THE MUNICIPAL WORLD

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

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SEPTEMBER.

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The Municipal World

PUBLISHED MONTHLY

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

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ST. THOMAS, AUGUST 1, 1903.

A new clerk has been engaged by the village of Iroquois. He is paid the munificent salary of $45 a year.

* * *

Mr. A. M. Chapman, of Frankford, has been appointed clerk of the township of Sidney, in the place of Mr. F. B. Prior, resigned.

* * *

The Bell Telephone Company will remove its poles from Dundas street in Woodstock and place its wires under ground.

* * *

St. Catharines has a council much more liberal towards sports than most councils are. It has just voted $2,500 towards the encourag ment of aquatic sports.

* * *

An exchange considering the question of the franchises enjoyed by electric and other companies says "as near as we can get at it the plan is to capitalize some free favors from the municipality and make the citizens pay the interest."

* * *

The county council of York recently decided upon a schedule of county roads. It is proposed to spend $150,000 improving them, including a portion of the Ontario Government's million dollar good roads grant. The council will submit a by-law to the ratepapers of the county.

* * *

The Canadian Sewer Pipe Co. desires us to announce that they have no exclusive sales agents and that any customer wishing to purchase pipe can do so from any of their factories direct, namely: The Ontario Sewer Pipe Co., Toronto; The Hamilton and Toronto Sewer Pipe Co., Hamilton; The Standard Drain Pipe Co. St. Johns, Que., where all direct orders will receive careful attention.

Payment of the Cost of Equalizing Union School Assessments.

Section 4 of the Public Schools Amendment Act, 1903, was evidently passed for the purpose of setting at rest what has hitherto been a somewhat vexed question, that is: To what source should assessors look for their pay for equalizing the union school assessments of their respective municipalities? It was the opinion of the Deputy Minister of Education and of a County Judge in a case against the township of Douro under the law as it was formerly, that the trustees of the union school section concerned should meet and pay this liability. The intention of the new section is apparently to fix this liability on the councils of the several municipalities out of which the union school section is formed, in the same proportion as the assessments of the portions of the municipalities out of which the union school section is formed bear to each other. Owing to the unsatisfactory wording of the new section it is doubtful as to whether this intention has been effectually carried out or not. The first part of the section provides that the "fees of assessors and arbitrators shall be borne and paid by the municipality in which the union school section is situate." We do not know nor can we conceive of a case where a union school section is or can be located wholly in one municipality. (See section 46 of the Public Schools Act, 1901). It further provides that "in case such section includes portions of two or more municipalities (which it always does) the said cost shall be borne and paid by the municipalities in the same proportion as the *equalized assessments of the municipalities* bear to each other." This suggests the question: Does this mean the equalized assessments of the municipalities as a whole fixed by the county council under section 87 and following sections of the Assessment Act, or the equalized assessments of the portions of the municipalities concerned, fixed by the assessors or arbitrators under the provisions of section 54 of the Public Schools Act, 1901? The full text of this section will be found at the foot of the second column on page 134 of our issue for July last.

Education in Municipal Government.

The following article from a recent issue of "Outlook" is worthy of the attention and consideration of those who have at heart the improvement of municipal conditions in this Province:

"The need for intelligent and adequate instruction in governmental matters, and especially in municipal government, is one that has been increasingly felt by educators generally. Appreciating this fact, the National Municipal League has appointed a committee on Instruction on American Educational Institutions, President Drown, of Lehigh University, as chairman. This committee devoted two years of consecutive activity to the preparation of courses, outlines, and syllabi for colleges, and its two reports constitute an important contribution to the subject, and have resulted in stirring up considerable interest, leading to the introduction of courses in municipal government in a number of institutions. A new committee, with city Superintendent William H. Maxwell, of New York, has been appointed by the league to consider the question in relation to elementary and high schools. This committee, which is made up of leading city superintendents, supervisors, principals of high and grammar schools, and publicists, has taken up its allotted task with vigor, and has just held a meeting in connection with the National Educational Association to outline an extended inquiry to ascertain to what extent instruction of any kind is given in these branches, what fundamental ideas should be developed, and what text books are most helpful. The high character of the personnel of the committee, and the keenness with which it has entered upon the discharge of its duties, give promise of a report of the first importance and value to the schools of the country. If it can suggest a course of study which will produce a more intelligent and enlightened generation of American citizens, especially in regard to their municipal duties, it will have achieved a result of untold value."

By-Laws for Raising Money for the Improvement of Highways.

We think it desirable to draw the attention of members of county and township councils to amendments to section 389 of the Municipal Act contained in sections 86 and 87 of the Municipal Amendment Act, 1903, particularly those contained in the latter section. Section 389, as thus amended, now reads as follows: "Subject to the provisions of the two last preceding sections, every by-law (except for drainage as provided for under the Municipal Drainage Act or for work payable entirely by local assessment *or under section 9 of the Act for the improvement of public highways passed in the first year of the reign of his Majesty King Edward the Seventh*) 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, be submitted to the electors of the municipality in the manner provided for in section 338 and following sections of this Act." The effect of these amendments is to enable the councils of townships and counties to pass by-laws for raising by debentures such sums of money as may be necessary to meet any expenditures on highways under the Act for the Improvement of Public Highways (Chapter 32 Ontario statutes, 1901) within the limits prescribed by section 9 of that Act, without first submitting such a by-law to the electors as provided by the Municipal Act.

Additional Municipal Legislation.

The Statute Law Amendment Act, 1903 contains the following provisions, which relate to municipal matters and are worthy of attention :

UNION AGRICULTURAL SOCIETIES TO BE BODIES CORPORATE.

7. Sub-section 1 of section 15 of *The Agriculture and Arts Act* is hereby amended by adding after the word "organized" in the second line of the said sub-section the words "And all Union Societies now or hereafter formed under section 23 of this Act"

8. Sub-section 1 of section 23 of *The Agricultural and Arts Act* is hereby amend by adding thereto the following :—"The Societies so uniting shall form a Union Society having all the powers conferred by this Act upon a Township or District Society, and the members of the societies so uniting shall become members of the Union Society."

AID TO AGRICULTURAL AND HORTICULTURAL SOCIETIES IN CITIES ABOLISHED.

9. Sub-section 1 of section 45 of *The Agricultural and Arts Act* is amended by striking out the words "in case of a city $3,000" occurring in the 12th line of the said sub-section.

JURY PROCESS.

14. Sub-section 2 of section 66 of *The Jurors' Act* is repealed, and sub-section 1 of the said section is amended by inserting after the word "jurors" in the 7th line thereof the words "as in their opinion are required or."

TIME FOR COUNTY SELECTORS TO DETERMINE NUMBER OF PETIT JURORS TO BE DRAFTED ETC.

15. Section 52 of *The Jurors' Act* is amended by inserting after the word "resolution" in the first line of the said section the words "to be passed at the meeting provided for by section 13."

POWER TO SUPPLY VACANCIES ON BOARDS OF ARBITRATION.

16. Section 8 of *The Arbitration Act* is repealed and the following substituted therefor :—

8. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, or where a submission provides that the reference shall be to three arbitrators, one to be appointed by each party and the third to be appointed by such two arbitrators or by any other person or in any other manner, or where a third arbitrator has been appointed under this Act, then unless the submission expresses a contrary contention.

(*a*) If either of the arbitrators appointed by the parties refuses to act, or is incapable of acting, or dies, the party appointing him may appoint a new arbitrator in his place.

(*b*) If either party fails to appoint an arbitrator either originally or after an arbitrator appointed by him refuses to act, or is incapable of acting, or dies, in substitution for such arbitrator for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment the Court or a Judge may on application by the party who gave the notice appoint an arbitrator who shall have the like powers to act in the reference and to make an award as if he had been duly appointed by the party so in default. The Court or Judge upon the hearing of such application upon such terms as may be deemed proper, may permit the party in default to appoint an arbitrator to act for him.

(*c*) If a third arbitrator refuses to act or is incapable of acting or dies, a new third arbitrator may be appointed in the same manner as the third arbitrator was originally appointed, for the Court or a Judge may upon the application of either party appoint a third arbitrator who shall have the like power to act in the reference and make an award as if he had been appointed by consent of all parties.

DEPUTY OR SECOND POLICE MAGISTRATES IN CITIES OF OVER 30,000 MAY PRACTICE AS BARRISTERS OR SOLICITORS.

19. Sub-section 2 of section 36 of the Act Respecting Police Magistrates is amended by adding thereto the words "but this sub-section shall not apply to a deputy or second police magistrate."

PAYMENT OF TAXES BY COLLECTOR INTO CHARTERED BANK.

40.—Sub-section 1 of section 19 of *The Act to make better provision for keeping and auditing Municipal and School Accounts* is hereby repealed and the following substituted therefor :

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 collector of taxes or by the person charged with the payment thereof paid into such chartered bank as the council may by such by-law direct, to the credit of the treasurer of 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 therefor in the books of the municipality.

SPECIAL RATE FOR PUBLIC LIBRARY PURPOSES.

41.—(1) Sub-section 2 of section 14 of *The Public Libraries Act* is amended by adding at the end thereof the words "and such further rate as may be necessary to raise the moneys required to pay the annual interest and sinking fund on moneys to be hereafter borrowed for the purpose of acquiring a site or sites or of purchasing or erecting buildings."

(2) Sub-section 3 of said section 14 is amended by striking out all the words in said sub-section prior to and including the word "buildings" in the fourth and fifth lines, and inserting in lieu thereof the words—"In case any public library board requires the council to raise as provided in this Act any money for the purpose of acquiring a site or sites or purchasing or erecting buildings, which money, together with the amount required for the expense of maintaining and managing the libraries, reading-rooms or classes under their control and of making any purchases required therefor would involve the levy in any one year of a rate greater than one-quarter of a mill on the dollar, in the case of cities with over 100,000 population, or greater than one-half of a mill on the dollar in the case of other municipalities."

(3) Sub section 4 of said section 14 is amended by adding after the word "purpose" in the fifth line of said sub-section the words "of acquiring a site or sites, or."

(4) The said section 14 is further amended by adding the following sub-section thereto :

(8) Notwithstanding anything in this section contained, the council of any city having a population of over 100,000 inhabitants may, if the council so determine, submit to the electors qualified to vote on money by-laws, any by-law for raising money for acquiring a site or sites for a public libtary or for purchasing or erecting buildings, and if so submitted the council shall not be required to pass such by-law until it has been approved of by a majority of such electors voting thereon.

AMENDMENTS APPLICABLE TO THE MUNICIPAL LIGHT AND HEAT ACT.

42. Section 14 of The Municipal Light and Heat Act is amended by inserting after the word "Act" in the second line the words "and the amendments thereto heretofore or hereafter passed."

THRESHING ENGINES, ETC., NOT WITHIN MEANING OF ACT TO REGULATE USE OF TRACTION ENGINES ON HIGHWAYS.

43. Section 10 of The Act to authorize and regulate the use of Traction Engines on Highways is amended by adding thereto the following sub-section :—

(3) The two preceding sub sections shall not apply to engines used for threshing purposes or for machinery in construction of roadways.

MAJORITY OF SHAREHOLDERS IN ROAD COMPANY TO BIND COMPANY.

58. Sub-section 1 of section 8 of The Toll Roads Expropriation Act, 1901, is amended by adding thereto the following words :

And in the case of any toll road owned by an incorporated company the shareholders thereof may by resolution in that behalf at a special general meeting called for the purpose authorize the sale of the

(*Continued on page 160.*)

Engineering Department

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

The Use of Common Roads by Electric Railways.

The principal objection to the use of a highway by an electric railway is the interference with the ordinary use of the road. As alternatives to placing the railway directly on the travelled roadway, it may be placed on the side of the highway, between what is commonly the ditch and the outside of the road allowance ; or a strip of sufficient width may be purchased adjoining and parallel to the road allowance.

Accidents from the frightening of horses are most apt to occur, during the first two or three years after the construction of an electric railway. After that, they become very rare. Horses quickly become accustomed to the cars. The ordinary farm horse, after passing an electric car two or three times, will not notice it afterwards. Women are very apt to be nervous in regard to cars when driving, and one complaint made by farmers is that they do not feel safe in allowing their wives and children to drive on the roads traversed by electric railways.

