barker* (*b*) an injunction was granted preventing the defendants from carrying on building operations during the night to the annoyance of an adjoining occupier, and limiting the working hours to those between 6 a.m. and 8 p.m.; and injunctions have been granted to prevent noise arising from a rolling mill (*c*), a steam engine and circular saw (*d*), stables (*e*), the making of confectionery (*f*), the rivetting of boiler plates (*g*), the carrying on of a dairy business (*h*), the giving of music and singing lessons (*i*), the construction of public works, etc. (*j*); and see as to nuisances arising from the ringing of bells, blowing of horns and playing of musical instruments, the cases cited in note (**a**), *supra* and note (**k**), *infra*.

Smoke.

Several decisions as to the nuisance caused by smoke will be found collected *infra* under sub-sec. 6, which relates to that subject. See also, as to the common law rights of parties in regard to nuisances thus created, *Cartwright* v. *Gray* (*k*), in which the defendant was restrained from using the steam engine of a saw- and planing-mill in such manner as to cause damage or annoyance to the plaintiff by smoke emitted from the mill-chimney.

As to smells, etc., arising from the carrying on of offensive trades,—section 112 of "*The Public Health Act*" (*l*) provides that:—

Offensive trades.

> "In case a person establishes, without the consent of the municipal council of the locality, any offensive trade, that is to say, the trade of blood boiling, or bone boiling, (*m*) *refining of coal oil*, or *extracting oil from fish*, (*n*) or storing of hides, or soap boiling, or tallow melting, or boiling, or *slaughtering of animals*, or *manufacturing of gas*, or tripe any other noxious or offensive trade, business or manufacture, or such as may become offensive, he shall be liable to a penalty not exceeding $250 in respect of the establishment thereof; and any person carrying on a business so established shall be liable to a penalty not exceeding $10 for every day on which, after notice in writing by the Local Board or an officer thereof to desist, the offence is continued, whether there has or has not been any conviction in respect of the establishment thereof."

This section is copied from s. 112 of "*The Public Health Act, 1875*" (*o*), which, however, does not mention the trades above named in italics, and under which (or under the corresponding words of Imp. Stat. 11-12 V. c. 63, s. 61) it has been held that the business of brickmaking is not *per se* a noxious or offensive trade analogous to those specifically enumerated in the section (*p*);

(*a*) *Per* Lord SELBORNE in *Gaunt* v. *Finney*, L. R. 8 Ch. 8 (1872), at p. 12.

(*b*) (1881) W. N. 158.

(*c*) *Scott* v. *Frith*, 10 L. T. N. S. 240 (1864).

(*d*) *Gort* v. *Clark*, 18 L. T. N. S. 343 (1868).

(*e*) *Ball* v. *Ray*, L. R. 8 Ch. 467 (1873); *Broxer* v. *Saillard*, 2 Ch. D. 692 (1876).

(*f*) *Sturges* v. *Bridgman*, 11 Ch. D. 852 (1879).

(*g*) *Hathaway* v. *Doig*, 28 Grant 461 (1881).

(*h*) *Fanshaw* v. *London & Provincial Dairy Co.*, 4 Times L. R. 694 (1887); *Tinkler* v. *Aylesbury Dairy Co.*, 5 Times L. R. 52 (1888).

(*i*) *Motion* v. *Mills*, 13 Times L. R. 427 (1897); *sed vide Christie* v. *Davey*, [1893] 1 Ch. 316, cited in note (**a**), *supra*.

(*j*) *Howland* v. *Dover Harbour Board*, 14 Times L. R. 355 (1898).

(*k*) 12 Grant 399 (1866). (*l*) R. S. O. c. 248.

(*m*) *Verco* v. *Morris*, 26 Sol. J. 126 (1880). And see *Cardiff Manure Co.* v. *Cardiff Union*, 54 J. P. 66 (1890), referred to *infra*, p. 766.

(*n*) *Houldershaw* v. *Martin*, 49 J. P. 179 (1885). And see *Braintree Local Board of Health* v. *Boyton*, 52 L.T.N.S. 99 (1885) referred to *infra*, p. 766.

(*o*) Imp. Stat. 38-39 V. c. 55. See an article in "Offensive Trades" in 49 J. P. (1885) at p. 179.

(*p*) *Wanstead Local Board* v. *Hill*, 13 C. B. N. S. 479 (1863).

Sec. 586 (3), (4). Notes. (d), (e).

Offensive trades.

nor is a brewhouse (a), nor a manufactory of manure (b), nor a hospital for infectious diseases (c). But in *Passey* v. *Oxford Local Board* (d), where the appellant, having set up the business of a rag-and-bone merchant, was convicted under this section,—the magistrate holding as a fact that the business was noxious and *ejusdem generis* with those specified in the section,—it was held that the conviction was right. See sub-sec. 5, *infra*.

Braintree Local Board of Health v. *Boyton* (e) decided that the section only applies where a business is *necessarily* noxious or offensive, and that a fish-frying business, although it was so carried on that the effluvia arising therefrom extended to a distance of 200 or 300 yards, was not a noxious or offensive business within the meaning of the section; and in *Cardiff Manure Co.* v. *Cardiff Union* (f), where a bone-boiling business—though it is one of those named in the section—was carried on in such a way, (viz.—by enclosing the bones in metal cylinders and treating them with dry steam), that there was no smell, the Court held that the Quarter Sessions had rightly quashed a conviction of the defendants for carrying on a noxious or offensive business without the sanction of the Local Board of Health.

The business of a butcher who slaughters beasts on the premises has been held not to be "a noxious, offensive, noisy or noisome trade" within the meaning of these words in a restrictive covenant (g).

Slaughter Houses.

4. For establishing public slaughter houses, and for preventing, regulating and inspecting the erection or continuance of slaughter houses, and for prohibiting the slaughter of animals intended for food except in slaughter houses designated in the by-law. In towns, villages and townships this clause shall not apply to the slaughter of animals which are so slaughtered for the use of the person killing the same and of his family. 55 V. c. 42 s. 521 (14), *part*; 56 V. c. 35, s. 18.

Taken from 56 V. c. 35, s. 18. The reference in the R.S.O. to 55 V. c. 42, s. 521 (14) is a mistake. That sub-section was intended to be repealed by 60 V. c. 15, Sched. C (90). See *supra* under sub-secs. 1-3 of this section.

Preventing, etc.

(e) "**For preventing, regulating and inspecting.**" See note (a) to sec. 329, note (b) to sec. 580, and notes (j) and (u) to sec. 583.

R.S.O. c. 250.

Further provision regarding this subject is made by R. S. O. c. 250, entitled "*An Act respecting the slaughtering of cattle and the inspection of meat and milk supplies of cities and towns*," which declares that :—

Slaughter houses.

"1.—(1) The municipal council of every city or town may by by-law provide for the establishment of a public slaughter house, or abattoir, within the limits of the municipality, or in such adjoining municipality as shall by by-law sanction its erection therein, and for the construction of cattle yards and pens for the proper keeping therein of animals intended for slaughter, and for charging fees to defray the costs incurred by the Local Board of Health in carrying out the provisions of this Act.

Regulations respecting.

(2) Every such slaughter house or abattoir, and cattle-yard and pen, shall be constructed, equipped and regulated in conformity with any regulations in that behalf from time to time adopted by the Provincial Board of Health and approved by the Lieutenant-Governor in Council.

(a) *Gorton* v. *Smart*, 1 Sim. & Stu. 66 (1822).

(b) *Cardwell* v. *Newquay Local Board*, 39 J. P. 742 (1875).

(c) *Withington District Local Board* v. *Corporation of Manchester*, [1893] 2 Ch. 19: *Atty.-Gen.* v. *Corporation of Manchester*, [1893] 2 Ch. 87: and see *Metropolitan Asylum District* v. *Hill*, 6 App. Cas. 193, 212 (1881): *Fleet* v. *Metropolitan Asylum Board*, 1 Times L. R. 80; 2 Times L. R. 361 (1884-5): *Bendelow* v. *Wortley Union*, 57 L. T. N. S. 849 (1888).

(d) 43 J. P. 622 (1879). (e) 52 L. T. N. S. 99 (1885).

(f) 54 J. P. 66 (1890).

(g) *Cleaver* v. *Bacon*, (*sic*), 4 Times L. R. 27 (1887); *Rapley* v. *Smart*, (1894), W. N. 2.

Sec. 586 (4) (5).

Notes (e)-(h).

2. (1) The Local Board of Health of every city or town in which such slaughter house or abattoir, cattle-yards or pens, may be established shall have the control and supervision of the same, and shall be responsible for the due carrying out of the regulations of the Provincial Board of Health made in connection therewith; and the costs of the supervision and inspection carried out under this Act, and of any regulations made under it with regard to slaughter houses or abattoirs, or cattle-yards or pens, or in carrying out any other provisions of this Act, shall be paid from time to time by the treasurer of the city or town out of the fees charged for such slaughter or inspection, on the order of the Local Board of Health.

Local Board of Health to have control.

(2) The powers conferred upon Local Boards of Health and their officers by section 108 of *The Public Health Act* shall apply in the supervision and inspection carried on under this Act.

R. S. O. c. 248, s. 108, to be applicable.

3. The Local Board of Health of every city and town where such cattle-yards and pens are established may employ one or more competent persons, approved of by the Medical Health Officer, to inspect at such slaughter house or abattoir, or at such cattle-yards or pens, all animals, carcasses and meat brought into the municipality and intended for human food."

Inspecting animals and meat.

The limitation, in the sub-section under consideration—and also in the last clause of R.S.O. c. 250, s. 3—to "animals . . . intended for [human] food," was probably suggested by the decision in *Elias* v. *Nightingale* (*a*).

Section 61 of "*The Public Health Act, 1848*," (*b*) which corresponds with the section [112] of "*The Public Health Act, 1875*," quoted in the preceding note, prohibited, under a penalty of £50, the establishment in any building or place to which the Act applied, of the business of a slaughterer of cattle, etc., without the consent of the Local Board of Health. After the Act had been applied to a district—cattle not having theretofore been slaughtered in the market thereof—a cattle company erected a building in which they allowed persons to slaughter cattle on payment of two shillings a head, the company finding the tackle attached to the building, but the persons slaughtering bringing their own implements. *Held*, that the company had established the business of slaughterers of cattle, within the meaning of the Statute (*c*).

What is a slaughter house?

By the councils of counties, cities and separated towns:—

5. For defining the areas within which tanneries hereafter erected, rag, bone or junk shops, or other industries of a noxious or unhealthy character may not be carried on within the municipality. 55 V. c. 42, s. 495 (12).

Defining districts within which certain trades may not be carried on.

Taken from 53 V. c. 50, s. 21 (1890).

(f) "**For defining the areas.**" See ss. 542 (1) (c), 686 (2), (4).

(g) "**Rag, bone or junk shops.**" As to rag-and-bone shops see *Pussey* v. *Oxford Local Board*, (*d*) referred to in note (**d**) *supra*; as to junk shops, note (**b**) to s. 484 and s. 583 (22), (22a), *ante*.

Tanneries, rag, bone or junk shops.

(h) "**Noxious** *or* **unhealthy.**" *Cf.* the language of "*The Public Health Act*," (*e*)—"any nuisance *or* thing prejudicial to health," (*f*)—"any nuisance *or* unsanitary condition," (*g*) "anything likely to endanger the public health *or* to become or cause . . . or which is or is causing a nuisance,"—(*h*) and see the cases of *The Malton Urban Sanitary Authority* v. *Malton Farmers' Manure Co.*, 4 Ex. D. 352 (1879); *Banbury Local Board* v. *Page*, 8 Q. B. D. 97 (1881); *Bishop Auckland Local Board* v. *Bishop Auckland Iron & Steel Co.*, 10 Q. B. D. 138 (1882); and *Houldershaw* v. *Martin*, 49 J. P. 179 (1885), all referred to in note (**a**) *supra*.

Tanneries, etc.

(*a*) 8 E. & B. 698 (1858). (*b*) Imp. Stat. 11-12 V. c. 63.
(*c*) *Liverpool New Cattle Market Co.* v. *Hodson*, L. R. 2 Q. B. 131 (1867).
(*d*) 39 J. P. 742 (1875).
(*e*) R. S. O. c. 248. (*f*) S. 73. (*g*) S. 67. (*h*) Ss. 65, 80.

Sec. 586 (6).

Note (i). Prevention of smoke nuisance.

By the councils of cities, towns and villages :

6. For compelling manufacturers and others to have such chimneys or other apparatus as shall consume the smoke or prevent the same from fouling the atmosphere or being carried by the wind or otherwise to other shops, houses, or premises, to the inconvenience or injury of the neighbouring premises or residents therein. 55 V. c. 42, s. 496 (16), *part.*

Taken from 44 V. c. 24, s. 13 (1881), the rest of which now forms s. 542 (5) of this Act.

(i) Section 91 of "*The Public Health Act, 1875,*" (*a*) declares to be nuisances :—

> "Any fire place or chimney which does not as far as practicable consume the smoke arising from the combustible used therein, and which is used for working engines by steam, or in any mill, factory, dye-house, brewery, bake-house or gas-work, or in any manufacturing or trade process whatsoever; and any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance."

Magistrates, acting under the above sections and ss. 12 and 13 of Imp. Stat. 18-19 V. c. 121,—which empower Justices of the Peace to make an order for the abatement of a nuisance in such manner and within such time as in such order shall be specified,—ordered the occupiers of certain premises to cease sending forth black smoke from their chimneys, so that the same should be no longer a nuisance. This order having been persistently disregarded, nineteen informations were laid, each for a separate day, and the offenders were convicted and fined separately on each charge. They objected that their disobedience constituted but one default, and that they could only be convicted and fined for a single offence; but it was held that each daily emission of smoke was a separate act of disobedience, for which a separate summons could lawfully be issued (*b*).

To be a nuisance under these sections the smoke need not be injurious to health (*c*).

Under a local Act which prohibited the *negligent* use of a furnace so as to cause the emission of smoke—it being shewn that the furnace was properly constructed, and a competent person placed in charge, but that the smoke was caused by the negligent act of a servant,—it was held, (BLACKBURN, J. dissenting), that only the servant, and not the employer, was liable (*d*).

In *Barnes* v. *Akroyd*, (*e*) the defendants having been summoned for sending out black smoke from a chimney of premises belonging to them—not being the chimney of a private dwelling house)—in such quantities as to be a nuisance under the above section, proof was given that the smoke had been emitted and was a nuisance, and that the defendants occupied the premises as a factory ; but there was no evidence as to who had charge of the premises. The magistrates dismissed the case, holding that the person primarily liable was "the person by whose act, default, permission or sufferance the nuisance arises" etc., (*f*) and that the owner or occupier of the premises could only be summoned "if such person cannot be found or ascertained." (*g*) But the Queen's Bench Division held that the defendants were properly summoned as the persons by whose "permission" the nuisance arose, and that they were responsible as such if the person who caused the smoke to arise was their servant. (*h*)

But in *Chisholm* v. *Doulton*, (*i*) where the defendant, (the owner and occupier of the well-known pottery works), was summoned before a

(*a*) Imp. Stat. 38-39 V. c. 55—re-enacting Imp. Stat. 29-30 V. c. 90, s. 19.

(*b*) *Reg.* v. *Waterhouse*, L.R. 7 Q. B. 545 (1872).

(*c*) *Gaskell* v. *Bayley*, 30 L.T.N.S. 516 (1874); and see *Cramp* v. *Lambert*, L. R. 3 Eq. 409 (1867); *S. C.* on appeal, 17 L. T. N. S. 133 (1868); *Saville* v. *Kilner*, 26 L.T.N.S. 277 (1872): and see *ante*, p. 757, foot note (m).

(*d*) *Wilcock* v. *Sands*, 32 J. P. 292 (1858). (*e*) L.R. 7 Q. B. 474 (1872).

(*f*) *Cf.* Imp. Stat. 18-19 V. c. 121, s. 12; 23-24 V. c. 77, s. 13.

(*g*) *Ibid.* See R. S. O. c. 249, s. 69, *supra*, p. 761.

(*h*) And see *Niven* v. *Geaves*, 54 J.P. 648 (1880). (*i*) 22 Q.B.D. 736 (1889).

Police Magistrate for "*negligently using* a furnace so that smoke arising therefrom was not effectually consumed and burnt"—contrary to the provisions of 16-17 V. c. 128, s. 1, which makes this an offence punishable on summary conviction,—the magistrate dismissed the summons on its being made to appear that the furnace was properly constructed so as to consume its own smoke if carefully used, that neither the defendant nor his foreman was guilty of any negligence, and that the emission of smoke was due to the carelessness of the stoker employed by the defendant to attend to the furnace; and upon a stated case it was held that the defendant was not criminally responsible for the negligence of his servant, and could not be convicted of the offence.

Sec. 586 (6), (7). Notes (i), (j). Smoke.

Per FIELD, J.:—

> "I entertain no doubt that if this were a civil proceeding for damages he would be liable . . . . but the mere use of a furnace so as to emit smoke is not an offence . . . The offence is the using of it *negligently* . . . The essence of the offence is that it should be negligent, and here the respondent took all the care he could. Looking at the cases in which it has been held that no appeal lies to the Court of Appeal from decisions relating to public nuisances, I am forced to the conclusion that this is not a mere civil proceeding, but that the offence charged is a criminal offence. . . . The case here being a criminal one, I must apply the general rule, and by that rule the defendant must be acquitted."

As to *Reg.* v. *Stephens* (*a*) the learned Judge says:—

> "That case must be taken to stand upon its own facts. No doubt the learned Judges came to the conclusion that in that particular case the proceeding was civil. Whether they were right or wrong it is not necessary for me to express an opinion."

In *Dumfries Commissioners* v. *Murphy* (*b*) it was held that a properly constructed furnace might be so misused as to become a nuisance under this section. (*c*)

As to the liability to indictment for causing a nuisance by smoke, see *Reg.* v. *White*, (*d*) *Reg.* v. *Dewsnap*, (*e*) and *Reg.* v. *Stephens*, (*f*) referred to in note (**b**) *supra*.

By the councils of townships, cities, towns and villages:—

7. For preventing or regulating the keeping of cows, goats, pigs and other animals, and defining limits within which same may be kept. 55 V. c. 42, s. 489 (45).

Limits within which cows, pigs, etc., may be kept.

Taken from 47 V. c. 32, s. 13 (6) (1884). *Cf.* 44 V. c. 24, s. 12 (1881):—"the keeping of cattle and pigs or swine, and cattle [byres] or cow-byres and piggeries."

(j) This sub-section probably applies to the keeping of cows, pigs, etc., and not merely to the business of cow-keeping, pig-keeping, etc. Almost every farmer keeps cows; but a farmer who keeps cows is not a "cow-keeper" within the meaning of that word in "*The Public Health (London) Act, 1891*". (*g*) Even the business of cow-keeping may be so carried on in a borough as not to be a nuisance (*h*); and *quaere*, whether a by-law for its total prohibition in a rural neighborhood would be held reasonable under "*The Municipal Corporations Act, 1882*," s. 23.

Keeping swine in a city is a nuisance at common law (*i*), and it is not necessary that there should be any injury to health. (*j*) In *Everett* v. *Grapes* (*k*) it was held that the general authority of municipal corporations under s. 23 of the English Act (*l*) to pass by-laws for the good government of the borough

(*a*) L.R. 1 Q.B. 702 (1866), referred to in note (**b**) *supra*.

(*b*) 11 Ct. of Session Cas. (4th Series) 694 (1884).

(*c*) See further, *Cooper* v. *Woolley*, L.R. 2 Ex. 88 (1867); *Weekes* v. *King*, 53 L.T.N.S. 51 (1885). (*d*) 1 Burr. 333 (1757). (*e*) 16 East 194 (1812).

(*f*) L.R. 1 Q.B. 702 (1866).

(*g*) Imp. Stat. 54-55 V. c. 76, s. 1. See *Umfreville* v. *London County Council*, 13 Times L.R. 109 (1896).

(*h*) *Manson* v. *Forrest*, 14 Ct. of Sessions Cases, (4th Series) 802 (1887).

(*i*) *Reg.* v. *Wigg*, Salk. 460. (*j*) *Banbury Sanitary Authority* v. *Page*, 8 Q.B.D. 97 (1881). (*k*) 3 L.T.N.S. 669 (1861). (*l*) See note (**d**) to s. 326.

Sec. 586 (7)-(8). Notes (j), (k).

Keeping cows, pigs, etc.

and the suppression of nuisances, etc., will not warrant a by-law which wholly prohibits the keeping of pigs in a borough, though it might have been good if it had prohibited the keeping of pigs *so as to be a nuisance*; but in *Wansteat Local Board of Health* v. *Wooster* (a) the by-law (of an urban authority) prohibiting any occupier of a house from keeping pigs within 100 feet of a dwelling house was held to be valid, on the ground that the creation of a nuisance thereby was so likely as to be almost a certainty; but a by-law by a rural authority (although possessing urban powers) prohibiting the keeping of swine within the distance of 50 feet from any dwelling house was held to be unreasonable and bad. (b)

It is to be observed that the by-laws referred in *Heap* v. *Burnley Union*, *Wansteat Local Board of Health* v. *Wooster* and *Tong St. Local Board* v. *Seed* were made, not under "*The Municipal Corporations Act, 1882*," but under s. 32 of "*The Local Government Act, 1858*," (c) and s. 44 of "*The Public Health Act, 1875*," (d) which authorize the making of by-laws "*for the prevention of nuisances* arising from . . . filth, "etc., and" for the prevention of the keeping of animals on any premises *so as to be injurious to health*."

In *Steers* v. *Manton* (e) the defendant (a dealer in pigs) had them brought every morning to a pen within 50 yards of his dwelling, and kept there during the day, but sent them back at night to a more distant place where they were fed. He was summoned for breach of the by-law forbidding the "keeping" of swine within 50 yards of a dwelling house; but the magistrates dismissed the summons, holding that the pigs were not "kept" at a place where they neither ate nor slept. *Held*, (on appeal) that this decision was wrong, and that there had been a "keeping of swine" contrary to the by-law.

Ringing of bells, etc.

8. For regulating or preventing the ringing of bells, blowing of horns, shouting and other unusual noises, or noises calculated to disturb the inhabitants. 55 V. c. 42, s. 489 (46).

Taken from 47 V. c. 13, s. 12 (1884). *Cf.* 12 V. c. 81, s. 60 (10), etc.:—"For preventing the the ringing of bells, blowing of horns, shouting and other unusual noises in the streets and public places."

(k) "**For regulating or preventing.**" See note (a) to s. 329, note (b) to s. 580 and notes (j) and (u), to s. 583.

It will be observed that until 1884 the power to prevent and regulate was limited to "unusual noises;"—the class of noises secondly herein referred to, viz., such as are "calculated (*sic*) to disturb the inhabitants" being added in 1884 to the sub-section as then re-enacted. "*The Town Police Clauses Act*" (f), imposes a penalty upon any one who . . . in any street . . . to the annoyance of the residents . . *wilfully and wantonly* disturbs any inhabitant by pulling or ringing any door bell or knocker at any door," etc.; and in *Clark* v. *Hoggins* (g) the Court sustained the conviction (under that Act) of one who, having been instructed to deliver papers to a solicitor who had refused to receive them, returned to the house of the solicitor at 10 p.m., and rang and knocked at the door for more than a quarter of an hour so violently as to disturb not only the inmates of the house but also the neighbours.

Per WILLES, J.:—"'Wantonly' means not having a reasonable cause . . . Wantonness consists in doing that which will worry another, and which the person doing it knows will produce no result to himself." (h)

In *Reg.* v. *Nunn* (i) the defendant was convicted of beating a drum on a public street in the city of London, Ont., contrary to a by-law that—"No per-

(a) 55 L.T.N.S. 81 (1873). See also *Tong St. Local Board* v. *Seed*, 39 J. P. 278 (1875).

(b) *Heap* v. *Burnley Union*, 12 Q. B. D. 617 (1884). *Per* Lord COLERIDGE, C.J.:—"It is impossible to lay down what under all the circumstances would be a reasonable by-law; but it seems to me unreasonable to say that in country districts, in the present state of things, nobody shall keep a pig within 50 feet of his dwelling house.".

(c) Imp. Stat. 21-22 V. c. 98. (d) Imp. Stat. 38-39 V. c. 55.

57 J.P. 584 (1893).

(f) Imp. Stat., 10-11 V. c. 89, s. 28.

(g) 11 C. B. N. S. 545 (1862).

(h) See *Christie* v. *Davey*, [1893] 1 Ch. 316, referred to in note (a), *supra*.

(i) 10 P. R. 395 (1884).

Sec. 586 (8).

Note (k).

son shall in any of the streets . . . blow any horn, ring any bell, beat any drum, play any flute, pipe or other musical instrument, or shout or make or assist in making any unusual noise or noises calculated to disturb the inhabitants of the said city."

Ringing bells, blowing horns, etc.

Held, that as the beating of drums is not specifically mentioned in the Statute, —as are the ringing of bells, the blowing of horns, etc.,—the noise must be,— and should have been shewn by the evidence to be—either unusual or calculated to disturb, in order to warrant its prohibition by by-law; and, this not having been established, the prisoner was discharged.

In *Reg.* v. *Martin* (*a*) the conviction was that the defendant did on, etc., create a disturbance on the public streets of the village of L. by beating a drum, tambourine, etc., contrary to a by-law which prohibited "the . . . beating of drums, and other unusual or tumultuous noises on the public streets of L. on the Sabbath day." The only evidence was that of a witness who said:—"I saw him playing the drum on the streets of L. last Sunday morning." The conviction was quashed.

Per A. Wilson, C. J.:—

> "I think the Justice could not infer from the evidence given here that the drum made in fact any unusual noise. The witness does not even say he heard any noise; he says only 'he saw' the defendant beating a drum. Then the conviction states that the beating of the drum by the defendant created a disturbance. The words of the Statute refer to noises 'calculated to disturb the inhabitants.' 'Calculate' is a word which, it is said, mostly refers to the future—and it is frequently used with a meaning 'to intend' or 'to expect' a certain event or act. It is in this latter or irregular sense [that] the word is used in the Statute; or perhaps it was used as meaning the making of a noise which would *be likely* to disturb the inhabitants, whether so intended or not by the performer, in which case I think it should have been averred that the person beating the drum 'well knew that the noise would disturb' the inhabitants. The Statute speaks of 'disturbing *the inhabitants*.' The conviction is that the defendant, by the noise, 'created a disturbance.' Are these equivalent terms? I think not. 'Disturbing the inhabitants' is annoying them,—as by making a noise which interferes with the thoughts or proceedings of others. But 'creating a disturbance' applies either to raising a clamour, commotion, quarrelling, or fighting. The former seems to apply to the comfort or convenience of the 'inhabitants'; the latter to a breach of the peace or something like it. The disturbance should be of the nature of a nuisance: *Johnson* v. *Mayor, etc., of Croydon*, 16 Q. B. D. 708 (1885)."

Johnson v. *Mayor of Croydon* has already been referred to in note (**d**) to s. 326. In that case, a by-law, made under the powers as to nuisances conferred by s. 23 of "*The Municipal Corporations Act, 1882*" (*b*), which enacted that no person not being a member of Her Majesty's Army or Auxiliary Forces, etc., should sound or play upon any musical instrument in any of the streets of the borough on Sunday, was held to be *ultra vires*, because the statutory authority of the council extends only to the suppression of nuisances:—and, (*per* Mathew, J.):—"This by-law is not confined to cases where a musical instrument is so played as to be a nuisance." But in *Reg.* v. *Powell* (*c*) a by-law (made under the same authority) was held to be reasonable which imposed a penalty upon "every person who shall sound or, play upon any musical instrument, or sing or make any noise whatsoever, in any street or near any house, . . . after having been required by any householder . . . or by any police constable to desist, . . . either an account of the illness of any inmate of such house, or for any reasonable cause."

In *Booth* v. *Howell* (*d*), the appellant Booth,—a member of the Salvation Army,—had been convicted of having used a noisy instrument—(to wit, a concertina)—in the street of a city contrary to a by-law, (passed under the same authority) which imposed a penalty upon "every person who shall blow any horn or trumpet or use any other noisy instrument to the annoyance of any of the inhabitants of this borough." The Justices found that the concertina was a noisy instrument; and several inhabitants testified that they had been annoyed by it. *Held*, that the by-law was valid, that there was evidence to

(*a*) 12 O. R. 800 (1886). (*b*) Imp. Stat. 45-46 V. c. 50.
(*c*) 51 L. T. N. S. 366 (1884). (*d*) 53 J. P. 678 (1889).

Sec. 586 (8).

Notes (b), (l).

support the conviction, and that it was not necessary to prove that the instrument was a public nuisance to all the inhabitants of the borough.

In a prosecution under a by-law providing that "any person making a violent noise in the streets of a town to the annoyance of the inhabitants" shall be guilty of an offence, it is sufficient to prove that an inhabitant has been annoyed (*a*).

As to the ringing of bells, see also *Soltau* v. *De Held*, 2 Sim. N. S. 133 (1851): as to a band with fireworks, *Walker* v. *Brewster*, L. R. 5 Eq. 25 (1867); a circus with music and shouting, *Inchbald* v. *Robinson*, L. R. 4 Ch. 388 (1889); works or entertainments collecting a noisy crowd of people, *Reg.* v. *Moore*, 3 B. & Ad. 184 (1832); *Bostock* v. *North Staffordshire R. W. Co.*, 5 De G. & Sm. 584 (1852); *Chase* v. *London County Council & Leslie & Co. (Ltd.)*, 14 Times L. R. (1898); and *cf. Barber* v. *Penley*, [1893] 2 Ch. 447, where the assembling of a crowd at the (yet unopened) doors of a theatre was held to be a nuisance, not on the ground of noise, but because the highway was obstructed (*b*).

Christie v. *Davey* (*c*), "a case of persistent piano playing," is fully referred to in note (a), *supra*.

Disturbances of the peace.

9. For preventing or regulating the firing of guns or other firearms; and the firing or setting off of fireballs, squibs, crackers or fireworks, and for preventing charivaris and other like disturbances of the peace. 55 V. c. 42, s. 489 (46*a*); c 43, s. 35.

Taken from the Act of 1858, (22 V. c. 99), s. 287 (25) which applied only to cities, towns and villages: extended to townships by 55 V. c. 43, s. 35 (1892). *Cf.* 12 V. c. 81, s. 60 (10) in which the last clause reads "For preventing *and punishing persons engaged in* charivaris and other like disturbances of the peace."

(1) **"For preventing or regulating."** See note (a) to s. 329, note (b) to s. 580 and notes (j) and (u) to s. 583.

"Fire-arms." In *Reg.* v. *Moore* (*d*), one who kept a shooting ground where persons came to shoot with rifles at pigeons and at a mark, was held to be guilty of creating a nuisance, partly by reason of the crowds which were thus caused to assemble (*e*). So a rifle gallery with an organ and "round-about" was held to be a nuisance. (*f*)

"Fireworks." In *Bliss* v. *Lilley* (*g*) fog-signals for use on railways were held be "fireworks" within the meaning of Imp. Stat. 23-24 V. c. 139, s. 6, which prohibited the manufacture and keeping of fireworks within specified distances from dwellings and other buildings. (*h*)

In *Walker* v. *Brewster* (*i*) the late Lord HATHERLEY (then V. C. WOOD) expresses his "clear opinion that the noise of fireworks,—to say nothing of the danger from falling rocket-sticks,—is a serious nuisance;" and Art. 207 of "*The Criminal Code, 1892*" declares that:—

> "Every one is a loose, idle or disorderly person or vagrant who, by discharging firearms, or by riotous or disorderly conduct in any street or highway, wantonly disturbs the peace and quiet of the inmates of any dwelling house near such street or highway."

(*a*) *Innes* v. *Newman*, [1894] 2 Q. B. 292. And see *Stanley* v. *Farndale*, 52 J. P. 709 (1892), where the plaintiff was charged under a local Act with shouting in a street to the annoyance of the residents and passengers. Evidence was given by a constable that at 12.40 a.m. he had been crying the "Special Mail" very loudly; but there was no direct evidence that any one had been annoyed. The Justices thought this was *per se* an "annoyance," and convicted S. The Q. B. D. held that the Justices were wrong.

(*b*) *Cf.* the cases on this point cited in note (c) to s. 557, *ante*. And see *Lambton* v. *Mellish*, [1894] 3 Ch. 163,—noise caused by several persons.

(*c*) [1893] 1 Ch. 316. (*d*) 3 B. & Ad. 184 (1832).

(*e*) See the preceding note.

(*f*) *Winter* v. *Baker*, 3 Times L.R. 569 (1886). See also *Teale* v. *Harris*, 13 Times L. R. 15 (1896), cited *ante*, p. 337; and *cf.* Arts. 103-114 of "*The Criminal Code, 1892*," relative to the carrying, etc., of fire-arms, which, by Art. 3 (r) are included under the general designation of "offensive weapons."

(*g*) 3 B. & S. 128 (1862),

(*h*) See now Imp. Stat. 38-39 V. c. 17, and *Cf.* subss. 17*a*-17*d* of s. 542, *ante*.

(*i*) L.R. 5 Eq. 25 (1867).

"**Charivaris**" are defined as "mock serenades of discordant music, kettles, tin horns, etc., designed to annoy and insult." (a)

Sec. 586 (9), (10).

Notes (l), (m), (n).

Beggars and Lazzaroni.

By the councils of cities, towns and villages :—

10. For preventing common begging or persons in the streets from importuning others for help or aid in money, or deformed, or malformed, or diseased persons from exposing themselves, or being exposed in the public streets to excite sympathy or induce help or assistance from general or public charity. 55 V. c. 42, s. 496 (2).

Prevention of begging, etc.

Taken from 44 V. c. 24, s. 11, *part* (1881), the rest of which now forms sub-section 1 of this section.

(m) Art. 207 of "*The Criminal Code, 1892*" declares that :—

> "Every one is a loose, idle or disorderly person or vagrant who, without a certificate signed within six months, by a priest, clergyman or minister of the Gospel, or two Justices of the Peace, residing in the municipality where the alms are being asked, that he or she is a deserving object of charity, wanders about and begs, or goes about from door to door, or places herself or himself in any street, highway, passage or public place to beg or receive alms."

(m) "**Common begging.**" Colliers "on strike," who were householders and had wives and families, went from house to house in a town with a waggon inscribed "Children's Bread Waggon," and begged for aid in money or in kind, but were in no way disorderly. They were convicted under "*The Vagrants Act*" (*b*) which declares that :—

> "Every person wandering abroad or placing himself or herself in a public place, highway, etc., to beg or gather alms . . . shall be deemed an idle and disorderly person."

Held, that as it was not their habit and mode of life to wander abroad and beg, they were not within the purview of the Act, and their conviction was quashed. (*c*)

Per CAVE, J.:—

> "I find a difficulty in distinguishing the case from one, common enough in country places, of a poor man who loses his cow, and takes round a paper stating his misfortune and soliciting assistance to enable him to buy another cow."

(*a*) Webster's Dictionary.

(*b*) Imp. Stat. 5 Geo. IV. c. 84, s. 3.

(*c*) *Pointon* v. *Hill*, 12 Q.B.D. 306 (1886).

Sec. 587 (1).

Notes (a), (b).

DIVISION XX.—EDUCATION.

Public Schools. Sec. 587 (1)
High Schools.—High School trustees. Sec. 587 (2).
Aid to High Schools. Sec. 587 (3).
Grants to High Schools and Collegiate Institutes. Sec. 587 (4).
Aid to U. C. College and Toronto University. Sec. 587 (5).
Supporting pupils thereat. Sec. 587 (6).
Supporting pupils at High Schools. Sec. 587 (7).
Supporting pupils at the Agricultural College. Note (l).
Endowing fellowships, scholarships, etc., at U. C. C. and Toronto University. Sec. 587 (8).
Aiding Toronto University. Sec. 587 (9).
Schools for artisans. Sec. 587 (10), (11).
Technical Schools, (Cap. 301). Note (o).
Art Schools. Sec. 587 (12).
Mining Schools, (Cap. 303). Note (q).
Industrial Schools. (Cap. 304.) Note (r).

587. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

Public Schools.

[See also s. 423, *ante*, as to by-laws setting apart for educational purposes moneys derived from the "Ontario Municipalities Fund" or from other sources, and as to the securities in which such moneys may be invested. S. 424 authorizes the lending of such moneys to Boards of school trustees, or the granting of aid therefrom to poor school sections; and see 62 V. (2nd Session), c. 11, s. 29, noted, *ante*, in note (a) to s. 424, and ss. 70 and 74 of "*The Public Schools Act*," (R.S.O. c. 292)].

Acquiring land for public schools, etc.

By the councils of townships, cities, towns and villages:—

1. For obtaining such real property as may be required for the erection of public school houses thereon, and for other public school purposes, and for the disposal thereof when no longer required; and for providing for the establishment and support of public schools according to law. 55 V. c. 42, s. 489 (10).

Taken from the Act of 1858, (22 V. c. 99), s. 259 (2). *Cf.* 12 V. c. 81, s. 31 (3), *etc.*:—"For the purchase and acquirement of such real property as may be required for common school purposes, for building common school houses, and for the sale and disposal of the same when no longer required; and for providing for the establishment and support of common schools according to law."

(a) **"For obtaining such real property as may be required."** See note (a) to s. 534. But rural school trustees and Public School Boards in cities, towns or villages may take land compulsorily. See the next note.

(b) **"For the erection of public school houses," etc.** Under ss. 31-37 of "*The Public Schools Act*" (*a*) the Board of Public School Trustees of any rural school section now have power, upon payment of compensation—the amount of which (in case of difference) is to be fixed by arbitration—to take (*b*) any lands required for a school site or for the enlargement of school premises; or (subject to s. 31) for a new school site in lieu of one then in use as such (*c*); and by s. 2 (4) of that Act "school site" is declared to mean "such area of land as may be necessary for the school house, teacher's residence, offices and playgrounds connected therewith" (*d*).

(*a*) R. S. O. c. 292.

(*b*) See s. 534, note (a).

(*c*) See *Williams* v. *Trustees of S. S. No. 8, Plympton*, and the other cases cited in note (c); also *Wallace* v. *Union S. S. No. 9, Lobo*, 11 O. R. 648 (1886).

(*d*) See as to the limitation prescribed by s. 34 (1), *Johnson* v. *Trustees S. S. No. 1, Howard*, 26 Grant 204 (1879).

Sec. 587 (1).

Notes (b), (c), (d).

Section 65 of the Act confers like powers upon urban School Boards,—*i.e.*, the school corporations ("Public School Boards") of cities, towns or villages.

Section 62 (12) empowers and directs the trustees of *all* public schools:—

Public schools.

> "To take possession of all property which has been acquired or given for public school purposes, and to hold the same according to the terms on which it was acquired or received; and to dispose, by sale or otherwise, of any school site or property not required in consequence of a change of site, or other cause; to convey the same under their corporate seal, and to apply the proceeds thereof to their lawful school purposes or as directed by this Act" (*a*)

By s. 117 of R. S. O. c. 292 (*b*)—it is declared that:—

> "All lands which, previous to the 24th day of July, 1850, were granted, devised or otherwise conveyed to any person or persons in trust for common school purposes, and held by such person or persons and their heirs or other successors in the trust, and have been heretofore vested in the public school trustees of the school section or municipality in which such lands are respectively situate, shall continue vested in such trustees, and shall continue to be held by the said trustees and their successors upon the like trusts and subject to the same conditions and estates upon or subject to which the said lands are now respectively held."

It has been held that land conveyed to school trustees "in trust for the use of a common school," with a proviso that if not so used for any three consecutive years it should revert to the grantor, his heirs and assigns, could not be sold under an execution on a judgment recovered against the trustees for the price of work done in building the school house (*c*).

(c) "**And for the disposal thereof when no longer required.**" See note (c) to s. 534; notes (f), (g) and (h) to s. 576: *Williams* v. *School Trustees S. S. No. 8, Plympton*, 7 C. P. 559 (1858); *Scott* v. *School Trustees No. 1, Bathurst and No. 2, Burgess*, 19 U. C. R. 28 (1859), referred to in note (b), *supra*: *Township of Toronto* v. *McBride*, 29 U. C. R. 13 (1868): *Village of Wyoming* v. *Bell*, 24 Grant 564 (1877): *Moffat* v. *Board of Education of Carleton Place*, 5 A. R. 197 (1880): *McGugan* v. *School Board of S. S. No. 7, Southwold*, 17 O.R. 428 (1889).

(d) "**For providing for the . . . support of public schools according to law.**" The public schools of Ontario derive their support from:—

(1) The grant annually made by the Provincial Legislature from the proceeds of "The Upper Canada School Fund" (*d*), and

(2) School taxes levied and collected by local municipal councils under the authority of ss. 66, 67-70, 71, 72 and 74 of "*The Public Schools Act*" (*e*).

In order properly to understand the subsection now under consideration a glance at the earlier School Acts seems to be necessary. The first legislative provision for the support of common schools in Upper Canada was made in 1816 by 56 Geo. III, c. 36, which authorized the Governor, Lieutenant-Governor or other person administering the government of the Province to appoint "not more than five fit and discreet persons to form a Board of Education" in and for each of the nine Districts into which Upper Canada was at that time divided (*f*). The Act further provided that certain sums of money therein mentioned, amounting in the aggregate to £6,000 per annum, should be annually paid out of Provincial funds to the several District Treasurers, to be apportioned by the Board of Education in each District among the common schools of the District, but so that no allowance to any one school should exceed £25 per annum. The inhabitants of every "town, township, village

(*a*) As to the powers in regard to school property previously conferred upon school trustees, see 7 V. c. 29, s. 44 (1843); 12 V. c. 83, s. 30 (2) (1849); 13-14 V. c. 40, s. 12 (3) (1850); "*The Consolidated Public School Act of 1874*," (27 V. c. 28), s. 86 (4); *County of Carleton* v. *Public School Board of Ottawa*, 25 C. P. 137 (1875).

(*b*) Taken from "*The Public Schools Act, 1885*," (48 V. c. 49), s. 269.

(*c*) *Scott* v. *Trustees Union School Section No. 1, Bathurst and No. 2, Burgess*, 19 U. C. R. 28 (1859).

(*d*) As to which see 4-5 V. c. 18: 7 V. c. 9: 12 V. c. 200: C. S. Ca. c. 26: "*The B. N. A. Act, 1867*," s. 117.

(*e*) R. S. O. c. 292. (*f*) See the Prefatory Chapter, *ante*, p. 2.

Sec. 587 (1).

Note (d).

How the public schools are supported.

or place" were authorized to hold an annual school meeting; and—so soon as there were 20 scholars to form a school, a school house had been built, and provision made for part payment of the salary of a teacher—school trustees were to be appointed, by whom a teacher might be engaged. By 60 Geo. III. c. 7 (1820) the annual Provincial grant was reduced to £2,500. By 4 Geo. IV. (2nd Session), c. 8 (1824), a further grant of £150 was made to purchase "books and tracts designed to afford moral and religious instruction"; and in 1841 all the preceding Acts were repealed by 4-5 V. c. 18, which provided for an annual legislative grant (for the united Provinces) of £50,000, to be called "The Common School Fund," and to be distributed as was by that Act provided.

Under subsequent Statutes, (*a*) a tax, the amount of which for each year was to be determined by a majority of the freeholders and householders present at a "school meeting" held in every school section during the month of January, was to be annually imposed upon the rateable property of the school section to raise the amount thus determined to be necessary for the school purposes of the section during the year. Until 1879 this tax might be collected either by the school trustees (personally or by deputy) (*b*) or, at their option, they might require the municipal council to levy and collect it with the other municipal taxes. (*c*) Since the passing (in 1879) of 42 V. c. 34, s. 11, the power of rural school trustees to collect school taxes has ceased to exist, and such taxes are now levied and collected by means of the ordinary municipal machinery.

By the School Act of 1850 (*d*) township councils were directed to levy and collect by assessment upon the taxable property of each school section respectively, such sums as—having first been fixed by a "school meeting"(*e*)—the trustees of the section should require to be so raised for the purchase of a school site, the erection, repairs, renting and furnishing of a school house, the purchase of apparatus and text books for the school, books for the library, and the salary of the teacher. (*f*) After 1874 (*g*) the previous approval by a "school meeting" of the trustees' estimate for ordinary expenses was no longer required. (*h*) The council might however (if the trustees so desired) authorize the latter to borrow the sum required, in which case the council was to levy annually upon all the taxable property of the school section (*i*) a rate sufficient to pay the interest and form a sinking fund to pay off the principal within ten years. (*j*)

If the council declined to levy a rate, after a proper demand upon them to do so and the lapse of a reasonable time, a mandamus might issue; but where the demand was informal, undated, and furnished no information to the coun-

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(*a*) 7 V. c. 29 (1843): 12 V. c. 83 (1849): 13-14 V. c. 48 (1850): C.S.U.C. c. 64: 37 V. c. 28: R.S.O. (1877), c. 204.

(*b*) See *The Chief Superintendent of Education (Appellant)* in *Re Kelly v. Hedges*, 12 U.C.R. 531 (1854): *Gillies v. Wood*, 13 U.C.R. 257 (1855): *The Chief Superintendent of Education (Appellant)* in *Re McLean and Farrell*, 21 U.C.R. 441 (1862).

(*c*) See *Hancke v. Marr*, 8 C.P. 441 (1858): *Newbury v. Stephens*, 16 U.C.R. 65 (1858).

(*d*) 13-14 V. c. 48, s. 18; afterwards C.S.U.C. c. 64, s. 34.

(*e*) *Hancke v. Marr*, 8 C.P. 441 (1858): *Re Taber and Township of Scarborough*, 20 U.C.R. 549 (1862): *Re McCormick and Township of Colchester South*, 46 U.C.R. 650 (1881).

(*f*) As to the last item, see *Stark v. Montague*, 14 U.C.R. 473 (1856): *Munson v. Town of Collingwood*, 9 C.P. 497 (1860).

(*g*) *Cf.* 37 V. c. 28, s. 46 (5).

(*h*) But it was otherwise as to the purchase of a school site, etc. See 42 V. c. 34, s. 29, quoted *infra*, and *Re McCormick and Township of Colchester South*, cited *supra*.

(*i*) *Re De la Haye and Gore of Toronto*, 2 C.P. 317 (1852); and see *Re Scott and City of Ottawa*, cited *infra*.

(*j*) 13-14 V. c. 48, s. 18 (1); C.S.U.C. c. 64, s. 35. See *Re De la Haye and Gore of Toronto*, 3 C.P. 23 (1853): *Re Hart and Township of Vespra and Sunnidale*, 16 U.C.R. 32 (1858): *Doherty v. Township of Toronto*, 25 U.C.R. 409 (1866).

cil as to the purposes for which the money was required, the writ was refused. (*a*) And where the township council, having raised the money, refused to pay it over without an order from the majority of the trustees, it was held that they were within their rights in so doing, and their action was sustained. (*b*) In replevin for goods seized under a distress for school rates, a plea that the rate was bad as not having been levied on all, but only upon three-fourths of the taxable property of the school section, was held good on demurrer. (*c*)

Sec. 587 (1).

Note (d). How the public schools are supported.

In cities, towns and villages, since the passing in 1850 of the 13-14 V. c. 50, it has been the duty of the Board of School Trustees for the municipality—which since the passing of "*The Consolidated Public School Act of 1874*" (*d*) is styled the "The Public School Board of the city, etc., of ———, etc."—"to prepare . . . and lay before the municipal council of the city, town or village an estimate of the sums which they think requisite for . . . the necessary expenses of the schools under their charge" (*e*); and until 1879 the council were bound by law and compellable by mandamus (*f*), "to provide such sums in the manner desired by the said Board."

But by 42 V. c. 34, s. 29 it was provided that :—

> "In any case where a High School Board or Public School Corporation may, by law require the municipal council to raise or borrow a sum of money for the purchase of a school site, or the erection or purchase of any school house, or addition thereto, or other school accommodation or for the purchase or erection of a teacher's residence, such municipal council may refuse to raise or borrow any such sum when it is so resolved by a two-thirds vote of the members present at the meeting of the council for considering any by-law in that behalf.
>
> (2). Where the municipal council, by a two-thirds vote, refuses to raise or borrow the sum proposed, then such question shall be submitted by the municipal council, if requested by the School Board, to the vote of the electors of the municipality in the manner provided by *The Municipal Act* for the creating of debts; and in the event of the assent of the municipal electors being thereby obtained, then it shall be the duty of such council to raise or borrow such sum." (*g*)

In *School Trustees of Port Hope* v. *Town of Port Hope* (*h*) it was determined by Chief Justice MACAULAY that although under 16 V. c. 185, s. 6 the trustees of *rural* schools could not purchase or change a school site without the approval of "a school meeting," the Public School Board of a *town* might under 13-14 V. c. 48. s. 24 (6) make a requisition upon the town council for funds for that purpose without first obtaining authority therefor from the ratepayers.

In *Re Scott and City of Ottawa* (*i*) it was held that nothing contained in the School Acts sanctioned a departure from the leading principle of the assessment law that all rates shall be imposed equally upon the ratepayers in pro-

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(*a*) *Re Trustees S.S. No. 6, Fredericksburgh and Township of Fredericksburgh*, 37 U.C.R. 534 (1876).

(*b*) *Trustees S.S. No. 3, Caledon and Township of Caledon*, 12 C.P. 301 (1862).

(*c*) *Harling* v. *Mayville*, 21 C.P. 499 (1871).

(*d*) 37 V. c. 28, s. 85.

(*e*) 13-14 V. c. 48, s. 24 (6) : C.S.U.C. c. 64, s. 79 (1) : 37 V. c. 28, s. 86 (11) : R.S.O. (1877), c. 204, s. 104 (10) : R.S.O. (1897), c. 292, s. 62 (9).

(*f*) Applications for writs of mandamus under these sections were made in *Board of School Trustees of Brockville* v. *Town of Brockville*, 9 U.C.R. 302 (1852) : *Board of School Trustees of Port Hope* v. *Town of Port Hope*, 4 C.P. 418 (1855) : *School Trustees of Galt* v. *Town of Galt*, 13 U.C.R. 511 (1856) : *School Trustees of Collingwood* v. *Town of Collingwood*, 17 U.C.R. 133 (1859) : *School Trustees of Elzevir* v. *Township of Elzevir*, 12 C.P. 548 (1862) : *School Trustees of Sandwich* v. *Town of Sandwich*, 23 U.C.R. 639 (1864) : *Coleman* v. *Kerr*, 27 U.C.R. 5 (1867) : *School Trustees of Mount Forest* v. *Village of Mount Forest*, 29 U.C.R. 422 (1869). And as to a similar application by Joint Boards of Grammar (High) and Common (Public) School Trustees, see *School Trustees of Trenton* v. *Village of Trenton*, 26 U.C.R. 353 (1867).

(*g*) See now R.S.O. c. 292, s. 72 (1).

(*h*) 4 C.P. 418 (1854). (*i*) 13 U.C.R. 346 (1856).

Sec. 587 (1), (2), (3).

Notes (d), (e). How the public schools are supported.

portion to their taxable property ; (*a*) and a by-law (passed by a city council) which—in compliance with the demand of the Public School Board of the municipality—assumed to raise for school purposes different amounts of money in the different wards of the city was therefore held to be unwarranted by law and void. (*b*)

The present Public School Act (R.S.O. c. 292) provides that :—

62. "It shall be the duty of the trustees of all Public Schools and they shall have power :— * * * *

9. To submit to the municipal council, on or before the first day of August, or at such time as may be required by the municipal council, an estimate of the expenses of the schools under their charge for the twelve months next following the date of application ;

10. To provide (in the case of rural schools) for the payment of teachers' salaries quarterly and, if necessary, to borrow on their promissory note, under the seal of the corporation, at interest not exceeding eight per cent. per annum, such moneys as may be required for that purpose, until the taxes imposed therefor are collected ;

11. To submit (in the case of urban municipalities) all accounts, books and vouchers to be audited by the municipal auditors, whose duty it shall be to audit the same (*c*) and to publish at the end of every year, in one or more of the public newspapers, or otherwise, an abstract of the annual report of the auditors, with such findings and recommendations as the auditors deem expedient."

The method in which the money directly contributed by the ratepayers toward the support of public schools, is to be raised by local taxation for the support of the public schools is set out in ss. 66, 67, 70, 71, 72 and 74 of "*The Public School Act*," which are too long to be here noted, and for which reference must be had to the Act itself.

(e) Separate Schools. As to municipal grants to Separate Schools and the levy of rates therefor, see R. S. O. c. 294, ss. 8-17 (Protestant and coloured Separate Schools) : ss. 28 (9), 33 (5), 42-60 and 63 (R.C. Sep. Schools), and "*The Assessment Act*," (R. S. O. c. 224), ss. 13 (5), 25 (3).

High Schools.—High School Trustees.

By the councils of counties, cities and separated towns :—

Establishing High Schools, etc.

Rev. Stat. c. 293.

2. For establishing high schools and appointing high school trustees, subject to *The High Schools Act*, and for obtaining in such part of the county, or of any city or separated town within the county, as the wants of the people may most require, the real property requisite for erecting high school houses thereon, and for other high school purposes, and for preserving, improving and repairing such school houses, and for disposing of such property when no longer required. 55 V. c. 42, s. 495 (5) ; c. 43, s. 37.

Aiding High Schools.

Aiding High Schools.

3. For making provisions in aid of such high schools as may be deemed expedient.

Proviso.

Rev. Stat. c. 293.

(*a*) Provided that notwithstanding anything contained in this Act or in *The High Schools Act*, the county council of any union of counties may pass a by-law

(*a*) *Cf.* R.S.O. c. 224, s. 6.

(*b*) And see *Re De la Haye and Gore of Toronto*, 2 C.P. 317 (1852) *supra*.

(*c*) As to the corresponding duty imposed by this Act upon the municipal auditors of cities, towns and villages, see s. 302, *ante* and note (**a**) thereto.

for the purpose of apportioning the amount to be levied for high school purposes, so that each county forming the union shall be liable only for the maintenance of the high schools situated within the county. 55 V. c. 42, s. 495 (6); c. 42, s. 38.

The first two lines of sub-sec. 2 were added in 1892 by 55 V. c. 43, s. 37 to the subsection as it appears in the earlier Acts of 1866, (29-30 V. c. 51, s. 288 (1)) and 1873, (36 V. c. 48, s. 383 (5)). *Cf.* 12 V. c. 81, s. 41 (3); 22 V. c. 99, s. 279 (1).

Sub-section 3 (except clause (a)) is taken from the Act of 1866, (29-30 V. c. 51, s. 288 (2). The Acts of 1849 and 1858, although substantially the same, apply only to counties and cities. Clause (a) was added in 1893 by 55 V. c. 43, s. 38.

(f) "For establishing High Schools and appointing High School trustees," etc.

Appointment of High School trustees.

"*The High Schools Act*" referred to in 55 V. c. 43, s. 37 (by which this power was first conferred upon the municipal councils above mentioned), was the Act of 1885, (48 V. c. 50), ss. 15-17 of which altered the mode of appointing High School trustees theretofore existing under the authority of "*The High Schools, etc. Consolidation Act of 1874.*" (*a*) The law now governing the appointment of High School trustees by the councils of counties, cities and separated towns, and which is referred to in the sub-section now under consideration, is contained in ss. 12 and 13 of "*The High Schools Act*," (R.S.O. c. 293) which are as follows:—

Qualification of High School trustees.

"**12.**—(1) Any ratepayer 21 years of age, residing in the county or municipality in which the High School is situated, who is not a member of the municipal council of such municipality or county, shall be qualified to serve as a High School trustee, or as a member of a Board of Education.

Number and appointment of High School trustees.

(2). Every High School Corporation shall consist of at least six trustees. In the case of High Schools situated in any municipality within the jurisdiction of the county, three of such trustees shall be appointed by the county council, and additional trustees shall be appointed by the municipalities composing the High School District as follows, that is to say:—

(*a*). Where a High School District is composed of one municipality the municipal council thereof shall appoint three additional trustees; where a High School District is composed of two municipalities, each municipality shall appoint two additional trustees; and where a District is composed of more than two municipalities, each municipality shall appoint one additional trustee. Any portion of a municipality assessed for $50,000, included in a High School District, shall be considered a municipality for the purposes of this section. In every case one of the trustees appointed by the county council and one trustee in each municipality composing the High School District shall retire each year.

(3). Where a High School District is composed of a county, the county council shall appoint six trustees for such District, two of whom shall retire every year.

(4). In cities and in towns separated from the county, the municipal council thereof shall appoint six trustees for each of the High Schools of such city or town; where the High Schools in a city do not exceed three in number, the municipal council shall appoint six trustees for each High School, and the trustees so appointed shall, with such additional trustees as are authorized by this Act, form one corporation. The municipal council of every city and town shall, by by-law, provide for the annual retirement of so many of the trustees appointed by the council as shall secure a complete rotation every three years.

(5). Where the trustees of any High School situated in a city or in a town separated from the county, notify the county clerk that such High School is open to county pupils on the same terms as High Schools in the municipalities not separated from the county, the county council may, from time to time, appoint three additional trustees of and for such High School so long as the School is open to county pupils on the terms aforesaid; and such school shall for all the purposes of this Act be considered a County High School.

(*a*) 37 V. c. 27, ss. 50-59.

Sec. 587 (2), (3).

Notes (f), (g).

Appointment of High School trus-

(6) The Separate School Board of the city, town, or incorporated village in which a High School is situated, may appoint one trustee of and for the High School Board or Board of Education, who shall not be a member of the Separate School Board and who shall hold office for one year, provided always, in the case of a Board of Education, that such trustee shall not take part in any of the proceedings affecting the public school.

(7) Except in the case of a Board of Education, the Public School Trustees of every city, town, or incorporated village in which a High School is situated, may appoint annually one trustee of and for the High School Board, who shall not be a member of the Public School Board, and who shall hold office for one year.

Vacancies, how filled.

13.—(1) Vacancies arising from the annual retirement of Trustees shall be filled at the first meeting thereof after being duly organized in each year by the municipal councils or by the Boards of Trustees empowered under this Act to make the appointments; and vacancies arising from death, resignation, or removal from the High School District or county, or otherwise, shall be filled forthwith by the municipal council or Board of Trustees having the right of appointment, and the person appointed to fill such vacancy shall hold office only for the unexpired term of the person whose place has become vacant.

(2) Where any town that has been separated from the county for municipal purposes is re-united to the county, the High School trustees appointed by the town council and in office at the time of such union shall continue in office till the expiration of the term for which they were appointed. Vacancies arising from any cause in the representation of the town shall not be filled till the number of Trustees has been reduced below the number required by this Act."

In *Dawson* v. *Town of Sault Ste. Marie* (*a*) it was held by Sir THOMAS GALT, C. J., that the appointment of High School trustees by a municipal council must be made by by-law; but this decision was reversed by the Court of Appeal in *Port Arthur High School Board* v. *Town of Fort William*, (*b*) where MOSS, J. A., in delivering this judgment of the Court, says (p.527):—

> "There is nothing in the Act (*c*) expressly requiring the Board to be appointed by by-law of the council, and the act of appointing trustees is not done under the provisions of "*The Municipal Act*." The attention of the learned Chief Justice (*d*) does seem to have been called to the opinion expressed by OSLER, J. A., in *Township of Pembroke* v. *Canada Central R. W. Co.*, 3 O.R. 507 (1882), at p. 508, (*e*) that the section of "*The Municipal Act*" requiring the powers of the council to be exercised by by-law must be construed as referring to the exercise of powers of the council under "*The Municipal Act*," and not to powers which may be exercised under a special Act passed for other purposes, or by another Legislature * * * Appointments of trustees are made every year, and from year to year, and there seems no special reason why the corporate action (*f*) in such cases should not be manifested in the form of a resolution."

High School property.

(g) "For obtaining . . . real property; . . . for erecting High Schools thereon, . . . and for . . . repairing such school houses," etc.

Section 15 of "*The High Schools Act*," (R.S.O. 1897, c. 293) now provides that:—

> "**15.** It shall be the duty of every [illegible] of [High School] Trustees and they shall have power:— . .

(*a*) 18 O. R. 556 (1889); referred to infra in note (**i**).

(*b*) 25 A. R. 522 (1898).

(*c*) The Act then under consideration was "*The High Schools Act, 1885*," (48 V. c. 50 ss. 14-21,) but the *ratio decidendi* is equally applicable to the corresponding sections of the present Act.

(*d*) Sir THOMAS GALT in the *Dawson* case, *supra*.

(*e*) Quoted *ante*, p. 334, in note (**e**) to s. 325.

(*f*) *Quaere*, should not this read "the will of the council."

2. To take charge of the High School for which they have been appointed trustees, to keep the school buildings in proper repair, to provide from time to time suitable furniture and equipment, and to see that the grounds and all the property of the corporation are duly protected (*a*). . . .

8. To provide adequate accommodation, according to the regulations of the Education Department, for all resident pupils, and (in the case of High Schools receiving aid from the county) for county pupils also, subject to section 34 of this Act." (*b*)

By ss. 16-29 of the same Act, the Board are empowered (subject as therein provided) to take (*c*) any lands required for a High School site or for the purpose of enlarging the High School premises; and s. 30 (*d*) declares that:—

"(1) All property heretofore granted, devised or acquired in any municipality, and vested in any person or persons or corporations for high school purposes, or which may hereafter be so granted, devised or acquired, shall be deemed and be taken as having vested absolutely in the Board of High School Trustees, and the Board shall have full power to convey, sell, transfer, or lease such property, upon the adoption of a resolution by the Board that such property is no longer required for high school purposes, and the proceeds of such sale, transfer or lease shall be applied for the use of such High School.

(2) The trustees of any High School District or any Board of Education may with the approval of a majority of the municipal council or councils composing the district, and of the Lieutenant-Governor in Council, sell, transfer or lease any site, territory or other property vested in them as a corporation, and after making provision for all debts and liabilities of the corporation, apply to the residue of the proceeds of such sale, transfer or lease to any purpose that may be approved by the Lieutenant-Governor in Council; and on such sale, transfer or lease and disposition of assets as aforesaid, the Lieutenant-Governor in Council may, by proclamation in the *Ontario Gazette*, declare such corporation dissolved and determined." (*e*)

(h) "And for disposing of such property when no longer required."

See note **(c)** *supra*.

(i) Sub-section 3.—"For making provisions (?) in aid of such High Schools as may be deemed expedient." See also the next following sub-section (4) as to the powers of townships, towns and villages in relation to the same subject. By 16 V. c. 186, s. 2, (1853) (*f*) it was provided that:—

"It may and shall be lawful for the municipal council of each county, city, township, town or incorporated village from time to time to levy and collect by assessment such sum or sums as it shall judge expedient, to purchase the site or sites of, to rent, build, repair, furnish, warm and keep in order a Grammar School house or Grammar School houses, and its or their appendages, grounds and enclosures, for procuring apparatus and text-books, for providing the salary of the teacher or teachers, and all other necessary expenses of such county Grammar School or Schools; and all sums so collected shall be paid over to the treasurer of the county Grammar School for which the said assessment was made."

(*a*) *Cf.* 16 V. c. 186, s. 11 (2) (1853): C. S. U. C. c. 63, s. 25, (2): 37 V. c. 27, s. 61 (4): R.S.O. (1877), c. 205, s. 39 (4): 48 V. c. 50, s. 25 (2): R.S.O. (1887), c. 226, s. 25 (2): 54 V. c. 57, s. 14 (2): 59 V. c. 71, s. 14 (2), and also s. 14 (8).

(*b*) Taken from 54 V. c. 57, s. 14 (9). *Cf.* 16 V. c. 186, s. 11 (2): C.S.U.C. c. 63, s. 25 (5): 37 V. c. 27, s. 61 (5-6) etc., etc.

(*c*) See s. 534, note **(a)**.

(*d*) Taken from "*The High Schools Act, 1885*," (48 V. c. 50), s. 26.

(*e*) As to the power of High School trustees to change the site of the school house, see *Malcolm* v. *Malcolm*, 15 Grant 13 (1868): *Coupland and School Trustees of Nottawasaga*, 15 Grant 339 (1868): *Board of Education of Perth and Town of Perth*, 39 U. C. R. 34 (1876): *Re Chamberlain and United Counties of Stormont, Dundas and Glengarry*, 45 U. C. R. 26 (1880).

(*f*) Afterwards C. S. U. C. c. 63, s. 16.

Sec. 587 (3).

Note (d).

Municipal aid to High Schools.

Under this section it was held that a county council could not by *mandamus* raise money to build a Grammar School (*a*).

In 1871 the law on this point was amended by 34 V. c. 33, s. 36, which provided that, in the case of a High School situate in a city or separated town, a sum equal to one-half of the government grant, together with such additional amount as might be required for the accomodation and support of the school, must, upon the application of the High School Board of the city or separated town, be provided by the municipal council thereof; and that—in the case of a High School in a township, village or town not separated from its county—any sums required to provide school accommodation and maintenance must be provided by the local municipality, and that a sum equal to one-half the government grant must be provided by the county council. In the event of a county council forming the whole or a part of a county into one or more High School Districts, the sum required for the maintenance of the High School was to be provided by the council or councils of the municipality or municipalities by taxation levied upon the inhabitants of the area composing the District.

Upon an application under the above Act by the trustees of a High School situated in a township, for a *mandamus* to compel the township council to raise a sum of money for the maintenance, etc., of the High School, it was held:—(1) that the fact of the applicants, "The Trustees of the Port Rowan County High School," being described in the requisition to the council as "The Port Rowan High School Board" was immaterial, since the township council were not thereby misled: (2) that the demand was properly made by the secretary and treasurer of the Board: (3) that it was not necessary (*b*) to furnish to the council the estimates upon which the amount of the demand was based; (4) that the purposes for which the money was asked, viz., "for expenses of conducting High School" and "current expenses of High School" were equivalent to "maintenance and school accomodation"—the words used in the Statute;—and that the demand was good (*c*).

Under that Act it was also held (*d*) that where a High School District had been formed, consisting of a town and township, the High School Board of the District could by *mandamus* compel the township to contribute towards the erection, and not merely towards the maintenance, of a school house in the town; and (*e*) that the Joint Board of Education of a town, and not the High School Board thereof were the proper applicants for a *mandamus* to compel the town to provide the money required to pay for a joint High and Public School house; (*f*) and that the sections of "*The High Schools Act*" and "*The Public Schools Act*," then in force, (37 V. caps. 27, 28), which conferred upon the joint Board the powers of each of the amalgamated Boards, referred only to those powers which, prior to amalgamation, each Board possessed for the purposes of its creation. The relevant sections of both Statutes are quoted and reviewed in the judgment delivered by HARRISON, C. J.; and although the demand was not strictly in proper form—not being expressed to be for the balance required over and above the government grant,—the council having based their refusal upon other grounds, effect was not given to the objection.

In *Re Chamberlain and the United Counties of Stormont, Dundas and Glengarry*, (*g*) the united counties having been formed into five High School Districts, it was held,—under the section of the Act of 1874, (37 V. c. 27), corresponding with that above quoted from the Act of 1871,—that the aid granted by the council of the united counties to high schools to supplement

(*a*) *Trustees of Weston Grammar School* v. *United Counties of York and Peel*, 13 C. P. 423 (1863).

(*b*) As under "*The Public Schools Act*," s. 62 (9), quoted *supra*, note (d).

(*c*) *Trustees of Port Rowan High School Board* and *Township of Walsingham*, 23 C. P. 11 (1873).

(*d*) In *Re Niagara High School Board and Township of Niagara*, 37 U. C. R. 529, (1875), affirmed on rehearing, 38 U. C. R. 362 (1876), and on appeal, 1 A. R. 288 (1877).

(*e*) In *Re Board of Education of Perth and Town of Perth*, 39 U. C. R. 34 (1876).

(*f*) Acc. *Board of Education of Morrisburgh and Township of Winchester*, 8 A. R. 169 (1883).

(*g*) 42 U. C. R. 279 (1877).

Sec. 587, (3).

Note (l).

Municipal aid to High Schools.

the government grant must be raised by an equal rate upon all the assessable property of the three counties, and not upon each High School District for the sum apportioned to its schools. (*a*).

The Act of 1874, (37 V. c. 27), speaks of municipal aid to High Schools under two distinct heads, viz. :—

(1) In s. 47—*voluntary* municipal assessments (the class here referred to) which may be made under by-laws passed by the councils of counties, cities or separated towns, (a) for procuring sites for High Schools, (b) for renting, building, repairing, furnishing, warming and keeping in order High School houses, grounds, etc., (c) for purchasing, etc., High School sites (*b*) and (d) "for making provision" (in addition to the compulsory provision next to be referred to) "in aid of such High Schools as may be deemed expedient by the council."

(2) In s. 44—*obligatory* municipal assessments to be made in the same way, by the same authority and for the same purposes as had already been mentioned in s. 36 of 34 V. c. 33. (*c*)

In *Dawson* v. *Town of Sault Ste. Marie* (*d*)—a motion to continue an injunction restraining the defendants from paying to the Sault Ste. Marie High School Board the sum of $15,000 raised by the town under a by-law passed by them under R. S. O. (1887), c. 226, ss. 34, 36 for the purchase of a site and the erection thereon of a High School for the town,—it was urged (1) that the Board were about to build the school upon land not yet acquired by them, and (2) that it had not been shown in the application of the Board to the council how much of the $15,000 was appropriated for the purchase of the land and how much for the erection of the building.

Both objections were over-ruled. *Per* Sir THOMAS GALT, C. J.:—

> "As to the first objection,—the observations made by PROUDFOOT, V. C., in the case of *Little* v. *Wallaceburg*, 23 Grant 540, at p. 546, are very applicable. He says: 'I cannot assume that the defendants are going to spend $6,000 on property to which they have no title.' A portion of the money was to be expended on the necessary site, and I 'have no doubt that before this is done a clear title will have been shown' (*e*). . . . As to the second objection—I can find nothing in the Statute that renders such a declaration necessary."

"*The High Schools Act*," (R. S. O. c. 293), now provides (s. 15) (8), that:—

> "It shall be the duty of every Board of High School trustees and they shall have power to apply to the municipal council or councils liable under this Act on or before the 1st day of August, or at such other time as may be required by the municipal council, for such sums of money as the Board may require for [the maintenance of the High School for the twelve months next following the date of such application, exclusive of all fees from pupils and other sources, and of appropriations from the Legislature and municipal council of the county, and for such additional sum as they may deem expedient for permanent improvements for the same period of time, not exceeding five hundred dollars."]

The corresponding section of R.S.O. (1887), c. 226, (viz., s. 25 (6))—instead of the words in brackets—read as follows, "the maintenance, *accommodation and other necessary expenses* of their High School, and as said council is required . . . to raise by local assessment for these purposes"; and in *Re Oakwood High School Board and Township of Mariposa* (*f*) it was held:—

(1) That these words "maintenance, accommodation and other necessary expenses" included the purchase of a school site, the erection, purchase or

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(*a*) *Cf.* the decision in *Re Scott and City of Ottawa*, 13 U. C. R. 346 (1856), referred to in note (**d**), *supra*.

(*b*) As now in sub-s. 2, *supra*.

(*c*) See also 40 V. c. 16, s. 18 (6, 7); R. S. O. (1877), c. 205, ss. 29-32; 48 V. c. 50, ss. 32-37; R. S. O. (1887), c. 226, ss. 32-37.

(*d*) 18 O. R. 556 (1889).

(*e*) But see *Re Caldwell and Town of Galt*, 30 O. R. 378 (1899), referred to in note (**m**) to s. 378, *ante*.

(*f*) 16 A. R. 87 (1888): reversing the decision of BOYD, C., in *S.C. sub nom. The Oakwood High School Case*, 15 O. R. 686 (1888).

Sec. 587 (3), (4), (5).

enlargement of a school house, or the purchase or erection of a teacher's residence (*a*); and

Note (i). Municipal aid to High Schools.

(2) That an application by a High School Board to a township council to raise or borrow money for any of these purposes must be made before August 1st, must be the corporate act of the High School Board, and must specify the purposes for which the money was required.

Now, however, by s. 2 (8) (9) of "*The High Schools Act*," (R. S. O. c. 293), it is declared that:—

"Permanent improvements."

"8. 'Permanent improvements' shall mean such expenditure as may be necessary for the purchase or rental of a residence for the teacher, or for the purchase or rental of a school site and the erection or rental of a school house, or for the enlargement of both or either of them, or for permanently changing the system of heating and ventilation, the erection of fences, outhouses and gymnasium, or for the purchase of school furniture, maps and apparatus, library and all other appliances required by the regulations of the Education Department for High Schools.

"Maintenance."

"9. 'Maintenance' shall mean such expenditure as may be necessary for ordinary repairs in the teacher's residence or for the improvement of the grounds attached thereto, and for the salaries of teachers, officers and servants of the Board, and for conducting the entrance examination prescribed by this Act, and for repairs to school buildings, outhouses, gymnasium, and fences, and for the improvement of the school grounds, the repair of school furniture, insurance of the school property and sundry expenses for ordinary school purposes, and such annual additions to the library, apparatus, and other school appliances as may be required by the regulations of the Education Department for High Schools."

And ss. 31-37 of the Act (which it is unnecessary here to note) deal in detail with the steps to be taken by High School Boards in order to obtain municipal aid either for "maintenance" or for "permanent improvements."

The formation and alteration of High School Districts is provided for by ss. 7, 8 and 9 of "*The High Schools Act*" (R. S. O. c. 293), (as amended in 1898 by 61 V. c. 34, s. 1 (*b*).

Grants to High Schools and Collegiate Institutes.

Grants to High Schools and Collegiate Institutes.

By the councils of townships, towns and villages:—

4. For making grants in aid of any high school or collegiate institute, or to build, preserve, enlarge or improve any high school or collegiate institute in any adjacent or other municipality. 55 V. c. 42, s. 509 (2).

Taken from 51 V. c. 28, s. 25 (1888).

(j) See *The Oakwood High School Case* (*c*), and *Dawson* v. *Sault Ste. Marie* (*d*), referred to in the preceding note.

Grants to University of Toronto and U. C. College.

By the councils of counties, cities and towns:—

Grants to Toronto University and U.C.C.

5. For making grants in aid of the University of Toronto or Upper Canada College; and the municipal council of the

(*a*) *Cf.* 42 V. c. 34, s. 29, quoted in note (d), *supra*, re-enacted as s. 35 (1-2) of R. S. O. (1887), c. 226.

(*b*) As to the formation and alteration of High School Districts under the earlier Acts see *Re Tyrell and County of York*, 35 U. C. R. 247 (1874); *Re Chamberlain and United Counties of Stormont, Dundas and Glengarry*, 45 U. C. R. 26 (1880); *Re Wolverton and North & South Grimsby*, 3 O. R. 293. (1883); *Re Board of Education of Morrisburgh and Township of Winchester*, 8 A. R. 169 (1883).

(*c*) 15 O. R. 686 (1888); in appeal *sub. nom. Re Oakwood High School Board and Township of Mariposa*, 16 A. R. 87 (1888).

(*d*) 18 O. R. 556 (1889).

City of Toronto may so grant to the said College water from the city water works, with or without any charge therefor. 60 V. c. 45, s. 55.

Sec. 587 (5)-(7). Notes (k)-(l).

See the reference appended to the sub-section.

Supporting Pupils at High Schools, Toronto University, Upper Canada College or the Agricultural College.

6. For making a permanent provision for defraying the expenses of the attendance at the University of Toronto, and at Upper Canada College, of such of the pupils of the public high schools of the municipality or county as are unable to incur the expense, but are desirous of, and in the opinion of the respective masters of such high schools, possess competent attainments for competing for any scholarship, exhibition or other similar prize offered by such University or College. 55 V. c. 42, s 495 (7); 60 V. c. 45, s. 54.

Supporting certain High School pupils at University of Toronto and U. C. College, etc.

See the references appended to the sub-section. The words "municipality or" in line 4 were inserted in 1897 by 60 V. c. 45, s. 54. *Cf.* 12 V. c. 81, s. 41 (4), (counties); 22 V. c. 99, s. 279 (3), (counties and cities); 29-30 V. c. 51, s. 288 (3), (counties, cities and separated towns); 36 V. c. 48, s. 383 (7), (do.); R. S. O. (1877), c. 174, s. 465 (7), (do.); R. S. O. (1887), c. 184, s. 495 (7), (do.), etc.

(k) In the Acts of 1849, 1858, 1866, 1873 and 1877, Upper Canada College is designated by its original title, viz., "Upper Canada College and Royal Grammar School" (*a*). In 1887 the name of the corporation was altered to "Upper Canada College" (*b*). As to the University of Toronto, see pp. 7-83 of "The Universities of Canada: Their History and Organization" by Wm. Houston, M.A., printed as an appendix to the Report of the Minister of Education for Ontario, 1896, at pp. 363-373, where the charter granted by Geo. IV. to King's College in 1828 is set out in full (*c*).

7. For making similar provision for the attendance at any high school, for like purposes, of pupils of public schools of the municipality. 55 V. c. 42, s. 495 (8).

Similar provision for attendance at High Schools.

The similar provision in the Act of 1858, (22 V. c. 99), s. 279 (14), applied only to counties and cities; that contained in the subsequent Acts (prior to this Revision) only to counties, cities and separated towns. *Cf.* 29-30 V. c. 51, s. 288 (4); 36 V. c. 48, s. 383 (8); R. S. O. (1877), c. 174, s. 465 (8); 46 V. c. 18, s. 495 (8); R. S. O. (1887) c. 184, s. 495 (8); 55 V. c. 42, s. 495 (8).

(l) As to the Agricultural College and Experimental Farm at Guelph, Ontario, it is provided by R. S. O. c. 302, s. 8, that:—

The Agricultural College at Guelph.

"8.—(1) Every county and every territorial District in the Province may have the privilege of having during all college terms one student in attendance, and receiving instruction at the College, without the payment of any entrance or tuition fee. The county council of each county shall nominate the student entitled to this privilege for the the county, and the Advisory Board shall nominate the students for the territorial district. Such student must be the son of a practical farmer resident in the county or district, and have lived on his parents' farm at least two years prior to his admission to the College.

(2) The Lieutenant-Governor in Council may prescribe the manner in which such students shall be nominated by the county council or Advisory Board."

See also, as to the obligation imposed by 60 V. c. 14, s. 73, upon towns in judicial or territorial Districts to pay for the maintenance of pupils from such town attending a High School in any other town in the same District, *Port Arthur High School Board* v. *Town of Fort William*, 25 A. R. 522 (1898).

(*a*) *Cf.* 12 V. c. 82, ss. 51, 79; C. S. U. C. c. 62, ss. 55, 64: R. S. O. (1877), c. 208.

(*b*) 50 V. c. 42, s. 1; R. S. O. (1887), c. 229. See 57 V. c. 60; 58 V. c. 58; R. S. O. (1897), s. 297.

(*c*) See also the Statutes of 7 Wm. IV. c. 16; 13 V. c. 82; 12-14 V. c. 89; 16 V. c. 89; C. S. U. C. c. 62, etc.

Sec. 587 (8)-(10).

Notes (m), (n).

Endowing fellowships, etc., in University of Toronto and U. C. College.

Endowing Fellowships.

8. For endowing such fellowships, scholarships or exhibitions, and other similar prizes, in the University of Toronto, and in Upper Canada College, for competition among the pupils of the public high schools in the municipality or county, as the council deem expedient for the encouragement of learning amongst the youth thereof. 55 V. c. 42, s. 495 (9); 60 V. c. 45, s. 54.

See the references appended to the sub-section. The words "municipality or" were inserted before "county" in lines 4 and 5 by 60 V. c. 45, s. 54 (1897). *Cf.* 12 V. c. 81, s. 41 (5), (counties); 22 V. c. 99, s. 279 (5), (counties and cities). 29-30 V. c. 51, s. 288 (5) and subsequent Acts (as noted under sub-s. 6, *supra*) applied only to counties, cities and separated towns.

(m) Sections 83-85 of R. S. O. c. 298, "*An Act respecting the University of Toronto and University College*," etc., provide that :—

"**83.** Any person, body politic or corporate, may found professorships, fellowships, lectureships, scholarships, exhibitions, prizes and other rewards in the said College or University, by providing a sufficient endowment in land or other property, and surrendering or conveying the same to the Crown for the purposes of the said College or University, and thereupon suing out letters patent from the Crown, instituting, establishing and endowing the same with the property so provided for that purpose as aforesaid. And the Senate may by statute provide that interest at a rate not exceeding six per cent per annum shall be paid and applied out of the income fund of the University on all moneys actually paid in to the Crown for the purposes of such endowment.

84. In such letters patent shall be set forth such rules and regulations for the appointing to and conferring of such professorships, fellowships, lectureships, scholarships, prizes or other awards as the respective founders thereof, with the approbation of the Crown, think fit to prescribe for that purpose, all which rules and regulations the authorities of the said College or University shall observe and give effect to, as in the said letters patent may be directed.

85. No professorship or lectureship shall be so founded for the teaching of any subject which under this Act is not to be taught in the said College or University."

By the councils of cities having 100,000 inhabitants or more :—

Municipal aid to University of Toronto.

9. For granting aid to the University of Toronto, and for creating a debt therefor, and for the issue of debentures for the amount of such debt; and no such by-law shall require the assent of the ratepayers of the municipality before the final passing thereof, unless the amount exceeds $500. 55 V. c. 42, s. 495.

Taken from 53 V. c. 41, s. 41 (1890).

(n) This sub-section was added after the fire which on Feb. 14, 1890 destroyed a great part of the University Buildings at Toronto.

Schools for Artisans.

By the councils of counties, cities and separated towns :—

Establishment of schools for artisans.

10. For establishing schools for the training and education of artisans, mechanics and workingmen in such subjects as may promote a knowledge of mechanical and manufacturing arts; and for acquiring such real property as may be requisite

for such schools; and for erecting and maintaining suitable buildings thereon; and for improving and repairing such school buildings, and for disposing of such property when no longer required.

(a) The councils of any municipalities establishing such schools may appoint boards of trustees or managers to conduct the schools, giving them such authority or power for the management of the same, as the councils may deem expedient. 55 V. c. 42, s. 495 (13). Management of such schools.

11. For making grants in aid of such schools as may be deemed expedient. 55 V. c. 14, s. 495 (14). Aid to such schools.

Taken from 54 V. c. 42, s. 19 (1891).

Technical Schools.

(o) R. S. O. c. 301, entitled "*An Act respecting Technical Schools*," provides (s. 4) that:— Technical Schools.

"It shall be lawful for the municipal corporation of any city or town by by-law to appropriate such sums of money as may be deemed expedient for the establishment of a Technical School for adults within the meaning of this Act. All the powers vested in the corporation by '*The Municipal Act*,' for the purchase or expropriation of lands or for leasing or repairing buildings or for the erection of new buildings for the use of the municipality, shall be applicable to this Act."

Art Schools.

12. For granting such aid to art schools, approved by the Education Department, as they may deem expedient. 58 V. c. 42, s. 25. Art Schools.

See the reference appended to this section.

(p) Under R. S. O. (1887), c. 173, any number of persons not less than ten might become an incorporated Art School in the manner and with the powers therein mentioned. That Act was repealed in 1895 by 58 V. c. 45, s. 27; but s. 29 of "*The Public Libraries Act*," (R.S.O. c. 232) provides that:—

"Every Art School incorporated under '*The Act respecting Mechanics' Institutes and Art Schools*' or under any other Act is hereby continued and shall be entitled to receive, subject to the regulations of the Education Department, a sum not exceeding $400 annually out of any appropriation made by the Legislative Assembly for Art Schools, and such further sum on the basis of attendance and efficiency as may be approved by the Minister of Education." R.S.O. c. 232.

Mining Schools.

(q) R. S. O. c. 303, entitled "*An Act for the Establishment of Mining Schools*," provides that:— Mining Schools.

"2. Any city, town, incorporated village, township or union municipality may, by by-law, provide for the establishment within such city, town, incorporated village, township or union municipality, or elsewhere of a Mining School, and may by said by-law provide for the levying of a special annual rate upon the whole of the rateable property thereof, for any term not less than ten, nor more than thirty years, for the establishment or maintenance of such school or both, or for the leasing of buildings, or grounds, or for the purchase of lands and erection of buildings, or for the purchase and maintenance of machinery, furnaces and scientific apparatus, and all other things necessary for the treatment of any ore, or other mineral found in the R.S.O. c. 303.

Sec. 577 (12).

Notes (q), (r), (s).

Mining Schools.

Province, and of all the appliances necessary for the treatment of such ores or minerals by reduction, smelting and other works, as well as all appliances, works, methods and systems necessary for the separation, amalgamation, manufacture, or other treatment of the metals thereby produced, and for the maintenance of the necessary teaching staff; provided that no such by-law shall be finally passed until it has first received the assent of a majority of the electors of the municipality in the manner provided by "*The Municipal Act*" with respect to by-laws for creating debts.

R.S.O. c. 303.

4. Subject to the assent of the electors being first obtained as provided by section 2 of this Act the council of any city, town, incorporated village, township, or union municipality may pass a by-law, or by-laws providing for the granting of aid by way of bonus to any such school already established or to be established, either in any township or ward forming part of such municipality or elsewhere, and every such by-law shall provide for the issue of debentures for the purpose of granting such bonus; but such debentures shall not be payable within any period less than ten years nor more than thirty years after the issue thereof; and such by-law shall provide for the levying and collection of a special annual rate for payment of such debentures, and the interest thereon to be levied upon all the rateable property within the municipality.

5. The council of any county may by a by-law which has been passed by the votes of two-thirds of the whole number of members thereof, grant aid to the extent of $10,000 to any mining school established or to be established under the provisions of this Act, for any or all of the purposes mentioned in section 2 hereof."

Industrial Schools.

Industrial Schools.

(r) As to the liability of counties, cities and separated towns for the maintenance of children sent to an Industrial School, it is provided by R. S. O. c. 304, s. 30, that :—

R.S.O. c. 304.

"(1) In case a child sent by a Judge or Magistrate to an Industrial School has not resided in the city or town in which said school is situated, or to which it is attached for a period of one year, but has resided for that period in some other county, city, or separated town, the school corporation or philanthropic society may recover from the corporation of such county, city, or separated town the expense of maintaining the child.

(2) If the child, although he or she had resided for a period of one year in the city in which the Industrial School is situated, or to which it is attached, had, since such residence, been resident for a period of one year in some other municipality, the school corporation or philanthropic society, may, in like manner, recover the expense of maintenance from the county, city, or separated town in which the child last resided for a period of one year.

(3) When the child resided for one year last preceding its admission to said school in the city or town in which the Industrial School is situated or to which it is attached, such city or town shall pay a sum of not less than $2.00 per week towards the expenses of maintaining in the school of each such child whose maintenance is not otherwise fully provided for; and such city or town shall have the power to recover the amount so paid from the parents if able to pay it."

DIVISION XXI.—CHARITIES.

Maintenance of indigent persons at work-houses, hospitals, etc. Sec. 588 (1).
Deed or mortgage may be given to secure charitable advances. Sec. 588 (1a).
Charitable Institutions.—Out-of-door relief. Sec. 588 (2).
Alms houses—Houses of Refuge Sec. 588 (3).
Support of destitute insane persons. Sec. 589.
Royal Victorian Order of Nurses. Sec. 590.

588. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

Aiding Indigent Persons.

By the councils of counties, townships, cities, towns and villages:—

Aiding indigent persons and charities

1. For aiding in maintaining any indigent person belonging to or found in the municipality, at any work-house, hospital or institution for the insane, deaf and dumb or blind, or other public institution of a like character:

Power to take security for grants made to individuals for charitable purposes.

(a) Where a municipal corporation advances money by way of charity or relief to a person who, although in destitute circumstances is the owner of or interested in any land the retention whereof is necessary for a dwelling for the person receiving such relief, it shall be lawful for the corporation to take a conveyance of or security on such land to cover the amount of such charity or relief, and on the death of the person in receipt of such charity or relief, or the surrender of said land by such person to the corporation, the corporation may sell or dispose of said land and apply the proceeds in payment of the amount so expended in charity or relief with interest thereon at six per cent. per annum, together with the costs of realizing on said land. The balance of such proceeds, if any, shall go to the next of kin or devisee of such person. 55 V. c. 42, s. 479 (12) *part*; 56 V. c. 35, s. 13.

Taken—(except clause (a)—from the Act of 1873, (36 V. c. 48), s. 372 (7).

The Municipal Amendment Act of 1868, (16 V. c. 181, s. 9 (2), provided that the council of any township in Upper Canada might pass by-laws:—

> "For levying, collecting and appropriating a rate, to be assessed equally on the whole rateable property of such township, for raising such moneys as may be considered necessary for the support of any indigent, infirm or helpless persons resident in such township. But no by-law for such purpose shall be made or passed unless upon a written request to that effect signed by a majority of the freeholders and householders on the assessment-roll of the township for the year in which such request shall be made, nor unless for at least one month previous to the passing of such by-law, printed copies of such request, with the names of the signers thereto, shall have been put up in at least four public places within such township, and at the usual place for holding the meeting of the township municipality, and also by inserting the same weekly for at least four weeks in some newspaper published within the county."

(a) 22 V. c. 99, s. 269; 29-30 V. c. 51, s. 279. By 31 V. c. 30, s. 28 (1868) this power was extended to villages. The Act of 1873, (36 V. c. 48), s. 372 (7) conferred upon all municipalities the powers now contained in sub-ss. 1 and 2 of this section. Clause (a) was added in 1893 by 56 V. c. 35, s. 13.

Sec. 588 (1).

Notes (a-b).

Support of indigent persons not compulsory.

(a) The English Poor Laws (*a*) were by the first Act of the First Parliament of Upper Canada (*b*) expressly excepted from those "laws of England" which by that Statute became "the rule for decision in all matters of controversy relative to property and civil rights." (*c*) Under the Provincial Acts above referred to (*d*), township councils (under the Acts of 1853, 1858 and 1866), and village councils (under the Act of 1868) were authorized to pass by-laws for levying rates to raise money for the support of the resident poor; but in *Re McDougall and Township of Lobo* (*e*) the Court refused a *mandamus* to compel a township to provide for the support of an indigent labourer.

Per ROBINSON, C. J.:—

> "The Legislature have enabled—but not required—township councils to raise money by rate for the support of the poor resident in the township . . . but . . . they have left a discretion to be exercised by them in regard to the necessity for such a rate . . . and . . . it does not rest with us to dictate to the municipal councils what particular cases of distress call for public relief." (*f*)

In *Kaiser* v. *Township of East Whitby*, a Division Court case tried before the late Judge Dartnell, the plaintiff, a medical man, sued the municipality for medical attendance upon a family of indigent poor resident in the township. The claim was based upon the grounds:—(1) that the municipality had received benefit from the services rendered, in being probably saved the expense of one or more pauper funerals, and (2) that the township council had specified in their estimates for the year a sum for poor relief, and had included it in the tax rate.

In giving judgment His Honour said:—

> "It is contended that a sum was was set apart for poor relief and that the defendants are therefore bound to distribute it for that purpose. This is a fallacy. The by-law is for the purpose of raising by a general rate upon the taxpayers the sums required for various municipal purposes; but it does not follow that because a sum for the relief of the poor was included in the estimates upon which the by-law is founded, the defendants are therefore bound to distribute it. It is still within their discretion to determine whether they shall expend all or any or more than the sum thus estimated. There may be no poor requiring relief. Supposing that at the time when, as the plaintiff contends, the defendants became liable to him, the amount estimated had been fully expended, would his position not be the same as if there had been no by-law."

(b) Clause (a). See also s. 524 as amended by 62 V. (2nd Session), c. 26, s. 31, clause (b) of s. 591 and clause (e) of 700.

Charitable Institutions.—Out-of-door Relief.

Charitable institutions. Out-of-door relief.

2. For granting aid to any charitable institution or out-of-door relief to the resident poor. 55 V. c. 42, s. 479 (12) *part.*

Taken from the Act of 1873 (36 V. c. 48), s. 372 (7). See under sub-section 1, *supra*. *Cf.* 22 V. c. 99, s. 290 (1): 29-30 V. c. 51, s. 299 (11) (cities and towns.)

(*a*) 43 Eliz. c. 2; 13-14 Car. II. c. 12; 3 W. & M. c. 11; 8-9 Wm. III. c. 30; 9-10 Wm. III. c. 11; 12 Anne, c. 18; 9 Geo. I. c. 7, etc.

(*b*) 32 Geo. III. c. 1, s. 6.

(*c*) See *Doe d. Anderson* v. *Todd*, 2 U.C.R. 82 (1845), *per* ROBINSON, C.J., at p. 86, and *per* MCLEAN, J., at p. 90.

(*d*) See the small-print note appended to this sub-section.

(*e*) 21 U. C. R. 80 (1861).

(*f*) But as to the duty of county councils in regard to destitute insane persons, see s. 589.

Almshouses.—Houses of Refuge.

Sec. 588 (3); 589.

Notes (c-f) (a).

Almshouses, etc.

By the councils of cities and towns:—

3. For establishing and regulating within the city or town, or on the industrial farm or ground held for public exhibitions, one or more almshouses or houses of refuge for the relief of the destitute, and also for aiding charitable institutions within the city or town. 55 V. c. 42, s. 504 (11).

Taken from the Act of 1858, (22 V. c. 99), s. 290 (1).

(c) "**On the industrial farm or ground held for public exhibitions.**" See s. 576 (3).

(d) "**One or more almshouses or houses of refuge.**" See ss. 524-527 and the notes thereto.

(e) "**For the relief of the destitute.**" *Cf.* the language of s. 526:—"All poor and indigent persons who are incapable of supporting themselves." The English Poor Laws classify the poor as:—

1. Poor by impotency, *e.g.*, the aged or decrepit, fatherless or motherless, poor under sickness, and persons who are idiots, lunatics, lame, blind, etc.;

2. Poor by casualty: such as able-bodied persons decayed or ruined by unavoidable misfortunes, or otherwise out of employment, and unable to procure employment;

3. Poor by prodigality or debauchery; also those called thriftless poor, as idle, slothful persons.

As to the support of destitute insane persons, see sec. 589.

(f). "**Aiding charitable institutions within the city or town.**" See also subs. 2 and ss. 590, 591 (9) (10).

Support of Destitute Insane Persons.

County council to make provision for the destitute insane.

589. The county council of each county shall, from time to time, make provision for the whole or partial support either in the county gaol or some other place within the county, of such insane destitute persons as cannot properly be admitted to the Provincial asylums, and shall determine the sum to be paid for such support, and also the parties to whom such sums shall be paid by the county treasurer. 55 V. c. 42, s. 520.

Taken from 43 V. c. 26, s. 1 (1880). "*An Act respecting the Support of Destitute Insane Persons.*"

Former law.

(a) The Provincial Statute 11 Geo. IV. c. 20 (1830)—after reciting that "it appears by the petition of the Chairman of the Quarter Sessions in and for the Home District, and also by presentment of the Grand Jury of the said District, that several insane persons, destitute of any provision for their maintenance, have been charitably received into the gaol of the Home District; and that (there being no funds for their support provided by law) a charge has been incurred from necessity and paid from the funds of the District without any legal authority"—provided:—(1) That the Clerk of the Peace should lay before the Grand Jury of the Quarter Sessions an account of any money paid or required to be paid for the purpose of maintaining and supporting insane destitute persons as aforesaid; (2) That each Quarter Sessions the Grand Jury should state in their presentment the amount to be allowed during the next year for this purpose, and that an account of the money expended during the preceding year should then be laid before the Grand Jury by the Clerk of the Peace; (3) That the District Treasurer should, upon the warrant of the Chairman of the Quarter Sessions, from time to time pay out of unappropriated District Funds the sum required for the purpose aforesaid up to the limit fixed by the Grand Jury.

The provisions of the above Statute, as extended by 3 Wm. IV. c. 46 (1833) to all the Districts of the Province, were embodied in C.S.U.C. c. 122 and in the Revised Statutes of 1877, c. 179, and remained in force until the enactment (in 1880) of the section now under consideration.

Secs. 589-591.

Note (a).

Power to grant aid to Victorian Order of Nurses.

The Royal Victorian Order of Nurses.

590.—The council of any municipality may assist the Victorian Order of Nurses by a grant of money to the Order. 60 V. c. 45, s. 25.

See reference.

(a) "The Royal Victorian Order of Nurses"—(which is its full and proper title)—was founded in 1897 by Her Excellency the Countess of Aberdeen, wife of the then Governor-General of Canada, as a fitting memorial of the "Diamond Jubilee" of Her Most Gracious Majesty Queen Victoria. Any grant of municipal funds under the authority of this section should be made to the Order, describing it (as above) under the name conferred by its Royal Charter.

DIVISION XXII.—AIDS, BONUSES, LOANS AND BOUNTIES.

Aid to manufacturing establishments. Note A.
Agricultural or horticultural societies. Sec. 591 (1).
Bands of music. Sec. 591 (2).
Bathing houses. Sec. 591 (3).
Burial grounds. (R. S. O. c. 214). Note (c).
Exhibition-building companies. (R. S. O. c. 196). Note (d).
Fences. Note (e).
Free libraries. Sec. 591 (4).
Gas and water companies. Sec. 591 (5).
Harbours, wharfs and beacons. Sec. 591 (6).
Railways. Note (f).
Rifle Associations—Militia. Sec. 591 (7).
Road, bridge and harbour companies. Sec. 591 (8).
Superannuation and benefit funds. Sec. 591 (9), (10).
Telegraph companies. Note (g).
Tree planting. Note (t).

591. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say :—

(A.) Aid to Manufacturing Establishments.

The Municipal Act of 1873, (36 V. c. 48), contained, as s. 372 (5) thereof, the following clauses, based upon 34 V. c. 30, s. 6, which was re-enacted as R. S. O. (1877), c. 174, s. 454 (5); 46 V. c. 18, s. 482 (10) and R. S. O. (1887), c. 184, s. 479 (10), but was repealed by "*The Municipal Amendment Act, 1892*" (55 V. c. 43), s. 28, it having been discovered, (after nearly twenty years of experience) that attempts to nourish manufacturing industries by means of the artificial stimulus of bonuses taken from the pockets of the local taxpayers usually produce an unhealthy condition of the body politic, and end in disappointment and loss.

The repealed clause was as follows :—

> "The council of every county, township, city, town or village may pass by-laws :—
>
> (5). For granting aid by way of bonus for the promotion of manufactures within its limits, by granting such sum or sums of money to such person or body corporate and in respect of such branch of industry as the said municipality may determine upon ; and to pay such sum, either in one sum or in an annual or other periodical payments, with or without interest, and subject to such terms, conditions and restrictions as the said municipality may deem expedient, and may take security therefor : provided, however, that no such by-law shall be passed until the assent of the electors has been obtained, in conformity with the provisions of this Act in respect of by-laws for

creating debts. Any municipality granting such aid, may take and receive of and from such person or body corporate that may receive any such aid, security for the compliance with the terms and conditions upon which such aid may be given."

Sec. 591 (1-2). Notes (A), (a).

By 42 V. c. 31, s. 34 (1879) it was further provided that no property owner or lessee interested in or holding stock in any company should be qualified to vote on a by-law granting a bonus to such company. See further note (a) to s. 366, (which formerly applied to by-laws for bonuses to manufacturing establishments); s. 411 (power to exempt manufactories from taxation), and,—as to the securities taken by municipalities for compliance with the terms of bonus by laws,—the cases referred to in note (d) to s. 700, *post*.

Aiding manufacturing establishments.

In *Re Cameron and Village of Lanark*, 20 A. R. 372 (1893), a village by-law, passed after the Statute of 1892 had taken from municipal councils the power to bonus manufacturing establishments, was quashed with costs, though valid on its face, it appearing that under the pretext of paying $4,000 for the purpose of "purchasing from one Caldwell for twenty years a water power for electric light purposes," the real intention of the council was to aid Mrs. Caldwell to rebuild a grist-mill which had been burnt down. See also *Scott* v. *Town of Tilsonburgh*, 13 A. R. 233 (1886), referred to in the notes to s. 694.

Agricultural and Horticultural Societies.—Live Stock Exhibitions.

By the councils of counties, townships, cities, towns and villages :—

1. For granting or loaning money or granting land in aid of the Agriculture and Arts Association or of agricultural or horticultural societies as authorized by *The Agriculture and Arts Act*: or in aid of any association formed for the holding of a fat stock or live stock show or exhibition or any exhibition for the promotion or improvement of farming in any of its branches or departments 53 V. c. 42, s. 479 (9), *part* : 62 V. (2nd Session) c. 26, s. 38.

Aid to Agricultural Associations, etc.

Cf. 16 V. c. 11, s. 24 : 20 V. c. 32, s. 36 : 22 V. c. 99, s. 242 (4) : 29-30 V. c. 51, s. 246 (4) : 36 V. c. 48, s. 372 (5) : 46 V. c. 18, s. 482 (9); 55 V. c. 42, s. 479 (9).

(a) "*The Agriculture and Arts Act*," (R.S.O. c. 43), s. 45, provides that :—

R.S.O. c. 43.

"(1) The municipal council of any city, town, village, county or township in this Province may grant or loan money or grant land in aid of any Agricultural Society or Horticultural Society formed within the limits of the municipality, or partly within the limits of such municipality and partly within the limits of other municipalities, or wholly within the limits of an adjoining municipality, when such Society has made the returns required by this Act to be made to the Minister in the case of a Township Society ; provided always that the total amount or value of the money or land heretofore or hereafter granted or loaned to any municipality or to an Agricultural Society under this section shall not exceed, in the case of a city, $3,000, in the case of a township or town, $2,000, and in the case of a village, $1,000.

(2) If such grant is a loan of money to enable the said Association or Society to acquire lands, such municipality may hold the lands so acquired or may take a mortgage thereon, as security for the amount of such grant until the amount of such grant be repaid to the municipality ; and any such grant heretofore made in accordance with the provisions of this Act shall be legal and valid."

Cf. 56 V. c. 9, s. 1 ; 57 V. c. 17, s. 1. And see sub-s. 3 of the same section, quoted in note (k) to s. 576, *ante*.

Bands of Music.

2. For aiding in the establishment or maintenance of a band of music 55 V. c. 42, s 479 (9*b*).

Bands of music.

taken from 32 V. c. 36, s. 19 (1869), where it was part of a section, the rest of which is now sub-s. 7, *infra*, (q. v.)

Sec. 591 (3).

Notes (b-d).

Bathing Houses.

Public bathing houses.

3. For granting money to aid and assist in the construction of public bathing houses within the municipality, for borrowing money for such purposes, and for issuing debentures to secure the re-payment thereof. 55 V. c. 42, s. 479 (29).

Taken from 54 V. c. 42, s. 22 (1891).

(b) Before the council of a local municipality can pass a by-law for borrowing money for this purpose or issuing debentures to secure the repayment thereof, the assent of the ratepayers must be obtained (s. 389) in the manner prescribed by ss. 338, 365; and ss. 367-389, 396 also apply to such by-laws.

Burial Grounds.

Burial grounds.

R. S. O. c. 214.

(c) R. S. O. c. 214, entitled "*An Act respecting Conveyances to Trustees for Burial Grounds*," provides that :—

"1. Whenever any of the inhabitants of a township or locality in Ontario, to the number of ten or more, desire to take a conveyance of land for a burying ground not to belong exclusively to any particular denomination of Christians, such persons may appoint trustees, to whom and their successors to be appointed in such manner as may be specified in the deed of conveyance, the land may be conveyed; and such trustees and their successors in perpetual succession, by the name expressed in the deed, may take, hold and possess the land, in trust for the uses and purposes limited in the deed, and may maintain and defend actions for the protection thereof and of their property therein; but there shall not be held in trust under any such conveyance for the purposes aforesaid, more than ten acres of land for the inhabitants of any one township or locality. . . .

3.—(1) In any case where land has been conveyed to trustees for a burial ground as provided in section 1 of this Act, and where in the deed of trust no provision has been made or directions given for providing funds for the proper fencing and keeping in repair of such burial ground, and when the funds accruing from the sale of burial plots or from subscriptions are insufficient to provide the funds necessary for said fencing and keeping in repair,

(2) *The council of the municipality within which such burial ground is situate, may*, upon the application of the trustees of such burial ground, *make a grant of money* to said trustees *out of the general funds of the municipality*, to enable the trustees to carry on and complete the work mentioned in subsection 1 of this section."

Exhibition-Building Companies.

Exhibition-building companies.

R. S. O. c. 196.

(d) R. S. O. c. 196, entitled "*An Act respecting Joint Stock Companies for the Erection of Exhibition Buildings*," provides (ss. 4, 6) that :—

"4.—(1) Any municipal corporation in Ontario may subscribe for, acquire, accept, hold and transfer stock in any company to be formed under the authority of this Act, and from time to time may direct the mayor, warden or other chief officer thereof, on behalf of the municipality, to subscribe for such stock in the name of such municipality, and to act for and on behalf of the municipality, in all matters relative to such stock, and the exercise of the rights of the municipality as a shareholder; and the mayor, warden or other chief officer shall, whether otherwise qualified or not, be deemed a shareholder in the company, and may vote and act as such, subject always to such rules and orders in relation to his authority as may be made in that behalf by the municipal council, by by-law or otherwise, but acting according to his discretion in cases not provided for by the council.

(2) The municipality may pay for all instalments of the stock which they subscribe for and acquire, out of any moneys belonging to the municipality and not specially appropriated to any other purpose.

and may apply the money arising from the dividends or profits on the stocks, or from the sale thereof, to any purpose to which unappropriated moneys belonging to such municipality may be lawfully applied. Sec. 591 (4), (5). Notes (d), (e), (f)

5. Any municipal corporation in Ontario may lend money to any company that may be formed under this Act out of moneys belonging to the municipality and not appropriated to any other purpose, and may effect such loan upon such terms and conditions as may be agreed upon between the company and the municipality making the loan, and may recover the money so lent, and may appropriate the moneys so recovered to the purposes of the municipality." Exhibition-building companies.

Fences.

(e) As to aiding and compensating persons required to maintain, keep up or lay down fences along highways on account of accumulations of snow, etc., see *ante*, s. 545, sub-ss. 2, and 8 (a). Fences.

Free Libraries.

4. For granting money or land in aid of any Free Library established under *The Public Libraries Act* or *The Act respecting Mechanics' Institutes and Art Schools* within the municipality or within any adjoining municipality. 55 V. c. 42, s. 479 (9) *part*. Free Libraries.

Added by 50 V. c. 29, s. 19 to s. 482 (9) of the Act of 1883, (46 V. c. 18). See the references printed in small type under sub-s. 1, *supra*.

(f) Section 31 of "*The Public Libraries Act*," (R.S.O. c. 232), provides that:— Rev. Stat. c. 232.

"31. Any municipal or school corporation may contribute to the maintenance of a public library as such corporation may deem expedient, and may exercise its corporate powers for the collection of any sum so contributed from the taxable property of the ratepayers under its jurisdiction."

Cf. "*The Free Libraries Act, 1882*," (45 V. c. 22), afterwards R. S. O. (1887), c. 189. This was repealed and new provisions made respecting Free Libraries, etc., by 58 V. c. 45 (1895), which, as amended by 59 V. c. 57 (1896) is now R. S. O. 232.

As to Mechanics' Institutes, see also 14-15 V. c. 86 (1852), afterwards C. S. C. c. 72; re-enacted with amendments by 49 V. c. 35 (1886) which—(consolidated as R. S. O. (1887) c. 173)—was repealed by s. 27 of "*The Public Libraries Act, 1895*," (58 V. c. 45).

Gas and Water Companies.

By the councils of townships, cities, towns and villages:— Taking stock in gas and water companies.

5. For acquiring stock in, or lending money to, any incorporated gas or water company; and for guaranteeing the payment of money borrowed by, or of debentures issued for money so borrowed by the company; provided the by-law as assented to by the electors, as hereinbefore provided.

(*a*) In such case the head of any corporation holding stock in such company to the amount of $10,000 shall be, *ex officio*, a director of the company in addition to the other directors thereof, and shall also be entitled to vote on such stock at any election of directors. 55 V. c. 42, s. 489 (31). Head of corporation to be a director in certain cases.

Taken from the Act of 1858, (22 V. c. 99), ss. 250 (16), 260. *Cf.* 16 V. c. 181, s. 4 (14) (1853), which applied only to cities and towns.

Sec. 591 (5), (6).

Notes (g-j).

(g) "**Assented to by the electors as hereinbefore provided.**" See ss. 338-365: 367-368. The provisions of ss. 369-374, 384 (or 386) and 396 are also applicable to by-laws passed under this sub-section.

Gas and water companies.

R. S. O. c. 199.

(h) Sections 12-13 of R. S. O. c. 199, entitled "*An Act respecting Joint Stock Companies for supplying Cities, Towns and Villages* (a) *with Gas and Water*," further provide that:—

"**12.** Any of the municipalities in which the works of any such company are erected or placed may subscribe for or take stock in the company, or may loan any sum of money, on mortgage or otherwise to the company, or contribute in any manner towards advancing the object for which the company has been incorporated.

13. The head for the time being of a municipality holding stock i such company to the extent of one-tenth part or more of the whole of the capital stock, thereof, shall be *ex officio* a director of the company so long as the municipality continues to hold stock to the extent aforesaid."

R. S. O. c. 200.

And by s. 4 of R. S. O. c. 200, entitled "*An Act respecting Companies for supplying Steam, Heat, Electricity or Natural Gas for Heat, Light or Power*," it is declared that the above sections are to be read as forming part of the last mentioned Act,—in other words, the powers conferred upon municipal councils by R. S. O. c. 199, ss. 12 and 13 in respect to Gas and Water Companies are extended so that they now apply to:—

"A company for supplying steam, hot air, or hot water, for power or for heating purposes, or [a company] for supplying electricity or natural gas for the purposes of light, heat or power in any city, town or incorporated village, township or other municipality." (*b*)

Harbours, Wharfs, Beacons, etc.

Granting aid by way of bonus to harbours, etc.

6. For granting aid by way of bonus, for or towards the construction of harbours, wharfs, docks, slips, and necessary beacons on any river, lake, or navigable water passing in through, or forming any part of the boundary of a county, whether such bonus be given by such county or by a city, town, township, or village situate therein and to pay such bonus either in one sum, or in annual or other periodical payments with or without interest, and subject to such terms, conditions and restrictions as the council may deem expedient;

Assent of electors necessary.

(*a*) No such by-law shall be passed until the assent of the electors has been obtained in conformity with the provisions of this Act in respect of by-laws for creating debts;

Security may be taken.

(*b*) Any municipality granting such aid may take and receive of and from the person or body corporate, receiving any such aid, security for the compliance with the terms and conditions upon which such aid is given. 55 V. c 42, s. 479 (8).

This power was conferred by 42 V. c. 31, s. 19 (1) upon the councils of counties, townships, cities, towns and villages. In the present Revision, counties are not mentioned. This is doubtless a mistake, and should be corrected by the Legislature. The section itself speaks of a "bonus . . . given by a county." See also sub-s. 8, *infra*, as to "taking stock in or lending money or granting bonuses to any incorporated company in respect of any . . . harbour within or near the municipality."

(1) In addition to the powers conferred by these sub-sections, it is provided by s. s. 9 and 10 of R. S. O. c. 195, entitled "*An Act respecting Joint*

(*a*) "*Townships or other municipalities*" are now included.

(*b*) See note (b) to s. 566.

Stock Companies for the Construction of Piers, Wharves, Dry Docks and Harbours," that the council of any county, township, city, town or village may acquire, hold and transfer stock in a company incorporated under any of the various Acts under which such companies have from time to time been incorporated and may pay therefor out of municipal funds, etc.; (*a*) Ss. 11 and 14 of the same Act further provide that:

Harbours, wharfs, beacons, etc.

"**11.** A company may sell to any municipality representing the interest of the locality in which the work is situate, and any such municipality may purchase the stock of the company at the value agreed on between them, and the municipality shall hold the same for the use and benefit of the locality; and shall, in all respects thereafter, stand in the place of the company, and shall possess all such powers and authority as the company had theretofore possessed and exercised.

14. A municipal council representing the interests of the locality in which the work is situate, may, after twenty-one years from the time of the work being so far completed as that tolls were and have been collected thereon, purchase the stock of the company at the current value thereof at the time of purchase, and shall hold the same for the use and benefit of the locality; and the municipality shall thenceforth stand in the place of the company, and the council thereof shall possess all such powers and authority as the company had theretofore possessed and exercised." (*b*)

(j) **Clause (a).** See note (**g**), *infra*.

(k) **Clause (b).** "**Security for compliance with the terms and conditions upon which such aid is given.**" As to the form of such security and the rights of the municipality in case default is made in the fulfilment of the terms and conditions thereby imposed, see note (**d**) to s. 700, *post*.

Railway Companies.

(l) As to the power of municipal councils to aid railway companies (including electric railways) see ss. 694-696, *post*, and R. S. O. c. 209, ss. 61-80, referred to in the notes to s. 696, *post*.

Railway companies.

Rifle Associations—Militia.

By the councils of counties, townships, cities, towns and villages:—

7. For aiding any regularly organized rifle association; or for adding to the sum paid during the period of annual or other authorized drill, or when on active service to any enlisted member or members of any corps of Active Militia organized within such municipality; or for the purpose of military outfit or equipment of the members of such corps. 55 V. c. 42, s. 479 (9*a*).

Aid to Rifle Associations and Militia.

Taken from 52 V. c. 36, s. 19 (1889), the rest of which now forms sub-s. 2 of this section.

(m) "**Any regularly organized Rifle Association.**" These words apparently include the Dominion Rifle Association, the Ontario Rifle Association, the Bruce, Grey, Guelph, Hespeler, Toronto, Victoria, etc., Rifle Associations, and such organizations as the Sault Ste. Marie Rifle Company, the Sudbury Rifle Company, the Thessalon Rifle Company, etc., which are not attached to any battalion of the Canadian Militia.

(*a*) The language is substantially the same as that of ss. 37 and 38 of R. S. O. c. 193, quoted *infra* in note (**o**).

(*b*) *Cf.* 16 V. c. 124, ss. 11, 12-17: C. S. U. C. c. 50, ss. 24-26, 31: R. S. O. (1877), c. 154, ss. 26-28, 30: R. S. O. (1887), c. 161, ss. 26, 28, 30.

Sec. 591 (7) (8).

Notes (n-o).

Aid to militiamen during annual drill.

(n) "**The sum paid during the period of annual or other authorized drill . . . to . . . enlisted members of . . . corps of Active Militia**" is regulated by ss. 59 and 61 of "*The Militia Act*," (R. S. Ca. c. 41,) and is as follows:—

Lieutenant-Colonel	$4.87
Major	3.99
Paymaster	3.05
Adjutant (Captain)	2.82
" (Lieutenant)	2.44
" (2nd Lieutenant)	2.13
Quartermaster	1.94
Surgeon	3.65
Ass't Surgeon	2.43
Veterinary Surgeon	2.50
Captain	2.82
Lieutenant	1.58
2nd Lieutenant	1.28
Sergeant-Major	1.00
Quartermaster-Sergt	.90
Paymaster's Clerk	.90
Orderly Room Clerk	.90
Hospital Sergeant	.90
Pay Sergeant	.80
Sergeant	.75
Corporal	.60
Bugler or Trumpeter	.50
Gunner, Trooper or Private	.50
For each horse taking part in such drill	1.00

The rates of pay of militia men when on active service are not fixed by Statute.

Road, Bridge and Harbour Companies.

Aid for roads, bridges and harbours.

8. For taking stock in or lending money, or granting bonuses to any incorporated company, in respect of any road, bridge or harbour, within or near the municipality, under and subject to the respective statutes in that behalf, or for granting aid by way of bonus to any incorporated road or bridge company;

Assent of electors necessary.

(a) No such by-law granting such aid by way of bonus shall be passed until the assent of the electors has been obtained in conformity with the provisions of this Act in respect of by-laws for creating debts. 55 V. c. 42, s. 479 (11).

The first part of the sub-section down to and inclusive of the word "behalf" is taken (in its present form) from 37 V. c. 16, s. 4 (1874). *Cf.* its earlier forms in 12 V. c. 81, s. 31 (18) (townships) and s. 41 (19), (counties); 16 V. c. 190, ss. 23, 24, Joint Stock Companies for roads, bridges, etc.); 18 V. c. 139, do. (powers extended to cities and towns); 22 V. c. 99, s. 317 (19) (all municipalities). The remainder of the sub-section, including clause (a), was added by 39 V. c. 34, s. 9, (1876).

Provisions of R.S.O. c. 193, as to aiding road, etc., companies.

(o). "**For taking stock in or lending money . . . to any incorporated company in respect of any road, bridge . . . within or near the municipality.**" See also s. 645, *post*. "*The General Road Companies' Act*," (R. S. O. c. 193), further provides (ss. 37-42) with respect to companies incorporated under that Act or its predecessors (*a*) that for the purposes therein mentioned, and with respect to roads and other works constructed by any such company:—

"**37.** A municipal council, having jurisdiction within the locality through or along the boundary of which such road passes, or in which such work is constructed, may subscribe for, hold, sell and transfer stock in any company formed under this or any former Act passed for the like purpose, and may from time to time direct the mayor, reeve, warden or other chief officer of the municipality on behalf thereof, to subscribe for such stock in the name of the municipality, and to act for and on behalf of the municipality in all matters relative to such stock, and the exercise of the right of the municipality as a shareholder; and the mayor, reeve, warden or other chief officer shall, whether otherwise qualified or not, be deemed a shareholder in the company, and may vote and act as such, subject to any rules and orders in relation to his authority, made in that be-

(*a*) *Cf.* 16 V. c. 190; R. S. O. (1877), c. 152; R. S. O. (1887), c. 159.

half by the by-laws of the municipal council or otherwise, and may vote according to his discretion in cases not provided for by the municipality. (*a*) R. S. O. (1887) c. 159, s. 68.

Sec. 591 (8).

Notes (o-p).

Aiding road, bridge or harbor companies.

38. The municipal council may pay all instalments upon the stock they subscribe for and acquire out of any moneys belonging to the municipality, and which are not specially appropriated to any other purpose and may apply the moneys arising from the dividends or profits on the said stock, or from the sale thereof, to any purpose to which unappropriated moneys belonging to the municipality may lawfully be applied (*b*) R. S. O. (1887) c. 159, s. 69.

39. Where a municipal council holds stock in the company, and is by law entitled to vote for the election of directors, and holds a controlling amount of the stock in the company, such council shall by resolution appoint such number of directors only as will suffice to form a majority of the board of directors, and all members of such municipal councils, whether shareholders in their own right or not, and any ratepayer in the municipality not being a shareholder in his own right shall be eligible to be appointed directors on behalf of the municipality, and the shareholders other than such corporation shall elect the other directors. (*c*) 55 V. c. 36, s. 1.

40. The municipal council of any locality through or along the boundary of which such road passes, or within which any such work connected therewith is constructed, may, out of the moneys belonging to the municipality and not appropriated to any other purpose, lend money to the company authorized to make the road or construct the work, or to any company heretofore chartered by Act of the Legislature for a like purpose, and upon such terms and conditions as may be agreed on between the company and the municipality making the loan, and the municipality may recover the money so loaned and appropriate the same to the purposes of the municipality. (*d*) R. S. O. (1887), c. 159, s. 71.

41. The municipal council may issue debentures for the payment of any loan negotiated by them with such company, in the same manner and subject to the same conditions as required by law with regard to the issuing of other debentures. (*e*) R. S. O. (1887), c. 159, s. 72.

42. The provisions of the last preceding five sections shall, in so far as respects the municipal councils of cities and towns, apply to all cases of companies formed under this Act, or heretofore chartered by any Act of the Legislature, for the formation of roads or the construction of bridges within or without such cities and towns respectively." (*f*) R. S. O. (1887), c. 159, s. 73.

(p) **"Under and subject to the respective Statutes in that behalf."**

Re Peck and Township of Ameliasburgh (*g*) was an application (under s. 378) to quash a by-law (duly assented to by the electors) by which the reeve and treasurer of a township were authorized to subscribe for stock in the Bay of Quinte Bridge Co. and to issue township debentures to pay therefor. One ground of objection was that the Act (*h*) which incorporated the bridge company, does not profess (*i*) to authorize a municipality to take stock in the company; and on this as well as on other grounds (*j*) the by-law was held bad.

(*a*) *Cf.* 16 V. c. 190, s. 23: C. S. U. C. c. 49, s. 63: R. S. O., (1877) c. 152, s. 67.

(*b*) *Cf.* 16 V. c. 190, s. 23: C.S.U.C. c. 49, s. 64: R.S.O. (1877) c. 152, s. 68.

(*c*) *Cf* 29 V. c. 36, s. 7: R. S. O. (1877), c. 152, s. 69: R. S. O. (1887), c. 159, s. 69.

(*d*) *Cf.* 16 V. c. 190, s. 24: C.S.U.C. c. 49, s. 65: R.S.O. (1877), c. 152, s. 70.

(*e*) *Cf.* 16 V. c. 190, s. 24: C. S. U. C. c. 49, s. 66: R. S. O. (1877), c. 152, s. 71.

(*f*) *Cf.* 18 V. c. 139, s. 1: C. S. U. C. c. 49, s. 67: R. S. O. (1877), c. 152, s. 72.

(*g*) 17 O. R. 54 (1889). (*h*) 50-51 V. c. 97 (Ca).

(*i*) As do ss. 37-38 of R. S. O. c. 193. (*j*) See note (e) to s. 384, *ante*.

Sec. 591 (8-10). Notes (p-s). Aiding road, bridge or harbor companies.

Per STREET, J.:—"The words . . . 'under and subject to the respective Statutes in that behalf' mean . . . that wherever in any special or general Act under which a road or bridge company is incorporated, a provision is contained authorizing the municipal council . . . to hold stock in it, then [and then only] the municipal council may take stock in the company."

(q) "For . . . granting bonuses . . . in respect of any road (or) bridge." "For granting aid by way of bonus to any incorporated road or bridge company."

It is to be noted that by-laws for granting aid by way of bonus to the companies mentioned in this sub-section do not require the assent of one-third of all the ratepayers entitled to vote on money by-laws, but that a mere majority of the votes of such ratepayers is sufficient. See s. 366, *ante*. The "assent of the electors" must, however, be obtained in the manner prescribed by ss. 338-365 and the provisions of ss. 367-386 and 396 also apply to such by-laws.

Superannuation and Benefit Funds.

By the councils of cities and towns:—

Superannuation and benefit funds for fire brigade and police force.

9. For aiding and assisting by annual money grant or otherwise, as the council may deem expedient, the establishment and maintenance of superannuation and benefit funds for the benefit of the members of the police force and fire brigades, and of their families respectively, where police forces and fire brigades are established. 55 V. c. 42, s. 504 (7).

Taken from 44 V. c. 21, s. 24, which, however, applied to fire brigades only when they had been established by the city or town. See also s. 592 (2), *post*.

Aiding benefit funds for corporation employees.

10. For aiding and assisting by annual money grant, or otherwise, as the council may deem expedient, the establishment and maintenance of official benefit funds for employees of the corporation (other than employees of the police force and fire brigades hereinbefore provided for) and their families 58 V. c. 42, s. 27.

See the reference appended to the section.

(r) In 1889 a corporation called "The Hamilton Police Benefit Fund" (*sic*) was formed under R.S.O. (1887), c. 172, entitled "*An Act respecting Benevolent, Provident and other Societies*," (as amended by 53 V. c. 39, s. 9); and by deducting 3 per cent. monthly from the pay of each member, a fund was created, the object of which was "to grant gratuities and pensions for long service in the force, and to assist members of the force who may be disabled in the actual execution of their duty or incapacitated . . . . by long sickness, and to make provision for old age and for families in case of death."

One of the rules provided that (except in certain specified cases) no money should be drawn from the fund until it should have reached $8,000. A corporator and subscriber having died before the fund had reached that amount, it was held that his widow and children were entitled to a gratuity from the fund to be payable as soon as it should reach $8,000, but to be calculated on the basis of its amount at the time of the subscriber's death. (*a*).

Telegraph Companies.

Telegraph companies. R.S.O. c. 192.

(s) R.S.O. c. 192, entitled "*An Act respecting Telegraph Companies*," provides (s. 8) that:—

"8. Any municipal corporation in this Province . . . . may subscribe for and hold stock in any telegraph company incorporated under chapter 67 of the Consolidated Statutes of Canada, or any general Act passed subsequently thereto or hereafter passed authorizing the incorporation of such companies, and may pay the amount of such subscription out of any municipal or other funds not specially

(*a*) *Miller* v. *Hamilton Police Benefit Fund*, 28 S.C.R. 475 (1898).

appropriated to any other purpose, and such municipal corporation may levy money by rate, for paying any such subscription; and shall have such rights as a member of the company, and shall vote upon the stock held by it in such manner and by the intervention of such person or officer, as may be determined by the instrument of incorporation of the company." (a)

Secs. 591 (15); 592.

Notes (s), (t), (u).

Tree Planting.

(t) As to the powers of councils of local municipalities to encourage by bonus the planting of certain shade or ornamental trees on highways, etc., see *ante*, s. 574, sub-ss. 1 and 2 (c), and "*The Ontario Tree Planting Act*," (R.S.O. c. 243), s. 3 of which is quoted in note (a) to s. 574, *ante*.

Tree planting.

DIVISION XXIII.—BOUNTIES, MEDALS AND REWARDS.

Foxes, etc.—Bounties for destruction of. Sec. 592 (1).
Wolves—Destruction of. Note (a).
Medals and rewards for firemen, etc. Sec. 592 (2).
Crimes—Discovery of. Sec. 593.
Personation. Sec. 594.
Horse thieves. Sec. 595.

592. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:

Destruction of Foxes, etc.

By the councils of counties, townships, cities, towns and villages:

1. For giving and paying bounties not exceeding $5 per head for the destruction of foxes and other wild animals which kill or destroy poultry. 56 V. c. 35, s. 14.

Taken from 56 V. c. 35, s. 14 (1893).

Bounties for destruction of foxes, etc.

Destruction of Wolves.

(a) R.S.O. c. 290, entitled "*An Act to encourage the destroying of Wolves*," provides that:—

Bounties for destruction of wolves.

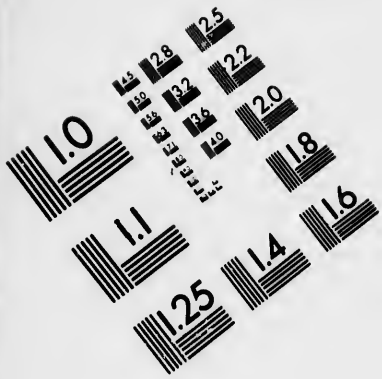
R.S.O. c. 290.

"1. If any person produces the head of a wolf with the ears on, before any Justice of the Peace acting for any county in Ontario, and makes oath or affirmation (as the case may be), or otherwise proves to to the satisfaction of such Justice, that the wolf was killed within that county, or within one mile of an actual settlement in the county, he shall be entitled to receive from the treasurer of the county the sum of $10 as a bounty for the same (b).

2. In case the Justice of the Peace before whom the head of the wolf is produced, is satisfied of the fact that the wolf was killed as in the preceding section mentioned, he shall first cut off the ears thereof, and then give the person a certificate that the fact of the wolf having been killed as in the last section mentioned has been proved to his

(a) *Cf.* 16 V. c. 10, s. 15; C.S.C. c. 67, s. 20; R.S.O. (1877), c. 151, s. 8; R.S.O. (1887), c. 158, s. 8.

(b) Taken from 6 Wm. IV. c. 29, s. 2, as amended by 55 V. c. 59, s. 1. *Cf.* C.S.U.C. c. 60, s. 1; R.S.O. (1877), c. 202; R.S.O. (1887), 223.



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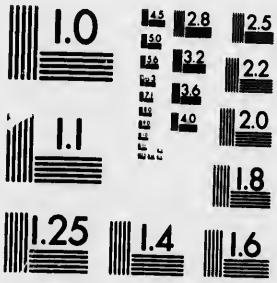

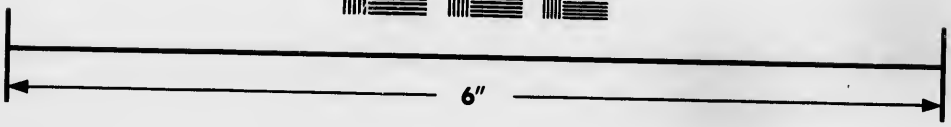

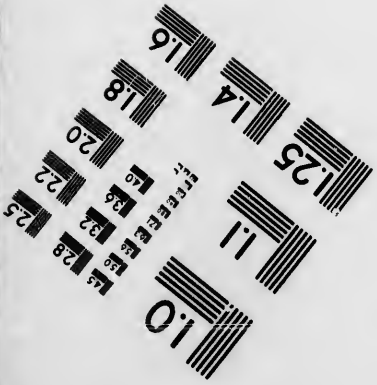

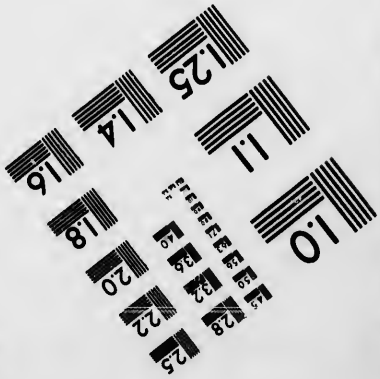

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Sec. 592 (1).

Note (a).
Destruction of wolves,
R.S.O. c. 290.

satisfaction, and such certificate shall authorize the person holding the same to demand and receive from the treasurer of the county the said bounty of $10 (*a*).

3. The treasurer of the county shall forthwith pay such bounty to the person presenting the certificate, provided the county funds in his hands enable him so to do: and if the said funds do not so enable him, then the said treasurer shall pay the same out of the moneys of the county which next thereafter come into his hands (*b*).

4. Upon the production of the said certificate and a written acknowledgment of the payment by said county, signed by the person to whom the same has been paid, the corporation of the county, except the Provisional County of Haliburton, shall be entitled to receive from the Provincial Treasurer the sum of $4 upon every bounty of $10 so paid, and the said Treasurer may pay the same out of such moneys as may be voted by the Legislature for that purpose (*c*).

5. The treasurer of a county shall not pay the bounty to which any such certificate entitles the person presenting the same, until he has paid the annual expenses of the county, arising from the building of a court house and gaol, and keeping the same in repair, the fees of the Clerk of the Peace, the salary of the gaoler, and the maintenance of the prisoners (*d*).

6. When the funds of any county do not enable the treasurer thereof to pay the bounty, the certificate thereof shall be a lawful tender to the full value and amount therein specified, for and towards the discharge of any county rate or assessment to be collected from any person within the county in which the wolf was destroyed, and shall be accepted and taken by the collector of any township within the county as equivalent to so much of the current money of Canada, and may be by him paid and delivered over to the county treasurer, by whom the same shall in like manner be taken and accepted as equivalent to so much of the current money aforesaid (*e*).

7. Where any wolf is so killed in any district of the Province which does not form part of any county, or in the Provisional County of Haliburton, upon the production of the head with the ears on, before any District Judge or Stipendary Magistrate or Police Magistrate, Sheriff, Crown Lands or Free Grant Agent, or before any Division Court Clerk of or within such district, or in the Provisional County of Haliburton, and the person so killing the same makes oath or affirmation, as the case may be, and establishes to the satisfaction of such officer that the wolf was killed within such district, he shall be entitled to receive from the Treasurer of the Province the sum of $10 as a bounty for the same (*f*).

8. In case the officer before whom the head is produced is satisfied that the wolf was killed as in the preceding section is mentioned, he shall first cut off the ears thereof and then give the person a certificate, as mentioned in section 2 of this Act, and that such person is entitled to receive from the Provincial Treasurer the said sum of $10, and the Treasurer may pay the same upon the production of the certificate upon being duly satisfied that the same has been duly signed by any such officer, out of such moneys as may be voted by the Legislature for that purpose (*g*).

9. The Lieutenant-Governor in Council may make regulations prescribing the manner in which proof shall be made and otherwise in order to carry this Act into effect." (*h*)

(*a*) Taken from 6 Wm. IV. c. 29, s. 3, as amended by 55 V. c. 59, s. 1. *Cf.* as under s. 1, *supra*.

(*b*) Taken from 6 Wm. IV. c. 29, s. 4. *Cf.* as above.

(*c*) Taken from 55 V. c. 59, s. 2.

(*d*) Taken from 6 Wm. IV. c. 29, s. 5.

(*e*) Taken from 6 Wm. IV. c. 29, s. 6.

(*f*) Taken from 55 V. c. 59, s. 3, *part*.

(*g*) 55 V. c. 59, s. 3, *part*. (*h*) 55 V. c. 59, s. 3 *part*.

Medals for Firemen.—Gratuities to them or their Widows.

Secs. 592-594.

Notes (a-b).

By the councils of cities, towns and villages:—

2. For providing medals or rewards for persons who distinguish themselves at fires; and for granting gratuities to the members of the fire brigade who may have become incapacitated for service on account of injuries or ill-health caused by accident or exposure at fires, or from old age or inability to perform their duties, and for granting pecuniary aid or other assistance to the widows of persons who may be killed while in the discharge of their duties by accident at fires, or who may die from injuries received or from sickness contracted while in the service of the corporation as firemen. 56 V. c. 35, s. 22.

Rewards to firemen and persons distinguishing themselves at fires.

Aid to widows of firemen, etc.

Taken from 56 V. c. 35, s. 22 (1893). *Cf.* the Act of 1849:—"For providing medals or rewards for persons who shall distinguish themselves at fires and for assisting the widows and orphans of persons who may be killed by accidents occurring at such fires;" 12 V. c. 81, s. 60 (13) (villages): ss. 61, 67, 80, (towns): ss. 82, 106, (cities). See also s. 591 (9), *ante*.

Rewards for Conviction of Criminals.

593. The council of any municipality in which a flagrant crime is believed to have been committed, may offer and pay a reward for the discovery, apprehension, or conviction of the criminal, or of any person who is suspected to be the criminal. 55 V. c 42, s. 481.

Rewards for apprehension of criminals.

Taken from 42 V. c. 31, s. 31 (1879).

(a) As to the circumstances under which such a reward becomes payable, see *Williams v. Carwardine*, 4 B. & Ad. 621 (1833): *Lockhart v. Barnard*, 14 M. & W. 674 [1845]: *Smith v. Moore*, 1 C. B. 438 (1845): *Thatcher v. England*, 3 C. B. 254 (1846): *Turner v. Walker*, 6 B. & S. 871; L R. 1 Q. B. 641; L. R. 2 Q. B. 301 (1866-7): *Bent v. Wakefield, etc., Bank*, 4 C. P. D., (1878): *Carlill* v. *Carbolic Smoke Ball Co.*, [1892], 2 Q. B. 484. In *England v. Davidson*, 11 A. & E. 856 (1840), it was urged that the plaintiff being a constable and police officer for the district in which the felony was committed, it was his duty to give every information and to apprehend and prosecute, and that he had therefore no right to recover; but it was held that the giving of the information was a sufficient consideration for defendant's promise to pay the reward. See also ss. 12 and 13 of R. S. O. c. 101, entitled "*An Act respecting the Fees of Officers engaged in the Administration of Justice*," referred to in note **A** under s. 530, "Expenses of Administration of Justice in Ontario," *ante*, pp. 665-676.

When such rewards are payable.

It would appear to be doubtful whether, in the absence of express statutory authority, a municipal council could, as incident to its general duty to protect the property and persons of the inhabitants of the municipality, offer a reward for the detection of those who have committed crimes, even though these should be of such a character as to be dangerous to the public safety,—*e.g.* arson (a).

594. The council of any municipality may offer and pay a reward or rewards for the discovery, apprehension and conviction of any person or persons guilty of personation, as in this Act defined. 59 V. c. 51, s. 12.

Rewards for detection of personators.

(a) "**Discovery, apprehension and conviction;**"—not (as in s. 593) "discovery [*or*] apprehension *or* conviction." In order to entitle a plaintiff to recover, or a council to pay the reward, there must have been a conviction.

(b) "**Personation as in this Act defined.**" The Act nowhere defines personation, but the offence is punishable under s. 193, sub-sections 1(c) and 2. (b)

(a) See Dillon, s, 139.

(b) See notes (**a**) and (**b**) to that section and note (**c**) to s. 246.

Secs. 595-597.

Horse Thieves.

Rewards for apprehension of persons guilty of horsestealing.

595 The council of every county or city shall provide by by-law, that a sum not less than $20 shall be payable as a reward to any person or persons who shall pursue and apprehend, or cause to be apprehended, any person or persons guilty of stealing any horse or mare within the said county or city; and such reward will be paid out of the funds of the corporation on the conviction of the thief, on the order of the Judge before whom the conviction is obtained. 55 V. c. 42, s. 494.

Taken from the Act of 1866 (29-30 V. c. 51), s. 355 (20), which applied only to counties; extended to cities in 1880 by 43 V. c. 24, s. 17.

Division XXIV.—ENTERTAINING GUESTS, TRAVELLING EXPENSES, DIFFUSING INFORMATION, ETC.

Reception and entertainment of guests. Sec. 596.
Travelling expenses on corporation business. Sec. 596.
Diffusing information. Sec. 597.

Annual appropriation for travelling and other expenses.

596. The council of any city may include in the annual estimates a sum to be expended in the reception and entertainment of distinguished guests, and any travelling expenses necessarily incurred in and about the business of the corporation, which sum shall, in the case of cities having a population of 100,000 or over, be not more than $5,000; in the case of other cities having a population of 20,000 or over, not more than $1,000, and in the case of other cities, not more than $500 in any year. 55 V. c. 42, s. 520*a*.

Taken from 54 V. c. 52, s. 37 (1891).

Appropriation for diffusing information.

597. The council of every city and of every town having a population of 5,000 or over may include in the annual estimates a sum not exceeding $500, to be expended in diffusing information respecting the advantages of such city or town as a manufacturing, business, educational or residential centre, or as a desirable place in which to spend the summer months. The councils of other municipalities may provide for the expenditure for the like purpose of a sum not exceeding $100. 60 V. c. 45, s. 17.

Added in 1897. See the reference.

PART VII.—POWERS OF MUNICIPAL COUNCILS.

TITLE II.—POWERS AND DUTIES OF COUNCILS AS TO HIGHWAYS AND BRIDGES.

DIV. I.—GENERAL PROVISIONS. (SECS. 598-636.)

DIV. II.—POWERS OF COUNTIES, TOWNSHIPS, CITIES, TOWNS, AND VILLAGES. (SECS. 637-646.)

DIV. III.—POWERS OF TOWNSHIPS, CITIES, TOWNS AND VILLAGES. (SECS. 647-656).

DIV. IV.—POWERS OF COUNTY AND TOWNSHIP COUNCILS. (SEC. 657.)

DIV. V.—POWERS OF COUNTY COUNCILS. (SECS. 658-659.)

DIV. VI.—POWERS OF TOWNSHIP COUNCILS. (SECS. 660-663.)

DIVISION I.—GENERAL PROVISIONS. (SECS. 598-636.)

Synopsis:—Section 598 declares that certain roads and certain road allowances shall be deemed public highways. Ss. 599-602 deal with the title to highways generally; ss. 613 (1), 614 with the assumption of roads and bridges by counties—(which are by s. 626 invested with any now) undistributed powers formerly exercisable by the magistrates in Quarter Sessions);—and by s. 613 (2-4) county councils are to have exclusive jurisdiction over the bridges therein described. The assumption of certain of these bridges by the villages within which they lie is provided for by s. 604. Roads vested in Her Majesty or in any public Department or Board are dealt with by ss. 627-628.

Ss. 606-608 deal generally with the liability of municipal corporations to keep highways and bridges in repair; s. 605 with the maintenance of bridge approaches; ss. 620-625 with the opening, maintenance and improvement of township and county boundary roads; and s. 619 with the cleaning out of boundary streams. Ss. 616-618 impose special duties upon county councils as to roads and bridges within their jurisdiction; and by s. 615 they are permitted to expend money upon certain township, town and village roads.

S. 612 provides that actions (under s. 606) for damages occasioned by the non-repair of highways shall be brought against the municipality and not against any municipal councillor, officer or employee. A remedy is given in certain cases by ss. 609-610; and (by s. 611) municipal corporations are exempted from liability for the acts or defaults of persons or corporations exercising statutory powers without the consent of the municipality.

