THE MUNICIPAL WORLD

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

Vol. 8. No. 4. ST. THOMAS, ONTARIO, APRIL, 1898. Whole No. 88

CONTENTS

Calendar for April and May, 1898.

Legal, Educational, Municipal and Other Appointments.

APRIL.

1. Clerks of counties, cities and towns separated from counties to make return of population to Educational Department.—Public Schools Act, section 69.
Last day for Free Library Board to report estimates to the council.—Free Library Act, section 12.
Last day for petitions for Tavern and Shop Licenses to be presented.—License Act, sections 11 and 31.
Last day for removal of Snow Fences erected by councils of townships, cities, towns or villages.—Snow Fences Act, section 3.
From this date no person compelled to remain on markets to sell after 9 a. m.—Municipal Act, section 579 (6).
Last day for Boards of Park Management to report their estimates to the council.—Public Parks Act, section 17.
5. Make returns of death by contagious diseases registered during March.
7. Last day for Treasurers of Local Municipalities to furnish County Treasurer with statement of all unpaid taxes and school rates.—Assessment Act, section 157.
Public and High Schools close.
8. Last day for Collector to return to Treasurer the names of persons in arrears for water rates in Municipalities.—Municipal Waterworks Act, section 22.
Good Friday.
15. Reports on Night Schools, due to Education Department (session 1897-8).
18. High Schools open (third term).—High School Act, section 41, Public and Separate Schools in cities, towns and incorporated villages open after Easter Holidays.—Public Schools Act, section 89.—Separate Schools Act, section 79 (3).
20. Last day for non-resident land holders to give notice to clerk of ownership of lands to avoid assessment as lands of non-residents.—Assessment Act, section 3.
Last day for Clerk to make up and deliver the assessor list of persons requiring their names to be entered in the roll.—Assessment Act, section 3.
30. Last day for completion of roll by assessor.
Last day for non-residents to complain of assessment to proper Municipal Council.—Assessment Act, section 86.
Last day for License Commissioners to pass regulations, etc.—Liquor License Act, Section 4.

MAY.

2. Last day for Treasurers to furnish Bureau of Industries, on form furnished by Department, statistics regarding finances of their municipalities.—Municipal Act, section 293.
County Treasurers to complete and balance their books, charging lands with arrears of taxes.—Assessment Act, section 164.
6. Arbor Day.

NOTICE.

The publisher desires to ensure the regular and prompt delivery of THE WORLD to every subscriber, and requests that any cause of complaint in this particular be reported at once to the office of publication. Subscribers who may change their address should also give prompt notice of same, and in doing so should give both the old and new address.

The Municipal World

PUBLISHED MONTHLY

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

K. W. McKAY, EDITOR,

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

TERMS.—$1.00 per annum. Single copy, 10c.; Six copies, $5.00, payable in advance

EXPIRATION OF SUBSCRIPTION.—This paper will be discontinued at *expiration of term paid for*, of which subscribers will receive notice.

CHANGE OF ADDRESS.—Subscribers, who may change their address, should give prompt notice of same, and in doing so, give both old and new address.

COMMUNICATIONS.—Contributions of interest to municipal officers are cordially invited.

HOW TO REMIT.—Cash should be sent by registered letter. Draft, express or money orders may be sent at our risk.

OFFICES—28 Elgin Street, St. Thomas. Telephone 101

Address all communications to

THE MUNICIPAL WORLD,
Box 1252, - - St. Thomas, Ont.

ST. THOMAS, APRIL 1, 1898.

Most of the assessors rolls will be returned during the present month, and in townships, clerks will be busily engaged in the preparation of statute labor and voters' lists. In the preparation of statute labor lists in which no changes have been made, clerks will find that the lists used in 1897 will most readily direct their attention to the names to go on the lists for 1898. If errors were made in the lists for last year they were no doubt corrected by the pathmaster, and will assist the clerk in improving his work this year.

* * *

The Courts of Revision of the assessment rolls will be held in May, and in this connection we desire to impress upon councils the necessity of complying with the law by considering only such appeals as may be filed with the clerk in proper time. Councillors are sometimes in the habit of assuming to attend to business for the ratepayers and think that it is only necessary to bring matters up at the board to have them attended to. This system of doing business only leads to abuses. All appeals against the assessor's work should be in the hands of the clerk within fourteen days after the first day of May or after the roll has been returned by the assessor. If at the court of revision it is found that there are other errors and complaints that should be corrected, concerning which no appeals have been made in time, the court may adjourn and appoint another day for the purpose of hearing these appeals. In the meantime the proper notices have to be given as required by the Assessment Act. Clerks making entries in assessment rolls in reference to appeals which were not properly before the court of revision, are liable for a violation of duty. The council should consider this and endeavor as far as possible to comply with the law, even if a few ratepayers are required to attend to their own business, and are put to some inconvenicnce for not doing so.

By-laws for the alteration of school section boundaries are required to be passed not later than the first day of in each year, and they do not take June effect before the 25th day of December next thereafter. All persons to be effected by proposed alterations have to be duly notified before the council can take action.

* * *

Auditors should be required to report on the value and condition of the securities given by the treasurer for the due performance of the duties of his office. Section 304, sub-section 3, of the Municipal Act makes it their duty to do so. This does not relieve the council in any way, as section 238 provides that every council shall inquire into the sufficiency of the security given by the treasurer and report thereon.

* * *

The boundaries of statute labor divisions as set forth in the by-laws of many councils is of little use to a clerk unless he is acquainted with the locality, as owing to the sub-division of lots, and property belonging to one owner being situated in several divisions the clerk is often at a loss to know what to do with a particular lot, which, owing to a change of ownership and incomplete assessor's description, he is at a loss to identify with the lots as assessed in the previous year. Under these circumstances it is often necessary to look up all of the acreage of the sub divided lots before it is possible to say in what list the work for a particular piece of property should be placed. Councillors generally think that statute labor lists are prepared by simply copying the assessment roll, and know little of the difficulty many clerks have in preparing correct lists.

* * *

In another column we publish a section of the revised statutes referring to the committal of inmates to houses of industry by any two of Her Majesty's justices of the peace. We do not know that this is altogether advisable, as the law will not under ordinary circumstances allow the detention or committal of inmates against their will. In none of the county institutions have arrangements been made for confining inmates while at work, and in counties where each local municipality pays for inmates sent therefrom, the councils in a measure control their contributions to the houses of industry. If magistrates are to be allowed to commit inmates indiscriminately we may look for some interesting disputes in reference to the payment of maintenance accounts.

* * *

The introduction of the section above referred to shows that it is not safe to depend entirely on the statutory law as in force during the past ten years as old sections of previous acts may have been introduced without notice and being in the Revised Statutes are thereby made law.

The bureau of county statistics operated from Peterborough is endeavoring to collect through the assessors information showing the amount of fire and life insurance carried by the property owners in the various townships. The agreement with an assessor provides that he is to receive an amount equal to 10 per cent. of his salary for his trouble. We do not object to this increase in a few assessors' salaries but we do object to this improper use of a public office for the collection of private information, to be afterwards sold to insurance companies and their agents. The people generally understand that they are required to give an assessor such information as he may ask for in the public interest. Insurance agents are with us always and do not require the assistance of any bureau or public official to locate business. We do not think that many assessors have accepted the proposition. Councils should see that their assessors do not collect the insurance statistics without informing the ratepayers that it is optional whether they give it or not.

* * *

The new Municipal Cash Books have nearly all been sent out. Many treasurers, no doubt, find it a little difficult to take up a new system of book-keeping which, at first, appears intricate. We have started three treasurers' cash books during the past month, and found it necessary to be very careful for the first two or three pages, after which the necessity for each entry is appreciated. We have no authority from the Provincial Auditor for saying that it is not necessary to enter the bank balance after each cheque payment as that can be done as well at the end of each page. It is necessary to carry forward the total columns as each receipt and payment is entered, and also to keep the cash account properly balanced. It is intended that any one examining the books should see at once the total expenditure and receipts for the month, and balance in bank and cash in office. Columns for special accounts will appear to be necessary in many cases. It is not expected that the use of the cash book will do away with the necessity for a ledger or journal—they are all necessary to the keeping of a proper record of all the financial affairs of a municipality. If special accounts are kept, and the blank columns are not sufficient for each, use one column for all special accounts, and post to ledger, making such division as may be necessary.

* * *

The cash books for treasurers of school boards are ready to be sent out. THE MUNICIPAL WORLD has made arrangements to distribute these for the Government contractors, and a catalogue, etc., has been mailed to each secretary-treasurer. They are smaller in size and simpler than it was possible to make the municipal books. The price for cash book for school board of a village, town or city, is $2.40; and for a township school section, $1.00.

Municipal Officers of Ontario.

Clerk Town of Strathroy.

Mr. Craig was born in the township of Pickering, County of Ontario, in 1832, and attended the public school until he obtained a second class certificate, after which he taught school until 1854, when he obtained a first class Normal certificate. He continued the teaching profession until 1857, when he moved to Minnesota and engaged in farming. While in Minnesota he received an appointment as door-keeper in the Senate of the United States, and also served for four years as clerk in the third auditor's office of the Treasury Department at Washington.

He then returned to London, and engaged with Mr. John Elliott, implement manufacturer. In 1869 he moved to

MR. F. J. CRAIG.

Strathroy, having secured an interest with Mr. Elliott, in the Strathroy Implement Works, which he carried on for thirteen years. During this time he held every office in the gift of the town, beginning with school trustee, and ending with mayor. In 1882 he removed his implement business to Sarnia, and in 1892 he returned to Strathroy, having received the appointment of town clerk.

Clerk Township of McKillop.

Mr. Morrison was born in the township of Kitley, Leeds county, in 1839, and settled in McKillop, in 1862. He shortly afterwards had the misfortune to lose his left arm. He then completed his education, and was engaged in teaching for seven years, after which he became interested in the manufacture of cheese.

He was appointed township collector in 1878, which position he held for eight years, until his appointment as township clerk. He has also acted as county auditor

MR. J. C. MORRISON.

at different times. Mr. Morrison takes an active interest in Farmers' Institutes, and is the author of several articles on the feeding and care of dairy stock.

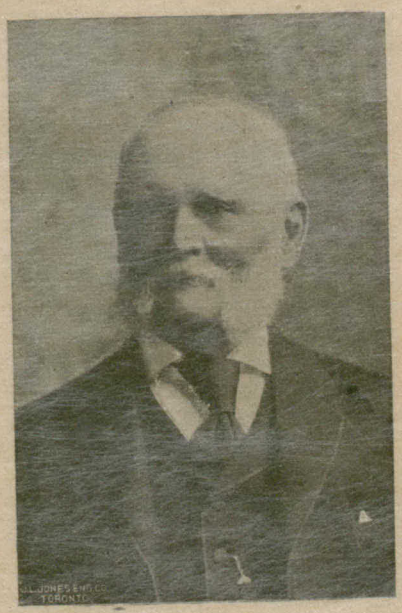
MR. H. BRYANT.

Clerk Township of Barton.

Mr. Bryant was born in Bristol, England, in 1839. He came to Canada in 1868, and in 1874 became a resident of Barton township. He has filled the offices of assessor, collector, councillor, deputy-reeve and reeve, and received his appointment as clerk in 1892. He is also secretary-treasurer of the Barton Agricultural Society, and from experience believes that every municipal officer should be a reader of THE MUNICIPAL WORLD.

Clerk, Township of Niagara.

Mr. Fisher was born in Somersetshire, England, in 1825. He came to Canada in 1834, with his parents, and settled in the old town of Niagara, where he attended school and completed his education at the old Niagara Grammer School. He afterwards engaged in the boot and shoe business, and for many years lived in the village of St. Davids. His first municipal appointment was that of assessor in 1856, which office he held for nine years. He also served one year as collector, and in 1871 was appointed to the office of clerk and treasurer of the township of Niagara. He was postmaster of St. Davids for twenty-seven years, until he removed



MR. C. FISHER.

from the village to his present residence, "Dubarton Farm" near the village of Queenston. Mr. Fisher has always endeavored to keep well posted, and as a result of his long experience is an authority on municipal matters.

