

# THE MUNICIPAL WORLD

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## Calendar for December, 1901.

- DEC. 1. Chairman of Board of Health to report to the Council on or before this date.—Public Health Act, schedule B, section 3.  
Last day for appointment of School Auditors by Public and Separate School Trustees.—Public Schools Act, section 22, (1); Separate Schools Act, section 28, (5).  
Municipal Clerk to transmit to County Inspector statement showing whether or not any County rate for Public School purposes has been placed upon Collector's Roll against any Separate School supporter.—Public School Act, section 72; Separate School Act, section 52.  
Last day for councils to hear and determine appeals where persons added to Collector's Roll by Clerk of Municipality.—Assessment Act, section 166.
5. Make returns of contagious diseases to Registrar General. R. S. O., chapter 44, section 11, subsection 4.
9. Last day for publishing notice of county council nomination. S. 132, (2) Mun. Act.
11. Last day for Public and Separate School Trustees to fix places for nomination of Trustees.—Public School Act section 60 (2); Separate School Act, section 31, (5).  
Returning Officers to be named by resolution of the Public School Board (before second Wednesday in December)—Public School Act, section 60, (2).
14. Last day for pryming of taxes by voters in local municipalities passing by-laws for that purpose.—Municipal Act, section 535.  
Last day for Collectors to return their rolls and pay over proceeds, unless later time appointed by Council.—Assessment Act, section 144.  
Local assessment to be paid Separate School Trustees.—Separate Schools Act, sec. 58.
15. Municipal Council to pay Secretary-Treasurer Public School Boards all sums levied and collected in township.—Public School Act, section 71.  
County Councils to pay Treasurer High School.—High School Act, section 33.  
Councils of towns, villages, townships hold meeting.—Municipal Act, section 304 (6).  
Roll to be finally revised by judge when assessment taken between 1st of July and 30th of September.—Assessment Act, section 58, (1).  
Pass all accounts for subscriptions, etc., due THE MUNICIPAL WORLD, and order election supplies, etc.
16. Nomination Day, where fixed by by-law of County Council. Section 125, Mun. Act.
19. Last day for notice of first meeting of trustees in New School Sections to be posted up by the Township Clerk.—Public Schools Act, section 11 (5).
20. Last day for treasurer to send Clerk list of all who have not paid their taxes.—Municipal Act, section 292.
22. Public and Separate Schools close.—Public School Act, section 96 (1); Separate School Act, section 81, (1).  
High Schools close first term.—High Schools Act, section 45.
23. County Council Nomination Day.—Section 133.
24. Last day for posting up Annual Statement of Assets and Liabilities in Townships, Towns and Villages.—Municipal Act, section 304, (7).  
Last day for publishing Notices of Nomination.—Section 127, Municipal Act.
25. CHRISTMAS DAY.  
High School treasurer to receive all monies collected for permanent improvements.—High School Act, section 39, (1).  
By-Law for dis-establishment of Township Boards takes effect.—P. S. Act, s. 31, (1).  
New Schools, and alteration of school boundaries go into operation or take effect.—Public School Act, section 25, (2); section 41, (3); section 42, (3); section 46 (10).  
Annual Public and Separate School Meeting.—Public School Act, section 14; section 60, (1); Separate Schools Act, section 27, (1); section 31, (1).
30. Nomination Day.  
Road Commissioners cease to hold office.—Assessment Act, section 120.  
Liquor License Commissioners cease to hold office.—Liquor License Act, section 3.  
Protestant Separate Schools Trustees to transmit to County Inspector names and attendance during the last preceding six months.—Separate School Act, section 12.  
Trustees' report to Truant Officers due.—Truancy Act, section 11.  
Auditors' report of Cities, Towns, and Incorporated Villages, to be published by Trustees.—Public School Act, section 65, (11).  
Persons liable to Municipality on Mortgage to state balance due thereon to head of Municipality.—60 Vic., c. 48, s. 22.
- JAN. 1. A HAPPY NEW YEAR TO ALL.  
Renew Subscriptions to the MUNICIPAL WORLD for 1901.

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# The Municipal World

PUBLISHED MONTHLY

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

K. W. MCKAY, EDITOR,

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

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ST. THOMAS. DECEMBER 2, 1901.

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132 your subscription ends with this issue.*

THE MUNICIPAL WORLD depends largely on the co-operation of those in office, both members of councils and officials, and to them our thanks are due for progress made during the past few years. We will be pleased to receive renewals of subscriptions them all, and from those who may be retiring or retired from municipal life, a recommendation to their successors. The Special Supplements describing public utilities in cities, towns and villages have increased the value of the paper to the authorities of urban municipalities.

The Question Drawer occupied more space during 1901 than any previous year. The value of this department depends entirely on the number and character of the questions, the answers to which, if obtained from any other source, would cost many times the subscription rates.

No other special publication, at any price, does as much for its readers as we have been able to do. For the appreciation of our efforts we look to the Supply Department, which has, in the past, received an encouraging report. We have a most complete list of Blank Forms, Books, Stationery and Office Supplies required by municipalities. The co-operation of all with this department is necessary if the present high standard of THE MUNICIPAL WORLD is to be maintained.

A by-law to grant aid to a sugar beet factory has been carried in the city of Berlin.

Mr. Henry Moorehouse, treasurer of the town of Perth, is dead at the age of 82 years.

The month of December is one of the busiest in municipal circles. There is generally a greater demand for special information as the elections draw near, than at any other time. Subscribers should not be backward in availing themselves of the privileges of the Question Drawer, to prepare themselves for the canvass and nomination day. We will keep THE WORLD OFFICE open evenings from December 16 to January 4 so that all who may desire to telephone or wire us at night rates may do so and receive prompt attention.

## Complimentary Resolutions.

Municipal office has few rewards commensurate with its duties and responsibilities.

Many long terms of service go unrewarded unless the fact that a man was a representative of the people, or an official, should be considered sufficient. Men are at all times sensitive, and keen to judge the actions of others. The unusual devotion of an employee, or the conspicuous bravery of a soldier, is generally recognized in some manner. Even the good behavior of a convict shortens the term of his imprisonment.

Look where we will we find that there is a general tendency among men to regard the creditable actions of their fellows as entitling them to some sort of reward.

In many ways we make ourselves responsible for the behavior of others, and should encourage them in well doing. Love of approbation is a strong motive to action. A word of appreciation in the form of a resolution in reference to a faithful employee, or an efficient member of the council, may have an enormous influence in determining right conduct. The influence will often extend far beyond those immediately interested, and raise the standard of municipal service and representation.

Nothing should interfere with the duty which, as occasions arise, every councillor owes to his colleagues, the officials, or his constituents in this respect. Complimentary resolutions are usual when a councillor or official dies. How much more appropriate when all can say:—

*"I see him coming! Let's fall into admiration of his good parts, that he may overhear his own praise."*

—The Antiquary.

Mr. James H. Johnston has succeeded Mr. Thomas Clitheroe, as clerk of the township of Haldimand.

Mr. Charles Lewis, of Warren, has been appointed clerk and treasurer of Ratter and Dunnett townships, as successor to Mr. W. A. Depew.

Mr. James Grant, for many years clerk of the township of London, died last month, and his daughter, Miss Mary Grant, has been appointed to succeed him.

The decision of "In re E. J. Parke, police magistrate of the city of London," referred to under nominations, was decided in 1898 but has not been brought prominently before the municipal officers of the province.

We are directing special attention to it in this issue, as we understand that an Act to amend the present law, so that the decision will not hereafter apply, will be introduced at the next session of the legislature.

Section 304, sub-section 6, of the Municipal Act, requires the council of every town, township and village to hold a meeting on the 15th day of December, this year, and immediately after the meeting publish a detailed statement of receipts and expenditures for a portion of the year ending on the day of such meeting, together with a statement of assets and liabilities and uncollected taxes. A similar statement in detail respecting the last fifteen days of the preceding year is to be attached thereto. As this is intended to be the last meeting of the year all outstanding accounts should be passed. The mayor or reeve and treasurer are required to sign this statement, and it shall be published forthwith in one or more newspapers (if any) of the municipality, and also in such other newspapers circulated in the municipality, as the council may direct. The council may, at their option, instead of publishing this statement in any newspaper, cause it to be printed and posted up in the offices of the clerk and treasurer, respectively, as well as at all the post-offices in the municipality, and at not less than twelve other conspicuous places therein, not later than the 24th day of December. The clerk is to procure not less than one hundred copies of this statement for delivery or transmission by post to such of the electors as shall first request him to do so, not later than the last mentioned date. It is the duty of the clerk to see that copies of this statement are produced at the nomination meeting.

The clerk, treasurer and other officials of the municipality should render the council all the assistance in their power in the preparation of this statement. The above remarks do not apply to township municipalities situated in East or West Algoma, North Renfrew, Muskoka or Parry Sound, or the provisional county of Haliburton.

*If we say 'n our pletform that all men are brothers,  
We don't mean that some folks ain't more so 'n others;  
An' et's wal understood that we make a s'lection,  
An' that brotherhood kin' o' subsidies arter 'lection.*

—Lowell Biglow Papers.

The by-law to grant \$20,000 in aid of Queen's University, Kingston, was defeated by ratepayers of the county of Frontenac on the 1st of November last by a majority of 503.



# NOMINATIONS.

The provisions of the Municipal Act divide the municipalities into eight classes for nomination purposes.

The following tabular statement will show when and where nomination meetings for 1901 should be held, and the municipal officers to be nominated.