Ss. 629-633 impose restrictions and conditions upon the powers of municipal councils to deal with roads within their jurisdiction. S. 635 makes provision for remedying mistakes in opening road allowances; and under s. 634 the heads of councils are empowered to administer oaths in case of disputes respecting roads, boundaries, etc. S. 636 gives certain powers to "The Canadian Wheelmen's Association of Canada." S. 603 provides for the acquisition of roads in adjoining municipalities for public avenues or walks and for the purchase of lands required to widen the same. It might more appropriately have been included in the next division of this Title.

Highways Defined.

What shall constitute public highways.

598. All allowances made for roads by the Crown surveyors in any town, township or place already laid out or hereafter laid out; and also all roads laid out by virtue of any Statute, or any roads whereon the public money, has been expended for opening the same, or whereon the statute labour has been usually performed, or any roads passing through the Indian lands, shall be deemed common and public highways, unless where such roads have been already altered, or may hereafter be altered according to law. 55 V. c. 42, s. 524.

Taken from 59 Geo. III. c. 1, s. 12 (1810), the only difference being that in the section, as it first appears in "*The Municipal Act*," (22 V. c. 99, s. 300), the final words are "may hereafter be altered *according to law*," instead of "altered according to the *provisions of this Act*," (the words used in 50 Geo. III. c. 1). See note (**d**) *infra*.

Sec. 598.

(a) "Shall be deemed common and public highways."

Note (a)

What is meant by "a highway."

The words "common and public" are unnecessary; for a "*highway*" is, *ex vi termini*, a common and public way, as contra-distinguished from a "*by-way*."

"A highway is a passage which is open to *all* the King's subjects." (*a*). "The term 'highway' . . . comprises all portions of land over which every subject of the Crown may lawfully pass." (*b*) These definitions exclude land over which a man may lawfully pass (a) by virtue only of a personal license, or (b) as owner or occupant thereof, or (c) as owner or occupier of other land to which an easement over the first mentioned land is appurtenant.

A *cul de sac* may be a highway (*c*); and even if an open highway becomes a *cul de sac*, by reason of the erection of buildings, etc., the remaining (vacant) portions will not cease to be a highway (*d*). But in *Bourke* v. *Davis* (*e*) KAY, J. says (p. 123):—"That is so in the case of a street in a town: . . . but I am not aware that this law has even been applied to a long tract of land in the country on which public money has never been expended." And a way ceases to be public when access at both ends has become impossible by reason of the ways leading to it having been legally blocked up (*f*).

How a highway is created.

At the time of the passing (in 1810) of the Act 50 Geo. III. c. 1—(from which s. 598 is taken)—the roads and streets intended to be thereby invested with the character of highways seem to have been chiefly, if not entirely, of two classes,—viz.:—

(1) The Crown roads,—*i.e.*, the "allowances made for roads by the King's surveyors,"—as to which see note (**b**), *infra*, p. 812. To this class was added in 1849 (*g*) all allowances for roads, streets, lanes or commons laid out in the original Government surveys of cities, towns and villages, and all allowances for roads or commons surveyed and laid down in the plans thereof by the owners of townships, tracts or blocks of land granted by the Crown to companies and individuals before any surveys had been made therein (*h*).

(2) Quarter Sessions highways,—viz., roads opened (or to be opened) by the Quarter Sessions, under the authority of "*The Highway Acts*," 33 Geo. III. c. 4, and 50 Geo. III c. 1. In this category should now be also included such highways as have been purchased or expropriated by municipal councils, since the transfer to these bodies by "*The District Councils Act*," (4-5 V. c. 10), of the powers, in respect to the opening of highways, which were formerly exercisable by the Courts of Quarter Sessions.

(3) A third class of highways has, since the passing of 50 Geo. III. c. 1, become so important as to require detailed consideration. It embraces all such public roads, streets, lanes, etc., as have been dedicated by private owners, and accepted as highways by or on behalf of the public.

(*a*) 2 Smith, L. C. 159. See Hawk. P. C. 32, s. 1; Wellbeloved on Highways, c. 1.

(*b*) Pratt on Highways, (14th Ed.), c. 1.

(*c*) *Rugby Charity* v. *Merryweather*, 11 East 375 note, 376 (1790), *per* Lord KENYON, C. J.: *Rex* v. *Lloyd*, 1 Camp. 260 (1808), *per* Lord ELLENBOROUGH: *Bateman* v. *Bluck*, 18 Q. B. 870 (1852): *Souch* v. *East London R. W. Co.*, L. R. 16 Eq. 108 (1873): *Vernon* v. *St. James, Westminster*, 16 Ch. D. 449 (1879). See *Reg* v. *Spence*, 11 U. C. R. 31, 45 (1852) and *per* PROUDFOOT, J., in *Frank* v. *Township of Harwich*, 18 O. R. 344 (1889), at p. 354.

(*d*) *Reg.* v. *Downshire*, (*Marquis of*) 14 A. & E. 698 (1836) *per* PATTESON, J.: *Young* v. *Cuthbertson*, 1 Macq. 456 (1854): *Gwyn* v. *Hardwicke*, 25 L.J.M.C. 97 (1856): *Reg.* v. *Burness*, 31 L.T.N.S. 828 (1875).

(*e*) 44 Ch. D. 110 (1889).

(*f*) *Bailey* v. *Jamieson*, 1 C. P. D. 329(1876).

(*g*) By 12 V. c. 35, ss. 33, 34.

(*h*) These sections are now re-enacted as ss. 20-21 of "*The Surveys Act*," (R.S.O. c. 181), quoted in note (**c**), *infra* at p. 814.

Sec. 598.

Note (a).

Highways arising by private dedication.

Whether the private owner of lands has or has not dedicated them to them public for highway purposes must in every case be a question of fact (*a*).

His intention to do so may be evidenced :—

(1) By his executing a deed or other writing in which the land is described as a highway (*b*) ;

(2) By his laying out the land, according to a plan, in lots bounded by streets or lanes, and selling, according to such plan, lots to which these streets or lanes would give access :—or

(3) By his dealing with the land itself in such a way as to indicate his intention to make it a public highway.

Apart from any considerations as to the effect of either "*The Registry Act*" (*c*), or "*The Surveys Act*" (*d*),—(presently to be discussed) — it is clear that when a man lays out a parcel of land on a plan, in village lots with streets or lanes to bound these lots, and sells according to that plan, he evidences an intention that the streets or lanes indicated on the plan shall be used as such by the purchasers of the lots abutting thereon (*e*) ; and, upon well known principles of equity, the purchaser of such a lot would be entitled to restrain his vendor from attempting to divert to other purposes land thus set apart as a street or lane (*f*), at all events where the street or lane is required to afford convenient access to the lot or lots thus purchased (*g*).

The purchaser of a lot shewn upon such a plan as abutting upon streets thereon indicated, acquires, as against the person who laid out the plot and sold the lot, a private right to use these streets subject to the right, if any, of the public to make them highways (*h*).

But—apart from "*The Surveys Act*,"—such a dedication of roads and streets is not absolute and irrevocable.

> "Neither the mere marking out upon a plan of spaces for roads and streets, nor the registration of such a plan, nor the sale of lots according to it, nor all these acts combined will constitute an absolute dedication of the places so marked down as public highways" (*i*).

And if all the lots thus sold become again the property of the original holder, he may make a new plan ; and in doing so he may close up any of such roads, streets or lanes which have not yet become public highways, subject only to the condition imposed by s. 100 (4) of "*The Registry Act*" (*j*), that :—

> "No part of any street . . . shall be altered or closed up, upon which any lot of land sold abuts, or which connects any such sold lot with, or affords means of access therefrom to the nearest public highway" (*k*).

Plan not binding until some sale is made under it ; alterations in plan.

Sec. 110 of the same Act provides that :—

> "In no case shall any plan or survey, although filed and registered be binding on the person so filing or registering the same, or upon any other person, unless a sale has been made according to such plan or

(*a*) *Belford* v. *Haynes*, 7 U.C.R. 464 (1850) : *Reg.* v. *Spence*, 11 U.C.R. 31 (1853).

(*b*) *Malloch* v. *Anderson*, 4 U.C.R. 481 (1848) : *Moore* v. *Township of Esquesing*, 21 C.P. 277 (1871), at p. 280 : *Rowe* v. *Sinclair*, 26 C.P. 233 (1876) : *Hastings* v. *City of St. Catharines*, 43 U.C.R. 134 (1878).

(*c*) R.S.O. c. 136.

(*d*) R.S.O. c. 181.

(*e*) *O'Brien* v. *Village of Trenton*, 6 C.P. 350 (1857) : *Bourget* v. *The Queen*, 2 Ex. C.R. 1 (1888).

(*f*) *Reg.* v. *Boulton*, 15 U.C.R. 272 (1857) : *Rossin* v. *Walker*, 6 Grant 619 (1858) : *Cheney* v. *Cameron*, Ibid 623 (1858) : and see the cases collected in notes (g) and (h) to s. 576.

(*g*) *Carey* v. *City of Toronto*, 11 A.R. 416 ; 14 S.C.R. 172 (1885).

(*h*) *Per* STREET, J., in *Sklitzsky* v. *Cranston*, 22 O.R. 590 (1892), at p. 594, citing *Espley* v. *Wilkes*, L.R. 7 Ex. 298 (1872) : *Reg.* v. *Chorley*, 12 Q.B. 515 (1848) : *Allen* v. *Ormond*, 8 East 4 (1806).

(*i*) *Per* OSLER, J.A., in *Re Waldie and Village of Burlington*, 13 A.R. 104 (1886), at p. 111.

(*j*) R.S.O. c. 136.

(*k*) This was done in *Morton* v. *City of St. Thomas*, 6 A.R. 323 (1881); and see, as to the effect of this section, *Reg.* v. *Rubidge*, 25 U.C.R. 299 (1866).

Sec. 598

Note (a).

Alteration of registered plans.

survey, and in all cases amendments or alterations of any such plan or survey may be ordered to be made, at the instance of the person filing or registering the same or his assigns, by the High Court, or by a Judge of the said Court, or by the Judge of the County Court of the county in which the lands lie, if on application for the purpose duly made, and upon hearing all parties concerned, it be thought fit and just so to order, and upon such terms and conditions as to costs and otherwise as may be deemed expedient. An appeal shall lie from any such order to the Court of Appeal."

Effect of s. 39 of R.S.O. 1.

Such, briefly stated, being the relative rights of vendor and purchaser where lands have been sold according to a plan on which streets and lanes are shewn, it remains to consider the effect of s. 39 of "*The Surveys Act*," (*a*) which is as follows:—

> "**39.**—(1) All allowances for roads, streets or commons, surveyed in *cities*, towns, villages *and townships, or any part thereof*, which have been or may be surveyed and laid out by companies and individuals and laid down on the plans thereof, and upon which lots of land fronting on or adjoining such allowances for roads, streets, or commons have been or may be sold to purchasers, shall be public highways, streets, and commons; and all lines which have been or may be run, and the courses thereof given in the survey of such cities, towns, villages and townships, or any part thereof, and laid down on the plans thereof, and all posts or monuments which have been or may be placed or planted in the first survey of such cities, towns, villages and townships, or any part thereof, to designate or define any allowances for roads, streets, lots or commons, shall be the true and unalterable lines and boundaries thereof respectively; . . .
>
> Provided that the municipal corporation shall not be liable to keep in repair any road, street, bridge or highway laid out by any private person until established by by-law of the corporation or otherwise assumed for public use by such corporation, as provided in *The Municipal Act*."

This section is based upon s. 41 of 12 V. c. 35, and (until recast in 1887 by 50 V. c. 25 s. 62 (1)) it read as follows:—

> "Whereas towns and villages in Ontario have been or may be surveyed and laid out by companies and individuals and by different owners of the lands comprising the same, and lands have been or may be sold therein according to the surveys and plans thereof; therefore all allowances for roads, streets of commons, which have been surveyed in such towns and villages and laid down on the plans thereof, and upon which lots of lands fronting on or adjoining such allowances for roads, streets or commons have been or may be sold to purchasers, shall be public highways, streets and commons." (*b*)

In *Re Morton and City of St. Thomas* (*c*) PATTERSON, J. A. expressed the opinion that these words were applicable only to the original survey of a town or village as a whole and that they had "no reference to the subdivision of a small town-lot into a few smaller town-lots."

But since the section has been altered to its present form (as above), this view of its scope, although upheld by BURTON, J. A., in *Gooderham v. City of Toronto* (*d*), was disapproved by OSLER and MACLENNAN, JJ. A., in the same case (*e*), upon reasoning which seems to be conclusive and incontrovertible.

The question whether the section (as amended in 1887) is or is not retrospective was much discussed in the same case. The trial Judge, FERGUSON, J., (*f*) was of opinion that as so amended the section applies to streets laid out on plans made before 1887; but this view—although it received the concurrence of ROSE, J. in the Divisional Court (*g*) and of OSLER, and MACLENNAN, JJ. A. in the Court of Appeal (*h*)—was finally negatived by the judgment of the Supreme Court (*i*).

(*a*) R. S. O. c. 181.
(*b*) See R. S. O. (1877), c. 146, s. 67.
(*c*) 6 A.R. 323 (1881).
(*d*) 19 A. R. 641 (1892), at p. 662.
(*e*) At pp. 652-657.
(*f*) 21 O. R. 120 (1890), at p. 130.
(*g*) 21 O. R. at p. 150.
(*h*) 19 A. R. at pp. 653-657.
(*i*) 25 S. C. R. 246 (1895), *per* GWYNNE, J., at page 259-260.

Sec 598.

Note (a)

Dedication by filing plans and making sales.

By this judgment the law as it stood prior to the amendment of the section in 1887 is thus stated :—

> "1st. The right of the public or of a municipal corporation to use as a public highway a road or street laid out by a private person on his own property applies only to such roads or streets as were in actual use as private roads or ways to property purchased by parties, and fronting on such roads or streets.
>
> 2nd. This right was qualified by such reservations as might have been made by the person laying out such road of street when first used as such road or street, —showing very clearly, I think, that the user of such road or street as a private road or street was an essential condition precedent to the public or the municipality being in a position to acquire a right to use it as a public highway.
>
> 3rd. A private road, so in use, was liable to be made a public road or highway by the application of public money for keeping it in repair and in a condition fit to be used ; but, until it was so converted from a private road or street into a public road or street, the municipality were under no responsibility to keep it in repair, or liability to persons injured by its not being kept in a sufficient state of repair."

But in cases which are within the scope of the amended section as defined and limited by the above decisions,—viz., surveys and plans of towns and villages made since 1849, of cities, towns and villages or parts thereof since 1887, and of townships since 1897,—(when the enactment was extended to townships by 60 V. c. 27, s. 20)—the making of a plan on which streets are indicated and the sale of lots shewn thereon as abutting upon these streets, has the effect of constituting these streets public highways, which, by force of section 601, are vested in the municipality (*a*). The liability of the municipality to repair such highways is, nevertheless, still limited by the proviso to s. 39 of "*The Surveys Act*," quoted *supra*, which is repeated in "*The Municipal Act*" as s. 607 thereof. (*b*)

Dedication by permitting public to use the way.

The intention to dedicate land as a highway may also be evidenced by the manner in which the land itself has been dealt with by the owner.

> "If the owner of the soil throws open a passage, and neither marks by any visible distinction that he means to preserve all his rights over it, nor excludes persons from passing through it by positive prohibition, he shall be presumed to have dedicated it to the public."

Such a presumption will, therefore, arise from the fact that a way is used by the public openly and as of right without objection by the owner of the soil. (*d*)

In England, and especially in urban localities, such public user—even for a short time—is sufficient to create the presumption of a dedication.

In *Rugby Charity* v. *Merryweather* (*e*) Lord Kenyon, C.J. mentions a case in which six years was held sufficient ; and in *Jarvis* v. *Dean* (*f*) it was held that four or five years user of a new street, though it had not been paved or lighted and led nowhere but to the fields, was sufficient to warrant a jury in finding (as they did) that there had been a dedication of it to the public as a highway. But "in a new country like Canada it would never do to admit user by the public readily as evidence of an intention to dedicate. Such user is very generally permissive, and allowed in a neighbourly spirit ; and it may go on for a number of years with nothing further from the mind of the owner of

(*a*) *Roche* v. *Ryan*, 22 O. R. 107 (1891).

(*b*) See note (**a**) to that section.

(*c*) *Per* Lord Ellenborough, C. J., in *Rex.* v. *Lloyd*, 1 Camp. 260 (1808), at p. 262. See *Woodyer* v. *Hadden*, 5 Taunt. 124 (1813) ; *Barraclough* v. *Johnson*, 8 A. & E. 99 (1838) ; *Reg. v. Spence*, 12 U. C. R. 31 (1853). But in *Hall* v. *Bootle Corporation*, 44 L. T. N. S. 873 (1881), where a lessee of building land, having laid out part of a proposed road across it, and built six houses on one side thereof, afterwards abandoned his intention of making the road, and demised the rest of the land (including the proposed road) as a timber yard, it was held by Bacon, V. C. that there had been no irrevocable dedication of the road.

(*d*) *Reg.* v. *East Mark*, 11 Q. B. 877 (1848) ; *Reg.* v. *Petrie*, 4 E. & B. 737 (1855) ; *Dawes* v. *Hawkins*, 8 C.B N.S. 848 (1860); *Moore* v. *Township of Esquesing*, 21 C. P. 277 (1875); *Marks* v. *Ford*, 45 J. P. 157 (1881).

(*e*) 11 East 376 (1790).

(*f*) 3 Bing. 447 (1826).

Sec. 598.

Note (a)

Public user of a way as evidence of dedication.

the land—than that his rights should be thereby affected (*a*);" and "a single act of interruption by the owner is of much more weight upon a question of intention than many acts of enjoyment by the public." (*b*)

In *Poole* v. *Huskinson* (*c*) the affixing of a notice board; in *Roberts* v. *Kerr* (*d*) the placing of a bar (though it was soon knocked down); in *Lethbridge* v. *Winter* (*e*) the erection of a gate (*f*); in *Healy* v. *Batley Corporation* (*g*) posts and chains,—were held sufficient evidence to rebut the presumption of dedication. So, where the land owner swore that people had no right to use a way across his garden, and that he had repeatedly sent them back. (*h*)

It would seem that the effect of public user of a way in creating a presumption of dedication should not be extended beyond the limits of the way as actually used (*i*); but when the fact of dedication has been proved and the limits of the dedicated land have been established by evidence other than that of mere user—*e.g.*, by reference to a deed in which the original owner refers to it as a lane *of a certain width*,—the public are entitled to the whole width of land thus dedicated; evidence that they have used the whole width is not essential; and no obstruction of part thereof by one who knew that he was obstructing a street already laid out, affords any evidence to displace the intention of the original proprietor (*j*).

If there is no definite enduring trackway, but merely temporary and transitory tracks (*k*), or an open space not defined by posts and fences (*l*), this is strong evidence against the existence of a public right of way.

Dedication may be limited.

It has been held in England that the dedication of a highway may be limited:

As to times of user.

(1) As to time,—*i.e.*, the right of the public may be exercisable at certain hours only (*m*); but (unless expressly authorized by Statute) there cannot be a dedication for a limited *period* of time (*n*).

(*a*) *Per* SPRAGGE, V. C., in *Dunlop* v. *Township of York*, 16 Grant 216 (1869), at pp. 222-3. In *Mytton* v. *Duck*, 26 U. C. R. (1866), forty years use of a country road (thirty of them being subsequent to the patent), and in *Frank* v. *Township of Harwich*, 18 O. R. 344 (1889), seventy years use of such a roadway was held to be conclusive evidence of dedication. In *Reg.* v. *Donaldson*, 24 C. P. 148 (1874), the use of a lane in a town for forty years was considered sufficient evidence of dedication to go to a jury.

(*b*) *Per* PARKE, B., in *Poole* v. *Huskinson*, 11 M. & W. 827 (1843).

(*c*) Supra. (*d*) 1 Camp. 262 (1808). (*e*) 1 Camp. 263.

(*f*) But see *Johnston* v. *Boyle*, 8 U. C. R. 142 (1850), where it is suggested—on the authority of *Davies* v. *Stephens*, 7 C. & P. 570 (1836)—that the erection of a gate or bar may be simply the exercise of a right reserved by the person who dedicated the property. As to such limited dedications, see page 811.

(*g*) L. R. 19 Eq. 375 (1873).

(*h*) *Stone* v. *Jackson*, 16 C. B. 199 (1855).

(*i*) See *per* CAMERON, C.J., in *Township of St. Vincent* v. *Greenfield*, 12 O. R. 297 (1886), at p 304.

(*j*) *Reg.* v. *Donaldson*, 24 C. P. 148 (1874); and see *Reg.* v. *United Kingdom Electric Tel. Co.*, 31 L. J. M. C. 166 (1862).

(*k*) *Schwinge* v. *Dowell*, 2 F. & F. 845 (1862): *Chapman* v. *Cripps*, Ibid 864 (1862): *Robinson* v. *Cowpen Local Board*, 62 L. J. Q. B. 619 (1893); 63 L. J. Q. B. 235 (1893): *Heminck* v. *Town of Edmonton*, 28 S. C. R. 501 (1898). In the last of these cases it was held by the Supreme Court of Canada that the user of old travelled roads or trails over the waste lands of the Crown in the North-West Territories of Canada prior to the Dominion Government survey thereof does not give rise to a presumption that the lands over which they passed were dedicated as public highways.

(*l*) *Reg.* v. *Ouellette*, 15 C. P. 260 (1865).

(*m*) *Rex* v. *Hudson*, 2 Str. 909 (1732): *Rex.* v. *Northampton*, 2 M. & S. 262 (1814). And see *Rex* v. *Buckingham*, 4 Camp. 189 (1815): *Rex* v. *Mellor*, 1 B. & Ad. 32 (1830): *Dawes* v. *Hawkins*, 8 C. B. N. S. 848 (1860), *per* BYLES, J.

(*n*) Pratt on Highways, (14th Ed.) 18: *Reg.* v. *Lordsmere*, 15 Q. B. 689 (1850), *per* COLERIDGE, J. at p. 700.

Sec. 598.

Note (a).

(2) As to the nature of the user thereof—*e.g.*, only for a footway, or excluding certain kinds of traffic (*a*).

As to the nature of the user.

So the owner may reserve the right to plough the land in due course of husbandry (*b*); or to keep up gates (*c*); or he may dedicate the land to be used as a highway subject to prior existing rights,—*e.g.*, market rights (*d*); or the right to use a part of the highway as a towing path (*e*); or as a depository of goods (*f*); or for washing carriages (*g*); or to the right to encroach thereon by an existing structure. (*h*) But in *Brown* v. *Town of Edmonton* (*i*) the Supreme Court of Canada appears to have held that the right of the public to the free and unobstructed use of the whole width of a street is not taken away by the fact that at and prior to the time of its dedication there was an obstruction (—*e. g.*, a log house) upon the land so dedicated as a highway.

Where land granted to a municipal corporation for a public market place was subsequently declared by Statute to be: "a public street, etc., provided that nothing herein contained shall affect public rights," it was held that the right of the public to the use of the highway was subject to that of the defendant municipality to erect thereon weigh-scales for the purposes of the market. (*j*)

If the public accept the right offered to them, they must take it *secundum formam doni* (*k*).

Limitation to public.

A highway cannot be dedicated to a limited portion of the public,—*e.g.*, a parish (*l*)—for it is essential to the notion of a "highway" that it shall be a way "common to all the King's people (*m*);" and if a way be dedicated with such a reservation (which cannot take effect in law), the dedication is void.

Who can dedicate.

The general principle is that no one but the owner in fee simple can dedicate land for a highway; because the right given to the public is a right in perpetuity (*n*).

Therefore a locatee of Crown lands cannot dedicate any part of them for highway purposes before he has obtained a patent (*o*); but he may so act that after patent issues he will be bound by rights meantime acquired by the public with his sanction. (*p*)

(*a*) *Lethbridge* v. *Winter*, 1 Camp. 263 note, (1808): *Stafford* (*Marquis of*) v. *Coyney*, 7 B. & C. 257 (1827). See *Rex* v. *Leake*, 5 B. & Ad. 469 (1833): *Grand Junction Canal Co.*, v. *Petty*, 21 Q. B. D. 273 (1888).

(*b*) *Mercer* v. *Woodgate*, L. R. 5 Q. B. 26 (1869): *Arnold* v. *Blaker*, L. R. 6 Q. B. 433 (1871).

(*c*) *Davies* v. *Stephens*, 7 C. & P. 576 (1836). *Cf. Sutherland* v. *Thomson*, 3 Ct. of Sess. Cas. 4th Ser. 385 (1876): and see *supra*, foot note (*f*) on p. 810: *Clendenan* v. *Blatchford*, 15 O. R. 285 (1888): *Warren* v. *Van Norman*, 29 O. R. 84, 508 (1894).

(*d*) *Elwood* v. *Bullock*, 6 Q. B. 383 411 (1844): *Attorney General* v. *Horner*, 11 App. Cas. 66 (1885). *Cf. Simpson* v. *Wells*, L. R. 7 Q. B. 214 (1872): *Rogers* v. *Great Northern R. W. Co.*, 53 J. P. 484 (1889).

(*e*) *Grand Junction Canal Co.* v. *Petty*, supra.

(*f*) *Morant* v. *Chamberlain*, 6 H. & N. 541 (1861).

(*g*) *Vestry of Chelsea* v. *Stoddard*, 43 J.P. 782. And see *St. Mary, Newington*, v. *Jacobs*, L. R. 7 Q.B. 47 (1871), referred to in note (b), ; *Le Neve* v. *Mile End Old Town*, 8 E. & B. 1045 (1858), referred to in note (d) to s. 557, *ante*, and *Robbins* v. *Jones*, 15 C. B. N. S. 221 (1863).

(*h*) *Hagarty* v. *Pryor*, 5 Nova Scotia Rep. 532 (1872).

(*i*) 23 S. C. R. 308 (1894).

(*j*) *City of Fredericton* v. *Municipality of York*, 1 N. B. Eq. 556; 34 C. L. J. N. S. 703 (1899).

(*k*) *Fisher* v. *Prowse*, 2 B. & S. 770 (1862), *per* BLACKBURN, J., at p. 780.

(*l*) *Bermondsey* (*Vestry of*) v. *Brown*, L. R. 1 Eq. 204 (1865): *Hildreth* v. *Adamson*, 8 C. B. N. S. 587 (1860): *Poole* v *Huskinson*, 11 M. & W. 827 (1843).

(*m*) 1 Hawk. P. C. 32, s. 1.

(*n*) Pratt on Highways (14th Ed.) 28; *Wood* v. *Veal*, 5 B. & Ad. 454 (1862): *Bermondsey* (*Vestry of*) v. *Brown*, 35 Beav. 226 (1865): *Reg.* v. *Wismer*, 6 U. C. R. 293 (1850); *Reg.* v. *Plunkett*, 21 U. C. R. 536 (1862): *Canadian Pacific R. W. Co.* v. *City of Vancouver*, 2 B. C. R. 306 (1892).

(*o*) *Beveridge* v. *Creelman*, 42 U. C. R. 29 (1877): *Rae* v. *Trim*, 27 Grant 374 (1888).

(*p*) *Rae* v. *Trim*, supra.

Sec. 598.

Notes (a), (b).

Highways by dedication.

And in *City of Hamilton* v. *Morrison* (*a*) it was held that a municipal corporation to which land had been granted and conveyed as and for a public market, being, by reason of this trust, incapable of dedicating any part of the property as a highway (*b*), no such dedication could be presumed from their permitting its user as such for a long time. (*c*)

But the dedication of land by the owner thereof is not alone sufficient to make the land a highway (*d*): there must be also an acceptance of the highway by or on behalf of the public. (*e*) This acceptance may be evidenced, —

(1) By Statute,—as in the cases to which ss. 20, 21 and 39 of "*The Surveys Act*" are applicable (*f*); (2) By municipal by-law; (3) By long continued public user of the land as a highway (*g*); or (4) by the expenditure of public money or the performance of statute labour thereon. (*h*)

Once a highway, always a highway.

"Once a highway, always a highway" is an established maxim; "for the public cannot release their rights, and there is no extinctive presumption or prescription." (*i*)

Original road allowances.

(b) **"All allowances made for roads by the Crown surveyors in any . . . . township . . . . already . . . . or hereafter laid out."**

The initial step towards the formation of a township in this Province is, of course, its survey. This, in nearly every case, is (and has been for many years past) made by a Government surveyor under instructions from the Department of Crown Lands (originally "the Land Office Department)."

The earliest of these instructions (known to the editor) were issued on June 18th, 1785, to Patrick McNiff, who made the first survey of that part of the eastern portion of the District of Luneburg (*j*) which lies along the north shore of the River St. Lawrence, commencing at the easterly limit of the District (the Province line) near "Point au Bodett" [Beaudette] on Lake St. Francis, and extending westerly along the north bank [of the river] to the westerly boundary of township No. 5 [now the township of Matilda] and back to the rear of the second concession of Lake [now Lancaster] township, to the seconde concession north of the River aux Raisin in Charlottenburg, to the eighth concession (as numbered on the easterly boundary) of the township of Cornwall, to the third concession of Osnabruck, and to the second concession of Williamsburg and Matilda.

McNiff's instructions (*k*) were to lay out a forty-foot road as near as conveniently might be to the River St. Lawrence, and, to the rear thereof and fronting thereon, to lay out the "first concession,"—viz., a range of lots, each with a frontage of 20 chains by a depth of 100 chains. In rear of this first concession there was to be another concession road 40 feet wide, and so on. The written instructions say nothing about "side roads"; but the plan itself (which is dated Nov. 1st, 1786, and is now in the possession of D. B. Maclennan, Q.C., of Cornwall)—shows that cross roads running N. 24° W.—at right angles to the concession roads—were laid out by McNiff in the township of Lancaster between lots 8 and 9, 16 and 17, 24 and 25, 34 and 35, and, in the

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(*a*) 18 C. P. 228 (1868). (*b*) *Cf.* note [h] to s. 576, *ante*.

(*c*) See also *Reg.* v. *Plunkett*, 21 U. C. R. 53 (1862), where the lands were vested in a rector, who had no power to bind his successors.

(*d*) "That a mere dedication by the owner of the soil will not create a highway is clear": *Cubitt* v. *Lady Caroline Maxse*, L. R. 8 C. P. 704 (1873), *per* BRETT, L. J., at p. 714.

(*e*) Pratt on Highways (14th Ed.) 18; Elliott on Roads and Streets, p. 85 *Moore* v. *Woodstock Woollen Mills Co.*, 29 S. C. R. 627 (1899).

(*f*) See *ante* at p. 808, and *post*, note [c], p. 814.

(*g*) See *supra*; also note [e], *infra*, and s. 607, *post*.

(*h*) See note (e), *infra*, and s. 607, *post*.

(*i*) *Per* BYLES, J., in *Dawes* v. *Hawkins*, 8 C. B. N. S. 848 (1860). And see *Badgely* v. *Bender*, 3 O. S. 226 (1834); *Reg.* v. *Purdy*, 10 U. C. R. 545 (1853); *Rex.* v. *Downshire* (*Marchioness of*), 4 A. & E. 232 (1855); *Reg.* v. *United Kingdom etc., Tel. Co.*, 31 L. J. M. C. 166 (1862); *Turner* v. *Ringwood Highway Board*, L. R. 9 Eq. 418 (1870); *Nash* v. *Glover*, 24 Grant 219 (1876); *Winslow* v. *Dalling*, 1 N. B. Eq. 608 (1899).

(*j*) See the Prefatory Note, *ante*, p. 1.

(*k*) M S.,—Crown Lands' Department, Toronto.

townships of Charlottenburg, Cornwall, Osnabruck, Williamsburg and Matilda, along the boundary of every sixth lot. These side roads—like the concession roads—were apparently only 40 feet wide.

Sec. 598 Note (b). Original road allowances.

The "Rules and Regulations of the Land Office Department, 17th February, 1787"—(a) provided that:—

> "X. The dimensions of every inland township shall be 10 miles square; and such as are situated upon a navigable river or water shall have a front of 9 miles by 12 miles depth; and they shall be subdivided respectively in the following manner:—(See note)."

Unfortunately, however, the all-important "note" is omitted from the printed copy; and the original MS. of the "Rules and Regulations" seems to have disappeared.

How townships were laid out.

It would appear, however, that soon after Mr. Chewett took charge of the Surveys Department of Upper Canada (which was in December, 1791) the instructions to Government surveyors were revised and altered; and, from the plans of several of the townships surveyed about the beginning of the century, it is evident that first the "concession lines" and, at a later period, the "side roads" were directed to be laid out of a uniform width of 66 feet (one chain).

In Robert Gourlay's "Statistical Account of Upper Canada," (Toronto, 1822) the usual method by which townships were laid out at that date is thus described:—

> "A front line was first adjusted to the shore, so as to leave as little as possible of head-land between it and the water, and of back-water between it and the land. A second line was then drawn parallel with the first, and at the distance of one hundred chains or a mile and quarter, besides the allowance for road. The intervening range of land was called "the front" or "first concession." In the same manner the second was laid out, and then a third, fourth, etc. In the front, and between the concessions, a strip of land was allowed for a road. The allowance for the front road was generally 60 feet, and for the other concession roads 40 feet. Each concession was divided into lots of 200 acres, by parallel lines at right angles with the concession lines, and 20 chains or a quarter of a mile distant from each other. At intervals of two or three miles a strip of 40 feet was left between lots for cross roads."

The intervals between the "side roads" varied considerably at different dates and in different localities. In McNiff's survey (as already noted) it was, as a rule, 120 chains—*i.e.*, the width of six lots—except in Lancaster township, where it varied from 160 to 200 chains. In other places—*e.g.*, in the Niagara Peninsula—there are townships in which every lot has a side road; but the most common practice—*e.g.*, in the Newcastle, Home, and most of the Western Districts—was to allow an interval of 100 chains—*i.e.*, five lots of 20 chains each—between side roads.

Surveyor's plans not alone sufficient.

Prior to 1810—when the Act from which this section is taken was passed—the mere laying out of a road allowance by a Crown surveyor and the deposit of his plan in the Land Office Department were not alone sufficient—*i.e.*, without evidence of use or acceptance by the public—to constitute the road allowance a public highway (b). Like any private person whose proposal to dedicate lands for a highway had not yet been accepted, the Crown was still at liberty to revoke its offer to the public, and to grant to an individual lands which had thus been intended for road allowances.

> "A reservation by the King of a public way through a tract of land granted by letters patent would not (of itself) constitute a public way. Such a reservation . . . might be considered a dedication: but an acceptance on the part of the public must be superadded to create a public right. . . . The Crown would be bound by the dedication: the public by the acceptance" (c).

Effect of the Act 50 Geo. III. c. 1.

It was to this state of things that the Statute of 1810 applied. It operated as a parliamentary acceptance of the lands dedicated by the Crown as highways; so that thereafter—"The fact of a Government surveyor laying out allowances for roads in the plan of the original survey of Crown lands was

(a) A copy is now in the Public Library, Toronto.

(b) *Rex* v. *Allan*, 3 O. S. 90 (1833).

(c) *Per* MACAULAY, J., in *Badgely* v. *Bender*, 3 O. S. 221, 230 (1834). See also *Eald* v. *Kemp*, 3 O. S. 374 (1834).

Sec. 598.

Notes (b),(c),(d).

Original road allowances.

sufficient . . . to give to such roads . . . the legal character of highways, though there may have been no stakes planted in the ground to mark them out. They would be deemed in law highways before they were actually opened and used, and before statute labor or public money had been expended upon them." (a)

Accordingly it was held in *Reg.* v. *Hunt* (b),—an indictment for obstructing two streets in the City of London, Ont., laid out in 1826 by Col. Burwell, Deputy P. L. S.,—(1) that a public road shown on the original plan of a survey of Crown lands by a Government surveyor is a public highway, though not laid out on the ground; and (2) that after a road has thus become a public highway, it is not in the power of the Crown, by grant of the soil and freehold thereof to a private person, to deprive the public of their right to use it as a road.

This is, however, subject to the condition that the surveyor's plan should be shewn to have been adopted by the Crown,—an adoption established in this case by evidence of sales having been made according to the plan and survey. (c)

Highways by virtue of R.S.O. c. 181, ss. 20-21.

(c) Highways by virtue of "The Surveys Act." Of a character very similar to the Crown road allowances referred to in the preceding notes are the street allowances made in the original Government surveys of cities, towns and villages in this Province, and the allowances for roads made in the original surveys of those townships, tracts, and blocks of land which were granted by he Crown to companies—*e.g.*, the Canada Company—before any Crown surveys had been made therein.

As to these, ss. 20 and 21 of "*The Surveys Act*," (R. S. O. 181), provide that:—

Streets, lanes, etc., shown on original surveys of cities, towns and villages.

"**20.** In every city, town or village, or any part thereof, which has been surveyed by the authority [of the Provincial Government], all allowances for any road, street, lane or common laid out in the original survey of such city, town or village, or any part thereof, shall be public highways and commons; and all posts or monuments placed or planted in the original survey of such city, town or village, or any part thereof, to designate or define any allowance for a road, street, lane, lot or common, shall be the true and unalterable boundaries of every such road, street, lane, lot and common (d).

Read allowances in townships, etc., patented prior to Government survey thereof.

21. All surveys of townships, tracts or blocks of land in this Province, granted by the Crown to companies and individuals before any surveys had been made therein, and which were afterwards surveyed by the owners thereof, shall be original surveys thereof, and shall have the same force and effect as though the said original surveys and the plans thereof had been made by competent authority; and all allowances for roads or commons surveyed in such townships, tracts or blocks of land, and laid down on the plans thereof, shall be public highways and commons; and all lines run and marked in such original surveys, and all posts or monuments planted or placed in such original surveys to designate and define any allowance for road, concession, common, or lot of land, shall be the true and unalterable lines and boundaries of such allowance for road, common or lot of land (e).

Roads laid out by the Quarter Sessions.

(d) "All roads laid out by virtue of any Statute."

The Act, 50 Geo. III. c. 1, from which this section is taken (and also the earlier Statute, 33 Geo. III. c. 4) provided (f) that upon the written applica-

(a) *Per* CURIAM in *Reg.* v. *Great Western R. W. Co.*, 21 U. C. R. 555, 577 (1862). *Cf. Reg.* v. *Berger*, [1894] 1 Q. B. 823.

(b) 16 C. P. 145 (1865).

(c) *Reg.* v. *Hunt*, in the Court of Error and Appeal, 17 C. P. 443 (1867), *per* DRAPER, C. J., at p. 447. See also *Spalding* v. *Rogers*, 1 U. C. R. 269 (1844); *Reg.* v. *Bishop of Huron*, 8 C. P. 253 (1859); *Mountjoy* v. *Reginam*, 1 E. & A. 429 (1861); *Carrick* v. *Johnson*, 26 U. C. R. 69 (1866)—surveyor's plan conclusive unless evidence of work on the ground inconsistent therewith: *Reg.* v. *Lees*, 29 U. C. R. 221 (1869); *Rowe* v. *Sinclair*, 26 C. P. 233 (1876); *Hagarty* v. *Britton*, 30 U. C. R. 321 (1870); *Kenny* v. *Caldwell*, 21 A. R. 110 (1894); 24 S. C. R. 699; *Heiminck* v. *Town of Edmonton*, 28 S. C. R. 501 (1898).

(d) Taken from 12 V. c. 35, s. 33.

(e) *Cf.* 12 V. c. 35, s. 34.

(f) 50 Geo. III. c. 1. s. 3.

Sec. 598.

Note (d).

Roads laid out or altered by the Quarter Sessions.

tion of a certain number of freeholders to the county surveyor, stating that any public highway, etc., then in use was inconvenient, but that it might be so altered as to better accomodate His Majesty's subjects, etc., or that it was necessary to open a new highway, etc., the surveyor should examine into the matter, and report to the next ensuing Quarter Sessions thereon; and if, after public notice of the proposed alteration of an existing highway, or the opening of a new one, no opposition was offered, the Quarter Sessions might confirm the surveyor's report and direct the work to be done. In case of any opposition, the matter was to be determined by a jury, who had power to confirm, annul, alter or modify the proposals contained in the surveyor's report, as the exigency of the case might seem to require. Any highway or road thus altered or opened was declared (*a*) to be a "common and public highway;" and the report (as finally adopted) was to be filed and to remain on record in the office of the clerk of the peace (*b*).

In order to establish a highway under the above Acts and to maintain an indictment for its obstruction, it was necessary to prove that all the requirements of the Statute had been complied with (*c*).

In *Re Lawrence and Township of Thurlow* (*d*) a mandamus was refused for the opening of an alleged highway laid out by a Crown surveyor in 1839 under 50 Geo. III. c. 1, though the surveyor's report was marked "*Allowed, I. F., Chairman Quarter Sessions.*" The Court of Queen's Bench held that there was no proof of the report having been filed or presented to "the next ensuing Quarter Sessions" after its date, or of the Sessions having ordered the opening of the road; and—*per* MORRISON, J. (p. 22)—a mere minute that the report was "allowed" without showing that the road was ordered to be opened, would not be sufficient (*e*).

But in *Palmatier* v. *McKibbon* (*f*),—an action of trespass *q. c. f.* in which the defence was that the *locus in quo* was a public highway,—it appeared that a surveyor had laid out a township road in 1834 under the authority of the Acts 50 Geo. III. c. 1 and 8 Geo. IV. c. 14; that his report (now destroyed) had been indorsed with a note "*Confirmed by the Court*"; that the precise line of the original road had not been adhered to; that the road now in question was adopted in 1853 in lieu of the original line and used until about 1860, when it was closed by a township by-law. Between 1853 and 1860, statute labour had been done on the road now in question. It was held that this (the substituted) road was a public highway.

Per OSLER, J. A., (p. 448):—

> "No doubt the road as it now exists . . . does not very exactly follow throughout its whole course the line which was laid out by the surveyor [in 1834]; but it was intended as an adoption of that road, and as being (so far as it varies from the line thereof) a mere straightening of its course."

Held also—*per* MACLENNAN, J. A.,—that the expressions, "laying out" and "opening" a road are used in the Statute 50 Geo. III. c. 1 in an equivalent sense, and actual work on the ground is not required before the road becomes a public highway; and the dictum of MORRISON, J., in *Re Lawrence and Township of Thurlow*, that a minute merely allowing the surveyor's report, without directing or ordering that the road should be opened is not sufficient to establish it as "a highway," is very far from being an adjudication on the point, and as a dictum cannot be maintained." (*g*)

(*a*) 50 Geo. III. c. 1. s. 35.

(*b*) See the procedure under 9 V. c. 8 described in *Purdy* v. *Farley*, 10 U.C. R. 545 (1853).

(*c*) *Rex* v. *Sanderson*, 3 O. S. 103 (1833).

(*d*) 33 U. C. R. 223 (1873).

(*e*) See also *Reg.* v. *Great Western R. W. Co.*, 32 U.C.R. 506 (1872),—where, the surveyor's report (dated July 3rd, 1837) not having been confirmed at "the next ensuing Sessions" in July, 1837, but at the Sessions of the following October—the highway in question was held not to have been legally established.

(*f*) 21 A. R. 441 (1894).

(*g*) As to the presumption that the land forming a road has been expropriated, see *Dickson* v. *Kearney*, 20 Nova Scotia Rep. 95; 14 S. C. R. 743 (1888).

Sec. 598.

Notes (e-f).

Effect of expending public money or statute labour on a road.

(e) "Any roads whereon the public money has been expended for opening the same."

"Public money" may be either Provincial or municipal funds. The expenditure must have been made under proper authority (*a*).

(f) "Or whereon the statute labour has usually been performed."

The effect of these words is to make the fact that statute labour has been usually performed upon a road presumptive evidence that the road has been laid out and dedicated as a highway (*b*); but this presumption may be rebutted by evidence to the contrary.

In *Reg.* v. *Rankin* (*c*) the defendant was indicted for obstructing a highway which had been laid out in 1846 by the county council of Kent. Under "*The District Councils Act*" (4 & 5 Vic. c. 10) the council could not open a new road except by by-law, and no by-law was proved. The road had, however, been opened by statute labour in 1846 or 1847; and much statute labour and public money had been expended upon it from that time until 1856, when the defendant obstructed it where it crossed his land. It was held that the road had not become a public highway, and that the defendant could not be convicted for obstructing it.

Per ROBINSON, C. J., (p. 310):—

> "We think there could be no ground for holding that the defendant had voluntarily dedicated this land as a highway, or that it had become a highway by dedication. We see what the origin of the road was,—that it was intended to be established by public authority without regard to the will of the proprietor. It has either become a road by the authority and acts of the county council, or it is not legally a road at all. The fact of the public using it for ten years, or expending labour and money upon it between 1846 and the present time is not sufficient to establish it as a lawful highway against the will of the owner of the soil, where there is no sufficient ground for presuming a dedication."

In *Township of St. Vincent* v. *Greenfield*, (*d*) OSLER, J. A. (after reciting the facts) observes (p. 571):—

> "If the origin of the road is unknown, it is presumed to be a highway if statute labour has been usually performed upon it. If the road has been laid out and dedicated by the land owner, the performance of statute labour upon it, or the expenditure of public money in opening it, is evidence of its acceptance and establishment as a highway by the municipality; but the continued performance of statute labour upon a road which was in its inception a trespass road does not in my opinion, by force of the Statute, absolutely make such a road a public highway. It may, at most, raise a presumption of dedication, or be evidence from which a dedication by the owner may be inferred, and may throw upon him the onus of rebutting such presumption or inference. I do not think it has any higher effect. Here—as I have said—the origin of the road is known; and, as regards the defendant's land, I agree with the Court below in thinking that the circumstances rebut any inference of dedication which might be drawn from the performance of the statute labour."

In *Reg.* v. *Plunkett*, (*e*) where a witness swore that, having once been pathmaster for two years, he had directed statute labour to be done on a road—ROBINSON, C. J. considered that this "did not amount to proof that statute labour had been *usually performed* on the road in question, but came very far short of it."

And in *Reg.* v. *Hall* (*f*), evidence that statute labour had been performed, not continuously, but at intervals, and only upon certain parts of a road

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(*a*) *Reg.* v. *Hall*, 17 C. P. 282 (1866); quoted and approved by CAMERON, C. J., in *Township of St. Vincent* v. *Greenfield*, 12 O. R., at p. 307 (1886).

(*b*) *Prouse* v. *Glenny*, 13 C. P. 560 (1863): *Moore* v. *Township of Esquesing*, 21 C. P. 277 (1871): *Gilchrist* v. *Township of Carden*, 26 C. P. 1 (1876).

(*c*) 16 U.C.R. 304 (1858). (*d*) 12 O. R. 297 (1886); 15 A. R. 567 (1887).

(*e*) 21 U. C.R. 535, 541 (1862). (*f*) 17 C. P. 282 (1866).

running diagonally across four concessions was held insufficient to establish the road as a highway under this section.

Notes (f)-(a)

Performance of statute labour as evidence of a road being a highway.

In *Hubert* v. *Township of Yarmouth* (a)—an action to compel a municipal corporation to maintain and repair a street laid out by private persons—it appeared that the street had neither been established as a highway by by-law nor assumed for public user by any corporate act of the municipal corporation; but it was contended that the performance of statute labour thereon with the consent of the pathmaster and (on one occasion) with the consent of the councillor for the ward and of the reeve, was evidence that it had been "otherwise assumed for public user." (b) But it was held that the acts required to work such an assumption must be corporate acts, clear and unequivocal, and such as clearly and unequivocally indicate the intention of the corporation to assume the road; and that the acts relied upon in this case could not bind the corporation or work such an assumption.

(g) **"Any roads passing through the Indian lands."**

Roads passing through Indian lands.

"It never could have been meant that every by-road or short cut used by the Indians across the plains or the flats was to be established as a permanent highway. . . . The meaning of the clause is, I think, that roads which, under the provisions of the Act were to acquire the character of legal highways, should have that same legal character when they passed through Indian lands as in other parts of their course, although they might not (as to such portions of them) be public allowances made in any original survey nor [have] had any public money expended or statute labour performed on them." (c)

(h) **"Shall be deemed common and public highways"**—*i. e.*, shall be *presumed* to be highways. But, as pointed out in note (f), *supra*, the presumption of dedication which arises from the fact that public money has been expended or statute labour performed upon a road may be rebutted; and such presumption will not, it seems, be extended to a greater width of road than that upon which the work was actually done or the public money expended (d).

Presumption is rebuttable.

(i) **"Unless where such roads have been already altered or may hereafter be altered according to law."**

When highway altered.

When a road, street or lane has once become a public highway it must continue to be one until deprived of that character by statutory authority (e).

Freehold in the Crown.

599. Unless otherwise provided for, the soil and freehold of every highway or road altered, amended or laid out according to law, and every road allowance reserved under original survey along the bank of any stream or the shore of any lake or other water, shall be vested in Her Majesty, Her Heirs and Successors. 55 V. c. 42, s. 525; 59 V. c. 51, s. 19.

Certain highways, road allowances, etc., vested in the Crown.

Taken from the Act of 1858 (22 V. c. 99), s. 301, excepting the words "and every such road allowance reserved under original survey along the bank of any stream or the shore of any lake or other water," which were inserted in 1896 by 59 V. c. 50, s. 19. *Cf.* 50 Geo. III. c. 50, s. 35.

(a) "*The Highways Act*" (f) declared that "the soil and freehold of every highway or road which should be altered, amended or laid out," under the provisions of that Statute should be vested in the Crown. The

(a) 18 O. R. 458 (1889).

(b) See s. 607, last clause.

(c) *Per* Robinson, C. J., in *Byrnes* v. *Bown*, 8 U.C.R. 181 (1851), at p. 184; and see the provisions of ss. 21-26 of "*The Indian Act*," (R. S. Ca. c. 43,) as to the punishment of persons occupying or trespassing upon any road or allowance for road running through any Indian Reserve.

(d) *Per* Cameron, C. J., in *Township of St. Vincent* v. *Greenfield*, 12 O. R. 297 (1886) at p. 307.

(e) See *supra*, note (a) at p. 812; and for a statement of the law governing the closing and sale of highways, see *post*, ss. 629, 632, 637 (1), 640 (11), 658 (1) (2) (9), 660 (2), 661 and 662, and the notes thereto.

(f) 50 Geo. III. c. 50, s. 35.

Sec. 599.

Note (a).

Of what highways the soil and freehold is vested in the Crown.

two classes of highways then in the contemplation of the Legislature (*a*) were the original allowances for roads made by the King's surveyors,—the fee of which undoubtedly remained in the Crown subject to the public easement—and the Quarter Sessions highways then already laid out under 33 Geo. III. c. 10 or to be laid out and established under the authority of the new Act.

To these, "*The Surveys Act*" of 1849, (12 V. c. 35), added the highways referred to *ante*, in note (c) to s. 598; and s. 1 of the Act of 13-14 V. c. 15, provided that:—

> "*The right to use* as public highways all roads, streets or public highways within the limits of any city or incorporated town . . . (except in so far as the right of property or other right in the land occupied by the same highways may have been expressly reserved by some private party, when it was first used as such road, street or highway, and except as to any concession or side-road within any such city or town when the persons now in possession, or those through whom they claim may have laid out streets in such city or town without any compensation therefor in lieu of such concession or side-road) shall be vested in the municipal corporation of such city or incorporated town, etc."

At the consolidation of "*The Municipal Act*" in 1858, both of these sections were included and both were amended; the clause above quoted from 13-14 V. c. 15, by extending it to all local municipalities, and by vesting in the corporations thereof not the mere *right to use* the public highways, but the actual highways themselves, and the 35th section of 50 Geo. III. c. 1, by prefacing it with the words "unless otherwise provided for."

In this amended form these two sections have been repeated in every consolidation of the Statutes down to the present time, and they now form ss. 599 and 601 of the present Municipal Act.

Where the soil and freehold is vested in the municipality.

As to the scope of these (apparently inconsistent) enactments, two differing opinions have been held,—the later (and the one now more generally accepted) being that the application of s. 601 (*b*) is restricted to roads, etc., which have been dedicated by or acquired from private owners of the land (*c*); and that in such cases it is not only the road or highway itself which is vested in the municipal corporation, but also the soil and freehold; (*d*) while in the case of highways otherwise created there is no *property* in the municipal corporation, but only the right of control given by s. 600.

On the other hand, it has been suggested (*e*) that the combined effect of ss. 599 and 601 may be that while the soil and freehold of every highway legally laid out otherwise than by the dedication or acquisition of private property is vested in the Crown, there is also vested in the local municipality, even in the case of original road allowances, a right of property in "the highway" itself,—using this word "highway" in the sense which has been given to the word "street" in corresponding English enactments, (*f*)—viz., as meaning "the surface and the area of ordinary user of the road *qua* road both above and

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(*a*) See *ante*, p. 806. (*b*) Originally 13-14 V. c. 15, s. 1, just quoted.

(*c*) See *per* BURNS, J., in *Town of Sarnia* v. *Great Western R. W. Co.*, 21 U. C. R. 59 (1861), at p. 64; *per* DRAPER, C. J., in *Mytton* v. *Duck*, 26 U. C. R. 61 (1866); *per* STREET, J., in *Roche* v. *Ryan*, 22 O. R. 107 (1891), at p. 109.

(*d*) *Per* STREET, J., 22 O. R., at p. 109.

(*e*) See *per* MCLEAN, J. in *Town of Sarnia* v. *Great Western R. W. Co.* 21 U. C. R. 59 (1861), at p. 62; *per* VANKOUGHNET, C. in *Kronshion* v. *Gap*, 10 Grant 573 (1874), at p. 575; *per* BOYD, C. in *Re Trent Valley Canal Co.*, 11 O. R. 687 (1886) at pp. 695-6, 699; *per* PATTERSON, J. A. in *Re Knight* v. *Townships of Medora and Wood*, 14 A. R. 112 (1887), at p. 114; and *per* MACLENNAN, J. A., in *Roberts* v. *Mitchell*, 21 A. R. 433 (1894) at p. 438.

(*f*) *Cf.* "*The Metropolis Local Management Act, 1855*", (Imp. Stat. 18-19 V. c. 120, s. 96): "*The Public Health Act, 1875*," (Imp. Stat. 38-39 V. c. 55, s. 149): *Coverdale* v. *Charlton*, 4 Q.B.D. 104 (1880): *Wandsworth Board of Works* v. *United Telephone Co.*, 13 Q.B.D. 904 (1884): *Gas Light and Coke Co.* v. *Vestry of St. Mary Abbott's, Kensington*, 1 Ca. & Ell. 368 (1884); 15 Q.B.D. 1: *Tunbridge Wells (Mayor of)* v. *Baird*, [1896] A.C. 434; *Vestry of St. Mary, Battersea* v. *County of London, etc., Electric Lighting Co.*, [1899] 1 Ch. 474; and see note (b) to s. 601.

below the surface;" this right of property being,—to use the words of the late Lord HERSCHELL (a)—"such . . . and such only as is necessary for the control, protection and maintenance of the street as a highway for public use." (b)

It is submitted (though with great deference, in view of the authorities to the contrary) that this construction—which provides for uniformity in the tenure of highways, and which best accords with the intention of the Legislature as indicated by the changes made in the Consolidation of 1858—is also the only one which gives full effect to all the provisions of both ss. 599 and 601, and, in particular, to that portion of s. 601 which, by excepting certain original road allowances from the operation of the enactment, indicates that highways existing upon all other original road allowances were intended to be vested in the local municipal authority.

Nor is this view in any way inconsistent with the generally received opinion that in the case of lands purchased or expropriated by municipal councils the soil and freehold, and not the mere highway, is vested in the municipal corporation (c).

Jurisdiction of Municipal Councils.

600. Subject to the exceptions and provisions hereinafter contained, the municipal council of every municipality shall have jurisdiction over the original allowances for roads and highways and bridges within the municipality. 55 V. c. 42, s. 526.

Jurisdiction of councils over roads, etc.

Taken from the Act of 1858 (22 V. c. 99), s. 302.

(a) "Subject to the exceptions and provisions hereinafter contained.

See ss. 627, 628, 629, 632; and, as to the relative distribution of authority between county and local municipalities, ss. 604, 605, 613-626.

(b) "Jurisdiction over the original allowances for roads," etc.

The council has a right to determine whether an original road allowance shall or shall not be opened; and the Courts have no jurisdiction to compel municipalities to open such allowances and make them fit for public travel (d). Although it was held in *Town of Sarnia* v. *Great Western R. W. Co.* (e) that a municipality cannot bring an action of ejectment in respect of a street laid out upon an original road allowance, yet "by virtue of the provisions of '*The Municipal Act*' there is such power of management and control as to highways and streets bestowed upon the local municipalities, and such an interest in the public easement vested in them," (f) that a municipality may maintain an action for an injunction to restrain the obstruction of a highway (g), or for damages for injury to a highway (h); or may have it declared (as against a private person) whether or not certain land is a public highway, and whether the defendant has a right to possess, occupy or obstruct it; and upon a declaration that such land is a highway, the defendant may be enjoined from possessing or occupying it (i).

(a) In *Tunbridge Wells (Mayor of)* v. *Baird*, [1896] A.C., at p. 442.

(b) See this more fully stated in note (a) to s. 601.

(c) *Per* STREET, J., in *Roche* v. *Ryan*, 22 O.R. (1893), at p. 109.

(d) *Re Wilson* v. *Township of Wainfleet*, 10 P. R. 147 (1883); *Hislop* v. *Township of McGillivray*, 12 O. R. 749 (1887); 15 A. R. 687 (1888); 17 S. C. R. 479 (1889).

(e) 21 U. C. R. 59 (1861).

(f) *Per* BOYD, C., in *Village of Fenelon Falls* v. *Victoria R. W. Co.*, 29 Grant 4 (1881).

(g) *Township of McKillop* v. *Smith*, 24 Grant 278 (1876); *Village of Fenelon Falls* v. *Victoria R. W. Co.* supra; *Township of St. Vincent* v. *Greenfield*, 15 A. R. 567 (1887).

(h) *Township of Sarnia* v. *Great Western R. W. Co.*, 17 U. C. R. 65 (1859).

(i) *City of Toronto* v. *Lorsch*, 24 O. R. 227 (1893).

Secs. 600, 601.

Notes (b); (a). Jurisdiction of municipal councils over original road allowances.

So, under the express provisions of this Act, municipal councils may pass by-laws for preventing the obstruction of public highways (*a*): for removing such obstructions at the expense of the person who places or maintains them on the highway (*b*): for preventing and abating public nuisances (*c*); and under such by-laws the offender may be summarily convicted and fined (*d*).

Or, if the obstruction or other interference with the highway amounts to a common nuisance (*e*), the offender may be indicted and fined or imprisoned under Articles 191, 192 of "*The Criminal Code, 1892*,"—quoted in note (**d**) to s. 606, *post*; (*f*)—and if the Court gives judgment that the nuisance be abated, the person convicted may be commanded to remove it at his own costs (*g*), or a writ "*de nocumento amovendo*" may be sued out and delivered to the sheriff (*h*); but the Court will not make such an order if the nuisance is not a continuing one (*i*), or if it has already been abated (*j*).

Certain Highways Vested in Municipalities.

Streets in cities, townships, towns and villages vested in municipalities subject to certain rights.

601. Every public road, street, bridge or other highway in a city, township, town or village,—except any concession or other road therein, which has been taken and held possession of by any person in lieu of a street, road or highway laid out by him without compensation therefor,—shall be vested in the municipality, subject to any rights in the soil reserved by the person who laid out such road, street, bridge or highway. 55 V. c. 42, s 527.

As to the genesis of this section, see note (**a**) to s. 599.

(**a**) "**Every public highway in a city, township, town or village shall be vested in the municipality.**"

These words do not apply :—

(1) To "any public road or bridge vested as a Provincial work in Her Majesty, or in any public Department or Board ;" (*k*)—nor

(2) To county roads and bridges (*l*) ;—for as to such last mentioned roads, "the expression 'exclusive jurisdiction' vests in the county municipality an interest beyond mere naked possession ;" (*m*)—nor

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(*a*) Ss. 557 (1-5, 6), 560, 637 (4).

(*b*) Ss. 557 (2), (4), 703. *Cf.* "*The Local Government Act, 1888*," (Imp. Stat. 51-52 V. c. 41 s. 11) : *Louth Rural Dist. Council* v. *West*, 12 Times L. R. 477 (1896): *Harris* v. *Co. Council of Northamptonshire*, 41 Sol. J. 608 (1897).

(*c*) S. 586 (1) and see notes (**a**) and (**b**) thereto.

(*d*) See also ss. 702, 705 and 706. As to the jurisdiction of the magistrate in a case summarily triable, if a question is raised as to whether the *locus in quo* was in fact a highway, see the authorities cited in the last paragraph of note (**a**) to s. 557, and *Reg.* v. *Darey*, Feb. 1900, not yet reported.

(*e*) As to which see *Howden* v. *Lake Simcoe Ice Co.*, 21 A. R. 414 (1894).

(*f*) See *Reg.* v. *Spence*, 12 U. C. R. 519 (1854) : *Reg.* v. *Grand Trunk R. W. Co.*, 17 U. C. R. 165 (1859) : *Reg.* v. *McLean*, 22 U. C. R. 443 (1863) : *Reg.* v. *Lees*, 29 U. C. R. 221 (1869) : *Reg.* v. *Davis*, 35 U. C. R. 107 (1874) : *Reg.* v. *Jackson*, 40 U. C. R. 290 (1876) : *Reg.* v. *Cooper*, *Ibid.* 294 (1876) : *Reg.* v. *Grover*, 23 O. R. 92 (1892) ; and *cf. Reg.* v. *Huber*, 15 U. C. R. 589 (1858) : *Reg.* v. *Fitzgerald*, 39 U. C. R. 297 (1876). As to the form of a conviction, see *Reg.* v. *Brittain*, 4 Nova Scotia Rep. 614 (1846).

(*g*) 5 Bacon's Abr. 798, *Tit.* "Nuisance," (D).

(*h*) Glen on Highways, 182.

(*i*) *Rex* v. *Pappineau*, 2 Stra. 686 (1726) : *Rex* v. *Stead*, 8 T. R. 142 (1799).

(*j*) *Rex* v. *Incledon*, 13 East 164 (1810) : *Rex* v. *Paget*, 3 F. F. 29 (1862).

(*k*) See s. 627.

(*l*) See ss. 613-617, 637, 658 (1-3, 8, 9), etc.

(*m*) *County of Wellington* v. *Wilson*, 14 C.P. 299, (1864) at pp. 305, 306, 307 ; 16 C.P. 104 (1865), at p. 129.

(3) To roads constructed by joint stock companies incorporated under "*The General Road Companies Act*," (*a*) or under the similar earlier Acts. (*b*)

Sec. 601.

Notes (a), (b). What streets are vested in the local municipality.

And where the freehold of lands intended for roads or streets has been purchased or acquired by municipal corporations by expropriation or otherwise: where bridges have been built; or where the roads (or portions of the roads) of joint stock companies have been purchased (*c*) or assumed by a municipality after having been abandoned by the company which constructed them, (*d*) no further enactment would seem to be necessary in order to vest the road, street or bridge in the municipal corporation.

The section, however, seems to apply:—(1) to original road allowances, the soil and freehold of which is by s. 599 vested in the Crown, and (2) to roads, streets, etc., situate within local municipalities, and which have been dedicated to the public by individuals,—the soil and freehold of which would at common law have remained in the original owners of the land, subject to the public right of passage. (*e*) Each of these cases is dealt with in the section, either expressly or by implication.

(b) "Except any concession or other road (*f*) **. . . taken and held . . . by any person in lieu of . . . a highway laid out by him without compensation.'** (*g*)

What is so vested in the case of original road allowances.

These words indicate (*h*) that in the case of those original road allowances of which private persons have not taken and held possession under the circumstances specified, there shall be vested in the local municipality something more than the mere naked jurisdiction conferred by s. 600,—in other words, an interest or right of property similar to that which in England is vested in the local authorities by "*The Metropolis Local Management Act, 1855*," and "*The Public Health Act, 1875*."

By the former of these it is declared that:—

> "All streets being highways, and the pavements, stones and other materials thereof. . . . *shall rest in* . . . the vestry or district board of the parish or district in which such highways are situate." (*i*)

And by the latter that:—

> "All streets being . . highways repairable by the inhabitants at large within any urban district, and the pavements, stones and other materials thereof . . . *shall rest in* and be under the control of the urban authority." (*j*)

The effect of these enactments is to transfer to the urban authority or local board the property in the surface of the street, and in the zone or area of ordinary user of the street, *qua* street, both above and below the surface. (*k*)

> "'Street' means more than the surface: it means the whole surface and so much of the depth as is or can be used, not unfairly, for the ordinary purposes of a street. It comprises a depth which enables the urban authority to do that which is done in every street,—viz., to raise the street and to lay down sewers; and also what is necessary

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(*a*) R.S.O., c. 193. (*b*) 12 V. c. 84: 13-14 V. c. 14: 16 V. c. 190: 18 V. c. 139: C.S.U.C. c. 49, etc. See *Reg.* v. *Brown and Street*, 13 C.P. 356 (1863): *Town of St. Catharines* v. *Gardner*, 20 C.P. 107 (1869); 21 C.P. 190 (1870).

(*c*) As in *Reg.* v. *Town of Paris*, 12 C.P. 445 (1862): *Reg.* v. *Township of Louth*, 13 C.P. 615 (1863).

(*d*) See R.S.O. c. 193, ss. 50, 102, 103.

(*e*) Pratt on Highways (14th Ed.) 56.

(*f*) In 13-14 V. c. 14, s. l. the words are—"any concession or side-road," etc.

(*g*) As to the rights of persons thus in possession of original road allowances, see ss. 641, 642.

(*h*) See *per* PATTERSON, J.A. in *Re Knight* v. *Townships of Medora and Wood*, 14 A.R. 112 (1887), at p. 114.

(*i*) Imp. Stat. 18-19 V. c. 120, s. 96.

(*j*) Imp. Stat. 38-39 V. c. 55, s. 149. *Cf.* "*The Highways and Locomotives Act, 1878*," (Imp. Stat. 41-42 V. c. 77, s. 5): "*The Local Government Act, 1888*," (Imp. Stat. 51-52 V. c. 41, ss. 11 (6), 35 (4), 38 (4), 100: and "*The Local Government Act, 1894*," (Imp. Stat. 56-57 V. c. 73, s. 25).

(*k*) Pratt on Highways, (14th Ed.), 60.

Secs. 601, 602.

Notes (b), (c); (a).

for the purpose of laying down gas and water pipes. . . . It does not include such a depth as would carry with it the right to mines." (a)

Property in highways.

The property in the streets, which in England is vested in the local authorities by the above Statutes, does not entitle them to restrain the erection of a telephone wire across a street at such a height above it as to cause no appreciable danger to the public or to the traffic (b); nor to excavate the soil and erect lavatories below the surface of the street (c); nor to license a salt company to lay down brine pipes under the highway (d); nor to compel the removal of wires which have been laid by an electric company in the subsoil below the street in such a manner as not to interfere with its use as a highway (e). But the proprietary rights of the local authority were held to be sufficient to entitle them to an injunction restraining the owner of the subsoil under a highway from cutting the wires of an electric lighting plant put up thereon by the local board (f).

In England.

Title to highways created by private dedication, etc.

(c) "**Subject to any rights in the soil reserved by the person who laid out such road, street, bridge or highway.**"

In cases of private dedication, where no rights in the soil have been reserved by the owner of the land, these words would seem to vest in the municipality a complete title, not only to the highway, but also to the soil and freehold of the land; and this is the construction now generally accepted (g).

> "There is a distinction between the Canadian law and the law of England as to public highways. The Canadian law agrees rather with the law of Scotland, which is founded on the civil law,—viz., that when a street or road becomes a public highway, the soil of the road is vested in the Crown if there is no other public trustee, or, if there is a corporate body that fills the position of trustee, then in that corporate body in trust for that public use." (h)

But the property thus vested in the municipalities "is a qualified property, to be held and exercised for the benefit of the whole body of the corporation. . . . They may be said to hold the freehold; but . . . it is only as trustees for the public." (i)

No Dower in Lands dedicated for Highways.

Lands dedicated for streets not subject to dower.

602. Lands dedicated by any owner thereof for a street or public highway shall not be subject to any claim for dower by the wife of any person by whom the same was dedicated. 55 V. c. 42, s. 527 *a*.

Taken from 53 V. c. 50, s. 43 (1890).

(a) This is the law in the United States (j), and is said to be founded upon the principles of the English common law (k).

(a) *Coverdale* v. *Charlton*, 4 Q.B.D. 104 (1878), *per* BRETT, J., at p. 121. But in this Province, a county or township may sell or lease the right to take minerals found upon or under any road, over which the municipality has jurisdiction. See *post*, s. 627.

(b) *Wandsworth Board of Works* v. *United Telephone Co.*, 13 Q.B.D. 904 (1884).

(c) *Tunbridge Wells (Mayor of)* v. *Baird*, (1896) A.C. 434;

(d) *Salt Union (Ltd.) etc.* v. *Harrey*, 61 J.P. 375 (1897).

(e) *Vestry of St. Mary, Battersea* v. *County of London Electric Lighting Company*, [1899] 1 Ch. 474.

(f) *Fareham Local Board and Fareham Electric Light Co.* v. *Smith*, 7 Times L. R. 443 (1891).

(g) See *per* STREET, J., in *Roche* v. *Ryan*, 22 O.R. 104 (1893) at p. 109, and the cases referred to in note (a) to s. 599.

(h) *Per* Lord FITZGERALD in *De la Chevrotiere* v. *City of Montreal*, 12 App. Cas. 149 (1886), at p. 159.

(i) *Per* McLEAN, J., in *Town of Sarnia* v. *Great Western R. W. Co.*, 21 U. C.R. 59 (1861), at p. 62.

(j) Elliott on Roads and Streets, p. 108.

(k) Scribner on Dower, Vol. 1, p. 550.

Acquiring Roads for Public Avenues.

603. The council of every city and town may respectively pass by-laws:— Notes (a); (a).

1. For acquiring and assuming possession and control, for a public avenue or walk, of any public highway or road in an adjacent municipality by and with the consent of such municipality, the same being signified by a by-law passed for that purpose: and Acquiring roads and lands for public avenues or walks.

2. (Subject to the provisions of sections 437 and 438 of this Act) for acquiring from the owners of the land adjacent to such highway or road, so much land as may be required on either side of such highway or road to increase the width thereof to the extent of 100 feet or less. 55 V. c. 42, s. 528.

Taken from 34 V. c. 30, s. 5 (1871).

Assumption of County Bridges by Villages.

604. The council of every county and village may pass by-laws for carrying out any arrangement between them for the assumption, by the village, of any bridge within its limits, under the jurisdiction of the county council, and for such bridge being toll free; and for the payment by the village to the county of any part of the cost of the construction of such bridge; Assumption by villages of bridges under control of county.

(*a*) After the passing of such by-laws the bridge shall be, and remain, under the exclusive jurisdiction of the village; and the village shall be subject to all the liabilities in the premises, which, but for the transfer, would have devolved on the county; and the bridge shall be and remain toll free. 55 V. c. 42, s. 529.

Taken from 41 V. c. 11, s. 1.

(a) "Any bridge within its limits under the jurisdiction of the county council." See ss. 613 (3), 616 (2).

Approaches to Bridges.

605. The approaches for 100 feet to and next adjoining each end of all bridges belonging to, assumed by, or under the jurisdiction of any municipality or municipalities, shall be kept up and maintained by such municipality or municipalities: the remaining portions of such approaches shall be kept up and maintained by the local municipalities in which they are situate. 55 V. c. 42, s. 530. Approaches to bridges.

aken from 43 V. c. 24, s. 18 (1880).

(a) "This section applies only to cases in which two municipalities may be concerned; and its sole purpose was to provide for cases in which the municipality which has jurisdiction over a bridge is different from the municipality which has jurisdiction over the adjacent approaches." (*a*)

(*a*) *Per* MACLENNAN, J. A., in *Johnston* v. *Township of Nelson*, 17 A. R. 16 (1890) at p. 19.

Secs. 605, 606 (1).

Notes (a); (a).

Approaches to bridges.

The word "approaches" means all such artificial structures as may be reasonably necessary and convenient for the purpose of enabling the public to pass from the road to the bridge and from the bridge to the road. It does not include the highway to a distance of 100 feet from each end of the bridge unless the artificial structure extends so far; nor does it relieve the local municipality from its liability (under s. 606) to keep and maintain the bridge in repair; but it merely gives to such municipality the right to enforce the provisions of the section against the municipality or municipalities owning the bridge. (*a*)

Liability to Repair Highways and Bridges.

Liability for repair of public roads, etc.

Limitation of actions.

606.—(1) Every public road, street, bridge and highway shall be kept in repair by the corporation; and on default of the corporation so to keep in repair, the corporation, besides being subject to any punishment provided by law, shall be civilly responsible for all damages sustained by any person by reason of such default, but the action must be brought within three months after the damages have been sustained.

This sub-section first appears in its present form in the Act of 1873, (36 V. c. 48), s. 409. It had originally formed part of 13-14 V. c. 15, s. 1, which,—after the words quoted in note (a) to s. 599, *supra*, p. 818—went on to provide that:—

> "Such roads, streets and highways shall be maintained and kept in proper repair, so long as they shall remain open as such, by and at the cost of such corporation: . . and if the municipal corporation of any such city or incorporated town shall fail to keep in repair any such road, street or highway within the limits thereof, *such default shall be a misdemeanour* for which such corporation shall be punished by fine in the discretion of the Court before whom the conviction shall be had; *and such corporation shall be also civilly responsible* for all damages which may be sustained by any party by reason of such default, provided the action for the recovery of such damages be brought within three months after the same shall have been sustained, but not otherwise."

The corresponding section in the Act of 1858, (s. 323), immediately follows what is now s. (a) of the present Act. It was repeated in C. S. U. C. c. 54 as s. 237 thereof; (*Cf.* C. S. C. c. 85, ss. 2, 3); and in 29-30 V. c. 51 as s. 339,—being extended by the last mentioned Act to roads, bridges, etc., in villages and townships.

Compare the provisions contained in Articles 788 and 793 of the *Code Municipal* of the Province of Quebec, which are as follows:—

> "**788.** Every municipal road must be at all times kept in good order, free from holes, cavities, ruts, slopes, stones, incumbrances or impediments whatsoever, with hand-rails at dangerous places, in such a manner as to permit of the free passage of vehicles of every description both by day and night, except in the case of Art. 389. (*b*) The sidewalks must also be kept in good repair, free from all obstacles and impediments whatsoever, with hand-rails at dangerous places.
>
> **793.** Every corporation is bound to cause the roads and sidewalks under its control to be maintained in the condition required by law . . . under a penalty not exceeding $20 for each infraction thereof. Such corporation is further responsible for all damages resulting from the non-execution of such . . . provisions of law, saving its recourse against the officers or ratepayers in default. But no suit shall be taken against any such corporation without 15 days notice of such suit being given in writing to the secretary-treasurer of the corporation, which notice may be given by registered letter, etc."

(a) "Every public road, street, bridge and highway."

In the original section (*c*) the words were "every *such* road, street, bridge and highway,"—thus limiting their application to those highways which, by s. 601 of the present Act, are declared to be vested in the local municipalities. But the section now extends also to county roads (*d*),—*i. e.*, roads assumed by county councils under ss. 613 (1), 614, or under R. S. O. c. 193, ss. 54 (3), 102, 103.

(*a*) *Traversy* v. *Township of Gloucester*, 15 O. R. 214 (1888). *Cf. Nottingham County Council* v. *Manchester, Sheffield, etc. R. W. Co.*, 71 L.T.N.S. 430 (1894).

(*b*) Art. 389 provides that:—"Whenever such obstructions arise in the course of some work duly authorized by law, by the council, or by the road inspector under the provisions of any by-law . . . the same is not to be deemed an obstruction, . . etc."

(*c*) 13-14 V. c. 15 s. 1,—quoted in note (a) to s. 599, *ante*, p. 818, and in the small-print note *supra*.

(*d*) See *per* Sir George Burton, C.J.O., in *Leizert* v. *Township of Matilda*, 26 A. R. 1 (1899), at p. 2.

Sec. 606 (1).

Note (a).

It does not, however, apply to "any public road or bridge vested as a Provincial work in Her Majesty or in any Public Department or Board" (*a*), (at all events while it continues to be so vested) (*b*), or to roads owned by companies incorporated under "*The General Road Companies Act*" (*c*), or its predecessors (*d*),—but such roads, on being acquired by a municipality under s. 33, or abandoned by the company under s. 50, or taken possession of under s. 102, become subject to the provisions of this section. (*e*)

To what highways the obligation to repair extends.

"It is plain that only travelled roads, etc., including allowances for roads on which the corporation has, by opening them, invited the public to travel, are intended; and not a road which has never been opened." (*f*) And though the public are entitled to the use of the entire width of the highway (*g*), the obligation of the municipality does not, as a rule, extend to a deviation *extra viam* (*h*). But where there is no visible boundary to the line of street, and there is a dangerous place upon a portion of the travelled roadway, which, though really outside the limits of the highway, is so near thereto as to induce a reasonable belief that it is part thereof, it seems that there is an obligation to protect travellers, either by the erection of a guard or in some other way (*i*).

Defects *extra viam*.

Municipal corporations are not bound to lay down street crossings (*j*), nor to provide sidewalks (*k*); but if street-crossings and sidewalks are constructed on a highway, they become part of it, and the obligation to repair applies equally to them (*l*).

Sidewalks and street crossings.

(*a*) See s. 627; *Re Knight and Townships of Medora and Wood*, 11 O. R. 138; 14 A. R. 112 (1887). But, *semble*, the municipality may become liable to keep in repair a bridge originally constructed as a government work, if they have in fact assumed it, though without passing a by-law for that purpose; *Patterson* v. *City of Victoria*, (the Port Ellice bridge case), 5 B. C. R. 628 (1897); [1899] A. C. 615.

(*b*) *Irwin* v. *Village of Bradford*, 22 C. P. 18, 421 (1871-2).

(*c*) R. S. O. c. 193. So in Quebec, as to roads which are under the control of turnpike companies incorporated under the laws of that Province: *Brunet* v. *Village of St. Joachim (Point Claire)*, Q. R. 14 S. C. 278 (1898).

(*d*) *Reg.* v. *Brown*, 13 C. P. 356 (1863); and see *Macdonald* v. *Hamilton and Port Dover Plank Road Co.*, 3 C. P. 402 (1853); *Whitmarsh* v. *Grand Trunk R. W. Co.*, 7 C. P. 373 (1857); *Caswell* v. *St. Mary's, etc. Road Co.*, 28 U. C. R. 247 (1869); *Reg.* v. *Ottawa and Gloucester Road Co.*, 42 U. C. R. 478 (1878). But *cf. Fraser* v. *North Oxford, etc., Road Co.*, 15 U. C. R. 291 (1857); *Stewart* v. *Woodstock and Huron, etc., Road Co.*, Ibid, 427 (1857); *Watson* v. *Sarnia, etc., Road Co.*, 16 U. C. R. 228 (1858). Such roads, however, are still highways, and a person who obstructs or encroaches upon them is liable to indictment: *Reg.* v. *Davis*, 35 U. C. R. 107 (1874).

(*e*) See *Reg.* v. *Town of Paris*, 12 C. P. 445 (1862); *Reg.* v. *Township of Louth*, 13 C. P. 615 (1863).

(*f*) *Per* PATTERSON, J. A., in *Hislop* v. *Township of McGillivray*, 15 A. R. 687 (1888), at p. 692. But see *per* GWYNNE, J., in *S. C.*, 17 S. C. R., 479 (1890), at p. 494. *Cf. Noverre* v. *City of Toronto*, 27 O. R. 651 (1896.)

(*g*) *Reg.* v. *United Kingdom Electric Telegraph Co.*, 31 L. J. M.C. 166 (1862); *Turner* v. *Ringwood Highway Board*, L. R. 9 Eq. 418 (1870).

(*h*) *Boswell* v. *Township of Yarmouth*, 4 A. R. 353 (1879); *McLean* v. *City of Ottawa*, Feb., 1900—a slippery sidewalk case—cited in note (i), *infra*: Dillon, ss. 1008, 1011.

(*i*) *Per* BOYD, C., in *Badams* v. *City of Toronto*, 24 A. R. 8 (1896), at p. 12, citing *Jewhurst* v. *City of Syracuse*, 108 N.Y. 303 (1888), at p. 312; and see *Coggswell* v. *Lexington*, 4 Cush. 307 (1857); *McLean* v. *City of Ottawa*, note (i) *infra*.

(*j*) *McCarthy* v. *Village of Oshawa*, 19 U. C. R. 245 (1860).

(*k*) *Boyle* v. *Town of Dundas*, 25 C. P. 420 (1875), *per* HAGARTY, C. J. at p. 425; *Bleakeley* v. *Town of Prescott*, 12 A. R. 637 (1886).

(*l*) *Ringland* v. *City of Toronto*, 23 C. P. 03 (1873); *Ray* v. *Village of Petrolia*, 24 C. P. 73 (1874); *Hutton* v. *Town of Windsor*, 34 U. C. R. 487 (1874); *Boyle* v. *Town of Dundas*, 25 C. P. 420; 27 C. P. 129 (1876); *Burns* v. *City of Toronto*, 42 U. C. R. 560 (1878); *Bennett* v. *County of York*, 43 U. C. R. 542 (1878); *Jodoin* v. *City of Montreal*, 11 Rev. Legale 431 (1882); *Biggins* v. *City of Montreal*, 29 L. C. Jur. 26 (1884); *Town of Portland* v. *Griffiths*, 23 N. B. Rep. 559 (1884); 11 S. C. R. 333 (1885); *Bleakeley* v. *Town*

Sec. 606 (1).

Notes (a), (b).

It does not however apply to crossings or approaches from private property which have been constructed by individuals for their own use, even though this may have been done with the knowledge of the corporation and without objection from them (*a*).

(b) "Shall be kept in repair."

"Kept in repair," Meaning of.

Few words in "*The Municipal Act*" have been more frequently than these the subject of judicial discussion and interpretation (*b*). In *Castor* v. *Township of Uxbridge* (*c*), HARRISON, C.J. says (p. 122):—

> "The object of the Act is the safety and convenience of the public when lawfully using the highways of the municipality. We should therefore, if possible, give to the Act such fair, large and liberal construction as will best ensure the attainment of that object. When a highway is in such a state, from any cause, whether of nature or man, that it cannot be safely or conveniently used, it may, in a large and liberal sense, be said to be out of repair. Whether the defect be an excavation caused by nature or man, or an addition making an obstruction caused by nature or by man, it may be equally unsafe and equally inconvenient to the public to use the highway. The Statute prescribes no standard of repair, nor does it in any manner declare what is to be deemed non repair. It would not be practicable for the Statute to do so. It would be absurd to require the municipality to keep all its roads in the same state of repair, or to require the municipality to keep even the same road in the same state of repair during all seasons of the year. The question whether a highway is in repair or not at the time of the occurrence of an accident is, in

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of Prescott, 7 O.R. 261; 12 A. R. 637 (1886); *Copeland* v. *Village of Blenheim*, 9 O. R. 10 (1885); *Beasley* v. *City of Hamilton*, 9 O. R. 112 (1885); *Simpson* v. *Village of Huntsville*, 13 A. R. 101 (1887); *Goldsmith* v. *City of London*, 11 O. R. 26; 16 S. C. R. 231 (1888); *Gordon* v. *City of Belleville*, 15 O. R 26 (1888); *Forward* v. *City of Toronto*, 15 O. R. 370 (1888); *Cameron* v. *Town of Moncton*, 29 N. B. Rep. 372 (1889); *City of St. John* v. *Christie*, 21 S.C.R. (1892); *Gilligan* v. *City of Montreal*, Q. R. 2 S. C. 405 (1892); *Stillway* v. *City of Toronto*, 20 O. R. 98, (1890); *Mills* v. *Corporation of Ste. Antoine*, Q. R. 2 S.C. 262 (1892); *Derochie* v. *Town of Cornwall*, 23 O. R. 355; 21 A. R. 279; 24 S. C. R. 391 (1893-5); *Organ* v. *City of Toronto*, 24 O. R. 318 (1893); *Drennan* v. *City of Kingston*, 23 A. R 406; 27 S. C.R. 46 (1896-7); *Thomas* v. *Town of Annapolis*, 28 Nova Scotia Rep. 551 (1897); *Smith* v. *City of Vancouver*, 5 B. C. R. 491 (1898); *Wade* v. *City of Hamilton*, Jan., 1900, not yet reported.

(*a*) *Hopkins* v. *Town of Owen Sound*, 27 O. R. 43 (1895).

(*b*) See *Reg.* v. *Epsom Union*, 8 L.T.N.S. 383 (1863); *Collack* v. *Township of Brantford*, 21 U.C.R. 276 (1871); *Caswell* v. *St. Mary's, etc., Road Co.*, 28 U.C. R. 247 (1869); *Ringland* v. *City of Toronto*, 23 C.P 93 (1873); *Hutton* v. *Town of Windsor*, 34 U.C.R. 487 (1874); *Ray* v. *Village of Petrolia*, 24 C.P. 73 (1874); *O'Connor* v. *Townships of Otonabee and Douro*, 35 U.C.R. 73 (1874); *Toms* v. *Township of Whitby*, 35 U. C. R. 195; 37 U. C. R. [illegible] (1875); *Burns* v. *City of Toronto*, 42 U. C. R. 560 (1878); *Boyle* v. *Township of Dundas*, 25 C. P. 420 (1875); 27 C. P. 429 (1876); *Lucas* v. *Township of Moore*, 43 U. C. R. 334; 3 A. R. 602 (1878); *Walton* v. *County of York*, 30 C. P. 217 (1879); 6 A. R. 181 (1881); *Maxwell* v. *Township of Clarke*, 4 A. R. 460 (1879); *Keachie* v. *City of Toronto*, 22 A. R. 371 (1895); *Derochie* v. *Town of Cornwall*, 23 O. R. 355; 21 A. R. 279; 24 S. C. R. 391 (1893-5); *Drennan* v. *City of Kingston*, 23 A. R. 406; 27 S. C. R. 46 (1896); *Fairbanks* v. *Township of Yarmouth*, 24 A. R. 273 (1897); *O'Neil* v. *Township of Windham*, Ibid, 341 (1897); *Atkinson* v. *City of Chatham*, 29 O. R. 518; 26 A. R. 521 (1898-9); *Macdonald* v. *Township of Yarmouth*, 29 O. R. 259 (1898); *Ewing* v. *City of Toronto*, 29 O. R. 197 (1898); *Foley* v. *Township of East Flamborough*, 29 O. R. 139 (1898); 26 A. R. 43 (1899). And in the Province of Quebec, *Gaudet* v. *Corporation of Chester West*, 1 Revue Legale 75 (1869); *Kelly* v. *City of Quebec*, 3 Q. L. R. 379 (1877); *Corporation of Douglass* v. *Maher*, 11 Q.L.R. 294 (1885); *Beauvage* v. *Corporation of Deschambeault*, 14 Rev. Leg. 655 (1886); *Lidham* v. *City of Montreal*, 29 L. C. Jur. 18 (1884); *Corporation of Sherbrooke* v. *Short*, 15 Rev. Leg. 283 (1887); *Foley* v. *City of Montreal*, Q. R. 2 S. C. 346 (1892); *Walsh* v. *City of Montreal*, Q. R. 5 S. C. 208 (1894).

(*c*) 39 U. C. R. 113 (1876).

Sec. 606 (1).

Note (b).

"Kept in repair," Meaning of.

general, a question of fact. In the determination of the question, it is necessary to take into account the nature of the country, the character of its roads, the care usually exercised by municipalities in reference to such roads, the season of the year, the nature and extent of travel, the place of the accident, and the manner and nature of the accident."

And, *per* PATTERSON, J.A. in *Lucas* v. *Township of Moore* (*a*):—

"It is now well settled . . . that the obligation expressed by the general phrase 'keep in repair'—a phrase which is applied equally to an allowance for road in a newly surveyed and organized township and to a crowded street in the business part of a city—is satisfied by keeping the road in such a state as is reasonably safe and sufficient for the requirements of the particular locality; and that in deciding whether any municipal council is chargeable with default, regard must be had to such considerations as the means at the command of the council and the nature of the ordinary traffic of the locality."

And, *per* ARMOUR, C.J. in *Foley* v. *Township of East Flamborough* (*b*):—

"The word 'repair,' as used in '*The Municipal Act*,' has been held to be a relative term; and to determine whether a particular road is or is not in repair, within the meaning of the Act, regard must be had to the locality in which the road is situated,—whether in a city, town, village or township, and (if in the latter), to the situation of the road therein, whether required to be used by many or by few,—to how long the township has been settled, to how long the particular road has been opened for travel, to the number of roads to be kept in repair by the township, to the means at its disposal for that purpose, and to the requirements of the public using the road. All these matters are to be taken into consideration, and from them is to be deduced the quality of the repair necessary to comply with the terms of the Act. And I think that if the particular road is kept in such a reasonable state of repair that those requiring to use the road may, using ordinary care, pass to and fro upon it in safety, the requirement of the law is satisfied."

Does it only forbid indictable non-repair?

In *Ringland* v. *City of Toronto* (*c*), the opinion was expressed (*d*) that such a state of repair as would exempt the corporation from liability on an indictment under the (yet unrepealed) provisions of C. S. C. c. 85, s. 3 (*e*) would also exempt them from liability in a civil action (*f*); but in *Burns* v. *City of Toronto* (*g*), this view was not concurred in by HARRISON, C. J.; and "our Courts have not adopted it as a rule of decision" (*h*).

It is also to be observed, that (except in the case of cities and towns), the reasoning upon which this opinion was originally founded—viz., that the civil and criminal liability were both imposed in respect of the very same default, and by the very same section of "*The Municipal Act*" which created the obligation—is now no longer applicable. In the case of counties, villages and townships, the liability of the municipality to indictment for the non-repair of a highway now depends upon Arts. 191, 192 of "*The Criminal Code, 1892*," and these differ entirely from s. 3 of c. 85 of the Con. Stat. of Canada, which still applies to cities and towns (*i*).

(*a*) 3 A. R. 602 (1879) at p. 608.

(*b*) 29 O. R. 139 (1898), at p. 141.

(*c*) 23 C. P. 93 (1873).

(*d*) By GWYNNE, J., at p. 99.

(*e*) Quoted *infra*, in note (**d**), p. 831.

(*f*) See also *per* HAGARTY, C. J., in *Ray* v. *Village of Petrolia*, 24 C. P. 73 (1874), at p. 77: *per* RICHARDS, C. J., in *Hutton* v. *Town of Windsor*, 34 U. C. R. 487 (1874), at p. 495: *per* BURTON, J. A., in *Derochie* v. *Town of Cornwall*, 21 A. R. 279 (1894), at p. 287: *per* GWYNNE, J., in *Town of Portland* v. *Griffiths*, 11 S. C. R. 333 (1885), at p. 341, and in *Drennan* v. *City of Kingston*, 27 S. C. R. 46 (1897), at p. 62.

(*g*) 42 U. C. R. 560 (1878).

(*h*) *Per* HAGARTY, C. J., in *Boyle* v. *Town of Dundas*, 25 C. P. 420 (1875), at p. 424.

(*i*) See more fully in note (**d**), *infra*.

Sec. 606 (1).

Note (b)

"Kept in repair," Meaning of.

The duty of keeping a highway in repair does not involve its construction or reconstruction; and where a road which ran along the side of a lake had been completely submerged, so that no ordinary reparation would suffice, it was held that the municipal corporation was not bound to restore the highway (*a*).

But a municipality has been held to have failed to perform the duty imposed upon it by this section, when it has neglected to provide proper guards and fences necessary to make roads and bridges safe for public travel (*b*); or has allowed the highway to become defective by reason of holes or excavations, (*c*) even when these are not within the limits of the highway itself, but so near thereto as to render it unsafe (*d*); or by reason of the inadequacy of bridges and causeways (*e*); or by reason of obstructions to travel, whether these are natural obstructions—*e. g.* stumps (*f*), or overhanging branches (*g*), or a rock (*h*)—or are such as have been placed on or near the highway so as so affect its safety and convenience for ordinary travellers (*i*), unless they have been so placed under the authority of a Statute, and in accordance with its requirements (*j*).

As to snow and ice, see *ante*, s. 559 note (**l**), and *infra*, note (**h**). Subject to the provisions of s. 612, the action may be brought directly against the person who caused the highway to be out of repair (*k*).

But municipal corporations have been held not to be liable as for non-repair by reason of the non-removal of objects placed upon, above or along the side of a highway in the reasonable and lawful use thereof (*l*); or of slight irreg-

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(*a*) *McCormack* v. *Township of Pelee*, 20 O. R. 288 (1890): and see *Reg.* v. *Epsom Union*, 8 L. T.N.S. 383 (1863): *Kent County Council* v. *Urban District Council of Sandgate*, 61 Sol. J. 637 (1897).

(*b*) *Toms* v. *Township of Whitby*, 35 U. C. R. 195 (1874): 37 U. C. R. 100 (1875); *Sherwood* v. *City of Hamilton*, 37 U. C. R. 410 (1875); *Lucas* v. *Township of Moore*, 43 U. C. R. 334; 3 A. R. 602 (1878): *Walton* v. *County of York*, 30 C. P. 217, 6 A. R. 181 (1881): *Brault* v. *City of Quebec*, 10 Q. L. R. 291 (1884): *Dufresne* v. *McCrea et al*, 13 Revue Legale 606 (1884): *Mead* v. *Township of Etobicoke*, 18 O. R. 438 (1889).

(*c*) *Miller* v. *Township of North Fredericksburgh*, 25 U. C. R. 31 (1865): *Hutton* v. *Town of Windsor*, 34 U. C. R. 487 (1875): *Boyle* v. *Town of Dundas*, 25 C. P. 420 (1875); 27 C. P. 129 (1876): *Adair* v. *City of Kingston*, 25 C. P. 126 (1876): *Pearson* v. *County of York*, 41 U. C. R. 378 (1877): *Ridgeway* v. *City of Toronto*, 28 C. P. 579 (1878): *Duck* v. *City of Toronto*, 5 O. R. 295 (1884): *Town of Portland* v. *Griffiths*, 23 N. B. Rep. 559 (1884); 11 S. C. R. 333 (1885); *Copeland* v. *Township of Blenheim*, 9 O. R. 19 (1885): *Duclos* v. *Township of Ely*, 5 Rev. de Jur. 177 (1898): *Carty* v. *City of London*, 18 O. R. 122 (1890).

(*d*) *Per* BOYD, C., *Badams* v. *City of Toronto*, 24 A. R. 8 (1896), at p. 13.

(*e*) *Macdonald* v. *Township of South Dorchester*, 29 C. P. 249 (1878): *Gordon* v. *City of Victoria*, 5 B. C. R. 553 (1898): *Patterson* v. *City of Victoria*, 5 B. C. R. 628 (1898); [1899] A. C. 615: *Vennard* v. *Township of Bruce*, 35 C. L. J. N. S. 200 (1899).

(*f*) *Foley* v. *Township of East Flamborough*, 29 O. R. 139 (1898).

(*g*) *Ferguson* v. *Township of Southwold*, 27 O. R. 66 (1895).

(*h*) *Davignon* v. *Corporation of Stanbridge Station*, Q. R. 14 S. C. 116, (1899).

(*i*) *Castor* v. *Township of Uxbridge*, 39 U. C. R. 113 (1875)—telegraph poles: *Atkinson* v. *City of Chatham*, 29 O. R. 518; 26 A. R. 521 (1898-9)—telephone pole: *McKelvin* v *City of London*, 22 O. R. 70 (1892)—boulder: *Howarth* v. *McGugan*, 23 O. R. 396 (1892), *per* ROSE, J. at p. 399—hammer. And see *Gliddon* v. *Town of Woodstock*, 33 N. B. Rep. 388 (1896)—hydrant and posts: *City of St. Henri* v. *St. Laurent*, 26 S. C. R. 176 (1896)—heap of earth: *Legault* v. *Café St. Paul*, Q. R. 12 S. C. 479 (1898)—fallen tree; *Hagman* v. *Township of Bayham*, 26 A R. 514 (1899)—milk-stand.

(*j*) *Soule* v. *Grand Trunk R. W. Co.*, 21 C. P. 308 (1871)—railway crossing sign. *Cf. Bonn* v. *Bell Telephone Co.*, 30 O. R. 696 (1899) with *Atkinson* v. *City of Chatham*, supra—referred to in note (**e**) to s. 559 and in note (**a**) to s. 609.

(*k*) See the cases collected in notes (**b**) and (**c**) to s. 559.

(*l*) *Rounds* v. *Town of Stratford*, 26 C. P. 11 (1876)—waggon: *Maxwell* v. *Township of Clarke*, 4 A. R. 460 (1879)—cordwood: *Howard* v. *City of St. Thomas*, 19 O. R. 719 (1890)—telephone wire: *City of Halifax* v. *Lordly*, 20 S.C. R. 505 (1892)—hydrant: (but see *contra*, *Gliddon* v. *Town of Woodstock* supra): *O'Neil* v. *Township of Windham*, 24 A. R. 341 (1897)—railway ties.

Sec. 606 (1).

Note (b).

"Kept in repair," Meaning of.

ularities or inequalities of surface arising from a reasonable mode of construction or user of the pavement (*a*); or of defects or obstructions arising at the moment from accidental circumstances (*b*); or which are outside the limits of the highway proper (*c*), except where there being no visible boundary, the defect is in or upon land used as part of the highway (*d*). A municipal corporation is not an insurer against accidents upon the streets and highways;—nor is every defect therein actionable, even though it may occasion injury and damage (*e*).

In *Castor* v. *Township of Uxbridge*, (*f*) HARRISON, C. J. held that the obligation to keep a highway in repair does not include the duty of keeping it free from objects, which, *while they do not block the way of the traveller*, may nevertheless be calculated to frighten horses; though in the same judgment he quotes with approval the opinion of Judge GOWAN of Simcoe, that "a highway cannot be said to be in repair if there are obstructions on it *so close to* the travelled track as to render it unsafe to pass them either by day or by night." And it is submitted that:—

> "A town is not liable for every object which renders a way unsafe or inconvenient for travellers to pass over it; but only for such as not only render the way unsafe and inconvenient, but also defective or out of repair; . . and it would be giving an unwarrantable interpretation to the Statutes which impose . . the duty of keeping highways . . in safe and convenient condition . . to hold that the existence of an object, though within the limits of a way, or the state of the surface of the road, which may cause horses to take fright, constitutes a culpable neglect" (*g*).

The questions put by HAGARTY, C. J., C. P., in *Rounds* v. *Town of Stratford* (*h*), viz:—

> "Must the corporation at its peril insist upon the removal of everything as likely to startle horses as an old country waggon with a red board seat standing up in it, hauled completely out of the travelled way? Must the flag of a foreign consulate, projecting a few feet over the sidewalk, be lowered; or gaudy bales of goods at shop-doors, or sensational picture-bills or advertisements pasted on board boardings be removed lest they might startle a sensitive horse?"—

may be answered in the words used by BLACKBURN, J., in *Fletcher* v.

Macdonald v. *Dickenson*, 24 A. R. 31 (1896)—tiles for road repairs: *Macdonald* v. *Township of Yarmouth*, 29 O.R. 259 (1898)—do.: *Rice* v. *Town of Whitby*, 25 A. R. 191 (1898)—house in course of removal. And *cf. Howden* v. *Lake Simcoe Ice Co.*, 21 A. R. 414 (1894)—broken down waggon.

(*a*) *Ray* v. *Village of Petrolia*, 24 C. P. 73 (1874): *Ewing* v. *City of Toronto*, 29 O.R. 197 (1898)—both of which were cases of projecting hinges of trap-doors: *City of London* v. *Goldsmith*, 16 S.C.R. 231 (1888)—difference of level between sidewalk and crossing: *McInnes* v. *City of Charlottetown*, 33 C. L. J. N. S. 297 (1897)—projecting plank: but see *Smith* v. *City of Vancouver*, 5 B. C. R. 491 (1898)—difference in width between sidewalk and crossing.

(*b*) *Lindell* v. *City of Victoria*, 3 B. C. R. 400 (1894); and see *Walsh* v. *City of Montreal*, Q. R. 5 S. C. 208 (1894).

(*c*) *Boswell* v. *Township of Yarmouth*, 4 A. R. 353 (1879): *Steele* v. *County of York*, 15 A. R. 666 (1888): *Noverre* v. *City of Toronto*, 27 O. R. 651: 24 A. R. 109 (1897).

(*d*) *Badams* v. *City of Toronto*, supra: *McLean* v. *City of Ottawa*, Feb., 1900, referred to *supra* in foot-note (i), p. 825, and *infra*, note (i).

(*e*) Dillon, s. 1019.

(*f*) 39 U.C.R. 118 (1876). See this case considered and commented upon by OSLER, J. A., in *O'Neil* v. *Township of Windham*, 24 A. R. 341 (1897) at pp. 349-350.

(*g*) *Per* BIGELOW, C. J., in *Kingsbury* v. *Town of Dedham*, 13 Allen (Mass.) 186 (1866), quoted with approval by HAGARTY, C.J., C.P., in *Rounds* v. *Town of Stratford*, 26 C. P. 11 (1876), at p. 16, and by BURTON, C. J. O., in *O'Neil* v. *Township of Windham*, 24 A. R. 341 (1897), at pp. 347-348.

(*h*) *Supra*, at p. 17.

Sec. 606 (1).

Notes (b)-(d).

"Kept in repair," Meaning of.

Rylands (*a*):—

> "Traffic on the highway . . . cannot be conducted without exposing those whose persons and property are near it to some inevitable risk; and those who go upon the highway . . may well be held to do so subject to their taking upon themselves the risk of injury from that inevitable danger." (*b*)

(c) "**By the corporation.**"

On whom the obligation to repair is imposed.

The municipal corporation which under this Statute has jurisdiction over a highway is bound to keep it in repair. (*c*)

As to roads,—this is the local municipality (or in the case of boundary roads the two municipalities) within which the road lies; unless the road is one which has been assumed by the county council as a county road under ss. 613 (1), 614 (*d*), or under ss. 59 (3), 102 or 103 of "*The General Road Companies Act*," (R. S. O. c. 193), or is owned by a road company incorporated under that Act or its predecessors (*e*), or is a toll road purchased by some person or company from a municipal council (*f*), or under an execution against a road company (*g*), or (in the case of a boundary road) unless the obligation to repair has been transferred by agreement to one of the two municipalities which would otherwise be jointly liable (*h*), or unless the want of repair is due to the default of an adjoining township council in clearing a stream or ditch of obstructions, after notice to do so has been given under s. 563.

As to bridges forming part of the highway, the same rule applies, except in the case of county bridges as defined by s. 613. As to the erection and maintenance of bridges between counties or between a county and a city or separated town, see s. 617.

The non-fulfilment of this obligation to repair is not excused by evidence of the fact that proper overseers of the highway have been appointed, and authority and means given them to keep the road in good order (*i*). Nor is it a defence that another corporation,—*e. g.*, a street railway company—has agreed to keep up and maintain the highway and to indemnify the corporation from liability for damage in respect thereof, even though such agreement may have been authorized by a special Act (*j*). And although a statutory liability may have been imposed upon railway companies to maintain and repair the bridges by means of which highways are carried over their railway lines, this does not absolve the municipal corporation in which the highways are vested from responsibility for any want of repair of such bridges (*k*). As to the responsibility of the municipality in which (by s. 601) are vested the portions of the highway referred to in s. 605 as forming the approaches to (county) bridges, see note (**a**) to section 605.

(d) "**Any punishment provided by law.**"

Criminal liability for non-repair of highways.

There are,—besides an action for damages—two modes of punishing municipal corporations for failure to keep their highways in repair, one, under "*The Criminal Code, 1892*,"—which applies to all municipal corporations; the other, under C. S. C. c. 85, s. 53,—which applies only to cities and towns.

(*a*) L. R. 1 Ex. 265 (1866), at p. 286.

(*b*) Quoted by HAGARTY, C. J. O., in *Zumstein* v. *Shramm*, 22 A. R. 263 (1895), where a turkey cock having, without any negligence on his owner's part, strayed upon the highway and frightened a horse, the owner of the turkey was held not to be liable for damage thus occasioned. *Cf. Roe* v. *Village of Lucknow*, 21 A. R., (1893) with *Lawson* v. *Village of Alliston*, 19 O. R. 655 (1890).

(*c*) *Per* PATTERSON, J. A., in *Re Knight* v. *Townships of Medora and Wood*, 14 A. R. 112 (1887), at p. 114; and see (as to county roads) *per* Sir GEORGE BURTON, C. J. O., in *Leizert* v. *Township of Matilda*, 26 A. R. 1 (1899), at p. 2.

(*d*) See *Balzer* v. *Township of Gosfield South and County of Essex*, 17 O. R. 700 (1889), referred to in note (**c**) to s. 613, *post*.

(*e*) 12 V. c. 84; 16 V. c. 190; C.S.U.C. c. 49, etc.

(*f*) R. S. O. c. 193, s. 34. (*g*) *Ibid*, s. 117. (*h*) S. 625.

(*i*) *Colbeck* v. *Township of Brantford*, 21 U. C. R. 276 (1861).

(*j*) *Carty* v. *City of London and London Street R. W. Co.* 18 O. R. 122 (1889).

(*k*) *Meade* v. *Township of Etobicoke*, 18 O. R. 438 (1889); *Fairbanks* v. *Township of Yarmouth*, 24 A. R. 273 (1897).

Sec. 606 (1). Notes (d), (e). Indictments for non-repair of highways.

First,—Arts. 191 and 192 of "*The Criminal Code, 1892*" provide that :—

> "A common nuisance is an unlawful act, *or omission to discharge a legal duty*, which act or omission endangers the lives, safety, health, property or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all Her Majesty's subjects ;" and
>
> "Every one is guilty of an indictable offence and liable to one year's imprisonment or a fine, who commits any common nuisance which endangers the lives, safety or health of the public, or which occasions injury to the person of any individual." (*a*)

Secondly,—The Consolidated Statute of Canada, c. 85, s. 3 (which seems to be still in force) declares that :—

> "If the municipal council of any . . . city or . . . town *shall fail* to keep in repair any such road, street or highway within the limits thereof, *such default shall be a misdemeanour* for which such corporation shall be punished by fine in the discretion of the Court before whom the conviction shall be had."

This section was first enacted in 1850, by 13-14 V. c. 15, s. 7 (quoted in the small-print note, *supra*, at the end of s. 606 (1)), and was consolidated (as above), in the Consolidated Statutes of Canada, and also as s. 337 of The Municipal Act of 1859 (C. S. U. C. c. 54). The latter section was repealed by 49 V. c. 4, s. 5 (2), entitled "*An Act respecting the Revised Statutes of Canada*" (*b*) ; the former (s. 3 of C. S. Ca., c. 85), only "from and after a day when the proper Legislature makes provision for the punishment of the offence by fine or imprisonment under '*The B. N. A. Act, 1867*,'" (*c*) a day which, in the case of this particular enactment, has not yet arrived. The section therefore appears to be still in force. (*d*)

In *Attorney-General ex rel. Mead et al.* v. *Weston Plank Road Co.* (*e*), an attempt was made to compel the defendants to fulfil their statutory duty to repair a public highway by means of an injunction restraining them from suffering their road to continue out of repair ; but it was held that the Court has no jurisdiction to enforce by injunction the ordinary repair of a highway, and that the proper remedy is by indictment.

This case was approved and followed in *Attorney-General* v. *Toronto Street R. W. Co.* (*f*), an information filed at the relation of certain inhabitants of the city of Toronto to compel the defendants to comply with the requirements of the Statute authorizing the construction of their railway, and praying an injunction against the continuance or use of the railway in its then condition (*g*).

Per MOWAT, V. C. :—"I think that though the Court cannot order the repair of the road, the Attorney-General has a right to insist on the removal of the rails as of a nuisance, if he thinks the public interests demand their removal." (*h*)

(e) "Shall be civilly responsible for all damages sustained by any person."

The civil remedy by action for damages occasioned by neglect to keep highways in repair.

The right of action for damages occasioned by non-repair of a highway is a purely statutory one.

(*a*) See *Re Townships of Moulton & Canborough and County of Haldimand*, 12 A. R. 503 (1885), in which the former law on this point is reviewed by PATTERSON, J.A., at pp. 519-522 ; *Hislop* v. *Township of McGillivray*, 12 O.R. 749 (1886) ; 15 A. R. 687 (1888) ; 17 S. C. R. 479 (1890).

(*b*) And see R. S. Ca., Vol. II. p. 2248, repealing the corresponding section (s. 339) of 29-30 V. c. 51.

(*c*) See 49 V. (Ca.) c. 4, s. 5 (3) (1886) and R. S. Ca. Vol. II. p. 2317.

(*d*) See the note in bourgeois type after s. 491 of "*The Municipal Act*," (R. S. O. (1877), c. 174).

(*e*) 4 Grant 211 (1853).

(*f*) 14 Grant 673 (1868).

(*g*) By the Act in question (24 V. c. 86, s. 6) it was provided that :—"The rails of the railway shall be laid flush with the streets and highways ; and the railway tracks shall conform to the grades of the same, so as to offer the least possible impediment to the ordinary traffic of the streets and highways."

(*h*) See further, note (**a**) to s. 586, and note (**b**) to s. 600, *ante*. As to the mode of enforcing the duty of county councils with regard to bridges, see s. 617 and note (**a**) thereto.

Sec. 606 (1).

Note (e). Actions for damages occasioned by neglect to keep highways in repair.

The varied character of the powers and functions of municipal corporations in this Province have already been referred to (*a*). The municipality may own lands, buildings, wharves, ferries, parks, cemeteries, etc.: may act as a telephone company, or a water company, or gas company, or an electric light or street railway company: may determine whether or not roads or streets shall be opened, closed, or altered in direction or level, drained, paved, cleaned, lighted, provided with sidewalks, etc., and if so, when and how those works shall be executed. The exercise of all or any of these powers is discretionary, and (within certain limits already noted) (*b*), the discretion of the council in reference thereto is absolute.

But (as has already been pointed out) the exercise of these powers involves correlative responsibilities. The municipal corporation, as the owner of lands, buildings or machinery, will be liable to persons who, while lawfully upon, in, or near them, receive injury owing to their being negligently managed or allowed to fall into disrepair (*c*). So,—although they are not bound to light the municipality (*d*), or to provide sewers (*e*), or sidewalks (*f*), or waterworks,—yet if they choose to undertake the duty of doing so, and damage arises from the imperfect or negligent performance of the work thus undertaken, the corporation will be responsible (*g*).

Again—apart altogether from any express legislative provision to that effect—damages are recoverable by any person injured through the *misfeasance* of the corporation, arising either from its having exceeded its statutory powers, or having executed them so negligently as to cause nuisance or unnecessary damage (*h*).

But the case is wholly different when the corporation is sued, not for *misfeasance*,—viz., for doing something which is unlawful, or for doing in an unlawful (*i. e.* a negligent or improper) manner something which would be lawful if properly done,—but for mere *nonfeasance*,— *i.e.*, for leaving undone a substantive duty imposed by law.

A person is not necessarily entitled to maintain an action because he has sustained injury from the non-performance by another of a statutory duty (*i*); and, in England, there being no express provision giving a right of action in such a case, damages for injuries arising merely from the non-repair of highways are not recoverable from the local authorities, even though the highways are by Statute "vested in, and under the management and control

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(*a*) See note (**b**) to s. 9.

(*b*) See s. 10, note (**a**); s. 552, note (**a**); s. 554, notes (**d**), (**j**); s. 561, notes (**a**), (**e**).

(*c*) See note (**a**) to s. 500; note (**a**) to s. 559; *Lawson* v. *Village of Alliston*, 19 O. R. 655 (1890), and the cases collected in foot-note (*y*) on p. 39, *ante*.

(*d*) *Harris* v. *Baker*, 4 M. & S. 27 (1815): *City of Halifax* v. *Lordly*, 20 S. C. R. 505 (1892).

(*e*) *Kinson Pottery Co.* v. *Poole Corporation*, [1899] 2 Q. B. 41.

(*f*) See p. 825, footnote (**k**).

(*g*) See *Jolliffe* v. *Wallasey Local Board*, L. R. 9 C. P. 62 (1873): *White* v. *Hindley Local Board*, L. R. 10 Q. B. 219 (1875): *Sullivan* v. *Town of Barrie*, 45 U. C. R. 12 (1880): *Blackmore* v. *Vestry of Mile End Old Town*, 9 Q. B. D. 451 (1882): *Reg.* v. *Williams*, 9 App. Cas. 418 (1884): note (**h**) to s. 554, and note (**a**), *supra*, to this section. *Cf.* also the cases in the notes to s. 73 of "*The Municipal Drainage Act*," *post*, Vol. II.

(*h*) See notes (**a**) and (**b**) to s. 437, and note (**a**) to s. 586: *Rowe* v. *County of Leeds and Grenville*, 13 C. P. 515 (1864): *Foreman* v. *Mayor of Canterbury*, L. R. 6 Q. B. 214 (1872): *Pearson* v. *County of York*, 41 U. C. R. 378 (1877): *Gas Light & Coke Co.* v. *St. Mary Abbott's, Kensington*, 15 Q. B. D. 1 (1885): *Gas Light & Coke Co.* v. *St. George's, Hanover Square*, 3 Times L. R. 581 (1887): *Tucker* v. *Axbridge Highway Board*, 53 J. P. 87 (1888): *Cameron* v. *Town of Moncton*, 29 N. B. Rep. 372 (1889): *Howarth* v. *McGuigan*, 23 O. R. 396 (1893), at p. 402.

(*i*) Addison on Torts (7th Ed.) 74: *Young* v. *Davis*, 7 H. & N. 760 (1862): *Atkinson* v. *Newcastle & Gateshead Waterworks Co.*, 2 Ex. D. 441, 448 (1877): *Glossop* v. *Heston, etc., Local Board*, 12 Ch. D. 102 (1879), *per* JAMES, L. J. at p. 109: *Finlay* v. *Miscamphell*, 20 O. R. 29, 39 (1890): *Groves* v. *Lord Wimborne*, [1898] 2 Q. B. 402; *Tompkins* v. *Brockville Rink Co.*, 31 O. R. 124 (1899), at p. 127. But see *Holborn Union* v. *Parish of St. Leonard's, Shoreditch*, 2 Q. B. D. 145 (1876).

Sec. 606 (1).

Note (e). Actions for dam occasioned by neglect to keep highways in repair.

of" such local authorities, coupled with a statutory obligation to keep them in repair (*a*).

In former editions of the MUNICIPAL MANUAL, the learned editors seem to have thought,—apparently from some *dicta* of ADAM WILSON, J. in *County of Wellington* v. *Wilson* (*b*), and in *Harrold* v. *County of Simcoe* (*c*), and also of VANKOUGHNET, C. in the latter case (*d*)—that the common law obligation of parishes in England to repair their highways (*e*) and of counties to repair bridges (*f*)—which has there arisen from long custom, and is enforceable by indictment (*g*)—necessarily involved the existence also of a civil liability to any one who might sustain injury owing to the non-repair of such a highway or bridge. But this was never the case (*h*); and it may now be regarded as settled law that a person injured by the mere non-repair of a road or bridge cannot sue the municipality unless a right of action is given him by the Legislature (*i*).

"**Any person**" means any person lawfully using the highway. In *Lockhart* v *City of St. John* (*j*) the plaintiff (a teamster) had taken a load of iron to be weighed on public weigh-scales situate on a street on one side of which was a public slip about 12 feet lower than the street. A railing ran along the brink of the street above the slip; and the plaintiff, while waiting until his load could be weighed, leaned upon this railing which gave way, precipitating him into the slip. It was held by the Supreme Court of New Brunswick that he was lawfully using the highway and was entitled to recover damages from the defendants, the jury having found negligence on the part of the latter in not properly maintaining the railing.

In Maine and Massachusetts—where the statutory obligation of the town is to keep the highways in repair "so that the same may be safe and convenient *for travellers*,"—it has been held that no action lies by a person who is injured while using the highway for the express purpose of horse racing (*k*), or simply as a play-ground (*l*). Yet, even in these States, it has been established (by later decisions) that evidence that a plaintiff was loitering by the way,—*e. g.*, to pick berries (*m*),—or that a child had been playing "tag" on

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(*a*) *Parsons* v. *Vestry of St. Matthew's, Bethnal Green*, L. R. 3 C. P. 56 (1867): *Gibson* v. *Mayor of Preston*, L. R. 5 Q. B. 218, 223 (1870): *Steel* v. *Dartford Local Board*, 60 L. J. Q. B. 256 [1891] (C. A.): *Cowley* v. *Newmarket Local Board*, [1892] A. C. 345 (H. L.).

(*b*) 14 C. P. 299 (1864), at p. 304.

(*c*) 16 C. P. 43 (1865), at p. 50.

(*d*) 18 C. P. 9 (1868), at p. 14.

(*e*) See *Rex* v. *Great Broughton*, 5 Burr. 2700 (1771): *Rex* v. *Sheffield*, 2 T.R. 106, 111 (1787): *Rex* v. *Leake*, 5 B. & Ad. 469 (1833).

(*f*) 22 Hen. VIII. c. 5: *Rex* v. *Oxfordshire*, 4 B. & C. 194 (1825), *per* LITTLEDALE, J., at p. 199.

(*g*) See *Rex* v. *Ecclesfield*, 1 B. & Al. 348 (1818): *Reg.* v. *Ashby Folville* L. R. 1 Q. B. 213 (1866); and *cf. Reg.* v. *Rollett*, L. R. 10 Q. B. 469 (1875).

(*h*) See *Russell* v. *Men of Devon*, 2 T. R. 667 (1788), *per* Lord KENYON, C.J., at p. 672; *Parsons* v. *St. Matthew's, Bethnal Green*, *per* WILLES, J., at pp. 59-60.

(*i*) *Picton* (*Municipality of*) v. *Geldert*, [1893] A. C. 524; following *Sanitary Commissioners of Gibraltar* v. *Orfila*, 15 App. Cas. 411 (1890); explaining *Bathurst* (*Borough of*) v. *Macpherson*, 4 App. Cas. 256 (1879); agreeing with *Gibson* v. *Preston* (*Mayor of*), L. R. 5 Q. B. 218 (1870), and *Cowley* v. *Newmarket Local Board*, [1892] A. C. 342, and shaking the authority of *Hartnell* v. *Ryde Commissioners*, 4 B. & S. 361 (1863), which was afterwards expressly overruled by the Judicial Committee in *Sydney* (*Municipal Council of*) v. *Bourke*, [1895] A.C. 433. And see *Dwyer* v. *Town of Portland*, 20 N.B. Rep. 423 (1880): *Wallace* v. *Municipality of Assiniboia*, 4 Man. Rep. 189 (1887), *per* TAYLOR, C. J., at p. 99: *Oliver* v. *Horsham Local Board*, [1894] 1 Q. B. 332: *City of St. John* v. *Campbell*, 26 S. C. R., (1896): *City of Montreal* v. *Mulcair*, 28 S. C. R. 458 (1898) *per* CURIAM, at p. 469.

(*j*) 30 N. B. Rep. 445 (1891).

(*k*) Dillon, s. 1000, note 1: Am. & Eng. Encyc. of Law, Vol. IX, p. 400.

(*l*) *Ibid*; Shearman & Redfield on Negligence, (5th Ed.), s. 370.

(*m*) *Britton* v. *Cummington*, 107 Mass. 347 (1871).

Sec. 606 (1).

Note (e).

Action for damages occasioned by neglect to keep highways in repair.

Who may sue.

the street just before the accident (*a*), was not sufficient to take away the right of action. And in other States,—*e. g.*, New York, Idaho, Illinois, Indiana, Missouri, West Virginia, Wisconsin (*b*) where the obligation of the municipality is not expressly limited to "travellers"—damages are recoverable in the case of a person loitering or stopping to watch a public spectacle, or even of a child using the highway for play;—the true rule being (as stated by Judge DILLON (*c*)) —viz., that:—

> "If by statute a city is required to keep its streets in repair, *without being limited to proper repair 'for travellers only,'* and if it has the power and the means to do so, it may be held responsible for damages sustained by persons using them for pleasure, recreation, or even through mere idle curiosity." (*d*)

Neither these nor the English authorities on the subject seem to have been cited to the Court in *Griffiths* v. *Town of Portland* (*e*), a case which turned chiefly upon the questions whether the defendants could be held liable for nonfeasance, and whether the plaintiff had been guilty of contributory negligence, and in which Sir WM. RITCHIE, C.J., in giving his judgment in the Supreme Court, expressed an opinion (*obiter*) that the plaintiff—who, while engaged in washing the windows of her house from the outside, had stepped backwards and fallen into a hole—was not lawfully using the street at the time of the accident.

Nor were they followed by FALCONBRIDGE, J. in *Ricketts* v. *Village of Markdale* (*f*), where the action was brought by the parents of a child killed while playing on or near a village sidewalk, by a stick of square timber which had been piled with other similar timbers on the highway, and which, having "slewed round" when he attempted to walk along it, crushed him against another piece of timber, thus causing his death.

In giving judgment the learned Judge said:—

> "I was not referred, to and have not been able to find, direct English or Canadian authority on the point which is, I think, crucial and decisive against plaintiffs,—viz., the fact that the child was not going out to school, or on any errand or business, but simply left his home about twenty minutes past seven p.m., his mother knowing that he was going out alone on the street to play. She says he had done this for two or three years, and that the sidewalk and street were used generally as play grounds. I refer, however, to Eversley on the Law of Domestic Relations, (2nd Ed.) 802: *Singleton* v. *The Eastern Counties R. W. Co.*, 7 C. B. N. S. 287 (1859): *Hughes* v. *Macfie*, *Abbott* v. *Macfie*, 2 H. & C. 744 (1863): *Town of Portland* v. *Griffiths*, 11 S.C.R. 333 (1885), (opinion of Sir Wm. RITCHIE, C.J., at p. 338).
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> The law in the United States is well summed up in the Am. & Eng. Encyc. of Law, vol. ix, p. 400. "Little children have a right to go upon the streets of a city for air and exercise without regard to the occupation or pecuniary condition of their parents; and a city's duty towards a child who is lawfully upon a street or bridge does not differ from its duty towards an adult, even though the child may be incidentally using the way for purposes of play,—*e. g.* rolling a hoop. . . . But children using a highway *merely* for play, are putting it to a use for which it was not intended, and cannot recover for injuries due to defects or obstructions."
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> The cases cited in support of the proposition just enunciated seem to be founded on a condition of law as to municipal liability similar to our own, and the opinions of the learned Judges who decided them

(*a*) *Graham* v. *Boston*, 156 Mass. 75 (1892).

(*b*) See the cases collected in Shearman & Redfield, (5th Ed.), s. 370.

(*c*) S. 1018, note 1.

(*d*) See *City of Chicago* v. *Keefe*, 114 Ill. 222 (1885),—child injured while rolling a hoop. *Per* SCHOLFIELD, C. J.:—"Those using them [the streets] for recreation, for pleasure, or through mere idle curiosity—so that they do not impinge upon the rights of others to use them—are equally within the protection of the law:" *Donoho* v. *Vulcan Iron Works Co.*, 7 Mo. App. 447 (1879). 75 Mo. (Sup. Ct.) 401 (1882).

(*e*) 23 N. B. Rep. 559 (1884); 11 S.C.R. 333 (1885).

(*f*) 31 O. R. 180 (1899).

Sec. 606 (1). Notes (e), (f).

are entitled to great respect. They are *Stinson* v. *City of Gardiner*, 42 Me. 248 (1856); *Blodgett* v. *City of Boston*, 8 Allen (Mass.) 237 (1864); *Tighe* v. *City of Lowell*, 119 Mass. 473 (1876) (*a*).

Compare, *Harrison* v. *Duke of Rutland*, 9 Times L.R. 115 (1892), where plaintiff went on a highway, the soil of which was vested in the defendant, not for the purposes of passing and repassing, but to spoil the grouse drive of defendant, who was shooting on his moors adjoining the highway. *Held*, that plaintiff was a trespasser on the highway, and that defendant was justified in using such force towards plaintiff as was necessary to abate such trespass." (*b*)

Who may sue for damages sustained by reason of a highway being out of repair.

(f) "Shall be civilly responsible for all damages sustained by any person by reason of such default."

The conditions of the right of action.

The right of action depends wholly upon the Statute. See *supra*, note (e), at pp. 831-833. In addition to the fact that the highway was out of repair, it must be shewn :—

(1) That this non-repair was due to negligence on the part of the municipal corporation, and

(2) That the damage was sustained by reason of the non-repair.

1. There must be direct evidence of the neglect of some duty on the part of the corporation which is sued (*c*).

Where the non-repair of the highway is due to the act of some third party, a municipal corporation will not be held responsible for damages resulting therefrom (*d*) unless :—

(1) *The corporation* have had express notice of the existence of the obstruction or defect, or

(2) It has been there so long as to warrant a jury in finding that they were aware of it, and might have amended or removed it (*e*).

But where the defect has been created under the express or implied authority of the municipal corporation, they will be liable (*f*); although it seems that even in such a case the remedy over given by s. 609 against the person actually creating the obstruction is available to the corporation. (*g*)

2. The non-repair of the highway must have been the efficient and proximate cause of the accident. (*h*)

(*a*) In Beven on Negligence (2nd Ed.) 431 the learned author, after citing *Stinson* v. *City of Gardiner*, and a later case of *Stickney* v. *City of Salem*, 85 Mass. (3 Allen) 374 (1862), observes that "these cases do not represent the English law;" and he cites, in support of that statement, *Gwinnell* v. *Eames*, L.R. 10 C. P. 658 (1875), and *Jewson* v. *Gatti*, 1 Times L.R. 635; 2 Times L.R. 381, 441 (1886).

(*b*) In the case referred to, the soil of the highway was vested in the Duke subject to the public easement of passing and repassing along it: *Reg.* v. *Pratt*, 4 E. & B. 860 (1855) (a case almost, if not quite, unknown in this Province); and—*per* Lord ESHER, M.R.—"Highways are primarily for the purpose of the public passing and repassing along them; but things are done upon them which have come to be recognized as done by the public in the reasonable and usual mode of user, *and if no more were done than that the person would not be a trespasser.*"

(*c*) *Bateman* v. *City of Hamilton*, 33 U.C.R. 244 (1873); *Castor* v. *Township of Uxbridge*, 39 U.C.R. 113 (1875); *Kelly* v. *City of Montreal*, 3 Q. L. R. 379 (1877); *Burns* v. *City of Toronto*, 42 U.C.R. 560 (1878); *Atkin* v. *City of Hamilton*, 24 A. R. 389 (1897); and see *Kerrin* v. *Canadian Coloured Cotton Mills Co.*, 28 O.R. 73 (1896); 25 A. R. 36 (1898); *Cowans* v. *Marshall*, 28 S.C.R. 161 (1897); *Gordon* v. *City of Victoria*, 5 B.C.R. 553 (1898); *Patterson* v. *City of Victoria*, 5 B.C.R. 625 (1898); (1899) A.C. 615; *McGregor* v. *Township of Harwich*, 29 S. C. R. 443 (1899). *Cf. Simpson* v. *Village of Huntsville*, 13 O.R. 101 (1887),—where the accident occurred between the date of the incorporation of the village and its organization as such.

(*d*) *Buchanan* v. *Town of Galt*, 12 C.P. 73 (1862).

(*e*) *Ayre* v. *City of Toronto*, 30 C. P. 225 (1879); *O'Neil* v. *Township of Windham*, 24 A.R. 341 (1897); *Rice* v. *Town of Whitby*, 28 O.R. 598; 25 A.R. 191 (1898); *Legault* v. *Corporation of Coté St. Paul*, Q.R. 12 S.C. 479 (1898); *McGregor* v. *Township of Harwich*, 29 S.C.R. 443 (1899) *per* Sir HENRY STRONG, C. J., at p. 444.

(*f*) *Howard* v. *McGugan*, 23 O.R. 396 (1892), *per* ROSE, J., at pp. 399; *Atkinson* v. *City of Chatham*, 29 O.R. 518 (1898).

(*g*) *Atkinson* v. *City of Chatham*, 26 A.R. 521 (1899), *infra*, note (a) to s. 609.

(*h*) *Wakelin* v. *London & South Western R. W. Co.*, 12 App. Cas. 41 (1886); *Gordon* v. *City of Victoria*, 5 B.C.R. 553 (1898).

Sec. 606 (1).

Note (f).

Matters affecting the right of action against a municipality for damages sustained by reason of the non-repair of highways.

It is not, however necessary that it should have been the only cause. Conditions such as unfamiliarity with the road, the darkness of the night, or stormy weather, or other circumstances for which neither party was responsible may have contributed to produce the result (*a*); and although such other circumstances and the non-repair of the road may have been equally proximate causes of the injury, the liability of the corporation will still exist (*b*). Thus a plaintiff—if he has exercised reasonable care and skill—is not disentitled to recover by reason of his horses having become temporarily ungovernable. (*c*) But where horses are injured while unattended, or wholly beyond the control of the driver, the non-repair of the highway is not a ground for fixing the corporation with liability; their duty being only to keep the highway in such repair that it shall be safe and convenient for ordinary travel (*d*).

Where, however, the plaintiff is so far responsible for the conditions which led to the accident that but for his negligence or want of ordinary care and caution, the misfortune would not have happened, he can not recover (*e*); which accords with the rule of the Roman law: "The harm I bring upon myself I must bear myself." (*f*)

"The question of contributory negligence arises where both parties are substantially in fault, and where the fault of each contributes to the disaster" (*g*); and the inquiry is limited to the question "which of the two, by exercising ordinary care and caution, could *last* have prevented the accident?" (*h*) It is clear that in an action against a municipal corporation for damages occasioned by the non-repair of a highway the plaintiff, must be the person on whom this duty last devolved; and accordingly, wherever he could have avoided the accident by ordinary care, he is disentitled to complain of the negligence of the corporation. He has contributed to his own injury, and has lost his right of action (*i*), because his negligence was the proximate, or last efficient cause of the misfortune (*j*).

(*a*) Dillon, s. 1007; Beven on Negligence, (2nd Ed.) 175; *Engelhardt* v. *Farrant*, [1897] 1 Q.B. 240.

(*b*) *Bliss* v. *Boeckh*, 8 O.R. 451 (1885).

(*c*) *Toms* v. *Township of Whitby*, 35 U.C.R. 195; 37 U.C.R. 100 (1875): *Sherwood* v. *City of Hamilton*, 37 U.C.R. 410 (1875): *Rounds* v. *Town of Stratford*, 26 C.P. 11 (1876): *Atkinson* v. *City of Chatham*, 29 O.R. 518 (1898); *City of Quebec* v. *Picard*, Q.R. 14 S.C. 94 (1898): *Foley* v. *Township of East Flamborough*, 26 A.R. 43, 46 (1899); reversing *S. C.* 29 O.R. 139 (1898): and *cf. Zumstein* v. *Schrumm*, 22 A.R. 263 (1895) cited in foot note (b), p. 830.

(*d*) See the preceding note; also *Price* v. *Cataraqui Bridge Co.*, 35 U.C.R. 314 (1874): *Steinhoff* v. *County of Kent*, 14 A.R. 12 (1887): *Foley* v. *Township of East Flamborough*, 29 O.R. 139 (1898); reversed on a different ground, 26 A.R. 243 (1899).

(*e*) *Per* WIGHTMAN, J., in *Tuff* v. *Warman*, 5 C.B.N.S. (Ex. Ch.) 573, at p. 585.

(*f*) See *Follett* v. *Toronto Street Railway Co.*, 15 A.R. 346 (1888): *Hunt* v. *Wilson*, Q.R. 15 S.C. 355 (1899).

(*g*) *Per* CLEASBY, B., in *Gee* v. *Metropolitan R. W. Co.*, L.R. 8 Q.B. 161 (1873), at p. 177.

(*h*) See *Ingles* v. *Halifax Electric Tram Co.*, 32 Nova Scotia Rep. 117 (1899): *Meyers* v. *Brantford Street R. W. Co.*, 32 O.R. (1900), not yet reported.

(*i*) Beven on Negligence (2nd Ed., (1895)), c. 5., p. 168: Shearman and Redfield on Negligence (5th Ed., (1898)), s. 61: *Butterfield* v. *Forrester*, 11 East 60 (1809): *Davies* v. *Mann*, 10 M. & W. 546 (1842): *Tuff* v. *Warman*, 2 C.B. N.S. 740; 5 C.B.N.S. 573 (1857-8): *Radley* v. *London & Northwestern R. W. Co.*, L.R. 9 Ex. 71; L.R. 10 Ex. 100; 1 App. Cas. 754 (1874-6); *The Bernina*, (2), 12 P.D. 58 (1887),—where the rules of law on this subject are very clearly enunciated by Lord ESHER, M.R., at p. 61.

(*j*) See *Flower* v. *Adams*, 2 Taunt. 314 (1810), where defendant having put lime-rubbish on a highway, dust blowing therefrom frightened plaintiff's horse and nearly forced him against a passing waggon, in avoiding which he *unskilfully* drove over other rubbish placed on the road by a third person and was thrown out and hurt. *Held*, that he could not recover. *Per* LAWRENCE, J.:—"The immediate and proximate cause is the unskilfulness of the driver." See also *Davignon* v. *Corporation of Stanbridge Station*, Q. R. 14 S. C. 116 (1898): *Fortier* v. *Lauzier*, Q.R. 14 S.C. 359 (1898).

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Sec. 606 (1). Notes (f), (g).

Contributory negligence.

To deprive a plaintiff of his right to recover there must be positive evidence of *some* contributory negligence on his part (*a*); but if this be established, the *degree* of such negligence is immaterial (*b*), and a very slight degree of carelessness or incaution will deprive him of his remedy (*c*).

As to how far "the doctrine of identification" will operate to make a party responsible for the negligence of a driver or other servant, see *The Bernina*, 12 P.D. 58; 13 App. Cas. 1 (1888). So, though persons who are of unsound mind, or drunk, or blind, or deaf have a right to use the highways (*d*), yet it is not unreasonable to require in such cases a more than ordinary degree of care and caution (*e*); and while the use of a highway known to be out of repair does not *per se* amount to contributory negligence (*f*), yet it is a circumstance to be taken into account in determining the degree of care and caution required (*g*).

Where it appears from the evidence of the plaintiff's witnesses that he has been guilty of contributory negligence, it is unnecessary for the defendants to adduce any evidence (*h*).

(g) "Within three months."

The action must be brought within three months.

The limitation applies only to actions brought under the authority of this statutory provision against municipal corporations for neglect to perform the obligation, imposed upon them by the section, of keeping highways in repair,—*i.e.*, for nonfeasance. (*i*)

It does not apply where the corporation has negligently exercised a discretionary power (*j*); nor where there has been active misfeasance, for which (apart from any statutory provision) an action would lie,—*e.g.* where an obstruction has been placed upon a road (*k*), though it was so placed for use in making repairs (*l*); but where the obstruction consisted of materials taken out of a hole in the road made for the purpose of ascertaining whether repairs were needed, and both obstruction and hole were left unprotected, the case was held to be within the section (*m*).

(*a*) *Rainnie* v. *City of St. John*, 31 N.B. Rep. 582 (1894): *Rowan* v. *Toronto R. W. Co.*, 29 S.C.R. 717 (1899).

(*b*) *Per* POLLOCK, C.B., in *Greenland* v. *Chaplin*, 5 Ex. 243 (1850), at p. 248; *Monongahela City* v. *Fischer*, 111 Penn. St. 9 (1885).

(*c*) *Town of Portland* v. *Griffiths*, 23 N. B. Rep. 559 (1884); 11 S. C. R. 333 (1885). Acc. *Burns* v. *City of Toronto*, 42 U. C. R. 560 (1877): *Castor* v. *Township of Uxbridge*, 39 U. C. R. 113 (1876): *Bleakeley* v. *Town of Prescott*, 12 O. R. 261; 12 A. R. 637 (1886): *Morris* v. *City of Montreal*, Q. R. 3 S. C. 342 (1893): *Keachie* v. *City of Toronto*, 22 A.R. 371 (1895).

(*d*) See *Clayards* v. *Dethick*, 12 Q. B. 439, *per* COLERIDGE, J., at p. 445.

(*e*) *Illinois Central R. W. Co.* v. *Buckner*, 28 Ill. 299 (1862): *Hutton* v. *Town of Windsor*, 34 U.C.R. 487 (1873): *Bridges* v. *North London R. W. Co.*, L. R. 6 Q. B. 377 (1871), *per* KEATING, J., at p. 398.

(*f*) *Copeland* v. *Village of Blenheim*, 9 O. R. 19 (1885): *Gordon* v. *City of Belleville*, 15 O. R. 26 (1887): *Osborne* v. *London & North Western R. W. Co.*, 21 Q. B. D. 220 (1888).

(*g*) *Gilmore* v. *City of St. John*, 28 N. B. Rep. 325 (1889): *Williams* v. *City of Portland*, 29 N. B. Rep. 1; 19 S. C. R. 159 (1891).

(*h*) *Wakelin* v. *London & North Western R. W. Co.*, 12 App. Cas. 41 (1886): *Ryan* v. *Canada Southern R. W. Co.*, 10 O. R. 745 (1886): *Weir* v. *Canadian Pacific Railway Co.*, 16 A.R. 100 (1888): *Morrow* v. *Canadian Pacific Railway Co.*, 21 A.R. 149 (1894): *Danger* v. *London Street R. W. Co.*, 30 O. R. 493 (1899). And see an interesting article in 32 C. L. J. N. S., at p. 735, on the relative functions of Judge and jury in negligence actions. As to how far the doctrine of contributory negligence applies as against a child of tender years, see Beven on Negligence (2nd Ed.), 182: Shearman & Redfield on Negligence, (5th Ed.), ss. 73, 73*a*: *Sangster* v. *Eaton*, 25 O. R. 78; 21 A. R. 624; 24 S.C.R. 708 (1894-5).

(*i*) *Turner* v. *Town of Brantford*, 13 C. P. 109 (1863).

(*j*) See *supra*, note (e); *Sullivan* v. *Town of Barrie*, 45 U.C.R. 12 (1880).

(*k*) *Howarth* v. *McGugan*, 23 O. R. 396 (1893), at p. 402.

(*l*) *Rowe* v. *County of Leeds and Grenville*, 13 C. P. 515 (1864). *Sed secus* in the Province of Quebec: *vide* Art. 389 of the *Code Municipal*, quoted in foot note (b) on p. 824,

(*m*) *Pearson* v. *County of York*, 41 U. C. R. 378 (1877)—a decision of very questionable authority.

Sec. 606 (1), (2).

Note (g), (h).

Action under s. 606 must be brought within 3 months.

The time runs from the date of the accident, even though the extent of the injury sustained cannot be estimated until after the expiration of the period of limitation. (*a*) So in the Province of Quebec under Art. 4616 of the R.S.Q. (*b*)—which is copied from ss. 1-3 of Con. Stat. Ca. c. 85 (*c*)—and under Art. 2262 of the *Code Civil*, which prescribes actions for bodily injuries after one year, save in certain excepted cases (*d*).

Under our practice, the defence that the action was not brought within three months must be raised upon the pleadings (*e*); but it seems that in Quebec the Court may act *sua sponte*, if it appears that the action is brought too late (*f*).

Snow or ice on sidewalks.

(2) No municipal corporation shall be liable for accidents arising from persons falling, owing to snow or ice upon the sidewalks, unless in case of gross negligence by the corporation;

Taken from 57 V. c. 50, s. 13 (1895).

(h) A municipal corporation which has laid down sidewalks and street crossings must keep them—as well as other portions of the highway—"in repair;" but the law is not so unreasonable as to require that at no time during a Canadian winter shall the highways be unsafe or inconvenient for travellers by reason of snow or ice.

"A municipality is not liable for accidents occasioned solely by the presence of snow or ice upon a street or sidewalk. It is not, as a rule, bound to remove either. But . . . snow may so accumulate as to make particular places impassable, and [thus] impose the obligation of removal." (*g*)

(*a*) *Miller* v. *Township of North Fredericksburgh*, 25 U.C.R. 31 (1865).

(*b*) *City of Quebec* v. *Howe*, 13 Q. L. R. 315 (1887): *Hunter* v. *City of Montreal*, 12 Leg. News 87 (1889): *Fenchelston* v. *Town of Lachine*, Q. R. 9 S. C. 37 (1896).

(*c*) Substantially identical with s. 1 of 13-14 V. c. 15, which is quoted in the small-print notes to ss. 600 and 606 (1) and is again referred to in note (e), *supra*.

(*d*) *Laroir* v. *Beaudoin*, Q.R. 14 S. C. 252 (1899).