Statistics are being collated by the Division of Chemistry, United States Department of Agriculture, in regard to the agricultural value of street sweepings, garbage and sewage. The secretary of agriculture has authorized an investigation of the extent of the use of these materials as fertilizers in this country, the results that have attented their use and the best method of applying them to the soil. Experience is asked particularly in regard to the use of sewage in agriculture, also as to the extent of the danger of disseminating pathogenic organisms among men and animals by the use of sewage for the irrigation of field and garden crops.

The Public School.

By W. Atkin, Esq., Inspector of Public Schools, County of Elgin.

I

HISTORICAL INTRODUCTION.

The development of the Public School System of Ontario was practically accomplished by 1876. In that year the duties of the Chief Superintendent of Education and the Council of Public Instruction were transferred to a responsible Minister and the Education Department.

By the Constitutional Act of 1791, the Legislature of Upper Canada received the right to legislate in reference to all matters pertaining to the development of the country and to the establishment of institutions deemed necessary for the educational and social welfare of the people. It was not till 1807 that the educational idea resulted in a Legislative Act. The desire to establish schools and promote education had impressed itself on some of the leading minds at the centres of the larger settlements; and private schools were established at Kingston, Cornwall, Bath, York, Niagara, Hay Bay, Port Rowan, Napanee and a few other places. With these Schools, will ever be associated the names of Bishop Strachan, M. S. Bidwell, Rev. Robert Addison, Jonathan Clarke, and others. While they were doing appreciated work among the pioneers, some of the more progressive and enterprising members of the legislature were unremitting in their efforts to formulate a scheme for the establishment of a system of public education for the province. In this connection must be mentioned the names of Governor Simcoe, Mahlon Burwell, Charles Duncombe, W. W. Baldwin and Wm. Morris. They each in the position they occupied strove to promote the educational interests of the province. They have left their mark on educational legislation which followed their patriotic and persistent efforts in this direction.

The question may be asked: What first awakened the desire to establish schools and promote education in Ontario? To answer this question we cannot do better than quote from Dr. Strachan's address at the opening of King's College (now Toronto University) in 1843. He said:—"When the independence of the United States was recognized by Great Britain in 1783, this province became the asylum of those faithful subjects of the Crown, who, during the revolutionary war had adhered to their king and to the unity of the Empire. And it is pleasing to remark that in 1789—a little more than five years after their first settlement—they presented a memorial to the Governor General, Lord Dorchester, on the subject of education, in which after lamenting the state of their children growing up without instruction religious or secular, they requested His Lordship to establish a Seminary at Kingston. To this the governor paid immediate attention and gave directions to the Surveyor-General to set apart eligible portions of land for the future support of schools in all new settlements."

Early in the century schools were established in the chief centres of the settlements. Soon a grammer school was to be found in every district and ultimately common schools, fashioned by the United Empire Loyalists, on the New England pattern were put in operation in every settled township in the province.

In 1807 the legislature passed the first School Act, which was the germ of the High School Act of the present day. This provided for the establishment of a public school in each of the eight districts of the province, and that $400 should be set apart annually for the payment of the salary of a teacher for a school in each district. Five trustees were to be appointed by the Lieutenant-Governor, for each district. They were to nominate as teacher, a fit and proper person, satisfactory to them morally and intellectually, and to make such rules and regulations for the good government of the school, with respect to teacher and pupils as they deemed expedient.

The character of these eight schools did not supply the demands of the growing population of the province They did not provide for the elementary education the Loyalists had enjoyed in the New England States. After nine years of agitation and consideration, the legislature, having established Grammar schools at the centres of the chief settlements and made provision for their maintenance, in 1816 passed the first Common Schools Act, providing for the establishment of a system of elementary education. By this Act elementary schools were placed within the reach of the great mass of the people and provision was made for their maintenance by appropriations of public money. The sum of $24,000 was to be divided among the schools established by law, but in no case was any school to receive more than $100 annually. As no provision was made for fees or raising of taxes for the support of these schools, any sums needed in addition to the legislative grant were raised by subscriptions.

This act authorized the inhabitants of a neighborhood to meet in public assembly and provide for the erection of a school house and elect three trustees if they were able to show that twenty children were likely to attend the school.

The duties of the trustees consisted in examining and appointing a teacher, making rules and regulations for the management and discipline of the school and selecting text-books. No teacher could be removed without the consent of the Lieutenant-Governor.

To us this act seems very elementary in character and provisions, but it is of interest, as the first attempt of the legislature to provide for the educational needs of the whole people and a legislative recognition of the right of the people to provide for the education of their children.

In 1824 an amendment was made to the act of 1816, transferring the power of granting certificates to teachers from the Trustee Board to the Board of Education for the district. Thereafter no school was to share in the distribution of the legislative grant unless in charge of a teacher holding a certificate signed by at least one member of the Board of Education.

The composition of Trustee Boards, the mode of their election and their duties, remained unchanged till 1841, when the School Act then in force was repealed and a comprehensive, Common Schools Act passed, introducing some radical changes in the local administration of schools. The most sweeping change and the most distasteful to the people was the abolition of Section Trustee Boards and the substitution of Township Boards of commissioners. The Township Board consisted of five persons elected by the ratepayers of the township, and is the germ of the Township Boards of Trustees, still alive in a few townships in this province.

The commissioners were authorized to tax the inhabitants for the maintenance of the schools. This was the first time that property was declared taxable for public education.

Each child was charged a fee of twenty-five cents a month for tuition.

The municipal councils were to divide the several townships in their districts into school sections and raise by assessment the sum of $200 to build a school house in each section where none existed. They were also authorized to appropriate $40 to provide such books as were recommended by the commissioners.

The District Boards of Trustees appointed by the Governor, under the act of 1807, for the management of the grammar schools were abolished and the Municipal Council for the district was constituted a Board of Education for such district.

The duties of the commissioners were to select school sites, superintend the building of school houses, appoint teachers, regulate the course of study in each school, select text books and make rules for the management and discipline of the schools, hear and settle complaints, visit each school at least once a month by one of their number, relieve indigent persons from the payment of fees for the tuition of their children and report their proceedings to the Municipal Council.

The management of schools by commissioners proved unsatisfactory to the people. They had become accustomed to having the trustees in their immediate neighborhood, and could more easily express their wishes or lay complaints regarding the management of the school.

Such representations were made to the legislature, that in 1843 an amendment was made to the act of 1841, abolishing Township Boards of Commissioners and

re-establishing Section Boards of Trustees. The duties formerly belonging to the commissioners devolved upon the newly constituted Boards of Trustees.

The act of 1846 continued the duties of trustees, except that the making of regulations affecting the management and discipline was transferred to the Chief Superintendent, that more uniformity and greater efficiency might be secured.

The act of 1850 provided that in rural sections, one trustee should retire annually, the intention being to secure greater continuity in the office of school trustee. This act, also gave the right to ratepayers of a section to decide at the annual meeting whether a rate bill or free school should prevail during the following year. Many bitter contests on this question occurred among the ratepayers assembled. Sometimes the rate bill party would win and sometimes the free school party. Gradually rate bill became unpopular, and in 1871 it was legislated out of existence. Since 1850, the composition, organization and duties of School Boards of Trustees have practically remained unchanged.

Having thus briefly outlined the legislative developement of rural School Trustee Boards we shall in future numbers of the MUNCIPAL WORLD discuss:—Formation of school sections; annual and other school meetings; organization of Trustee Boards; revenues of school sections; Trustees' duties relating to school property; trustees' duties in relation to teachers and pupils; trustees' relation to Local Boards of Health; selection and change of site; and penalties for neglect of duty.

First Annual Report of Municipal Auditor.

The first annual report of the Provincial Municipal Auditor presented at the last session of the legislature shows that a large number of treasurer's offices have already been visited and that the total defalcations discovered where special investigations were held amounted to about $100,000. The appointment of auditors in November or December is recommended. In conclusion the report states that it is not surprising that there should be a strong feeling in favor of a better system, and a general feeling of satisfaction that the legislature has endeavored to establish some method which would have a tendency to diminish, if not to eradicate, the evils caused by bad book-keeping on the one hand, and equally bad auditing on the other. The great body of municipal councillors and officers are distinctly in favor of improving the condition of the municipal accounts, and some municipalities are disposed to go considerably further than the legislature has already gone, in order to obtain the desired accuracy in their financial affairs. The new books will pave the way for great improvements in municipal book-keeping. Not a little remains to be done to perfect the system of municipal accounts, but a good start has been made and the remainder will come in due time.

Municipal Law.

An exchange says: Some people are not yet aware that a change has been made in the law relative to actions for damages against municipal corporations on account of accidents due to defective or slippery sidewalks or improperly graded roadways or improperly protected culverts, etc. Formerely a jury could be had in such cases and it was found that almost invariably sympathy carried away their better judgment and corporations were very generally considered able to assist the sufferer and were assessed accordingly. Hereafter such actions will be held before a judge without the aid of a jury, and unless it can be shown that the officials of the municipality were culpably negligent the decision will go against the plaintiff, so that persons injured on streets or public highways should first weigh carefully their own share of contributory negligence before trying legal conclusions with corporations who have the finances of the municipality at their back. It would be better to lay the matter frankly before the council and depend on their generosity and fairness in the matter than to run any risk of being mulcted in heavy costs.

Health of Cities.

Remember that boards of health have not only the physical health of the city to look after, but the moral health of our towns. A filthy city is a vicious city. Show me the filthiest part of any town and I will show you the worst part of it. Dirt is demoralization. Soap and fumigation must go along with hymn books and New Testaments. The ancient deluge was a necessity; the world had to be washed before it could be redeemed. But while we recognize the effect of sanitary regulations upon the morals of the city, let us just as well recognize the effect of the Gospel upon the public health.—*Christian Herald.*

It has been demonstrated again and again that purification of sewage by filtration or by irrigation is practicable, and can be conducted at reasonable expenditure, and it is to be hoped that the time is rapidly approaching when public sentiment will be aroused to the degree of compelling such filtration whenever public health and comfort are imperiled.

Under a county system the best road construction would be undertaken, and the economic value of this work would be seen and appreciated by the people of the different townships. Well built roads stand as object lessons and would teach the better expenditure of the funds spent by the townships on the roads maintained by them. In this way, during the currency of the debentures, many times the cost of these county roads would be saved by the people.

The Ward System.

The principal objection to our Municipal Government is the Ward system in operation in many municipalities. The Legislature recognized this, and in towns of not more than 5,000, by the last Canadian census, the Council will hereafter consist of a mayor and six councillors, to be elected by a general vote.

The ward system has done a great deal to promote sectionalism and petty jealousy in municipalities, and often prevents good men from entering municipal life.

There is no inducement to a ward member to interest himself in the general affairs of his municipality; the idea of an election irrespective of ward divisions is the correct one; it enlarges the constituency of a councillor, and calls for a wider application of his influence—the aim should be to adapt the public expenditure and improvements without consideration of ward boundaries.

It may be said that the system of electing members of a township council by ward boundaries is not in itself objectionable; but when the Council endeavors to divide the annual expenditure equally between the wards, irrespective of other considerations, a serious fault, leading to extravagance, is the result.

The township is a small enough unit for local government. It is impossible to find a township the four wards of which require the same amount of money each year. A ward councillor who succeeds in securing the largest expenditure in his ward, irrespective of actual requirements, is sure of re-election—the ward is his first, last and only consideration. On the other hand, in a council elected by the whole municipality, the members are not interested in any particular section, and each receives what its actual requirements demand. The ward system is sometimes introduced for political considerations, to insure the election of one or more representatives of a particular party to the council, and keep alive the feeling created during political elections.