## STATEMENT.

MUNICIPALITY.	DATE.	MAYOR.	WHERE.	ALDERMEN	WHERE.
I. CITIES ..... Sections 118 and 119.	30 December .....	10 a. m., to 11 a. m. . . .	At City Hall..	12 noon to 1 p. m., or if by-law passed under sec- tion 120, 7.30 p. m. to 8.30 p. m. ....	At City Hall or place in each ward fixed by by-law.....
II. TOWNS Divided into wards; popula- tion over 5,000 ..... Sections 118 and 119.	30 December .....	10 a. m. to 11 a. m., or if by-law passed under sec- tion 120, 7.30 p. m., to 8.30 p. m.*.....	At Town Hall	(Councillors.) 12 noon to 1 p. m., or if by-law passed under sec- tion 120, from 7.30 to 8.30 p. m. ....	At Town Hall or place in each ward
III. TOWNS Not divided into wards; pop- ulation over 5,000..... Sections 118 and 119.	30 December.....	Same.....	At Town Hall	Same.....	At Town Hall.....
IV. TOWNS Divided into wards; popula- tion, 5,000 and under..... Sections 118, 119 and 71a.	30 December.....	10 a. m. to 11 a. m., or if by-law passed under sec- tion 120, 7.30 p. m. to 8.30 p. m.*.....	At Town Hall	Same.....	At Town Hall or place in each ward
V. TOWNS Not divided into wards; pop- ulation 5,000 and under.... Sections 118, 119 and 71a.	30 December .....	Same.....	At Town Hall	Same.....	At Town Hall.....
VI. VILLAGES ..... Sections 119 and 120.	30 December.....	12 noon to 1 p. m., or if by-law passed under sec- tion 120, 7.30 p. m. to 8.30 p. m.*.....	At Town Hall or at such place as may be fixed by by-law.....	Same.....	At Town Hall or at such place as may be fixed by by-law
VII. TOWNSHIPS ..... Sections 119, 122 and 123.	On 30 December, or if by-law passed by county council under section 125, on 16 December..	12 noon to 1 p. m., or if by-law passed under sec- tion 122, 1 to 2 p. m*...  (County Councillors.)	At Town Hall or place fixed by by-law under section 123....	12 noon to 1 p. m., or if by-law passed under sec- tion 122, 1 to 2 p. m....	At Town Hall or place fixed by by- law under section 123.
VIII. COUNTIES ..... Section 133.	23 December.....	1 p. m. to 2 p. m*.....	At place in each district fixed by Nom. Officer, sec. 132, (1) (a) and sec. 7, c. 23, 61 Vic.....		

\*In the case of E. J. Parke, Police Magistrate, of the City of London, referred to below, it was held that when more than one candidate for any particular office has been nominated there is no limit fixed by law within which nominations must be made and received by the Returning Officer.

### Nomination Proceedings.

#### NOTICE.

It is the duty of the clerk or other returning officer to give, at least, six days' notice of nomination meeting. For county council nominations, two weeks' notice is necessary. Notice may be given by advertisement in newspapers, or printed posters.

#### NOMINATIONS, SECTION 128.

The persons nominated to fill each office shall be proposed and seconded (*seriatim*) and every such nomination shall be in writing, and state the full name, place of residence, and occupation of the candidate, and shall be signed by his proposer and seconder.

The change in the law requiring nomi-

nations to be in writing came into force on the first of January, 1899. Nomination forms should be provided for use at the nomination meetings.

The tabular statement shows the municipal officers to be nominated at the meetings. In towns where ward elections have been abolished, either by by-law or the amendments of the Act of 1898, the number of councillors has been reduced.

#### RESIGNATIONS

may be handed to the returning officer at nomination meeting, or on the following day, at any time before nine o'clock p. m.

At the nomination meeting candidates proposed may resign verbally, but after the nomination meeting all resignations must be in writing, signed and attested by a witness, and delivered to the clerk or

returning-officer within the time mentioned. When resignations are not received in time or in proper form, a clerk has no alternative but to hold the election.

In re E. J. Parke, Police Magistrate, of the city of London, (30 Ont. Rep., p. 498,) it was held by the Divisional Court that the provision in sub-section 2, of section 28, of the Municipal Act, which provides for the closing of the meeting for the nomination of candidates for municipal offices after the lapse of one hour, only applies where not more than one candidate is proposed, sub-section 3 applying where more than one candidate is proposed, in which case no time limit is prescribed. Chief Justice Armour in delivering the judgment of the Court said, "It is obvious that the provision of the second

(Continued on page 184.)



## Municipal Officers of Ontario.

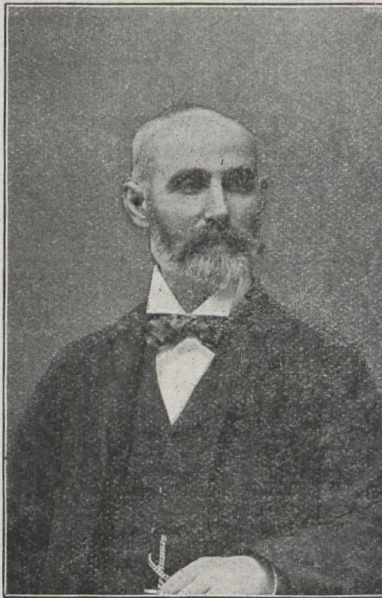
sub-section, as to the lapse of one hour, is only applicable to the case to which that sub section applies, namely, the case where 'only one candidate for any particular office is proposed,' in which case the clerk or other returning-officer or chairman is obliged to allow one hour to elapse before he can 'declare the candidate duly elected for that office.' This provision is, in such case, to prevent the one candidate from being declared duly elected before an opportunity is afforded to nominate another candidate. But where more candidates are proposed for any particular office than are required to be elected, the provisions of sub-section three are applicable, and the provision in the second sub-section, as to the 'lapse of one hour, is not applicable to such a case.'

A nominating or returning officer should



MR. PETER CORRIGAN.

not refuse to accept a nomination paper for the reason that he has a personal knowledge of the fact that the person nominated thereby is not a legally qualified candidate; the responsibility of deciding this question should be left to the courts. The Municipal Act does not make it the duty of such officer to read each nomination paper to the assembled electors, either when handed to him or at the close of the nomination meeting. He may do this, however, as a matter of courtesy. At the close of the nomination meeting he should announce the names of the candidates placed in nomination. The nominator and seconder of a candidate should both be present at the nomination meeting, and should be electors of the municipality. It is not necessary that a person nominated should be present at the meeting.



MR. WYANT.

Treasurer Township of Kinloss.

Mr. Corrigan was born in Philadelphia, Penn., in 1833, and came to Canada with his parents in the following year, settling in the township of Hungerford. In 1854 he moved to the township of Kinloss. He was educated at the public school in the township of Hungerford, and was appointed treasurer of the township of Kinloss in 1863. He is a Justice of the Peace and commissioner in H. C. J.

Clerk Township of Enniskillen.

Mr. Wyant was born in the township of

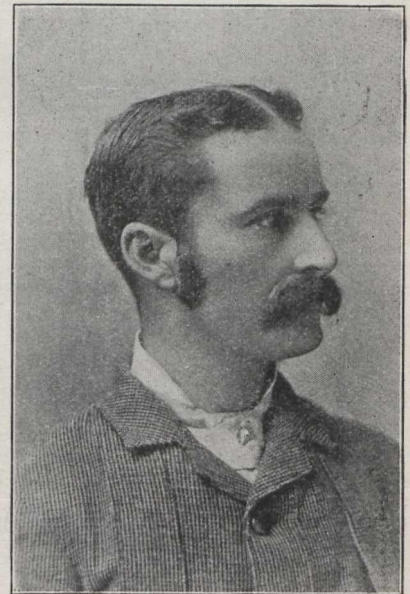


MR. CARMICHAEL.

Etobicoke, in 1854. He removed with his parents to the township of Nottawasaga in 1859, and was educated in the common school at Nottawa, and learned the trade of painting. He came to the township of Enniskillen, in 1876, and engaged in farming. He was assessor of the last named township in 1891, 1892, 1893 and 1894, and was appointed clerk in 1896. Mr. Wyant is also secretary-treasurer of the Petrolea and Enniskillen Agricultural Society, and also carries on business as an accountant, conveyancer and insurance agent.

Clerk Township of Widdifield.

Mr. Carmichael was born at Bourg Louis, Quebec, in 1867, and removed to the township of Widdifield in 1886. He there engaged in farming. He was collector of the township from 1891 to 1893, inclusive, and councillor in 1895. He was appointed clerk in 1900. Mr. Carmichael is also secretary-treasurer of the West Nipissing Farmers' Institute.



MR. SINCLAIR.

Clerk Village of Connington.

Mr. Sinclair was born in Toronto, and received his education at the Port Perry High School and Lindsay Collegiate Institute. He is engaged in business as a broker. He was appointed clerk in 1889.

Four wells were sunk on the London waterworks property for the purpose of augmenting the water supply, but without success. The average depth was one hundred and twenty-nine feet, and cost \$800. A well will be sunk on the East London waterworks property for the purpose of testing the prospects of securing artesian water there.

A by-law to purchase the electric plant was recently defeated by the duly qualified electors of the town of Grimsby.



## Engineering Department

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

### Pioneer Roads.

In the early history of this Province the building of wagon roads was looked upon as being one of the most important problems with which the early settlers had to deal. The soil being of a very strong character and the land entirely covered with heavy and deep rooted timber, the task of clearing, stumping, grading and draining was a very difficult one. This compelled early settlement largely along the margins of lakes and streams, where access to markets and mills, and travel between points, could be had by water. The land along these streams was not always the most desirable, and soon the more daring ventured to explore farther back, with special regard to the future value of their location. While the settlement was scattered for many years, these brave men endured all kinds of difficulties and privations in their efforts to establish a home and improve their possessions. Much of the travel was by canoe when in the direction of streams, and often by the more difficult land route across the country, where the trail or the blazed line was the only road, and where their giant physiques were the only conveyance. History records many instances of long travel, carrying heavy burdens of grist to mill, or simple articles of food and apparel for the family. The duty of building roads they realized to be a difficult and trying one, requiring years of honest toil to accomplish, yet they faced it nobly and manfully, and in addition to all other duties of early settlement, and with little or no assistance, so that we marvel at what has been accomplished in one brief century.

