The Municipal Miscellany.

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Calendar for December, '91.

1. Last day for Councils to hear and determine appeals where persons added to collectors' roll by clerk. Sec. 154 Assessment Act.
14. Collector to return roll unless Council extend time. Sec. 132 Assessment Act.
Last day for payment of taxes by voters in municipalities passing by-laws for that purpose. Sec. 489 Municipal Act.
Last day for payment of taxes to save five per cent additional where by-laws passed for that purpose.
15. Return under oath of collectors to treasurer of persons who have not paid their taxes on or before 14th Dec. (when by-laws have been passed requiring taxes to be paid that day.
Councils of towns, townships and villages to hold meeting this day. Sec. 263 Municipal Act.
20. Last day for local treasurer to transmit to clerk of municipality a list of persons who have not paid their taxes on or before 14th Dec. where by-laws passed requiring payment at that time. Sec. 251 Municipal Act.
21. Last day for posting notice of nominations.
22. High, public and separate schools in cities, towns and villages close.
23. Rural, public and Separate schools close.
24. Last day for posting up treasurers' financial statement. Sec. 263 Municipal Act.
28. Nomination day for municipal councillors, and also public school trustees where school boards have required the latter to be elected at same time as municipal councils.

QUESTION DRAWER.

I am a ratepayer living in an incorporated village which by the Dominion census lately taken is shown to have a population of a little over 2,000. Nearly all of us would like to be dubbed *townsmen* instead of *villagers*, but there are some who fear that the change of title would entail heavier burdens of taxation, and would be glad if you would tell us something about the way to proceed to get our village incorporated, and also the probable expense of doing so, as well as the difference in the running expenses between a village and a town. W. A.

The statement of our correspondent in reference to the ambition of the villagers to become townsmen does not surprise us. It is a failing (?) common to nearly all persons similarly situated. The difference in expense in running a village municipality as compared with that of a town is not *necessarily* much increased by the change, but the experience of most towns is that *actually*, whether necessarily or not, the expenses have been considerably increased. The cause of the increased expense is attributed to the fact that town councillors are elected for wards, and allow sectional interests to sway their judgment in the matter of local expenditures. Whether this is the case or not we do not undertake to say. A small town does not require any more officials than a village, and where no payment is made to councillors for their services, an increase in the number at the council board need not make any difference in the expense so far as the officials are concerned, therefore if a majority of the villagers prefer the affix "town of ——" instead of "village of——" and are inclined to be prudent in expenditures we think they need have nothing to dread on the score of increased taxation from the change. The first step is for the council to pass a by-law ordering a census of the population to be taken. The census lately taken for a different purpose would not do, as the Municipal Act contemplates a census taken under and by virtue of a local by-law, which has to be certified to by the head of the corporation, and under the corporate seal, before being sent with the application to the Lieutenant Governor. The census having been taken, the next thing to make sure of is that the area of land covered by the municipality and containing the necessary population as shown by the census, does not exceed the limit laid down, which is 500 acres for the first 1,000 population and 200 additional acres for every additional 1,000 inhabitants. If the municipal bounds are a little too extensive for the population it may be squeezed in a bit by deducting the acreage occupied by streets. The amount of land included in the proposed boundaries of the town is important, as it is not at all likely the Lieutenant Governor would sanction the inclusion of a mile or two of the adjoining townships to make up sufficient population. It is quite likely that a certified plan of the proposed boundaries of the town would be necessary to be made by a surveyor and sent with the application and other documents in order that the government might be satisfied as to the requirements of the law in regard to the area of land to be included within the proposed town corporation. The census and the area having been ascertained and found satisfactory by the village council, their next proceeding would be to insert a notice during three months in a newspaper published in the municipality. If none published in the village, then notices must be posted up in four public places in the village and also published in a newspaper in the county town for three months, setting forth the intention of the council to apply for the erection of the village into a town and stating the limits intended to be included therein. The lawmakers evidently intended, by three months notice, to give the ratepayers sufficient time to discuss the the matter in the evenings while sitting on the village counters, perchance they may repent of their ambition before too late. This formality having been gone through with, and the people being still of the same mind, the census is duly certified to and signed by the reeve, the corporation seal is attached, the application is filled out and signed by the reeve and clerk—though the clerk's name may not be considered necessary as the law is silent on that point—and affidavits proving the publication of the notice as laid down having been included with the other documents, all are forwarded to the Provincial Secretary to be laid before the Lieutenant Governor of the province for his approval. If these formalities are properly observed, and approval of the change given, the municipality is forthwith proclaimed and gazetted under the corporate name of the "Town of ——," and the inhabitants are thenceforward entitled to

the coveted dignity of being "townsmen." When applying to become a town it frequently happens that a difficulty arises in the selection of a suitable name for the new burg, a matter in which there is less likelihood of unanimity among the villagers than in the question of becoming "townsmen." We have heard of places where the diversity of tastes in the matter of a name for the new town was so great and the excitement ran so high that it could not be decided in three months or even in three years, and the application for the coveted proclamation had to be deferred. There is one very important matter to be considered in discussing the advisability of the change and that is the property qualification for municipal voters. In villages those assessed for $200 real property are qualified municipal voters, whereas in towns it requires $300 valuation to become a municipal voter. It does not, however, lessen the voters for parliamentary elections.