The Legislature will advance the best interests of municipal government by abolishing the ward system. The first step has been taken. The conditions existing in towns are to be found in other local municipalities. The legislation of last session should apply to all.

A Soft Pavement to Fall On.

An alderman of Port Angelos not long since was greatly exercised over a paving problem, and vigorously championed wood in a speech, closing it, says *The Surveyor*, as follows: "Gentlemen, I consider it our bounden duty to degrade and pave these streets. By putting our heads together we can at least construct a wooden pavement. By so doing our posteriors will forever bless us."

ENGINEERING DEPARTMENT.

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

Reforestation.

There has recently been issued the preliminary report of the Forestry Commission appointed by the Ontario Government to investigate the restoring and preserving of white pine and other timber trees upon lands in the Province not adapted for agricultural purposes or for settlement. The report is brief, but is replete with information. The subject is an important one, inasmuch as a considerable portion of the revenue of the Province is derived from this source.

What could be done by a system of forestry preservation is indicated to some extent by the experience of Prussia, in which country the annual profit derived from the forests is six millions, in spite of the fact that the annual cost of caring for the forests amounts to eight millions. Timber, however, in Europe is much more valuable than in America, in view of the expense of transportation. An interesting portion of the report refers as follows to a theory very commonly believed:

"The widely entertained theory that the white pine on being cut away is invariably and permanently succeeded by a crop of inferior varieties was completely disproved by the frequent instances observed in which tracts of flourishing young pine trees are growing up on cut-over land, and the prevalence of the idea can only be accounted for on the ground that fire has in so many cases completely exterminated the pine in all stages of growth. In most of the burned-over territory examined, pine was found intermixed with other trees, and gradually, as was no doubt the case with the original forest, asserting its supremacy and dominating the surrounding trees of the young generation.

* * *

If a forest fire has completely bared the ground, the presence of the young, broad leaved trees is essential for the successful growth of a pine forest. The young pine plants, particularly Pinus Strobus or white pine, are extremely sensitive to strong sunlight and if exposed to sun, are almost certain to be killed in the first ten days of growth. Hence the cover afforded by the poplar affords the shade conditions needed by the young pines. If there were no fires, however, the cover afforded by the trees left by the lumbermen would doubtless provide the shade required for the successful propagation of the pines, but after the forest fire, the quick growth of poplar is a favorable condition for restocking the burned area with the original and most valuable trees.

In looking casually at a young forest on one of these devastated tracts the first impression conveyed is that poplar and other deciduous trees form the sole vegetation, but a closer inspection will reveal the presence of a large stock of young conifers growing in the shade of the poplars. The young pines shoot up straight and slim, reaching for the source of the light, that filters through the leaves of the poplar. In the course of time the pines, which develop slowly at first, overtake and outgrow their competitors. The growth of the pine during the first two or three years is slow, but after that time the rate of growth increases in a very marked manner. The poplars being gradually crowded out by the sturdier evergreens, die and decay, adding to the soil nutriment for the now dominant pines. The dense shade furnished by the poplars has in the meantime killed the lower branches of the pines, which consequently rise straight and free of limbs to the height of the crowns of the deciduous trees. The next and final stage reveals the forest as it originally stood, displaying a mixed growth, with the tops of the giant pines visible from a distance, reaching above the level of the leafy canopy of the forest.

Concrete.

We are entering the age of concrete. A sixteen-story warehouse is being erected in Detroit composed almost entirely of concrete, except for the steel skeleton that forms the frame work, and the necessary doors, windows and office furniture of woodwork. The station of the New York Central Railroad in New York city is being remodeled and concrete is being used because of its strength, durability and beauty. The cement, sand and broken stone composing the concrete is moulded into blocks on the premises, colored and put directly in place, being allowed to set and form a solid structure. Both on this continent and in Europe large bridges are built of concrete surrounding a steel framework. The concrete may be used either in the form of blocks, cemented together as in ordinary masonry, or it may be put in place as a solid mass, forming in effect a structure hewn out of a single stone. In Ontario the Trent Valley and other canals exhibit some excellent work in concrete.

The hydraulic-electric works of Chambly and Lachine are also good examples of the use of concrete. In the city of Reading, Pa., concrete has been used to replace brick in sewer construction with excellent results. While used by municipalities in Ontario to but a limited extent for culverts, it is steadily growing in favor.

Concrete, it has been stated, consists of a mixture of sand, broken stone or gravel, and cement. Cement is a near relative of lime, the binding constituent of ordinary mortar, and is made by burning certain kinds of limestone with clay, and then regrinding. Cement may be of two kinds: Rosendale, otherwise known as natural or hydraulic, and Portland. The former of these, Rosendale, is made by burning limestone containing large proportions of clay and magnesia and regrinding to a fine powder. The latter, Portland cement, is a more exact chemical mixture. It is made by first grinding a limestone containing little magnesia and a fixed proportion of clay. Clay and gypsum are added to form the precise proportions required. This is then burnt under intense heat and is reground to a fine powder.

Although cement was used by the ancient Romans, a great many people still have very indistinct ideas regarding it. Structures of cement concrete are stronger and more durable than those of stone or brick. The Roman cement was made of a mixture of lava and lime, and some of their bridges are still standing, although in military operations efforts have been made to destroy them. The charges of explosives have merely shot out almost as though from the barrel of a rifle, having little effect upon the concrete.

Cement-concrete is frequently confused with asphalt. Asphalt is a material generally used for paving roadways, concrete being used commonly in sidewalks. Asphalt is a mineral pitch. In Ontario there are a few small deposits in Lambton County, formed, it is believed, from an overflow of petroleum, petroleum being the mineral pitch from which coal oil is extracted. The watery parts of petroleum having evaporated, the hardened deposits remaining are known as asphalt. A large part of the asphalt used in paving is brought from the Island of Trinidad. With this pure asphalt is mixed sand and stone dust before placing on the roadway, so that, as the concrete of our sidewalks, bridges, etc., is termed "cement-concrete," to the compound of asphalt, sand and stone dust used in the roadway, may be applied the parallel term "asphalt-concrete." A concrete used for sidewalks is sometimes formed from coal tar, sand and broken stone or gravel, and is usually known as tar-concrete. A natural asphalt, ready for paving without adding sand and stone dust, is obtained by grinding up certain limestones and sandstones naturally cemented together by a mineral pitch. There is a term commonly used by the uninitiated—"ash-felt." There is no such material, the word being a corruption, no doubt, of "asphalt."

Agitation is the avenue by which the masses must be reached if they are to be awakened to the necessity for better roads; organization is the highway on which those who are aroused must travel in order to accomplish effective work and attain success.

It is said that 27,000 tons of water fall every year on each mile of road. This water does its best to run off and join some water course, but it is generally so hampered in its efforts that much of it soaks directly into the surface, so that dirt roads become mud, and stone roads are ruined. Proper drainage alone would go far toward improving all our highways.

Good Roads.

Good roads attract population, schools and churches, decrease cost of transportation, increase value of property, thus encourage exchange of products, are feeders for the railroads, bring distant places more closely together, promote intercourse between one section and another, and develop commercial life. A good road is always to be desired, and is a source of comfort and convenience to every traveler. A good road improves the value of property, for a farm situated only five miles from market, connected by a bad road, is of less value than an equally good farm situated ten miles from market connected by a good road. A larger load can be drawn by one horse over a good road than by two over a bad one. Good roads mean more business; they encourage riding and driving. The farmer needs good roads to be successful. He carries the product of the field to the market, and returning brings weighty and bulky materials at a cost of labor and wear and tear on horses and wagon, much less as the roads become better. The price of wheat and grain is increased in a locality having improved roads. If it costs a farmer $1 to haul 100 bushels of wheat one mile on dirt roads, and by macadamizing the roads this can be reduced to 20 cents per mile, the price of wheat is raised accordingly. One mile saves 80 cents, ten miles $8 per hundred bushels, or 8 cents per bushel increase in price; besides he is able to haul a larger load.

Good roads facilitate rapid travel; rapid travel means saving time, lessening the time to reach the market, and brings the farmer close to market. Transportation of country products should be done in bad weather or the rainy season, when the farmer cannot work outdoors. If he has good roads he can go at any time, winter or summer, rain or shine, and when the market is particularly favorable to the disposal of his produce. Common dirt roads, however, compel the farmer to remain at home for four or five months in the year. As they are impassable, he cannot go to town to sell or go to buy necessaries if he wanted to. It must be clear to any man with the most ordinary instincts that good roads mean thrift, liberality, wealth. They mean good farms, good value to real estate, better buildings, better horses, wagons and carriages, better school-houses, churches, easy intercourse with neighbors, the miller or country merchant. Good roads mean more business for all of us.—*State's Duty.*

A SAMPLE STREET IN ORANGEVILLE.

Municipal Drains.

We now and again hear the complaint that our drainage laws are too cumbersome, that something should be done to simplify the procedure and expense. After several years' experience, however, with the present provisions respecting drainage, there are very many others who are beginning to think that in spite of certain difficulties which occasionally arise, the drainage acts are almost as nearly perfect as any laws can be. Laws have never been framed in such a way that they will provide for every case which arises; nor can they be found; and to amend laws on every occasion to meet exceptional cases is certain to produce other difficulties which were not foreseen. As these drainage laws are becoming better understood the machinery is operating more smoothly.

Municipalities are learning, too, that there is much economy in employing a reliable engineer, even if his charges are in proportion to his skill and reputation. In any case his charges are apt to be much less than the lawyers' fees which result from the mistakes of an incompetent man.

Of late years the practice of laying out drains differs materially from that of a few years ago There was a tendency to carry the drains along the road allowances, even though deep cuts were necessary, in order to avoid infringing on private property. Latterly, however, it is found that these deep cuts are expensive to construct and maintain. More satisfactory results are attained by following, as a general thing, the natural watercourses.

The Purchase of Waterworks.

It has, in nearly every instance where municipal ownership has been applied, been found so advantageous for a town to own and operate its own waterworks that a number of the municipalities in the Province are now taking steps toward the purchase of plants owned by private corporations. The valuation of these properties causes difficulty. The company owning the plant desires to obtain as much for their property as the town will pay; the town council, on the other hand, desires to pay an equitable price. On the part of the council there is usually lacking the direct personal interest that would prompt them to pay less than the actual value.

In the valuation of a plant there are four methods of arriving at a result: (1) The cost of original construction may be estimated, and from this the depreciation resulting from age, wear, etc., may be subtracted. (2) The cost of reproducing a similar plant at the time of valuation may be ascertained, and from this the depreciation subtracted. (3) The revenue may be capitalized, a method, however, which gives widely varying results on very slight differences of earnings, interest charged, skill with which the system has been operated, etc. (4) The value of the material in the existing works, in assisting to reconstruct a suitable system for the town, may be taken as a basis.

Among the features likely to cause complications is the franchise. If it is a permanent franchise it undoubtedly has a value. If the franchise is limited the value is of a correspondingly less amount. Frequently, however, we find an expired franchise used as a lever by the company in raising the estimated value of their property. An expired franchise has no value, nor has a company any right to have such a claim recognized to any extent in estimating the price which the ratepayers shall pay for a waterworks plant.

In Canada a man is "working for the Queen" when he does but a half-day's work, but he is no more short-sighted than the American who "works" out his road-tax in a half-hearted way, doing just as little as he can.

County Roads.