Municipal appropriations and government aid were not available in those days and nothing but the strength and application of man could be resorted to. Thanks to the efforts of these pioneers and their successors, the forests have been driven back, the lands have been brought into successful cultivation, roads have been formed and much done to make them good throughout what is known as the older part of Ontario.

Not satisfied, however, with the development of one small portion of the country, efforts are now being put forth to colonize what may fairly be looked upon as the larger and in many respects the wealthier portion. With immense areas of rich agricultural soil, well timbered and watered, with an ideal climate, no good reason can be offered for not opening it up to receive the surplus population of the older congested settlement, rather than have them drift to other provinces and other countries. Much has been done to attract the attention of settlers to this new section, and many localities are now fast filling up.

There are, scattered through each of these communities, what may be justly called pioneer settlers who for years have been trying to attract their fellows, and these have experienced many of the troubles of early settlement. But by those who are now pouring into New Ontario very little of the genuine pioneer life is experienced. Where it is desirable that a section should be opened up, it is the duty of the government to do all in its power to remove obstacles from the way of the settlers in order that they may devote their time and energy to clearing up the land. The more rapidly this is done, the more quickly will these hidden treasures be cultivated for the benefit of the whole province.

For the older part of the community much has been done by moneys realized from the lakes, forests and mines of New Ontario, and it is only fair and right that a fair proportion of the revenue of that section should be used in aid of its substantial development. Opportunities are now provided for doing this more easily, cheaply and perfectly than before, and for this reason much of the attention of the Provincial Road Department is being turned to the important matter of building proper colonization roads.

A careful examination of the whole section is first made, comprehensive plans are laid down for securing lines that will best accommodate communities for the future as well as the present. Due regard is being paid to the location so as to secure the straightest and shortest lines, but at the same time having due regard for grades, hills, easy crossing of streams, etc. A study of the experience of the older townships is of the greatest benefit in the framing of such a plan.

The ruling principle of older Ontario seemed to be to follow as nearly as possible the fixed lines of survey, regardless of hills, grades or crossings, with the result that much extra cost is involved in building expensive bridges and keeping up troublesome hills, in addition to the constant annoyance and loss of energy in hauling loads over difficult grades, where, by a little study and forethought, these might have been removed by slight deviations from the straight line with often little, if any, difference in length.

Again, the new system provides for clearing the road the width of the allowance, and forming the roadbed, in however elementary a way, so as to provide a uniform width of grade as far as possible, making the width in accordance with the demands of travel. Thorough and systematic drainage is being resorted to and strict attention is given to the building of drains sufficient to carry the water to outlets in the adjoining land.

The excavated earth is used in forming

the roadway, and no more corduroy is used than is indispensable. The drainage of the road and the making of top drains, in addition to securing a firm foundation, relieves the land of surface water and provides outlets for the drainage of the settler's first clearing. The value of this is fully appreciated by all who are enjoying its benefits.

Modern machinery for doing this work easily and quickly is being adopted wherever practicable, and as fast as means will permit, new roads are being opened to the settlements, with the result that settlement in New Ontario cannot be styled pioneer life as compared with the first occupation of older Ontario.

### Toronto's Public Works.

The annual report of the city engineer of Toronto, just issued, maintains its character as an interesting and instructive document. Commenting on various features of street work, Mr. Rust says:

"In 1895 an experiment was made with different kinds of wood as paving material, on the west approach to the King street subway, the woods used being beech, maple, rock elm, soft elm, hemlock, Norway pine, white pine and cedar. All the blocks were rectangular, 4 x 7 inches deep, and 8 to 12 inches long, with the exception of the cedar, which were the ordinary round blocks. In June of this year these different woods were examined, with the following results: Beech, nearly all the blocks were decayed; maple, a few of the blocks were in good condition, but the majority of them had dry rot; rock elm, most of the blocks were in good condition, with the exception of a few, which showed signs of dry rot; soft elm, the blocks were all decaying; hemlock, the majority of the blocks were sound; Norway pine, were in fairly good condition, but the traffic had decreased their depth to about a half inch, and a few of them showed signs of dry-rot; white pine were in as good condition as the Norway pine, a great many of the blocks showing signs of dry-rot. The round cedar blocks were in better condition than any of the other woods.

During the year a great many pavements, roadways and sidewalks have been constructed, and council will, no doubt, be pleased to see that the citizens are evincing a strong desire for a pavement of a permanent character, and only upon streets where cedar block pavements already existed, where there is a great deal of vacant property, and the property owners at present cannot afford an expensive pavement, have block pavements been relaid. This class of pavement remains in fairly good condition for five or six years. There was, however, some dissatisfaction among a few of the property owners on these various streets, who desired a better class of pavement, and in some cases objected to the manner of construction. I consider the pavements



have been fairly well laid, and the rate-payers have, in every instance, received full value for their money.

The records attached to the report of the assistant-engineer in charge of the roadway department, show that 24,666 miles of new pavements and roadways, and 15.295 miles of concrete and brick sidewalks were constructed during the year, divided as follows :

6.348 miles of asphalt pavement ; 6.045 miles of brick pavement ; 7.842 miles of cedar block pavement, and 2.403 miles of macadam roadways, and about two miles of gravel, scoria and stone sett roadways.

The asphalt pavement appears to be the favorite. I think, however, that brick for residential streets will last quite as long and will not cost as much for maintenance as asphalt, but the great objection to this class of pavement is the noise. We have as far as possible taken steps to remedy this, but there is still considerable rumbling, and I am afraid it is absolutely impossible to entirely prevent it. The bricks used in the construction of the various pavements have been entirely of Canadian manufacture, and in some instances they have not complied fully with the abrasion test called for in the specifications. These tests were made with the old form of rattler, as adopted by the Brick Manufacturer's Association, but I have since ascertained that this has not given satisfactory results, and is being gradually discarded, and the department, at present, is engaged in making fresh tests with a somewhat different form of machine."

The total street mileage is nearly two hundred and sixty miles. The extent to which the different classes of pavement are used in Toronto is indicated by the following table, showing the percentage laid of the different classes :

	Per cent.
Cedar block.....	27.20
Stone or scoria.....	.26
Asphalt.....	11.90
Wood on concrete.....	.26
Macadam.....	18.10
Cedar blocks with asphalt between tracks.....	.60
Cedar block with brick between tracks.....	5.30
Macadam with stone setts between tracks.....	.35
Bricks.....	4.15
Gravel.....	2.06
Unpaved.....	29.82
	100.00

Plans for sewage disposal were prepared during the year, embodying septic tank treatment with subsequent filtration. As a preliminary to designing these works, weirs were placed in each main sewer in the city near its outlet, and accurate measurements taken of the dry weather flow of sewage for each hour of the day and night, the general result being a gross dry

weather flow of sewage of 20,745,000 imperial gallons per day, or deducting water received from West Toronto Junction sewers, or county water taken in at the city boundary, of 898,000 imperial gallons per day, leaving a net amount of 19,847,000 imperial gallons of city sewage per day.

Mr. C. L. Fellows, deputy city engineer, in the course of his report on the city's waterworks, says :

"The council, this year, granted a small appropriation for this purpose. The district selected was the north-western section of the city, extending from Dundas street on the west, to Manning Avenue on the east, and from College street on the south, to city limits on the north, containing 1,356 acres, the number of houses being 2,090, the tubs 3,008, lawn hydrants 472, baths 894, closets, 932, the population 8,553. The consumption averaged 234,163 gallons per day of twenty-four hours, before repairs were made ; the leaks on mains were 58, showing a loss of 26,122 gallons, per twenty-four hours, and the service taps 308, with a loss of 58,304 gallons. After repairs had been made the consumption fell to 140,565 gallons per twenty-four hours, showing there had been a loss of forty per cent. in the quantity supplied, and this in a sparsely built up section of the city in which the number of taps and fixtures per house was a minimum. Had a test for leakage taken place in other sections of the city the percentage of loss would have undoubtedly risen much above this. The time is not far distant, unless proper means are taken to prevent waste, when the ratepayers will be called upon to provide large sums for improvements to the system, if the supply and pressure are to be maintained."

The Road Movement.

About one-eighth of the townships of Ontario have, within the past few years, abandoned the system of statute labor for making and keeping up their roads, and there is no instance where a township has returned to the old system or regretted the change ; but on the contrary the greatest satisfaction appears to be given after the new system has been put in fair operation. Reports from many of these townships show that the roads would have been vastly better with no greater expenditure, had the change been made many years ago. All are agreed in their recommendation to others to make the change as soon as possible.

Most people who have given the road question careful study can easily see that while it has had its day, and answered a useful and economical purpose, changed conditions have rendered statute labor almost incapable. New requirements find in it very little hope for ready and economical relief. The question of road-making, viewed from the standpoint of a public necessity, receiving expenditure of

public labor and funds, is one which demands the best attention of the rate-payers in every community, but unfortunately does not receive the attention its importance rightly demands.

The agitation which has been going on in this province for a few years past has done much to create sentiment favorable to improved methods, but why should so much effort and energy be required to cause the people to move in their own behalf? Every citizen should look upon the question of roadmaking as being a personal matter, and at least once a year, a day should be set aside specially for the purpose of talking over measures and methods, ways and means, for improving the condition of the roads. The annual expenditure of both labor and money should be carefully gone over, the purposes for which it was expended should be explained and the results considered. Fair and friendly criticism should be offered, suggestions made for improving each year upon the work of the past, every energy directed towards perfectly systematizing the work and seeing that the expenditure, as far as possible, is concentrated on substantial and finished work ; that the means of maintenance should be provided for remedying defects when they can be most cheaply done ; and for preventing injury, thus reducing the necessity and lessening the cost of repair.