Can a person qualify who has been an assessor and received his full salary for the then current year if he tendered his resignation of such office and the resignation is accepted before nomination by the council? G. C.

In the case referred to where the corporation had no further claim on the assessor's services, and the assessor had no pecuniary claim on the corporation we think the assessor would be eligible for election at the ensuing municipal election.

Should the returning officer at a municipal election receive the nomination of a candidate whom he knows is not qualified according to the last assessment roll? G. C.

Our views on this matter will be found elsewhere in this paper, having been in type before our correspondent's letter came to hand. We have nothing further to add except that as the returning officer has not been constituted a court to try the question of qualification, he should not interfere further than to call the attention of the parties concerned to what he may consider good grounds for disqualification, and leave it to them to take the responsibilty of going further. We do not say the returning officer may not refuse to accept nominations under any and every circumstance. If some ratepayers were making a burlesque of the election by proposing persons well known to be disqualified, it would be the duty of the returning officer, and he would be upheld in doing so, to refuse to permit such a farce. It is different where persons supposed to be qualified have been proposed in good faith, in such a case the returning officer would have to be very clear as to his course before taking the responsibilty of refusing the nomination.

The council of Springhill, N. S., are considering the construction of a system of waterworks. They propose to obtain the supply from a stream seven miles distant, on the gravitation system.

* * *

Messrs. Leech, C. Flack and F. Flack have submitted a proposition to the city council of Brantford, for the construction of an electric street railway similar to that in operation in the City of Ottawa.

CORRESPONDENCE.

I would like to have the opinion of yourself and other clerks as to why the first appeal against errors in the voters lists should not be to the council or a committee thereof, subject to a further appeal to the County Judge if the parties thought they had not received justice from the council. As the law now is if there are errors for which the assessor or clerk are blameable, they are compelled to pay the costs of court. If the appeals were heard before the council the costs would be but trifling, if any, as after their disposal the council could take up the other business. My reason for drawing attention to the matter just now is that our legislators will soon be remodeling our Municipal Act and their notice ought to be directed to the matter through your columns. H. J. L., Cambray.

I consider it an injustice to municipal clerks that they should be required to give a casting vote in case of two or more candidates at a municipal election receiving an equal number of votes. It is true it is not very often a clerk is called upon to perform such an unpleasant duty, but it sometimes happens (as it has done with the writer) and may do so at any election in any municipality, thus placing the clerk in a very unenviable position. It is impossible for a clerk to decide an election in such a case without offending a great many of the electors whom he, in his capacity of clerk, is the stewart of. He is expected not to be a partisan, but to stand indifferent between the contending parties and to have no interest to serve for either or for himself. Let him fill the spirit of this rule ever so well and at the close of an election decide a tie vote and he will be suspected by half of the electors, whose wishes he has just defeated, of violating it. If the matter were properly laid before the Legislature I think there would be no trouble in getting this clause of the Act amended. Of course nothing would be done unless it could be shown that the clerks want a change. The county council decides a tie vote in the election of warden without placing their clerk in such an unpleasant position, and I think a very acceptable plan could easily be devised for the benefit of other clerks in similar cases. Say, for instance, that the candidate highest assessed on the last revised assessment roll should be declared elected. J. B. F.

P. S.—I should like to hear from other clerks on this subject. J. B. F.

In a former number of THE MISCELLANY the question was asked as to the legality of clerks acting as both returning officers and deputy returning officers, and an examination of the various clauses led us to offer the opinion then that the Municipal Act never contemplated or intended such a combination. A further examination has more firmly convinced us of this view of the law. The only exception made is in Section 136 where it says that "in case of municipalities which are not divided into wards or polling sub-divisions, the clerk shall perform the duties *which in other cases* are performed by deputy returning officers."

* * *

A movement has been commenced at Windsor, Ont., for the erection of joint public buildings for town and county buildings.

* * *

Remittances received since last issue: C. F., Queenston; J. C., Londesbero; J. R., Port Rowan; J. S. B., Stirling; C. W., Vanburgh; G. C. T., Archer.

APPEALS AGAINST VOTERS' LISTS.

In our correspondence column is a suggestion by H. J. L. relating to simplifyng and cheapening appeals from the voters' lists. He suggests that the council should sit as a court of revision on voters' lists as is now done in the case of appeals from assessments. The suggestion is one that will meet the approval of all who give the matter proper consideration. The present system of holding a court of revision by the council in the case of assessments works satisfactorily, and it is the exception to the general rule to appeal from that court to the judge. There can be no good reason that we can see why similar proceedure should not be provided for a revision of the voters' lists. Mistakes, where they exist are not usually wilful, and could be easily and satisfactorily corrected in this way at comparatively small expense. When it is considered that the requirements relating to the preparation of the assessment roll and the voters' list are both numerous and intricate, as laid down in the Municipal Act, Assessment Act, Manhood Suffrage Act, Ontario Election Act, and Jury Act, it is not to be wondered at that errors will sometimes occur even with the most efficient officers, and it is hardly fair to saddle them with unnecessary costs if it can be avoided. These officers should not be held liable for costs unless the judge found them guilty of wilful or gross neligence. To make them liable for unintentional errors is to make them scape goats for the sins of legislators who provide such complicated machinery that it would sometimes puzzle even a "Philadelphia lawyer" to understand.