So far as the mere frightening of horses is concerned, there would appear to be little choice as to the precise location of the railway track, whether on the roadway or on the roadside. A horse that would be frightened by an approaching car, at a distance of ten or fifteen feet, will be almost as readily frightened by a car at two or three times that distance.

If the electric railway is directly on the travelled roadway, the danger, however, is greatest. There is less room to drive an unmanageable horse between the car and the ditch or the side of the road allowance. Accidents may happen by the sudden bolting of a horse as it comes very close to an approaching car. Under such circumstances, a horse is almost as apt to leap directly on the car track as to spring away from it, and in this way a serious accident is most likely to occur. This danger may be aggravated in the winter time when the sides of the road are blocked by snow drifts, and the car track, which has been plowed out, is used as a sleigh road.

By placing the electric railway on the roadside, with an open ditch separating it from the travelled roadway, actual collisions by horses jumping in front of a moving car, or backing into it, are less likely to occur.

Accidents from the frightening of horses, however, are not of common occurrence on any of the electric railways in the Province: The Metropolitan Railway is the oldest rural electric railway in Ontario. It runs from Toronto to Newmarket, a distance of twenty-eight miles, along Yonge street, one of the most heavily travelled country roads in Ontario. A cow is occasionally killed, but while some care has to be exercised at times by drivers of vehicles, an accident is of very rare occurrence. Horses have become accustomed to the cars. Those that are known to be excitable, are not used, or are driven by a person who can control them.

It is impossible to specify a safe width of roadway on which to place a track, which will apply under all circumstances. Cuts or embankment, a turn in the road, trees or houses which obstruct the view, culverts, bridges, have all to be considered in relation to each particular case. To locate an electric railway on a public highway, especially when the highway is narrower than the statutory width of sixteen feet, requires careful study on the ground.

In general, where the road is ordinarily straight and flat, and travel is not excessive, it would be safe to place an electric railway on the side of a twenty-eight foot grade, the poles carrying the trolley wire, to be outside of this. With the car and track occupying ten feet, this would leave eighteen or twenty feet for ordinary vehicles, and a horse could be at least ten or twelve feet from the car. Where there is a ditch, embankment, where the road allowance is very narrow, etc., additional protection should be provided.

Where a much travelled road allowance is as narrow as thirty-five feet, it is open to question whether, even under favorable circumstances, it should not be widened to keep at least this width clear for drainage and ordinary travel.

An electric railway on a country road should not be placed in the centre of a roadway, if this can be avoided In this position less room is available for managing a frightened horse. Also, the wheels of vehicles are more apt to become caught between the tracks. The macadam is not in actual practice kept flush with the top of the rails, T rails are used, and in turning out quickly, a vehicle may be broken or upset.

So far as ordinary travel is concerned, the most favorable location is along the roadside, outside of the open ditch ; or preferably, along a parallel right-of-way, purchased by the company, which, if little grading is necessary, need be only ten or fifteen feet wide for a single track, a matter of between one and two acres per mile of track.

A company desiring to construct its track as cheaply as possible, as a rule prefers to lay it on the centre or on the side of an old gravelled or macadamized road-bed. A common method, (though not the most acceptable to the public) is to dig trenches about ten feet apart in which to lay the ties. Shallow, longtitudinal trenches are excavated in which to place the rails. The rails being spiked to the ties, the latter are tamped to grade with whatever loose gravel, stone or mud is convenient, and the track is complete. In this way the company finds its grading and ballasting already done, and the track is laid at a minimum cost. The expense of grading and ballasting is the real saving, not the cost of the right-of-way, which would amount to between one or two acres only per mile.

A good deal of the opposition to electric railways in townships where they exist has arisen through defective agreements between the townships and companies, prepared at the time of granting the franchise. The townships of Waterloo and North Dumfries may be mentioned in this connection. In Waterloo an accident occured just south of Preston at a point where the road was exceptionally narrow. Through lack of clearness, the agreement as to liability was not sufficient to relieve the township. To defend the action and to widen and reconstruct the road, cost the municipality about $1,500.

Were a company to purchase its own right-of-way, parallel to the highway, question as to liability would not arise, except at road crossings. In a case where the road allowance is narrow, a franchise granted by a township should contain suitable regulations as to speed of cars kind of cars, care when passing vehicles definitely requiring the company to assume liability for accidents. A careful agreement of this kind would induce greater care on the part of the company in the operation of its cars, and the possibility of accident even on a very narrow road allowance, would be reduced to a minimum.

Independent Telephone.

Lines owned by individuals, municipalities and local companies are steadily growing in number in Ontario as instanced in Port Arthur, Fort William, Sturgeon Falls, Rat Portage, St. Joseph Island, and by the farmer's lines in the vicinity of Markham, Beaverton, Shelburne and Grand Valley, (Dufferin County), East Luther, (Wellington County), Harrietsville, (Middlesex), Fonthill in the Niagara District, Prince Edward County and elsewhere.

The construction of these lines is very simple and inexpensive. In the case of farmers' lines, a single line is used. The average is No. 12 copper wire, weighing 105 pounds per mile, and costing 16 cents per pound. Poles placed 150 feet apart, cost from $1.50 to $2.00 in place, Cross arms cost from 20 cents to 35 cents according to size and the number of pins. the latter price, 35 cents, providing for ten wires. The insulators cost 1 ¼ cents each. Stringing the wire costs $5 per mile. Telephone instruments cost from $10 to $14 each.

In the case of towns and villages where there is a central equipment, this will cost from $3 to $3.50 per instrument; while instead of a single wire, each instrument will have a metallic circuit, thereby doubling the amount of wire used.

For farmers' lines, the annual cost of maintenance will be about $2 per instrument; and for towns and villages with a central exchange, the cost is about $6 or $8 annually, increasing with the number of subscribers.

Wide Tires.

What is known commonly as the narrow tire, and which still is used to a large extent in many sections, is the greatest enemy of our roads, and each wagon thus equipped does more to injure a road in a season than we could possibly expect the owner to repair.

Every user of a narrow tire is certainly unconscious of the injury he is inflicting on the common property of the community. There may, at one time, have been some reason for the manufacture and use of narrow tires, but now, with the improved condition of the roads, there can be little or no reason for their continuance.

In the building of a proper road, a heavy roller is the most serviceable instrument, as by it the clean, rough material is fully compacted, and the surface made hard and smooth so that the traffic is distributed. If the road is properly crowned, the water readily sheds from the centre. The more the material is rolled, the harder and firmer it becomes. Those who are familiar with steam road rollers know that they are simply heavy loads upon three wide tires. And if loads proportioned to this were on wheels of proportionate width, all vehicles would then have the tendency to preserve the road, and to keep it in repair, rather than to cut it up as is now the case.

Ordinary heavy loads on narrow tires break, cut, rut and destroy the roads. The narrow tire, vibrating under the load, separates the stone and gravel, creating a narrow rut which marks the course for all vehicles. These ruts hold the water, and wagons then simply grind the material, deepen the rut, and allow the water to slowly penetrate the road surface and foundation.

The greatest injury done to the surface of a road is caused by vehicles which create ruts that hold water. The secret of road maintenance is to keep the road in such shape that it will perfectly shed the water. Wherever this form of road exists, a good road is usually found, whether it be of stone, gravel or dirt. To experienced councillors and those who have made the question of roads a study, it is quite apparent that our system of roadmaking is the most expensive in the world, and this is clearly demonstrated on many of our leading roads where the greatest attempt has been made to make them good.

A much greater depth of material than is necessary was at first used, but owing to the fact that the road had not been properly drained or crowned, that the gravel had not been properly prepared, carefully spread, and thoroughly rolled, the first load on narrow tires passing over, separates the material, creating a rut that remains a defect for all time. The continual use of narrow tires demands annual repairs and the application of stone or gravel, each in itself almost sufficient in quantity to make a new road, and yet the road is not good.

Many of the leading roads in Ontario, in consequence of faulty construction, carelessly selected and prepared material, applied without spreading and rolling, and placed on improperly crowned roadways, subjected to the destroying influence of narrow tires, have cost more money than have the best roads of England, or than would even pave them with asphalt.

Our system of raising large sums of money annually, spending it on our roads, and them purchasing narrow tired wagons with which to destroy these roads, seems to be a reckless system which differs so much from the care and economy exercised by the people in every other class of work, and along every other line in private and public life, as to make it ludicrous. The roads of older countries are properly and systematically built, apparently costing more than ours in first construction-but by being carefully made they are preserved and kept in repair by obliging every person who uses them, to have a width of tire that will do them the least injury.

Six inches of broken stone carefully spread and perfectly rolled, on a properly prepared road, under wide tires will make a vastly better road than sixteen inches of gravel or broken stone dumped on in a careless way and subjected to the treatment of narrow tires. Proper implements to prepare the material and carefully lay it, care in forming the road-bed and draining it, and the general use of wide tires, will lessen the quantity of material to be used, lessen the annual cost of repair, and give us cheaper, and at the same time good roads. In many sections of Ontario the interest in this matter is keen. People seeing the financial as well as other benefits have gone in for purchasing wide tires, and many of the farmers, realising their benefit and utility, are now using them exclusively, while others are determined, when buying new wagons, to have wide tires. And at public meetings it is a common thing to have the people say that they are willing to accept all of the trifling objections offered to wide tires, in the interest of better and cheaper roads.

Most councils are now considering the question of wide tires as a means of lessening the present cost of maintaining the roads and making better ones; or creating a healthy interest among the people favoring the adoption of wide tires when purchasing new wagons or renewing only, and it is a subject in which every council can well afford to interest itself.

Sidewalks.

Concrete is rapidly taking the place of plank for sidewalks, a number of municipalities having wholly given up the use of the latter material. Wooden walks now cost six or seven cents a square foot for construction, and their life, with extensive repairs, rarely exceeds ten years, while concrete, although costing nearly twice as much as plank, should last ten times as long. Concrete, made of Portland cement and gravel, or of Portland cement, broken stone and sand, although an artificial stone, is, when properly made, more durable than the natural stone commonly used for walks, and the cost is much less.

These walks are variously called "artificial stone," "granolithic," "cement," "concrete" and "cement-concrete." The term "granolithic" is properly applied to the walks of this class in which granite chips are mixed with sand and cement in forming the wearing surface. Although of similar appearance. concrete walks are not the same material as is used for asphalt roadways, with which they are very commonly confused, the asphalt pavement being a mixture of sand and mineral pitch. Asphalt is occasionally, as in the city of Kingston, used for sidewalks. Vitrified paving brick are also used to some extent for sidewalks, costing about the same as concrete, while they are commonly used for crossings, being laid on a concrete base, and taking the place of the concrete wearing surface.

The usual requirements for a concrete walk are :

(1) A foundation layer of stone, gravel, cinders, or other suitable material, consolidated to a depth of from six to twelve inches in thickness, according to the nature of the sub-soil.

(2) A concrete base from three to four inches in thickness.

(3) A surface coat of cement-mortar, one inch in thickness; mixed in the proportion of one of cement to two of sand.

The foundation layer is intended to provide a certain amount of drainage, as well as strength, and should be greater on a clay soil, retentive of moisture and subject to upheaval by frost, than it need be on a loose gravel soil.

A concrete base three inches in thickness is ordinarily required on a favorable soil, and four inches where the sub-soil is of clay, or where, for other reasons, the drainage is not thought sufficient.

Where broken stone is used in the concrete base, safe proportions would be one part of Portland cement, two and one-half of sand, and five of broken stone. This quantity of sand and cement will make a strong mortar, and there will be sufficient to surround and fill the voids in the stone.

Where gravel is used to form the concrete base, the usual proportions are, one part of cement to five or six of gravel. The gravel used in mixing concrete should

be free from clay, loam, or earthy material, and should contain about thirty per cent sand. As there is apt to be some uncertainty as to the quality of the gravel, and the uniformity with which sand is intermixed with it, a greater proportion of cement is required than with a carefully adjusted mixture of cement, sand and broken stone.