The work of the Good Roads Train operated by the Eastern Ontario Good Roads Association attracted intense interest and the long stretches of good roads built in various parts of the eastern counties have demonstrated, as never before, how easily and perfectly roads can be built, when proper implements are used, and business methods employed. The building of concrete culverts, pipes and arches was an object lesson of incalculable value in all those sections where perishable material has been used in the past, where timber is scarce, and where hundreds of dollars must be provided each year without adding to the durability of the work or lessening the demand for annual outlay. The Good Roads Train has gone into winter quarters, but the demand for it is so great that operations will be renewed in the spring, and, it is expected, continued throughout the season.

Many township councils throughout the province will test the feeling of the electors at the next election by taking a plebiscite on the question of road reform, and it is to be hoped that the whole question will be discussed at public meetings before the vote is taken. No harm, but good must necessarily follow from such a course. In fact, there is nothing so conducive to the welfare of municipal affairs than that the people should get together and talk matters over in a spirit and with an intention becoming all those who have the welfare of their municipality at heart.



**Street Wear.**

The city of Winnipeg goes further in its efforts to protect the city pavements, than merely regulate the width of tires. A by-law provides that horse-shoes shall not have circular corks less than three-quarters of an inch in diameter at the point where the cork rests upon or touches the pavement; and that horse-shoes shall not have square corks less than three-eighths of an inch square at the point where the cork rests upon the pavement.

Such a by-law will be of undoubted benefit to the many property owners who have taxed themselves heavily to pave the streets adjoining their homes with expensive asphalt, brick and broken stone pavements.

Much as we may regret the indications that, for city use at least, the horse is likely to become a rarity, there will be much gained in the saving of pavements when the motor vehicle comes into general use. Slowly but surely the motor-vehicles and rubber tires are growing in popularity, and their general adoption is a certainty of the near future.

Action in regard to the Highway Improvement Act is increasing, and among the counties interesting themselves in the matter are: Leeds and Grenville, Renfrew, Bruce, Welland, Lanark, Peel, Wentworth, Victoria, Dufferin, York, Elgin, Hastings.

Conferences have been held in most of these cases between county and township councils, and wherever the question has been properly understood, there has been, practically, unanimity as to the benefits to be derived, and township councils are lending their aid to the selection of the most important road within their several townships.

Should a county council take advantage of this Act, the council is expected to prepare a plan of the county showing the central points and places of business, designating such roads, as in their opinion would best serve the requirements of traffic.

Where possible, it would be well to have the system a connected one, but this point is not of sufficient importance to make it compulsory.

In designating the roads, unless there is some glaring discrepancy, or a protest from some section of the people interested, the plan of the county council as to the roads, whether connecting or not, will be accepted by the government, believing that the county council with the advice of township councils will view the matter from the county standpoint, and that they are best able to frame the most serviceable system and the one upon which the expenditure will be of the greatest good to the people.

The impression prevails, in some localities, that the Department of Public Works will require an expensive standard of road. On the other hand a fixed standard will not be laid down. That will be left to

the county engineer or commissioner having charge of the work, and his report as to the treatment of the road and the character and cost of the work undertaken will, for the most part govern. That report, however, it will be necessary to submit to the government, but so long as it embodies the elementary principles, observing proper drainage, crowning, and as far as possible uniform grading, and a systematic application of material, it will meet the requirements.

For example, in going over a road which falls within a county scheme, the first mile, owing to its having already been graded, graveled, etc., to some extent, may only require patching and simple repairs to put it in good condition, at a cost of not more than \$100; whereas the next mile, unimproved and neglected, through swampy land, etc., might cost \$1,000 to drain, grade and gravel or stone, the required depth or thickness. And the next mile, being at the outer end of such road, on favorable soil and receiving but little traffic, might be made equally good and serviceable by proper grading, draining and a light coat of gravel, at a cost of a couple of hundred dollars.

The number of miles of road to be comprised in a system is not limited by the Act. The amount of money which a council spends on these roads may be such as they see fit to raise, and the improvement made on the system may be placed where it will be most serviceable and effective in the bettering of the condition of these roads, drawing upon the government's special fund for one-third of the cost, up to, but not exceeding, the county's proportion of the \$1,000,000.

The material to be used will be such as the council and superintendent deem the most economical and profitable, preference being given to that of the locality.

The aim of the Act is not so much to oblige the building of an expensive system of complete roads, as it is to place the management in hands that will provide uniform and systematic work, employ and properly operate modern and economical implements, such as rollers, rock crushers and graders; and provide careful, constant and methodical supervision in maintenance; to provide object lessons in the care and treatment of roads and set examples for those having charge of the remainder.

The Act as it stands has the alternative plan, whereby townships may individually carry on the work, but the Department believes that this can be best accomplished by the county council, because as a council, they would have charge only of these particular roads, would have sufficient work for and naturally employ a competent man to supervise and care for it.

Whereas under township control, the township council having charge of these special roads as well as all the other roads in the township, will be influenced after the first expenditure to make future municipal expenditures on other roads, and those designated for government aid will

be neglected. While other roads in a township remained unimproved many councils, after once improving a road under this Act, would find it impossible to make a sufficient yearly expenditure to properly maintain it, and under such conditions the first outlay would be little better than wasted. There are other reasons, familiar to most experienced councillors, why the principal roads, those subjected to extremely heavy travel, can be better and more economically maintained by the one larger body in the county rather than by the half dozen separate townships working independently of one another.

It cannot be doubted that county councils, constituted as they now are, will take a deep and intelligent interest in this work, and will strive to create such a distinction between their results and those under township management as to stimulate a friendly rivalry which must naturally do much in the interest of improved roads and economical management.

**To be Operated by Water Power.**

The town of Almonte has bought a water-power at a cost of \$13,000, with which to operate the electric plant recently purchased. Electric plant, \$14,750; arbitration expenses, \$1,200; water power, \$13,000: total, \$28,956, is the expenditure to date. Municipal ownership of public utilities is growing in favor, and the enterprise of Almonte in this regard is an index to the feeling gaining ground throughout the province. With cheap power, such as Almonte has secured, the operation of the electric plant is on a favorable basis.

**Kingston Arbitration.**

The award of Judges McDougall, Price and McTavish, arbitrators appointed to fix the price at which the works and plant of the Kingston Light, Heat and Power Company are to be taken over by the city, has been made. The award fixes the amount to be paid for the works at \$170,373. Judge McTavish and Judge McDougall find that the company is not entitled to anything for franchise, as the city never contracted to purchase the franchise. From this Judge Price dissents. The three judges agree that upon appeal to the High Court if the company is to be allowed for franchise, the value shall be \$80,000. Judge Price was the company's arbitrator. Under the award each party shall pay its own costs, and the city pays the arbitrators' fees, the costs of the award and the stenographer's fees. The company, when asked by the council to place a value on their property, asked \$373,000. The tangible assets of the company, in their inventories submitted to the arbitrators, were placed at \$223,111.33. The company officials say they will appeal to the court on the question of the value of the franchise. The arbitrators fees amounted to \$2,146.70.



## Questions on Municipal Engineering.

Subscribers are entitled to answers to all Questions submitted on this subject. 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 regarding engineering matters have heretofore been answered by mail, but believing that these would be of more than local interest, it has been decided, for the future, to devote sufficient space to them in our regular columns. To insure answers in the following issue of the paper, questions should be received at the office of publication on or before the fifteenth of the month.

### THE RATING OF BOILERS.

J.—Our council contracted with a firm to supply a one hundred horse-power boiler for the waterworks. We are not satisfied that the boiler is of the capacity specified, and we would like to know how to decide what the horse-power really is.

Horse-power, as applied to boilers is a very indefinite term. Under the old method they were rated at one horse-power boiler for each five square feet of boiler surface heated. This now varies with the type of boiler from five feet to seventeen square feet. One reason for the misuse of the term is the difference of engine efficiency, one engine generating several times the horse-power produced by another, when connected to the same boiler, and consuming equal amounts of fuel. By stating the type of boiler and dimensions we can give you the information you request.

### CARE OF TAR WALKS.

COUNCILLOR.—Some tar walks laid in our village about ten years ago are in fair condition, except that the surface has worn rough. Can anything be done to improve them?

These walks are used to a considerable extent in England and there the practice is to "paint" them from time to time. The "painting" process consists in applying a thin coating of tar with a broom, and over this, clean sand is sprinkled and swept, to keep the walk from being sticky. By this means tar walks are greatly benefited and are given a smooth, elastic and agreeable surface, preferred by many to the hard, unyielding surface of cement-concrete walks.

### TILE DRAINING.

SUBSCRIBER.—"We have a short piece of sandy road which in the spring becomes very soft and wet, and we have decided to tile drain it. The drain would be sixteen rods long. Would two feet be deep enough, and what fall should we give it? The ground is very flat. Would it be advisable to protect the tile in any way to keep out silt?"

A tile drain, under the circumstances you describe, would undoubtedly do good. As to depth, three feet would be much better than two, as the drain would act more quickly in the spring, as well as

lower the water-line. A fall of three inches in one hundred feet would answer, but it would be better to give it twelve. Care should be taken to lay the tile on a uniform grade, otherwise, where depressions occur, silt will be deposited, and the carrying capacity decreased. To surround the tile with sawdust is an excellent means of preventing the entrance of silt.