The county roads system is attracting attention in different parts of the Province at present, the success with which it has operated in Hastings County being cited as an illustration of its beneficial results. For some time past it has received attention from the council of Victoria County. At the session of the council in November last, the report of the standing committee on roads and bridges, as adopted, contained the following clause:

Your committee have considered the resolution of council instructing them to report on the advisability of the council assuming and maintaining certain leading roads in the county. The mover and seconder of the resolution have supported it before your committee, on the principle of county control of leading highways, with much force and clearness. It is apparent that under the present system of local municipal control, there is great inequality in the condition of the roads; that most of the work of construction is temporary in its character; that there is no community of interest between the municipalities, and that the system is extravagant and inefficient, and therefore, unsatisfactory. It is urged that when leading roads are spoken of it does not necessarily mean roads leading to the county town only as a centre. Experience in one other county at least, has shown that a county system is immeasurably superior to the fragmentary local system. In further support of the adoption of a county system it is pointed out that while the county rate might be increased as a consequence, the local rates for roads would be lessened; that money can be borrowed at a very low rate of interest on debentures that may run for thirty or forty years, thus reducing the levy for sinking fund to a small per entage annually, and it is contended that the future generation of ratepayers who would possess all the advantages of the present expenditure, because the roads constructed would be permanent, should be allowed to contribute toward its payment. Your committee are of opinion that the question is one of great importance, and in order that an opportunity may be had for discussion among the ratepayers, recommend that no conclusion be now stated; that the council seek fuller information on the question, and in relation to details, and that the subject be held for further consideration at the next session of the council. Your committee recommend that this clause be printed and sent to the reeves and clerks of municipalities with a view to expressions being obtained.

* * *

The outcome of this report of the committee, was a meeting held in the county town, Lindsay, on the 27th of January, called for the purpose of discussing the county roads system, at which a sentiment decidedly in its favor, was awakened. Addresses were delivered by Mr. James Graham, county councillor, Lindsay; Mr. A. F. Wood, ex-M. P. P., Madoc, Hastings County, and Mr. A. W. Campbell, C. E., Provincial Road Commissioner.

* * *

The address of Mr. Graham included a statement showing that in the past ten years nearly $300,000 had been spent on the roads of Victoria by the different municipalities with very unsatisfactory results.

* * *

The story of the Hastings county roads was told by Mr. Wood. Forty years ago, he and others had taken steps similar to those now being taken in Victoria County. They found that the statute labor system was giving very poor results. A scheme was then evolved to borrow the sum of £50,000, buy out the toll roads, and have the county assume control of the leading highways. It met with an overwhelming defeat, but later on, when the people had become educated, it was again advanced and carried at the second attempt. They borrowed the £50,000, the understanding being that certain roads would remain toll roads, but toll charges proved distasteful, as they were mainly paid by the people who carried on the business of the county and advanced the general prosperity. The result was that the toll roads were wiped out, and for the past twenty-five years the good roads of the county had been as free as air. The next difficulty was how to keep the roads in repair; various systems were tried and found unsatisfactory, because they had to employ an army of officials to oversee the work. Finally he (Mr. Wood) advanced a scheme by which the council appointed a good roads committee; they selected a capable superintendent, foreman and staff of men, and whenever a section of roadway required repairs it was inspected by the superintendent, when the foreman and men received proper instructions and were sent to the spot with a camping outfit. The scheme was first opposed, but a year's trial proved so satisfactory and economical that it was continued, with the result that the work is now done at half the former cost and the roads are becoming better every year owing to the careful supervision exercised.

* * *

Mr. Wood, continuing, said: Since the construction of the first 200 miles of roads with borrowed money the county has built 200 additional miles from the direct resources of the county, and the mileage is being constantly increased, and the statute labor dispensed with as directed, to the improvement of the side roads under capable roadmasters. As a result many of the township lines have been transformed into as good gravel roads as can be found anywhere in the Province.

* * *

Further points advanced in favor of a county system were the following:

By a county plan uniformity in system and work will be secured throughout the various municipalities. Whereas, under township control, a diversity of plans is sure to be adopted.

In a county plan an experienced man could be employed to have general supervision of the work; whereas, under township control, each municipality cannot afford to pay the salary of such a man.

Under county control, machinery can be handled to better advantage, as an experienced operator for each implement and a better and more uniform class of work will be secured.

A township can manage its roads properly, only by adopting a plan similar to that outlined for a county system. But by extending it over the county it becomes more cheaply operated.

A properly connected system of leading roads throughout the county will be obtained under a county system; whereas with each township working independantly of those around it, this will be lost sight of.

* * *

If no greater expenditure is made upon the roads than at the present time, the rate will be reduced because:

Most of the township expenditure is now placed on the leading roads, and the township will be relieved of these by a county system.

Under the county system, the funds will be sufficiently concentrated to undertake durable work. Consequently the roads will be properly constructed and afterwards maintained at a much less cost than at present.

* * *

The county road system equalizes the cost of maintaining leading roads. In every county, within a certain radius of a market town, traffic constantly increases as the town is approached. The cost of construction and maintenance increases in the proportion to the traffic. It is unfair to those living near the town, to burden them with the cost of keeping roads to support the traffic from a distance, so unfair as to cause discouragement, and often withdraws support.

* * *

There is no community of interest between the townships. In one township there is a certain leading road much travelled and well made and maintained. The adjoining municipality may for various reasons, not consider the continuation of that road through it of so much importance as to warrant making an expenditure to benefit largely their neighbors who are obliged to travel over it.

Property is very largely valued according to the distance from the market, and the convenience with which the market can be reached. Property a long distance from the market is effected to a greater extent by the bad condition of roads than is property very near the market. Good roads are therefore of greater value to townships a long distance from the market town than those in the immediate vicinity.

LEGAL DEPARTMENT.

JAMES MORRISON GLENN, LL. B.,
of Osgoode Hall, Barrister-at-Law,
Editor.

LEGAL DECISIONS.

O'Brien vs. Toronto.

Municipal Corporations — Negligence — Icy Sidewalks—55 Vic., c. 42, s 531—57 Vic. c. 50, s. 13—Granolithic Pavement.

Held, that a municipal corporation has a right to select such material for sidewalks as in its discretion may think best, so long as it is a material which is generally used or adaptable for the purposes required, and the corporation is not liable for damages which may result, merely because such pavement becomes at any time so affected by natural causes, over which the corporation has no control, that more than ordinary caution is required by the public using such sidewalk to prevent accidents.

This was an action brought against the city of Toronto for damages sustained by the plaintiff through the alleged negligence of the defendants.

The plaintifff while walking along a sidewalk in the city of Toronto slipped and fell violently, seriously injuring herself. It appeared that the sidewalk in question was a granolithic pavement, and had been in a slippery condition since the inception of the winter, that at the time of the accident it was covered with thin slippery ice, that the walk had been so covered for some five days prior to the accident.

At the close of the plaintiff's case the defendants moved for a non-suit.

Morgan, J. J. I have felt for a long time the difficulty that must come up and must eventually be decided with respect to the icy and dangerous condition of foot pavements. The city is not bound to construct a foot pavement of any description, either wooden or otherwise. If in the absence of a pavement the snow fell upon the earth as it stood in its original character, and was tramped down by foot passengers, it is very doubtful whether there would be the same condition of slipperyness as is complained of here; and presuming such condition existed, it is exceedingly doubtful whether, in the absence of an artificial sidewalk, the city would be bound to interfere with conditions of slipperiness that nature has produced by frost or fallen snow upon the places where foot passengers ordinarily go.

But, it may be argued that if the city chooses to change the condition of the original earth by putting down some sort of improvement for the convenience of passengers, and that the presence of that improvement produces a higher degree of slipperiness than would exist in the absence of the improvement, that to that extent they must at all times take care, under all circumstances and climatic influences, to protect the public against a condition of affairs that would not have existed but for the improvement, and if they had not interfered with existing conditions. One would properly regret that this should be the law, because the demands of civilization call for these foot pavement improvements the convenience of the public calls for, they are all put there with a consensus of the public; they are all enjoyed by the public, and the public would naturally object if these pavements were not put down, and the city is only yielding to a well understood public demand if these things are done. Then can it be said, when the corporation, in obedience to a public demand, makes such sidewalk improvements, and makes them of the best and most endurable material that experience seems to suggest as the proper thing for sidewalks, and that when these sidewalks, affected by the forces of nature, uncontrollable by the city—namely, snow and frost—at times become very slippery that the city is bound, all over these sidewalks, at all times and under all circumstances, to protect the public against a danger caused by the forces of nature. I do not think I can say so.

The Legislature has recently provided that in damage actions for injury through snow and ice on sidewalks gross negligence must be proved (57 Vic., c. 50, s. 13.) I think that the intention of the Legislature was to disturb an existing state of the law as expressed in decided cases and produce a different state of the law, that state of the law being to relieve the city from responsibility in cases on all fours with this; and I think I must give effect to the legislation intended and hold that in cases of this description the city is not liable, and that the plaintiff has not made out such a case as would bring her within the right to recover.

The action must be dismissed.

Re City of Toronto and Toronto Railway Company.

Judgment on appeal by the corporation of the City of Toronto from a decision of a board of County Court Judges that the rails, poles and wires of the Toronto Railway Company were not assessable by the city corporation, and upon special case submitted in the same. The majority of the court held that they were bound by the decision of the Supreme Court of Canada in the Toronto Consumers' Gas Company case to hold that the rails, poles and wires were assessable, and the decision of this court in re Fleming and City of Toronto overruled. Burton, C.J.O., dissented on the ground that the remarks of the Chief Justice of Canada in the gas case were not necessary for the decision of that case. Appeal allowed with costs. Question in special case answered by declaring that rails, poles and wires are assessable. Robinson, Q.C., and Fullerton, Q.C., for the appellants. McCarthy, Q.C., and Laidlaw, Q.C., for the company.

Township of Sombra vs. Township of Chatham.

Municipal Corporation—Assessment—Extra cost of works Drainage R.S.O. (1877) c. 174—46 Vict. c. 18 (Ont.)—By-Law—Repairs—Misapplication of funds — Negligence— Damages — Re-Assessment — Intermunicipal Works.

Where a sum amply sufficient to complete drainage works as designed and authorized by the by-law for the complete construction of the drain has been paid to the municipality which undertook the works, to be applied towards their construction, and was applied in a manner and for a purpose not authorized by their by-law, such municipality cannot afterwards by another by-law levy or cause to be levied from the contributors of the fund so paid any further sum to replace the amount so misapplied or wasted.

Appeal allowed with costs.

Town of Amherst vs. Fillimore.

Municipal Law—Remuneration of Councillors—Recovery of money drawn s Salary.

This case was tried before Townshend J., at Amherst, Oct., 1897. The defendent was a member of the Town Council of Amherst in 1891. The Council passed a resolution for the payment of a salary of $100.00 to each of the councillors and defendent received said money. Subsection 68, 81 and 269 of the Towns' Incorporation Act, 1888, gives the Council power to provide for the salaries and emoluments to be paid to "officers" of the town. The town brought an action against the defendant to recover the money paid as salary to defendant as councillor, and the defendant pleaded the resolution of the Council under which the payment was made.

Held that the councillor was not an "officer" of the town within the meaning of the Act, and that the town was entitled to recover the money.

Townshend, J., in giving judgment, said: "One cannot shut their eyes to the strong reasons for debarring a body corporate for municipal purposes voting money to themselves or in any way being interested in municipal contracts. Practical experience has proved it to be a source of corruption and weakness. Public policy is against it. If the Council could vote themselves $100 they might with equal right vote $1000 or more and the citizens would be without remedy. The authorities are numerous and consistent on this subject and it will therefore be unnecessary for me to go through them with any detail. I may, however, cite a short extract from the judgment of Burns, J., in Municipal Council, of Nissouri, vs. Horseman, 16, U.C.E., at p. 388: "The members or councillors comprise the Council and not the corporation—they are agents of the corporation for the management of the affairs and funds of the corporation. When these agents have been proved so to misappropriate the funds or to put money into their own pockets, I think an action will lie against them to recover it back."

HIGHWAYS.

WHAT CONSTITUTES NON-REPAIR

Foley vs. East Flamborough.