The sand used in mixing broken stone concrete should be clean, sharp, and of varying sized grain. One of the objects to be aimed at in mixing concrete is to have fine and coarse materials in such proportion to one another that the percentage of voids in the consolidated mass will be reduced to a minimum.

For the surface coat the proportion of one of cement to two of sand is customary, except at street crossings, where one part of cement to one and one-half of sand is commonly employed.

Broken Stone.

Broken stone, when of a suitable quality and properly applied, is a more durable surfacing material for roads and streets than gravel. Owing to the greater cost, it is used by those townships only which have not a supply of gravel. As ordinarily used, broken stone gives less satisfaction than gravel, because the latter binds quickly under traffic owing to the presence of sand and clay. To get the best service from broken stone a road roller should be used to consolidate it; otherwise the stones roll loosely for a considerable length of time. The feeling of councils with regard to its use is that it makes a passable road for a short time in fall and spring, but that a good dirt road for summer use is spoiled. Townships which have only broken stone for road metal, will receive decided benefit from the use of a steam or horse road roller, which will at once consolidate the stone and make a thoroughly good and smooth road for all seasons of the year.

The different kinds of stones for macadam roads cannot be completely approached from the standpoint of names. Granite, limestone, sandstone, are rocks common in this Province, but to say that granite is better than limestone, or that limestone is better than sandstone, while true of the best qualities of each, may be quite incorrect as regards particular varieties, since a good sandstone may be preferable to a poor limestone or granite. The best stone for a macadam road is that which is hard and tough, not easily affected by the atmosphere, moisture, or the varying conditions of climate. The choice will generally lie between a cheaper and less durable stone near at hand, and a more costly but better stone from a distance.

A great proportion of the macadam roads in Ontario will be constructed of limestone, since this rock is the most common, quarries being within easy access of almost any part of the Province. In quality it ranges from that which is useless to that which is almost equal to trap. Limestone, if it is tough and close grained, is an excellent material for roads on which the weight of traffic is not excessive. Some dolomitic limestones, while hard, appear to lack in toughness. Other limestones, of a slatey texture, have not good wearing qualities, are rapidly disintegrated on exposure to the atmosphere, and should be avoided. Some limestones of an open porous nature, yield readily in this climate to the effects of moisture and frost, merely turning into mud. The excellent binding qualities of limestone make up largely for a lack of hardness, a weak cement being formed by the dust, which adds very much to its durability.

All things considered, hardness and toughness to resist wear, and atmospheric action, the relative desirability of rocks is ordinarily in the following order: (1) trap, (2) syenite, (3) granite, (4) schist, (5) gneiss, (6) limestone, (7) quartizite, (8) sandstone, (9) slate, (10) mica schist, (11) marble. Of these, the last five, sandstone, slate, mica schist and marble, are of little value in roadmaking, except for the lower courses, when they are surfaced with a durable stone that will resist wear.

In determining the best quality of stone for road purposes, there are four prominent destructive agencies which have to be considered: (1) The crushing of loads; (2) the grinding action of the wheels; (3) the blows from the shoes of horses; (4) climatic influences of air, water and frost.

With respecr to the first three, a stone may have great hardness and splendid crushing strength, but at the same time be brittle, yielding readily to the grinding effect of wheels, and the blows administered by the hoofs of horses. On the other hand, a stone may be able to resist, in a measure, the second two wearing agencies, those of "abrasion" and "impact," and yet be so soft as to crush readily.

The fourth agency, the decomposing effect of the atmosphere, is one of very great importance. The denser stones, those which absorb the least water, are usually best able to resist the injurious action of frost and moisture. The weight, or specific gravity of a stone, is an indication of durability in this respect, the lighter stones usually being those which are most porous and in consequence are subject to atmospheric decay.

Another feature which a good rock for road-making should possess is that, when crushed, it should break into a compact form. A stone that, in breaking, takes thin, flaky shapes, will not wear so long as one that breaks into cubical pieces, nor will it consolidate so readily in a roadbed, for a wheel, in passing over the side of a flat stone, will throw it out of place and loosen the stones adjoining.

The tests usually applied in determining the qualities of stone are those which indicate crushing strength; the power to resist impact and abrasion; the density, determined by the weight of the stone; the amount of water absorbed. While elaborate trials may be made, a practical man can judge of the qualities of a stone by applying simple tests; by breaking the stone with the hammer; wearing it on a grindstone; crushing it in a blacksmith's vice: scratching with an iron nail; breaking small pieces with the fingers. By such simple means, a general idea of the stone can readily be formed, but no test is so conclusive as actual wear on the road.

Broken stone produced from boulders has been objected to as road metal on various grounds. The rounded sides do not permit consolidation with the minimum of vacuum. If they have been exposed to the atmosphere the boulders are apt to be decomposed, are soft and will crumble readily. The mixture of different kinds of rock on the road surface some hard, some soft, permits unequal wear, and produces a rough surface.

While these are defects which certainly are not to be overlooked in the choice of a road metal, boulders, nevertheless, constitute a very valuable material for the construction of a road, particularly in localities where they are plentiful and gravel or bed rock not readily obtainable.

In selecting field boulders, care should be taken to discard all rock which shows signs of having "weathered," or having been decomposed by the action of the atmosphere. Sandstones and granites are peculiarly subject to this disintegration, while soft limestones are very common. Rocks which should be condemned from this cause are those which crumble readily under successive blows of a hammer, or which show iron stains when broken. A little experience will quickly teach a judicious roadman to detect the stone which is unfit for road purposes.

Railway companies have shown a desire to assist in the building of roads, especially those leading the traffic to their own lines, and in some instances have delivered the material free, in others not charging more than half freight rates. When they are permitted to carry the material at slack seasons, they have expressed a willingness to do the work at actual cost of hauling, which would place some municipalities in a position to procure first-class material at even less cost than can others where material is considered plentiful. In this way, too, many towns and cities now using gravel of an inferior quality would be enabled to use a first-class quality of durable material.

The state legislature of Pennsylvania has made an appropriation of $6,500,000 for highway improvement. Two-thirds of the cost of construction is paid by the state, and one-third by the county or township. Of the amount appropriated, $500,000 is available this year, the same sum next year, $1,250,000 the third year, and $1,500,000 for the remaining two years.

The Good Roads Movement in Ontario.

The problems of transportation have never before received so great attention from the Canadian public as during the past year, and the present outlook is that this interest will be intensified rather than diminished for some years to come. In Ontario the southerly section is already a network of steam railways, yet more are being constructed or proposed. For Northern Ontario numerous railways are being projected, The Ontario Government in keeping with this spirit, is building a provincial railway from existing connections, into the territory adjacent to Lake Temiskaming, now being rapidly occupied by the flow of population from the older section to the south. Electric radial railways are asserting their utility and are steadily being extended from centres of population, along country high ways into the surrounding farm districts.

Millions of dollars have been and are being poured out by private corporations, the Dominion Government, the Provinces and municipalities, upon railways, canals, harbors, lake and ocean steamship lines, for the purpose of transporting the products of Canada's almost illimitable extent of forest, field and mine. Without common country roads, the enormous expenditure would be futile and barren of results. Every ton that is carried by railway or steamer, has first to be transported over the country roads.

The value of land is created by making it accessible, and the more perfect the means of reaching it, the more readily will land attain its greatest value. The great drawback to settlement in new districts, the cause of hardships experienced by pioneers, is the lack of means of communication Land excepted, the value of all material things, in part at least, is created by transferring them from their original position to another.

Despite the value of good roads, their improvement in Ontario has not kept pace with the construction of the greater trunk lines, the railways, and the highest development of the resources of the Province have been retarded thereby. While railways have, in some respects, altered the direction and character of traffic on the roads, the actual number of vehicles is greater than it ever was before, and this traffic must increase rather than diminish. The awakening, however, has come, and "good roads" is becoming the motto of municipal and Provincial organizations.

The agitation for better roads has developed two features of the subject, one, to which reference has been made, the value which improved roads would be to the entire Province; the other, the great need for establishing better methods for directing the present outlay on roads. It is not, at the present time, so much an increase in the amount spent on roads that is needed, but rather that the system of making the expenditure shall be rendered more efficient. A Select Committee of the British House of Commons, nearly a century ago, as the result of evidence regarding road management said: "The most improved system is demonstrated to be the most economical; and even the first effectual repair of a bad road may be accomplished with little, if any, increase of expenditure, and its future preservation in good order will, under judicious management, be attended with considerable saving to the public.

What was true then of England, is true in Canada to day. The money now being expended upon roads, and the work performed, is in most cases, scattered in small amounts, irrespective of the greater need of certain roads, or parts of roads, and the amount of travel over them. A thin veneering of disconnected improvements is soon lost, and the roads return to their former condition. With the application of money to definite and substantial improvements, the results are far different and in a few years a marked improvement will be made in the average condition of the highways. It is not always necessary that the amount spent shall be large, in order that it may be economically expended. The one principle underlies the expenditure of $50 and of $5,000, that whatever is done, must be well done.

Arch Culverts.

Concrete or other durable culvert tile are to be recommended for small waterways, where there can be no doubt as to their sufficiency to accomodate the maximum flow of water. A difficulty with tile, however, has been that they are frequently used in places where a larger waterway should be provided; and while they may be large enough for the greatest flow of water for a period of years, yet there is apt to come a time of sudden flood or freshet when they are subjected to a rush of water for which they have not capacity, and a washout results.

For this reason, when putting in culverts which it is desired shall be permanent, care should be taken to provide a waterway of ample size for the unusual, not the usual, amount of flow. To this end, arch culverts of concrete or stone masonry should be employed. Of the two material, the cheaper is concrete made of gravel and Portland cement; or of broken stone, sand and Portland cement. If properly made, concrete is not only cheaper but is equally as durable as stone masonry.

The cost of a concrete culvert will range from about $4.50 to $6.50 per cubic yard of concrete in the structure. This variation is created by the various details, the availability of gravel, the cost of Portland cement, the cost of labor and other items. The first to be constructed by a municipality always costs more than subsequent work.

A stone arch is so designed that the stones will remain in place without being held together by mortar. Concrete arches, on the other hand, are dependent upon the cohesive strength of the materials. Good workmanship and good materials, are therefore of exceedingly great importance in building concrete arch culverts. It is also essential that the sidewalls of arch culverts shall rest on a firm stratum of hardpan, gravel, compact earth, or other unyielding base, so that there will be the least possible settlement. If settlement occurs to any extent, it is rarely uniform, and the arch is thereby likely to be distorted and cracked. Usually it is necessary to excavate, for the sidewalls, a depth of about three feet below the bed of the stream. A certain depth is necessary in any location in order that the sidewalls may not only be safe from settlement, but also from the undermining tendency of the stream.

Highway Bridges.

Highway bridges are now being commonly constructed with steel superstructures, and concrete or stone masonry abutments. When timber of the best quality was more plentiful and cheaper than now, wooden bridges were no doubt most economical, but with the growing scarcity of lumber, the increased price, and poorer quality obtainable, the more durable, if more expensive materials will, after a term of years, be found the cheapest.

Wooden bridges, supported on piles do not now last for more than eight or ten years, during which period a considerable amount has to be spent for repairs. Concrete piers and abutments, if well built, should last a century or more, while the steel super-structure, with proper attention should last at least half as long. So that although the initial cost of a wooden bridge may be only one-half or one-third that of a steel and concrete structure, the latter will in the end, be the cheapest. In addition it will be safer, less liable to collapse, and will be more convenient for traffic.

Well made concrete is cheaper and fully as durable as stone masonry. Just as the cost of stone masonry varies at different localities, in accordance with the cost of stone, labor, etc., so the cost of concrete will vary according to the relative cost of gravel, broken stone, Portland cement and labor. For piers and abutments, the cost of concrete usually ranges from $4 to $6 per cubic yard, as compared with stone masonry at from $10 to $14 per cubic yard. Under almost any circumstances concrete is cheaper than stone masonry.