LEGAL INTELLIGENCE.

Ronald v. Town of Sault St. Marie.—Idington, Q. C., for the defendants, appealed from the judgment of Robertson, J., who tried the action at Goderich, in favor of the plaintiffs. The action was brought to recover the amounts due under debentures given by the defendants to the plaintiffs as the price of the fire engine sold by the plaintiffs to the defendants, or for the price of the engine. Robertson, J., held that the defendants were bound by their contract to pay for the engine and that the debentures issued were valid, and he gave judgment for $310, the amount due under the debentures, and interest. The defendants contended that the contract was not an executed one and that they were not liable because there was no by-law validating the contract. Appeal dismissed with costs, the court holding that the want of a by-law or of a contract under the corporate seal could not relieve the defendants, in the face of their acceptance and use of the engine.

Before Armour, C. J., Falconbridge J., Street, J.

Gibson v. Township of North Easthope.—Matthew Wilson, Q.C., for the plaintiff, appealed from the judgment of Meredith, J., dismissing the action, which was brought to recover back $600, and interest paid by the plaintiff under protest to the defendants, being the amount assessed against the plaintiff as one of the land owners benefitted by a drain in the township, which runs in a south-westerly direction through the plaintiff's lands, lots 34 and 35 in the 7th concession, or in the alternative to compel the defendants to have the drain properly constructed. The plaintiff contends that there was no proper petition for the drainage work, and therefore that the by-law authorizing it is bad, and the defendants had no right to make the assessment; but, if the by-law should be held good, that the drain was not properly constructed according to the original plan and profiles, though Meredith, J., found it was. The evidence was taken partly before Proudfoot, J., and partly before a county judge, and the case was decided before Meredith, J., upon the evidence so taken. Idington, Q.C. for the defendants, supported the judgment. Reserved.

JUSTICE GWYNNE ON THE GRAND JURY SYSTEM

The idea that the grand jury system constitutes in the present day the paladium of British liberties and serves as a shield interposed between the subject and the crown, necessary for the preservation of the liberties of the former from the tyranny, injustice and oppression of the latter, partakes altogether of too mediæval a character to justify its receiving a moment's consideration in the present day.

No perils to the due administration of criminal justice do, or can, in modern times arise from any interference, due or undue, upon the part of the crown.

Even in troublous times when the constitution under which we now live was being developed in England it is difficult to point out any real, substantial benefit which the subject derived from the intervention of grand juries in the administration of criminal law. Their functions were never of any higher order than to determine whether the *ex parte* one-sided evidence submitted to them by the prosecution was sufficient to justify the accused person being put upon his trial. It must needs have afforded but little satisfaction to a person who may have been confined in goal for six months or more awaiting his case being submitted to a grand jury to find at length that this tribunal ignored the bill containing the charge upon which he had already undergone several months' imprisonment. In such cases if the evidence submitted to the grand jury was the same in every particular as that upon which the accused had been committed, it is I apprehend, to be feared that it was the interests of the public and of justice which had been prejudiced.

In some few state prosecutions doubtless grand juries may be said to have intervened as a shield between the subject and the crown, or courts subservient to the crown, but since the judges have been rendered independent of the crown, the scandal upon the administration of justice that such a shield was necessary has been effectually removed. It is the petit jury and not the grand jury which has always constituted and still constitutes under the direction of independent judges the true protection of the subject against unjust and frivolous prosecutions whether instituted on behalf of the public, or (and herein the only peril to the due adminstration of criminal justice exists) by wicked and maliciously disposed persons making false or frivolous accusations for the gratification of their own selfish vindictive and malignant purposes. The legislature has, however, in modern times afforded a much more effectual shield to the subject against frivolous and unjust prosecutions than the grand jury ever afforded, and has rendered the interposition of such a tribunal practically useless.

The provisions of the Act formerly known as "The Vexatious Indictment Act," now embodied in section 140 of chapter 174 of the Revised Statutes of Canada, and the provisions of sections 69, 70, 71, 72, 73, 80, 81 and 82 of the same chapter 174 regulating the proceedings before justices upon criminal charges, are all framed with the most anxious solicitude to prevent persons being put upon trial upon frivolous or unjust accusations. These provisions, if they are not already, can be made abundantly sufficient to dispense altogether with the services of grand juries whose functions are now reduced to an enquiry, more ludicrous

than real, whether the evidence upon which the justices had after careful investigation into the charges, as provided for in those sections, committed the accused parties to goal to stand their trial, or had bound them over to appear and stand their trial, was sufficient to warrant the proceedings taken, and to justify the putting the accused persons upon their trial.