Municipal Corporations—Highway—Accident—Runaway Horses—Control—"Repair" of Highway.

An appeal by the plaintiffs, the widow and child of a man named Foley, who was killed by being thrown from a wagon on the centre road in the township of East Flamborough, from the judgment of Boyd, C., at Hamilton, dismissing with costs an action brought against the township corporation for damages for the death, which the plaintiffs charged was due to the road being out of repair, their being an obstruction in it in the shape of a stump. Foley was being driven by a friend of his, one Sullivan, in the latter's wagon, to which was attached a pair of spirited horses. The action was dismissed because it was found that Sullivan was drunk, and Foley, if sober must have known it, and this condition contributed to the accident. The trial Judge not having found specifically whether the road was or was not in a reasonable state of repair, the court now found upon the evidence that at the time of the accident the road was in a reasonable state of repair, having regard to the public using the road in the ordinary way.

The word "repair" was used in the Municipal Act, as a relative term. If the particular road is kept in such a reasonable state of repair that those requiring to use it may, using ordinary care, pass to and fro in safety, the requirement of the law is satisfied. A road need not be kept in such a state of repair as to guard againt injury caused by runaway horses, i. e., horses whose riders or drivers have entirely lost control of them, either in spite of ordinary care or by reason of the want of it.

But for Sherwood vs. Hamilton, 37, U. R. C. 410, it should be held that in this case the running away of the horses and their ceasing to be under control was the proximate cause of the injury. Assuming the facts to be that the driver, in spite of ordinary care on his part, lost control of his horses, and that they running away, the injury was caused by their running the vehicle against the stump in the highway, the plaintiffs could not recover, because, notwithstanding the stump, the road was in a reasonable state of repair for ordinary travel.

Appeal dismissed with costs.

This case involves several points of interest. The learned trial Judge, without determining as a fact whether the road in question was or was not in a reasonable state of repair, dismissed the action because it was found that the driver, Sullivan, was drunk, and that Foley, the plaintiff, if sober, must have known it, and that this condition contributed to the accident. The Divisional Court, instead of directing a new trial, assumed the functions of a jury itself, and found that the road was in a reasonable state of repair. If the road was in a reasonable state of repair the plaintiff could not recover, because the road, being in a reasonable state of repair, the municipality was not guilty of any negligence, and without negligence there could be no liability. We doubt very much if the Court should have taken upon itself the question of determining whether the road was or was not in a reasonable state of repair. If the trial Judge had found, as a fact, that the road was out of repair, the Divisional Court would not have disturbed his finding unless the evidence was greatly against the finding, and that being so, we think the proper course was to have ordered a new trial. If the road was out of repair, we doubt very much if the ground upon which the learned trial Judge dismissed this action was sufficient to warrant a dismissal.

In the case of Thorogood vs. Bryan, the Court held that a passenger was so far identified with the carriage in which he was travelling that want of care on the part of the driver was a bar to his right to recover against the driver of another carriage which injured him, but this case has been overruled by the House of Lords, by the case of Mills vs. Armstrong, 13 Ap. Cases, where Lord Watson says: "The theory that an adult passenger places himself under the guardianship of the driver so as to be affected by his negligence, appears to me to be without foundation either in fact or in law." The law upon this point is also laid down in Jones on municipal negligence as follows: "The prevalent and more reasonable rule on this subject now is, that a passenger in a public conveyance, or a person driving by an invitation with another, will have his right of action against a municipality for an injury occasioned him by the combined negligence of the corporation and the driver." The statement of law "that the word 'repair,' as used in the Municipal Act, is a relative term, and that if the particular road is kept in such a reasonable state of repair that those requiring to use it may, using ordinary care, pass to and fro upon it in safety, the requirement of the law is satisfied," is correct. An arbitrary standard, by which it should be determined whether a road was out of repair or not, would create hardships upon some municipalities. Sec. 606, R. S. O., 1897, provides: "Every public road, street, bridge and highway shall be kept in repair by the corporation, etc." In the case of Colbeck vs. Brantford, 21, U. C. Q. B., 276, Robinson, C. J., speaking of the words "shall be kept in repair," says: "There may in some such case arise a question as to the effect proper to be given to the words, *shall be kept in repair*. If, for instance, an accident should arise on a new side line or concession line lately opened in a township but thinly settled, the argument would be probably urged that what should be understood by the words "keeping in repair," should be construed with a reasonable attention to circumstances, for such a road could hardly be expected to be found in as perfect condition as an old highway in a well settled township. Dillon, on Municipal Corporations, states the duty of municipalities in regard to keeping roads in repair, as follows: "In general, however, the duty to keep in repair only extends to the road actually used for travel, provided it is wide enough to be safe, and is, in its actual condition, reasonably safe for travellers who use due care," and Jones in his work on Municipal Negligence, says: "But in discharging the duty of exercising reasonable care to keep its streets and roads safe a municipal corporation is not required to keep the whole width of a country road in a condition fit for travel. If reasonable care is exercised to keep a travelled track, sufficient to answer the needs of the public, safe for ordinary use the duty will be performed. But on the other hand the municipality should not allow obstructions or excavations to adjoin a travelled way which will render its use unsafe and dangerous." It may be stated here that it is not enough that the metal part of the road itself is in good condition for public travel. Such a road may be unsafe for ordinary travel by reason of obstructions adjoining the travelled part, and it makes no difference whether such obstructions or excavations are within or without the limits of the highway, provided they are so situated as to render the road dangerous and unsafe. The legislature has recognized the necessity of safeguarding such places by the provision of sub-sec. 6, of Sec. 640, R. S. O., 1897, which is as follows: "The Council of every county, township, city, town and village may pass by-laws.

6. For making regulations as to pits, precipices and deep waters and other places dangerous to travellers." In a recent case tried before Chief Justice Armour at St. Thomas, he held a township liable in damage because it allowed a railing along one side of a narrow fill in a ravine to get out of repair, through a gap in which the plaintiff's horses and engine fell, causing the plaintiff serious injury. The council of the township has since then had railings and fences put up along similar places throughout the township. The law upon the subject is stated as follows, in Jones on "Municipal Negligence:" "Many cases have arisen with regard to the duty of a Municipality to protect horses and vehicles from danger by reason of excavations, declivities or embankments adjoining the street. Whether in any particular place an excavation or embankment renders the street or road unsafe for use depends largely upon its proximity to the edge of the street. When the declivity adjoins the travelled way there can be little doubt of the duty of the corporation to erect barriers, but where on the other hand there is substantial protection in the distance of the danger, there is no liability for a failure to erect barriers. When a highway was so narrow that a team could not pass between an embankment and a fence, the town was held

liable for the damages resulting from a collision."

Another important question involved in this case is as to the right of a person to recover damages from a municipality where it is shown that his horses were, at the time of the accident running away and not under his control. In some of the courts of the United States a distinction is drawn between a case where a horse is temporarly beyond the control of the driver and a case where the horse has entirely escaped from his control. In some of the States it is held that when all control over a horse is lost, the damage then following arises from the condition of the horse and not from any defect that may exist in the way, and that therefore such a defect is not the proximate cause of an injury thus occasioned. The better rule there however appears to be that even although a horse has escaped entirely from control his owner is still entitled to demand that an injury shall not be occasioned by an obstruction in the way or by a dangerous excavation adjoining the highway, and that he can recover for any damage that results from a failure of the authorities to keep the highway in a reasonable condition for ordinary use. In an Iowa case, Moss vs. city of Burlington, it was held that where a horse which the owner left tied to a post became frightened, broke loose, and ran down a bank and was killed, the plaintiff could not recover. In that case the horse was not being driven by the owner, so that, if it were possible, he could have controlled it and directed its course. When, however, a horse is being driven by the owner and takes fright and is running away and is beyond the control of the driver there is a possibility of the driver being able to control him and direct his course, and if an accident happens through a defect in the way the corporation is liable, and this appeaas to be the law in this province. The case of Sherwood vs. Hamilton, referred to by the court in the case of Foley vs. East Flamborough is a case of this kind and it appears to establish a more practicable and satisfactory rule than that which the court in Foley vs. East Flamborough suggests ought to be the rule because there is no doubt about the right of a person to recover where his horse is only momentarily out of control and if the rule which the court in Foley vs. East Flamborough lays down were adopted it would be difficult in many cases to determine whether at the time of the accident the horses were entirely beyond the control of the driver or not. In the Sherwood case, Harrison C. J. said:—"The Supreme Court of Missouri held that as the driver had not lost the control of the horse, except during the short period of his backing into the hole, and there was neglect on the part of the defendants, the decision of the Circuit Court should be affirmed; and this seems to me to be in accordance with the decision of our Court of Appeal in Tims vs. Whitby, 37 U. C. R., 100. In Tims vs. Whitby, both in the Court of Queen's Bench and in the Court of Appeal, I, as counsel for the defendants endeavored to get the Court to adopt the decisions of Maine; but while Mr. Justice Morrison was inclined to adopt the view which I urged, the majority of the Court was against me. Mr. Justice Wilson, after a very careful review of all the United States decisions then known, expressed the opinion that a road or bridge must be reasonably safe for public use, and if it be not so the fact that the horse was running away or unmanageable will not prevent the person injured from recovering the damage he has sustained.

The Revised Statutes.

The regular decennial issue of the Revised Statutes of Ontario is ready. The volume is a bulky one, containing over 1,000 pages more than the issue of 1887. The issue consists of 10,000 volumes, which is not too large when it is considered that there are over 7,000 justices of the peace and police magistrates to be supplied, as well as clerks of the various municipalities. Then about 1,500 members of the legal profession require copies. The preparation of the new issue has been an arduous task, necessitating much labor and care on the part of Mr. A M. Dymond, law clerk of the Legislative Assembly. Mr. Dymond has paid particular attention to the index of the present issue, and the result is that it is very much fuller than heretofore; in fact it is twice as large as the last. The trouble with most law indexes is that, being prepared principally for the use of the profession, they are not comprehensive enough for the lay mind. Mr. Dymond recogn zed this, and as a result the new index has been greatly simplified and amplified so that the densest searcher of the statu'es will be able to find what he requires. Mr. Dymond has thus not only earned the thanks of the legal profession but the gratitude of the general public as well. It was thought at first that it wou'd be necessary to increase the price to $8.00 but an order has been issued by the government fixing the price at six dollars. We understand that the Municipal and Assessment Acts will be issued in a separate volume for the convenience of municipal officers, the same as in 1892.

The city health department of Columbus, Ohio, will be provided with a bacteriological laboratory.

The health of the people should be the first duty of the governing classes, for without this health there can be no prosperity, and even if prosperity seem to shine, there can be no enjoyment. As surely as the health of the masses is secured so surely will there be human enjoyment.

London Municipal Elections

During March the municipal elections for greater London were held; the available reports of the campaign show that the political parties took an active interest. In the election of 1895, party issues were prominent, and the result was a tie between the Progressives (Liberal) and the Moderates.

But as the nineteen aldermen who are elected by the 118 councillors for a term of six years—ten retiring triennially—contained a majority of Progressives, the Moderates were still out-voted upon all questions of policy, and not since the formation of the Council have they had an opportunity of proving their capacity to govern.

The working of municipal institutions in New York and other large cities played a great part in the campaign speeches. But the text most commonly quoted by both parties was taken from an address delivered by the man who has—in Birmingham—produced an ideal system of municipal government, and says: "The true sphere of municipal activity is limited to those things which a community can do better than a private individual. When, however, the local authority goes beyond this, enters into direct competition with private industry, and undertakes work which individuals are equally able to perform, when it becomes its own builder, its own engineer, its own manufacturer, and possibly also its own shopkeeper, it raises a new class of considerations and incurs risks which cannot lightly be put aside."