### Taxation of Business Enterprises.

Municipalities and states are learning that nothing is so mobile as capital; that nothing is so easily moved as finances and business; and that no state can improperly interfere with or tax business and business enterprises without a resulting loss and injury to the state, because capital will leave the jurisdiction of such an unwise government. Lack of sound business organization, methods and administration must, sooner or later, react against a state, because, to-day, competition between states for business and capital is keen. States are learning that they cannot hold subject to legislative control, if improperly exercised, capital and business affairs. If municipalities or states improperly attack, if they improperly tax business and capital, they will surely take to themselves wings and fly away.—*Public Policy.*

### Water Waste.

The Stratford Water Company recently found a leak in its water mains, responsible it is believed, for a loss of 500,000 gallons daily. A somewhat similar story could be told of many another waterworks system, if a careful examination were made. One of the most serious sources of waste is open and defective taps in the houses of consumers. An annual or semi-annual, inspection will do much to remedy this condition as very little difficulty will be experienced in securing a greater care of water, under penalty of shutting off the supply. Water meters are the most perfect method of checking all water waste, whether by defective mains or taps, but the cost of installing them and the additional cost of reading, render them, under certain circumstances, of doubtful profit. The city of Cleveland is at present installing 10,000 meters.

Proprietor to proof-reader: "Here is a job which the customer rejects, because you spelled sausage—"sossage." How in the world did you come to pass such a palpable error?" Proof-reader: "Oh, I don't know; I thought everthing went in sausage."

### Voting Machines.

The Toronto *World* says: In the last Presidential elections, the vote in 25 of the cities, towns and villages of New York State, were recorded by voting machines. The number of machines used in each place varied from one, in some of the villages, to 108, which was the number employed in Buffalo. On the whole 442 machines were used, and the press has generally endorsed their use, on the ground that they are economical and accurate, ensure rapid voting and an immediate count and prevent needless recounts and expensive litigation. The National Congress and Legislatures of the States of New York, Michigan, Iowa, Indiana, Ohio, Minnesota, Rhode Island, Massachusetts, Connecticut and Nebraska have enacted laws authorizing the use of voting machines. A company with a large capital has been organized in Rochester to take advantage of the rapidly increasing demand for the new machines. In this connection the Buffalo *Commercial* says: The advantage secured by the use of voting machines such as have been used in Buffalo for three years past in national, state and municipal elections, are so numerous and decisive that there is no possibility of returning to the old system of ballots and "pastors."

### One Man, One Vote.

The Municipal Amendment Act of 1901, by sections 9 and 10, does away with double or treble voting for councillors at the town or township elections. The following are the new sections regulating the matter:

158 a. In towns and cities where the councillors or aldermen are elected by general vote every elector shall be limited to one vote for the mayor and one vote for each councillor or alderman to be elected for the town or city, and shall vote at the polling place of the polling subdivision in which he is a resident, if qualified to vote therein; or when he is a non-resident or is not entitled to a vote in the polling sub-division where he resides, then where he first votes and there only; and in cities where the aldermen are elected in two electoral divisions every elector shall be limited to one vote for mayor and to one vote for each alderman to be elected in each electoral division in which he has been rated for the necessary property qualification and shall vote in the manner hereinbefore prescribed.

10. Section 159 of the said Act is amended by inserting after the word "wards" in the third line thereof the following words "nor more than once in the township, though the township is divided into wards where the election is for the township at large by general vote."

Mr. Joseph Brisbois, clerk of the township of Alfred, Prescott County, has been appointed a Notary Public by the Ontario government.



## Question Drawer.

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

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

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

**Township Council Can Make Grant to High School—  
By-Law Need Not Be Submitted to Electors—  
Township Has Right to Land Purchased  
for Road.**

**479.—SUBSCRIBER.**—Our township municipality is not in any high school district. The high school board of a high school located in a corporate village in our township recently waited on the council and requested it to make them a grant of \$500, to be applied by them towards defraying the general expenses of maintaining and conducting the school.

1. Would it be legal for the township council to make the above grant?

2. Is there any authority enabling the township council to legally submit a by-law to the ratepayers of the township asking their consent to the making by the council of such grant to the above mentioned high school board in each year in the future?

3. In or about the year 1878 the council of our township purchased land from the owners of adjoining farms for the purpose of establishing a blind line, a width of one and one-half rods off each lot. No conveyances were made by the owners of the land sold to the municipality, but each owner from whom lands were purchased was paid in full the price agreed on for his lands. The greater part of this blind line has been opened, graded, gravelled and put in a condition for travel, and statute labor has been continuously performed upon it. About three years ago A purchased the farm of one of the owners who had so sold a portion of his land to the municipality, receiving a conveyance from his vendor which did not except from the land sold the portion previously disposed of to the municipality for road purposes. At the time of A's purchase a fence was erected along the limit of the purchased road, one and one-half rods in upon the land he bought and had been so erected for a number of years. The land bought for road purposes off this farm had been chopped and prepared for grading sometime previous to the date of A's purchase. A now claims that the township has no right to the portion of land sold off his farm for road purposes, and last November moved his fence out one and one-half rods to the original line. Who is the legal owner of the land claimed by the municipality for road purposes, A or the township?

4. If you answer that the township is the owner what proceedings should they take to compel A to move back his fence and establish their title to the land?

1. Subsection 4 of section 587 of the Municipal Act empowers the councils of counties, towns and villages to pass by-laws for making grants in aid of any high school or collegiate institute, or to build, preserve, enlarge or improve any high school or collegiate institute in any adjacent or other municipality.

2. No, and it would be improper to do so.

3. We are of the opinion that there was a dedication in effect of the lands referred to for the purpose of a road, and that, under the circumstances, the municipality is entitled to the lands as against A. If

the land which A claims was subject to a mortgage at the time of the purchase by the municipality, the rights of the mortgagee are not affected unless he was a party to the transaction.

4. An action may be brought to compel A to remove the fence.

**Collection of Cost of Laying Granolithic Walk.**

**480.—J.H. M.**—Our council has put down on one side only of one of our streets, a granolithic walk, assessing property owners who own property on one side of this street (as the same sidewalk is on), other side being church property and vacant lots, 40 per cent of the cost of same. Passing a by-law during the progress of the work, or at least after work was commenced, such by-law being carried by votes of all members of the council with no opposition. This was done without a petition of said interested property owners. In fact they objected to having it done—except one or two of the owners. Before making up the collector's roll the reeve advised me to base the cost at one dollar per square yard and, supplying me with the measurements of the different respective lots, we made up the square yards for each individual, adding the amount to the other taxes in each case in the roll and making out a statement of the measurements and appending to roll on a separate sheet. What I want to know is this:

Can the collector collect these amounts in the regular course, or would it be better to sue (as I believe the parties refuse to pay), or is the by-law illegal because of not being petitioned for by a sufficient number of the interested property owners on such street, or passed after commencing work?

We do not think the procedure adopted by the council in this case was legal. The council might, by an affirmative vote of three-fourths of the members, have passed a by-law under section 678 of the Municipal Act to construct a granolithic sidewalk upon the street in question if it is a leading or principal business street, and to raise, by way of a loan on the credit of the debentures of the municipality, forty per cent. of the cost of the construction in addition to the part of the cost to be provided by the municipality, and to assess the remainder of the cost falling on the property benefited in the manner provided in the Municipal Act as to assessments for local improvements in other cases. Subsection 2 of section 678 provides the manner of raising by assessment the remainder of the cost, that is the sixty per cent. Section 665 declares that the special rate to be assessed and levied shall be an annual rate according to the frontage thereof upon the real property immediately benefited by the work or improvement, and the property owners are entitled to the right of appeal from the

assessment, as provided by clause (a) of subsection 1 of section 664 of the Act. The by-law should therefore provide for holding a court of revision. We do not understand where the reeve found any authority for charging a private owner one dollar per square yard. The frontage should be ascertained and the sixty per cent. of the cost of the work falling upon the property owners should then be levied according to each man's frontage. Then, as to the method of enforcing payment of the assessments, we think they must be collected in the same manner as other taxes and that is by a demand for them in the usual way, and, if there is no distress out of which they can be made, the land may be resorted to. They cannot be recovered by action until the special remedies for making them either out of the owner's chattels or his lands are exhausted.

**Sale by Municipality of Lot Purchased at Tax Sale.**

**481. W. E. W.**—At a tax sale some years ago our council bought in a village lot which did not realize the amount of arrears of taxes standing against it. Through some error this lot has been omitted from the list of lands liable to be sold for taxes. Can the council make a private sale of this lot or must it be advertised in the usual way?

Assuming that your council purchased this village lot under the authority of subsection 3 of section 184 of the Assessment Act, and in accordance with its provisions, it has the right to sell the lot by private sale at any time within seven years from the date of the purchase. It would not be a proper proceeding to include it in the list of lands liable to be sold for taxes or to advertise it for sale in the usual way.

**Duties of Auditor.**

**482.—W. Y. X.**—1. Should auditors report every thing in writing, for instance, an error of eighteen cents in the collector's roll, paying interest without any motion or by law from council, etc.?

2. In printing copies of the report for circulation is it necessary to give all small errors such as mentioned in question 1?

1. Yes. Everything that affects the accounts of the corporation. Subsection 1 of section 304 of the Municipal Act requires the auditors to "examine and report upon all accounts affecting the corporation, or relating to any matter under its control or within its jurisdiction, etc." Auditors cannot be too exact in performing the duties required of them by law, and no matter affecting the accounts of the corporation can be so minute as to be unworthy of their attention.

2. Yes. The copies printed and promulgated, as required by the Municipal Act, should be EXACT copies of the abstract and report filed with the clerk by the auditors. (See section 306 of the Act).

**15th December Statement.**

**483.—D. L.**—Would you give us the proper legal heading and certificate which should be attached to the township treasurer's financial statement which has to be issued to the electors



after the 15th December, and any other information regarding this statement that you might think necessary?

The following is a proper heading for the 15th of December statement:

"Detailed statement of receipts and expenditures of the township of . . . . . for the portion of the year . . . . . ending on the fifteenth of December, together with a statement of assets and liabilities and uncollected taxes."