To me it has always appeared marvellous that the persons who are called upon to serve as grand jurors in this country have endured without vigorous protest the inconvenience to which they have been subjected in being taken from their business for the purpose of discharging such useless functions: the pay, however, which they receive affords, I presume, the explanation of their forbearance.

Mr. Forsyth, in his work on "Trial by Jury," while he admits that a very prevalent public opinion and frequently expressed as to their utter uselessness of the grand jury as a tribunal to take part in what he designates the "Grand Judicial Drama," is well founded if limited to the district in England within the jurisdiction of the central criminal court, seems disposed to justify their continuance in English counties as a school wherein the landed gentry and nobility of the counties, who constitute the class from which in England, grand juries are taken, "shall hear an exposition of the criminal law from the judge," which he regards as being of essential service to them in the discharge of their magisterial duties through the year. This is the only plea of justification which, as far I know, has ever been offered for the continuance of the system in England.

This may be, and perhaps is generally considered to be a sufficient reason for the continuance in England of a tribunal otherwise rendercd useless by legislation and the security which in modern times the subject enjoys from all interference by the crown in criminal prosecutions. It is, however, to be borne in mind that in England the nobility and landed gentry who constitute the class from which grand jurors and justices of the peace are taken, themselves bear the burthen and expense upon the continuance of the grand jury as a school of instruction of the magistrates in the discharge of their magisterial duties entails, and as they bear the burthen, there is less reason for one hindering them from taking part in the pageantry of what Mr. Forsyth calls the "Judicial Drama." In this country, however, where grand juries are taken from the same class as petit jurors, and are paid for their services, the continuance of the system as pageantry in a drama is an expensive proceeding which is not, I think, compensated by any real and commensurate benefit

The justices of the peace can always have the assistance of the county crown attorneys to advise them in the discharge of their duties, and the courts under sections 81 and 82 of the Criminal Procedure Act can always be invoked to intervene in the interests of the persons charged with crime when the evidence taken before the justices would seem to justify the accused being admitted to bail instead of being confined in gaol to await their trial.

But whether the existing law regulating the discharge of their duties by justices of the peace out of sessions be or be not sufficient to warrant the immediate and total abolition of the grand jury system is of no importance, for it can be made sufficient in every particular wherein it may be deemed to be insufficient. In fine, there exists no reason whatever, in my judgment, for the continuance of the grand jury system, and it may, in my opinion, be abolished not only without any detriment, but with positive advantage to the due, speedy and inexpensive administration of the criminal law.

The ratepayers of Parry Sound carried a by-law on the 20th inst., to expend $28,000 for a system of waterworks.

MUNICIPAL MATTERS are generally treated by critics as of grave concern and in language most sober and prosaic, therefore it is somewhat refreshing to find a writer bubbling over with humor when writing on such matters. Below we give a few gems culled from a Toronto newspaper, and referring to their local municipal squabbles:—

"The condition of the city of Toronto is not of that inordinately grave character that requires of the hard-worked ratepayer to lose his natural rest in order to devise means for the common safety. True, there are changes in the municipal system that the times demand, abuses that must be rectified, new conditions that must be met and financial complications that must be faced, but nothing that threatens in even the most remote degree the stability of our institutions or the prosperity of our city.

"This, however, is the time of the year for the annual effervescence, when slightly excitable, though well meaning, citizens feel called upon to rush their fellow-men to the front as candidates. Their fellow-man is as a rule quite willing, and as a reason for the hope that is in them, it is quickly decided between the two that the city is going to the dogs and must be saved.

"When the present issues are disposed of, as they easily will be, new issues will arise, new changes will be demanded, new abuses will be discovered, new conditions will have to be met. When the present saviours of the city are called up higher, as they will be in the fulness of time, new saviours of the city will continue to come to the sacrifice.

"It is good.

"Meanwhile the blithe tax collector will continue his merry round and the rest of us will feast even as though the army of the Medes and Persians were not at the gates of this city, against whom the prophetic Ratepayers' Association have already pronounced their Mene mene tekel upharsin.

"But in saying this it does not necessarily follow that the present aldermanic board is composed of highwaymen and lunatics. This, of course, is what one would gather from the utterances of certain individual wide-mouthed flapjacks, who mistake abuse for facts and the foghorn notes of their own voices for the silver tones of eloquence.

"By all means get out the very best men. The new divisions will be a help in this matter. But, when dealing with the subject, do not be one of those 'who cannot see the rose for the thorn or the star for the mist of their own breath blowing across it.'

"Work on the Dundas street bridges has commenced. Let the band play 'Annie Laurie.'

"The Trunk sewer scheme appears to need a vigorous off-hind-leg movement to get it in motion again.

"Viewing the attitude of the Citizens' Association and the Ratepayers' Association each towards t'other, white-winged peace has turned a dusky brown.

"Power of lung and the frequent use thereof, swelling of the throat, whirling of the arms and redness of face are not as much evidences of soundness of argument as of physical constitution. This is intended to apply generally, and to one member of the city council in particular.

"The Don improvement is a veritable old Man of the Sea which has come down to us from a previous generation of administrations."