(*e*) Holmested & Langton, (2nd Ed.) 458.

(*f*) *Corporation of Sherbrooke* v. *Dufort*, 34 L. C. Jur. 76 (1893).

(*g*) *Per* SEDGEWICK, J., in *City of Kingston* v. *Drennan*, 27 S.C.R. 46 (1897), at p. 57. *Cf. Stewart* v. *Woodstock & Huron Plank, etc. Road Co.*, 15 U.C.R. 427 (1858), per ROBINSON, C.J., at p. 429: *Ringland* v. *City of Toronto*, 23 C.P. 93 (1873): *Bleakeley* v. *Town of Prescott*, 12 A.R. 637 (1886); reversing *S.C.* 7 O.R. 261 (1884): *Forward* v. *City of Toronto*, 15 O.R. 370 (1888): **Taylor* v. *City of Winnipeg*, 12 Man. R. 479 (1899): *Bonin* v. *City of Montreal*, Q.R. 15 s.c. e. 492 (1899). The American authorities are reviewed by HARRISON, C.J. in *Burns* v. *City of Toronto*, 42 U.C.R. 560 (1878); but (although that case was no doubt well decided) it is respectfully submitted that in some of the *dicta* of the learned Chief Justice therein, the words of "*The Municipal Act*,"—"shall be kept in repair"—are erroneously regarded as equivalent in effect to the language used in the Statutes of Maine, Massachusetts and Rhode Island,—"shall be kept in repair *so that the same may be safe and convenient for travellers . . . at all seasons of the year.*"

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*In *Taylor* v. *City of Winnipeg*, the plaintiff's claim was for damages for an injury sustained by falling upon an icy slope which had formed on a sidewalk in the City of Winnipeg, adjacent to a public well supplied with a pump, which was daily used by a large number of people. The well was one of about sixty provided by the corporation and maintained at its expense, and a number of men were employed by the corporation, whose duty it was to visit the well from time to time during the winter, and to remove or reduce the mounds of ice on the sidewalks and around the pumps, caused by the freezing of the water that dripped from them, or was spilled from pails while being carried away. One of these employees was on the spot on the very day of the accident and did not consider it necessary to do anything for the purpose of making the place more safe for foot passengers; and other employees of the city, whose duty it was to report unsafe conditions, had passed the place on the same day and made no report upon it. The action was tried without a jury. The evidence for the plaintiff showed that there was a general slope of the ice from the east to the west side of the walk, that there were lumps or raised places in the ice at two different points, and that the ice was very smooth and slippery at the place where the plaintiff fell; but the judge thought the witness had exaggerated the height of the lumps and the steepness of the slopes. He came to the conclusion also that the ice-mounds and the slopes on the sidewalk had been caused, not from the water that dripped from the pump or was spilled in filling pails there, but by the spilling of water from the pails while being carried along the sidewalk or in the filling of other vessels, and were thus the result of

Sec. 606 (2).

Notes (h), (i).

But where mounds of snow or ice are negligently allowed to remain on a street (*a*), or where there is unreasonable delay in making a road (*b*) or a sidewalk (*c*) passable, or there is some defect in the way itself which is made more dangerous by the snow or ice (*d*), the municipality will be held responsible (*e*). So, where the mode of construction of the roadway (*f*), or an attempt to remove ice or snow from a portion of the highway (*g*), or the use of a street or sidewalk for sliding or tobogganing thereon (*h*), has occasioned or contributed to the action by making the snow or ice more dangerous to travellers.

Accidents occasioned by snow or ice on sidewalks.

The fact that a municipal corporation has passed a by-law under s. 559 (1) (2) (for compelling owners and occupants to remove snow and ice from streets and sidewalks adjoining their property) does not affect the liability of the corporation (*i*); nor does a frontager who has failed to comply with the requirements of such a by-law become, by reason thereof, responsible in damages to a person who sustains injury by reason of such non-removal (*j*); but evidence of the existence of such a by-law may be given as showing what the Legislature (*k*) and the corporation (*l*) considered necessary to be done in order to secure the reasonable safety of persons using the sidewalks.

(i) "**Gross negligence.**"

What is "gross negligence."

Whether there is any—and, if any, what—difference between "negligence" and "gross negligence" has been much and often discussed (*m*); but,—as was observed by Lord CHELMSFORD—(*n*), "the epithet 'gross' is certainly not without its significance." The expression here means "very great negligence" (*o*).

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negligence on the part of other persons, and not of any faulty construction of the pump or its approaches; and the place where the accident happened was not shown to have been at the time more unsafe than many other spots on the sidewalk are frequently rendered by local conditions where freezing and thawing follow each other at short intervals.

1. *Held*, (following *City of Kingston* v. *Drennan*) that although to allow the formation and continuance of obstructions or dangerous spots in the highways, due to accumulations of snow or ice, may amount to non-repair for which the corporation would be liable; yet it is in every such case a question whether, taking all the circumstances into consideration, it is reasonable to hold that the municipality should have removed the danger.

2. That in the present case it would not be reasonable to hold the city liable, as there were over sixty such wells in the city, usually placed at street crossings and in constant use, and to keep the sidewalks near them completely free from ice, or roughened by chopping or sprinkling sand or ashes on them would be well-nigh impossible. *Action dismissed with costs.*

(*a*) *Caswell* v. *St. Mary's Road Co.*, 28 U.C.R. 247 (1869); *Burns* v. *City of Toronto*, 42 U.C.R. 560 (1878); *Kinnealy* v. *City of St. John*, 30 N. B. Rep. 46 (1890); *White* v. *City of Montreal* Q. R. 2 s. c. 342 (1892).

(*b*) *Caswell* v. *St. Mary's Road Co.*, supra.

(*c*) *Leclerc* v. *City of Montreal*, Q. R. 15 s. c. 205 (1899).

(*d*) *Driscoll* v. *City of St. John*, 29 N. B. Rep. 150 (1890); *Derochie* v. *Town of Cornwall*, 23 O. R. 355 (1893); 21 A. R. 279 (1894); 27 S. C. R. 46 (1897).

(*e*) Jones on Municipal Negligence, s. 98.

(*f*) *Fairbanks* v. *Township of Yarmouth*, 24 A. R. 273 (1897).

(*g*) *Judson* v. *City of Toronto*, 27 C. L. J. N. S. 602; 11 C. L. T. 335 (1891); *City of Toronto* v. *Toronto Railway Co.*, 24 S. C. R. 589 (1895).

(*h*) *Beaufort* v. *Corporation of Coatbridge*, 32 L. C. Jur. 118 (1888).

(*i*) *Ringland* v. *City of Toronto*, supra; *Organ* v. *City of Toronto*, 24 O.R. 318 (1893).

(*j*) See *ante*, note (**b**) to s. 559: *Lutham* v. *City of Montreal*, 29 L. C. Jur. 18 (1884).

(*k*) *Per* HARRISON, C. J., in *Burns* v. *City of Toronto*, 42 U.C.R. 560 (1878), at p. 567.

(*l*) *Per* ARMOUR, C.J., in *Derochie* v. *Town of Cornwall*, 23 O.R. 355 (1893), at p. 360, note.

(*m*) *Hinton* v. *Dibbin*, 2 Q.B. 647 (1842); *Wilson* v. *Brett*, 11 M. & W. 113 (1843); *Beal* v. *South Devon R. W. Co.*, 3 H.& &. 337 (1864); and see *McLean* v. *City of Ottawa*, Oct. 9th, 1899,—a valuable judgment by STREET, J. at Nisi Prius, affirmed by a Divisional Court, Feb. 1st, 1900—but which (not having been overruled) may possibly not be embodied in the Ontario Reports.

(*n*) *Giblin* v. *McMullen*, L.R. 2 P.C. 317 (1869), at p. 337.

(*o*) *Per* GWYNNE, J., in *Drennan* v. *City of Kingston*, 27 S.C.R. 46 (1897), at p. 60.

Sec. 606-7 (3 (4).

Notes (j), (k).

Notice of action.

(3) No action shall be brought to enforce a claim for damages under this section unless notice in writing of the accident and the cause thereof has been served upon or mailed through the post office to the mayor, reeve, or other head of the corporation, or to the clerk of the municipality within thirty days after the happening of the accident where the action is against a township, and within seven days where the action is against a city, town or village;

When dispensed with.

Provided that in case of the death of the person injured the want of notice shall be no bar to the maintenance of the action. 55 V. c. 42, s. 531 (1); 57 V. c. 50, s. 13; 59 V. c. 51, s. 20; 60 V. c. 3, s. 3.

Taken from 57 V. c. 50, s. 13 (1894), except the words "where the action is against a township and within seven days where the action is against a city, town or village," which were inserted in 1896 by 59 V. c. 51, s. 20.

(j) This provision applies to all actions under s. 606 against municipal corporations for damages occasioned by non-repair of highways (a).

The defence of want of the notice required by this subsection must be raised upon the pleadings, and not by a motion for nonsuit (b). The giving of the notice is a condition precedent to the right to bring an action (c).

In *Davignon* v. *Corporation of Stanbridge Station* (d), LYNCH, J. held that if the fifteen days notice prescribed by s. 793 of the *Code Municipal* (e) is required to be given in an action against the corporation for damages, (as to which there is some doubt), it is at all events sufficient that the notice shall be plain and intelligible to an ordinary understanding (f).

Notice of claim for non-repair of highways where municipalities jointly liable.

(4) Where the claim for damages is against two or more municipalities jointly responsible for the repair of the road, street, bridge or highway, no action shall be brought to enforce such claim under this section unless the notice to each of the municipalities jointly liable has been served or mailed as provided in sub-section 3 within the period or periods therein mentioned.

Taken from 62 V. (2nd Session), c. 26, s. 39.

(k) This sub-section was added in consequence of the decision in *Leizert* v. *Township of Matilda* (g) that sub-section 3 was inapplicable to an action brought against both a township and a village, to recover damages occasioned by the non-repair of a road which both municipalities were jointly liable to repair

(l) S. 104 of "*The Judicature Act*," (R.S.O. c. 51), provides that;—

> "All actions against municipal corporations for damages in respect of injuries sustained through non-repair of streets, roads or sidewalks, shall be tried by a Judge without a jury; and the trial shall take place in the county in which the road, street or sidewalk is situated."

This applies to actions for damages sustained by reason of the non-repair of bridges (h).

607. The last preceding section shall not apply to any road, street, bridge or highway laid out by any private person, and

(a) *Aldis* v. *City of Chatham*, 28 O.R. 525 (1897). See note (b) *supra*.

(b) *Longbottom* v. *City of Toronto*, 27 O.R. 198 (1896). See s. 468, note (c), footnote (j), *ante*, p. 513.

(c) *Employers' Liability Assurance Corporation* v. *Taylor*, 29 S.C.R. 104 (1899). (d) Q.R. 14 S.C. 116 (1899).

(e) See the small-print note under s. 606 (1), *supra*.

(f) And see, *per* Sir WILLIAM RITCHIE, C.J., in *City of St. John* v. *Christie*, 21 S.C.R. 1 (1892), at p. 7. *McQuillan* v. *Town of St. Mary's*, 36 C. L. J. N. S. 65 (1899). (g) 29 O.R. 98 (1897); 26 A.R. 1 (1899).

(h) *Vennard* v. *Township of Bruce*, 35 C.L.J.N.S. 200; 19 C.L.T. 87 (1899)

the corporation shall not be liable to keep in repair any such last mentioned road, street, bridge or highway, until established by by-law of the corporation, or otherwise assumed for public user by such corporation. 55 V. c. 42, s. 531 (2).

Secs. 607, 608.

Notes (a); (a).

To what roads s. 606 applies.

Taken from the Act of 1873 (36 V. c. 48), s. 409, last clause. *Cf.* the proviso to s. 39 of "*The Surveys Act*," (R.S.O., c. 181), quoted in note (a) to s. 598, *ante*, at p. 808. In the Acts of 1858 and 1866 the words were:—"Shall not apply to any road, street, bridge or highway laid out without the consent of the corporation by by-law, until established and assumed by by-law."

(a) "**Or otherwise assumed for public user by such corporation.**" The acts required to work such an assumption must be corporate acts, clear and unequivocal, and such as clearly and unequivocally indicate the intention of the corporation to assume the road (*a*).

Where a bridge, which had been dedicated to the public and in public use for a number of years, formed part of a public thoroughfare which was the only means of direct communication with the south, and on which houses had been built; and the bridge had been repaired by the municipality out of the public funds for nine or ten years, it was held that the municipality was thereafter liable to keep it in repair (*b*).

Repairs of Crossings, Sewers, Sidewalks, etc., on Toll Roads.

Repair of crossings, etc. made by leave of municipality on toll roads.

608. The corporation shall, in the absence of an agreement to the contrary, keep in repair all crossings, sewers, culverts and approaches, grades, sidewalks and other works made or done by the council of any municipality, or by any person with the permission of the said council, upon any toll road in or through the said municipality, and on default so to keep in repair shall be responsible for all damages sustained by any person by reason of such default, but the action must be brought within three months after the damages have been sustained. 55 V. c. 42, s. 531 (3).

Taken from 47 V. c. 32, s. 17 (1884).

(a) Ss. 147-149 of "*The General Road Companies Act*," (R.S.O. cap. 193), provide that:—

> "**147.** The council of a municipality through which a toll road runs, that has been constructed under this Act, or the owner of any land lying adjacent to the road, may set out shade and ornamental trees alongside the road, in the same manner and with the same rights as if the road were an ordinary highway.
>
> **148.** The council of a municipality through which the road runs, or any person by the permission and direction of the council, may plant shade and ornamental trees, and may grade, level, cut down, or fill up the land alongside of the road, and may build sidewalks of plank, gravel, or other material thereon, as if the road were an ordinary road or street.
>
> **149.** The council of a municipality through which any such road runs shall have authority to make stone, wood or other crossings across such road, and may construct watercourses across or alongside the road, and may construct culverts and approaches over watercourses or ditches crossing or alongside of the road from streets, lanes or buildings in the municipality, and may raise or lower the road, or change the grade thereof when necessary in order to connect with other roads or streets, and shall have all other rights and privileges with regard to sidewalks, culverts and approaches to the road as if the same were an ordinary highway or street; but the council shall in all every such case without unnecessary delay replace the road in as good condition as it was before such work was undertaken, and shall keep in proper repair all such crossings."

Section 608 (in its original form) applied only to works done under the authority of the above Act.

(*a*) *Hubert* v. *Township of Yarmouth*, 18 O.R. 458 (1889), cited in note (f to s. 598, *ante*, p. 817.

(*b*) *Reg.* v. *Village of Yorkville*, 22 C.P. 431 (1872).

Secs. 609 (1)-(4).

Remedy over, in case of Action.

Remedy in case of damages for damages caused by parties other than the municipal corporation sued.

609.—(1) In case an action is brought against a municipal corporation to recover damages sustained by reason of any obstruction, excavation or opening in or near to a public highway, street or bridge placed, made, left or maintained by another corporation, or by any person other than a servant or agent of the municipal corporation, or to recover damages sustained by reason of any negligent or wrongful act or omission of any other corporation, or of any person other than a servant or agent of the municipal corporation, the last mentioned corporation shall have a remedy over against the other corporation or person for, and may enforce payment accordingly of the damages and costs, if any, which the plaintiff in the action may recover against the municipal corporation. 55 V. c. 42, s. 531 (4); 60 V. c. 45, s. 18.

Remedy over for damages caused by non-repair of road against persons causing same.

(2) The municipal corporation shall be entitled to such remedy over in the same action, if the other corporation or person is made a party to the action, and if it is established in the action as against the other corporation or person that the damages were sustained by reason of an obstruction, excavation or opening as aforesaid, placed, made, left or maintained by the other corporation or person; and the municipal corporation may in such action have the other corporation or person added as a party defendant or third party for the purposes hereof (if not already a defendant in the action jointly with the municipal corporation); and the other corporation or person may defend such action as well against the plaintiff's claim as against the claim of the municipal corporation to a remedy over; and the Court or Judge upon the trial of the action may order costs to be paid by or to any of the parties thereto, or in respect of any claim set up therein as in other cases. 55 V. c. 42, s. 531 (5).

Where person causing damage has not been made a party.

(3) If such other corporation or person be not a party defendant to such action, or be not added as a party defendant or third party, or if the municipal corporation has paid the claim for such damages before any action is brought to recover the same, or before any recovery of damages or costs against the municipal corporation therein, such municipal corporation shall have a remedy over, by action against any other corporation or person for such damages and costs as have been sustained by reason of any obstruction, excavation or opening placed, made, left or maintained by the other corporation or person.

When the validity of the original judgment is deemed to be admitted.

Rev. Stat. c. 51.

(4) Such other corporation or person shall be deemed to admit the validity of the judgment, if any, obtained against such municipal corporation in cases only where a notice has been served on such other corporation or person pursuant to the provisions of the Rules of Court made under the authority of *The Judicature Act*, or where such other corporation or

Sec. 609 (4), (5).

Note (a).

person has admitted, or is estopped from denying the validity of such judgment. 55 V c. 42, s. 531 (6) *part.*

When a fresh action will be necessary.

(5) Where no such notice has been served, and there has been no such admission or estoppel, and the other corporation or person has not been made a party defendant or third party to the action against such municipal corporation, or where such damages have been paid without action, or without recovery of judgment against the municipal corporation, the liability of the municipal corporation for such damages, and the fact that the damages were sustained by reason of an obstruction, excavation or opening placed, made, left or maintained by the other corporation or person, must be established in the action against such other corporation or person to entitle the municipal corporation to recover in such action. 55 V. c. 42, s. 531 (6) *part.*

The of Act 55 V. c. 29, s. 33 (1887) first gave to a municipal corporation sued for damages occasioned by the non-repair of a highway a remedy over against a third person through whose wrongful act the highway had become out of repair; but under that statute the remedy over was confined to cases (1) where such third person had made "any obstruction, excavation or opening *in* a public highway," etc., and (2) where he was added as defendant or third party in the original action. The Act of 54 V. c. 42, s. 24 (1891) inserted the words "or near to" before "a public highway," and permitted the remedy over to be enforced by means of a separate action. See subs. (2) (3) (4) (5). By 60 V. c. 45, s. 18 (1897) the remedial operation of the section was extended to cases where the damages had been sustained "by reason of *any negligent or wrongful act or omission*" of the third person.

Remedy over in case accident caused by negligence of a third party.

(a) Before this section was added to the Act a municipal corporation had no remedy over in the cases mentioned (*a*); but now they are entitled to such a remedy wherever the accident has been caused (1) by reason of any obstruction or excavation, in or near to a highway, etc., placed, made, left, or maintained by any corporation or person not acting as a servant of the defendent municipality (*b*), or (2) by reason of any other negligent or wrongful act or omission of such corporation or person.

The fact that the section applies when an action has been brought against the municipality, indicates that it was intended to apply to cases where there has been default in fulfilling the obligations imposed by s. 606; and it seems that even though such default may be established in the action as against the municipal corporation, this will not take away their right to a remedy over.

In *Atkinson* v. *City of Chatham*, (*c*) the city, being sued for damages occasioned by the sleigh of one of the plaintiffs having been upset by collision with a telephone pole, brought in the Bell Telephone Co. by a third party notice. The company contended that under an agreement between them and the city, this pole had been located four years previous to the action by an officer of the municipality, and had since remained on the street with the knowledge and acquiescence of the corporation and its officers. The trial Judge found that the pole was an obstruction to the highway, which, on account thereof, became and was out of repair; that the pole had been erected and maintained by the company under the superintendence of the city's officers and with the knowledge of the corporation; and he held that the municipality was liable to the plaintiff, and that they had no right under this section to a remedy over against the telephone company. But on appeal (*d*), his decision on the last point was reversed, and judgment was directed to be entered with costs in favour of the city against the telephone company for the full amount of damages and costs recovered by the plaintiffs.

Per MACLENNAN, J. A.:—

> "The further question is whether the city is entitled to a judgment of indemnity against the Bell Telephone Company as provided by section 609 (1), (2) of '*The Municipal Act.*' It is clearly a case of

(*a*) *Township of Vespra* v. *Cook*, 26 C. P. 182 (1876). In the Province of Quebec it was otherwise: *Rousseau* v. *Parish of St. Nicholas*, Q. R. 15 S. C. 214 (1899).

(*b*) In which case the action must be brought against the municipality alone. See s. 612. (*c*) 29 O. R. 518 (1898). (*d*) 26 A. R. 521 (1899).

Sec. 609.

Notes (a)-(c).

Remedy over, in case damages were occasioned by the act or default of a third party.

an obstruction on a highway made and maintained by the latter company; and the city having been held liable, it has *primâ facie* under that section a right to a remedy over against the company for the damages and costs recovered by the plaintiffs. The learned Judge has held that the company is not liable to indemnify the city, on the ground that the pole was placed where it stood under the superintendence of the corporation and with its sanction,—that is to say, as provided in the Statute and in the agreement of the 20th of February, 'under the direction and supervision of the engineer, or such other person as the council may appoint.' . . . Assuming then, that the pole was placed with the knowledge and consent of the city, does that bar the claim of indemnity? The Statute makes no such exception, but declares that if an action is brought against a municipal corporation for damages by reason of an obstruction in a street placed by another corporation, the municipal corporation shall have a remedy over against the other corporation for damages and costs recovered. The enactment assumes liability by the municipal corporation for the same obstruction, which must either be for consenting to its being placed there in the first instance, or for allowing it to remain. It is a case of joint tort-feasors committing and continuing the same wrong; and the Legislature has said—in that respect changing the rule of the common law—that the municipality shall be entitled to indemnity. I therefore think that upon the very language of the Statute, even if the city has expressly assented to the placing of this pole, it would be no bar to its claim for indemnity."

The section goes further than to give merely a remedy over. Had this been its sole effect, the defendant corporation could only have added the person responsible as a third party under Consolidated Rules 209 *et seq.*(*a*). That course may now be adopted; or he may be added as a party defendant, in which case judgment may be given against the municipality for the plaintiff's damages and costs, and for the municipality as against the added party for this amount together with the costs of the corporation (*b*).

The section "seems intended solely for the purpose of the remedy over which it gives, and not for the purpose of giving a judgment for the plaintiffs against the added party." (*c*) But in *Stillway* v. *City of Toronto* (*d*)—where the pleadings were amended after verdict so as to exonerate the municipality and give the plaintiff damages directly against the added party—it was held by a Divisional Court that the leave so to amend had been properly granted; and the judgment was affirmed.

It is apprehended—notwithstanding the decision of ROSE, J., in *Erdman* v. *Town of Walkerton* (*e*), that the defendant municipality are entitled as of right to the remedy given by this section, and that they have an option as to which of the two modes of procedure therein mentioned they will select and adopt. Where the plaintiff's right to succeed is clear, and there is no substantial issue to be tried between the municipality and the person whom it is desired to add, it may be found more convenient to make the latter a party defendant: in all other cases he should be served with a third party notice.

(b) **"Established . . . . . as against the other corporation or person"** See *Zimmerman* v. *Kemp*, 30 O. R. 165 (1899): *Ex p. Young, In re Kitchen*, 17 Ch. D. 668 (1881).

(c) **Costs.** These are in the discretion of the trial Judge; and without his leave there is no appeal from his decision as to costs (*f*).

(*a*) *Hewitt* v. *Heise*, 11 P. R. 47 (1885): *Peterson* v. *Fredericks*, 15 P. R. 361 (1893).

(*b*) *Balzer* v. *Township of Gosfield*, 17 O. R. 700 (1889): *McKelvin* v. *City of London*, 22 A. R. 70 (1892).

(*c*) *Per* MACLENNAN, J. A., in *Baskerville* v. *City of Ottawa*, 20 A.R. at p. 123 (1892). (*d*) 20 O. R. 98 (1890). (*e*) 15 P. R. 12 (1892).

(*f*) R. S. O. c. 51, c. 72: *Ewing* v. *City of Toronto*, 18 P. R. 137 (1898). See also Con. Rule 214, and the cases collected thereunder in Holmested & Langton (2nd Ed.) 384.

Contribution Between Municipalities Jointly Liable.

Secs. 610, 611, 612 (1), (2).

Note (a) Apportionment of damages where more than one municipality liable for non-repair.

610. Where two or more municipalities are jointly liable for the keeping in repair of a public road, street, bridge, or highway, there shall be contribution between them as to the damages sustained by any person by reason of their default in keeping the same in repair, and any action brought by any such person shall be brought against all of such municipalities, and any of the defendants therein may require that the proportions in which such damages and the costs of the action are to be borne between them shall be determined therein, and in settling such proportions, either in the action or otherwise, regard shall be had to the extent to which each municipality was responsible, either primarily or otherwise, for the act or omission for which the damages have become payable or are recovered, and the damages and costs shall be apportioned between them accordingly. 55 V. c. 42, s. 531 (7); c. 43, s. 46.

(a) This section was passed in 1892 (*a*) in consequence of the decision in *Township of Sombra* v. *Township of Moore* (*b*), that where judgment had been recovered against one of two municipalities for damage for injury sustained upon a road which they were jointly liable to keep in repair, the one was not entitled to contribution from the other.

No Liability for Acts or Defaults of others.

Actions for negligence in repair of highways, etc.

611. Nothing contained in sections 606 to 610 of this Act (both inclusive) shall cast upon the municipal corporation any obligation or liability in respect of acts done or omitted to be done by other persons, companies or corporations, acting in the exercise of powers or authorities conferred upon them by law, and over which such municipal corporation has not control, where the municipal corporation is not a party to such acts or omissions, and the authority under which such persons, companies or corporations have acted or shall act is not a by-law, resolution or license of the council of the municipality. 59 V. c. 51, s. 22.

Action shall lie only against the Corporation.

Corporation not responsible for acts of certain others in non-repair of highways.

612.—(1) In any case where an action may be brought against a municipal corporation by any person who has suffered damage by reason of the default of a municipality in keeping any public road, street, bridge or highway in repair as provided by section 606 of this Act, no action shall be brought in respect of, or to recover such damage, or any part thereof, against any member of the council, officer or employee of the municipality personally, but the remedy therefor shall be wholly against the municipality.

(2) Nothing in this section contained shall apply to or affect litigation pending on the 7th day of April, 1896, or prevent any action from being brought or maintained by any municipality against any officer or employee for negligence or misconduct, or for any act of omission or commission in breach of his duty as such officer or employee.

(*a*) 55 V. c. 43, s. (46). (*b*) 19 A. R. 144 (1892).

Secs. 612 (3), (4); 613, 1, 2, 3, 4.

Notes (a), (b).

When an action for non-repair of a highway must be brought against the municipality.

(3) Where any such action was brought against any such officer, member or employee prior to the 7th day of April, 1896, the municipality may assume the same or the defence thereof, and may pay any damages or costs for which such officer, member or employee may be or has become liable in respect thereof.

(4) This section shall not extend to or include a mere contractor with the corporation, or any member of council, officer or employee who is such contractor, and by reason of whose act or neglect the damage was caused. 59 V. c. 51, s. 21.

This section was passed in consequence of *McDonald* v. *Dickenson*, 25 O. R. 45; 21 A. R. 45; 24 A.R. 31 (1894-7), and *Freeman* v. *Dickenson*, referred to 24 A.R. p. 32.

County Roads and Bridges.

613. Every county council shall have exclusive jurisdiction:—

Jurisdiction of county council over roads and bridges assumed by by-law.

1. Over all roads and bridges lying within any township, town or village in the county, which the council by by-law assumes with the assent of such township, town or village municipality as a county road, or bridge, until the by-law, assuming the same has been repealed by the council, and

Taken from the Act of 1858 (22 V. c. 99), s. 341, which applied only to roads and bridges within townships, and did not require the assent of the local municipality. *Cf.* 12 V. c. 81, s. 37, *part*; 29-30 V. c. 57, s. 341; 36 V. c. 48, s. 410. Extended to roads and bridges within towns and villages by 37 V. c 16, s. 17 (1874), by which also the words "with the assent of such township, town or village municipality" were inserted. From this section, however, townships were omitted; an error corrected by 39 V. c. 7, s. 2 (1876).

Over bridges separating townships.

2. Over all bridges, across streams, rivers, ponds or lakes separating two townships in the county, and

Taken from 22 V. c. 99, s. 325 (1858), which applied only to "streams." "Ponds" and "lakes" were inserted by 51 V. c. 28, s. 30 (1888), and "rivers" in the Revision of 1897. *Cf.* 12 V. c. 81, s. 38.

(a) **"Streams, rivers."** See note (j) to s. 562.

Over certain bridges in villages.

3. Over all bridges crossing streams or rivers over 100 feet in width, within the limits of any incorporated village in the county, and connecting any main highway leading through the county, and

This sub-section appears first in 34 V. c. 30, s. 7 (1871), which applied to "*any* highway leading through the county," but only to "rivers . . . over 500 feet in width." By 36 V. c. 48, s. 410 (1873), the necessary width of the river was reduced to 200 feet, and by 37 V. c. 16, s. 17 (1874), it was further reduced to 100 feet, and such watercourses were then called indifferently "streams or rivers." 50 V. c. 29, s. 34 (1887) introduced the word "main" before "highway." By 49 V. c. 37, s. 16 (1886), jurisdiction was given to counties over bridges crossing rivers or streams within townships or separated towns; but this provision was repealed in the next year by 50 V. c. 29, s. 36 (1887).

Over bridges over rivers, etc., forming municipal boundaries.

4. Over all bridges over rivers, streams, ponds or lakes forming or crossing boundary lines between two local municipalities in the county. 55 V. c. 42, s. 532; 60 V. c. 15, *Sched.* C (91).

Taken from R.S.O. (1877), c. 174, s. 492, from which, however, the words "streams, ponds or lakes," "local," and "in the county" were omitted. The words "ponds or lakes" were inserted by 51 V. c. 28, s. 30 (1888); the remainder by 60 V. c. 15, *Sched.* C. (91) (1897).

(b) **"Exclusive jurisdiction."** It is apprehended that the effect of these words is to confer upon county councils, with regard to the highways and bridges mentioned in this section, powers and duties co-extensive with those conferred upon local municipalities by the word "vested" in s. 601 as to the

highways to which that section refers (*a*). The result is doubtless to bring county corporations within the operation of s. 606 (*b*), and subject them to indictment or civil action in case of neglect to keep their highways in repair (*c*).

Secs. 613, 614.

Notes (b)-(g); (a)-(c).

County roads and bridges.

(c) "By by-law assumes." Where a county by-law declared a township road to be assumed "for the purpose of expending thereon the county appropriation, and for such purpose only" the road was held to be a county road within the meaning of this section (*d*).

As to the duty of the county council in respect of any road or bridge within a township, which has thus been assumed, see s. 616 (1).

(d) "With the assent of such township." It seems that this assent need not be by by-law, but that it is sufficiently expressed by the absence of objection by the local municipality to the county by-law, or to the expenditure, during some years, of county funds upon the highway pursuant thereto (*e*).

(e) Clause 3. See, as to the assumption of such bridges by the villages in which they are situate, s. 604, *supra*.

(f) "Over 100 feet in width." The width of the stream or river is to be ascertained at the place where the bridge crosses, and is to be determined by the width of the stream after heavy rains and during freshets (*f*).

(g) Clause 4. Although, under s. 617 (1), local municipalities may be liable to contribute toward the cost of erecting such a bridge, the exclusive jurisdiction conferred by this subsection upon the county council is not interfered with (*g*).

The county council may, by by-law under s. 617 (3), declare that this clause shall not extend to rivers, streams, ponds or lakes less than eighty feet in width.

614. Any county council may assume, make and maintain any township or county boundary line at the expense of the county, or may from time to time grant for the said purposes such sum or sums as they deem expedient. 55 V. c. 42, s. 533.

Boundary lines may be maintained by county.

This section—with the exception of the word "boundary" (added by 36 V. c. 48, s. 413, (1873))—appears as subs. 11 of 29-30 V. c. 51, s. 431 (1866), but, until 1877, was unnecessary, by reason of the provision, omitted in the Revision of that year—attention having been called to it in *O'Connor* v. *Township of Otonabee*, 35 U. C. R. 83 (1874), that county councils should have exclusive jurisdiction "over every road or bridge dividing different townships." See 12 V. c. 81, s. 38; 22 V. c. 99, s. 325; 29-30 V. c. 51, 341; 36 V. c. 48, s. 410; 37 V. c. 16, s. 17; and *Re McBride and Township of York*, 31 U. C. R. 355 (1871).

(a) "May assume." In this case the road becomes a county road; and the assent of the local municipalities is not necessary as it is under s. 613 (1). As to the case township boundary lines not so assumed, see ss. 620-625.

(b) Any * * * county boundary line. Under s. 622 such boundary lines until assumed are under the joint jurisdiction of the local municipalities bordering thereon. It is apprehended, therefore, that the county council cannot assume more than the township's share of this joint jurisdiction. (*h*)

(c) "For the said purposes."—*i.e.*, apparently, for the purpose of assuming as well as of making and maintaining.

(*a*) *County of Wellington* v. *Wilson*, 14 C.P. 100; 16 C.P. 124 (1865).

(*b*) See note (**c**) to that section.

(*c*) *Harrold* v. *County of Simcoe*, 16 C. P. 43; 18 C. P. 9 (1868); *Walton* v. *County of York*, 6 A. R. 181 (1881); *Re Townships of Moulton et al. and County of Haldimand*, 12 A. R. 503 (1885); *Balzer* v. *Township of Gosfield*, 17 O. R. 700 (1889).

(*d*) *Balzer* v. *Township of Gosfield*, 17 O. R. 700 (1889).

(*e*) *Balzer* v. *Township of Gosfield*, supra.

(*f*) *Village of New Hamburg* v. *County of Waterloo*, 22 S. C. R. 296 (1893); reversing *S.C.* in the Court of Appeal, 20 A. R. 1, and in the Divisional Court, 22 O. R. 193, and restoring the judgment of FERGUSON, J. at the trial, 22 O. R. 195.

(*g*) *Re Cummings and County of Carleton*, 26 O. R. 1 (1894).

(*h*) See note (**b**) to s. 658 (2).

Secs. 615, 616 (1), (2).

Notes (a); (a), (b), (c).

Maintenance, etc., of roads in local municipalities by county councils.

615. Any county council may, at the expense of the county, make, maintain and improve any township, town or village road or highway which runs into any county road, and may grant such sum or sums from time to time for the said purpose, as they may deem expedient. 59 V. c. 51, s. 23.

(a) It would seem that the power given by this section is in addition to those conferred by s. 658 (5)-(7), and that the word "grant" is used here (as in s. 614) in the sense of "appropriate." *Quære*—whether a road thus made, etc., by a county council remains vested in in the local municipality in which it is situate? If so, it would seem that a county council, by opening a road under this section (at least upon an original road allowance (*a*)) might cast upon the local municipality the duty of keeping it in repair. See ss. 600 and 606.

Improving and Maintaining County Roads and Bridges.

Roads or bridges assumed by county councils.

616.—(1) Where a county council by by-law assumes as a county road or bridge, any road or bridge within a township, they shall, with as little delay as reasonably may be, and at the expense of the county, cause the road to be planked, gravelled or macadamized, or the bridge to be built in a good and substantial manner. 55 V. c. 42, s. 534, *part*.

Taken from 22 V. c 99, s. 326 (1858) with some verbal amendments made in the Revision of 1897. *Cf.* 12 V. c. 81, s. 37 *part*; 22 V. c. 99, s. 326; 29-30 V. c. 51, s. 342; 36 V. c. 48, s. 412.

(a) This subsection does not apply to roads or bridges within a town or village assumed under s. 613 (1), or to township or county boundary lines assumed under s. 614.

(b) **"Shall . . . cause the road to be planked" etc.**

In *Re Township of Augusta and United Counties of Leeds and Grenville*, (*b*) the Court was of opinion that this duty might be enforced by mandamus. In *Hacking* v. *County of Perth*, it was held by the Court of Error and Appeal (*c*), that—since it would be impossible in such a case to fulfil the duty imposed by this section—a county council had no power to assume a road already planked, gravelled or macadamized; but—apart from the obvious possibility of substituting one of the other pavements above named for that which had previously been laid, it would seem that this decision is not in accord with the general intention of the Statute as shown by the original form of the enactment (*d*), where provisions corresponding to s. 613 (1) and to this sub-section were both contained in the same section; and it is possible that if the question came up again the decision might be different.

(c) **"Or the bridge to be built."**

See note (a) to s. 617 (1).

Maintenance of certain bridges in villages.

(2) The county council shall in a like manner cause to be built and maintained, all bridges on any river or stream over 100 feet in width, within the limits of any village in the county, necessary to connect any main public highway leading through the county. 55 V. c. 42, s. 534, *part*.

This subsection first appears in 34 V. c. 30, s. 8 (1871), but was there much restricted in its application. It was amended by 36 V. c. 48, s. 412 (1873), and was repealed and re-enacted in its present form by 37 V. c. 16, s. 18 (1874) with the omission (supplied by 50 V. c. 29, s. 38 (1887)) of the word "main" before "public highway."

(a) **"Shall . . . cause to be built and maintained."**

See note (a) to s. 617 (1).

(b) **"Necessary to connect."** It will be observed that the duty here imposed is not co-extensive with the jurisdiction conferred by s. 613 (3).

(*a*) S. 607.
(*b*) 12 U.C.R. 532 (1854).
(*c*) 35 U.C.R. 460 (1874).
(*d*) The Act of 1849: 12 V. c. 81, s. 37.

In *Reg. v. County of Wellington* (*a*), there were in a village two bridges which divided the travel on a leading county road. One was on the direct line of the road: the other about 300 yards away. Neither had been assumed by the county. *Held*, that the bridge not on the direct line was not within this clause.

Secs. 616 (2), 617 (1).

Notes (b); (a), (b).

617.—(1) It shall be the duty of the county councils to erect and maintain bridges over rivers, streams, ponds or lakes forming or crossing boundary lines between any two municipalities (other than a city or separated town) within the county; and in case of a bridge over a river, stream, pond or lake forming or crossing a boundary line between two or more counties or a county, city, or separated town, such bridges shall be erected and maintained by the councils of the counties or county, city and separated town respectively; and in case the councils fail to agree as to the respective portions of the expense to be borne by the municipalities interested, it shall be the duty of each to appoint arbitrators as provided by this Act, to determine the proportionate amount to be paid by each, and the award made by them shall be final. 55 V c. 42, s. 535 (1); 60 V. c. 15, *Sched.* C (92).

Bridges between municipalities.

Taken from 48 V. c. 39, s. 22 (1885): the words "streams, ponds and lakes" having been inserted in 1897 by 60 V. c. 15, Sched. C. (92), and certain verbal amendments made in the Revision of that year.

(a) "It shall be the duty of the county councils to erect and maintain bridges."

In case of refusal on the part of a county council to comply with the requirements of this and the preceding section in regard to the erection of bridges, proceedings may be taken under s. 611, *post*; and the county corporation would, it seems, be liable also to indictment (*b*) under Art. 138 of "*The Criminal Code*, 1892" quoted *ante* in note (**a**) to s. 393. It is doubtful whether (in cases to which s. 618 does not apply) the performance of the duty thus imposed may be enforced by mandamus. That procedure has been attempted in several cases (*c*); but in each the mandamus was refused. In *Re Townships of Moulton and Canborough* (*d*)—decided before s. 618 was passed—HAGARTY, C.J., and OSLER, J.A., held that though the mandamus would lie, indictment was the appropriate remedy; while BURTON and PATTERSON, J.J.A. considered that the duty under these sections was not the general obligation to keep the highways and bridges in repair, but a specific duty, like that cast upon railway companies by their charters with respect to the restoration of roads or the building of bridges—which has always been enforceable by mandamus.

Duty of county council, how enforced.

In case of non-repair, indictment and not mandamus is the proper remedy (*e*).

(b) "By the councils . . . respectively."

"There is nothing in section 617 which has the effect of divesting the county council of the exclusive jurisdiction conferred upon it by section 613 over all bridges over rivers or ponds or lakes forming or crossing boundary lines between two municipalities. And although, in case of a bridge over a river forming or crossing a boundary line between a county, city or separated town within the county, such bridge is to be erected and maintained by the councils of the county,

Jurisdiction still vested in county councils.

(*a*) 39 U.C.R. 194 (1876).

(*b*) *Re Townships of Moulton and Canborough*, 12 A.R. 503 (1885).

(*c*) *Kinnear* v. *County of Haldimand*, 30 U.C.R. 398 (1870): *Re Westcott and County of Peterborough*, 33 U.C.R. 280 (1873): *Brooks* v. *County of Haldimand*, 41 U.C.R. 381; 3 A.R. 73 (1876).

(*d*) 12 A.R. 503 (1885).

(*e*) See note (**d**) to s. 606: *Reg.* v. *County of Haldimand*, 20 U.C.R. 574 (1861): *Reg.* v. *Brown*, 13 C.P. 356 (1863): *Reg.* v. *County of Haldimand*, 38 U.C.R. 396 (1876): *Re Jamieson and County of Lanark*, 38 U.C.R. 347 (1876): *Reg.* v. *County of Carleton*, 1 O.R. 277 (1882).

Sec. 617 (1)-(4).

Notes (b), (c).

Jurisdiction over bridges between municipalities.

city and separated town respectively, each contributing such portion of the expense thereof as may be agreed upon or determined by arbitration, yet the exclusive jurisdiction over such bridge so erected and maintained still remains in the county council. And although such bridge is to be so erected and maintained, yet the approaches for 100 feet to and next adjoining each end of such bridge are, by the provisions of section 605, to be kept up and maintained by the county council, under whose exclusive jurisdiction such bridge is declared to be by section 613." (a)

Accordingly it was held in *Cummings'* case that claims for compensation for lands injuriously affected by the construction of approaches to such a bridge must be made against the county alone, and not against the county and the local municipality jointly.

Deviating boundary roads.

(2) A road which lies wholly or partly between two municipalities shall be regarded as a boundary line within the meaning of this section, although such road may deviate so that it is in some place or places wholly within one of the municipalities; and a bridge built over a river, stream, pond or lake crossing such road where it deviates as aforesaid shall be held to be a bridge over a river, stream, pond or lake crossing a boundary line within the meaning of this section. 55 V. c. 42, s. 535 (1, 2); 60 V. c. 15, *Sched.* C (93).

Taken from 48 V. c. 39, s. 22 (2) (1885), "streams, ponds or lakes" having been inserted by 60 V. c. 15, Sched. C (93) (1897). *Cf.* 12 V. c. 81, s. 38; 22 V. c. 99, s. 325; 29-30 V. c. 51, s. 341; 36 V. c. 48, s. 410; R.S.O. (1877), c. 174, s. 498; 46 V. c. 18, s. 538.

(c) "**Although such road may deviate.**"

In *County of Brant* v. *County of Waterloo* (b) ROBINSON, C. J. expressed the opinion that the deviation intended was one made only for the purpose of obtaining a good line of road. This decision was approved, and the meaning of the word "deviate" was considered, in *County of Victoria* v. *County of Peterborough* (c).

Rivers, etc., less than 80 feet wide.

(3) Notwithstanding anything contained in this section or in section 613, the council of any county may, by by-law, provide that where the words "rivers, streams, ponds or lakes," are mentioned in those sections as applying to the erection and maintenance of bridges over rivers, streams, ponds or lakes, where such rivers, streams, ponds or lakes form or cross any boundary line between two municipalities within such county, the said words of any of them shall not include or extend to any river, stream, lake or pond less than eighty feet in width. 55 V. c. 42, s. 535 (3); 56 V. c. 35, s. 25; 60 V. c. 15, *Sched.* C (94).

County by-law.

In 58 V. c. 36, s. 28 (1889), where this section first appears, the words "streams" after "rivers" and "form or" before "cross," were omitted. The latter was inserted by 56 V. c. 35, s. 25 (1893), the former by 60 V. c. 15, Sched. C (94) (1897).

Duty of local municipalities if such a by-law is passed.

(4) In the event of the council of any county passing a by-law under the last preceding subsection, the councils of the local municipalities bordering upon such boundary line shall erect and maintain all necessary bridges over rivers, streams, lakes and ponds of a less width than 80 feet forming or crossing such boundary line. 55 V. c. 42, s. 535 (4); 60 V. c. 15, *Sched.* C (95).

The principle of this section was first embodied in the Act by 52 V. c. 36, s. 28 *part* (1889), which, however, was very badly worded and was corrected in several particulars in 1897 by 60 V. c. 15, Sched. C (95) and in the revision of that year.

(a) *Per* ARMOUR, C. J., *Re Cummings and County of Carleton*, 26 O. R. 1 (1894), at p. 5. (b) 19 U.C.R. 450 (1860)

(c) 15 O.R. 446; 15 A.R. 617 (1888). See also *Re McBride and County of York*, 31 U.C.R. 355 (1871) where there was a deviation opposite one lot only.

(a) "*The Beach, Shore and River Bed Protection Act*," (R. S. O. c. 270), s. 11, provides that :—

Secs. 617-620, (1). Note (a).

"11.—(1) No person shall remove any stones, gravel, earth or sand from the bed of any river, stream or creek running between two municipalities, or over which bridges have been erected, or through or under which drainage pipes or water mains have been laid by or at the instance of a municipal corporation, so as to endanger the safety of or injure such bridges, pipes or mains, without the consent of the council of the municipality or municipalities within whose limits the stones, gravel, earth or sand are to be taken.

Removal of stones, etc., from beds of certain streams prohibited.

(2) Any person guilty of a contravention of this section shall, for every such offence, be liable on summary conviction thereof to a penalty of not less than $10, nor more than $25, or to imprisonment for a period not exceeding three months, or to both fine or imprisonment to the said amount and for the said term; and if a fine is imposed and is not paid forthwith, the person convicted shall be imprisoned for a period not exceeding three months, unless the said fine and costs are sooner paid."

Penalty.

618. Wherever there is a dispute between a county council and the council of any other municipality as to whether the duty or liability to build or maintain a bridge over any river, stream, lake or pond belongs to or rests upon such county council or such other council, either party to the dispute may bring and prosecute an action in the High Court of Justice for Ontario against the other to try the question in dispute, or the said Court may, upon the application of either party, compel by mandamus the performance of such duty or liability by the party upon or to whom such duty or liability rests or belongs. 55 V. c. 42, s. 535*a*; 60 V. c. 15, *Sched.* C (96).

Proceedings, where liability of municipality to erect bridges disputed.

Taken from 53 V. c. 50, s. 40 (1890), which, however, did not contain the words "lake" or "pond." These were inserted by 60 V. c. 15, Sched. C (96) (1897).

Driftwood in Rivers and Streams.

619.—(1) Where a river, or a stream forms a boundary line between two or more municipalities within a county, it shall be the duty of the council of the county to keep such river or stream free from all accumulation of driftwood or fallen timber now or hereafter accumulated.

When county councils to keep river or stream free of driftwood.

(2) In the case of any river or stream which forms a boundary line between two or more counties, or a county, city, or separated town, it shall be the duty of the councils of the county or counties, city and separated town respectively to keep such river or stream free from all accumulation of drifted or fallen timber now or hereafter accumulated; and in case the councils fail to agree as to the respective portions of the expense to be borne by the municipalities interested, the same shall be decided by arbitration under the provisions of this Act, and the award made shall be final. 55 V. c. 42, s. 535*b*.

When councils of counties, cities, or separated town to keep stream free from driftwood.

Taken from 51 V. c. 28, s. 31. See s. 563 and the notes thereto.

Maintaining Township Roads.

620.—(1) All township boundary lines not assumed by the county council shall be opened, maintained and improved by the township councils, except where it is necessary to erect

Boundary lines not assumed by county councils.

Secs. 620 (1)-(5), 621.

Note (a).

or maintain bridges over rivers, streams, lakes or ponds forming or crossing boundary lines between two municipalities. 55 V. c. 42, s. 536 (1); 60 V. c. 15, *Sched.* C (97).

First clause taken from 29-30 V. c. 51, s. 341 (1) (1866); second clause from R. S. O. (1877), c. 174, s. 496 part, the words "streams, lakes or ponds" having been inserted by 60 V. c. 15, Sched. C (97) (1897).

Boundary lines not assumed by county councils.

(a) The effect of this section with section 617 (1) and 622 is that:—

> "The duty to maintain the boundary line roads in the case of townships and counties, where not assumed by the county council, and the joint jurisdiction over them, is cast upon the adjoining townships, whether in the same or adjoining counties, while the duty to erect and maintain the bridges in the course of such roads is devolved upon the council of the county,—or the councils of the two counties—as the case may be." (*a*)

Road allowances on township boundary lines.

(2) In the case of any township boundary line, or any portion of such line on which a road allowance has not been reserved, in the original survey thereof, the council of any one of the municipalities bordering on such boundary line, may pass a by-law for acquiring within such municipality either by purchase or expropriation the land necessary for one-half of the required road allowance.

(*a*) Within four days after the passing of the by-law the clerk of the municipality shall send a copy of the by-law by registered letter to the clerk of the adjoining municipality.

Sections 623 and 624 to apply.

(3) Sections 623 and 624 of this Act shall apply to proceedings taken under the provisions of this section.

Arbitration.

(4) If the matters in dispute between the two municipalities are referred to arbitration, the arbitrators shall have power to decide upon the proportion of the cost of the land which will be required upon each side of such boundary line for a road allowance which shall be borne by each municipality, and shall also have power to decide whether a road allowance shall be laid out or not.

When arbitrators decide against laying out allowance.

(5) If the arbitrators decide against the laying out of a road allowance upon such boundary line or any portion of such line, then no further proceedings shall be taken for a period of two years, or such further time as the arbitrators may determine upon, but not exceeding in all four years. 55 V. c. 42, s. 536 (2-5).

Taken from 53 V. c. 50, s. 31 (1890).

Township boundaries, being also county boundaries.

621. Township boundary lines forming also county boundary lines, and not assumed or maintained by the respective counties interested, shall be maintained by the respective townships bordering on the same, except where it is the duty of the county council, under the provisions of this Act, to

(*a*) *Per* PATTERSON, J. A., in *County of Victoria* v. *County of Peterborough*, 15 A. R. 617 (1888), at p. 626. See also *Maw* v. *Townships of King and Albion*, 8 A. R. 248 (1883).

erect or maintain bridges over rivers, streams ponds or lakes, forming or crossing boundary lines between two municipalities. 55 V. c. 42, s. 537; 60 V. c. 15, *Sched.* C (97, 98).

Secs. 621-623. Notes (a)-(b)

First clause taken from 29-30 V. c. 51, s. 341 (7) (1866); second clause from R. S. O. (1877), c. 174, s. 497, *part*—the words "the duty of the county council under the provisions of this Act" (lines 4, 5) having been substituted for the word "necessary" by 60 V. c. 65, Sched. C. (98) and the words "streams, lakes or ponds" having been inserted by 60 V. c. 15, Sched. C. (97) (1897).

(a) "**Except where it is the duty.**"—*i. e.*, in all cases in which no by-law has been passed under s. 617 (3).

Roads under Joint Jurisdiction.

622. In case a road lies wholly or partly between a county, city, town, township or village and an adjoining county or counties, city, town, township or village, the councils of the municipalities between which the road lies shall have joint jurisdiction over the same, although the road may so deviate as in some places to be wholly or in part within one or other of them.

Joint jurisdiction over certain roads.

Taken from 29-30 V. c. 51, s. 329 (1866), which applied to both roads and bridges. The application of the section was restricted to roads alone by R. S. O. (1877), c. 174, s. 498.

(a) "**Joint jurisdiction.**" This section applies whether the road (if an original road allowance) has been opened or not (*a*); and it involves a joint liability to repair any road which has been opened (*b*) and to contribute towards any damage sustained by reason of its non-repair (*c*), unless by-laws have been passed and registered, as required by s. 625.

The dividing line between a village and a township was the middle of an original road allowance; but each municipality had passed resolutions providing that the whole road should be kept in repair by the village. *Held*, that for the purpose of repairing and widening the road, the village had the right to enter on the portion of the road within the township limits and to take sand therefrom.

See as to the jurisdiction of county councils over county boundary lines, note (**b**) to s. 614, *supra*.

(b) "**Although the road may . . deviate.**" See note (**c**) to s. 617.

(*a*) The word "road" in this section shall not include a bridge over a river, stream, lake or pond, forming or crossing the boundary line between two municipalities other than counties, which bridge it is the duty of the county council to erect and maintain. 55 V. c. 42, s. 538; c. 43, s. 50; 60 V. c. 15, *Sched.* C (99).

Certain bridges not within purview of section.

Until 1877, s. 622 applied to both roads and bridges; but in R. S. O. (1877), s. 174, s. 498, this sub-section appears as at present, except that "streams, ponds or lakes" and all the words after "municipalities" (line 4) are omitted. Of the latter, the words "in the county" were added by 45 V. c. 23, s. 13 (1882), the rest by 55 V. c. 42, s. 538 (1892): "streams, ponds or lakes" were inserted by 60 V. c. 15, Sched. C (99) (1897).

623. No by-law of the council of any one of such municipalities with respect to such last mentioned road or bridge, shall have any force until a by-law has been passed in similar

Both councils must concur in by-laws respecting them.

(*a*) *Re County of Waterloo and County of Brant*, 23 U.C.R. 537 (1864).
(*b*) See ss. 620, 625 (3). (*c*) S. 610.
(*d*) *Township of Stamford* v. *Village of Niagara Falls*, 34 C.L.J.N.S. 785; 18 C.L.T. 404 (1898). See *post*, s. 640 (10).

Sec. 623-626.

By-law of both councils necessary.

terms, as nearly as may be, by the other council or councils having joint jurisdiction in the premises. 55 V. c. 42, s. 539.

Taken from 22 V. c. 99, s. 315 (1858), which was applicable where only two municipalities were interested. The words were extended to other cases by 33 V. c. 26, s. 9 (1869).

Arbitration if they do not concur.

624. In case the other council or councils, for six months after notice of the by-law, omit to pass a by-law or by-laws in similar terms, the duty and liabilities of each municipality in respect to the road or bridge shall be referred to arbitration under the provisions of this Act. 55 V. c. 42, s. 540.

See reference under s. 623. The sections containing this provision were s. 316 of 22 V. c. 99 (1858) and s. 10 of 33 V. c. 26 (1869).

Agreements between adjoining townships as to maintenance of boundary roads.

625. (1) The councils of adjoining townships may enter into an agreement for the maintenance and repair of any road forming the boundary between such townships, whereby each of such townships may undertake, for a term of years, not to exceed ten years, to maintain and keep in repair any portion of such road for its whole width, and to indemnify and save harmless the other township from any loss or damage arising from want of repair of such portion.

Agreement may be registered.

(2) Any agreement so made, shall when confirmed by by-law of the council of each of the contracting townships, be registered in the registry office in the manner provided by sub-section 1 of section 633 of this Act.

Effect of agreement.

(3) After the registration of the by-laws confirming such agreement, each of the contracting corporations shall have sole jurisdiction over that portion of the road which it has undertaken to maintain and keep in repair, and shall be liable for all damages incurred by reason of neglect to maintain and keep the same in repair, in the same manner and to the same extent as in the case of any road lying wholly within and under the jurisdiction of such township; and the other contracting corporations shall be relieved from all liability in respect to the maintenance and repair of such portion.

(4) Any such agreement heretofore made and entered into shall, after confirmation thereof, and registration of the confirming by-laws as aforesaid, be legal, valid and binding upon each of the said township municipalities, and the said townships shall severally have jurisdiction over and be liable for the maintenance and repair of portions of any road which is the subject of such agreement, according to the terms and tenor thereof. 60 V. c. 45, s. 56.

Transfer to County Councils of former powers of Justices in Sessions.

Certain powers of justices in sessions transferred to county councils.

626. All powers, duties and liabilities which at any time before the 1st day of January, 1850, belonged to the magistrates in Quarter Sessions, with respect to any particular road or bridge in a county, and which are not conferred or imposed upon any other municipal corporation, shall belong to the council of the county, or in case the road or bridge lies in two

or more counties, to the councils of such counties; and except as by this Act otherwise provided, and in addition to the provisions thereof, the neglect and disobedience of any regulations or directions made by such council or councils shall subject the offenders to the same penalties and other consequences as the neglect or disobedience of the like regulations of the magistrates would have subjected them to. 55 V. c. 42, s. 541.

Transfer to county councils of former powers of quarter sessions.

Taken from 22 V. c. 99, s. 327 (1858), the words "except as by this Act otherwise provided, and in addition to the provisions thereof" having been inserted in the Revision of 1897. *Cf.* 12 V. c. 81, s. 190 (1849).

(a) "The section was, it is presumed, inserted *ex abundanti cautela* and not because there was any case or property upon which it could operate" (*a*). It is no longer of any practical value.

Roads vested in Her Majesty.

627. No council shall interfere with any public road or bridge vested as a Provincial work in Her Majesty, or in any public Department or Board: and the Lieutenant-Governor shall by Order-in-Council have the same powers as to such road and bridge as are by this Act conferred on municipal councils with respect to other roads and bridges; but the Lieutenant-Governor may, by proclamation, declare any public road or bridge under the control of the Commissioner of Public Works, to be no longer under his control, and in that case, after a day named in the proclamation, the road or bridge shall cease to be under the control of the Commissioner, and no tolls shall be thereafter levied thereon by him, and the road or bridge shall thenceforth be controlled and kept in repair by the council of the municipality whose duty it is to repair the same. 55 V. c. 42, s. 542; 60 V. c. 15, *Sched.* C (100).

Roads, etc., being provincial works vested in Her Majesty, etc., not to be interfered with.

Proclamation by Lieutenant Governor as to roads, etc., under control of Commissioner of Public Works.

Taken, with some verbal alterations, from 22 V. c. 99, s. 303 (1858). The last words "whose duty it is to repair the same," were added by 60 V. c. 15, Sched. C (100) (1897). *Cf.* 13-14 V. c. 15, s. 2 (1850).

(a) "**Vested.**" The word is not here used in the sense of "vested in estate": it apparently means "under the control of." Accordingly, a road originally constructed as a colonization road, but upon which the statute labour had been performed for 10 or 15 years by the municipality in which it was situate was held not to be within this section (*b*).

(b) "**May by proclamation.**" Such a proclamation was presumed in an action to recover damages for non-repair where the local municipality was shown to have repaired the road for twelve years prior to the occurrence of the accident (*c*).

(c) "**By the council of the municipality.**" Where under a similar provision in "*The Public Works Act*, (*d*) the Minister of Public Works had relinquished a portion of a public road, the control over which had consequently devolved upon the township corporation within whose limits it was situate, it was held that the township could not authorize another township corporation to assume control of and keep in repair such portion of the road, that the latter township could not assume the road and lawfully collect tolls thereon, and that by-laws

(*a*) Per CURIAM in *Harrold* v. *County of Simcoe*, 16 C.P. 43 (1865), at p. 51.

(*b*) *Re Knight and Townships of Medora and Wood*, 11 O.R. 138; 14 A.R. 112 (1887).

(*c*) *Irwin* v. *Village of Bradford*, 22 C.P. 18, 421 (1871-2).

(*d*) R.S. Ca. c. 36, ss. 15, 16: originally 31 V. c. 12, ss. 52-51, Ca.

Secs. 627-629. Notes (c); (a).

passed for such purposes were invalid (*a*). In the case of a bridge which two municipalities are liable to maintain under s. 617, the obligation to control and keep in repair would devolve upon both jointly. (*b*)

Bridges, etc., vested in Her Majesty.

It would seem that, even when there is no statutory provision similar to the last clause of the above section, a municipality may become responsible for the repair of a bridge by reason of acts done by their officers, though without the authority of a by-law of the corporation (*c*).

Roads on Dominion Property.

628. Without the consent of the Government of the Dominion of Canada, no municipal council shall pass a by-law:—

Ordnance roads, lands, etc.,

1. For stopping up or altering the direction or alignment of any street, lane or thoroughfare made or laid out by Her Majesty's Ordnance, or the Principal Secretary of State in whom the Ordnance Estates became vested under the Statute of the Province of Canada passed in the 19th year of Her Majesty's reign, chapter 45, or the Consolidated Statute of Canada, chapter 24, respecting the Ordnance and Admiralty lands, or by the Dominion of Canada; or

Dominion lands,

2. For opening any such communication through any lands held by the Dominion of Canada; or

Bridges, etc.

3. Interfering with any bridge, wharf, dock, quay or other work vested in the Dominion of Canada; or

Military lands,

4. Interfering with any land reserved for military purposes, or with the integrity of the public defences,—

Not to be interfered with without consent of Dominion.

and a by-law for any of the purposes aforesaid shall be void unless it recites such consent. 55 V. c. 42, s. 543.

Taken from 36 V. c. 48, s. 421 (1873). *Cf.* practically the same provision—which applied only to the Department of Her Majesty's Ordnance—in 12 V. c. 81, ss. 193, 194, (1849), and to that Department and H. M. Principal Secretary of State therefor, in 22 V. c. 99, s. 303 (1858); 29-30 V. c. 51, s. 309 (1866).

(a) As to the streets, etc. referred to in clause 1, see 7 V. c. 11 (1843); 19 V. c. 45 (1856); C. S. Ca. c. 24 (and the schedules thereto), as amended by 23 V. c. 22 (1860); "*The B. N. A. Act, 1867*," s. 108 and Schedule 3 (9); 31 V. c. 42, s. 35 (1868), and R. S. Ca. c. 55.

Roads necessary for Ingress and Egress.

Council not to close road required for ingress and egress.

629.—(1) No municipal council shall close up any public road or highway, whether an original allowance or a road opened by the Quarter Sessions or by any municipal council, or otherwise legally established, whereby any person will be excluded from ingress and egress to and from his lands or place of residence over such road, unless the council, in addition to compensation, also provides for the use of such person some other convenient road or way of access to the said lands or residence

Arbitration.

(2) If the compensation offered by the council, to the owner of the lands, or the road provided for the owner in lieu of the

(*a*) *Smith* v. *Township of Ancaster*, 27 O.R. 276 (1896).

(*b*) *Harrold* v. *County of Simcoe*, 18 C.P. 9 (1868).

(*c*) *City of Victoria* v. *Patterson*; *City of Victoria* v. *Lang* (1899), A. C. 615, affirming *S. C.*, 5 B. C. R. 628 (1897).

Sec. 629 (2).

Notes (a)-(d).

Roads necessary for ingress and egress not to be closed.

original road, as a means of ingress and egress, is not mutually agreed upon between the council and the owner or owners (as the case may be) the matters in dispute shall be referred to arbitration, under the provisions of this Act respecting arbitrations 55 V. c. 42, s. 544.

There was originally no alternative. It was provided that such a road should not be closed, but should "remain open for the use of the person who requires the same." See 20 V. c. 69, s. 7 (1857) and 22 V. c. 99, s. 305 (1858); 29-30 V. c. 51, s. 320 (1866), the two latter of which contain the first five lines of the present section practically *verbatim*. The proviso to subsection 1 was added by 36 V. c. 48, s. 422 (1873), and subs. 2 by 49 V. c. 37, s. 15 (1886).

(a) "No council shall." This section limits the general power conferred by s. 637 (1) to pass by-laws for stopping up any road. In case its requirements are not complied with, the proper remedy is by application to quash the by-law closing the road (*a*). Such an application may be made at any time after the date on which the by-law is to take effect; it is not necessary to wait until the road is actually—*i. e.*, physically—closed (*b*).

(b) "Whereby any person will be excluded from ingress and egress to and from his lands . . over such roads."

Before 1873 (*c*), no council could close a road of this class, the provision being that such a road should "remain open for the use of the person who requires the same." (*d*) This made it practically impossible to close any road; since, as HAGARTY, C.J. pointed out in *Moore* v. *Township of Esquesing* (*e*), "if a road be stopped, most certainly all persons must be excluded from ingress and egress to and from their lands over such road. There can be no ingress or egress over a stopped up road."

In 1873 the section was amended (*c*) so that upon giving compensation, and providing other convenient means of ingress and egress, any road might be stopped up; and it has been held that it now applies only to prevent a council from completely taking away (even with compensation) a man's sole or only convenient means of access to his lands.

If some other convenient road or way of access is already in existence, it is not necessary for the council to "provide" a new one (*f*); but it lies upon the corporation to show that the other road or way satisfies the requirements of the section (*g*).

The hardship and injustice sought to be avoided by the Judges in *Moore* v. *Township of Esquesing* (*h*) has been obviated by the provision for compensation since inserted in the Act (*i*).

(c) "Unless the council provides some other convenient road or way of access."

Unless some other road is provided.

Such provision need not be made in the by-law for closing the road; but it must be made before it is actually closed (*j*).

(d) "In addition to compensation."

The right to compensation under this section arises only when the lands are injuriously affected by the closing of the road (*k*). As to the circumstances

(*a*) *Vandecar* v. *Township of East Oxford*, 3 A. R. 131 (1878).

(*b*) *Re Laplante and Town of Peterborough*, 5 O. R. 634 (1884.)

(*c*) See note as to sources of section.

(*d*) See *Falle* v. *Town of Tilsonburg*, 23 C. P. 167 (1873), decided upon the section prior to the amendment of that year.

(*e*) 21 C. P. 277 (1871) at p. 285.

(*f*) *Re Thurston and Township of Verulam*, 25 C. P. 593 (1876); *Re McArthur and Township of Southwold*, 3 A. R. 295 (1878): *Re Adams and Township of East Whitby*, 2 O. R. 473 (1882): *White* v. *Rural Municipality of Louise*, 7 Man. Rep. 231 (1891).

(*g*) *Re Adams and Township of East Whitby*, 2 O. R. 473 (1882).

(*h*) Supra. See also *per* PATTERSON, J. A., in *Re McArthur and Township of Southwold*, 3 A. R. 295 (1878), at p. 308.

(*i*) See s. 437.

(*j*) *Re Thurston and Township of Verulam*, 25 C. P. 593 (1876): *Re Adams and Township of East Whitby*, 2 O. R. 473 (1882).

(*k*) See *per* BURTON, J. A., in *Re McArthur and Township of Southwold*, 3 A.R. 295 (1878), at p. 299.

Secs. 629-631.
Notes (d), (a), (b), (c).

under which it may be recovered, see s. 437 note (d). It need not be provided for in the by-law for closing the road; but may be made a matter for subsequent agreement or arbitration (a).

Width of Roads.

Width of roads.

630. No municipal council, except the council of a city or town, shall lay out any road or street more than 100 nor less than 66 feet in width, except where an existing road or street is widened, or unless with the permission of the council of the county in which the municipality is situate; but any road, when altered, may be of the same width as formerly. 55 V. c. 42, s. 545, *part.*

Taken from 36 V. c. 48, s. 423, *part* (1873). *Cf.* 12 V. c. 81, s. 139 (1849)—which fixed the maximum and minimum width of any new road at 90 ft. and 40 ft.—and 22 V. c. 99, s. 307 (1858) and 29-30 V. c. 51, s. 322 (1866), which provided that no road or lane should be more than 90 ft. or less than 30 ft. in width.

(a) This section imposes a restriction upon the general authority to open roads, conferred by s. 637 (1); and the words "lay out" here used seem to be synonomous with the word "open" in that section.

Permission of county councils necessary.

(b) **"With the permission of the council of the county."**

In *Re Ostrom and Township of Sidney* (b), ROSE, J. held that this permission is not a condition precedent to the passing of the by-law of the local municipality for opening and establishing the road, but only of its "laying out," which he considered to mean "either the actual work on the ground or the laying of it out on a plan for registration; . . [which] . . could not well be done in most cases until after the passing of the by-law under which the laying out of the road is authorized."

(2) No highway or street of a less width than 66 feet, shall be laid out by any owner of land, without the consent of the council of the municipality, by a three-fourths vote of the members thereof. 55 V. c. 42, s. 545, *part*; 60 V. c. 45, s. 57.

Taken from 36 V. c. 48, s. 423, *part* (1873), except the words "by a three-fourths vote of the members thereof," which were added by 60 V. c. 45, s. 57 (1897).

(c) Section 110 of "*The Land Titles Act*," (R.S.O. c. 138) provides that:—

> **110.** "No map or plan shall be filed in the office of the Master of Titles at Toronto or in office of any Local Master of Titles upon which a road, street or highway less than 66 feet wide is laid out unless and until the assent of the proper municipal council is registered therewith where such assent is by law necessary."

By-laws prescribing width of streets, etc. on which dwellings may be erected or occupied, etc.

631.—(1) The municipal council of any city having a population of 50,000 or more may pass a general by-law prescribing the minimum width of streets, lanes, alleys or other public places within the municipality wherein dwelling houses may be erected or occupied, and the minimum area of vacant land to be attached to and used with any dwelling house hereafter to be erected, as the courtyard or curtilage thereof, and the mode of erection of buildings occupied or intended to be occupied as dwelling houses within the municipality or within any

(a) *Re Thurston and Township of Verulam*, 25 C.P. 593 (1876): *Re McArthur and Township of Southwold*, 3 A.R. 295 (1878): *Re Vashon and Township of East Hawkesbury*, 30 U.C.R. 194 (1879): *White* v. *Rural Municipality of Louise*, 7 Man. Rep. 231 (1891).

(b) 15 O.R. 43 (1888). See also *per* ROBINSON, C.J., in *Dennis* v. *Hughes*, 8 U.C.R. 444 (1851), at p. 451.

area or areas thereof to be defined by the said by-law or by any other by-law which may from time to time alter or amend or repeal such by-law.

Secs. 631-632, Note (a).

(2) Every such by-law before the final passing thereof shall be published in full twice in each week for four consecutive weeks in two newspapers published in the city with a notice appended thereto, stating the date when the council proposes to take into consideration the proposed by-law. 55 V. c, 42. s. 545*a*.

By-laws to be published before its final passing.

Taken from 53 V. c. 50, s. 24 (1890). *Cf.* "*The Public Health Act, 1875,*" (Imp. Stat. 38-39 V. c. 51), s. 157 (3).

Notices of By-laws affecting Public Roads.

632.—(1) No municipal council shall pass a by-law for stopping up, altering, widening, diverting, leasing or selling any original allowance for road, or for establishing, opening, stopping up, altering, widening, diverting, leasing or selling any other public highway, road, street or lane;

Conditions precedent to passing by-laws intended to affect public roads.

Taken from 22 V. c. 99, s. 308 (1858)—the word "leasing" in line 2 having been inserted by 60 V. c. 45, s. 29 (1897), and in line 4 by the Revisers of 1897, under the authority of 60 V. c. 3, s. 3 (1897). *Cf.* 12 V. c. 81, s. 192 (1849) which applied only to "stopping up, altering, widening and diverting" a "public highway, road, street or lane." The word "opening" was inserted in 1850 by 13-14 V. c. 64, Sched. A (31); and by 20 V. c. 69, s. 8 (1857) provision was made for the exercise of these powers in respect of original road allowances.

(*a*) Until written or printed notices of the intended by-law have been previously posted up for one month in six of the most public places in the immediate neighbourhood of such original allowance for road, street or other highway, road, street or lane.

Notices to be posted up,

Taken from 22 V. c. 99, s. 308 (1358). *Cf.* 12 V. c. 81, s. 192 (1849); 20 V. c. 69, s. 8 (1857), and see the note as to the sources of the preceding sub-section.

(*b*) And published weekly for at least four successive weeks in some newspaper published in the municipality; or if there be no such newspaper, then in a newspaper published in some neighbouring municipality; and, where no newspaper is published in the municipality or in a neighbouring municipality, then in the county town, if any such there be.

And published in a newspaper.

The first two clauses are taken from 22 V. c. 99, s. 308 (1858). By 36 V. c. 48, s. 424 (1873), publication in the county town was made necessary in every case; but the provision was restricted by 55 V. c. 43, s. 51 (1892) to the cases to which it now applies.

(*c*) Nor until the council has heard, in person or by counsel or solicitor, any one whose land may be prejudicially affected thereby, and who petitions to be so heard. 55 V. c. 42, s. 546 (1-3); c. 43, s. 51; 60 V. c. 45, s. 20; c. 3, s. 3.

Persons prejudicially affected to be heard.

Taken from 22 V. c. 99, s. 308 (1858). *Cf.* 12 V. c. 81, s. 192 (1849).

(a) **"No council shall."** This sub-section restricts the powers conferred by ss. 637 (1), 640(1), 660 (2), 661, 662; and the strict observance of its provisions is essential to the validity of a by-law passed under any one of these sections (*a*).

In the case of the sale by a township of an original road allowance, s. 660 (2b) further requires that the by-law be confirmed by a by-law of the county council. Thus where it was not shewn when the notices required by clause (a) had been posted up, nor what they contained, and it appeared that the advertisement required by clause (b) had been published for three weeks

(*a*) See cases collected in foot note (h), *ante*, p. 46, and in notes (f) (g) and (h) to to s. 338.

Sec. 632 (1).

Note (a).

By-laws for opening, stopping up, altering, etc., public roads.

only, the by-law was held to be invalid (*a*). So where it appeared that a month could not have elapsed between the notice and the passing of the by-law (*b*): where the notice was given on March 28th for April 28th (*c*): on July 29th for August 29th (*d*): where it did not state the day on which the council intended to consider the by-law (*e*); and where it was given as for a money by-law (*f*). But where the notice described a road intended to cross not only the four lots ultimately mentioned in the by-law, but also five others, the variance was held not to be fatal (*g*). An obvious clerical error in the notice is immaterial (*h*).

On a motion to quash a by-law affecting a public road, the Court, until the contrary is shewn, will presume that the council have acted regularly (*i*); but municipal corporations should nevertheless be careful to preserve affidavits proving that the notices required by clauses (a) and (b) have been duly posted and published (*j*). "Although, when a by-law is assailed and sought to be quashed, the Court will not presume that the proper notices have not been given—yet when it is advanced as a valid by-law, the existence of the facts without which it could not be lawful must be averred and proved." (*k*) So, in *Winter* v. *Keown* (*l*), where a plaintiff in ejectment relied on a by-law reciting the opening of a new road and the conveyance of the old road allowance to himself, it was held that he must prove that the statutable notices had been given. But upon an application to quash a by-law, the onus of showing that the conditions have not been complied with is upon the person who impugns its validity. Thus the by-law was sustained where the applicant swore only that he had tried to ascertain whether notices had been posted up and could not find that they were (*m*); and similarly where the only evidence of the invalidity of the by-law was an affidavit that the witness had no recollection of having seen any notices (*n*).

In some cases in this Province, an applicant who had personally received notice has not been allowed to attack the by-law on the ground that sufficient notice had not been given. Thus the Court refused to interfere, though it was proved that the whole number of notices required by clause (a) had not been put up, where the applicant had been aware that the closing of the road was in contemplation, and had expressed his intention to take no part in the matter one way or the other (*o*): so where the applicant had seen one or more notices, and had signified an intention to oppose the by-law though he failed to appear at the meeting, proof that all six notices had been duly posted was considered to be unnecessary (*p*); and where the applicant knew of the contemplated by-law before it was passed, had appealed to the Court of Revision against his assessment under it, and had given notice of a further appeal to the County Judge (*q*).

(*a*) *Wanamaker* v. *Green*, 10 O.R. 457 (1886).

(*b*) *Lafferty* v. *Stock*, 3 C.P. 1 (1852).

(*c*) *Re Laplante and Town of Peterborough*, 5 O.R. 634 (1884).

(*d*) *Re Ostrom and Township of Sidney*, 15 O.R. 43; 15 A.R. 372 (1888).

(*e*) *Re Birdsall and Township of Asphodel*, 45 U.C.R. 149 (1879); *Re Campbell and Village of Southampton*, 34 C.L.J.N.S. 197; 18 C. L. J. T. 119 (1898).

(*f*) *Re Nichol and Township of Asphodel*, 41 U.C.R. 577 (1877).

(*g*) *Re Ostrom and Township of Sidney*, 15 O.R. 43 (1888); following *Re Baker and Township of Saltfleet*, 31 U.C.R. 386 (1871).

(*h*) *Re Chambers and Township of Burford*, 25 O.R. 276 (1895).

(*i*) *Per* ROBINSON, C.J., in *Fisher* v. *Township of Vaughan*, 10 U.C.R. 492 (1853), at p. 497.

(*j*) *Re Lafferty and Counties of Wentworth & Halton*, 8 U.C.R. 232 (1850).

(*k*) *Per* MACAULAY, C.J., in *Lafferty* v. *Stock*, 3 C.P. 1 (1852), at p. 19.

(*l*) 22 U.C.R. 341 (1861). *Cf. Wanamaker* v. *Green*, 10 O.R. 457 (1886).

(*m*) *Re Lafferty and Counties of Wentworth & Halton*, supra.

(*n*) *Fisher* v. *Township of Vaughan*, 10 U.C.R. 492 (1853). See also *Re Choate and Township of Hope*, 19 U.C.R. 424 (1858).

(*o*) *Re Janson and Township of Reach*, 19 U.C.R. 591 (1860).

(*p*) *Parker* v. *United Townships of Pittsburgh and Howe Island*, 8 C.P. 517 (1858). See also *Re Drope and Township of Hamilton*, 25 U.C.R. 363 (1866): *Vashon and Township of East Hawkesbury*, 30 C.P. 194 (1879), *per* OSLER, J., at p. 202.

(*q*) *Re White and Township of Sandwich East*, 1 O.R. 530 (1882): and, as to publication under clause (b), *Re Galterno and Township of Rochester*, 46 U.C.R. 792 (1881).

But it was held in Manitoba that although the applicant had actually attended the meeting at which the by-law was passed, and had taken part in the proceedings, he was not thereby estopped from setting up the omission of the council to give due notice; since "these provisions are for the protection of the public generally, and not for that of the applicant alone" (a).

Secs. 632, 633 (1), (2).

Notes (a), (b).

(b) "**For two successive weeks.**" The number of insertions is not prescribed, but at least one publication in each of four successive weeks is necessary. Consequently where the only paper published in the municipality appears at greater intervals than a week it cannot be made use of (b). Whether the notice is published weekly or oftener, the full period of four weeks must be allowed to elapsed between the first insertion and the consideration of the by-law (c).

Publication notices of by-laws affecting public roads.

(2) In the case of road allowances reserved under original surveys along the bank of any river or stream or the shore of any lake or other water any such by-law shall not have force or effect until after the approval thereof by the Lieutenant-Governor in Council. 59 V. c. 51, s. 24.

Approval by Lieutenant-Governor of by-laws affecting certain highways.

Passed in 1896. See reference.

(3) The clerk shall give such notices, at the request of the applicant for the by-law, and upon payment of the reasonable expenses attendant on such notices. 55 V. c. 42, s. 546 (4).

Clerk to give the notices on payment of expenses.

Taken from 22 V. c. 99, s. 308 (1858).

(4) In case the council of a township or village, and the owners of or persons interested in lands required to be taken possession of for establishing a public road, mutually agree as to the price of or compensation to be paid for such lands, the council may accept a deed or deeds for the same, which shall be registered as provided by section 633 of this Act, and in such case the publication of the by-law required by clause (b) of sub-section 1 of this section shall be dispensed with. 55 V. c. 42, s. 546 (5); 60 V. c. 15, *Sched.* C. (101).

Where price settled by agreement.

Taken from 50 V. c. 29, s. 37 (1897), with some verbal amendments made by 60 V. c. 15 Sched. C. (101) (1897).

Registration of Road By-Laws.

633.—(1) Every by-law passed since the 29th day of March, 1873, or hereafter to be passed by any municipal council under the authority of which any street, road or highway has been, or is, opened upon any private property, shall, before the same becomes effectual in law, be duly registered in the registry office of the registry division in which the land is situate; and for the purpose of registration a duplicate original, or copy of the by-law shall be made out, certified under the hand of the clerk and the seal of the municipality, and shall be registered without any further proof. 55 V. c. 42, s. 547; 62 V. (2nd Sess.), c. 16, s. 8.

By-laws under which roads are opened on private property to be registered.

(2) Every by-law passed before the said day, and every order and resolution of the Quarter or General Sessions, passed

As to by-laws passed before 29th March, 1873.

(a) *White* v. *Rural Municipality of Louise*, 7 Man. Rep. 231 (1891); and see *per* HAGARTY, C. J., in *Re Birdsall* v. *Township of Asphodel*, 45 U. C. R. 149 (1880), at p. 153.

(b) *Re Chambers and Township of Burford*, 25 O. R. 276 (1894).

(c) See s. 338, note (f).

Secs. 633 (3)-635.

Notes (a), (b).

Registration of by-laws affecting public roads.

before said day, under the authority of which any street, road or highway has already been opened upon any private property, may, at the election of any person interested or of the municipality, and at the cost and charges of such person or municipality, be also duly registered upon the production to the registrar of a duly certified copy of the by-law under the hand of the clerk of the municipality and the seal of the municipality, or by a duly certified copy of such order or resolution of the Quarter or General Sessions, given under the hand of the Clerk of the Peace, as the case may be. 55 V. c. 42, s. 547; 60 V. c. 15, *Sched.* C. (102); 62 V. (2nd Session), c. 16, s. 8. *See also* R. S. O. (1887), c. 114, s. 75.

Taken from s. 61 of "*The Registration of Titles Act*," 29 V. c. 24 (1865), the opening words of which are:—"All by-laws hereafter to be passed." It was introduced in this form into "*The Con. Mun. Act of 1873*" (36 V. c. 48) s. 445—whence the date "March 29th, 1873." The words "or of the municipality" in lines 5 and 6 of subs. 2 were inserted by 60 V. c. 15, Sched. C. (102) (1897), and the words "or copy" in line 8 of subs. 1 by 62 V. (2), c. 16, s. 8 (1899). The section—without the first mentioned amendment and with other verbal differences—is also to be found in "*The Registry Act*," (R. S. O. c. 136, s. 86 (1), (2).

(a) "**Since the 29th day of March, 1873.**" The subsection does not apply to by-laws passed before that date (*a*).

(b) "**Duly registered.**" This registration is not merely for the purpose of notice under the registry laws; but is essential to make the by-law effectual in law; and therefore, where a by-law providing for the opening of a road had been deposited with the proper registrar and the necessary registration fee paid, but the by-law was never in fact entered or registered, because it did not conform and refer to the registered plans—as required by R. S. O. c. 136, s. 103 (3) it was quashed (*b*).

Disputes respecting Roads—Administration of Oaths.

Power to administer oaths in certain cases.

634. In case of disputes in any municipality concerning roads, allowances for roads, side lines, boundaries or concessions within the cognizance of, and in the course of investigation before a municipal council, the head of the council may administer an oath or affirmation to any party or witness examined upon the matters in dispute. 55 V. c. 42, s. 548.

Mistakes in Opening Road Allowances.

Municipality and officers thereof protected from actions arising from mistakes in opening road allowances.

635.—(1) In case any municipality within whose jurisdiction an original road, or allowance for road is situate, open that which they take and believe to be the true site of the same, and in case the municipality, their officers and servants, act in good faith, and take all reasonable means to inform themselves of the correctness of their line and work; and in case it appears that the road being opened, although not or not altogether upon the true line of the original road, or allowance for road, is nevertheless, from any difficulty in discovering correctly the true line, as near to, or as nearly upon, the true line as under the circumstances could then be ascertained, no action shall be brought by any person against the municipality, their officers or servants, for or in respect of

(*a*) *Beveridge* v. *Creelman*, 42 U. C. R. 29 (1877).

(*b*) *Re Henderson and City of Toronto*, 30 O. R. 669 (1898).

the opening of such road, or allowance for road, or for any other act or matter whatsoever connected with or arising from the same.

Secs. 635 (1)-(3), 636.

Notes (a), (a).

(2) The municipality shall, however, in any case respecting the opening of an original road, or road allowance, make to any person having title to or interest in the same, reasonable compensation in full of all claims, and as a final settlement of the same:

Municipality to make compensation.

(3) Claims for such compensation shall be made within one year from the time of the laying out or taking possession by the municipality or its officers of such road or the part thereof in respect of which compensation is claimed; and in the event of the parties not agreeing as to the amount or terms of such compensation, the same shall be ascertained and the payment thereof enforced, under the provisions of this Act relating to arbitrations. 55 V. c. 42, s. 549.

Limitation of claims.

Arbitration.

Taken *verbatim* from 44 V. c. 24, ss. 15, 16 (1881).

(a) The section applies only where the council have in good faith intended to open a road allowance, but by mistake have not done so on the true line (*a*).

Sign-posts, etc., Guides to Bicyclists.

636. The Canadian Wheelmen's Association of the Dominion of Canada may, at the expense of the said Association, erect and maintain for the benefit of bicyclists and other travellers upon the public roads and highways, sign-posts at road intersections and wherever necessary to guide travellers, and mile-posts to show distances, and danger signals at hills which may be deemed by the said Association dangerous or unsafe for travellers on bicycles. Provided that every such sign-post, mile-post and danger sign shall be so placed as not to be an obstruction to the highway or to endanger the safety of any person travelling thereon; and provided further that no advertisements or notices shall be placed thereon except those only which give the names of places and show danger signs and distances as above mentioned, under a penalty of $5 for every offence, to be recovered before any Justice of the Peace having jurisdiction in the locality. 59 V. c. 51, s 39.

The Canadian Wheelmen's Association authorized to place sign-posts on highways.

Proviso.

(a) "Shall be so placed as not to be an obstruction to the highway."

See the judgment of BOYD, C. in *Bonn* v. *Bell Telephone Co.* (*b*), quoted *ante*, at pp. 668-9.

(*a*) *Re Beemer and Village of Grimsby*, 8 O. R. 98; 13 A. R. 225 (1886).
(*b*) 30 O.R. 696 (1899).

DIVISION II.—POWERS OF COUNTIES, TOWNSHIPS, CITIES, TOWNS AND VILLAGES IN RELATION TO ROADS AND BRIDGES.

General powers. Sec. 637.
Boulevards. Sec. 638.
Areas or openings in or under streets and sidewalks. Sec. 639.
Bicycle paths. Sec. 640 (1).
Roads crossing railways or railway lands. Sec. 640 (2).
Straightening, etc., streams. Sec. 640 (3).
Tolls. Sec. 640 (4-5).
Dangerous places. Sec. 640 (6).
Timber, stone, etc., on road allowances. Sec. 640 (7).
Privileges to road or bridge companies. Sec. 640 (8,9).
Procuring materials for repairing roads. Sec. 640 (10).
Road allowances. Secs. 640 (11), 641.
Possession of unopened road allowances. Sec. 642.
Notice of by-laws for opening such allowances. Sec. 643.
Aid to adjoining municipalities in making roads or bridges. Sec. 644.
Aiding bridge companies. Sec. 645.
Statute labour on toll roads. Sec. 646.

637. The council of every county, township, city, town and village may pass by-laws:—

General Powers.

Opening, etc., or stopping up roads, etc.

1. For opening, making, preserving, improving, repairing, widening, altering, diverting, leasing, selling, or stopping up roads, streets, squares, alleys, lanes, bridges, or other public communications within the jurisdiction of the council. 55 V. c. 42, s. 550 (1), 60 V. c. 45, s. 20.

Taken from 22 V. c. 99, s. 317 (6) (1858), which conferred the powers here enumerated, together with that of "pulling down," but not those of "leasing" or of "selling," and which applied to "drains, sewers, water-courses" as well as to "roads," etc. The provisions as to drains and roads were separated in 1873, becoming respectively sections 372 (10) and 425 (1) of "*The Con. Mun. Act*" of that year (36 V. c. 48). The words "leasing, selling" were inserted in 1897 by 60 V. c. 45, s. 20. *Cf.* 12 V. c. 81, ss. 31 (10), 41 (11), 60 (1) (1849).

(a) Certain restrictions upon the general powers conferred by this section are imposed by ss. 629, 630, 632, 633, 640 (11), 641, 661, 662. See the notes to those sections.

Opening, etc., roads, etc.

(b) "**Opening, making . . widening, altering . . diverting.**"

The exercise of these powers is in the discretion of the council; and a mandamus will not lie to compel them to act. This applies even to the opening of original road allowances (*a*).

In all of these cases a by-law is necessary, and it must be passed with all the formalities required by s. 632; (*b*) but a road may have become a public highway by dedication, user, etc., and in such cases the absence of a by-law authorizing its opening will not excuse those who have obstructed it, or exonerate the municipality from keeping it in repair (*c*).

(*a*) *Re Wilson and Township of Wainfleet*, 10 P. R. 147 (1888): *Hislop* v. *Township of McGillivray*, 12 O. R. 749; 15 A. R. 687; 17 S.C.R. 479 (1888-9): *Re McCormack and Township of Pelee*, 20 O.R. 288 (1890.)

(*b*) See the notes to section 632; and also *Reg.* v. *Rankin*, 16 U.C.R. 304 (1858): *Taylor* v. *Township of Verulam*, 21 C.P. 154 (1870).

(*c*) See s. 598, notes (d), (e), (f); s. 607, note (a).

Sec. 637 (1). Notes (b), (c). By-laws for opening, widening, etc., roads.

It is essential to the validity of a by-law to establish and lay out a highway, that "the course, boundary and width of such highway, should be capable of being ascertained either from the by-law itself or from some document or description referred to by it, which may be treated as incorporated therewith. Failing this, the by-law is necessarily inoperative and void; since, merely as regards the width of the road, it cannot be seen whether it was to be of the maximum or minimum width prescribed by the Act, or of some width intermediate between the two," (a)

The by-law was accordingly held to be invalid,—(1) where it did not state the width of the proposed road (b); (2) where neither the course or the width of the road was stated, but the by-law merely referred to a surveyor's report which was not annexed (c); and (3), *a fortiori*, where the reference was only to "a survey," and no report or plan was stated to have been made (d).

But the proposed road was determined to have been sufficiently described where the by-law provided merely that it should be in continuation of an existing street "on a course N. 16° W. from the side road of lots 39 and 40 to the side road of lots 41 and 42, up to the survey of Gordon Brown" (e); and where, although the road was insufficiently described, it appeared that its course was clearly marked by fences on each side, and that it had been travelled for a number of years, the Court in its discretion refused to interfere (f).

Where the boundaries of the proposed road were given with precision, so that no one going over the ground could fail to see and know what was being taken, the by-law was sustained, although there was a doubt whether the land to be taken belonged to the municipality or to a private owner (g).

A provision in a by-law for opening a road, which exonerates the corporation from liability to make compensation to owners of land injuriously affected thereby, and casts this duty upon private persons, is void (h); and, where it appeared that without this provision the by-law might not have been passed, it was quashed (i). But a provision that persons in possession of an original road allowance should by a certain date give up possession and open the road for public travel was held to be good (j). Where a by-law to open an original road allowance not only described the course and boundaries of the road to be opened, but went on to declare these to be the true boundaries of the original road allowance, (which was a matter then in litigation), that portion of the by-law was quashed (k).

It appears that land vested in the Province cannot be expropriated by by-law for the purpose of opening a highway (l).

Preserving, improving or repairing roads.

(c) **"Preserving, improving, repairing."** There has been some conflict of judicial opinion as to whether a by-law is necessary in these cases. The question has usually arisen in an action against the municipal corporation for damage occasioned by reason of lands having been injuriously affected by changing the grade of highways or doing other work thereon with a view to their improvement or repair.

(a) *Per* OSLER, J.A., *Township of St. Vincent* v. *Greenfield*, 15 A.R. 567 (1887), at p. 569. See also *Reg.* v. *Sanderson*, 3 O. S. 103 (1834): *Re Thompson and Township of Burford*, 21 U. C. R. 545 (1862).

(b) *Re Smith and Township of Euphemia*, 8 U.C.R. 222 (1850): *Township of St. Vincent* v. *Greenfield*, 12 O.R. 297; 15 A.R. 567 (1887).

(c) *Dennis* v. *Hughes*, 8 U. C. R. 444 (1851): *Re Brown and County of York*, 8 U.C.R. 596 (1851).

(d) *McIntyre* v. *Township of Bosanquet*, 11 U.C.R. 460 (1854).

(e) *Beveridge* v. *Creelman*, 42 U.C.R. 29 (1877).

(f) *Hodgson* v. *County of York*, 13 U. C. R. 268 (1855).

(g) *Re Chambers and Township of Burford*, 25 O. R. 276 (1894).

(h) See *Dennis* v. *Hughes*, 8 U. C. R. 444 (1851).

(i) *Lafferty* v. *Stock*, 3 C. P. 9 (1852).

(j) *Re McMichael and Township of Townsend*, 33 U. C. R. 158 (1872).

(k) *Ex rel. McMullen* v. *Township of Caradoc*, 22 C. P. 356 (1872).

(l) *Rae* v. *Trim*, 27 Grant 374.

Sec. 637 (1).

Note (c).

When by-law necessary for "preserving, improving and repairing" roads.

By the Act of 1849 (*a*) municipal corporations were authorized to pass by-laws for "levelling, pitching, raising [and] lowering" any highway, etc.; and under that Act compensation could be obtained by arbitration only when a road was opened, changed, widened or diverted (*b*); which was held to mean only when land had been taken. This rule continued in force until the amendment of the Act in 1873 (*c*).

Where ingress or egress to or from land had been cut off or rendered difficult by an alteration in the grade of a highway, it therefore became important to decide whether the owner of the land was left without remedy, or whether he had an action of trespass against the corporation. It was held that such an action would lie unless what had been done was mere repair, and (if more than mere repair) unless there was a by-law authorizing the work.

Thus in *Croft* v. *Town of Peterborough* (*d*), where the level of a street had been raised, the plaintiff having been non-suited on the ground that the work was one of mere repair, (which under the Statute the defendants were bound to perform), the Court set aside the non-suit and granted a new trial to ascertain whether this was the fact; and, the jury having found for the plaintiff, it was held that a by-law should have been passed to authorize the work.

Per MACAULAY, C. J., (p. 46):—

> "Whatever is cast upon the defendants *as executive duties under the statutes* in relation to the maintenance and repair of the roads, or whatever is fairly included in those terms, they may do without a by-law: when not so, and it is only within their discretion, *in the exercise of their legislative powers*, it would be otherwise."

The same principles governed the decisions in *Reid* v. *City of Hamilton*, 5 C.P. 269 (1856); *Buchanan* v. *Town of Galt*, 12 U.C.R. 73 (1862); *Perdue* v. *Township of Chingucousy*, 25 U. C. R. 61 (1865). In the last case, HAGARTY, C. J. says (p. 64):—"For the performance of a statutable duty like the repairs of highways,—a work required to be done, as it were, from day to day, we think no by-law to be necessary."

In *Lewis* v. *City of Toronto* (*e*), it was held that the acts there complained of could not have been done even under a by-law, but the cases of *Croft* v. *Town of Peterborough* and *Reid* v. *City of Hamilton* were quoted with approval.

In 1873 the words "or injuriously affected by the exercise of its powers" were introduced into the section giving compensation (*f*), and it has thenceforward become of less importance to distinguish between acts which may and acts which may not be done without a by-law; since the damages may be assessed by arbitration in every case.

Re Yeomans and County of Wellington (*g*) was an appeal from a consent award for damages for injuriously affecting the lands of the plaintiff by the raising of the grade of a road, the work having been done without a by-law. The case was very fully considered in the Court of Queen's Bench and also in the Court of Appeal, and it was held that the proceeding (by arbitration) was proper, and that the award must be sustained (*h*). The report of *Adams* v. *City of Toronto* (*i*), in which on demurrer to a statement of defence it was decided that no action lay for raising a sidewalk and thereby injuriously affecting the plaintiff's land—is silent as to whether there was a by-law authorizing the work.

(*a*) 12 V. c. 81, s. 31 (10) (townships); s. 41 (11) (counties); ss. 52, 59 (villages); ss. 61, 67, 89 (towns); ss. 82, 106 (cities). (*b*) S. 195.

(*c*) *Reg.* v. *County of Perth*, 14 U. C. R. 156 (1856); and *per* GWYNNE, J. in *Re Yeomans and County of Wellington*, 43 U.C.R. 522 (1878) at p. 530.

(*d*) 5 C. P. 35 (1855); *S. C.* 5 C. P. 141 (1856).

(*e*) 39 U. C. R. 343 (1876), at p. 652. (*f*) 36 V. c. 48, s. 373, now s. 437.

(*g*) 43 U. C. R. 543; 4 A. R. 301 (1878-9).

(*h*) The contention that because of the absence of a by-law Yeomans had a right to bring an action of trespass was not expressly raised in either Court, although GWYNNE, J. expressed the opinion that no such action would have lain, and MOSS, C. J., spoke of the grading as having been done "under the general jurisdiction of the council as to roads."

(*i*) 12 O. R. 243 (1886).

Sec. 637 (1).

Note (c).

When a by-law is necessary for "preserving, improving, or repairing" roads.

The question whether the absence of a by-law gave the plaintiff a right of action came up directly for decision for the first time since 1856 in two cases determined in 1887, viz: *Pratt* v. *City of Stratford* (*a*), and *Ayers* v. *Town of Windsor* (*b*). In the latter of these, ROSE, J., held a by-law necessary on the ground that the decision in *Town of Parkdale* v. *West* (*c*) applies to municipal corporations, and that the express power given by the Act is not "to raise or lower" the level of streets, but "to pass by-laws" authorizing this to be done.

In *Pratt* v. *Town of Stratford*—which was an action for injury to real property by raising the grade of a highway in order to form the approach to a bridge reconstructed by the defendants at a different level from the one which it replaced—BOYD, C. held that the rebuilding of the bridge was merely the making of repairs in the exercise of a statutory duty, the non-fulfilment of which would have subjected the corporation to indictment: that the raising of the approaches was the unavoidable consequence of properly performing this duty; and that consequently no action lay, the remedy by arbitration being alone open to the plaintiff. This decision was affirmed by the Court of Appeal (*d*).

Per HAGARTY, C. J. O. (p. 127):—

> "I cannot see any sensible distinction in principle between a four foot and a four inch change of level. The most ordinary repair of a highway may involve constant changes of elevation, consequent upon the filling up of holes or marshy spots or the laying down of new material for the road; and it is quite possible that such alterations may injuriously affect the approach to buildings or lands."

OSLER and MACLENNAN, JJ. A. concurred in holding that the corporation could not be made liable in an action for damages occasioned by the raising or lowering of a highway, even when the work was done without a by-law. The latter—though basing his judgment in part upon the fact that the Act incorporating the defendants as a city (*e*) had declared the bridge to be necessary, and that its erection therefore became a corporate duty—continued, (p. 211):—

> "In *Croft* v. *Town of Peterborough* (*f*), justice required that the corporation should be held to a very strict observance of the authority which enabled them to do injury without compensation. But in the present case, the same reason requires as full effect and meaning as possible to be given to the words of the Legislature. The policy of the Legislature has always been to have such claims settled by arbitration and not by action, so that the advantage which the claimant has derived from the work may be a set-off against his injury; and a construction of the section [s. 437] should (if the language will admit of it) be adopted, which will effect to the intention and policy of the Legislature in all proper cases. The application of the section ought not to be left to depend on whether the act was done with all due formalities or not. The substance and not the form of the matter should be regarded and should govern."

BURTON, J. A. differed from the majority of the Court, and considered that in the absence of a by-law authorizing the work, the plaintiff's action could be maintained. He says (p. 32):—

> "I should have thought it too clear for argument—but for the doubts which have been thrown upon it—that what was intended was to delegate to the municipal council the right *to legislate* upon these subjects. That is the true, clear and grammatical construction of the words used—intended, as I think, to obviate the necessity of applying to the Legislature for powers, as is the case in England, and at the same time not to give these powers generally, but only after the subject had been discussed by the governing body, and a by-law passed with the prescribed formalities. If that be the correct view, it is clear that the by-law becomes all-important—inasmuch as the power to do the work is derived from it—and it cannot be referred to 'as a mere matter of form.'"

In view of these conflicting opinions it cannot be regarded as settled law that the raising or lowering of a highway to any height or depth is in all cases

(*a*) 14 O. R. 260 (1887).
(*b*) 14 O. R. 682 (1887).
(*c*) 12 App. Cas. 602 (1887).
(*d*) 16 A. R. 5 (1888).
(*e*) 48 V. c. 72. (O.)
(*f*) 5 C. P. 35, 141 (1855).

Sec. 637 (1), (2).

Notes (c)-(f).

When a by-law is necessary to authorize the preserving, improving, or repairing of highways.

"a mere act of repair," which the corporation is bound to perform at the peril of indictment. It may be difficult, if not impossible, to suggest any general criterion as to the cases in which a by-law may, and those in which it may not, be safely dispensed with; but to hold that a corporation may, without any by-law, carry out extensive permanent improvements—possibly affecting large sections of a municipality—would be a dangerous extension of the powers conferred by this Act; and—though it is doubtless the policy of the Legislature to provide for the settlement by arbitration of disputes arising from the exercise (even informally) of their corporate powers—it is submitted that this consideration should not be allowed to outweigh the plain requirement of s. 325—viz., that these powers "*shall*, unless otherwise provided, *be exercised by by-law*."

In none of the later cases (above referred to) has the authority of *Croft* v. *Town of Peterborough*, and *Reid* v. *City of Hamilton* been directly questioned; and the rule laid down by Chief Justice MACAULAY—that, although a by-law is unnecessary when the duty to be discharged is the statutable and executive duty imposed by s. 606, it is otherwise when the corporation is exercising discretionary and legislative powers—seems on the whole to be a safe and wise one, especially when the change of grade may involve encroachments upon adjacent land owned by private persons (*a*).

Leasing or selling roads.

(d) "**Leasing, selling.**" As to the formalities to be observed before passing a by-law for selling or leasing a road, see s. 632; as to the sale of original road allowances, ss. 640 (11a), 641, 660 (2b); and as to the sale of toll roads, s. 658 (9). The provisions of ss. 658 (1), 661, 662, of the remainder of ss. 640 (11) and 660 (2) appear to be superseded by this section.

Stopping up roads.

(e) "**Stopping up.**" In these cases, also, a by-law is necessary, and the formalities required by s. 632 must be observed (*b*).

A by-law for closing an existing road need not describe its course, etc., so minutely as one by which a new road is established (*c*); but a by-law not showing on its face which of two roads was intended to be closed was held to be void for uncertainty (*d*).

A highway is legally "stopped up" when a by-law for that purpose is passed, though there may be no physical obstruction to the use of the road (*e*).

In *Hewison* v. *Township of Pembroke* (*f*), ROSE, J. doubted whether a township council had any power to close or divert a main highway—such, (*e.g.*), as the Kingston Road—which runs through several municipalities.

Entering upon land.

2. For entering upon, breaking up, taking or using any land in any way necessary or convenient for the said purposes, subject to the restrictions in this Act contained;

Taken *verbatim* from the Act of 1858 (22 V. c. 99), s. 317 (6).

(f) "**For entering upon, . . . taking or using any land.**" For the exercise of these powers a by-law is necessary. If there is no by-law, the corporation is liable to an action, even where the trespass has taken place in the course of gravelling a road and no unnecessary damage has been done (*g*). Where there is not even an order or resolution authorizing the work, it is apprehended that the trespassers would be personally liable (*h*).

(*a*) See *City of New Westminster* v. *Brighouse*, 20 S. C. R. 520 (1892), *per* STRONG, J. at p. 526, and *per* GWYNNE, J. at p. 533: but *contra*, *per* PATTERSON, J. A. at p. 540:—"I have no doubt of the power of the corporation to improve the street by altering its level, or in any other way, without passing a by-law for the purpose."

(*b*) See, however, the suggestion of Sir JOHN ROBINSON, C.J., in *Re Choate and Township of Hope*, 19 U.C.R. 424 (1858), at p. 429, that it would be unnecessary to quash a by-law for selling a road of which due notice had not been given; since the alienees could not make out a title under it.

(*c*) *Fisher* v. *Township of Vaughan*, 10 U.C.R. 492 (1853).

(*d*) *Wanamaker* v. *Green*, 10 O.R. 457 (1886).

(*e*) *Johnston* v. *Reesor*, 10 U.C.R. 101 (1853).

(*f*) 6 O.R. 170 (1884).

(*g*) *St. George's Church* v. *County of Grey et al.*, 21 U.C.R. 265 (1861).

(*h*) See s. 468, *supra*.

(g) "**Any land necessary or convenient for the said purposes,**" *i.e.*, for the opening, widening, diverting, etc., of roads, squares, bridges or other public communications. See also ss. 534 (2), 576 (1), 603, and *Jones* v. *Town of Port Arthur*, 16 O.R. 474 (1888), cited *ante*, at p. 583. Where a municipal corporation, authorized to make certain street works, had power to take compulsorily "for the purpose of the street works, the lands shewn on the plans deposited in connection therewith, and which they may require *for the purposes thereof*," it was held that they had no power to take compulsorily lands not required for the purpose of the street works, but merely for the purpose of re-sale at a profit so as to reduce the cost of the street works (*a*).

Secs. 637 (2)-(4), 638 (1)-(3).

Notes (g)-(k). What lands may be taken.

(h) "**Subject to the restrictions in this Act contained.**" See ss. 325, 637.

3. For setting apart and laying out such portions of any or such roads, streets, squares, alleys, lanes, bridges, other communications, as the council may deem necessary or expedient for the purpose of carriage ways boulevards and sidewalks, or for the improvement or beautifying of the same.

Setting apart carriageways, boulevards and sidewalks.

Taken from 51 V. c. 28, s. 32 (1888). See s. 638.

(i) As to the powers of the council in regard to any portion of a highway which has been laid out as a sidewalk, boulevard, etc., see ss. 559 (9), 560, 638.

4. For preventing and removing any obstructions upon any roads within its jurisdiction.

Obstructions on highways.

Taken from 34 V. c. 30, s. 4 (1871), which contained the words "or bridges" after "roads." These were omitted by 58 V. c. 42, s. 30 (1895).

(j) See ss. 557, 583 (1) and the notes thereto.

5. For permitting subways for cattle under and bridges for cattle over any highway. 55 V. c. 42, s. 550 (1); 58 V. c. 42, s. 30; 60 V. c. 15, *Sched.* C. (118); 60 V. c. 45, s. 20.

Subways or bridges for cattle.

Taken from R.S.O. (1877), c. 174, s. 509 (1), which applied only to subways. By 58 V. c. 42, s. 30 (1895), the words "or bridges" were inserted after "subways," but (as amended) the section conferred the power to permit only "subways *or bridges* for cattle *under* any highway." The obviously necessary correction was made in 1897 by 60 V. c. 15, Sched. C (118).

(k) As the construction of these bridges or subways may increase the probability of accidents for which the municipality would be liable under s. 606, it is suggested that a proper indemnity should be taken whenever permission is given therefor.

Boulevards (*b*).

638. The council of every city, town and village may pass by-laws:

1. For setting apart, upon such terms as to resumption by the municipality and otherwise as the by-law may state, portions of the public streets at or near the sides thereof for the purposes of boulevards;

Setting apart.

2. For regulating the construction and maintenance of such boulevards;

Regulating.

3. For permitting the owners of property abutting on any street to construct such boulevards at their own expense, but so as not to unreasonably confine, impede or incommode public traffic;

Permitting construction of.

(*a*) *Donaldson* v. *South Shields Corporation*, 1898] W.N. 170; [1899] W.N. 6; distinguishing *Galloway* v. *Mayor, etc. of London*, L.R. 1 H.L. 34 (1866).

(*b*) As to the meaning of this word, see note (c) to s. 576.

Sec. 638 (4), (5), 639, 640

Note (a).

4. For regulating and confirming boulevards already constructed on any street;

Confirming.

Protection of boulevards.

5. For making regulations for the protection of all boulevards constructed in the public streets. 57 V. c. 50, s. 9.

Passed in 1894. See the reference.

Areas and Openings in or under Streets and Sidewalks.

Construction of areas in or under sidewalks.

639.—(1) Municipal corporations may permit areas or openings to be constructed in or under the sidewalks and streets of their respective municipalities, and may authorize the continuance of any such areas, constructed prior to July 1st, 1897, and may make an annual charge for such privilege and for the use of the areas or openings theretofore constructed of such sums as the council may think reasonable, and may enforce the payment of said sums in like manner as municipal taxes.

Existing agreements cancelled.

(2) All bonds and agreements entered into before and existing upon said date between any owner or owners of property in any municipality and the municipal corporation thereof for indemnity in respect of such areas are hereby cancelled and made void as to such indemnity except as to any rights or causes of action which have accrued thereunder to the corporation owing to any accident or injury arising from negligence in connection with such areas or from the improper use thereof prior to the said date.

No vested rights created

(3) Neither this section nor any permission or privilege in respect of such areas or openings granted by any municipal corporation under this section shall interfere with any liability created or existing under the provisions of this Act, nor with the remedies over provided by section 609 of this Act, nor shall this section or such permission or privilege create any vested right in any such area or opening. 60 V. c. 45, s. 21.

Passed in 1897. See the reference.

Rights of frontagers to make areas or openings in or under sidewalks or streets.

(a) It has been held in the State of New York, that owners of property abutting upon streets—although they have no property in the highway itself, or in the soil thereunder—are entitled as of right to make vaults under the streets, subject to municipal or police regulations as to the location, mode of construction and use of such vaults, and also to the prior and paramount right of the public to the use of the street as a highway (a).

Before this section came into effect (b) it had been the practice of the corporation of the City of Toronto to grant permission for the making of an area or opening in or under a sidewalk only after receiving from the owner a bond of indemnity against all claims for damages thereby occasioned. For this, the Act now substitutes an annual charge, collectable in the same manner as ordinary taxes.

(a) July 1st, 1897. (b) Dillon, s. 656 (b).

Bicycle Paths.

Sec. 640 (1)-(4). Notes (a)-(c).

640. The council of every county, township, city, town and village may pass by-laws:

Bicycle paths.

1. For setting apart so much of any highway or road or street as the council of any such municipality having control over the same deems necessary for the purpose of a bicycle path; and any person who rides or drives a horse or other beast of burden, or a wagon, carriage or cart over or along such bicycle path shall incur the penalties imposed by *The Act to regulate Travelling on Public Highways and Bridges.* 60 V. c. 45, s 19; c. 57, s. 1.

Rev. Stat. c. 236.

Passed in 1897. See the references.

(a) The penalty referred to is a fine of not less than $1 or more than $20, in the discretion of the convicting Justice, payment of which may be enforced by distress or, in default of sufficient distress, by imprisonment for not less than one or more than twenty days (*a*).

Roads Crossing Railways and Railway Lands.

Roads across railway lands.

2. For establishing, opening, making, preserving, improving, maintaining, widening, enlarging, altering, diverting or stopping up within the limits of the municipality, any highway through, over, across, under, along, or upon the railway and lands of any railway company, and for entering upon, breaking up, taking or using any such land in any way necessary or convenient for the said purpose; but subject to the provisions contained in *The Railway Streets and Drains Act*, and provided that the highway is within the jurisdiction of the council. 55 V. c. 42, s. 550 (2).

Rev. Stat. c. 241.

Taken from s. 4 of "*The Railway Streets and Drains Act, 1882*," (45 V. c. 21), which is now consolidated as R. S. O. c. 241, s. 4.

(b) *Quære*,—how far may the powers conferred by the sub-section be exercised in the case of railways which are subject to the exclusive jurisdiction of the Parliament of Canada? See note (e) to s. 559, *ante*, p. 666, foot-note (d).

Straightening, etc., Streams.

3. Subject to the provisions of this Act respecting compensation for lands taken or injuriously effected:—

Straightening etc., streams dangerous to bridges, etc.

For straightening, deepening, widening or diverting any river, creek or stream, for the purpose of preventing the flooding, undermining or carrying away of any land, or for preventing injury to any highway, bridge or other structure by the flow of the waters of any such river, creek or stream; but nothing herein shall authorize the interference with any mill site or water privilege on any such river, creek or stream. 55 V. c. 42, s. 550 (2*a*); 60 V. c 15, *Sched.* C. (103).

Taken from 52 V. c. 36, s. 30 (1889),—the words "injuriously affected" (in line 2), having been substituted in 1897 for the word "injured," by 60 V. c. 15, Sched. C. (103).

(c) See *ante*, ss. 563, 563a, and the notes thereto.

Tolls.

Raising money by toll.

4. For raising money by toll on any bridge, road or other work to defray the expense of making or repairing the same. 55 V. c. 42. s. 550 (3)

Taken *verbatim* from the Act of 1858 (22 V. c. 99), s. 317 (7).

(*a*) R. S. O. c. 236, ss. 11, 13.

Secs. 646, 4-7.

Notes (d)-(h).

Tolls on roads.

(d) "For raising money by toll on any bridge, road or other work."

Section 151 of "*The General Road Companies Act*," (h) provides that certain sections of that Act shall apply to all toll roads which "may have been constructed by or belong to the municipality of any county, and to all toll roads which may have been purchased from the Government of the late Province of Canada and are owned or held by any private companies or by municipal councils." (a)

(e) "To defray the expense of making or repairing the same."

See *Campbell* v. *City of Kingston*, 14 C. P. 285 (1864), referred to in note (d) to s. 562.

Power to lease tolls.

5. For granting to any person in consideration or part consideration of planking, gravelling or macadamizing a road, or of building a bridge, the tolls fixed by by-law to be levied on the work for a period of not more than twenty-one years after the work has been completed, and after such completion has been declared by a by-law of the council authorizing tolls to be collected; and the grantee of the tolls shall, during the period of his right thereto, maintain the road or bridge in repair. 55 V. c. 42, s. 550 (4).

Taken *verbatim* from 22 V. c. 99, s. 317 (14) (1858). *Cf.* 12 V. c. 81, s. 191 (1849); 14-15 V. c. 109, Sched. A. (26).

(g) "The tolls fixed by by-law."

It appears that a by-law of the municipality must be passed authorizing the tolls (c), but that the limitation as to the amount of the tolls which may be imposed under sub-s. 4 does not apply to those which may be fixed under this subsection (d).

Dangerous Places.

Regulations as to dangerous places.

6. For making regulations as to pits, precipices and deep waters, and other places dangerous to travellers. 55 V. c 42, s. 550 (5).

Taken (except for the substitution of "and" for "or" before "other places") from the Act of 1849 (12 V. c. 81), ss. 31 (15), 41 (15).

(h) *Cf.* also the power given by s. 543 and see note (b) to that section. It is apprehended that the regulations contemplated are such as will secure the safety of travellers by preventing the meeting of teams, and by regulating the speed of travel at places where, from some cause beyond the control of the municipal authority, there is danger to travellers on a highway (e).

Timber, Stone, etc., on Road Allowances.

For preservation of trees, stone, etc.

Rev. Stat. c. 32.

7. For preserving and selling timber, trees, stone, sand or gravel on any allowance or appropriation for a public road; but this shall be subject to the provisions of *The Act respecting Timber on Public Lands* relative to Government road allowances and the granting of Crown timber licenses. 55 V. c. 42, s. 550 (6).

The first clause is taken *verbatim* from the Act of 1858, (22 V. c. 99), s. 317 (6). *Cf.* 12 V. c. 81, ss. 31 (12), 41 (12) (1849). The proviso first appears in the Act of 1873, (36 V. c. 48), s. 425 (4), where the reference was to 34 V. c. 19 (1871), which was passed in consequence of the decision (*Town of Barrie* v. *Gillies*, 29 C. P. 369; 21 C. P. 213 (1871)) that Government licenses to cut timber did not apply to road allowances. See now R.S.O. c. 32, ss. 7-13, *infra*.

(a) R. S. O. c. 193.

(b) See *Wilson* v. *Groves*, 17 U.C.R. 419 (1859); *Wilson* v. *County of Middlesex*, 18 U.C.R. 348 (1859); *Smith* v. *County of Wentworth*, 26 O.R. 269 (1894).

(c) *Township of Ancaster* v. *Durrand*, 32 C. P. 563 (1882).

(d) See *per* MACLENNAN, J. A. in *Payne* v. *Caughell*, 24 A. R. 556 (1897), at p. 560.

(e) See *Boswell* v. *Township of Yarmouth*, 4 A. R. 353 (1879), at pp. 367-8.

Notes (i), (j).

Preserving timber on road allowances.

(i) **"For preserving timber," etc.** Even without a by-law, the municipality may recover from a wrong-doer the value of the timber trees cut on any road allowance which is not covered by a Government timber license (*a*). So, an action may be maintained where stone, sand or gravel is wrongfully taken from a road allowance (*b*).

But where a Government road allowance is included in a Crown timber license, the right to the timber or trees cut thereon is vested in the licensee; and no by-law under this section is to have any force or effect against such license (*c*). In the case, however, of a township which has passed a by-law for preserving or selling timber or trees on such a Government road allowance, and where a certified copy of the by-law, verified by an affidavit of the clerk or reeve of the township, has been filed in the Department of Crown Lands at Toronto within six months of the passing of the by-law, it is provided that the township shall be entitled to be paid by the Province 2 per cent. of the dues received by the Crown in respect of any timber or saw-logs which, during the existence of the by-law, were cut within the township under the authority of the license; and that any moneys so received shall be expended in improving the highways of the township (*d*).

Granting Privileges to Road or Bridge Companies.

Granting privileges to road or bridge companies.

8. For regulating the manner of granting to road or bridge companies permission to commence or proceed with roads or bridges within the jurisdiction of the council, and for regulating the manner of ascertaining and declaring the completion of the work, so as to entitle such companies to levy tolls thereon and for regulating the manner of making the examinations necessary for the proper exercise of these powers by the council. 55 V. c. 42, ss 550 (7). *See also Cap.* 193.

The first two clauses, down to "thereon" (line 6), are taken—with some merely verbal amendments and a restriction to "joint stock road or bridge companies," *i. e.* companies incorporated under "*The Joint Stock Road Companies Act*," 12 V. c. 84—from the Act of 1849, (12 V. c. 81), ss. 31 (17), 41 (18). See 13-14 V. c. 64, Sched. A (5). The last clause was added by 22 V. c. 99, sec. 317 (12) (1858), which also removed the limitation of the applications of the section to "joint stock road and bridge companies."

(j) **"Permission to commence or proceed."** "*The General Road Companies Act*," (*e*) provides that:—

When municipal by-law necessary.

"7. No road shall be constructed or pass within the limits of any city, or of any incorporated town or village, except by permission under a by-law of the city, town or village passed for that purpose.

Thirty days notice to be served on the head of the municipality, prior to any company commencing any work.

11. No company formed under this Act shall commence any work until thirty days after the directors have served a written notice upon the head of the municipality in the jurisdiction of which the road or other work connected therewith is intended to pass or to be constructed; and if the municipal council of such locality passes a by-law prohibiting, varying or altering such intended line of road, or the plan of such other work, such by-law shall have the same force and effect, and be as obligatory upon all persons, and upon such company, if the company proceeds in the construction of the road or other works, as if the provisions thereof had been inserted in the body of this Act.

If no by-law passed within thirty days company may proceed.

12. If no by-law is passed within thirty days after service of the notice upon the head of the municipality, then the company may proceed with the intended road or other work without being liable to any interruption or opposition from any source whatever."

(*a*) *Township of Burleigh* v. *Hales*, 27 U. C. R. 72 (1867): *Township of Burleigh* v. *Campbell*, 18 C. P. 457 (1868), at p. 461.

(*b*) *Township of Brock* v. *Toronto and Nipissing R. W. Co.*, 37 U. C. R. 372 (1875). See also *Township of Stamford* v. *Village of Niagara Falls*, 34 C. L. J. N. S. 785; 18 C. L. T. 404 (1898).

(*c*) See "*The Crown Timber Act*," (R. S. O. c. 32), ss. 7-9.

(*d*) R. S. O. c. 32, ss. 10-12. (*e*) R. S. O. c. 193.

Sec. 640. (8-10).

Notes (k), (l). Joint Stock Co's. roads. R.S.O. c. 193, ss. 7, 11, 12.

It is to be observed that permission to construct the road is required only from the councils of any cities, towns and villages through which it is to pass; but that the road may be carried through a township unless a by-law prohibiting the work is passed within thirty days after notice to the head of the municipality. A company proceeding without such permission, or contrary to the terms of a by-law, would doubtless be restrained by injunction (*a*).

(k) **"For . . . ascertaining and declaring the completion of the work so as to entitle such companies to levy tolls, etc."**

There is now, nor has there ever been, a provision in any of the Road Companies' Acts (*b*), making the passage of a municipal by-law or a declaration by a municipal council or officer, a condition precedent to the right of a road or bridge company to collect tolls. Such a by-law is however necessary in the case referred to in subs. 5, *supra*.

Power to purchase and hold land, stone or gravel beds, etc.

Power to sell same.

9 For purchasing and holding by itself or jointly with any other municipality such land containing stone or gravel beds within its own or any adjoining municipality as may be necessary to procure stone or gravel therefrom for the purpose of constructing, maintaining or repairing any streets, roads or highways owned by such municipality, and for selling and conveying the same whenever the object for which the same was purchased no longer exists. 55 V. c. 42, s. 550 (7*a*).

Taken from 54 V. c. 42, s. 25 (1891).

Procuring Materials for Repairing Roads.

Power to take materials for roads.

10. For searching for and taking such timber, gravel, stone, or other material or materials (within the municipality) as may be necessary for keeping in repair any road or highway within the municipality; and for the purpose aforesaid, with the consent of the council of an adjoining municipality (by resolution expressed), for searching for and taking gravel within the limits of such adjoining municipality.

Arbitration.

(*a*) The right of entry upon such lands, as well as the price or damage to be paid to any person for such timber or materials, shall if not agreed upon by the parties concerned be settled by arbitration under the provisions of this Act:

To be a condition precedent.

(*b*) No such gravel shall be taken or removed from the premises of any person in an adjoining municipality until the price or damage has been agreed upon between the parties, or settled by arbitration. 55 V. c. 42, s 550. (8).

This power was first given by 16 V. c. 4 (1852), which extended to municipalities the powers already possessed by road companies under 12 V. c. 84 (1849). The first clause of the subsection is taken from 29-30 V. c. 51, s. 333 (10) (1866),—where, however, the words, "within the municipality" were omitted, the words "making [illegible] before "keeping in repair," and the words "belonging to" replaced "within" [illegible] the municipality." In 1885 the clause was enacted in its present form by 48 V. c. [illegible], s. 23 by which also the second clause of the section was added. Clause (a) is taken from 29-30 [illegible] c. 51, s. 333 (10) (1866), the words "timber or" before "materials" having been omitted [illegible] the re-enactments of the section by 48 V. c. 39 s. 23. Clause (b) also was added by the latter Act.

(l) **"For searching for and taking."**

The same by-law cannot authorize both the searching and the taking. The search must have been made, and the gravel, etc., found before the by-law providing for its taking be passed.

(*a*) *See Attorney-General* v. *Bytown and Nepean Road Co.*, 2 Grant 626 (1851).

(*b*) 12 V. c. 84; 13-14, V. c 72; 16 V. c. 190; C.S.U.C. c. 49, etc.

A by-law which empowered the pathmasters and other employees of the corporation to enter upon any land and search for and take "such timber, gravel, etc., as might be necessary" was accordingly held bad (*a*).

Sec. 640, (10-11).

Notes (l)-(n).

Procuring material for road repairs.

Per STREET, J. (p. 297):—

> "What the Legislature did intend, I think, was that the council should, as necessary arose for them to do so, exercise the right to take gravel from any parcel or parcels of land, *having first declared the necessity to exist, and chosen and described by a by-law the land from which the gravel was to be taken.* The by-law is therefore upon its face illegal; because it purports to confer upon the officers (of the corporation) powers much wider and more extensive than the Statute authorizes."

It has been held that the quantity of material to be taken must also be fixed by the by-law or by the notice to the owners; and where the by-law did not state the quantity of gravel to be taken, and the arbitrators awarded "32 cents a load," but did not specify the number of loads, the award was held bad (*b*).

(m) "With the consent of the council of an adjoining municipality."

Consent of local authority necessary to authorize entry on its territory.

An agreement under s. 625 between two municipalities jointly responsible for the maintenance and repair of a boundary road, whereby the duty is cast wholly upon one of them, authorizes officers of the latter to enter upon that part of the the road allowance situate wholly within the other municipality, and to take therefrom any gravel, etc., which might be necessary for the repair of the road (*c*).

(n) Clause (a).

The first words of this clause would seem to make an agreement or an arbitration a condition precedent to the entry upon lands by the authority of a by-law passed under this section, as it is also under clause (b). But for this provision the case would have been otherwise (*d*).

Selling Road Allowances.

When the council may stop up or sell a road allowance.

11. For selling the original road allowance to the persons next adjoining whose lands the same is situated, when a public road, for the site or [illegible] of which compensation has been paid, has been opened in lieu of the original road allowance, and for selling, in like manner, to the owners of any adjoining land, any road legally stopped up or altered by the council; and in case such persons respectively refuse to become the purchasers at such price as the council thinks reasonable, then for the sale thereof to any other person for the same or greater price.

(*a*) In the case of road allowances reserved under original surveys along or leading to the bank of any river or stream or the shore of any lake or other water, such by-law shall be of no effect unless and until the same has received the sanction of the Lieutenant-Governor in Council. 55 V. c. 42, s. 550 (9); 59 V. c. 51, s. 25; 62 V. (2nd Sess.), c. 26, s. 40.

Under the Act of 1849, (12 V. c. 81), ss. 187, 188, the power of municipalities to sell roads extended only to such as were not original road allowances; but their power to sell was extended to such allowances in 1857 by 20 V. c. 69, s. 4. The section in its present form is taken from the Act of 1858 (22 V. c. 99), s. 317 (11), the words "or leading to"—in the second line of clause (a)—having been inserted by 62 V. (2), c. 26, s. 40 (1899).

(*a*) *Rose* v. *Township of Wawanosh*, 19 O. R. 294 (1890).

(*b*) *Re Town of Ingersoll and Carroll*, 1 O. R. 488 (1882).

(*c*) See *Township of Stamford* v. *Village of Niagara Falls*, 34 C. L. J. N. S. 685; 18 C. L. T. 404 (1898).

(*d*) See *Stonehouse* v. *Enniskillen*, 32 U.C.R. 562 (1872), at p. 567; *Harding* v. *Township of Cardiff*, 29 Grant 308; 2 O. R. 329 (1882).

Secs. 640, (11), 641 (1), (2).

Notes (o)-(q).

Selling original road allowances.

(o) "For selling the original road allowance."

Since power to sell public highways—which by s. 598 includes every original road allowance—is now conferred by s. 637 (1), this sub-section seems no longer to be necessary. It authorized a sale only when a new road had been opened in lieu of the original allowance (*a*). The powers conferred were exercisable only by by-law, in the passing of which the formalties prescribed by s. 632 were to be most strictly observed. Such compliance must still be proved by any one who seeks to justify the occupation of an original road allowance by setting up a title acquired by the purchase of such an allowance from a municipality (*b*).

"Owner," Meaning of.

(p) "The owners."

A mortgagee of property is "an owner" within the meaning of this sub-section, and is entitled to the right of pre-emption, subject to the right of the mortgagor to redeem.

> "The . . idea . . is that the persons to whom the adjoining land belongs should have the first right to acquire and add to that land the accretion formed by closing the highway . . The interest of [the mortgagee] in the land is not infrequently the only valuable interest belonging to any one. Even where the equity of redemption of the mortgagor is a valuable one, he might seriously impair the security of the mortgagee if he were allowed to become the owner as against him of a highway upon which the property originally had a front, and to close this front against him "(*c*).

Selling stopped-up roads.

(q) "For selling . . any road legally stopped up or altered."

It is apprehended that since the insertion in 1897 by 60 V. c. 45, s. 20, of the words "leasing, selling" in s. 637 (1) this provision is superseded by the general power thereby given to sell roads, streets, squares, alleys, etc.

When landowner opening road to be entitled to original road.

641.—(1.) In case any one in possession of a concession road or side line has laid out and opened a road or street in place thereof without receiving compensation therefor, or in case, in lieu of an original allowance for road, a new or travelled public road has been laid out and opened for which no compensation has been paid to the owner of the lands so appropriated, such owner, if his lands adjoin the concession road, side line, or original allowance, shall be entitled thereto in lieu of the road so laid out; and the council of the municipality, upon the report in writing of its surveyor, or of an Ontario land surveyor, that such new or travelled road is sufficient for the purposes of a public highway, may convey the said original allowance for road, in fee simple, to the person or persons upon whose land the new road runs.

Compensation to party whose land is taken who does not own land adjoining original road.

(2) Where such original road allowance is, in the opinion of the council, useless to the public, and lies between lands owned by different persons, the municipal council may, subject to the conditions aforesaid, sell and convey a part thereof to each of such persons, as may seem just and reasonable; and in case compensation was not paid for the new road, and the person through whose land the same passes does not own the land

(*a*) See *Clapp* v. *Haight*, 19 U. C. R. [illegible] (1869), and, *per* BURTON, J. A., in *Cameron* v. *Wait*, 3 A. R. 175 (1878), at p. 180.

(*b*) See note (**a**) to s. 632, and *Wanamaker* v. *Green*, 10 O. R. 257 (1886) there cited.

(*c*) *Per* STREET, J., in *Brown* v. *Bushey*, 25 O. R. 612 (1894), at p. 616. See also notes (**b**) to s. 437 and (**b**) to s. 445, citing *Lowthop* v. *Township of York*, 16 Grant 216 (1869).

adjoining the original road allowance, the amount received from the purchaser of the corresponding part of the road allowance when sold shall be paid to the person who at the time of the sale owns the land through which the new road passes. 55 V. c. 42, s. 551.

Where original road allowance may be conveyed to owner of adjoining land who has given a new road in lieu thereof.

Taken from the Act of 1858 (22 V. c. 99), s. 318. *Cf.* 20 V. c. 69, ss. 5, 6, (1857).

(a) The powers conferred by this section must be exercised by by-law (*a*).

As the provisions of the section are somewhat intricate, the following attempt to state them in a less complex form may aid in their interpretation.

1. Any one in possession of an original road allowance, who has himself, without compensation, laid out and opened a new road in place of the allowance, is entitled to a conveyance thereof from the municipality if a surveyor reports to the council in writing that the new road is sufficient for the purposes of a public highway.

2. An owner of lands adjoining an original road allowance through whose lands the municipality without paying compensation has opened a new road in lieu of the allowance, is entitled to a conveyance thereof (although he may not have been in possession) if a surveyor reports as aforesaid.

3. Where the owner of lands through which a new road has been opened in lieu of an original road allowance has received no compensation for the lands taken for the new road, and has no lands adjoining the allowance, the corporation may sell part thereof to each of the adjoining owners, if a surveyor reports as aforesaid and the council decides that the original allowance is useless; and in case the original allowance is so sold, the owner at the time of the sale of the land through which the new road has been opened is entitled to the purchase money (*b*).

If he who gave the new road owns no land adjoining the old one.

(b) The conditions imposed by this section upon the exercise of the powers which it confers must be strictly observed; and the onus of proving that they have been so complied with lies on the party setting up the by-law (*c*). The surveyor's report must fulfil the requirements of the Statute. Where the surveyor reported that "the said road answers the purpose of a public highway," McLEAN, J. said (*d*), "It certainly is not in substance what the Act requires." It is also necessary that the council should have decided that the original allowance is useless (*e*). Where the council had passed—but had subsequently repealed—a by-law opening the road allowance, this was held to be evidence that it was not in their opinion useless (*f*).

Section strictly construed.

(c) "**Owner.**"

This term probably includes a mortgagee (*g*).

"Owner," meaning of.

(d) "**May convey.**"

A conveyance is necessary; and without it the owner has no claim to the land which formed the original allowance (*h*). But when he has become entitled to it, it cannot be refused by the corporation (*i*). It appears, however, that this right is personal to him who, at the time the new road was opened, was the owner of the lands through which it runs, and that it does not pass under a conveyance of those lands to a transferee (*j*). It will be observed, however, that this is not so of the right (under subs. 2) to the *purchase money* realized from the sale of a road allowance thereunder, which, it is expressly provided, is to be paid to the person who "*at the time of the sale*" owns the land through which the new road passes.

Right does not (usually) pass by conveyance of land.

(*a*) See note (**o**) to s. 640.

(*b*) See *per* GWYNNE, J., in *Cameron* v. *Wait*, 27 C.P. 475 (1877), at p. 492.

(*c*) See *per* BURNS, J., in *Purdy* v. *Farley*, 10 U.C.R. 545 (1853) at p. 568, and note (**o**) to s. 640.

(*d*) *Winter* v. *Keown*, 22 U.C.R. 341 (1863) at p. 345.

(*e*) See *Cameron* v. *Wait*, 27 C.P. 475, 502; 3 A.R. 175 (1878). (*f*) *Ibid.*

(*g*) See note (**b**) to s. 437, note (**b**) to s. 445, and note (**p**) to s. 640.

(*h*) *Cameron* v. *Wait*, 27 C. P. 475; 3 A. R. 175 (1878); but see note (**a**) to s. 642.

(*i*) *Ibid*, *per* HARRISON, C.J., 3 A.R. at p. 193.

(*j*) See *per* McLEAN, C. J., in *Winter* v. *Keown*, 22 U. C. R. 341 (1861), at pp. 344-5; *per* CAMERON, J., in *Cameron* v. *Wait*, 27 C.P. at p. 498, and compare the cases cited in footnote (k) on p. 459.

Sec. 642, 643, 644.

Notes (a), (b); (a).

Possession of Unopened Road Allowances.

Original allowances for road when to be deemed legally possessed till a by-law is passed for opening them.

642. In case a person is in possession of any part of a government allowance for road, laid out adjoining his lot and enclosed by a lawful fence, and which has not been opened for public use by reason of another road being used in lieu thereof, or is in possession of any government allowance for road parallel or near to which a road has been established by law in lieu thereof, such person shall, as against any private person, be deemed legally possessed thereof until a by-law for opening such allowance for road has been passed by the council having jurisdiction over the same. 55 V. c. 42, s. 552.

Taken from the Act of 1858, (22 V. c. 99), s. 319.

(a) "**Adjoining his lot.**"

It is perhaps unnecessary to say that this means "actually touching," not simply "adjacent,"—*i.e.*, lying near to (*a*).

(b). "**Until a by-law . . . has been passed.**"

It appears that long possession may under certain circumstances give a title to an original road allowance even as against the municipality.

In *Re Burritt and Township of Marlborough* (*b*), a by-law opening an original road allowance was quashed, there being evidence which would warrant a jury in finding that a road, which had been travelled for sixty years, had been given without compensation by the owners of the lots across which it ran, in lieu of the original allowance, which had been in their possession for a corresponding length of time; and in *Re Beemer and Village of Grimsby* (*c*), the possession of the lot-owners having continued for eighty years, it was held that in the absence of evidence of their having received compensation, they must be presumed to hold the allowance in lieu of the travelled road. A by-law for opening it as of right was therefore quashed.

Notice of By-laws for Opening such Allowances.

Notice of by-law to be given.

643. No such by-law shall be passed until notice in writing has been given to the person in possession, at least eight days before the meeting of the council, that an application will be made for opening such allowance. 55 V. c. 42, s. 553.

Taken from the Act of 1858, (22 V. c. 99), s. 320.

Aiding in making Roads and Bridges.

By-laws to aid adjoining municipality to open roads, etc.

644. The council of any municipality may pass by-laws for granting aid to any adjoining municipality in making, opening, maintaining, widening, raising, lowering, or otherwise improving any highway, road, street, bridge, or communication passing from or through an adjoining municipality. 55 V. c. 42, s. 554.

Taken from 32 V. c. 43, s. 20 (1869).

(a) "**Adjoining.**" As to the meaning of this word, see note (**a**) s. 642. In *Re Bateman (Baroness) and Parker's Contract* (*d*) a plot of ground separated from a church yard by a highway about twenty feet wide was held to be "ground *adjoining* to an existing churchyard," within the meaning of Imp. Stat. 30-31 V. c. 133, ss. 1, 5.

(*a*) *Cf.* s. 640 (11) and see *Rex* v. *Hodges*, Moo. & M. 341 (1829), followed in *Vale* v. *Moorgate St., etc., Buildings (Ltd.)*, [1899] W.N. 52.

(*b*) 29 U.C.R. 119 (1869); followed in *Re Webster and Township of West Flamborough*, 25 U.C.R. 590 (1874).

(*c*) 8 O.R. 98; 13 A.R. 295 (1886).

(*d*) [1898] 1 Ch. 599.

Aiding Bridge Companies.

Secs. 645, 646, 647.

Note (a).

Aiding bridge companies.

645. The council of every county, township, city, town or village, may pass by-laws for subscribing for any number of shares in the capital stock of, or for lending to or guaranteeing the payment of any sum of money borrowed by any bridge company incorporated for the purpose of erecting and maintaining any bridge within, or partly within the municipality or between the municipality and another; and all the clauses of section 694 of this Act shall apply in the same manner, and with the same effect, as if the words "or bridge company" were inserted in clause 5 in the first line after the words "railway company," and the words "or bridge" were inserted after the word "railway" in the second line of the said clause. 55 V. c. 42, s. 554*a*.

Taken from 52 V. c. 36, s. 42 (1889).

(a) See also s. 591 (8), *ante*, and notes (o), (p) and (q) thereto.

Statute Labour on Toll Roads.

Power to agree with owners of toll road as to the expenditure of statute labour thereon.

646. The council of every county, township, city, town or village through or adjoining which any toll road passes may enter into an agreement with the owner or owners of such toll road to expend on such road, for a limited number of years, such statute labour or such sum of money as may be agreed upon, and that at the end of the term of years agreed upon such toll road shall be made free and shall become the property of the municipality or municipalities in which the same it situate. 56 V. c. 35, s. 26.

Taken from "*The Municipal Amendment Act, 1893*," (56 V. c. 35), s. 26.

DIVISION III.—POWERS OF TOWNSHIPS, CITIES, TOWNS AND VILLAGES IN RELATION TO ROADS AND BRIDGES.

Aiding counties in opening new roads. Sec. 647 (1).
Joint works with other municipalities. Sec. 647 (2).
Improvements on streets between two municipalities. Sec. 647 (3).
Repair of township roads, how enforced. Sec. 648-656.

647. The council of every township, city, town or village may pass by-laws—

New Roads.

Aiding counties in making roads and bridges.

1. For granting to the county or united counties in which the municipality lies, aid, by loan or otherwise, towards opening or making any new road or bridge on the boundaries of the municipality. 55 V. c. 42, s. 555 (1).

Taken from the Act of 1858 (22 V. c. 99), s. 321 (1). *Cf.* 12 V. c. 81, s. 31 (16) (townships); s. 60 (5) (villages); ss. 67, 80 (towns); ss. 82, 106 (cities).

Secs. 647 (2), (3), 648, 649.

Joint works with other Municipalities.

Joint works with other municipalities.

2. For entering into and performing any arrangement with any other any council in the same county or united counties for executing, at their joint expense and for their joint benefit, any work within the jurisdiction of the council. 55 V. c. 42, s. 555 (2).

Taken from the Act of 1858 (22 V. c. 99), s. 321 (2).

Improvements on Streets between two Municipalities.

Improvements on streets between two municipalities.

3. Wherever a public street, square or drive forms the boundary between any two or more municipalities (although such street, square or drive is wholly within the limits of one of such municipalities or partly in each), the councils of such municipalities may make and enter into any agreements and pass any by-laws proper and necessary to provide for the construction and maintenance of any one or more of the street improvements or works, and the performance of any one or more of the street services for which provision is made in this Act in sections 664 to 686, both inclusive, and every such council may pass by-laws for ascertaining, determining and raising so much of the cost of any such work, improvement or service as is to be borne by the municipality generally, and for determining the proportion thereof to be assessed and levied upon the real property benefited thereby, and for assessing and levying upon the real property so benefited and situate within its jurisdiction, and for collecting the proportion or share of the cost of any such improvement, work or service done under any such agreement by the municipality, in the same manner and with the like remedies as if the improvement had been made, or the work had been done, or the service had been rendered upon or in a street within the municipality, and as if the cost thereof was assessable upon real property, the whole of which was situate in the same municipality. 55 V. c. 42, s. 555 (3).

Added in 1889 by 52 V. c. 36, s. 31; which was passed at the instance of the Corporation of the City of Toronto in order to authorize the making of arrangements with the adjoining Village of Parkdale for the improvement of streets lying between the two municipalities.

Repair of Township Roads—How Enforced.

Township councils failing to maintain township boundary lines.

648. Where township councils fail by mutual agreement as to the share to be borne by each, to maintain township boundary lines not assumed by the county council, in the same way as other township roads, it shall be competent for one or more of such councils to apply to the county council to enforce joint action on all township councils interested. 55 V. c. 42, s. 556.

Taken from the Act of 1866 (29-30 V. c. 51), s. 341 (2).

Resident ratepayers may petition county council to enforce opening up of road.