It is not necessary to append or attach any certificate to this statement. It should simply be signed by the reeve and treasurer, as required by subsection 6 of section 304, of the Municipal Act. We do not know that we can furnish any information that would be of service to you in the preparation of this statement other than that contained in the above subsection, which states clearly what the statement should contain, in what way prepared, by whom signed and in what manner it is to be promulgated. See Editorial page.

**Closing a Road—Making and Repairing Bridges Over Drains.**

**484.**—J. M.—1. All the persons living on a road petitioned the council to have a portion of it closed. The road is not an original allowance, nor has the municipality any deed of it, but statute labor has been performed on it for over 25 years. The portion to be closed (on diagram) is filled in ink.

(a) Would it be necessary to pass a by-law besides putting up notices as required by sec 632 of the Municipal Act, and advertising in paper?

(b) If by-law necessary, what form would you suggest?

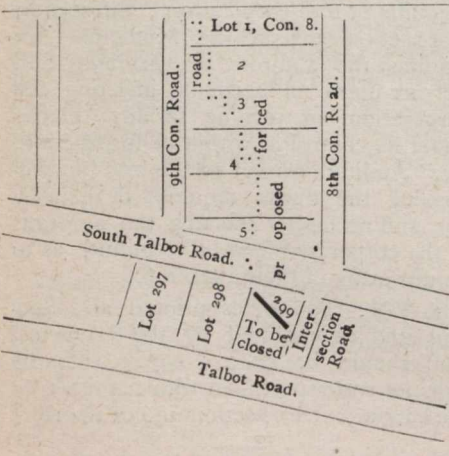
(c) If closed, does the land go back to owner of lot 299, or must he buy it?

2. There are bridges on highways (not entrance to farms) over special drains, and many of these bridges were included in engineer's estimates and repaired with the drainage work.

(a) Is it legal for engineer to include the same in his estimate?

(b) Would it be legal for council to repair the same and charge to drain when there is no surplus on drain?

(c) If so done, can the engineer, in future repairs, take into account the amount so spent and charge to drain?



1. (a) Yes.
- (b) The by-law should be numbered and entitled a by-law to close (the portion of the road proposed to be closed,

describing it.) A preamble should be inserted reciting the preliminary steps that had been taken under section 632, and then an enactment closing the portion of road (describing it.)

(c) No. It does not revert to the owners of the lots. Assuming that it is a highway belonging to the municipality, it will remain the property of the municipality though closed.

2. (a) Yes. See sub-section 1, of section 9, of the Drainage Act. (Chap. 226, R. S. O., 1897.)

(b) Yes. See section 68, of the Drainage Act.

(c) No. The repairing of these bridges is a work of maintenance, and should be collected by the council from the parties originally assessed for the construction of the drainage work, pro rata according to their respective assessments. See section 68, of the Drainage Act.

**Changing from Award to Municipal Drain.**

**485.**—J. E. H.—1. A petition has been placed in the hands of council for a drain to be dug and an award has already been given some years ago, and one of them now refuses to sign who was on the former award, as he says that the then engineer said it was carried to a proper outlet. What effect will the former award have on the present ditch or drain?

2. Can the man who refuses, stop the drain?
3. Could any one on the former award stop it?
4. Can a man claim damages where his watering place for cattle will be drained by drain in question?

1. You speak of an award, and we therefore assume that this drain was originally constructed under the provisions of the Ditches and Watercourses' Act, and that your council is now petitioned to change it into a municipal drain under the authority of section 84, of the Drainage Act, (Chap. 226, R. S. O., 1897.) If this be done the former award will be superseded by the by-law passed pursuant to the petition. A petition in compliance with section 3, of the Drainage Act, will be required.

2. Not if the petition presented to the council under section 84, is signed by the majority in number of the resident and non-resident owners, (exclusive of farmers' sons not actual owners) as shown by the last revised assessment roll of the municipality, to be the owners of the lands to be benefited in the area described in the petition. See section 3, of the Drainage Act.

3. No. Provided the petition is as stated in our answer to question No. 2.

4. Any person who has been injured by the construction of the drainage works is entitled to compensation for such damages as he has sustained. See section 93, of the Drainage Act.

**Liability for Pollution of Stream.**

**486.**—A SUBSCRIBER.—There is a creek running through A's and B's farms, which used to be good and pure drinking water for cattle and all other purposes. A started a business by which he lets large quantities of poisonous matter run into the creek, by which the fish

and all living creatures that were in the creek have died, which makes B's water wholly unfit as drinking water for cattle or any other purposes. During spring freshets and heavy rains the creek overflows its banks, distributing the poison over the creek flats, thereby making pasturing unsafe, as several head of cattle have died of it already. If B notifies the township board of health, must the said board of health take action against A to have the said evil stopped and also to recover damages to the land, and cattle which have died?

B can proceed against A for damages for the injury he has sustained by reason of the pollution of the stream, and for an injunction restraining A from further carrying on the business to his injury. In case the business is one that requires the consent of the council of the municipality, under section 72, of the Public Health Act, A is liable to the penalty named in the Public Health Act, if he has not obtained the consent of the council to carry on the business. If the business is one mentioned in section 586, of the Municipal Act, and your council has passed a by-law under the authority of this section, the terms of the by-law must be observed by A in carrying on the business, otherwise he will be liable for the penalty fixed by the by-law. See Van Egmund vs. Seaforth, 6 O. R. 599.

**A Contract Improperly Performed.**

**487.**—J. K.—The government gave a grant to be spent on a certain road. The man who did the job built the road about two feet higher than the old road bed and only wide enough for one conveyance, so that two teams loaded cannot pass without upsetting. There is a large ditch on each side of the old road-bed and three or four feet from the new, and these ditches are filled with water and slush during the fall and spring, and when filled with snow this part of the road will be very unsafe and dangerous and it would cost the municipality more to put the road in proper shape now than if there had been no money spent on it, besides it is too late to do anything with it this fall, and as there is a great deal of traffic on the road, it being a leading thoroughfare, there are likely to be some accidents happen before the road is put in proper shape.

1. Are the council responsible for damages on such road?
2. The man who made the road filled up a culvert. Could he be compelled to put one in instead of it?
3. How ought the council to act in such cases? The ratepayers are all complaining and the council is at a loss to know what to do as such cases are hard to handle.
4. What is the least width of a legal road bed?

1. Yes. Assuming that the new road is one that is under the jurisdiction of the council.

2. We do not think so. If he completes the work according to his contract, it seems to us that the work must be regarded as the work of the corporation and, if the effect of it is to leave the road in a dangerous condition, the corporation will be liable in case an accident happens. If, on the other hand, the contractor did not do the work according to contract, he is liable to the corporation for damages



for the breach of his contract, but he cannot be compelled to complete it.

3. The council should see that the road is put in a condition of safety at as early a date as possible, and, in the meantime, that notices and signals warning the public of its dangerous condition are placed at either end of it, and at points where it is intersected by other roads (if any).

4. Section 630 of the Municipal Act provides that no municipal council (except that of a city or town,) shall lay out any road or street more than one hundred, or less than sixty-six feet in width, etc., but any road, when altered, shall be of the same width as formerly. With the consent of the council, passed by a three-fourths vote of the members thereof, a highway or street less than sixty-six feet in width may be laid out by the owner of land. By section 35, of Chap. 225, R. S. O., 1897, councils in townships, in the District of Algoma, etc., may open roads less than sixty-six feet in width, subject to the regulations of the Crown Lands Department.

**Removal of Sand Adjoining Road Allowance—Right of Township to Sell Sand and Gravel—Tenant's Covenant to Pay Taxes.**

488.—A SUBSCRIBER.—1. A has a sand pit on his farm, close beside the road. Has he a legal right to remove the sand so near to the line as to cause a large and dangerous hole in the side of the road?

2. Has the council of a township authority to sell sand or gravel from the road allowance? Give authority.

3. A rented a farm on which he agreed to pay taxes. This year a school-house was built and paid for by one yearly rate. Must A pay the tax levied for building the school?

1. No.

2. Yes. Sub-section 7, of section 640, of the Municipal Act, provides that the council of every county, township, etc., may pass by-laws for preserving or selling timber, trees, stone, SAND, or GRAVEL, on any allowance or appropriation for a public road.

3. If the lease is the ordinary short form, containing a covenant on the part of the lessee to pay taxes, and these taxes are not specially excepted, A will have to pay them. The covenant to pay taxes means, "and also will pay all taxes, rates, duties and assessments whatsoever, whether municipal or otherwise, now charged or HEREAFTER to be charged upon the demised premises, or upon the said lessor on account thereof, etc." See page 1177, of vol. 1, R. S. O., 1897, clause 2, and sec. 17, chap. 170, R. S. O., 1897, sec. 26 of Assessment Act. In the matter of George Michie and the corporation of the city of Toronto, 11 U. C. C., P. 379, the court of Common Pleas held that an ordinary lease containing the words "and to pay taxes," covered a special rate created by a corporation by-law, as well as all other taxes, and in the case of Boulton vs. Blake, 12 O. R., 532, Mr. Justice Ferguson held that, under the wording of the covenant to pay "all taxes,

rates, duties and assessments whatsoever, now charged or hereafter to be charged upon the said demised premises," the defendant was liable for local improvement taxes, and for the additions made under the Assessment Act year by year, to the amount of the taxes in arrears, or additions made by the municipality.

**Limit of License for Billiard and Bagatelle Tables.**

489.—C. B.—Has township council power to fix the sum to be paid for licensing billiard or bagatelle tables too high to make it profitable for the person to carry on the business? Cap. 223, s. 583, s. s. 4 and 5.