Among the recent uses to which concrete has been applied, is the making of bridge floors. In the County of Elgin more of this class of work has been done than elsewhere in the Province, and so satisfactory has experience been with these floors, that they are being used on all county bridges. Plank floors wear out in from two to four years and are a constant matter of expense.

(Continued on Page 160.)

Question Drawer

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

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

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

Requisition for School Moneys by Trustees of Union School Section.

424.—Clerk—Should a secretary-treasurer of a union school section, when filling out trustees requisition make application to each municipality for their proportion according to the last equalization, or should he apply to the municipality in which the school is situated for the full amount, leaving the Clerk to arrange with the adjoining municipalities?

The trustees of a union school section should make application to each of the municipalities, out of parts of which it has been formed, for the levy of its proportion of the amount required by the trustees for school purposes. Section 49 of the Public Schools Act, 1901, requires the collector of each municipality concerned to collect these rates, and pay them to the treasurer of his municipality, *who is to pay over the same without any charge or deduction to the trustees entitled thereto.*

Prevention of Shooting off Firearms in Township.

425—Reeve—What powers have township councils to pass by-law to prohibit promiscuous shooting?

Sub-section 9 of section 586 of The Municipal Act authorizes the councils of townships, etc., to pass by laws "for preventing or regulating the firing of guns or other firearms, etc."

Placing of Tenants on Voters' List.

426—P. F. S.—I hold that in municipalities married men with families who are tenants in such townships should go on part I as M. F. & T. in the voters' list if they pay rent for their homes. One of our assessors places them in part III as M. F. I cannot find any definite proof for my version in this behalf in the statutes, therefore your ruling will be gratefully accepted.

The assessor has nothing to do with determining the part of the voters' list in which any particular voter should be placed. It is his duty to assess all persons in the municipality liable to assessment, in accordance with the facts. Tenants in their own right or in right of their wives, rated for real property on the assessment roll in townships at $100 or upwards, who are British subjects by birth or naturalization, and are of the full age of twenty-one years, are entitled to be placed by the clerk in part I. of the voters' list as being entitled to vote at both municipal and legislative elections. Your idea is the correct one.

Assessment of Non-Resident Lands.

427—I. A.—Will you let me know if a municipal council are justified in assessing non-resident, unproductive lands required to be placed on the resident roll at a higher value than their actual worth or even higher than resident productive lands in proportion to their respective values and if assessed for more than their actual value and more in proportion to their worth than resident lands, then can the collector go on and seize and sell anything he may find to satisfy such tax or can the lands be sold and especially when the owner of such lands is ready at any time to settle said taxes on a fair basis and on an even assessment with resident lands in proportion to their worth?

All the lands in a municipality, whether resident or non-resident, should be assessed by the assessor "at their actual cash value, as they would be appraised in payment of a just debt from a solvent debtor" in accordance with the provisions of section 28 of the Assessment Act. If the owner of lands does not appeal against his assessment as provided in section 71 of the Act, or if he appeals and no change is made in his assessment, his taxes should be calculated on the amount at which his lands have been rated by the assessor, and if he neglects or refuses to pay the amount within fourteen days after demand or notice (as the case may be) from the collector, he can proceed to make the amount out of any goods of the person assessed liable to seizure for taxes, and if the amount cannot be made in this way, then the lands can be sold at the time and in the manner mentioned in the Assessment Act to realize the amount.

Townsnip Councils may License Billiard and Bagatelle Tables.

428—O. L.—Is it lawful for the municipal council of a township in a district (without county organization) to impose a license on pool or bagatelle tables? If not, would it be lawful to suppress or stop the same by seizing or destroying such?

Sub-sections 4 and 5 of section 583 of the Municipal Act empower councils of townships to pass by-laws "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, etc.," and "for fixing the sums to be paid for licenses required under by-laws passed under sub-section 4." In no case could the keeping of these tables be prevented by their seizure or destruction.

Raising of Cost of Erection of Steel Bridge.—Letting of Contracts.

429—D. D.—Our council proposes to erect a steel bridge over a certain stream in this municipality. The structure will cost from $1,600 to $1,800 and it will be necessary to borrow funds for carrying on the work. We will probably have to borrow $1,500. Please advise me.

1. Will it be sufficient to pass a by-law in council authorizing the reeve and treasurer to borrow the amount or would it be neceesary to submit such a by-law to the ratepayers of the township for their approval?

2. Suppose the contracts between the bridge company and conncil have been signed, what action should be taken in case the by-law, (if submitted), should be defeated?

1. The cost of building a steel bridge is not part of the ordinary expenditure of a township municipality, and unless the amount is to be paid within the municipal year within which the debt is incurred, a by-law providing for the raising of the money will have to be submitted to and receive the assent of the duly qualified electors before it can be finally passed. (See sub-section 1 of section 389 of the Municipal Act.)

2. These contracts should not have been entered into until proper provision had been made for payment of the contract price. If they were signed and the by-law was afterwards submitted and defeated, the contracts would not be binding on the municipality, as they had no power to enter into them until proper provision had been made for raising the funds.

Maintenance of Bridge on Township Boundary Line.—Snow Fences.

430—M. S. B.—1. Our council passed a motion last winter notifying the county council that we would hold them responsible for the maintenance of a certain bridge on the boundary between our township and the one to the north of us as we considered it a county bridge according to law. The county council notified their engineer to take measurements and send in a report. The engineer went on the 10th June along with two county councillors and measured the width and sent in his report, stating that the bridge was to all intents and purposes a county bridge. At the session just closed of the county council it was moved that the report of the engineer be accepted. There was an amendment moved that no action be taken. The main motion was lost and the amendment carried. What steps will be necessary on the part of the townships interested, compelling the county council to assume said bridge or can they be made to assume it and what would be the probable cost of such action?

2. Our council notified certain parties to attend the last meeting of council to make arrangements to remove certain rail fences along their property as said fences caused the snow to drift, therefore causing a considerable expense every year, keeping said road in a fit condition for travel. Some of the parties attended and agreed to remove the rail fence and put up wire, the council granting 15c per rod as a bonus. The rest of them paid no attention to the notice and did not attend. What is the proper way for the council to take to compel those parties to remove rail fences, who paid no attention to the notice?

1. It is not stated whether this is a county bridge within the meaning of sub-sections 2 and 4 of section 613 of the Municipal Act, or, if it is, whether the county council has passed a by-law pursuant to sub-section 3 of section 617 of the Act. If the county council has passed such a by-law, and the river, stream, lake, or pond which the bridge crosses is less than 80 feet in width, the county is not bound to maintain it. If the river, stream, lake, or pond is 80 feet or more in width, or if no such by-law has been

passed, and there is a dispute between the county council and the councils of the local municipalities as to whether the bridge is a county bridge or not, section 618 of the Act provides the proceedings necessary to be taken to settle the matter in dispute. In a case where the stream is less than 80 feet in width we think the county council can pass a by-law under sub-section 4 of section 617 after an action has been brought to compel it to maintain such bridge, but the county would in all probability in such a case be ordered to pay the costs of the action as far as it went.

2. Section 1 of chapter 240, R. S. O., 1897, (An Act Respecting Snow Fences), empowers councils of townships to require owners or occupiers of lands adjoining highways therein to remove fences that cause an accumulation of snow, and to replace them with others that will not have this effect. It also empowers such councils to compensate such owners for the additional cost of the new fences required to be erected. If there is any dispute as to the amount of this compensation, provision is made for a settlement thereof by arbitration in the manner provided by the Municipal Act. In case the owner or occupant refuses or neglects to comply with the requirements of the council in this regard within two months after the compensation has been settled, section 2 of the Act authorizes it to remove the old fence and erect the new, and to recover the amount of all costs and charges thereby incurred by the council over and above the amount of the compensation agreed upon or settled by arbitration from the occupier or owner in any division court having jurisdiction in the locality.

Enforcing Performance of Statute Labor in Districts.

431—A. E.—Will you please let me know how the commissioners are to go about enforcing the statute labor on lots where the owner is not living in the township. You said in your reply of April 15th, that a land owner who does not live on his lot and who has no improvements can be compelled to do statute labor. By what means can we enforce it. Can we register it against the lot or how are we to go about it? That is unpatented land. If he wont do the work, won't pay for it, and we cannot put it against the place, what can we do?

Section 127 of the Assessment Act provides the remedy in this case. It enacts that "any person liable to perform statute labor under the next preceding sixteen sections, who, after six days' notice requiring him to do the same, wilfully neglects or refuses to perform at the time and place named by the commissioners the number of days statute labor for which he is liable, shall incur a penalty of $5, and in addition $1 for each day in respect of which he makes default, the same to be paid to the commissioners and to be expended in improving the said roads, and upon such person's conviction thereof before a Justice of the Peace, having jurisdiction in the township, such justice shall order the penalty together with the costs of prosecution and distress, to be levied by distress of the offender's goods and chattels." In connection with this we may say that a Justice of the Peace cannot summon a person who is outside of the territory over which he has jurisdiction, and in such a case we do not think that any procedure is provided for enforcing the performance of statute labor.

Qualification of Arbitrators—Validity of Award—Time for Moving to set Aside—Limit of County's Borrowing Powers.

432—F.—An arbitration was held between two municipalities; one municipality appointed a member of their council, the other appointed their treasurer, the two met and appointed a third. Both municipalities appointed their arbitrators by by-law. No objection was made to the legality of the appointments, nor any motion made to quash said by-law, although the appointments are apparently contrary to R. S. O. chapter 223, section 457. The arbitrators took evidence and made their award, which apparently is satisfactory to all concerned, no property of any kind being in any way affected.

1. Is said award valid or legal?

2. If said award is invalid or illegal is there a limited time in which application can be made to set same aside?

3. What is the limit of time to set same aside?

5. What is the largest sum a county may raise by debenture for the improvement of highways without submitting by-law re the same to the ratepayers for their approval?

1. This arbitration being authorized by the Municipal Act, and by the Act Respecting the Grant of Provincial Aid for the Improvement of Highways, this award is valid, unless and until it has been set aside as a result of proceedings instituted with that object in view. The fact that two of the arbitrators were disqualified by section 457 of the Municipal Act to act in the matter, does not of itself render the award void or illegal, but would be a ground for setting it aside on application made for this purpose.

2 and 3. Yes, within six weeks after the publication of the award. (See section 465 of the Municipal Act.) The award is "published" when the arbitrators give the parties notice that it may be had on payment of the charges, but the High Court or a Judge thereof may, under special circumstances, allow the application to set aside an award to be made after the expiry of six weeks.

4. Yes.

5. $20,000. See sections 388 and 390 of the Municipal Act and section 9 of chapter 32 of the Ontario statutes, 1901. We are not to be understood to mean that in every case where the amount required to be raised for the special purpose mentioned a county council can without the consent of the ratepayers raise $20,000. If a county council for example has in any one term raised say $10,000 over and above what is required for its ordinary expenditure not more than $10,000 could be raised for this special purpose over and above other sums raised in addition to ordinary expenditure for other purposes.

Payment of Damages for Sheep Killed.

433—G. W. T.—At a recent session of council two ratepayers applied for compensation for sheep killed and injured by dogs. The dogs were two in number, both parties saw the dogs and after diligent search found the owner of one dog who acknowledged, that, although his dog was tied and fed at night, yet on that particular night he was absent, and he agreed to pay one-half of the loss. No owner could be found for the other dog. Under these circumstances is the township liable to the owners of these sheep for two-thirds of the one-half of their value?

Assuming that the council of the township has not passed a by-law pursuant to either section 2 or section 8 of chapter 271, R. S. O., 1897, if the council is satisfied that the owner of the dog identified has agreed to pay the full extent of the damage committed by his dog, whether it be one-half or any other proportion of the whole amount, then the council is liable for and should pay these ratepayers two-thirds of the difference between the whole amount of the damages they have sustained and the sum they have received or are to receive from the owner of the dog identified.

Owner of Sheep Running at Large Liable for Damage to Hedge.

434—W. D. M.—In the absence of a by-law permitting sheep to run at large in our township, who is responsible for the damage to a hedge fence along road side caused by sheep eating same from the road allowance?