649. In cases where all the township councils interested neglect or refuse to open up and repair such lines of road in a manner similar to the other local roads, it shall be competent for a majority of the ratepayers resident on the lots bordering

on either or both sides of such line, to petition the county council to enforce the opening up or repair of such lines of road by the township councils interested. 55 V. c. 42, s. 557.

Taken from the Act of 1866 (29-30 V. c. 51), s. 341 (3).

Repair of township roads, how enforced.

650. A county council receiving such petition, either from township councils or from ratepayers, as in the preceding section mentioned, may consider and act upon the same at the session at which the petition is presented. 55 V. c. 42, s. 558.

Taken from the Act of 1866 (29-30 V. c. 51), s. 341 (4), in which the language was :—"It shall be the duty of the county council receiving such petition . . . to consider and act," etc.

Action by county council on petition.

651. The county council may determine the amount which each township council interested shall be required to apply for the opening or repairing of such lines of road, or may direct the expenditure of a certain portion of the statute labour, or both, as may seem necessary to make the said lines of road equal to other roads. 55 V. c. 42, s. 559.

Taken from the Act of 1866 (29-30 V. c. 51), s. 341 (4), in which the language was :—"It shall be the duty of the county council to determine," etc.

Amount, etc., to be determined by each township.

652. It shall be the duty of the county council to appoint a commissioner or commissioners to execute and enforce their orders or by-laws relative to such roads. If the representatives of any or all of the townships interested intimate to the council or to the commissioner or commissioners so appointed their intention to execute the work themselves, then the commissioner or commissioners shall delay proceedings for a reasonable time; but if the work is not proceeded with during the favourable season by the township officers, then the commissioners shall undertake and finish it themselves. 55 V. c. 42, s. 560.

Taken from the Act of 1866 (29-30 V. c. 51), s. 341 (5).

(a) As to the right of such commissioners to remuneration, although they may be members of the county council, see *ante*, s. 537 (*1a*).

Commissioners to enforce order of county council as to such roads.

Proviso.

653. Any sum of money so determined by the county council as the portion to be paid by the respective townships, shall be paid by the county treasurer, on the order of the commissioner or commissioners, and the amount shall be retained out of any money in his hands belonging to such township; but if there are not, at any time before the striking of a county rate, any such moneys belonging to such township in the treasurer's hands, an additional rate shall be levied by the county council against such township sufficient to cover such advances. 55 V. c. 42, s. 561.

Taken from the Act of 1866 (29-30 V. c. 51), s. 341 (6).

(a) Sections 648-653 refer to township boundary lines ; ss. 654-656 to county boundary lines.

Sums determined upon to be paid by townships.

654. Whenever the several townships interested in the whole or part of any county boundary line road are unable mutually to agree as to their respective shares of money to be

When the several townships interested cannot agree.

Secs. 654, 655, 656, 657 (1).

paid or of work to be done or of both, in opening or maintaining such boundary line road, or portion thereof, one or more of such township councils may apply to the wardens of the bordering counties to determine jointly the amount which each township shall be required to expend on such road, either in money or statute labor, or both, and the mode of expenditure. the County Judge of the county in which the township first making the application is situate shall in all cases be the third arbitrator. 55 V. c. 42, s 562.

Wardens to be arbitrators.

County judge to be third arbitrator.

Taken from the Act of 1866 (29-30 V. c. 51), s. 341 (8), the words "their respective shares of money to be paid or work to be done or both" having been substituted in the Revision of 1897 for the words "their joint action."

Meetings of wardens.

655. It shall be the duty of the wardens of the counties interested, within twenty-one days of the time of receiving the application, to meet for the determination of the matter in dispute. The warden of the county in which the township first making the application is situated, shall be the convener of the meeting; and it shall be his duty, within eight days after receiving the application, to notify the warden of the other county and County Judge of the time and place of meeting. 55 V. c. 42, c. 563.

Who to convene, etc.

Taken from the Act of 1866 (29-30 V. c. 51), s. 341 (9).

What the wardens and county judge shall determine, etc.

656. At such meeting the wardens and County Judge, or any two of them, shall determine the share to be borne by the respective townships, of the amount required on the part or parts to be opened or repaired by each or both, and shall appoint a commissioner or commissioners to superintend such work, and it shall be the duty of the township treasurer to pay the orders of the commissioners to the extent of the sum apportioned to each; and pathmasters controlling the statute labour on the lots adjoining such line, on the portion of such line to be opened or repaired, shall obey the orders of the commissioner or commissioners in performing the statute labour unexpended. 55 V. c. 42, s. 564.

Taken from the Act of 1866 (29-30 V. c. 51), s. 341 (10).

Division IV.—POWERS OF COUNTY AND TOWNSHIP COUNCILS IN RELATION TO ROADS. (Sec. 657.)

Sale or Lease of Minerals on or under Roads. Sec. 657.

Sale or lease of mineral rights under roads.

657.—(1) The corporation of any township or county, wherever minerals are found, may 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, if considered expedient so to do.

(2) No such sale or lease shall take place until after due notice of the intended by-law has been posted up in six of the most public places in the immediate neighbourhood of such road, for at least one month previous to the time fixed for considering the by-law.

Sec. 657 (2), (3). Note (a). No sale of lease till after notice.

(3) The deed of conveyance or lease to the purchaser or lessee under the by-law shall contain a proviso protecting the road for public travel and preventing any uses of the granted rights which would interfere with public travel. 55 V. c. 42, s. 565.

Sale or lease not to interfere with public travel.

Taken from 31 V. c. 30, s. 37 (1868), which, however, did not include a power to lease; and which, instead of the words "the right to take minerals found upon or under," had the words "the mineral rights to." The former words were substituted for the latter by 36 V. c 48, s. 442 (1873); and power to lease was given by 44 V. c. 24, s. 18 (1881).

(a) "The right to take minerals." The conveyance or lease should be of the *right to take* the minerals, not of the highway itself. But where the lease was of a portion of the highway, "for the purpose of boring and taking therefrom all gas or other minerals"—the quantity of land being no more than was required for the company's purposes, and the rights of the public being fully protected—it was held that the practical difference was so small as not to constitute a ground for quashing the by-law (*a*).

Form of lease or conveyance.

> "The selling or leasing is not restricted to the adjoining owners, but may be to any one; and the purchaser or lessee may interfere with and obstruct the highway to a reasonable extent, so long as public travel is protected and not unreasonably interfered with." (*b*)

"Minerals" have been held to include "every substance which can be got from underneath the surface of the earth for the purpose of profit, unless there is something in the context or in the nature of the transaction to induce the Court to give the word a more limited meaning," (*c*) a definition which, although criticized by Lord HALSBURY in *Lord Provost, etc., of Glasgow* v. *Farie* (*d*), received the support of Lord HERSCHELL in the same case, and was afterwards warmly approved by the Court of Appeal in *Earl of Jersey* v. *Neath Poor Law Union* (*e*).

What are "minerals."

The word has been held to include natural gas (*f*), brick-earth clay (*g*), but not flint (*h*), or common clay or sand (*i*).

(*a*) *Re Ontario Natural Gas Co. and Township of Gosfield South*, 19 O. R. 591; 18 A. R. 626 (1891).

(*b*) *Per* MACLENNAN, J. A., *Ibid*, 18 A. R., at p. 633.

(*c*) *Per* MELLISH, L. J., in *Hext* v. *Gill*, L.R. 7 Ch. 699 (1872), at p. 712.

(*d*) 13 App. Cas. 657 (1888).

(*e*) 22 Q B.D. 555 (1889). And see *Johnstone* v. *Crompton*, [1899], 2 Ch. 190.

(*f*) *Re Ontario Natural Gas Company and Township of Gosfield South*, supra.

(*g*) *Earl of Jersey* v. *Neath Poor Law Union*, supra.

(*h*) *Attorney-General for Isle of Man* v. *Mylchreest*, 4 App. Cas. 508 (1879).

(*i*) *Lord Provost of Glasgow* v. *Farie*, supra.

Sec. 658 (1), (2).
Notes (a); (a).

DIVISION V.—POWERS OF COUNTY COUNCILS IN RELATION TO ROADS AND BRIDGES.

Closing road allowances. Sec. 658 (1).
Opening and altering roads. Sec. 658 (2).
Trees obstructing highways. Sec. 658 (3).
Double tracks in snow roads. Sec. 658 (4).
Aid to local municipalities. Sec. 658 (5).
Repair of county roads therein. Sec. 658 (6).
Abandoning or disposing of toll roads. Sec. 658 (7).
Improvements by united counties. Sec. 659.

658. The council of every county shall have power to pass by-laws for the following purposes:—

Closing Road Allowances.

Disposing of original allowance for roads in certain cases

1. For stopping up, or stopping up and sale, of any original allowance for roads, or part thereof within the county, which is subject to the sole jurisdiction and control of the council, and not being within the limits of any village, town or city within or adjoining the county; but the by-law for this purpose shall be subject to section 632 of this Act. 55 V. c. 42, s. 566 (1).

Taken from 20 V. c. 69, ss. 3, 8 (1857).

(a) Since these powers are now included among those conferred by s. 637 (1) upon the councils of *all* municipalities, this sub-section is no longer necessary, and might be repealed.

Opening and Altering Roads.

Opening, etc., roads, etc., within or between several municipalities.

2. For opening, making, preserving, improving, repairing, widening, altering, diverting and stopping up roads, streets, squares, alleys, lanes, bridges or other public communications, running or being within one or more townships or between two or more townships of the county; or any bridge required to be built or made across any river or stream over 100 feet in width within any village in the county connecting any public highway leading through the county, and which is in continuation of a county road, or between the county and any adjoining county or city or separated town, or on the bounds of any town or village within the boundaries of the county, as the interests of the inhabitants of the county, in the opinion of the council, require to be so opened, made, preserved and improved; and for entering upon, breaking up, taking or using any land in any way necessary or convenient for the said purposes, subject to the restrictions herein contained. 55 V. c. 42, s. 566 (2); 60 V. c. 15, *Sched.* C (104).

Taken mainly from the Act of 1858 (22 V. c. 99), s. 328 (3). The words "or any bridge" (line 5) down to and inclusive of the words "leading through the county" (line 8) were inserted by 34 V. c. 39, s. 9 (1871). Amended (as to width of rivers) by 36 V. c. 48, s. 440 (2); 37 V. c. 16, s. 17 (1874), and R.S.O. (1877), c. 174, s. 524 (2). The word "streams" was inserted by 60 V. c. 15, Sched. C (104) (1897); the words "and which is in continuation of a county road" (lines 8-9), and the words "or separated town" (line 10) by 36 V. c. 48, s. 440 (2) (1873).

(a) The clause referring to bridges over streams within villages is not only unnecessary,—since jurisdiction over these is already conferred upon counties by ss. 613 (3) and 637 (1)—but it also obscures the true construction and object

Sec. 658 3.

Note (a).

of the sub-section, which originally (*a*) applied only to roads (1) running through one or more townships (*b*) (2): between two townships of the county: (3) between the county and an adjoining county, city or separated town; or (4) on the bounds of a town or village within the county.

Powers of county councils as to opening, etc., certain roads etc.

But—even after the interpolated clause relating to bridges has been eliminated—the interpretation of the section presents no little difficulty. Read literally, it gives a county council power,—if in the opinion of the council the interests of the county so require—to exercise, as to every road not situate within a city, town or village, all the powers conferred by s. 637 (1) upon the council of every municipality as to roads which are within their respective jurisdictions. Such an interpretation would render s. 613 (1)—*quoad* bridges in townships—and also s. 614 wholly unnecessary; since, if a county council is intended to possess under this sub-section powers as extensive in regard to such roads as they could acquire by assuming them under one of the sections mentioned, there would be no reason for their taking the latter course, and assuming, with the road, the burden of maintenance imposed by s. 606. Section 615 would also become unnecessary; since larger powers would be conferred by this sub-section than by that section.

It is apprehended, therefore, that a county by-law for "opening, making, preserving, widening, altering, diverting or stopping up" any of the "public communications" to which this sub-section applies, is—in effect if not in form—a by-law for assuming the highway or bridge in question.

In the case (first above mentioned) of a road within a township, or within more townships than one, this right of assumption by the county council would seem to be controlled by s. 613, which requires the assent of the local municipality or municipalities. In the case (secondly above mentioned) of a road running between two or more townships, no such assent is necessary. See s. 614 and note (**c**) thereto.

As to the roads thirdly and lastly above mentioned—viz., boundary roads not lying between two townships,—s. 622 has already conferred joint jurisdiction upon the contiguous municipalities; and it is apprehended that no county by-law could affect the jurisdiction conferred by that section upon a local municipality lying outside the limits of the county, or upon a city or separated town, although it might be locally situate within the county. This subsection may, however, possibly authorize the county to assume the share of such joint jurisdiction which would otherwise have belonged (under s. 622) to a township situate within the county and lying along one side of the road in question. If this be the intention of the enactment, it is most unhappily expressed; and a more probable conclusion seems to be that in the various Revisions of the Act from 1873 to 1897, the language of the clause as it stood in 1858 has been retained without any attempt to consider how its practical utility may have been affected by the amendments since made in other sections relating to bridges and highways.

It may be that a county by-law passed under this subsection merely for "improving or repairing" a township road or bridge would not *ipso facto* amount to an assumption thereof (*c*); but in view of the conflict of jurisdiction and the uncertainty as to the incidence of municipal liability which would result from such a construction, it can scarcely be adopted without the authority of a judicial decision.

Trees Obstructing Highways.

May direct the trees to be cleared on each side of highways.

3. For directing that, on each and either side of a highway under the jurisdiction of the council, passing through a wood, the trees (except such as are reserved by the owner for ornament or shelter) shall, for a space not exceeding twenty-five feet on each side of the highway, be cut down and removed by the proprietor within a time appointed by the by-law, or, in

(*a*) See 22 V. c. 99, s. 328 (3).

(*b*) *Quære*, does not this mean "more than one township"? See *per* ROSE, J., in *Hewison* v. *Township of Pembroke*, 6 O.R. 170 (1884), at p. 172.

(*c*) See *O'Connor* v. *Townships of Otonabee and Douro*, 35 U.C.R. 73 (1874), cited in note (**f**), *infra*.

Sec. 658 (3-6).

Notes (c)-(g).

County council may direct cutting down and removal of trees on each side of a county road.

his default, by the county surveyor or other officer in whose division the land lies; and, in the latter case, for authorizing the trees to be used by the overseer or other officer for any purpose connected with the improvement of the highways and bridges in his division, or to be sold by him to defray the expenses of carrying the by-law into effect; and the council may further pay such expenses out of county funds. 55 V. c. 42, s. 566 (3).

Based upon the Act of 1858 (22 V. c. 99), s. 328 (4). The words "under the jurisdiction of the council" (line 2), and words corresponding to the last clause of the section were inserted by 36 V. c. 48, s. 440 (3) (1873), and the exception in brackets (lines 3, 4), then received substantially its present form.

Compensation.

(c) The learned editors of the preceding editions of the MUNICIPAL MANUAL seem to have been of opinion that in no case would the land owner be entitled to compensation for injury sustained by reason of the exercise of the powers hereby conferred upon the council (a); but there seems to be no valid reason why the general provisions of s. 437 should not apply here; and it is apprehended that any diminution in the value of the land occasioned by the exercise of this corporate power would be a subject for compensation under that section.

Double Tracks in Snow Roads.

Double tracks in snow roads.

Rev. Stat. c. 237.

4. For providing for the making and keeping open of double tracks in snow roads according to the provisions of *The Act Respecting Double Tracks in Snow Roads*. 55 V. c. 42, s. s. 566 (3).

This power was given to county councils by 36 V. c. 46 s. 1 (1873), and was first consolidated in "*The Municipal Act*," as s. 524 (4) of R.S.O. (1877), c. 174.

(d) See "*The Act respecting Double Tracks in Snow Roads*," (R.S.O. c. 237).

Aiding Local Municipalities.

For aiding the making of roads and bridges.

Guaranteeing debentures of local municipalities.

5. For granting to any town, township or village in the county, aid, by loan or otherwise, towards opening or making any new road or bridge in the town, township or village, in cases where the council deems the county at large sufficiently interested in the work to justify such assistance, but not sufficiently interested to justify the council in at once assuming the same as a county work; and also for guaranteeing the debentures of any municipality within the county, as the council may deem expedient. 55 V. c. 42, s. 566 (5).

Taken from the Act of 1858 (22 V. c. 99), s. 328 (7), the last clause having been inserted in 1873 by 36 V. c. 48, s. 440 (4). *Cf.* 12 V. c. 81, s. 41 (16) (1849).

(e) This subsection applies only to aid granted towards making *new* roads or bridges; and in *Re Strachan and County of Frontenac* (b), a by-law granting money to certain townships to assist them "in preserving, improving and repairing roads and bridges" was quashed. But see now the next two subsections.

Aid to local municipalities for construction or maintenance of road.

6. For granting aid to any town, township or village in the county in making, opening, maintaining, widening, raising, lowering or otherwise improving any highway, road, street, bridge or communication passing from or through any township, town or village municipality into a county road. 59 V. c. 51, s. 26.

Passed in 1896. See the reference.

(a) See Mr. HARRISON'S note at p. 446 of the 3rd Ed., which is repeated by Mr. JOSEPH in the 4th Ed. at p. 532-3, and in the 5th Ed., at p. 540.

(b) 41 U.C.R. 175 (1877).

(f) See s. 615 and the note thereto. The making of such grants, and even the expenditure, by commissioners appointed by the county council, of money thus granted, is no evidence that the county intends to assume the road as a county road, but rather of the contrary (a).

Sec. 658 7, 8, 9. Notes (f)-(h).

7. For granting to any town, township or village in the county, aid towards improving any road, street, bridge or other public communication running into any county road of the county within which such local municipality is situate. 59 V. c. 51, s. 27.

Aid towards road improvements in local municipalities.

Passed in 1896. See the reference.

(g) This sub-section seems to be wholly unnecessary, since these and even wider powers are already conferred by sub-section 6.

Repair of County Roads in Local Municipalities.

8. For requiring that the whole or any part of a county road within any local municipality shall be opened, improved and maintained by such local municipality. 55 V. c. 42, s. 566 (6).

Opening roads in local municipalities.

(h) This section appears first in the Act of 1858 (b), being there so worded as to empower a county council to impose upon a local municipality the duty of maintaining *any county road* whether situate within the local municipality or not. It was omitted from the Act of 1866 (c); but was re-inserted in its present form in the Act of 1873 (d), no authority for its re-insertion being stated. The intention and effect of the section are doubtful. In 1858—when it was first enacted—roads dividing townships were county roads by virtue of the Statute; but under the Act as it now stands, there are no county roads except such as have been assumed by by-law. It is apprehended that the section—if it has now any application whatever—merely authorizes a county council to repeal a by-law by which a road has been assumed as a county road, and to declare (what is already the law) that the road shall be henceforth maintained, or (if they see fit), that it shall be opened or improved by the local municipality in which it is situate.

> "Although it may not be altogether easy to say what county roads the sub-section does or does not include, . . . yet I am of opinion, . . . that the county cannot by by-law assume a road . . . as a county road, and compel the local municipality or municipalities of such place or places at their sole expense to improve such road." (e)

It seems that so long as a road continues to be a county road, the county council cannot divest themselves of the duty to maintain it (f).

Abandoning or Disposing of Toll Roads.

9. For abandoning or otherwise disposing of the whole or any portion of a toll or any other road owned by a county, whether situated wholly within the county or partly within the county and partly within an adjoining county or counties.

Disposing roads.

(a) On the passing of such by-law the clerk shall forthwith forward a certified copy thereof to the local municipality or municipalities which any portion of said abandoned road runs through or along or borders upon.

(a) *O'Connor* v. *Townships of Otonabee and Douro*, 35 U. C. R. 73 (1874).

(b) 22 V. c. 99, s. 328 (8).

(c) 29-30 V. c. 51.

(d) 36 V. c. 48, s. 440 (5).

(e) *Per* Adam WILSON, J., in *Re Rose and United Counties of Stormont, etc.*, 22 U. C. R. 531 (1863), at p. 537.

(f) See *Reg.* v. *Township of Louth*, 13 C. P. 615 (1863).

Sec. 659 (b), 659 (1-2).

Notes (a), (b).

Power to abandon or dispose of county roads.

(*b*) No such by-law shall take effect until assented to by the local municipality or municipalities affected, nor until the same shall have been approved by the Lieutenant-Governor in Council. 55 V. c. 42, s. 566 (7).

Taken from 48 V. c. 39, s. 24 (1885), the words "or any other" between "toll" and "road" (line 2) having been inserted by 53 V. c. 50, s. 32 (1890), and clause (b) having been added by 49 V. c. 37, s. 18 (1886).

(a) "**For abandoning.**" These words would authorize the repeal of a by-law which had been passed for assuming a toll road under s. 50 or 102 of "*The General Road Companies Act*," (*a*), or for assuming any other road under s. 613 (1) or 614 of this Act.

(b) "**Or otherwise disposing of.**" These words authorize the council to pass a by-law for selling a toll road under s. 34 of "*The General Road Companies Act*," (*b*), or for selling or leasing any road within the jurisdiction of the municipality (*c*).

Ss. 33 and 34 of "*The General Road Companies' Act*," (R. S. O. c. 193,) provide that :—

Companies may sell their works and rights to municipalities.

"**33.** A company formed under this or any former Act may sell to any municipal council representing the interests of the locality through or along the boundary of which such road passes, or in which the work is situate, and the municipal council may purchase the stock of the company, or any part of the road belonging to the company, at the value that may be agreed on between the company and the municipal council ; and the municipality may hold the same for the use and benefit of such locality, and shall, after the purchase, stand in the place and stead of the company, and possess all such powers and authority as the company theretofore possessed and exercised in respect to the road or part of road, or other work purchased.

Municipalities may sell roads, etc.

Application of proceeds.

34. The municipal council may sell any work, or any macadamized, plank, or other toll road which they have constructed or purchased, or any stock held in any road or other company, and apply the proceeds of such sale to the payment of existing debts contracted for the construction of the same, or for such stock ; or if no debt exists for such work, road or stock, then to the general purposes of the municipality or otherwise, as they may determine."

Improvements by United Counties.

Enabling either county of a union to make improvements therein.

659.—(1) The councils of united counties may make appropriations and raise funds to enable either county, separately, to carry on such improvements as may be required by the inhabitants thereof. 55 V. c. 42, s. 515.

Taken from 20 V. c. 68, s. 1 (1857). Consolidated in the Act of 1858 (22 V. c. 99), s. 281 (1858

Councillors representing the county affected alone to vote.

Exception.

(2) Whenever any such measure is brought before the council of any united counties, none but the members thereof representing the county council divisions comprising the county to be affected by the measure shall vote; except in case of an equality of votes, when the warden, whether a representative of any portion of the county to be affected by the measure or not, shall have the casting vote. 55 V. c. 42, s. 516 ; 60 V. c. 3, s. 3.

Taken from the Act of 1858 (22 V. c. 99), s. 282, a slight redundancy in which is corrected by 29-30 V. c. 51, s. 291. The section formerly referred to reeves and deputy reeves; but was made applicable to the present system of governing united counties in the Revision of 1897, under the authority of 60 V. c. 3, s. 3 (1897). *Cf.* 20 V. c. 68, s. 2 (1857).

(*a*) R. S. O. c. 193. (*b*) *Supra*. (*c*) See s. 637 (1).

Sec. 659 (3)-(5).

Note (a).

(3) In all other respects, all the provisions of this Act making provision for the payment of the amounts appropriated, whether to be borrowed upon a loan or to be raised directly by taxation, shall be adhered to. 55 V. c. 24, s. 517.

Provisions of this Act for repayment to apply.

Taken from 20 V. c. 68, s. 3 (1857). The words "giving such privileges and" having been omitted before "making" (line 1) in R. S. O. (1887), c. 184, s. 517. *Cf.* 22 V. c. 99, s. 283; 29-30 V. c. 51, s. 292; 36 V. c. 48, s. 399; R. S. O. (1877), c. 174, s. 480; 46 V. c. 18, s. 517.

Treasurer to pay over moneys without deduction.

(4) The treasurer of the united counties shall pay over all sums so raised and paid into his hands by the several collectors, without any deduction or percentage 55 V. c. 42, s. 518.

Taken from 20 V. c. 68, s. 4 (1857), in which the words "raised and" before "paid" (line 2) were omitted; and the word "for" occurred instead of the word "or" before "percentage." The change from "for" to "or" was made by 29-30 V. c. 51, s. 293 (1866); and the omitted words were inserted by 22 V. c. 99, s. 284 (1858).

The property to be assessed in such cases.

(5) The property to be assessed for the purposes contemplated in the last four preceding sub-sections, shall be the same as the property assessed for any other county purpose, except that any sum to be raised for the purposes of one county only, or for the payment of any debt contracted for the purposes of one county only, shall be assessed and levied solely upon property assessed in that county, and not upon property in any other county united with it, and any debenture that may be issued for such purposes may be issued as the debenture of the said one county only, and shall be as valid and binding upon that county as if that county were a separate municipality: but such debentures shall be under the seal of the united counties, and be signed by the warden thereof. 55 V. c. 42 s. 519.

Debentures.

The first clause, down to the words "united with it" (line 8) is taken from 20 V. c. 68, s. (1857), with some verbal amendments made in the consolidation of 1858 (22 V. c. 99, s. 285). The second clause (relating to debentures) is taken from the Act of 1866 (29-30 V. c. 51), s. 294.

Form of debentures.

(a) **"May be issued as the debentures of the . . one county only."** It is not easy to understand this part of the section. The provision that any debenture that may be issued may be so issued "as the debenture of the one county only, and shall be as valid and binding upon that county as if that county were a separate municipality," would appear to indicate an intention that the promise to pay shall be that of the one county only? But the concluding provision, that such debentures "shall be under the seal of the *united counties*, and be signed by the warden *thereof*," is inconsistent with such a conclusion. And since the united counties form but one corporation (*a*)—there can be, prior to the date of separation named in the proclamation of the Lieutenant-Governor (*b*), no other corporate body capable of making such a contract. It is submitted that the debentures should be issued as debentures of the union, but should be so drawn as to shew on their face that they form a charge upon the one county only.

(*a*) See s. 9 of this Act.

(*b*) See s. 50.

Sec. 660 (1-3).
Note (a).

DIVISION VI.—POWERS OF TOWNSHIP COUNCILS IN RELATION TO ROADS AND BRIDGES.

Aiding counties. Sec. 660 (1).
Closing road allowances. Sec. 660 (2).
Trees obstructing highways. Sec. 660 (3).
Footpaths. Sec. 660 (4).
Sale of roads in villages and hamlets. Sec. 661, 662.
Roads connecting side lines in double-front concessions. Sec. 663.

660. The council of every township may pass by-laws :—

Aiding Counties.

Aiding adjoining county in making roads, etc., and granting aid to county for roads assumed by county.

1. For granting to any adjoining county, aid in making, opening, maintaining, widening, raising, lowering or otherwise improving any highway, road, street, bridge or communication lying between the township and any other municipality, and for granting like aid to the county in which the township lies, in respect of any highway, road, street, bridge, or communication, within the township, assumed by the county as a county work, or agreed to be so assumed on condition of such grant. 55 V. c. 42, s. 567 (1).

Taken from the Act of 1858 (22 V. c. 99), s. 329 (1). *Cf.* 12 V. c. 81, s. 31 (16).

Closing Road Allowances.

Stopping up, leasing or sale of original road allowance.

2. For the stopping up, leasing or sale of any original allowance for road, or any part thereof, within the municipality; and for fixing and declaring therein, the terms upon which the same is to be leased, sold and conveyed;

But no such by-laws shall have any force,—

Proviso.

(*a*) Unless passed in accordance with section 632 of this Act, nor

(*b*) Until confirmed by a by law of the council of the county in which the township is situate, at an ordinary session of the county council, held not sooner than three months nor later than one year next after the passing thereof. 55 V. c. 42, s. 567 (2).

Taken from 20 V. c. 69, s. 2 (1857), with the exception of some verbal amendments which were made in the Consolidation of 1858, (22 V. c. 99, s. 329 (2)), the substitution of the word "or" for "and" before "sale" (line 1), and the omission of the power to lease. This change was made and the omission supplied by 44 V. c. 24, s. 17 (1881).

(a) Since power to sell public highways (*a*) was conferred in 1897 upon the councils of all municipalities (*b*), it is apprehended that this section is no longer necessary. The restrictions contained in clauses (a) and (b) are, however, still in force.

Trees obstructing Highways.

Ordering trees to be cut down on each side of a road.

3. For directing that, on each or either side of a highway under the jurisdiction of the council, passing through a wood,

(*a*) See s. 637 (1). (*b*) By 60 V. c. 45, s. 20.

Secs. 660 (3),(4), 661, 362.

Notes (a), (a).

Township council may pass by-law directing cutting down and removal of trees on each side of a township road.

the trees (except such as are reserved by the owner for ornament or shelter) shall, for a space not exceeding twenty-five feet on each side of the highway, be cut down and removed by the proprietor within a time appointed by the by-law, or, on his default, by the overseer of highways, or other officer in whose division the land lies; and, in the latter case, for authorizing the trees to be used by the overseer or other officer for any purpose connected with the improvement of the highways and bridges in his division, or to be sold by him to defray the expenses of carrying the by-law into effect; and the council may grant, out of township funds, any money that it may be necessary to pay for cutting down and removing such trees. 55 V. c. 42, s. 567 (3).

Taken from the Act of 1858 (22 V. c. 99), s. 329 (3), as amended by 36 V. c. 48, s. 441 (3).

(a) This section is identical with s. 658 (3). See that section and the notes thereon.

Footpaths.

Footpaths.

4. For setting apart so much of any highway as the council may deem necessary for the purposes of a footpath, and for imposing penalties on persons travelling thereon on horseback or in vehicles. 55 V. c. 42, s. 567 (4).

Taken from 33 V. c. 26, s. 11 (1869).

(a) See as to sidewalks, s. 637 (3); as to bicycle paths, s. 640 (1); and, as to prohibiting the use of vehicles on sidewalks and footpaths, s. 560.

Sale of Roads in Villages or Hamlets.

When roads in police villages and certain hamlets may be stopped up, sold, etc., by township council.

661.—(1) In case the trustees of any police village, or fifteen of the inhabitant householders of any other unincorporated village or hamlet consisting of not less than twenty dwelling houses standing within an area of 200 acres, petition the council of the township in which the village or hamlet is situate, and in case the petition of such unincorporated village or hamlet, not being a police village, is accompanied by a certificate from the registrar of the registry division within which the township lies, that a plan of the village or hamlet has been duly deposited in his office according to the registry laws, the council may pass a by-law to stop up, sell and convey, or otherwise deal with any original allowance for road lying within the limits of the village or hamlet, as the same shall be laid down on the plan, but subject to all the restrictions contained in this Act with reference to the sale of original allowances. 55 V. c. 42 s. 568 (1).

Taken from the Act of 1858 (22 V. c. 99), s. 330.

When village is partly in each of two townships.

662. The preceding section shall apply to a village or hamlet situate in two townships, whether such townships are in the same or different counties, and in such case the council of each of the townships shall have the power thereby conferred, as to any original allowance for road lying within that part of the

Secs. 662, 663. Note (a).

village or hamlet which, according to the registered plan, is situate within such township. 55 V. c. 42, s. 568 (2).

Taken from the Act of 1858 (22 V. c. 99), s. 331.

Sale of roads in police villages and hamlets.

(a) These sections seem to be no longer necessary, since by s. 637 (1) power has been given to all municipalities to sell public highways—a term which, by s. 598, includes original road allowances.

Roads connecting Side Lines in Double Front Concessions.

Side lines in double front concessions.

663.—(1) In any township in which the concessions have been surveyed with double fronts, that is with posts or monuments planted on both sides of the road allowances between the concessions, and the division or side lines drawn from the posts at both ends to the centre of the concession do not meet, and road allowances have been laid out along such lines, the council may by by-law provide for the opening and laying out (upon a survey made by an Ontario land surveyor, to be named in the by-law) of a roadway joining the ends of such road allowances.

(2) The centre of such roadway shall be determined by a straight line drawn along the centre of the concession between the ends of such road allowances, unless it shall appears to the surveyor that any other line would be more suitable according to the circumstances of the case.

(3) The surveyor shall determine the compensation to be paid to persons whose lands are taken for opening and laying out the said roadway, and the amount so determined shall be paid to such persons by the municipal corporation of the township.

(4) A copy of the by-law shall be served upon all persons over whose lands the proposed road will pass; and any such person desiring to object to the surveyor named in the by-law may, within one month after service thereof upon him, serve on the clerk of the municipality and on the other persons interested a notice of objection to such surveyor together with an appointment returnable before the County Judge of the county in which the lands lie.

(5) Upon the return of the appointment the Judge, after hearing all parties concerned, may confirm the appointment of the surveyor named in the by-law or may name and appoint some other Ontario land surveyor to carry out the terms of the by-law; and in such case the surveyor so appointed shall act in the place and stead of the surveyor named in the by-law. 60 V. c. 55, s. 1.

Passed in 1897. See the reference.

TITLE III.—POWERS OF MUNICIPAL COUNCILS AS TO IMPROVEMENTS TO BE PAID FOR BY LOCAL RATE.

The Local Improvement System.

Origin of special local assessments.

It is, no doubt, very commonly believed—even among those who know something about our local improvement system—that it is of American origin; but this is a mistake. Its fundamental principle,—viz., the right of the local authority to assess and levy from the owners of real estate specially benefited by the construction of a local work a share, at least, of the benefit thus conferred—may be traced back to the Statutes of 6 Henry VI. c. 5 (1427) and 23 Henry VIII. c. 5 (1531), which authorized the levy of a rate upon land owners to meet the cost of constructing sea-walls and similar protective works; and—as applied to municipal improvements—it was embodied in an Act of 1662 (*a*), entitled "*An Act for repairing the highways and sewers and for keeping clean the streets in and about the cities of London and Westminster*," *etc.*, and again in an Act passed in 1667 (*b*), to regulate the rebuilding of the City of London after the Great Fire (*c*). A local improvement system "was in full operation in London at a period when the American colonies were in their infancy, and the United States, to which they gave birth, were a full century yet unborn." (*d*)

In England.

The existing law.

"*The Metropolis Local Management Act, 1855*," (*e*) and the amending Act of 1862 (*f*) now provide that where a "new street" (*g*) has been or is to be paved by the local authority, the frontagers shall pay on demand the expense—or the estimated expense—of the work according to an apportionment to be made by the local authority, which may charge owners of land in a less proportion than owners of house property, and may accept payment of the amount apportioned or charged in respect of each house, by instalments spread over twenty years. The local authority is not bound to charge the frontagers rateably *inter se*, according to frontage or otherwise; and, if the requirements of the Act have been complied with (*h*), the apportionment cannot be questioned except for *mala fides* in the making of it (*i*). As to the expense of constructing sewers, similar powers are given to the local authorities by s. 80 of the first mentioned Act (*j*) and by ss. 52-57 of the Act of 1862 (*k*); but the apportionment of expense in the latter case is subject to an appeal to the Metropolitan Board of Works.

Again,—s. 8 of "*The Artisans Dwellings Act, 1882*" (*l*) provides—in case of the demolition of what is therein styled "an obstructive building"—that "where, in the opinion of the arbitrator, the demolition . adds to the value of . other buildings . the arbitrator shall apportion so much of the compensation to be paid for the demolition of the obstructive building as may be equal to the increase in value of the other buildings amongst such other buildings respectively; . and the local authority may make and levy improvement rates on the occupiers of such premises accordingly."

(*a*) 14 Car. II. c. 2. (*b*) 19 Car. II. c. 3.

(*c*) See also 22-23 Car. II. c. 17; 7 Anne, c. 9.

(*d*) Blunden,—"Local Taxation and Finance," (London, 1895), p. 91.

(*e*) Imp. Stat. 18-19 V. c. 120, s. 105. (*f*) Imp. Stat. 25-26 V. c. 102.

(*g*) *Attorney-General* v. *Rufford*, [1899] 1 Ch. 537: *London County Council* v. *Dicens*, [1899] 1 Q. B. 496: *Allen* v. *Fulham Vestry*, [1899] 1 Q. B. 681.

(*h*) *Cook* v. *Ipswich Local Board*, L. R. 6 Q. B. 431 (1871): *Mile End (Vestry of)* v. *Whitechapel*, 7 Q. B. D. 680 (1876): *Shanklin Local Board* v. *Miller*, 5 C. P. D. 272 (1880).

(*i*) *Clacton Local Board* v. *Young*, [1895] 1 Q. B. 395: *Barry and Cadoxton Local Board* v. *Parry*, [1895] 2 Q. B. 140: *Darix* v. *Greenwich District Board of Works*, [1895] 2 Q. B. 217: *Metropolitan District R. W. Co.* v. *Fulham Vestry*, Ibid. 443; *and vide Whitechurch* v. *Fulham District Board of Works*, L. R. 1 Q. B. 233 (1866).

(*j*) Imp. Stat. 18-19 V. c. 120. (*k*) Imp. Stat. 25-26 V. c. 102.

(*l*) Imp. Stat. 45-46 V. c 54, re-enacted as ss. 38-39 of the "*The Housing of the Working Classes Act, 1890*," 53-54 V. c. 70.

The Local Improvement System.

In England.

Lastly,—ss. 23, 36, 41, 62, 150 and 160 of "*The Public Health Act, 1875*" (*a*) and s. 3 of "*The Public Health (Water) Act, 1878*" (*b*) authorize the imposition, by local or sanitary authorities, of "private improvement rates" for the expenses of works done by these authorities upon default of the property-owners (after notice) to comply with regulations in respect of house drainage, water-closets, water supply, street paving, etc.,—a method which we have adopted in those sections of "*The Municipal Act*" which authorize councils to pass by-laws for "compelling" property owners to execute certain works,—coupled with s. 703, which empowers them in case of default on the part of the property-owner, to do work at the expense of the person so in default, and to collect the amount thus expended by action or distress, or in the same manner as municipal taxes.*

On the Continent.

The principle of special assessments for local improvements is recognized also in France (*c*), in Belgium (*d*), and in Germany (*e*); but it is in the United States

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(*a*) Imp. Stat. 38-39 V. c. 55. (*b*) Imp. Stat. 40-41 V. c. 25.

(*c*) "*Loi relative au desséchement des marais,*" *16 Septembre, 1807,*—which provides that in cases where, by the opening of new streets, by the creation of new public places, by the construction of quays, etc. . . . . private property shall have acquired a marked increase in value, such property may be charged with payment of an indemnity amounting to one-half the value of the advantages acquired.

(*d*) Leemans,—"*Des Impositions Communales en Belgique.*"

(*e*) Leidig,—"*Preussiches Stadtrecht*"; Loening,—"*Verwaltungsrecht*"; Neumann,—"*Die Steuer und das öffentliche Interesse*"; Ludwig Wolf, "*Sachsische Gesetzgebung über Wegebau.*"

* A most interesting discussion of the whole subject may be found in the report of a Select Committee of the House of Lords appointed to consider a Bill entitled "*The Town Improvements (Betterment) Act, 1894.*" The report, together with a *verbatim* copy of the evidence, is printed in the House of Lords' Sessional Papers for 1894, Vol. 8, at page 129. The Committee consisted of fifteen members, and included Lord Halsbury who was Chairman—Lord Tweedmouth, the Duke of Norfolk, Lord Salisbury, Earl Cowper, Lord Farrer, Lord Eggerton and Lord Thring.

They were directed "to consider and report whether, in the case of improvements sanctioned by Parliament and effected by the expenditure of public funds, persons, the value of whose property is clearly increased by an improvement, can be equitably required to contribute to the cost of the improvement; and, if so, in what cases, and under what conditions, Parliament should sanction the levying of such contributions in local Acts or provisional Orders."

After hearing a number of witnesses specially familiar with the subject, the Committee came to a unanimous conclusion in regard to the matters referred to them, and reported to the House in July, 1894. Among their conclusions are the following:—

"1. The principle of betterment—in other words, the principle that persons whose property has clearly been increased in market value by an improvement effected by local authorities, should specially contribute to the cost of improvement, is not in itself unjust, and such persons can equitably be required to do so. But the effect of a public work in raising the value of neighbouring lands is shown by experience to be uncertain. Whether, in any particular case, it is possible to pronounce that such an effect has been produced by the completion of any public work, is a point upon which the evidence of eminent valuers differs greatly. * * *

3. It should be provided that within some reasonable period *after the completion of the work*, the owner of the property intended to be charged should receive notice of the amount of the charge which the local authority proposes to make in respect of the alleged increase in the market value of his property due to the work in question. Inasmuch as the appropriateness of the period must to some extent depend upon the nature of the work and the condition of the neighbourhood, it would be difficult to fix any definite time applicable to all cases; but the period should not be so short that the effect of the improvement could not be adequately tested, and it should not be so long as to make the property intended to be charged suffer in market value by the suspension of the decision as to the charge.

4. In default of acquiescence by the person on whom notice is served, the amount of the charge to be made should be decided by an arbitrator, unless the said person claims to go before a jury; and the decision should be taken with as little delay as possible.

5. All the costs of such arbitration or inquiry before a jury should be borne by the local authority claiming to lay such charge, unless the arbitrator or jury finds or awards the same sum or a greater sum than that which the local authority sought to lay upon the property, in which case each party should bear his own costs incident to the arbitration or inquiry; and the costs of the arbitrator or jury should be borne by each of the parties in equal proportion, unless otherwise ordered by the arbitrators, or (in the case of a jury) by the High Court, upon the ground that the opposition to the proposed charge has been frivolous and vexatious.

6. If the owner has property in the immediate neighbourhood, which is found to be injured in its market value by the same work, the amount of the injury should be considered in determining the charge to be imposed upon him for improvements.

Its origin.

of America that the system has attained its highest development (*a*)—for reasons which are especially applicable to loosely-built and widely-extended towns and cities—(where some of the territory within the corporate limits is urban only in name)—and which have exceptional weight and influence with governing bodies where the Legislature has seen fit to limit the amount which may be annually raised by general rate. A summary of the legislation of various States on the subject will be found in chap. XIX. of Judge DILLON'S invaluable work on Municipal Corporations (*b*); and in s. 761 the learn[illegible] [illegible]hor sums up the general result of the American decisions relating to [illegible] assessments in respect to local improvements—pointing out that :—

In the United States.

1. A local assessment upon property immediately and specially benefited by a local improvement, although resting for its foundation upon the taxing power, is in many respects distinguishable from a tax.

2. Special benefits to the property assessed—*i.e.*, benefits received by it beyond those received by the community at large—form the only true and just foundation upon which local assessments can rest.

3. The assessment may be made on benefited lots in proportion to their superficial area or to their assessed value.

4. Where the property is urban, and is laid out in blocks or lots of equal depth, all abutting upon the local improvement, and there is nothing in the nature or circumstances of the case which will cause an assessment according to frontage to work manifest injustice—the assessment may be so made.

5. But the method most generally adopted,—and the only one which (in the author's judgment) is right in principle and equitable in its practical workings—is to assess the cost of the work (or a definite part or share thereof) rateably upon the several properties specially benefited thereby, according to the special benefit which each separate lot or parcel of property actually and separately receives therefrom.

In this Province.

Although—as is pointed out *infra* in the small-print note to s. 664 (2)—the principle of the local improvement system was recognized in this Province by s. 81 (5) of the Municipal Act of 1849 (*c*) and s. 9 of the Act of 1853 (*d*), the foundation of the procedure now contained in ss. 664 *et seq.* of this Act was laid in 1859 (*e*) by the Act of 22 V. (2nd Sess.), c. 40. This Statute authorized the council of every city to pass by-laws :—

> "1. 1. For providing the means of ascertaining and determining what real property will be immediately benefited by any proposed improvement, the expense of which is proposed to be assessed as hereinafter mentioned upon the real property immediately benefited thereby : and of ascertaining and determining the proportions in which the assessment is to be made on the various portions of the real estate so benefited ; subject in every case to an appeal to the County Court Judge, in the same manner and on the same terms, as nearly as may be, as an appe[illegible] [illegible]om the Court of Revision in the case of an ordinary assessment.

(*a*) The first American Statute giving power to impose local assessments for local improvements is an Act of the Assembly of the Province of New York, passed in 1691, "for regulating the buildings, streets, lanes, wharfs, docks and alleys of the City of New York." [See Angell & Durfee on Highways (2nd Ed.), s. 178]. It authorized the mayor and aldermen,—"to impose a reasonable tax upon all houses in the said city, according to the benefit they shall receive thereby, for and towards the making, altering, etc., of the said drains, sewers, pavements," etc.

(*b*) *Cf.* also Cooley on Taxation, pp. 26, 637.

(*c*) 12 V. c. 81. (*d*) 16 V. c. 181.

(*e*) Special assessments for drainage works were introduced in 1858 (22 V. c. 99, ss. 271-272), when township councils were authorized—upon a petition sufficiently signed—to make an assessment of so much of the cost of draining any locality as should not exceed the benefit derived from such drainage. The assessment was to be according to the proportion of benefit received. The principle of assessing only up to the amount of benefit received was soon abandoned ; but, with this exception, the present "*Municipal Drainage Act*" is but an amplification of the two sections of the Act of 1858.

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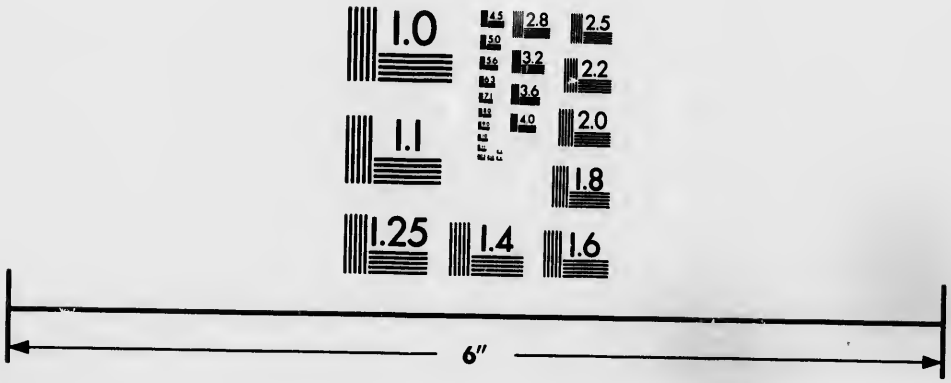

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The Local Improvement System.

In this Province.

22 V. c. 40 (1859).

2. For assessing and levying upon the real property to be immediately benefited by the making, enlarging or prolonging of any common sewer, or the opening, widening, prolonging or altering, macadamizing, grading, levelling, paving or planking of any street, lane or alley, public way or place, or of any sidewalk therein, on the petition of at least two-thirds in number and one-half in value of such real property of the owners of such real property, a special rate, sufficient to include a sinking fund for the repayment of debentures, which such councils are hereby authorized to issue in such cases respectively on the security of such rates respectively, to provide funds for such improvements, and for so assessing and levying the same,—

(1) By an annual rate in the pound on the real property so benefited, according to the assessed value thereof, including the improvements thereon, or

(2) By an annual rate in the pound on the real property so benefited, according to the value thereof, exclusive of the improvements thereon, or

(3) By an annual rate of so much per foot, equally, according to the frontage of the real property so benefited without reference to the comparative value of the different portions thereof, or

(4) By an annual rate on each portion of the real property so benefited in proportion, as nearly as may be, to the benefit derived by such portion, or

(5) Partly by each of these methods, or partly by each of any two or three of them.

3. For regulating the time or times and manner in which the assessments to be levied under this Act are to be paid, and for arranging the terms on which the parties assessed for local improvements may commute for the payment of their proportionate shares of the cost thereof in principal sums:

4. For effecting any such improvement as aforesaid with funds provided by parties desirous of having the same effected.

2. No such local improvement as aforesaid shall be undertaken by the council of any city . . otherwise than on the petition of two-thirds in number and one-half in value of real property to be directly benefited thereby of the owners of such real property,—the number of such owners and the value of such real property having been first ascertained and finally determined in the manner and by the means provided by by-law in that behalf. And if the contemplated improvement be the construction of a common sewer having a sectional area of more than four feet, one-third of the cost thereof shall also first be provided for by the council of the city, by by-law for borrowing money (which every such council is hereby authorized to pass for such purpose), or otherwise. * * *

6. Nothing in this Act contained shall be construed to apply to any work of ordinary repair or maintenance; and every common sewer made or prolonged and street, lane, alley, public way and place and sidewalk therein, once made, opened, widened, prolonged, altered, macadamized, paved or planked under this Act shall thereafter be kept in a good and sufficient state of repair at the expense of the city generally" (a).

(a) This Act was introduced upon a petition of the mayor, aldermen and commonalty of the City of Toronto, and was presented to the Legislative Assembly of Canada in March, 1859, by the late Hon. George Brown. The Bill—which as introduced by him applied to towns as well as cities—was referred to a Special Committee consisting of Messrs. Brown, McMicken, Buchanan Benjamin and Mowat, and (having been passed by the House as reported by that Committee), was sent up to the Legislative Council, where it was amended by striking out all reference to towns. The Lower House having concurred in this amendment, the Bill became law on May 4th, 1859. The Mayor of Toronto,—who signed the petition for the Bill on behalf of the City,—was the late Sir (then Mr.) Adam Wilson, afterwards Chief Justice of the Q. B. D. He had been elected (by popular vote) in the preceding January; and it is not improbable that he was the principal promoter of the Bill.

How the system has extended since the Act of 1859.

The powers conferred by this Act have since been extended to all other local municipalities (*a*), and its principle has been from time to time applied to new works and undertakings. In 1871, bridges were included (*b*); in 1880, the deepening of streams, drainage works, and the curbing, sodding and planting of streets (*c*); in 1890, culverts and embankments (*d*), and in 1892, water and light mains (*e*). It has been found necessary to authorize councils to assume out of their general funds the rebate (if any) allowed on corner lots (*f*) the cost of work at street intersections and opposite exempt properties (*g*), a share of the cost of bridges, culverts, embankments, of the opening up and extension of streets, and of certain improved sidewalks (*h*), and to make special assessments only for the balance; but, except in these cases, practically the whole cost of a work undertaken as a local improvement must be locally levied (*i*).

The mode of ascertaining the property to be assessed has been frequently altered. From 1859 to 1882, benefit was the only criterion of assessability; and all benefited property, wherever situate, was assessable. In the latter year, however, locality became in certain cases the test, the rates being imposed "upon the real property fronting or abutting upon the street or place whereon or wherein" the work was done (*j*), and in 1883, this rule was made applicable to all cases (*k*). It was, however, found to be too arbitrary; and exceptions became necessary, as in the case of the rule which required that the whole cost of the work should be locally levied. Accordingly an amendment was made in 1885, whereby property benefited, though not abutting, might be included in assessments for the cost (or part of the cost) of bridges, culverts, embankments or the opening up and extension of streets (*l*). In 1888 the restriction of the assessment to abutting property was removed in the case of sewers of greater capacity than that required for the drainage of the particular streets in which they were laid (*m*), and in 1892, in the case of all works in certain townships (*n*). It was completely swept away in 1896; and the present rule, which is the same as that in force prior to 1882, was then adopted (*o*).

Alterations have also been made in the method of apportioning the amount to be levied among the various parcels of property to be assessed (*p*). Under the Act of 1859, the council had the option of adopting any one or more of four modes, viz.:—(1) by rate on assessed values exclusive of benefit; (2) by rate on assessed values including benefit; (3) by frontage rate; or (4) according to the proportion of benefit received by each parcel of land. By the Act of 1866 (*q*) this option was taken away, the first mode—viz., by rate on assessed values exclusive of improvements—being the only one authorized. In 1881, a further change was made by which the respective frontages of the lots became the standard for determining their respective shares of the sum to be levied, the rate being one per foot of frontage. This has since remained the general rule, subject to the decision of the Courts that the rate upon non-abutting property need not be the same per foot as that upon abutting property (*r*).

In assessments made upon this basis the fact of benefit is of importance only in determining the property which is to be assessed. The apportionment of the amount to be levied among the various parcels of such property depends solely upon their measurement, the relative amounts of their respective benefits being altogether disregarded. The resulting distribution of the burden is equitable in simple cases—*e.g.*, in that of sidewalks or pavements in urban localities where abutting property is alone assessed, and where the lots are of approximately equal depth and of similar capabilities; but in other cases it is sometimes most unfair. For instance,—suppose that by the construction of a bridge three lots of equal frontage are benefited to the respective amounts of $50, $100 and $500. According to this method each of them will nevertheless be

(*a*) To towns by 31 V. c. 30, s. 35 (1868); to villages by 34 V. c. 30, s. 10 (1871); and to townships by 50 V. c. 29, s. 48 (1887).
(*b*) 34 V. c. 30, s. 11. (*c*) 43 V. c. 27, s. 10. (*d*) 53 V. c. 50, s. 38.
(*e*) 55 V. c. 43, s. 63. (*f*) S. 673 (4). (*g*) S. 679 (1).
(*h*) See ss. 674 (1), 675, 678. (*i*) See note (e) to s. 664.
(*j*) 45 V. c. 23, s. 4. It is possible that the effect of other sections of the Act as then amended would have restricted the assessment to property which was actually benefited; but this does not appear to have been the intention of the framers of the amendment. See R.S.O. (1877), c. 174, ss. 551 (1), 552, 553.
(*k*) 46 V. c. 18, s. 612 (4). See small-print note under s. 665 (1).
(*l*) See s. 674 (2). (*m*) See s. 673 (2). (*n*) See s. 665 (3).
(*o*) See small-print note under s. 665 (1) and note (b) thereto.
(*p*) See on this point the small-print note to s. 665 (1).
(*q*) 29-30 V. c. 51, s. 301. (*r*) See note (a) to s. 665.

The Local Improvement System.

assessed for exactly the same amount; and if—as is quite conceivable—these lots alone receive any benefit, and the bridge costs $2,000, of which the municipality assumes one-half (*a*), each of these proprietors will be charged $333, one of them thus being compelled to pay nearly seven times the amount of the increase in value of his property, while another pays but two-thirds of the amount of his benefit.

Assessment according to the proportions of benefit received.

Possibly because of the injustice which must occasionally result from an assessment according to frontage, another method has been introduced since the passing of the Act of 1866. In 1882, townships were authorized (if they saw fit) to assess each parcel of property benefited by a bridge or culvert, or by the opening up and extension of a street, etc., according to the proportion of the whole amount of benefit received by that parcel (*b*); and in 1892 this power was conferred, in the case of all works, upon townships any part of which lies within five miles of a city containing 50,000 inhabitants or over (*c*). This method of assessment is scarcely more defensible than that according to frontage If—upon appeal to the Court of Revision or the County Judge—the assessment proposed by the engineer is varied in respect of a single lot, a compensating variation must also be made in respect of another or others, in order that the amount which is to be raised may remain the same; and since the assessment is based upon the *proportion* of benefit received, it may be necessary—in order to effect a proper apportionment—to have every assessed owner and his witnesses before the Court. Furthermore—considerable difficulty arises when lands have been benefited but have at the same time been injuriously affected. If the benefit and damage are set off one against the other (*d*) an assessment cannot be equitably made upon the benefit which has been thus set off; while, on the other hand, it may not be equivalent in amount to a share of the whole cost proportionate to the benefit. *E.g.*—suppose that by a work costing $600 (including land damages) lot A. is benefited $100, and lot B. is benefited $200, but damaged $300, no other land being affected. The benefit to lot B. being set off against the damage, its owner will receive but $100 as his compensation. He therefore contributes toward the cost of the work $200, the amount of the benefit to his property. Lot A. must then be assessed for the balance of the cost, viz. $400, or four times the amount of the benefit which it has received. Properly speaking, damage and benefit should be kept entirely distinct, lot A. being charged $200 and lot B. $400, but the owner of the latter recovering full compensation for all damage.

This procedure, however, is not free from objecti[illegible] In following it, the amount of the benefit and the amount of the dama[illegible]st be separately estimated. Since each is properly determined by asc[illegible]g the difference in the market value of the land due to the construction of the work, to determine either of them separately, without regard to the other, is a task of extreme complication; and it is most unlikely that the resultant effect of the decisions of the Court of Revision as to benefit, and of an arbitrator as to damage, will be to place the owner of lot B. in precisely the same position as if both these matters had been determined by the same tribunal (*e*).

(*a*) This is the limit of its power. See s. 675.

(*b*) See s. 674 (3).

(*c*) See s. 665 (3 *proviso*). This is the method of assessment under "*The Municipal Drainage Act*," (R.S.O. c. 226.)

(*d*) In cases under this Act benefit and damage must be set off: see s. 437: *Re Richardson and City of Toronto*, 17 O. R. 491 (1889): *Re Pryce and City of Toronto*, 16 O.R. 726; 20 A.R. 16 (1892); and apparently also in cases under "*The Municipal Drainage Act*": *Township of Ellis* v. *Hiles*, 23 S.C.R. 429 (1894), at pp. 448-9: *Re Thackeray and Township of Raleigh*, 25 A.R. 226 (1898).

(*e*) It has been suggested that the Court of Revision should make the assessment according to benefit alone, and that the arbitrator should allow to the owner his damage less any advantage which he may have derived, and *plus* the excess of the amount of the special assessment over and above the benefit. This course must probably be followed in practice, but it is open to the objections urged against both methods of assessment. Benefit and damage must be separately estimated; and the result is identical with that arrived at by a direct assessment according to the actual benefit after damage has been deducted. See *per* OSLER, J. A., in *Re Thackeray and Township of Raleigh*, 25 A. R. 226 (1898), at p. 236-7.

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Its present unsatisfactory condition.

All the amendments already noted—together with many others of less importance—have been from time to time grafted upon the original Act of 1859. By twenty-three amending Acts, and in nine consolidations, about one hundred and twenty variations (exclusive of many verbal changes) have been made in that short Statute, and the three pages which formed the original Act have been expanded to eighteen pages in the present Revised Statute. Yet during all these forty years no attempt has been made to deal with the subject in a comprehensive or scientific enactment. The annual alterations and additions have been made upon principles—if any—constantly varying, and often with reference to some particular case of assumed injustice or hardship. In the result, our local improvement law has become—to use the language of OSLER, J.A.—"a patchwork of clauses," which Sir WILLIAM MEREDITH, C.J., considers "complicated, cumbrous, and contradictory"—an opinion fully concurred in by Sir GEORGE BURTON, C. J. O., who adds that the result is "sometimes illogical, and frequently unjust." (*a*)

It is not surprising that questions innumerable, and sometimes insoluble, should arise when one attempts to interpret such a chaotic conglomeration of heterogeneous clauses; and the reasons why they have not proved more fruitful in creating litigation are (probably) their very complexity, the consequent uncertainty of success, and the comparatively small amount involved (as a rule) in any individual case.

Suggestions for its improvement.

In view, therefore, of the self-evident fact that some scientific and well considered enactment is needed to remove the ambiguities, anomalies and inconsistencies of the present local improvement sections, it may not be amiss to discuss the general lines upon which such an enactment should be based, in order that it may be at once equitable, simple, and of practical applicability.

General principle.

The principle upon which ordinary municipal taxes are assessed and levied is that which was laid down in 1776 by Adam Smith (*b*), viz., that:—

> "The subjects of every state ought to contribute to the expense of the government as nearly as possible in proportion to their respective abilities, *i.e.*, in proportion to the revenue which they respectively enjoy under the protection of the State;"

in order to which "*The Assessment Act*" provides (*c*) that,—"All municipal . . . taxes . . . . shall be levied equally upon the whole rateable property, real and personal, of [in] the municipality . . . . according to the assessed value of such property." (*d*)

The logical basis of special local assessments.

Special local assessments may seem at first to be inconsistent with the above general principle; but this inconsistency is more an apparent than a real one, at least in two cases. First—where the value of land has been directly increased by the construction of a municipal work, it seems fair that the owners of property thus specially benefited should bear the expense of the work to the extent to which their ability to pay has been enhanced thereby. Such property-owners suffer no pecuniary loss, since they receive, in the in-

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(*a*) *Re Robertson and City of Chatham*, 30 O.R. 158; 26 A. R. 554 (1899).

(*b*) "An Inquiry into the Causes and Nature of the Wealth of Nations," (Adam Black, Edinburgh, 1828), Vol. III., p. 368.

(*c*) R.S.O. c. 224, s. 6.

(*d*) The resulting distribution of burdens would be practically identical were the value of real property alone taken as the basis of assessment; and in any case, taxable personalty forms no more than a small fraction of the fraction of the total taxable property in any municipality.

The Local Improvement System.

creased value of their lands, an equivalent for the money which they are thus called upon to repay to the municipality (*a*).

Secondly, if a work is (or will be) required everywhere in a municipality, the amount levied from each individual will be the same, whether he pays his share of the aggregate cost, or the whole cost of the particular part of the work especially referable to him; provided only that the assessment is in both cases upon the same basis.

To each of these cases a different mode of assessment is suitable; and each will be found to apply to different classes of municipal works.

The municipality may act:—

In its governmental capacity,

Or as a trustee for its citizens,

Or as an agent for local property owners.

A municipal corporation in undertaking a work may act in any one of three capacities:—

1. It may perform the functions of a governing body, as it usually does in constructing pavements or bridges, or in procuring the cleaning, lighting, etc., of streets.

2. Its position may be that of a capitalist and trustee, as in the laying of water, light or heat mains.

3. It may act as an agent for certain individuals who desire the construction of a work, but who (in most cases (*b*)) have neither the necessary organization nor the available capital. This is most frequently its position in the construction of drainage works; but the same principle might be applied to the opening up of roads, etc., etc.

An assessment for a work constructed in the exercise of either of the first two functions is properly a tax. An assessment for the cost of a work undertaken by the corporation as an agent is more like the collection of an account for services rendered and disbursements made.

In urban municipalities, such works as pavements, sidewalks, street sweeping, lighting, etc., may be required on every street, the requirements of each street being independent of and unaffected by those of any other. Where they are needed, the property is usually of higher value than where they are not, and in localities where more substantial works and more frequent renewals are called for, the owners are in general of higher "ability" than in those where requirements are more modest and the necessity for renewals occurs at longer intervals. If, therefore, such works were carried out on every street according to its needs, the whole cost of the work directly affecting the land of an indi-

(*a*) See *per* STRONG, J., in *Schenley* v. *Commonwealth*, 36 Pa. St. 29, 57 (1859); *per* WOODWARD, J., in *McGonigle* v. *Allegheny City*, 44 Pa. St. 118, 121 (1862), and *per* WALKER, J., *Crawford* v. *The People*, 82 Ill. 557 (1876). This principle is, in fact, correlative to that which governs the right of a land owner to be paid out of public funds the amount by which his property may have been "injuriously affected"—(*i. e.* diminished in value) by reason of a municipal improvement undertaken for the public benefit. See *ante*, note (d) to s. 437. The local improvement system has however been carried further than is warranted by this principle; and, under the specious name of "betterments" or "local improvements" works have been undertaken and expenses incurred far beyond local requirements or commensurate benefits.*

The municipal machinery—diverted from its legimate objects—has been pressed into the service of speculators, land jobbers and contractors; the municipal accounts have been unnecessarily complicated, and the true condition of the municipal finances in many cases dangerously obscured. §

(*b*) But see s. 664 (4); taken from 22 V. (1859), c. 40, s. 2 (4).

* An illustration of this fact—cited by Dillon, s. 760*a*, note 2—is afforded by the case of the City of Elizabeth, N. J., which shortly after the grant of a new charter in 1863, commenced to make expensive local improvements, many of them being merely aids to real estate speculations. "Miles of wooden pavement were laid across the meadows and woods adjoining the built-up portions of the city; bonds to the amount of several millions of dollars were issued and sold to obtain money to pay for the work in anticipation of the assessments; and the entire cost of the improvements was assessed on the land fronting on the streets thus 'improved.'" A similar experience has not been unheard of in Ontario. Indeed a classical punster might say "*Mutato nomine, de T——— fabula narratur.*"

§ The local improvement debt of the City of Toronto in December, 1899, was $6,205,265.95, or about $30 per head of its population. Every farthing of this is represented by city debentures, of which even those secured by local improvement rates are guaranteed by the city at large under s. 385(2) of this Act. Section 685 (2) declares that the debentures issued under local improvement by-laws for the *ratepayers'* share of liability thus incurred shall not be part of the general debt of the municipality; but notwithstanding the provisions of s. 685 (1) [See *post* p. 967] "*The City of Toronto Debt and Consolidation Act, 1889*," (52 V., c. 70), which was passed upon the petition, and at the instance of the city council, provides (s. 11) that the debentures to be issued for *the city's share* of the cost of local improvements (assumed under the authority of ss. 629 and 685 of "*The Municipal Act*,") shall not be counted as part of its general debenture debt. If these local improvement debenture debts were taken into account, the limit of the city's borrowing powers, fixed by s. 1 of the Act of 1889, would have been long ago exceeded.

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vidual would be substantially the same as his share of the aggregate cost of all the works. Special assessments for the cost of constructing them on one street—before they are actually carried out on every street—may be justified it on the grounds—(1) that the primary and direct effect of the work is local (though no actual enhancement in the value of property may result); (2) that the land-owners upon a street may thereby procure the class of work which they consider to be suitable and at the time when they deem it to be requisite; and (3) that (possibly venal) local authorities are thus deprived of power to unduly favour certain localities in the distribution of public works to be paid for out of general funds.

Suggestions for improving

Sewers—though it may at some time or other be necessary to construct them upon every street in the town—stand upon a somewhat different footing from pavements and other like works, since their size and cost may be increased far beyond the needs of the streets in which they are constructed, by reason of the necessity that the sewage of other streets at higher levels should pass through them to gain an outlet. An equitable mode of meeting their cost would seem to be to assess locally the expense which it would be necessary to incur for the purposes of the street in which a sewer is laid, the excess of the expenditure being met out of the general rates.

In the case of assessments of the class now under discussion, the whole cost—or practically the whole cost—of the work, or of that part of the work which is referable to the street where it is constructed (*a*) should be locally levied upon the property from which direct access is or might be had to the street or sewer, the apportionment being made according to the assessed values of the various parcels, or—where the lots are of equal depth and similar capabilities—by a frontage rate.

But the list of works for which special assessments may be made has not yet been exhausted. Such works as bridges, subways, the opening and grading of streets, etc., etc., cannot be required everywhere in any municipality; nor can such works as pavements become necessary on every country highway. To assess the whole (or any arbitrary part) of the cost of such works upon neighbouring property is clearly unfair (*b*), unless the work has been undertaken by the municipality as agent of the owners, as to which see *infra*. But local assessment is not excluded. Resort may be had to the principle of benefit; and the amount of any increase in the value of a parcel of land due to such a work may be demanded from its owner, just as the amount of damage thereby occasioned is paid to him. Where benefit has accrued and damage has at the same time been suffered, they may be set off one against the other, and the difference paid by the party against whom the balance is found. Any expenditure upon the work over and above the aggregate benefit is—or should be—its value to the municipality at large, and ought to be paid out of general taxes.

The class of works to be next considered are those constructed by the corporation as capitalist and trustee. These are represented in this Act by water, heat and light-mains, the whole cost of which may be locally levied. Expenditures upon works like these are virtually investments of capital, and would as a rule remain so, a sum being annually written off for depreciation and wear and tear. If they were to be realized, the profits should repay the capital thus invested; but this, in the case of municipal services, is practically impossible, since the cost to the consumer is forced down so that the return barely covers expenses. There remains taxation, and to this the same rules would seem to apply as in the case of sewers,—viz., that the cost of laying a main sufficient for the purpose of a street should be locally assessed upon the property from which direct access to the main is or might be had—*i.e.*, practically, abutting property,—the balance of the cost being borne by the municipality (*c*).

There remains the class of works which the municipality executes as agent for certain property owners, for whose particular benefit the work is carried out, and at whose request the whole expense is assessed and levied by the municipal machinery provided in the case of other special assessments.

(*a*) The municipality should assume the proportion of the cost referable to exempt property, probably part of the assessment on corner lots, and possibly also the cost incurred for construction across street intersections.

(*b*) An example has already been given of the inequality which may (and often does) result from such assessment according to frontage. A rate based upon assessed values might be equally unjust; and reference has been made to the objections to an assessment according to the proportion of benefit received.

(*c*) The inclusion in the assessment of the cost of private service pipes cannot, of course, be justified upon principle. See, however, ss. 664 (2), 673 (1) (3).

Works under "*The Municipal Drainage Act*" are undertaken upon this system, which, though not expressly recognized in "*The Municipal Act*," is applicable in the case of bridges and like works in all municipalities, and in the case of sidewalks, pavements, etc., in rural districts (*a*). The variation between the incidence of assessments upon this basis and those assessments which the municipality makes for similar works which it has constructed in the exercise of what we have styled its governmental functions, lies in the mode in which the excess of the expenditure over benefit is to be met. Ordinarily, that excess falls upon the general rates; but in this case it must be paid by the promoters of the work—*i.e.*, the petitioners therefor and those whom they have power to bind. The rules generally applicable to the set-off of benefit against damage will apply, the difference being collected or paid by the corporation, as the case may be. By this operation every land owner affected (whether damaged or benefited) has presumably been placed in exactly the same position as if the work had not been carried out. The proportional benefits received by each, form, therefore, a standard for assessing the excess no more satisfactory than would the proportional damages suffered. Recourse must be had to "ability"; and the assessment must be made upon the petitioners and those whom they bind in proportions fixed by the petition, or according to the assessed values of their respective properties. By adopting this basis of assessment, the practical difficulties attending an assessment according to the proportion of benefit received are also overcome.

Div. I.—POWERS OF TOWNSHIPS, CITIES, TOWNS AND VILLAGES. (Secs. 664 686).
Div. II.—OF TOWNSHIPS AND VILLAGES. (Sec. 687).
Div. III.—OF TOWNSHIPS. (Secs. 688 690).
Div. IV.—OF COUNTIES. (Secs. 690-693).

Division I.—LOCAL IMPROVEMENTS IN TOWNSHIPS, CITIES, TOWNS AND VILLAGES. (Secs. 664-686).

Synopsis;—S. 664 (2) enumerates the works which may be constructed as local improvements. These may be initiated in any of the modes provided by ss. 668, 669, 672 (4), viz.,—by petition (s. 668 (1)), by notice (s 669 (1)) or by recommendation from the local board of health (s. 668 (4)). S. 677 creates an exception to the necessity for observing these preliminaries. S. 671 (1-4) provides for giving notice of the assessment to the persons to be charged, who may, if they consider the apportionment incorrect, apply to the Court of Revision and appeal to the County Judge to amend it (ss. 664 (1a), 671 (5)). The powers of the County Judge in certain cases are dealt with by s. 671 (6). His decision is final (s. 671 (7)). Under ss. 664 (1) and 667 the council may pass a general by-law to regulate the details of the procedure in these matters.

The municipality is compelled to bear a share of the expense connected with certain works (s. 664 (5)), and councils are empowered to assume one-half of the cost of a bridge, culvert or embankment (ss. 674 (1), 675) a percentage of the cost of certain improved sidewalks in towns (s. 678), any proportion of the cost of the opening up and extension of streets (s. 674 (1)), that part of the cost of any work referable to street intersections or exempt property (s. 679), and part of any assessment upon corner lots (s. 673 (4)).

Assessment by-laws are authorized by s. 664 (2), (3); and s. 665 (1) specifies the property to be assessed and the nature of the rate, the latter of which may in a proper case be varied by the council under s. 673 (6). The assessable property is further defined by ss. 664 (6), 665 (3), 673 (2), 674 (3), 683, 684; and under ss. 665 (3) and 674 (3) townships may in certain cases make the assessment on a basis different from that usually adopted.

S. 665 (2) provides for a supplementary assessment by-law where the first one was passed before the completion of the work and the amount thereby levied proves to be insufficient. When the passing of the assessment by-law is deferred until after the work has been finished, temporary loans to meet the cost of the work may be raised under s. 672 (1), the period of assessment in such case being limited by s. 672 (2).

If the assessment by-law is (for any reason) quashed, the council may pass another in substitution therefor (s. 672 (3)). The issue of debentures to meet the municipality's share is provided for by s. 685. Ss. 673 (1), (3) authorize assessments for the combined cost of different works. S. 674 (4) deals with the purchase of completed works; s. 676 with the construction of sidewalks by private owners; s. 664 (4) with the construction of works by the municipality out of funds provided by persons desirous of having the same effected; s. 686 with the exemption of persons specially assessed from general rates for the same purpose; s. 673 (7) with assessments for works in public parks, squares, public drives and boulevards; s. 666 with the repair of works constructed as local improvements, and s. 682 with the adoption by the electors of the local improvement system and its extension in such cases. The same extension in other cases is authorized by s. 686. S. 670 provides a short form of local improvement by-law; and s. 681 enacts that assessments for local improvements shall not be deemed incumbrances as between vendor and purchaser.

(*a*) It might also be applied in certain cases to sewers and water and light-mains; but in such cases somewhat different considerations arise.

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By-laws respecting Local Improvements.

Sec. 664 (1).

Note (a).

664. The council of every township, city, town and village may pass by-laws for the following purposes:—

1. For providing the means of ascertaining and determining what real property will be immediately benefited by any proposed work or improvement, the expense of which is proposed to be assessed, as hereinafter mentioned, upon the real property benefited thereby; and of ascertaining and determining the proportions in which the assessment of the cost thereof is to be made on the various portions of real estate so benefited. 55 V. c. 42, s. 612 (1), *part*; and see sec. 647 (3), *ante*, p 880.

Providing means of ascertaining real property benefited by local improvements.

And how it should be assessed.

This section is taken from 22 V. c. 40, s. 1 (1) (1859)—(see *ante*, p. 895) which was first included in "*The Municipal Act*" as s. 290 (1) of C.S.U.C. c. 54 (1859). The word "immediately"—which in the original Act followed the words "real property" (line 4)—was omitted in 47 V. c. 32, s. 20 (1884), and the words "work or" (line 3) and "of the cost thereof" (line 6) were inserted in the re-enactment of the local improvement sections by 53 V. c. 50, s. 38 (1890). The section at first applied to cities only. It was extended to towns in 1868 by 31 V. c. 30, s. 35; to incorporated villages in 1871 by 34 V. c. 30, ss. 10, 19; to unincorporated villages in 1885 by 48 V. c. 39, s. 59 (3) (see s. 37, *supra*), and to townships in 1887 by 50 V. c. 29, s. 48. *Cf.* "*The Municipal Drainage Act*," (R.S.O. c. 226), ss. 3 (1), 19 (5), and the notes thereto, *post*, Vol. II.

(a) **"For providing the means of ascertaining," etc.** Even without this provision, any municipality would have power to pass a by-law such as is here authorized,—viz., to provide machinery whereby a council proposing to carry out an improvement, the cost of which is to be repaid by local assessment, may obtain all necessary information as to what real property would be thereby benefited, and as to the proportions in which the various portions thereof should be assessed for the cost of the work (*a*).

What a report under s. 664 (1) should contain.

The information referred to is usually procured by means of a report from an engineer or other officer of the corporation; which, in the case of any of the works provided for, by ss. 664-685, should show:—

I. NATURE.

1. The nature of the proposed work. S. 671 (2). See VII. *infra*.

II. COST.

1. The total estimated cost of the work (*b*), including:—
   (a) The probable contract price.
   (b) The amount of any land damages necessarily resulting from its construction.
   (c) Any engineering expenses connected therewith.

III. LIFETIME.

1. The probable lifetime of the work. S. 672 (2).

IV. PROPERTY BENEFITED.

1. What real property will be benefited thereby.

This now probably includes, in every case, both abutting and non-abutting property (*c*); but non-abutting property may certainly be assessed in the following cases:—

(a) *In any municipality:*
   (i) The construction or repair of bridges or culverts. S. 674 (2).
   (ii) The opening up and extension of any street, lane or alley. S. 674 (2).

(*a*) See note (**a**) to s. 667.
(*b*) S. 671 (2). See note (**e**) to this section.
(*c*) See note (**b**) to s. 665.

Sec. 664 (1).

Note (a).

What a report under s. 664 (1) should contain.

(iii) The construction of a sewer of larger capacity than would be required for the efficient sewerage and drainage of abutting property. S. 673 (2).

(b) *In a township any portion of which is within five miles of a city containing 50,000 inhabitants or over*:—

(i) The construction of any work. S. 665 (3)

V. THE METHOD OF ASSESSMENT.

1. Whether—instead of being made according to frontage—the assessment should be according to the proportion of benefit received by each parcel of property benefited:—

(a) *In any township by*:—

(i) The construction or repair of a bridge or culvert. S. 674 (3).
(ii) The opening and extension of any street, lane or alley. S. 674 (3).

(b) *In a township any portion of which is within five miles of a city containing 50,000 inhabitants or over, by*:—

(i) The construction of any work. S. 665 (3 *proviso*).

VI. THE DISTRIBUTION OF THE AMOUNT TO BE LEVIED.

A. *In cities, towns and villages*:—

(a) The total frontage of:—

(i) Abutting property (including street intersections).
(ii) Non-abutting property benefited.

(b) The abutting frontage of street intersections.

(c) The frontage of the exempt portion of:—

(i) Other abutting property.
(ii) Non-abutting property benefited.

(d) The frontage of the assessable portion of:—

(i) Abutting property,
(1) Benefited. (2) Not benefited.
(ii) Non-abutting property benefited.

(e) Whether all the lands on one side of the street are unfit for building purposes. S. 673 (6).

(f) The situation, value and superficial area of each corner lot as compared with adjoining assessable pieces of land. S. 673 (4). (*c*)

(g) The proportion of the whole amount to be levied which should be assessed on the assessable portion of:—

(i) Benefited abutting property fit for building purposes. S. 673 (6).
(ii) Benefited abutting property unfit for building purposes (if all property on one side of the street is so unfit). S. 673 (6).
(iii) Non-abutting property benefited.
(iv) Each corner lot as compared with adjoining lots. S. 673 (4).

B. *In townships*:—

1. If the assessment is to be made according to frontage (*b*):—

(a) As in cities, towns and villages, omitting (e) and (f), and showing, under (g), only the proportions which should be assessed on:—

(i) Abutting property benefited.
(ii) Non-abutting property benefited.

2. If the assessment is to be made according to the proportion of benefit received by each parcel of the property benefited (*c*):—

(a) The proportion of the amount to be levied which should be assessed against each such parcel.

(*a*) See note (**b**) thereto.
(*b*) Ss. 665 (1), (3); 673 (1), (2); 674 (1), (2), (3).
(*c*) Ss. 664 (6); 665 (3) *proviso*; 674 (3).

Sec. 664 (1).

Notes (a), (b).

What a report under s. 664 (1) should contain.

VII. THE PROPORTION OF THE COST TO BE LEVIED.

I. Whether or not it would be advisable for the municipality to assume :—

A. *In any municipality :—*

(a) The portions of the cost of any work referable to :—

(i) Street intersections. S. 679 (1).

(ii) Exempt property. S. 679 (1).

(b) Any allowance made on the assessment of corner lots of land. S. 673 (4).

(c) Any—and if any—what proportion of the cost of :—

(i) The repair of bridges or culverts. S. 674 (1).

(ii) The opening up and extension of a street, lane or alley. S. 674 (1).

(d) Any, and if any, what proportion (up to one-half) of the cost of :—

(i) The construction of a bridge, culvert or embankment forming part of a highway. Ss. 674 (1), 675; see s. 664 (2).

B. *In a city or town which has not adopted the local improvement system in respect to sidewalks :*

(a) A percentage of that part of the cost of a granolithic, stone, asphalt, or brick sidewalk on a leading or principal business street, referable to property assessable therefor. S. 678.

VIII. SPECIAL RECOMMENDATIONS.

A. Whether, with the cost of draining any locality or of laying or prolonging any sewer, it would be advisable to include the cost of constructing branch drains to the line of street. S. 673 (1).

B. Whether, before constructing or renewing a pavement, it would be advisable to put in private drain connections, water-mains, etc., and to levy their cost with that of the pavement. S. 673 (3).

C. In the case of a work on a public park, square, drive or boulevard, the cost and lifetime of the work, the amount of benefit to be received therefrom by assessable abutting property, and the frontage of such property, are in general all the matters which need be dealt with by the report. S. 673 (7).

A report from the treasurer or other officer may also be required, shewing :—

(a) The probable cost of obtaining a temporary loan under s. 672 to meet the cost of the work.

(b) The probable expense of issuing and selling the debentures which must be issued to cover the cost of the work, including the discount on their sale.

(c) The probable cost of advertising, printing, etc., connected therewith.

(b) "For providing the means . . . of determining," etc.

These words authorize a general by-law (*a*) providing the machinery whereby a council may determine how the amount which they may decide to levy by local assessment shall be apportioned among the various owners of the property which should be charged, and how the sum payable by each may be ei finally determined. The determination of the council in regard to the amount to be levied, the term of the assessment and the share of the cost which shall be assumed by the municipality, is to be subsequently made in each case, according to the circumstances.

Matters to be determined by the coun- by the

When the council are in a position to proceed with any work, by reason of—

(I) A sufficiently signed petition therefor having been presented (*b*), or

(II) The local board of health having made a recommendation (*c*), or

(III) A sufficient time having elapsed after notice of their intention to undertake the work (*d*),—they may at once pass a by-law providing for its construction. The power to do this, and the power to levy the cost of the work by special assessment, are wholly distinct. They need not be exercised by the same by-law, or at the same time, or even by the same council (*e*). The former

(*a*) See s. 667. (*b*) S. 668 (1). (*c*) S. 668 (4).
(*d*) S. 669. (*e*) See ss. 327, 669 (4*a*).

Sec. 664 (1).

Note (b).

Matters to be determined by the council.

power is conferred, not by the local improvement sections, but by one of those other sections throughout the Act,—*e. g.*, ss. 554, 566, 606, 637, etc.,—which authorize the council to pass by-laws for, and to carry out, certain works; and the only point at which the exercise of these powers is touched by the local improvement sections arises from the requirement that certain conditions precedent (*a*) must be complied with before the commencement of the work in order that its cost may be leviable by local assessment (*b*).

By the by-law authorizing the work (or by a contemporaneous by-law), the council may, however, make an assessment of its estimated cost. If this course be adopted, they must at once determine the matters presently mentioned; a by-law must be passed for providing for the municipality's share of the cost (*c*), and the proper proceedings must be taken before the Court of Revision and County Judge. But this course cannot be recommended; since, if the actual cost of the work exceeds its estimated cost, a second assessment by-law will be necessary, and a second Court of Revision must be held (*d*).

The more business-like—and as a rule the more economical—course is to pay for the work as it proceeds, either out of moneys on hand, or by means of advances obtained under s. 672, and to defer the assessment by-law until the improvement is completed and its exact cost ascertained. The engineer then makes a report, showing all the matters referred to in note (**a**) *supra*, but substituting the actual for the estimated cost, etc.; and the council determines the following matters, which under the Statute are left to their decision (*e*):—

A. *In any municipality:*—

1. The items of expense to be included in "the cost of the work." (*f*)

2. The period of assessment (*g*).

3. The shares of the amount to be levied which shall be borne by abutting and by non-abutting property respectively (*h*).

4. Whether the municipality will assume:—

(a) In the case of any work:—

(i) The proportion of cost referable to:—

(1) Street intersections. S. 679 (1).

(2) Exempt property. S. 679 (1). See note (**a**) thereto.

(ii) Any allowance made on the assessment of corner lots. S. 673 (4).

(b) In the cases of the repair of a bridge or culvert, or the opening up and extension of any street, lane or alley:—

(i) Any—and if any what—proportion of the total cost. S. 674 (1).

(c) In the cases of the construction of a bridge, culvert or embankment forming part of a highway:—

(i) Any—and if any what—proportion (up to one-half) of the total cost [two-thirds vote]. Ss. 674 (1), 675, and see s. 664 (2).

B. *In a city, town or village:*—

(a) The respective shares of the amount to be levied which shall be respectively borne,—(i) by property which is unfit for building purposes, and (ii) by building lots. S. 673 (6).

C. (1) *In any township,*—in the case of the construction or repair of a bridge or culvert, or the opening up and extension of a street, lane or alley (*i*), or

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(*a*) Viz., petition, recommendation or notice, under ss. 668 (1), 668 (4), or 669.

(*b*) See s. 672 (4).

(*c*) *Re Fleming and City of Toronto*, 20 O. R. 547; 19 A. R. 318 (1890-2).

(*d*) See note (**c**) to s. 665.

(*e*) Unless otherwise indicated the decision may be made by a majority vote.

(*f*) See note (**e**) to this section.

(*g*) See s. 672 (2) and note (**c**) thereto.

(*h*) See *Re Robertson and City of Chatham*, 30 O. R. 158; 26 A. R. 554 (1899) cited in note (**a**) to s. 665.

(*i*) S. 674 (3)

(2) *In a township, any portion of which is within five miles of a city containing 50,000 inhabitants or over,*—in the case of any work (*a*)—

(a) Whether the assessment shall be made according to the proportion of benefit received, instead of being made according to frontage.

D. *In a city or town which has not adopted the local improvement system in respect of sidewalks*:—

In the case of certain improved sidewalks:—

(a) Whether the municipality will assume a percentage of that part of the cost which is referable to the property assessable therefor. S. 678.

Sec. 664 (1) (1a).

Notes (b d.)

Matters to be determined by the council.

When these matters have been decided, a by-law should be passed forthwith to provide for the municipality's share of the cost of the work (*b*). But the time for an assessment by-law has not yet arrived. The matter should now be referred to the assessment commissioner (or some other like officer) to prepare a statement which—if the rate is to be a frontage rate—ought to show:—

1. The parcels of the property reported by the engineer as being benefited.
2. The name of the owner of each such parcel.
3. The annual rate per foot necessary in order to levy, within the time fixed (*c*), the amount which it has been determined by the council to raise from,—
   (i) Abutting property, fit for building purposes,
   (ii) Abutting property, unfit for building purposes,
   (iii) Non-abutting property.

If the levy is to be according to the proportion of benefit received, the report of the engineer will be sufficient if it shows the owners of the parcels benefited.

The notices required by s. 671 (1) (2) may now be given, and a Court of Revision held to confirm the proposed assessment. When the assessment has been thus finally revised and settled, a by-law may be passed for assessing and levying the amount to be raised during the time already fixed, either by means of the annual rate found to be necessary therefor, or (if the assessment is according to benefit) in the proportions found to be correct (*d*).

This by-law should recite the determination of the council upon any of the matters mentioned above as depending upon their decision.

(c) "**And of ascertaining and determining the proportions.**" See note (**a**) to s. 665.

(*a*) There shall be the same right of appeal from any such assessment, or proposed scale of assessment, to the Court of Revision, and from the Court of Revision to the County Judge, as is provided for by *The Municipal Drainage Act*; and the proceedings thereon shall, except as otherwise provided in section 671 of this Act, be the same respectively as in the case of appeals from ordinary assessments under *The Assessment Act*. 55 V. c 42, s. 612 (1).

Appeal.

Rev. Stat. c. 226.

Rev. Stat. c. 224.

The original section, (22 V. c. 40, s. 1 (1) (1859): see *ante*, p.895) provided for an appeal to the County Court Judge on the same terms as an appeal from the Court of Revision in the case of an ordinary assessment. See C. S. U. C. c. 54, s. 299 (1). By the Act of 1866, (29-30 V. c. 51, s. 391 (1)), the Recorder was substituted for the County Court Judge; but the section was changed back to its original form by 34 V. c. 30, s. 10 (1871). The present clause is taken from 47 V. c. 32, s. 20 (1884), the words "or proposed scale of assessment" (line 2) having been inserted in 1890 by 53 V. c. 50, s. 38.

(d) "**The same right of appeal as is provided for by 'The Municipal Drainage Act.'**"

Under "*The Municipal Drainage Act*," any owner of land may complain to the Court of Revision (1) of undercharge or overcharge in the assessment

(*a*) S. 665 (3).

(*b*) *Re Fleming and City of Toronto*, 20 O. R. 547; 19 A. R. 318 (1890-2).

(*c*) See as 664 (3), 672 (3).

(*d*) See note (**d**) to this section.

Sec. 664 (1a),(2). Note (d).

of his own lands, (2) of undercharge in the assessment of any other lands, or (3) of the omission of any lands which should have been included among the properties assessed (*a*).

Appeals to Court of Revision and County Judge from proposed local assessments.

In the case of assessments under this Act according to frontage, the *quantum* of benefit is immaterial, if any benefit at all has been received; since the rate must be a uniform rate upon each foot of the property of the same class (*b*). An appeal therefore lies from the assessment commissioner (or other like officer)—(1) to include benefited property omitted from his statement, (2) to omit unbenefited property included therein, or (3) to correct inaccurate frontage measurements.

If the assessment is according to the proportion of benefit received (*c*), an appeal lies in respect of the first and second of the above matters, and also in respect of the proportion of benefit alleged to have been received (*d*). An amendment of the statement in any of these particulars by the Court of Revision will involve the re-adjustment of the rates (when the assessment is according to frontage) or of the other assessments (when it is according to benefit); since the gross amount which is to be levied can be neither increased or reduced.

A further power is given to the Court of Revision by s. 673 (4),—viz., to see that effect is given to the provisions of any by-law which may have been passed under that sub-section (*e*); and (though it is not expressly so provided) an amendment of the statement in respect of the names of the owners or lessees chargeable is probably within the competence of the Court in every case, as it certainly is in cases which fall within s. 671 (5). (*f*)

The powers of the County Judge upon appeal are probably co-extensive with those of the Court of Revision (*g*); and his decision upon these matters is final.

If, by an assessment by-law, the requirements of the Act are not fulfilled, and benefited property is unassessed, unbenefited property charged, or the apportionment is otherwise unfair, there is no remedy. If the statutory procedure has been followed, and these errors have nevertheless remained uncorrected, there is no appeal,—and if it has not been followed before the passing of the by-law, the time for doing so has passed, and the opportunity of amendment has been lost.

Except in the case provided for by s. 671 (6), a Court of Revision must be held to confirm every assessment (*h*), whether there has or has not been a previous assessment for the same work (*i*). "The imposition of a tax is a *quasi*-judicial proceeding; and . . . when a person's property is to be affected by anything analogous to a judicial proceeding he is entitled to be heard" (*j*).

By-laws assessing real property benefited for cost of certain works.

2. For assessing and levying by means of a special rate:—

The cost of deepening any stream, creek, or watercourse, and draining any locality, or

The cost of making, enlarging or prolonging any common sewer, or

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(*a*) See R.S.O. c. 226, s. 32. The provisions of that section as to roads are inapplicable to local assessments under this Act. See however sub-s. 6, *infra*, and note (**k**) thereto.

(*b*) *Re Robertson and City of Chatham*, 30 O.R. 158; 26 A.R. 554 (1899).

(*c*) See ss. 664 (6), 665 (3), 674 (3).

(*d*) See *Re White and Township of Sandwich East*, 1 O.R. 530 (1882).

(*e*) See note (**b**) thereto.

(*f*) See "*The Assessment Act*," (R.S.O. c. 224), s. 71.

(*g*) See R. S. O. c. 224, s. 75: s. 671 (6) of this Act and note (**h**) thereto.

(*h*) *Re Hodgins and City of Toronto*, 23 A. R. 80 (1896).

(*i*) *Re Sweeny and Town of Smith's Falls*, 22 A. R. 429 (1895): *Re Pitman and City of Toronto*, 24 A. R. 53 (1897). See also *Re Gillespie and City of Toronto*, 19 A.R. 713 (1892).

(*j*) *Per* HAGARTY, C. J. O., 23 A. R., at p. 83, and *per* BURTON, J. A., Ibid. p. 85.

Sec. 664 (2). Note (d).

For what works local assessments may be made.

Of opening, widening, prolonging or altering, macadamizing, grading, levelling, paving or planking any street, lane, alley, public way or place, or

Of constructing any sidewalk, bridge, culvert or embankment forming part of a highway therein, or

Of curbing, sodding, or planking any street, lane, alley, square, or other public place, or

In any case where a system of waterworks has been constructed by such municipality, then for providing for the cost of the extension within the limits of such municipality of branch mains and pipes, and all other work necessary for connecting the properties of the property owners with the waterworks system of said municipality, in order to permit such property owners to receive the benefit of such waterworks; or

In any case where a system for lighting within a municipality has been constructed or erected, by such municipality then for providing for the cost of the extension within the limits of the municipality of the poles, wires and pipes, and all other work necessary for lighting any street, square or other public place whereon the lands to be benefited thereby front or abut, or

Of reconstructing any work hereby provided for. 55 V. c. 42, s. 612 (2); c. 43, s. 65.

The principle of special assessment for local improvements was recognized in the Act of 1849, (12 V. c. 81). S. 81 (5) of that Act gives power to towns, and ss. 82 and 106 thereof to cities, to pass by-laws:—

> "For assessing the proprietors of such real property in any such town [or city] as may be immediately benefited by such improvements for such sum or sums as may at any time be necessary to defray the expense of making or repairing any common sewer, drain, flagging, posts or pavement in any public highway . . . immediately opposite or near to such real property."

Under 16 V. c. 181, s. 9 (1853), all the rateable property in a part of a township might be assessed by the council thereof upon petition of two-thirds of the resident freeholders and householders representing one-half of the property within the part to be assessed for sums sufficient to defray the cost of constructing, improving or repairing any road, bridge or other public improvement.

Both these provisions were omitted from the Act of 1858 (22 V. c. 99). Under ss. 271, 272 of that Act, townships had power to make local assessments for the cost of draining localities; and by s. 324 (1) cities, towns or villages might impose a local assessment, but only for the making or repairing of pavements. The latter section was repealed by 22 V. c. 40 s. 7 (1859); but by s. 1 (2) of that Act, cities were authorized to impose upon the properties immediately benefited local rates for the repayment of debentures issued to provide funds for "the making, enlarging or prolonging of any common sewer, or the opening, altering, widening, prolonging or macadamizing, grading, paving," etc., (as in lines 5, 6) of any road or sidewalk,—but only upon the petition of two-thirds in number and one-half in value of the owners of the property to be assessed; Ibid, s. 2. See this Act, printed *supra* at pp. 895, 896: also C. S. U. C. c. 54, s. 299 (2); 29-30 V. c. 51, s. 301 (1866).

The section was extended to towns by 31 V. c. 30, s. 35 (1868) and to villages by 34 V. c. 30, s. 10 (1871). By s. 11 of the latter Act it was made to apply also to "any bridge forming part of the highway." See also 36 V. c. 28, s. 464 (2) and R. S. O. (1877), c. 174, s. 551 (2). By 43 V. c. 27, s. 10 (1880) further power was given to make local assessments for deepening streams, draining localities, curbing, sodding, and planting (which became "planking" in 55 V. c. 42, s. 612 (2)) of streets, or reconstructing any authorized work; and in 1882 (by 45 V. c. 23, s. 4) a petition by the owners to be assessed was made no longer a necessary pre-requisite to the undertaking of the work.

Section 612 (2) of "*The Con. Mun. Act of 1883*," (46 V. c. 18), collects all these enactments and contains (practically *verbatim*) the first twelve lines (down to "other public place") and the last line of the present section. Certain other verbal amendments have from time to time been made; and the words "culvert or embankment" (line 7) were inserted in the re-enactment of the local improvement sections in 1890 by 53 V. c. 56, s. 38. That part of the section from the words "or in any case" (line 13) to "front or abut" in the last line but one, were inserted in 1892 by 55 V. c. 43, s. 65. The powers conferred by the section were extended to townships in 1887 by 50 V. c. 29, s. 48. *Cf.* "*The Municipal Drainage Act*," (R. S. O. 226), s. 19 (3) and the notes thereto, *post*, Vol. II.

Sec. 664 (2).

Note (e).

By-laws for assessing and levying the cost of local improvements.

(e) **"For assessing and levying the cost."**

See, as to assessments for local improvements on streets, etc., between two municipalities, s. 647 (3), *ante*, p. 886.

The word "assessing" (as here used) means allotting and apportioning the amount to be raised between the various parcels of the property out of which it is to be "levied" (*levé*) or collected.

Every assessment must be made by by-law. A resolution is not sufficient, even under a general by-law authorizing such resolutions to be passed for a particular purpose (*a*). The by-law should state the property out of which the levy is to be made, the amount to be raised, and the annual rates to be imposed therefor. But where the work had already been done, and the amount involved was small, the Court refused to quash a by-law which had been passed before the execution of the work, for levying an amount to be estimated upon the contract price (*b*).

When a work is undertaken as a local improvement, its "cost" is required to be assessed, unless either—(1) the Statute compels the municipality to assume a part thereof (*c*), or (2) the council has exercised a discretion to do so—as they may in certain cases (*d*). Except in these cases, there is no power to assess any amount less than the whole cost of the work (*e*).

The term "cost" is nowhere defined by the Act. It certainly includes,—the contract price of the work (with the additions authorized by s. 673 (1) (3))—probably also any engineering expenses connected therewith—the cost of advertisements, of serving notices, etc.—the expense of the issue of debentures—any discount on their sale—and the interest upon any loans obtained under s. 672. It may also possibly include land damages (if any) necessarily resulting from the execution of the work; but probably not damages arising from its improper or negligent construction (*f*).

The council should in every case decide which of the aforesaid items they will include in the amount to be levied; and the exercise of a reasonable discretion in this particular would not probably be interfered with. But the assessment (and levy) of an amount greater or less than that which may fairly be comprehended within the term "cost of the work" would furnish ground for an application to quash the assessment by-law (*g*).

(*a*) *Re Morell and City of Toronto*, 22 C. P. 323 (1872).

(*b*) *Re Platt and City of Toronto*, 33 U. C. R. 53 (1872).

(*c*) The municipality must assume,—(1) one-third of the cost of every common sewer having a sectional area of more than four feet [s. 664 (5)]; (2) that part of the cost of any work in a public park, etc., beyond the benefit derived therefrom by abutting property (being at least one-half in certain cases) [s. 673 (7)]. When no by-law has been passed under s. 682, they must also assume (3) the cost of culverts and other works necessary for street surface drainage [s. 664 (5)]; and (4) that part of the cost of any sewer chargeable in respect of street intersections or exempt property [s. 664 (5): see note (a) to s. 679].

(*d*) As to the cases in which the council has a discretion to assume part of the cost, see note (b) to this section, note (d) to s. 665 and note (a) to s. 682.

(*e*) See note (d) to s. 665 and note (b) to s. 672. In *Gillespie* v. *City of Toronto*, 19 A. R. 713 (1892), this point does not seem to have been raised, although the municipality had assumed (apparently without authority) nearly two-thirds of the whole cost of the work.

(*f*) But see *Township of Sombra* v. *Township of Chatham*, 18 A. R. 252 (1891)—a case decided under s. 592 of R. S. O. (1887), c. 184. See now the provisions of R. S. O. c. 226, s. 95.

(*g*) "If people who have to exercise a public duty by exercising their discretion, take into account matters which the Courts consider not to be proper for the guidance of their discretion, then, in the eye of the law, they have not exercised their discretion." *Per* Lord ESHER, M. R., in *Reg.* v. *Vestry of St. Pancras*, 24 Q.B.D. 371 (1890), at pp. 375-6; quoted by ARMOUR, C. J., in *Re Pattullo and Town of Orangeville*, 31 O. R. 192 (1899), at p. 196. *Cf. Haslem* v. *Schnarr*, 30 O. R. 89 (1898).

Regulating time and manner of payment of assessments.

3. For regulating the time or times and the manner in which the assessments to be levied under this section are to be paid and for arranging the terms on which persons assessed for such works or improvements may commute for the payment of their proportionate shares of the cost thereof in principal sums. 55 V. c. 42, s. 612 (3).

Taken from 22 V. c. 40, s. 1 (3) (1859)—see *ante*, p. 896—first consolidated as part of *The Municipal Act* in C.S.U.C. c. 54, s. 299 (3). See 29-30 V. c. 51, s. 301 (3). The words "works or" (line 4) were substituted for the word "local" in 53 V. c. 50, s. 38 (1890); and the word "persons" (line 3) for the word "parties" in the Revision of 1897. *Cf.* 12 V. c. 81, s. 81 (5) (towns); ss. 82, s. 106 (cities), and (as to drainage), 22 V. c. 99, s. 272 (3).
The subsection originally applied to cities only. It was extended to towns by 31 V. c. 30, s. 35 (1868); to villages by 34 V. c. 30, s. 10, 19 (1871), and to townships by 50 V. c. 29, s. 48 (1887). *Cf.* "*The Municipal Drainage Act*," (R. S. O. c. 220), s. 19 (4), *post*, Vol. II.

Term of assessment.

(f) It is evidently the intention of the Act that the period over which the assessments are to extend shall coincide with the term of the debentures issued to repay the amount advanced by the corporation for the work. See ss. 402, 672 (2), and the form of local improvement by-law referred to in s. 670, and printed *ante*, at p. 401.

Doing work when funds, furnished by persons.

4. For effecting any such work or improvements as aforesaid with funds provided by persons desirous of having the same effected. 55 V. c. 42, s. 612 (4).

Taken from 22 V. c. 40, s. 1 (4) (1859)—see *ante*, p. 896—first consolidated as part of *The Municipal Act* in C.S.U.C. c. 54, s. 299 (4). See 29-30 V. c. 51, s. 301 (4). The words "work or improvements" were substituted for "improvement" by 53 V. c. 50, s. 38 (1890); and the word "persons" for "parties" in the Revision of 1897. The subsection originally applied only to cities. It was extended to towns by 31 V. c. 30, s. 35 (1868), to villages by 34 V. c. 30, s. 10, 19 (1871), and to townships by 50 V. c. 29, s. 48 (1887).

Construction of sewers, etc., in part to be provided by council.

5. If the contemplated work or improvement is the construction of a common sewer having a sectional area of more than four feet, one-third of the whole cost thereof shall be provided for by the council. The council of every municipality which has not passed a by-law within and under the provisions of section 682 of this Act shall also provide, in connection with all sewers, the cost of all culverts and other works necessary for street surface drainage, and also the cost of that part of every such work, improvement or service which is incurred at and is chargeable in respect of street intersections, and also that part thereof done or made opposite real property which by any general or special Act is exempt from special or local assessment. 55 V. c. 42, s. 612 (5).

Works at street intersections and opposite exempt property.

The first sentence is taken from 22 V. c. 40, s. 2 (1859)—see *ante*, p. 896—consolidated in C.S.U.C. c. 54, as s. 300; and in 29-30 V. c. 51, as s. 302. The words "also first" which originally occurred after the word "shall" (line 3) were varied to "before the work is undertaken" by 46 V. c. 18, s. 612 (8), and were omitted in the re-enactment of the section by 47 V. c. 32, s. 21 (1884), when the second sentence of the present section was added. The words "work or" (line 1) were inserted by 53 V. c. 50, s. 38 (1890). The subsection originally applied only to cities. It was extended to towns and villages by 34 V. c. 30, s. 10 (1871), and to townships by 50 V. c. 29, s. 48 (1887).

(g) "**Common sewer,**" i.e., a public sewer. See s. 539 (2) and note (a) to s. 554.

(h) "**Which has not passed a by-law . . under . . section 682.**"
A by-law might be passed under s. 682, which would not apply to sewers, or to works necessary for street surface drainage. The probable intention of the sub-section is that, unless the by-law includes such works, the municipality shall be compelled to assume that part of the cost which is referred to. See note (a) to s. 682.

(i) "**Works necessary for street surface drainage.**" A man-hole is part of a sewer within the meaning of s. 45 of "*The Public Health Act, 1848*," (a)

(a) Imp. Stat. 11-12 V. c. 63.

Sec. 664 (5), (6). Notes (j), (k).

which provides that "The local board of health shall . . . cause to be made such sewers as may be necessary for effectually draining their district." (a)

(j) "Every such work, improvement or service."

The use of the word "service" is inexplicable, except upon the supposition that the word "such" refers to the works mentioned in the preceding subsections, and that it was intended to compel municipalities to assume—not only in the case of sewers, but also in the case of all other works or services for which special assessments may be made—that portion of the cost of all these works which is referable to street intersections and to exempt properties. It is, however, at least possible that the word was inserted through mere inadvertence.

Lands benefited to be charged with proportion of costs of certain local improvements.

6. If the contemplated works or improvements relate to any stream, creek or watercourse, or to draining any locality, and in the opinion of the engineer or surveyor specially benefit any lands lying within the municipality or any road or roads lying therein or any roads therein belonging to any other municipality or corporation, then the engineer or surveyor aforesaid shall charge the lands, road or roads to be so benefited, and the municipality, corporation, person or company whose lands, road or roads, are improved, with such proportion of the cost of the work or improvements as he may deem just, and the amount so charged for lands or roads, or agreed upon by arbitration, shall be paid by such person or out of the general funds of the municipality, corporation or company, as the case may be, and the provisions of *The Municipal Drainage Act* so far as applicable shall apply to any such work or improvement constructed under this section. 55 V. c. 42, s. 612 (6).

Rev. Stat. c. 226.

Taken from 48 V. c. 39, s. 29 (1885), as amended in the consolidation of the local improvement sections in 1890 by 53 V. c. 50, s. 38.

Alternative methods in drainage cases.

(k) "Relate to any stream, creek or watercourse, or to draining any locality."

It appears that an assessment of the cost of deepening any stream, creek or watercourse or of draining any locality may be made either under "*The Municipal Drainage Act*" (b); or under this Act—and that in each of these cases a different set of provisions will apply.

Under "*The Municipal Drainage Act*," the work may be undertaken only upon petition, for withdrawal from which special provision is made, as it is also for the ascertainment of the *quantum* of benefit to be derived from the work by each parcel of property affected thereby, for the settlement of damage claims, and for all other incidental matters.

If s. 664 (2), *supra*, be taken as the authorization for the assessment, the work may be initiated not only by petition, but also by notice under s. 669, and, in the case of a drain, without even notice, upon the recommendation of the local board of health. The apportionment must then presumably be made by the method outlined in this subsection (6), but it remains uncertain which of the other matters connected with the assessment are to be governed by the provisions of this Act, and which regulated by those of "*The Municipal Drainage Act*."

It may be doubted whether this result was intended by the Legislature. It seems highly improbable that the elaborate system of "*The Municipal Drainage Act*" should have been devised in order to make complete provision for assessments for drainage works, and that the adoption of the less highly developed system of "*The Municipal Act*" should nevertheless (in the case of such a work) be left optional an as alternative; and it appears equally unreasonable to impute to the Legislature an intention that where this alternative had been adopted it should be left to litigants to ascertain the respective fields of operation of the two Statutes.

(a) *Swanston v. Twickenham Local Board*, 11 Ch. D. 838 (1879).

(b) R. S. O. c. 226, *post* Vol. II.

Secs. 664 (6), 665 (1).

Note (a).

On the other hand, these provisions were (from the time of their enactment in 1880 and 1885 respectively) until 1894, to be found in "*The Municipal Act*" side by side with special provisions as to drainage works—similar to those now included in "*The Municipal Drainage Act*"—(*a*), and it can scarcely be presumed that they were overlooked in 1894, when the drainage sections were transferred to a separate enactment.

Apart, however, from this initial difficulty, the interpretation of the section is by no means clear. Who is "the engineer or surveyor ?" Presumably the reference is to such an engineer or surveyor as is to be appointed in certain cases under "*The Municipal Drainage Act.*" Again, it is not easy to determine how the amounts payable by each corporation or person are to be arrived at. The engineer is to charge each with a certain amount,—but this, if objected to, is to be "*agreed upon* by arbitration." Possibly this means "agreed upon *or determined* by arbitration"; but, if so, questions arise as to the parties who are to agree, and what are the circumstances in which resort is to be had to arbitration. If it is intended that the municipality which is about to construct the work and the person or corporation to be charged with part of its cost, may agree upon the amount payable therefor by the latter, and that in default of agreement they may resort to an arbitration to determine such amount,—then this is the only case under either this Act or "*The Municipal Drainage Act,*" in which such a procedure is authorized.

The uncertainty which must result from provisions so obscure makes it useless as well as dangerous,—without the aid of judicial decision—to do more than point out these difficulties and apparent inconsistencies. In the notes to the other subsections of this section the questions here suggested have accordingly been passed over: and this subsection has been treated as if it belonged to "*The Municipal Drainage Act,*" and not to "*The Municipal Act*" (*b*).

Rate to be assessed on frontage.

665.—(1) The special rate to be so assessed and levied shall be an annual rate according to the frontage thereof, upon the real property immediately benefited by the work or improvement. 55 V. c. 42, s. 613 (1); c. 43, s. 66; 59 V. c. 51, s. 28 (1).

The property to be assessed was originally, (as here), that "immediately benefited" among the various parcels of which the amount to be levied might, at the option of the council, be apportioned in any one or more of the following methods:—

(1) By an annual rate in the pound on the assessed value including the improvement,

(2) By an annual rate in the pound on the value exclusive of the improvement,

(3) By an annual equal rate per foot frontage, or

(4) By an annual rate on each portion in proportion to the benefit derived by such portion.

See 22 V. c. 40, s. 1 (2) (1859) (quoted *ante* at p. 896); C.S.U.C. c. 54, s. 299 (2). Under the Acts of 1866, 1873 and 1877, there was but one method (No. 2, *supra*), viz:—"By an annual rate in the dollar on the real property so benefited, according to the value thereof, exclusive of improvements." See 29-30 V. c. 51, s. 301 (2); 36 V. c. 48, s. 464 (2), and R.S.O. (1877), c. 174, s. 551 (2). These words were struck out in 1881 by 44 V. c. 24, s. 26, which substituted for them the words, "by means of an annual rate on the real property so benefited *according to the frontage thereof.*" In 1882 it was provided (45 V. c. 23, s. 4) that the council—without a petition therefor (which had theretofore been in most cases necessary)—might pass a by-law for constructing a local improvement, and for assessing the cost by a frontage rate "upon the real property *fronting or abutting upon the street or place whereon or whereon* such improvement is proposed to be done or made." The provisions of these two sections were combined in s. 612 (4) of the Act of 1883, (46 V. c. 18), in which the words used were "an annual rate *according to the frontage thereof* upon the real property *fronting or abutting,*" etc.—as in 45 V. c. 23, s. 4,—the assessment being restricted in all cases to abutting property, and the only authorized method of dividing the cost being according to frontage. See R. S. O. (1887), c. 184, s. 612 (4); 55 V. c. 42, s. 613, and also 55 V. c. 43, s. 66. Thus the law continued until 1896, when the section was re-enacted in its present form by 59 V. c. 51, s. 28 (1) (1896), which is practically a return in every case to the method which had been applied by 44 V. c. 24, s. 26 to cases where the work had been petitioned for. But see note (d), *infra*.

(a) "**A rate according to the frontage.**" "The proportion of the cost of the work charged against each parcel of land must be an amount which bears the same proportion to the whole cost as the frontage of the parcel bears to the entire frontage of all the parcels of land which are found to be benefited." (*c*). *Re Robertson and City of Chatham* (*d*) was an application by the City for prohibition to the County Judge of Kent, to prevent the enforcement of his decision reducing the assessment of R.'s lands in respect of a sewer

(*a*) See small-print notes to subs. 2 and to this subsection.

(*b*) See this subsection referred to by OSLER, J. A., *post*, p. 914, as "that peculiar clause, s. 664 (6)."

(*c*) *Per* MEREDITH, C. J., in *Re Robertson and City of Chatham*, 30 O. R., at p. 174.

(*d*) 30 O. R. 158; 26 A. R. 554 (1899).

Sec. 665 (1).

Notes (a), (b).

Frontage rate to be an equal rate per foot.

proposed to be constructed in one of the city streets. The lands abutting upon the street had been assessed for the sewer proposed at the uniform rate of 32 cents per foot of their frontage. The County Judge found that R.'s lands would be benefited, but not to an equal extent with other lands abutting upon the street; and he accordingly reduced R.'s assessment from $239.95 to $47.87. It was contended on behalf of R. that s. 664 (1) authorized a County Judge to determine "the proportions in which the assessment should be made on the various portions of the real estate benefited" by the work, and that the Act nowhere compelled the imposition of an arbitrary equal frontage rate upon each foot of benefited land along the whole street irrespective of the *quantum* of benefit.

But it was held (*a*) that the County Judge had no power to change an assessment of an equal rate per foot according to the frontage, to an unequal one, based upon his judgment of what would be a just and equitable share of the cost of the work to be charged upon R.'s land.

Per OSLER, J.A.:—

> "I think that under the present system the Legislature has expressed its intention that—at all events as regards properties fronting on the street in which the work or improvement is done and which are benefited thereby—the cost of the work is to be raised by an equal per foot frontage rate upon such properties, without regard to the fact that they may be unequally benefited; unless the council deem it inequitable to assess lands—which (like the appellant's) though fronting on the street in which the improvement is made, are unsuitable for building purposes,—at as high a rate as the building lots fronting on the same street, and [unless they] so determine by by-law under the authority of section 673 (6)." (*b*)

Per MACLENNAN, J.A.:—

> "The cost of the work is not only to be assessed, but levied by means of a rate according to the frontage. If the *quantum* of benefit were to be regarded, the frontage would be quite immaterial, and would afford no assistance in distributing the burden. Each owner would have to pay his proportion according to the amount of his benefit, whether his frontage was much or little. Having regard, therefore, to section 664 and section 665 (1), I think it is plain that the question of benefit is not an element to be regarded in making the assessment."

But, *semble*, the rate per foot on non-abutting property need not be the same as that on abutting property.

MEREDITH, C.J., was however of opinion (*c*) that where non-abutting—as well as abutting properties—are assessable for a work, although, as regards properties belonging to the same class,—*i.e.*, abutting or non-abutting—the rate must be an equal one per foot, yet as between these two classes there may be a difference in the rate per foot; and OSLER, J.A.—concurring in this opinion—thought also that perhaps a different rate per foot might be imposed "in the case of corner or irregular lots provided for by s. 673 (4), and under that peculiar clause, s. 664 (6)."

What property may be assessed for a local improvement.

(b) "The real property immediately benefited."

Under ss. 665 (3), 673 (2) and 674 (2), express permission is given to assess property immediately benefited, other than that fronting or abutting upon the street, etc., whereon or wherein the improvement is made or to be made. It is not clear whether under this subsection—as it now stands—non-abutting property may not be assessed in every case where it is benefited.

Prior to 1882 (*d*), the assessability of real property for local improvements depended upon benefit alone: its situation was wholly immaterial. Thenceforward, until 1896, the special rate leviable under this subsection was restricted to property "fronting or abutting," etc.; and it was during this period that the above exceptions to that rule were created—s. 674 (2) having been passed in 1885, s. 673 (2) in 1888, and s. 665 (3) in 1892 (*e*). The reten-

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(*a*) By MEREDITH, J., and subsequently by a Divisional Court consisting of MEREDITH, C. J., ROSE and MACMAHON, JJ.; and (in the Court of Appeal) by OSLER, MACLENNAN and MOSS, JJ. A.

(*b*) See note (**d**) to s. 673.

(*c*) 30 O. R. 158 (1899), at p. 175.

(*d*) 42 V. c. 23, s. 4. See the small-print note *supra*.

(*e*) See the small-print references under these subsections respectively.

Sec. 665 (1).

Note (b).

What property may be assessed for a local improvement.

tion of these sections in the Act since the amendment of 1896 is probably due to oversight; since there seems to be no reason why the words of this subsection should not now be construed in the same sense as the almost identical words of the Act of 1881 (*a*),—viz., as permitting the assessment of all property immediately benefited, whether it does or does not front or abut upon the street or place whereon or wherein the work or improvement is done or constructed.

It therefore becomes important to define the word "benefited" as used in the Act: a task by no means easy. The primary and natural meaning of the word is "increased in value;" and in order to determine whether or not property has been or will be "benefited," it is necessary to ascertain whether or not its market value has been or will be (*b*) enhanced by reason of the work (*c*). Yet there are cases in which a strict application of this test would result in no local assessment being possible under the wording of the Act; for it must often happen that the laying of a pavement or sidewalk has no perceptible effect, either actual or prospective, upon the value even of abutting property; and *a fortiori* is this the case where a pavement or sidewalk is renewed. It is therefore in many cases necessary that the assessment should be based upon locality rather than upon benefit; and the Act seems to contemplate such a course (*d*). Indeed it is apprehended that the property abutting upon a street in which any local improvement is constructed may always be assessed for its cost, unless the land is of such a character that no possible increase, even of personal convenience, can accrue to the owners or occupiers thereof (*e*).

Where, however, the strict test of benefit can be applied, it must be taken as the guide in determining what property shall be assessed; and every parcel, the value of which has been increased by reason of the work, must be charged, whether it abuts or does not abut upon the work or upon the improved street.

The word "immediately" does not refer to time, or to space; it means "directly," as also does the word "specially," which is used instead of "immediately" in ss. 665(3), 673(7). The use of either word is, indeed, unnecessary, since the expression "benefited *by the work*" conveys the whole idea,—viz., an in-

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(*a*) 44 V. c. 24, s. 26.

(*b*) *Quaere—or* "is likely to be?" It has been held in the United States that the benefit may be an estimated, not an actual one, and that it suffices if there is "the potentiality of receiving a benefit;" *Per* SHAW, C. J., in *Wright* v. *City of Boston*, 63 Mass. (9 Cush.) 233 (1862), at p. 236, referring to the earlier case of *City of Boston* v. *Shaw*, 42 Mass. (1 Metc) 130 (1840).

(*c*) *Re Pryce and City of Toronto*, 16 O. R. 726; 20 A. R. 16 (1892): *Re William and Anthony Streets, New York*, 19 Wend. 678 (1839), at p. 690; Cooley on Taxation, p. 660, citing *Re Furman St.*, 17 Wend. 649, 668 (1830), approved in *State* v. *Newark*, 35 N. J. Law 157, 167 (1871), and in *Re Mead*, 74 N. Y. 216 (1878), *per* MULLER, J., at p. 221: *Cf.* Dillon, s. 752 *et seq.*; Hare, American Constitut. Law, Vol. I. p. 310: *Taylor* v. *Palmer*, 31 Cal. 240 (1866): *Broadway Baptist Church* v. *McAtee*, 8 Bush. (Ky.) 508, 517 (1871): *Hammett* v. *City of Philadelphia*, 65 Pa. St. 146 (1870), *per* SHARSWOOD, J., at p. 147: *Re Washington Avenue*, 69 Pa. St. 352 (1871): *Macon* v. *Petty*, 57 Miss. 378 (1879).

(*d*) See ss. 665 (3), 673 (2), 674 (2).

(*e*) In *City of Toronto* v. *Canadian Pacific R. W. Co.*, 26 S. C. R. 682 (1896),* it was held that the respondents could not be charged as for a local improvement with part of the cost of a pavement through a subway—by the construction of which their access to the original highway had been cut off—on the ground (among others) that their lands could not be said to have been benefited by the work. In *Re Hodgins and City of Toronto*, 23 A. R. 80 (1896), decided before the amendment of 1896, MACLENNAN, J. A., expressed the opinion (p. 89), that property on one side of a street could not be alone assessed; but there seems now to be nothing in the Act which forbids such an assessment, provided the benefit received by the lands on one side is distinguishable from that conferred upon those on the other. See also *Belanger* v. *City of Montreal*, Q. R. 15 S. C. 43 (1898), referred to in note (**d**) to s. 673.

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* See also *S. C., sub nom. Re Canadian Pacific R. W. Co. and City of Toronto*, 23 A. R. 250 (1896).

Sec. 665 (1), (2). Notes (b)-(d).

crease in value and consequent upon or due to the construction of the improvement. All property so increased in value must be assessed; and there is no authority whatever for the assessment of part only of the property benefited (*a*).

When it is found that the value of a parcel of property has been *decreased* by the construction of a work, it does not necessarily follow that it may not be assessed therefor, although the amount of any compensation payable to the owner for the damages occasioned by the work must (under s. 437) be reduced by deducting therefrom the amount of any benefit received (*b*). The property is nevertheless assessable, if there is any benefit at all to be so deducted: in other words,—if the value of the property would have been increased had no damage been suffered it is assessable as "benefited" property (*c*).

Provision in case of insufficient or excessive assessment.

(2) If in any case the first assessment for any such work or improvement proves insufficient, the council shall make a second or other additional assessment in the same manner, and so on until sufficient moneys have been realized to pay for such improvement or work, and if too large a sum has at any time been raised, the excess shall be refunded rateably to those to whom it was paid. 55 V. c. 42, s. 613 (2).

Taken from 43 V. c. 27, s. 10 (1880), the words "or other additional assessment" (line 3) having been inserted in 53 V. c. 50, s. 38 (1890), in which also the words "work or" (line 1) were substituted for the word "local." See 46 V. c. 18, s. 612 (5); R. S. O. (1887), c. 184, s. 612 (5). *Cf.* "*The Municipal Drainage Act*" (R. S. O. c. 226), ss. 66, 74 *et seq.* and notes thereto *post*, Vol. II.

(c) "**If the first assessment . . . . proves insufficient.**"

The insufficiency of the first assessment may be due either to an erroneous estimate, or to deviations and variations from, or even additions to, the work as originally planned (*d*).

(d) "**The council shall make a second assessment in the same manner.**"

When the estimated cost has been assessed, and the estimate proves to have been too low, a second—and if necessary a third, fourth, etc.—assessment *must be made* under this sub-section, which is imperative.* The council has no power to assume any part of the cost of a local improvement except in those cases where express authority to do so is conferred by the Statute (*e*); but, in case an assessment by-law has been quashed, the council may probably exercise a discretion as to whether they will pass another in its place (*f*).

(*a*) See note (**d**) to s. 664.

(*b*) *Re Pryce and City of Toronto*, 16 O. R. 726; 20 A. R. 16 (1892).

(*c*) See *Re Pryce and City of Toronto*, supra: *Re Richardson and City of Toronto*, 17 O. R. 491 (1889): *Thackeray* v. *Township of Raleigh*, 25 A. R. 226 (1898), *per* OSLER, J. A., at pp. 236, 237.

(*d*) *Re Suskey and Township of Romney*, 22 O. R. 664 (1892)—a case under "*The Municipal Drainage Act*,"—and *cf. Green* v. *Township of Oxford*, 15 O. R. 506; 16 A. R. 4 (1888): *Re Township of Rochester and Township of Mersea*, 26 A. R. 474 (1899).

(*e*) See note (**e**) to s. 664.

(*f*) See s. 672 (3): *sed vide* s. 682, note (**a**).

* The retention of the above subsection (2) in "*The Municipal Act*" is of doubtful expediency. The knowledge that when once a local improvement has been authorized the property owner must pay, pay, pay, till it is finished, has led (in many cases within the experience of the editor) to estimates of the cost of proposed works which turned out to be very far from the truth, as subsequently told by the assessment by-law. Here are a few specimens:

	Estimated cost.	Actual cost.
Extension of Margueretta St., Toronto	$ 8,200	$21,921 41
" Gladstone Avenue, Toronto	14,500	36,180 22
Rosedale Valley Road	27,500	69,532 73
Carlaw Avenue	14,600	46,770 88
Boswell Avenue	1,575	2,477 68
Total actual cost		$176,882 92
Total estimated cost	$66,375	
Difference		$109,507 92

or an excess of *165 per cent.* over the estimates.

A by-law passed under this sub-section should authorize the levy of no more than the amount by which the actual cost of the work has exceeded its estimated cost (*a*); and, though the levy of the total actual cost may have been authorized by a second by-law, it is apprehended that the first assessment by-law would still remain in force, since any by-law repealing it would be illegal under s. 392, *supra*.

Sec. 665, (2), (3), Notes (d), (e).

Notices under s. 671 (1), (2) must be given of the sitting of a Court of Revision to confirm every assessment imposed under this sub-section (*b*), unless s. 671 (8) has the effect of making these unnecessary where the supplementary assessment does not exceed 10 per cent. of the first one (*c*).

Assessment of cost of certain local improvements in townships.

(3) In the case of a township, any portion or which is situate within five miles of a city containing 50,000 inhabitants or over, if the council determine that any real property other than that fronting or abutting on the street, lane, alley, public way or place, or the portion thereof whereon or wherein the improvement made, or to be made, is specially benefited and ought to be charged with a part of the cost thereof, and determine the proportion in which the cost of the improvement is to be assessed against the land so benefited, the council may, upon the petition of three-fourths in number of the owners representing three-fourths in value of the lands to be benefited, assess and levy, by frontage rate in like manner as the same would be assessed and levied in the case of lands fronting or abutting upon the street, lane, alley, public way or place, or the portion thereof whereon or wherein the improvement is made or to be made, the proportion of the cost chargeable against the lands benefited, whether such lands do or do not front or abut upon such street, lane, alley, public way or place.

Provided, that, instead of assessing and levying by a frontage rate, the council may by by-law provide that the cost of the local improvement therein specified may be assessed and levied by a special rate upon the lands benefited thereby, according to the proportion of benefit received therefrom, instead of by a frontage rate. 55 V. c. 42, s. 613 (3); c. 43, s. 67.

Taken from 55 V. c. 43, s. 67 (1892), included in "*The Consolidated Municipal Act*" of that year (55 V. c. 42) as s. 613 (3). Some merely verbal amendments were made in the Revision of 1897.

(e) "**Fronting or abutting on the street,**" etc. By s. 150 of "*The Public Health Act, 1875,*" (*d*) provision is made for payment of the expenses of paving, sewering, lighting, etc., private streets within any urban district by the owners of the premises "fronting, adjoining or abutting" thereon; and these words have been frequently interpreted in England by judicial decision.

The general result of the cases is that all property from which there is a right of access to the street is assessable under the section, even though it is not actually contiguous to the street. It is not necessary, apparently, that there

(*a*) *Re Sweeny and Town of Smith's Falls*, 22 A.R. 429 (1895).

(*b*) See note (**d**) to s. 671 and *Re Gillespie and City of Toronto*, 19 A.R. 713 (1892), *per* OSLER, J.A., at pp. 722, 723: *Re Sweeny and Town of Smith's Falls, supra, per* OSLER, J.A., at pp. 437, 488: *Petman* v. *City of Toronto*, 24 A.R. 53 (1897).

(*c*) See note (**k**) to that section. (*d*) Imp. Stat. 38-39 V. c. 55.

Sec. 665 (3). 666.

should be actual access, if there is a possibility of access, or even the right of access (*a*).

Notes (e) (j). What is "fronting or abutting property."

In *Watson* v. *Maze and City of Montreal* (*b*)—a case under a Quebec Statute (*c*) it was held by ARCHIBALD, J., that the "properties fronting" on the line of a street include all properties adjoining or contiguous thereto, although the buildings may front upon an intersecting street.

(f) "**If the council shall determine.**" The assessment by-law should recite this determination, following the words of the Statute.

(g) "**Upon the petition,**" **etc.** It is essential to the validity of the by-law that the petition should be signed by the requisite number of owners, and that they should in fact be the owners of lands of the requisite value (*d*).

(h) "**May . . . assess and levy . . . the proportion of the costs.**" See note (**e**) to s. 664 and note (**a**) to this section.

(i) "**By frontage rate.**" *Semble*, the rate per foot on non-abutting property need not be the same as that imposed upon abutting property (*e*).

(j) **Proviso.** "**According to the proportion of benefit received.**" Under this proviso (and under s. 674 (3)) the method of assessment authorized by "*The Municipal Drainage Act*" (*f*) may be applied to works constructed under this Act. As to the contents of the engineer's report when it is adopted, see note (**a**) to s. 664; as to the powers of the Court of Revision and the County Judge, note (**d**) to s. 664; and as to the effect of such an assessment, and the disposition of damage claims, the note on "The Local Improvement System," *supra*, p. 898.

Preceding sections not to apply to ordinary repair or maintenance.

Compelling municipality to repair.

666.—Nothing contained in the two preceding sections shall be construed to apply to any work of ordinary repair or maintenance; and all works or improvements constructed under the said sections shall thereafter be kept in a good and sufficient state of repair at the expense of the township, city, town, or village generally; and any ratepayer whose property adjoins, and who has been assessed for the said works or improvements, may, on giving one month's notice to the said municipality that the said works or improvements are not in such good and sufficient state of repair, apply by a summary proceeding to a Judge of the High Court of Justice, or to a County Judge having jurisdiction in such municipality, for an order respecting the keeping of the said works or improvements in such a state of repair as may be reasonable and proper and as is hereinbefore required. 55 V. c. 42, s. 614; 62 V. (2nd Session), c. 26, s. 41.

Based upon 22 V. c. 40, s. 6 (1859),—which reads as follows:—

"Nothing in this Act contained shall be construed to apply to any work of ordinary repair or maintenance, and every common sewer made, enlarged or pro-

(*a*) Premises were accordingly held to be assessable, though divided from the street by a wall which the owner might at any time remove or break through: *Manchester (Mayor of)* v. *Chapman*, 18 L.T.N.S. 640 (1868). *Cf. Sheffield* v. *Fulham District Board of Works*, 1 Ex.D. 395 (1876): *Newport Sanitary Authority* v. *Graham*, 9 Q.B.D. 183 (1882): *Lightbound* v. *Higher Belbington Local Board*, 16 Q.B.D. 577 (1857). So where the premises were divided from the street by a small stream, crossed by two bridges in which were gates that could be closed by the owner of the property. *Wakefield Local Board* v. *Lee*, 1 Ex. D. 336 (1876); but where, between the street and the property, there was a wall belonging to a third person the owner of the property abutting upon the wall was held not to be liable as for premises "fronting or abutting upon the street": *Leith Magistrates* v. *Gibb*, 9 Ct. of Sess. Cas. (4th Series) 627 (1882). See on this point the cognate cases as to the right of a riparian owner to access from his land to a public water way, which are cited in foot notes (*h*), (*i*), (*j*) and (*k*) on p. 679, in note (**f**) to s. 562.

(*b*) Q.R. 15 S.C. 268 (1899). (*c*) 55 V. c. 57.

(*d*) See *Re Misener* v. *Township of Wainfleet*, 46 U.C.R. 457 (1882): *Re Township of Romney and Township of Mersea*, 11 A.R. 712 (1885): *Re Robertson and Township of North Easthope*, 16 A.R. 214 (1889), and note (**d**) to s. 671.

(*e*) See note (**a**) to this section. (*f*) R.S.O. c. 226.

longed, and street, lane, alley, public way and place and sidewalk therein once made, opened, widened, prolonged, altered, macadamized, paved or planked, under this Act shall thereafter be kept in a good and sufficient state of repair at the expense of the city generally."

Secs. 666, 667.

Notes (a), (b).

See *ante*, p. 896, also C. S. U. C. c. 54, s. 304; 29-30 V. c. 51, s. 336; 30 V. c. 48, s. 467; R.S.O. (1877), c. 174, s. 554. In 1883 (46 V. c. 18, s. 612 (6)) the enumeration of the works referred to was omitted, and the section was recast in its present form. The words "or improvements" (line 3) were inserted in 53 V. c. 50, s. 38. See R.S.O. (1887), c. 184, s. 612 (6). The last clause from "and any ratepayer" (line 6) to the end of this section, were added in 1889 by 62 V. (2), c. 26, s. 41.

The section originally applied to cities only. It was extended to towns and villages in 1871 by 34 V. c. 30, s. 10, and to townships in 1887 by 50 V. c. 28, s. 48. *Cf.* "*The Municipal Drainage Act*," (R.S.O. c. 226), ss. 68, 69, and the notes thereto, *post*, Vol. II.

Local works to be kept in repair at general expense.

(a) This section imposes upon the municipality a duty which must not be confounded with the general duty to repair. That duty is one toward the public: this one is imposed for the benefit of the persons at whose expense the local improvement has been made (*a*). In *Re Medland and City of Toronto* (*b*) an application was made by a ratepayer for an order respecting the keeping in repair of a city street which had been constructed by placing cedar blocks upon a foundation of gravel. Although the estimated lifetime of the pavement had not yet expired, it was proved that its repair would involve the reconstruction of the wearing surface, the gravel foundation alone remaining. It was contended, on behalf of the applicant, that the duty imposed by this section must be performed by the municipality unless the council had, either upon their own initiative or upon petition, commenced the re-construction authorized by s. 664 (2),—but it was held that to repair this pavement involved its practical reconstruction, and that:—

"The duty to repair, imposed by s. 666, . . . ends when the time arrives when it becomes necessary to reconstruct the work or improvement, and whenever it is in such a condition that practical men would say of it that it is worn out and not worth repairing, the municipality cannot be compelled to do that which is, *ex hypothesi*, impossible to be done." (*c*)

Per Sir WILLIAM MEREDITH, C.J.:—

"Had it appeared that the present condition of the pavement was due to the municipality having in the past neglected the duty to repair, it may be that the answer to the motion which I decide to be a sufficient one, might not have been any answer."

(b) "**Any ratepayer whose property adjoins and who has been assessed.**"

Who may make the application.

Both these qualifications are necessary to the *status* of the applicant. In *Re Thompson and City of Toronto* (*d*) a joint application under this clause was made by a husband and wife, the former, after he had been assessed for the work and prior to the application, having conveyed to the latter, the property adjoining the street, and upon which the *status* of the applicant was based. *Held*, that such a joint application is not within the Statute, and the order was refused.

62 V. (2), c. 26, s. 41.

667.—It shall be deemed to have been and to be a sufficient compliance with the provisions of section 664 if the council shall have passed or shall pass a general by-law or general by-laws, providing the means of ascertaining and determining what real property will be immediately benefited by any proposed work or improvement, the expense of which is proposed to be assessed upon the real property immediately benefited thereby, and of ascertaining and determining the proportions in which the assessment of the final cost thereof is to be made on the various portions of real estate so benefited, and it shall not be deemed to have been, or to be necessary to pass a special by-law in each particular instance for the purposes above mentioned. 55 V. c. 42, s. 615.

General by-law under s. 664 (1) sufficient.

Taken from 48 V. c. 39, s. 36 (1885), the words "of the final cost thereof" (line 9) having been inserted by 53 V. c. 50, s. 38 (1890). See R. S. O. (1887), c. 184, s. 612 (1a).

(*a*) *Per* Sir WILLIAM MEREDITH, C.J., in *Re Medland and City of Toronto*, 31 O. R. 243 (1899). (*b*) Ibid.

(*c*) See *Town of Amherstburgh* v. *Caldwell*, (Divl. Ct.) Feb., 1900; not yet reported.

(*d*) 35 C.L.J.N.S. 612; 19 C.L.T. 320 (1899.)

Secs. 667, 668.

Note (a).

(a) A general by-law respecting local assessments under this and other sections may deal with the following subjects:—

General by-law under s. 667. Contents of.

1. The contents and receipt of petitions for works. S. 668 (1).

2. The contents and publication of notice of the intention of the council to undertake a work. S. 669 (1).

3. The receipt of petitions against such work. S. 669 (1).

4. The mode of determining whether or not a petition is sufficiently signed. Ss. 668 (1), 669 (3).

5. The mode in which any petitioner whose name is not upon the assessment roll may satisfy the clerk as to his right to petition. S. 669 (5).

6. The forwarding of petitions to the council or to a committee thereof.

7. The report to the council of the fact that no petition has been received against a work of which notice has been given upon the initiative.

8. The preparation and contents of a report by an engineer or other officer before the work is begun. S. 664 (1), 667. See note (a) to s. 664.

9. The financial arrangements to be made for meeting the cost of the work. S. 672. See note (a) thereto, and note (a) to s. 664.

10. The preparation and contents of a report by an engineer or other officer after the completion of the work. Ss. 664 (1), 667. See notes (a) and (b) to s. 664.

11. The preparation of a by-law for issuing debentures to meet the municipality's share of the cost. See note (b) to s. 664 and note (c) to s. 672.

12. The preparation and contents of a statement by the assessment commissioner or other officer, showing assessable parcels, measurements, etc. Ss. 664 (1). See note (b) to s. 664.

13. The contents, mailing and publication of notices of the sitting of the Court of Revision. S. 671 (1), (2). See s. 673 (3), (4) and note (b) thereto.

14. The attendance of officers at the Court of Revision.

15. The giving of notice of the sitting of the County Judge to hear appeals.

16. The return of the final statement and the preparation of an assessment by-law pursuant thereto. See note (b) to s. 664.

17. An equitable mode of assessing corner lots. S. 674 (4). See note thereto.

18. The period of the exemption of property owners paying any local rates from general rates for the like purposes. S. 680. See note (a) thereto.

19. The preparation in each year of a statement showing the amount to be paid out of the general rates for each class of work for a particular portion of which a local rate is being levied in the municipality. See s. 680 and note (a) thereto.

MODES OF INITIATING LOCAL IMPROVEMENT WORKS.

(1) By Petition.

Council may undertake works on petition of owners to be benefited.

668.—(1) Upon the receipt of a petition praying for any of the works and improvements mentioned in the four preceding sections, signed by at least two-thirds in number of the owners of any real property to be benefited thereby, according to the last revised assessment roll of the municipality, such owners representing at least one-half in value of such real property—the number of such owners and the value of such real property as appears by the last revised assessment roll as aforesaid having been first ascertained and finally determined in the manner and by the means provided by by-law in that behalf—the council may take all proper and necessary proceedings for the execution and completion of the work or improvement with as little delay as possible, and after such final determination no name shall be removed from such

petition without the consent of the Judge of the County Court. 55 V. c. 42, s. 616 (1); 58 V. c. 42, s. 31; 62 V. (2nd Session), c. 26, s. 42 (1).

Sec. 668 (1). Notes (a), (b), (c).

Initiation of local improvements.

It was originally provided that (except where constructed with funds provided by the persons interested):—"No . . . local improvement shall be undertaken . . . otherwise than on the petition of one-third in number and one-half in value of the real property to be directly benefited thereby, of the owners of such real property." See 22 V. c. 16, s. 2 (1859), *ante* p. 890; C.S.U.C. c. 54, s. 390; 36 V. c. 48, s. 465; R.S.O. (1877), c. 174, s. 552.

1. By petition of property-owners.

By 34 V. c. 30, s. 12 (1872) authority was given to the council to initiate local improvements without petition in certain cases, and this was extended to *all* cases by 45 V. c. 23, s. 4 (1882). (See small print note under s. 669 (1)).

In the Consolidation of 1883 (46 V. c. 18), the provision allowing their initiation by petition was omitted, but it was re-inserted in the following year by 47 V. c. 32, s. 21 (1884), upon which this section is based. See R.S.O. (1887), c. 184, s. 612 (9). The words "according to the last revised assessment roll of the municipality" (lines 4, 5) were inserted in the Consolidation of 1890 (53 V. c. 50, s. 398), from which also some unnecessary words before "may take" (line 11) were omitted. The words between dashes (lines 7-11), which had been used in the early Statutes, were re-inserted in 1895 by 58 V. c. 42, s. 31, and the last three lines, from "and after such final determination," were added in 1898 by 62 V. (2), c. 26, s. 42 (1). *Cf.* "*The Municipal Drainage Act*" (R.S.O. c. 226), s. 3 (1), *post*, Vol. II.

(a) "A petition." (*a*)

Contents of petition.

The petition must state the nature of the work desired; its locality (by metes and bounds), and the real property which will be benefited thereby. It would be advisable also to name the amount which the petitioners desire that the municipality should expend upon the work. In such a case the council would probably not be justified in letting the contract at a higher figure,—but if, after beginning the work, it is found that it will cost more than the amount named in the petition, the excess must also be levied (*b*).

(b) "Ascertain and finally determine in the manner provided by by-law."

How its sufficiency is determined.

The usual mode of determination is by a certificate of the clerk of the municipality. When a by-law has been passed providing the means of ascertaining and determining the number of the owners petitioning, and the value of the property which they represent, and when these matters have been determined in the manner so provided, a by-law, based upon such a petition, for assessing the cost of a local improvement will not, (in the absence of fraud), be open to attack on the ground that a sufficient number of owners have not in fact petitioned, or that those who have petitioned do not represent the necessary proportion of value (*c*). The "determination" of these matters must, however, be based on the area and assessment of the lands which it is alleged by the petitioners will be benefited by the work. If, as a matter of fact, other land is benefited and the area or assessment of the lands actually benefited is such that the petitioners—though upon the face of the petition they may appear to be sufficient in number and value—are not so in fact, this seems to be a ground for quashing the assessment by-law (*d*).

(c) "The council may take all proper and necessary proceedings."

Proceedings consequent thereupon.

Two courses are open to the council:—

1. A by-law may be passed (if a by-law is necessary) providing only for the construction of the work—(for which the petition is a sufficient authority)—; and, after the work has been completed, the notices required by s. 671 (1) (2) may be given, and an assessment by-law passed for levying the whole ascertained cost.