Yes. In re Neilly and the town of Owen Sound, (37, U. C. R., p. 289.) A motion was made to quash a by-law, which provided that licenses for billiard tables, etc., for hire or gain, or to be had or kept in a house of public entertainment within the municipality, might be issued on payment of a fee of \$300, on the ground (among others) that it was unreasonable and oppressive and was in fact, a by-law to prohibit such tables and therefore void. The motion was refused with costs, and in the course of its judgment, the court remarked, "that the trade or profession of keeping a billiard table for profit is not like that of buying or selling the necessaries of life. It is not like a license to a butcher, or a baker, or a seller of firewood and such like articles of daily necessity. If this corporation imposed a license duty of \$300 on every seller of firewood, or of meat or bread, the effect might be to prohibit the exercise of such trades. We know of market prices for wood, meat or bread, but we have no such knowledge as to the cost properly chargeable for playing billiards. It is merely a matter, not of necessity, but of pleasure and luxury.

**Compulsory Destruction of Barberry Hedge.**

490.—L. B.—A petition has been presented to our council asking for the removal and destruction of certain barberry shrub fences. The hedge was planted some years ago on farm lands. Those living in vicinity of said lands claim that it is the cause of rust on grain, hence the petition asking for removal under an Act passed by the legislature of the Province of Ontario. Some think the Act not very clear. Would you be kind enough to explain the Act? To what extent have councils power to enter on farm lands for the destruction of the barberry shrub? How should they proceed with the matter?

Chap. 48, of the Ontario Statutes, 1900, sec. 2, empowers municipal councils to require the removal and destruction of hedges or fences formed by the barberry shrub, planted prior to the passing of the Act, (30th April, 1900.) The council should pass a by-law providing for the removal and destruction of such hedges, and notify, in writing, the owner or owners to remove or destroy the same. In case the owner refuses or neglects to destroy or remove the hedge within one month from the date of the service of the notice, the council may cause the hedge to be destroyed or removed, and in this case the owners will not be entitled to any compensation. The notice should be served personally on the owner. If the owner

complies with the terms of the notice he will be entitled to compensation fixed in the manner provided by section 3, of the Act.

**Owner on Road Proposed to be Closed Should Have Outlet—Payment for Necessaries to Persons Quarantined.**

491.—E. B.—1. The Monck road crossing Gull river from was changed and the old road is applied by owner of lot to be handed over and closed. If the council hands over and passes a by-law closing said road it would close a settler in, settled close to the river, there being a road allowance of four rods on bank of river, but almost impassible and impossible to make. Could this settler force the council to make this river road or buy him a right of way of a road to the main road?

2. Is a council liable for the cost of doctor's attendance and things necessary, as provisions and clothing, supplied to a family which has diphtheria, while quarantined under the Public Health Act, they being able to pay their own way?

1. Yes. The council must either leave the present road open for the settler, or, if they close it, must, in addition to compensation, also provide for the use of such settler some other convenient road or way of access to his lands and residence. See section 629, of the Municipal Act.

2. This is a matter that should be looked after by the Local Board of Health of your municipality. The Board is not liable for the costs or expenses referred to unless the person afflicted, or his parents, or other person or persons liable for his support are unable to pay the same. See section 93, of the Public Health Act, Chap. 248, R. S. O., 1897.

**Opening New Road and Closing Old.**

492.—R. M.—There is a road in this municipality leading to a county bridge between the counties of E and M. A portion of said road in the spring of the year during a freshet is for a few days covered to quite a depth with water. A few years ago B, a councillor of this municipality, wanted the township council to change the site of said road for a distance of forty rods from the bridge or on the river flats to a higher site. The then council took no action then and B thought he could construct said new road with gratis work and told the council so. He started to work and partly made said new road, but never completed it, and hired help and paid for said work or promised to do so to the several parties. Now for some years he wanted the council to adopt said road and they complete it or he will agree to complete said road for the sum of \$200, and he wants \$200 more for what has already been done. Now the council consider that as the question has been an unsettled one handed down from year to year, it would be well to submit the question to a vote of the electors at the coming municipal elections in January next, and passed a resolution unanimously to that effect. Now what is the proper course to pursue in regard to submitting it to the electors. Will it require a by-law stating the estimated cost of said new road, or will a ballot with the question, "Are you in favor of the adoption of said new road," yes or no be sufficient? As the question at issue really is, are the people in favor of the change of the road. The present road has been in use for public travel for quite a number of years and the present council would like to have the feeling of the electors to see if they are in favor of the new or old road.

The proceedings in this matter appear



to have been informal and irregular all the way through. What B did seems to have been voluntary on his part, and without any legal authority from the council. The council is, therefore, in no way bound to adopt or sanction what B has done—to take over the work already done, and continue the opening and construction of the new road. There is no authority for submitting a question of this kind to the vote of the electors, and it would be improper to do so. The Municipal Act makes provision for closing existing roads, and opening new, and these provisions should be strictly observed. See sections 632 and 637 of the Act. If the council deem it advisable, and in the interests of the ratepayers in the locality, it should proceed to close the old road, and open the new in the manner prescribed by the Act.

#### Fees of Witness at Voters' List Court of Revision—High School Taxes.

**493.**—J. M.—The county Judge held a Court of Revision of the voters' list in our township and had our assessor summoned to appear at said court as witness and to assist with revision. The Judge gave our assessor an order on the council for \$4.50 for his services. I thought that was a little high and would like to learn your opinion on this subject.

2. Does the township of South Dorchester pay any high school taxes?

1. The assessor having attended the Court of Revision as a witness, he is entitled to be paid as such. By the latter part of sub-section 1, of section 18, of the Ontario Voters' Lists' Act, (R. S. O., 1897, Chap. 7,) witnesses subpoenaed to give evidence at a Court of Revision of a voters' lists, are to be paid according to the scale allowed to witnesses in a Division Court, that is, seventy-five cents per day, and ten cents per mileage, (one way.) If the witness goes to and returns from the place of meeting of the Court of Revision by railway he is entitled to the price of a return ticket, in addition to the per diem allowance. You do not say how far the assessor's residence is from the place of holding the Court of Revision, or by what means he reached it, so we cannot say whether the \$4.50 is the correct sum to which he is entitled or not.

2. Yes. It has to pay its share of the amount for which the county as a whole is liable. See sec. 33 and 34 of the High Schools Act, 1901. Any sums required in excess of the legislative grant and what the county is liable for, must be provided by the council of the High School District.

#### An Illegal Dog-Tax By Law.

**494.**—J. R.—The council of this township passed a by-law authorizing the clerk to place any dogs omitted from the assessment roll on the collector's roll, on sufficient evidence being produced that such dogs existed. In accordance with said by-law, a few dogs were placed on the collector's roll. Are these dogs legally taxed?

The council has no authority to pass a by-law of this kind either under chapter 271, R. S. O., 1897, or section 540 of the Municipal Act or otherwise. The assessor is required by section 3 of chapter 271, R. S. O., 1897 (in case a by-law has not been passed pursuant to section 2 of the

Act) to enter opposite name of every person assessed, and also opposite name of every resident inhabitant not otherwise assessed, being the owner or keeper of any dog, the number by him owned or kept. The collector's roll is prepared from the data furnished by the assessment roll, and the clerk has no right to enter taxes for dogs on the collector's roll which are not on the assessment roll, nor can his council give him such right.

#### Telephone Franchise Cannot Be Granted to Private Party—Assessment of Telephone Plant.

**495.**—SUBSCRIBER.—A party desires to put in a telephone system if we give a use or franchise of the streets and present electric light poles in use. How can we do this and for what term of years?

2. Is it by agreement and by-law simply by council? Is it registered?

3. Is telephone plant assessable? Give all particulars.

1. We are of opinion that the council of a town cannot grant a franchise to a private individual to install a telephone system. Sub-section 1, of section 331, of the Municipal Act, empowers councils of towns, etc., to grant such a franchise to a telephone COMPANY, but not to an individual. When a council desires to grant such a franchise to a company, a by-law is required. The term cannot exceed five years. The by-law need not be registered. In fact, no provision is made for its registration.

2. Our answer to question No. 1 renders it unnecessary to reply to this.

3. Yes. That is, the poles and wires, etc. As the law stands at present, these are assessable as junk, scrap-iron, so much dead material, and not as part of a going concern.

#### An Illegal Public School Levy.

**496.**—A. M.—The trustees of S. S. No. 11, township of B, are building a new school-house upon a new site this season. Having fully complied with the requirements of sub-sec. 1 of sec. 74 of P. S. A., 1901, they applied to the municipal council of the township for the issue of debentures for a loan of \$1,800, being the amount sanctioned by the ratepayers, to be spread over a period of five years, for the purchase of a site, the erection of a school-house and the equipment thereof, the first payment to fall due and to be collected with this year's rates. I may say that the voice of the ratepayers at the meeting was strongly against spending any more than the above amount. We find, however, that at a subsequent meeting of council the trustees made a second request that in addition to the annual payment on debenture account, a further sum of \$125 be placed on the collector's roll for this year for the same purpose. The request was complied with and the additional amount now appears on the roll, against the wishes of the ratepayers of the section who have been entirely ignored in the matter. Of course you will understand that this supplementary rate has nothing to do with the ordinary S. S. rates authorized by section 71, to which we make no objection.

1. Does the School Act authorize the issue of debentures for a loan and the levy of a special supplementary rate for the same purpose as the debenture rate at the same time?

2. Or, are the trustees limited to the amount authorized and sanctioned by the ratepayers at their meeting, or have they a free hand to expend what they please, and to levy and collect as they may deem proper?