The Progressives have a majority in the new Council. The Conservatives claim that this was the first occasion upon which as a party they used their machinery in municipal elections, and it is fair to assume from the defeat they have sustained, that the domestic policy of the present Cabinet is not viewed with the same approval which the nation is extending to its stand in defence of British interests abroad

District Jails.

A Toronto exchange says that the Ontario Government will soon inaugurate a change in the system of jails, which will no doubt meet with the approval of every one interested. The intention is to have district jails instead of county jails. Then the expense would be much less, the discipline would be very much better, and generally a great improvement would be the effect. At the last session of the Legislature a bill was passed which permitted counties to do away with jails when the number of prisoners does not exceed on the average four per day for two years, and for making arrangements with the sheriff to act when a vacancy occurs in the office of gaoler.

At the next session of the Legislature a bill will be introduced which will go further still, and in a very short time the county jail will be transformed into the district jail.

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 stamped addressed envelope. All questions answered will be published, unless $1 is enclosed with request for private reply.

Possession of Unopened Road Allowance.

145.—H. G. G.—Some years ago a petition was presented to the Municipal Council asking that a road be opened in lieu of an impracticable side road. One of the petitioners whom we will call A placed under the petition after said petition had been signed by himself and others, an offer signed by himself only offering to give land for said road in exchange for a useless piece of concession line. Road petitioned for has been surveyed and legalized. At time of surveying said road it was found that instead of being on the shore of lake, the concession line claimed was considerably inland, leaving part of a lot belonging to a party whom we will call B south of concession line.

A claims deed of whole concession line under his offer and section 551, sub-section 1 of Municipal Act and also under section 552 said Act, and has conveyed to another. B claims half of concession under section 551, sub-section 2.

1. Can the council convey half of concession ine to each party?

2. Has A the right to convey, not having deed from council?

3. Supposing an action at law, can the council have any bond to secure themselves from loss, both parties A and B being poor men, and in case of either losing suit the council could get nothing from them. (Both parties threaten action and are backed by their separate lawyers.)

As we understand the facts of this case, the council has taken A's lands for an original allowan e for road upon which A's land borders.

1. If that is the case, we say that it is the duty of the council to convey the road allowance, as it agreed, to A, and not to convey one-half to B.

2. No. A has no legal title until he obtains a conveyance from the council.

3. No. The council cannot compel either party to furnish any bond as security.

Collectors Seizure—Portable Oven—Manufacturers Lien.

146.—J. M.—A and B build a store and bakehouse, and purchase a baker's oven (portable) and carry on the trade of public bakers. The business not paying they are obliged to mortgage the property, and afterwards both leave the County.

The property is vacant but the baker's oven is still left on the premises, the builders of the oven having a lien on the same. Can our collecter legally levy on the same for taxes? The mortgage has not yet been foreclosed.

Section 6 of the Assessment Act of 1896 says: "In case of distress for the non-payment of taxes where the owner or person assessed is not in possession, the goods and chattels on the premises not belonging to the person liable for the taxes shall not be subject to seizure," etc. The persons assessed are not in possession, but though you say that the builders have a lien it is very probable that they have more than that; they very likely have a contract by which no property has passed to A and B, and if that is so the interest of A and B only can be seized under another part of section 6, which we have not set forth in full. If, however, the property passed from the builders to A and B then the oven may be seized and sold to satisfy the full amount of the taxes regardless of any supposed lien of the builders. Before seizing you ought to satisfy yourself whether the property in the oven is still in the builders or not.

A Reeve is a Justice of the Peace.

147.—T. H. W.—Kindly inform me whether the reeve of a township can by virtue of his office legally take affidavits, act as Justice of the Peace, and perform such other duties as are usually done by an ordinary magistrate; or how does the reeve's power extend in such matters?

Yes, section 415, Consolidated Municipal Act, 1892, provides: "The head of every council, and the reeve of every town, township and incorporated village shall *ex-officio*, be justices of the peace for the whole county or union of counties in which their respective municipalities lie, etc." This act declares these persons to be, and they are justices of the peace during their term of office.

Assessment of Bishop's Stipend and Residence.

148.—B.—1. Is a bishop's salary or stipend, or a minister's, exempt from taxation?

2. Are bishop's or minister's residences exempt?

1, Yes, to the extent of $700, but the excess above $700 is subject to taxation.

2. No.

Payment of Selectors of Jurors.

149.—E. H.—At the last meeting of our council they moved a resolution that I write you with reference to the fee that is paid the reeve, clerk and assessor for selecting jurors. The fee that has been paid in the past was $1 each. The council want to know if there is a fee set by law and what amount, if any; also the deputy-returning officers have always been paid $1. The council want to know if they have power to change the fee, and if so, has it to be by by-law or can it be done by resolution?

In regard to the fees to which the reeve, clerk and assessor are entitled as selectors of jurors, the law does not provide any stated fee but only such sum as is authorized by the council. We would advise that the fee which the council considers proper, be fixed by by-law. See section 159, cap. 61, R. S. O., 1897. The fees payable to deputy-returning officers appears to be a matter for the treasurer of the municipality and not for the council. See section 206, cap. 223, R. S. O., 1897, which provides that the treasurer shall pay the clerk all reasonable fees, allowances for services rendered under the act. If the treasurer considers the fees, allowances claimed unreasonable he ought not to pay them.

Farmers' Sons—Joint Owners.

150.—H. C. G.—Our assessor has always, by request, assessed young men, farmers' sons jointly with their fathers as if partners, but on the same assessment. It is claimed, as they are not partners, they should be assessed as farmers' sons. If partners, firm should be registered. Is the assessor right?

The assessor is right, the Municipal Act provides: "If the father is living, and either the father or the mother is the owner, the son or sons may be entered, rated and assessed in respect of the farm, jointly with the father, and as if such father and son or sons were actually and bona fide joint owners thereof."

Organization of Councils.

151.—J. D. N.—Is the business of a council legal by them signing their declaration of office, or have they got to be sworn in?

As soon as the members of the council have made the declaration of office and property qualification required by the Municipal Act, they are entitled to organize and transact the business of the municipality without any further ceremony.

Seizures for Taxes.

152.—J. B.—1. Are farm implements exempt from seizure when owned by party assessed as owner and occupier of land?

2. Is a buggy being used by said occupier for a year or more and found on the premises, is it in his possession and liable to seizure, although said buggy is not paid for? What constitutes possession?

3. A party whose name is on the roll as owner but lives in an adjoining township, is he a non-resident, and are his goods in such adjoining place exempt from seizure?

1. Such property as this is not exempt when it is owned by the person who is actually assessed therefor and whose name also appears upon the collectors' roll for the year as liable therefor.

2. Yes, unless the title of the buggy has not passed, as is frequently the case, where the seller provides that no title or property shall pass to the purchaser until the article is fully paid for. In the latter case only the interests of the buyer can be seized.

3. Unless this party requested his name to be entered on the assessment roll his lands ought to have been assessed upon the non-resident roll. If he requests that his name should be entered upon the assessment roll he is in the same position as any resident whose name is on the roll and his goods are distrainable in any part of the county. In the case of non-residents who have not requested their names to be entered on the assessment roll only such property as is found on the lands can be seized.

Assessor and Collector.

153.—CLERK—The one person being appointed by the Municipal Council as assessor and collector in the same place for the same year, what effect would it have in the collecting of taxes? Could those assessed refuse to

pay their taxes to the collector? Could he enforce payment by distress?

The persons assessed could not refuse to pay their taxes and the collector could enforce payment of the taxes by distress.

By-Law re payments to Treasurer of County of Simcoe.

154.—TOWNSHIP TREASURER—I beg to herewith enclose a copy of by-law No. 598 passed by the County Council of Simcoe, with a view of eliciting your opinion of its legality or utility. I think it is absurdly and wholly illegal and expressly conflicts with the duties of local treasurers under the provincial statutes, and would give the treasurers of minor municipalities a great deal of unnecessary expense and trouble if it can be enforced.

EXTRACT FROM BY-LAW NO. 598.

For directing the payment of monies payable to the corporation of the county of Simcoe into a chartered bank to the credit of the said corporation.

Therefore the Municipal Council of the corporation of the county of Simcoe enacts as follows:

1. That the treasurers of all the local municipalities within the County of Simcoe, and each and every one of such treasurers charged with the payment of monies for county or other levies, or rates levied or imposed by the county and required to be paid to the said corporation of the County of Simcoe, and the Provincial Treasurer of the Province of Ontario charged with the payment or refund of cost of administration of justice, all high school and public school grants and all other grants or payments to be made by the Government of Ontario or any department thereof to the corporation of the County of Simcoe requiring to pay any such money, shall be and each and every such official or person is hereby required, after the coming into force of this by-law, to pay all such monies so to be paid by them or any of them into the office of the Bank of Toronto at Barrie, to the credit of the corporation of the County of Simcoe, and the person or persons making such payments shall obtain a receipt from the said Bank for each such payment so made by him, and shall forthwith produce the same to the treasurer of the County of Simcoe at his office, Barrie, who shall thereupon make the proper entries thereof in the books of this corporation.

2. That only such payments as are made in the manner in this by-law directed shall be deemed to be good and valid payments to this corporation, and the person or persons so required to make such payments shall only be discharged in respect thereof upon from and after the production to the said treasurer of the receipt of the bank aforesaid.

We agree with you that the by-law, in so far as it directs that moneys payable to corporation shall be paid into the the Bank of Toronto at Barrie, and that the person so paying such moneys into the bank shall obtain a receipt from the bank therefor and shall produce the same to the treasurer, is invalid. Persons indebted to the corporation are not bound to respect this by-law in the manner directed. Payment by you as treasurer is perfectly good notwithstanding the by-law. Sections 265 and 267 of the Assessment Act, R. S. O., 1897, require that all moneys collected for county purposes and all county monies shall be paid by the treasurers of the local municipalities to the county treasurer.

Tile Drainage By-Law.

155.—J. M.—1. Should 5 per cent. in clauses 2 and 18 of the Tile, Stone and Timber Drainage Act be read 4 per cent?

2. Is the notice (form 6) all that is necessary to publish in two newspapers before passing of by-law?

3. Clause 3 of Tile, Stone and Timber Drainage Act says the by-law shall be promulgated pursuant to Consolidated Municipal Act, 1892. It seems to me that it is necessary to publish by-law in only one paper (section 329 of Consolidated Municipal Act, 1892. Am I correct?

4. Affidavit of clerk (form 3) section 2. It seems to me that pursuant to this a notice stating the object of the by-law and stating the steps to be taken to quash the by-law has to be published in two papers. If the by law has to be published does it not state the object of the bg-law, or do you think it necessary to publish the by law notice in two papers?

1. No.

2. The publication of the notice (form 6) is all that need be done before the passing of the by-law.

3. You are right. See sections 375 and 376, R. S. O., 1897.

4. But for the form of affidavit provided (form 3) we would have thought that publication of a true copy of the by-law and the notice as provided by section 375, R. S. O., 1897, would be sufficient. We would suggest that the notice would be worded in this way:

"Notice—Take notice that a by-law for raising the sum of $ for drainage, under the Tile, Stone, and Timber Drainage Act, was passed by the municipal council of the of on the day of , 189 , and that the above is a true copy of the said by-law, etc.

Assessment of Street Railway.

156.—C. H. R.—The Consolidated Assessment Act, 1892, section 34, sub-section 2, says, in reference to street railways, that the shareholders shall be assessed on the income derived from such companies.

Can we assess the street railway company for the land occupied by their rails and the posts planted along the streets as real property?

No. The land occupied by the railway belongs to the public, and is exempt from taxation. The railway company has a mere easement over the highway. We are assuming, of course, that it is the usual case of a street railway laid along a public highway.

Township License—Transient Traders.

157.—W. M.—Our county council passed a by-law under section 495, sub-section 3, of the Municipal Act of 1892, and amendments thereto licensing hawkers and pedlars. That being the case, has our Township Council power to pass by-laws for licensing transient traders?