* * *

As this is the season of the year when school trustees are entering into new engagements with teachers; it may be as well to remind them that the School Act requires such agreements to be in writing, and to be signed by the parties thereto, and to be sealed with the corporate seal of the trusteess. Any teacher who enters with such an agreement and fails to carry it out is liable to have his certificate suspended by the Inspector.

MUNICIPAL ELECTIONS.

The time is near at hand when the municipalities will be in a turmoil over the elections of members to the council board. We have nothing to say as to the class of men to be selected for such responsible positions. The electors are to be the judges and are quite competent to look after that. We may, however, briefly refer to the legal qualifications required by those who aspire to the position of representatives at the council board either as mayor, alderman, reeve, deputy-reeve or councillor.

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Such person must be a resident of the municipality or within two miles thereof. He must be a natural born or naturalized subject of Her Majesty. He must be at least twenty-one years of age. He must be assessed for property on the last revised assessment roll of the municipality either as owner or tenant, in his own name or in the name of his wife, of not less than the following valuation, viz: In cities, freehold $1,000, or leasehold $2,000; towns, freehold $600, or leasehold $1,200; townships, freehold $400, or leasehold $800; villages, freehold $200, or leasehold $400. These values must be over and above any liens and incumbrances affecting the property. This would appear to include incumbrances on leasehold property, for the payment of which the candidate is in no way liable, as the Act makes no exceptions.

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A person, however, in actual occupation of freehold property assessed at not less than $2,000 on the last revised assessment roll is entitled to be elected notwithstanding any incumbrances on the property. So also a person may be elected who has sold his property, if valued as above, between the final revision of the assessment roll and the day of election, but who still continues to reside in the municipality and occupying property of sufficient value to qualify him. In such cases, if the person is elected, the oath of office to be taken by him has to be altered to suit, by adding after the word "occupation" the words "and I had such an estate actually rated on the last revised assessment roll of this township [naming it] at an amount not less than $2,000." The word "township" is evidently a guide merely, as residents of cities, towns and villages are not excluded in this qualification.

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In leasehold qualification the lease must be a yearly one. A tenant leasing by the month only even if the property is assessed sufficiently, would not be legally qualified to be elected as a member of council.

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There are certain provisos in the case of newly-created townships having no separate assessment roll. The qualification so far as the value of property is concerned is the same as other townships provided there are not less than ten persons in the new municipality owning sufficient property, but should there be a less number so that the electors might be said to have no choice, then the qualification of members of council would be reduced to $100 the same as for voters.

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There are certain persons disqualified by law to act as members of council. These are judges, sheriffs, registrars, county crown attorneys, deputy clerks of the crown, clerks of the peace, clerks of the county court, municipal clerks, assessors, treasurers, collectors, gaolers, bailiffs, chief constables of cities and towns, High School trustees, innkeepers, saloon-keepers, liquor shop-keepers, license commissioners, inspectors of licenses, police magistrates, solicitors employed in prosecuting claims against the municipality, and all persons having an interest in any contract with the corporation. Shareholders in an incorporated company having dealings with the corporation, and those holding a twenty-one years' lease of municipal property, are not disqualified to become members of council, but they are precluded from voting on any question affecting their company or lease.

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There are also a number of persons who though not disqualified yet are entitled to be exempt if they wish from serving either as members of council or in any other municipal office. These are all persons over sixty years of age, all M. P.'s and M. P. P.'s, all persons in the civil service of the crown, coroners, clergymen, barristers, solicitors, officers of the courts of justice, doctors, professors, masters, teachers, millers, and also firemen belonging to an authorized fire company.

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Qualified electors are men and unmarried women and widows of twenty-one years of age, subjects of Her Majesty, rated on the last revised assessment roll on which the voters' list is based as owners of real property valued in cities at not less than $400, in towns $300, in villages $200, and in townships at $100. If a married man he would be entitled to vote if the property is owned either by himself or his wife. Owners of real property are qualified voters at mnnicipal elections whether they are resident in the municipality or not.

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The next class of municipal voters are similar persons who are assessed as householders or tenants to the same amounts as above, but they must be actual residents and have resided within the municipality for at least one month previous to the election. Thus a person assessed as tenant who had removed from the municipality previous to the month of December might have his vote challenged even though on the voters' list.

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The third class of voters are those who are assessed for income from some trade, office, calling, or profession, of not less than $400. Income voters must be residents at the time of the election and must have resided continuously in the municipality "since the completion of the last revised assessment roll." This means since the last revision of the roll.

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The fourth class of voters at municipal elections are those assessed as farmers' sons, and who have resided in the municipality on the homestead at least six months of the year.