2. What procedure should the owner of the hedge take to restrain the owner of the sheep from allowing his fence to be damaged? Can he obtain damages?

1. The owner of the sheep.

2. The owner of the hedge can bring an action in the proper court for the damages which he sustains.

Removal of Obstruction on Road Allowance—Power to Close Road.

435—X—In 1852 a public road was legally opened through private property and used for some time; statute labor performed thereon. For some years however part of the road has not been used by the general public, owners of lots being allowed to put fences or bars across at different parts. A town site has been laid out on the banks of the Rideau Lake and this road is in the vicinity of the said town site. Two petitions will come before the council at next meeting, one praying that the above road be closed, the other that the obstructions be removed therefrom.

(a). In case the council passes a by-law ordering the pathmaster to have obstructions removed, and in case the present owners who possibly found said obstructions thereon when they came into possession, refuse to remove said obstructions, what provision is made in the statutes for collecting from the parties the expense of removal?

(b). Some claim said expenses can be entered on the collectors roll. I cannot find any authority for that contention. Am I right?

(c). As this road is not an "original road allowance" it will not be subject to section 660 (2) (b) in case the legal steps be taken to close it. Am I right?

(d). One J. P. claims that the council cannot close this road as it is the shortest distance

from the aforesaid town site to the Perth travelled road. In case he is right, please quote authority. The distance will be about one mile shorter.

(*a*) None. See sub-sections 3 and 4 of section 557 of the Municipal Act.

(*b*) Your contention is correct.

(*c*) Yes.

(*d*) It is optional with the council as to whether it closes the road in question. It can do so under the authority of section 637 of the Municipal Act, after the provisions of section 632 have been strictly observed. It altogether depends upon whether general public convenience requires the road or not, and as to this members of the council are the best judges.

Declaration of Doctor as to Death Not Necessary.

436—E. H.—Is it legally necessary for a medical practitioner to be called in case of a death to declare that the person is dead?

No.

Threshing Engine Not Within the Statute.—Cost o Attendance of Reeve Under D & W Act.—Burial of Person Found Dead.—Power of Drainage Court of Revision and Engineer.—Exemption of Farmer's Sons From Statute Labor.—Ownership of Gravel in River Bed.

437 SUBSCRIBER—1.—Is a threshing traction engine witnin the meaning of the law. If not, please explain why.

2. Where the reeve of a township is called out and attends the first meeting under the Ditches and Watercourses Act, for the purpose of agreeing, if possible, to just proportions, where should his expenses be charged to the drain or to the general funds of the municipality?

3. In a case where a man was killed on the G. T. R. tracks by one of their trains in a certain township and removed by them to a village in another township and left there for interment. Who is responsible for burial expenses? The man being a stranger and not belonging to either township, the coroner of the village mentioned gave instructions to the undertaker to bury.

4. Has Court of Revision on an appeal, any power to change the amount allowed in money by the engineer in his report to any person for the benefit of any private ditch or any ditch dug under the D. & W. Act? Certain parties claiming that they dug the ditch below their own lots and they were entitled to the money instead of the owners of the lots the ditch passes through.

5. Did the engineer discharge his duties in allowing in money to the owner of the lot he found the ditch in or should he have allowed the persons he found mentioned in the previous award?

6. Please explain in what capacity a man assessed as farmer's son is exempt from statute labor. Must he be sole manager of the farm?

7. When a road runs along the River Thames bank for forty years, but the original mapped road is back through the farm 40 or 50 rods has the owner of the lot any right to charge for the gravel taken out of the river for the benefit of the roads as all that is necessary to get the gravel is to drive down the bank off the travelled road?

1. The Act to authorize and regulate the use of Traction Engines on Highways (R. S. O., 1897, chapter 242), does not apply to traction engines used for threshing purposes. Section 43 of the Statute Law Amendment Act, 1903, adds the following sub-section to section 10 of the Act: "(3) The two preceding sub-sections shall not apply to engines used for threshing purposes or for machinery in construction of roadways.

2. To the general funds of the municipality.

3. If there is an Inspector of Anatomy for this locality, this body should have been placed under his control as directed by section 2 of chapter 177, R. S. O., 1897. If there is no such official, the body should be buried at the expense of the municipality into which it was carried by the railway company, because it was there it was found dead and unclaimed so far as the municipality is concerned. (See section 19 of the Act.)

4. No. The only complaints that a Drainage Court of Revision has authority to entertain are those mentioned in section 31 of the Municipal Drainage Act (R. S. O., 1897, chapter 226), that is, complaints as to undercharge or overcharge of lands or roads in the municipality, the wrongful omission of lands or roads from the assessment, or that lands or roads which should have been assessed for outlet or injury liability have been omitted wrongfully.

5. This question is not put very clearly, but by sub-section 4 of section 9 of the Municipal Drainage Act, the engineer is directed to allow in his report in money the value to the drainage work of any private ditch or drain, or of any ditch constructed under any Act respecting ditches and watercourses, to the person who actually constructed, or whose lands are liable for the maintenance of the ditch or drain, or portion of ditch or drain allowed for.

6. The simple fact that a farmer's son is rated and entered as such on the assessment roll of the municipality entitles him to exemption from the performance of statute labor under section 106 of the Assessment Act.

7. It is not stated whether the lands of this owner are bounded by the water's edge of the river or extend midway across the stream. If the former, the owner has no right to charge for gravel taken out of the bed of the river, and if the latter is the case, he is the owner of the gravel in the river between its bank opposite his land, and the middle of the stream, and no one has any right to remove it without his consent.

Duties of Pathmaster.

438—J. S. B.—A is pathmaster in division No.— and has nine days statute labor charged against him. He has made declaration of office, called out the men in his division, superintended the work, which took three days of his time, and returned his road list to the clerk with the work all marked as having been performed. He had no extra hands on to perform his own labor.

1. Has A satisfied the law in having given himself credit for nine days labor performed?

2. How many days labor did he perform.

1 and 2. There is no statutory definition as to what constitutes a day's statute labor. This is a matter that ought to be, and usually is, regulated by the council of the municipality by a by-law passed under the authority of sub-section 5 of section 561 of the Municipal Act. It is not stated whether this municipality's council has passed such a by-law or not. It is the duty of a pathmaster to exercise a general supervision over the road division for which he has been appointed not only while the statute labor is being performed therein, but during his whole term of office, and it is customary, and we think equitable, to allow him all his statute labor, whatever it may be, for performing this duty. In addition to this we may say that the Assessment Act does not appear to apply to the pathmaster. It does not require him to make a return as to himself. (See section 110.)

Duties of Council and Assessor as to Assessment Roll.

439—J. H. M.—The town of C advertised for application for assessor at a salary of $30. D sent in an application and was accepted. He went on with his job, and on the day he was finishing, the town clerk told him that they always had their roll arranged alphabetically. That was the first intimation he had of such an arrangement. After returning the roll to the town clerk, the council thought the total assessment on the roll rather low for their town, and they had a certain party put in a general appeal to have the assessment raised by the court of revision. The clerk notified D to attend the Court of Revision, which he did, and was not asked to do anything, the clerk making a memorandum of of all the changes made on the roll. At the close of the first day the mayor and one of the councillors told D that it was going to take several days to go over the whole thing, and that he had better go home as he lived about sixteen miles out of town. D went home and at the close of the court of revision, he was notified by the town clerk at the request of council, to come and complete the work done by the court of revision. D went in and had to make out a new roll, which took him about three days. At the next meeting of council they passed an order in favor of D for $30 for assessing and said nothing about all the other extra work he had done.

Is it necessary to have a roll alphabetically arranged and is D supposed to do this work for the $30, nothing being said about it in the contract.

2. Is D not entitled to pay for attending court of revision on the first day and for copying the work of the court of revision, and making out a new roll, he having to make three rolls. He kept his roll as clean as possible when going through the town and made all the work with the pen, thinking that he would not have to copy it, or have it arranged alphabetically, nothing being said about it. They say they paid their clerk $15 for copying their work. I maintain the assessor should have done this.

3. Cannot D compel the council to pay him for all his extra time that he lost after doing the assessing and what is a fair day's wages for such work, he having to board at a hotel for about three weeks. The members of court of revision got $2.50 per day.

1. There is no legal authority for filing or for the entertaining by a municipal court of revision of a GENERAL appeal against the assessment roll of a municipality, as appears to have been done in

this case. The proceedings appear to have been wholly irregular. An appeal should be filed against each individual assessment, and the party assessed should be duly served with the notice of appeal, as is required by section 71 of the Assessment Act. The statutes do not require any assessor to arrange his roll alphabetically—this is a matter of taste, and should be arranged for by the council with the assessor at the time of employing him. If this was not a condition mentioned at the time the assessor was engaged, if he has prepared and returned his roll in accordance with the provisions of the Assessment Act, he is entitled to be paid his salary whether the roll is arranged alphabetically or not.

2. We do not think that D is entitled to any extra pay under these circumstances. He was not bound to attend this court of revision, or do any further work in connection with the assessment roll after he had prepared and returned it, in accordance with the provisions of the Assessment Act. He should have made a new contract with the council to do this extra work, if the council had any legal authority to employ him or anyone else to do it, which we do not think it had.

3. No, for the reason given in our answer to question number 2.

Appraisement of Damages by Fence-Viewers Under the Poundage Act.

440—W. C. D.—1. Where cattle are impounded and the distrainor claims damages and the owner of the cattle protests against the amount charged, what proceedings should the pound-keeper take?

2. Should the owner, the distrainor, and the pound-keeper each name a fence-viewer?

3. Who should notify the fence-viewers?

4. In naming a fence-viewer has it to be done in writing?

1. The proceedings to be taken in a case of this kind will be found in sections 20, 21 and 22 of chapter 272, R. S. O., 1897.

2. Yes. See section 20 of the Act.

3. The owner, distrainor and pound-keeper should each notify a fence-viewer.

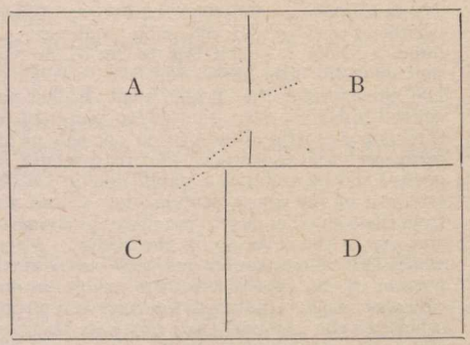
4. The statute does not require these notices to be given in writing, but to facilitate proof of the giving and receipt of the notices to and by the fence-viewers, in case of dispute, it is better that written notices should be given.

A Deviating Townline—Statute Labor of Person Unassessed.

441—J. A. G.—A is one municipality, B and C another and D the third. The dotted line is a road that strikes the townline between A and B, runs south on it about 30 rods, then runs southwest through first concession of A 100 rods, crosses townline between A and D, runs southwest 40 rods through corner of D and crosses townline into C.

1. Is the road that runs through corner of A in lieu of townline between A and B? None of the road shewn is on road allowance only where it strikes townline between A and B, but it is the recognized road, as townline between A and B was not opened up by them.

2. Can a man who is not assessed, but lives on a road beat be compelled to do one day's statute labor? If so, what steps should be taken to compel him, and by whom?



1. If this deviating road was made only for the purpose of obtaining a good line of road, it would most likely be held to be a road established in lieu of the town lines between the several municipalities, and under the joint jurisdiction of these municipalities. (See section 622 of the Municipal Act.) This was the opinion of Mr. Chief Justice Robinson under similar circumstances in County of Brant v. County of Waterloo (19 U. C. R. 450), and this decision was approved in County of Victoria v. County of Peterborough (15 O. R. 446; 15 A. R. 617.)

2. If this man is not otherwise assessed or otherwise exempt by law, he is liable to perform one day's labor in the township under section 100 of the Assessment Act. If he neglects or refuses to perform the statute labor, he is liable to the penalty mentioned in sub-section 2 of section 107 of the Act.

Early Closing By-Laws in Townships.