Yes. See section 583, sub-section 30, chapter 223, R. S. O., 1897.

Assessment of Farmers' Personal Property.

158.—W. C.—1. Are farmers' vehicles, farm machinery and other farm implements exempt from taxation?

2. Can a municipal council legally, or have they power by motion, to instruct the assessor not to assess the personal property of farmers used in connection with farming?

3. Is not this motion in contravention of section 6 of Assessment Act?

4. Can assessor truthfully take final declaration when he returns the assessment roll that he has assessed all the real and personal property of the municipality?

1. No. Unless the actual value of them is under $100. See sub-section 26 of sec. 7, chapter 224, R. S. O., 1897.

2. No.

3. Yes.

4. No.

Trains on Railway Crossings of Highway.

159.—G. M. H.—The public in and around our village are much inconvenienced by the G. T. R. Company, allowing their trains to stand on the public crossing from five to fifteen minutes at a time. We brought the matter to the notice of the company on several occasions and have asked them for a second crossing. They have declined giving us a second crossing, and still continue annoying the public by blocking the only crossing we have. I wish to know what legal privileges the company have, and the proper way to obtain redress.

Section 53, of the Railway Act, R.S.C., chapter 109, provides "whenever any railway crosses any public highway on the level, the company shall not, nor shall its officers, servants or agents wilfully permit any engine, tender or car, or any portion thereof, to stand on any part of such highway for a longer period than five minutes at one time, and if in any city, town or village a train is waiting for more than five minutes, such waiting train shall be cut so as to clear the highway." Sub-section 22, the same section, for every violation of the above section by any officer, servant or agent having control of such engine, imposes a penalty not exceeding $50, recoverable, with costs, in any Court of competent jurisdiction, provided that, if such violation is, in the opinion of the Court, excusable, the action for the penalty may be dismissed, but without costs.

Ownership Exhibits—Drainage Appeal.

160.—CLERK—Municipal council of a township passed a by-law to provide for a municipal drain. Several appeals were filed against the assessment. Court of Revision dismissed them. Appeal was then made to County judge. The judge gave judgment dismissing the appeals and returned to township clerk the exhibits used as evidence. The appellants wish to get back a map put in by their engineer when the judge heard the appeals.

To whom do the maps and other exhibits belong? If to the township, is there any way for appellants to get them?

They belong to the party who put them in as evidence. The clerk should deliver to you the exhibits which you put in. If he refuses to do so you should apply to the Judge, who will, no doubt, direct the clerk to deliver them to you.

Organization of Townships in Districts.

161.—W. F.—The municipality of Alberton was composed of the united townships of McIrvine, Crozier and Roddick At the beginning of this year the township of McIrvine ceased to be part of the union and formed a municipality of themselves. There is a very strong feeling in the other two townships against municipal organization as they are too poor to support it, their assessment last year being about $15,000.

1. Can they drop out of existence as a municipality? If so what steps must they take?

2. Two of the councillors for this year were elected from those two townships previous to dissolution. Provided the townships named have to continue as the municipality of Alberton, do the two councillors still hold office or must they be again elected?

3. If Crozier and Roddick can drop out of existence as a municipal body, can the people of the township appoint trustees to take charge of any assests coming to them from municipality as previous existing, and in case of liabilities exceeding assets who would pay them?

1. There does not appear to be any provision by which a municipality may drop out of existence.

2. Yes.

3. Section 32, cap. 223, R. S. O., 1897, makes provision for the disposition of the property of a union upon its dissolution, but this section applies only where one municipality is separated from a union and sets up business for itself.

Dog Tax—Payment for Sheep Killed.

162.—O. P. E.—For a number of years we have levied a tax on dogs, and each year the tax has amounted to more than what was paid out for sheep killed. This tax was never kept separate, but was placed in the general funds. If we abolish the dog tax by a by-law can we be compelled to pay out for sheep that may be killed more than the tax amounted to in the last year that such taxes were collected, or must we continue to pay out until the whole tax is exhausted, reckoning from the first year such taxes were levied?

We are of the opinion that the residue of the dog tax must be applied to satisfy claims which may be made for damages for sheep killed by dogs, until the fund is exhausted, but the council may, as to the future tax to be collected, pass a by-law declaring it advisable that the tax should be maintained, but the application of the proceeds, as provided by the Dogs and Sheep Act, be dispensed with, and if the council pass such a by-law all future taxes collected shall be the property of the municipality.

Cattle Running at Large—Highway Railway.

163.—CONSTANT READER.—R. S. O. chapter 170, section 103, provides that no horses, sheep, swine or other cattle shall be permitted to be at large upon any highway within half a mile of the intersection of such highway with any railway crossing or grade unless in charge of some person, etc.

Section 104 allows any person to impound such cattle.

Does this mean all or any cattle found on any road allowance within half a mile of railway crossing?

All road allowances laid out by the Crown are highways. If cattle are found at large upon any road allowance or any other highway, and the point at which they are so found is within a half mile from the intersection of highway with a railway such cattle may be impounded.

Assessment of Ministers' Residences.

164.—J. B.—We have some ministers' residences directly connected with the church property and owned by the church. Others owned by the church are on property the church owns in other parts of the town from the church. I presume these two are on the same footing. Other property is owned and occupied by the ministers themselves, and again one or two ministers in town rent from private parties.

Are all these properties taxable? or is there any distinction? Some claim here that class 1 certainly exempt, and others that class 2 is also.

We are of opinion that all of these properties are taxable. There is no doubt whatever but that the properties referred to in classes 2 and 3 are taxable. At one time parsonages were exempt, but the Legislature has since then repealed the section exempting them, and therefore we do not think they can escape taxation by being connected with church property and owned by the church. The assessor should assess all of these properties, and let those who are interested in them appeal if they are dissatisfied.

Copy of Assessment Roll for County Clerk.

165.—J. B.—Is the municipal clerk exempted from copying the assessor's roll for the county clerk this year?

No. Section 83, of the Assessment Act requires clerk to transmit copy of assessment roll to county clerk within ninety days after it has been finally revised and corrected.

To Establish New Road—Bad Title.

166.—W. G.—Husband dies without a will leaving farm property, widow and two children. Council wishes to establish a road through said property. The widow being opposed to any road on said land, should the council agree with the widow as to the amount of compensation.

1. What proceedings would the council take to establish said road so as to have a clear title and not be liable for children's share?

2. Can the widow give a clear title of road by signing a bond with council for children's share?

3. Can the council establish a 40 foot road by taking a deed for same without the consent of County Council?

4. Is any by-law necessary to make a road legal when a title is received by deed?

1. They must proceed according to the provisions of section 632, cap. 223, R. S. O., 1897.

2. No.

3. No.

4. Yes, there ought to be a by-law.

Hotelkeeper—Boarding Indigents.

167.—G. L. H.—A hotelkeeper sends his bill to a municipality for keeping persons that are travelling, claiming to have nothing to pay their way. He gives no names of the parties. Can he compel the municipality to pay it?

No.

Hotelkeeper—Sick Man—Council's Liability.

168.—X. Y.—1. Sick and somewhat delirious man in hotel. Hotelkeeper requests council to take charge of him, as he could not keep him in the hotel. Were they obliged to do so?

2. Council ordered his removal to lock-up. Shortly afterwards he died, leaving some goods and chattels in the hotel. Council were put to considerable expense, and as no relatives could be found to claim his effects or settle the council's outlay in his death and burial, they demanded from the hotelkeeper the goods and chattels, so that they might dispose of them by auction and recoup the municipality for the outlay. Hotelkeeper refuses to give them up until he is paid his account against deceased. Can he hold them?

3. Will the council have to pay hotelkeeper's bill against deceased?

4. Would in doing so make the council legally liable to pay other bills against deceased?

1. No.

2. The hotel-keeper probably has a lien on them. The council cannot, however, compel him to give them up.

3. No.

4. No.

Statute Labor Tax—Resident Aliens—Special Work.

169.—A. H. K.—In Bertie Township there is a quarry, where from April to December upwards of 300 aliens are employed getting out stone for the Buffalo Harbor Works. These laborers, while operations are going on, live in houses built for the purpose on the quarry premises.

Our statute labor by-law provides that male persons between 21 and 60 residing in the municipality and not on the assessment roll shall be called out by the pathmaster for one day's statute labor.

Are these quarrymen liable for statute labor?

Considering the length of time that these men are residing in the township we are of the opinion that they are liable for statute labor

School Board Procedure and Accounts.

170. R. R.—I enclose you a clipping from Ottawa Journal, headed "Hintonburg New School." Among the accounts presented at the meeting "There were two items which the board would not pass, claiming they were not warranted. One was for $6 for an address to a member of the board and another for $1.50 for hack hire." As the board appears to differ very much in their mode of transacting business, would like to have your opinion on the following questions:—

1. Can chairman of said board vote when there is not a tie as in this case, (and make it a tie)?

2. Can the said chairman legally take his seat after receiving said illuminated address, when the said amount six dollars was charged by the board to the section?

3. Is there not a clause in the statute that a member of a public school board shall not receive any remuneration during his term of office?

4. Also can chairman of said board legally engage a cab to attend a funeral with members of board and charge the same to the section?

5. Are the auditors justified in refusing to pass those two items?

1. Yes.

2. Section 100, chapter 292, R. S. O., 1897, disqualifies a trustee who has a contract in his own name, or in the name of another, with the board, but we do not consider this to be a case within that section. It does not follow that because a board of trustees pays an unlawful claim to a third person, that such an act can be said to be a contract between a member of the board and the board.

3. No. The clause above referred to.

4. No.

5. Yes.

Assess Store Buildings and Stock—School Rate not included in Exemption—Assess Cordwood, etc.

171.—SUBSCRIBER.—1. Is it lawful to assess store buildings at the same rate as other property and after the Court of Revision is passed and the rate is struck, pass a by-law and impose a business tax taking the value of the building as the basis to strike the rate of tax?

2. Is an assessor obliged to take a store keeper's statement as to the amount paid on stock, or can he assess store goods to the amount he thinks proper and then let store keeper appeal at Court of Revision and take his affidavit to same?

3. Has council power with consent of ratepayers to exempt school rates on mill site property. No by-law has been passed nor will be up to April 1st, 1898?

4. Does the exemption of municipal rate include road work or not.

5. Are ties, pulp wood, cordwood or any other timber assessable when it is piled along lake shore or roads within the municipality?

1. The buildings ought to be assessed at their actual value. Sub-section 22, section 36, R. S. O., 1897, contemplates the assessment of the buildings first in the usual way, because the annual value is fixed upon the basis of the assessed value of the premises. The by-law should be passed and the rate struck afterwards.

2. He is not bound to take the storekeeper's word. If he is not satisfied he may assess the goods and leave the owner to appeal.

3. No. See section 73, chapter 292, R. S. O., 1897, and section 417, chapter 223, R. S. O., 1897.

4. Yes.

5. Yes.

Mutual Fire Companies' Assessments and Notes.

172.—T. T. L.—1. Can a mutual fire insurance company make a special assessment after the policy expires, the regular annual assessment being paid in advance?

2. Can the insurance company hold the premium note after the policy expires, if the policy-holder demand it after it runs out?

1. Yes, for payments if any remaining unpaid.

2. Section 137 (2), cap. 203, R. S. O., 1897, provides: "On the expiration of forty days after the term of insurance has ended, the premium note or undertaking given for the term, shall be absolutely null and void, except as to first payment or fixed payment remaining unpaid, and except as to lawful assessments, of which written notice, pursuant to sections 130 and 131, has been given to the maker of the premium note or undertaking during the currency of the policy or within the said forty days, and on the expiration of the said period the premium note or undertaking shall, upon application therefor, be given up to the maker thereof, provided all liabilities with which the premium note or undertaking is chargeable as aforesaid, have been paid."