2. Notices of the sitting of the Court of Revision may be given under s. 671 (1) (2)—or (in a proper case) under s. 671 (3) (4) (*e*)—and provision made by one by-law for the execution of the work, for assessing its estimated cost, and for the issue of debentures. If, when the work is completed, this estimate is found to have been too low, a supplementary assessment by-law must be passed for levying the excess and authorizing the issue of further debentures (*f*).

(*a*) See s. 672 (4*b*). (*b*) See note (**e**) to s. 664.

(*c*) *Re Michie and City of Toronto*, 11 C.P. 379 (1862).

(*d*) *Re Township of Romney and Township of Mersea*, 11 A.R. 712 (1885); *Re Robertson and Township of North Easthope*, 16 A.R. 214 (1889). See note (**a**) to s. 337 and note (**d**) to s. 671.

(*e*) See note (**d**) to s. 669.

(*f*) See note (**d**) to s. 665.

Sec. 668 (2)-(4).

Note (d).

"Owner" to include certain leaseholders.

(2) Where the word "owner" occurs in this Act in sections 664 to 686 both inclusive, 689 and 690, it shall be construed and deemed to include a leaseholder, the unexpired term of whose lease (including any renewals therein provided) extends over a period which is not less than the duration of the proposed assessment, if the lessee has covenanted in his lease to pay all municipal taxes on the demised property during the term of said lease, and would be liable for the taxes for the proposed improvements, and every such lessee shall have the same right to petition for or against any local improvement proposed to be constructed under this Act as if he were the owner of the property liable to be assessed therefor. 55 V. c. 42, s. 616 (2); 60 V. c. 15, *Sched.* C (105).

Based on 19 V. c. 37, s. 2 (1886). Taken from 53 V. c. 50, s. 38 (1890), which applied to all the local improvement sections except those corresponding to ss. 691-701. Its application was restricted as at present in the Revision of 1897.

Lessee's covenant "to pay taxes" does not (now) include local improvement rates.

(d) In leases made before September 1st, 1897, in pursuance of "*The Short Forms of Leases Act*," a covenant "to pay taxes" includes local improvement rates unless they are expressly excepted (*a*). In leases made since that date, it does not include such rates unless so specifically provided (*b*); and the form of lease given in Schedule B to R.S.O. c. 125 now contains an express exception of such rates (*c*).

Owner not to petition where lessee may.

(3) In any case where a lessee has the right to petition for or against any proposed improvement under the provisions of the last preceding subsection, the owner of the property in fee shall not have such right.

(*a*) This subsection and subsection 2 shall not apply to townships. 55 V. c. 42, s. 616 (3).

Taken from 53 V. c. 50, s. 38 (1890).

2. Initiation of certain local improvements for sanitary or drainage purposes.

(2) On Sanitary Grounds.

(4) If the council of any city, town or village upon the recommendation of the local board of health, affirm by a vote of two-thirds of all the members of the council at any regular meeting thereof, that it is desirable and necessary in the public interest to construct, make, enlarge or prolong a drain, sewer or sewers, for the purpose of draining a particular locality for sanitary or drainage purposes, as a local improvement, it shall not be necessary for such council to give notice of the proposed assessment for such local improvement, except the notice required by subsection 4 of section 671 of this Act, of the sitting of the Court of Revision for the purpose of hearing complaints against such proposed assessment.

(*a*) This shall not affect or impair the powers heretofore conferred upon any municipality by special Act. 55 V. c. 42, s. 616 (4); 58 V. c. 42, s. 32.

Taken from 53 V. c. 50, s. 38 (1890), which applied only to cities and towns. Extended to villages by 58 V. c. 42, s. 32 (1895). An error in the original reference to the notice was corrected by 54 V. c. 42, s. 26 (1891).

(*a*) *Re Michie and City of Toronto*, 11 C.P. 379 (1862): *Boulton* v. *Blake*, 12 O.R. 532 (1886).

(*b*) 60 V. c. 14, s. 28 (1). See R.S.O. c. 170, s. 17. (*c*) See note (e) to s. 402.

(e) "Local board of health."

As to the constitution of the local board of health see "*The Public Health Act*," (R.S.O. c. 248), ss. 48-55. See also note (**c**) to s. 672.

(f) "Two-thirds of all the members of the council."

See note (**b**) to s. 24; and, as to the necessity of strictly observing this requirement, note (**d**) to s. 671.

(g) "Draining a . . locality . . for drainage purposes."

This seems to cover every case where it is in the public interest to make, enlarge or prolong a sewer.

(h) "Subsection 4 of section 671."

What "notice of the sitting of the Court of Revision" is intended to be referred to.

In "*The Municipal Amendment Act, 1890*" (*a*), s. 38,—in which this subsection first appears as s. 616 (4), the words are:—"It shall not be necessary . . to give notice of the proposed assessment . . except the notice of the Court of Revision . . that is required *by s. 623 of this Act*." The section referred to is s. 676 of the present Act (*b*). The draftsman probably intended to refer to s. 623 of R. S. O. (1887), c. 184 (*c*); and in reconsolidating the Act in 1892 the reference was accordingly altered,—regardless, however, of the fact that by the Act of 1890 the form of notice in the section referred to had been so altered as to apply only to cases where the assessment is made before the completion of the work. Moreover,—the restriction to that form of notice never was an appropriate one, since that notice applied only to improvements undertaken under the provisions of a general by-law providing for assessment upon abutting properties only, whereas the construction of sewers was one of the few cases in which non-abutting property might be assessed (*d*). It is therefore apprehended that, the conditions precedent having been fulfilled, the council may construct, enlarge or prolong, a drain or sewer, and, upon its completion, may adopt the procedure set out in s. 671 (1) (2). Since a petition against the work would be unavailing, it would seem useless to compel the the adoption of a procedure which may necessitate the holding of two Courts of Revision (*e*).

(3) On the Initiative.

3. Initiation of local improvements by the municipal council.

669.—(1) Any work or improvement mentioned in section 664 (2) of this Act, may be undertaken and the assessment of the cost thereof may be made upon the properties benefited thereby, unless the majority of the owners of such real property, representing at least one-half in value thereof, petition the council against the same within one month after the last publication of a notice of the intention of the council to undertake the said work, such notice to be inserted once in each week for two weeks in at least two newspapers published in the township, city, town or village, if there are two newspapers published therein; and, if not, then in a newspaper published nearest to the proposed improvement or work.

The method of initiating local improvements without petition was first recognized in 1871 by 34 V. c. 30, s. 12, under which cities and towns were empowered to do so under much the same conditions as are provided by this section, but only where the council assumed one-half the cost. See 36 V. c. 48, s. 466. By 43 V. c. 27, s. 12 (1880), cities, towns and villages were authorized to impose the whole cost without petition, provided that the local improvement system had been adopted by general by-law; and in 1882 their power was extended to other cases by 45 V. c. 23, s. 4. This was consolidated in the following year as s. 612 (4a) of 46 V. c. 18, which is identical with the existing section except in the omission of the first three lines thereof, the substitution of "notice of the intention of the council to undertake the said work" (line 7) for "notice of such assessment," and certain verbal amendments. See R. S. O. (1887), c. 184, s. 612 (4a). The section was recast, into its present form, by 53 V. c. 50, s. 38 (1890).

(*a*) 53 V. c. 50.

(*b*) See 53 V. c. 30, s. 36 (623).

(*c*) Now s. 671 (3-5).

(*d*) See s. 673 (2) and references thereto.

(*e*) See note (**c**) to this section and note (**b**) to s. 669.

Sec. 669 (1).

Notes (a)-(d).

Procedure when a local improvement has been initiated by the municipal council.

(a) "The majority of the owners."

A petition praying for a local improvement must be signed by at least two-thirds of the owners of the property to be benefited (*a*),—but where proceedings are initiated by the council, the petition of a bare majority is sufficient to block the work.

As to the manner of ascertaining and determining the number of owners petitioning, etc., see sub-s. (3), *infra*, and note (**c**) to s. 668.

(b) "Petition the council."

If a petition is presented within one month after the last publication of the notice mentioned in note (**c**), *infra*, the construction of the work must be abandoned; or (if constructed) it must be paid for out of the general rates. A by-law making a local assessment of its cost would be invalid (*b*).

If no petition is so presented the council may adopt any one of the following courses:—

1. They may authorize the work, passing a by-law for this purpose if necessary (*c*) and

(a) May meet its cost out of ready money on hand or moneys raised by loans under s. 672, leaving the assessment to be made when the work is completed (*d*), or

(b) They may give notices under s. 671 (1) (2), hold a Court of Revision, and pass (another) by-law assessing the estimated cost and authorizing the issue of debentures to meet it.

2. They may give the notices required by s. 671 (1) (2); hold a Court of Revision, and (after the assessment has been confirmed) pass one by-law authorizing the work, making the assessment, and providing for the issue of the necessary debentures.

3. In the cases to which s. 671 (3) (4) applies—they may cause the lands to be measured, the statement required by sub-s. 4 to be prepared, and notices in the form therein given to be published; then allow ten days to elapse; finally decide to undertake the work; hold the Court of Revision, and, at the last, triumphantly pass a by-law authorizing the work, making the assessment, and providing for the issue of debentures.

The first mentioned course "(1a)" is to be recommended. Unless it be adopted, matters will probably be still further complicated by the necessity for passing a supplementary assessment by-law to provide for the difference between the actual and the estimated cost and (sometimes) to authorize the issue of further debentures (*e*).

(c) "A notice."

The notice required by this sub-section is simply "a notice of the intention of the council to undertake the said work"—describing it (*f*). It is not, as under the Act of 1887 (*g*), a notice of a proposed assessment. It would therefore seem to be unnecessary to specify in the notice either the estimated cost of the work or the lands to be benefited thereby. By sub-s. 4a "such a notice, so given, shall stand good as the authority for undertaking any such work, improvement or service."

(d) "Once in each week for two weeks in at least two newspapers."

An omission to comply with this provision would doubtless invalidate the assessment (*h*). The notice of a proposed assessment and of the sitting of the Court of Revision under s. 671 (4) is required to be published in one newspaper only.

(*a*) See s. 668 (1).

(*b*) *Per* OSLER, J. A., in *Re Gillespie and City of Toronto*, 19 A. R. 713 (1892), at p. 726.

(*c*) See note (**b**) to s. 664.

(*d*) The notices to be given in such a case are those provided for by s. 671 (1), (2).

(*e*) See note (**d**) to s. 665.

(*f*) See *per* OSLER, J. A., in *Re Gillespie and City of Toronto*, 19 A. R. 713 (1892), at p. 723.

(*g*) R. S. O. (1887), c. 184, s. 612 (4a).

(*h*) See note (**d**) to s. 671. As to publication, see notes (**a**), (**b**) to s. 632.

(2) In the event of any sufficiently signed petition as aforesaid against the proposed work or improvement being presented to the council, no second notice for the same shall be given by the council within two years thereafter.

Effect of petition against work.

Taken from 45 V. c. 23, s. 4 (1882), with verbal amendments made from time to time. See 46 V. c. 18, s. 612 (4b); R.S.O. (1887), c. 184, s. 612 (4b); 53 V. c. 50, s. 38; 55 V. c. 42, s. 617 (2).

(3) The number of the owners petitioning against the proposed improvement or work and the value of the real property which they represent, may be ascertained and finally determined in such manner and by such means as are provided by by-law in that behalf; and after such final determination no name shall be removed from the petition unless by the consent of the Judge of the County Court.

Determining number and value of property of petitioners.

Adopted from the provisions of 22 V. c. 40, s. 2 (1859) as to petitions for local improvements. See *ante* p. 896. *Cf.* 29-30 V. c. 51, s. 302; 36 V. c. 48, s. 465; R.S.O. (1877), c. 174 s. 552. The subsection in its present form is taken from 46 V. c. 18, s. 612 (4c), the words "proposed improvement or work" having been substituted for "assessment" by 53 V. c. 50, s. 38. The last three lines,—from "and after such final determination"—were inserted by 62 V. (2nd Sess.), c. 26, s. 42 (2).

(e) See note (b) to s. 668.

(4) When notice of a proposed improvement, work, or service to be paid for by special assessment as a local improvement, has been given by the council of any municipality pursuant to the provisions of this Act, and no petition sufficiently signed as aforesaid has, within the time limited in that behalf by this Act, been presented to the council against such proposed improvement, work or service and assessment it shall be lawful for the council, in the same or any succeeding year, to carry on the proposed work, improvement or service to completion before making the assessment therefor.

Completion of local improvements.

(*a*) A notice, so given, shall stand good as the authority for undertaking any such work, improvement or service, and for making such assessment or assessments, and passing all necessary by-laws, whether the same shall have been or shall be undertaken and completed by the council giving such notice or by any succeeding council. 55 V. c. 42, s. 617.

Taken from 49 V. c. 37, s. 40 (1886). See R. S. O. (1887), c. 184, s. 616; 53 V. c. 50, s. 38. Some verbal amendments were made in these Consolidations and in that of 1892. In that of 1897 the last three words were substituted for the words, "the council in any succeeding year."

(f) See note (b), *ante*, and s. 437.

(5) Any owner of real property to be benefited by the construction of any work or improvement, the cost of which is payable by local special assessment under sections 664 to 676 of this Act, may, notwithstanding that his name does not appear on the last revised assessment roll of the municipality, petition for or against such local improvement upon satisfying the clerk of the municipality by statutory declaration or otherwise that he is the owner of the property instead of the person assessed therefor upon such last revised assessment roll. 55 V. c. 42, s. 617*a*; 60 V. c. 15, *Sched.* C. (106).

Owner whose name is not on assessment roll may petition.

Taken from 54 V. c. 42, s. 41 (1891). The application of the section was extended from s. 668 to s. 676 by 60 V. c. 15, Sched. C (106).

Secs. 670 671 (1).

Notes (a); (a), (b).

Short Form of Local Improvement By-laws.

Words in column one of schedule to have same effect as words in column two.

670.—(1) Where a by-law made according to the form set forth in Schedule N annexed to this Act or any other by-law expressed to be made in pursuance of this section or referring thereto, passed by any municipal council for borrowing money by the issue of debentures secured by local special rates on the property benefited thereby, contains any of the forms of words contained in column one of Schedule O hereto annexed and distinguished by a number therein, such by-law shall be taken to have the same effect and shall be construed as if it contained the form of words contained in column two of said Schedule O, and distinguished by the same number, but it shall not be necessary in any such by-law to insert any such number.

By-laws failing to take effect hereunder.

(2) Any by-law which fails to take effect by virtue of this section, shall, nevertheless, be as effectual to bind the corporation, the council of which passed such by-law, as if this Act had not been passed.

Use of form to be optional.

(3) Nothing herein contained shall require any municipality to adopt the said form of by-law. 60 V. c. 47, ss. 1-3.

Passed in 1897. See the reference.

(a) This form of by-law is printed *ante*, at pp. 400-403.

Notice may be given in lieu of Advertising By-law.

Notice may be served on owners, etc., in lieu of advertising.

671.—(1) No by-law passed by the council of any township, city, town or village under the provisions of section 664 of this Act shall require to be advertised in any newspaper, but a written or printed, or partly written and partly printed notice of the sitting of the Court of Revision for the confirmation of every such special assessment shall be given to the owners and lessees having the right to petition, or to the agents of such owners and lessees. 55 V. c. 42, s. 618 (1); 60 V. c. 15, *Sched.* C (108).

Taken from 42 V. c. 31, s. 21 (1879). See 46 V. c. 18, s. 618; R.S.O. (1887), c. 184, c. 622; 53 V. c. 50, s. 38. By the Revision of 1892 some verbal amendments were made in the section as it appears in these Consolidations. In the Revision of 1897 the words "or published by the said council" were omitted after "advertised" (line 3). By 60 V. c. 15, Sched. C (108), the words "of each parcel of real estate included in such by-laws and assessments" were omitted after "lessees" in the last line. The section applied originally only to cities, towns and villages. It was extended to townships by 50 V. c. 29, s. 48 (1887).

(a) "**By-law . . . under . . . section 664.**"

The by-law referred to is the assessment by-law authorized by s. 664 (2), (3). The section does not apply to a by-law which merely authorizes the construction of a work, without making any assessment of its cost. See note (b) to s. 664.

(b) "**Owners and lessees having the right to petition.**"—*i.e.*, all owners of property to be assessed, and all leaseholders who come within the description in s. 668 (2). The words "having the right to petition" are misleading; since the right to petition must have ceased to exist before this notice can be given (*a*).

(*a*) See note (b) to s. 664, note (c) to s. 668 and (b) to s. 669.

(c) "Agents of such owners and lessees."

The agent here referred to is probably a general agent with power to let, repair and act in all respects for the owner. An agent for a particular purpose —*e.g.* for sale—would, probably, not come within the meaning of the clause (*a*).

Contents of Notice and how served.

Contents of notice and how served.

(2) Every such notice shall contain a general description of the property in respect of which the same is given, and the nature of the proposed improvement, work or service, the total cost thereof, the amount of the proposed assessment on the particular piece of property, and the time and manner in which the same is to be payable, and shall be signed by the clerk, assessment commissioner or other officer appointed by the council for the purpose, and shall, at least fifteen days before the day appointed for the sitting of the Court, be mailed to the address of the person entitled to receive the notice. Ten days' notice of the time and place of the meeting of the said Court shall also be given by publication in some newspaper having a general circulation, which notice shall specify generally what such assessment is for and the total amount to be assessed. 55 V. c. 42, s. 618 (2).

Taken from 42 V. c. 31, s. 21 (1899). Verbal amendments have been made in the various Consolidations from 1883 to 1897. See 46 V. c. 18, s. 618; R.S.O. (1887), c. 184, s. 622; 53 V. c. 50, s. 38. *Cf.* "*The Municipal Drainage Act*" (R.S.O. c. 226), s. 22, and the notes thereto, *post*, Vol. II.

Requirements of Act as conditions to the right to assess are strictly construed.

(d) The non-existence of any of the facts, or the omission to perform any of the duties prescribed by the Statute as necessary in order to confer upon the municipality jurisdiction to impose a local assessment (*b*), or any substantial departure from the prescribed mode of procedure, will vitiate the assessment (*c*).

Notice of every local assessment must be given to the persons intended to be affected thereby (*d*), and the corporation must be prepared to show that the statutory provisions in this respect have been strictly followed. Evidence that notices in the usual form have been posted is insufficient. A certified copy must be produced, so that the Court can upon view of the notices decide whether or not they comply with the requirements of the Act (*e*).

The by-law must correspond with the notice. Where the notice given was for a macadam roadway, to cost $17,710 and to be paid for by local assessment in five and twenty equal instalments, an assessment by-law founded upon it for a macadam and granite sett roadway with stone curbing, constructed at a cost of $21,320, of which $7,860 was to be raised by local assessment in five annual instalments, the balance being assumed by the city, was quashed with costs (*f*).

(*a*) See *Reg.* v. *Osler*, 32 U.C.R. 324 (1872), and s. 44 of "*The Assessment Act*," R.S.O. c. 224.

(*b*) See ss. 665 (3), note (**g**); s. 668 (1), note (**d**); s. 669 (4); s. 669 (1), notes (**b**), (**d**).

(*c*) Dillon, s. 769: Cooley on Taxation, s. 659: *Hodgins* v. *City of Toronto*, 26 O.R. 480; 23 A.R. 80 (1896): Rosewater on Special Assessments (1898), c. IV., s. 13.

(*d*) See note (**d**) to s. 664.

(*e*) *City of Toronto* v. *Canadian Pacific R. W. Co.*, 26 S.C.R. 682 (1896), *per* GWYNNE, J., at pp. 693-4.

(*f*) *Re Gillespie and City of Toronto*, 19 A. R. 713 (1892); affirmed by the Supreme Court of Canada, May 1st, 1893.

Sec. 671 (3), (4).

Note (e).

Notice of proposed assessment: not proposed *improvement.*

(e) "Proposed improvement."

The word "proposed" is (now) misleading. It occurred in the section as originally passed in 1879, and should have been excised in 1883, when councils were authorized to defer the making of an assessment until after the completion of the work. These notices should not be given until just before the assessment by-law is to be passed, so that the statement upon which it is based may be corrected up to the latest possible moment. The Court of Revision may, however, be held as soon as the work is determined upon, although no assessment is to be made until after its completion; but, if in such a case, the actual cost of the work exceeds its estimated cost by more than 10 per cent., a second Court of Revision will be necessary (*a*).

When By-law General and Rate a Frontage Rate.

Where special rate is a frontage rate general description sufficient when by-law has been passed under s. 667.

(3) Where notice of the intention of the council to undertake any work or improvement is given under the provisions of a general by-law passed under section 667, which provides, or is intended to provide, that the special rate to be assessed therefor shall be an annual rate according to frontage upon the real property fronting or abutting upon the street or the portion of street or place whereon or wherein the improvement or work is proposed to be done or made, it shall be sufficient if the notice of the proposed work or improvement describes the street or place or portion thereof whereon or wherein the work or improvement is to be done or made by a general description thereof, stating the points between which it is to be made. It shall not be necessary in such cases to state the value of the real property rateable for the work or improvement, or to impose a rate upon such real property by any description other than that hereinbefore mentioned. 55 V. c. 42, s. 618 (3).

Statement and Notice in Such Cases.

Notice of by-law and sitting of Court of Revision

(4) In cases within the preceding subsection the council shall procure a measurement to be made of the frontages liable to assessment for the cost of the proposed work or improvement, and of the frontages exempt from taxation, and shall, for at least ten days before its final decision to undertake the said proposed work or improvement, keep a statement of the same open for inspection in the office of the clerk of the municipality. The council shall also cause to be inserted once a week for two successive weeks in a public newspaper published within the municipality or in the county town, or in a public newspaper published in the nearest municipality in which a public newspaper is published a notice in the form following or to the like effect:

Take notice that the municipal council of the corporation of the
intends to *(describing the work)* on
street, between *(describing the points between which the work has been or is to be made or constructed)* and to assess the final cost thereof upon the property abutting thereon and to be benefited thereby, and that a statement showing the lands liable to pay the said assessment, and the names of the owners thereof, so far as they can be ascertained from the last revised assessment roll,

(*a*) See s. 671 (8) and note (**k**) thereto.

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nearest municipality
l a notice in the form

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ch the work has been or is
thereof upon the property
that a statement showing
the names of the owners
ast revised assessment roll,

is now filed in the office of the clerk of the municipality and is open for inspection during office hours.

The estimated cost of the work is $ of which $ is to be provided out of the general funds of the municipality.

A Court of Revision will be held on at for the purpose of hearing complaints against the proposed assessment or accuracy of the frontage measurements or any other complaint which persons interested may desire to make, and which is by law cognizable by the Court.

Dated Clerk.

Sec. 671 (4), (5).

Notes (e), (f), (g).

Statement and notice when by law general and rate a frontage rate.

55 V. c. 42, s. 618 (4).

Taken from 48 V. c. 39, s. 38 (1885), slight amendments having been made in the various Consolidations from 1887-1897. See R. S. O. (1887), c. 185, s. 623; 53 V. c. 50, s. 38.

(f) Sub-sections 3 and 4 authorize a mode of procedure which may be followed instead of that prescribed by s. 671 (1)(2)—when so provided by by-law,—when the work is initiated by the council,—when only the abutting property is to be assessed,—when the rate is a frontage rate,—and when the council has adopted the policy of assessing the estimated cost before undertaking the work. These sub-sections appear now to be wholly unnecessary; and they are certainly misleading. The procedure which they authorize can be adopted in but a few cases; it is very intricate (*a*); and some of the provisions indicate that the draftsman was wholly unfamiliar with the general scheme of the Act. The reference in sub-section 3 to a notice "given under the provisions of a general by-law passed under s. 667" is clearly wrong, the notice which is intended being that provided by s. 669 (1); and the provision in sub-section 3 that the council shall not finally decide to undertake the work until the statement has been for ten days kept open for inspection, necessitates a perfectly useless delay, since either the time for petitioning against the work has elapsed, or—if it has not—s. 669 precludes the council from taking any action. The notices effect no economy, either of time or of expense; and while the adoption of this procedure may save the municipal clerk some trouble, it obliges every interested property owner to visit the clerk's office, in order that he may be able to determine whether or not he should appeal from the assessment of his property.

A clumsy method of procedure.

Appeals to Court of Revision and County Judge.

(5) From any such proposed assessment there shall be the same right of appeal to the Court of Revision, and from the Court of Revision to the County Judge, as is provided in *The Municipal Drainage Act*, and the proceedings thereon shall, except as otherwise provided by this Act, be the same (as nearly as practicable) as in the case of appeals from ordinary assessments under *The Assessment Act*, and the Court of Revision and the County Judge shall respectively have the like jurisdiction, rights and powers in respect to every such appeal as in the case of such last mentioned appeals. 55 V. c. 42, s. 618 (5).

Appeals from Court of Revision. Rev. Stat. c. 226.

Rev. Stat. c. 224.

Taken from 48 V. c. 39, s. 38 (1895). *Cf.* "*The Municipal Drainage Act*," (R. S. O. c. 226), ss. 33 *et seq.* and the notes thereto, *post*, Vol. II.

(g) This subsection was passed at the same time as the two which immediately precede it, having (presumably) been added in order to preserve the right of appeal in cases where the procedure authorized by subss. 3 and 4 was followed in lieu of that provided by subss. 1 and 2. It may possibly apply only in those cases (*b*); but it confers upon the Court of Revision and the County Judge a power which is not expressly given by s. 664 (1*a*). That clause gives only "the same right of appeal as is provided for by '*The Municipal Drainage Act*,'"—ss. 32-47 of which confer no express power to amend the statement in respect of the names of the persons chargeable. This subsection gives to the Court of Revision and County Judge the like jurisdiction to that which

(*a*) See note (**b**) to sec. 669.

(*b*) *Per* Sir WILLIAM MEREDITH, C. J., *Re Robertson and City of Chatham*, 30 O. R. 158(1899), at p. 176.

Sec. 671 (5), (6). Notes (g), (h).

they respectively possess in appeals under "*The Assessment Act*,"—which includes the power of adding or striking out the names of persons erroneously omitted from or inserted in the roll (*a*). It is difficult to see why the Court and Judge should not be held to possess this power in every case of local assessment, whether under subss. 1 and 2, or under subss. 3 and 4; since it is necessary not only that the proper lands should be assessed, but that the list of the persons who are to be charged in respect of them should also be correct (*b*).

Powers of County Judge in cities and towns.

Rev. Stat. c. 224.

(6) Wherever, in cities and towns, an appeal lies from the Court of Revision to the County Judge under sections 664 to 676 inclusive, the said County Judge in addition to his other powers under this Act and *The Assessment Act*, may, inquire and determine what lands (if any) other than those included in the assessment appealed from are or will be specially benefited by the proposed work or improvement and may add such lands to the lands to be assessed, notwithstanding that such lands may not have been specified in any notice of appeal to the said Judge; and the said Judge shall cause all persons who may be affected by the addition of their lands to the lands so to be assessed, to be notified of the time and place when the said appeal and matter will be considered, and may for that purpose, from time to time, adjourn the hearing of the said appeal. 55 V. c. 42, s. 623*a*.

Taken from 53 V. c. 50, s. 38 (last clause), some verbal amendments having been made in the Revision of 1897.

(h) To decide what lands are benefited by a work is within the competence of the Court of Revision and of the County Judge upon appeal, not in cities and towns only, but in every municipality (*c*). The effect of this subsection would seem to be to confer upon the County Judge original jurisdiction to add to the statement any benefited lands omitted therefrom in the case of an assessment in a city or town.

Powers of County Judge restricted in certain cases.

Provided that the said County Judge shall not have power, in case the assessment is duly made in accordance with a by-law for ascertaining and determining what real property is immediately benefited by such work or improvement, to interfere with or alter the said statement as to the lands liable to pay the said assessment unless and only so far as:

(a) Upon the evidence he finds that they have been incorrectly measured, or

(b) Unless lands other than those fronting or abutting upon the street, or place, or portion of a street whereon the work or improvement is proposed to be done or made, are alleged to be benefited and are brought into the scheme or assessed therefor, or

(c) Unless the proportion of assessment of corner lots, triangular or other irregular pieces of land situate at the intersections or junctions of streets, has to be modified on appeal to him, or

(*a*) See R. S. O. c. 223, s. 71. (*b*) See note (**d**) to s, 664, *ante* p. 908.
(*c*) See note (**d**) to s. 664.

Sec. 671 (6), (7).

Note (l).

(d) Unless the share to be borne by the municipality in his judgment should be changed, or

(e) Unless he finds that the property in respect of which an appeal is brought cannot, from its situation, be benefited by such work or improvement,

Powers of County Judge restricted in certain cases.

and in each such case the said Judge shall only interfere with or alter the assessment of the said lineal frontage so far as may be necessary to carry into effect any of the changes which are occasioned by his judgment. 59 V. c. 51, s. 28 (2); 60 V. c. 15, *Sched.* C. (121).

Taken from 59 V. c. 51, s. 28 (2) (1896)—the words from "to interfere with" (lines 5, 6) to the end of clause (b), having been substituted by 60 V. c. 13, Sched. C. (121) for those used in the earlier Act.

(i) The interpretation of this subsection presents many difficulties. It applies only to "an assessment made in accordance with a by-law for ascertaining and determining what real property is immediately benefited" by a work. No such by-law is authorized by the Act (*a*). A by-law may be passed for providing *the means of* ascertaining this and other facts (*b*); and, after they have been ascertained and determined by the means thus provided, an appeal lies to the Court of Revision, and from the Court of Revision to the County Judge, to correct any errors which may have been made. But when an assessment has been imposed by by-law upon certain property, neither the Court of Revision nor the County Judge has power to amend or alter the by-law, or to interfere with its legal operation. Any attack upon it must be by way of motion to quash or by one of the modes specified in note (h) to s. 378. It is possible that the sub-section was meant to read:—"In case a proposed scale of assessment has been prepared in accordance with a by-law for providing the means for ascertaining," etc.; but this, of course, is merely a conjectural emendation.

Some problems for Judges to solve.

Apart, however, from this initial difficulty, the effect of the sub-section is doubtful. Clauses (a) (b) (c) and (e) enumerate the ordinary powers of the Court of Revision and County Judge (*c*),—but the inclusion of clause (d), in a sub-section professedly intended to restrict the powers of the County Judge (*d*), is wholly inexplicable. The council may, in certain cases, exercise a discretion as to whether they will or will not assume part of the cost of a local improvement (*e*); and it is surely not intended that this clause should empower a County Judge to abrogate their decision (*f*). If he may do so, the procedure by which his interference may be procured is not clear. The Court of Revision has certainly no power to consider the matter; and provision is nowhere made (*g*) for the exercise by the County Judge of any function other than the hearing and determining of appeals from that Court.

When Assessment Becomes Final.

(7) The statement referred to in the two preceding subsections unless so far as the same is altered or varied by the Court of Revision or the County Judge upon appeal shall be final and conclusive as to all matters therein contained. 55 V. c. 42, s. 618 (6).

Assessment unless altered on appeal, to be conclusive.

Taken from 48 V. c. 39, s. 38 (1885), as re-arranged in the Revision of 1897. *Cf.* "*The Municipal Drainage Act*," (R.S.O. c. 226), s. 51, *post*, Vol. II.

(*a*) See s. 664 (1) and note (a) thereto. (*b*) See ss. 664 (1), 667.
(*c*) See note (e) to s. 664. (*d*) See the side-note to the subsection.
(*e*) See ss. 673 (4), 674 (1), 678 (1), 679 (1), by none of which is an appeal given in respect of the amount assumed by the council.
(*f*) "A misapprehension of the law by the Legislature would not have the effect of making that the law which the Legislature had erroneously assumed it to be": *per* SEDGEWICK, J., in *Northwest Electric Co. v. Walsh*, 29 S.C.R. 33 (1898), at p. 49, citing *March & Co. v. Court of Wards*, L. R. 4 P. C. 419 (1872), at p. 437. See also *Re West End & Croydon R. W. Co., Ex p. Lloyd*, 1 Sim. N. S. 248 (1851), at p. 251; and *Earl of Shrewsbury v. Scott*, 6 C.B.N.S. 1 (1859), at pp. 180, 181. (*g*) Except in subs. 6, *supra*.

Secs. 671 (7), (8), 672 (1).

Notes (j), (k); (a).

(j) After—and not until after—the statement has become final and conclusive as in this subsection provided, should the assessment by-law be passed (a). The by-law must follow the statement in respect of the land to be charged and the rates per foot frontage. The other matters dealt with by the statement need not appear in the by-law.

Second Court of Revision when unnecessary.

(8) Where the proposed assessment has been regularly brought before a Court of Revision and the County Judge, (in case there has been an appeal to such County Judge), and where there is in force in the municipality a by-law passed under the provisions of section 667 of this Act, it shall not be necessary to submit to another Court of Revision the by-law for the actual cost of the work or improvement when such actual cost does not exceed by more than ten per cent. the estimated cost thereof as submitted to the Court of Revision. 59 V. c. 51, s. 29.

Taken from 59 V. c. 51, s. 29 (1899), as re-arranged in the Revision of 1897.

Another unsatisfactory clause.

(k) The procedure apparently contemplated by the draftsman of this section is unnecessarily cumbrous and ineffective. The Court of Revision to confirm an assessment should not be held until just before the assessment by-law is to be passed (b), whether this is prior to the commencement of the work or not until after its completion (c). That the sitting of the Court should be held before the commencement of the work, when no assessment is intended to be imposed until it is completed, is both unnecessary and unwise. Such a course has nothing to recommend it; especially as a second sitting of the Court will be thereby rendered necessary if the actual cost of this work exceeds its estimated cost by more than 10 per cent. The first sitting will in that case have been wholly useless.

Power to Incur Debts for the Cost of Local Improvements.

Power to borrow funds for local improvements.

672.—(1) For the purpose of enabling councils to avoid the necessity of making supplementary assessments or of refunding in case of over assessments, and for the purpose of ascertaining the exact cost of any work or improvement, done or constructed as a local improvement under the provisions of this Act, the council of any local municipality may make agreements with any bank, or with any person or body corporate for temporary advances and loans for meeting the cost of the work and improvement, until the completion thereof, and may in their option make the special assessments for the cost thereof, after the work or improvement has been completed, and may then pass the necessary by-law authorizing the issue of debentures to repay the amount of the temporary loan or advance. 55 V. c. 42, s. 619 (1).

Taken from "*The Con. Mun. Act, 1883*," (46 V. c. 18), s. 617 (1),—the words "the council of any local municipality" (line 6) having been substituted for the word "they" in the Revision of 1897.

The former procedure.

(a) Until the enactment of this section (in 1883) municipal councils were obliged, before a local improvement could be commenced, to pass a local assessment by-law for its estimated cost and to provide for the issue of debentures to raise the amount required. If their estimate proved too low, a second by-law became needful, upon the completion of the work, to assess the difference and to authorize the issue of debentures to repay it. Under this section, however, an alternative mode of procedure is authorized. The cost of the work may be met by means of loans from a bank, etc.; and, when the work has been completed, a single by-law may be passed making the assessment and authorizing

(a) See note (b) to s. 664.

(b) See note (d) to s. 671.

(c) See note (c) to s. 668, and note (b) to s. 669.

the issue of the necessary debentures (*a*). The two modes of procedure are mutually exclusive. If the old system is followed, the council has no power to effect a loan under this section (*b*); and in such cases the expenditure must be met by the issue of debentures (*c*).

(b) **"The cost thereof."** There is no power under "*The Municipal Act*" to assess any amount less than the whole cost of the work, except where the council are compelled to assume a share, or where they have a discretion so to do and have exercised that discretion (*d*).

Time for repayment of loans.

(2) Every by-law passed under the preceding sub-section for borrowing money by the issue of debentures as aforesaid, shall provide for the repayment of the loan and the maturing of the debentures to be issued pursuant to such by-law, within the probable life of the work or improvement for which such debt has been incurred, as certified by the engineer, or other proper officer to be appointed by the council for that purpose. 55 V. c. 42, s. 619 (2); 60 V. c. 15, *Sched.* C. (107).

Taken from "*The Con. Mun. Act, 1883*," (46 V. c. 18), s. 617 (2),—the words "under the preceding sub-section" (line 1) and "by the issue of debentures as aforesaid" (line 2) having been inserted by 60 V. c. 15, Sched. C (107) (1897). *Cf.* "*The Municipal Drainage Act*," (R.S.O. c. 226), ss. 53 *et seq.*, and the notes thereto, *post*, Vol. II.

(c) Before 1897 (*e*) this sub-section applied to "every by-law for borrowing money" [for a local improvement]; but in that year its scope was restricted to by-laws passed after the completion of a work or improvement the cost of which has been met in the first instance by means of loans procured under the preceding sub-section. Where this method has been adopted, the debentures must be made payable within the estimated lifetime of the work; but, if an assessment of the *estimated* cost is made, and the debentures are issued before the work is undertaken (*f*), the period of time during which they may run is, in ordinary cases, 20 years, and, in the case of debentures to pay for sewers, 30 years (*g*). It is probable that the period over which the assessments extend must be in all cases identical with that within which the debentures are made payable (*h*).

Where a local assessment by-law has been quashed, a new one may be passed.

(3) If a debt has been incurred by a local municipality for any work done or improvement constructed under the provisions of this Act, and if after the incurring of the said debt the special assessment for such work or improvement or the by-law providing for borrowing money therefor is set aside or quashed, either wholly or in part, on the ground of any irregularity or illegality in making such assessment or passing such by-law, it shall be lawful for the council, and they are hereby authorized, to cause a new assessment or assessments to be made, and to pass a new by-law, so often as may be necessary to provide funds for the payment of the debt so incurred for such work or improvement. 55 V. c. 42, s. 619 (3).

Taken from "*The Con. Mun. Act, 1883*," (46 V. c. 18), s. 617 (3). See R.S.O. (1887), c. 184, s. 627 (3).

(*a*) See note (**c**) to s. 668 and note (**b**) to s. 669.

(*b*) See *per* OSLER, J.A., in *Sweeny* v. *Town of Smith's Falls*, 22 A. R. 429 (1895), at p. 435.

(*c*) S. 435 does not apply to expenditure for local improvement works.

(*d*) See notes (**b**), (**e**) to s. 664.

(*e*) See small-print note, *supra*.

(*f*) See note (**c**) to s. 668 and note (**b**) to s. 669.

(*g*) See s. 384 (4); but see also 61 V. c. 23, s. 21, printed in addenda.

(*h*) See s. 402 and the form of local improvement by-law given by s. 670, and printed *supra*, at p. 401.

Secs. 672 (3), (4), 673 (1), (2).

Notes (d)-(g).

(d) The power conferred by this sub-section is apparently discretionary; but see s. 682 (1) and note (a) thereto.

Where a local assessment by-law has been quashed,

(e) In *Banque Ville Marie* v. *Morrison* (a), where assessment rolls by which local improvement rates had been imposed had been set aside or lost, and legislative authority was granted for the preparation of new rolls, it was held that the vendor of property, a conveyance of which was made after the loss of the first set of rolls, but before authority had been given to prepare the second, was not liable to pay such rates under his warranty that all taxes had been paid; since both sets of rolls could not be in force at the same time, and the taxes for the work were, therefore, not legally imposed until after the date of the conveyance (b).

But only if improvement has been properly initiated.

(4) Nothing herein contained shall be construed as authorizing any assessment to be made, or any work or improvement to be undertaken, unless the same has been initiated in some one of the three methods by law provided, namely:

(a) Either on the report of the engineer or other sanitary officer, and of a committee of the council, adopted by the council, recommending the proposed work or improvement for sanitary or drainage purposes, or

(b) On a sufficiently signed petition of the owners of the real property to be benefited, or

(c) After due notice, as above provided, of the proposed assessment and no sufficiently signed petition of the owners, as hereinbefore defined, of the real property benefited being presented to the council against the proposed assessment within the time limited therefor. 55 V. c. 42, s. 619 (3), *part.*

Taken from "*The Con. Mun. Act, 1883*," (46 V. c. 18), s. 617 (3),—some merely verbal amendments having been made in subsequent Consolidations. See R.S.O. (1887), c. 184, s. 621 (3).

(b) **Clause (a).** This section was passed in 1883; but s. 668 (4)—which was passed in 1890—does not require a report from an engineer or other officer, and substitutes "the local board of health" for "a committee of the council."

(g) **Clauses (b), (c).** As to clause (b), see s. 668 (1); and as to clause (c), s. 669 (1).

SPECIAL PROVISIONS AS TO ASSESSMENTS FOR CERTAIN LOCAL IMPROVEMENTS.

As to Sewers.

Cost of sewers.

673.—(1) In ascertaining and determining the cost of draining any locality or of making and laying or prolonging any common sewer, the council of any township, city, town or village, may estimate the cost of the construction of branch drains from the drain or sewer to the line or street and may, in making the assessment for such drains or sewers, include the cost of such branch drains as part of the cost of the local improvement. 55 V. c. 42, s. 620 (1).

Taken from 50 V. c. 29, s. 49 (1887), which applied only to cities, towns and villages; extended to townships by s. 48 of the same Act. Some verbal amendments have been made in the various Consolidations. See R. S. O. (1887), c. 184, s. 613; 53 V. c. 50, s. 38.

When non-abutting property may be assessed for sewers.

(2) Where in order to afford an outlet for the sewerage and drainage of real property other than that fronting or abutting upon the street in which a sewer is constructed, such sewer has

(a) 25 S.C.R. 289 (1895). (b) See s. 681, *post.*

been constructed of a larger capacity than that required for the efficient sewerage and drainage of the real property fronting or abutting upon the street, the council may impose a special assessment upon any other real property benefited by the construction of such sewer in the manner provided by sections 671 and 672 of this Act. 55 V. c. 42, s. 620 (2); c. 43, s 68.

Sec. 673 (2), (3), (4).

Notes (a), (b).

When non-abutting property may be assessed for a sewer.

Taken from 54 V. c. 28, s. 33 (1890): a clerical amendment having been made by 55 V. c. 43, s. 68 (1892). The reference to ss. 671, 672 is a mistake. The sections intended are ss. 674, 675, which were referred to in the clause as first enacted in 1888 by their numbers in R. S. O. (1887), c. 184 (ss. 618, 619). In the consolidation of the local improvement sections in 1890, these numbers were changed; and the resulting mistake has since remained uncorrected. See *per* MEREDITH, C. J., in *Re Robertson and City of Chatham*, 30 O. R. 158 (1899), at p. 177.

(a) This subsection was probably rendered unnecessary by the amendment of s. 665 (1) in 1896. See note (b) to that section. As to the municipality's share of the cost of sewers in certain cases, see s. 664 (5) and notes (g) (h) and (i) thereto.

(3) In case the council of a municipality is about to construct, renew or alter the character of a pavement on any street, highway or public place, or portion thereof, as a local improvement, the council may, before putting down such pavement, put in all necessary private drain connections from any existing drain or sewer upon such street or portion thereof to the street line on each side of the drain or sewer, and also all necessary water mains, and may assess and levy the cost thereof, and of any alterations of service pipes and stop-cocks, thereby necessitated, against the properties benefited thereby as part of the cost of the said local improvement, pursuant to the provisions of section 664 of this Act. 55 V. c. 42, s. 620 (3).

Private drains, water mains, service pipes, etc., may be included in cost of pavement.

Taken from 52 V. c. 36, s. 38 (1889),—the words "and all necessary water mains" (lines 7, 8), and "and of any alterations of service pipes and stop-cocks thereby necessitated" (lines 9-10) having been inserted by 54 V. c. 42, s. 27 (1890).

As to Corner and Irregular Lots.

(4) The council of every township, city, town and village may, by by-law, provide an equitable mode of assessing for local improvements, works and services, corner lots, triangular or other irregular shaped pieces of land situate at the intersections or junctions of streets, having due regard to the situation, value and superficial area of such lots, as compared with adjoining lots and pieces of land assessable for such improvements, works and services, and may charge the amount of any allowance made on any such lot or piece of land, on the other real property fronting on the improvements, or may assume the same as a portion of the municipality's share of the works or improvements. Any such assessment shall be subject to appeal to the Court of Revision and from the Court of Revision to the County Judge as in this Act provided. 55 V. c. 42, s. 620 (4).

Assessment of corner lots, for local improvements.

Taken from "*The Con. Mun. Act, 1883*," (46 V. c. 18), s. 613,—some verbal amendments having been made in subsequent Consolidations. The subsection was extended to townships by 50 V. c. 29, s. 48 (1887). See R. S. O. (1887), c. 184, s 614.

(b) This subsection applies only to corner lots. The assessment of irregular(ly)-shaped pieces of land, which are not situate at the intersections or junctions of streets, cannot be varied. The apparent intention of the enact-

Sec. 673 (4),(5),(6)

Notes (b), (c).

By-law respecting assessment of corner lots for local improvements.

ment is to confer upon the municipality power to pass *a general by-law* "for providing an equitable mode," etc.; but it would be practically impossible to draw such a by-law in which due regard could be had to the situation, value and superficial area of every corner lot in the municipality as compared with adjoining assessable lots. Moreover, this section does not authorize the passing of such a by-law applicable to cases where the only adjoining property is not "assessable for the improvement," —*e. g.*, where it is exempt property. Yet such a case is clearly within the spirit of the enactment. Some municipalities have passed by-laws providing for the exemption of a certain number of feet of a corner lot, or of a proportion of the whole frontage ("flankage allowances"); but this does not seem to be in accordance with the literal requirements of the subsection. It is therefore suggested—though with some hesitation and doubt—that, as a mode of complying with the evident intention of the clause, the by-law should direct the engineer to suggest in his report upon each individual case what he considers to be a fair proportion to be borne by each such lot (*a*), and that the council should exercise its discretion in accepting, rejecting or varying this recommendation, and as to whether the amount of the rebate (if any) shall be assumed by the municipality or added to the amount to be levied from the remaining properties. The jurisdiction of the Court of Revision and the County Judge would then seem to be confined to seeing that the provisions of s. 665 (1) are complied with (*b*).

Refund of part of special rate for local improvements imposed on corner lots, prior to March 30th, 1885, etc.

(5) The council of any township, city, town or village may, by a two-thirds vote of the council, pass by-laws to remit and refund so much of the special rates imposed prior to the 30th day of March, 1885, on corner lots or irregular pieces of land for the construction of pavements and sidewalks under local improvement by-laws as may be necessary to equalize the assessment made on adjoining properties for the same improvement or work, and may provide the amount of all rates so remitted or refunded by passing by-laws for borrowing money by the issue of debentures, or by including said amounts in the rate bills for the year. No such remission or refund shall be made in any case where the work or improvement was made or constructed more than four years before the passing of the by-law authorizing the refund or remission. 55 V. c. 42, s. 620 (5).

Taken from 48 V. c. 39, s. 35 (1885)—the words "made on such property with the assessment" having been omitted after "assessment" (line 7) in the Revision of 1897. The subsection was extended to townships by 50 V. c. 29, s. 48 (1887). See R. S. O. (1887), c. 154, s. 615.

(c) This subsection is now probably *effete*. It confers power to remit or refund only in the case of an assessment imposed before March 30th, 1885, for a work finished within the last four years. It is at least unlikely that there is any existing pavement or sidewalk which fulfils these conditions.

Lands on same street unequally benefited.

Determining proportion of cost of work in special cases.

(6) Where the lands on either side of a street, lane, or alley in a city, town or village are, in the opinion of the council, unfit from any cause for building purposes, and the council deems it inequitable to assess the same for local improvements at so high a rate as the building lots fronting on said street, lane or alley, the council shall, in all such cases, determine in what proportion the cost of any such improvement shall be borne by the lands on each side of said street, lane, or alley, respectively. 55 V. c. 51, s. 620 (6).

Taken from "*The Con. Mun. Act, 1883*," (46 V. c. 18), s. 614. See R. S. O. (1887), c. 184, s. 617.

(*a*) See note (**a**) to s. 664, par. VI., A. (f), *ante*, p. 904, and note (**b**) to the same section, *ante*, p. 906, par. A., 4 (a) (ii).

(*b*) See note (**d**) to s. 664 and note (**a**) to s. 665.

(d) This section applies only when all the lands on one side of the street are building lots and all on the other side are unfit for building purposes. In Quebec, it has been held that a similar power was implied where the Statute merely directed that part of the cost of a work should be borne by the frontagers (*a*).

Secs. 673 (6), (7), 674 (1).

Notes (d)-(f).

Where all the lands on one side of a street are unfit for building purposes.

The reduction of the rate (in a proper case) is wholly within the discretion of the council. If they have not chosen to exercise their power, the property owner has no right, before the Court of Revision or elsewhere, to insist upon its exercise. If they have exercised it, the proportions fixed by them are not subject to review (*b*).

Lands Fronting on Parks, Boulevards, etc.

Assessment for works on boulevards, etc.

(7) Real property adjoining and fronting on any park, square, public drive or boulevard shall be specially assessable for and in respect of the improvements, works and services made, done or provided upon or in any such drive or boulevard in like manner as real property fronting or abutting upon any public street, but where a public park, square, drive or boulevard exists or may hereafter be established, the lands adjoining it not exempt from taxation shall be assessable only in respect of such improvements, works and services to the extent to which such lands are specially benefited by such improvements, works and services; and where the lands on one side of such drive or boulevard are a public park or square, or for other reasons are exempt from taxation, at least one half of the cost of such improvements, works and services shall be borne by the municipality generally.

(*a*) No petition shall avail to prevent the carrying out of any local improvement, work or service in any such park, square, drive or boulevard, and the making of special assessments therefor as aforesaid. 55 V. c. 42, s. 620 (7).

Taken from 52 V. c. 36, s. 39 (1889).

(e) "**Public drive or boulevard.**" See note (c) to s. 576. As to local improvements on streets, squares or drives lying between two municipalities, see s. 647 (3)

(f) "**Appeal.**"

In the case of an assessment under this section the Court of Revision and the County Judge have jurisdiction to determine the *quantum* of benefit received by each parcel of property, as well as to decide the matters which are within their jurisdiction in other cases (*c*).

Property not fronting or abutting may be assessed.

Cost of constructing bridges or culverts and of opening and extending streets.

674.—(1) Where in the opinion of the council of any township, city, town or village it is expedient and necessary to construct or repair bridges or culverts on any street, lane or alley, or to open up and extend any street, lane or alley within the limits thereof for the more immediate convenience or benefit of any locality within such limits, and the council is of opinion

(*a*) *Belanger* v. *City of Montreal*, Q. R. 15 S. C. 43 (1899)—*per* GILL, J.

(*b*) *Re Robertson and City of Chatham*, 30 O. R. 158 (1899), *per* MEREDITH, C.J., at p. 176. See also *per* OSLER, J.A., in *S. C.*, 26 A. R. 554 (1899).

(*c*) See note (d) to s. 664.

Sec. 674 (1). Notes (a)-(e).

that from any cause it is inequitable to charge the whole of the cost of the improvement on the lands fronting thereon, the council shall determine what lands are benefited by such works or improvements, and the proportion in which the cost thereof shall be assessed against the land so benefited, and also the proportion, if any, of the cost of the improvement, which shall be assumed by the township, city, town or village as its share thereof:

(*a*) The share or proportion of the cost of such improvement assumed by the municipality may be provided for by the issue of debentures upon the credit of the municipality at large in like manner as in the case of the share of the municipality of other local improvements.

(*b*) All assessments made under the above provisions shall be subject to an appeal to the Court of Revision and from the Court of Revision to the County Judge in like manner as in the case of other special assessments for local improvements under the provisions of this Act. 55 V c. 42, s. 621 (1).

Taken from 46 V. c. 18, s. 615 (1883) and 48 V. c. 39, s. 33 (1885). The former refers to the construction, etc., of bridges ,and contains all the rest of this section except the provisions as to streets—clause (a)—and the last three lines immediately preceding that clause. The latter section, (48 V. c. 39, s. 33), refers to the extension, etc., of streets; and it contains the whole of this section except the provisions as to bridges. The consolidation of the two sections was effected by 50 V. c. 29, ss. 42, 43 (1887). See R.S.O. (1887), c. 184, s. 618—a verbal error in which was corrected by 51 V. c. 28, s. 36 (1888).

(a) "The opening up and extension."

The conjunction is important. It is apprehended that the provisions of this section would not apply where a new street opened is not an extension of one already existing.

(b) "The council shall determine what lands are benefited."

This is remarkable as the only instance—except under s. 688—in which the Act permits the council to exercise any judgment upon the question "what lands are benefited?"—and since under clause (a) an appeal lies to the Court of Revision and the County Judge—who, as in other cases, are finally to decide it—an *interim* determination by the council seems to be useless. The question is one, not of discretion, but of fact; and it cannot be affected by any decision on the part of the council.

(c) "The proportion . . . . . which shall be assumed."

It is only under this subsection that the council is authorized to assume an unlimited share of the cost of a local improvement (*a*); and in the case of the construction of bridges and culverts, the power here conferred is narrowed by s. 675, which fixes the limit of the municipality's share at one-half the total cost of the work (*b*).

(d) Clause (a). So soon as the council has arrived at its decision, a by-law providing for the issue of debentures to meet that part of the cost of the work which they determine to assume, must be passed. The municipality cannot be charged with a payment for which no provision is made either in the estimates or by the issue of debentures (*c*).

(e) Clause (b).

See s. 664 (1a) and note (**d**) thereto.

(*a*) See notes (**b**) and (**e**) to s. 664.

(*b*) See s. 682 and note (**a**) thereto.

(*c*) *Re Fleming and City of Toronto*, 20 O. R. 547; 19 A. R. 318 (1891-1892).

(2) In the case of the construction or repair of a bridge or culvert, or the opening up and extension of any street, lane or alley—if the council determines that any real property other than that fronting or abutting on the street, lane or alley, or the portion thereof whereon or wherein the improvement is made, or to be made, is specially benefited, and ought to be charged with a part of the cost thereof, and determines the proportion in which the cost of the improvement shall be assessed against the lands so benefited—the council shall assess and levy the proportion of the cost chargeable against the lands benefited by, but not fronting or abutting upon such street, lane, or alley by a frontage rate, in like manner as the same would be assessed and levied in the case of lands fronting or abutting upon the street, lane or alley, or the portion thereof whereon or wherein the improvement is made or to be made. 55 V. c. 42, s. 621 (2).

Assessment of non-abutting lands benefited by certain improvements.

Taken from 48 V. c. 39, s. 34 (1885),—the words "or the portion thereof" (lines 5, 14) having been inserted, and the words "of the improvement" after the word "cost" (line 10) omitted, by 53 V. c. 50, s. 38 (1890). See R.S.O. (1887), c. 184, s. 619 (1). The insertion of the word "by" (line 11) after "benefited" in the Revision of 1897 is evidently an error.

(f) It is probable that non-abutting property is now assessable wherever it has received any benefit, and that this subsection is therefore no longer necessary (*a*).

(3) Or in the case of a township, the council may, by by-law, provide that the cost of the works therein specified may be assessed and levied by a special rate upon the lands benefited thereby according to the proportion of benefit received therefrom instead of by a frontage rate, as hereinbefore provided. 55 V. c. 42, s. 621 (3), *part*.

Assessments according to benefit.

Townships only.

Taken from 51 V. c. 28, s. 37 (1888). See R.S.O. (1887), c. 184, 619 (2); 53 V. c. 50, s. 38.

(g) See ss. 664 (6), 665 (3), and note (j) to the latter section.

Purchase of Works or Improvements already Constructed.

(4) In the case of a township, where the owners of real property have constructed works or improvements which might have been constructed by the municipality as local improvements, the council may, upon the petition of three-fourths of the owners of lands to be benefited by the acquisition of such works or improvements, representing at least two-thirds in value thereof, acquire the same at a price to be fixed by arbitration pursuant to this Act, and the purchase money therefor may be raised, assessed and levied, as for local improvements upon the real property benefited thereby, as above provided.

When township may purchase works or improvements already constructed.

(a) The number of owners petitioning for the said assessment, and the value of the real property which they represent, may be ascertained and finally determined in such manner and by such means as are provided by by-law in that behalf, subject to

(*a*) See note (b) to s. 665.

Secs. 674 (4a)-676.

Notes (g); (a).

an appeal as in the case of other special assessments for local improvements. 55 V. c. 42, s. 621 3), *part.*

Purchase (by township) of works already constructed, *e.g.*, the Rosedale Ravine Bridge, Toronto.

Taken from 51 V. c. 28, s. 37 (1888),—the words "agreement or" before "arbitration" (line 7), and the words "to the Judge of the County Court" before "appeal," (line 6 of clause (a)) having been struck out by 53 V. c. 50, s. 38 (1890). Subsections 1 and 4 of s. 674 originally formed one section. See R.S.O. (1887), c. 184, s. 619 (2).

(g) Clause (a). "Subject to appeal as in the case of other local special assessments."

The number of owners petitioning, and the value of the property which they represent, is in no other case subject to appeal, but is to be settled in the manner provided by a by-law (*a*). It is therefore apprehended that in this case there is no appeal. It was probably the intention of the Legislature that there should be an appeal from an assessment imposed under this section; and such a right undoubtedly exists, notwithstanding the absence of any express provision on the subject (*b*).

When the Corporation may pay half the Cost of Bridges, etc.

Where council declares the whole municipality to be benefited by the construction of a bridge, etc.

675. In any case where a council affirms by a two-thirds vote thereof that the constructing, erecting or making of any bridge, culvert or embankment benefits the municipality at large, and that it would be inequitable to raise the whole cost of such improvement or work by local special assessments, the council may pass a by-law for borrowing money by the issue of debentures upon the credit of the municipality at large to provide as the corporation's share of the cost of such improvement or work an amount not exceeding one-half of the whole cost thereof; and no such by-law shall require the assent of the electors before the final passing thereof. 55 V. c. 42, s. 622.

Taken from 50 V. c. 29, s. 43 (1887).

(a) The power of assuming, on behalf of the municipality, a share of the cost of the construction of a bridge or culvert (given by s. 674 (1)) is by this section restricted to one-half of such cost; and there is at the same time conferred upon the council the further power to assume one-half the cost of constructing an embankment,—which (by s. 664 (2)) means "an embankment forming part of a highway."

(b) "A two-thirds vote thereof." See note (**b**) to s. 24. *Cf.* s. 677.

Sidewalks constructed by private Owners.

Council may permit owners to build or improve sidewalks in front of lands.

676. The council may permit the owner or owners of lands in any township, city, town or village to build or improve the sidewalk in front of his or their lands, under the direction of the council or an officer thereof appointed for that purpose, and according to such plans and regulations as the council may prescribe, in which case the owners or occupants of such lands shall be exempt from all taxes for improvements of a like nature so long as they shall keep the same in repair to the satisfaction of the council. 55 V. c. 42, s. 623.

Taken from "*The Con. Mun. Act, 1883*," (46 V. c. 18), s. 616,—the words "of lands in any township, city, town or village" (lines 1, 2), having been inserted in 53 V. c. 50, s. 38 (1890). *Cf.* R.S.O. (1887), c. 184, s. 620.

(*a*) See s. 668 (1), note (**b**); s. 669 (3).

(*b*) See note (**d**) to s. 664.

Laying Plank Sidewalks without Petition or Notice.

Secs. 677, 678.

Notes (a), (b).

Laying plank sidewalks in cities and towns.

677. Notwithstanding anything contained in any by-law of the municipality, the corporation of any city or town may construct and lay down a plank sidewalk upon and along any street, lane, alley or other thoroughfare or park in the said city or town as a local improvement, and the cost thereof may be assessed against the properties fronting or abutting thereon, if such sidewalk is, in the opinion of two-thirds of the members present at any regular meeting of the city or town council, desirable in the public interest. 55 V. c. 42, s. 623*b*.

Taken from 53 V. c. 50, s. 42 (1890),—which applied to cities only. Extended to towns in 1891 by 54 V. c. 42, s. 33. The words "in s. 612" [now s. 664] of "*The Municipal Act*," which occurred in the original section, after the words "anything contained" (line 1), were amended as noted *infra* by 54 V. c. 42, s. 34, and were omitted in the Revision of 1897.

(a) During the period when this section began with the words:—"Notwithstanding anything contained in the preceding fourteen sections of this Act," the City of Toronto attempted to make an assessment of the cost of a sidewalk constructed thereunder, without having given the owners any personal notice of the assessment, or having had a sitting of the Court of Revision to confirm it. It was held that the right of an owner to be heard before being assessed can only be taken away by an explicit provision, and that this section was not sufficiently definite to deprive him of that right (*a*).

Notice of proposed assessment must be given.

The decision of the council that the construction of the sidewalk is desirable in the public interest is final and conclusive (*b*). As to the property which may be assessed, see note (**b**) to s. 665.

(b) "**Any park.**" See s. 673 (6), *supra*.

Cities and Towns may pay part of cost of Improved Sidewalks.

Cities and towns may assume forty per cent. of ratepayers' share of the cost of certain improvements.

678.—(1) It shall be lawful for the council of the corporation of any city or town which has not adopted the local improvement system in respect of sidewalks, by by-law to provide from the general funds of the municipality, or to raise by way of loan on the credit of the debentures of the municipality, forty per cent. of that part of the cost of the construction of granolithic, stone, asphalt or brick sidewalks upon leading or principal business streets of the city or town as local improvements on the property benefited, in addition to the part of such cost to be provided by the municipality, and to add said forty per cent. to the said part of the cost of the construction of said sidewalks to be provided by the municipality, and to issue debentures for the amount thus obtained, and it shall not be necessary to submit the by-laws of the said corporation authorizing the issue of the said debentures to, or to have the assent of, the electors of the municipality before the final passing thereof; but any by-law for carrying the provisions of this section into effect, both as to selecting streets and providing the necessary funds, shall require an affirmative vote of three-fourths of the members of the council. Where sidewalks have been or are hereafter made under this section, the property assessed for the said sixty per centum for or

Assent of electors not required.

Exemption to extent of 60 per cent.

(*a*) *Re Hodgins and City of Toronto*, 26 O.R. 480; 23 A. R. 80 (1896).

(*b*) *Per* STREET, J., 26 O. R., at p. 481.

Secs. 678 (2)-(3), 679 (1).

towards such construction shall be exempted from any general rate or assessment for the like purpose under section 680 of this Act to the extent of sixty per centum of such rate only. 57 V. c. 50, s. 16 (1); 58 V. c. 42, s. 33, *and see sec.* 400.

Taken from 57 V. c. 50, s. 16, (1) (1894). The last six lines were added by 58 V. c. 42, s. 33 (1895).

Remainder of cost to be assessed on property benefited.

(2) The remainder of that part of the cost of constructing the said sidewalks, falling on the property benefited, after the said forty per cent. had been deducted, shall be assessed for and dealt with in the manner provided in this Act as to assessments for local improvements in other cases. 57 V. c. 50, s. 16 (2).

Passed in 1894. See the reference.

Corporation's share of certain permanent sidewalks.

(2*a*) The council of the corporation may provide from the general funds of the municipality or raise by way of loan upon debentures of the municipality such larger or smaller proportion than 40 per cent. as they may deem expedient of the cost of construction of granolithic, stone, asphalt, cement or brick sidewalks upon any streets of the city or town on an affirmative vote of three-fourths of the members of the council and the provisions in this section contained shall apply to the proportions or percentages of the contributions to be paid by the city corporation and the owners of the property benefited respectively, such percentages being substituted for the terms forty per cent. and sixty per cent. respectively in any by-laws to be passed or debentures to be issued or proceedings taken relating to such sidewalks or to the payment therefor. 62 V. (2nd Sess.), c. 26, s. 43.

Passed in 1899. See the reference.

Irregularities in form not to invalidate debentures.

(3) Sub section 1 of section 400 of this Act shall apply to by-laws and debentures passed and issued under this section. 57 V. c. 50, s. 16 (3).

Passed in 1894. See the reference.

Cost of Local Improvements opposite Street Intersections or Exempt Properties.

Certain part of improvements may be charged on general rates.

679.—(1) In case of a special assessment being made on property benefited by any local improvement, the council of the municipality (if they think fit) may, by by-law, provide for constructing, at the expense of the general funds of the municipality, such part of the local improvement as is situate upon or in that part of any street, lane, alley, public place, or square, which is intersected by any other street, lane, alley, public place or square or as would otherwise fall on property exempt from assessment: and the council may provide for the cost thereof in the general rates or taxes for the year, or by the issue of debentures, or in such other manner not inconsistent with the provisions of this Act, or of any special Act, as to said council may seem best, and subject to such by-laws as the council may pass in that behalf.

Taken from 43 V. c. 27, s. 14 (1880).

(a) Under this section, councils may exercise a discretion as to whether they will or will not assume either that part of the cost of a work or improvement referable to street intersections, or that part referable to exempt property, or both. But the section probably applies only to municipalities which have not passed a by-law under s. 682, and (in other municipalities) only to works which do not belong to any of the classes covered by a by-law which has been so passed (*a*). Even in such other municipalities, it certainly does not apply to sewers; since it is expressly provided by s. 664 (5) that so much of the cost of any sewer as is chargeable in respect of street intersections and exempt property must be provided by the municipality out of general rates. Indeed the words of that sub-section might be interpreted as compelling such provision to be made not only in the case of sewers but also in the case of every other work, improvement or service for which a local assessment may be made (*b*).

Secs. 679 (2), 680 (1)-(3).

Note (a).

(2) The by-law authorizing the issue of the debentures need not be submitted for the assent of the electors of the municipality; and the debentures issued to pay for that part of the work payable by local assessment may, if the council thinks fit, be issued as a series distinct from those required to pay for that part which is to be borne by the general funds of the municipality, or all the debentures required for the work may be issued in one series, as "Local Improvement Debentures." This sub-section shall be deemed declaratory of the law on and from the 5th day of March, 1880. 55 V. c. 42, s. 627.

Provisions as to "Local Improvement Debentures."

Taken from "*The Con. Mun. Act, 1883*," (46 V. c. 18), s. 622 (2). The 5th of March, 1880, was the day upon which sub-s. 1 came into operation.

Exemption from General Rates for Like Purposes.

680.—(1) Any real property specially assessed by any council for any local improvement or work under this Act, shall be exempted by the council from any general rate or assessment for the like purpose, except the cost of works at the intersection of streets, and except such portion of the general rate as may be imposed to meet the cost of like works opposite real property which is exempt from such special assessment.

Property specially assessed to be exempt from general assessment for like purposes.

This provision was first made in 1880 by 43 V. c. 27, s. 11, which applied only to works constructed by petition,—the only method then open. With the adoption of the "initiative system" in the following year, a similar provision was made by 45 V. c. 23, s. 4, as to works so undertaken, and the two sections were consolidated as s. 619 (1) of "*The Con. Mun. Act*" of that year (46 V. c. 18), from which this sub-section is taken *verbatim*.

(2) Where a local improvement or service is petitioned for and the petition is by two-thirds in number of the owners of the real property fronting or abutting upon the street or place wherein or whereon such improvement or work is proposed to be done or made, the exemption may be for a specified period named in the petition and agreed to by the council.

When exemption may be for specified period,

Taken from "*The Con. Mun. Act, 1883*," (46 V. c. 18), s. 619 (2). *Cf.* 43 V. c. 27, s. 11 (1).

(3) Or if, either with or without naming any period for such exemption, the petition requests an arbitration, the council may accede to the proposal for an arbitration.

Or a period fixed by arbitration.

Taken from "*The Con. Mun. Act, 1883*," (46 V. c. 18), s. 619 (3), under which there was no provision for the initiation of local improvements by petition. See small-print note under s. 668 (1). *Cf.* 43 V. c. 27, s. 11 (3) (1880).

(*a*) See note (a) to s. 682.

(*b*) See note (i) to sub-s. 664 (5).

Secs. 680 (4)-(6). 681.

Note (a).

Procedure.

(4) In case the matter is to be determined by arbitration, a sole arbitrator shall be chosen for the purpose by the County Court Judge, unless some person or persons is or are agreed to in that behalf by the petitioners and the council.

Council to distinguish proportion of general rate thus occasioned.

(5) Where, by reason of a special assessment, the owners are exempted from a general rate, for the like purpose, as aforesaid, the council shall, from year to year, by by-law, directing the general rate of assessment, or by some other by-law, state what proportion of the general rate is for purposes for which there is such special assessment in any part of the municipality, and shall state the same in such manner as may give effect to this section.

Otherwise general rate not to be used for local improvements.

(6) Until a by-law is passed containing such statement, none of the money raised by general rate on real property especially assessed or rated for any work or service hereafter executed shall be applied to any work or service of the same character in any part of the municipality. 55 V. c. 42, s 624.

Subss. (4), (5), (6) are taken from 43 V. c. 27, s. 11 (4), (5), (6) (1880).

(a) The effect of this section is to compel councils to distinguish in each year what proportion of the general tax rate is referable to the municipality's share of the expenditure during that year upon each kind of work for which a local special rate is being levied in the municipality; and every owner who pays any such local rate during the year is to be exempt from payment of that proportion of the general rate which is due to expenditure upon the particular kind of work for which such local special rate is levied. Thus, the council should, in their general assessment by-law, state the proportion of the tax-rate referable to expenditure for the construction of pavements; and any person paying a special local rate for any pavement must be exempted from the payment of that proportion of the general tax-rate. Similarly, in the case of each other kind of work for which special assessments are being made. The section (it is apprehended) applies only to municipalities which have not passed a by-law under s. 682, or (if there is such a by-law) then only to the classes of works not included therein (*a*).

The provisions of subss. 2 and 3 (as to a petition for exemption, etc.) are not easy to understand. In the Act of 1883—where these subsections first appear in their present form—(*b*), there was no provision for the initiation of local improvements otherwise than by the council, and the subsections had therefore no meaning or application. It may be through inadvertence that they have since remained in the Act. In cases where no petition has been presented, there is no provision for putting an end to the period of exemption, which is presumably in such cases synchronous with the period of assessment. This should also be the standard for determining the proper period in the cases provided for in the section.

Covenants against Incumbrances, How Construed.

Local improvement rates not covered by a covenant against incumbrances.

681. Where local improvements benefiting real property have heretofore or are hereafter made under the provisions of the local improvement sections of this Act the costs whereof, in whole or in part, have been charged upon or against the real property, the petitioning for or procuring to be made, or the making of any such local improvements or the charging the costs thereof upon or against the real property, or the fact that they are a charge upon or against such real property, shall

(*a*) See note (a) to s. 682.

(*b*) See small-print notes *supra*.

not be deemed to be a breach of the covenant by a vendor or person agreeing to sell that he has done no act to incumber the real property, except to the extent that the annual or other payments in respect of such charge are in arrear, and unpaid. 55 V. c. 42, s. 624*a*.

Secs. 681.682(1). Note (a).

Taken from 54 V. c. 42, s. 35 (1891),—a grammatical mistake in the second line thereof having been corrected in the Revision of 1897.

(a) Before this section was passed, it had been held that improvement rates imposed to pay the cost of a local improvement, for which the vendor of real property had petitioned formed an incumbrance upon the property which he was bound to discharge under a covenant against incumbrances, even though the assessment by-law had not been passed at the date of the execution of the conveyance (*a*). So, where, although the vendor had not petitioned for the work, the assessment by-law had been passed prior to the date of the contract (*b*); and where the work was done before the making of the contract, but the by-law was not passed until after it had been made (*c*). Such cases can now no longer arise.

Former law.

Where the assessment proceedings contain no description of the property to be charged, but only the names of the owners, the assessment must be considered as having been made upon the smallest parcel of land which answers to the description in the statement. It forms a charge thereon, like a mortgage in favour of the corporation payable by instalments, in the nature and extent of which no difference can be made by any subdivision of the property among various owners after the imposition of the charge. In subsequent assessment rolls, therefore, "these parcels, with the persons assessed for each, must be bracketed; and the annual sum charged against the original parcel should be placed opposite the bracket as that for which the parcels and the persons assessed for them are liable under the assessment by-law." (*d*) Where the boundaries of the subdivisions do not correspond with those of the original lot, "all the persons assessed for any part of the original lot are jointly and severally liable for the annual special rate" (*e*). See note (**d**) to s. 672 (3).

From how large a parcel of property the local rate is leviable, in case of subdivision after rate is imposed.

Adoption of Local Improvement System by Electors.

682.—(1) The council of any township, city, town or village may, by by-law, passed with the assent of the electors according to the provisions of this Act, direct that all future expenditure in the municipality for the improvements and services, or for any class or classes of improvement or service, for which special provisions are made in sections 664 and 686, shall be by special assessment on the property benefited, and not exempt by law from assessment. 54 V. c. 42, s. 625 (1).

By-laws directing future improvements to be paid for by local assessment.

Taken from 43 V. c. 27, s. 84 (1880), which applied only to cities, towns and villages, and of which the concluding words "and in such cases a petition from the owners of the property benefited shall not be necessary" were omitted in "*The Con. Mun. Act, 1883*," (46 V. c. 18), s. 620 (1). See the small-print note under s. 668 (1). When—by 47 V. c. 32, s. 21 (1884)—provision for petition was again made, the restoration of this subsection to its original form was apparently considered inadvisable. See R.S.O. (1887), c. 184, s. 625 (1). The application of the section was extended to townships by 50 V. c. 29, s. 48 (1887).

(a) "**All future expenditure.**" The language of the section—"*all* future *expenditure in the municipality*," etc.,—is as comprehensive as possible; and it is apprehended that upon the passing of a by-law under this subsection the council is deprived—as to classes of works therein provided for—of the power to assume any part of the cost of such works,—a power which, but for such

(*a*) *Cumberland* v. *Kearns*, 18 O. R. 151; 17 A. R. 281 (1889-90).

(*b*) *Re Graydon and Hammill*, 20 O. R. 199 (1890).

(*c*) *Re Graydon and Hammill*, supra; *Armstrong* v. *Auger*, 21 O. R. 98 (1891).

(*d*) *Capon* v. *City of Toronto*, 26 O. R. 178 (1894), *per* STREET, J., at p. 186

(*e*) Ibid.

Sec. 682 (1)-(3). Notes (a)-(c).

by-law, it would have possessed under ss. 673 (4), 674 (1), 675 and 679 (1)—and that the second clause (or sentence) of s. 664 (5) thereupon ceases to apply to the municipality (*a*). After the words, "shall be" in the last line but one the word "repaid," "levied," (or some like word) has evidently been omitted. To fulfil the requirement that the "*expenditure* . . . shall be by special assessment," is an obvious impossibility.

Repeal of by-laws.

(2) After such a by-law has been passed in manner aforesaid, it shall not be repealed without the like assent of the electors; and, in case of such repeal, the provisions of section 680 with respect to freedom from any general rate or assessment of property which is subject to a special rate, shall apply to all property which had been specially rated or assessed for such improvement or service, while the repealed by-law was in force. The time when the exemption is to cease, shall be determined by arbitration, and the arbitrator shall be appointed by the County Judge, on the application of the municipal council. 55 V. c. 42, s. 625 (2).

Taken from 43 V. c. 27, s. 12 (1880),—the word "municipal" before "council" (last line) having been inserted in the Revision of 1897.

(b) "**Exemption.**" The proper standard for determining the period of exemption would seem to be the unexpired portion of the period of assessment. See note (a) to s. 680.

Extension of Local Improvement System in such Cases.

Repairing and cleaning streets.

(3) Notwithstanding anything contained in clause 3 of section 664—after such a by-law has been passed in manner aforesaid, the council may pass a by-law or by-laws dividing the municipality into certain areas, districts or sections within which the streets or parts of streets may be maintained, repaired, cleaned, cleared of snow and ice, watered, swept, lighted and the grass therein cut and trees therein trimmed, and may impose a special rate upon the assessed real property therein, according to the frontage thereof, in order to pay any expenses incurred in maintaining, repairing, cleaning, clearing of snow and ice, watering, sweeping and lighting such streets or parts of streets, and cutting grass and trimming trees therein, or for any one or more of such services. 55 V. c. 42, s. 625. *And see sec.* 686.

Taken from 48 V. c. 39, s. 30 (1885),—the reference in which is to section s. 612 (3) of "*The Con. Mun. Act, 1883,*" (= s. 666 of the present Act). This reference, and the number of the section referred to remained unchanged in the Revision of 1887 (R. S. O. (1887), c. 184, ss. 612 (3) (*cf.* 625 (3) of that Act); but when the local improvement sections were re-cast in 1890 by 53 V. c. 50, s. 38, although the numbering of s. 612, subss. (1), (2) remained as before, the number of s. 612 (3) was changed, and it became s. 614. The section now under consideration (s. 682 (3)) was not included in the re-enactment of 1890, and when the whole Municipal Act was again consolidated in 1892 and 1897 this wrong reference passed unnoticed. The reference should now be to s. 666.

(c) "**After such a by-law.**" The fact has apparently been overlooked that a by-law may be passed under s. 682 (1) which does not include the works and services mentioned in this subsection. The probable intention was to make this provision apply only to municipalities which had passed a by-law under s. 682, which would be applicable to the particular services here referred to.

(*a* See note (h) to s. 664.

Certain Exempt Properties may be assessed for Local Improvements.

Secs. 683, 684, 685 (1)-(2).

Note (a).

Assessment of lands in connection with churches for local improvements.

683 Land on which a place of worship is erected, and land used in connection with a place of worship, shall be liable to be assessed in the same way and to the same extent as other land for local improvements made or to be made. 55 V. c. 42, s. 626. [*See also Cap. 224, sec. 7 (4)*].

Taken from 53 V. c. 55, s. 1 (1890), the word "hereafter" having been omitted after "improvements" (line 4) in the Revision of 1897. *Cf.* 43 V. c. 27, s. 13; 46 V. c. 18, s. 621; R. S. O. (1887), c. 184, s. 620.

Assessment of colleges, etc.

684. The buildings and grounds of and attached to a university, college or other incorporated seminary of learning, whether vested in a trustee or otherwise, shall be liable to be assessed in the same manner and to the same extent as other land is assessed for local improvements made or to be made. This section shall not apply to schools which are maintained in whole or in part by a legislative grant or a school tax. 55 V. c. 42, s. 626*a*. [*See also Cap. 224, sec. 7 (4)*].

Proviso.

Taken from 53 V. c. 55, s. 1 (1890),—the word "hereafter" after "improvements" (line 5) having been omitted in the Revision of 1897.

(a) See s. 6 of R.S.O. c. 224 and notes (d) (i) to s. 587 (1) (2).

A Municipality's Share of Local Improvement Debts may be raised without assent of Electors.

Assent of electors not required to by-laws for raising municipality's share of cost of local improvements.

685.—(1) The council of any township, city, town or village may pass all by-laws necessary, from time to time, to raise loans and borrow moneys required for its share of any local improvements and works, on the credit of such township, city, town, or village at large; and it shall not be necessary to obtain the assent of the electors of such township, city, town, or village to the passing of any such by-law under the provisions of this Act, any special or private Act in that behalf to the contrary notwithstanding; provided always that nothing in this section contained shall be construed as authorizing an extension of the general debt of such township, city, town or village beyond the limits thereof fixed by any Act limiting the same. 55 V. c. 42, s. 628 (1).

Ratepayors' Share not to be counted as part of General Debt of Municipality.

Ratepayers' share not to be counted of general debt of the municipality.

(2) It is hereby declared that the debentures issued under local improvement by-laws on the security of special assessments therefor form no part of the general debt of any such municipality, within the meaning of any such last above mentioned Act, and it shall not be necessary to recite the amount of the local improvement debt so assured by special rates or assessments in any by-law for borrowing money on the credit of the township, city, town or village at large as aforesaid, but it shall be sufficient to state in any such by-law, that the amount of the general debt of the municipality as therein set forth is exclusive of local improvement debts, secured by special Acts, rates or assessments. 55 V. c. 42, s. 628 (2).

Taken from "*The Con. Mun. Act, 1883*," (46 V. c. 18), s. 623 (1) (2), the word "assured" subs. 2, line 6) having been substituted for the word "secured" in the Revision of 1897.

Secs. 685 (2), 686 (1).

Notes (a), (b); (a), (b).

(a) *Cf.* ss. 385 (2), 674 (1a), 675, 678 (1), 679 (2).

(b) "It shall be sufficient to state," etc.

This is a directory provision. The omission, in a by-law for borrowing money on the credit of the municipality, to state that the amount of the pre-existing debt therein recited is exclusive of local improvement debts; is not fatal to a by-law otherwise valid on its face (*a*).

EXTENSIONS OF THE LOCAL IMPROVEMENT SYSTEM.

(*And see sec. 682 (3)*).

Sweeping, Lighting, and Watering Streets.

Sweeping, lighting and watering streets.

686.—(1) The council of every township, city, town and village may pass by-laws for raising, upon the petition of at least two-thirds of the persons resident in any street, square, alley or lane, whose names appear upon the last revised assessment roll of the municipality as freeholders or tenants of the assessed real property therein representing in value one-half of the said assessed real property, such sums as may be necessary for sweeping, watering or lighting the street, square, alley, or lane, by means of a special rate on the real property therein, according to the frontage thereof, or according to the assessed value thereof when only such latter system of assessment shall have been adopted by a three-fourths vote of the full council; but the council may charge the general corporate funds with the expenditure incurred in such sweeping, watering or lighting as aforesaid. 55 V. c. 42, s. 629 (1); 60 V. c. 15, *Sched.* C. (109).

First in the Act of 1849 (12 V. c. 81), s. 81 (6), which applied only to towns and cities (ss. 82, 100) and to sweeping and watering. The rate was to be "a special rate to be assessed equally on the whole rateable property on such street," etc. Extended to street lighting in 1853 (16 V. c. 181, s. 15 (2)); to villages by the Act of 1858 (22 V. c. 99), s. 324 (2), which made it no longer necessary that the rate should "be assessed equally" or upon the "whole of the property upon the street," and by which also the last three lines of the section were added. See 29-30 V. c. 51, s. 346 (2) (1866). It was intended by the Act of 1873, (36 V. c. 18), s. 468, to make the rate a frontage rate, but this was not effected until the following year by 37 V. c. 16, s. 21. See R. S. O. (1877), c. 174, s. 555; 46 V. c. 18, s. 624. The alternative method of assessment based upon assessed value—was introduced by 50 V. c. 29, s. 45; and by s. 48 of the same Act the powers conferred by the section were extended to townships. See R. S. O. (1887), c. 184, s. 629 (1). The words from "persons resident" (line 3) down to "or tenants of" (line 5) were substituted by 60 V. c. 15, Sched. C. (109) (1897) for "freeholders and householders resident in any street, etc., representing in value one-half" which were the words used in the Act of 1858 and in the subsequent Acts.

(a) This section applies whether a by-law has been passed under s. 682 (1) or not. It is otherwise in the case of s. 682 (3), by which much the same powers are conferred.

(b) "Persons resident in any street."

The persons who may petition are probably those owners and tenants of property abutting on the street whose names appear on the last revised assessment roll as such, and who eat, drink and sleep—or whose families eat, drink, and sleep—upon such property (*b*).

It is not necessary that the petition should be signed by two-thirds of all the qualified persons resident in a whole street, from one end of it to the other. The necessary number of residents on a portion of a street, defined by cross-streets or otherwise, may petition; and the work may be done and the assessment made upon that portion only (*c*).

(*a*) *Ward* v. *Town of Welland*, 31 O. R., not yet reported; 20 C. L. T. 9 (1899).

(*b*) See note (1) to s. 86, *supra*; but see also *Re Banff Provincial Election*, 19 C. L. T. 119 (1899), at pp. 123-4; *Rodoul* v. *Falconer*, [1899] W. N. 174.

(*c*) *Re Platt* v. *City of Toronto*, 33 U.C.R. 53 (1872).

Secs. 686 (2)-(4); 687 (1).

Notes (c), (d)

(2) The council may also, by by-law, designate certain streets or parts of streets, or define certain areas or special sections within the municipality, in which the streets should be watered, swept and lighted, and may impose a special rate upon the assessed real property therein, according to the frontage thereof, or according to the assessed value thereof when only such latter system of assessment shall have been adopted by a three-fourths vote of the full council, in order to pay any expenses incurred in watering, sweeping or lighting such streets. 55 V. c 42 s. 629 (2); 58 V. c. 42, s. 34.

Special rate may be imposed therefor.

First in the Act of 1873 (36 V. c. 48), s. 468, which authorized assessments by a frontage rate for watering a city, town or village street: extended by 46 V. c. 18, s. 624 (2) to assessments for sweeping and lighting and, by 50 V. c. 29, s. 48 (1887) to townships. The alternative method of assessment according to assessed value was introduced in 1891 by 54 V. c. 42, s. 24.

(c) "**By by-law designate . . . certain areas . . . and . . . impose a special rate.**"

These powers are completely distinct; and they need not be exercised by the same by-law. See note (b) to s. 664. It seems that neither petition under s. 668 (1) or notice under s. 669 (1) is required before the by-law designating the streets is passed and the work done. Notice of the assessment must of course be given. See note (d) to s 671.

Cutting Grass and Weeds.—Trimming Trees and Shrubbery.

(3) The council may also include in either of the foregoing by-laws, the cutting of grass and weeds, and trimming the trees or shrubbery on any such street, square, alley or lane, and otherwise cleaning the same. 55 V. c. 42, s. 629 (3).

Cutting grass, etc.

Taken from 48 V. c. 39, s. 31 (1885).

(d) There is no power to pass a by-law providing solely for the assessment of the cost of the works enumerated in this section. An assessment for their cost must be made by means of a by-law passed under one of the two preceding sections in which—at the option of the council—these works or any of them may be included with other works.

Removing Snow, Ice and Dirt.

(4) The council may also by by-law define certain areas or sections within the municipality in which all snow, ice and dirt and other obstructions shall be removed from the sidewalks, streets, lanes or alleys, in such areas or sections, and may impose a special rate upon the real property therein, according to the frontage thereof, in order to pay any expenses incurred in removing such snow, ice, dirt or other obstruction. 55 V. c. 42, s. 629 (4).

Removal of snow, ice, etc.

Taken from 50 V. c. 29, s. 46 (1887).

Div. II.—POWERS OF TOWNSHIPS AND VILLAGES. (Sec. 687).

Lighting, waterworks and fire protection. Sec. 687 (1-3).
Fire trustees and election of. Sec. 687 (4-6).

687.—(1) The council of any township or village may, under and subject to the provisions of sections 664 to 685 of this Act, pass by-laws providing for lighting the municipality, or for the construction of waterworks, or for the purchase of fire engines and other appliances for the purposes of fire pro-

Lighting, water-works and fire protection.

Sec. 687 (1)-(7). Lighting, water-works, fire protection:

tection or for the purchase and laying of mains and other appliances to connect with any existing system of water-works. 55 V. c. 42, s. 630 (1); 56 V. c. 35, s. 27.

First in 48 V. c. 39, s. 32, (1885), which applied only to villages and included only street-lighting and the construction of waterworks: extended to townships by 50 V. c. 29, s. 48 (1887); to the purchase of fire engines and other appliances by 52 V. c. 36, s. 46 (1889); and to the purchase and laying of water mains, etc., by 56 V. c 35, s. 27 (1893). The words "the" before, and "the municipality" after, "lighting" (line 3) were inserted in the Revision of 1897.

Cost of, may be locally assessed.

(2) The council may, by by-law, define by metes and bounds, or otherwise, what real property will be immediately benefited by the proposed improvement, and is to be charged with the cost thereof, and may also, by by-law, make provision for assessing and levying on the property so defined the cost of managing and maintaining the said works, fire engines and appliances. 55 V. c. 42, s. 630 (2).

(3) Section 666 of this Act shall not apply to any works constructed under the powers by this section conferred. 55 V. c. 42, s. 630 (3); 56 V. c. 35, s. 28.

Subss. (2), (3) are taken from 48 V. c. 39, s. 32 (1885). In the Revision of 1892, the section contains the same error as s. 682 (3), *supra*, in regard to the section to which reference is made. See note in small print to s. 682 (3), *supra*. But the error was in this case corrected by 56 V. c. 35, s. 28 (1893). See R. S. O. (1887), c. 184, s. 630 (3): 53 V. c. 50, s. 38; 55 V. c. 42, s. 630 (3).

Fire trustees.

(4) The council of a township may also, by by-law, direct in any case where a fire engine and appliances for the purpose of fire protection have been or are about to be purchased, that at the then next ensuing, and at each subsequent municipal election for the municipality, three trustees, with the powers and for the purposes hereinafter mentioned, shall be elected for the same periods of time and in the same manner as municipal councillors are elected. 55 V. c. 42, s. 630 (4), *part*.

(5) The said trustees shall have the care, control and management of said fire engine and appliances. 55 V. c. 42, s. 630 (5).

Who may vote.

(6) No person shall have a vote at said election of said trustees unless he is the owner of real property defined by a by-law of the said municipality as real estate to be benefited by and charged with the cost of the purchase of such fire engine and appliances, and has the same qualifications as are required by this Act to enable owners of real estate to vote at municipal elections. 55 V. c. 42, s. 630 (4), *part*.

Subss. (4), (5), (6) are taken from 54 V. c. 42. s. 31 (1891).

Agreements between adjoining townships for purchase of fire engine and road making appliances.

(7) The councils of two or more adjoining municipalities whether in the same county or not, may enter into an agreement for the purchase of and may purchase jointly a fire engine and other appliances, for the purpose of fire protection, or road-making machinery and appliances. The councils of such municipalities may in and by such agreement, determine the proportion of the purchase money and yearly cost of managing and maintaining such fire engine and appliances or other machinery and appliances to be borne by each municipality and the place or places where the same shall be kept and all other matters and

things necessary and proper in the maintenance and use of the engine and other machinery and appliances, and each council shall, as to the assessing and levying of its proportion, proceed as hereinbefore in this section provided.

Secs. 687 (7)-(8); 688 (1)-(2), 689.

(8) Where the councils of two or more municipalities purchase a fire engine and appliances or road-making machinery and appliances jointly, the reeves of such municipalities shall be the trustees, having the care and control of such engine, machinery and appliances. 61 V. c. 23, s. 20.

Who shall be trustees in such case.

Subss. (7), (8) were passed in 1898. See the reference.

DIVISION III.—POWERS OF TOWNSHIPS.
(SECS. 688-690).

Maintenance of abandoned toll roads. Sec. 688.
Improvement of roads, bridging, etc. Sec. 689.
Exemption of property so specially assessed. Sec. 690.

Maintenance and Repairs of Abandoned Toll Roads.

688.—(1) The council of any township, on the petition of two-thirds in number of the owners, whose names appear upon the last revised assessment roll of the municipality as representing one-half in value of the property proposed to be assessed and subject to the provisions of sections 664 to 685 inclusive of this Act, may pass by-laws providing for the maintenance and repair of any highway or portion thereof within the jurisdiction of the council, which has theretofore been a toll road, and has been abandoned as such, and may define by by-law what real property will be immediately benefited by the work, and is to be charged with the cost thereof, and may also declare what proportion of the cost is to be borne by the real property within the limits defined by the by-law, and what proportion shall be borne by the general funds of the township; and may also by by-law make provision for assessing and levying upon the property so defined the cost of such maintenance and repair not provided by the township. 55 V. c. 42, s. 630*a* (1); 60 V. c. 15, *Sched.* C. (110).

Maintaining and repairing highways in townships.

Taken from 53 V. c. 50, s. 39 (1890), the words from "whose names" to "municipality as" (lines 4, 5) having been inserted by 60 V. c. 15, Sched. C. (110) (1897).

(2) Sections 666 and 680 of this Act shall not apply to work done under the provisions of this section. 56 V. c. 35, s. 29.

Taken from 53 V. c. 50, s. 39 (1890), a mistake in the reference to the sections having been corrected by 56 V. c. 35, s. 29 (1893). See note in small print under s. 682 (3).

(a) As to the petition, see note (g) to s. 665, and as to the right of appeal, note (d) to s. 664 and *Re Hodgins and City of Toronto*, therein cited. Except in cases falling under s. 665 (3), the assessment must be according to frontage. See s. 665 (1) and notes thereto.

Improvement of Roads.

689. In case all the owners of the property or lots abutting according to the original survey by the Crown, on any road, street or public way in any part of any township, petition the council of the township to macadamize, gravel, drain

Power to construct roads, etc., in townships as local improvements.

Secs. 689, 690.
Notes (a); (a).

Local assessments for improvements upon township roads.

or otherwise improve (by approved material) and to drain the road, street or public way (describing it), or to build a bridge in connection therewith, the council may procure an engineer or Ontario land surveyor to make an examination of the road, street or public way so proposed to be improved, and may procure plans, estimates of and a report upon the said work to be made by such engineer or surveyor, showing the real property, municipalities and corporations to be benefited by such work, or the owners or occupants of real property who may or can use the same, and stating as nearly as may be, in the opinion of such engineer or surveyor, the proportion of benefit to be derived therefrom by every such lot or portion of a lot, railway or street railway, or municipal or other corporation; and the council, if of opinion that the proposed work or a portion thereof would be desirable, may pass by-laws:

(*a*) For providing for the proposed work or a portion thereof being done.

(*b*) For borrowing on the credit of the municipality, the funds necessary for the work, although the same extends beyond the limits of the municipality (subject in that case to be reimbursed as hereinafter mentioned), and for issuing the debentures of the municipality to the requisite amount, including the costs of reference, if any, in sums of not less than $100 each, and payable within twenty years or less from date, with interest at the rate of not less than four per cent. per annum.

Taken from 54 V. c. 42, s. 38 (1891), several verbal amendments having been made in the consolidations, of which the least intelligible was the substitution of the word "drain" (line 4) for the word "plank."

Rev. Stat. c. 226 to apply.

(2) The provisions of *The Municipal Drainage Act* not inconsistent with this section, shall, *mutatis mutandis*, be applicable, as far as possible, to the making and improvement of the said road, street or public way, and the drainage and other works connected therewith, as if the said Act related to roads and the improvement thereof (so as to make the said clauses efficient for the construction of roads in substantially the same way as drains are constructed). 55 V. c. 42, ss. 611*a*, 611*b*.

Taken from 54 V. c. 42, s. 39 (1891), some minor changes having been made in the various consolidations, one of which was the omission in 1897 of the words "and in aid thereof" after "section" (line 2).

(a) The method of assessment herein prescribed is that adopted in "*The Municipal Drainage Act*." See note (j) to s. 665.

Exemption of Property so Specially Assessed.

Exemption of property specially assessed.

690. Any real property specially assessed by any township council for any local improvement or work under the last preceding section of this Act, may be exempted by the council in whole or in part from any general rate or assessment for the like purpose. 55 V. c. 42, s. 611*c*.

Taken from 54 V. c. 42, s. 40 (1891).

(a) "**May be exempted.**" *Cf.* s. 680 and note (a) thereto.

Secs. 691 (1), (2); 692 (1).

Note (a), (b); (a).

DIVISION IV.—POWERS OF COUNTIES.—SECS. 691-693.

Local improvement by-laws for making, repairing or improving roads, bridges, etc. Sec. 691 (1).

But not roads or bridges in a town or village. Sec. 691 (2).

Conditions under which by-laws may be passed. Sec. 692.

Roads or bridges assumed or acquired. Sec. 693.

691.—(1) The council of every county may pass by-laws for levying by assessment on all rateable property within any particular part of one or parts of two townships to be described by metes and bounds in the by-law, in addition to all other rates, a sum sufficient to defray the expenses of making, repairing or improving any road, bridge or other public work, lying within one township or between parts of such two townships, and by which the inhabitants of such parts will be more especially benefited. Special assessments by counties for improving certain roads, bridges, etc.

(2) This section shall not apply to any road, bridge or other public work within the limits of any town or village. 55 V. c. 42, s. 631.

Subs. 1 is taken [illegible] V. c. 181, s. 14 (1853), which applied only to works between two townships; extended [illegible] wholly within one township in the Act of 1866 (29-30 V. c. 51) s. 344 (6). Verbal amendments have from time to time been made in the various consolidations of the Act. See 22 V. c. 99, s. 328 (5); 36 V. c. 48, s. 469; R. S. O. (1877), c. 174, s. 558; 46 V. c. 18, s. 625; R. S. O. (1887), c. 184, s. 632. Subs. 2 is taken from the Act of 1866 (29-30 V. c. 51), s. 344 (6).

(a) **"By assessment."** The assessment of the cost of the work may apparently be made by the method which, under the circumstances, seems to the council to be most just and convenient. If all the property receives an approximately equal benefit per acre, the assessed values of the parcels will probably be found to constitute the most satisfactory standard. If some lands receive considerably more benefit per acre than others, it will probably be fairer to assess upon each parcel the exact amount of the benefit conferred upon it, and to meet the balance, if any, of the expense by a rate in the dollar upon assessed values (*a*). Basis of assessment.

(b) **"Road, bridge or other public work."**

The powers of constructing local improvements conferred by this section upon county councils are very wide. They are (by implication) authorized to undertake as a local improvement the making, repairing or improving of "any road, bridge or other public work" anywhere within the county, except in a town or village thereof.

692. No by-law under the last preceding section shall be passed, except:— Procedure.

1. Upon a petition signed by at least two-thirds of the electors who are rated upon the last revised assessment roll of the municipality for at least one-half of the value of the property within those parts of the township which are to be affected by the by-law; nor Petition.

Based upon 16 V. c. 181, s. 14 (1853); taken from 29-30 V. c. 51, s. 344 (7) (1866), the words "upon the last revised assessment roll of the municipality" having been inserted by 60 V. c. 15, Sched. C. (111) (1897). *Cf.* as under s. 691 (1).

(a) As to petition, see note (j) to s. 665, and as to "electors," s. 2 (5) and note (b) to s. 338, *ante*.

(*a*) See note on "The Local Improvement System," *supra*, p. 901.

Secs. 692 (2), 693 (1)-(4).

Note (b).

Notice to be posted up, and published for three weeks.

2. Unless a printed notice of the petition, with the names of the signers thereto, describing the limits within which the by-law is to have force, has been given for at least one month, by putting up the same in four different places within such parts of the township, and at the places for holding the sittings of the council of each township, whether it be within such parts or not, and also by inserting the same weekly for at least three consecutive weeks in some newspaper (if any there be), published in the county town, or if there is no such newspaper, then in the two newspapers published nearest the proposed work. 55 V. 42, s. 632: 60 V. c. 15, *Sched.* C. (111).

Taken from 36 V. c. 48, s. 470 (1873). *Cf.* as under s. 691 (1).

(b) As to publication, see note (a) to s. 632, and as to the necessity for strict observance of these requirements, note (d) to s. 671.

Roads or Bridges Assumed or Acquired.

Power to pass by-laws acquiring roads, etc., lying within one or more townships, etc., and to levy special rates for improvement thereof.

693.—(1) A county council may, by by-law, assume or acquire any road, bridge or other public work, lying within or adjacent to one or more townships, towns or villages, and may, by by-law, raise by way of loan, a sum of money for the improvement of such road, bridge or public work, to be repaid by a special assessment on all the rateable property within the municipalities immediately benefited by such road, bridge or public work. 55 V. c. 42, s. 633 (1).

Particulars which are to be stated in the by-law.

(2) The by-law shall state the amount to be raised for the work, and shall define the municipalities forming the portion of the county municipality which will be affected by the by-law, and the portion of the work to be performed in each municipality, and shall provide for the raising of the said amount by the issue of debentures of the county, payable in twenty years, or by equal annual instalments of principal, with interest, and shall provide for assessing and levying upon all the rateable property lying within the section defined by such by-law, an annual special rate sufficient for the payment of the principal and interest of the debentures. 55 V. c. 42, s. 633 (2).

By-law to be submitted to electors in portion of county interested.

(3) The by-law shall, if approved by a majority of the representatives in the county council of the municipalities which are defined in the said by-law, be submitted to the vote of the qualified ratepayers, who are entitled to vote on money by-laws, in the portion of said county to be affected by said by-law. 55 V. c. 42, s. 633 (3).

By-law only to apply to those municipalities in which it has a majority of votes.

(4) In case there should be a majority of votes cast against the by-law in any one or more of the municipalities mentioned therein, although the by-law be carried, then the by-law shall only apply to those municipalities in which it has received a majority of the votes cast, and shall not in any way affect the other municipalities mentioned; and the amount of money mentioned in the by-law to be raised by way of loan, shall be reduced by the proportionate amount which the said munici-

pality or municipalities, giving a majority of votes against the by-law, would have been required to pay under the by-law. 55 V. c. 42, s. 633 (4).

Secs. 693 (4)-(7), 694.

Note (a).

(5) In case there should be a majority of votes cast against the by-law in any one or more municipalities mentioned therein, although the by-law be carried, then upon the approval of the majority of the representatives in the county council of the municipalities which have given a majority of votes in favor of the by-law, the same may be read a third time and passed by the county council, or dropped altogether; but in case the by-law is finally passed, only the representatives in the county council of those municipalities giving a majority in favor of the by-law, and to be affected by the same, shall have any voice in reference to the expenditure of the money to be raised thereby. 55 V. c. 42, s. 633 (5).

By-law, if carried in some municipalities only may be passed or dropped.

(6) In all other respects the voting on the by-laws, and the passing and subsequent proceedings thereon, shall be in accordance with the provisions of this Act. 55 V. c. 42, s. 633 (6).

General provisions to apply to voting, etc.

(7) Cities and separated towns may, with the approval of the ratepayers qualified to vote on money by-laws, pass similar by-laws to assist in the purchase of any toll roads, in which the cities or separated towns may be interested, or may pass by-laws abolishing the market fees charged by them, on condition that certain toll roads therein named are made free. 55 V. c. 42, s. 633 (7).

Powers of cities and separated towns.

Subss. 1-6 are taken (with some verbal amendments) from 45 V. c. 23, s. 14 (1882). Subs. 7 was added by 49 V. c. 37, s. 34 (1886), by which also were inserted the words "or adjacent to" after "within," in line 4 of subs. 1. See 46 V. c. 18, s. 627; R.S.O. (1887), c. 184, s. 633.

(a) Sub-s. 1. "A sum of money for the improvement of any such road," etc.

The procedure outlined in subss. 1-6 applies only to by-laws passed by county councils for making special assessments to raise money for the improvement of a road, bridge, or other public work, but the first clause of subs. 7 gives cities and towns power to pass similar by-laws for assisting in the purchase of toll roads. The last clause of subs. 7 appears to have no necessary connection with the rest of the section. As to the necessity for the strict observance of the prescribed procedure, see note (d) to s. 671.

TITLE IV.—POWERS OF MUNICIPAL COUNCILS AS TO AIDING RAILWAY AND STREET RAILWAY COMPANIES. (SECS. 694-699).

Aiding railway companies by taking stock, etc. Sec. 694.
When head of council to be a director ex-officio. Sec. 695.
Aid to railways by portions of townships. Sec. 696.
Townships may permit railways to be constructed on highways, etc. Sec. 697.
Grouping clauses repealed. Sec. 698.
Aid to street railway companies by portion of municipality. Sec. 699.

Aid to Railway Companies.

694. The council of every county, township, city, town and village may pass by-laws—

By-laws may be made for:

Sec. 694 (1)-(6).

Note (a).

Taking stock in certain railways or guaranteeing debentures. Rev. Stat. c. 207, s. 39, 51 V. c. 29 (Ca.).

1. For subscribing for any number of shares in the capital stock of, or for lending to, or guaranteeing the payment of any sum of money borrowed by an incorporated railway company, to which section 18 of the Statute 14 and 15 Victoria, chapter 51, or sections 75 to 78 inclusive of chapter 66 of the Consolidated Statutes of Canada, or the equivalent sections of *The Railway Act of Ontario*, have been or may be made applicable by any special Act; or to which the equivalent sections of *The Railway Act of Canada* do now or may hereafter apply. 55 V. c. 42, s. 634 (1).

For guaranteeing the payment of debentures, etc.

2. For indorsing or guaranteeing the payment of any debenture to be issued by the company for the money by them borrowed. 55 V. c. 42, s. 634 (2), *part*.

Special rates.

3. For assessing and levying from time to time upon the whole rateable property of the municipality, a sufficient sum to discharge the debt or engagement as in the two preceding subsections mentioned. 55 V. c. 42, s. 634 (2) *part*.

For issuing debentures, etc.

4. For issuing, for the like purpose, debentures payable at such times, and for such sums respectively, not less than $20, and bearing or not bearing interest, as the municipal council thinks meet. 55 V. c. 42, s. 634 (3).

Bonuses.

5. For granting bonuses to any railway company in aid of such railway, and for issuing debentures in the same manner as in the preceding clause 4 provided, for raising money to meet such bonuses. 55 V. c. 42, s. 634 (4).

Form of debenture.

6. For directing the manner and form of signing or indorsing any debenture so issued, indorsed or guaranteed, and of countersigning the same, and by what officer or person the same shall be so signed, indorsed or countersigned respectively.

Assent of electors necessary.

But no municipal corporation shall subscribe for stock, or incur a debt or liability for the purposes aforesaid, unless the by-law, before the final passing thereof, receives the assent of the electors of the municipality in the manner provided by this Act. 55 V. c. 42, s. 634 (5). *See also sec.* 366 *and* R.S.O. c. 207, s. 39 (3).

These powers were first conferred upon municipal corporations in 1851 by s. 18 (1-3) of "*The Railway Clauses Consolidation Act*" (14-15 V. c. 51) (See note (4) to s. 338], which was substantially identical with s. 39 (1-3) of "*The Railway Act of Ontario*" (R.S.O. c. 207). In 1858 these clauses were introduced into "*The Municipal Act*," as s. 332 (1-3) of 22 V. c. 99, which corresponded to subs. 1-4 and 6 of the above section. The references (in subs. 1) to c. 66 of the C.S.Ca. and to the equivalent sections of "*The Railway Act of Ontario*," were inserted in the Consolidation of 1873, 36 V. c. 48, s. 471 (1). *Cf.* R.S.O. (1877), c. 174, s. 559 (1). The power to grant bonuses to railway companies was conferred in 1871 by 34 V. c. 30, s. 6; but the present form of subs. 5 is taken from the Act of 1873: 36 V. c. 48, s. 471 (4).

(a) "For subscribing for any number of shares," etc. "For granting bonuses," etc. (a)

Grants may be made to Dominion as well as to Provincial railway companies (*b*), upon such conditions as may seem desirable:—*e.g.*, that debentures

(*a*) See as to aid to bridge companies, s. 645, *supra*.

(*b*) *Canada Atlantic R. W. Co.* v. *City of Ottawa*, 8 O.R. 183, 201; 12 A.R. 234; affirmed 12 S.C.R. 365 (1884-5); *Canada Atlantic R. W. Co.* v. *Township of Cambridge*, 11 O.R. 392 (1886). It appears that it is not necessary that any railway should be named in the by-law or that a company should have been formed to undertake the work described: *Vickers* v. *Shumiah*, 22 Grant 410 (1875).

of the municipality shall be accepted at par by the company (*a*), or that the bonus shall only be payable upon the certificate of a Government (*b*) or other engineer (*c*), that stations (*d*) or machine shops shall be located and maintained by the company within the limits of the municipality (*e*); that the company shall remain independent (*f*); that it shall grant running powers to other companies, and itself erect and procure such other companies to erect stations (*g*); or that the line shall be completed and in running order within a specified time (*h*),—but, even where no time is specified for the completion of the line, a condition is presumed that it shall be completed, or that the bonus shall be earned, within the time fixed therefor by the company's charter (*i*). The right of the company to the grant depends only upon the conditions set out in the by-law; and the bonus cannot be withheld because of the non-performance by the company of covenants which are contained only in a contemporaneous agreement (*j*); nor may such covenants be set out on the face of the debentures issued by the municipality, since these must be negotiable instruments (*k*). Damages may, however, be recovered in respect of such non-performance; and it appears that the debentures will be ordered to be delivered up only upon payment or upon the giving of a bond for the payment of any damages which may be found to be due (*l*). A mandamus to compel the municipality to deliver up the debentures will not be granted upon motion; the applicant must bring his action (*m*). Where the company makes default in the performance of conditions named in the by-law, the debentures may, at the suit of the contracting corporation (*n*), be recovered back from a trustee into whose hands they have been placed pending such performance (*o*), or, if the bonus has been actually paid over, its amount may be recovered as liquidated damages in an action on a bond given for the performance of the conditions (*p*). Payment to contractors for the company, at the request of the latter, will discharge the municipality (*q*).

The "assent of the electors" is a necessary condition precedent to the exercise of the powers conferred by this section (*r*); and the requirements of the Statute must be *bona fide* complied with (*s*). As to the procedure prescribed in voting, etc, on by-laws requiring the assent of the electors, see ss. 338-374.

(*a*) *Higgins* v. *Corporation of Whitby*, 20 U.C.R. 296 (1860).

(*b*) *Bickford* v. *Town of Chatham*, 10 O.R. 257; 14 A.R. 32; 16 S.C.R. 235 (1886-8).

(*c*) *Canada Atlantic R. W. Co.* v. *Township of Cambridge*, 11 O.R. 392; 12 A.R. 234; 12 S.C.R. 365 (1884-5).

(*d*) *Township of Wallace* v. *Great Western R. W. Co.*, 5 A.R. 44 (1878); *City of St. Thomas* v. *Credit Valley R. W. Co.*, 12 A.R. 273 (1885); *Township of Nottawasaga* v. *Hamilton & North-Western R. W. Co.*, 16 A.R. 52 (1888).

(*e*) *City of Toronto* v. *Ontario & Quebec R. W. Co.*, 22 O.R. 344 (1892).

(*f*) *County of Halton* v. *Grand Trunk R. W. Co.*, 19 A.R. 252; 21 S.C.R. 716 (1892).

(*g*) *County of Haldimand* v. *Hamilton and North Western R. W. Co.*, 27 C.P. 228 (1887).

(*h*) *Township of Luther* v. *Wood*, 19 Grant 349 (1872). *Cf. Re Stratford & Huron R. W. Co. and County of Perth*, 38 U.C.R. 112 (1876).

(*i*) *Canada Atlantic R. W. Co.* v. *City of Ottawa*, supra.

(*j*) *Bickford* v. *Town of Chatham*, supra.

(*k*) *Parish of St. Cesaire* v. *McFarlane*, 14 S.C.R. 738 (1887), and see note (c) to s. 429.

(*l*) *Bickford* v. *Town of Chatham*, supra.

(*m*) *Re Grand Trunk R. W. Co. and County of Peterborough*, 8 S.C.R. 76 (1882); *Re Canada Atlantic R. W. Co. and Township of Cambridge*, 3 O.R. 291 (1883). *Cf. Re Stratford & Huron R. W. Co. and County of Perth*, supra.

(*n*) *Township of West Gwillimbury* v. *Hamilton & North-Western R. W. Co.*, 23 Grant 383 (1876).

(*o*) *County of Haldimand* v. *Hamilton and Northwestern R. W. Co.*, supra. *Cf. Township of Brock* v. *Toronto & Nipissing R. W. Co.*, 17 Grant 425 (1870).

(*p*) *County of Halton* v. *Grand Trunk R. W. Co.*, supra. As to the measure of damages in other cases, see *City of St. Thomas* v. *Credit Valley R. W. Co.*, 15 O.R. 673 (1888).

(*q*) *Woodruff* v. *Town of Peterborough*, 22 U.C.R. 274 (1862).

(*r*) *Ex rel. Clement* v. *County of Wentworth*, 22 C. P. 302 (1872); *Re Bate and City of Ottawa*, 23 C. P. 32 (1873).

(*s*) *Scott* v. *Town of Tilsonburg*, 13 A. R. 233 (1886). See *Re Campbell and Village of Lanark*, 20 A.R. 372 (1893), referred to *ante* at p. 793.

Secs. 695, 696.

In certain cases head of council to be *ex-officio* a director.

695. In case any municipal council subscribes for and holds stock in a railway company under the next preceding section to the amount of $20,000 and upwards, the head of the council shall be *ex-officio* one of the directors of the company, in addition to the number of directors authorized by the special Act, and shall have the same rights, powers, and duties as the other directors of the company. 55 V. c. 42, s. 635. *See also* R. S. O. c. 207, s. 39 (4).

Based on s. 18 (4) of "*The Railway Clauses Consolidation Act*," 14-15 V., c. 51. Cf. R.S.O. c. 207, s. 39 (4). Introduced into "*The Municipal Act*" in 1858 as s. 334 of 22 V. c. 99, from which this section is taken.

Aid to railways by portions of townships.

696.—(1) In addition to the powers conferred by section 694, a portion of a township municipality which may be interested in securing the construction of a railway, or through or near which any such railway may pass or be situated, may aid the said railway by granting money or debentures by way of bonus or gift, or by way of loan to such railway under and subject to the provisions hereinafter contained;

Provided always that such aid shall not be given except after the passing of a by-law for the purpose, and the adoption of the by-law by the qualified ratepayers of the said portion of the municipality in the manner provided in respect to granting aid by way of bonuses to railways. 55 V. c. 42, s. 635*a* (1). *See sec.* 366.

Petition.

(2) Before a by-law is submitted under this section to the vote of the ratepayers a petition shall be presented to the council expressing the desire to aid the railway, and stating in what way and for what amount, and defining the portion of the township to be charged by metes and bounds, or lots and concessions, and shall be signed by fifty or a majority of the freeholders resident in such portion of the township, being duly qualified voters under this Act. 55 V. c. 42, s. 635*a* (2); 60 V. c. 15, *Sched.* C (112).

Contents of by-law.

(3) The by-law shall in each instance provide:—

(a) For raising the amount petitioned for in the portion of the municipality mentioned in the petition by the issue of debentures of the municipality, and shall also provide for the delivery of the debentures or the application of the amount to be raised thereby as may be expressed in the said by-law:

(b) For assessing and levying upon all rateable property lying within the portion of the municipality defined in said by-law, an annual special rate sufficient to include a sinking fund for the repayment of the said debentures within twenty years with interest thereon payable yearly, or half yearly, which debentures the councils, reeves and other officers of the municipality are hereby authorized to execute and issue in such cases. 55 V. c. 42, s. 635*a* (3).

Taken from 51 V. c. 28, s. 37 (1888),—the words "or a majority" (subs. 2, line 6) having been inserted by 53 V. c. 50, s. 2 (1890). The word "resident" (subs. 2, line 7) was omitted by 53 V. c. 50, s. 2 (1890), but re-inserted by 60 V. c. 15, Sched. C (112). See 55 V. c. 42, s. 635*a* (2).

(a) As to the procedure to be followed in obtaining the assent of the "electors," see ss. 338-374, and note (b) to s. 694.

Secs. 697, 698, 699.

Note (c).

697. The council of every township may pass by-laws for authorizing any railway company, in case such authority is necessary, to make a branch railway on property of the corporation, or on highways, under such conditions as the council see fit, and subject to the restrictions contained in *The Railway Act of Ontario*, and in any other Acts affecting such railway; and may also pass by-laws to authorize companies or individuals to construct tramways and other railways along any highway on such terms and conditions as the council see fit. 55 V. c. 42, s. 636.

By-laws authorizing branch railways, tramways, etc., along highways. Rev. Stat. c. 207.

First clause taken from the Act of 1858 (22 V. c. 99) s. 335. *Cf.* 16 V. c. 181, s. 9 (6). Last clause—beginning "and may also" (line 7)—taken from 33 V. c. 26, s. 12 (1869), "ways" having been added to the word "tram" by R.S.O. (1877), c. 174, s. 561.

(a) Before a railway can be carried along an existing highway leave must be obtained, under "*The Railway Act*," (a) from the Railway Committee of the Privy Council, and under "*The Railway Act of Ontario*," (b) from the proper municipal authority—but it appears that this leave may be sufficiently given by resolution, and that acquiescence will deprive the municipality of any right to complain (c).

698. So much of any enactment in any private or other Act passed on or before the 5th day of March, 1880, as authorizes or provides for the grouping or joining together of municipalities or a municipality, or part of any municipalities or municipality with part of another municipality or parts of other municipalities, for the purpose of granting municipal aid to any railway or railway company is hereby repealed and declared to be inoperative. 55 V. c. 42, s. 637.

Grouping clauses in railway Acts passed on or before 5th March, 1880, repealed.

Taken from 43 V. c. 27, s. 17 (1880).

Aid to Street Railway Companies.

699.—One-fourth in number of the persons shown by the last revised assessment roll to be the owners of real property comprised in a township, city, town or village, or any portion of any such municipality to be defined in the petition hereinafter referred to, and who according to such assessment roll represent at least one-third of the value of such property, may petition the council to aid any street railway company by granting money or debentures by way of bonus or gift or by way of loan to such company to assist in the construction of the railway to, through, or partly through or near to such municipality or portion thereof, and may in such petition define the manner and amount of the aid desired. 62 V. (2nd Session), c. 26, s. 44 (1).

Aid to street railways from a portion of a municipality

Passed in 1899. See reference. *Cf.* 56 V. c. 35, s. 30 (1893); 54 V. c. 42, s. 36 (1) (1891).

(a) 51 V. c. 29 (Ca.), s. 183.

(b) R.S.O. c. 207, s. 29 (1).

(c) *Township of Pembroke* v. *Canada Central R. W. Co.*, 3 O.R. 503 (1882).

Sec. 699(2)-(4).

Note (a).

By-law to be passed by council for levying rates.

(2) Upon receipt of such petition the council (after the assent of a majority of the ratepayers within such municipality or portion thereof who are entitled to vote thereon, has been obtained in the manner provided by this Act), may pass the by-law for the granting of such aid in accordance with the petition and for raising the amount petitioned for in the municipality or portion thereof mentioned in the petition, by the issue of debentures of the municipality, and for the delivery of the debentures or the application of the amount to be raised thereby as may be expressed in the by-law, and for assessing and levying upon all the rateable real property lying within the municipality or portion thereof defined in the by-law an annual special rate for the repayment of the said debentures within twenty years, with the interest thereon payable yearly or half-yearly: which debentures the council, reeves and other officers of the municipality are hereby authorized to execute and issue. 55 V. c. 44, s. 636*a* (2); 62 V. (2nd Session), c. 26, s. 44 (2).

Agreement to be published in full.

(a) In every such case any agreement which has been entered into between the municipal corporation and the street railway company defining the terms and conditions upon which the construction of such railway is to be authorized, shall be published in full with such by-law; and all provisions of law respecting the publication of any such by-law in any newspaper or otherwise shall also apply to such agreement. 55 V. c. 42, s. 636*a* (2); 56 V. c. 35, s. 31.

Repayment of debentures and interest.

(3) The principal and interest of the debentures may be made repayable by annual instalments, as provided for by section 386 of this Act, or a sinking fund may be provided for by the by-law. 55 V. c. 42, s. 636*a* (3).

Arbitration as to rate for transfer tickets where two companies operating lines in same municipality.

(4) In any and every case in which street railway lines are built by different duly incorporated street railway companies in the same or adjoining municipalities along different routes to the same terminal point, then in case an agreement cannot be arrived at between two such companies providing for the exchange and transfer of tickets for a continuous trip over both such lines or portion thereof, the matters in difference in respect thereof shall be referred to arbitration under the provisions of this Act. 55 V. c. 42, s. 636*a* (4).

Subsection 2, except the proviso, and subsections 3 and 4 are taken from 54 V. c. 42, s. 36 (1891). The words "or portion thereof" in lines 2, 6 and 12 of subs. 2 were substituted by 62 V. (2) c. 26, s. 44 (2) for the words "portion of the" which formerly preceded the word "municipality." The proviso to subsection 2 was added in 1893 by 56 V. c. 35, s. 31.

(a) As to the procedure to be followed in obtaining the assent of the ratepayers, see ss. 338-374. The requirement of s. 366, that one-third of all the ratepayers entitled to vote must vote in favour of the by-law does not apply to aid granted under this section (*a*).

See City of *Kingston* v. *Kingston, etc., Electric Railway Co.*, 28 O.R. 399; 25 A.R. 462 (1897-8).

(*a*) *Adamson* v. *Township of Etobicoke*, 22 O.R. 341 (1892).

TITLE V.—POWERS OF MUNICIPAL COUNCILS IN CERTAIN DISTRICTS AS TO AIDING SMELTING WORKS.

Sec. 700.

700.—The council of every municipality within the districts of Algoma, Manitoulin, Thunder Bay, Rainy River and Nipissing, whether established under the provisions of chapter 225 of the Revised Statutes of Ontario or of any special Act, and the council of every [other] municipality may pass by-laws:

Granting aid by way of bonus to certain manufactures.

For granting aid by way of bonus for the promotion of iron or other smelting works within or adjacent to the limits of the municipality, or within or adjacent to the limits of any municipality contributing aid thereto, by granting such sum or sums of money to such person or body corporate, in respect of the said industry as the council may determine upon; and to pay the said sum, either in one sum or in annual or other periodical payments, with or without interest, and subject to such terms, conditions and restrictions as the said council may deem expedient;

(a) No such by-law shall be passed until the assent of the electors has been obtained, in conformity with the provisions of this Act in respect of by-laws for creating debts, and the assent of one-third of all the ratepayers entitled to vote shall be necessary as well as the assent of a majority of the ratepayers voting on such by-law.

Assent of electors necessary.

(b) No property owner or lessee interested in, or holding shares or stock in any company shall be qualified to vote on a by-law for the purpose of granting a bonus to the company in which he is so interested as aforesaid.

Persons interested in company not to vote on by-law aiding same.

(c) Any municipality granting such aid may take and receive security for the compliance with the terms and conditions upon which such aid is given. 55 V. c 42, s. 637*a*; c. 43, s. 69; 56 V. c. 35, s. 32; 57 V. c. 50, s. 17.

Security may be taken.

(d) The debentures to be issued for any such bonus may be issued at such time or times as may be provided in any by-law granting the bonus, and the issue thereof may be postponed until the conditions contained in the by-law have been fulfilled, or until such other time or times as may be provided for in the by-law. 56 V. c. 35, s. 33, *part.*

Debentures issued in aid of iron smelting works.

(e) Any municipality granting aid by way of bonus for smelting works may, for the promotion of such smelting works, acquire lands within or adjacent to its limits, and may convey such lands to any person or corporation, subject to such conditions as

Acquiring land for smelting works.

Secs. 700, 700a, 701.

Notes (a)-(d).

the municipality may deem expedient, and subject to the assent of the electors as provided by this section. 56 V. c. 35, s. 33, *part.*

Aiding smelting works.

By 55 V. c. 43, s. 60 (1892) the powers herein enumerated were conferred upon the municipalities of all the Districts above named except the District of Nipissing—which, however, was included by s. 637 (a) of "*The Consolidated Municipal Act*" of the same year (55 V. c. 42). They were extended to cities by 56 V. 5, s. 32 (1893), to all municipalities by 57 V. c. 50, s. 17 (1894), were again restricted to cities by R.S.O. (1897), c. 223, s. 700; and once more extended to all municipalities by 62 V. (1) c. 2, Sched. (15). The operative words of the principal clause—together with clauses (a) (b) (c)—are taken from 55 V. c. 43, s. 60 (1892), the words "or other" (line 7) having been inserted by 55 V. c. 42, s. 637a (1892), and the words "or adjacent to" (lines 7, 8) by 56 V. c. 35, s. 32 (1893), by which also clauses (d) and (e) were added.

(a) **"For granting aid by way of bonus."**

A municipality has also power to make a loan (*a*).

With regard to the conditions (as to security, etc.) under which aid may be granted, and the measure of damages in case of their breach, see note (**a**) to s. 694: *Village of Brussels* v. *Ronald* (*b*), and *Village of Brighton* v. *Auston* (*c*).

(b) **"The assent of the electors."**

As to the procedure to be followed in obtaining the assent of the electors, see ss. 338-374. A certificate of the clerk of the municipality that one-third of the ratepayers entitled to vote have voted in favour of the by-law should be obtained, as under s. 366, *supra*, in the case of bonuses to railways, etc.

(c) **Clause (b).** See s. 680 (2) and note (**e**) thereto.

(d) **"Security."** See *Scottish American Investment Co.* v. *Village of Elora*, 6 A.R. 628 (1881): *Village of Brussels* v. *Ronald*, 4 O.R. 1; 11 A.R. 605 (1885), cited in note (**a**) *supra*.

Bonuses to rolling mills and iron works.

700*a*. The council of any city may pass by-laws for granting aid by way of bonus to promote the establishment of rolling mills and iron works in the same manner and to the same extent and subject to like terms and conditions as in the case of by-laws for granting aid in the promotion of iron smelting works, and all the provisions of the last preceding section shall apply to by-laws for granting aid to promote the erection or establishment of rolling mills and iron works which may hereafter be passed or which, since the first day of January, 1898, have been submitted to and have received the assent of the ratepayers of any city qualified to vote thereon, and may hereafter be passed by the council of such city. 61 V. c. 23, s. 23.

Passed in 1898. See the reference.

TITLE VI.—POWERS OF MUNICIPAL COUNCILS AS TO AIDING THE ESTABLISHMENT OF GRAIN ELEVATORS. (SEC. 701).

By-laws for granting aid in promotion of grain elevators.

701. The council of any municipality may pass by-laws for granting aid by way of bonus to promote the establishment of grain elevators, in the same manner and to the same extent and subject to the like terms and conditions as in the case of by-laws for granting aid for the promotion of iron smelting works, and all the provisions of the last preceding section shall apply to by-laws for granting aid to promote the establishment of grain elevators. 60 V. c. 45, s. 58.

Passed in 1897. See the reference.

(*a*) *Scottish American Investment Co.* v. *Village of Elora*, 6 A.R. 628 (1881).
(*b*) 4 O.R. 1; 11 A.R. 605 (1885). (*c*) 19 A.R. 305 (1892).

Sec. 702.
Note (a).

TITLE VII.—*AS TO THE ENFORCEMENT OF BY-LAWS.*

DIVISION I.—BY FINE AND IMPRISONMENT. (SEC. 702).

702. By-laws may be passed by the councils of counties, townships, cities, towns and villages:—

1. For inflicting reasonable fines and penalties not exceeding $50 exclusive of costs:— Fines and penalties.

(*a*) Upon any person for the non-performance of his duties who has been elected or appointed to any office in the corporation and who neglects or refuses to accept such office, unless good cause is shewn therefor, or to take the declaration of office, and afterwards neglects the duties thereof; and For neglect of duty or refusal to accept office.

(*b*) For breach of any of the by-laws of the corporation. 55 V. c. 42, s. 479 (17). Or for breach of by-laws.

Taken from the Act of 1858 (22 V. c. 99), s. 242 (6), clause (a) having been amended by 34 V. c. 30, s. 3. See 36 V. c. 48, s. 372 (11), etc. *Cf.* 12 V. c. 81, s. 31 (29) (villages); s. 41 (29) (counties); s. 80 (3) (towns); s. 107 (5) (cities).

2. For collecting such penalties and costs by distress and sale of the goods and chattels of the offender; 55 V. c. 42, s. 479 (18). Collecting penalties and costs.

Taken from the Act of 1858 (22 V. c. 99), s. 242 (7), the words "and costs" having been inserted by the Act of 1873 (36 V. c. 48), s. 372 (12). *Cf.* as under sub-s. 1, and also 22 V. c. 99, s. 205. See also references under sub-s. 3.

3. For inflicting reasonable punishment for breach of any of the by-laws of the council, in case of non-payment of the fine inflicted therefor and there being no distress found out of which such fine can be levied, by imprisonment either in the common gaol, house of correction or a lock-up house of the county or municipality, with or without hard labour, for any period not exceeding six months in the case of a by-law of a city or of a by-law of any municipality for the suppression of houses of ill-fame, and not exceeding in other cases twenty-one days, unless in any of the said cases the fine inflicted and costs (if any), including the costs of the distress and of the committal and conveyance of the offender to the gaol, house of correction or lock-up house are sooner paid. 55 V. c. 42, s. 479 (19); 60 V. c. 15, *Sched.* C. (82).

Taken from 60 V. c. 15, Sched. C. 82 (1897)—by which the sub-section (as it formerly stood) was amended and re-arranged. *Cf.* 55 V. c. 42, s. 479 (19); R. S. O. (1887), c. 184, s. 479 (18); 46 V. c. 18, s. 482 (20); 42 V. c. 31, s. 18; R.S.O. (1877) c. 174, s. 454 (14); 36 V. c. 48, s. 372 (13); 29-30 V. c. 51, s. 246 (8); 22 V. c. 99, s. 242 (8); 14-15 V. c. 109, Sched. A (7); 13-14 V. c. 61, Sched. A (9); 12 V. c. 81, s. 31 (29), etc.

(a) **"Fines and penalties."** The fines and penalties referred to in sub-section 1 are pecuniary only. If a penalty is imposed by a by-law, its recovery is, in general, the only remedy for the infraction of the by-law (*a*); and if no

(*a*) *Tompkins* v. *Brockville Rink Co.*, 31 O.R. 124 (1899).

Sec. 702, Notes (b)-(e).

punishment is provided (*a*), a right to bring an action founded upon the breach arises only where the duty is imposed for the benefit of particular persons, and one of such persons is injured by the failure to perform it (*b*).

Enforcement of by-laws by fine and imprisonment.

(b) "Not exceeding $50." For the breach of the provisions of a by-law under s. 583 (8) a fine of $500 may in certain cases be imposed (*c*); but this is the only instance in which a greater penalty than $50 may be provided for the breach of a municipal by-law. That result may not be arrived at either directly or indirectly, as by inflicting a penalty for each stroke of a goldsmith's hammer made by an unlicensed person (*d*), or for each day's default in the performance of an act, at least when, upon such default, the corporation itself has power to do the act and to assess the owner for the cost (*e*); but a new act daily performed, though of the same nature, may constitute a new offence each day, and separate and distinct breaches of the by-law may thus be committed, for each of which the offender may be convicted and fined (*f*).

A minimum as well as a maximum fine may be fixed by the by-law (*g*); and it appears that larger penalties may be inflicted for the second and subsequent offences (*h*), provided the limit of $50 be in no case exceeded.

If the by-law assumes to deal with the disposition of the fines imposed thereunder, it must direct their disposition in accordance with the provisions of s. 708; otherwise it will be bad (*i*).

(c) Clause (a). By s. 319, a penalty of not more than $80, and not less than $8, is imposed upon members of councils who refuse to make the declaration of office and qualification; and it is doubtful whether an additional fine can be provided by by-law under this sub-section (*j*), which, however, authorizes penalties to be imposed upon an officer of the corporation who, without good cause, refuses to accept *and* neglects to perform the duties of the office to which he has been appointed.

(d) "Not exceeding six months." For the offences of keeping, being an inmate of, or frequenting a house of ill-fame, six months' imprisonment may, under s. 208 of "*The Criminal Code, 1892*," be awarded as a substantive punishment, but not as a means of enforcing the payment of a fine. Art. 788 authorizes six months' imprisonment only when it is imposed conjointly with—not in default of—a fine; and under s. 872 (b), that punishment may be awarded in the first instance, but imprisonment in default of payment of a fine may be for three months only (*k*). Under a municipal by-law, six months imprisonment may be awarded only upon default of payment of a fine and of sufficient distress out of which the fine may be levied (*l*).

(e) "Twenty-one days." Within this limit the by-law may fix a maximum and a minimum term of imprisonment in a gaol (*m*), but if it authorizes a longer term, it will be bad (*n*).

(*a*) A by-law which provides no penalty for its breach is not necessarily bad: *Re Local Option Act*, 18 A.R. 572 (1891).

(*b*) See *Tompkins* v. *Brockville Rink Co.*, 31 O.R. 124 (1899), and the cases therein cited.

(*c*) See note (**m**) to s. 583.

(*d*) Dillon, ss. 338 (note 3), 342, 343.

(*e*) See note (**a**) to s. 703.

(*f*) See note (**i**) to s. 586 and *Reg.* v. *Waterhouse*, L. R. 7 Q. B. 545 (1872), there cited. *Cf. Eddlestone* v. *Barnes*, 1 Ex.D. 67 (1875): *Reg.* v. *Hazen*, 20 A.R. 633 (1893), reversing *S.C.*, 23 O.R. 387 (1893).

(*g*) *Re Snell and Town of Belleville*, 30 U. C. R. 81 (1870): *Piper* v. *Chappell*, 8 M. & W. 624 (1845). *Cf. Fennell* v. *Town of Guelph*, 24 U.C.R. 238 (1865).

(*h*) *Butchers' Company* v. *Bullock*, 2 B. & P. 434 (1843). *Cf.* Dillon, ss. 337-338.

(*i*) *Re Snell and Town of Belleville*, 30 U.C.R. 81 (1870).

(*j*) See, however, note (**a**) to s. 549.

(*k*) *Reg.* v. *Stafford*, 1 Can. C. C. 239 (1898).

(*l*) See note (**b**) to s. 706, *post*.

(*m*) As to lock-up houses, see note (**a**) to s. 706.

(*n*) *Re McCutchon and City of Toronto*, 22 U.C.R. 613 (1863)

DIVISION II.—SUMMARY REMEDY IF BY-LAWS NOT OBEYED. (SEC. 703).

Secs. 703, 704.
Note (a).

Mode of compelling performance of matters directed to be done by council, etc.

703. Wherever any municipal council has any authority to direct, by by-law or otherwise, that any matter or thing should be done by any person or corporation, such council may also by the same or another by-law, direct that in default of its being done by the person, such matter or thing shall be done at the expense of the person in default, and may recover the expense thereof with costs by action or distress; and, in case of non-payment thereof, the same shall be recovered in like manner as municipal taxes. 55 V. c. 42, s. 482.

Taken from the Act of 1873, (36 V. c. 48), s. 377.

(a) This section provides for a class of cases referred to by ss. 542 (8) (15), 545 (1) (6), 551 (1) (2) (4), 557 (3), 559 (1) (2), 562 (10) (12) (13), 586 (6), etc., in which punishment by fine would be an inadequate remedy (*a*). In these cases it appears that no fine may be inflicted for breach of the by-law (*b*).

PART VIII.

RECOVERY OF FINES AND PENALTIES.

DIVISION I.—PENALTIES. (SECS. 704-710).

Penalties imposed by "The Municipal Act." Sec. 704.
Penalties for offences against by-laws. Secs. 705, 706.
Form of conviction under by-laws. Sec. 707.
Application of penalties. Sec. 708.
Convictions not to be void for certain defects. Secs. 709, 710.

Recovery and enforcement of penalties imposed by this Act.

Imprisonment in default of payment.

704. Every fine and penalty imposed by this Act may, unless where other provision is specially made therefor, be recovered and enforced with costs, by summary conviction, before any Justice of the Peace for the county or of the municipality in which the offence was committed; and in default of payment the offender may be committed to the common gaol, house of correction or lock-up house of the county or municipality, there to be imprisoned for any time, in the discretion of the convicting Justice, not exceeding (unless where other provision is specially made) thirty days, and with or without hard labour, unless such fine and penalty, and costs, including the costs of the committal and conveyance of the offender to the common gaol, house of correction or lock-up house, are sooner paid. 55 V. c. 42, ss. 419, 420; 60 V. c. 15, *Sched.* C. (72).

Taken from the Act of 1873 (36 V. c. 48), s. 315, the words "and with or without hard labour" (line 11) having been inserted by 42 V. c. 31, s. 15 (1879), and the words "and conveyance of the offender to the common gaol, house of correction or lock-up house" by 60 V. c. 15, Sched. C (72), (1897). *Cf.* 29-30 V. c. 51, s. 355 (23); 22 V. c. 99, s. 338 (23).

(*a*) See the cases cited in footnote (*l*) on p. 610, and footnote (*j*) on p. 659.

(*b*) *Re McCutchon and City of Toronto*, 22 U.C.R. 613 (1863), at pp. 619, 620.

Sec. 704.

Notes (a), (b).

(a) "**Every fine and penalty imposed by this Act.**" This section applies only to fines and penalties imposed *by this Act* (*a*), not to those which municipalities are authorized under s. 702 to impose *by by-law* (*b*).

Summary procedure for punishment of offences.

(b) "**By summary conviction.**" The procedure by summary conviction is regulated by Part LVIII. (Arts. 839-909) of "*The Criminal Code, 1892*," made applicable by R.S.O. c. 90, s. 2, in every case where any penalty or punishment is imposed under the authority of a Provincial Statute, and is recoverable before, or may be inflicted by a Justice of the Peace or a Police or Stipendary Magistrate.

Proceedings may be instituted by an information or complaint before a Justice (upon oath or affirmation when the Statute so requires), which may be in the following form:

Canada, Province of Ontario. County of To wit: } The information and complaint of of the *township* of taken [on oath] before me, Esquire, a Justice of the Peace in and for the said county of the day of in the year of Our Lord one thousand nine hundred

The said informant, [upon oath], saith he is informed and believes that on the day of in the year of Our Lord one thousand nine hundred at in the county of did

[*State offence following words of by-law or Statute.*]

contrary to the form of a by-law of the corporation of the *township* of [*or "the Statute"*] in such case made and provided.

Complainant prays that a summons may issue, and justice be done in the premises.

Sworn [*or Taken*] before me on the day and year first above mentioned. } [*Signature of Informant.*]

[*Signature of J.P.*]

The information must be laid within six months from the commission of the offence (*c*) and the above form should be closely followed. Only one offence must be charged (*d*); and the words of the Act or by-law creating it should be used (*e*). The municipality in its corporate capacity cannot lay an information; this must be done by an officer on its behalf.

No warrant should issue for an offence against a by-law (*f*); but the defendant should be served with a summons, which may be in the following form:

Canada, Province of Ontario, County of *Village* of To wit: }

To [*The person complained against*] of the said *village*.

Whereas you have this day been charged before the undersigned ——————, Esquire, a Justice of the Peace in and for the said county of for that you on the day of in the year of Our Lord one thousand nine hundred at the *village* of did contrary to law

[*State the offence*]

(*a*) The word "penalty" includes imprisonment: *Reg.* v. *Gavin*, 1 Can. C. C. 59 (1898).

(*b*) See *Reg.* v. *Grant*, 18 O. R. 169 (1890). See *Reg.* v. *Hart*, 20 O.R. 611 (1891).

(*c*) Crim. Code, Art. 841.

(*d*) Crim. Code, Art. 845. See *Reg.* v. *Gravelle*, 10 O.R. 735 (1886), referred to in note (**c**) to s. 581, *ante*, p. 728: *Reg.* v. *Hazen*, 20 A.R. 633 (1893).

(*e*) See *Reg.* v. *Hollister*, 8 O.R. 750 (1885), cited *ante*, p. 724: *Reg.* v. *Martin*, 12 O.R. 800 (1886), *ante*, p. 771: *Reg.* v. *Bell*, 25 O.R. 272 (1894), *ante*, p. 631.

(*f*) See *Kelly* v. *Barton*: *Kelly* v. *Archibald*, 26 O.R. 608; 22 A.R. 522 (1895), referred to in note (**a**) to s. 491, *ante*, p. 533.

Sec. 704.

Summary procedure for punishment of offences.

These are therefore to command you in Her Majesty's name to be and appear before me on (*a*) the day of in the year of Our Lord one thousand nine hundred, at o'clock in the noon at (*b*) in the said county, or before such other Justice or Justices of the Peace for the said county as shall then be there to answer to the said charge, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal this day of in the year 19 at the *village* of . [*Signature of Justice.*] [*Seal.*]

If the defendant does not appear, either in person or by counsel or solicitor, it will be necessary to prove that the summons was served a reasonable time previous to the time fixed for appearance (*c*). The evidence may then be heard and a conviction made (*d*). In such cases, care should be taken that the charge is clearly and fully proved (*e*). If the complainant does not appear, the Justice must dismiss the charge, unless he thinks fit to adjourn the hearing (*f*).

Both the complainant and the defendant may appear in person or by counsel or solicitor (*g*): the personal appearance of the defendant is unnecessary. The absence of an information or summons, or any irregularity in either, is waived by the defendant's appearing and pleading to the charge (*h*). Upon his appearance, a plea of guilty may be received, or the facts may be admitted (*i*); but if a plea of not guilty is entered, and the facts are disputed, the informant must prove the charge.

According to the usual practice, either party is entitled to an adjournment at the first hearing, unless there is some special reason to the contrary; and adjournments may be subsequently made from time to time. Every adjournment must, however, be to a time and place certain, and must not be for a period beyond the eighth day (*j*), but if made at the defendant's request (*k*), or if he afterwards appears without objection (*l*) the conviction cannot be impeached on the ground that this limit has been exceeded; and the Justice may reserve judgment for a longer period (*m*).

The evidence (*n*) must be taken upon oath in the presence of the accused or his counsel, who should have an opportunity to cross-examine the witnesses. It should be reduced to writing by the Justice; and care must be taken that it is sufficient to support the charge. If the offence is created by by-law, the by-law must be proved (*o*), and (in all cases) the time and place of its commission, in order that the jurisdiction of the Justice may appear. No variance between the information and the evidence is to be deemed material; but, if it appears to the Justice that the defendant has been prejudiced by such variance, he may adjourn the hearing (*p*). The defendant cannot, however, be convicted of an offence which he was not summoned to answer, and to which the evidence is not addressed (*q*).