442—H. L. B.—We have no incorporated town or village in our municipality. Can we (upon petition from a number of ratepayers) pass a legal by-law making it compulsory on our merchants to close their places of business at 7 o'clock p. m. two or three nights during each week? In other words has a township council any such power?

Yes, if the petition is signed by a sufficient number of the ratepayers. See section 44 of chapter 257 of R. S. O., 1897, particularly clauses (*d*) and (*e*) of sub-section 1 and sub-section 2.

Requisites of Petition for Construction of Cement Sidewalks.

443—J. B.—A petition has been presented to this council to construct as a local improvement, a cement sidewalk and has been signed by a two-thirds majority of the owners fronting and abutting on said street according to the last revised assessment roll. It is claimed that there are other owners whose names have never appeared upon the present or any other assessment roll, and have never been assessed as such owners. We are threatened with proceedings if we build the walk. The petition, in so far as value is concerned, is largely in excess of the value of the property not represented, but the numbers if the owners, not represented by signature nor not appearing on the roll is not enough to qualify said petition. Have the council the right to build the walk under such circumstances.

If the petition is signed by at least two-thirds in number of the owners of the real property to be benefited by the construction of this sidewalk, as shown by the LAST REVISED assessment roll of the town, and the owners so signing the petition represent at least one-half in value of such real property to be benefited, the council has legal authority to go on with the work. If the above requirements of the statute are complied with, the fact that there are owners of property to be benefited, whose names do not appear on the assessment roll, does not affect the question.

Clerks Certificate to Collector's Roll—Requisition for School Moneys—Payment of School Moneys to Union Section.

444—J. H.—1. I want to know if the clerk should attach *warrant* to the collector's roll. If so, where is his authority for so doing? I have never seen it done, and cannot find anything in the municipal law requiring him to do so.

2. The trustees of a school section send requisition to clerk asking for say $500. The requisition says farther on "This does not include special grant of $150 (new law)." Should the clerk levy for the whole $500, or should he deduct the $150, and levy the balance? The clerk not knowing anything further than is contained in the requisition.

3. The treasurer of an incorporated village school board union with township asks the township treasurer to send him the amount due from township without sending an order. Should the township treasurer send him the money under the circumstances?

1. We agree with you that there is no statutory authority for the attaching of a warrant by the clerk to the collector's roll prior to its delivery by him to the collector. After the clerk has prepared his roll in accordance with the statute, all he is required to do, is to append thereto the table mentioned in sub-section 2 of section 130 of the Assessment Act, and to certify to the roll under his hand as required by section 131.

2. We think it quite clear from this statement of the facts that the clerk should levy the whole $500 on the taxable property of the public school supporters in the section whose trustees have filed this requisition.

3. The township council should by resolution authorize the issue of an order for this sum to the treasurer of the union school board, and the township treasurer has no authority to pay the amount, until such an order is presented to him.

Payment of Expenses of Ditches and Watercourses' Drain.

445—T. B.—In 1900 the engineer on requisition made examination of certain property under the Ditches and Watercourses' Act, and laid out a ditch to be completed first November 1900, by parties owning properties that ditch ran through, the work was done and expenses paid by owners.

In 1902 by requisition of other parties to get an outlet into same ditch, engineer came on and gave an outlet into it and taxed the first parties with part of his expenses as he claims he had to make a new award. Was it legal to make them pay the second time after the construction of the ditch?

It does not appear whether the persons interested under the first award who were charged with a part of the engineer's fees were notified of the proceedings which led

up to the making of the second award or not. If they were not we do not think the engineer had any power to charge them with any part of his fees and moreover we think that even if they had been it was inequitable to charge them with part of his fees. It is a principle of law that no person's property should be charged with the payment of money for public works or work of the kind in question without notice of the proceedings. If the parties referred to were notified of the proceedings the award will stand good unless altered by the county judge on appeal to him.

Time for Levy of School Moneys—Private Cemetery Liable to Assessment and Taxation.

446—G. V.—1. The trustees of schools are asked to hand to council by August 1st their requisition for the amount required for school purposes. What period should the requisition cover? Up to December 31st 1903 or up to December 31st 1904?

2. A private individual owns a cemetery and the revenue derived therefrom goes to his private use. Is the cemetery assessable?

1. The requisition on the council for the levy of moneys for school purposes to be filed by the 1st August of the present year, should be for such moneys as are required for the year ending December 31st, 1903. See sub-section 9, of section 65, of The Public Schools Act, 1901.

2. Whether the exemption mentioned in sub-section 3 of section 7 of the Assessment Act extends to all burying grounds or only to those used in connection with a place of worship, is a question not yet determined. We are inclined to the opinion, however, that a cemetery which is not connected with a place of worship or is not public property, but is owned by a private person, is subject to taxation.

Township Liable for Accidents—Application of Dog Tax —Conduct of Council Meeting.

447—W. T. H.—1. A pathmaster puts stone on the road not broken according to by-law of township, and council notifies him to break them according to law. If accidents occur, who is liable for the damages?

2. Can a council apply dog tax to the ordinary expenses of the township, or must they keep them separate for paying damages done to sheep by dogs?

3. Is it lawful for a reeve to give notice to council of his intention to introduce a by-law at its next meeting, and would it be lawful for him to introduce such by-law?

1. The municipality.

2. Section 7, of chapter 271, R. S. O., 1897, provides that "The money collected and paid to the clerk or treasurer of any municipality under the preceding sections, shall constitute a fund for satisfying such damages as arise in any year from dogs killing or injuring sheep or lambs in such municipality, and the residue, if any, shall form part of the assets of the municipality for the *general purposes* thereof, but when it becomes necessary in any year for the purpose of paying charges on the same, the fund shall be supplemented to the extent of the amount which has been applied to the general purposes of the municipality."

3. Yes.

Status of Bridge—Township's Liability for Drainage.

448—CLERK.—A river runs across A's farm; A's buildings are erected on the portion of farm between the river and the public highway. A builds a bridge to enable him to get to the rear portion of his farm across the river. When A had the piers of the bridge built, he led the council to believe that the bridge was built on the unopened road allowance on one side of his farm, and that sometime the road would be opened and be useful as a public road. On the strength of the above statements, A obtained from the council money to purchase the stringers and part of the covering for the bridge. Afterwards the council found out that only a small portion of the approach to the bridge on one side was on the allowance for road and on the other side the approach was not near the road allowance on account of the river running diagonally across the road allowance and the bridge being built straight across the river. The council then notified A that unless the approaches to the bridge were secured to the township, they would remove the covering, but nothing more was done about it, so that at present the bridge cannot be reached without travelling through A's fields, and it is not likely the road will ever be opened, for it is of no use to any person. Statute labor has been performed on this bridge without the consent of council.

1. From the above facts is this a private bridge or a township bridge?

2. Can the township council pass a by-law closing up this bridge or ignoring the bridge altogether?

3. If A meets with an accident while crossing the bridge, to or from his work, is township responsible?

A and B live on opposite sides of the road. A digs a ditch through his land to the road. B digs from the other side of the road across his land to give A an outlet. The stretch across the road (66 feet) is not dug. Now the township has a culvert at this place to carry away the spring floods, and council does not want to bear the expense of digging the connecting piece of ditch as it is no benefit to the road.

4. Who should bear the expense of the piece across the road?

5. If the council should do it, must council put in a covered drain? A's and B's portions are covered across their respective lands.

1. From the facts as stated we are of opinion that this bridge, with the exception of that portion of the approach which is on the highway, belongs to A, and is his private property. The council should have ascertained before giving A the stringers for this bridge, that he was stating the facts. Having given him these stringers the council cannot now remove them or recover their value from A.

2. If the road allowance is open for travel to the river, in the locality and the bridge is in such a position as to invite travellers to use it, the council would be responsible for any accident happening thereon, owing to its lack of repair. The council can pass a by-law pursuant to section 637 of the Municipal Act, (after having strictly observed the preliminary proceedings prescribed by section 632 of the Act), closing this road, and if public convenience does not need the road, it should do this. The existence of this bridge does not defeat the council's authority to exercise this power.

3. The municipality will not be responsible for any accident that may happen to A on this bridge, unless it occurred on that part of the approach which is on the road allowance, and even then their liability is very doubtful.

4 and 5. The council is not bound to construct this ditch across the road or to bear the expense of so doing. This is a case where proceedings should be instituted to have an award made under the provisions of the Ditches and Watercourses Act. A requires an outlet but the council is not bound to provide an outlet and the council should not make any connection for A because B or some subsequent owner might complain that water was being illegally discharged upon his land by A and the municipalities.

Closing Road—Building Cement Walks in Police Villages

449—L. W.—1. In this township there is a side road that is not open all the way through, but the owners of the lots along side of the side road have been using it to go to their fields. Now the council considers it unsafe to the travelling public to have this road open a part of the way, but the owners of the lots lying along side object. Has the council power to close said road, and if so, will they have to pass a by-law?

2. Have township councils power to pass by-laws to enable police trustees of police villages situated in the township to make local improvements, such as cement walks, in the same way as towns, etc., usually do this work; that is by borrowing money and extending payment over a term of years, and the village property to be held responsible for repayment.

1. The council has authority to pass a by-law closing this road allowance, pursuant to the provisions of section 637 of the Municipal Act, if it deems it in the public interest to do so after all the preliminary proceedings prescribed by section 632 of the Act have been strictly observed. A by-law must be passed under the authority of the above section 637 in order to accomplish this object. But section 629 of the Municipal Act must be kept in view in exercising this power. That section provides that no municipal council shall close up a road whereby any person will be excluded from ingress and egress to and from his lands or place of residence, unless the council in addition to compensation also provides for the use of such person some other convenient road to the said lands or residence.

2. A township council has no authority to pass by-laws enabling the trustees of a police village to do work of this kind, but it may pass by-laws for the construction of local improvements of the kind mentioned in section 664 of the Municipal Act, as enacted by section 143 of the Municipal Amendment Act, 1903, (subsection 2 of which provides for the passing of by-laws for the construction of cement or other sidewalks) to be paid for in the manner provided in section 664 and following sections of the Municipal Act. Section 165 of the Municipal Amendment Act, 1903, makes provision for the incorporation of police villages, and adds sections 751 to 757 inclusive to the Municipal Act. Section 752 makes provision for the passing of by-laws for the construction of local improvements by

the police trustees after they have become so incorporated.

Liability for Interest on School Moneys.

450—I. F.—Kindly explain answer to question No. 2 of 416 Municipal World, 1901. When read with answers 1 and 2 to question 109, 1901 they appear somewhat contradictory.

2. I have pointed out to our council that interest should not be charged to school sections for money they require. See question 225, 1902. They say this may be so in a town. Are not the conditions the same in a township?

1. We have looked up the questions and answers quoted, and cannot find that they relate to the same subject matter, nor is there any similarity between them. Perhaps a mistake has been made in giving the numbers.

2. The latter part of sub-section 1 of section 71 of the Public Schools Act, 1901, provides that "in the case of rural schools, all moneys collected shall be paid to the secretary-treasurer of the section on or before the 15th December." If the township council is not ready to pay this money on the day fixed by the statute, and has to borrow money to enable it to do so it has no power or authority to charge the interest on the money borrowed for the purpose, to the school section.

Pathmaster's Duties.—Barbed Wire Fences.

451—First. On the 17th concession of our township there is a small lake which would require bridging, but the council consider the cost too great for the number of people who would receive benefit. The council fenced the road allowance leading to the lake on both sides. Now one of the pathmasters interested in bridge took his statute labor off his own beat and did it at lake making approaches and laid down the fence which we paid for building. Now I will enclose one of our road lists you will see by-law on back. He has to the first of September to complete this work. If he does not do his work on his own beat all of the men went and did their work at lake except one he did it in proper beat, can the council collect amount of statute labor of the ratepayers in his division? Is he liable for taking down fence?

Second: Is there anything in statutes prohibiting farmers from building barbwire fences along public roads as we have passed a by-law granting 25c per rod where council thought it would be a benefit in winter. Now some have built barb and are applying for bonus there is nothing in by-law what kind of wire fence.