Ditches and Watercourses Act Proceedings—Continued.

173.—W. S.—A person takes all the necessary steps, according to the Ditches and Watercourses Act, 1894, up to the calling of the engineer. The reason he was not called was that winter had set in for good by this time, so that he could not do his work properly. Now, can this man commence where he left off, or will the grounds all have to be gone over again, *i. e.*, sign the declaration of ownership and call a friendly meeting, etc.?"

Under the circumstances we are of the opinion that the owner may continue the proceedings without beginning de novo, that is, he may now file the requisition as provided by section 13 of the Act. Had he abandoned the proceedings it would have been different. But he does not appear to have done that, but delayed taking the next step because the work could not be done during the winter.

Union School Section Rates Differ.

174.—CLERK—I live in township A and belong to a union public school, composed of parts of townships A and B, the school-house being situated in township B. The rate in township A for the general public school levy is 12 mills on the dollar and the rate in township B for the same levy 9½ mills on the dollar.

1. Which of the above rates should I pay?

2. Is B entitled to receive from A an amount calculated at 12 mills on the dollar of the equalized assessment of the A portion of the union, or only an amount calculated at 9½ mills?

1. You must pay twelve mills on the dollar, on your property in A, and 9½ mills in B.

2. For the purpose of equality section 51 of the Public Schools Act provides for the equalization of the lands in the school section as between the two municipalities. The total amount required by the trustees is apportioned between the two municipalities on the basis of the equalization made under section 51. Each municipality must then impose such a rate as will raise the amount which it is required to pay over to the trustees as its share. Each collector is to pay over the moneys collected to the treasurer of his municipality, and such treasurer pays the total amount to the trustees. See section 46 and 66, sub-section 2, of the Public School Act.

Stationery for Police Magistrate.

175.—F. J. C.—We have a police magistrate residing in this town. He receives no salary from the corporation. Is it the duty of the corporation to furnish him with an office, together with fuel, light, stationery and furniture or any of these things at the expense of the corporation. Should your answer be in the affirmative, will you please point out the law that requires the council to do so?

Yes. Section 479 (1), chapter 223, R. S. O., 1897, provides, "The council of every town and city shall establish therein a police office; and the police magistrate, etc., shall attend at such police office daily, or at such times and for such period as may be necessary for the disposal of the business brought before him, etc," and sub-section (2) the same section, provides "The council shall from time to time provide all necessary and proper accommodation, fuel, light, stationery and furniture for the police office, and for all officers connected therewith."

Assess Telegraph and Telephone Poles.

176.—A. J. R.—Can telegraph and telephone poles be legally assessed within an incorporated municipality?

Yes.

Assessor or Councillor.

177.—A. B.C.—Our assessor was nominated for a councillor at the regular nomination in December, 1897. Before his nomination he did not resign his assessorship, but he did at a special meeting held after the nomination, and the council accepted his resignation. He was elected to sit as a councillor and took the declaration as such. He sat at the council board for two meetings and transacted business, but hearing that an effort was being made to unseat him he placed a disclaimer in the hands of the clerk. At the next meeting of the council he sent a communication to the council re disclaimer. The council decided they had no right to deal with the matter. Two meetings went by and at the third meeting he took his seat and transacted business—voted moneys to pay accounts presented.

According to the foregoing brief account, is he qualified to sit at the council board, and if not, what steps can or should be taken to unseat him?

It is now, no doubt, too late to question the validity of the election upon the ground that the councillor, being an assessor at the time of the nomination, was then disqualified. Assuming, however, that the disclaimer was in proper form, he ceased to be a member as soon as it reached the clerk, and he had no right to sit in the council thereafter, and a new election ought to have been held.

Non-Resident County Councillor.

178.—INQUIRER.—Can a County Councillor or commissioner retain his seat legally as such councillor and remove to another county? He still owns and holds his farm in the county for which he was elected.

Section 5 of the County Council Act says, "Each sub-division shall be designated and distinguished by its number, and shall be represented in the county council by its members, who shall hold office for the term of two years, and who shall be resident of the division for which they are councillors." We are of opinion that the residence required in this section has reference to the time of the election of a county councillor, and that it does not apply to a councillor who, subsequent to his election, ceases to be a resident. Section 207, and following sections of the Municipal Act, R. S. O., 1897, shows the acts arising after election which creates a vacancy in the council.

No School Tax Exemptions.

179.—B.—A municipal council legally post up notices asking ratepayes of this municipality to come on a certain date to vote for or against the exemption of tax on a mill site and adjoining tract of land. All who came voted for exemption of tax. Will this vote exempt said property of both municipal and school tax, it being understood by a great many of said voters that they were exempting school as well as municipal tax, or have the ratepayers authority to exempt school rate by legal vote with council consent and by-law? It is maintained by some that school tax cannot be exempt if one ratepayer objects. On this occasion none voted against exemption, but a number of ratepayers did not vote at all. In your March number you refer us to section 73 of School Act, also saying unless council had passed a by-law after 14th April, 1892, school tax could not be exempt, but said section says by-law should have been passed prior to that date. Did you make mistake and print the word "after" instead of "before"? According to section 73 of School Act the council cannot exempt school tax as we had no by-law passed prior to 14th April, 1892. What we want to know is, can we exempt school tax by legal vote of ratepayers called by notices being

posted up giving all ratepayers notice that this vote was to be taken, and if any did not appear it being their own fault, all appearing voting for exemption of tax, neither municipal or school tax being stated and thus meaning both. Some ratepayers since claim they only intended exempting mnnicipal tax and supposed they were voting to that effect.

We intended to say that a municipality has not had the power to pass a by-law exempting property from school rate since the 14th April, 1892. Section (73) the School Act shows that the use of the word "after" was the printed term. The consent of all the ratepayers would not make the by-law good.

Rural School Year and General Township Assessment.

180.—W. P.—1. The Public School Act, 1896, section 66, says: "Which has been kept open the whole year." Does this mean the calendar year? If not, when does the school year commence?

2. If an assistant teacher commenced to teach immediately after the summer holidays (being engaged a few days previous) how much should that section get from township funds by reason of having an assistant?

3. Referring to second question, should council of the same year pay this money or council of the following year?

1. The rural school year commences on the third Monday in August, and ends on the 30th of June. See section 89 of the Act.

2 and 3. The school rates are usually fixed in August, and the amount of the general township assessment is determined by the facts relative to the previous school year.

Effect of Employment of Disqualified Teachers.

181.—TRUSTEE.—A teacher holding a third-class certificate, also second non professional, having taught four years without renewal of county Board, has been hired by two members of the trustee board, the third, the secretary-treasurer, refusing to sign on the ground that the teacher was not the holder of a legal certificate of qualification, not having complied with the requirements of section 87 of public school regulations.

1. Is the agreement of any value? The corporate seal has not been attached to it.

2. What position will teacher and trustees be in if ratepayers refuse to pay tax for teacher's salary?

3. Have the trustees a legal right to levy tax for salary under the circumstances?

1. No.

2. No rate can be levied, neither can the teacher collect his salary from the trustees

3. No.

Width of Road Opened Liquor Licenses.—Registration of B. D. & M., Unorganized Territory.

182.—C. C.—1. I herewith enclose resolution of the municipal council re a certain road, A. Cote, whose name appears in the first resolution now objects to giving road 66 feet. You will see that he had previously consented, with others, to pay for all demands for lands taken in excess of twenty-five feet. He now claims for payment. The council do not wish to pay for land, and if it has not the power to open road 66 feet wide, will close it. Kindly advise as to the best way to settle this dispute?

July 17th, 1894.

That the petition of Arthur Cote, Louis Ramillard and others, asking to establish road from division line between lots 8 and 9, to the west, two acres of lot 6 in the third concession, township of Caldwell, on the south side of Veuve river, be granted, said road to be 25 feet wide. Should the said road require to be widened the parties petitioning to pay for the land taken in excess of 25 feet in width, otherwise the said line of road to be closed.

December 18th, 1897.

That whereas, the parties bordering along the road south of Veuve river, from Government road east to lot No. 6, in the third concession, have by their petition, prayed this council to widen said road, and make it 66 feet wide, same as all other public roads, and whereas the said parties have agreed to settle all claims for land taken in excess of 25 feet wide, (as specified in the resolution passed on the 17th of July, 1894,) excepting Mr. A. Cote, therefore it is resolved that the prayer of said petition be granted, and that said road be made 66 feet wide under the conditions herein named.—Carried.

2. When is the council supposed to notify the hotel-keepers that their licenses may be maintained by paying the necessary duty, and what is the mode of procedure?

3. Is the council compelled by law to pay for the registration or B. D. and M. occurring in the adjoining townships not organized.

1. Without the consent of all parties interested or affected the council cannot establish the road as intended unless it proceeds in the manner provided by section 632, cap. 223, R. S. O., 1897, and compensation must be paid for all land taken, if the owners insist upon it.

2. We are not aware of any notice of this kind referred to. Section 20 of the Liquor License Act empowers councils to limit the number of licenses by by-law to be passed before the 1st day of March in any year.

3. We do not think the council is compelled to pay for registration of B.D. & M. occurring in adjoining townships. If a case has actually arisen involving this question we would suggest that you refer the matter to the Deputy Registrar-General, Toronto, who has charge of this department of the public service, and may have made special regulations in reference thereto.

An effort should be made to secure the return of all the collectors' rolls for 1897 during the present month. In townships the returns of taxes unpaid have to be made to the county treasurer, and unless he has time to enter these returns on his books before the first day of May he has no authority for charging the 10 per cent. which should be added to all arrears of taxes on that day. Councils have no authority for extending their collector's time and should insist upon the return of the roll. In many municipalities where the rolls are not returned, councils are already paying interest on money borrowed to carry on their business, when a prompt collection of the taxes would place them in a position to get along without borrowing money for some months. If in addition to the interest, they lose the 10 per cent. properly chargeable upon arrears by the county treasurer, they will be in a position to estimate how much they should pay a good collector to collect their taxes promptly as contemplated by our municipal laws.

Re Committal of Inmates to Houses of Industry.

In the Revised Statutes for 1887, the sections of the Municipal Act referring to the committment of persons to houses of industry by any two of Her Majesty's justices of the peace, were omitted, and the councils of counties wherein these institutions have been established, have in many cases changed their by-laws authorizing certain persons and no others to commit inmates. A reference to the revised statutes of 1897, section 526, shows that the sections omitted in the statutes of 1887 have been included and read as follows:—

(1.) Any two of Her Majesty's justices of the peace or of the inspectors appointed as aforesaid, may, by writing under their hands and seals, commit to the house of industry or of refuge to be employed and governed according to the rules, regulations and orders of the house:

1. All poor and indigent persons who are incapable of supporting themselves,

2. All persons without means of maintaining themselves and able of body to work, and who refuse or neglect to do so,

3. All persons leading a lewd, dissolute and vagrant life, and exercising no ordinary calling or lawful business sufficient to gain or procure an honest living,

4. And all such as spend their time and property in public houses to the neglect of any lawful calling, and

5. Idiots.

(2.) Every person committed to the house of industry or refuge, if fit and able, shall be kept diligently employed at labor during his confinement therein, and in case any such person is idle, and does not perform such reasonable task or labor as may be assigned, or is stubborn, disobedient, or disorderly, such person shall be punished according to the rules and regulations of the house of industry or refuge in that behalf.

Publications Received.

Auditor's Report, Township of Humberstone, 1897.

Auditor's Report, Township of Burford, 1897.

Auditor's Report, Township of Reach, 1897.

Auditor's Report, Township of Crowland, 1897.

Proceedings County Council of Wellaud January Session, 1898.

Proceedings County Council of Wentworth, 1897.

Proceedings of Council, Township of Beverly, 1897.

Yonkers, N. Y., has three women acting as health inspectors, and whose work has proven exceptionally efficient.