If, in the opinion of the Justice, the complainant makes out a case, the defendant must be called upon for his defence; and his witnesses may be cross-

(*a*) A reasonable time should be allowed for the appearance of the defendant.

(*b*) The place stated should be reasonably near the place where the offence was committed.

(*c*) Crim. Code, Art. 853.

(*d*) Ibid. See *Reg.* v. *Toronto Railway Co.*, 30 O.R. 214; 26 A.R. 491 (1899).

(*e*) See *Reg.* v. *Edgar*, 17 O.R. 188 (1889). (*f*) Crim. Code, Art. 854.

(*g*) Crim. Code, Arts. 850, 855.

(*h*) See *Reg.* v. *Clarke*, 20 O.R. 642 (1891), and the cases there cited; also *Reg.* v. *Hughes*, 4 Q.B.D. 614 (1879).

(*i*) See Crim. Code, Art. 690.

(*j*) *Reg.* v. *Collins*, *Reg.* v. *Goulais*, 14 O.R. 613 (1887).

(*k*) *Reg.* v. *Heffernan*, 13 O.R. 616 (1887).

(*l*) *Reg.* v. *Hazen*, 20 A.R. 633 (1893).

(*m*) *Reg.* v. *Hall*, 12 P.R. 142 (1887): *Reg.* v. *Alexander*, 17 O.R. 458 (1889).

(*n*) See ss. 711, 712.

(*o*) See s. 334, and note (**a**) thereto; s. 710; *Reg.* v. *Dowslay*, 19 O.R. 622 (1890): *Reg.* v. *Banks*, 2 N.W.T. 77; 1 Can. Crim. Cas. 370 (1894).

(*p*) Crim. Code, Art. 847. (*q*) *Reg.* v. *Mines*, 25 O.R. 577 (1894).

Secs. 704-705.

Note (c).

Summary procedure.

examined by the complainant or his counsel. If the case is one within the jurisdiction of the magistrate, and there is any evidence upon which he may convict, the weight to be attached to such evidence is a matter wholly for him to determine (*a*). The summary jurisdiction of the Justice will be ousted if the defendant sets up a claim of right which the Justice finds to be *bona fide*, but not otherwise (*b*); and if the offence is proved, it is the duty of the Justice to convict; if not, he must dismiss the charge.

A memorandum of the conviction should immediately be made, from which the formal conviction may be afterwards drawn up. This should be done as soon as possible and the form given in s. 707 should be followed where the offence is the contravention of a by-law; where the penalty is imposed by the Act the conviction should be in the form WW in Schedule 1 of "*The Criminal Code, 1892.*"

(c) "Any Justice of the Peace," etc.

Jurisdiction of J. P.'s

A police magistrate is *ex-officio* a Justice of the Peace for the county within which lies the city or town of which he is police magistrate (*c*); and he has within such city or town the powers of two Justices (*d*). The jurisdiction of a Justice of the Peace is territorial, not personal. Outside the boundaries of the territory for which a Justice has been appointed he cannot act as such, nor can he take cognizance of any offence committed outside its limits (*e*); but an offence may be tried by any Justice of the Peace for the county in which it has been committed, unless it has been committed within the jurisdiction of a police magistrate (*f*), or unless the Justice has a direct interest (*g*). If more than one Justice acts, the decision of the majority will govern.

Penalties imposed by by-laws.

705. All prosecutions for any offence against a municipal by-law, or a by-law of a Board of Commissioners of Police may be had by summary proceedings before a Justice of the Peace for the county or of the municipality in which the offence was committed, or where the offender resides, and the Justice before whom the prosecution is had may convict the offender on the oath or affirmation of any credible witness, and shall award the whole or such part of the penalty or punishment imposed by the by-law as he thinks fit, with the costs of prosecution, and may by warrant, under the hand and seal of the Justice (or in case two or more Justices act together therein, then under the hand and seal of one of them), cause any such pecuniary penalty and costs, or costs only, if not forthwith paid, to be levied by distress and sale of the goods and chattels of the offender. 55 V. c. 42, s. 419, *part*; 60 V. c. 15, *Sched.* C. (73).

The first six lines, down to "Justice" (line 6) are taken from 60 V. c. 15, Sched. C. (73) (1897). The words "or where the offender resides" (line 6) and "before whom the prosecution is had" (line 7) were inserted in the Revision of that year. The rest of the section is taken from the Act of 1858, (22 V. c. 99), s. 205, the words "the whole or such part thereof" (lines 7, 8) and the words "as he thinks fit" (line 9) having been inserted in the Act of 1866, (29-30 V. c. 51), s. 209, in consequence of the question raised in *Re Fennell and Town of Guelph*, 21 U.C.R. 238 (1865), at pp. 243-4. *Cf.* 12 V. c. 81, s. 185; 16 V. c. 18, s. 31.

(*a*) *Reg.* v. *Malcolm*, 2 O. R. 511 (1881): *Reg.* v. *McDonald*, 12 O. R. 381 (1886): *Reg.* v. *Herman*, 8 Man. Rep. 330 (1892): *Reg.* v. *St. Clair* (C.A.): *Reg.* v. *Urquhart*, (Divisional Court), February, 1900, not yet reported.

(*b*) See the cases cited in foot notes (*j*) to (*o*) inclusive, and in note [illegible] 600, *ante*, p. 820.

(*c*) R. S. O. c. 87, s. 27. As to the municipalities for which police magistrates may be appointed, see note (a) to s. 474.

(*d*) R. S. O. c. 87, s. 30. As to who are Justices besides those who are named in the commission as such, see ss. 473, 474.

(*e*) But see note (a) to s. 705. (*f*) S. 476, and see note (c) to s. 473.

(*g*) See ss. 477-478 and notes thereto, and also *Ex p. Doak*, 19 C. L. T. 405: *Reg.* v. *Gaisford*, [1892] 1 Q. B. 381; *Allinson* v. *General Medical Council*, [1894] 1 Q. B. 750: *Reg.* v. *Young*, [1897] 2 Q. B. 468.

(a) "A Justice for the county . . . where the offender resides."

These words—which were inserted, apparently without authority, in the Revision of 1897—seem to authorize the trial of an offender against a municipal by-law by a magistrate of the county where he resides, although the offence has been committed outside of its limits. This jurisdiction did not formerly exist (*a*).

Commitment in default of distress.

706. In case of there being no distress found out of which the penalty can be levied, the Justice may commit the offender to the common gaol, house of correction, or nearest lock-up house, for the term specified in the by-law or some part thereof. 55 V. c. 42, s. 422.

Taken from the Act of 1858 (22 V. c. 99), s. 206, the words "or some part thereof" having been added in 29-30 V. c. 51, s. 210 (1866). *Cf.* 12 V. c. 81, s. 185 (1849).

(a) "Lock-up house." Commitment to a lock-up house may be for ten days only. See s. 520, *supra*.

(b) "In case of there being no distress found," etc.

For an offence under a municipal by-law, the punishment of imprisonment may be inflicted only when a distress has been made and has been found insufficient to cover the fine (*b*). If the amount of the fine has been thus levied and collected, the defendant cannot be sent to gaol, although the costs may be still unpaid and cannot be recovered by distress (*c*). When, however, the defendant has been lawfully committed to a gaol, etc., he may be detained until not only the penalty, but also the costs of the prosecution and of the committal and conveyance to gaol are discharged (*d*).

Form of conviction under by-laws.

707. It shall not be necessary in any conviction made under any by-law of any municipal corporation, to set out the information, appearance or non-appearance of the defendant, or the evidence or by-law under which the conviction is made; but all such convictions may be in the form following:

PROVINCE OF ONTARIO, County of , To WIT. } BE IT REMEMBERED that on the day of A.D. , at , in the county of , *A. B.* is convicted before the undersigned, one of Her Majesty's Justices of the Peace in and for the said county, for that the said *A. B. (stating the offence, and time and place, and when and where committed)*, contrary to a certain by-law of the municipality of the of , in the said county of , passed on the day of , A.D. , and intituled *(reciting the title of by-law)*; and I adjudge the said *A. B.*, for his said offence, to forfeit and pay the sum of , to be paid and applied according to law, and also to pay to *C. D.*, the complainant, the sum of , for his costs in this behalf. And if the said several sums are not paid forthwith (*or* on or before the day of *as the case may be*), I order that the same be levied by distress and sale of the goods and chattels of the said *A. B.*; and in default of sufficient distress, I adjudge the said *A. B.* to be imprisoned in the common gaol of the said county of (*or*, in the public lock-up at) for the space of days, unless the said several sums, and the costs of the said distress and of the committal and conveyance of the said *A. B.* to such gaol (*or* lock-up), are sooner paid.

Given under my hand and seal the day and year first above written at , in the said county.

[L.S.]

J. M.,
J. P.

55 V. c. 42, s. 427; 60 V. c. 15, *Sched.* C. (76).

(*a*) See note (**d**) to the last section; and *cf.* s. 476, *supra*.
(*b*) But it is otherwise in British Columbia under "*The Municipal Clauses Act, 1896*," 59 V. c. 50, s. 81: *Reg.* v. *Petersky*, 5 B. C. R. 549; 1 Can. Crim. Cas. 91 (1898).
(*c*) *Cf.* s. 702 (3).
(*d*) See s. 709 and note (**a**) thereto and *cf. Reg.* v. *Grant*, 18 O.R. 169 (1889).

Secs. 707, 708, 709.

Notes (a); (a); (a).

Taken from 27 V. c. 18, s. 1 (1863) and introduced into this Act as s. 362 of the Act of 1866 (29-30 V. c. 51), the words "and the costs of the said distress and of the committal and conveyance of" (last line but 5 of the form of conviction), having been substituted by 60 V. c. 15, Sched. C. (76) for the words "and all costs and charges of conveying."

(a) The form of conviction here given should be closely followed. The offence should be described in the words of the by-law, and it must be that to which the evidence is addressed (*a*). If the by-law creates two offences, a conviction stating one as alternative to the other is bad; and if there are exceptions in the by-law they should be negatived (*b*). It is necessary that the by-law should be referred to sufficiently to identify it. As to the costs, see s. 708 and R. S. O. c. 4, ss. 4 (3-5), 5.

Application of penalties.

708. Unless otherwise provided, where the pecuniary penalty has been levied under this Act, one moiety thereof shall go to the informer or prosecutor, and the other moiety to the municipal corporation, unless the prosecution is brought in the name of the corporation, in which case the whole of the pecuniary penalty shall be paid to the corporation. 55 V. c. 42, s. 423.

Taken from the Act of 1858 (22 V. c. 99), s. 207. *Cf.* 22 V. c. 99, s. 338 (24); 29-30 V. c. 51 ss. 211, 355 (25); 36 V. c. 48, s. 316.

(a) See also "*The Interpretation Act*," R. S. O. c. 1, s. 8 (30), (32). The informant may be ordered to pay costs (*c*).

Convictions not to be void for certain informalities.

709. All by-laws authorized under the provisions of this Act, which have been, or which may hereafter be enacted and which have imposed or may impose fines and penalties and the recovery thereof with costs by summary conviction, and which authorize, in default of payment, the commitment of the offender to the common gaol, house of correction or lock-up house of the county or municipality unless such fine and costs, including the costs of the committal and conveyance to the common gaol, house of correction or lock-up house, are sooner paid, are hereby declared to be good and valid, notwithstanding that such by-law, amongst other things, authorizes the imprisonment of the accused during the period for which by law he might be imprisoned unless such costs of committal and conveyance to the common gaol, house of correction or lock-up house, are sooner paid; and no conviction shall by reason only that it includes the cost of such conveyance and committal, be impeached, quashed or set aside. 55 V. c. 42, s. 423*a*; 60 V. c 15, *Sched.* C. (74) *and see Sched.* C. (72).

Taken from 53 V. c. 50, s. 13 (1890), some words rendered unnecessary by 60 V. c. 15, Sched. C. (72), having been struck out by 60 V. c. 15, Sched. C. (74), and the words "by-law" and "authorizes" (line 11), having been substituted, in the Revision of 1897, for the words "conviction" and "directs."

(a) The meaning of this section is not clear. Before the Revision of 1897, it read:—"All *by-laws*, etc. (as above) . . . are hereby declared to be good and valid, notwithstanding that *such conviction* . . . *directs* the imprisonment of the accused . . . unless the costs of committal and conveyance to gaol are sooner paid."

(*a*) *Reg.* v. *Mines*, 25 O. R. 577 (1894).

(*b*) *Reg* v. *Caton*, 16 O. R. 11 (1888), cited *ante*, pp. 750-751; *Reg.* v. *McFarlane*, 17 C. L. T. 29; 33 C. L. J. N. S. 119 (1897); *Reg.* v. *Smith*, 31 O. R. 224 (1899), cited *ante*, p. 754. But see Crim Code, Arts. 889, etc.

(*c*) *Reg.* v. *Hollister*, 8 O. R. 750 (1885), referred to *ante*, p. 754; *Reg.* v. *McFarlane* 33 C. L. J. N. S. 119; 17 C. L. T. 29 (1897); *Reg.* v. *Mashinter*, Divisional Court, Jan. 25th, 1900—not yet reported—are cases in which the informant was ordered to pay costs. *Reg.* v. *Smith*, 31 O. R. 224 (1899).

Secs. 709, 710.

Note (a).

The substitution (in that Revision) of the words "by-law . . authorizes" (line 11) for "conviction . . directs" have, at least, had the effect of giving some meaning to the section; but it seems impossible that there should be, even now, any by-laws to which it can apply. S. 702 authorizes the passing of by-laws under which imprisonment may be directed, but only in case there is no sufficient distress out of which the fine can be levied; and ss. 705 and 707 clearly show that the insufficiency of a distress is a condition precedent to the exercise of the right of a Justice to imprison under a by-law. When, therefore, this section (709) speaks of a by-law which authorizes the commitment to the county gaol of an offender against a by-law unless he at once pays both fine and costs, it is describing a by-law which no municipality has—or ever had—power to pass under "*The Municipal Act.*" The provision that such a by-law "shall be good and valid" notwithstanding that it makes certain directions as to costs, is evidently an error, and cannot but be nugatory (*a*). It is apprehended that the intention of the Legislature was merely to permit the costs of conveyance, etc., to be included with other lawful costs, a provision rendered necessary by the decision in *Reg.* v. *Grant* (*b*), where a conviction was quashed on the ground that it included the costs of conveyance to gaol; hence the amendment (in 1897) of s. 702 (3) and of the form of conviction in s. 707 by 60 V. c. 15, Sched. C. (72), (76). It therefore seems that section 709 is now no longer necessary, and that it should be repealed.

Certain by-laws and convictions validated.

710.—(1) On an appeal from a motion to quash a conviction made under a municipal by-law or under any by-law of a Board of Commissioners of Police passed in pursuance of any Act of this Legislature, the conviction shall not be deemed invalid or be quashed for want of proper proof of such by-law before the convicting Justice; but upon any proceeding to quash such conviction the Court to which the application is made may, in its discretion, dispense with proof of the by-law or may allow the same to be proved before it by affidavit or by the production of a copy duly certified in manner provided by section 334 of this Act in the case of a by-law passed by a municipal council, or in the manner provided for by section 485 of this Act in the case of a by-law of a Board of Commissioners of Police. 58 V. c. 44, s. 1; 60 V. c. 15, *Sched.* C. (119).

Convictions not invalidated for want of proof of by-law.

Taken from 58 V. c. 44, s. 1 (1895), "*An Act respecting Convictions under Municipal By-laws,*" the words "or any by-law of a Board of Commissioners of Police" (line 2), and the last four lines from the words "in the case of a by-law" having been added by 60 V. c. 15, Sched. C. (119).

(2) Nothing in this section shall be construed as relieving a prosecutor from the duty of proving the by-law before the magistrate, or as entitling the magistrate to dispense with such proof. 58 V. c. 44, s. 2.

By-laws to be proved.

Passed in 1895. See reference.

(a) As to the proper mode of proving a by-law, see s. 334 and note (a) thereto. It cannot be proved before the Justice by an affidavit of its contents (*c*).

(*a*) As to the Legislature mistaking the existing law, see the cases referred to in note (i) to s. 671, *ante* at p. 931, footnote (*f*).

(*b*) 18 O.R. 169 (1889).

(*c*) *Reg.* v. *Banks*, 2 N. W. T. 77; 1 Can. Crim. Cas. 370 (1894).

Secs. 711-713.

Note (a).

DIVISION I.—WITNESSES. (SECS. 711-712.)

Who may be witnesses. Sec. 711.
Compelling attendance of witnesses. Sec. 712.

Who may be witnesses.

711. Upon the hearing of any information or complaint exhibited or made under this Act, and upon any prosecution for an offence against any by-law passed by a municipal council or by a Board of Commissioners of Police under the authority of this Act, the person exhibiting or making the information or complaint shall be a competent witness, notwithstanding such person may be entitled to part of the pecuniary penalty on the conviction of the offender, and the defendant, and the wife or husband of such persons opposing or defending shall also be competent witnesses; and all the said persons shall be compellable to give evidence on the hearing. 55 V. c. 42, s. 424; 60 V. c. 15, *Sched.* C. (75).

Based upon s. 338 (23) of the Act of 1858, (22 V. c. 90), which applied only to the informant. See 20 V. c. 31, s. 13 (1857); 29-30 V. c. 51, s. 355 (24). Extended to the defendant, and the wife or husband of the informant or defendant by 36 V. c. 10, s. 4 (1873). See R. S. O. (1877), c. 174, s. 404. The words from "and upon" (line 2) to "this Act" (line 5) were inserted by 60 V. c. 15, Sched. C. 75 (1897).

(a) Since the amendment of this section in 1897, *Reg.* v. *Hart* (a) is no longer an authority. An offender against the provisions of this Act or of a municipal by-law may be convicted upon his own evidence alone (b). See also note (a) to s. 472.

Compelling witnesses to attend, etc.

Rev. Stat. c. 90.

712. In prosecuting under any by-law, or for the breach of any by-law, witnesses may be compelled to attend and give evidence in the same manner, and by the same process, as witnesses are compelled to attend and give evidence on summary proceedings before Justices of the Peace in cases tried summarily, under *The Ontario Summary Convictions Act.* 55 V. c. 42, s. 426.

Taken from 27 V. c. 18, s. 2 (1863). *Cf.* 29-30 V. c. 551, s. 363 (1866).

PART IX.

POLICE VILLAGES.

DIV. I.—FORMATION OF POLICE VILLAGES. (SECS. 713-714).
DIV. II.—TRUSTEES AND THEIR ELECTION. (SECS. 715-735a).
DIV. III.—POWERS AND DUTIES OF POLICE TRUSTEES. (SECS. 736-750),

DIVISION I.—FORMATION OF POLICE VILLAGES. (SECS. 713-714).

Existing police villages continued. Sec. 713.
New police villages.—how formed. Sec. 714.

Existing police villages continued.

713. Until otherwise provided by competent authority, every existing police village shall continue to be a police

(a) 20 O. R. 611 (1891).
(b) *Reg.* v. *Nurse*, 2 Can. C. C. 57; 35 C. L. J. N. S. 35 (1898). *Cf.* R.S.O. c. 73, s. 5.

village, with the boundaries now established. 55 V. c. 42, s. 638.

Secs. 713–719.

Taken from 36 V. c. 48, s. 477 (1873). *Cf.* 29-30 V. c. 51, s. 1; 22 V. c. 99, s. 2.

714. On the petition of any of the inhabitants of an unincorporated village, the council or councils of the county or counties within which the village is situate may, by by-law, erect the same into a police village, and assign thereto such limits as may seem expedient. 55 V. c. 42, s. 639.

New police villages.

Taken from 22 V. c. 99, s. 9 (1858). *Cf.* 12 V. c. 81, s. 42.

DIVISION II.—TRUSTEES AND THEIR ELECTION. (SECS. 715-735a).

Existing trustees continued. Sec. 715.
Trustees three in number. Sec. 716.
Qualification required. Secs. 717, 718.
Electors, who are. Sec. 719.
Election, where to be held. Secs. 720-722.
Returning officer, how appointed. Secs. 720, 721.
Election not to be held in a tavern. Sec. 722.
Nomination, how conducted. Secs. 723-725.
Polling, how conducted. Secs. 726-730.
Powers of returning officer. Sec. 731.
Term of office. Sec. 732.
Return of voters' lists, etc. Sec. 733.
Vacancies, how filled. Sec. 734.
Inspecting trustee, how appointed. Sec. 735.
Constable may be appointed. Sec. 735a.

715. The trustees of every police village existing when this Act takes effect, shall be deemed the trustees respectively of every such village as continued under this Act. 55 V. c. 42, s. 640.

Present trustees continued.

Taken from 22 V. c. 99, s. 3 (1858).

716. The trustees of every police village shall be three in number. 55 V. c. 42, s. 641.

Number of trustees.

Taken from 36 V. c. 48, s. 480 (1873). *Cf.* 29-30 V. c. 51, s. 68; 22 V. c. 99, s. 68; 12 V. c. 81, s. 43.

717. The persons qualified to be elected police trustees shall be such persons as reside within the police village or within two miles thereof, and are eligible to be elected township councillors, and are qualified in respect of property for which they are rated in such police village to the amount which would be required to qualify them for election as township councillors. 55 V. c. 42, s. 642.

Qualification of trustees.

Taken from 36 V. c. 48, s. 481 (1873). *Cf.* 29-30 V. c. 51, s. 70; 22 V. c. 99, s. 70.

(a) See s. 76.

718. If there are not six persons qualified under the preceding section, any person entitled to vote at the election may be elected. 55 V. c. 42, s. 643.

Deficiency in number of qualified persons.

Taken from 36 V. c. 48, s. 482 (1873). *Cf.* 29-30 V. c. 51, s. 72; 22 V. c. 99, s. 72.

719. Any township elector, rated on the last revised assessment roll for such property in a police village as entitles him to vote in respect thereof at the municipal election for the

Qualification of electors.

Secs. 719-726.

township, shall be entitled to vote at the election for police trustees. 55 V. c. 42, s. 644; 60 V. c. 15, *Sched* C. (113).

Taken from 36 V. c. 48, s. 483 (1873), the word "revised" (line 1) having been inserted by 60 V. c. 15, Sched. C. (113). *Cf.* 31 V. c. 30, ss. 9, 10; 29-30 V. c. 51, ss. 75, 76; 22 V. c. 99, ss. 75, 76.

Place for holding first election, etc.

720. The council by which a police village is established shall by the by-law establishing the same, name the place in the village for holding the first election of police trustees, and also the returning officer therefor. 55 V. c. 42, s. 645.

Taken from 36 V. c. 48, s. 484 (1873). *Cf.* 29-30 V. c. 51, ss. 86, 96; 22 V. c. 99, ss. 85, 92.

Place for holding subsequent elections, etc.

721. After the first election in a police village, the trustees thereof, or any two of them, shall, from time to time, by writing under their hands, appoint the returning officer, and the place or places within such village for holding nominations and elections. 55 V. c. 42, s. 646.

Taken from 36 V. c. 48, s. 485 (1873). *Cf.* 29-30 V. c. 51, s. 96 (2); 22 V. c. 99, s. 93; 12 V. c. 81, s. 45.

No election to be held in a tavern.

722. No election of police trustees shall be held in a tavern or in a house of public entertainment licensed to sell spirituous liquors. 55 V. c. 42, s. 647.

Taken from 36 V. c. 48, s. 486 (1873). *Cf.* 29-30 V. c. 51, s. 82; 22 V. c. 99, s. 81.

Nomination meeting.

723.—(1) A meeting of the electors shall take place for the nomination of candidates for the offices of police trustees, in each police village, at noon on the last Monday in December, annually, at such place therein as is from time to time fixed by the trustees.

Taken from 36 V. c. 48, s. 487 (1873.) *Cf.* 29-30 V. c. 51, s. 100.

Provision for Christmas day.

(2) When the last Monday in December is Christmas day the meeting shall be held on the preceeding Friday. 55 V. c. 42, s. 648.

Taken from 39 V. c. 7, s. 20 (1876). See R. S. O. (1877), c. 174, s. 572 (2).

Who to preside.

724. The returning officer (or, in his absence, a chairman to be chosen) shall preside at such meeting of which the police trustees shall give at least six days' notice. 55 V. c. 42, s. 649.

Taken from 36 V. c. 48, s. 488 (1873). *Cf.* 29-30 V. c. 51, s. 100 (1).

If no more candidates than offices.

725. If only three candidates are proposed and seconded the returning officer or chairman shall, after a lapse of one hour, declare such candidates duly elected. 55 V. c. 42, s. 650.

Taken from 36 V. c. 48, s. 489 (1873). *Cf.* 29-30 V. c. 51, s. 100 (2).

If more, and poll demanded.

Election.

726. If more than the necessary number of candidates are proposed, the returning officer or chairman shall adjourn the proceedings until the first Monday in January, when a poll or polls shall be opened for the election, at nine o'clock in the morning, and shall continue open until five o'clock in the afternoon, and no longer. 55 V. c. 42, s. 651.

Taken from 36 V. c. 48, s. 490 (1873). *Cf.* 33 V. c. 26, s. 3; 31 V. c. 30, s. 13; 29-30 V. c. 51, s. 100 (3).

Secs. 727-730.

Notice of persons proposed to be posted.

List of voters to be obtained.

727. The returning officer or chairman of the meeting shall on the day following that of the nomination, post up in the office of the clerk of the township, if it is situated in such police village, and if not, then in some other public place in such police village, the names of the persons nominated at at the meeting; and shall, if a poll is necessary, demand in writing from the clerk of the township, or clerks of the townships, a list of the names of the persons appearing by the last revised assessment roll to be entitled to vote in the said police village, such as is required to be furnished under the next succeeding section. 55 V. c. 42, s. 652; 60 V. c. 15, *Sched.* C (114).

Taken from 36 V. c. 48, s. 491 (1873), as amended by 40 V. c. 7, Sched. A (184) and 60 V. c. 15, Sched. C (114). *Cf.* 29-30 V. c. 51, s. 100 (4); R.S.O. (1877), c. 174, s. 576.

Clerk of township to furnish alphabetical list of voters.

728. The clerk of the township, or clerks of the townships in which any police village is situated, shall, at latest on the day previous to the day for opening the poll, deliver to the returning officer of the police village a list of the names, according to the form prescribed by law in the case of other municipal elections, of the persons entitled to vote at township municipal elections, in respect of real property situate, or income received in the said police village, or in the portion thereof in the municipality of such clerk, and shall attest the said list by his solemn declaration in writing under his hand. 55 V. c. 42, s. 653.

Taken from 36 V. c. 48, s. 492 (1873), as amended by 40 V. c. 7, Sched. A (185) (1877). *Cf.* R.S.O. (1877), c. 174, s. 576; 29-30 V. c. 61, s. 100 (5); 22 V. c. 99, s. 97 (4); 12 V. c. 81, s. 44.

(a) As to the list of voters, see ss. 152, 153.

Except where otherwise provided, same proceedings, etc., to be had as at elections, etc., of councillors, etc.

729. The various sections of this Act relating to the proceedings at the nomination and election of township councillors, including those relating to the questions to be put and oaths to be adminstered to electors, and as to the appointment of a chairman or returning officer, in case the person appointed is absent, and also the provisions respecting controverted elections and for the prevention of corrupt practices, shall apply and be acted on in the election of police trustees, except where a different provision is herein made. 55 V. c. 42, s. 654.

Taken practically verbatim from 36 V. c. 48, s. 498 (1873).

(a) See as to nominations, ss. 119, 128 (1-3), 129 (2-4); as to oaths, ss. 112-117; as to the procedure in elections, ss. 136-185; and as to the returning officer's neglect to perform his duties, s. 108.

Casting vote.

730. In case a casting vote is required to determine an election, the returning officer, whether otherwise qualified or not, shall give a casting vote for one or more of the candidates, so as to decide the election, and except in such case the returning officer shall not vote at such election. 55 V. c. 42, s. 655.

Taken from 36 V. c. 48, s. 495 (1873). *Cf.* 29-30 V. c. 51, s. 100 (9); 22 V. c. 99, s. 97 (11).

Secs. 731-735a.

Powers of returning officer.

731. The returning officer shall have the like powers for the preservation of the peace as are given to returning officers and deputy returning officers at municipal elections. 55 V. c. 42, s. 656.

Taken from 36 V. c. 48, s. 499 (1873), as amended in R.S.O. (1877), c. 174, s. 580.

(a) See ss. 109, 110.

Term of office.

732. The persons elected shall hold office until their successors are elected or appointed and sworn into office and hold their first meeting. 55 V. c. 42, s. 657.

Taken from 36 V. c. 48, s. 496 (1873). *Cf.* 33 V. c. 26, s. 3 (1869).

Returning officer to return ballot papers, etc., to clerk of township, verified under oath.

733. Every returning officer shall, on the day after the close of the poll, return the ballot papers, voters' lists and other documents relating to the election, to the clerk of the township in which the village is situated, or in case the village lies in several townships, then to the clerk of the county, verified under oath before such clerk, or before any Justice of the Peace for the county or union of counties in which the village lies, as to the due and correct taking of the votes. 55 V. c. 42, s. 658.

Taken from 36 V. c. 48, s. 497 (1873), as amended in R.S.O. (1877), c. 174, s. 582. *Cf.* 29-30 V. c. 51, s. 100 (7); 22 V. c. 99, s. 98.

Filling vacancies.

734. In case of a vacancy in the office of a police trustee by death or otherwise, the remaining trustee or trustees shall, by writing to be filed with such clerk as aforesaid, appoint a trustee or trustees to supply the vacancy. 55 V. c. 42, s. 659.

Taken from 22 V. c. 99, s. 294 (1858). *Cf.* 12 V. c. 81, s. 47.

Appointment of inspecting trustee.

735. The trustees of every police village, or any two of such trustees, shall, by writing under their hands, to be filed with the clerk of the township, or in case the village lies in several townships, with the clerk of the county, appoint one of their number to be inspecting trustee. 55 V. c. 42, s. 660.

Taken from 22 V. c. 99, s. 293 (1858), as amended by 36 V. c. 48, s. 501 (1873). *Cf.* 29-30 V. c. 51, s. 308; 12 V. c. 81, s. 43.

Appointment of constable for police village.

735*a*.—(1) The police trustees of any police village may appoint a constable, who shall have the same powers and shall perform the same duties within the police village as a constable appointed by the council of an incorporated village.

Remuneration of constable.

(2) Every constable so appointed shall be paid by the township treasurer out of the funds at the credit of the police village such salary or other remuneration as the police trustees shall order in writing. 62 V. (2nd Sess.), c. 26, s. 48

Passed in 1899. See reference.

DIVISION III.—DUTIES AND POWERS OF POLICE TRUSTEES. (SECS. 736-750).

Oaths of office and qualification. Sec. 736.
First meeting. Sec. 737.
Expenditure, how provided for. Secs. 738-742.
Township by-laws respecting pounds, licenses, etc. Sec. 742a.
License fees and penalties. Sec. 742b.
Orders by trustees on township treasurer. Sec. 743.
Fire protection, lighting and heating. Sec. 744.
Fire protection, assessment of part of village. Sec. 745.
Establishment of parks, gardens, etc., in police villages, etc. Sec. 746.
Township by-laws respecting tree planting. Sec. 746a.
Regulations to be enforced by trustees. Sec. 747.
Prevention of fire. (1-12).
Gunpowder. (13-14).
Nuisances. (15)
Penalties. Secs. 748-750.
Neglect of duty by trustees, how punishable. Sec. 749.
Limitation of actions for penalties. Sec. 750.

736. Every police trustee shall take the oaths of office and qualification in the same manner and within the time prescribed for township councillors, under like penalties in case of default. 55 V. c. 42, s. 661. Oaths of office and qualification.

Taken from 36 V. c. 48, s. 502 (1873). *Cf.* 29-30 V. c. 51, s. 178; 22 V. c. 99, s. 175.

(a) See ss. 311, 312, 315, 317, 319.

737. The trustees of every police village shall hold their first meeting at noon on the third Monday of the same January in which they are elected, or on some day thereafter at noon. 55 V. c. 42, s. 662. When first meeting to be held.

Taken from 36 V. c. 48, s. 503 (1873). *Cf.* 29-30 V. c. 51, s. 133; 22 V. c. 99, s. 130.

738. The trustees, at any time previous to the first day of June, may require the council of the township or townships in which the police village is situated to cause to be levied along with the other rates, upon the property liable to assessment in such village, such sums as they may estimate to be required to cover the expenditures for that year in respect of matters coming within their duties, and to cover any balance for expenditures incurred during the year then last past, such sum not to exceed one cent in the dollar on the assessed value of such property. 55 V. c. 42, s. 663. Expenditure, how provided for.

Taken from 36 V. c. 48, s. 504 (1873).

739. In case the village is situated in two or more townships, the trustees shall require a proportionate amount from each, according to the value of the property of the village in each township, as shewn by the last equalized assessment rolls. 55 V. c. 42, s. 664. Where village in two or more townships.

Taken from 36 V. c. 48, s. 505 (1873).

740. The rate levied for police village purposes by the council or councils of the township or townships in which the police village is situated upon the property liable to assessment in such village, shall be in lieu of such proportion of the town- Rates levied in police villages.

Secs. 640-643b.

ship rate now levied for the same or like purposes within such village as the trustees and the council may by agreement provide. 55 V. c. 42, s. 663*a*; c. 43, s. 71.

Taken from 55 V. c. 43, s. 71 (1892).

Powers of trustees of police villages.

741. The trustees of every police village may pass by-laws for letting contracts, or employing labour and purchasing material, for building sidewalks, culverts, putting in drains and making, repairing and improving streets, and doing all things necessary for such purposes within the limits of the police village. 55 V. c. 42, s. 663*b*; c. 43, s. 70.

Taken from 55 V. c. 43, s. 70 (1892).

Payment of orders given by trustees, etc.

742. The township treasurer shall from time to time, if he has moneys of the municipality in his hands not otherwise appropriated, pay any order given in favour of any person by the inspecting trustee, or by any two of the trustees, to the extent of the amount required to be levied as aforesaid, although the same may not have been then collected. 55 V. c. 42, s. 665

Taken from 36 V. c. 48, s. 506 (1873).

When orders may be given.

743. No trustee shall give any such order in favour of any person except for work previously actually performed, or in payment of some other executed contract. 55 V. c. 42, s. 666.

Taken from 36 V. c. 48, s. 507 (1873).

By-laws respecting cattle running at large; licenses for billiard rooms, exhibitions, tobacconists.

743*a*.—(1) The municipal council of any township in which a police village or any part thereof is situate shall at the request of the police trustees pass by-laws applicable only within the police village or such part thereof as may be situate in the township for any of the purposes mentioned in section 546 or in paragraphs 4, 5, 8, 9, 28 and 29 of section 583 of *The Municipal Act*, and thereafter no general by-law of the township for any of the said purposes shall apply or be in force in the police village.

License fees; application.

(2) All sums collected for license fees or for penalties under any by-law passed under the preceding subsection shall be paid over to the township treasurer and be by him placed to the credit of the police village and supplied to the purposes thereof. 62 V. (2nd Sess.), c. 26, s. 49.

Passed in 1899. See reference.

License fund for police villages.

743*b*. The council of any township in which a police village or part of the territory comprising a police village is situated, may by by-law provide that the whole or any part of the sums collected and received by the township for licenses issued for premises situated in the police village or penalties imposed for offences committed in the police village under *The Liquor License Act*, shall be placed to the credit of the police village in the books of the township treasurer and be available for the purposes of the said village. 62 V. (2nd Sess.), c. 26, s. 47.

Rev. Stat. c. 245.

Passed in 1899. See reference.

744.—(1) Upon the application of the trustees of any police village for the issue of debentures for the purchase of fire engines and other appliances for the purpose of fire protection and the supply of water therefor, or for lighting the streets of such police village, or supplying light and heat to the inhabitants thereof, the council of the township in which the police village is situated shall, in the manner provided by this Act in respect of by-laws for creating of debts, submit to the ratepayers of such village entitled to vote on money by-laws a by-law for the purpose of issuing such debentures for a period not exceeding ten years, and for levying a special rate for repayment thereof upon the taxable property in such police village, and in the event of the assent of the said ratepayers being thereto obtained, it shall be the duty of such council to raise or borrow such sum.

Submitting by-laws for purchase of fire appliances and lighting and heating in police villages.

(2) Debentures issued under this section shall be so issued in conformity with section 386 of this Act.

Issuing debentures.

(3) All moneys raised as aforesaid by the issue of debentures shall be retained in the hands of the township treasurer, who shall pay thereout any order given by the inspecting trustee or by any two of the trustees in favour of any person or persons, such order being for work previously actually performed or in payment of some other executed contract necessary for the carrying out of such improvements.

Treasurer to pay orders of trustees on funds raised.

(4) The trustees may, and shall let contracts, employ labour, purchase material, and do all things necessary for the proper construction, maintenance and operation of such improvements, and they shall have the care, control and management of the said fire engine and appliances as well as of the construction, maintenance and operation of the plant and apparatus necessary for the purpose of supplying light and heat as aforesaid.

Trustees may make contracts, employ labour, etc.

(5) The trustees shall annually before the striking by the township council of the rate for the year, furnish to the council a statement showing in detail the amount required to be levied from the property of the village for the services aforesaid for the current year, and for managing and maintaining the said fire engine and appliances, and for providing the necessary water supply. 58 V. c. 42, s. 35, *part.*

Passed in 1895. See reference.

745.—(1) Upon the petition of a majority of the ratepayers entitled to vote on money by-laws in any defined area or portion of a police village, representing in value more than one-half of the assessed real property within such portion or area, the township council of the township in which such police village is situate may pass a by-law or by-laws for the purchase of a fire engine and other appliances and the supply of water therefor for the purposes of fire protection, and may by by-law define, by metes and bounds or otherwise, what real property within such area will be benefited by the pro-

Fire protection in defined area in police villages.

Secs. 745, 746 (1), (2).

posed fire protection and is to be charged with the cost thereof, and may also by by-law make provision for assessing and levying on the real property so defined the cost of managing and maintaining the said fire engine and appliances and of providing the necessary water supply.

Cost of such engine, etc.

(2) The said council may levy in any one year upon the real property so to be benefited, the cost of such engine and appliances and of the water supply, or they may issue the debenture or debentures of the township payable during a period not exceeding ten years in annual proportions with interest, and may from time to time levy the amount payable thereon upon the real property to be benefited as aforesaid.

Police trustees to have charge.

(3) The police trustees shall have the charge, control and management of the said fire engine and appliances and of the said supply of water; and they shall annually before the striking of the rate for the year by the township council furnish to the council a statement showing in detail the amount required to be levied for the current year for managing and maintaining the said fire engine and appliances and for providing the necessary water supply.

Assent of electors not required.

(4) It shall not be necessary to submit to a vote of the electors any of the said by-laws in this section or in the preceding section mentioned, except the by-law directed to be so submitted, nor to comply with the other formalities required only for or on account of such submission.

Issuing debentures.

(5) Debentures issued under this section shall be so issued in conformity with section 386 of this Act 58 V. c. 42, s. 35, *part.*

Passed in 1895. See reference.

Establishment of Parks, Gardens, etc.

Establishment of parks, gardens, etc., in police villages.

746.—(1) Upon the petition of three-fourths of the persons entitled to vote upon a money by-law in any police village, the township council of the township in which such police village is situate may pass a by-law or by-laws for acquiring real property within or without the limits of said police village for a public park, garden or place for exhibitions, and for the erection thereon of such buildings and fences as the said council may deem necessary for the purposes of such park, garden or place for exhibitions, and for the disposal of such real property and improvements when no longer required for such purposes.

Assessing property in police villages for cost of parks.

(2) The council may by by-law make provision for assessing and levying on the real property of the said police village, the cost of such park, garden or place for exhibitions, and of the erection thereon of buildings and fences and of the repair and maintenance thereof, or for issuing debentures of the

Secs. 746 (2)-(4), 747 (1)-(3).

township payable during a period not exceeding ten years in annual proportions with interest, and for levying upon such real property the amount from time to time payable on such debentures.

Police trustees to have control of park.

(3) The police trustees shall have the charge, control and management of such public park, garden or place for exhibitions, and shall annually before the striking of the rate for the year by the township council furnish to the council a statement showing in detail the amount required to be levied for the current year for managing and maintaining such public park, garden or place for exhibitions.

Assent of electors not required.

(4) It shall not be necessary to submit any of the said by-laws in this section mentioned to a vote of the electors, nor to comply with the other formalities required only for or on account of such submission. 58 V. c. 42, s. 36.

Passed in 1895. See reference.

Township by-laws respecting tree-planting in police villages.

746 *a.*—(1) Not less than thirty municipal electors in a police village may present a petition to the township council praying for the passing of a by-law under section 3 of *The Ontario Tree Planting Act* to have effect within the limits of the police village, and on receipt of such petition the council of the township in which such police village is situated may pass by-laws giving effect to such petition. R.S.O. c. 243.

Inspector of trees.

Payment of expenses.

(2) The police trustees of such village shall appoint the inspector of trees provided for by the by-law of the township council, and the amount required for the payment of bonuses for tree-planting under such by-law, and the remuneration of the inspector shall be raised by rate levied upon the property liable to assessment in such police village in the manner provided by *The Municipal Act*. 62 V. (2nd Sess.), c. 30.

Rev. Stat. c. 223.

Passed in 1899. See reference.

Regulations Governing Police Villages.

Following regulations to be enforced.

747. The trustees of every police village shall execute and enforce therein the regulations following:

Prevention of Fire.

For providing ladders, etc.

Penalty.

1. Every proprietor of a house more than one storey high, shall place and keep a ladder on the roof of such house near to or against the principal chimney thereof, and another ladder reaching from the ground to the roof of such house, under a penalty of $1 for every omission; and a further penalty of $2 for every week such omission continues.

Fire buckets.

Penalty.

2. Every householder shall provide himself with two buckets fit for carrying water in case of accident by fire, under a penalty of $1 for each bucket deficient.

As to furnaces, etc.

Penalty.

3. No person shall build any oven or furnace unless it adjoins and is properly connected with a chimney of stone or brick at least three feet higher than the house or building in which the oven or furnace is built, under a penalty not exceeding $2 for non-compliance.

Sec. 747 (4)-(14).

Stove pipes, etc.

4. No person shall pass a stove-pipe through a wooden or lathed partition or floor, unless there is a space of four inches between the pipe and the wood-work nearest thereto; and the pipe of every stove shall be inserted into a chimney; and there shall be at least ten inches in the clear between any stove and any lathed partition or wood-work, under a penalty of $2.

Penalty.

Lights in stables, etc.

5. No person shall enter a mill, barn, outhouse or stable, with a lighted candle or lamp, unless well enclosed in a lantern, nor with a lighted pipe or cigar, nor with fire not properly secured, under a penalty of $1.

Penalty.

Chimneys.

6. No person shall light or have a fire in a wooden house or outhouse, unless such fire is in a brick or stone chimney, or in a stove of iron or other metal, properly secured, under a penalty of $1.

Penalty.

Securing fire carried through streets, etc.

7. No person shall carry fire or cause fire to be carried into or through any street, lane, yard, garden or other place, without having such fire confined in some copper, iron or tin vessel, under a penalty of $1 for the first offence, and of $2 for every subsequent offence.

Penalty.

Lighting fires on streets.

8. No person shall light a fire in a street, lane or public place, under a penalty of $1.

Penalty.

Hay, straw, etc.

9. No person shall place hay, straw or fodder, or cause the same to be placed, in a dwelling-house, under a penalty of $1 for the first offence, and of $5 for every week the hay, straw or fodder is suffered to remain there.

Penalty.

Ashes, etc.

10. No person, except a manufacturer of pot or pearl ashes, shall keep or deposit ashes or cinders in any wooden vessel, box or thing not lined or doubled with sheet iron, tin or copper, so as to prevent danger of fire from such ashes or cinders, under a penalty of $1.

Penalty.

Lime.

11. No person shall place or deposit any quick or unslacked lime in contact with any wood of a house, outhouse or other building, under a penalty of $1, and a further penalty of $2 a day until the lime has been removed, or secured to the satisfaction of the inspecting trustee, so as to prevent any danger of fire.

Penalty.

Charcoal furnaces.

12. No person shall erect a furnace for making charcoal of wood, under a penalty of $5.

Penalty.

Gunpowder.

Gunpowder, how to be kept.

13. No person shall keep or have gunpowder for sale, except in boxes of copper, tin or lead, under a penalty of $5 for the first offence, and $10 for every subsequent offence.

Penalty.

Not be sold at night.

14. No person shall sell gunpowder, or permit gunpowder to be sold in his house, storehouse or shop, outhouse or other building, at night, under a penalty of $10 for the first offence, and of $20 for every subsequent offence.

Penalty.

Nuisances.

Certain nuisances prohibited.

15. No person shall throw, or cause to be thrown, any filth or rubbish into a street, lane or public place, under a penalty of $1, and a further penalty of $2 for every week he neglects or refuses to remove the same after being notified to do so by the inspecting trustee, or some other person authorized by him. 55 V. c. 42, s. 667.

Taken *verbatim* from the Act of 1858 (22 V. c. 99), s. 299 (1-15). *Cf.* practically the same provisions in the Act of 1849 (12 V. c. 81), s. 51 (1-15).

Penalties.

Who to sue for penalties.

748. The inspecting trustee, or in his absence, or when he is the person complained of, one of the other trustees, shall sue for all penalties incurred under the regulations of police herein established, before a Justice of the Peace having jurisdiction in the police village and residing therein, or within five miles thereof; or if there be no such Justice then before any Justice of the Peace having jurisdiction in the police village; and the Justice shall hear and determine such complaint in a summary manner, and may convict the offender, upon the oath or affirmation of a credible witness, and cause the penalty, with or without costs, to be levied by distress and sale of the goods of the offender, and to be paid over to the path-master or path-masters of the division or divisions to which the police village belongs, or to such of the said path-masters as the trustees may direct; and such path-master or path-masters shall, under the direction of the trustees, apply the penalty to the repair and improvement of the streets and lanes of the police village. 55 V. c. 42, s. 668.

And before whom.

Conviction and levy of penalty.

Taken from the Act of 1858 (22 V. c. 99), s. 297, the reference to costs having been inserted by 36 V. c. 48, s. 510. *Cf.* 12 V. c. 81, s. 50.

Penalty for breach of duty by trustees.

749. Any police trustee who wilfully neglects or omits to prosecute an offender at the request of any resident householder of the village offering to adduce proof of an offence against the regulations of police herein established, or who wilfully neglects or omits to fulfil any other duty imposed on him by this Act, shall incur a penalty of $5. 55 V. c. 42, s. 669.

Taken from 22 V. c. 99, s. 295 (1858). *Cf.* 12 V. c. 81, s. 48.

When prosecutions to be commenced.

750. The penalties prescribed by the next preceding section, or by that for the establishment of regulations of police, shall be sued for within ten days after the offence has been committed or has ceased, and not subsequently. 55 V. c. 42, s. 670.

Taken from 22 V. c. 99, s. 296 (1858). *Cf.* 12 V. c. 81, s.

61 VICTORIÆ, CAP. 23.

The Municipal Amendment Act, 1898.

(*Assented to Jan. 17th, 1898.*)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Amends "*The Act respecting the Provisional County of Haliburton*," (R.S.O. c. 4) s. 30.
2. Adds to "*The Municipal Act*" s. 71*a* (1-3). See *ante*, p. 97. (*a*)
3. Amends s. 72. See *ante*, p. 99.
4. " s. 73. " p. 99.
5. " s. 74, which is printed *ante*, at p. 100. (*b*)
6. " s. 128 (4). See *ante*, p. 152.
7. " s. 132 (2). " p. 156.
8. " s. 299. " p. 308.
9. " s. 301. " p. 309.
10. " s. 309. " p. 313.
11. Adds a new section, printed as s. 291*a*, pp. 303-304.
12. " " " " s. 279*a*, p. 292.
13. " " " " s. 306*a*, p. 312.
14. " " " " s. 581*a*, p. 729.
15. Amends s. 386 (1) by inserting after the words "public school houses" (line 9) the words "or for electric light works in towns having a population of 5,000 or under."
16. Repeals s. 435 (2) and substitutes a new section. See *ante*, p. 453. (*c*)
17. Adds to s. 506, subs. 2 thereof. See *ante*, p. 550.
18. Amends s. 565 (1). See *ante*, pp. 684, 685.
19. Adds subs. 5 to s. 574. See *ante*, p. 705.
20. " subss. 7 and 8 to s. 687. See *ante*, pp. 950, 951.

Issue of debentures for drainage works to be done by pumping, etc.

21.—(1) In the case of any drainage work heretofore constructed and to be executed by pumping, embanking or other mechanical operations, the cost of which exceeds the sum of $25,000, the council of any municipality which has issued debentures to provide for payment of the cost of said drainage work by annual instalments of principal and interest, may from time to time issue debentures bearing interest at a rate of not less than 4 per cent. per annum, payable half-yearly, for the

(*a*) This section has been since amended by 63 V. c. 33, s. 4, which is printed *post*, at p. 995, and the amended section is also printed *ante* at pp. 97-98.

(*b*) This section has been since repealed by 62 V. (2nd Session) c. 26, s. 4. See *post*, p. 988.

(*c*) Note the further amendments of this section by 62 V. c. 26, ss. 26 and 45, *post*, pp. 990-991, and by 63 V. c. 33, s. 17, *post*, p. 1000.

61 V. c. 23, ss. 21-23. 62 V. (1) c. 2.

purpose of paying off and retiring, as they fall due, the debentures, or any of the debentures, and for the purpose of paying the interest on the said debenture debt falling due during the first six years of the term during which the debentures issued for the cost of constructing the drainage work are payable, and with the proceeds of the said debentures so issued may retire the debentures and pay the interest on the debenture debt falling due during the said period of six years, or any of them.

(2) The debentures issued under this section shall not exceed five in number and shall be for equal amounts, and one of such debentures shall be made payable in each year commencing with the first year after the expiration of the period during which the debentures issued for the cost of construction of such drainage work are to be paid off.

(3) Any council which issues debentures under this section shall levy in each year after the issue thereof a special rate upon the property assessed for the drainage work for the payment of the interest falling due from time to time on the said debentures, and shall also levy in each year in which any debenture issued under this section falls due, a special rate on the property so assessed sufficient to pay off such debenture.

(4) This section shall remain in force for a period of four years from the date of the passing of this Act, and at the expiration of the said period shall be deemed to be repealed, but this shall not affect the validity of any debentures issued, or other acts lawfully done under this section while the same remains in force. 61 V. c. 23, s. 21; 63 V. c. 17, s. 34.

As this section becomes effete on Jan. 17th, 1902, it is not printed in the body of the work.

22. Repeals R.S.O. c. 250, s. 4 (3), entitled "*An Act respecting the Slaughtering of Cattle and the Inspection of Milk and Meat Supplies of Cities and Towns*," and substitutes the following :—

"3. This section shall not come into operation, and no proceedings thereunder shall be taken until the close of the next session of the Legislature."

See also 62 V. (2nd Session) c. 26, s. 53, *post*, p. 992, and 63 V. c. 33, s. 38, *post*, p. 1005.

23. Adds s. 700*a*. See *ante*, p. 962.

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62 VICTORIÆ (1st SESSION), CAP. 2.

An Act to correct certain clerical and typographical errors in the Revised Statutes of Ontario, 1897.

(*Assented to August 24th, 1898.*)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. The Acts and parts of Acts mentioned in the Schedule to this Act are hereby amended in the manner set forth in the last column of the said Schedule. 62 V. (1) cc. 2, 5 & 11, s. 22.

2. The said amendments shall be deemed to have been in force on and from the 31st day of December last.

SCHEDULE.

Clauses (7)-(16) amend ss. 290, 375, 539 (3), 542 (15), 545 (3), 554, 583 (15) (16), 637 (5), and 700 of "*The Municipal Act*" (R.S.O. c. 223). These amendments are embodied in the sections as printed *ante*, at pp. 300, 373, 601, 614, 622, 648, 744, 869 and 961.

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62 VICTORIÆ (1st SESSION), CAP. 5.

An Act to amend "The Municipal Act."

(*Assented to August 24th, 1898.*)

This Act is printed *ante*, at p. 683, as s. 563*a* of "*The Municipal Act.*"

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62 VICTORIÆ (2nd SESSION) CAP. 11.

An Act to amend the Statute Law.

(*Assented to April 1st, 1899.*)

22. No person shall be disqualified from being elected a member of the council of any municipal corporation or from being elected a member of any public school, separate school or high school board, or from sitting or voting in such council or board by reason only of his being proprietor of or otherwise interested in a newspaper or periodical publication in which from time to time official advertisements are inserted by the council or board which appear in other newspapers or publications in the municipality or school district, or which is subscribed for by the council or board or by any of the departments or offices of the municipality or school district, although such advertisements or subscriptions are paid for at the usual rate out of the moneys of the municipal corporation or school board, but this shall not apply to any person who has entered into an agreement or contract with a municipal corporation or school board, to do at a specified rate all or the greater part of the printing required by such corporation or board during the term of such agreement or contract; but such member of council or school board shall not be entitled to vote where his own account is in question.

Newspaper proprietors inserting official advertisements not disqualified from sitting in councils, etc.

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62 VICTORIÆ (2nd SESSION) CAP. 26.

The Municipal Amendment Act, 1899.

(Assented to April 1st, 1899.)

1. Section 27 (4) (*ante*, p. 65) amended by striking out all the words down to "no by-law of the council" and substituting for the word "thereafter" (line 2), the words "after the proclamation has been issued."

2. Section 68 (*ante*, p. 95) amended by inserting after the word "city," (line 4) the words "or where a separated town is re-united to the county" (*a*).

3. S. 71 (*ante*, p. 96) amended by inserting at the commencement thereof the words "subject to the provisions of 's. 71*a*,'" and striking out all the words in italics after "wards" (line 5).

4. Repeals s. 74 (*ante*, p. 100).

5. Amends s. 75 by striking out the word "the" at the end of line 4 and adding at the end of the section the words "and shall, together with the representatives of separated towns mentioned in subsection 3 of section 41, constitute the said provisional council."

6. Amends s. 76 (1) (*ante*, p. 101), by striking out the word "deputy-reeve," line 4.

7. Amends s. 77 (*ante*, p. 106) by inserting the word "mayor" instead of "reeve" in line 2.

8. Amends s. 86 (1) "Thirdly" (*ante*, p. 121) by inserting in the last line on the page (after "assessment roll") the words "or for twelve months prior to the last day for making complaint to the County Judge under '*The Voters' Lists Act*.'

(2) Amends the same section under "Fourthly" (*ante*, p. 122), by striking out the words "the return by the assessors of the assessment roll upon which the voters' list used at the election is based," and inserting in lieu thereof the words "the date of the final revision and correction of the assessment roll or for twelve months prior to the last day for making complaint to the County Judge under '*The Voters' Lists Act*.'"

(3) Amends s. 86 (2) (p. 123) by inserting after "sons" (line 6) the words "step-son or step-sons," and after "step-father" (line 8) the words "and mother shall include step-mother."

(4) Repeals sections 100 and 101 of R. S. O. c. 223.

(5) Amends s. 113 as shewn *ante*, p. 139.

(6) " s. 114 " " p. 141.

(7) " s. 115 " " p. 142.

9-10. Amend ss. 118, 119, 120, 121, 122, 123, 124, as shewn *ante*, pp. 143 to 148; strike out the words "deputy reeves" from line 3 of s. 125 (p. 149), and insert in s. 127 (2) (p. 153) after "or" in the first line of the subs. the words "at any time before nine o'clock, p.m."

11. Repeals s. 140 and substitutes new section, printed *ante*, p. 162.

12. Amends s. 156 and Schedule "D" as shewn in the reprint thereof on p. 175.

13. " s. 158 as shewn in the reprint thereof, *ante*, p. 176.

14. " s. 161 as shewn in the reprint thereof, " p. 177.

15. " s. 162, reprinted as amended, *ante*, p. 177.

Form of ballot papers in cities and towns.

16.—(1) The form of ballot papers as set out in Schedule A to the said Act for use in cities shall not apply in the case of cities in which the aldermen or councillors are elected by general vote; but in the case of such cities and in the case of towns in which the aldermen or councillors are elected by general vote the form of ballot paper to be used shall be that set out in Schedule A to this Act.

(*a*) S. 68 was again amended in 1900. See 63 V. c. 33, s. 3, printed *post*, at p. 994, and the entire section as thus doubly amended is reprinted at p. 96, *ante*.

(2) The forms of ballot papers set out in schedule A of the said Act for use in case of townships divided into wards and in the case of incorporated villages and townships not divided into wards are repealed and the forms set out in Schedule B* to this Act are substituted therefor. 62 V. (2) c. 26. ss. 16 (2)—20. Form of ballot papers.

(3) Schedule B to the said Act, being directions for the guidance of voters in voting is amended by striking out all the words therein after the words "hard labour" at the end of the seventh paragraph of the said schedule and inserting in li thereof the form set out in Schedule B to this Act. Directions to rs.

Schedule "A" and "B" as hereby amended are reprinted *ante* at pp. 163-166, and 183-185.

17. Amends clause 5 of s. 189 (8) by substituting "returning officer" for "clerk of the municipality" (line 4).

18. Amends s. 191 (2) by inserting after the word "forward" (in line 3) the words "to him" and striking out the words "for the purpose of production before him to the clerk of the county."

19. Amends s. 263 by striking out the words "after two ballots" (line 3) and substituting the words "after the council has voted twice."

(2) Adds to s. 274 the following subsection:—

"274*a*. Whenever a division is taken in a municipal council, either upon the appointment of an officer of the corporation, the election of a warden or other presiding officer of the council, or upon a by-law, resolution or for any other purpose, each member of the council present voting shall announce his vote upon the question openly and individually in the council, and the clerk shall record the same; and no vote shall be taken by ballot or by any other method of secret voting in any municipal council; and every vote so taken shall be void and of no effect." Voting to be open and recorded by clerk.

(3) Amends s. 276 (2) by striking out the words "balloted" (line 3) and "ballot" (line 4) and substituting therefor the words "voted" (line 3) and "time" (line 4).

20. Adds the following section after s. 276:—

"276*a*.—(1) The council of any city having a population of less than 100,000 but more than 45,000, may by by-law, to be passed at their first meeting in the month of January in any year, provide for a Board of Control to be constituted in the same manner and with the same powers and duties as a Board of Control in cities having a population of 100,000 or more, but the salaries to be paid to members of the Board shall not exceed for each member the sum of $400.00 per annum. Boards of Control in cities of more than 45,000 and less than 100,000.

(2) No by-law passed under the powers conferred by this section shall be repealed within five years from the adoption thereof; and such by-law shall in no case be repealed except upon a two-thirds vote of the members of the council in favor of such repeal.

(3) This section shall not apply to the city of Hamilton."

* This is apparently a misprint, Schedule A being intended. See *ante*, p. 164.

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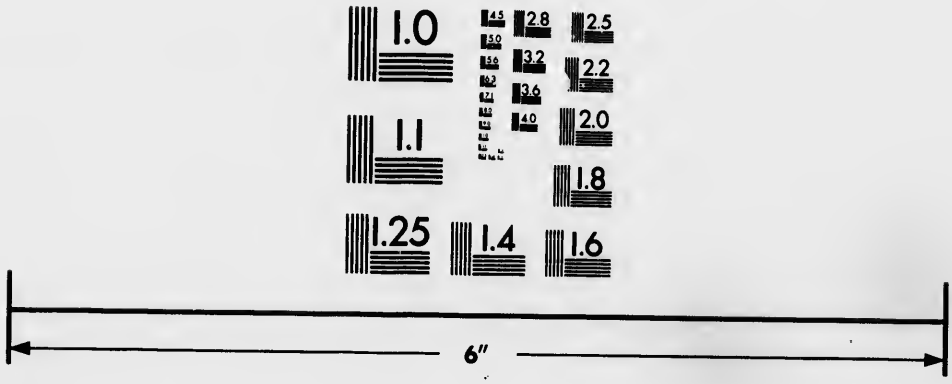

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62 V. (2) c. 26. ss. 21-31.

21. Adds to s. 378 subsections 6, 7, and 8 thereof, as printed *ante*, p. 385.

22. Adds s. 378*a*, as printed *ante*, p. 385.

23. Adds s. 388*a* as follows:—

City by-laws for raising money for certain bridges without assent of electors.

"388*a*. The council of a city by by-law passed at any meeting of the council, without submitting the same for the assent of the electors, but subject to the approval of such by-law by the Lieutenant-Governor in Council, may raise such sum or sums of money as may be required to pay and liquidate its share of the cost and expense incurred in building and constructing and also of rebuilding and reconstructing bridges over any stream which constitutes a dividing line between such city and any other municipality, and may in like manner pass a by-law or by laws to raise such sum or sums of money as may be required to re-build any existing bridge within the municipality; and for such purposes may issue debentures at such rates, for such times, not exceeding 20 years at the farthest, and upon such terms as such council may deem advisable. Provided always that the aggregate amount to be raised for all of said purposes in any one year shall be limited according to population as follows:—by a city having a population of not more than 20,000, the sum of $10,000; by a city with a population of more than 20,000 and not more than 100,000, the sum of $15,000; by a city with a population more than 100,000, $20,000; such population to be determined by the last preceding Dominion census."

Proviso.

24. Amends s. 396 (1) as shown *ante*, p. 416.

25. Repeals s. 411 and substitutes a new section, which is printed *ante*, pp. 429-430 (*a*).

26. Adds to s. 435 a new subsection, printed *ante* (p. 454) as subsection 3*a*. (*b*)

27 Repeals s. 438 and substitutes a new section, printed *ante*, p. 469.

28. Amends s. 481 as shewn *ante*, p. 524. (*c*)

29. Adds a new section, printed at p. 530 as s. 486*a*.

30. Adds to s. 516 a new subsection, printed *ante*, at pp. 554-555, as subsection 3.

(2) Repeals s. 512, and substitutes therefor a new section, printed *ante*, p. 553.

31. Adds to s. 524 the following subsection:—

Inmates of house of industry or refuge may convey property to a municipal corporation as payment or security for maintenance.

"(8) In case any person who is an inmate of such house of industry or house of refuge is possessed of any real or personal property and desires to transfer by way of security or by absolute conveyance such real or personal property to the municipal corporation having control of such house of industry or house of refuge as payment or compensation for his maintenance for such time as he remains an inmate therein or as

(*a*) And which has been since repealed by 63 V. c. 33, s. 11 (April, 1900). See *post*, p. 999.

(*b*) Note the further amendment of this section by 61 V. c. 23, s. 11, *ante*, p. 985, by s. 45 of this Act, and again in 1900 by 63 V. c. 33, s. 17, referred to *post*, at p. 1000.

(*c*) Note the further amendment of s. 481 in 1900, by 63 V. c. 33, s. 19, *post*, at p. 1000.

62 V. (2) c. 26, ss. 31-45.

may be agreed upon, such person may convey or transfer either by way of security or absolutely as aforesaid such real or personal property to the municipal corporation, and the municipal corporation may receive and hold such real or personal property for the purposes of the corporation and n ay dispose of the same in such manner as the council may deem proper; or, in case such property is only held by way of security, the said corporation shall, upon the death of such person, sell and dispose of the same and apply the proceeds in payment of the actual cost of maintenance of such person in such house with interest thereon at six per cent. per annum, together with the cost of realizing on said property. The balance of such proceeds, if any, shall go to the person entitled thereto as if such conveyance had not been made or according to his direction: but no such conveyance shall be valid unless executed in the presence of the Judge of the county and unless there shall be endorsed thereon a certificate signed by such Judge stating that he has examined the grantor and is satisfied that the transfer is not under the circumstances improvident and was made by the grantor voluntarily and that he understood the effect thereof and desired to make such conveyance."

32. Amends s. 526 as shewn *ante*, p. 562 (*a*).

33. Adds s. 542*a*, printed *ante*, p. 618.

34. Adds to s. 542, subss. 17*a*, 17*b*, 17*c*, and 17*d*, printed *ante*, at pp. 617, 618.

35. Amends s. 566 (4) as shewn *ante*, pp. 687-690 inclusive (*b*).

(2) Amends s. 566 (4*b*) and s. 569 (7) as shewn *ante*, pages 691 and 699.

(3) Amends s. 566 (4*d*) and (4*e*) as shewn *ante*, pp. 691 and 692.

(4) Amends s. 569 (5) as shewn *ante*, p. 698.

(5) Printed at p. 699 in the small-print note under s. 569 (5).

36. Amends s. 579 (2) as shewn on p. 714 (2). See small-print note to s. 579, *ante*, p. 717.

37. Repeals s. 583 (22) and substitutes new subsections (22) and (22*a*) which are printed *ante* at pp. 745 and 746.

(2) Adds to s. 583 (23) and 583 (35) the words printed as part of these sections *ante*, pp. 746 and 752 (*c*).

38. Amends s. 591 (1) as shewn on p. 793.

39. Adds to s. 606 (4) a new subsection, which is printed *ante*, at p. 840.

40. Amends clause (a) of s. 640 (11) as shewn *ante*, p. 875.

41. Adds to s. 666 a new clause, which is printed therewith, *ante*, at p. 918.

42. Adds to s. 668 (1) the words inserted therein, *ante*, at pp. 920-921.

(2) Adds to s. 669 (3) the words inserted therein, *ante*, at p. 925.

43. Adds to s. 678 a new subsection (2*a*), which is printed *ante*, at p. 942 (*d*).

44. Substitutes for s. 699 (1) a new subsection (1) printed *ante*, at p. 959.

(2) Amends s. 699 (2) as shewn *ante* p. 960.

45. Adds to s. 435 section 2*a* thereof, as printed *ante*, pp. 453-4.

(*a*) S. 526 was again amended in 1900 by 63 V. c. 33, ss. 21, 22, as noted *post*, p. 1001.

(*b*) S. 566 (4) was again amended in 1900 by 63 V. c. 33, ss. 29, 30, 31. See *post*, p. 1002.

(*c*) S. 583 (23) was repealed and a new subsection inserted in lieu thereof by 63 V. c. 33, s. 37 which is printed *post*, p. 1003.

(*d*) S. 678 has since been amended by 63 V. c. 33, s. 47. See *post*, p. 1006.

62 V. (2) c. 26, ss. 46-53.
62 V. (2) c. 30.

"**46.** The council of any township, town or village may pass by-laws for making an annual grant not exceeding $100 towards the maintenance of a ferry over any navigable water separating a part of such municipality from the remainder thereof, or separating such municipality from any other municipality in the Province of Ontario."

47. Printed as s. 743*b*, *ante*, p. 978.

48. Printed as s. 735*a*, *ante*, p. 976.

49. Printed as s. 743*a*, *ante*, p. 978 (*a*).

50. Amends "*The Act respecting the establishment of Municipal Institutions in Territorial Districts*," (R.S.O. c. 225), s. 1 (2).

51 and **52.** Local.

53. Amends "*The Act respecting the Slaughtering of Cattle and the Inspection of Meat and Milk Supplies of Cities and Towns*," (R. S. O. c. 250), s. 4 (3).

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62 VICTORIÆ, (2nd SESSION), CAP. 30.

An Act to amend "The Ontario Tree Planting Act."

(*Assented to April 1st, 1899.*)

Printed *ante*, p. 981, as s. 746*a*.

(*a*) Repealed April, 1900, and a new section substituted by 63 V. c. 33, s. 52. Note also 63 V. c. 33, ss. 53-56. These sections are printed *post*, at pp. 1008-1010.

63 VICTORIÆ, CAP. 9.

An Act respecting Provincial Aid towards the establishment of Municipal Cold Storage Buildings.

63 V. c. 9.

(Assented to April 30th, 1900.)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The council of any municipality may pass by-laws:

Municipal by-laws for establishing cold storage buildings.

(1) For acquiring land as a site for buildings for cold storage purposes;

(2) For erecting thereon buildings with all necessary and suitable appliances for cold storage purposes;

(3) For the management and control and operation of such buildings;

(4) For prescribing the fees to be paid by persons from time to time storing goods and produce in such buildings, provided that such fees shall be subject to any order of the Lieutenant-Governor in Council from time to time passed for the purpose of fixing the maximum fees to be charged by municipalities for cold storage.

2. Any two or more municipalities may enter into an agreement for jointly acquiring land and erecting buildings for cold storage purposes and for the joint control and management of the same, and for such purpose may pass all necessary by-laws and do all necessary acts to carry out such agreement.

Agreements for joint action by municipalities.

3. The Lieutenant-Governor in Council may by Order-in-Council direct that out of any moneys that may be voted by the Legislative Assembly for that purpose there shall be paid to any municipality or municipalities which have heretofore erected or may hereafter erect buildings for cold storage purposes as hereinbefore mentioned a sum not exceeding one-fifth of the cost of the construction and equipment of such cold storage buildings, provided that no such grant shall in any case exceed the sum of $500; and provided further that any cold storage buildings erected under this Act shall be distant not less than five miles from any other cold storage buildings erected by private capital or erected under any other Act of this Legislature.

Grants of public moneys in aid of municipal cold storage.

4. No grant shall be made under this Act until the Commissioner of Public Works of the Province of Ontario has reported to the Lieutenant-Governor in Council that he has caused the said buildings to be examined, and that as to structure, equipment and all reasonable essentials for cold storage

Report of the Commissioner of Public Works.

53 V. c. 9. ss. 4, 5; c. 33, ss. 1-2

purposes they will supply effectual cold storage for the products of the dairy, orchard and farm and such other products as are usually placed in cold storage for preservation.

Buildings need not be within municipalities granting aid.

5. It shall not be necessary for the purposes of this Act that the site selected for the erection of buildings for cold storage shall be within the municipality or municipalities or any of them issuing the debentures for the purchase of the same.

Note also s. 581*a* of "*The Municipal Act*," printed *ante*, at p. 729.

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63 VICTORIÆ, CAP. 33.

The Municipal Amendment Act, 1900.

(*Assented to, April 30th, 1900.*)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows:—

Rev. Stat. c. 223, s. 27, amended.

1. Section 27 of *The Municipal Act* (*a*) is hereby amended by adding after the word "town" in the first line of said section the following words, "containing by the last municipal census at least five thousand inhabitants."

Rev. Stat. c. 223, s. 27, subs. 2, amended.

Proviso.

2. Subsection 2 of the said section 27 of the said Act (*b*) is hereby amended by adding at the end of the said sub-section the following words: "Provided that no such town shall in any case be allowed the value of any interest it may have in any county property unless the council of the county in which the said town is situated ratifies and confirms the by-law of such town withdrawing from the county, such ratification and confirmation to be made by by-law of the council of such county."

Rev. Stat. c. 223, s. 68, amended.

3. Section 68 of the said Act (*c*) is amended by adding thereto the following:—

Forming town re-united to county into a separate county council division.

"Or the said Board may with the consent of the councils of the county and separated town form the separated town about to be reunited into a division of the county council in addition to the present divisions, to be represented in proportion to population, one member being added for such town when the population thereof is less than any of the county council divisions, and two members being added for such town when the population is equal to that of any of the existing county council divisions. This arrangement shall continue only until a redistribution of the county council divisions shall take place by reason of increase of population or otherwise."

(*a*) See *ante*, p. 63. (*b*) See *ante*, p. 65. (*c*) See *ante*, p. 95.

4.—(1) Section 71 of the said Act (*a*) is amended by inserting in subsection 3 thereof after the word "vote" in the fifth line thereof the words "or of a mayor and six aldermen when the population is less than 6,000." 63 V. c. 33. ss. 4 5.

This amendment shall come into force immediately after the passing thereof and in cases where the number of aldermen already elected is less than six, additional aldermen shall be elected as soon as possible after the coming into force of this Act. Such election shall be held in the same manner as an election to fill a vacancy in the council.

(2) Section 71*a* of the said Act (*b*) is amended by inserting therein after subsection 4 the following subsections:— Rev. Stat. c. 223, s. 71*a*, amended.

"(4*a*) In any city having a population of more than 15,000, the council may by by-law provide that the aldermen shall be elected by a general vote of the municipal electors, and either by general vote or in two electoral divisions where the population exceeds 40,000, one half the number to be elected by each division; but such by-law shall not come into force unless and until it has been first submitted to a vote of the electors according to the provisions of this Act with regard to by-laws requiring the assent of the electors. For the purposes of this section the population of any city shall be determined by the then last census of the Dominion of Canada. The persons entitled to vote upon such by-law shall be those who are entitled to vote at municipal elections, and if the submission of such by-law be desired by petition of at least 400 of such electors, it shall be submitted at the then next annual municipal election. If such by-law be carried by the votes of a majority of the municipal electors voting thereon, it shall come into effect at the next annual municipal election. Such by-law may be repealed by a by-law to be submitted to the electors at any annual municipal election held not later than five years after the passing of such first mentioned by-law, the repealing by-law to be submitted to the vote of the municipal electors if petitioned for by at least 400 of such electors. Aldermen in cities of more than 15,000 may be elected by general vote, or where over 40,000 by general vote in two electoral divisions.

(4*b*) Where, by a vote of the electors taken at a municipal election in any city within a year last past, it has been declared that the election of the members of the council should thereafter be by general vote of the electors and not by wards, a by-law bringing the Act into force may be passed by the council of the municipality before the first day of July next, without submitting the same to a vote of the municipal electors." Where already voted on within a year by-law may be passed.

5. Section 129 of the said Act (*c*) is amended by adding the following subsection:— Rev. Stat. c. 223, s. 129 amended.

"(3*a*) In cities having a population of more than 30,000 every candidate shall on the day of the nomination or on the follow- Candidates to file declaration of qualification.

(*a*) See *ante*, p. 98. (*b*) See *ante*, p. 98. (*c*) See *ante*, p. 154.

63 V. c. 33, ss. 5-8 (2).

ing day, or when such last named day is a holiday, then before 5 o'clock in the afternoon of the succeeding day, file in the office of the clerk of the municipality a statutory declaration in accordance with the form contained in section 311 of this Act or to the like effect, that he possesses the necessary qualification for the office; and in default of his so doing such candidate shall be deemed to have resigned, and his name shall be removed from the list of candidates and shall not be printed on the ballot papers."

Votes in each ward.

6. Section 158 of the said Act, as enacted by section 13 of *The Municipal Amendment Act, 1899*, is amended by inserting after the word "wards" in the second line thereof the words "or in two divisions or by a general vote."

See s. 158, reprinted as amended, *ante*, p. 176.

Rev. Stat. c. 223, s. 276, subs. 1 amended.

Four controllers.

Abolition of double vote of mayor.

7. Subsection (1) of section 276 of *The Municipal Act* (*a*) is amended by substituting the word "four" for the word "three" where it first occurs in the third line thereof and also in the fourth line; and subsection (2) of the said section 276 is amended by striking out the word "three" in the first line and inserting the word "four" in lieu thereof. Subsection (3) of the said section 276 is amended by striking out the words "in the event of a tie at the Board the Mayor shall have a second or casting vote" in the third and fourth lines thereof.

Rev. Stat. c. 223, s. 366*a* added.

8. The said Act is amended by inserting therein the following section:—(*b*)

Requisites to validity of bonus by-law.

"366 (*a*) (1).—To render valid a by-law of the municipality for granting a bonus in aid of any manufacturing industry, the assent shall be necessary of two-thirds of all the ratepayers who were entitled to vote on the by-law, unless the number of ratepayers voting against such by-law does not exceed one fifth of the total number entitled to vote, when the assent of three-fifths only of all the ratepayers shall be necessary, and in addition to the certificate required by section 364 of this Act the clerk, in case of a majority of the votes being in favour of the by-law, shall further certify whether or not, as far as shown by the voters' list and assessment roll, such majority appears to be two-thirds of all the ratepayers who are entitled to vote on the by-law, and if such majority appears to be less than two-thirds of such ratepayers the clerk shall further certify whether or not such majority appears to be three-fifths of all such ratepayers and whether or not the number voting against such by-law appears to be more than one-fifth of the ratepayers so entitled to vote.

(2) In case of a dispute as to the result of the vote, the Judge shall have the same powers for determining the question as he has in any case of a scrutiny of the votes.

(*a*) See *ante*, p. 287. (*b*) To be noted on p. 367.

(3) The petition to the Judge may be by an elector or by the council, and the proceedings for obtaining the Judge's decision shall be the same as nearly as may be as in the case of a scrutiny. 63 V. c. 33, ss. 8 (2)-9.

(4) Provided, however, that in the case of the Districts of Nipissing, Algoma, Thunder Bay and Rainy River, such by-law shall be carried if two-thirds of the ratepayers who actually vote (and being a majority of all the ratepayers entitled to vote) shall vote in favour of the by-law."

9. The said Act is further amended by adding at the end of section 591 (*a*) the following:— Rev. Stat. c. 223, s. 591, amended.

"By the councils of counties, townships, cities, towns and incorporated villages:—

12. For granting aid by way of bonus for the promotion of manufactures within the limits of the municipality to such person or body corporate and in respect of such branch of industry as the municipal council may determine upon; and to pay any sum of money granted by way of gift or loan either in one sum or in annual or other periodical payments with or without interest and subject to such terms, conditions and restrictions as the said municipality may deem expedient. By-laws granting aid to manufacturers.

(a) No such by-law shall be passed until the assent of the electors has been obtained in conformity with the provisions of this Act in respect of by-laws for granting bonuses to manufacturing industries. Assent of electors.

(b) No property owner or lessee interested in or holding any stock in any company shall be qualified to vote on a by-law for the purpose of granting a bonus to the company in which he is so interested as aforesaid. Shareholders not to vote.

(c) Any municipality granting such bonus may take and receive security for the compliance with the terms and conditions upon which such aid is given. Security for fulfilment of terms of bonus.

(d) No by-law shall be passed granting a bonus to or for a manufacturer under this section who proposes establishing an industry of a similar nature to one already established in such municipality unless the owner or owners of such established industry or industries shall first have given their consent in writing to the granting of such bonus, loan or guarantee. Industry not to be aided where one of like nature established without bonus.

(e) No by-law shall be passed by a municipality for granting a bonus to secure the removal of an industry already established elsewhere in the Province. Not to secure removal of industry from another place in Ontario.

(*a*) To be noted on p. 801. Subs. 11 of s. 591 is added by s. 43 of this Act, which is printed *post*, at p. 1006.

63 V. c. 33, ss. 9-10.

Aid so given not to exceed 10 per cent. of total tax rate.

(*f*) No such by-law shall be passed for granting a bonus by gift or loan or guarantee of money to any manufacturing industry where the granting of such bonus would for its payment, together with the payment of similar bonuses already granted by said municipality require an annual levy for principal and interest exceeding 10 per cent. of the total annual municipal taxation thereof, but if such bonus is by way of loan or guarantee of money then any amount to be repaid annually by any person or company so aided shall be taken into account and shall for the purposes of this paragraph be deducted from the amount required to be levied annually. Nothing herein contained shall relieve the municipal council from liability for neglecting to levy annually the special rate required to repay any debt contracted by the municipality."

Bonus defined.

10. The word "bonus" where it occurs in section 366*a* or subsection 12 of section 591 of *The Municipal Act* as amended by this Act (*a*) shall mean and include:—

(*a*) A grant of money as a gift or a loan, either unconditionally or conditionally.

(*b*) The guaranteeing of the repayment of money loaned, and interest.

(*c*) The gift of lands owned by the municipality or the purchase of lands as a site for building and works or as a means of access or for any other purpose connected with the manufacturing industry to be aided or the leasing of lands either freely or at a nominal rental for any such purpose.

(*d*) The closing up or opening, widening, paving or improving of any street, alley, lane, square or other public place or the undertaking of any other public work or improvement which involves the expenditure of money by the corporation for the particular use or benefit of a manufacturing industry.

(*e*) The supplying of water, light or power by the municipal corporation either freely or at rates less than those charged to other persons and corporations in the municipality.

(*f*) Generally the doing, undertaking or suffering on the part of a municipal corporation of any act, matter or thing which involves or may thereafter involve the expenditure of money by a municipal corporation.

(*a*) See the preceding foot-note.

(*g*) A total or partial exemption from municipal taxation or the fixing of the assessment of any property for a term of years, but nothing in this Act contained shall be deemed to authorize any exemption for a longer period than ten years and a renewal of such exemption for a further period not exceeding ten years or any exemption, either partial or total, from taxation for school purposes, or any by-law or agreement which directly or indirectly has or may have the effect of such an exemption. 63 V. c. 33, ss 10-15.

11. (1) Section 411 of *The Municipal Act* as amended by section 25 of *The Municipal Amendment Act, 1899*, is repealed. Rev. Stat. c. 223, s. 411, repealed.

(2) Any by-law already voted upon since the first of January, 1900, and any by-law at the present time submitted or being submitted to a vote of the ratepayers providing for a bonus, which would come under the provisions of section 8, 9 and 10 of this Act, and which has been or shall be carried by the vote of the required number of ratepayers, and which shall comply with the other provisions of the said sections 8, 9 and 10 shall be deemed to have been or to be submitted and carried under and in conformity with the terms of the said sections.

S. 411 of "*The Municipal Act*," as amended by s. 25 of "*The Municipal Amendment Act, 1899*," is printed *ante*, at p. 429.

12. Section 375 of the said Act (*a*) is amended by striking out the words "the publication shall for the purposes aforesaid be continued" and substituting therefor the words "the said copy and notice shall for the purpose aforesaid be inserted." Rev. Stat. c. 223, s. 375 amended.

13. Subsection 4 of section 384 of the said Act (*b*) is hereby amended by inserting the following words —"Iron or other smelting works," after the word "railways" in the first line of said subsection. Rev. Stat. c. 223, s. 384, subs. 4, amended.

14. Subsection 1 of section 397 of the said Act (*c*) is amended by striking out the words "the publication shall for the purpose aforesaid be continued" and substituting therefor the words "the said notice shall for the purpose aforesaid be inserted." Rev. Stat. c. 223, s. 397 amended.

15. Section 398 of *The Municipal Act* (*d*) is amended by inserting therein the word "township" immediately after the word "town" in the second line of the said section. Rev. Stat. c. 223, s. 398, amended.

(*a*) See *ante*, p. 373.
(*b*) See *ante*, p. 390.
(*c*) See *ante*, p. 417.
(*d*) See *ante*, p. 418.

63 V. c. 33, ss. 16-19.

16.—(1) The said Act is amended by inserting the following as section 424*a*:—

Apportionment of public school moneys among school sections in townships.

424*a*. The municipal corporation of every township shall have power to apportion by by-law, among the public school sections in the township, the principal or interest of any investments held by the corporation for public school purposes according to the salaries paid to the teachers engaged by the respective school sections during the past year, or according to the average attendance of pupils at each school section during the same period or according to the assessed value of the property in the section, or by an equal division among the several sections.

62 V. (2) c. 11, s. 29 repealed.

(2) Section 29 of *The Act to amend the Statute Law* passed at the second session held in the 62nd year of Her Majesty's reign is hereby repealed.

Rev. Stat. c. 223, s. 435, amended. Borrowing for current expenditure pending collection of taxes.

17. Subsection 1 of section 435 of *The Municipal Act* (*a*) is amended by inserting after the word "borrow" in the third line thereof the words "either before or after the passing of the by-law levying the taxes for the current year," and by inserting after the word "levied" in the fifth line thereof the words "or to be levied."

Rev. Stat. c. 223, s. 436 repealed.

18. Section 436 of the said Act (*b*) is hereby repealed and the following section substituted therefor:—

Debentures, etc., not to be for less sums than $100.

436. Unless specially authorized so to do, and save as hereinafter provided, no council shall make or give any bond, bill, note, debenture or other undertaking for the payment of a less amount than $100; and any bond, bill, note, debenture or other undertaking issued in contravention of this section shall be void.

Proviso as to debentures issued for sums which include principal and interest.

"Provided that any debenture heretofore or hereafter issued under the authority of any by-law passed under or pursuant to the provisions of sections 384 and 386 of this Act providing for payment of principal and interest together yearly, so computed and apportioned, that the sum of both principal and interest payable under the by-law shall be an even annual sum of not less than $100 whether such debenture is issued with or without separate interest coupons attached thereto shall be deemed to be a debenture of not less than $100 within the meaning of this section, and all debentures heretofore or hereafter so issued under such a by-law and otherwise legal are hereby declared valid."

Rev. Stat. c. 223, s. 481, amended.

19. Section 481 of *The Municipal Act* (*c*) is amended by inserting therein, after the words "police magistrate" in the sixth line of the said section, the words: "in case of the ab-

(*a*) See *ante*, p. 453; also pp. 985, 990, 991. (*b*) See *ante*, p. 455.

(*c*) See *ante*, p. 521.

sence from the Province of the police magistrate, the deputy police magistrate, if any, shall be a member of the Board for the time being."

63 V. c. 33, ss. 19, 25.

20. Section 484 of said Act (*a*) is amended by inserting the following subsection :—

Rev. Stat. c. 223, s. 484, amended.

"(4*a*) The Board of Commissioners of Police in any city and the council of any town may by by-law prohibit keepers of second-hand shops, or junk stores or shops, from directly or indirectly purchasing from, exchanging with or receiving in pledge from any minor appearing to be under the age of 18 years, without written authority from a parent or guardian of such minor, any metals, goods or articles."

Junk shops buying from minors.

21. Subsection 1 of section 526 of *The Municipal Act* (*b*) is hereby amended by striking out the words: "Any two of Her Majesty's Justices of the Peace or of the inspectors appointed as aforesaid may by writing under their hands and seals" at the commencement of the said subsection and inserting in lieu thereof the words: "Any person authorized for that purpose by by-law of the county council may by writing under his hand and seal."

Rev. Stat. c. 223, s. 526, subs. 1.

22. Subsection 3 of the said section 526, as enacted by section 32 of *The Municipal Amendment Act, 1899*, (*c*) is repealed.

62 V. (2) c. 26, s. 32, subs. (3) repealed.

23. Section 530 of *The Municipal Act* (*d*) is amended by adding thereto the following subsection :—

Rev. Stat. c. 223, s. 530, amended.

"(3) Where a city forms part of a county for judicial purposes and pays a proportion of the expenses of the administration of justice, one of the auditors appointed for auditing and approving accounts and demands preferred against the county, a proportion of which is payable by the city, shall be appointed by the city council, the other auditor being appointed by the county council."

Appointment of one auditor by city council.

24. The paragraph numbered 2 in section 532 of the said Act (*e*) is amended by striking out the words "the by-law" in the 8th line of the said subsection, and inserting instead the words: "a copy thereof certified under the hand of the clerk and the seal of the municipality."

Rev. Stat. c. 223, s. 532, subs. 2, amended.

25. Section 536 of the said Act (*f*) is amended by striking out the figures "200" wherever they occur therein, and substituting therefor the figures "300," and by substituting "400" for "300" in subsection 12 : but this amendment shall not apply to cities having 100,000 inhabitants or more.

Rev. Stat. c. 223, s. 536, amended.

Number of electors in polling subdivisions.

(*a*) See p. 529. (*b*) See p. 532. (*c*) *Ibid.*
(*d*) See p. 565. (*e*) See p. 589. (*f*) See pp. 586, 587, 589.

63 V. c. 33, ss. 26-32.

Rev. Stat. c. 223, s. 549 amended.

26. The paragraph numbered 1 in section 549 of the said Act (a) is hereby amended by inserting after the word "posting" in the first line of said section, the words "or exhibiting," and by inserting after the word "placards" in the said first line thereof the words "play bills or posters" and by inserting before the words "or pictures" in the second line thereof the word "photographs."

Rev. Stat. c. 223, s. 549 amended.

Sparring exhibitions and boxing matches.

27. Section 549 of the said Act (b) is amended by inserting therein after the paragraph numbered 9 the following:—

"(9a) For preventing the holding of sparring exhibitions and boxing matches, where an admission fee is charged, unless a permit therefor is issued by the chief of police in cities and towns, or by the reeve in municipalities in which there is no chief of police."

Rev. Stat. c. 223, s. 557 par. 6 repealed

By-laws for preventing persons from throwing dirt, etc., in highways.

28. The paragraph numbered 6 in section 557 of the said Act (c) is repealed, and the following inserted in lieu thereof.—

"(6) For preventing persons from throwing any dirt, filth, glass, handbills, paper or other rubbish, or the carcasses of animals upon any street, road, lane or highway."

Rev. Stat. c. 223, s. 566 (4) amended.

29. The paragraph numbered 4 in section 566 of *The Municipal Act* as enacted by section 35 of *The Municipal Amendment Act*, (d) *1899* is amended by inserting after the word "principal" in the fourth line the words "or of the principal and interest."

Rev. Stat. c. 223, s. 566 (4) (a5) amended.

30. Article (a5) of the said paragraph, as enacted by section 35 of *The Municipal Amendment Act, 1899*, (e) is hereby amended by striking out the words "one month" in the first line and inserting in lieu thereof the words "three months" and by inserting after the word "award" in the second line of the said article (a5) the words "or after the receipt by the municipality of notice of acceptance of the offer" and by inserting after the word "terms" in the fourth line of the said article (a5) the words "of the award" and by striking out the word "thereof" in the said fourth line.

Rev. Stat. c. 223, s. 566 (4) (a 9) amended.

31. Article (a9) of said paragraph numbered 4, as enacted by section 35 of *The Municipal Amendment Act, 1899*, (f) is amended by inserting after the word "*Arbitrations*" in the third line of said article (a9) the words "or some other person."

Rev. Stat c. 223, s. 569, subs. 5, amended.

32. Subsection (5) of section 569 of *The Municipal Act* (g) is amended by substituting the word "with" for the word "and" in the fourth line and by striking out the words "has

(a) See p. 630. (b) Note this on p. 637. (c) See p. 662.
(d) See p 687. (e) See p. 689. (f) See p. 690.
(g) See p. 698.

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(*e*) See p. 662.
(*f*) See p. 690.

been published for two months" in the fifth and sixth lines of the said subsection. 63 V. c. 33, ss. 32-37.

33. The paragraph numbered 6 in section 583 of the said Act (*a*) is amended by inserting the words "and bill distributors" after the word "posters" in the first line thereof. Rev. Stat. c. 223, s. 583, (6), amended.

34. The paragraph numbered 10 in section 583 of the said Act (*b*) is hereby amended by inserting the words "theatres, music halls" after the word "profit" in the second line of the said paragraph. Rev. Stat. c. 223, s. 583, par. 10, amended.

35. The paragraph numbered 16 in section 583 of the said Act (*c*) is amended by inserting in the said subsection after the word "push-cart" in the fourth line "$10 for one carrying a pack," and by adding at the end of the said paragraph the words "and every such licensee shall at all times whilst carrying on his business have his license with him and shall upon demand exhibit the same, and upon failing to exhibit the same when demanded shall, unless the same is accounted for satisfactorily, be liable to a penalty of not less than $1 nor more than $5, together with costs recoverable before a Justice of the Peace." Rev. Stat. c. 223, s. 583, amended. Pedlars' licenses. Hawkers and pedlars licenses.

36. The paragraph numbered 37 in section 583 of the said Act (*d*) is amended by adding thereto the words "and for regulating and licensing the drivers of cabs and other vehicles for hire." Rev. Stat. c. 223, s. 583, par. 37, amended.

37. The paragraph numbered 23 in section 583 of *The Municipal Act* as amended by subsection 2 of section 37 of *The Municipal Amendment Act, 1899,* (*e*) is repealed, and the following substituted therefor:— Rev. Stat. c. 223, s. 583, par. 23 and 62 V. (2), c. 26, s. 37 (2) repealed.

"23. For licensing and regulating milk vendors. Licensing milk vendors.

(*a*) Every applicant for a license under any such by-law shall be entitled thereto upon the production of a certificate signed by the secretary of the Local Board of Health of the municipality in which such applicant resides that he has complied, in all respects, with the provisions of section 10 of the by-law set out in Schedule "B" to *The Public Health Act.* Certificate of Local Board of Health.

(*b*) The premises of every person licensed under a by-law passed in pursuance of this paragraph shall at all times be open to inspection by any medical health officer or sanitary inspector of the municipality granting such license. Inspection of premises.

(*a*) See p. 734. (*b*) See p. 736. (*c*) See p. 744.
(*d*) See p. 753. (*e*) See p. 746.

63 V. c. 33. s. 27.

Suspension of license.

(c) A license granted under any such by-law may be suspended for non-compliance with the provisions of section 10 of the said by-law, set out in Schedule B to *The Public Health Act*, by the Local Board of Health of the municipality issuing the license, and unless removed by the Provincial Board of Health, as hereinafter mentioned, such suspension shall continue until such Local Board is satisfied that the provisions of the said section 10 are duly complied with; but where the licensee does not reside in the municipality granting the license such suspension shall not take place until the medical health officer or a sanitary inspector of the Local Board of the municipality granting the license, and a medical health officer or a sanitary inspector of the municipality in which the premises of the licensee are situate, have together examined the premises of the licensee, and it shall be the duty of such medical health officer or sanitary inspector to make such joint examination within twenty-four hours after being required to do so by the chairman of the Local Board of Health of the municipality issuing the license, and if no medical health officer or sanitary inspector of the municipality in which the premises of the licensee are situate shall join in making such examination within twenty-four hours after being so required, the Board of Health of the municipality granting the license may act without any report of such medical health officer or sanitary inspector.

Joint inspection.

Concurrence in suspension.

(d) If such medical health officer or sanitary inspector of the municipality in which the licensee resides shall join in the inspection, but shall not concur in the suspension of the license, no such suspension shall take place unless it shall first be sanctioned by the secretary of the Provincial Board of Health.

Appeal to Provincial Board of Health.

(e) Any licensee whose license has been suspended by a Local Board of Health shall have the right to appeal to the Provincial Board of Health against any such suspension, and such appeal shall be heard upon two days' notice in writing being given to the Board of Health of the municipality granting the license, and the decision of the Provincial Board of Health shall be final.

Notice of decision.

(f) Notice of the action of the Provincial Board of Health shall be given in writing, by the Secretary thereof, to each of the parties concerned, and no new license shall be granted to the holder of the suspended license until the suspension is removed, or the conditions imposed by the Provincial Board of Health have been complied with."

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38. To remove doubts it is hereby declared that section 4 of *The Act respecting the Slaughter of Cattle and the Inspection of Meat and Milk Supplies in Cities and Towns* is not and never has been in force in this Province, and the said section shall not come into operation and no proceedings thereunder shall be taken until the close of the next session of the Legislature.

63 V c. 33, ss. 38-41.

Rev. Stat. c. 250, s. 4, declared not to be in force.

See also 61 V. c. 23, s. 22, *ante*, p. 786, and 62 V. (2), c. 26, s. 53, *ante*, p. 992.

39. The paragraph numbered 28 in the said section 583 is amended by adding thereto the following words:—

Rev. Stat. c. 223, s. 583, par. 28, amended.

"And for revoking any license so granted whenever the council or board deems such revocation desirable, without stating any reason therefor, but in the case of the revocation of a license under any such by-law, the treasurer of the municipality shall refund to the licensee such proportionate part of the license fee as will represent the unexpired portion of the term for which the license was granted."

Revocation of licenses to tobacconists, etc.

See p. 748 and the N.B. at the top of p. 749.

40. Section 586 of *The Municipal Act* (*a*) is amended by inserting therein after the paragraph numbered 1 the following:—

Rev. Stat. c. 223, s. 586, amended.

"1*a*. For preventing the hauling of dead horses, offal, night soil or other offensive matter or things along any street in the municipality to be named in the by-law during the hours of daylight."

Hauling dead horses, etc., through the streets in daylight.

41.—(1) Paragraph numbered 5 in section 587 of *The Municipal Act* (*b*) is amended by inserting after the word "College," in the second line thereof the words: "or any other University or College within Ontario, or any historical, literary or scientific society, and for creating a debt therefor, and for the issue of debentures for the amount of such debt; and such grants may be made from time to time, and may be either by one payment, or by an annual payment for a limited number of years, and upon such terms and considerations as may be agreed upon."

Rev. Stat. c. 223, s. 587, par. 5 amended.

(2) The paragraph numbered 6 in the said section 587 (*c*) is amended by inserting after the word "College" in the third line thereof the words: "or any other University or College within Ontario."

(3) The paragraph numbered 8 in the said section 587 (*d*) is amended by inserting after the word "College" in the third line thereof the words: "or any other University or College within Ontario."

(*a*) To be noted on p. 759.
(*b*) See pp. 784, 785.
(*c*) See p. 785.
(*d*) See p. 786.

63 V. c. 33, ss. 42-47.

Rev. Stat. c. 223, s. 591 (2), amended.

42. The paragraph numbered 2 in section 591 of the said Act (*a*) is amended by adding at the end thereof the following words: "and for aiding in the establishment or maintenance of a band or bands by any corps of active militia within the county or for aiding and encouraging amateur athletic or aquatic sports."

Rev. Stat. c. 223, s. 591, amended.

Aid to life boat association.

43. Section 591 of the said Act (*b*) is amended by adding thereto the following paragraph:—

"11. For aiding and assisting by annual money grant or otherwise as the council may deem expedient any organization owning, manning and working lifeboats or other salvage apparatus for life saving purposes."

Rev. Stat. c. 223, s. 595, amended.

Horse thieves.

44. Section 595 of *The Municipal Act* (*c*) is amended by adding at the end thereof the following:—

"Provided that the amount payable as the reward upon any such conviction as aforesaid shall be in the discretion of the Judge but shall not exceed the amount fixed by the by-law."

Rev. Stat. c. 223, s. 633 (1), amended.

45. Subsection 1 of section 633 of the said Act (*d*) is amended by inserting the words "or copy" after the word "original" in the 8th line of the said subsection.

Rev. Stat. c. 223, amended.

Settling with contractors for local improvements as upon *quantum meruit*.

46. The said Act is amended by adding thereto the following as section 672*a*:

"672*a*. Every municipal council shall have power to pass a by-law to agree and settle as upon a *quantum meruit* with any contractor or contractors for any work which has been done or shall be done as a local improvement, where such council shall consider the work to have been performed sufficiently for the purposes of such local improvement although not in strict compliance with the contract, and the amount so agreed upon and fixed shall be the amount or part of the amount, as the case may be, for which an assessment may be made upon the properties benefited by such local improvement; and this clause shall apply to all work heretofore done, as well as to future work. Provided that nothing herein shall be construed to enlarge or extend the rights (if any) of any contractor as against a municipal corporation, unless the council thereof shall see fit to pass a by-law hereunder and then only subject to the terms of such by-law."

Proviso.

To be noted at p. 934.

Rev. Stat. c. 223, s. 678 (1), amended.

47. Subsection 1 of section 678 of the said Act (*e*) is amended by striking out the word "or" in the second line of said section, and by inserting the words "or village" after the word

(*a*) See p. 793. (*b*) See p. 800. (*c*) See p. 804.
(*d*) See p. 861. (*e*) S. 678 is printed *ante*, at p. 941-942.

"town" in said second line, and by striking out the word "or" after the word "city" in the eighth line of said subsection and by inserting the words "or village" after the word "town" in the ninth line of the said subsection;

63 V. c. 33, ss. 47-49.

Granolithic sidewalks.

And by inserting after the word "sidewalks" in the third line the words, "or streets;"

Paving of streets.

And by inserting after the word "streets" in the eighth line the words, "or of paving any street with macadam, brick, asphalt or other paving material,"

And by inserting after the word "sidewalks" in the twelfth line the words, "or of said pavements,"

And by inserting after the word "sidewalks" in the twenty-first line the words, "or streets,"

And by inserting after the word "made" in the twenty-second line the words "or paved."

(2) Subsection 2 of the said section 678 is amended by inserting after the word "sidewalks" in the second line thereof the words, "or streets,"

Rev. Stat. c. 223, s. 678, subs. 2, amended.

(3) Subsection 2*a* of section 678 of *The Municipal Act*, enacted by s. 43 of *The Municipal Amendment Act, 1899*, is amended by striking out the word "or" in the sixth line and by inserting the words "or village" after the word town in said sixth line, and by inserting after the word "city" at the end of the ninth line the words "town or village."

Rev. Stat. c. 223, s. 678, subs. 2*a*, amended.

Construction of sidewalks.

And by inserting after the word "sidewalks" in the sixth line thereof the words, "or of paving streets with macadam, brick, asphalt or other paving material,"

Paving of streets.

And by inserting after the word "sidewalks" in the last line the words, "or pavements."

48. Subsection 1 of section 680 of *The Municipal Act* (*a*) is amended by inserting after the word "council" in the third line the words "upon the value of the land only and not of the improvements thereon," and by adding at the end of the said subsection the words "and the value per foot of frontage of the land to be so exempted from any general rate or assessment for the like purpose, shall be estimated for the purposes of such exemption and shall be stated in the notice of assessment provided for in subsection 2 of section 671, and such valuation shall be subject to appeal under subsection 5 of the said section."

Rev. Stat. c. 223, s. 680, subs. 1, amended.

Exemption of lands especially assessed from general assessment for like purposes.

49. *The Municipal Act* is amended by inserting therein the following section:—

Rev. Stat. c. 223, amended.

"700*b*. The council of any municipality shall have the power of exempting any iron, steel or other smelting works

By-laws exempting smelting works from taxation.

(*a*) See p. 943.

63 V. c. 33, ss. 49-52.

from taxation, except as to school taxes, for a period not longer than 20 years, subject to the assent of one-third of the ratepayers entitled to vote, as provided by clause *a* of section 700 of this Act as well as the assent of a majority of the ratepayers voting on such by-law."

To be noted at p. 962, after s. 700a.

Rev. Stat. c. 223, s. 714, repealed

50. Section 714 of the said Act is repealed and the following substituted therefor:—

Police villages.—formation of.

"714—(1) The council of any county or the councils of any counties in which an unincorporated village is situated shall set apart such unincorporated village as a police village upon a petition being presented describing the area to be included in such village and signed by a majority of the ratepayers resident therein.

Bylaw fixing date—Returning Officers.

(2) Where such unincorporated village lies wholly in one county the council shall in and by such by-law fix a time and place for, and shall name a returning officer for conducting the first election of police trustees as hereinafter mentioned, and the date of the first meeting of the police trustees after such election.

Council of county containing largest number of resident ratepayers to appoint R. O.

(3) Where the territory described in the petition lies within two or more counties the by-law shall be passed by the councils of each of the counties, but the council of the county in which the largest number of the ratepayers resident in such territory reside shall so name the returning officer and fix the time and place for holding the first election for police trustees, and the date of the first meeting of the police trustees after such election."

Rev. Stat. c. 223, s. 720 repealed.

51. Section 720 of the said Act is repealed. (*b*)

62 V. (2), c. 26, s. 49, repealed.

52. Section 49 of *The Municipal Amendment Act, 1899*, (*c*) is repealed, and the following substituted therefor:—

Police trustees to pass by-laws for certain purpurposes.

"743*a* (1) The police trustees of any village may pass by-laws applicable only in the police village for any of the purposes mentioned in section 546 and in paragraph 1 of section 559, and in paragraphs 4, 5, 8, 9, 28 and 29 of section 583, and paragraph 4 of section 591 of *The Municipal Act*; and thereafter no general by-law of the township or either of the townships in which the police village is situate for any of such purposes shall apply in such village.

(2) The police trustees of any police village may pass by-laws applicable only in the police village for any of the purposes mentioned in paragraphs 1, 2, 3 and 4 of section 540 of *The Municipal Act*, provided there is no township by-law in force for any of the purposes mentioned therein."

(*a*) S. 714 is printed at p. 973.

(*b*) This section is printed at p. 978 as s. 743*a*.

(*c*) See p. 974.

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(*c*) See p. 974.

63 V. c. 33, ss. 53-55.

By-laws, authentication, etc., of

53. By-laws passed by the police trustees of any police village shall be duly authenticated by the signature of two of the trustees, and a copy of any such by-law certified by one of the police trustees to be a true copy shall be of the same force and shall have the same effect as a copy of any municipal by-law duly certified by the clerk of the municipality in the manner provided by section 334 of *The Municipal Act*, and within seven days after the passing of any by-law by the police trustees of a police village a certified copy of such by-law shall be transmitted to the clerk of the township or of each of the townships in which such police village is situate."

Certified Copy.

To be noted after s. 741 on p. 670.

Submitting by-laws to vote.

54. Where the territory comprised in a police village lies in two or more townships, by-laws for the purposes mentioned in section 744 of *The Municipal Act* shall be prepared by the police trustees and shall be submitted to a vote of the ratepayers by the police trustees in the same manner as nearly as may be, as in the case of by-laws submitted by a municipal council. The amount to be assessed and levied upon the property in each of the townships in which the police village lies respectively shall be based upon the last equalization of the assessment by the assessors of the said townships to be made as hereinafter provided, and the police trustees shall in and by such by-law ascertain the amount to be raised by the council of each of the townships in which the police village lies. The by-law shall name some person to act as returning officer upon the taking of the vote of the ratepayers. Upon such by-law receiving the assent of a majority of the ratepayers entitled to vote, and being passed by the police trustees the trustees shall serve a certified copy of such by-law upon the clerk of each of the townships in which the territory comprised in the police village is situated: and the council of each of such townships shall levy and collect the rates required by said by-law within the territory under the jurisdiction of such council. And the council of each of such townships shall issue debentures for the proportion required to be raised by the council of such township.

Assessment based on last equalization.

Council to levy and collect rates.

Issue of debentures.

To be noted after s. 744, p. 979.

Rev. Stat. c. 223, amended.

55. *The Municipal Act* is amended by inserting therein the following as section 739*a* :—

Assessors of townships to determine proportion.

739*a*.—(1) The assessors of two or more townships in which a police village is situated, immediately after the formation of such police village, shall meet and determine what proportion of the annual requisition made by the police trustees of such police village for the purposes of the said police village shall be levied upon and collected from the taxable property of the respective municipalities out of which the police village is formed, and notice of such determination shall be given forthwith to the inspecting trustee of the police vil-

63 V. c. 33, ss. 55-60.

lage concerned, and the said assessors shall meet thereafter in every second year after they have completed their respective assessments for the like purpose.

Inspecting trustee to act as arbitrator in case of disagreement.

(2) In the event of the assessors disagreeing as to the proportions as aforesaid notice shall be forthwith given to the inspecting trustee of the police village, who shall act as arbitrator and with the assessors aforesaid shall determine the said matter and report the same to the clerk of each of the respective townships within one month of the date upon which the said notice of disagreement was given and the decision of a majority shall be final and conclusive until the next equalization of the assessment.

Meeting of assessors.

(3) The meeting of the assessors for the purposes hereinbefore set forth shall be called by the assessor of the township in which is situated the larger portion of the assessable property of the police villages."

This and s. 58 should be noted at p. 977 of the MANUAL.

License fees in police villages to whom payable.

56. All sums collected for license fees or for penalties for offences against any by-law passed by the police trustees of a police village or against any regulation contained in section 747 of *The Municipal Act* shall be paid over to the treasurer of the township in which the licensee resides or carries on business or in which the offence was committed.

Note this at p. 978, after s. 743*b*.

Rev. Stat. c. 223, s. 723, amended.

57. Section 723 of *The Municipal Act* (*a*) is amended by adding thereto the following subsection :—

Nominations in police villages.

(3) The police trustees may by by-law provide that the nomination for police trustees may be held at half-past seven in the evening instead of the hour in the said section mentioned."

Rev. Stat. c. 223, s. 739, amended.

58. Section 739 of the said Act (*b*) is amended by striking out all the words after the word "township" in the fourth line and inserting in lieu thereof the words "according to the proportions determined by the assessors under section 739*a* of this Act."

Rev. Stat. c. 223, s. 742, amended.

59. Section 742 of the said Act (*c*) is amended by adding at the end thereof the words "and he shall in like manner pay any such order to the extent of the moneys received by him for licenses under any by-law passed by the police trustees of the police village and for breaches of any such by-law and for penalties under section 747 of *The Municipal Act*.

Payment of license fees and penalties.

Rev. Stat. c. 223, s. 748, amended.

60. Section 748 of the said Act (*d*) is amended by striking out all the words after the word "offender" in the twelfth line.

(*a*) See p. 974. (*b*) See p. 977.
(*c*) See p. 978. (*d*) See p. 983.

63 V. c. 33, ss. 61-62. 63 V. c. 35.

Municipality selling electrical power.

61. Any municipal corporation which, under the authority of *The Municipal Act*, has established or acquired, or hereafter establishes or acquires, an electric plant for the purpose of producing electricity for light and heat in the municipality in accordance with *The Municipal Light and Heat Act*, may, subject to the provisions of the next succeeding section, sell or lease, for any use for which electrical power can be used in the municipality, that electrical power or energy necessarily produced by such plant in producing electricity for light and heat which is in excess of that immediately required for the purpose above mentioned.

Not to sell when company engaged in producing power or energy.

62. Except as provided by *The Municipal Light and Heat Act* and by the preceding section, no municipal corporation shall sell, lease, furnish or supply electrical power or energy to any person or corporation in a municipality where an incorporated company, firm or individual is engaged in producing and disposing of electrical power or energy for value or as a commercial product.

These sections (61 and 62) should be noted under ss. 566-7 of "*The Municipal Act*," *ante*, pp. 687-695.

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63 VICTORIÆ, CAP. 35.

An Act respecting the enforcement of certain contracts entered into with Municipal Corporations.*

(*Assented to, April 30th, 1900.*)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows:—

Right of action of municipal corporation to enforce agreements with companies, etc.

1. Where duties, obligations, or liabilities are or have been heretofore imposed by statute upon any person, company or corporation in favour of a municipal corporation, or the inhabitants, or a portion of the inhabitants thereof, or where contracts or agreements are or have heretofore been created, enacted or validated by statute which impose such duties, obligations or liabilities, every such municipal corporation shall have the right by action to enforce such duties, obligations and liabilities either in favour of the corporation, or of the said inhabitants, and to obtain as complete and full relief, and to enforce the same remedies as could have been maintained, obtained and enforced therein by the Attorney-General had he been a party to the said action as plaintiff, or as plaintiff at the relation of any person or corporation interested.

This Act was passed in consequence of the question (as to parties) which arose in *Johnston et al.* v. *Consumers' Gas Co.*, 27 O.R. 9; 23 A.R. 566; 17 P.R. 297; [1898] A.C. 447.

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* As to the enforcement of agreements between municipal corporations and street railway companies where territory in which a street railway has been constructed is transferred to another municipality, see 63 V. c. 31, s. 4 noted *post* p. 1014.

63 VICTORIÆ, CAP. 36.

An Act authorizing Municipal and other Grants for the benefit of Canadians on Military Service in South Africa.

(*Assented to April 30th, 1900.*)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Grants for benefit of persons serving in military forces in South Africa validated.

1.—(1) All grants of money heretofore or which may hereafter be voted by any municipal council within the Province by way of contribution in aid of the members of the Canadian forces sent to South Africa for service during the present South African war by way of supplementing the pay of the members of such forces, or making provision for their equipment, or by way of insurance or other provision for them or for the families of or persons dependent upon any of the members of the Canadian forces so sent as aforesaid or by way of contribution to the Canadian Patriotic Fund Association or the Canadian Branch of the British Red Cross Society or any local Patriotic Association for similar purposes or objects are hereby made and declared legal and valid.

Issuing debentures.

(2) Any such grant may be paid out of the general funds of the municipality, or for the purpose of making the same the council may pass by-laws for issuing debentures payable within ten years at furthest from the date thereof, and borrowing thereon the amount so granted in the manner provided by *The Municipal Act* with respect to by-laws for the creation of debts, but it shall not be necessary to obtain the assent of the ratepayers to the passing of any such by-law.

Grants made by companies validated.

2. All grants for the purposes aforesaid heretofore or which may hereafter be made by any incorporated company within the legislative jurisdiction of this Province are hereby confirmed and declared to be legal and valid and within the powers of any such company, anything in any Act contained or otherwise to the contrary notwithstanding.

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63 VICTORIÆ, CAP. 37.

An Act to permit Municipalities to use Voting Machines.

[*Not printed here, it being considered improbable that the present mode of voting will be abandoned in favour of this new one, at all events for some time to come.*]

ADDENDA ET CORRIGENDA.

Page 15. Line 14. Port Hope. See 63 V. c. 87.
16. " 2. Anderdon. See 63 V. c. 59.
" " 6. Windsor. See 63 V. c. 108.
" " 7. Leamington. See 63 V. c. 73.
19. " 18. Clinton. See 62 V. (1) c. 6.
" " " Goderich. See 63 V. c. 70.
" " 19. Blyth. See 62 V. (2) c. 39.
" " 35. Wallaceburg. See 63 V. c. 105.
20. " 30. Town of Perth re-united to County of Lanark, Jan., 1900.
" " 30. Smith's Falls. See 63 V. c. 96.
21. " 3-4. The Tps. of Front of Escott and Front of Yonge were united in 1888 to form the Tp. of Front of Yonge and Escott.
" " 19. Sheffield. See 63 V. c. 95.
" " 30. St. Catharines. See 63 V. cc. 92, 93.
" " 9. London (City). See 63 V. c. 76.
22. " 10. Strathroy. See 63 V. c. 99.
23. " 15. For "Canise Island" (as in R. S. O. c. 3, s. 29 (26)), read "Thorah Island."
" " 17. Oshawa. See 63 V. c. 88.
" " 18. Port Perry. See 63 V. c. 79.
24. " 13. Stratford. See 63 V. cc. 97, 98.
" " 13. Listowel. See 63 V. c. 75.
25. " 5-6. Delete the (incorrect) reference to the Town of Prescott.
" " 9. Co. Cl. Div. No. II. should read thus:—"II. The Towns of Hawkesbury and Vankleek Hill and the Tp. of Hawkesbury West."
" " 33. Arnprior. See 63 V. c. 60.
26. " 24. Tottenham (Village). See 63 V. c. 104.
" " 30. Co. Cl. Div. No. V. should read thus:—"V. Collingwood and polling sub-divisions 5-12 of Nottawasaga Tp."
27. " 6. Should read "(3) Omemee, (4) Sturgeon Point and (5) Woodville."
" " 13. Add "Sturgeon Point" after "Fenelon Falls" in Co. Cl. Div. No. V.
" " 19. Preston incorporated as a town by Proc. of 4th Nov., '99. See also 63 V. c. 90.
29. " 5. Toronto (City). See 63 V. cc. 101, 102.
" " 5-9. North Toronto separated from County of York by Proc. 4th Mar., '99 Ont. Gaz., p. 1263.
" " 6. Toronto Junction. See 63 V. c. 103.
" " 7. East Toronto incorporated as a town by 63 V. c. 68.
" " 14. Strike out "North Toronto (Town)" from Co. Cl. Div. No. II.

32. Foot-note (*t*). See also *Uckfield Rural Council* v. *Crowborough Dist. Water Co.*, [1899] Q.B. 664; *Re Renaud*, Q.R. 14 S.C. 452 (1899); *Garant* v. *Carrier*, Q.R. 15 S.C. 601 (1899).

39. Foot-note (*v*). *Tp. of Logan* v. *Tp. of McKillop* is since reported, 25 A.R. 498 (1898); 29 S.C.R. 702 (1899).

" Foot-note (*y*). *Schmidt* v. *Berlin* should be "26 O.R. 54." Refer also to the cases cited at pp. 595-598 and 826-833.

40. Line 37. *Reg.* v. *Toronto Railway Co.* is now reported, 30 O.R. 214. As to the liability of a corporation for a malicious prosecution, see *Cornford* v. *Carlton Bank*, [1899] 1 Q.B. 392, following *Edwards* v. *Midland R. W. Co.*, 6 Q.B.D. 287 (1880).

41. Foot-note (*i*). As to ratifying a voidable contract, see *Woodburn* v. *Regina*, 6 Ex. C.R. 12 (1898); *S.C.* in App., 29 S.C.R. 112.

42. Foot-note (*j*). See also *Garland Mfg. Co.* v. *Northumberland Paper*, etc., *Co.*, 31 O.R. 40 (1899); and *Barrie Public School Board* v. *Town of Barrie*, 19 P.R. 32 (1899), following *Town of Barrie* v. *Weymouth*, 15 P.R. 95 (1892).

45. Foot-note (*q*). See also *Tp. of Sombra* v. *Tp. of Chatham*, 18 A.R. 252; 21 S.C.R. 305 (1891-2); *City of Kingston* v. *Kingston Electric*, etc., *R. W. Co.*, 28 O.R. 399; 25 A.R. 462; note (b) to s. 616 (p. 848) and note (a) to s. 617 (p. 849).

" Foot-note (*s*). See also *Re Giles* v. *Village of Wellington*, 30 O.R. 610 (1899).

Page 50. Note (g). As to the meaning of "unincorporated village," see *Bond* v. *Commee*, 16 A.R. 398, *per* OSLER, J.A., at p. 401.

62. Note (h). Delete this note and substitute the following:—
"qualified municipal electors," *i.e.*, persons qualified to vote at municipal elections. See s. 2 (5), ss. 86-93 and note (b) to s. 578, *post*, p. 713.

63. Sec. 27. Amended by 63 V. c. 33, s. 1, *ante*, p. 994.
64. " 27(2). Words added by 63 V. c. 33, s. 2, *ante*, p. 994.
" " 27(4). Amended by 62 V. (2) c. 26, s. 1, *ante*, p. 988.
85. " 56. 63 V. c. 31, s. 2 provides that where territory on which a street railway, or an electric or other railway has been constructed under an agreement with the municipal corporation of the locality is or has been transferred to another municipality, the benefit or burden of the agreement, (so far as it relates to maintenance of tracks, roadbed, etc., and removal of snow and ice and disposal thereof) shall enure to the corporation of the municipality to which the territory has been transferred, etc.
100. " 74. Repealed by 62 V. (2) c. 26, s. 4, *ante*, p. 988.
" " 75. Words added by 62 V. (2) c. 26, s. 5, *ante*, p. 988.
101. " 76, line 4. "Deputy reeve" struck out by 62 V. (2) c. 26, s. 6.
106. " 77, line 2. "Mayor" substituted for "reeve" by 62 V. (2) c. 26, s. 7.
109. Foot-note (*e*)—the second one. Add to cases cited, *Ryan* v. *Willoughby*, 30 O.R. 411 (1899); reversed in C.A., March 27th, 1900, not yet reported.
110. Line 9. "No similar provision in Ontario," etc. But see now 62 V. (2) c. 11, s. 22, printed *ante*, p. 987.
123. " 11-13. Note the extension of the meaning of "son," "father," "mother" by 62 V. (2) c. 26, s. 8 (3) *ante*, p. 988.
131. Subs. 100-101 were repealed by 62 V. (2) c. 26, s. 8 (4). See *ante*, p. 988.
149. Sec. 125. Line 3. The words "deputy reeves"—which are here printed in italics—were struck out by 62 V. (2) c. 26, s. 9 (9). See *ante*, pp. 148, 988.
150. Foot-note (*a*). For *Harvey* v. *Armitage*, 12 Q. B. D. 127," read "*Henry* v. *Armitage*, 12 Q. B. D. 257."
153. " 129 (2). The words "at any time before 10 o'clock p.m." inserted after "or" (line 1) by 62 V. (2) c. 26, s. 10. See *ante*, p. 988.
154. " 129. New subs. (3*a*) added by 63 V. c. 33, s. 5, *ante*, p. 995.
191. " 172. Note (b). In *Hastings* v. *Summerfeldt*, 30 O.R. 577 (1899), it was held by FALCONBRIDGE, J, that the word "conveniently" in section 109 of R.S.O. ch. 9, "*The Ontario Election Act*,"—which is substantially identical with s. 172 of "*The Municipal Act*"—means "conveniently for the voter and for his wish, purpose and intention in voting." The facts were that the plaintiff in marking his ballot had inadvertently marked it for the candidate against whom he intended to vote. Immediately, and before leaving the apartment set apart for marking ballots, he informed the defendant, (the deputy returning officer,) of his mistake, and asked for another ballot paper. The defendant said he must first see the marked ballot paper. This the plaintiff refused to allow, but, on the scrutineer for his party recommending him to do so, he handed it to the defendant, without creasing or folding it that it might be placed in the ballot box, but so that those present could not see how it was marked. The defendant looked at it, and then either shewed or placed it in such a manner that it could be seen and was seen by nearly all present, and contending that it was not a spoiled ballot and contrary to the plaintiff's protest, placed it in the ballot box, and it was counted for the person against whom the plaintiff intended to vote.
Held, that the defendant by his acts in disclosing how the plaintiff marked his ballot paper, in not cancelling it, and in refusing to give the plaintiff another ballot paper on his demanding one, and by thus compelling the plaintiff to vote for the candidate which he was about to oppose, had been guilty of breaches of duty which entitled the plaintiff to judgment in his favour for the penalties under the Statute.
211. " 189 (8). Clause 5. Note that by 62 V. (2) c. 26, s. 17, *ante*, p. 989, the words "returning officer" are substituted for "clerk of the municipality" in line 4 of this clause.
212. " 191 (2). Note amendment of this clause by 62 V. (2) c. 26, s. 18, *ante*, p. 989.
216. " 194. Add to note (a) at top of page:—
See also *Hastings* v. *Summerfeldt*, 30 O.R. 577 (1899) quoted *supra* in the Addenda to s. 172, note (b), p. 191.

Page 221. " 204. Note (**a**). In *Re Young* v. *Township of Binbrook*, 31 O.R. 108 (1899) STREET, J.—in delivering the judgment of a Divisional Court on an appeal for an application to quash a by-law—says (p. 111):—
"I think, as a general rule, that an election should be held to have been 'conducted in accordance with the principles laid down in the Act' when the directions of the Act have not been intentionally violated, and when there is no ground for believing that the unintentional violation of them has affected the result."
228. Foot-note (*c*). In also *Re Pontefract Municipal Election*, 15 T.L.R. 147 (1899); *S.C. sub nom. Pease* v. *London*, [1899] 1 Q.B. 386.
241. Foot-note (*g*) last line, "s. 200" should be "s. 220."
273. Sec. 263. Note the amendment of this section by 62 V. (2) c. 26, s. 19, *ante*, p. 989.
276. " 270. Add to note (**b**) the following:—
The notice calling a special meeting of the municipal council of a city at which two by-laws were passed regarding the number of tavern and shop licenses to be granted in the municipality, stated that it was "for the consideration of a by-law relating to tavern licenses:"—
Held, a sufficient notice.
It was objected that notice of intention to introduce the by-laws should have been given, and that they should not have received their three readings in one day, the council's rules of proceeding so providing, with the exception of cases of urgency:—
Held, that these were matters of internal regulation, and subject to the decision of the mayor or chairman of the council, and the only appellate tribunal was the council. *Re Jones and City of London*, 30 O.R. 583 (1899)—ROSE, J.
277. New sec. (274*a*) added by 62 V. (2) c. 26, s. 19 (2). See *ante*, p. 989.
278. Sec. 275. *Held*, that a meeting of the council might adjourn temporarily, without a formal motion to adjourn, by the consent of the majority of a quorum present; and, even if the adjournment in this case, announced by the mayor, was not by the consent of the majority, the validity of an objection grounded on the absence of such consent would be so doubtful that the Court should not, in its discretion, quash by-laws passed after such an adjournment. *Re Jones and City of London*, 30 O.R. 583 (1899)—ROSE, J.
287. " 276. Note amendments made by 62 V. (2) c. 26, s. 19 (3) and 63 V. c. 33, s. 7, *ante*, pp. 989, 996.
" New Section (276*a*) added by 62 V. (2) c. 26, s. 20.
308. Sec. 299. In *Thomas* v. *Dereumont Corporation*, [1900] 1 Q.B. 16, the Court of Appeal held that the duty of a municipal auditor is not confined to ascertaining that there are vouchers for each item in the accounts submitted to him, but extends to investigating whether the payments represented by the vouchers are illegal or improper.
310. Line 7. For "Note (**c**) to s. 587" read "Note (**d**) to s. 587."
321. Foot-note (*k*). See also *Meriden Britannia Co.* v. *Bradon*, 17 P.R. 77 (1896) and *Walker* v. *Garney-Tilden Co.*, 19 P.R. 12 (1899).
324. Note (**c**). Refer also to s. 428 and note (**a**) thereto.
325-326. See, 324 (2) and 325. The side-notes to these sections have been transposed.
330. Foot-note (*m*). See also *Reg.* v. *Levy*, 30 O.R. 403, (1899), where the by-law (referred to in note (**a**) to s. 484) was quashed, partly because it was partial and unequal in its operation as between different classes.
Foot-note (*n*). See also *Corp'n of St. Ambrose* v. *Godin*, 5 Rev. de Jur. 321 (1899).
331. Foot-note (*e*). See also the *dictum* of ARMOUR, C. J. in *Re Harris and City of Hamilton*, 44 U.C.R. 641, 645, quoted at p. 724 in note (**g**) to s. 580 (6); *Canadian Pacific R. W. Co.* v. *City of Quebec*, Q.R. 8 Q.B. 246; 30 S. C. R. 74 (1899).
332. Foot-note (*a*). See also *Reg.* v. *Petersby*, 1 Can. C. C. 91, (1898).
334. Foot-note (*a*). Add "Approved by the Court of Appeal in *Port Arthur High School Board* v. *Town of Port Arthur*, 25 A.R. 522, at p. 527."
352. S. 338 (2). "The council shall before the final passing of the by-law publish a copy thereof."
Semble,—That the by-law as finally passed must be substantially identical with the copy so published: *Canada Atlantic RW. Co.* v. *City of Ottawa*, 8 O.R. 183, 190, 201; 12 A.R. 234, 238; 12 S.C.R. 365, 370, 373, 375.
362. Note (**f**). After the word "quashed" in line 12 of this note there should be a reference to *Re Cox and Township of Pickering*, 24 U.C.R. 439 (1865).
353. Note (**g**). See also *Re Gallerno* and *Tp. of Rochester*, 46 U.C.R. 279 (1881).
354. Foot-note (*a*), line 1. For "8 A.R." read "12 A.R."

Page 367. Note new Sec. (366 *a*) added by 63 V. c. 33, s. 8, *ante*, p. 996.

373. S. 375. Note the amendment of this sec. by 63 V. c. 33, s. 12, *ante*, p. 999.

377. 2nd Foot-note (*c*). See also *Re Caldwell* and *Town of Galt*, 30 O. R. 378 (1899), *per* ROBERTSON, J. at p. 382.

378. Foot-note (*e*). *Re Day and Tp. of Storring on* should be "38 U.C.R. 528 (1876)."
" " (*k*). See also *Re Caldwell* and *Town of Galt*, 30 O.R. 378 (1899).

390. S. 384 (4). Note the amendment made by 63 V. c. 33, s. 13, *ante* p. 999.

417. S. 397 (1). Note the amendment made by 63 V. c. 33, s. 14, *ante*, p. 999.

418. S. 398. " " " " " 63 V. c. 33, s. 15. " p. 999.

419. Note (a). The judgment of FERGUSON, J. in *Sutherland-Innes Co. v. Tp. of Romney* and the judgment of the Court of Appeal (affirming it) are now reported, 25 A.R. 495 (1899).

424. S. 403. "Actual value" means the value which an owner could obtain for a property if there was a purchaser who needed it. *Cassils v. City of Montreal*, Q.R. 14 S.C. 269 (1899).

429 S. 411. Note that this sec. is repealed by 63 V. c. 33, s. 11, *ante*, p. 999.

431. Foot-note (*b*), line 8, "22 C. P. 28" should be "23 C.P. 28."

441. Note (a). S. 29 of "*The Statute Law Amendment Act, 1899*" (printed in this note) was repealed by 63 V. c. 33, s. 16 (2) and a new section (424*a*) added to "*The Municipal Act*," by 63 V. c. 33, s. 16 (1). See *ante*, p. 1000.

453. S. 435. Amended by 63 V. c. 33, s. 17. See *ante*, p. 1000.

455. S. 436. Amended by 63 V. c. 33, s. 18. See *ante*, p. 1000.

457. Foot-note (*b*). Add, "In *McLellan v. Tp. of Chingnacousy*, (C. A.) May 15th, 1900, not yet reported, it was held that where a drain constructed by a municipal corporation pursuant to the award of an engineer appointed by the council under s. 4 (6) of "*The Ditches and Watercourses Act*" (R.S.O. c. 285) occasions injury to lands of a neighbouring proprietor, he has no right to compensation, no liability therefor being imposed by "*The Ditches and Watercourses Act*," upon the person or corporation so constructing the drain. *Per* MACLENNAN J. A.:—"There can be no claim for compensation under "*The Municipal Act*" for work done by a municipal corporation in pursuance of an award under "*The Ditches and Watercourses Act*."

462. Foot-note (*g*). Upon a motion to set aside an award under "*The Municipal Act*" of compensation for damages occasioned by lowering the grade of a highway, it was held by Sir WILLIAM MEREDITH, C.J. that the arbitrator might include in his award compensation to the land-owner for the inconvenience sustained by him during the progress of the work, and also for the necessary expense incurred by him in making a new approach to his land; but a direction that the municipal corporation "should at all times keep up and maintain along the front of said lands a retaining wall," etc., was held *ultra vires*, and the award was set aside. *Re Burnett and Town of Durham*, 31 O.R. 262 (1899). See also the Addenda to p. 488.

488. S. 458. On a motion to set aside an award made upon a reference under "*The Municipal Act*," it was held by Sir WILLIAM MEREDITH, C.J., that the failure of the arbitrator to take and subscribe the oath required by this section before proceeding to try the matter of the arbitration is fatal to the validity of the award; but (following *Levick v. Epsom etc., R.W. Co.*, 1 L. T. N. S. 60 (1859)) that it must clearly appear that the applicant was not aware of the omission until after the award had been made. *Re Burnett* and *Town of Durham*, 31 O.R. 262 (1899).

492. S. 460. The power given to the arbitrators by this section "to award the payment by any of the parties to the other of the costs of the arbitration or of any portion thereof" is subject to the rule that when the claimant has been guilty of no misconduct, omission or neglect such as would induce the Court to deprive him of his costs, the unsuccessful party should bear the whole costs of the litigation. *Re Pattullo and Town of Orangeville*, 31 O.R. 192 (1899).—ARMOUR, C. J.

501. Foot-note (*a*) Acc. *Re Burnett and Town of Durham*, 31 O.R. 262 (1899).

504. Foot-note (*c*). Add:—"Affirmed 30 S. C. R. 114 (1899)."

511. Foot-note (*d*). See also *Traves v. City of Nelson*, 7 B. C. R. 48 (1899).

522. Sec. 479 (2). The corporation of a town is not bound to supply the police magistrate with facilities for the transaction of business arising outside the town and undertaken by the police magistrate not as such but as a Justice of the Peace for the county. The police office need not be in a separate building; any suitable room in any building belonging

to the municipality is sufficient, and, *semble*, a private office in addition to the public one need not be provided. *Mitchell* v. *Town of Pembroke*, 31 O. R. 348 (1899). It was there held that the council chamber—although available only before 4 p.m.—afforded sufficient accommodation, and also (following *Newsome* v. *County of Oxford*, 28 O. R. 442 (1895)) that the town must supply the police magistrate with stationery for the use of his office.

Page 524. Sec. 481. Amended by 63 V. c. 33, s. 19. See *ante*, p. 1000.
529. Sec. 484. New subsec. (4a) added by 63 V. c. 33, s. 20. See *ante*, p. 1001.
544. Foot-note (*k*). Acc. *McShane* v. *T. H. & B. R. W. Co.*, 31 O. R. 185 (1899).
562. Sec. 526. Subs. 1 amended and subs. 3 repealed by 63 V. c. 33, ss. 21, 22. See *ante*, p. 1002.
565. Sec. 530. New subs. (3) added by 63 V. c. 33, s. 23, *ante*, p. 1002. Last paragraph: see *Sills* v. *Lennox and Addington*, 36 C. L. J. N. S. 159 (1900).
580. Sec. 532 (2). Amended by 63 V. c. 33, s. 24. See *ante*, p. 1002.
586-9. Sec. 536 (1), (4), (6), (12). Amended by 63 V. c. 33, s. 25. See *ante*, p. 1002.
591. Line 7. For "incorporated townships" read "unincorporated townships."
595. Foot-note (*j*). Add "*Penny* v. *Wimbledon Council*, [1898] 2 Q. B. 212; [1899] 2 Q. B. 72; *The Snark* [1899] P. 74; [1900] P. 105."
596. Foot-note (*e*). Add "*Steves* v. *South Vancouver*, 6 B. C. R. 17 (1899)."
597. Foot-note (*h*). The responsibility of a municipal corporation for the acts of its fire-brigade was affirmed by the Court of Appeal in *Thompson* v. *City of Toronto*, 16th January, 1900—not yet reported.
602. Note (**b**). "*The Ontario Game Protection Act*" (R. S. O. c. 287) is repealed and re-consolidated by 63 V. c. 49.
603. Foot-note (*f'*). See also R. S. Ca. c. 104, s. 26, quoted at p. 726 in note (j) to s. 580.
616. Sec. 3 (2) of R. S. O. c. 264 is amended by 63 V. c. 44, by adding thereto the following:—

"Provided that the provisions of this subsection shall be deemed to be sufficiently complied with by the substitution for the rope therein mentioned (with the approval of the Inspector), of the fire escape known as 'the Natural Drop Fire Escape' consisting of a cylindrical casing made of canvas or any other suitable material and provided at the top with a metal ring supported by chains from the window, the lower portion of the casing extending into proximity with the ground."

621. Foot-note (*c*). See also *Young* v. *Erie and Huron R. W. Co.*, 27 O. R. 530 (1896); *Madden* v. *Nelson and Fort Sheppard R. W. Co.*, 5 B. C. R. 541; [1899] A. C. 626.
630. Foot-note (*d*). See also the language of SPRAGGE, C.J.O., in *Reg.* v. *Hodge*, 7 A. R. 246, 262, quoted at p. 733 in note (g) to s. 583.
631. Sec. 549 (1). Amended by 63 V. c. 33, s. 26. See *ante*, p. 1002.
637. Sec. 549. New subs. (9a) added by 63 V. c. 33, s. 27. See *ante*, p. 1002.
638. Foot-note (*l*). But see *Reg.* v. *Welland*, 14 Q. B. D. 63 (1884). In *Langrish* v. *Archer*, 10 Q. B. D. 44 (1882) a railway carriage was held to be "an open and public place to which the public have or are permitted to have access." [Imp. Stat. 36-37 V. c. 38, s. 3.]
644. Foot-note (*g*). *Farlow* v. *Stevenson* was affirmed in C. A., [1900] 1 Ch. 128. See also *Baylis* v. *Jiggins*, [1898] 2 Q. B. 316.
646. Foot-note (*c*). See also *Boyle* v. *Sherborne Local Board*, 46 J. P. 675 [1882]; *Vestry of St. John's, Hackney* v. *Hutton*, [1897] 1 Q. B. 210; *Robinson* v. *Sunderland Corporation*, [1899] 1 Q. B. 751.
651. Foot-note (*c*). For "*Danaher*" read "*Dunard*," and for "note (i) to s. 562" read "note (j) to s. 562."
652. Foot-note (*b*). Add "Acc., *A. M. C. Medicine Co.* v. *City of Montreal*, Q. R. 15 S. C. 594 (1899).
" Foot-note (*f*). See also *Hornby* v. *New Westminster Southern R. W. Co.* 6 B. C. R. 588 (1898).
656. Foot-note (*h*). See also *Attorney-General* v. *Brighton, etc., Co-operative Ass'n*, [1900] 1 Ch. 276.
659. Foot-note (*g*). *Walker* v. *Brewster* should be cited as from "L. R. 5 Eq. 25."
661. Line 6. *Watson* v. *Ellis* is reported, 1 Times L. R. at p. 317.
662. Sec 557 (6). Repealed and a new subs. enacted by 63 V. c. 33, s. 28. See *ante*, p. 1002.
680. Foot-note (*j'*). Add "affirmed in C. A., [1900] P. 105."
687. Sec. 566 (4). Amended by 63 V. c. 32, s. 29. See *ante*, p. 1002.
689. Clause (a5). Amended by 63 V. c. 32, s. 30. See *ante*, p. 1002.

Page 690. Clause (a9). Amended by 63 V. c. 33, s 31. See *ante*, p. 1002.
695. Here should be noted ss. 61 and 62 of 63 V. c. 33, printed *ante*, p. 1011.
698. Note (**b**). *Reg.* v. *Toronto Railway Co.* in C. A. is now reported, 26 A. R. 491.
Sec. 569 (5). Amended by 63 V. c. 33, s. 32. See *ante*, p. 1002.
720. Foot-note (*e*). (See also pp. 731, 732, 737, 745, 746, 747, 748, 750). *Bollander* v. *Ottawa* was affirmed in C. A., 15th May, 1900, not yet reported.
731-748. In the side-heads on these pages **Sec. 582** should be **Sec. 583.**
734. Sec. 583 (6). Amended by 63 V. c. 33, s. 33. See *ante*, p. 1003.
Sec. 583 (8). Note that "*The Act respecting Travelling Shows, Circuses and other Exhibitions*" (R. S. O. c. 244) was amended by 63 V. c. 41, the second section of which is as follows:—

"**2.** No municipal corporation shall issue a license to any menagerie, circus, wild beast show, or other show to which section 1 of the said Act applies until the applicant for such license produces a license from the Provincial Treasurer for exhibiting in the Province of Ontario; and any member or officer of a municipal corporation who is a party to the issue of any license in violation of the provisions of this section shall be liable on summary conviction to a fine of $20 besides costs."

736. Sec. 583 (10). Amended by 63 V. c. 33, s. 34. See *ante*, p. 1003.
744. Sec. 583 (16). Amended by 63 V. c. 33, s. 35. See *ante*, p. 1003.
746. Sec. 583 (23). Repealed and a new clause substituted by 63 V. c. 33, s. 37. See *ante*, p. 1003, and *cf.* the section of the Manitoba Statute which was before the Court in *Taylor* v. *City of Winnipeg*, referred to in note (**bb**).
747. Sec. 583 (28). Amended by 63 V. c. 33, s. 39. See *ante*, p. 1005.
750. Foot-note (*b*). See also *Reg.* v. *Wilson*, 20 C. L. T. 144 (1900), a decision upon similar language in "*The Municipal Clauses Act*" of British Columbia.
753. Sec. 583 (37). Amended by 63 V. c. 33, s. 36. See *ante*, p. 1003.
758. Foot-note (*b*). A small-pox hospital is not, *per se*, a nuisance. *Tp. of Elizabethtown* v. *Town of Brockville*, 10 O.R. 372 (1885), *per* BOYD, C., at p. 375.
Foot-note (*i*). Add *Goldberg* v. *Liverpool Corp'n*, 16 Times L.R. 320 (1900).
759. S. 586. New subs. (1*a*) added by 63 V. c. 33, s. 40. See *ante*, p. 1005.
761. Foot-note (*b*). *Benjamin* v. *Storr*, should be "L. R. 9 C. P. 400," not "500."
784-786. Sec. 587 (5), (6), (8). Amended by 63 V. c. 33, s. 41. See *ante*, p. 1005.
793. Sec. 591 (2). Amended by 63 V. c. 33, s. 42. See *ante*, p. 1006.
800. " 591. New subs. (11) added by 63 V. c. 33, s. 43. See *ante*, p. 1006.
801-2. Note (**a**). R.S.O. c. 290 was amended by 63 V. c. 51, ss. 1, 2, by substituting "$15" for "$10" in ss. 1, 4, 7 and 8, and "$6" for "$4" in s. 4, and by adding to s. 7 the following subsection:—

"**(2)** In case the locality in which the killing of the wolf takes place is at so great a distance from all the officers mentioned in sub-section 1 of this section, that the person killing the same cannot conveniently attend before any of the said officers, the production of the head of the wolf may take place and proof of the killing be made before a Justice of the Peace; and if the Provincial Treasurer is satisfied as to the sufficiency of the cause for appearing before such Justice of the Peace instead of before one of the said officers, such production and proof shall be deemed sufficient compliance with this section, so as to entitle the person killing the same to receive the said bounty."