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The above are the qualifications of municipal voters, and it is on this basis that parts 1 and 2 of the voters' list are made up by the clerks. The fact that a voter's name is on the revised voters' list as a municipal voter is *prima facie* evidence of his right to vote and no enquiries are to

be entered into further than laid down in the oaths, which the candidate or his authorized agent may require to be taken before the oath is recorded. The oaths specify that the owner is the person named in the list, that, in case of freehold qualification, the voter is the owner in his own right or that of his wife, that he is a subject of Her Majesty, that he has not voted at any other other polling place in the municipality at that election, that he has not received nor expects to receive any reward for his vote, that he has not received or been promised anything directly or indirectly either to induce him to vote, or for loss of time, travelling expenses, hire of team, or any other service connected with that election, and that he himself has not directly or indirectly paid or promised anything to any person to induce him to vote or to refrain from voting. In the case of a woman being sworn there is a clause in reference to being unmarried or a widow. The oath of a person voting as a householder or tenant contains much the same as for freeholders, but has clauses referring to residence. The oath to voters on income has a clause specifying the fact of having such income at that date and for twelve months previously. The oath of a farmer's son recites in addition to the general clauses the fact of his residence on the property for twelve months previously, and not having been absent during that time more than six months. If a voter takes the oath when required, the returning officer has no option but must accept the vote tendered.

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The attention of returning officers is called to the change made in 1890 in the form of oath of qualification when required to be taken by a person claiming to vote in respect of freehold property. The words "within the municipality" are to be added after the word "freeholder" in the third paragraph.

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It is not, so far as we know, the business of the deputy returning officer to dispute the right of any person to vote whose name appears as a municipal voter on the certified list of voters, nor can he refuse to accept his vote if the voter takes the oath of qualification when required by the scrutineers. The voters' list is a sufficient authority for the deputy returning officer, and it rests with the scrutineers to go behind that and require the oath of qualification. It would be different in case, to the knowledge of the deputy returning officer, a person offered to vote who was not on the list, but was personating a voter on the list. The deputy returning officer would, however, require to be very positive of this, otherwise the risk of refusal would be great, and if he had doubts it would be safer to require the person to be sworn before taking his vote.

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The nominations for members of councils this year will be held on the 28th December. Returning officers are to give notice not later than the 21st. The law does not define the manner of notice, so it is presumed that it is in the discretion of that officer either to do so through the advertising columns of a local newspaper or by posting up notices. Where notices are posted it requires at least three to be put up in public places in the municipality, or if there are wards, there should be three in each ward. The object is to make the matter public to those interested, and to advertise in a newspaper that had not a fair circulation in the municipality would not comply with the intention of the law, nor would small written notices placed where they were not likely to be seen by the ratepayers be a compliance with the law.

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The hour laid down for nominations is as follows: For mayor in cities, 10 a.m.; for mayor, reeves and deputy reeves in towns, 10 a.m.; for reeves in townships divided into wards, 10 a.m.; for aldermen in cities, 12 noon; for councillors in towns, 12 noon; for reeves, deputy reeves and councillors in villages, 12 noon; for reeves, deputy reeves and councillors in townships not divided into wards, 12 noon. Town councils may by by-law hold the nomination for councillors at 10 a.m., the same as for reeves and deputy reeves; or they may hold their nomination for all at half-past seven in the evening. Village councils have the right to change the hour of nomination from twelve to half-past seven. City councils may also change the hour from twelve to half-past seven for the nomination of aldermen.

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The clerk of the municipality as head returning officer is to preside at the nomination, except where there are ward nominations; in these the by-law would name the returning officer for each ward. In the event of the clerk or the person appointed not attending through sickness or other cause, the ratepayers present have power to appoint a chairman. The nominations, which are but ordinary proposals of a person for the office duly moved and seconded, is to be made singly and not *en bloc*. It makes no difference as to the order of nomination in respect of the office, so that it would be correct enough to nominate councillors before nominating reeves, and *vice versa*.

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If more candidates than the required number for any office are nominated, "and if a poll is required by these respectively, or by any elector, the clerk or other returning officer or chairman shall adjourn the proceedings for filling such office until the first Monday in January." And if a poll is not demanded by a candidate or some elector, what then? Would the returning officer call for a show of hands at one o'clock and declare those elected who had a majority in their favor? Harrison's notes would seem to indicate this course. The manner laid down in section 117 for deciding in case a candidate was proposed for two offices and did not elect for which he would remain nominated would be simpler, as in that case the office for which he was first proposed is to be taken to prevail, and on that principle if no one demanded a poll, the person first proposed until the required number was made up would be declared elected. The intention of the law is that the ratepayers shall have every opportunity to make a selection of their representatives, and when more than the required number are nominated we do not think it would be a safe course for the returning officer to declare anyone elected, either on a mere show of hands or in a manner similar to the procedure in section 117. The better way would be to see that some one present demands a poll, and then to adjourn the proceedings until polling day.

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"At the nomination meeting or at any time within two

days thereafter, any person proposed for one or more offices may resign, or elect for which office he isto remain nominated, and in default he shall be taken as nominated for the office in respect of which he was first proposed and seconded." If the resignation does not take place at the nomination meeting, the person proposed if he wishes to resign must do so in writing signed by him and by a witness. This does not say that the consent of the mover or seconder is requisite, but the courts have held that such consent is necessary. This must be on the principle that all qualified citizens owe it to society to serve the public when properly called on, and can only be released from the obligation by those who have made the demand. It would be well to see that the proposer and seconder are consenting parties. If, a person proposed is not legally qualified, the returning officer, if he is aware of that fact, should make it known at the nomination in order that further nominations may be made to ensure a legal election. There might be circumstances in which a returning officer would be justified in refusing to accept a nomination, but as a general rule it is better and safer to lean the other way if the nomination is insisted on, even where the returning officer has a knowledge of the candidate's disqualification.