1. Neither the pathmaster nor any of the property holders in his road-division, liable to perform statute labor, had any right or authority to perform their statute labor elsewhere than in their own road-division, unless otherwise directed by the municipal council. The council can refuse to accept this statute labor as performed and treat all parties who so performed it as defaulters from whom commuted statute labor can be collected under the authority of sub-section 1 of section 110 of the Assessment Act. We may say that we consider the by-law, in so far as it requires all statute labor to be performed prior to the 1st September in each year, objectionable. Sub-section 1 of section 110 of the Assessment Act requires all statute labor lists to be returned to the clerk before the 15th August in each year, and a township by-law cannot over ride or alter the positive provision of the statute in this regard. The pathmaster should be required to restore the fence that had been erected for the protection of the public, and is liable to indictment for removing it and thus rendering the highway dangerous for the travelling public.

2. No.

Collection of Expenses of Contagious Disease Patients Under Quarantine.

452—P. M.—We had several cases of small-pox in our township last spring. We have no isolation hospital. The patients were quarantined in their own homes. Provisions and necessaries were supplied to the different houses so quarantined. Now we wish to know how to proceed against two parties to obtain a refund to the township of the amount of moneys paid out for same.

If these patients, or tneir parents, or other person or persons liable for their support are able to pay it, the amount disbursed by the municipality for provisions and necessaries furnished them while under quarantine, can be collected from them by ordinary process of law as a debt due from them to the municipality. If the patients, or their parents, or other person or persons liable for their support are unable to pay the amount it will have to be borne and paid by the municipality. (See section 93 of the Public Health Act, R. S. O., 1897, chapter, 248.)

Collection of Expenses of Quarantining Contagious Disease Patients.

453—I. A.—I am instructed by our council to write you asking for full information regarding the payment of cost of attendance on small-pox cases and other contagious diseases.

1. Are the parties who are placed under quarantine liable for the costs, and would it make any difference if they were quarantined on suspicion and no case developing, and how long can the municipality go back to collect and how will they proceed?

Can the amount be charged on the collector's roll and after rendering the account to the parties they fail to pay?

1. If by "costs' of quarantining persons afflicted with, or suspected of having been exposed to any contagious disease, is meant the cost of furnishing them with nursing and other assistance and necessaries, section 93 of the Public Health Act, (R. S. O., 1897, chapter 248), provides that such costs shall be borne by the person afflicted or his parents or other person or persons liable for his support, if able to pay the same, otherwise by the municipality. It makes no difference whether the parties were quarantined on reasonable grounds for suspicion or not. The amount disbursed in this way can be collected from the parties liable under section 93 by ordinary process of law, at any time within six years after the liability was incurred.

2. No.

Application of Poundage Fees.

454—F. D. S.—Can the council of an incorporated village pass a by-law fixing the scale of fees to be paid by owners of animals impounded providing that part of such fee be paid to the pound-keeper, part to the person bringing the animals to the pound, and part to the municipality. The municipality rents a pound and wishes to provide for the expense of same.

Sub-section 4 of section 546 of the Municipal Act empowers the councils of incorporated villages to pass by-laws "for determining the compensation to be allowed for *services rendered* in carrying out the provisions of any act with respect to animals impounded, etc., but such councils have no power to pass by-laws, providing that a portion of such compensation shall be paid as a "bonus" to persons impounding animals, and another part received by the municipality to be applied towards paying the rental of the pound or otherwise.

Public School Trustees Cannot Lease School Premises.

455—J. D. P.—Has the Board of Public School Trustees power to lease school premises for the purpose of operating thereon for petroleum?

By sub-section 12 of section 65 of The Public Schools Act, 1901, the trustees of a public school section are empowered "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," but the Act does NOT authorize the LEASING of school premises for the purpose of operating thereon for petroleum or any other purpose.

Proportion of Votes Necessary to Carry Bonus By-Law.

456—G. L. G—We expect to vote on a by-law for the establishing of a factory in this municipality by way of a loan. There are 196 property owners on the list, four of whom are dead, thirty are non-resident. How many votes will it require in favor of the passing to carry the by-law.

Section 348 of the Municipal Act, as amended by section 73 of the Municipal Amendment Act, 1903, provides that the voters' list shall be a list "of all persons appearing by the then last revised assessment roll, to be entitled to vote, etc., and the clerk should make up his list from the assessment roll alone including the names of non-resident voters on the assessment roll and of voters who have died since the revision of the roll; but we do not think that the names of ratepayers who are dead can be counted in ascertaining whether a sufficient number of ratepayers have voted for the by-law, but the names of non-residents entitled to vote on the by law must be counted. Therefore the total number of votes to be counted in this case, in arriving at the proportion necessary to carry the by-law is 192. If the vote against the by-law does not exceed one-fifth of the total number entitled to vote, the assent of three-fifths of the ratepayers or 116 is necessary to carry the by-law and if the vote against the by-law exceeds one fifth of the total number entitled to vote, the assent

of two-thirds of all the ratepayers entitled to vote, or 128 is necessary. (See section 366 a of the Municipal Act, as enacted by section 8 of the Municipal Amendment Act, 1900.)

Members of Drainage Court of Revision not Entitled to Pay—Time for Passing of Supplementary By-law—Distribution of Surplus—Collection of Assessments Omitted—Personal Liability of Councillors.

457—Y. R. H.—1. Council and reeve charge for Court of Revision, and other services re drains, can this be considered part of the cost of the work?

2. How long after *work completed* or *debentures paid* can council levy by supplementary by-law for deficiency?

3. Drainage work account shews a surplus due ratepayers. All assessments have heen paid in accordance with by-law. Can council now distribute the surplus pro rata in cash to owners of lands assessed for original construction?

4. Assessments not levied on first collector's roll after by-law passed. In case of five yearly payments, can an assessment be levied in the sixth year for the first omitted?

5. If any annual assessment is omitted can it be put on the following or any subsequent year?

6. Is it compulsory to levy assessments each year after drainage by-law passed? Will issue of debentures, non-completion of work, or proceedings to quash, affect answer to this?

7. If a council in any year instructs council or clerk not to enter a drain assessment, or a collector not to collect it, after it is entered on the roll, and it is afterwards uncollectible, who is liable to municipality for loss?

1. The Municipal Drainage Act, (R. S. O., 1897, chapter 226), makes no provision for the payment of any fee or allowance for expenses to a reeve or councillor for sitting as a member of a court of revision of a drainage assessment, as section 50 of the act does in the case of a judge who hears an appeal from such a court of revision and we know of no other services which a reeve or councillor could be called upon to perform, for which he would be entitled to any fee or allowance that would be properly chargeable against the drainage works.

2. The statute prescribes no definite time limit in either of these instances, but the council should pass the supplementary by-law, providing for the levy of the deficiency, as soon as possible and without delay, after it has been ascertained. See section 66 of the Municipal Drainage Act.

3. No. The only provision the statute makes for the disposition of a surplus of this kind is that contained in sub-section 3 of section 66 of this Act.

4. No.

5. No.

6. Yes. If the by-law as finally passed so provides, as it usually does following the form given in schedule B to the Municipal Drainage Act. (See clauses 3 and 4 of the by-law.) The levy cannot legally be made, however, until the debentures have been actually issued. (See Bogart vs. Township of King, 1 O. L. R., 496)and the debentures should be issued within two years after the passing of the by-law. (See sub-section 3 of section 384 of the Municipal Act, as enacted by section 84 of the Municipal Amendment Act 1903.) The non-completion of the work, or the taking of proceedings to quash the by-law, does not alone absolve the council from its duty to make the levy each year after the by-law has been passed and the debentures issued thereunder.

7. Provided these assessments are such as by law are required to be entered on the collector's roll and when so entered are legally collectible, the members of the council responsible for their not having been entered upon the collector's roll, or for their non-collection when so entered, can be held individually responsible for the amounts thus lost to the municipality.

Power of Village Council to Assist in Erecting Grand Stand for Regatta Club.

458—J. M. A. W.—1. Has the village council power to grant legally five hundred dollars for the purpose of assisting to build a grand stand within the village limits to be used in connection with a Regatta or Rowing Club?

2. If it can legally be done, how many ratepayers petitioning against (what proportion) would it require to prevent the council from doing so?

1. Section 42 of the Municipal Amendment Act, 1900, enables councils of villages to pass by-laws for aiding and encouraging amateur athletic or aquatic sports."

2. The council is not bound to act in accordance with the wish of the ratepayers.

Trimming and Removal of Trees on Highway.

459—G. L.—In our township there is a small village, not incorporated. On the road leading through the village, there are some maple shade trees opposite a certain property and I believe they were planted by the present owner. Trees are outside of sidewalk, branches are very low down and overhang roadway, are a nuisance to the driving public. Complaints have been made to council about the same. Property owner claims they cannot be trimmed without his consent. What action should the council take to have same trimmed or removed?

By section 606 of The Municipal Act, the liability for keeping in repair the highways therein is cast upon the corporation. This liability extends not only to the surface of the highway, but to whatever may be above it. Every municipality has an inherent common law right to deal with trees growing on the highways, so as to make them passable. If the branches of any tree adjoining a highway extend to such a distance on the roadway, or are so low down as to obstruct the highway and occasion a nuisance thereon, the council has authority to trim or lop off the offending branches, doing no more damage to the tree than is necessary to remove the obstruction from the highway. This power should be exercised by by law or special resolution of the council. See in re Allen and town of Napanee, 4 O. L. R., 582). In the case of Ferguson vs. township of Southwold, (27 O. R., 66), it was held that anything which exists or is allowed to remain above the highway, interfering with its ordinary and reasonable use constitutes want of repair and a breach of duty on the part of the municipality having jurisdiction over the highway; In this case a branch of a tree growing by the side of a highway, to the knowledge of the defendants, extended over the line of travel at a height of about eleven feet. The plaintiff in endeavoring to pass under the branch on the top of a load of hay, was brushed off and injured. The jury at the trial having found that the highway was out of repair, the Chancery Divisional Court, held, on appeal, that the defendants were liable, and refused to interfere with the verdict for $1,200 damages which the jury had found against them. If the council desires to remove any shade tree in front of a man's land it must comply with sub-section (a) of section 574, chapter 223, R. S. O., 1897.

Distribution of Intestates' Estates—Rights and Liabilities of Parties to Agreement for Sale of Land.

460—J. P. O.—1. James, a man, got married to L. After they had been married for a while John, the father of L, gave by deed a farm to L.

(a) Should James' wife die, who would inherit the land in case James and L have no children?

(b) If they have children?

(c) In either event can John claim the property?

2. A married man who has property has children. This man dies without a will having been made, etc.

(a) Will the property descend to the wife alone?

(b) Will it descend to the children alone?

(c) Will it descend to the wife and children together?

(d) If to both, in what proportion would it be divided?

3. A man makes an agreement to sell his land to John without letting his wife know and without her consent. The man's wife does not want to release her dower, that is, she does not want to sign the deed, unless she receives a certain amount of money from the sale. John wants to get the land as per agreement and cannot do so.

(a) Will the law oblige the man's wife to sign the deed?

(b) If not, what can John do in this case?

4. A agrees to sell his land to B, and B agrees to buy the land. B gives $100 more or less to A to make the bargain binding. Can A or B break the bargain, and can B receive back his money?

1. (a) James would be entitled to one-half and the balance would go and devolve as if her husband had predeceased her. (See section 5 of chapter 127, R. S. O., 1897).

(b) James would be entitled to one-third and the balance would go and devolve as if her husband had predeceased her. (See above section of the Act.)

(c) He is entitled to one-third if there are children and to one-half if there are no children.

2. (a) No.

(b) No.

(c) Yes.

(d) One-third to wife, the residue to the children, share and share alike.

3. (a) No.

(Continued on Page 160.)

Legal Department

J. M. GLENN, K.C., LL.B.,
OF OSGOODE HALL, BARRISTER-AT-LAW.

Rex el Rel Warr v. Walsh.