804. Sec. 595. Amended by 63 V. c. 33, s. 44. See *ante*, p. 1006.
806. Foot-note (*d*). *Reg.* v. *Downshire* should be "4 A. & E. 698."
808. Paragraph 2. "*The Surreys Act*" is R. S. O. c. 181. Note new subs. added to s. 39 by 63 V. c. 17, s. 22.
809. Foot-note (*c*). *Reg.* v. *Spence* should be "11 U.C.R. 31."
826. " (*l*) from p. 825. *Simpson* v. *Huntsville* should be "13 O.R. 101."
830. " (*b*). *Roe* v. *Lucknow* should be "21 A.R. 1."
834. " (*f*). The judgment of FALCONBRIDGE, J. was unanimously over-ruled by a Divisional Court consisting of Sir JOHN BOYD, C. and FERGUSON and ROBERTSON, JJ. (31 O.R. 610 (1900)). Besides the authorities referred to in foot-notes (*a*) and (*b*) on p. 835, the following cases are cited by BOYD, C., *McGarry* v. *Loomis*, (1875), 63 N. Y. at p. 108; *Quincy Horse Co.* v. *Gause*, (1889), 38 Ill. at p. 223; and *Morrison* v. *McAra*, (1896) 23 Rattie (Ct. of Sess. Cases, 4th Series) 564.
835. " (*b*). *Cf.* the similar case of. *Hickman* v. *Maisey* [1900] W.N. 72; 16 Times L.R. 274.
837. " (*c*). *Bleakeley* v. *Prescott* should be "7 O. R. 261."
839. " (*b*), Add *Kennedy* v. *Portage la Prairie*, 12 Man. Rep. 634 (1899).
" (*d*), line 2. For "27 S. C. R. 46" read "21 S. C. R. 301."

ec *ante*, p. 1002.
3, printed *ante*, p. 1011.
, is now reported, 26 A. R. 491.
See *ante*, p. 1002.
, 746, 747, 748, 750). *Bollander*
th May, 1900, not yet reported.
nld be **Sec. 583.**
See *ante*, p. 1003.
Travelling Shows, Circuses and
4) was amended by 63 V. c. 41,
ollows:—
icense to any menagerie, circus,
section 1 of the said Act applies
ices a license from the Provincial
of Ontario; and any member or
a party to the issue of any license
ction shall be liable on summary
'

See *ante*, p. 1003.
See *ante*, p. 1003.
stituted by 63 V. c. 33, s. 37. See
of the Manitoba Statute which was
y of Winnipeg, referred to in note

See *ante*, p. 1005.
. L. T. 144 (1900), a decision upon
nicipal Clauses Act" of British

. See *ante*, p. 1003.
er se, a nuisance. *Tp. of Elizabeth-*
. 372 (1885), *per* BOYD, C., at p. 375.
rp'n, 16 Times L.R. 320 (1900).
, s. 40. See *ante*, p. 1005.
" L. R. 9 C. P. 400," not "500."
c. 33, s. 41. See *ante*, p. 1005.
See *ante*, p. 1006.
33, s. 43. See *ante*, p. 1006.
33 V. c. 51, ss. 1, 2, by substituting
and 8, and "$6" for "$4" in s. 4,
ng subsection :—
ing of the wolf takes place is at so
mentioned in sub-section 1 of this
e cannot conveniently attend before
n of the head of the wolf may take
e before a Justice of the Peace; and
as to the sufficiency of the cause for
eace instead of before one of the said
all be deemed sufficient compliance
erson killing the same to receive the

See *ante*, p. 1006.
e "4 A. & E. 698."
O. c. 181. Note new subs. added to

1 U.C.R. 31."
tsville should be "13 O.R. 101."
"21 A.R. 1."
RIDGE, J. was unanimously over-ruled
g of Sir JOHN BOYD, C. and FERGUSON
610 (1900)). Besides the authorities
d (*b*) on p. 835, the following cases are
. Loomis, (1875), 63 N. Y. at p. 108;
889), 38 Ill. at p. 223; and *Morrison*
t. of Sess. Cases, 4th Series) 564.
ckman v. *Maisey* [1900] W.N. 72; 16

1 be "7 O. R. 261."
Prairie, 12 Man. Rep. 634 (1899).
6" read "21 S. C. R. 301."

Page 839. Foot-note (*m*). *Beal* v. *South Devon R. W. Co.* should be "3 H. & C. 337."
840. " (*f*) *McQuillan* v. *St. Mary's* is now reported, 31 O. R. 491.
844. " (*b*). *McKelvin* v. *London* should be "22 O.R. 70."
847. " (*a*). *Wellington* v. *Wilson* should be "14 C.P. 299."
853. Note (**a**). Add to 2nd par. a reference to foot-note (*d*).
860. Foot-note (*f*). "*Asphodel*" should be "*Alnwick*."
" (*n*). *Re Choate and Tp. of Hope* should be "16 U.C.R. 424."
" (*q*). In last line "792" should be "279."
861. Note (**b**) "For two successive weeks" should be "For four successive weeks."
Sec. 633. Amended by 63 V. c. 33, s. 45. See *ante*, p. 1006.
862. Foot-note (*b*). *Re Henderson and Toronto* should be "29 O.R. 669."
866. Paragraph 5. *Buchanan* v. *Galt* should be "12 C. P. 73."
868. Foot-note (*b*). *Re Choate and Tp. of Hope* should be "16 U.C.R. 424."
870. Foot-notes (*a*) and (*b*) are transposed.
878. Foot-note (*a*). But see *Ind, Coope & Co.* v. *Hamblin*, [1900] W.N. 24.
934. New section (672*a*) added by 63 V. c. 33, s. 46. See *ante*, p. 1006.
941-2. Sec. 678. Amended by 63 V. c. 33, s. 47. See *ante*, p. 1006.
943. Sec. 680. Amended by 63 V. c. 23, s. 48. See *ante*, p. 1007.
962. New section (700*b*) added by 63 V. c. 33, s. 49. See *ante*, p. 1007.
968. Foot-note (*a*). *Reg.* v. *St. Clair* is noted 20 C.L.T. 204, (FALCONBRIDGE, J.) and was affirmed in C. A., Feb., 1900, not yet reported.
973. Sec. 714. Repealed and new section substituted by 63 V. c. 33, s. 50. See *ante*, p. 1008.
974. Sec. 720. Repealed and new section substituted by 63 V. c. 33, s. 51. See *ante*, p. 1008.
" Sec. 723. New subs. (3) added by 63 V. c. 33, s. 57. See *ante*, p. 1010.
977. Sec. 739. Amended by 63 V. c. 33, s. 58. See *ante*, p. 1010.
New sec. (739*a*) added by 63 V. c. 33, s. 55. See *ante*, p. 1009.
978. New sec. added here by 63 V. c. 33, ss. 53. See *ante*, p. 1009.
Sec. 742 amended by 63 V. c. 33, s. 59. See *ante*, p. 1010.
Sec. 743*a* (62 V. (2) c. 26, s. 49) repealed and a new section substituted by 63 V. c. 33, s. 52. See *ante*, p. 1008.
979. New sec. added after s. 744 by 63 V. c. 33, s. 54. See *ante*, p. 1009.
983. New sec. added after s. 747 by 63 V. c. 33, s. 56. See *ante*, p. 1010.
Sec. 748 amended by 63 V. c. 33, s. 60. See *ante*, p. 1010.

GENERAL INDEX.

PAGE.

Abattoirs,
Preventing, regulating and inspecting 764, 765, 766
Establishing public slaughter houses and cattle yards 766

Absence,
When member of council vacates seat by 226

Acceptance of Office,
What constitutes 238

Accidents,
Liability of municipality for injury caused by coasting, etc., on streets 604
Prevention of, from children riding behind vehicles, etc 604
Regulations for prevention of, from machinery, etc., in factories 607
Regulations of means of egress from certain buildings 606
Strength of walls, etc., in buildings 607
Elevators and hoists 607
Liability of occupant for, when caused by projections into or over streets 661
Arising from non-repair of highways—*see* HIGHWAYS 831
Prevention of, from fire—*See* FIRE.

Acclamation,
Election by 150

Accounting for Moneys,
Includes paying over 299

Accounts,
To be preserved and filed by clerk 293
To be kept separately of special rate and sinking fund 435
Auditing—*See* AUDITORS AND AUDIT 308

Actions,
Continuance of after separation of united counties 83
Changing place of trial 84
By and against municipal corporations 39
Right to resort to the courts 39
Municipalities may sue one another 39
Right to have receiver appointed 39
Foreclosing mortgages 39
Suing for negligence on the part of an officer 39
Injunction to restrain closing of highway 39
For declaration as to limits of highway 39
Suing municipalities,—on contracts 39
In tort,—for non-feasance 39, 832
For mis-feasance 40, 832
Summary proceedings before magistrates 40
Persons concerned in prosecuting not to be members of councils 107, 110
Recovery of costs by municipality when solicitor paid by salary 321
Right not taken away by arbitration provisions where statutory power exceeded or improperly exercised 457
Acts done under illegal by-laws, etc 510
Not to be brought until one month after quashing or repeal 510
One month's notice of action to be given 510, 512
Want of notice must be pleaded 513
To be brought against the corporation alone 510
What actions intended 511
Replevin 511
Injunction to restrain corporation 511
Tender of amends 513
Effect of tender on costs 513
Negligence,—tender or payment into court 515
Costs 515
Executions,—indorsement of writ 516
Sheriff to make demand on treasurer 516
If amount not paid, sheriff to strike rate 516
Precept to collectors, etc., to levy rate 516

PAGE.

Actions.—*Continued.*
Column to be added to roll 516
Surplus—application of 517
Duty of clerk, assessors, collectors, etc. 517
Witnesses 517
Jurors,—ratepayers, members and officers of local municipalities may be challenged 517
For damages caused by non-repair of highways—*See* HIGHWAYS 518

Active Militia,
Supplementing pay of 831
Making grants to bands 797
Grants for benefit of Canadians serving in S. Africa 1006

"Actual Occupation,"
Meaning of 1012

"Actual Value,"
How determined in fixing qualification of electors 105

Adjournment,
Powers of councils as to 124
Purpose of 278
What business may be transacted at adjourned meeting 278

Administration of Justice,
Justices of the peace—*See* JUSTICES OF THE PEACE 278
Police office—*See* POLICE OFFICE 518
Expenses of, what payable and how borne—*See* JUSTICE. 521
Convictions—*See* CONVICTIONS.
Court-houses, etc.—*See* COURT-HOUSES.
Penalties—*See* PENALTIES.
Police Magistrate—*See* POLICE MAGISTRATES.

Adulteration,
Appointment of inspectors for prevention of 593
Prevention of 639
Use of improper materials in bread, etc 640

Advertisements,
Preventing the defacing of property by 626
not to be placed on sign posts erected for bicyclists—*See* NOTICES 863

Advertising,
Annual appropriation for diffusing information as to municipality 804

Affirmations,
See OATHS.

Age,
Evidence of, as to right to vote 117

Agents,
When corporate seal not necessary to contracts made by 42
Liability of corporations for acts or defaults of 595
At Elections—
Certificates entitling to vote at place of service 178
May be present at marking ballot for incapable voter 188
Authority to attend at polling need not be in writing 191
May be present at counting of votes 192
Attendance at recounts 209
Duty as to maintaining secrecy of voting 217
What constitutes communicating information 218
Candidate may undertake duties of 219
Exception as to blind, illiterate, etc. voters 219
Who intended in sections referring to 220
Non-attendance not to invalidate elections 220
Evidence of agency in relation to corrupt practices 260
At Voting on By-laws—
Appointment of, time and place to be fixed by by-law 355
By head of municipality in writing 356
By deputy returning officer 356
Declaration to be made by 356
Admission to polling places 356
May vote where employed 357

Agricultural Associations,
Duty as to preventing gambling at fairs 634
Horse racing at fairs 634
Grants of money or lands in aid of 793
Agreements with municipalities as to use of grounds and buildings 709

PAGE.

Agricultural College,
Nominating students for free tuition at 785

Agriculture, Department of,
Annual returns as to steam boilers to be made to 296
Annual returns as to debts to be made to 443

Aisles,
Preventing the obstruction of 606

Aldermen,
Three to be elected for each ward in cities 95
By-laws for electing by general vote in towns and cities of more than 5,000 and not more than 25,000 98
In cities of more than 15,000 995
Powers as to administering oaths 318
To be *ex officio* justices of the peace 518
Require no additional property qualification to act 520
Payment of in cities of 599

Algoma, District of,
Provisions as to publication of annual financial statement not to apply to 312
Qualifications of councillors in 101

Aliens,
Disqualified to vote at municipal elections 117, 118

Allegiance,
Taking oath of, will not qualify alien to vote 118
Effect of changing on right to vote 118

Alleys,
Regulating the erection etc., of dwellings in 647
Preventing the obstruction and fouling of 657, 658

Almshouses,
Establishing and regulating in cities and towns 791

Amusements,
Regulating and licensing roller skating rinks, etc 734
Preventing, regulating and licensing theatres, music halls etc 1003
Preventing, regulating and licensing bowling alleys etc 726

Anatomy,
Duty of head of municipality as to 292

Animals,
Prevention of cruelty to 603
Pounds and preventing the running at large of 624
Preventing the obstructing and fouling of streets by 657
Preventing the throwing of carcasses into streets 662, 1002
Prohibiting the driving of, on streets 670
Preventing the encumbering or fouling of wharfs, harbours, etc. by 676
Authorizing public fairs for sale of 713
Market fees on 715
Fees for weighing 715
Preventing or regulating buying or selling of 721
Slaughtering for food 766
Preventing or regulating the keeping of goats, cows etc 766, 769
Granting bounties for destruction of foxes etc 801
Wolf bounty 801, 1018

Annexation,
Of village or town to adjacent village, town or city 61
Application of by-laws in new territory 85
Adjustment of debts, and assets upon 86
Qualification of members of council in territory annexed 106

Annual Returns,
To Bureau of Industries, by clerk 295
—by treasurer 304
—by auditors 309, 310
Of steam boilers to Minister of Agriculture 296
To Provincial Treasurer by municipalities indebted to municipal loan fund 442
By council as to debts of municipality 443

Anticipatory Appropriations,
In lieu of special rate, in any year for payment of debt 433
What funds may be appropriated 433
By-laws to state sources and application of funds to be used 433
Suspending yearly rate 433
Recitals in by-law 434
Assent of Lieutenant-Governor 434
On dissolution of union of municipalities 434

Apprentices.
Preventing the sale of intoxicants to ..... PAGE. 637

Aquatics.
Grants for encouragement of amateur sport 1006

Arbitration.
On withdrawal of town from county 64
On separation of united townships 71
Proper parties to, where lands taken 458
Arbitrators,—
Cities and towns, amount claimed not exceeding $1,000 County Judge may act 477
Notice,—application to judge for appointment of sole arbitrator 478
Fees of arbitrator 478
General provisions applicable 478
Appointments,—to be in writing, authentication of 478
By head of municipality 478
Estoppel from taking technical objections 478
Revocability of 479
Either party may appoint and give notice to the other 479
Form of appointment and notice 480
Compelling by *mandamus* in other than expropriation cases 480
Third arbitrator, appointment of 481
Form of appointment 481
Not an umpire 481
In cases between corporations 481
Appointment not a judicial act 481, 482
Where private property has been entered upon 482
Form of appointment 482
Where several persons interested 483
Council may take the initiative 484
Owner omitting to appoint,—County Judge may appoint 484
Not an admission of liability 485
Appointment constitutes submission 486
Time for making award 502
Enlargements 486
Validity of award after expiry 486, 503
Who disqualified to act 487
Oath of 488
Misconduct or interest,—setting aside award 488
Removal of for misconduct 490, 503
Powers of, witnesses and evidence 503
Stating special case 504
Correcting clerical errors 502, 509
Fees of,—what may be charged 503
Penalty for extortion 506
Claim for,—how enforced 508
Procedure.
Submission, what constitutes 508
Not revoked by death 502
Time and place of first meeting 510
Omission to hold first meeting within 20 days 489
Notice to parties 489
Ex parte procedure, where allowable 489
Notice to other arbitrators 489
Setting aside for proceeding without notice 489
For misconduct or interest of arbitrator 489
Mistake must be apparent on face of award 490, 503
Remitting award 490
Witnesses and evidence 91, 497, 503
Commissions, witness fees 505
Habeas corpus ad test 505, 507
Filing sworn copies in lieu of originals 509
Stating case on point of law for opinion of court 509
Execution of award 509
Copy of award to be filed with each municipality interested 491, 497
Costs and taxation thereof 492
Majority to decide 492
Notes of evidence, when to be filed 493
Arbitrators acting on their own knowledge or skill 493, 494
Certificate of time occupied and fees charged 494

Arbitration.—*Continued.* PAGE.

Procedure—
Payment of fees on taking up award 494
Taxation of fees by county court clerk 494
Revision of taxation 495
Costs of taxation 495
Adoption of award by by-law, when necessary 496
Abandonment of work by council 496
Review of award thereafter 496
Time for moving against award 497
Award to be in writing signed by majority 497
Enforcing award 501, 505
Notice of motion for leave 501
Certain provisions of Arbitration Act to apply to municipal arbitrations 501
Costs of references, powers of arbitrators as to 506
Agreements as to fees of arbitrators 507
Postponements 507
Taxation 492, 494, 507
Council fees 507
Attempting to exact excessive fees 508
Discretion of Courts as to 509

Appeals to High Court and Court of Appeal—
Powers of High Court 497
Remitting award to arbitrators 491, 497, 498, 503
Increasing or reducing amount of award 498
Weight of evidence, a question for arbitrators 499
Practice on appeals 505
Awards not requiring adoption 500
Application to set aside when to be made 500
When award deemed to be published 500
Extension of time for moving against 501
Production of exhibits 509
To determine contribution to cost of court house, gaol, etc 552
Fixing amount of compensation payable for lands taken or injured—*See* COMPENSATION, ETC 456

Architects,
Fees when acting as arbitrators 506

Area of Municipalities,
Limit in case of towns and villages 52
In other Provinces 53
Detaching farm lands from city, town or village by proclamation 55
Detaching farm lands from town or village by county council 56
Annexing village or town to adjacent village, town or city 61

Areas,
Construction of, in or under sidewalks, etc 870

Army,
Officers in full pay disqualified from being members of council 107
Grants for Canadians serving in South Africa 1012

Arrests,
When corporation not liable for actions of constables 597
Without warrant, who may make and when 532, 534
By constable for breach of the peace not committed in his presence 540
Under warrant,—how far officer protected 535

Art Schools,
Granting aid to 787

Ashes,
Regulating the mode of removal and safe keeping of 612, 613
How to be kept in police villages 982

Assent of Electors,
Required to by-laws for contracting debts 410
Exceptions,—county by-law for not more than $20,000 410
Drainage and local improvements 410
City and county's share of expense in erecting court house 410
City or town's share of county debt 411
Repair or reconstruction of certain bridges by city 989
How obtained to by-laws—*See* VOTING 350

'Assess,"
Meaning of 422

PAGE.

Assessment,
For year preceding dissolution of union,—to belong to senior municipality ... 89
Equalization, by county council,—valuation for ... 313
In police villages lying in two or more townships ...
For local improvements—*See* LOCAL IMPROVEMENTS.

Assessment Commissioner,
Appointment of by council of city or town. ... 306
Need not be re-appointed annually ... 306
To appoint with mayor the assessors and valuators ... 306
Powers and duties of ... 306
Notices as to assessment to be sent to ... 306

Assessment Roll,
When to be deemed to be finally revised ... 35
Meaning of "rated on the last revised", etc ... 103
Certificates as to, for use at elections ... 175
Right of ratepayers th inspect and have copies of ... 294
Qualification of voters on by-laws in absence of ... 360
Examination by sheriff on striking rate for execution against municipality ... 516
May be posted at township hall in town or village ... 585
Divis'on of municipality into polling sub-divisions to be based upon ... 587
Rating necessary to qualify electors—*See* ELECTORS ... 117

Assessors,
Disqualified from being members of councils ... 107
Appointments to be made annually ... 305
Should be by by-law ... 305
Who may not be appointed or act ... 305
By assessment commissioner and mayor ... 306
Vacancies ... 306
Duties ... 306
Districts to be assigned for ... 305
Need not be identical with ward divisions, etc ... 306
Board of, in cities and towns where there is assessment commissioner ... 306
Declaration of office ... 306
Penalty for refusing to accept office ... 316

Assize of Bread,
Regulation of ... 319

Assizes,
Place where held to be the county town ... 730

Asylums,
Aiding in maintaining indigents at ... 34

Athletics,
Grants for encouragement of amateur sports ... 789

Auctioneers,
Licensing, regulating and governing ... 1006
Bailiffs not affected by regulations ... 730
What is an "auction" ... 731
Sale of lands not affected ... 731
Right to refuse license to ... 731
Transient trade, selling goods by ... 732

Auditors and Audit,
Registrars to transmit annual statement of amounts paid to municipality ... 749
Books, etc., of deceased county treasurer not to be interfered with ... 292
Appointments to be made annually at first meeting ... 298
Exceptions, Toronto ... 308
Municipalities appointing in November or December ... 308
Disqualification for ... 308
To audit daily or otherwise ... 309
When county auditor will not, or cannot, act ... 308
Toronto, City of, appointment of two auditors ... 313
Tenure of office ... 308
Duties ... 308
Report ... 308
By-laws for appointing auditors for accounts of current year ... 309
Monthly audit and report ... 309
School accounts, etc ... 309
Vacancies in cities ... 309
Duties of ... 310
Special report on illegal expenditure ... 310
Return to Bureau of Industries ... 310

PAGE.

Auditors and Audit.—*Continued.*
Report on sureties of treasurers ... 310
Right to inspect bank account ... 311
Publication and distribution of detailed statement of receipts and disbursements, etc ... 311
Exceptions as to certain new districts ... 312
Penalty for false statements ... 312
By-laws of cities requiring audit before payment ... 312
Abstract and report, publication of ... 312
Vouchers to be marked "audited" ... 312
Council to have final audit of all accounts ... 312
County councils to audit all payments by county treasurer ... 313
Daily or other audit, councils may direct ... 313
Declaration of office of auditor ... 317
Accounts of expenses in administration of justice ... 565, 1001

Authentication of By-laws,
By corporate seal and signature of head and clerk ... 347
For purpose of registration ... 416
Of by-laws of police commissioners ... 529

Auto-Motors,
Regulating and governing in cities of 100,000 ... 604

Avenues,
Acquiring lands for in cities and towns ... 823

Awards,
See ARBITRATIONS ... 477

Bagatelle Tables,
Licensing, regulating and governing keepers of ... 732
Minors under 16 years frequenting ... 733
What are houses of public entertainment ... 733
License fee, amount of ... 733

Bail,
Powers of police officers in cities as to taking ... 535

Bailiffs,
Disqualified from being members of councils ... 107

Baldwin, Honorable Robert,
Introduction of general Municipal Act by ... 8

Ballot,
Voting at elections to be by ... 159
Use of in taking votes in councils prohibited ... 989
Permitting municipalities to use voting machines ... 1012

Ballot Boxes,
When poll required clerk to procure ... 160
Construction of ... 160
Delivery to deputy returning officer ... 160
Preservation for use at future elections ... 160
Penalty for failing to furnish ... 160
Deputy returning officer to procure one if not furnished by clerk ... 160
Deputy returning officer to show box empty and lock and seal it ... 179
How to be placed during voting ... 179
Opening at close of poll ... 192
To be returned to clerk after voting ... 200
To be brought before judge on recount ... 209
Offences and penalties in relation to at voting ... 213

Ballot Papers,
At Elections.
Where poll required—clerk to cause to be printed ... 161
Contents of ... 161
Omission of candidate's name, effect of ... 161
Printing names in full ... 161
Separate sets for mayor and councillors or aldermen in cities and towns, etc., divided into wards ... 162
In cities and towns where aldermen elected by general vote ... 162, 988
Forms ... 162, 166
Form of counterfoil in elections to fill vacancies ... 167
How furnished and supplied to deputy-returning officers for county council elections ... 167
Adapting forms to county council elections ... 168
Delivery to deputy-returning officers at each polling place ... 168

PAGE.
310
311
eceipts and disburse-
311
312
312
312
312
312
312
312
r 313
313
317
565, 1001

347
416
529

604

823

477

732
733
733
733

535

107

8

159
989
1012

160
160
160
160
160
160
by clerk 179
d seal it 179
192
200
209
213

161
161
161
161
n cities and towns, etc.,
162
vote 162, 988
162, 166
167
ficers for county council
167
168
ace 168

Ballot Papers.—*Continued.*

PAGE.

Compartment for marking 169
Receipt of to be *prima facie* evidence of having voted 178
Initialling by deputy-returning officer 181
Penalty for wilful neglect or refusal 181
Liability to civil action by person aggrieved 181
Delivery to voter 182
How to be marked by voter 181
When to be rejected for uncertainty 182
Delivery to deputy-returning officer and deposit in ballot box 186
How to be marked for county councillors 182, 187
No one but voter to be present at marking 187
Exception in case of incapacity 188
Jews voting on Saturday 188
Declaration of incapacity 188
Who may be present in case of incapacity, etc., of voter 189
Procedure when inadvertently spoilt 189
No provision for "tendered ballots" 190
Counting at close of poll 191
What to be rejected 192
Who may be present 192
Summary of the law relating to 192, 197
General rules relating to 193
Noting objections 196
Indorsement on, when rejected 196
Statement of result 197
To be made up into packets and sealed 197
Delivery of packets to clerk 198
"Ballot paper account" 200
Disputes as to statement, settlement by clerk 201
County council elections 201
To be retained for one month by clerk and then destroyed 202
Order for inspection of 208
Opening packets and examining on recount 208
Production of packets by clerk—indorsement to be evidence of contents 209
Offences and penalties in relation to, at voting 213
Inspection of, time within which motion to inspect must be made 213
At county council elections.
To be placed in same ballot-box as other ballots 239
How to be dealt with thereafter 202
At voting on by-laws.
Form of 203
Counting at close of poll 355
Noting objections to 364
Sealing up in separate packages at close of poll 364

Bands of Music.
Regulation of by police commissioners 364
Aiding in establishment or maintenance of 529
Granting aid to corps of active militia for 793

Bankrupt Stocks.
When sale of not within provisions as to transient traders 1006

Banks.
Treasurers should not act as agents for 749, 750
Treasurers to keep account for corporation moneys with 297
Duty of managers as to statement of treasurer's balance 302, 303
By-laws for payment of taxes into 303
By-laws for directing withdrawal by countersigned cheque 302
Municipality borrowing from for ordinary current expenses 303
Municipalities not to engage in business of 453, 1000

Barley.
Market fees not to be charged on 455

Barristers.
Exempt from service in municipal office 713
Fees when acting as arbitrators 115

Bar-Rooms.
Allowing minors to loiter in 506

Bathing.
Preventing or regulating in public waters 638
637

PAGE.

Bathing Houses.
Inspection of 638
Granting money to assist in construction of 794

Bathurst District.
How constituted formerly 2

Bawdy Houses.
See HOUSES OF ILL FAME.

Beacons.
Erecting and maintaining in harbours, etc 675
Granting aid to construction of 796

Beggars.
Restraining and punishing 635
Prevention of mendicancy in the streets 773

Bells.
Regulating or preventing the ringing of 770

Beverages.
Preventing or regulating sale of by retail in streets or vacant lots 722

Bicycles.
Regulating and governing use of in cities of 100,000 inhabitants 604
Rule of the road as to 604
An unlawful obstruction on a sidewalk 658
Prohibiting use of sidewalks, etc., for 673
Erection of sign posts by C. W. A. of Canada 863
Setting apart portion of highway for 871
Penalty for riding or driving horses, etc., on 871

Billiard Tables.
Licensing, regulating and governing keepers of 732
Minors under 16 years frequenting billiard rooms 733
What are "houses of public entertainment" 733
License fee, amount of 733

Bill Posters and Distributors.
Licensing, regulating and governing 734, 1003

Bills of Exchange.
Not to be issued by municipal corporations for less than $100 455

Bills of Mortality.
By-laws for keeping and returning 582

Birds.
Preventing the destruction of 603

Black Knot.
Appointment of inspector to prevent the spread of 591

Blasphemy.
Prevention of 631

Blindness.
Marking ballot for voter on account of 188
Aiding in maintaining indigent persons at institutions for blind 789

Blood Boiling.
Not to be carried on without the consent of municipality 765

Board of Audit.
See JUSTICE 656

Board of Commissioners of Police.
See POLICE COMMISSIONERS

Board of Control.
In cities of 100,000 or more, how constituted 287, 996
Quorum 287
Election of four members by council 287, 996
Mode of electing 287
Balloting abolished 989
Who to preside 287
Double vote of mayor abolished 996
Salaries of members 287
Term of office of elected members 287
Vacancies 287
Members not ineligible for chairmanships of committees 287
Removal of members by vote of council 287
Duties of Board, preparing estimates 288
Awarding contracts 288
Inspecting municipal works 288
Nominating officers of corporation 288
Exceptions as to power of Board 290

Board of Control.—*Continued.*
Suspension or dismissal of officers ..... PAGE. 289
Controlling appointment and duties of subordinate officers 289
Other duties of Board 289
Submitting by-laws to council 289
Amalgamating departments 289
Secretary 289
Council may assign other duties 289
To return minutes to council when required 289
Reference back by council 289
Recording votes on reversal of action of Board 289
School Boards, Police Commissioners and Free Library Board to furnish estimates to 289
Exclusive powers of board 290
In cities of more than 45,000 and less than 100,000 290
Not to apply to Hamilton 989
Boarding Houses.
Regulating construction of stairways in 989
By-laws for securing inmates against accidents by fire in 666
Fire escapes 614
Boarding Stables.
See LIVERY STABLES. 615
Boat Houses.
Inspection of 638
"Body Corporate."
Meaning of 38
Boilers.
Annual returns to Department of Agriculture as to 296
Regulations respecting 614
Bonds.
Of treasurer—*See* TREASURER.
Of other officers—*See* SECURITY BY OFFICERS.
Of municipal corporations—*See* DEBENTURES.
Bone Boiling.
When not a "noxious or offensive trade" 766
Not to be carried on without consent of municipality 765
Bone Shops.
Defining areas within which not to be carried on 767
Bonuses.
By-law set aside where councillors were shareholders in company aided 113
Where members of council voting for submission disqualified 275
One-third of qualified ratepayers must assent in case of railway or water company 366
Certificate of clerk as to number of voters 367
Appeal to county judge as to result 367
By-law quashed where majority of council disqualified to vote although assented to by electors 372
Form of debentures issued for 448
Selling or leasing municipal water power 685
To encourage tree planting 701, 702, 703
To agricultural societies, fat stock shows, etc. 793
Aiding establishment or maintenance of bands of music 793
Aiding public bathing houses 793
Grants to burial ground trustees 794
Taking stock in exhibition building companies 794
Grants to free libraries, mechanics' institutes, etc. 794
Taking stock in gas, water, steam heating, electric, etc., companies 795
To harbors, wharfs, beacons, etc. 795
Aiding rifle associations 796–798
Supplementing pay of active militia 797
Taking stock in or making grants to road, bridge and harbor companies 797
Superannuation and benefit funds 798
Taking stock in telegraph companies 800
Bridge companies 800
To railways—powers of municipalities generally 879
Aid from portion of township 955
"Grouping clauses," repeal of 958
To street railways 959
To smelting works 959
..... 961

PAGE.

Bonuses.—*Continued.*
To rolling mills and iron works 962
To grain elevators 962
To manufacturers, power to grant, requisites of by-laws 996, 997
What forms bonuses may take 998
Former provisions as to 792

Booms,
Protection of 627
Right of Province to authorize 627

Boot-blacks,
Regulation by police commissioners of children employed as 529

Booths,
Authorizing the erection of at cab stands, etc 666

Boulevards,
Prohibiting the use of, by certain vehicles 673
Exempt from taxation when owned by municipality 706
May be established by street railway companies 706
Expropriating land for 706
Duty of municipality taking land outside its own limits 706
Setting apart portions of highways for 869
Regulating construction and maintenance 869
Permitting owners of abutting property to construct 869
Protection of 870

Boundaries of Municipalities,
Application of by-laws within 36
By-laws for ascertaining 36
Enlarging limits of village by proclamation 55
Of new town or city to be stated in notice of application for incorporation 58
Registration of by-laws for altering 67
Application of by-laws on alteration of 85
Adjustment of debts and assets on extension of 86
Re-arrangement of county council divisions on alteration of 95
Qualification of members of council on enlargement of 106
By-laws for ascertaining and marking 579
Record of streets to be kept for public inspection 582
Highways and bridges on—*See* HIGHWAYS.

Bowling Alleys,
Preventing, regulating and licensing 736
Deemed nuisances at common law 736

Boxing Matches,
Preventing the holding of without a permit 1002

Brant, County of,
How constituted, county council divisions in 13

Breach of the Peace,
Arrests without warrant for 534, 540

Bread,
Preventing the use of improper materials, etc 640
Seizing and selling when of light weight 727
Regulating the as size of 730

Brewing,
Not a "noxious or offensive trade" 766

Bribery,
Definition of 257
Payments to voters 251
After voting 262
Payments to induce others to influence voters 262
Canvassers 262
Receiving payment to corruptly influence voters 262
Advancing money for corrupt expenditure 263
By candidate 263
Voter receiving money to induce him to vote 263
After voting 264
Hiring teams 264
Penalty, in case of candidate 267
In case of voter 268
Procedure on application to quash by-law for 387

Brick-making,
Not a "noxious or offensive trade" 765

PAGE.

"Bridge,"
Means a public bridge 34

Bridge Companies,
Taking stock in, or granting bonuses to 798
Privileges which may be granted to 873
Municipal aid to 879

Bridges,
Repair of,—liability of corporation—*See* HIGHWAYS 824
Arbitrators to consider expenditure on, when town withdrawn from county 65
Situated in town to be town property after separation from county 66
Cost of not to be deemed ordinary expenditure 411
Preventing the obstruction and fouling of 657, 658
Regulating riding and driving on 672
Preventing racing and furious driving on 672
Jurisdiction of councils over 819
Vested in local municipalities 820
Assumption of county bridges by villages 823
To be thereafter toll free 823
Approaches, how maintained 823
When county has sole jurisdiction over 846
Responsibility of county on assuming 848
When county must construct 848
Over waters forming or crossing boundary lines 849
On roads wholly or partly between two municipalities 850
When river, etc., less than 80 feet wide 850
Removal of stone, etc., from water forbidden 851
Procedure where liability to maintain disputed 851
Removal of driftwood, etc., from streams 851
On township boundaries which are also county boundaries 852
Provisions as to joint jurisdiction not to apply to 853
Transfer to counties of former powers of Quarter Sessions 854
When vested in Crown not to be interfered with by councils 855
Abandonment of by Crown to municipalities 855
When vested in Dominion not to be interfered with except by consent 856
Where city may raise cost of rebuilding without assent of electors 990
Powers of counties, townships, cities, towns and villages,
Making, improving and repairing 864
Carriage ways and sidewalks on 869
For cattle over highways 869
Straightening streams dangerous to 871
Taking tolls on 871
Leasing tolls 872
Granting privileges to bridge companies 873
Aiding adjoining municipality 878
Aiding bridge companies 879
Powers of townships, cities, towns and villages,
Granting aid to county for 879
Powers of counties,
Making, improving and repairing 884
Aiding local municipalities 886
Powers of united counties 888
Powers of townships,
Aiding counties 890
Constructed by local assessment,
Powers of municipalities 909
Municipality assuming part of cost 937
Assessment of non-abutting lands for 939
When municipality may pay half the cost 940
Powers of counties as to 953

British Columbia, Province of,
Municipal councils in 92

British Subjects,
Electors must be 117
Who deemed to be 118
Re-naturalization,—onus of proof of 118

Brock District,
How constituted formerly 3

Brockville, Town of,
Separated from the county 35

PAGE.

Brothels,—*See* HOUSES OF ILL FAME.

Bruce, County of,
How constituted, county council divisions in 13

Brushwood,
Regulations as to setting on fire 616

Buildings,
Numbering on streets and keeping record of numbers 581
By-law for raising money to buy site for post office, etc., invalid 583
By-law for raising money to buy site for post office, etc., invalid 591
Appointment of officer to enforce laws respecting egress from 605
Inspection and regulation of hoists, etc., used in erecting or altering 606
Regulating means of egress from churches, etc 606
Preventing obstruction of aisles, etc 607
Regulating size and strength of walls, roofs, etc. 607
Plans, compelling production of for inspection 610
Destruction of, in public interest,—strict construction of powers 611
What may be deemed 608
Prevention of fire, making regulations as to materials used in 608-610
Pulling down when in contravention of regulations 611
What structures may be deemed 611
Using fire or lights in dangerous places 611
Dangerous trades 611
Construction of fireplaces, etc 612
Chimneys 612
Aisles 612
Party walls 612
Scuttles, etc., in roof 612
Guarding against fire 612
Buckets 612
Inspection of premises 612
Preventing spread of fire, pulling down 612
Conduct of persons at fires 614
Providing against accidents, etc., in public buildings, etc 614
Fire escapes 614
In factories 615
In shops 615
In hotels 617
Regulating the construction of factories and magazines for explosives 981
Regulations in force in police villages 658
Directing the removal of door-steps, etc., obstructing streets 651
Liability of occupier for accidents caused by projections into streets 651
Ascertaining the levels of cellars 652
Compelling furnishing of ground plans 676
Preventing the obstruction of wharfs, harbors, etc., by projections from 858
Cities of 50,000 may prescribe minimum width of street for, and of area of vacant land to be attached to 544

Buildings of Municipal Corporations,
Liability for accidents caused by non-repair 583
Obtaining lands for erecting 584
Disposing of when no longer required 593

Burdock,
Measures to prevent spread of 295

Bureau of Industries,
Annual returns to by clerk 304
By treasurer 309, 310
Returns by auditors to 794

Burial Grounds,
Granting money to trustees of 709
See CEMETERIES 625

Burials,
Disinterment a common law offence 625
Penalty for misconduct at 626
Rights of next of kin as to 648
Regulation of 592

Bush Fires,
Appointment of fire guardians 725

Butchers,
Preventing and regulating purchase by of provisions brought to market 766
Business of, not a "noxious trade" 766

Butchers.—*Continued.*
Slaughter houses and cattle yards ..... PAGE.
Regulating slaughter of cattle and sale of meat—*See* MEAT. 766
Butter.
Statutory regulations respecting 639
When market fees not to be charged on 714
Preventing forestalling, etc., of 725
By-laws.
Territorial application of 36
In existing municipalities contained 37
Repeal of Act does not affect those passed prior thereto 37
Varying name of corporations, effect of 37
Discretion of councils as to passing 37
Enforcing duties of officers under, by mandamus 44, 45
Strict compliance with statutory requirements, when essential 45
Issue and sale of debentures, etc., not an answer to motion to quash 45, 46
Form of, for incorporating a village 46
Mutual agreements between municipalities by 51
Registration of where affecting municipal boundaries 64
Continued until altered by council of new corporation 67
Must be repealed in same manner as passed 84
Application of, when additions made to municipalities 85
What constitutes concurrence in 85
Members counted as concurring must be qualified 275
Procedure as to introduction and consideration of 276
Balloting on in councils prohibited 284
Originals and certified copies to be kept by clerk 989
Copies to be furnished by clerk certified under seal 293
Clerk to send advertisement of money by-law to Bureau of Industries 294
Fixing salaries not in the nature of contracts with officers 296
Powers of councils to be exercised by, unless otherwise directed 321
Where order or resolution will suffice 326
Application of, confined to municipality represented 334
Need not be stated in by-law 326
Exceptions 326
What are 327
Effect of—binding to same extent as other laws 327
Ambiguity in 327
Must be certain and positive in their operation 327
Reasonableness 328
Not to be considered unreasonable if words of Statute followed 329, 341
Distinction between by-laws of companies and by-laws of municipalities 331
Discriminating 337
Repugnant to law 330
Must be in *bona fide* exercise of statutory powers 332, 335
Regulations amounting to prohibition 332
Not in the public interest 341
Partly good and partly bad 333
Need not recite authority of council 333
In case of conflict statute law must prevail 334
Regulations, general power to make should be exercised by 335
Procedure of councils and conduct of members 335
For general welfare 335
Must be good though not expressly authorized by Statute 336
For the public safety and convenience 336
Distinction between prevention and regulation 337
Fee for certificate of compliance with 341
Repeal and amendment 343
Exceptions 334-338
After 31st December and before meeting of new council 338
Licenses to traders, fixing fee and term of 339
Restraint of trade—distinguished from regulation 339
Powers strictly construed 340
Licenses 340
Amount of fees which may be imposed 344
Must not have effect of prohibition or monopoly 340
Imposing power must be express 341
Special taxes on individuals 344
Monopolies not to be created 343

PAGE.

By-laws.—*Continued.*
Under colour of power to license 343
Exceptions as to telephone companies 345
Ferries 346
Authentication by seal and signature 347
Necessity for seal 347
Enforcing signing by *mandamus* 347
Copies certified by clerk under seal to be evidence 346
Statutory mode of proof must be followed 348
Recitals where assent of Lieutenant-Governor required 349
In by-laws for creating debts 395
Objections by ratepayers to be made 349
When to be given effect to 349
Council not to pass by-law until disposed of 372
Validity, where recitals are untrue in fact 349
Assent of electors, when required 351
Special requisites of bonus by-laws 366, 996
Majority in favour does not take away discretion of council 371
How obtained—*See* VOTING 350
Scrutiny—*See* SCRUTINY 369
Corrupt practices—*See* CORRUPT PRACTICES.
Promulgation of 373, 999
Effect of in confirming by-law 373
Notice as to time for moving against 373, 999
Validity if not moved against 374
Quashing—*See* QUASHING BY-LAWS, ORDERS AND RESOLUTIONS 374
Creating debts, powers strictly construed 388
To name a day when to take effect 389
Issue of debentures 390
When debt to be made payable 390
Statement of amount to be raised annually 391
Time of commencement of annual rate in by-laws before 1st July, 1897 392
Saving as to certain special Acts 393
Investment of sinking fund—estimated interest 393
Property on which rate to be levied 393
Recitals 393
In local improvement by-laws 399
Forms 395
Local improvement by-law 400
Making debt payable in annual instalments 403
Form 404
Special rates a charge on property 409
County councils, amount which may be raised without assent of electors 410
Special meeting of council to consider 412
Assent of electors when required 410
Exceptions 410, 411
Repeal, when allowed 413
Assent of Lieutenant-Governor 413
Prohibition of, in other cases 413
Officers not to obey illegal repealing by-law 414
For purchase of public works 414
Registration, when required 415, 999, 1001
Manner of 416, 999
Fees of registrar 416
Penalty of a clerk neglecting to perform duties 416
Notice, publication 417
Not obligatory as to local assessment by-laws 418
Application to set aside 418
Registration 421
Dismissal, certificate of 418
Effect of 418
Not to validate illegal by-laws 419
Irregularities in form when not too invalidate 420
For imposing yearly rates—*See* TAXES 421
For making anticipatory appropriations 433
Recitals in 434
Requisites of 433
Assent of Lieutenant-Governor 434
On dissolution of unions 434

By-laws.—*Continued.*
Effect of promulgation on validity of debentures ..... PAGE.
Form for consolidation of local improvement debentures 448
Illegal—actions for things done under 450
Jurisdiction of mayor as to offences against 510
Justice of the Peace, jurisdiction as to offences against 519
Not disqualified by reason of membership in council 520
Nor because penalty payable to municipality where he is a ratepayer 520
Officers should be appointed by 521
Where contravention punishable by fine, action by individual not maintainable 590
For setting apart cemeteries, may not be repealed 611
Every local assessment must be made under 710
Enforcement of 910
Imposing penalties for breach of 910
Collecting penalties and costs 963
Imprisonment 963
Keeping houses of ill fame 963
Municipality may do the work and charge offender 963
Of Board of Police Commissioners—*See* POLICE COMMISSIONERS 963, 964
Of Police trustees—*See* POLICE VILLAGES 965
Quashing—*See* QUASHING BY-LAWS, ORDERS AND RESOLUTIONS.

Cabinet Makers' Shops,
Use of fire or lights in 611

Cabs,
Power of police commissioners to license and regulate owner keeping for hire 526
Regulating hours of labour of drivers 528
Licensing drivers of 528
Authorizing and assigning and erecting shelters for drivers at stands 666
Preventing the importuning of travellers by drivers of 747
Licensing owners and drivers,—in towns and villages 754, 1003
Fixing fares and enforcing payment 754
In counties having free roads 754

Canada Thistles,
Appointment of inspector to prevent growth of 592
Prevention of 626

Canadian Wheelmen's Association,
Erecting sign-posts on highways 863

Candidates,
Meaning of "candidate" 235
May be present in polling places 191
But not when ballot marked for illiterate voters, etc 219
May be present at counting votes ..... [illegible]
May undertake duties of agent 219
When liable for corrupt acts of agents 259, 263

Carcasses,
Preventing the throwing of, into streets, etc 1002

Carleton, County of,
How constituted, county council divisions in 14

Carleton, Sir Guy (Lord Dorchester),
Proclamation dividing Upper Canada into four districts 1

Carpenters' Shops,
Use of fire or lights in 611

Carriages,—*See* VEHICLES.

Carters,
Powers of police commissioners to regulate and license 526
Licensing and regulating in towns and villages 753
In counties having free roads 754

Cash Book,
To be kept by certain treasurers 301

Casting Vote,
At elections to be given by clerk 202
At county council elections to be given by nominating officer 205
At elections of police trustees 975
By clerk where equality of votes found on recount 211
At election of warden 273
Equality of votes negatives question in council 277
Not to be given by returning officer on by-law 366

PAGE.

Cattle,
Seizure of when dying on cars or in markets 640
Prohibiting the driving of on certain streets 670
Preventing driving on sidewalks, etc. 673
Authorizing fairs for sale of, etc. 713
Market fees on 715
Slaughter houses and yards for 766
Preventing and regulating the keeping of 769
Permitting subways and bridges for under or over highways 869

Celery,
When market fees not to be charged on 714

Cellars,
Regulating the construction and cleaning of 642
Liability of municipality for flooding from defective sewers 651
Ascertaining levels of 651
Compelling the furnishing of plans of 652
Construction of areas and openings in or under streets, etc. 870

Cemeteries,
Protection of 625
Penalty for committing certain offences in 625
Rights of next of kin as to burials 626
Regulation of interments 648
Accepting or purchasing lands for 709
Acquiring land in adjoining municipality 709
Not to be in city, town or village 709
By-law, requisites of,—not to be repealed 710
Transfer of lands held by company or trustees 710
Sale or lease of plots in 710
Villages,—may acquire land in their own limits 710
Consent of Provincial Board of Health 710
Enlargement of,—acquiring and taking lands for 711
When lands are in village or town,—consent of Provincial Board of Health 711
Arbitration proceedings 711
What lands may not be taken without consent of owner 711
Granting money to trustees of 794

Cemetery Companies,
Transfer of lands to municipality 710

Census.
Ascertaining population of cities by 25
No authority for partial census of municipality 49
May be taken at any time by by-law of town or village 58
Exclusive legislative authority of Parliament 58
How to be taken on incorporation of village 50
Verification of returns on erection of town into a city or village into a town 59
By-laws for taking 582
To be taken decennially for the Dominion 582

Cesspools,
Regulating construction and cleaning of 642
Filling up and closing in definite areas 642, 645

Chairman,
Rules of procedure as to 279
In Committee of the Whole 283

Chairman of Council,
Clerk to preside at election of warden 273
Power to expel persons for improper conduct 274
Head of council when present to be 276
When president to be elected 277
Appointment of, where head temporarily absent 277
May vote 277
Power as to administering oaths 319

Chairmen of Committees,
Payment of in cities of 100,000 599

Charity,
Preventing the solicitation of in the streets 773
Aiding maintenance of indigent persons at certain institutions 789
Taking security on land of indigent persons 789
Municipal aid not compellable 790
Aid to charitable institutions and out of door relief 790, 791
Establishing and regulating almshouses, etc. 791

PAGE.
640
670
673
713
715
766
769
869
714
642
651
651
652
870
625
625
626
648
709
709
709
710
710
710
710
710
711
ial Board of Health 711
711
711
794
710
25
49
58
58
50
llage into a town.... 59
582
582
642
642, 645
279
283
273
274
276
277
277
277
319
599
773
tions 789
789
790
790, 791
791

Charity.—*Continued*
Support of destitute insane persons by county councils PAGE. 791
Aid to Victorian Order of Nurses 792
Committal of paupers, etc., to House of Industry—*See* HOUSES OF INDUSTRY.
Charivaris,
Prevention of 772
Cheese,
Market fees not to be charged on 713
Chief of Police,
Appointment and duties of, in cities 530
In towns and villages 537
Disqualified from being member of council 107
May be appointed high bailiff 530
Suspension of 540
Duty as to enforcing laws relating to means of egress from buildings 591
Children,
Regulation by police commissioners when engaged in certain callings 529
Who are to be deemed 529
Prevention of riding behind vehicles and on platforms of cars 604
Preventing the sale of intoxicants to 637
Loitering in bar-rooms, etc. 638
Curfew-bell 638
Chimneys,
Inspection and regulation of scaffolding, etc., used in erecting or repairing 605
Regulating the construction of, to prevent fire 611, 612
Enforcing the cleaning of 612, 613
Compelling use of smoke consumers 768
When smoke from will be a nuisance 768
Christmas Day,
Provision for case of nomination day falling on 148
Churches,
Regulating means of egress from, strength of walls, etc. 606
Compelling production of plans 606
Preventing obstruction of aisles, etc. 606
Disturbance of, by playing of bands, etc 758
Assessment of site and lands for local improvements 947
Cigarettes,
Licensing and regulating vendors of 748
Penalty for supplying to minors under 18 748
Revoking license of vendors of 1005
Cigars,
Licensing and regulating vendors of 748
Penalty for supplying to minors under 18 748
Right to revoke license of vendor 1005
Circuses,
Preventing or regulating and licensing 734, 735
Licenses not to be granted for certain times and places 735
Prohibition of in neighborhood of agricultural fairs 736
Amount of license fees 736
Cities,
Early acts of incorporation 5
Population, how ascertained 35
List of provisions respecting cities of specified population 35
Separation of farm lands by proclamation 55
Erection of towns into 58
Population required 58
Notice of application 58
Verification of census returns and publication of notice 59
Adjustment of debts with county 59
Proclamation 59
Additional territory may be attached 59
Wards 60
Extension of limits 60
Territory added may remain in same electoral division 60
New territory to belong to same county as the rest of the city 61
Annexation of adjacent village or town 61
Re-division of wards 62
Councils, how composed—*See* COUNCILS 95

PAGE.

Civil Service,
Members of exempt from service in municipal office ... 115

Clergymen,
Exempt from service in municipal office ... 115

Clergy Reserves,
Application of surplus derived from Municipalities Fund ... 440, 441

Clerk,
Disqualified from being member of council ... 107
Of local municipalty may vote at county council elections ... 117
Not to vote at elections except to give casting vote ... 202
Penalty for offences at elections ... 213, 215
Rules of procedure in council relating to ... 284
Should preside in absence of head of council until chairman elected ... 278
To be appointed by every council ... 293
Should be appointed by by-law ... 293
To keep minutes and record votes, etc ... 293
To preserve accounts and copies of by-laws, etc ... 293
May be appointed treasurer ... 293
Powers as to binding council ... 293
Duties under other statutes ... 294
Absence or incapacity of ... 294
To allow inspection of documents and furnish copies ... 294
Right of inspection may be enforced by *mandamus* ... 295
Documents certified by, to be receivable in evidence ... 295
Returns to Bureau of Industries ... 295
To transmit advertisements of money by-laws ... 296
Moneys payable by Province may be retained until returns made ... 296
To make return of steam boilers to Minister of Agriculture ... 296
Penalty for ref al or neglect ... 296
Mode of recovery ... 297
Duties with respect to annual financial statement ... 311, 312
Declaration of office ... 316
Powers as to administering oaths ... 318
Council to fix remuneration for services under Ditches and Watercourses Act ... 320
To sign by-laws ... 347
Copies of by-laws certified by to be evidence ... 348
To verity recitals in by-laws requiring consent of Lieutenant-Governor ... 348
Not to have a casting vote on by-laws submitted to ratepayers ... 366
Duty as to registration of money by-laws ... 415
Penalty for neglect ... 416
To be deemed an officer of the court as regards executions against corporations ... 517
Appointment, duties and fees as clerk of police office ... 522

Clerk of the Peace,
Appointment of, for junior county on separation ... 80
Disqualified from being member of council ... 107
Agreement with county for salary in lieu of fees ... 321
To notify Sessions of appointment of constables ... 538
Accommodation to be furnished in court house for ... 549
Tariff of fees of ... 568
Not to be allowed double fees when acting also as County Attorney ... 572
Fees on selection and empanelling of jurors ... 573
By-laws creating polling sub-divisions to be filed with ... 588

Clerk of Works,
Declaration of office ... 316

Clerks,
Licensing and regulating employment agencies for ... 745

Coal Oil Refineries,
Not to be carried on without consent of municipality ... 765

Coasting,
On streets of city, town or village ... 604

Colborne District,
How formerly constituted ... 2

Cold Storage,
City may carry on business of, in connection with market ... 729
Construction of buildings by municipalities and government aid to ... 991

Collector,
Disqualified from being member of council ... 107
Appointment to be made annually ... 305
Should be by by-law ... 305

PAGE.
115
115
440, 441
107
117
202
213, 215
284
elected 278
293
293
293
293
293
293
294
294
294
295
295
295
296
irns made 296
296
296
297
311, 312
316
318
Watercourses Act 320
347
348
nt-Governor 348
vers 366
415
416
gainst corporations 517
522
80
107
321
538
549
568
Attorney 572
573
588
316
745
765
604
2
729
ernment aid to 991
107
305
305

Collector.—*Continued.*
Who may not be appointed or act
By-laws relating to 305
Annual re-appointment not necessary in cities 306
Duties 306
By-laws prescribing 306
Returns as to tax defaulters 305
Assignment of districts to 306
In townships forming provisional county 306
Penalty for refusing to accept office 306
Declaration of office 307
Duties with respect to executions against municipal corporations 319
To be deemed officer of the court as regards executions against corporations 316
516
517

Colleges,
Members and officers exempt from service in municipal office 115
Regulating construction of means of egress from 606
Assessment of for local improvements 947
Making grants in aid of 1005
Issuing debentures 1005
Supporting pupils at 1005
Endowing fellowships, etc., in 1005
1005

Collegiate Institutes,
See High Schools.

Commission of Inquiry,
As to redivision of city of 100,000 into wards 132

Commission of Inquiry into Finances.
Issue of by Lieutenant-Governor-in-Council 444
Expenses of 444, 445

Commissioner of Crown Lands,
Surveyors' monuments to be erected under authority of 578

Commissioners of Police,
See Police Commissioners.

Committee of Lunatic's Estate,
Authorized to convey to municipality lands required in exercise of statutory powers 472

Committee of the Whole,
Rules of procedure as to 283

Committees,
Rules of procedure as to appointment and organization of 285
Members of Board of Control may be chairmen of 287

Common Gaol,
See Gaols

Common School Fund.
Origin of 776

Companies.
Shareholders not to be disqualify from being members of councils 113
By-laws of, distinguished from municipal by-laws 337

Compensation for Lands Taken or Injured,
Owners to be compensated by corporation 456
"Eminent domain" 456
Recoverable only where law so provides 457
Delegation of right to corporations 457
Strict construction of laws authorizing expropriation 457
Exceptions 458
Right of action where statutory powers exceeded or not properly exercised 457
Who may make a claim 458
One proceeding to settle all claims 459
Right exists distinct from the land 459
"Injuriously affected," meaning of 460
Injury must be to the land itself 460-461
Damage must be peculiar to property affected 462
Damage need not be permanent 462
Must be irrespective of any particular use of property 462
Depreciation in market value 463
Measure of, larger measure in case of taking than for injury 463
Where some land taken and the remainder injured 463
Future user of portion taken causing damage to remainder 464
Value of lands, how to be estimated 464
Percentage added for compulsory sale 465

Compensation for Lands Taken or Injured.—*Continued.* PAGE.
Payment not a condition precedent to right of entry 465
Damage must be legal and necessary 465
Right of action in case of negligence 465
Not confined to the execution of the work 465
Must be finally determined by award 466
As of what date to be ascertained 466-469
Interest not allowed 467
Set off of benefits derived by claimant 467
Must be in respect of the land 467
Advantages must result directly from the work 467
But need not be peculiar to the property 468
Local improvements 468
Who may determine claims 468
Limitation of claims 469
Cities and towns may file plans with clerk 469
What plans should show 470
Claims not barred when plans insufficient 472
Notice of the work 469
Form of notice 470
Claims to be filed within 60 days after service of notice 469
Mode of service of notice 470
Extension of time where person served resides out of Ontario 469
Claims barred if not filed within time limited 471
Arbitration to determine claims filed 471
Right of municipality to abandon work 471
Particulars of claim, delivery of claim 471
Conveyances, corporations, tenants in tail, etc., may make 472
Where there is no person to make a conveyance, appointment by County Judge 473
Purchase money, application of where person conveying has not absolute estate 473
Sum paid to stand in place of lands taken 474
Payment into court 475
Notice to persons interested to file claims 475
Costs 476
Order of distribution to bar all claims 476
Tender by corporation, effect of on costs 476
Appointment of arbitrators and award, *see* ARBITRATION 477

Compensation for Negligence.
Tender or payment into court by corporation, effect of on costs 515

Confirmation of By-Laws.
By publication and no motion to quash within time limited 373
Extent of 374

Consolidated Municipal Loan Fund.
Annual returns by municipalities indebted to 442

Constables.
Authority to be present in polling places 191
Attendance at schools, etc., used as polling places 590
Declaration of office at elections 317
Agreements with municipalities as to funding fees 321
City Council to appoint high bailiff 530
In cities and towns having police commissioners 530
Appointment and tenure of office 531
Oath 531
Regulation by Board of Police Commissioners 531
Duties of, generally 531
Remuneration and other expenses of force 536
Indemnifying officers in actions for damages 537
In cities, taking bail when in charge of police station 535
In towns having no police commissioners and in villages 537
Counties and townships, appointments by council 537
Powers and privileges 537
Appointment and dismissal by General Sessions 538
By County Judge when Sessions not sitting 538
Temporary appointments by County Judge 538
High constables for counties, appointment, remuneration and equipment 538
Oath 539
Tenure of office 539
May be appointed Provincial Constables 539
Fees 539

PAGE.

Constables.—*Continued.*
Arrest without warrant, who may make and when 532
Duty of assisting, penalty for breach of 533
Arrests under warrant 534
Provincial and district constables 539
Special constables 539
Exemption of volunteers 539
Suspension of constables by County Judge 539
By Inspector of Legal Offices 539
By Mayor of town pending organization of Board of Police Commissioners 540
Incapacity, salary to cease during 540
Arrests for breaches of the peace not committed in their presence 541
Cities and towns not bound to contribute to pay fees of 540
In charge of lock-up houses—provision for salary 550
Appointment of 557-558
Allowance for special services for detection of crime 558
Tariff of fees 565
Disallowance of unnecessary charges for arresting vagrants 571-574
Payment of 75 per cent. of certified accounts in advance of meeting of Board of Audit 575
Firemen exempt from services as 576
Liability of corporations for acts of 594
May not arrest without warrant for violating bicycle regulations 597-598
Powers to see that by-laws for preventing obstruction of aisles, etc., are carried out 605
By-laws for establishment of police force 606
Right to rewards offered for detection of crime 628

Contagious Diseases.
Supplying blanks and providing for notification of 803

Contempt.
Punishment for witness refusing to answer 647

Contractors.
Liability of corporation for accidents before taking over buildings 525
Liability of corporations for acts or defaults of 544
Settlement with as on a *quantum merint* for work on local improvements 595

Contracts of Corporations.
Actions by and against municipalities upon 1006
Limits of powers of municipal corporations 39

Contracts.
Limitations of powers of corporations as to 40
When *ultra vires*—void or voidable 40
Parties to, bound to take notice of limited powers of corporations 40
Corporate seal, when necessary and when unnecessary 41
Executed and unexecuted 41
Proper statutory formalities must be observed 42
Cannot be made by members of councils with the corporation 42
Personal liability of members of councils for when unauthorized 47
Liability of county council for cost of court house and gaol in absence of seal 47
Persons interested in not to be members of councils 78
Exception as to shareholders in companies 107, 109
To be null and void when members of council interested 113
Members declared trustees of profits improperly made 114
Partnership transactions 114
Duties of Board of Control as to receiving tenders and awarding contracts 115
Certain by-laws deemed to be in nature of 288
Liability for work on court house for provisional county in absence of seal 338
Seal necessary in contracts for fire appliances, etc 543
Right of enforcing against public companies without Attorney-General being a party 619

Contributory Negligence.
What constitutes 1011

Controverted Elections.
Acceptance of votes of persons refusing to be sworn a ground for application 836
Who may try right to seat or office 143
Jurisdiction of Master in Chambers 233, 235
No appeal from Judge of High Court 237
Appeals to lie from Master or County Judge 237
Relator,—who may be 237
When injunction may be granted 233, 235
..... 234

Controverted Elections.—*Continued.* PAGE.
In case election has been by acclamation ... 236
Time within which proceedings must be taken ... 238
For inspection of ballot papers ... 239
What are reasonable grounds for proceeding ... 239
What must be shown by relator ... 239
Where relator claims seat ... 244
Notice of motion ... 239
Length of notice ... 243
Form of ... 243
Service of ... 245
Relator limited to grounds stated in ... 246
Fiat for service of ... 240
Recognizance to be entered into by relator ... 240
Form of ... 240
Affidavit of justification ... 241
Need not be signed when taken by commissioner ... 241
Allowance of,—indorsement by Judge ... 240
No appeal from ... 241
How entitled ... 241
Proceedings,—how entitled and where to be carried on ... 242
Affidavits to be filed before notice served ... 245
Relator claiming seat ... 246
Proceeding by one motion against several persons ... 246
Several proceedings as to one election,—trial of ... 246
Production of books and papers ... 247
Evidence,—how taken *viva voce* ... 247
Adding returning officers, etc., as parties ... 248
Allowing others to intervene and prosecute or defend ... 248
Summary trial ... 249
Issues,—trial of by jury ... 249
Form of order for trial ... 249
Form of indorsement of verdict ... 250
Judgment,—terms of ... 250, 254
Form of,—in favour of relator ... 250
For respondent ... 251
To have effect of mandamus ... 254
Return of ... 254
Costs ... 251, 253
When returning officer may be ordered to pay ... 253
Effect of disclaimer upon ... 253
When election of whole council invalid ... 252
Order to be directed to sheriff ... 252
Right of action against returning officers, etc., not affected ... 253
Disclaimer,—after election complained of ... 254-255
Form of ... 254
Transmission of ... 255
Before election complained of ... 255
Operates as a resignation ... 255
Next highest candidate takes seat ... 255
Relieves from liability for costs ... 255
Exception ... 256
Effect of ... 256
Rules of practice,—Judges may make ... 257

Conveyances,
Lists to be furnished by registrar on request of clerk or assessment commissioner ... 307

Convictions,
Under by-laws cannot be quashed for invalidity of by-law unless invalidity is patent ... 377
Validity of by-law may be incidentally questioned in proceedings to set aside ... 379
Form ... 969
Not to be void for certain informalities ... 970
Not invalidated for want of proof of by-law ... 971
For offences against Municipal Act ... 965

Corn,
Market fees not to be charged on ... 713

Coroners,
Appointment of, for junior county on separation ... 80
Exempt from service in municipal office ... 115

PAGE.

Coroners.—*Continued.*
Cities and separated towns not bound to contribute to expenses of inquests 550
Tariff of fees 568
Fees of constables at inquests 571
Expenses of inquests, how borne 574

Corporations.
Power of Provincial Legislature as to creating 50
Procedure laid down by Statute must be strictly followed 51
Powers of council confined to territorial limits 326
Exceptions 327
Not liable for mistakes in exercise of jurisdiction 334
May obtain judgment for foreclosure of mortgage 441, 583
Delegation of right of eminent domain to 457
Authorized to convey to municipality lands required in exercise of statutory powers 472
Liability for damages caused by non-repair of buildings 544
Insurable interests in court-house, etc. 553
Liability to prisoners for damages from non-repair of lock-up 557
Application of mortmain laws to 583
Right to decree of foreclosure 583
May recover on covenant in mortgage of lands 583
Not entitled to rectification of description of lands in mortgage 584
Contract with owner to erect buildings on his own lands, *ultra vires* 584
Members of councils may act as commissioners or superintendents of corporation works 592
Liability for acts or defaults of agents, contractors and officers 595
Liability for acts of licensees 604
Enforcing certain statutory or contractual obligations in favor of 1011
Mode of creating,—*See* INCORPORATION.
Matters consequent on formation of,—*See* NEW CORPORATIONS.

Corpses.
Disinterment of,—a common law offence 625
Penalty for disturbing funeral 625
Improperly interfering with 626
Rights of next of kin as to burial, etc. 626
Regulating interments 648

Corrupt Practices.
Bribery,—definition of 257
Penalty 267, 268
As an offence at common law 258
Under the Criminal Code 261
To induce persons to influence voters 262
Canvassers 262
Persons corruptly influencing voters 262
Advancing money for 262
Receiving money, etc. 263
Hire of teams 263, 264
Undue influence,—definition of 264
What conduct will constitute 264
Penalty 265
Candidate,—how far liable for acts of agent 264
Must have given authority for, or ratified illegal act 259
Wilful ignorance of illegal expenditure 259
Lawful personal expenses 263
Payments for professional services 266
To forfeit seat and be disqualified for two years 267
Speakers at public meetings,—payment of 267
Agency,—evidence of 267
Procedure where by-law sought to be quashed for 260
Costs.
Recovery of by municipality where solicitor paid by salary 387
Effect of tender of compensation in actions for things done under illegal by-laws. 321
In actions for negligence 515
Of arbitrations,—*See* ARBITRATIONS 515
Councils.
Meaning of "council" and "councillor" 492
Do not constitute the corporation 33
Head, members and officers in existing municipalities continued 36, 47
Powers of corporation to be exercised by 37
.... 44

Councils.—*Continued.* PAGE.
Discretion as to exercise of powers generally 44
Ultra vires acts of do not bind corporation 47
Jurisdiction of continues until council of new corporation organized 89
Different classes of, in Ontario 91
In other Provinces 91
How composed, in counties,—*See* COUNTY COUNCILS.
In cities 95
In towns 96
Reduction in number of councillors in towns 96
Repeal of by-law 97
In towns of not more than 5,000 98
Councillors to be elected by general vote 98
Division into wards, by-law for 98
By-law for election of aldermen by general vote in towns of more than 5,000 and and cities of not more than 15,000 ..... 98, 995
Assent of electors to by-law 98
Electing aldermen by general vote in other cities 995
In villages 99
In townships 99
In provisional counties 100, 988
Provision in case of non-election of full council owing to resignation of candidates 153
How far bound by acts of clerk 293
Powers to be exercised by by-law except where otherwise authorized 326
Jurisdiction of, generally confined to municipality represented 326
When extended beyond their own municipalities 327
Mistakes as to, liability of corporation for 324
Powers of, to be exercised by by-law unless otherwise expressly authorized 326
When order or resolution sufficient 334
Generally as to regulations 334
To repeal, alter or amend 334
To be deemed to be continuing bodies 338
Certain things not to be done after 31st December 338
License fees 339
Monopolies must not be granted by 343
Telephone companies 345
Ferries 346
Procedure, power to make regulations as to 334, 335
Discretion as to passing by-laws assented to by ratepayers 372
To make annual returns as to debts 443
Delegation of powers to other bodies 612
Boards of Control—*See* BOARD OF CONTROL.
Members,
Personal liability for illegal acts 43, 47
Powers of corporations to be exercised by 44
Qualification, what rating required 101
Exception as to certain Districts and Haliburton 101
Residence 101
On wife's property 102, 103
Owner or tenant 102
Nature of estate 102
Ownership without rating not sufficient 103
Rating must be by name on the roll 103
Last revised assessment roll, what is 35
Election not voided if qualification actually possessed 104
Liens, charges and incumbrances 104
Unpaid local improvement rates 104
Must be deducted from assessed value 104
What deemed to affect estate 104
When not to be taken into account 105
Adding different properties to make up required amount 105
Alienation of property, when not to affect 105
Declaration of qualification in such cases 105
When new territory added to city, town or village 106
County councillors 106
New townships where no assessment roll 106
Where not two persons qualified for each seat 106
Disqualification, who may not be members 107

PAGE.
44
47
nized 89
91
91
95
96
96
97
98
98
98
ore than 5,000 and
98, 995
98
995
99
99
100, 988
ignation of candi-
153
293
horized 326
d 326
327
324
sly authorized 326
334
334
334
338
338
339
343
345
346
334, 335
372
443
612

43, 47
44
101
101
101
102, 103
102
102
103
103
35
104
104
104
104
104
105
105
105
105
106
106
106
106
107

Councils.—*Continued.*
Clerks of municipalities
High school trustees
Innkeepers and liquor licensees
Contractors with corporation
Who deemed to be
Persons having claims, etc., against corporation
Convicted of offences at elections
Convicted of offences against liquor license laws
Notice of, when and how given
Effect of
Form of
Exceptions, shareholders in companies dealing with corporation
Lessees from corporation for 21 years
Persons exempted from taxation
Persons publishing official advertisements
County Councils
Members not eligible for local councils
Members making contracts with corporation
Exemptions from service
Distinction between exemption and disqualification
Members not to be appointed assessors or collectors
Members not to be appointed auditors
Penalty for false statements in annual financial report
Investigation of charges of misconduct by County Judge
Liability for diversion of sinking fund
Liability for neglect to levy for sinking fund
Liability for illegal investments
Not to be arbitrators where municipality interested
Competent witnesses in actions to which corporation a party
In the case of local municipalities liable to challenge as jurors
Exempt from jury service in inferior courts
May act as commissioners or superintendents of corporation works
Remuneration of in counties and townships
Entitled to be reimbursed expenses legitimately incurred
Proceedings to set aside or unseat members of—*See* CONTROVERTED ELECTIONS.
Declarations of qualification and office—*See* OATHS AND DECLARATIONS.

PAGE.
108
108
108
109
109
110
111
111
111
111, 112
113
113
113
113
987
114
114
114
115
115
305
308
312
424
436
437
441, 442
488
517
518
518
592
599
599

Vacancies—
When seat of member to become vacant
Crime
Insolvency
Absence
Forfeiture
Member to resign or be unseated
Disqualification
Proceedings in county councils
Resignation with consent of majority
Warden's resignation
Notice of vacancy
Neglect or refusal to accept office
New election, how ordered
Who to conduct
Time for holding
When vacancy occurs before organization
Organization of council to be proceeded with
Seat to be held for residue of term
When council may appoint or order new election
Appointing requisite number when election neglected

224
225
225
226
227
226
227
227, 232
228
228
228
229
229
229
230
230
230
231
231

Meetings—
First meeting, when to be held
Effect of holding meeting at other time
Notice, when necessary
Declarations of office and qualification to be first made
Where to be held
Subsequent meetings, where to be held
Place for must be fixed beforehand by by-law or resolution
County or township may acquire necessary place in city, town or village
Ordinary meetings to be open to the public

233
271
271
272
272
273
274
274
274
274

PAGE.

Councils.—*Continued.*
Meetings—
Quorum, majority to constitute 275
Where there are only five members three must concur 275
Effect of not expressing dissent when question put 275
Members concurring must not be disqualified to vote 275
Head to preside 276
Refusing to put motion 276
Appointment of president in case of absence or vacancy 277
Casual absence, election of chairman 277
May vote 277
Equality of votes negatives question 277
Special meetings, how called 276
Where to be held 277
May be either open or closed 277
Adjournments 278
Balloting at prohibited 989
Suggested rules of procedure—*see* PROCEDURE 278-286

Counties,
Meaning of "county" 33, 34
Original division of Upper Canada into 2
Present division of Province into 13-30
County council divisions 13-30
Transferring territory on incorporation of village lying in more than one county 53
May be constituted by proclamation in unorganized territory 67
How formed 74
On formation may be united to adjoining counties 74
Unions of, how formed 74
Seniority, how regulated 75
Laws applicable to 75
Dissolution of—*See* PROVISIONAL COUNTY CORPORATIONS 75
Withdrawal of towns from—*See* TOWNS 63
Matters consequent on separation from union—*See* NEW CORPORATIONS 89

County Board of Audit,
See JUSTICE 565

County Constables,
See CONSTABLES.

County Councils,
List of divisions as at present constituted in each county 13-29
Compellable by mandamus to pass by-law incorporating village 50
How composed 93
Population, how ascertained 93
Earlier legislation respecting 93
Divisions, how determined 94
Number of 94
Two members for each 95
Re-arrangement of 95
On re-union of town with county 994
Term of office in 95
Exception as to Haliburton 95
Valuation for purposes of equalization of assessment 313
Agreement with clerk of the peace for salary in lieu of fees 321
Debts, limit of amount to be raised without assent of electors 410
Guaranteeing debentures of minor municipalities 601
Duties with regard to county buildings—*See* COURT HOUSE, GAOL.
Elections—
Qualification of electors 117
To be held in alternate years 128
To be held on same days and at same hours as local elections 129
Nominations when to be held 144
Procedure where local council elected by acclamation 137
Nominating officers appointment of 155
Notice of time and place for nominations 155
Nominating officer to preside 156
Death or absence of 156
When nominations to be held 156
By acclamation certificate of 157
Certificate when poll is necessary 158
Resignation of candidates 158

County Council.—*Continued.*

PAGE.

Elections—
Ballot papers, etc., to be procured by clerk and furnished to deputy-returning officers 167
Duty of clerk where local council elected by acclamation 168
Additional column in poll book for 174
Where electors to vote 176
Ballots to be placed in same box as those for local election 202
How to be dealt with thereafter 203
Separate ballot paper account 203
Procedure where no local election is being held 203
Certificate of result of voting 203
Form 203
Certificate where local municipality not all in same county council division 203
County clerk to cast up votes and declare result 204
Casting vote to be given by nominating officer 205
Ballots to be placed in same box and dealt with in same manner as others 205
Local clerk to certify result of vote to clerk of county 202
Form of certificate 203
County clerk to count up votes and declare result 203
Nominating officer to give casting vote in case of a tie 205
Penalty for neglect of duty by clerks or officers 205
For making false returns of result 216
Application of general provisions as to penalties 217
Recount, special provisions as to 217
Expenses, apportionment 989
Application to county judge to settle disputes 223
Form of notice of application 223
Incurred by officers to be paid by treasurer 223
Members—
Qualification of members 224
Members of local councils for year preceding election not disqualified 106, 988
Not to sit or vote in county council 114
County clerk and treasurer disqualified 114
Candidates for, not to be eligible for local councils 114
Exempt from jury service in inferior courts 114
To be *ex officio* justices of the peace 518
Property qualification as justices of the peace 518
Payment of 520
Meetings—
First meeting, when to be held 599
Where to be held 272
Election of warden 273
Not to be balloted for 272
To be held annually 989
Clerk to preside 272
Casting vote 273
Subsequent meetings 273
Special meeting to pass by-law for borrowing $20,000 or less 274
Notice of by-law and meeting 412
Vacancies—
Procedure to vacate seat 413
In office of warden 227
How and when to be filled 228
County Court Clerks,
Disqualified from being members of councils 232
County Crown Attorneys,
Disqualified from being members of councils 107
Tariff of fees for service at general sessions 107
Accommodation to be furnished in court house for 572
In City of Toronto 549
County Judge,
Appointment of, for junior county on separation 550
Investigation of charges of malfeasance in office 80
To be a police commissioner 324
Appointment of constable by 524
Suspension of county constable by 538
Approval of by-law changing name of street, etc. 539
Appeal to,—from by-law making polling sub-divisions 580
587

PAGE.

County Town,
Meaning of ... 34
To be named in proclamation setting apart provisional county ... 76
Courts in junior county to be held at ... 84
Court house, gaol, etc., to be erected at ... 543

Coupons to Debentures,
May be for less than $100 each ... 455

Court House,
Erection of by provisional county ... 78
Liability of council for cost where contract not under seal ... 78
Regulations governing plans, etc., of ... 79
Debts contracted by city and county for,—assent of electors not required ... 410
Former provisions as to erection of ... 541
Crown may set aside and appropriate public lands as sites for ... 541
Must be erected before provisional county can be finally separated ... 541
Plans, etc., approval by Inspector of Prisons ... 541
By-laws for erecting, improving and repairing ... 542
County council to keep in repair and provide supplies, etc ... 542
Must be erected at county town ... 543
Inspector of Prisons, etc.,—power to compel repairs to be made ... 543
Liability for accidents arising from non-repair ... 544
Site,—by-laws for acquiring ... 543
To be the court house for cities and towns situated in the county ... 545
City by-laws for the erection, etc., of ... 545
Regulations to be made by the city council ... 550
County council to have the care of ... 546
Accomodation to be provided ... 547-549
Sittings of courts in ... 547
Voters' lists revision ... 548
Division Courts ... 548
Police magistrate's court ... 548
Crown attorney of Toronto ... 550
Separation of united counties, regulations continued ... 550
Cost of erection and maintenance, cities and separated towns to contribute ... 550
Disagreement as to—determination by arbitration ... 551
Agreements between county and city or separated town ... 552
Where county has bought out city or town's interest ... 552
Council not liable for furniture, etc., unless ordered by proper authority ... 553
Insurable interest of contributing municipalities ... 553
City to be consulted as to plans, cite, etc., of building after 5th March, 1880 ... 553
Matters to be considered in determining contribution of city or town ... 554
Compensation for use of by city or town ... 556
Reconsideration of amount agreed upon or awarded ... 557

Court of Revision,
Payment of members in cities of 100,000 ... 599
Local improvement assessments,—right of appeal ... 907

Courts,
Appointment of officers, etc., for junior county on separation ... 80
Courts of union to cease to have jurisdiction in junior county thereafter ... 81
Pending proceedings in ... 83
To be held at county town of junior county after separation ... 84
Officers of, exempt from service in municipal office ... 115
Accommodation, etc., to be provided in court house for ... 546
Appointment of interpreter and stenographer at instance of county council ... 551

Covenant Against Incumbrances,
Does not include local improvement rates ... 944

Cows,
See CATTLE.

Cranes,
Regulating the construction of ... 607

Criers,
Tariff of fees for services in courts ... 572
Preventing the selling of small wares by, in public places ... 724

Crime
Seat of members of council vacated on conviction of ... 225
Disqualification for office of assessor or collector ... 305
Who may be committed to lock-up house ... 558
Allowance for special services in detection of ... 565

PAGE.

Crime.—*Continued.*
Municipalities may legislate for prevention of 629
By-laws for offering rewards for detection of 803
Criminal Justice Accounts,
Contribution by cities and separated towns to expenses of county 550
Audit and payment of—*See* JUSTICE 565
Crossings,
Construction and repair of on toll roads 841
Crown,
By-laws for incurring debts to—for purchase of public works 414
Crown Lands,
Setting aside lots for sites for court house and gaol 541
Crown Timber,
Moneys distributed under Acts relating to, how dealt with on dissolution of united municipalities 70
Crown Witnesses,
Payment of,—how borne 575
Cruelty to Animals,
Prevention of 603
Culverts,
Construction and repair of on toll roads 841
Curfew Bell,
Powers of councils as to instituting 638

Dairy Products,
Preventing forestalling, etc., of regulating sales of on markets. *See* MARKETS.. 725
Dalhousie District,
How formerly constituted 2
Damage to Lands,
Compensation payable by corporation for. *See* COMPENSATION FOR LANDS..... 456
Dancing House,
Kept without a license deemed a disorderly house 736
Dead Bodies,
Disinterment of,—a common law offence 625
Penalty for disturbing funeral 625
Improperly interfering with 626
Rights of next of kin as to burial, etc 626
Regulating interments 648
Deaf and Dumb Institutes,
Aiding in maintaining indigents at 789
Deaths,
By-laws for keeping and returning bills of mortality 582
Debentures,
Sale of, not an answer to motion to quash by-law 46
To be issued by senior county or township for debts contracted before dissolution of union 89
When to be issued under by-law for creating debt 390
Term within which to be made payable 390
Power to guarantee local improvement debentures 399
Registration of by-laws for issue of—*See* REGISTRATION OF BY-LAWS 415
Right of holder to compel levy of rate for payment of 422
Issued before 1st January, 1867, priority of 428
Rates for payment of, how calculated 429
Sinking fund 429
Reduction of rates for payment of, when allowed 432
Redemption of by application of sinking fund moneys 438
To have corporate seal and be signed by head or some person authorized by by-law 445
Mandamus to enforce performance of duty 447
Exceptions as to railway and other bonuses 448
Treasurer to see that money raised properly applied 446
Liability for misapplication 447
Form of 446
Local improvements 446
Negotiability of 446
Rights of holder 447
Coupons, except in cities, to be sealed and signed by head and treasurer 447
Form 447
Full amount recoverable notwithstanding rate at which negotiated 448

Debentures.—*Continued.* PAGE.
Interest—no restriction upon rate of ... 448
Railway and other bonuses ... 448
Informalities in promulgated by-laws not to invalidate ... 448
Defence of illegality when sued on ... 448
Estoppel of municipality ... 448-449
Issued before 1st February, 1883, by-law and debentures valid after two payments ... 449
For local improvements,—to be marked ... 449
Consolidation of several issues ... 449
Requisites of consolidating by-law ... 450
Form of consolidating by-law ... 450
Registration of,—prescribing mode of transfer by ... 452
Book to be kept by treasurer, entry of transfers ... 452
Certificates of ownership ... 452
Transfer thereafter to be only by entry ... 453
Borrowing sums to meet ordinary current expenditure for the year ... 453
Limit of amount to be borrowed ... 453
Disqualification of councillors for exceeding limit ... 453
Lender not bound to prove necessity for loan ... 454
For school purposes ... 454
Payment over to treasurers of school boards ... 455
Not to be issued for less than $100 ... 1000
Limitation does not apply to coupons ... 455
Debentures which include principal and interest ... 1000
Municipalities not to act as bankers ... 455
By-laws of county council guaranteeing, when issued by local municipalities ... 601
Assent of electors not required ... 601
May be passed before that of minor municipality ... 601

Debts.
Balance found due on separation of counties,—interest on ... 80
How to be provided for ... 80
Territory erected into new municipality remains liable for ... 86
Adjustment of when limits of municipalities extended ... 86
Senior county or township to issue debentures for on dissolution of union ... 89
Rates for payment of to be collected and paid over by new municipalities ... 89
By-laws contracting ... 388
To name a day when to take effect ... 389
When date of taking effect left blank ... 389
Changing date after publication of by-law ... 389
Debentures when to be issued ... 390
When to be made payable ... 390
Smelting works ... 999
To specify sums required annually for principal and interest ... 391
Rate to begin from date fixed for issue of debentures ... 391
By-laws passed before 1st July, 1897 ... 392
Debentures issued under certain local Acts ... 393
Interest on investments to be estimated at four per cent ... 393
Special rate ... 393
Recitals ... 393
Amount of debt to be created ... 394
Object of debt ... 394
Amount required annually ... 395
Amount of assessment of the municipality ... 395
Existing debt ... 395
Forms, where sinking fund required ... 395, 397
Local assessment by-laws, recitals in ... 399
Guaranteed by municipality ... 399
Short form of ... 400
Making principal repayable in annual instalments ... 403
Sinking fund need not be provided for ... 404
Forms ... 404, 406
Special rates to be charged on property ... 409
To be collected in the same manner as other taxes ... 409
Assent of electors, county by-laws ... 410
Special meeting of council ... 413
Other municipalities ... 410
Erecting court house and offices ... 410
Payment of city's or town's share of county debt ... 411

PAGE.

Debts.—*Continued.*
Ordinary expenditure, what may be deemed 411
For purchasing public works 415
Repeal of by-laws, when only part of the money raised 413
Requisites of repealing by-laws 413
Not allowed until debt paid 413
Refusal to carry out law under colour of illegal by-law 413
Penalty 414
For purchasing public works from the Crown 414
By-law need not name day when to take effect 414
Yearly rates to be levied to pay those falling due within the year 389
What are to be deemed 421
Levying retrospective rates for 422
Contracted before 29th March, 1873, rates for payment of 422
Debentures issued before the 1st January, 1867, how rates calculated 424
Reduction of rate for payment, when allowed 428
Rate for payment of 432
Returns to Provincial Treasurer by corporations indebted to Municipal Loan Fund 433
Returns to Minister of Agriculture 442
Reduction of sinking fund rate for certain local improvement debentures 442
Power to incur for local improvements 601
Amounts to be kept and management of sinking fund, etc.,—*See* FINANCE 932
Form and negotiability, etc., of debentures,—*See* DEBENTURES 435
Registration of by-laws for creating,—*See* REGISTRATION 445
Declaration,
See OATHS AND DECLARATIONS 516
Declaration of Incapacity,
When to be made by voter 139
Attestation of 188
May be made orally by Jews voting on Saturday 189
Form of 189
Declaration of Office,
Inadvertent mis-statement as to qualification in 190
To be administered to members of council before business proceeded with 104
Jurisdiction of mayor in prosecutions for not making 272
Declarations of Qualification,
To be filed by candidates in cities of more than 30,000 519
Duty of certain officers as to,—*See* OATHS AND DECLARATIONS. 995
Dedication,
Invalidity of attempts to alienate lands after 584
Of parks,—what constitutes 708
Of highways,—*See* HIGHWAYS 807
Defaulters' Lists,
Preparation of before election 159
Who to be named in 159
Copies to be furnished 160
Persons named in to be excluded from voters' lists when prepared by clerk 173
To be evidence of non-payment of taxes 174
Deformities,
Preventing the exposure of in the streets 773
Deputy Clerks of the Crown,
Disqualified from being members of councils 107
Deputy Police Magistrate,
Appointment and salary of 521
Attendance at police office 522
May act as police commissioner in absence of police magistrate 1000
Deputy Reeve,
When included in term "reeve" 34
Office practically abolished 35, 97
Office ceased in town on separation from county 65
References to office of, repealed 988, 989
Deputy Returning Officers,
Appointed by by-law for each polling place 134
Clerk to perform duties of, where no wards or sub-divisions 135
Refusal or neglect to act 135
Death or absence of on polling day 135
Illness, etc., during polling 135
To be conservators of the peace 136

Deputy Returning Officers.—*Continued.* PAGE.
Summary trial of offenders by 136
May swear in special constables 136
At county council elections 137
Liability for interference with voters' choice of oaths 142
Certificates entitling to vote at place of service 178
May vote at elections 202
Right of action of person aggrieved by misconduct of 215
Absence from duty does not invalidate election when result not affected 222
May be made a party to controverted election proceedings 248
Liability for costs 249
Declaration of office 317
At voting on by-laws,
To be named in by-law to be submitted to electors 350
May vote where employed 357
Deputy Sheriffs,
Disqualified for membership in councils 107
Despatch Messengers,
Regulation by police commissioners of children employed as 529
Directions to Voters,
At elections, clerk to furnish deputy returning officers with 169
Form of 183
Placarding at polling places 169
Voting on by-laws,—form of 359
Dirt,
Compelling removal of from roofs and sidewalks 662
Liability for accidents to pedestrians 662
Preventing the throwing of into streets, etc 1002
Frontage rates for removal of from streets 946, 949
Not to be thrown into streets in police villages 983
Disclaimer,
By person elected,—form and effect of 254
Diseases,
Notification of when contagious 647
Preventing the exposure of in the streets 773
Disorderly Conduct,
Restraint and punishment of persons guilty of, in streets, etc 635
Disorderly Houses,
Suppression of 631
Certain places of amusement, if kept without a license, will be deemed 736
Keeping of,—a public nuisance 757
Disqualification,
Of clerk or nominating officer for fraudulent returns of county council elections, etc. 217
Vacating seat in council for 227
Who may not be appointed or act as assessor or collector 305
Who may not be appointed auditors 308
For diversion of sinking fund 436
For neglect to levy for sinking fund 437
For exceeding limit in borrowing for current expenditure 453
Of magistrates on ground of interest 521
By-laws for disqualifying tax defaulters 586
Who disqualified to sit in councils,—*See* COUNCILS 107
Proceedings to declare seat vacant for,—*See* CONTROVERTED ELECTIONS 233
Distilleries,
Preventing and regulating the erection, etc., of 764
Distress,
Selling butchers' meat distrained for rent of market stalls 727
District Councils,
Transfer of former powers of Quarter Sessions to 6
Origin of 93
Mode of electing members of 94
Districts,
Proclamation of 1788 dividing Upper Canada into 1
Divided into counties for representation purposes 2
Re-named by first Legislature 2
Re-division of Upper Canada 2
Government of, by Quarter Sessions 3, 6
Municipal councils constituted for 6
Abolition of 8

PAGE.

Ditches and Watercourses,
Remuneration of clerk for services in respect of 320
Appointment of engineer to carry out provisions respecting 591
Division Courts,
In junior county after separation 84
County not bound to furnish accommodation for officers, etc., at court house.547, 549
Right to use court house when sitting at county town 548
Municipalities in which sittings held to furnish accommodation 549
Docks,
Granting aid to construction of 796
See WHARFS.
Dogs,
Appointment of inspectors of sheep worried by 590, 591
Powers of councils and police commissioners as to
Running at large 602
By-laws for imposing tax 602
Object of 602
Protection of sheep from 602
Restriction of use in hunting deer 603
Doors,
Regulating size and number of in certain buildings 602
To open outwards in certain buildings 606
Door-steps,
Directing the removal of where obstructing streets 606
Dorchester, Lord,
Proclamation dividing Upper Canada into four districts 658
Dower,
Lands dedicated for streets to be free from 1
Drainage,
Adjustment of indebtedness on separation of municipalities 822
Proceeding with where territory in which drain was begun is annexed to another municipality 70
New municipality to indemnify municipality undertaking 87
Collection of rates, etc., thereafter 87
Where part only of lands liable transferred 88
Assent of electors not required to by-laws 88
When cost not to be deemed ordinary expenditure 410
Registration of by-laws optional 411
Irregularities in form cured 418, 999
Certificate of application to quash 420
Ratepayers of municipalities interested not to act as arbitrators 421
Appointment of engineer for ditches and watercourses 488
Borrowing money and issuing debentures for tile drainage 591
Charging sewer rents 600
Liability of owner and occupant for escape of sewage 600
Of cellars, privies, etc 643
Vacant lots 642
Generally, for sanitary purposes 642
Opening, making, etc., of sewers and drains 642
Levels of cellars, plans, etc 648
Acquiring lands in another municipality from which surface water flows 651
Extension of sewers into adjoining municipality 652
Purchasing wet lands from Crown and draining and selling same 653
Preventing the obstruction of drains and watercourses 654
Clearing away and removing trees, brushwood, etc., from streams 680
Imposing penalties for causing obstruction of streams, etc 681
Removal of stone, etc., from bed of stream in which pipes laid prohibited 681
Construction of, as a local improvement 851
Assessment of lands benefited 908
Alternative methods of procedure 912
In police villages 912
Draymen,
Licensing and regulating in towns and villages 978
In counties having free roads 753
Driftwood,
Removal of, from rivers or streams on boundary lines 754
Drives,
Exempt from taxation when owned by municipality 851
May be established by street railway companies 706
..... 706

Drives.—*Continued.* PAGE.
Expropriating land for ... 706
Duty of municipality taking land outside its own limits ... 706
Driving,
See STREETS.
Drugs,
Appointment of inspectors to prevent adulteration of ... 593
Drums,
Preventing the beating of ... 770
Drunkenness,
Committal to lock-up house for ... 558
Committal of habitual frequenters of taverns to house of industry, etc ... 562-563
Inebriate asylums,—by-laws for establishing ... 564
Who may be committed to ... 564
Prevention of ... 631
Restraint and punishment of persons guilty of in streets, etc ... 635
Authorizing officer in charge of station to release offenders ... 635
Dry Earth Closets,
Regulating and compelling construction or ... 642, 646
"Due,"
Meaning of ... 428
Dufferin, County of,
How constituted, county council divisions in ... 14
How formed and when, ... 75
Dundas, County of,
How constituted, county council divisions in, ... 15
Durham, County of
How constituted, county council divisions in ... 15
Dwellings,
Regulating erection or occupation of, on narrow streets ... 647
Cities of 50,000 may prescribe minimum width of streets for, and of area or vacant lands to be attached to ... 858

Earth Closets,
Regulating construction and cleaning of ... 642, 646
Eastern District,
How formerly constituted ... 2
Eating Houses,
Limiting the number of, regulating and licensing ... 752
Limitation as to license fee ... 753
Revocation of license ... 752
Education,
Obtaining sites, and establishing public schools ... 774
Separate schools ... 778
Establishing high schools and appointing trustees ... 778
Aid to high schools ... 778
Grants to high schools and collegiate institutes ... 784
Grants to University of Toronto and Upper Canada College, and other universities and colleges ... 784, 1005
Issuing debentures ... 1005
Supporting pupils at universities and high schools ... 785, 1005
Right to nominate pupils for free tuition at Agricultural College ... 785
Endowing fellowships, scholarships etc ... 786, 1005
Powers of City of Toronto as to aiding University of Toronto ... 786
Technical schools for artisans, etc ... 786
Art Schools ... 787
Mining Schools ... 787
Industrial Schools ... 788
See SCHOOL MONEYS.
Eggs,
When market fees not to be charged on ... 714
Preventing forestalling etc., of ... 725
Egress from Public Buildings,
Appointment of officers to enforce laws respecting ... 591
Elections,
County by-law separating junior township from union, to name returning officer and place for holding first election ... 68
Qualification and disqualification for service in councils. *See* COUNCILS ... 101
Electors,—who may be. *See* ELECTORS ... 116

Elections.—*Continued.*

PAGE.

Oaths of voters, *See* VOTING
Nominations. *See* NOMINATIONS 138
Recount of votes by County Judge. *See* RECOUNT 144
Poll, how conducted. *See* VOTING 209
County Councils,—special provision as to. *See* COUNTY COUNCILS
Setting aside, *See* CONTROVERTED ELECTIONS
Corrupt practices at. *See* CORRUPT PRACTICES 233

Time and place of holding. 257
County councils
Local councils 128
After erection of new municipality or extension of limits 129
By-laws to fix place in each municipality 129
First election in junior township 130
To be held in municipality to which they relate 130
Not to be held in taverns or other licensed places 133

Wards. 133
Wards in townships,—abolished on dissolution of union 130
Townships and villages,—general vote in 131
New division in cities and towns 131
Cities of 100,000 or over 132

Returning officers and Deputy Returning Officers.
Council to provide by by-law as to each ward or polling sub-division 134
Clerk to be returning officer for whole municipality 134
Where no wards or polling sub-division 135
Refusal or neglect to act 135
Death or failure to appoint 135
Illness, etc., during polling 135
To be conservators of the peace 135
Special constable,—appointment of 136
Duties as to county council elections when no polling at local election 136
Posting up names of candidates 137
Duties on withdrawal of candidates after nomination 153
For municipalities not divided into polling sub-divisions 154

Tax Defaulters Lists. 175
To be prepared by treasurer and verified by oath 159
Income voters 159
Real property voters when by-law has been passed 159
Non-return of collector's roll, Collector to prepare lists 159
For each polling sub-division 159
Copies to be furnished on application 160
Exclusion of persons in default, from lists made up in poll book 160
To be evidence of non-payment of taxes 173

Ballot Boxes. 174
To be procured by clerk 160
How made 160
Delivery to deputy-returning officers 160
Return at close of poll 160
Preservation for future use 200
Failure to furnish, penalty on clerk 160
Deputy-returning officer to procure 160

Ballot Papers. 160
Clerk to procure 161
Names of candidates, how printed and arranged 161
Accidental omission of 161
Error in statement of 161
Where election is by wards 162
Where by general vote 162
Forms of 162
In case of election to fill a vacancy 162-166
County councils 167
Delivery to deputy-returning officers 167
How disposed of after election 168

Polling Places. 208
Clerk to supply materials, etc., necessary for use at 168
Compartments for voters to mark ballots 169
Sections relating to corrupt practices to be posted up 270

Councils.—*Continued.* PAGE.

Directions to voters.
Clerk to furnish printed copies 169
To be placarded 169
Form of 183

Voters' Lists and Poll Books.
What lists to be used 170
In new municipality for which there is no roll 170, 171
Form of poll book 171
Lists where new territory is added or village incorporated 172
Form of lists 171
Where no voters list has been filed or certified 173
Delivery to deputy-returning officers 173
Fees of clerk of the peace 174
County councillors, column for votes for 174

Certificates as to the Assessment Roll.
Clerk to prepare and deliver to deputy-returning officer 175
To be given out by clerk on application 175
Penalty for clerk's neglect or refusal to give 175
What to be evidence of 175
Form of 175

Not held at proper time or interrupted.
To be commenced on following day or continued until poll open for eight hours.. 206
If not held in four days new election to be ordered 206
Declaration of election 207
Assumption of office by persons elected 207

Recount.
Appointment for by county judge 209
Deposit by applicant 209
Who may be present 209
Opening packets, recounting votes 209
Secrecy to be observed 209
Continuous proceedings 210
Mode of procedure 210
When ballot may be disallowed or allowed in part 210
Writing or omission by deputy-returning officer not to avoid vote 210
Objections to be noted 210
Decision of county judge to be final 210
Statement of result by county judge 211
Form of judge's certificate 211
Return of ballots to clerk 211
Clerk to declare result 211
Quo warranto proceedings not affected 212
Costs 212
County council elections 212

Production of documents by clerk.
Documents and indorsements to be conclusive evidence for certain purposes 213
Production of documents and indorsements on ballot packets as evidence 213

Offences and Penalties.
Fraudulent dealing with ballot papers 213
Applying for ballot in name of dead or fictitious person 213, 214
Voting oftener than entitled to 213, 214
Attempts to commit above offences 213
Imprisonment 213
Other corrupt practices. *See* CORRUPT PRACTICES 214, 215
Officers, penalty for misconduct by 215, 216
Refusal to perform duties 216
Making false or incorrect returns 217
County councils, application of general provisions to 217

Secrecy of proceedings.
Maintenance of, *See* VOTING 217

Miscellaneous Provisions.
Candidate may undertake duties of agent 219
Expressions referring to agents, meaning of 220
Time, computation of 220
Elections not invalidated for want of strict compliance where result not affected 220
Matters essential to validity 221, 222
Matters not essential 221

Councils.—*Continued.*
Miscellaneous Provisions.
PAGE.
Disturbances at the poll
Candidate acting as returning officer ... 222
Absence of deputy-returning officer ... 222
What must be shown to uphold an election ... 222
Expenses of county council elections ... 222
Disputes between local municipality and county ... 223
To be paid by treasurer to clerk and distributed by him ... 223
Electors neglecting or declining to elect ... 223
Elections to fill vacancies, warrant for ... 224
Who to conduct ... 233
When vacancy occurs before organization ... 229
Time for holding ... 229
When council may appoint or order new election ... 230
County councils ... 230
Appointment of members when election neglected ... 231
Non-observance of statutory hour for,—when not fatal ... 227, 232
Validity not to be questioned on member elect making declaration of office ... 233
Declaration of office to be taken by returning officers, etc ... 271
May be held at township hall in town or village ... 272
By laws relating to ... 317
For disqualifying tax defaulters ... 585
For dividing municipality into polling subdivisions ... 586
For uniting polling subdivisions in cities of 100,000 and using school houses ... 586
Use of voting machines at ... 589
Of police trustees. *See* POLICE VILLAGES ... 1012
Of warden,—to take place annually ...
Mode of procedure ... 272
Balloting prohibited ... 273
Of members of Board of Control ... 989
Balloting prohibited ... 287
Elections to Legislative Assembly, ... 989
See POLLING SUBDIVISIONS
Electoral Districts, ... 586
See POLLING SUBDIVISIONS
Electors,
Meaning of ... 586
In relation to approval of village becoming unincorporated ... 34
On question of annexation of town or village to adjoining municipality ... 57
Do not constitute a corporation ... 1014
Who qualified to vote at county council elections ... 36
Clerks of local municipalities ... 117
Who qualified generally at elections ... 117
Women ... 117
Full age, what constitutes ... 117
Evidence of ... 117
British subjects, who deemed to be ... 117
Onus of proof of re-naturalization ... 118
Rated on the last revised assessment roll ... 118
Voters' list determines right to vote ... 119
Must hold property for which rated ... 119
Property held in right of wife ... 119
Property held in trust does not qualify ... 119
Amount of rating necessary ... 120
Freeholders ... 123
Residence not necessary ... 120
Tenants ... 120
Substituted for "householders," ... 120
Residents, who to be deemed ... 120
Wife need not be resident if husband is ... 120
Income Voters ... 121
Evidence as to dates ... 121, 988
Farmers' Sons ... 122
When more than one son resident ... 122, 988
When qualification not sufficient for more than one person ... 122
Occasional or temporary absence ... 122
Interpretation ... 123
"Owner," when leaseholder included ... 123

Electors.—*Continued.*
PAGE.
Persons in default for taxes 124
Must be named on voters' list 124
Right to vote—how determined 125, 127
Cannot mark a tendered ballot 127
Where there is no assessment roll 127
Territory added or new municipality erected 127
Owner and occupant severally rated 128
Joint owners or occupants 128
Partners and joint tenants 128

Electric Light,
Term of debt to be contracted for in towns of 5,000 or less 390, 403
Erection of poles and wires 666
Acquiring water rights to supply power for 684
Supplying surplus power to manufacturers 1011
Powers of municipality as to. *See* LIGHT AND HEAT 686

Electric Light Companies,
Taking over works by municipality about to undertake supply 687
Offer to company 687, 1002
Determining value of works on arbitration 688, 1002
Severance where part only of works taken 688
Withdrawal of municipality from purchase 689
Arbitration to fix charges for supply 689
Application of certain provisions to works operated by individuals 690
Acquiring stock in or lending money to 796

Electric Railways,
Compelling company to provide shelters for motormen 697
Establishment of parks in connection with 706

Elevators,
Licensing and inspecting 607
Regulating the construction of 607
In factories 607

Elevators for Grain,
By-laws for granting aid to 962

Elgin, County of,
How constituted, county council divisions in 15

Eminent Domain,
Right of—defined 456-457

Employment Agencies,
Licensing and regulating the keepers of 745

Engineers,
Declaration of office 316
Fees when acting as arbitrators 506
Appointment of to carry out law as to ditches and watercourses 591
Appointment of, to enforce repairs on toll roads 594
By-laws for appointment of for counties, cities and towns 594
Report on proposed local improvements 903

Epidemics,
Postponement of elections on account of 207

Equality of Votes,
See CASTING VOTE.

Equalization of Assessment,
Appointment of valuators by county council 313
Valuation to be the basis of 313
Term for which each valuation to be in force 313
In police villages lying in more than one township 1009

Equine Syphilis,
Inspection of stallions, etc., to prevent spread of 594

Essex, County of,
How constituted, county council divisions in 16

Estimates,
Duties of Board of Control as to preparing 288
To be furnished to Board of Control by school and other boards 290
To be prepared annually by councils 424
Yearly rate to be based upon 425
Reduction of when shortage in collection of taxes 426
Appropriation of surplus 427

PAGE.

Estimates.—*Continued,*
Not to be exceeded by amount borrowed pending collection of taxes 455
Appropriation for entertainment of guests, travelling expenses, diffusing information, etc 804

Estoppel,
Effect of certain conduct on the part of applicant to quash by-law 375
From making technical objections to arbitration proceedings 479

Exchequer Court of Canada,
Right to use court house and gaol 547

Executions.
How dealt with on separation of junior county 83

Executions against Municipal Corporations,
Indorsement of direction to sheriff to levy rate 516
Service of writ on treasurer 516
If claim not paid rate to be struck by sheriff 516
Precept to collectors, etc., to levy rate 516
Column to be added to rate roll for sheriff's rate 516
Collector to pay amount raised by rate to sheriff 516
Surplus to be paid over to treasurer 516
Clerks, assessors, etc., to be officers of the court from which writ issues 517

Exemptions from Service in Councils,
Who not required to serve 517
Distinguished from disqualification 115
Refusal to accept office an offence 115

"Exempt from Taxation,"
Meaning of 115

Exemptions from Taxation.
By-laws for,—how affected by transfer of territory to another municipality 114
Persons exempted, not disqualified from being members of councils 85
By-law for, deemed in nature of a contract 113
By-laws for exempting manufacturing establishments to be subject to same requirements as bonus by-laws 338
Not to include school rates 999
Should be a consideration for 999
May be regarded as contracts 999
Repeal of, assent of person exempted 430
Sale of, illegal 431
Renewals, power can only be exercised once 431
Property assessed for local improvements exempt from general rates for same purposes 431, 999
Extension of term of exemption 943, 952
Iron, steel or silver smelting works 1007
Liability of certain exempt property for local improvements 1007

Exhibition Buildings Companies,
Taking stock in or lending money to 94

Exhibition Grounds,
Powers of cities and towns as to acquiring lands, erecting buildings, managing, etc 794
Agreements with agricultural and horticultural associations 707

Exhibitions,
Preventing or regulating and governing 709
Licenses not to be granted for certain times and places 734, 735, 736
Prohibition of in neighborhood of agricultural shows 735
Amount of license fee 736

Explosives,
Regulating the keeping, manufacturing and storing of 736
Licensing the manufacture and storage of 617
Regulations as to storage of gunpowder in police villages 618

Expressmen,
Power of police commissioners to license and regulate 982
Prohibiting stables within certain districts 526
Regulating hours of labour of drivers 528
Licensing and regulating in towns and villages 528
In counties having free roads 753

Express Messengers,
Regulation by police commissioners of children employed as 754

Expropriation,
Special provisions as to filing plans, etc., in clerk's office in cities and towns 529
Authority for must be expressly conferred 469
..... 583

PAGE.

Expropriation.—*Continued.*
Limitations as to in case of lands required for enlargement of cemetery 711
See COMPENSATION FOR LANDS 456

Factories,
Regulating construction of stairways in 606
Regulations for prevention of accidents from machinery, elevators, etc..... 607
Securing employees, etc., against accidents by fire, etc. 614
Means for extinguishing fires to be provided..... 614
Doors 614
Ropes to be provided for every window..... 614
Outside fire escapes..... 615, 616, 1017

Fairs,
Duties of agricultural associations as to preventing gambling at..... 634
Horse racing at..... 634
Authorizing the holding of 713

Farm Lands,
Separation of, from city, town or village, by proclamation..... 55
From town or village by county council..... 56

"Farm,"
Meaning of in relation to farmers' sons' qualification 123

Farm Produce,
Regulating place and manner of selling or weighing..... 723

Farmers' Sons,
Qualification as electors..... 122, 988
Oath of voters as..... 141

Faro Banks,
Seizing and destroying..... 633

Fat Stock Associations,
Grants of money or land in aid of 793

"Father,"
Includes stepfather, in relation to farmers' sons' qualification..... 123

Fees,
Of clerk furnishing copies of documents..... 294
Of clerk for service under Ditches and Watercourses Act 320
Remuneration of officers by..... 320
Agreement with clerk of the peace for salary in lieu of..... 321
With constables 321
Solicitor, when entitled to recover costs..... 321
Of county judge holding investigation into charges of misconduct..... 325
Of registrar on registration of by-laws 416
Registration of certificates as to proceedings to quash by-laws 419
Of arbitrators..... 478, 506
Of clerk of police office..... 522, 523
Application of when clerk paid by salary..... 522
Of justices of the peace and their clerks..... 523
Not to be taken by gaolers 546
Payable to officers in administration of justice..... 565
Registrar on registering by-law changing name of street, etc..... 580
By-laws for fixing payment of fees of certain officers 592

Felony,
Seat of member of council vacated on conviction of 225

Fences,
Preventing erection of wooden fences within fire limits..... 608
Common law liability of owner of land as to..... 620
Duties of railway companies as to maintaining 621, 1017
Ignorance of want of repair no defence..... 621
Enclosure of vacant lots 621
Settling height and description of lawful fences..... 621
Compensation for maintenance or laying down of 621
Division fences, application of Line Fences Act..... 622
Prevention of indecent placards, etc., upon..... 630
Removal of when obstructing highway..... 661
Worm fences, when not obstructions..... 661

Fence-Viewers,
By-laws for appointment of..... 590
Statutory duties of..... 591

PAGE.

Ferries,
By-laws granting exclusive privileges in 346
Between a province and any other country 346
Having termini in different municipalities 346
Grant of license by Lieutenant Governor 346
Joint license to two or more municipalities 346
Power to sub-let 346
Licensing and regulating 346
Between what points municipalities have control 346
Granting exclusive privileges in 737
Making annual grants in aid of 737
Fertilizers,
Appointment of inspectors to prevent adulteration 738
Filth,
Preventing the throwing of, into streets, etc 991
Not to be thrown into streets of police village 593
Finance,
Abstract and detailed statement of receipts and expenditures, etc 1002
Publication of annually in September 983
Exception as to certain municipalities 311
Penalty for untrue statements in 311
Form in which to be published 312
Reduction of special rate when allowed 312
Anticipatory appropriations, by-laws for 312
Special accounts to be kept for rates and sinking fund of every debenture debt 432
Surplus amount raised for debt in any year, how applied 433
Sinking fund, moneys raised for not to be diverted 435
Diversion a breach of trust 436
Members of council personally liable for diversion 436
Action to recover diverted moneys, how brought 436
Disqualification for diverting 436
Annual statement of treasurer showing amount to be raised 436
Council neglecting to levy rate to be disqualified for two years 436
Application to redemption of debentures 437
Assent of Lieutenant-Governor 437
Investment of surplus moneys raised by special rate 438
Orders in Council regulating 438
In local improvement debentures 438
Carrying surplus moneys of corporations to credit of 439
Surplus, application to payment of debts 438
Ontario Municipalities Fund, moneys derived from may be set apart for education 439
Investment of surplus moneys 440
Remedies of municipalities as to mortgage investments 440
Loans to school trustees, gifts to poor schools 440
Apportionment of moneys held for school purposes 441
Illegal investments, penalty 441
Returns to Provincial Treasurer by treasurers of corporations indebted to Municipal Loan Fund 441, 1000
Penalty for neglect 441
Recovery of penalty 442
Returns to Minister of Agriculture as to debts 442
Penalty for neglect 443
Commission of Inquiry, when Lieutenant-Governor-in-Council may issue 443
Powers of commissioners 443
Expenses, how determined and payable 444
Borrowing to meet ordinary current expenditure pending collection of taxes 444
Councils not to issue bills, notes, etc., for less than $100 each 444
Exception as to debentures which include principal and interest 453, 1000
Penalty for issuing instruments to circulate as money 453, 1000
By-laws for borrowing money for tile drainage 1000
For charging sewer rents 455
For reduction of sinking fund rate under certain local improvement by-laws 600
By county councils for guaranteeing debentures of local municipalities 600
For local improvements, insufficient or excessive assessment 601
Temporary loans pending completion of work 601
Issuing debentures 916
Term of debentures 932
Treasurers' books, disposition of funds, etc—*See* TREASURER. 932
..... 933

PAGE.

Finance.—*Continued.*
Form and negotiability, etc., of debentures—*See* DEBENTURES.
Auditing accounts—*See* AUDITORS AND AUDIT.
Estimates and by-law imposing yearly rates thereon—*See* TAXES.

Financial Year,
Meaning of 389

Fines,
For breach of duty or non-acceptance of office 963
For violation of by-laws 963
Collection of 963, 965
Application of 970

Fire,
Regulating the erection of buildings 608
Prohibiting the use of inflammable material in buildings and fences in specified districts 608
Pulling down buildings contravening regulations 608
By-laws for protection of life and property 608
Regulating the erection of buildings 608, 618
Prohibiting wooden buildings within certain limits 608, 618
Regulating alterations in roofs and walls 608, 618
Pulling down buildings contravening regulations 608, 610, 618
Use of lights, etc., in dangerous places 611
Construction of chimneys, stoves, etc 611
Dimensions and cleaning of chimneys 612, 613
Removal and safe keeping of ashes 612, 613
Party walls 612, 613
Scuttles and ladders 612, 613
Guarding against in buildings and yards 612
Inspection of premises 612
Suppression of fires, pulling down buildings, etc 612
Regulating conduct of persons at fires 612, 613
Providing against accidents in factories, hotels, etc 614
Fire escapes 614
Factories, fire escapes and other statutory requirements as to 614, 1017
Shops 615
Hotels 615
Responsibility of owner of land for negligence in setting out 616
Regulating the setting out of 616
Regulating the keeping, manufacturing and storage of explosives 617
Power to contract for water supply and fire appliances 619
Purchase of engine and appliances for use in defined area in town or village 619
In police villages 979, 1009
Local rate for cost of purchase and management 619
Debentures 619
Assent of electors not required 620
Duties of fence viewers as to prevention of forest fires 591
Purchase of fire appliances by local assessment 549
Election of trustees of 950
Agreements between municipalities for joint purchase of 950
Regulations as to police villages 981

Firearms,
Penalty for discharging in a cemetery 625
Preventing or regulating the firing of 772

Fire Companies,
By-laws for promoting, establishing and regulating 593

Fire Guardians,
Appointment of 592

Fireplaces,
Regulating the construction of 611

Fire Wardens,
Appointment of 593

Firemen,
Exempt from service in municipal office 115
Appointment of 593
Exemption from certain services 594
Liability of corporations for torts committed by 597
Aiding superannuation funds of 800
Rewards and gratuities to 803

PAGE.

Fireworks,
Preventing or regulating the firing of 772

Firewood,
Removal of, when obstructing highway 661

Fish,
Inspection of when intended for food 639
Regulating place and manner of selling or weighing 723
Preventing forestalling, etc., of 725

Floods,
Construction of works on rivers, etc., for prevention of damage from 683

Flues,
Regulating the construction of 611

Fodder,
Regulating place and manner of selling or weighing 723

Food,
Appointment of inspectors to prevent adulteration 596
Statutory regulations with respect to 639

Foot-paths,
Prohibiting use of by certain vehicles 673
Preventing riding or driving of horses or cattle on 673

Foreclosure,
Municipal corporations, right to obtain 441
Right of corporation to obtain decree for 583

Forest Fires,
Duties of fence viewers as to prevention of 591

Forestalling,
What constitutes 725
Preventing the practice of 725

Forms,
Of notice of application for incorporation of city or town 59
Notice of disqualification of candidate 113
Withdrawal of candidate after nomination 154
Certificate of county council election by acclamation 157
Where poll necessary 158
Of ballot papers for use at elections 162, 166
Voters' list and poll book for use at elections 171
Certificate as to assessment roll 175
Directions to voters at elections 183
Declaration of incapacity by voter 190
Oath of deputy returning officer at close of poll 200
Certificate of result of county council election 203
Where local municipality in more than one county council division 204
Certificate of result of recount 211
Declaration of secrecy at elections 219
Fiat for service of notice of motion by relator 240
Recognizance of relator and affidavit of justification 241
Notice of motion to set aside election 243
Order for trial of issue in controverted election proceedings 249
Indorsement of verdict 250
Judgments in controverted election cases 250
Disclaimer by person elected 254
By-law governing procedure in council 278
Declarations of office 314-316
Of qualification 314
Of office 316
Of returning Officers, etc 317
Of auditor 317
Notice to be published with by-law before voting thereon 317
Ballot papers at voting on by-law 354
Declaration by agent at voting on by-laws 355
Oaths of persons voting on by-laws 356
Declaration of secrecy at voting on by-laws 362-363
Petition for scrutiny of votes on by-law 368
Recognizance by applicant for scrutiny 369
Notice to be published on promulgating by-law 370
Notice of motion to quash by-law 374
Recognizance by applicant to quash by-laws 382
..... 384

PAGE.

Forms—*Continued.*
Money by-laws,—principal payable at end of term, interest half yearly 395
Debentures issued at different times, interest payable annually and principal by instalments 397
For local improvements, short form 400
Debt repayable in equal annual instalments 404-406
Notice of by-law of county council to borrow funds and of meeting to consider same 413
Notice of registration of by-laws 417
Certificates of proceedings attacking registered by-law 418-410
Debentures 446
Transferable by registry only 452
Coupons for interest 447
By-law consolidating issues of local improvement debentures 456
Notice to owners, etc, of land affected by corporation work in city or town 470
Appointment of arbitrator and notice thereof 480
Appointment of third arbitrator 481
Appointment of arbitrator after passing of by-law and property entered upon 483
Oath of arbitrator 488
Oath of constable in city or town 531
Oath of high constable 539
Convictions under by-law 969

Foxes,
Granting bounties for destruction of 801

Freeholders,
Meaning of "freeholder" 50
Qualifications for municipal councils 101
Qualification as electors 120
Amount of rating necessary 123
Oath of voters as 138
Voting on by-laws,—qualification 360
Oath of 362

Free Libraries,
Duty of Board as to furnishing estimates to Board of Control 290
Granting money or land in aid of 795

Frontage Tax,
See LOCAL IMPROVEMENTS.

Frontenac, County of,
How constituted, county council divisions 16

Fruit,
When market fees not to be charged on 714
Preventing or regulating retail sales in streets or vacant lots 722
Preventing forestalling, etc., of 725

Fruit Trees,
Appointment of inspector to prevent the spread of yellows and black knot 591
Diseases other than yellows and black knot 593

Full Age,
What constitutes 117

Funerals,
Penalty for misconduct at 625
Rights of next of kin 626

Gambling,
Constitutionality of by-laws for prevention of 630
Suppression of 633
At agricultural fairs 634

Games,
Penalty for playing in a cemetery 625
Grants for amateur athletic or aequatic sports 1006

Gaming Houses,
Nuisances at common law 633
What will constitute 633
Keeping of,—an indictable offence 634

Gaol,
Determining liability of town on withdrawal from county ..... [illegible]
New agreement or award after five years ..... [illegible]
Erection of by provisional county ..... [illegible]
Government regulation of plans, etc ..... [illegible]
Liability of council for cost, where contract not under seal ..... [illegible]

Gaol.—*Continued.*

PAGE.

Disqualification of gaolers for memberships in councils 107
Cost of maintenance of prisoners to be deemed ordinary expenditure 411
Former provisions as to erection of 541
Appropriation of public lands as sites for 541
Must be erected before final separation of provisional county 541
Plans, etc.,—approval by Inspector of prisons 541
Agreement for use of, by another county 541
By-laws for erecting, improving and repairing 541
County council to keep in repair and provide supplies, etc., for 542
Must be erected at the county town 542
Repairs,—powers of Inspector of Prisons as to 543
Liability for accidents caused by non-repair 543
To be the common gaol for city or town situate in the county 544
City by-laws for the erection, etc., of 545
Sheriff to have care of 545
Keeper,—appointment and remuneration of 546
Approval of Lieutenant-Governor 546
Not to take fees, etc., apart from salary 546
Use of by courts, etc 546
City regulation of 547
Separation of united counties, regulations continued 550
Cost of erection and maintenance, etc., contribution by cities and separated towns 550
Disagreement as to, determination by arbitration 550
Agreements between county and city or town 551
When county has bought out interest of city or town 552
Council not liable for supplies, etc., unless ordered by proper authority 552
Insurable interest of contributing municipality 553
City to be consulted as to plans, site, etc 553
Arbitration,—matters to be considered in determining contribution 553
Form of compensation for use by city or town 554
Reconsideration of agreement or award 556
Committal to lock-up house pending transfer to 557
Use of as a lock-up for county town 558
To be house of correction until separate place established 559
Duty of county council as to maintenance of destitute insane 564

Gaol Surgeons,
Appointment and removal of 791
Fee on examination of prisoner before removal to Central Prison or Reformatory for Women 546
By-laws for appointment of 565, 573

Gardens,
See PARKS. 594

Garbage,
Not to be thrown into streets of police village 983
Preventing the throwing of into streets, etc 1002

Gas Companies,
Authorizing the laying of pipes, etc., by 686
Taking over works by municipality about to undertake supply 687
Offer to company 687
Time for withdrawal of offer 1002
Determining value of works on arbitration 688, 1002
Severance where part only of works taken 688
Withdrawal of municipality from purchase 689, 1002
Arbitration to fix charges for supply 689
Application of certain provisions to works operated by individuals 690
Acquiring stock in or lending money to 795

Gas Works,
Term of debt to be contracted for 390, 403
Preventing and regulating the erection, etc., of 764
Not to be carried on without consent of municipality 765
Powers of municipality as to constructing and operating—*See* LIGHT AND HEAT.

General Sessions,
Appointment of constable by 538

Glass,
Preventing the throwing of, into streets 1002

Glengarry, County of.
How constituted, county council divisions in 17

PAGE.

Goats,
Preventing or regulating the keeping of 769

Gore District,
How formerly constituted 2

Government Buildings,
By-law for raising money to buy lands for site for, invalid 583

Grain,
Appointment of inspector to prevent spread of disease 592
Market fees not to be charged on 713
Fees on weighing 715
Selling on streets adjoining market 716
Preventing or regulating retail sales in streets or vacant lots 722
Regulating place and manner of selling or weighing 723
Preventing forestalling, etc., of 725

Grain Elevators,
By-laws for granting aid to 902

Gratuities,
Not subject to review by Courts 323
On retirement or removal from office on account of old age 323
To firemen or their widows 803

Gravel,
On road allowance, preserving and selling 873
Purchasing lands containing, for road repair, etc 874

Graves,
Protection of 625

Grenville, County of,
How constituted, county council divisions in 17

Grey, County of,
How constitued, county council divisions in 17

Grocers,
Preventing and regulating purchase by, of provisions brought to market 725

Guarantee Companies,
Acceptance of policies of as security for officers 324

Guardians,
Authorized to convey to municipality lands required in exercise of statutory powers 472

Guests,
Annual appropriation for entertainment of 804

Gunpowder.
By-laws for regulating the keeping or transporting of 617
For acquiring land for magazines 617
For regulating the construction of factories and magazines 617
For regulating the manufacture of 618
For licensing the manufacture and storage of 618
An offence at common law to keep large quantities in closely inhabited places 618
Regulation as to storing and sale in police villages 982

Guns,
Preventing or regulating the firing of 772

Habeas Corpus ad Test,
Issue of on arbitrations 509

Hacks,
Power of police commissioners to license and regulate keepers of 526
Prohibiting stables within certain districts 528
Regulating hours of labour of employees 528
Authorizing stands and shelters for drivers 666
Preventing the importuning of travellers by drivers of 747
Licensing owners and drivers in towns and villages 754
Fixing fares and enforcing payment 754
In counties having free roads 754

Haldimand, County of,
How constituted, county council divisions in 18

Haliburton, Provisional County of,
How constituted 29
How formed and when 75
Provisions as to constitution of county council not to apply to 95
Qualification of councillors in 101
Provisions as to publication of annual financial statement not to apply to 312

PAGE.

Halls,
Regulating means of egress from, strength of walls, etc. 606
Production of plans 606
Preventing obstruction of aisles, etc. 606
For use of corporations,—*See* TOWN HALL.

Halton, County of,
How constituted, county council divisions in 18

Hamilton, City of,
Provisions as to Boards of Control not to apply to 989

Hamlets,
Meaning of "hamlet" 73
By-laws of township councils for setting apart 72
Powers of township council with reference to 73, 74
By-laws of township councils for uniting 74
Establishment of fire limits in 618
Creation of police villages—*See* POLICE VILLAGES.

Hand Bills,
Preventing the throwing of, into streets 1002

Harbour Companies,
Taking stock in, or granting bonuses to 798

Harbours,
Term of debt to be contracted for 390, 403
Power to contract debt to Crown for purchase of 414
Making, opening and improving 675
Regulating 675
Preventing the filling up or incumbering of 675
Beacons 675
Duty of those having possession and control of 675
Erecting and renting wharfs, elevators, etc. 676
Regulating vessels in 676
Charging dues and tolls, harbour master 676
Regulating and preventing the incumbering and fouling of 676, 677
Removal of obstructions projecting into or over 676, 677
Compelling the removal of sunken vessels, cribs, etc. 676, 677
Granting aid to construction of 680
How constituted, county council divisions 796

Hastings, County of,

Hawkers and Pedlars,
Licensing, regulating and governing 18
License not required by manufacturer or producer, etc. 738
No power to prohibit sales on certain streets 738
Who are "hawkers," "pedlars" and "petty chapmen" 739
Arrest without warrant for selling without license 740, 742
Sales of samples 740
Going from town to town to sell by auction 741, 742
Selling for charitable purposes 740, 741
As to license being personal to licensee 741
Form of conviction for selling without a license 741
Agents of persons not resident in the county 742
Who are agents 742
Supplying licenses 743
Limitation as to license fees 744
Licensee to exhibit license on demand 744, 1003

Hay,
Market fees not to be charged on 1003
Need not be weighed if neither vendor or purchaser so desire 713
Fees on weighing 714
Preventing and regulating retail sales in streets or vacant lots 715
Regulating place and manner of selling or weighing 722

Heads of Municipal Corporations,
Procedure on filling vacancy in office 723
To preside at meetings of council 231
When to summon special meetings 276
Absence or vacancy in office 276
Casual absence from council 277
May vote on all questions 277
Should take clerk's chair until a quorum is present 277
Warden, mayor and reeve to be 278
291

Heads of Municipal Corporations.—*Continued.* PAGE.
Duties of, to enforce laws of municipality 291
Oversight of officials 291
Recommendation of measures to council 291
As to administration of justice 292
As director of companies in which corporation holds stock 292
Selector of jurors 292
As to strikes 2
Notifying inspector of anatomy 292
Notifying electric railway company when level crossing out of repair 292
Inspecting children's shelters 292
To lay statement of registrar before council 292
Financial statements of other officers 292
Remuneration of 292
Mayor may call out *posse comitatus* 292
By-laws for directing counter-signature of cheques by 303
To lay quarterly statement of bank balance before council 303
Annual statement of balance due on mortgage 303
Power as to administering oaths 318, 319
Statutory duty to sign by-laws enforceable by *mandamus* 347
In case of refusal council may select another chairman 348
Copies of by-laws certified under hand of, in evidence 348
Appointment of agents at voting on by-laws 356
To sign debentures 445
And coupons except in cities 447
May be compelled by *mandamus* 447
Appointment of arbitrator by 478
Notice of appointment of arbitrator to be given to 480
To be *ex-officio* justices of the peace 518
Requires no additional property qualification to act 520
To be director of a railway where stock taken to $20,000 958

Health.
Postponement of municipal elections on account of contagious disease 207
Appointment of medical health officer and sanitary inspectors 591
Regulations as to food and drinking water 639
Regulating and licensing milk vendors 1003
Cellars, cesspools, etc 642
Draining and cleaning vacant lots 642
Regulations for sewerage or drainage 642
Dry earth closets 642
Lavatories and urinals on public streets 646
Dwellings on narrow streets 647
Contagious diseases, notification of 647
Restrictions as to location and enlargement of cemeteries 709, 710, 711
Keeping an infectious disease hospital not a "noxious or offensive trade" 766
Drainage by local assessment on sanitary grounds 922
Abatement, etc., of nuisances prejudicial to
See NUISANCES.

Hesse.
Former District of, how constituted 2

Hide Storing.
Not to be carried on without consent of municipality 765

High Bailiff.
Appointment of in cities and towns having police commissioners 530
In towns and villages 537
Suspension of 540
Duty of enforcing laws as to egress from public buildings 591

High Constables.
Appointment, remuneration and equipment of 538
Oath of 539
Tenure of office 539
Duties 539
May be appointed provincial constables 539
Fees 539
Suspension of 539, 540
Allowance for special services in detection of crime 565

High Court of Justice.
Right to use court house and gaol at sittings of 547

High Schools.

PAGE.

Trustees of, disqualified from being members of councils 107, 108
Establishing and aiding 778, 784
Trustees, appointment of 778
Qualification of 779
Vacancies, how filled 780
Duty of municipality as to furnishing amount required by trustees 783
Maintenance of students at 785
Endowing fellowships in Universities, etc., for pupils of 786
Raising and apportioning funds.
See SCHOOL MONEYS.

Highways.

"Highway," means a public highway 34
Right of corporation to bring action for injunction to restrain the closing or obstruction of 39
Arbitrators to consider expenditure on when town withdrawn from county 65
Roads in towns to be town property after withdrawal from county 66
Effect of transfer of territory to new municipality on by-laws relating to 85
Granting exclusive rights to telephone companies 345
Cost of, when not to be deemed ordinary expenditure 411
Invalidity of by-law making grant for conditional on other contributions 412
Power to contract debts to Crown for purchase of 414
Illegal by-laws for opening must be quashed before action can be brought 510
Regulation by police commissioners of playing of bands, etc., in 529
Payment of fees of County Attorney on prosecution for obstruction of 572
By-laws for setting boundaries of and naming streets 580
Requisites to validity of by-law for changing name 580
Numbering houses and lots on streets 580
Keeping record of streets and numbers, etc 581
Appointment of overseers or pathmasters 581
Calling on persons liable for statute labour to keep roads open in winter 590, 592
Appointment of engineer to enforce repair of toll roads 592
Coasting or tobogganing on streets 594
Preventing children riding on platforms of cars and behind vehicles 604
Regulating and governing bicycles, etc., in cities of 100,000 604
Posting indecent placards 604
Restraint and punishment of persons drunk, and begging, etc., in 1002
What constitutes an unlawful obstruction 635
Preventing the obstruction and fouling of 656
Liability for accidents caused by projections into 657, 658
Removal of fences, etc., when obstructing,—worm fences 661
Preventing the throwing of rubbish, etc., into 661
Stone, gravel, etc., not to be put down during sleighing 662
Removal of snow, ice and dirt from the streets and sidewalks 662
Cities of 100,000 662
Liability for accidents to pedestrians 665
Cabstands, shelters, etc 663
Erection of poles and wires by telegraph and telephone companies, etc 666
Regulating traffic, width or tires, etc 666
Width of sleigh runners 670
Regulating driving and riding of horses, etc 671
Preventing racing and furious driving in 672
Speeding on certain streets, in cities of 100,000 672
Preventing riding or driving on sidewalks 672
Prohibiting use of certain vehicles on sidewalks 673
By-laws in counties having free roads regulating livery stables, width of tires, etc 673
Taking stock in road companies 754
Preventing the hauling of night soil, etc., in the day time 798
"Once a highway always a highway" 1005
Not subject to claims for dower 812
Original road allowances,—what are 822
Early surveys 812
How townships were laid out 812
Surveyors' plans not sufficient without legislative acceptance 813
Actual opening and user not necessary 813
Revocation of 813
Adoption of surveyor's plan by the Crown 814

Highways.—*Continued.* PAGE.
Laid out under Surveys Act 814
Streets in cities, towns and village plots 814
In townships patented prior to survey 814
Quarter Sessions Roads, how established 814
Proof of compliance with statutory requirements necessary 815
Expenditure of provincial or municipal funds 816
Roads on which statute labour has been done 816
Presumption may be rebutted 816
Roads passing through Indian lands 817
Statutory authority required to change character of road 817
Freehold in the Crown 817
Rights of Crown and municipality respectively 818
Jurisdiction of councils, extent of 819
Roads vested in local municipalities 820
Exceptions 820
Roads held in lieu of others laid out without compensation 821
Rights reserved by person who laid out road 822
Municipality holds as trustees for the public 822
Cities and towns may acquire lands for public avenues or walks 823
Widening highways to 100 feet 823
Assumption of county bridges by villages 823
Bridges so assumed to be toll free 823
Approaches to bridges—100 feet to be under same jurisdiction as bridge 823
What included in "approaches" 824
Repair and maintenance—responsibility of corporation 824
Action for damages, must be brought within three months 824
To what highways obligation extends 824
Protection of dangerous places adjoining travelled portion 825
Sidewalks and crossings 825
Crossings and approaches from private property 826
Meaning of "kept in repair" 826
Not limited to indictable non-repair 827
Objects which may frighten horses 829
On whom obligation to repair imposed 830
Roads held by or purchased under executions against road companies 830
Bridges over railway lines 830
Indictment for nuisance 830
For misdemeanour 831
No remedy by injunction 831
Right to damages a statutory right 831
Who may bring action for damages 833
What is lawful user 833
Children playing in streets 834
Negligence of corporation must be proved 835
Conditions of right of action 835
Notice of existence of defect 835
Non-repair must have been proximate cause of damage 835
Contributory negligence 836
Limitation of action 837
Snow or ice on sidewalks, gross negligence must be proved 838
Notice of accident 840
Failure to give, no bar in case of death 840
To be given to each of municipalities jointly liable 840
Action to be tried without a jury 840
Roads, etc., laid out by private persons 840
Crossings, culverts, sidewalks, etc, on toll roads 841
What works may be done on company's road 841
Remedy over, against person or corporation causing damage 842
Adding parties responsible as defendants 842
Action to recover damages or costs paid by municipality 842
Admission of validity of judgment 842
When cause of damage must be proved 843
Costs ..... 84[illegible]
Contribution between municipalities jointly liable 845
No liability for acts or defaults of others not under control of corporation 845
Action not to lie against officers, etc., but against corporations only 845
Does not include a mere contractor 846
County roads and bridges,—roads and bridges assumed by by-law 846

Highways.—*Continued.*

PAGE.

Bridges between two townships 846
Bridges crossing streams over 100 feet wide 846
Bridges over streams forming boundary lines 846
Maintenance of boundary lines or grants for such purposes 846, 849
Roads running into county roads 847
Duty as to maintaining and improving roads and bridges assumed, etc. 848
Mandamus to enforce 848
Bridges over boundary between counties or a county and city, etc. 848
County by-law may exclude bridges over streams less than eighty feet wide 849
Deviating boundary lines 850
Removal of stone, etc., from bed of river 850
Determining disputes as to liability to erect and repair bridges 851
Keeping rivers, etc., clear of driftwood 851
Township boundary lines not assumed by county 851
Bridges to be maintained by county 851
Where road allowance not reserved in original survey 851
Arbitrators to decide how cost to be borne and whether road shall be laid out or not 852
Township boundary lines which are also county boundary lines 852
Joint jurisdiction,—roads lying wholly or partly between municipalities 852
Certain bridges not included 853
Concurrent by-laws required 853
Arbitration in default of concurrence 853
Agreements between adjoining townships 853
Registration of agreement 854
After registration,—jurisdiction and responsibility of each township 854
Transfer to county councils of former duties and liabilities of Quarter Sessions 854
Roads vested in Crown,—not to be interfered with by councils 854
Abandonment to municipality by proclamation 855
On Dominion property, by-laws relating to must recite consent of Dominion Govt. 855
Ingress and egress,—restrictions upon closing up roads 856
Other road to be provided as well as compensation 856
Width of roads,—not more than 100 or less than 60 feet 856
Exception as to cities and towns 858
Consent of county council as to varying 858
Owners not to lay out less than 60 feet without three-fourths vote of council 858
On plans filed in Land Titles office 858
By-laws in cities of 50,000 prescribing minimum, width of streets, etc 858
Conditions precedent to by-laws affecting roads 858
Posting up and publication of notice 859
Sufficiency or otherwise of notice 859
Clerk to give notice on request and payment of expenses 860
Council to hear petitioners prejudicially affected 961
Proof of compliance with conditions 859
Onus of proof on party attacking by-law 860
Approval of Lieutenant-Governor as to road allowances along rivers, etc. 860
Registration of by-laws 861
Roads opened on private property under by-laws passed since 29th March, 1873 861
Permissive as to by-laws theretofore passed 861
Disputes as to roads,—taking evidence on oath 862
Mistakes in opening road allowances, when corporation protected 862
Compensation 862
Limitation of claims 863
Sign posts placed by Canadian Wheelmen's Association 863
Counties, townships, cities, towns and villages. 863
Opening, making and repairing, etc., roads and bridges 864
By-laws,—requisites of 864
Preserving, improving or repairing,—when by-law necessary 865
Stopping up,—description of road in by-law 865
Taking lands 868
Setting apart and improving carriage ways, boulevards and sidewalks 868
Obstructions,—preventing and removing 869
Subways and bridges for cattle 869
Boulevards in cities, towns and villages 869
Areas and openings in or under streets and sidewalks 869
Annual charge for privilege 870
Cancellation of bonds, etc., given prior to 1st July, 1897 870
Liability of corporation not affected 870

Highways.—*Continued.* PAGE.
Bicycle paths ... 871
Penalty for driving horses, etc., on ... 871
Crossing railways and railway lands ... 871
Straightening streams, etc., dangerous to roads and bridges ... 871
Tolls,—power to raise money by ... 871
Application of ... 872
Leases of—lessee to make repairs ... 872
Dangerous places,—regulations as to ... 872
Timber, stone, sand, etc., on road allowance ... 872
Rights of timber licensees ... 873
Road and bridge companies,—granting privileges to ... 873
When by-laws necessary ... 873
Notice by company prior to commencing work ... 873
When company may proceed without by-law ... 873
Stone or gravel beds ... 874
Materials for repairing roads, by-laws for taking ... 874
Taking gravel in adjoining municipality ... 874
Selling road allowances,—when by-law may be passed ... 875
Assent of the Lieutenant-Governor in Council when required ... 875
Rights of owner, opening road in place of side line, etc., without compensation ... 876, 877
Compensation to person whose land is taken for new road ... 876
Unopened road allowance,—when possession in adjoining owner ... 878
Notice of by-law for opening ... 878
Aid to adjoining municipality in opening roads, etc ... 878
To bridge companies ... 879
Agreements with owners of toll roads as to expenditure of statute labour or money thereon ... 879
Townships, cities, towns and villages,
Aid to county in making roads and bridges ... 879
Joint works with other municipalities ... 880
Agreements for construction of improvements, etc., on streets, etc., between municipalities ... 880
Maintenance of township boundary lines,—application to county council to enforce joint action ... 880
Petition from ratepayers resident on road ... 880
Action by county council ... 881
Determining contribution of each township ... 881
Commissioners to enforce order of county council ... 881
Payment of contribution,—how enforced ... 881
Arbitration where townships disagree as to county boundaries ... 881
Wardens and county judge to act ... 882
Appointment of commissioners to superintend work ... 882
Counties and townships,
Sale of lease of minerals on or under roads ... 882
Notice of by-law ... 883
Protection of public travel ... 883
Form of conveyance or lease ... 883
What are minerals ... 883
County Councils,
Closing up and selling road allowances ... 884
Opening, altering and constructing roads and bridges ... 884
Trees obstructing highways ... 885
Rights of adjoining owners ... 886
Double tracks in snow roads ... 886
Granting aid to local municipalities ... 886
Abandoning or disposing of toll roads ... 887
Assent of local municipalities and Lieutenant-Governor ... 888
Improvements in united counties ... 888
Representatives of county affected only to vote ... 888
Assessment for ... 889
Debentures ... 889
Townships,
Granting aid to adjoining county ... 890
Closing road allowances ... 890
Confirmation by county council ... 980
In police villages and hamlets ... 891
Trees obstructing highways ... 890

PAGE.
871
871
871
871
871
872
872
872
872
873
873
873
873
873
874
874
874
875
875
out compen-
876, 877
876
878
878
878
879
ute labour or
879
879
880
880
etc., between
y council to
880
880
880
881
881
881
881
881
881
882
882
882
883
883
883
883
884
884
885
886
886
886
887
888
888
888
889
889
890
890
980
891
890

Highways.—*Continued.*
Footpaths
Roads connecting the ends of side lines in double front concessions 891
Regulations as to statute labour 892
General provisions as to,
What constitutes a public highway 874
How created 805
Allowances in original surveys 806
Quarter Sessions, roads opened under 806
Dedicated by private owners 806
Dedication,—how intention may be evidenced 806
Effect of laying out roads on plans 807
Plan not binding until sales have been made 807
Effect of provisions of Surveys Act 807
Municipality incurs no responsibility until highway established by by-law. 808
By permitting public user of way 808
Rebuttal of presumption 809
May be limited as to use at certain hours 810
As to nature of user 810
Must be common to all the public 811
Who may dedicate 811
Township by-laws as to use of by railways, etc 811
Planting and removal of trees,—*See* TREES 959
Construction of works upon by local assessment,—*See* LOCAL IMPROVEMENTS. 701
Historical Societies,
Grants in aid of 1005
Hogs,
Seizure of, when dying on cars or in market 640
Authorizing fairs for sale, etc., of 713
Market fees not to be charged on, when dressed 713
Market fees on 715
Fees on weighing 715
Selling (when dressed) on streets adjoining market 716
Preventing or regulating the keeping of 769
Keeping in a city a nuisance at common law 769
Hoists,
Licensing and inspecting 607
Regulation and construction, etc., of 607
In factories 607
Inspection and regulation of, in erection, etc., of buildings 605
Holidays,
Term "next day" not to apply to 34
Excluded in computing time in provisions relating to elections 220
What are 220
Attendance at police office not required on 522
Home District,
How formerly constituted 2
Honey,
When market fees not to be charged on 714
Hook and Ladder Companies,
By-laws for promoting, establishing and regulating 593
Horns,
Regulating or preventing the blowing of 770
Horse Racing,
Prevention of 634
At agricultural exhibitions 634
Not illegal in itself 635
Horses,
Power of police commissioners to license and regulate owners keeping for hire. 526
Inspection of for the prevention of spread of certain diseases 594
Regulating the riding or driving of 672
Preventing racing in streets 672
Speeding on certain streets, in cities of 100,000 672
Preventing driving on sidewalks, etc 673
Authorizing fairs for sale, etc., of 713
Market fees on 715
Licensing and regulating keepers for hire in towns and villages 754
In counties having free roads 754
Existence of objects on highways which may frighten 829
Preventing hauling of carcasses of through the streets in the day time 1005

PAGE.