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The first Monday in January will be on the 4th of the month, and the polls will open at 9 a. m. and close at 5 p. m. The deputy returning officers and their clerks and the scrutineers should be in attendance before the time for opening the poll, so as to have the preliminary declarations of secrecy attended to in time to permit of receiving votes without delay at nine o'clock.

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The ballot papers are to be obtained by the returning officer, and these with the ballot boxes, certified voters' list, poll book and other necessary papers are to be delivered to the deputy returning officers in sufficient time for the poll. There is a penalty of $100 if the ballot boxes are not delivered to the deputy returning officer at least two days before the day of polling. The ballot papers should be printed on good quality of paper so that the pencil mark may not be readily seen when it is folded. Some ballots are printed on such soft paper that the slightest pressure of the pencil leaves a mark through the paper, which the deputy returning officer cannot always avoid seeing, and thus knowing how the elector voted. This should not be case. Very few of these officers wish to know how any one has voted, and it is not fair to make them custodians of such secrets against their will.

We call special attention to J. B. F.'s letter respecting the necessity of clerks giving a casting vote in case of a tie at municipal elections. The framers of the law cannot have taken into consideration the relation in which the clerk stands to the public, or they would not put him in the disagreeable position of antagonism to one half of those he is expected to serve in all other respects without partiality. This and many other matters affecting the office of municipal clerk require amending, which could best be done by and through an organized association of these officers.

Our thanks are due J. G. Stewart, Esq. clerk township of Raleigh, for copies of by-laws, voters list, etc. in pamphlet form. A number of these by-laws are for levying rates for local drainage, and we are pleased to receive them for the information they contain, especially the one advertised in the Chatham *Banner*, which is an immense affair, occupying in that large newspaper two full pages of figures in small type. The labor of getting up such a by-law must be very great. We understand that the amount already expended on draining in the township of Raleigh exceeds $250,000. Each land-owner pays a proportion according to benefit, the separate amounts being specifically named in the by-law.

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Not having succeeded in completing arrangements for a transfer of the publication of The Miscellany, and finding of late that our time is so fully occupied in the discharge of official duties that we cannot continue to devote the time necessary, we would like if some other person having the leisure would undertake it either alone or in conjunction with us. We regret very much that we cannot continue to give it the attention necessary, as we have received more encouragement than we had anticipated at the outset. Until within a few months other work did not fill up our whole time, but now it is otherwise, and to continue as at present, would necessitate our giving up entirely needed rest and relaxation. This we cannot do, having a regard to health, but if any of our municipal clerks who may have the time to spare will undertake it, we will be willing to assist as far as possible. We will be glad to hear at once from any who are willing to take the publication in hand from the new year so that we can announce it in the December issue.

REPORT OF COMMISSION ON MUNICIPAL INSTITUTIONS.

(EXTRACTS CONTINUED.)

The Legislature sometimes made special grants for bridges. We have already mentioned the first special grant, which was for a bridge across the Grand River, and was made in 1809. An additional grant for that work was made in 1810. In 1824 a sum of £250 was granted, of which £150 was to be expended in improving the road in the township of West Gwillimbury, and £100 in aid of the resources of the inhabitants for the erecting of a bridge across the river Trent, at the foot of Rice Lake. In the same year an Act was passed authorizing the justices of the district of Johnstown to raise a loan of £2,500, wherewith to erect a new court house or repair the old one, and to erect new bridges over Yonge and Fish Creeks. In 1826 the Legislature granted £1,200 for making and repairing certain roads and bridges named in the Act. In 1827 an Act was passed incorporating a number of persons, and authorizing them to build a bridge over the Cataraqui, from

Kingston to Point Frederick, and authorizing them to collect tolls as soon as the justice in General Sessions certified that the bridge was complete. The Act provided that there must be a "draw" of at least 18 feet in length in this bridge. The number of shares was not to exceed 240, of £25 each. In 1827 £100 was granted in aid of a bridge over the Otanabee, in the district of Newcastle.

In 1829 the first Act to incorporate a private company for the purpose of making a turnpike road was passed. This road was to be built in the county of Halton, and the company was to be known as the Dundas and Waterloo Turnpike Company. The capital was to be £25,000. The company was clothed with all necessary powers, including that of erecting gates not less than nine miles apart, and charging tolls at or under the rates fixed by the Act.

The Government afterwards adopted another mode of promoting the construction and improvement of roads and bridges. In 1833 an Act passed authorizing the Government to borrow £1,500 on debentures, expend that amount through commissioners in building a bridge at Brantford, and through commissioners to levy tolls which should be applied after payment of expenses to the liquidation of the debt. In the same year the Government were authorized to borrow four thousand pounds, and expend it in building a bridge across the Trent, near its mouth, in the like manner and on the same conditions. In the same year twenty thousand pounds to be raised on debentures was appropriated for the improvement of roads and bridges throughout the Province, the amount to be expended in each of the eleven districts and by each of the commissioners named on each road section being fixed by the Act.