Judgment on motion by relator to set aside the election by acclamation of Edward J. Walsh, Joseph Allen, Thomas Mara, Manton Treadgold, John Fingland and Richard Ashley, as councillors for the Town of Brampton, upon the ground that the nomination of candidates for councillors was held at 10 o'clock in the forenoon of Monday, 29th December, 1903, for one hour, instead of at noon of the same day. Held, that the Legislature having by section 119 of the Municipal Act expressly fixed the hour of noon for such nominations, the council has no power by by-law or otherwise to alter the hour. The time of holding an election is a matter of substance; the nomination is the commencement of the election. The authority to hold an election at one time will not warrant an election at another time. Am. and Eng. Encyc. of Law, 2nd ed., vol. 10, p 697; re East Simcoe Election, 1 Ont. Elec. Cas., 291, 308, 322, 336-7. Held, also, that the direction of the statute is not merely directory, but imperative. Held, also, that holding the election at the wrong hours is not a mere irregularity coming within Sections 204 of the Act, the "saving clause." Order made setting aside the election and directing the holding of a new election, with costs.

The above is the judgment of Mr. Winchester, the then Master in Chambers. An appeal was taken from this judgment and heard by Mr. Chief Justice Meredith. The following is his decision reversing that of Mr. Winchester:

Re ex rel. Warr v. Walsh.—Judgment on appeal by defendants from order of Master in Chambers (4th Febuary, 1903), setting aside the election of the appellants as councillors for the Town of Brampton, and directing a new election, upon the ground that the nomination of candidates, which resulted in the election of the appellants by acclamation, took place at 10 o'clock in the forenoon, and not at noon. In each of the years from 1898 te 1902 (inclusive) the municipal Council of the Town of Brampton provided by by-law that the nomination for Councillors should be held at the same time and place as the nomination for mayor, that hour being 10 o'clock in the forenoon, and this they assumed to be under sub-section 2 of section 118 of the Municipal Act, R. S. O., ch. 223. The difficulty arises in grafting the provisions of the Municipal Amendment Act, 1898, as to the election of councillors of towns having a population of not more than 5,000 upon the provisions of the Municipal Act. Held, that sub-section (1) of the section added by the act of 1898 (71a) had not the effect of abolishing in the case of towns to which it applied their division into wards; the only change made was that instead of there being a prescribed number of councillors for each ward, the number of councillors was fixed at six, and, instead of being elected by wards, they were all to be elected by a general vote. The language of sub-section 2 of the added section should be treated as an inaccurate expression of the idea that on the conditions and in the event mentioned in it, the former mode of constituting the council and of election of councillors might be restored. Sub-section 2 of section 118 should be read, in order to give effect to the amendment, as empowering the council, where the election is to be by general vote, to provide by by-law that the nomination of councillors shall be held at the same time and place as that for Mayor, and to make the same provision in the case of all towns of over 5,000, where the nomination of councillors must still be made for the several wards of the town. And section 119 should be read as providing that the meeting for the nomination of councillors in either case shall, unless the contrary is provided by by-law, be held at noon. Therefore, the council had power to pass the by-law under the authority of which the nomination for councillors was held at the same time and place as the nomination for Mayor, and the appellants were properly nominated and duly elected. Appeal allowed, with costs here and below.

Rex Ex-rel McFarlane v. Coulter.

Judgment on appeal by relator from order of local judge at Sandwich, setting aside the fiat, the relation, and all proceedings taken thereon. On 21st January, 1902, upon the application of the relator, the local judge granted a fiat giving the relator leave, upon entering into the proper recognizance, to serve a notice of motion upon James A. Coulter, under section 20 of the Municipal Act, to set aside his election as reeve of the township of Colchester North. The proceedings were taken and styled in the county court of Essex, and the recognizance was duly entered into and filed, and notice of motion served on the respondent on 21st January. On 10th March, 1902, respondent, by leave of the same judge, gave a notice of motion, returnable before him on 11th March, 1902, to set aside the fiat, notice of motion, under it, and all the proceedings in the relation. On 21st March respondent's motion to set aside all the relator's proceedings was heard, and judgment reserved. On 1st August this was granted, and an order made setting all proceedings aside, with costs. The present appeal was from that order. Held, that the appeal must be dismissed upon the ground that no appeal lies from the order appealed against to a judge in chambers. The proceedings were intituled and carried out in the county court of Essex, and appeals from county courts lie in ordinary cases to a divisional court. Under the Municipal Act of 1892, 55 Vic., chap. 42, section 187, sub-section 3, for the first time an appeal was given from the decision of the judge trying the matter, to a judge of the high court. Such appeal is not from any interlocutory proceeding, but from the decision of the judge in the matter upon the merits. No opinion expressed as to whether the county court judge had any power to make the order appealed against. No such power is expressly given him, and unless he have it by implication, which the court of appeal in Regina ex-rel. Grant v. Coleman, 7 A. R., 619, thought he had not under the law as it then stood, his duty was to go on and try the matter on the merits. The change in the law effected by the statute of 1892 is such as to render the decisions referred to in that case no longer binding. The further change by 2 Edw. V. I. I., chapter 1, section 15, does not seem to affect the present application, which was launched before that statute was passed.

Greer vs. Village of Colborne.

This was an appeal by plaintiff from judgment of Street, J., dismissing with costs an action for damages for injuries alleged to have been received owing to defendant's negligence in not having a sufficient railing along the walk on which plaintiff was walking so as to prevent pedestrians from falling into the dangerous hole mentioned in the evidence. The trial judge found that the sidewalk in question was defective and in a dangerous condition, and that appellant would have recovered had he not been intoxicated. The appellant contends that the trial judge erred in finding that such intoxication was the proximate cause of the accident and not defendant's negligence. Appeal dismissed with costs.

Township of Lochiel v. Township of East Hawkesbury.

Judgment on appeal by plaintiffs from judgment of Ferguson, J., in so far as it was against the plaintiffs, in an action brought for a declaration that a government allowance for public road exists between the plaintiff township, in the county of Glengarry, and the defendant township, in the county of Prescott, and between the respective gores of the township, and that such allowance is upon the boundary line between the townships. Appeal allowed (Osler, J. A., dissenting) and judgment to be entered for plaintiffs in the court below. No costs of action or appeal.

Rex ex Rel Roberts v. Ponsford.

Judgment upon appeal by relator from order of Master in Chambers (I. O. W. R. 590) dismissing application by relator to set aside the election of eleven persons as aldermen for the city of St. Thomas, at the general election held on the 6th January, 1902, upon the ground that the election was not conducted according to law. Held, that while the matter is somewhat doubtful as to the case of the late successful candidate, Luton, it is very clear that the election of the other ten cannot be effectively impeached. Luton polled 728 votes, and the next highest vote of 706 was cast in favor of Price. Taking it that 90 votes, as found by the master, were illegal, because that number of double votes were cast, contrary to the law as amended by the Municipal Amendment Act of 1901, section 9, and that all these votes could be attributed to Luton's total and deducted from it, that would leave Price ahead of Luton. But that would be an improper assumption. The error about double voting was a common one as to all parties. Luton himself was not active in the promotion of his election he sought no votes in any way, and does not seem to have profited by the duplicate voting. The more reasonable assumption would be that the illegal and irregular votes were divided, and as many cast for Price as for Luton. Other makeweights of alleged irregularities cannot be brought in on the argument which were not relied upon in the original notice, especially when they are of comparatively trivial character; section 226. The master's conclusions should not be disagreed with, particularly having agreed to the fact that this is a municipal election, good only for a year, of which the greater part has now elapsed. Appeal dismissed without costs.

Re Leach and City of Toronto.

Judgment upon case stated under the Assessment Act by the Lieutenant-Governor-in.Council for the opinion of the court. The question involved was the right to charge lessees of property of the University of Toronto, on College street, in the city of Toronto, holding under leases in existence at the date of the agreement between the city of Toronto and the University of Toronto, confirmed by and set out as a schedule to, 52 Vict. ch. 53 (O), with part of the cost of local improvements on College street. McDougall, Co. J., held, affirming the finding of the Court of Revision of the City of Toronto, that the lessees were chargeable, the decision being based mainly on the ground that by the agreement in question College street had been made a public highway of the city. Held, upon the construction of the statute, that leaseholders are liable just as owners are, unless they are persons expressly exempted by law. Judgment in favor of the city corporation upon the case stated.

Ritz v. Corporation of Village of New Hamburg.

Judgment on application by J. F. Katzenmeir for order allowing him to be added as an applicant upon pending motion to quash by-law No. 250 of Village of New Hamburg, or substituting applicant for C. Ritz, or for order allowing motion to quash to continue in name of C. Ritz, on behalf of all others interested in quashing such by-law, upon such terms as to the court seem meet, and for other relief. Applicant authorized to continue proceedings in the name of C. Ritz, on the usual terms of indemnifying Ritz against costs. Applicant also to undertake to speed the hearing of the application and at the end of the litigation to pay respondents' costs of the motion below and of this appeal, which, by reason of new evidence adduced, amounts to an original motion.

Township of Gloucester v. Canada Atlantic R. W. Co.

Judgment on appeal by defendants' from judgment of Lount, J. (3 O. L. R. 85), upon a stated case as to the right of the plaintiffs to open an original road allowance across which the defendants railway runs. Appeal dismissed with costs.

QUESTION DRAWER.

(*Concluded from page 158.*)

(b) The law now is that the court will not interfere specifically to perform contracts where a wife's consent is requisite and she refuses to give it. See Fry on Specific Performance, 2nd edition, page 435. The purchaser, however, is entitled to damages for the breach of contract to convey and make a good title.

4. If the agreement is in writing it can be enforced by either party. If it is not in writing it is not binding, but if A refuses to carry out the contract B can compel him to repay him the $100. If, on the other hand, A is willing to carry out his contract, B must carry it out on his part or lose his money.

Additional Municipal Legislation.

(*Concluded from page 147.*)

said road at a fixed price and such resolution shall be binding on the Company and all the shareholders thereof; provided however that the said resolution must be approved of by a majority in number of the entire number of shareholders of the company, who also represent the majority in value of the stock thereof.

VOTING MACHINES TO BE KEPT LOCKED FOR 30 DAYS AFTER ELECTION.

An Act was passed at the recent session of the Legislature repealing Section 15 of the Act passed in the sixty-third year of the Reign of Her late Majesty Queen Victoria, intituled An Act to Permit Municipalities to use Voting Machines and substituting the following section therefor:

15. All voting machines shall remain locked and sealed for a period of 30 days next succeeding the date of an election, or until it is necessary to prepare the voting machines for another election, and shall not be opened nor their contents examined during the time, except by order of a Court or Judge of competent jurisdiction, unless proceedings have been started within said thirty days, under the provisions of sub section 1 of section 220, of The Municipal Act, to contest the validity of the election of any mayor, warden, reeve, deputy reeve, alderman, county councillor, councillor or school trustee, or to show that such election was not legal, or had not been conducted according to the law, or that some person or persons declared elected thereat, had not been duly elected, and in such case the said voting machines shall remain locked and sealed for a period of thirty days, next succeeding the date of such election, and shall not be opened or their contents examined, except by order of a Court or Judge of competent jurisdiction.

ENGINEERING DEPARTMENT.

Highway Bridges.

(*Concluded from page 151.*)

Concrete floors are exceedingly durable and although costing much more than plank when first laid, their greater durability will enable them to outwear half a dozen plank floors. Their cost in Elgin when first adopted was 47 cents a square foot, but this has been reduced, and floors are now being laid for 28 cents a square foot.

Concrete adds a considerable load to the dead weight of the bridge, but this is more than compensated for by the extent to which it distributes the live load. With a plank floor the weight of every vehicle passing over is transmitted to the individual members of the bridge, causing a constant jarring and distortion that is very destructive to steel. With concrete, on the other hand, the weight of a passing vehicle is spread over a much greater area of the bridge structure, the floor being a monolith and distributing the live load over a much greater bearing than can each plank. In this way the injury to bridges is much less with a concrete, than with a plank floor.

So much is this the case that, with a concrete floor, it is not necessary to restrict the speed of vehicles travelling over it. With a plank floor it is always expected that horses will not be driven over the bridge at a faster pace than a walk. But with concrete floors, travel is not interfered with and horses may be driven over at the ordinary pace.