Horse Thieves,
Rewards for arrest and conviction of ... 804
Discretion of convicting Judge as to amount of reward ... 1006

Horticultural Societies,
Grants of money or land in aid of ... 793

Hospitals,
Regulating construction of means of egress from ... 606
Aiding in maintaining indigents at ... 789

Hotels,
Elections not to be held in ... 133
Committal of idlers in, to house of industry, etc ... 562, 563
Regulating construction of stairways in ... 606
By-laws for securing inmates from accidents by fires, etc ... 614
Fire escapes ... 614, 615, 1017
Preventing the sale of intoxicants to children, apprentices, etc ... 637
Supplying drink to minors ... 638
Allowing minors to loiter in bar-rooms ... 638
Preventing the importuning of travellers by runners ... 747

House of Commons,
Members and officers exempt from service in municipal office ... 115

Householder,
Meaning of ... 44

Houses,
By-laws for numbering ... 581
For keeping record of numbers ... 581
Regulating erection or occupation of on narrow streets ... 647
Cities of 50,000 may prescribe minimum width of streets for, and of area of vacant land to be attached to ... 858
Regulations for prevention of fires—*See* FIRES ... 608

Houses of Correction,
By-laws for erecting, improving and repairing ... 542
Use of by city or town not separated from county ... 545
City may erect separate buildings ... 545
Adjustment of contribution between city or separated town and county ... 552
By-laws for establishing and regulating in cities and towns ... 563
Who liable to be committed to ... 563
Common gaol to be until separate place erected ... 564

Houses of Ill Fame,
Suppression of ... 631
Penalty which may be imposed for keeping ... 963
Punishment under Criminal Code ... 964

Houses of Industry,
Former enactments concerning ... 542
By-laws for erecting, improving, etc ... 542
City by-laws for erecting, etc ... 545
County, city or separated town may establish ... 559
Appointment of inspector and other officers ... 559
Regulation of ... 650
Union of counties, etc., in establishment of ... 560
By-laws for compelling persons sent to, to work, and appropriating earnings ... 560
In local municipalities ... 560
In cities and towns ... 563
Maintenance of inmates sent to county house by local municipalities ... 561
Indigent persons, by-laws for committal of ... 561
Who may commit ... 1001
Provincial aid to, inspection of ... 561
Inspector to keep accounts, register of inmates, etc ... 562
Who may be committed to, by justices of the peace, etc ... 562-563
By-laws for appointment of inspectors of ... 594
Aiding in maintaining indigents in ... 789
Taking mortgage or conveyance from inmate as security for maintenance ... 990

Houses of Refuge,
Establishing and regulating by cities and towns ... 791
See HOUSES OF INDUSTRY ... 559

Hucksters,
Preventing and regulating purchase by of provisions brought to market ... 725

Huron, County of,
How constituted, county council divisions in ...

Huron District,
How formerly constituted ..... PAGE. 3
Hydrants,
Power to purchase or contract for renting of 619
Ice,
Compelling removal of from roofs and sidewalks 662
Liabilities for accidents to pedestrians 663
Liability of corporation for accidents on sidewalks 838
Frontage rates for removal of from streets 946-949
Idiots,
Committal to house of industry, etc 562-563
Idleness,
Committal to house of industry, etc., of persons without means who refuse to work, etc 562-563
Illiteracy,
Marking ballot for voter on account of 188
"Immediately Benefited,"
Meaning of 914
Imprisonment,
Enforcing by-laws by 963
May be inflicted in default of payment of penalties 965
Income Voters,
Qualification as electors 121, 988
Disqualified by default in payment of taxes 124
Oath of, at elections 141
If taxes unpaid to be entered on defaulters' list 159
Incorporation,
Existing corporations continued 36
Inhabitants the corporators 36
Boundaries to be defined in instrument creating corporation 36
By-laws, application of territorially 36
Ascertaining boundary lines 36, 579
Councils, officers, by-laws, etc., of existing corporations 37
Name of corporation 37
Variations when allowable 37
Provisional county corporations 38
Corporations erected under present Act 38
Body corporate, definition of 38
General powers incidental to 38
Corporate powers to be exercised by council 44
Registration of by-laws, proclamations, etc 67
Of villages—*See* VILLAGES 48
Of towns—*See* TOWNS 58
Of cities—*See* CITIES 58
Of townships—*See* TOWNSHIPS 67
Of counties—*See* COUNTIES 74
Separation of county from union—*See* PROVISIONAL COUNTY CORPORATIONS 75
Matters consequent upon—*See* NEW CORPORATIONS 84
Incumbrances,
Effect of, on qualification for municipal councils 104
Covenant against, does not include local improvement rates 944
Indecency,
Prevention of 630, 638
Posting up or exhibiting indecent pictures, etc 1002
In public places a nuisance 757
Indian Lands,
Roads passing through deemed to be highways 805
Indian Reserves,
Population of excluded in computing population for county council representation 93
Indians,
Qualified to vote 118
Indigents,
Bylaws for committal to house of industry, etc., ... 561, 563
Committal to house of industry by two justices 562
See CHARITY.
Industrial Farms,
Counties, cities and separated towns may acquire lands for 559
By-laws for compelling persons sent to work and appropriating their earnings 560

Industrial Farms.—*Continued.* PAGE.
Local municipalities, two or more may unite in establishing 560
Committal to in cities or towns 563
Cities and towns acquiring land for purpose of 707
Acceptance of lands dedicated for 707
Erection of buildings, fences, etc 707
Management 707
Granting leases of land not immediately required for 709

Industrial Schools,
Liability of municipalities for maintenance of children at 789

Inebriate Asylums,
By-laws for establishment of 564
Who may be committed to 564

Infectious Diseases,
Supplying blanks and providing for notification of 674

"Inhabitants,"
Meaning varies according to subject matter 50

Inhabitants,
Who to be deemed 36, 309
As corporators in municipalities 36, 38

Injunction,
To restrain corporation acting under illegal by-law 511

Injury to Lands,
By corporations under statutory powers.—*See* COMPENSATION FOR LANDS 456

Innkeepers,
Disqualified from being members of councils 107, 108

Inns,
Committal of idlers in, to house of industry, etc 562, 563
By-laws for securing inmates against accidents by fire in 614

Inquiry into Finances,
Issue of commission by Crown 444

Insane,
Aiding in maintaining indigents at asylums 789
Duty of county council as to making provision for 791

Insolvency,
Seat of member of council vacated for 225

Insolvent Estates,
When sale of stock not within provisions as to transient traders 749

Inspection,
Of trees for planting of which bonus granted 591
Of trees affected with yellows and black knot 591
Suppression of weeds and diseases of grain and fruit trees 592, 593
Of food to prevent adulteration 593
Of scaffolding, etc., used in building 605
Of plans of buildings 606, 607
Of premises, to see that fire regulations carried out 612

Inspector of Legal Offices,
Suspension of county constable by 540

Inspector of Prisons and Public Charities,
Approval of plans of court house and gaol 541
Compelling repairs of court house and gaol 543
Revision of salaries of gaol officers 536
Approval of lock-up house by 559
Inspection of houses of industry, etc 561

Inspectors of House of Industry,
Power to appoint 559
Duties of 562

Inspectors of Sheep killed by Dogs,
By-laws for appointment of 590

Insulting Language,
Prevention of 631

Intelligence Offices,
Licensing and regulating the keepers of 745

Interest,
Rate to be six per cent. in absence of other agreement 71
No restriction upon rate municipality may pay or receive 448
Allowance of on amount found due under award for land taken, etc. 466

PAGE.
... 560
... 563
... 707
... 707
... 707
... 707
... 709
... 789
... 564
... 564
... 674
... 50
... 36, 309
... 36, 38
... 511
... Lands ... 456
... 107, 108
... 562, 563
... 614
... 444
... 789
... 791
... 225
... 749
... 591
... 591
... 592, 593
... 593
... 605
... 606, 607
... 612
... 540
... 541
... 543
... 536
... 559
... 561
... 559
... 562
... 590
... 631
... 745
... 71
... 448
... tc. ... 466

PAGE.

Interments,
Disinterment a common law offence ... 625
Penalty for misconduct at ... 625
Rights of next of kin as to ... 626
Regulation of ... 648

Interpretation. *See* Words and Phrases.

Interpreters,
County by-laws appointing for Local Courts ... 551

Intoxicating Liquors,
Elections not to be held in licensed premises ... 133
Preventing the sale of to children and apprentices ... 637

Investments,
Of sinking fund moneys ... 438, 439
Of moneys set apart for educational purposes ... 440, 441
Penalty for illegal investments ... 441
Of surplus moneys raised on special rate ... 441
In local improvement debentures ... 438
Of surplus moneys applied to sinking fund ... 438
Moneys set apart for educational purposes ... 439
In loans to school trustees ... 440
Penalty for illegal investments ... 441

Iron-Smelting Works,
By-laws for granting aid to ... 441
Term of debentures for bonuses ... 961
Exempting from taxation ... 999

Iron Works,
By-laws for granting aid to ... 1007

Jews,
Marking ballots when election held on Saturday ... 962
Declaration as to incapacity may be made orally ... 188

Johnstown District,
How formerly constituted ... 189

Joints Owners,
Division of rating to qualify as electors or councillors ... 2

Journal,
To be kept by certain treasurers ... 128

Judges,
Disqualified for membership in councils ... 302
Exemption from service in municipal office ... 107

Junior County,
Separation from union.—*See* Provisional County Corporations ... 115

Junior Township,
Meaning of ... 75
When first election to be held in ... 72

Junk Shops,
What are ... 130
Power of police commissioners to license and regulate ... 526
Licensing or regulating ... 526
Cancellation of license on conviction for receiving stolen goods ... 745
Defining areas within which not to be carried on ... 745
Prohibiting purchases from minors ... 767

"Juridical Days,"
Meaning of ... 1001

Jurisdiction of Council,
Limited to municipality represented ... 220
Exceptions ... 326
Mistakes as to, council not liable for ... 327

Jurors,
Head of municipality to be a selector of ... 334
Members and officers of corporations exempt from services in inferior Courts ... 292
Local municipality,—members and officers liable to challenge where corporation a party ... 518
Fees and expenses payable by counties ... 518
Firemen exempt from service as ... 573

Justice, Administration of,
Apportionment of expense on separation of town from county ... 594
New agreement or award after five years ... 64
Maintenance of prisoners and gaol expenses ... 66
... 573

Justice, Administration of.—*Continued.* PAGE.
Fees of jurors, clerk of the peace, selectors and sheriff 573
Right to recover proportion from cities and separated towns 574
Coroners' inquests 574
Crown witnesses 575
Provincial bailiffs 575
Order in which accounts to be paid 576
Right of city contributing to appoint auditor 1001
Board of Audit,—how composed 565, 575
Remuneration of 565
Meeting, etc., of 575
What accounts must be audited by 576
Expenses of, fees to be allowed to officers 565
Payable in first instance by counties 566
What repayable by the Province 566, 573
Sheriffs 566
Coroners 568, 574
Clerks of the peace 568, 573
Constables 571, 574
Disallowance for unnecessarily arresting vagrants 575
Payment of 75 per cent. of certified account without waiting for meeting of Board 576
Criers 572
Crown Attorneys 572
Gaol surgeons 565, 573
Court Houses. *See* COURT HOUSE.
Gaols. *See* GAOLS.
Penalties. *See* PENALTIES.
Police Magistrates. *See* POLICE MAGISTRATES.

Justices of the Peace,
Appointment of for junior county on separation 80
Justices of union to cease to have jurisdiction in junior county thereafter 81
Powers as to administering oaths 318
Exempt from jury service in inferior Courts 518
Wardens, mayors, reeves, county councillors and aldermen to be ex-officio 518
Extent of jurisdiction 518
Where there is a police magistrate 519
Jurisdiction of mayor where there is no police magistrate 519
Property qualification—when not required 520
Qualification of—generally 520
Jurisdiction in cases under by-laws where there is no police magistrate 520
Not disqualified to try offences against by-laws by reason of membership in councils 520
Nor because penalty payable to municipality 521
Disqualification for interest 521
Attendance at police office at request of mayor or police magistrate 521-522
Fees of 523
Jurisdiction of, for recovery of penalties, under Act 968
For recovery of penalties under by-laws 968

Kent, County of,
How constituted, county council divisions in 19

"Knowingly,"
Meaning of 217

Labourers,
Licensing and regulating employment agencies for 745

Lambton, County of,
How constituted, county council divisions in 20

Lanark, County of,
How constituted, county council divisions in 20

Land,
What included in 34
Corporation cannot hold without special authority 43
Cannot be acquired by corporation as site for government buildings 583
By-laws for obtaining for use of corporation 583
Expropriation not authorized 583
Disposing of when no longer required 584
Cannot be alienated by corporation when given for special public purposes 584

Land.—*Continued.*
By-laws for acquiring in another municipality ..... PAGE.
Former township by-laws confirmed 584
Township halls in town or village 585
Setting out fire for purposes of clearing 585
Acquiring in another municipality from which water flows 616
Purchasing wet lands from Crown and draining and selling 652
Prescribing minimum area of court yards to dwellings in cities of 50,000 654
Taken or injuriously affected.—*See* COMPENSATION 858
Arbitration proceedings as to.—*See* ARBITRATION 456
Landlord and Tenant,
Liability for payment of special rates for night watchmen 456
Respective liability for continuance of nuisance on the premises 628
Right of action for nuisance on adjoining premises 643
Landmarks,
Petition to Lieutenant Governor to have survey made 644
Mode and cost of survey 578
Stone and other monuments to be erected by surveyor 579
By-laws for making boundaries of municipality 579
Penalty for removal of 579
Lanes,
Regulating erection or occupation of dwellings on 580
Preventing the obstruction and fouling of 647
Preventing the throwing of dirt, etc., into 657, 658
"Last Revised Assessment Roll,"
What deemed 1002
Laths,
Market fees not to be charged on 35, 103
Lavatories,
May be provided for use by the public in cities and towns 713
Law Association of County,
Accommodation to be provided in court house for library of 646
Law Society,
Members exempt from service in municipal office 547
"Leasehold,"
Meaning of in relation to qualification for councils 115
Leaseholders,
Voting on by-law for separation of town from county 106
From corporation, may be members of council when lease is for 21 years 62
When deemed owners in relation to qualification of farmer's sons 113
Voting on by-laws,—qualification of 123
Term must be equal to that of currency of debt 360
Oaths of 360
By-laws for adopting or repealing local improvement system 362
Oath of 361
When proper parties to arbitrate for lands taken 363
Qualification for municipal councils. *See* COUNCILS 459
Leeds, County of,
How constituted, county council divisions in 101
Legal Tender,
What constitutes 21
Legislative Assembly,
Members and officers exempt from service in municipal office 514
Elections for.—*See* POLLING SUB-DIVISIONS 115
Lennox and Addington, County of,
How constituted, county council divisions in 587
Libraries,
Granting money or lands in aid of 21
License Commissioners,
May not be members of councils 795
License Fund,
Application of in police villages 107
License Inspectors,
May not be members of councils 978
Licenses,
Limiting number to one creates monopoly 107
Power to regulate fees, and to fix term of 333, 341
Distinction between restraint and regulation of trade 339
Powers as to must be expressly given 339
..... 339

PAGE.

Licenses.—*Continued.*
By-laws requiring, will be strictly construed 340
Fees, amount of 341
Right to require must be plainly conferred 344
To ferries 346
For manufacturing and storing explosives 618
Discretion as to refusing 732
As to reasonableness of license fees 733
Control of by police commissioners in cities of 100,000 755
Powers and duties of Board of Commissioners of Police. *See* POLICE COMMISSIONERS

Lieutenant-Governor in Council.
Approval of partial repeal of money by-law 413
Assent required to by-law for reduction of special rates 432
Assent required to by-laws for anticipatory appropriations 434
Directions as to application of sinking fund in redemption of debentures 438
Approval of securities in which corporations may invest 438
Issue of commission of inquiry into finances of 444
When arbitrator may be appointed by 482
Approval of plans of court-house and gaol 541
Approval of appointment or dismissal of gaolers 546
May order re-consideration of court house agreement or award after five years. 557
Assent to reduction of sinking fund rate for certain local improvement debentures 601

Life Boat Associations.
Making grants in aid of 1006

Light and Heat.
Acquiring water rights for supplying power for electric light 684
Manufacturing and supplying 686
Authorizing gas companies to lay down pipes, etc 686
Constructing gas and electric light works 687
Taking over works of existing companies 687, 1002
Extent of powers of municipalities 691
Corporation to supply buildings on line of supply on request 691
Security may be required from consumer 692
Liability for failure of supply 692
Arbitration to fix rate at which companies should supply 689
Term of debentures for electric light works in towns of not more than 5,000 694
Contracting for lighting of streets, etc 695
By-laws for constructing and operating works,—conditions precedent 698, 1002
Publication of estimates, etc 698, 1002
Assent of electors 698
Rejected by-law not to be re-submitted in same year 699
Extension and improvement of system with assent of Lieutenant-Governor in Council 698
Extension of system of street lighting by local assessment 909
By-laws for 948
Township and village by-laws 949
Submitting by-laws in police villages 979, 1009
Disposing of surplus power from electric plant 1011

Limitation of Proceedings.
Application to quash by-law order or resolution 385
Application to quash registered by-law 418
Local improvement by-law 420
Claims for compensation for lands taken or injured 469
Claims for compensation for land, etc., in city or town where plans filed and notice given 471
For damages arising from non-repair of highways 824, 837
For recovery of penalties, etc., in police villages 983

Lincoln, County of.
How constituted, county council divisions in 21

Liquor Licenses.
Holders of tavern and shop licenses may not be members of councils 107
Disqualification of persons convicted under laws relating to 111
Elections not to be held on licensed premises 133
Member of council forfeits seat on conviction 227

Livery Stables.
Power of police commissioners to license and regulate 526
May prohibit the keeping of within certain areas 528
May regulate the hours of labour of employees 528
Form of by-law and license 527

PAGE.
340
341
344
346
618
732
733
755
E COMMISSIONERS
413
432
434
438
438
444
482
541
546
after five years. 557
ement debentures 601
1006
684
686
686
687
687, 1002
691
691
692
692
689
e than 5,000.... 694
695
ecedent.....698, 1002
698, 1002
698
699
ant-Governor in
698
909
948
949
979, 1009
1011
385
418
420
469
e plans filed and
471
824, 837
983
21
uncils 107
111
133
227
526
528
528
527

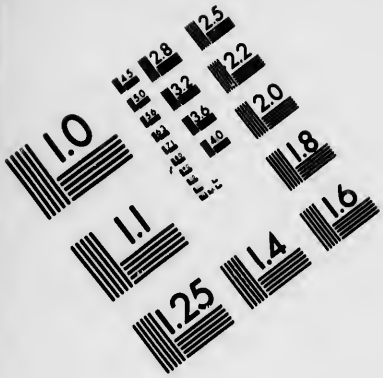
Livery Stables.—*Continued.*
Licensing and regulating in towns and villages PAGE. 753
In counties having free roads 754
Defining limits within which not to be kept in towns and villages 754
Live Stock.
Market fees on 715
Live Stock Associations.
Grants of money or land in aid of 793
Local Board of Health.
Payment of members in cities of 100,000 599
Prevention and abatement of nuisances by 761
Recommendation for drainage by local assessment, on sanitary grounds 922
Inspection of premises of milk vendors 1003
Local Improvements.
Early provisions for local assessment 12
Territory detached from county to remain liable for 54
Powers of township councils as to, in hamlets 73
Proceeding with, when territory where begun annexed to another municipality. 87
New municipality to indemnify municipality doing the work 87
Collection of rates by new municipality 88
Where part only of lands benefited are transferred 88
Unpaid rates for, an incumbrance 104
What must be recited in by-laws 399
Short form of by-law 400
Assent of electors not required to by-laws 410
Registration of by-laws optional 418
Irregularities in form cured by certificate of dismissal of application to quash 419
Limit as to aggregate annual rate not to include rates for 421
Rates for, not really taxes 424
Exempting by-laws not to include 424, 429
Investment of sinking fund moneys in debentures for 438
Debentures to be so designated on their face 449
Consolidation of issues 449
Form of by-law 450
Set-off on arbitration for lands taken, etc., for 468
Purchasing fire engine and appliances for defined area in town or village 67
Rate for cost of purchase and management 619
On streets between two municipalities 880
Origin of system 893
In Ontario 895
Existing law in England 893
In Europe and in the United States 894
Assessment for, distinguishable from a tax 895
History of extension and amendments 897
Benefit, and frontage as bases of assessment 898
Logical basis of special local assessments 899
Different capacities in which municipality acts 900
In townships, cities, towns and villages,
Ascertaining what property benefited and how to be assessed 903
Report of engineer, what to contain 903
Matters to be determined by council 905, 907
Cost should be assessed after completion of work 906
Frontage, how ascertained 907
Appeals from assessment,—grounds of 907
Who may appeal 908
What works may be undertaken 908
Assessment for 908
Must be by by-law 910
What to be included in cost of work 910
Regulating time and manner of payment 911
Term of 911
When insufficient or excessive 916
Doing work, when funds furnished by individuals 911
Sewers, proportion of cost to be borne by council 911
When general by-law has not been passed 911
Drainage works,—mode of assessing for 912
Rate to be assessed on frontage 913

PAGE.

Local Improvements.—*Continued.* 914
What property liable for 917
In townships within five miles of city of 50,000 917
Assessment by benefit instead of frontage 918
Repair and maintenance, responsibility of municipality for 918
Enforcing 919
Who may take proceedings 919
General by-law,—when sufficient 922
"Owner"—What leaseholders included 925
When petition may be signed by although name not on assessment roll 920
On petition,—requisites of 921
Procedure of council 922
On sanitary grounds, for drainage 922
Recommendation of Local Board of Health 922
Notice 923
On the initiative,—petition against 924
Procedure of council 924
Notice of work 925
Effect of petition 925
Determining number and value of property of petitioners 925
Completion of work before assessment 400, 926
Short form of by-law 926
Notice in lieu of advertising by-law 927
Contents and service of 928
Where by-law general and rate on frontage 929
Appeals from assessment 930
Powers of county judge in cities and towns 931
Assessment to become final unless altered on appeal 932
Borrowing funds,—temporary advances 933
Time for repayment of loans 933
When by-law quashed,—new assessment 934
Sewers,—assessment may include cost of branch drains 935
When non-abutting property assessable 935
Pavements,—drain connections may be made and charged as part of cost 935
Corner and irregularly shaped lots 936
Refund of part of local rates on 936
Lands on different sides of the streets unequally benefited 937
Fronting on parks, squares, etc 937
Bridges and culverts,—opening streets, etc 938
Municipality may assume proportion of cost 939
Assessment of non-abutting lands 939
In townships,—assessment by benefit 939
Purchasing works or improvements already constructed in township 640
When corporation may pay half the cost 940
Sidewalks,—exemption of owners constructing 941
Plank sidewalks may be laid without petition or notice
City, town or village may contribute 40 per cent. of cost of permanent works 941, 1007
Contribution of larger or smaller proportion than 40 per cent 942
Extension of foregoing provisions to pavement of roads 1007
Street intersections and exempt properties, cost of work at 943
Exemption of property specially assessed from general rates for same purposes 943
Extent of exemption 1007
Covenant against incumbrances does not include local rates 944
Adoption of system on general vote of electors 945
Repeal of by-law 946
Repairing and cleaning streets, etc 946
Site and land used in connection with church 947
Buildings and grounds of colleges, etc 947
Assent of electors not required to raise share of cost borne by municipality 947
Ratepayers share of cost not included in general debt 947
Sweeping, lighting and watering streets 948
Cutting grass and weeds, trimming trees 949
Snow, ice and dirt, removal of 649
Settlement with contractors as upon a *quantum meruit* 1006
Townships and villages, 949
Lighting, waterworks and fire protection 950
Trustees of fire appliances 960
Joint purchase of fire engine or road-making machinery by two municipalities

Local Improvements.—*Continued.*
Townships,
Maintenance and repair of abandoned toll roads ..... PAGE.
Construction of roads on petition 951
Exemption of specially assessed property for general rates 951
Counties,
Special assessments in townships for making and improving roads, bridges, etc. 952
Petition required 953
Notice 953
Assuming roads and bridges in local municipalities 953
Rates on municipality specially benefitted ..... [illegible]
By-law to be submitted to electors interested ..... [illegible]
When by-law carried in some municipalities only ..... [illegible]
Assisting in purchase of toll roads by cities and towns 954
Local Municipality,
Meaning of 955
Local Option By-Laws,
Repeal of by council of new corporation 34
Lock-up Houses,
Former enactments concerning 85
May be established by county councils 541
purpose of 557
Responsibility of municipality for injury to prisoners from non-repair of 557
Duty of sheriff as to gaols used for 557
General Sessions to appoint constable 557
Making provision for pay of constables 558
Who may be confined in 558
Establishment of by local municipalities 558
Payment to be made when county town uses gaol as 558
Maintaining prisoners in and expenses of conveying them to and from 558
By-laws for impowering police magistrates, etc., to commit certain classes of persons to 559
Lodging Houses,
Regulating construction of stairways in 563
By-law for securing inmates against accidents by fire in 606
Fire escapes 614
Logs,
Regulations as to setting on fire 615
London District,
How formerly constituted 616
Lord's Day,
May be described as the Sabbath 2
Committal to lock-up house for desecrating 328
Lumber,
Market fees not to be charged on 558
Regulating place and manner of selling or weighing 713
Lunatic Asylums,
Aiding in maintaining indigents at 723
Duty of county council as to making provision for maintenance of indigent insane 789
Luneburg,
Former District of, how constituted 791

Machinery,
Regulations as to prevention of accidents from in factories 607
Magazines for Explosives,
By-laws respecting 617
Majority,
Power to bind minority of corporation 43
Malfeasance in Office,
Investigation by County Judge 325
Mandamus,
Persons interested may compel the performance of duty by corporation 45
Not applicable where exercise of powers discretionary 45
To compel acceptance of office 319
Enforcing statutory duty of signing by-laws by 347
Does not lie to compel council to pass by-law assented to by ratepayers 372
Opposing on grounds of invalidity of by-law 379
To compel council to levy annual amount required to pay debt 392



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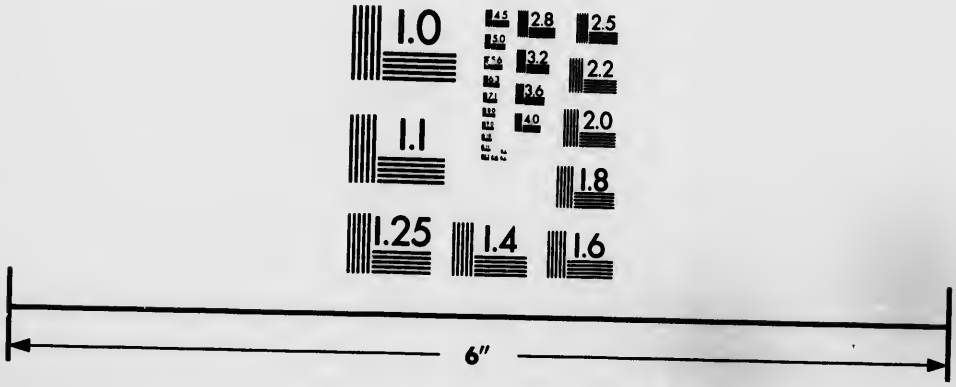

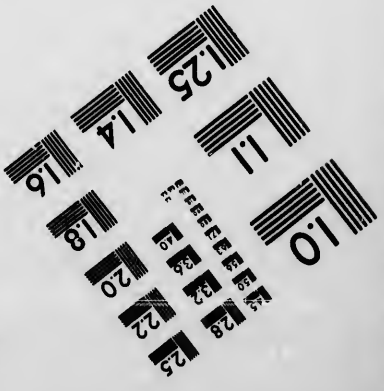

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PAGE.

Mandamus.—*Continued.*
To compel due execution of debentures 447
Compelling municipality to appoint arbitrator 481
To compel police commissioners to exercise their powers 525
Enforcing the cleaning of stream by lower municipality 683

Manitoba, Province of,
Municipal councils in 92

Manitoulin, District of,
Qualification of councillors in 101
Provisions as to publication of annual financial statement not to apply to 312

Manufactories,
Regulation of when dangerous in causing or promoting fire 611, 612
By-laws regulating the making and storing of explosives 617
Regulation and prevention of nuisances from 764
Certain classes of not to be carried on without consent of council 765
Compelling use of smoke consumers 768
When smoke from will be a nuisance 768
Former provisions as to granting bonuses to 792
Present powers as to granting bonuses 997
Requisites to validity of bonus by-laws 996
What included in term "bonus" 998

Manure,
Manufacture of not a "noxious or offensive trade" 766

Maritime Court,
County not bound to provide accommodation, etc., for officers, except in York 547
Right to use court house and gaol 547

Market Regulations,
May be quashed by same procedure as by-law, etc 375

Markets,
Seizure of unslaughtered cattle which have died on 640
Regulating place and manner of selling and weighing certain articles 723
Preventing criers and vendors of small wares from selling in public places 724
Preventing forestalling, regrating or monopoly of provisions 725
Purchases by hucksters, grocers butchers and runners 725
Light weight or short measurement in things marketed 726-727
Regulating vehicles, etc., in which goods are brought to market 727
Sale of meat distrained for rent of butchers' stalls 727
Cold storage in cities 729
Fees, not to be imposed,—
On certain articles or on vehicles containing them 713
On butter, etc., unless sheltered place provided for sale 714
Articles delivered in pursuance of prior contract 714
On goods sold elsewhere than on market place after 10 a.m. 714
For sale of goods in bona fide shops 716
Where market held in street 716
On scale of 714-715
Fees,—By-law may allow sale except at market place 715
May be imposed upon vendors voluntarily using market 715-718
Or taking advantage of market by using adjoining streets 716
Municipalities where no fee imposed on 10th March, 1882 716
Power to regulate sales, etc 717
Market fees may be sold, leased or assigned 718
On vehicles, etc., in which goods brought 727
Weighing and measuring,—not compulsory in respect to certain articles 714
Scale of fees for 715
Regulations as to 726
Erecting and maintaining weighing machines 729
Hours of enforced attendance for sale of goods 714-717
Establishment of 718
Regulations,—what included in power to regulate 719
May prohibit certain sales 720
Must not prevent the exercise of lawful calling 720
Preventing or regulating buying and selling 721
Vending in public streets or adjacent vacant lots 722
City or towns may abolish fees on abolition of tolls on roads 955

"May,"
To be construed as permissive 44
Exceptions 44

PAGE.

Mayor,
To be the head of city or town council 95-96
To be the head of city or town corporation 291
Former mode of electing 96
May resign with consent of majority of council 228
Vacancy in office,—when council may a, point or order new election 231
To preside at Board of Control 287
Casting vote at Board of Control 287-996
To give notice of strikes 292
Powers as to calling out *posse comitatus* 292
To act with assessment commissioner in appointing assessors 306
Declaration of office 316
Exempt from jury service in inferior courts 518
To be *ex-officio* justice of the peace 518
Requires no special property qualification to act 520
Where there is no police magistrate—jurisdiction in prosecutions under by-laws, etc 519
Attendance at police office in absence, etc., of police magistrate 521
Not required on Sundays and holidays 522
May request Justice of the Peace to attend in his place 521
To be police commissioner 524
Suspension of constable by, when there is no board of police commissioners 540
Election of. *See* ELECTIONS .....

Meat,
Seizing unslaughtered cattle which have died on cars or in market 639
Statutory regulations with respect to 639
Inspection of 639
Fees on weighing 715
Preventing or regulating retail sales in streets or vacant lots 722
Regulating place and manner of selling or weighing 723
Preventing forestalling, etc, of 725
Selling when distrained for rent of butchers' market stalls 727
Regulating sales of in quantities less than the quarter carcass 727
License fees 729

Mecklenburg,
Former district of, how constituted 1

Medical Health Officer,
Appointment of 591
County by-laws for appointing 594
When corporation not liable for torts of 597

Medical Practitioners,
Exempt from service in municipal office 115

Meetings,
At least two persons must be present to constitute 145
Adjournment, what business may be transacted on resuming 278
Procedure in council—*See* PROCEDURE .....

Menageries,
Preventing or regulating and licensing 734, 735
Licenses not to be granted for certain times and places 735
Prohibition of, in neighborhood of agricultural fairs 736
Amount of license fees 736

Mendicants,
Restraining and punishing 635
Prevention of begging in the streets 773

Middlesex, County of,
How constituted, county council divisions in 22

Midland District,
How formerly constituted 2

Military Bands,
Not subject to regulations of police commissioners as to playing in streets, etc. 529
Making grants to 1006

Militia,
Supplementing the pay of 797
Grants for benefit of persons serving in S. Africa 1012

Milk,
Statutory regulations with respect to 639
Inspection of supply 639
Preventing forestalling, etc., of 725
Suspension of statutory provisions for inspection of supply for cities and towns. 1005

PAGE.

Milk.—*Continued.*
Licensing and regulating vendors of 1003
When applicant to be entitled to license 1003
Inspection of premises of licensee 1003
Suspension of license 1004
Appeal to Provincial Board of Health 100

Minerals,
What are 883
Sale or lease of rights on or under roads 882

Mining Schools,
Establishing and aiding 787

Ministers of the Gospel,
Exempt from service in municipal office 115

Minors,
Preventing the sale of intoxicants to 637
Loitering in bar-rooms, etc 638
Curfew bell 638
Prohibiting purchases from by keepers of junk shops, etc 1001

Minutes,
Rule of procedure as to reading of 279
Of Board of Control to be furnished to council on request 289
To be recorded and kept by clerk 293
Right of ratepayers to inspect, and have copies 294

Monopoly,
Limiting number of licenses to one, illegal 333
By-laws granting prohibited 343
Exceptions as to telephone companies 345
Ferries 346
Preventing in relation to provisions, etc., on markets 725

"Month,"
Means a calendar month 512

Monuments,
Petition to Lieutenant-Governor to have survey made 578
Mode and cost of survey 579
Stones and other monuments to be erected by surveyor 579
Penalty for removal of 580
By-laws for marking boundaries of municipality 579

Mortgages,
Effect of, on qualification for municipal councils 104
Investment of surplus moneys raised on special rates in 438
Investment of school funds in 440
Remedy of municipality by foreclosure 441
When proper parties to arbitrate for lands taken 459
Corporation may obtain decree of foreclosure 583
May recover on covenant to pay 583
Not entitled to rectification of description 584

Mortgagors,
To furnish annual statement of balance to head of municipality 303

Mortmain Laws,
Corporation cannot hold lands without special authority 43
Municipalities may notwithstanding obtain judgment in foreclosure 441
Municipal corporations subject to 583

Mortuary Statistics,
By-laws for keeping and returning bills of mortality 582

Morals,
General power of councils as to regulating 629
Not limited to matters coming under Criminal Code 629
Prevention of indecent placards 630, 1002
Vice, drunkeness, profanity, etc. 631
Suppressing disorderly houses 631
Gambling 633
Preventing horse-racing 634
Vagrants and drunkards 635
Indecent exposure 636
Bathing in public places 637
Selling intoxicants to minors, etc 637
Inspection of bathing-houses and boat-houses 638
"Curfew bell" 638

PAGE.

Motormen,
Compelling company to provide shelter for 697

Municipalities,
Meaning of "municipality" 34
Powers of council as to 578
Landmarks and monuments 578
Boundaries 579
Surveying and naming streets 580
Numbering houses and lots 581
Record of streets and numbers 581
Census 582
Mortuary Statistics 582
Obtaining property for use of corporation 583
Acquiring lands elsewhere for public purposes 584
Town halls 585

Municipalities Fund,
Origin of 440
Application of surplus moneys derived from, to education 440-441

Municipal Loan Fund,
Moneys distributed under Acts relating to, how dealt with on dissolution of union of municipalities 70
Annual returns by municipalities indebted to 442

Music,
Regulations by police commissioners as to playing in streets, etc 529
Giving music lessons, etc., not an actional nuisance 758
Restraining nuisances from 765
Disturbing public worship by playing bands, etc 758
Playing on certain instruments in the streets 770

Music Halls,
Securing inmates against accidents by fire in 614
Fire escapes in 614
Preventing and regulating and licensing 1003

Muskoka, District of,
Formation of counties in 67
Qualification of councillors in 101
Provisions as to publication of annual financial statement not to apply to 312

Mutual Insurance Companies,
Meetings in township halls 585

"Mutually agreed upon,"
Meaning of 64

Names,
Of municipal corporations generally 37
Of provisional county corporations 37
Variations,—how far allowable 37
Proclamation erecting town or city to declare 60

Nassau,
Former district of, how constituted 2

Natural Gas Companies,
Acquiring stock in or lending money to 796

Naturalization,
Necessary before alien can vote 118

Navigation,
Right of Province to authorize the erection of booms 627
Granting aid to construction of harbours, etc 796
Taking stock in harbour companies 797-798
See HARBOURS 675
See RIVERS, STREAMS AND CREEKS

Negligence,
In exercise of statutory powers of expropriation
Action for 465
Tender or payment into Court by corporation in action for 457
Liability for accident for non-repair of municipal buildings 515
Liability of corporations for acts or defaults of agents, officers, etc 544
Setting out fire for purposes of husbandry 595
Actions for non-repair of highways. *See* HIGHWAYS 616

Negotiable Instruments,
See DEBENTURES 831

PAGE.

New Corporations,
By-laws in force before incorporation continued 84
Must be repealed in same manner as passed 85
Where territory added by-laws extend to new limits 85
Exception as to highways 86
Debts,—liability of new or separated municipalities for 86
Adjustment of when new territory added 86
Issue of debentures by senior or remaining county, etc., ... 89
Local improvements,—proceeding with in lands annexed to another municipality, 87
Municipality doing the work to be indemnified 87
Rates to be collected and debt paid by new municipality 88
Where part only of lands improved are annexed 88
Assessments and rates, for preceding year 89
Where sum paid by new corporation exceeds its share 89
Officials and their sureties, former councils and officers to exercise jurisdiction until new council organized 89
Effect of separation upon liability of officers and sureties 90
Qualification of electors before voters' list prepared 127
When first election to take place 129
Qualification for voting on by-law where there is no assessment roll 360, 361

New Brunswick, Province of,
Municipal councils in 92
Disqualification of holders of liquor licenses 109

Newcastle District,
How formerly constituted 2

Newspaper Vendors,
Regulation by police commissioners of children employed as 529

Newspapers,
Publication of official advertisements not to disqualify proprietors 987

"Next Day,"
Not to include Sunday or holiday 34

Niagara District,
How formerly constituted 2

Niagara Falls, Town of,
Separated from the county 35

Night Soil,
Preventing the hauling of through streets in daylight 1005

Night Watchman,
By-laws for appointment of and payment by special rate 628

Nipissing, District of,
Qualification of councillors in 101

Nitro-glycerine,
By-laws as to keeping, manufacturing or storing 617

Noise,
Manufactures, etc, causing a nuisance by 765
Regulating or preventing 770

"Nominate,"
Meaning of 485

Nominating Officer,
To have casting vote in case of a tie 205
Penalty for false or incorrect declaration of election, etc 217

Nominations,
Preservation of the peace at 136
When and where to be held 144
Mayor in cities and towns 145, 147
Aldermen in cities 146
Councillors in towns, and reeve and councillors in villages and townships, 146, 147
Towns divided into wards 146
Townships, holding in adjoining city, town or village 148
County by-law lengthening time between nomination and polling 149
Two persons must be present to constitute a meeting 145
What constitutes 145
Elections begin with 145
Must be held in place appointed 145
Chairman,—clerk or returning officer to be 146, 149
Absence of clerk or returning officer 146, 149
Christmas Day,—provision as to 148
Six days' notice to be given 149
To be in writing,—procedure in making 150

Nominations.—*Continued.*

PAGE.

Election by acclamation,—when to be made 150
Chairman not concerned with qualification of candidates 151
Adjournment until polling day 151
Polling a continuation of the proceedings 151
Names of candidates to be posted up 153
Resignation of candidates 153
After nomination closed 154
Non-election of full council by reason of 155
Declaration of qualification to be filed by candidates in cities of more than 30,000 995
May be held at township hall in town or village 311
Of county councillors,—*See* COUNTY COUNCILS 585

Norfolk, County of
How constituted, county council divisions 155

North Renfrew, Electoral District of,
Provisions as to publication of annual financial statement not to apply to 22

North West Territories,
Municipal councils in 312

Northumberland, County of,
How constituted, county council divisions in 92

Notice of Action,
In actions for damages for things done under illegal by-laws 510, 512
When corporation entitled to 513
Not required in mandamus proceedings against police commissioners 525

Notices,
May be posted at township halls in town or village 585
Preventing the pulling down or defacing of 627
Preventing the defacing of property by 626

Nova Scotia, Province of,
Municipal councils in 92

Noxious Weeds,
Prevention of 626

Nuisances,
By-laws as to, under power to make regulations for public welfare 337
Payment of fees of county attorney on prosecution for 572
Restraining and regulating dogs running at large 602
Penalty for committing in a cemetery 625
Validity of by-laws for suppression of, when same offence punishable as a crime 630
Disorderly houses 631
Gambling houses 633
Sale of articles unfit for human food 640
Regulations to prevent cess-pools, etc., becoming 642
Liability of landlord for continuance of 643
Rights of landlord and tenant of adjoining premises 644
Selection of sites for public lavatories, etc 646
Power to construct drains, etc., does not authorize 650
Where obstruction of streets will constitute 656
Abatement of when caused by portions of buildings, etc., projecting into streets 661
Erection of cab-stand without authority 666
Poles, etc., erected by certain telegraph and telephone companies cannot be treated as 669
Right to remove boughs and trees overhanging highways 705
Preventing the importuning of travellers by runners 747
Bowling alleys 726
What may be deemed 756
Classification of 756
Acts or omissions which interfere with rights of the public 756
Acts which are contrary to good morals 757
Private nuisances 757
Need not be dangerous or injurious to health 757
Interference with comfort sufficient 757
Giving music lessons, singing, etc 758
Bands of music interfering with public worship 758
Temporary annoyance by ordinary user of land not to be deemed 758
Stables 759
Preventing and abating public nuisances 759
Rights of private individual 760
Proceeding by action or information 761

Nuisances.—*Continued.* PAGE
Acquiescence or delay of plaintiff 761
Local Board of Health—information to 761
Investigation by 761
Service of notice requiring abatement 761
Powers of board 762
Action by Provincial Board of Health 762
Indictment 764
Manufactures and trades which may prove to be 764
Slaughter houses, gas works, tanneries, distilleries, etc. 764
Noise 765
Smoke 765, 768
Smells 765
What are noxious trades 765
Establishment of public slaughter houses 766
Public abattoirs and cattle yards 766
Inspection 767
What is a slaughter house 767
Defining limits within which certain industries may be carried on 767
Compelling use of smoke consumers 768
Limits within which cows, goats, pigs, etc., may be kept 769
Regulating and preventing ringing of bells and other noises 770
Preventing or regulating firing of guns and disturbances of the peace 772
Begging and exposure of deformities, etc., in the streets 773
Obstruction of highways 820
What constitutes an indictable common nuisance 831
Throwing filth into streets in police villages 983
Hauling night soil, etc., through streets in daytime 1005

Oath of Allegiance.
Does not qualify alien to vote 118

Oaths and Declarations.
Perjury, what constitutes 139
Where affirmation may be substituted for oath 318
Of office and qualification to be administered before business of council proceeded with 272
Of qualification, who to make 314
When to be made 314
Forms of 314-316
Not required by certain *ex officio* justices of the peace 315
Nature of estate required to be stated 315
Refusal to take is a refusal of the office 315
Quo warranto proceedings where office exercised without taking 315
Alternative form in townships 316
Before whom to be made 317
Jurisdiction of mayor in prosecutions for refusal to make 519
Of office, who to make 316
Only one necessary although more than one office held 316
Effect of failure to make 317
Before whom to be made 317
Of election officers 317
Of auditors 317
Making and subscribing 318
Certificate of the taking of oaths of qualification and office 318
Who may administer 318
To be deposited with clerk 318
Head or chairman of council, powers of 319
Penalty for neglect to take 319
Agent appointed to act at voting on by-law 356
Freeholder voting on by-law 362
Leaseholder voting on by-law 362
On by-law for adopting or repealing local improvement system 363
Of secrecy at voting on by-law 368
Oath of arbitrator 488
Of police constable in city or town 531
Of high constable 539
Administration of in disputes concerning roads 862
Of police trustees 977
Of voters at elections. *See* VOTING 138

PAGE

Oats,
Market fees not to be charged on 713

Objections to By-laws,
Who may make and how 349

Obscene Language,
Prevention of 631

Obscenity,
Prevention of in public places 757

Offal,
Preventing the hauling of through streets in daylight 1005

Office,
Refusal to accept, penalty for 319
An offence at common law 319
How person refusing may be proceeded against 319
Jurisdiction of mayor in prosecutions for non-acceptance 519
Declaration of. *See* OATHS AND DECLARATIONS 314

Officers,
In existing municipalities continued 37
Liability of corporation for torts committed by 40

Officers of Municipal Corporations,
Enforcing performance of duties by mandamus 45
Appointment of by provisional county council 77
Continuance in office until others appointed by council of new corporation 89
Misconduct at elections, penalty for 215
County council elections 216, 217
Rules of procedure as to appointment of 282
Not to be balloted for 989
Duties of Board of Control as to nominating 288
As to suspension or dismissal 289
Exceptions 290
Powers of board of control as to prescribing mode of appointing subordinates 289
Council to provide payment of 320
No applied assumpsit in absence of express provision 320
Remuneration not to be settled by tender 320
Partial payment by fees 320
Gratuities on resignation or removal on account of old age 323
By-laws fixing salaries not in the nature of contracts 321
Duties, may be added to by by-law 321
Claims for compensation for extra services 323
Mode of appointing ..... [illegible]
Rights as to salary in case of dismissal ..... [illegible]
Council has no right to appoint for definite term 322
Dismissal, what amounts to 323
Investigation of charges of malfeasance by County Judge 324
Security by, acceptance of bonds or policy of guarantee company 324
Not to be appointed after 31st of December by retiring council 338
Not to be arbitrators where their own municipality interested 488
In actions to which municipality a party—competent witnesses 517
Liable to challenge as jurors 518
Exempt from jury service in inferior Courts 518
By-laws for appointment and removal of 590-594
For fixing remuneration of 592
Liability of corporation for acts and defaults of 595
Acts specially authorized or adopted 595
Acts not specially authorized 595
Where appointment statutory is and corporation has no special interest in the public services performed 597
Aiding superannuation funds of 800
Not personally liable for non-repair of highways 845
Auditors,—*See* AUDITORS AND AUDIT 308
Clerk,—*See* CLERK 293
Treasurer,—*See* TREASURER 297
Valuators,—*See* VALUATORS 306, 313
Duties with respect to oaths, etc,—*See* OATHS AND DECLARATIONS 314

Oil Refineries,
Not to be carried on without the consent of municipality 765

Oleomargarine,
Prohibition of manufacture or sale of 639

PAGE.

Omnibuses,
Power of police commissioners to regulate and license owner keeping for hire.. 526
Regulating hours of labour of drivers 528
Licensing and regulating keepers for hire in towns and villages..... 754
In counties having free roads..... 754

Ontario, County of,
How constituted, county council divisions in..... 23

Ontario Municipalities Fund,
Origin of..... 440
Application of surplus moneys to educational purposes.....440, 441

Opera Houses,
By-laws for securing public against accidents by fire in..... 614
For requiring fire-escapes..... 614
Preventing, regulating and licensing..... 1003

Orders,
Copies to be furnished by clerk certified under seal 294

Orders of Councils,
Proceedings to quash, *See* QUASHING BY-LAWS, ETC..... 374
Illegal,—actions for things done under, *See* ACTIONS AGAINST MUNICIPAL CORPORATIONS 510

Ordinaries,
Limiting the number of, regulating and licensing..... 752
Limitation as to license fee..... 753
Revocation of license 752

"Ordinary Expenditure,"
Meaning of 411

Ottawa District,
How formerly constituted 2

Ovens,
Regulations respecting..... 611

Overseers of Highways,
By-laws for appointment of 590, 592
Statutory duties of 591, 592

Owner,
Meaning of in relation to farmers' sons' qualification 123
Who deemed to be for purpose of expropriation clauses 459

Ox-Eye Daisy,
Measures to prevent spread of 593

Oxford, County of,
How constituted, county council divisions in..... 23

Paper,
Preventing the throwing of into streets 1002

Parish and Town Officers' Act, 1793,
Election and powers of wardens under 3

Parks,
Term of debt to be contracted for.....390, 403
Regulation by police commissioners of playing of bands, etc., in 529
Prohibiting the use of certain vehicles..... 673
Exempt from taxation when owned by municipality 706
May be established by street railway companies 706
Expropriating land for..... 706
Duty of municipality taking land outside its own limits..... 706
Powers of cities and towns as to acquiring lands, erecting buildings, managing, etc., etc. 707
Dedication of lands for, what constitutes 708
Assessment for local improvements on..... 937
Establishment of in police villages 980
Planting and removal of trees. *See* TREES.

Parliament of Canada,
Members and officers exempt from service in municipal office 115

Parry Sound, District of,
Formation of counties in..... 67
Qualification of councillors in..... 101
Provisions as to publication of annual financial statement not to apply to..... 312

Partners,
Division of rating to qualify as electors or councillors..... 128

Party Walls,
Regulating and enforcing the erection of 612, 613

PAGE.

Pathmasters,
By-laws for appointment of 590, 592
Statutory duties 591, 592
Liability of corporation for acts of 598

Patriotic Funds,
Grants to validated 1012

Paupers,
By-laws for committal to house of industry 561
Committal to house of industry, who may commit, etc. 562, 563

Pavements,
Construction by local assessment. *See* LOCAL IMPROVEMENTS.

Payment into Court,
Effect of, after or without plea of tender 515
In actions against corporations for negligence 515

Peace,
Preservation of at elections 136

Peace Officers,
Who are to be deemed 532
See CONSTABLES 532

Pedlars,
See HAWKERS.

Peel, County of,
How constituted, county council divisions in 24

Penalties,
Recovery of, where no special method provided 137
For offences in relation to voting at elections 213
For neglect of duty by officers at county council elections 216
For falsifying returns of county council elections 217
For bribery 267, 268
For undue influence 264
Clerk neglecting or refusing to make returns to Bureau of Industries 295
To make returns of steam boilers 296
When recoverable on indictment 297
Treasurer neglecting to make returns to Bureau of Industries 304
Auditors failing to make returns to Bureau of Industries 309, 310
Falsifying annual financial statement 312
Refusal to accept office, or make necessary declaration of office 319
Violating secrecy of voting on by-law 368
Officers acting under illegal repeal of money by-law 414
Clerk neglecting duty as to registering by-laws 416
Diversion of sinking fund 436
Treasurer neglecting to make annual statement of amount required for sinking fund 437
Neglecting to levy for sinking fund 437
Council not making annual returns as to debts 442
Illegal investments 442
Treasurer of municipality indebted to Municipal Loan Fund not making returns 442-443
For extortion by arbitrator 508
Witness refusing to answer or to attend 525
For infraction of by-laws of police commissioners, how enforced 530
Omitting assist peace officer when required 533
Removing surveyors' monuments or other landmarks 580
Continuing offences 610
By-laws for inflicting 963
Collection of 963-965
Recovery of 965
Procedure 966
Evidence 967
Jurisdiction of Justices of the Peace 968
Application of 970
Collection and application of in police villages 983, 1010

Perjury,
What constitutes 139

Perpetual Succession,
Object of as applied to corporations generally 43

"Person Aggrieved,"
Meaning of 215

PAGE.

Personal Property,
Powers relating to, incidental to incorporation 43

Personal Service.
What constitutes 245

Personation,
Penalty for, at elections 213
What constitutes 214
Form of indictment for 214
Rewards for discovery of 803

Perth. County of.
How constituted, county council divisions in 24

Perth. Town of.
Separated from the county 35

Peterborough, County of.
How constituted, county council divisions in 24

Peterborough. Town of.
Separated from the county 35

Petitions.
Rules of procedure relating to treatment of by councils 285

Petty Chapmen.
See HAWKERS AND PEDLARS 738

Photographs.
Preventing the posting up or exhibiting of indecent pictures 1002

Physicians.
Exempt from service in municipal office 115

Piers.
See WHARFS .....

Pigeon Shooting.
Held to be a nuisance 772

Pigs.
Prohibiting the driving of on certain streets 670
Authorizing fairs for sale of, etc. 713
Market fees on 715
Fees on weighing 715
Preventing or regulating the keeping of 769
Keeping in the city a nuisance at common law 769

Places of Amusement.
Regulating and licensing 736, 1003

Places of Worship.
See CHURCHES .....

Plans.
Registrar to deliver duplicates to treasurer or assessment commissioner 307
Filing with clerk in city or town on commencing expropriation proceedings 469
Compelling the production of plans of buildings for inspection 606, 607
Of cellars, etc., compelling the furnishing of 65
Directing the submission of, in case of building intended for manufacture of explosives 617
When binding as to roads laid out thereon 807

Play Bills.
Preventing the posting up or exhibiting of when indecent 1002

Plumbers.
Licensing and regulating 746

Police.
By-laws for establishment of force 628
Releasing persons found drunk in streets 635
Duty of municipality taking lands outside its own limits for parks 706
Aiding superannuation funds of force 800
See CONSTABLES 530

Police Commissioners.
Duty as to furnishing estimates to Board of Control 290
As to proceedings to quash by-laws of 376
Board of, to be constituted in every city 524
Board may be constituted in town having police magistrate 524
How composed 524
When deputy police magistrate to act 1000
President of council to take the place of mayor 525
Chairman, quorum 525
Meetings 526
By-laws for, dissolution of, in towns 524-537

Police Commissioners.—*Continued.*
Salaries, may be paid in cities of 100,000 ..... PAGE.
Powers, must be exercised judicially 525
Mandamus to compel the exercise of 525
Notice of action not necessary 525
Powers,—summoning and examining witnesses 525
Licensing and regulating, second-hand stores, livery stables, cab drivers, etc 525
Prohibiting livery or other stables within defined areas 526-528
Regulating hours of labour for drivers, etc 528
Control of children in certain trades 528
Bands of music 529
By-laws, authentication and proof of 529
How enforced 529
Licenses, discretion as to granting or refusing 530
Police force, report as to number of men required 530
Appointments to 531
Regulations as to, and control of 531
Requisition on council for expenses 531
Certifying as to indemnifying members of force when action brought 536
To have constable in attendance at schools, etc., used as polling places 537
Powers in cities of 100,000,—regulations as to dogs 590
Control of trade licenses in cities having 100,000 602
Control of police force by. *See* CONSTABLES 755

Police Magistrates.
Right of Provincial Government to appoint 530
Exclusion of jurisdiction of Justices of the Peace in territory of 80
Appointment of,—in cities and towns of more than 5,000 519
In other towns 519
Attendance at police office 519
Not required on Sundays and holidays 521
Deputy—appointment and salary of 522
To be a police commissioner 521
Temporary appointment of county or district constables by 524
Suspension of constables by, when there is no board of police commissioners 538
Right to use court house or town hall 540
Jurisdiction of, for recovery of penalties under Act 548

Police Office.
To be established in every city and town 968
Police magistrate or mayor,—attendance of 521
Justice of the peace attending at request of mayor 521
Deputy police magistrate 521
Attendance not required on Sundays and holidays 521
Accommodation and furniture to be provided for 522
Appointment of person to be clerk of 522
Fees 522

Police Trustees.
First provisions for election of 522-523
Penalty for refusing to accept office. *See* POLICE VILLAGES 5

Police Villages.
Not corporations 319
Existing villages continued 34
Formation of 972
County council to pass by-law on petition 1008
By-law to fix date of first election, etc 1008
Where village lies in more than one county 1008
Trustees of existing villages continued 1008
Number and qualification 973
Electors, qualification 973
Elections after the first, returning officer, etc 973
Not to be held in taverns, etc 974
Nominations 974
Polling 974
Voters' lists 974
Application of provisions relating to municipal elections 975
Casting vote 975
Preservation of the peace 975
Return of ballots, etc., to township clerk 976
Term of office 976

Police Villages.—*Continued.* PAGE.
Vacancies 976
Oath of office and qualification 977
First meeting 977
Penalty for breach of duty by 983
Expenditure, township to levy amount required by trustees 977
Levying rate 977, 1010
Inspecting trustee 976
Constable 976
By-laws, sidewalks, culverts, drains, streets 978
Pounds and restraining animals running at large 1008
Removal of snow, ice and dirt from streets 1008
Billiard and bagatelle tables 1008
Showmen, circuses, etc 1008
Tobacconists 1008
Dogs running at large and dog-tax 1008
Authentication and proof of 1009
Township treasurer to pay out moneys on order of trustees 978
When orders may be given 978
Liquor license fund, application of 978
Fire protection, lighting and heating 979
Submitting by-law when village lies in two or more townships 1009
Equalization of assessment when village in more than one township 1009
License fees and penalties, application of 1010
Parks, etc., establishment of 980
Tree-planting 981
Fire, regulations for prevention of 981
Gunpowder and explosives 982
Nuisances 983
Penalties, recovery and application of 983, 1010
Limitation of prosecutions 983

Poll Book.
Declaration of deputy returning officer at close of poll as to use of 199
Form 200
See VOTING 170

Poll Clerks.
Certificates entitling to vote at place of service 178
May vote at elections 202
Declaration of office 317
At voting on by-laws, may vote where employed 357

Polling.
At Elections. *See* VOTING 179

Polling Places.
Delivery of ballots and materials for marking to deputy returning officers 168
Compartment for marking ballots 169
Placarding directions to voters at 169
At voting on by-laws, to be named in by-law 350
Who may be present in 357

Polling Subdivisions.
By-laws for dividing municipality into 586
To have well defined boundaries 586
To be equal as to number of electors 586
Limit of number of voters in each 586, 1001
Clerk to call the attention of council to excess 587
Excess not to invalidate election if not more than 300 589
Not to include territory in more than one electoral district 586
Alterations to be made before publication of voters list 587
If made afterwards not to take effect until next list made out 587
Re-division to be made as required 587
To be based on assessment roll 587
Appeal from by-law correction by County Judge 587
Numbering 588
By-law to be transmitted to clerk of the peace 588
To be the same as at municipal elections 588
At Provincial elections .....
Polling places 588
Additional polling places 588
Union of two or more subdivisions 588
Expense of polling places 589

PAGE.
976
977
977
983
977
977, 1010
976
976
978
1008
1008
1008
1008
1008
1008
1009
978
978
978
979
1009
1009
1010
980
981
981
982
983
983, 1010
983

199
200
170

178
202
317
357

179

officers 168
169
169
350
357

586
586
586
586, 1001
587
589
586
587
587
587
587
587
588
588
588

588
588
588
589

Polling Subdivisions.—*Continued.*
When returning officer to divide subdivisions
Remuneration of returning officers for making subdivisions
Polling places,—when clerk may choose
In cities of 100,000—union of two subdivisions, one polling place
Use of schools and other public buildings for polling places
Payment therefor
Consent of School Board
Attendance of constable
Poll Tax,
Firemen exempt from
Pool Tables,
Licensing, regulating and governing keepers of
Minors under 16 years frequenting
What are houses of public entertainment
License fee, amount of
Poor,
See CHARITY
Poor-Houses,
See HOUSES OF INDUSTRY
Population,
How determined in case of cities
What necessary for incorporation of village
Area of towns and villages limited accordi
What necessary on incorporation of town
Of city
How determined in fixing number of county councillors
How determined in fixing qualification of electors in towns
Porches,
Directing the removal of where obstructing streets
Preventing the obstruction of wharfs, harbours, etc., by
Posse Comitatus,
Powers of mayor as to calling out
Posters,
Preventing the defacing of property by
Poultry,
Inspection of when intended for food
When market fees not to be charged on
Preventing forestalling, etc., of
Granting bounties for destruction of animals dangerous to
Pound-Keepers,
Appointment of
Statutory duties of
Pounds,
Preventing animals running at large and impounding them, etc.
Prescott, County of,
How constituted, county council divisions in
Prescott, Town of,
Separated from the county
President of the Council,
Appointment of in case of vacancy in office of mayor, etc.
To be a police commissioner
Previous Question,
Rule of procedure as to putting
Priests,
Exempt from service in municipal office
Prince Edward, County of,
How constituted, county council divisions in
Prince Edward District,
How formerly constituted
Prince Edward Island, Province of,
Municipal councils in
Prisoners,
Gaolers not to take fees, etc., from
Matters to be considered in adjusting liability for maintenance of
Liability of corporation for damages for non-repair of lock-up
Who may be committed to lock-up house
Expenses of maintaining and conveying to and from lock-up
Fee of gaol surgeon on certifying as to removal to Central Prison, etc.

PAGE.
589
589
589
589
589
589
590
590
594
732
733
733
733

35
48
52
58
58
93
123
658
676
292
626
639
714
725
801
590
591
624
25
35
277
525
282
115
25
2
92
546
554
557
558
559
565, 573

PAGE.

Prisoners.—*Continued.*
Cost of maintenance, transportation, etc., what payable by Province 573
Apportionment of cost of maintenance, etc. *See* GAOLS .....

Privilege,
Rules of procedure as to questions of 283

Privy Vaults,
Regulating construction and cleaning of 642
Filling up and closing in defined areas 642, 645

Procedure in Councils,
Record of yeas and nays 280
Inquiries by members 281
Admission of strangers within the bar 281
Adjournment 281
Motion for, always in order 282
Suspension of rules 281
Parliamentary rules to govern in unprovided cases 281
Notice of motions 281
Motions,—how made and withdrawn 281
Motion to commit precludes amendment 281
Dilatory motions 282
Previous question 282
Amendments 282
Appointments,—how voted on 282
Not to be made by ballot 989
Members not eligible for salaried positions 282
Dividing a motion 282
Putting the question 283
Votes not to be taken by ballot 989
Privilege 283
Divisions 283
In Committee of the Whole 283
Chairman 283
Rules of debate 283
Questions of order,—appeal to council 283
Motion to rise and report 283
Motion to rise without reporting 284
By-laws,—how introduced 284
Not to be voted on by ballot 989
Readings in council 284
Reference to committee 284
Duties of clerk 284
Consideration in committee 284
Reporting to council 284
Signing and sealing 284
Petitions and communications 285
How to be written and signed 285
Presentation of 285
Reference of 285
Consideration when presented in previous years 285
Committees, appointment of 285
Standing committees 285
Quorum 286
Organization, election of chairman 286
Special meetings of standing committees 286
Special committees 286
Members of council may be present at meetings of 286

Profanity,
Prevention of 631

Prohibition,
Power to license does not include 333, 341

Promissory Notes,
Not to be issued by municipal corporations for less than $100 ..... 455, 1000

Promulgation of By-laws,
By publication in newspaper 373, 999
Effect of, on validity of debentures 448

Property,
Disposition of, on separation of junior county from union 79, 81
By-laws for obtaining for use of corporation 583
Disposing of when no longer required 584
Validity of by-laws authorizing the destruction of, without compensation 603

PAGE.

Prostitutes,
Suppression of disorderly houses 631
Summary conviction of 632

Provincial Board of Health,
Postponement of election on report of 207
Consent required to acquiring lands for cemetery or enlargement thereof, in town or village 710, 711
Prevention and abatement of nuisances by 762
Appeals from suspension of milk vendor's license 1004

Provincial Constables,
Appointment of 539

Provincial Elections,
See POLLING SUBDIVISIONS 586

Provincial Treasurer,
May retain moneys due to municipalities until returns made 296, 404, 311
Returns to by corporations indebted to Municipal Loan Fund 442

Provisional County Corporations,
Proper designation of 38
Separation of junior county from union, when to take place 75
When population is less than 25,000 but more than 17,000 77
Resolution, petition and proclamation 75
Appointment of council 76
First meeting of council, who to preside 76, 77
County town, proclamation to name 76
Representation of separated towns in council 77
Warden and other officers, appointment of 77
Treasurer—liability of sureties of 77
Erection of court-house and gaol 78
Powers of council of union not to be interfered with 78
Agreement with remaining counties as to liabilities and assets 79
Provisional councillors not to vote in council of union on 79
Arbitration in case of disagreement 79
Balance found due,—payment of 80
To bear interest 80
Provision for payment, how made 80
Appointment of judge, sheriff, etc., for junior county 80
Final separation by proclamation 80
Division of property on separation 81
Courts and officers of union to cease to have jurisdiction in the junior county 81
Tax sales in junior county 81
Provisional council, officers and by-laws, etc., continued 82
Treasurer of union to deliver over books relating to arrears of taxes in junior county 82
When separate registry office is established 82
Actions pending at time of separation 82
Changing place of trial 83
Executions in hands of sheriff of union 84
Division Courts 83
Courts to be held at county town of junior county 84
Debentures to be issued by senior county for old debts 84
Rates to be imposed for payment of debts of union 89
Jurisdiction of council and officers of union continued until new council organized 89
Effect of separation on officers and sureties 89
Council,—how composed 90
Not empowered to grant gratuities on retirement of officers 100, 988
Collectors of townships in junior county to be collectors for 323
Erection of court house and gaol, approval by Inspector of Prisons 307
Liability for work on court house, etc., where contract not under seal 541

Provisions,
Regulations respecting food and drinking water, etc 543
Preventing forestalling, etc., of 639

Public Libraries,
Granting money or lands in aid of 725

Public Schools,
Duty of School Board as to furnishing estimates to Board of Control 795
Term of debt to be contracted for school houses 290
By-law for issuing debentures must state amount to be raised annually 390, 403
..... 392

Public Schools.—*Continued.* PAGE.
Use of as polling places in cities of 100,000 589
Obtaining land for school buildings 774
Powers of trustees 775
Lands vested in trustees 775
Disposing of lands when no longer required 775
Approval of change of site 777
Providing for establishment and support of 774
Legislative grant and school rates 775
"Common School Fund" 776
Duty of board as to preparing estimates, etc. 777, 778
Rates for, how to be levied 777
Apportionment of funds among sections by township councils 1000
See School Moneys.

Public Works,
Purchase from the Crown, by-law need not name a date when to take effect 389
Term of debt not limited 390

Publication of By-laws,
When assent of electors required 352
Promulgation of by-laws by 373, 999

Qualification,
Returning officer not concerned as to at nominations 151
Declaration to be administered before business of council proceeded with 272
Of ratepayers voting on by-laws 360
Of Justices of the Peace 520
Of trustees and electors in police villages 973
Declaration to be filed by candidate in cities of over 30,000 995
Who may be elected to councils. *See* Councils 101
Of electors. *See* Electors.
Declaration of. *See* Oaths and declarations.

Quantum Meruit,
Settlement with contractors on local improvements on basis of 1006

Quarter Sessions,
Government of former Districts by 3
Places of meeting 3
Powers of 3
As to towns 4
Popular dissatisfaction with 5
Transfer of powers to District Councils 5
Roads opened by to be highways 805, 806
Former powers of, in relation to highways transferred to county councils 854

Quashing By-laws, Orders and Resolutions,
Issue and sale of debentures, etc., not an answer to motion 46
Inquiry as to truth of recitals 51
Origin of jurisdiction 375
Who may move 374, 375
Where by-law affects another municipality 385
What may be quashed 375
By-laws or orders of Police Commissioners 376
Application,—in the Judicial Districts 376
Should be to a single Judge 376
When to be made 385, 386
Affidavit should state interest of applicant 375
Unsealed by-laws, may be treated as orders, etc. 375
Extent of power of Court 374, 375
Patent or latent illegality 376, 377
Discretionary power 377
When Court may refuse to quash for illegality 378
Technical and trivial objections 378
Other ways in which validity may be questioned 379
On motion to quash conviction 377, 379
Costs, to be in discretion of Judge 374
Usually follow result of application 380
When refused to applicant although successful 381
When refused to corporation although by-law not quashed 381
Notice of motion 382
Proof of by-law 383
Security to be given by applicant 384

Quashing By-laws, Orders and Resolutions.—*Continued.*
Recognizance ..... PAGE.
Deposit in lieu of recognizance 384
Not required where a municipality applies 385
By-laws affecting another municipality 385
Corrupt practices 385
Inquiry by County Judge 387
Return of evidence to High Court 387
Hearing and determination 387
Proceedings u. er by-law to be stayed until application disposed of 387
Errors in recital of amount of rateable property and existing debt in debenture by-laws 388
Registration of certificates as to proceedings in case of money by-law 395
Local improvement by-laws 418-419
When by-law, etc., must be quashed before action can be brought for things done under it 420

Quebec, Province of,
Municipal councils in 510

Quorum,
Meaning of 91
Majority of council necessary 275
In councils of five, three must concur 275
Members counted must not be disqualified 275
Of Board of Control 275
Of board of commissioners of police 287

Quo Warranto,
Remedy not affected by recount 525
Present procedure in controverted elections substituted for 212
Time within which proceedings must be taken 234
Will lie in cases to which Statute does not apply 238
Proceeding by notice of motion in nature of 239
See CONTROVERTED ELECTIONS, ... 239

Racing,
Prohibiting in public streets 672

Rag Shops,
Defining areas within which not to be carried on 767

Ragweed,
Measures to prevent spread of 593

Railings,
Directing the removal of when obstructing streets 658
Preventing the obstruction of wharfs, harbours, etc. by 676

Railways,
Territory detached from county to remain liable for bonuses to 54, 55
Adjustment of indebtedness for on separation of municipalities 70
Bonus by-law assented to by electors need not be passed by council 372
Defects in bonus by-laws how far cured by promulgation 374
Term of debt to be contracted for 390, 403
Debentures in aid of,—form of 448
Construction of roads across 871
By-laws for aiding 955
Manner in which aid may be given 956
Assent of electors 956
Dominion as well as Provincial lines may be aided 956
Conditions which may be attached 956
Where stock taken to $20,000 head of council to be a director 958
Debentures may be for not less than $20 956
Aid from portion of a township 958
Assent of ratepayers 958
Petition for by-law 958
Contents of by-law 958
Township by-laws as to use of highways 959
Repeal of "grouping clauses" 959

Rainy River, District of,
Qualification of councillors in 101
Provisions as to publication of annual financial statement not to apply to 312

Ratepayers,
Do not constitute a corporation 36
Right to restrain *ultra vires* acts of corporation 47

PAGE.

Ratepayers.—*Continued.*
Not disqualified by interest from voting in council 276
Meaning of "ratepayer" 309
Right to object to by-laws, how exercised 349
Who may vote on by-laws, requiring assent of electors 360
May vote on by-laws in each ward where qualified 361
May act as arbitrators where their own municipality interested 488
Exception as to drainage 488
In actions to which corporation a party, competent witnesses 517
In case of local municipalities liable to challenge as jurors 518
Not disqualified from acting as Justices of the Peace because penalty payable to municipality 521

Rating,
Necessary to qualify for membership in councils 101
Must be correct 103
What necessary to qualify electors—*See* ELECTORS 117

Real Property,
What to include 34

Recitals,
In by-laws requiring assent of Lieutenant Governor to be verified 348
In debenture by-laws 393
In local improvement by-laws 399
Partially repealing money by-law 413
For making anticipatory appropriations 434

Recognizance,
Distinguished from bond 384

Recorder,
Formerly member of Board of Commissioners of Police 524
Abolition of office 524

Recorder's Court,
Constitution and abolition of 521

Recount,
Affidavit by applicant for 209
Appointment before County Judge 209
Deposit of $25 as security for costs 209
Who may be present at 209
Opening of packets 209
Secrecy of ballot to be preserved 209
To be a continuous proceeding 210
During adjournment documents to be kept sealed up 210
Procedure before County Judge 210, 989
What ballots to be held void 210
Deciding upon objections 210
Statement of result 211
Ballot papers to be sealed up and returned to clerk 211
Certificate of result 211, 989
Form 211
Casting vote, if result is an equality of votes 211
Not to affect other remedies 212
Costs, to be apportioned by Judge 212
Taxation and recovery 212
At county council elections 212
Of votes given by ratepayers on by-law,—*See* SCRUTINY 369

Red Cross Society,
Grants to, validated 1012

Reeve,
When to include "deputy reeve" 34
Office formerly ceased in town on separation from county 65
Vacancy in office, when council may appoint or order new election 231
Powers as to administering oaths 318
Exempt from jury service in inferior Courts 518
To be *ex-officio* Justices of the Peace 518
Require no additional property qualification to act 520

Refreshment Rooms,
Limiting the number of, regulating and licensing 752
Limitation as to license fee 753
Revocation of license 752

Refuges,
See HOUSES OF INDUSTRY 559

PAGE.

Refuse,
Regulations as to burning in the open air 616

Regattas,
Making grants for encouragement of amateur sports 1006

Registrars of Deeds,
Disqualified from being members of councils 107
To transmit to head of corporation annual statement of amount paid to municipality 292
Delivery of duplicate maps or plans and list of conveyances to treasurer or assessment commissioner 307

Registration,
Of by-laws, proclamations, etc., altering municipal boundaries 67
By-laws creating debts to be registered 415
Optional in case of drainage and local improvements 418, 999
Duty of clerk 415, 416
Penalty for neglect 416
Recovery of penalty 417
In what office 415
Book to be kept by registrar and particulars to be entered therein 416
How by-law to be certified and authenticated 416
Inspection by public 416
Fees of registrar 416
On registering certificates as to proceedings to quash 419
Notice, publication of 417
Form 417
Effect of application to quash 418, 419
Where application deemed to be made 420
Certificate of proceedings to quash 418
Form 419
What defects cured by 419
Local improvement by-law, irregularities in form cured 420
By-laws for contributing to cost of permanent sidewalks 420
Time for registering certificate of proceedings 421
Changing names of streets 580, 1001

Registration of Debentures,
Transfer thereafter to be by entry 452

Registry Divisions,
Expenses consequent in transferring territory, how borne 54

Registry Offices,
Determining town's share of expense on withdrawal from county 64
New agreement or award after five years 66
Appointment of registrar for junior county on separation 82
When to be established,—duty of county council as to erecting and maintaining. 542

Registry Offices for Servants,
Licensing and regulating the keepers of 745

"Regrating,"
What constitutes 725
Preventing the practice of 725

Regulations,
Power to impose fee for certificate of compliance with 343
Power to make, distinguished from power to restrain or prevent 526
By police commissioners. *See* POLICE COMMISSIONERS 526
See BY-LAWS.

Remuneration of Officers,
See SALARIES 320

Renfrew, County of,
How constituted, county council divisions in 25

"Repair,"
Meaning of 827

Repeal of By-Laws,
General power 338
Exceptions 338
Corporation ordered to pay costs of motion to quash notwithstanding repeal 382
Partial repeal of money by-law where only part of loan raised 413
Money by-laws not to be repealed until debt paid 413
Penalty for acting upon illegal repeal 414
By-laws setting apart cemeteries may not be repealed 710

Replevin,
Validity of by-law may be questioned by action for 379
Action arising under illegal by-law, not necessary that by-law should be quashed 511

PAGE.

Reservoirs,
Establishing, protecting and cleansing 641

Residence,
What constitutes so as to qualify voters 120

Resignation,
Of candidates nominated for municipal councils 153
Must be in writing 154
Form of 154
Election by acclamation in consequence of 155
Non-election of full council owing to 155
At county council elections 158
Of seat in council,—when compulsory 226
May be permitted by majority 228
What constitutes 228
Not allowed while trial of right to seat pending 256
Payment of gratuity to officer retiring on account of old age 323

Resolutions,
Copies to be furnished by clerk certified under seal 294
Powers of council generally to be exercised by by-law 326,327
Exceptions 334
When signed and sealed amount to by-laws 334
Corporate seal distinguishes by-law from 347
Officers should not be appointed by 590
Proceedings to quash. *See* QUASHING BY-LAWS, ETC 374
Illegal,—action for things done under. *See* ACTIONS AGAINST MUNICIPAL CORPORATIONS 510

Respondeat Superior,
Application of maxim to corporations and their officers and agents 595

Restaurants,
Limiting the number of, regulating and licensing 752
Limitation as to license fee 753
Revocation of license 752

Returning Officers,
Council to appoint for each ward 134
Clerk to act for whole municipality 134
Appointment when clerk unable to act 134
Refusal or neglect to act 135
Death or absence at nomination or polling 135
Illness, etc., during polling 135
To be conservators of the peace 136
Summary trial of offenders by 136
Special constables, power to swear in 136
Who are 137
At county council elections 137
Right of action of person aggrieved by misconduct of 215
May be made a party to controverted election proceedings 248
Liability for costs 253
Declaration of office 317
Not to have a casting vote on by-laws submitted to ratepayers 366

Revised Statutes,
Mode of citing 31

Revenue,
As to power to issue licenses for purposes of 340,344

Rewards,
For destruction of foxes, etc 801
Wolf bounty 801, 1018
For detection of crime 803
For discovery of personators 803
For apprehension and conviction of horse thieves 804

Riding,
See STREETS.

Rifle Associations,
Granting aid to 797

Rifle-gallery,
Held to be a nuisance 772

Riots,
Procedure where election interrupted by 206
Calling out *posse comitatus* to suppress 293

PAGE.

Rivers, Streams and Creeks,
Protection of booms 627
Booms,—right of Province to authorize 627
Improvement of,—erecting wharfs, etc 675
Regulating or preventing the obstruction or fouling of 675
Removal of obstructions to navigation 680
Preventing the obstruction of by trees, brushwood, etc 681
Right to float timber and saw logs down 681
Township removing obstructions may require township below to continue work 682
Constructing works for prevention of damage by flooding 683
Acquiring rights in for water power for electric light works 684
Acquiring water privileges for purpose of developing and leasing or selling to manufacturers 684
Removal of stone, etc., from, when prohibited 851
Removal of driftwood from, on boundary lines 851
Straightening and improving when dangerous to bridges, etc 871
Powers and duties of municipalities in relation to bridges. *See* BRIDGES.

"Road,"
Means a public road 34

Road Allowance,
Illegal by-law for opening must be quashed before action brought 510
See HIGHWAYS.

Road Commissioners,
By-laws for appointment of 590
Statutory duties 591

Road Companies,
Appointment of engineer to enforce repair of roads 594
Taking stock in, or granting bonuses to 798
Construction and repair of certain works on toll roads by municipalities 841
Privileges which may be granted to 873
Notice to municipality and consent of council before work proceeds 873
Municipality acquiring road from 888

Road-making Machinery,
Agreement between municipalities for joint purchase of 950

Road Masters,
County by-laws for appointing, to keep open snow roads 594

Road Overseers,
By-laws for appointment of 590, 592
Statutory duties of 591

Road Surveyors,
By-laws for appointment of 590

Roads,
Arbitrators to consider expenditure on, when town withdrawn from county 65
Situated in town to be town property after separation from county 66
Cost of, when not to be deemed ordinary expenditure 411
Invalidity of by-law making grant for, conditional on other contributions 412
Power to contract debts to Crown for purchase of 414
Keeping township roads open for sleighing 592
Stone, gravel, etc., not to be put down during sleighing 662
Regulations as to statute labor 674
Local assessment for improvement of. *See* LOCAL IMPROVEMENTS.
See HIGHWAYS.

Roller Skating Rinks,
Regulating and licensing 734
Amount of license fee 736

Rolling Mills,
By-laws for granting aid to 962

Roofs,
Regulating construction of 607, 608
Compelling removal of snow and ice from 662
Liability for accidents to pedestrians 663

Roots,
Preventing forestalling, etc., of 725

Rouge-et-noir Tables,
Seizing and destroying 633

Roulette Tables,
Seizing and destroying 633

Royal Victorian Order of Nurses,
Granting money in aid of 792

PAGE.

Rubbish,
Preventing the throwing of, into streets, etc. 1002
In police villages 983

Runners,
Preventing and regulating purchase by of provisions brought to market 725
Preventing the importuning of travellers by 747

Russell, County of,
How constituted, county council divisions in 26

Rye,
Market fees not to be charged on 713

Sabbath,
Sunday may be described as 328

St. Mary's,
Separated from the county 35

Salaries,
Of members of Board of Control 287
May be paid to heads of county, city, town and village corporations 292
Treasurer may be paid a percentage in lieu of 297
Duty of council as to providing for 320
Clerk's services under Ditches and Watercourses Act 320
Not to be settled by tender 320
No implied assumpsit in absence of express provisions 320
Agreement with Clerk of the Peace for payment of in lieu of fees 321
Constables 321
Solicitors paid by salary, recovery of costs by 321
By-laws fixing not in the nature of a contract 323
Gratuities on retirement 323
Rights of officers in case of dismissal 322
Claims for compensation for extra services 323
Deemed ordinary expenditure 411
May be paid to police commissioners in cities of 100,000 525
By-laws for payment of certain officers 592
County and township councillors 599
Aldermen, Board of Health and Court of Revision in cities of 100,000 599

Saloonkeepers,
Disqualified from being members of councils 107-108

Salvage Corps,
By-laws for promoting, establishing and regulating 593

Sanitary Inspectors,
Appointment of 591

Saw logs,
Protection of booms for 627

Scaffolding,
Inspecting and regulating when used in erection, etc., of buildings 605

School Houses,
Term of debt to be contracted for 390-403

School Moneys,
Limit as to annual aggregate rate not to include 421
Rates for payment of debentures 422
By-laws exempting from taxation not to include 429, 431
Application of surplus moneys derived from Municipalities Fund to school purposes 440-441
Loans or gifts to school corporations 441
Council may borrow for annual expenditure 454
Amount borrowed to be paid over to school treasurers 455
Apportionment of, by township councils 1000

Schools,
Incorporation of city, town or village not to alter boundaries of sections 55
Where annexation of territory to city or town involves a division of school section 61
Union of municipalities, assets and liabilities of each to be assumed by school corporation of union 62
Liability of Boards for debts after division of territory 86
Teachers and officers, etc., exempt from service in municipal office 115
Use of, as polling places in cities of 100,000 589
Appointment of truant officers 593
Regulating construction of means of egress from 606
Assessment of for local improvements 947

PAGE.

Schools.—*Continued.*
Duties and powers of municipalities as to grants for purposes of. *See* EDUCATION 774
Scientific Societies,
Making grants in aid of 1005
Scrutiny,
As to result of voting on bonus by-laws 367
Application for by petition to county judge 369
Form of petition 369
Notice of 369
Security to be given by applicant 370
Form of recognizance 369
Clerk to attend with ballot papers 370
Procedure 371
Powers of Judge limited to recount of ballots 371
In matters of procedure 371
Costs, discretion as to 371
Certifying result to council 371
By-law not to be passed until petition disposed of 371
Scuttles,
Compelling the construction of in roofs 372
Seal,
Necessity for use of by corporation 612, 613
What may be used as 41
When dispensed with 41
Not necessary on agreement between town and county on separation 41
Liability on contract for building court house in absence of 64
By-laws to be authenticated by 78, 543
Distinguishes by-law from resolution 347
To be affixed to debentures 347
Exception as to bonus debentures 445
Not to be affixed to debenture coupons except in cities 448
Authentication of appointment of arbitrators 447
Officers should be appointed under 478
Necessary in contracts for purchase of fire appliances, etc 590
Second-hand Stores,
Powers of police commissioners to license and regulate 619
Licensing or regulating 526
Cancelling license on conviction for receiving stolen goods 745
Prohibiting purchases from certain minors 745
Secrecy of Voting,
See VOTING 1001
Security by Officers,
Technical defences to actions on bonds .....
Irregularities in appointment 297
Annual re-appointment of officer, effect of 298
Non-disclosure of past irregularities 298
Responsibility of sureties for treasurers in provisional county 298
Acceptance of security or policy of guarantee company 307
By-laws for fixing 324
Special provisions as to treasurers. *See* TREASURER 592
Seeds,
Selling on streets adjoining market 297
Senate,
Members and officers exempt from service in municipal office 716
Senior County,
Situation of court-house and gaol determines 115
See PROVISIONAL COUNTY CORPORATIONS 75
Senior Township,
Meaning of 72
Separate Schools,
Duty of Board as to furnishing estimates to Board of Control 290
Municipal grants to and levy of rates for 778
Separated Town,
Meaning of 35
Servants,
Liability of corporations for acts or defaults of 595
Preventing the sale of intoxicants to 637
Licensing and regulating employment agencies for 745

PAGE.

Set off,
By claim for compensation for lands taken or injured 467

Sewers,
Terms of debt to be contracted for 390, 403
Rents to be a charge on property, collectable as taxes 409
Cost not to be deemed ordinary expenditure 411
By-laws for charging persons draining into 600
Payment of rent—how enforced 600
Commutation of rent 601
Regulations as to 642, 644
Opening, making, closing up, etc 648
Taking lands for 648, 649
Power to construct does not authorize a nuisance 650
Liability for damages when improperly constructed 651
Extension into and through adjoining municipality 653
Preventing the incumbering or obstructing of 676
Repair of, on toll roads 841
Making or enlarging as a local improvement 908
When corporation to bear one-third of cost 911
Street surface drainage, street intersections, etc 911
Construction or enlargement on sanitary grounds 922
Including cost of branch drains 934
When non-abutting property may be assessed 935
Cost of putting in connections with, may be included in cost of pavement 935

"Shall,"
To be construed as imperative 44
Exceptions 44

"Shall Include,"
Effect of 33

"Shall Mean,"
Effect of 33

Shareholders,
Not disqualified from being members of council by company's dealing with corporation 113

Shavings,
Regulations as to burning in the open air 616

Sheep,
By-laws for appointment of inspectors of, when worried by dogs 590, 591
Seizure of, when dying on cars or in market 640
Prohibiting the driving of on certain streets 670
Authorizing fairs for sale, etc., of 713
Market fees on 715
Fees on weighing 715

Shelters,
Authorizing erection of at cabstands, etc 666

Shelters for Children,
Head of municipality may visit and inspect 292

Sheriff,
Appointment of for junior county on separation 80
Execution of writs in junior county thereafter 82
Execution of process on separation of united counties 82, 83
Liability of sureties, after separation of united counties 90
Disqualified for membership in council 107
Powers as to new election when election of whole council set aside 252
Powers as to calling out *posse comitatus* 293
Duties with respect to executions against corporations 516
To have care of gaol and appoint officers 546
Duty as to keeping gaol used as lock-up in proper condition 558
Fees of 566

Shingles,
Measurement fees not to be charged on 713
Regulating place and manner of selling and weighing 723

Short Form of Local Improvement By-law,
Form of 400
Power to use 926
Meaning of words in 926

Short Titles,
Citation of Acts by 31

PAGE.

Shorthand Writers.
Appointment of, for Local Courts 551

Shop Licenses.
Disqualification of holders from being members of councils.

Shops,
Ropes to be provided for lowering from windows..... 107, 108
Fire escapes,—construction of 615

Shouting,
Regulating or preventing..... 615, 1017

Shows,
Unlawful obstruction of streets by..... 770
Preventing or regulating and governing..... 659
Licenses not to be granted for certain times and places..... 734, 735, 736
Prohibition of in neighborhood of agricultural shows..... 735
Amount of license fee..... 736

Sidewalks.
Registration of by-laws for contributing to cost of permanent walks..... 736
Compelling removal of snow, ice and dirt from..... 429
In cities of 100,000 662
Liability for accidents to pedestrians..... 665
Setting apart portions of highway for..... 663
Areas and openings in and under 869
Preventing driving or riding of horses or cattle on..... 870
Prohibiting use of by certain vehicles..... 673
Municipalities not bound to provide..... 673
Obligation to repair..... 825
Corporation liable for accidents on sidewalk only in case of gross negligence..... 825
Action for non-repair how to be tried..... 838
Construction and repair of on toll roads..... 840
Construction of in police villages..... 841
Construction by local assessment, *See* LOCAL IMPROVEMENTS..... 978

Simcoe, County of,
How constituted, county council divisions in.....

Simcoe District.
How formerly constituted 26

Sign-Boards,
Preventing the pulling down or defacing of 2
Obstruction of streets by..... 627

Sinking Fund,
Interest on investment of how estimated..... 660
Need not be provided for when debt repayable in equal annual instalments..... 393
Reduction of rates, when allowed..... 404
Debentures issued before 1st January, 1867, how rates calculated..... 432
Anticipatory appropriation of funds derived from investments..... 429
Special account to be kept for each debt..... 433
Surplus at credit of special rate may be applied to 435
Not to be diverted..... 436
Penalty for voting for diversion of 436
Treasurer to state annually amount to be raised 436
Liability for neglecting to levy 437
Application to redemption of outstanding debentures 437
Investments of, what authorized 438
Application of surplus corporation funds to..... 438
Penalty for illegal investments 439, 440
By-laws for reducing rate for, in case of certain local improvement debentures..... 441
Interest on investments how to be calculated..... 601
Assent of Lieutenant-Governor 601

Sinks,
Regulating construction and cleaning of 601

Slaughter Houses,
Statutory regulations respecting 642
Preventing, regulating and inspecting 639
Establishing public abattoirs and cattle yards 764, 765, 766

Sleighs,
Power of police commissioners to license and regulate owners keeping for hire..... 766
Regulating hours of labour of drivers..... 526
Stone, gravel, etc., not to be placed so as to interfere with sleighing 528
Prescribing width between runners 662
Not to apply to non-residents..... 671
..... 672

PAGE.

Sleighs.—*Continued.*
Exemption of vehicles owned at time of passing by-law 672
Commencement of by-law 672
Prohibiting use of sidewalks, etc., for 673
Making and keeping open roads fo., by statute labour 674

Smallwares,
Regulation by police commissioners of children when engaged in vending 529
Preventing or regulating retail sales in streets or vacant lots 722
Regulating place and manner of selling or weighing 723
Preventing the sale of by criers, etc., in public places 724

Smells,
Prevention of nuisance from certain trades 764, 765

Smelting Works,
Provisions as to bonuses to 961
Term of debentures for bonuses to 999
Exempting from taxation 1007

Smoke,
Prevention of nuisance arising from 764, 768

Smut,
Appointment of inspector to prevent spread of 593

Snow,
Stone, gravel, etc., not to be put down during sleighing 662
Compelling removal from roofs and sidewalks 662
Liability for accidents to pedestrians 663
Liability of corporation for accidents on sidewalks 838
Frontage rates for removal of from street 946, 949

Snow Roads,
By-laws for appointing pathmasters, etc 592
Powers and duties of pathmasters 591, 592
Calling on persons liable for statute labour to keep roads open in sleighing season 592
Providing for making and keeping open 886

Soap Boiling,
Not to be carried on without consent of municipality 765

Solicitors,
Exempt from service in municipal office 115
Recovery of costs by municipality when paid by salary 321
Fees when acting as arbitrators 506

"Son,"
Meaning of, in relation to farmers' sons' qualification 123

South Africa,
Grants for benefit of Canadians serving in 1012

Sparring Matches,
Preventing the holding of without a permit 1002

Special Constables,
Definition of 137
Appointment of at elections 136
Appointment, powers and duties of 539

Special Meetings,
Of council, rules of procedure as to 278
Of committees,—rules of procedure as to 286

Special Rates,
For payment of debts. *See* DEBTS 388

Sports,
Making grants for the encouragement of amateur athletics, etc 1006
Preventing the holding of sparring matches without a permit 1002

Squares,
By-laws for changing names of, requisites to validity. *See* PARKS 580

Stables,
Use of fire or lights in 611
In police villages 982
When keeping of will be a nuisance 759
See LIVERY STABLES .....

Stairways,
Regulating construction of in certain buildings 606

Stallions,
Inspection of, for preventing spread of certain diseases 594

PAGE.

Statistics,
Annual returns to Bureau of Industries by clerk 295
By treasurer 304
Of steam boilers to Minister of Agriculture 296
By-laws for keeping and returning bills of mortality 582

Statute Labour,
By-laws of township councils as to commutation tax in hamlets 73
Persons liable for, may be called upon to keep roads open in winter 592
Exemption of firemen from personal tax for 594
Powers of township councils as to 676
Expenditure on road constitutes it a highway 805, 816
Municipality may agree with owners of toll roads as to expenditure of 879
Pathmasters to obey the order of county road commissioners as to 882

Statutes,
Mode of citing 31

Steamboats,
Preventing the importuning of travellers by runners for 747

Steam Engines,
Annual return of boilers to Minister of Agriculture 296
By-law prohibiting erection of without leave of council,—invalid 613
By-laws fixing distance from highway at which portable engine may be used 618

Steam Heating Companies,
Acquiring stock in or lending money to 796

Steel Smelting Works,
Exempting from taxation 1007

Stenographers,
Appointment of for Local Courts 551

Stone,
Removal of, when obstructing highway 661
Not to be placed so as to interfere with sleighing 662
On road allowances, preserving and selling 873
Purchasing lands containing, for road repair, etc 874

Stormont, County of,
How constituted, county council divisions in 26

Stoves,
Regulations respecting 611

Straw,
Regulations as to setting on fire 616
Market fees not to be charged on 713
Need not be weighed if neither vendor nor purchaser so desire 714
Regulating place and manner of selling or weighing 723

Streams,
Bridges over,—*See* BRIDGES.
Constructing improvements by local assessment,—*See* LOCAL IMPROVEMENTS.
See RIVERS, STREAMS AND CREEKS.

Street Commissioners,
Declaration of office 316

Street Railways,
Prevention of accidents to passengers 604
Powers of municipality as to building, equipping and operating 696
Extensions into adjoining municipality 696
When constructed without authority a public nuisance 697
Conditions precedent to passing by-law 698, 1002
Publication of estimates, etc 698, 1002
Assent of electors 698
Rejected by-law not to be re-submitted in the same year 699
Compelling company to provide shelter for motormen 697
Establishment of parks in connection with 706
Aid from municipality or portion thereof 959
By-laws for granting 960
Agreement to be published with by-law 960
Repayment of debentures and interest 960
Arbitration as to rates for transfers where two lines operating 960

Streets,
By-laws for granting exclusive rights to telephone companies 345
Regulations by police commissioners of playing of bands, etc., on 529
Settling boundaries and naming 580
Changing names of, requisites to validity of by-law 580, 1001
Numbering houses and lots, etc 581

Streets.—*Continued.* PAGE.
For keeping records of streets and numbers, etc. 581
Prohibiting children from riding behind vehicles or on platforms of cars 604
Coasting or tobogganning on 604
Regulating and governing bicycles, etc., in cities of 100,000 604
Posting indecent placards, playbills, etc. 630, 1002
Restraint and punishment of persons drunk or begging, etc., in 635
Selection of sites for public lavatories, etc., in 646
Regulating erection or occupation of dwellings on narrow streets 647
What constitutes an unlawful obstruction of 656
Preventing the obstruction and fouling of 657, 658
Collecting crowds, loitering, etc., in 659
Liability of occupier for accidents caused by projections into 661
Removal of fences, stone, etc., obstructing 661
Preventing the throwing of rubbish, etc., into 1002
In police villages 983
Removal of snow, ice and dirt from streets and sidewalks 662
In cities of 100,000 665
Liability for accidents to pedestrians 663
Cabstands, shelters, etc. 666
Erection of poles and wires by telegraph and telephone companies, etc 666
Regulating traffic, width of tires, etc. 670
Width of sleigh runners 671
Regulating driving and riding of horses, etc. 672
Preventing racing and furious driving in 672
Speeding on certain streets in cities of 100,000 672
Preventing riding or driving on sidewalks 673
Prohibiting the use of certain vehicles on sidewalks 673
Licensing and regulating hawkers, etc. 738
Preventing the importuning of travellers by runners 747
Prevention of begging, etc., in 773
Meaning of 821
Areas and openings in or under sidewalks, etc. 870
Constructing and improving in police villages 978
Preventing the hauling of carcasses, night soil, etc., in daytime 1005
Market regulations as to purchases and sales in,—*See* MARKETS 713
Construction of works upon by local assessment,—*See* LOCAL IMPROVEMENTS.
Planting and removal of trees,—*See* TREES.
See HIGHWAYS.

Stumps,
Regulations as to burning 616

Submission,
See ARBITRATION 477

Subways for Cattle,
Permitting construction of under highways 869

Summary Convictions,
Procedure for recovery of penalties by 965

Sunday,
Term "next day" not to apply to 34
Excluded in computing time in provisions relating to elections 220
May be described as the Sabbath 328
Attendance at police office not required on 522
Commital to lock-up house for desecrating 558

Superannuation Fund,
Making grants in aid of 800

Sureties,
Liability of, when treasurer of provisional county re-appointed after separation. 78
Liability of, not affected by separation of municipalities 90
Acceptance of policy of guarantee company in lieu of 324
Of treasurer,—*See* TREASURER 297
Of municipal officers,—*See* SECURITY BY OFFICERS

Surgeons,
Exempt from service in municipal office 115
By-laws for appointment of, for gaols, etc. 594

Surplus Funds,
Application of,—*See* FINANCE 435

Surveyor,
Appointment of for town or city 593

PAGE.
581
tforms of cars 604
604
0 604
630, 1002
e., in 635
646
streets 647
656
657, 658
659
to 661
661
1002
983
662
665
663
666
mpanies, etc 666
670
671
672
672
672
673
673
738
747
773
821
870
978
ytime 1005
RKETS 713
CAL IMPROVEMENTS.

616

477

869

965

34
tions 220
328
522
558

800

inted after separation. 78
90
324
297

115
594

435

593

PAGE.

Surveys,
Petition to Lieutenant-Governor for marking front or rear concession lines, etc. 578
Mode and cost of 579
Stone or other monuments to be erected 579
Penalty for removing 579
By-laws for ascertaining and marking boundaries of municipality 580
Surveying and marking boundaries of streets, etc 579
Road allowances, etc.,—*See* HIGHWAYS 580

Swearing,
Prevention of

Swine,
Authorizing fairs for sale of 631
Market fees on 713
Fees on weighing 715
Preventing or regulating the keeping of 715
Keeping in a city a nuisance at common law 769

Talbot District,
How formerly constituted 769

Tanneries,
Preventing and regulating the erection, etc., of 3
Defining areas within which not to be carried on 764

Tavern Licenses,
Holders of not to be members of councils 767

Taverns,
Elections not to be held in 107
Committal of idlers in, to house of industry, etc 133
By-laws for securing inmates from accidents by fire in 562, 563
Fire escapes 614

Taxes,
Excessive payments to be taken into account on dissolution of union of townships 614, 615
Sales for in junior county after separation 70
Treasurer of union to deliver over books relating to arrears in junior county on separation 82
Default in payment to disqualify income voters
Voters on real property when by-law passed 82
Council may direct payment into bank 124
Collector's duty as to returning list of defaulters 124
Statutory mode of levying must be complied with 302
Councils not to impose special taxes on individuals 306
Non-payment of, not a disqualification for voting on by-laws 332
Special rates for payment of debts,—*See* DEBTS 343
Charges for work done by corporation on default of owner to be collected as 360
Yearly rates 388
Rate to be sufficient to pay all debts payable within the year 409
Creditor may compel levy 421
What are valid debts 421
Council may be restrained from levying greater rate than necessary 422
Limit of the aggregate rate 422, 423
School taxes not included 422
Local improvement rates 421, 423
Debts contracted prior to 29th March, 1873 423
Retrospective rates illegal 424
How to be calculated 424
Estimates to be made annually by council 421
Need not be set out in by-law 424
Reduction of in case of deficiency in collection 424
Deficiency in amount collected on county or provincial taxes 425
In other cases 426
By-law for levying, requisites of 425
More than one, may be passed 426
Surplus, how appropriated 425
To be computed from 1st January 426
When deemed to be due 427
Adjustment of between vendor and purchaser, etc 427
Debentures issued before 1st January, 1867, special rates for payment of 427, 428
Sinking fund 428
By-laws exempting from requisites of 428
Reduction of special rates when permissible 429
Approval of Lieutenant-Governor 429
432
432

PAGE.

Taxes.—*Continued.*
Anticipatory appropriations and suspension of annual special rate 434
Borrowing to meet current expenditure pending collection of.....453, 1000
Rate struck by sheriff to satisfy executions against municipality..... 516
By-laws for disqualifying electors for non-payment of..... 586
By-laws for imposing taxes on dogs 602
Exemptions from,—*See* EXEMPTION FROM TAXATION .....
Lists of persons in default, use of at elections,—*See* DEFAULTERS' LISTS..... 159
Accounts to be kept of special rates, etc.,—*See* FINANCE 435

Teamsters,
Licensing and regulating in towns and villages..... 753
In counties having free roads..... 753

Technical Schools,
Establishing and maintaining 786, 787

Telegraph Companies,
Erection of poles and wires..... 666
Taking stock in..... 800

Telephone Companies,
By-laws of cities, towns and villages for granting exclusive rights to..... 345
Agreements between municipality and company 345
Assent of two-thirds of council required..... 345
Rights of companies under agreements existing on 27th May, 1893..... 345
Agreements made prior to 17th May, 1893, confirmed 345
Erection of poles and wires..... 666
Lopping trees in order to prevent interference with wires..... 704

Telephone Service,
City or town may construct and carry on 690
Carrying works over streets and private property 700
Management of works and business 700
Protection of corporation and its officers..... 701
Actions against corporation, when to be brought 701

Tenant,
When to be deemed a householder 34
Qualification as elector..... 120
Oath of voter as..... 139
When a proper party to arbitration for lands taken 459

Tenants in Tail,
Authorized to convey to municipality lands required in exercise of statutory powers 472

Tender,
Remuneration of officers not to be settled by 320
How it should be made..... 514
What questions for jury and what for Judge 515

Tender of Amends,
In actions for things done under illegal by-law..... 513
For negligence 513

Tender of Compensation,
Effect of, on costs of arbitration 476

Tendered Ballots,
No provision for at municipal elections 127

Tenure of Office,
Of officers of municipal corporations..... 321

Territorial Divisions,
Counties, how constituted 13

Theatres,
Regulating means of egress from, strength of walls, etc..... 606
Production of plans 606
Preventing obstruction of aisles, etc..... 606
By-laws for securing public against accidents by fire 614
Fire escapes in 614
Licensing, regulating or preventing 1003

Thunder Bay, District of,
Qualification of councillors in..... 101
Provisions as to publication of annual financial statement not to apply to..... 312

Tile Drainage
By-laws for borrowing money and issuing debentures for 600

Timber,
Protection of booms for 627
Booms, right of Province to authorize 627

PAGE.
e 434
.....453, 1000
..... 516
..... 586
..... 602
s' Lists..... 159
..... 435
..... 753
..... 753
..... .786, 787
..... 666
..... 800
ts to..... 345
..... 345
..... 345
y, 1893..... 345
..... 345
..... 666
..... 704
..... 699
..... 700
..... 700
..... 701
..... 701
..... 34
..... 120
..... 139
..... 459
rcise of statutory
..... 472
..... 320
..... 514
..... 515
..... 513
..... 513
..... 476
..... 127
..... 321
..... 13
..... 606
..... 606
..... 606
..... 614
..... 614
..... 1003
..... 101
to apply to..... 312
..... 600
..... 627
..... 627

Timber.—*Continued.*
Removal of, when obstructing highway ..... PAGE. 661
Removal of when obstructing streams, etc..... 681
Removal of, from rivers or streams on boundary lines..... 851
On road allowances, preserving and selling..... 872
Time,
Meaning of "at least six days"..... 149
How computed in provisions relating to elections..... 220
Non-observance of statutory hour for election held not fatal..... 271
Tires,
Regulating the width of on certain vehicles 670
Regulation of width of tires by counties having free roads..... 754
Tobacco,
Licensing and regulating vendors of..... 748
Penalty for supplying to minors under 18 748
Revoking license to vendor..... 1005
Tobogganning,
On streets of city, town or village..... 604
Liability of corporation for accidents from 604
Toll Roads,
Appointment of engineer to enforce repair of..... 594
What works on to be kept in repair by municipality 841
Trees, municipality may plant on 841
Expenditure of statute labour on 879
County abandoning or disposing of 887
Sale, etc., by company to municipality 888
City and town by-laws for assisting in purchase of 955
May provide for abolition of market fees in abolition of tolls..... 955
Maintenance and repair of by local assessment when abandoned 957
Tolls,
Contracting debts to Crown for purchase of, or for freeing roads, etc., from..... 414
Raising money to build, repair, etc., bridges, roads, etc..... 871
Granting to person undertaking to keep road in repair 872
On markets,—*See* Markets 713
Tombs,
Penalties for commiting certain offences with respect to..... 625
Protection of 625
Toronto, City of,
Council,—how composed 96
Special provisions as to auditors 308
Sheriff of city to have charge of county gaol 546
Accommodation, etc., for Crown Attorney to be provided for by council 550
May grant water to Upper Canada College..... .784, 785
Board of Control,—*See* Board of Control..... 287
Toronto Junction, Town of,
Separated from the county 35
Torts,
Liability of corporations to actions for..... 39
Actions for things done under illegal by-laws..... 510
Liability of corporations for acts or defaults of agents..... 595
Town Hall,
Nomination meetings to be held in 144
Cost of—not to be deemed ordinary expenditure 411
Right of police magistrate to use 548
By-laws for obtaining lands for site and erecting 583
Disposing of when no longer required 584
Township by-laws for acquiring, in town or village 585
What meetings may be held and what notices posted at 585
Town Meetings,
Former powers of 3
Towns,
First forms of municipal government in 4
When town to be a "separated town" 35
Definition of "town" 49
Area limited according to population 52
Limitations in other provinces 53
Separation of farm lands from by proclamation 55
By by-law of county council 56
Census may be taken at any time 58

Towns.—*Continued.* PAGE.
Erection of villages into ... 58
Erection of, into cities ... 58
Population required ... 58
Notice of application ... 58
Verification of census returns and publication of notice ... 59
Adjustment of debts with county ... 59
Proclamation ... 59
Additional territory may be attached ... 60
Wards ... 60
Extension of limits ... 60
Territory added may remain in same electoral division ... 60
New territory to belong to same county as remainder of town ... 61
Annexation to adjoining town or city ... 61
New municipality may be erected into a city ... 62
Re-division into wards ... 62
Voting on, by electors ... 62
Proclamation ... 63
Withdrawal from county jurisdiction ... 63
What towns may withdraw ... 987
Who may vote on by-law ... 63
Determining amount to be paid to the county ... 64
Expenses of administration of justice, etc. ... 64
Agreement need not be under seal ... 64
Population to be the basis of award ... 64
County debt ... 65
Costs of award ... 65
Roads and bridges ... 65, 66
Proclamation,—when to issue, effect of ... 65, 988
By-laws of county to cease to have effect in town ... 65
Reeve and deputy reeve,—abolition of offices of ... 65
New agreement or award after five years ... 66
County property except roads and bridges not affected ... 66
No interest in county property unless county ratifies separation ... 987
Re-union with county after withdrawal ... 66
Assent of electors to by-law ... 66
Ratification of by-law by county council ... 66
Determining accounts as to debts ... 66
Representation of separated towns in provisional county council ... 77
Councils, how composed. *See* COUNCILS ... 96

Townships.
Election and powers of wardens and town meeting ... 3
Boundaries of, when bordering on the great Lakes and River St. Lawrence ... 30
Meaning of "township" ... 35
Adjustment of debts and assets on incorporation of village, etc. ... 53
How constituted ... 67
After laying out may be attached to a county ... 67
Formation of unions ... 67
Separation from union ... 68
Separation from union, by by-law of county council ... 68
Junior township—population necessary before separation ... 68
When junior township may be attached to adjoining municipality ... 69
Disposition of property ... 69, 70
Apportionment of indebtedness ... 70
Arbitration in case of disagreement ... 71
Balance of indebtedness to bear interest ... 71
When laid out in counties, to be united to some other township or union ... 71
Unions, how formed in counties ... 72
In united counties to be dissolved with union of counties ... 72
Hamlets, powers as to setting apart and passing by-laws applicable to ... 72
Forming unions of ... 74
Councils, how composed ... 99
Qualification of councillors before roll made up ... 106
Establishment of fire limits in unincorporated villages ... 618
Instructions as to earliest surveys of ... 812
Matters consequent on separation from union. *See* NEW CORPORATIONS ... 89

Town Wardens.
Election and former powers of ... 3

PAGE.

Trade,
Distinction between restraint and regulation of 339

Trade Disputes,
Duty of mayor of city or town as to strikes 292

Trades,
Regulation of when dangerous in causing or promoting fire 611, 612
Nuisances arising from,—prevention of 764
Certain classes of not to be carried on without consent of council 765
Defining areas within which certain trades not to be carried on 768
Compelling use of smoke consumers 766
Slaughtering cattle, etc. 713
Regulations as to markets, etc. *See* MARKETS

Traders' Licenses,
See LICENSES.

Trading Stamps,
Vendors of not traders 751

Tramways,
Township by-laws as to use of highways by 959

Transient Traders,
Licensing, regulating and governing 749
Sale of bankrupt stocks 749, 750
Who are "transient traders" 750
Requiring payment of fee before commencing to trade 749
Limitation as to amount of license fee 751
Crediting fee on taxes if trader remains in municipality 751

"Transmit,"
Meaning of 416

Travellers,
Preventing the importuning of, by runners 747

Travelling Expenses,
Annual appropriation by council for 804

Treasurer,
Appointment of by provisional county council 77
Liability of sureties after re-appointment on final separation of county 78
Duty of treasurer of union on separation of junior county 82
Disqualified from being members of councils 107, 108
Clerk of municipality may be appointed 293
To be appointed by every council 297
Should be appointed by by-law 297
May be paid by salary or percentage 297
Should not act as agent of a bank 297
Security to be given by 297
Bond may be executed before appointment 297
Technical defences to action on bond will not be sustained 297
Invalidity or irregularity of appointment no defence to action 298
Imposition of additional taxes does not vitiate 298
Annual re-appointment does not discharge sureties 298
Liability of surety where treasurer acts as collector 298
Non-disclosure by council of information to sureties of former irregularities 298
Statements made in good faith as to past conduct 298
Liability of personal representatives 298
Condition of bond, effect of varying 298
Annual inquiry as to sufficiency of 299
Sureties not discharged by ignorance of facts unless information fraudulently withheld 299
Appointment of county treasurer *pro tempore* warden 300
Warrant of appointment to fix security 299
To receive and take care of, and disburse moneys 300
Members of councils not to receive money from 300
Mixing moneys of corporation with private funds 300
Not liable for accidental destruction of money by fire 300
Protected by instructions of council except where payments contrary to law 301
Cannot bind council by acceptance of orders 301
Other statutory duties 297, 301
Books to be kept by,—Cash book 301
Journal 301
Bank account,—corporation moneys to be deposited to credit of where possible 302
Council may order payments to be made directly into bank 302
By-laws directing how corporation moneys shall be paid out 303

PAGE.

Treasurer.—*Continued.*
To keep moneys of corporation separate from his own 303
Bank to state balance to member of council on request 303
Statement of balance to be required quarterly 303
Persons liable on mortgages to state balance due to corporation quarterly 303
Penalties when no special provision made 303
To make annual statement of other municipalities of moneys paid to their treasurers 303
Half yearly statement of assets 304
Tax defaulters' lists 304
Returns of Bureau of Industries 304
Provincial treasurer shall retain moneys until returns made 304
Dismissal from office,—successor may draw funds 304
Withdrawal does not effect liability of sureties 304
Duties as to preparation of annual financial statement in Toronto 308
Auditors to report on security given by 310
To give order to bank to show account to auditors 311
Declaration of office 316
Penalty for acting upon illegal repeal of money by-law 414
To make annual statement of amount required for sinking fund 437
Penalty for neglect 437
To see that moneys collected under debenture by-law properly applied 445
Personal liability for misapplication 447
To sign debenture coupons except in cities 447
Duty as to registration of holders of debentures 452
May be authorized with the head of the municipality to borrow for current expenditure 453
Order in which accounts of administration of justice to be paid 576

Trees,
Appointment of inspector of, when bonuses given for planting 591
Regulations as to setting on fire 616
Penalty for injuring in a cemetery 625
Protection of, when planted for shade or ornament 626
Fruit- and shade- —encouraging planting by granting abatement in statute labour, etc 701
Regulating planting on highways 702
Bonuses for planting certain classes of shade trees on highways and farm boundaries 702
Inspection when so planted 702
Removal of, when necessary for public improvements 702
Notice and compensation to adjoining owner 703
Must be authorized by resolution 703
Limitation of rights of compensation 705
Grants of money to be expended in planting on highways 703
Right of owner to plant on adjoining highway or on farm boundary 703
Property in, when planted on highways, etc. 703
Regulating planting on boundary lines between private properties 703
Authorizing park commissioner to plant and trim 704
Special powers of City of Toronto 705
On road allowances,—preserving and selling 872
By-laws for clearing sides of highways 885, 890
Frontage rates for trimming, etc., on streets 946, 949
Regulating the planting of in police villages 981

Trenton, Town of,
Separated from the county 35

Tricycles.
Regulating and governing in cities of 100,000 604
Rule of the road as to 604
Held to be a "locomotive" 605

Truant Officers,
Appointment of 593

Trucks,
Power of police commissioners to license and regulate owners keeping for hire 526
Regulating hours of labour of drivers 528

Trustees,
Authorized to convey lands required in exercise of statutory powers 472

Ultra vires,
Contracts void or at least voidable 40
Persons dealing with corporations bound to take notice of limited powers 41

PAGE.

Ultra vires.—Continued.
Unexecuted contracts not binding unless statutory requirements fulfilled. 42
Right to deal with personal property subject to express restrictions 43
Powers essential to objects of corporation 43
Strict compliance with statute, when excused 43
Restraining corporations by action from exceeding powers 46
Acts of council in excess of powers do not bind corporation 46
Where there is no authority express or implied, by-law bad 47
Powers of corporation must be exercised strictly within statutory limits and in prescribed manner 331
General power to make regulations 331

Umpire,
Distinguished from third arbitrater 334

Undue Influence,
Definition of 481
What has been held to constitute 264
Penalty for 265
Procedure on application to quash by-law for 264

United Counties,
Unions,—how formed 387
Union of townships in different counties to cease on dissolution of 67, 74
Seniority, how determined 72
Laws applicable to 75
Separated counties to remain liable for debts 75
Regulations as to court house and gaol to continue in force after dissolution 86
Appropriation by council to enable either county to make improvements 550
Dissolution of union,—*See* PROVISIONAL COUNTY CORPORATIONS. 888

Union of Townships,
Included in word "township" 35
How constituted 67
Separation of junior township 67
Attaching separated townships to adjoining municipality 68
Disposition of real property 69
Distribution of property and debts 69
Determining matters in dispute by arbitration 70
Balance of indebtedness to bear interest 71
Formation of, in counties 71
Seniority, how regulated 71, 72
By-law for formation of to cease on dissolution of union of counties 72
When first election to be held in junior township 72

Unincorporated Villages,
What are meant by 130
Township by-laws for setting apart as hamlets 49
Township by-laws as to fire limits 72

United Municipalities,
Anticipatory appropriations for relief of junior municipality on dissolution 618

Universities,
Members and officers exempt from service in municipal office 434
Making grants in aid of, and issuing debentures 115
Supporting pupils at 1005
Endowing fellowships, etc., in 1005
Assessment of for local improvements 1005

University of Toronto,
Making grants to 947
Issuing debentures in aid of 784
Defraying expenses of students at 1005
Endowing fellowships, scholarships, etc., in 785
Powers of city of Toronto as to aiding 786

Unmarried Women,
Qualification as electors 786

Unorganized Territory,
Attaching new townships in, to adjacent county 117
Constituting townships and counties in 67

Upper Canada College,
Making grants to 67
Issuing debentures in aid of 784
City of Toronto may grant water to 1005
Defraying expenses of students at 785
Endowing scholarships, etc., at 785
..... 786

PAGE.

Urinals,
May be provided for use by the public in cities and towns 646

Vacancies in Councils,
See COUNCILS.

Vacant Lots, ... 642-644
Cleaning, etc., of 662
Removal of snow, ice and dirt from sidewalks 665
In cities of 100,000 ..... 562, 563

Vagrants,
Committal to house of industry, etc. 575
Disallowance of constables' accounts for unnecessary arrests, etc 635
Restraining and punishing 306

Valuators,
Appointment by assessment commissioner and mayor 306
To be members of board of assessors 313
Appointment in counties, duties 313
Term for which valuation to be in force 590
By-laws for appointment of 625

Vaults,
Protection of tombs 722

Vegetables,
Preventing or regulating retail sales in streets or vacant lots 723
Regulating place and manner of selling or weighing 725
Preventing forestalling, etc., of 657

Vehicles,
Preventing the obstruction of streets, etc., by 666
Authorizing stands for, and erection of shelters in streets 526
Power of police commissioners to license and regulate owner keeping for hire 528
Regulating hours of labour of drivers 604
Regulating and governing bicycles, auto-motors, etc., in cities of 100,000 604
Prevention of children from riding behind 670
Regulating traffic and width of tires, etc 671
Width of sleigh runners 672
Regulating driving in streets 672
Regulating racing in streets 672
Speeding in certain streets in cities of 100,000 673
Use of sidewalks by 673
Prohibiting use of sidewalks for 676
Preventing the incumbering or fouling of wharfs, harbours, etc., by 727
Regulations as to bringing goods to market in 754
Regulating and licensing keepers for hire in towns and villages 1003
Regulating and licensing drivers of in towns and villages 754
In counties having free roads 428

Vendor and Purchaser,
Adjustment of taxes for current year 944
Covenant against incumbrances does not include local improvement rates 657

Vessels,
Preventing the obstruction of streets, etc., by 676
Regulation of when arriving in harbours 676, 677
Collection of harbour dues 680
Removal of wrecks obstructing navigation 594

Veterinary Surgeons,
Appointment of for inspection of stallions, etc 631

Vice,
Prevention of 27

Victoria, County of
How constituted, county council divisions in 2

Victoria District,
How formerly constituted 792

Victorian Order of Nurses,
Granting money in aid of 752

Victualling Houses,
Limiting the number of, regulating and licensing 753
Limitation as to license fee 752
Revocation of license 49, 50

Villages,
Definition of "village" 55
Adding territory to 55
Farm lands,—separation from

Villages — *Continued.*

PAGE.

Area,—limitations as to 52
Reduction of by separation of farm lands 55, 56
Becoming unincorporated,—resolution of council 56
Assent of adjoining municipality 56
Proclamation of Lieutenant-Governor 56
Adjustment of assets and debts 57
Agreement for imposing a special rate on territory formerly included 57
Where territory annexed to municipalities in different counties 57
Census may be taken at any time under by-law 58
Erecting into a town 58
Proclamation 59
Enlarging limits 60
Annexation to adjacent village, town or city 61
Incorporation, petition to county council 48
Population required 48
By-law of county council 48
When situate within a mile of city of 100,000 51
Area,—limitation as to 52
Adjustment of property and debts with township when lying within two or more counties 53
Adjustment of county liabilities 54
Distribution of Ontario Municipalities Fund on separation from township 70
Township councils may set apart unincorporated villages as hamlets 72
Councils, how composed 99

Volunteers,
Exemption from service as constables 539
Supplementing the pay of 797
Making grants for bands 1006
Grants for benefit of Canadians serving in South Africa 1112

Voters' Lists,
Electors must be named in 124
Determine the right to vote 119
Assessment roll formerly the basis of right to vote 125
Finality as to property qualification of electors 127
Qualification of electors in absence of 127
Clerk may not exclude names of persons found guilty of corrupt practices 268
Right of ratepayers to inspect and have copies of 294
Right to use court house for sittings of Judge 548
May be posted at township hall in town or village 585
At elections—what to be used 170
In new municipality where there is no separate assessment roll 170
Form of 171
Where territory has been added or village incorporated 172
"Last filed or certified list," meaning of 172
Where there is a roll, but no list certified 173
Delivery to deputy returning officers 173
Who to prepare 174
Certificates as to 175
Deputy returning officer to ascertain if name of applicant for ballot entered 179
Mark to be made against name of person voting 181
Declaration of deputy returning officer at close of poll as to use of 199
Form 200
At voting on by-laws—clerk to prepare 357
Delivery to deputy returning officer 357
Noting qualification where there is no assessment 360, 361
Declaration as to proper use 365

Voting,
In Council—
Rules of procedure as to 280, 282
Not to be by ballot 988
At Elections—
Persons named as tax defaulters to vote on producing certificate 124
Oaths to be administered to voters 138
Freeholders 138
Tenants 139
Income voters 141
Farmers' sons 141
Perjury,—what constitutes 139

PAGE.

Voting.—*Continued.*
Prosecutions for taking false oath 143
Right of voter to select form 142
When and how administered 143
Preservation of the peace during 136
In what cases poll to be held 151
Polling a continuation of proceedings at nomination 151
Hours of polling 152
In cities of over 100,000 152
Effect of closing poll too soon 152
To be by ballot 159
Ballot boxes,—construction and supply of 160
Ballot papers,—how to be printed, form of 161-165
Delivery of ballot papers and materials to deputy returning officers 168
Compartments in which ballot papers to be marked 169
Directions to voters,—to be furnished to deputy returning officers 169
Form of 183
To be placarded by deputy returning officer 169
Voters' lists, poll books 170
What to be used 170
New municipality where there is no roll 170
Form of 171
Where territory has been added to municipality 172
When clerk to prepare 172
Exclusion of tax defaulters 173
Delivery to deputy returning officers 173
Copies of lists 174
Defaulters' list to be evidence of non-payment of taxes 174
County councillors,—column to be added for 174
Certificates as to assessment roll 175
Clerk to act as deputy returning officer where municipality not divided 175
Where and how often electors may vote 176, 177
Penalty for voting twice for mayor or reeve 177
Imprisonment in default of payment 177
Deputy returning officers, poll clerks and agents—voting where stationed 178
Deputy returning officer to show box empty to persons present, and then lock and seal it 179
Procedure on tender of vote 179
Ascertaining that name entered on list 179
Recording name, etc., in poll book 180
Objections, entry of, in poll book 180
Oath or affirmation, administering 180, 181
Entry of refusal to swear or affirm 181
Initialling ballot paper and checking list 181
Penalty for refusal or neglect to initial 181
Explanation as to mode of voting 181
Noting poll book 182
Marking ballot 182
Voter to enter compartment 182
To be done by making a cross 182, 185
Where cross should be placed 185
Directions to voters 183
Ballot to be folded and returned to deputy returning officer 182
Verifying initials of deputy returning officer 182
Placing ballot in box 183
For county councillors 187
Exclusion from compartment 188
Voter not to take ballot out of polling place 188
Penalty 213
Incapacity of voter—deputy returning officer to mark ballot 188
Declaration to be made by voter 188, 189
Form of 190
Entry in poll book 189
Oral declaration by Jews voting on Saturday 189
Ballot not to be marked by any one but deputy returning officer 189
Presence of other persons in polling place 189
Candidate may not be present 219
Spoiling ballot inadvertently, cancellation of ballot 190
Tendered ballots, no provision for 191

PAGE.
143
142
143
130
151
151
152
152
152
159
160
161-165
g officers 168
169
officers 169
183
169
170
170
170
171
172
172
173
173
174
174
174
175
175
not divided 176, 177
177
177
here stationed 178
resent, and then lock
179
179
179
180
180
180, 181
181
181
181
181
182
182
182
182, 185
185
183
officer 182
182
183
187
188
188
213
188
lot 188, 189
190
189
189
rning officer 189
189
219
190
191

Voting.—*Continued.*

PAGE.
Who may be present in polling place 191
Authority to agent need not be in writing 191
Counting votes at close of poll 191
What ballots to be rejected 192
Ballots including more than one office 192, 193
Not initialled by deputy returning officer 192
Too many votes 192
Improperly marked 193
Torn or defaced 193, 196
Objections to be noted and numbered by deputy returning officer 195
Number of objection to be marked on ballot 196
Indorsement of rejection and objection thereto 197
Statement of result 197
Number of agents who may be present 197
Certificate of result, who entitled to 197
Duties of deputy returning officer after counting 198
Certificate as to number who have voted 198
Sealing up of ballots and statements 198
Statement as to illiterate and incapable voters 198
Declaration as to use of voters' list and poll book 198
Form 199
Delivery of packets to clerk 200
Return of ballot boxes, etc 200
Ballot paper account 200
Disputes as to count,—clerk may open packages and count votes 201
Clerk to cast up votes and declare election 201
Casting vote in case of a tie 201
Not to vote except to give casting vote 203
Officers employed may vote 203
When interrupted or not commenced at proper time 202
Poll to be kept open for eight hours in all 206
New election when prevented for four days 206
When election completed clerk to cast up votes and declare result 206
Declaration and assumption of office 207
Postponement on account of epidemic 207
Offences and penalties in relation to 207
Secrecy—persons in attendance to aid in maintaining 213
No one to interfere with voter or ascertain how he has voted 217
Information not to be given as to how any one has voted 217
Duty of officers at counting of votes 217
Voter not to be induced to disclose vote 218
Penalty 218
Declaration to be taken by officers and agents 218
Form of 218
No one compellable to disclose his vote 219
Secrecy a privilege but not an obligation of voter 219
Election not be avoided for irregularities when result not affected 219
What matters absolutely essential 220
What are non-essential 221, 222
Qualification of electors.—*See* ELECTORS 221, 1015

On By-laws— 117
Procedure must be strictly followed 351
When necessary to have assent of electors 351
Time and place for 351
May be stated in notice appended to by-law 350
Publication of by-law 351
What sufficient 352
May take place on holidays 352
Where to take place 352
Notice of polling, to be appended 353
Form 354
Deputy returning officers to be named in by-law 354
Ballot papers,—printing of 350
Form 355
Agents for persons supporting or opposing, by-law to fix time and place for appointment 355
Head of municipality to appoint 355
Appointment to be produced on admission to polling booth 356
356

PAGE.

Voting.—*Continued.*
Declaration of ... 356
Appointment by deputy returning officer ... 356
Oaths,—Freeholders ... 362
Leaseholders ... 362
Leaseholders voting on local improvement by-laws ... 363
Other inquiries not to be made of voter ... 362, 363, 364
Statement by deputy returning officer as to result ... 364
Counting ballots, noting objections ... 364
Sealing up ballots, statement, voters list, etc ... 364
Oath of deputy returning officer as to use of voters list ... 365
Ballot box, return of to clerk ... 365
Certificate of result, to be given to agents on demand ... 366
Clerk to cast up figures and declare result ... 366
Certifying result to council ... 366, 996
In case of bonus by-law ... 367
Equality of votes—no casting vote to be given ... 366
Bonus by-laws, special requisites of ... 367, 996
Appeal to Judge ... 367, 996
Secrecy of proceedings,—duty as to maintaining ... 367
Voters not to be interfered with ... 367
Information not to be given as to votes ... 368
At counting of votes ... 368
Voter not to be induced to disclose his vote ... 368
Penalty for violation of ... 368
Declaration by officers and agents ... 368
When by-law to be finally passed ... 371
Discretion of council ... 371
Postponement until after petition for scrutiny disposed of ... 372
Scrutiny by County Judge.—*See* SCRUTINY ... 369
Who may be present in polling place ... 357
Officers and agents, voting at places where employed ... 357
Certificate required ... 357
Who may administer oath ... 357
Voters' list for each polling subdivision, clerk to prepare ... 357
Attestation and delivery to deputy returning officer ... 357
Where municipality not divided into polling subdivisions ... 358
To be by ballot ... 358
Procedure at elections to be followed ... 358
Directions for guidance of voters ... 359
Voters, who entitled to be, freeholders ... 360
Where there is no assessment roll ... 360
Leaseholders ... 361
On local improvement by-laws ... 361
Where there is no assessment roll ... 361
May vote in each ward where qualified ... 361

Voting Machines,
Permitting municipalities to use ... 1012

Warehouses,
Regulating construction of stairways in ... 606
Securing inmates against accidents by fire in ... 614
Fire escapes ... 615

Waggons,
See VEHICLES.

Walkerville, Town of,
Separated from the county ... 35

Walls,
Regulating strength of in public buildings and elsewhere ... 606, 607
Regulating and enforcing the erection of party walls ... 612, 613
Prevention of indecent placards, etc ... 630
Preventing the exhibiting of indecent playbills, photographs, etc, upon ... 1002

Wardens,
Election and powers of town wardens under Act of 1793 ... 3
Appointment of in provisional county councils ... 77
Resignation, how announced ... 228
Special meeting to fill vacancy ... 228
To be elected annually ... 272
Mode of electing ... 273
Balloting at election of prohibited ... 989

PAGE.

Wardens.—*Continued.*
Duty as to requiring security by treasurer *pro tempore* 298
To be the head of county or provisional county corporations 291
Warrant for appointment of treasurer *pro tempore* 299
Appointment of auditor on vacancy occurring 308
Exempt from jury service in inferior courts 518
To be *ex-officio* Justices of the Peace 518
Qualification 520

Wards.
Division of new town or city into 60
Re-division on annexation of village or town to adjoining village, town or city 62
By-laws for dividing towns of not more than 5,000 into 98
By-laws for election of aldermen in towns and cities of more than 5,000 and not more than 15,000 by general vote 98, 995
In other cities 995
Abolition on dissolution of union of townships 130
Reason for existence of, abolished as to townships 131
New division,—in cities and towns 131
In cities of 100,000 or over 132
Ratepayer may vote on by-law in more than one, if qualified 361

Watchmen.
By-laws for appointment of and payment of by special rate 628
See HARBOURS.
See RIVERS, STREAMS AND CREEKS.

Water.
Establishing, protecting and cleansing etc. of wells 641
Analysing when taken from wells 641
Closing up wells 641
Preventing the use of for drinking purposes when taken from wells 641

Waterloo, County of.
How constituted, county council divisions in 27

Water Closets.
Regulating construction and cleaning of 642
Filling up and closing in defined areas 642, 645
May be provided for use by the public in cities and towns 646

Water Companies.
By-law exempting from taxation,—requisites of 429
Authorizing the laying of pipes etc., by 686
Taking over works by municipality about to undertake supply 687
Offer to company 687
Time for withdrawal of offer 1002
Determining value of works on arbitration 688, 1002
Severance where part only of works taken 688
Withdrawal of municipality from purchase 689
Arbitration to fix charges for supply 689
Application of certain provisions to works operated by individuals 690
Acquiring stock in or lending to 796

Watercourses.
See DRAINAGE; RIVERS, STREAMS AND CREEKS

Water Power.
Acquiring rights in, for electric light purposes 684
Leasing or purchasing with adjacent lands for purposes of development, etc. 684

Water-works.
Term of debt to be contracted for 390, 403
Power to contract for supply for fire and other purposes 619
Compelling use of water from 641
By-laws for constructing and operating 685, 687, 1002
Conditions precedent to validity of by-laws 698, 1002
Publication of estimates, etc 698, 1002
Assent of electors 698
Rejected by-law not to be re-submitted in same year 699
Taking over works of existing companies 687, 1002
Extent of powers of municipality 691
Corporation must supply buildings on line of supply 691
Security may be required from consumer 692
Liability for failure to supply 692
Extension and improvement with assent of Lieutenant-Governor-in-Council 698
Removal of stone, etc., from bed of stream in which pipes laid prohibited 851

PAGE.

Water-works.—*Continued.*
Extension of system by local assessment 909
Cost of putting in mains, etc., may be included in cost of pavement 935
Powers of township and village councils 949

Wax-works,
Preventing or regulating and licensing exhibitions of 734
Amount of license fees 736

Weeds,
Appointment of inspector to prevent growth of 592
Prevention of 626

Weighing and Measuring,
When not compulsory in case of certain articles marketed 714
Scale of fees for 715
Regulations as to 726
Seizing and forfeiting for light weight, etc 726, 727
Weighing machines 729

Weigh-Scales,
Must not be placed so as to obstruct streets 656
Erecting, maintaining and charging fees for use of 729

Welland, County of,
How constituted, county council divisions in 27

Wellington, County of,
How constituted, county council divisions in 28

Wellington District,
How formerly constituted 3

Wells,
Establishing, protecting and cleansing 641
Closing up 641
Prohibiting use of drinking water from 641
Filling up and closing in defined areas 642, 645

Wentworth, County of,
How constituted, county council divisions in 28

Western District,
How formerly constituted 2

Wet Lands,
Purchasing from Crown and draining and selling 654

Wharfs,
Making, opening, preserving, etc 675
Rights of riparian owners as to 676
Responsibility of corporation 676
Erecting and renting in harbors 676
Regulating or preventing the incumbering, fouling or obstruction of 676
Granting aid to construction of 796

Wheat,
Market fees not to be charged on 713

Wheels,
Regulating the width of tires in certain cases 679

Widows,
Qualification as electors 117

Wild Oats,
Measures to prevent spread of 593

"Wilful Misfeasance,"
Meaning of 215

Witnesses and Evidence,
Production by clerk of documents, etc., relating to elections 213
Voter not compellable to disclose his vote 219
In proceedings where corrupt practices charged 267, 269
Copies of documents certified by clerk under corporate seal 295
Administration of oaths as to matters submitted to council 319
On investigation by County Judge into charges of misconduct, etc 325
By-laws proved by copy certified by clerk under seal 348
Proof of by-laws on applications to quash 383
Power of commissioner on inquiry into finances 444
On arbitration proceedings 493, 505, 507
In proceedings to which municipality a party—ratepayers, members, officers to be competent 517
Attachment for disobedience to subpoena 525
By-laws of police commissioners, how proved 529
By-laws of police trustees, authentication of 1009

Witnesses and Evidence.—*Continued.*
Payment of Crown witnesses,—how borne ..... PAGE. 574
Administering oaths in disputes as to roads 862
On summary proceedings to recover penalties 967
Who may be 972
Compelling attendance 972
Wolves,
Bounty for destruction of 801, 1018
Women,
Qualification as electors 117
When qualified to vote on by-laws 360
Wood,
Regulations as to setting on fire 616
Market fees not to be charged on 713
Need not be measured if neither vendor or purchaser so desire 714
Fees on measuring 715
Selling on streets adjoining market 716
Regulating place and manner of selling or weighing 723
Preventing forestalling, etc., of 725
Wool,
Market fees not to charged on 713
Words and Phrases,
Interpretation of words and phrases 31
Object of such provisions 32
Rules as to, generally 32
Effect of general enactments on special Acts 32
Clauses of Municipal Act to apply to certain other Acts 33
Marginal notes and headings 33
List of definitions applying only to particular sections 35
"Actual occupation" 105
"Arbitration" 502
"Arbitrator" 506
"Assess" 422
"At least six days notice" 149
"Award" 506
"Body corporate" 38
"Bridge" 34
"Buildings" 611
"By-law" 327
"Candidate" 235
"Charivari" 773
"Children" 529
"Council" 33
"Councillor," "Municipal Councillor," 33
"County" 33, 34
"County town," 34
"Due" 428
"Election," in farmers' sons' qualification 123
"Electors" 34
"Exempt from taxation" 114
"Farm,"—in farmers' sons' qualification 123
"Father,"—in farmers' sons' qualification 123
"Felony" 225
"Financial year" 389
"Freeholders" 50
"Full age" 117
"Gross negligence" 839
"Hamlet" 73
"Hawkers" 740-742
"Highway" 34
"Householder" 34, 806
"Immediately benefited" 914
"Infamous crime" 225
"Inhabitant" 36, 50
"Inhabitant and ratepayer" 309
"Injuriously affected" 460
"Innkeeper" 108
"Juridical days" 220
"Knowingly" 217

PAGE.

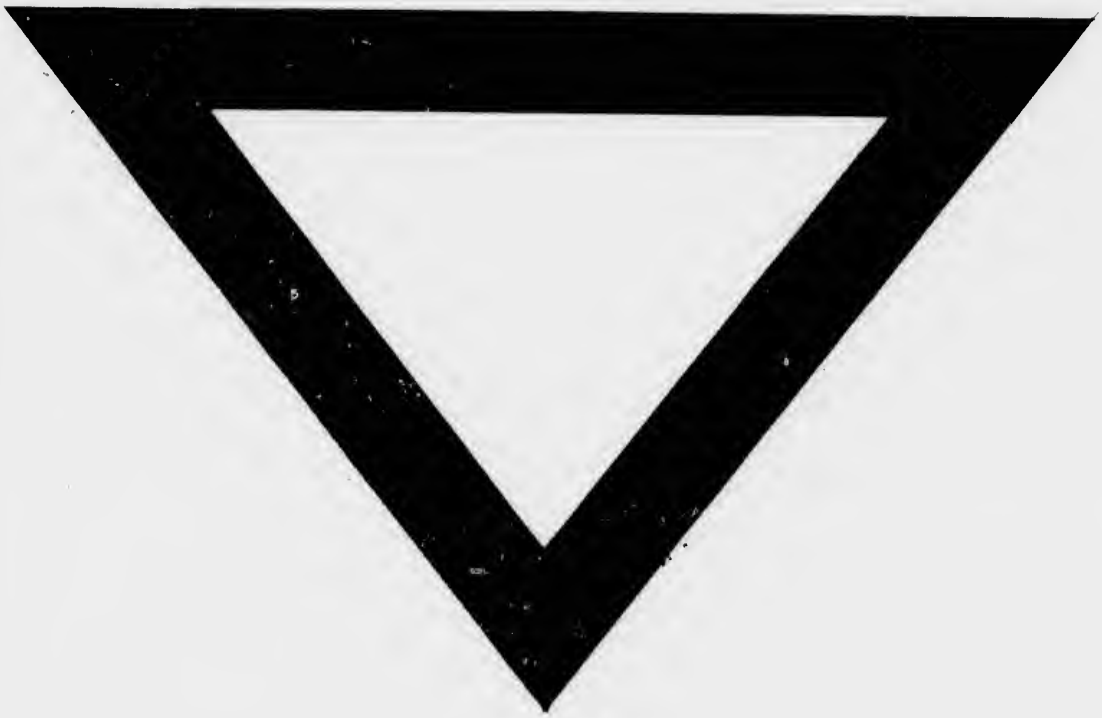
Words and Phrases.—*Continued.*
"Land" 34
"Last filed or certified list" 172
"Leasehold," meaning of in relation to qualification for councils 106
"Legal tender" 514
"Levy" 422
"Local municipality" 34
"Mineral" 883
"Municipality" 34
"Mutually agreed upon" 64
"Next day" 34
"Nominate" 485
"One month's notice" 512
"Ordinaries" 752
"Ordinary expenditure" 411
"Owner" 458, 754
"Owner," in farmers' sons' qualification 123
"Party wall" 613
"Peace officer" 532
"Pedlars" 740
"Person aggrieved" 216
"Petty chapmen" 740
"Public holiday" 220
"Qualified to be elected" 106
"Quorum" 275
"Rated on the last revised assessment roll" 103
"Real estate" 34
"Real property" 34
"Reeve" 34
"Regrating" 725
"Repair" 827
"Road" 34
"Scuttle" 613
"Senior Township," "Junior Township" 68, 72
"Separated town" 35
"Shall" and "may" 44
"Shall mean" 33
"Shall include" 33
"Small wares" 725
"Son," "Farmer's son," in farmers' sons' qualification 123
"Special constables" 137
"Street" 821
"Town" 49
"Transmit" 416
"Undue influence" 264
"Unincorporated village," 49
"Using" as applied to land 459
"Township" 35
"Victualling house" 752
"Village" 35, 49, 50
"Vote" in farmers' sons' qualification 123
"Wilful misfeasance" 215

Work-houses,
Aiding and maintaining indigents in 789
See HOUSES OF INDUSTRY .....

Workmen,
Protection of when engaged in erection, etc., of buildings 605
Licensing and regulating employment agencies for 745

Worm Fence,
When not to be deemed an obstruction of highway 661

Wreckage,
Removal of, when obstructing harbours, etc. 680

Yards,
Cleaning, etc., of 642-644

PAGE.
34
172
106
514
422
34
883
34
64
34
485
512
752
411
458, 754
123
613
532
740
216
740
220
106
275
103
34
34
34
725
827
34
613
68, 72
35
44
33
33
725
123
137
821
49
416
204
49
459
35
752
35, 49, 50
123
215
789
605
745
661
680
642-644