In this year also trustees were appointed to take charge of the improvement of Dundas street, Yonge street and the Kingston road within the Home District. The Receiver-General was authorized to raise a loan of ten thousand pounds from such persons or body corporate as may be willing to advance the same on the credit of the tolls to be levied under authority of this Act, and to pay over the amount when received to the trustees named, who were to expend four thousand pounds on Yonge street, commencing at the northern limit of the town of York, fifteen hundred on Dundas street and two thousand on the Kingston road. The remaining five hundred was to be used in paying the first year's interest. The trustees were authorized to erect gates and collect tolls. The toll gate system then introduced continues to the present day.

In 1834 twenty-five thousand pounds to be raised on Provincial debentures was appropriated for the improvement of roads and bridges, and Acts were passed making further provision for the expenditure of the money voted in 1833. In 1836 an Act was passed authorizing the Receiver-General to raise thirty-five thousand pounds on the security of the tolls, to be levied on the roads named. Of this fifteen thousand was to be expended by commissioners on Yonge street, ten thousand on the Kingston road, and ten thousand on Dundas street. In 1836 fifty thousand pounds was granted, to be expended on the roads and bridges in all the districts of the Province, then numbering twelve, as the Act directed. In 1836 commissioners were authorized to expend on the West Gwillimbury road and bridge one thousand pounds, raised on credit of the tolls, to erect toll gates and collect tolls. In 1837 the Receiver-General was authorized to raise one hundred thousand pounds on the security of the tolls collected on the roads of the Home District, of which sixty thousand was to be expended for completing Yonge street to Holland Landing, or such other point as the trustees may determine, twenty thousand in continuing the improvement of the Eastern road to the eastern limit of the Home District, and twenty thousand for the improvement of the western road to the western limit of the Home District. Of the money granted for the west road three thousand pounds was to be used in macadamizing the Front road, from the mouth of the Humber, and of the money for the east road five thousand was to be expended in making a road to Resorville, five hundred more was to be advanced for repairing the West Gwillimbury road, and if the tolls were not sufficient to pay the interest and sinking fund the deficit would be raised by assessment of the district. In the same year twenty-five hundred pounds was raised on security of tolls for improving Hurontario street, and trustees were appointed to expend the money and collect tolls. Authority was given to raise thirty-five thousand pounds on security of the tolls to be expended on the main road from Hamilton to Brantford, and to appoint trustees. Authority was given to raise and expend twenty-five thousand pounds on the same conditions and in the same manner, in the construction of a macadamized road from Dundas to Waterloo in the Gore District; thirty thousand for macadamizing the road from Brockville to St. Francis, Charleston, Lyndhurst, Beverly and Perth, in the district of Johnstown; thirty thousand for macadamizing the road from Kingston to Napanee; thirty thousand for macadamizing the main road from Queenston to the west boundary line of Grimsby in the Niagara district. In all these cases the credit of the Province was pledged to the creditors to make good the deficiency. If this had not been done the sale of the debentures would have been difficult in more than one case. The extraordinary growth of this system of making and repairing roads at that time is very remarkable. In all the Acts of 1836-7 the preamble declares that "the Act to raise a sum of money (on this system) to improve certain roads in the vicinity of the town of York had fully realized the advantages anticipated." The evils of the toll gate system were then either not understood or not dreaded. Only the advantage of getting some of the greater roads made passable was thought of, and the terms seemed easy.

About the same time a number of bridges were built with money raised in a similar manner. A loan of £1,250 to build a bridge over the Grand river, at Dunnville, and a loan of £1,500 for a bridge over the same river at Paris were authorized. A company was incorporated in 1836 to build a bridge over the Grand river at Cayuga. One provision of the charter was that the amount collected as tolls in any year should not exceed 20 per cent. of the cost of the structure. In 1837 an Act was passed authorizing a loan of £1,500, on Provincial security, the amount to be expended by commissioners in building a bridge over the Thames at Chatham. The commissioners were to levy tolls and pay the receipts over to the Receiver-General. The bridge over the Cataraqui, erected by a company chartered in 1827, appears to have been for some years the only toll bridge in the Province.

In 1834 a company was incorporated to build a tramway from Rice Lake to Lake Ontario, near Cobourg, capital forty thousand pounds, and a company to construct a tramway "on and over any part of the country lying between the town of London and Burlington Bay, and to the navigable waters of the River Thames, and also to Lake Huron," capital not to exceed one hundred thousand pounds, with a right to increase to two hundred thousand. In 1835 a company was incorporated to build a tramway "on and over any part of the country lying between the town of Hamilton in the District of Gore and Port Dover in the District of London, capital forty thousand pounds, with a right to increase to one hundred thousand if the work was extended. The Erie and Ontario R. R. Company was incorporated in 1835, nominal capital seventy-five thousand pounds; the Toronto and Lake Huron R. R. Company in 1836 nominal capital five hundred thousand; the Burlington Bay and Lake Huron R. R. Company, nominal capital three hundred and fifty thousand; and the Niagara and Detroit R. R. Company.

To be Continued.

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