1. No.

2. The Public Schools Act does not

empower the trustees of a rural school section to pay for the erection of a new school site, in part by the issue of debentures, and the balance by supplementary levy as you state. The council may, at the request of the trustees, levy such sums as may be required for the purpose by one yearly rate under section 75 of the Act, but if the trustees propose to raise the amount by the issue of township debentures, these debentures should be issued for the whole amount required, and this should be the amount which the ratepayers sanctioned at their meeting held pursuant to section 74, subsection 1.

#### Bridge on Municipal Drain.

**497.**—W. D.—A municipal drain goes across the corner of a lot and the engineer allows \$10 for a farm bridge. The owner does not want a bridge, is it compulsory to compel him to build the said bridge?

2. Would it be legal to disallow the bridge and deduct the \$10 from the assessment against the said lot?

1. The engineer who examined the locality and reported on the drainage scheme must be assumed to be the best judge as to whether the bridge is a necessary part of the drainage works or not. We are, therefore, of opinion that the bridge should be built, as part of the drainage works. If the present owner were to sell his farm, the purchaser might call upon the council to build a bridge in accordance with the engineer's report, and if he did we doubt very much if the council could set up the fact that the former owner did not desire a bridge. We think, in that event, that the council could not successfully contend that the work was being maintained according to the report.

2. No.

#### Payment of Liabilities of Portion of Village Municipality Transferred to Township Municipality—Private Owners Have No Legal Right to Dam Water on to Road Allowance.

**498.**—H. M.—1. In sub-sec. 6 of sec. 2, Municipal Amendment Act, 1901, page 65, it states that the municipality to which the lands are annexed shall pay to the village from which such lands have been taken, such part of the debts of the village as have been agreed upon or determined by arbitration. Has the municipality annexing them to assume the debt, or can the amount paid be collected off the lands released from village such as a school debt would be?

2. The natural run of the water from lots 2 and 3 on 4th concession is across the road through a culvert, then through lots 3 and 2 in 5th concession into a creek on the boundary between lots 1 and 2 on 5th concession. There is a drain from lot 4 on 5th concession that empties on the road to keep the earth out of the ditch. The pathmaster, without authority, connected the two drains and the owner of lot 3 on the 5th concession demands that the council continue the drain to culvert from lots 3 and 4 on 4th concession, a distance of 24 rods more, the owners of lots 2 and 3, concession 5, are ditching but had no engineer and they threaten to dam the water on to the road. Can they dam the water on to the road?

3. Can the owner of lot 4, concession 5, drain on to the road without council's permission?

4. Can the council bring on the engineer?

5. What action should the council take in the matter, as it will be a serious thing to have the road flooded?



1. The section to which you refer makes no provision for the collection of any portion of the village debt from lands annexed to the municipality. Sub-section 6 provides that "the municipality to which the same shall be annexed shall pay to the town or village from which such lands have been taken such part, if any, of the debts of the town or village as may have been agreed upon, or determined by arbitration, and shall be entitled to receive from, and be paid by, the said town or village the value of the interest which, at the time of such separation, the lands so separated had in the property or assets of the town or village, etc."

2. This is the case of surface water and therefore the council may erect a drain to keep the water from coming on the road, or any owner may erect a dam to keep the water off his lands.

3. No. And the council should not give such permission.

4. Notwithstanding the fact that the word "owner" as defined in the Ditches and Watercourses' Act, (section 3, and section 1, of Chap. 28, Ont. Stats., 1899,) to mean and include "a municipal corporation as regards any highways or other lands under its jurisdiction." We have considerable doubt as to whether a municipal council can initiate proceedings under the Act. The point has not, so far as we are aware, been decided by any High Court judge, but we understand that the county judge of Welland has held that a municipality has no right to commence proceedings under the Act. See also our answers to questions Nos. 95, 270 and 333, 1901.

5. The council should dam up the drain emptying on the road, and if the parties persist in keeping the drain open, they can be restrained from so doing by injunction proceedings. The other parties interested will then be compelled to take the proper steps to have a drain constructed either under the Ditches and Watercourses Act or Drainage Act, whichever is applicable to the circumstances.

**Time Within which Judge Should Give his Judgment on Appeal from Award Under the Ditches and Watercourses' Act.**

499 - X. Y. Z. - During the present year the township engineer was requested to make an award ditch between two parties in our township. Before the time for appeal had expired the clerk received a legal notice of appeal. The clerk forthwith sent a copy of the appeal and all necessary documents to the county judge requesting him to name date for hearing the appeals, which, according to sub-section 6, section 22, should be inside of two months from date of notice. The junior judge who was appointed to hear the case did not do so until the expiration of two months and twenty-five days, and did not give his decision until fourteen days later, and in his decision completely released the appellant from any work, and all expenses were to be paid by the defendant. Please give your opinion on the course pursued by the judge in view of sub-sections 3 and 6, of section 22. The solicitor for the defendant did not dispute the judge's authority to go on with the case although it was, as above stated, past the time for hearing.

We are of the opinion that the judge had authority to hear and determine this appeal at the time and in the manner he did, and that the course he pursued was perfectly legal. In the case of *Re McFarlane vs. Miller et al* (26 Ontario Reports, p. 516) it was held that the provisions of subsection 5, which require the judge of the county court to hear and determine an appeal from an award under the Act, within two months after receiving notice thereof, are merely directory. In the course of his judgment in the case, Mr. Justice Rose remarked that "having regard to the principles of construction to be found in the text-books he mentions and in *re Ronald* and the village of Brussels, I think we must hold that the provisions of subsection 6 of section 22 *directory*, so as to prevent the injustice of a construction which would cause an appellant who had his right of appeal, in fact, practically to have his appeal dismissed, because the judge might neglect to hear and determine, or hear, or determine, the appeal within two months after receiving notice thereof." Even if the judge does hear the appeal within the two months, he now has the right to adjourn its hearing and determination for such further period as on hearing the parties, he may decide to be necessary, in order to allow proper inspection of the premises, to be made as authorized by subsection 7, (see section 22 of chapter 12, Ontario Statutes, 1901).

**Receipt of Taxes.**

500 - J. M. M. - A property in our town was not occupied in 1899 or 1900, and in consequence was returned each of those years by the collector of taxes. It had been occupied in 1901 and tenant is willing to pay taxes. Will collector and the council be justified in accepting taxes for 1901, giving receipt for same, with taxes still unpaid for 1899 and 1900?

Yes. The taxes for 1899 and 1900 are not now properly payable to the collector, but should be paid to the town treasurer. As soon as the amount of the taxes for 1899 and 1900 have been returned by the treasurer to the clerk, pursuant to section 152 of the Assessment Act, if property is occupied in 1901, it should be placed by the clerk on the collector's roll and will then be properly payable to the collector.

**A Drain on a Highway Under Railway Roadbed.**

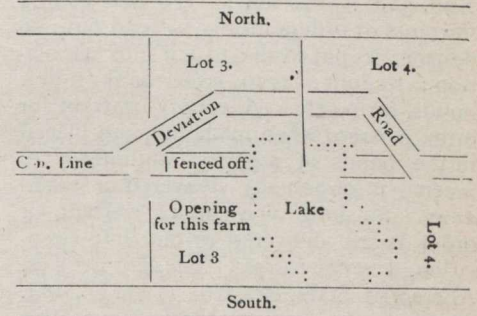
501. - COUNCILLOR. - In the fall of 1900 a tile drain was laid out by the township engineer under Ditches and Watercourses Act, said drain running its whole length on the side of the public highway and crossing under the C. P. R. railway. According to the award of the engineer it was intended to diverge a little from a straight line and enter upon the C. P. R. land and cross through their sewer pipe culvert which would have to be lowered about one foot. The roadmaster met on the ground with one of the township councillors to look over and arrange matters, and advised a straight course making an independent drain entirely on township highway, which course was adopted. The parties to the award neglected or refused to carry out the award and construct their portions, and the engineer was notified this past summer and came on, advertised and

sold and has completed the work excepting 18 or 20 feet directly under the railway track. The railway company forbid the work and refuse to allow it to be carried through unless the township use cast-iron pipe and sign an agreement to construct and maintain and be responsible for all costs of the same, and even hint that they, the township, shall be liable for any circumstance in connection therewith. The railway intend building a siding to cross highway, and ask township to put in 40 feet of cast-iron pipe. The drain was laid out under requisition of the township reeve and the cost of the construction of the 18 feet directly under the track was in the award placed against the railway. The council do not object to bearing the cost of construction using common sewer pipe. Have the railroad power to dictate thus in this matter and prevent the drain being completed when it is wholly on township property or what would you advise in the matter.

If the council and the railway company cannot agree the only remedy which the council has is to make an application to the railway committee in the manner provided by section 14, of the Railway Act.

**Closing and Sale of Road Allowance.**

502. - CLERK. - In surveying our township a lake was on concession line as per diagram. Authority came from crown land department to survey a road round the north side of the lake. This was a government survey hence no compensation was ever paid for deviation. This lake and original concession line was fenced in and occupied by the parties from whom deviation was taken, about 35 years ago, without molestation. The mark in this lake is of great value, as cement works are building there. There are about two acres of road allowance of water and our council is going to dispose of this two acres. Please give us the various steps to be taken to give purchasers a perfect title?



You will find the proceedings necessary to close the piece of road in question laid down in sec. 632, Mun. Act, and sec. 637 gives a council authority to close a road. It will be well to consider sections 641, 642 and 643 of the Municipal Act.

**Qualification of Tenant to Vote on Waterworks By-law.**

503. T. A. M. - Some parties here are on the assessment roll both as owners and tenants, but on the voters' list as tenants. Can they legally vote for the by-law for waterworks?

In a case of this kind a special voters' list must be prepared by the clerk from the assessment roll, as provided by section 348, of the Municipal Act, and that being so, the difficulty which appears to have occurred to you does not arise. For the qualifications of owners and tenants, see sections 353 and 354.

**Levy to Meet Payment of Debentures Not Issued Cannot be Made.**

504. - S. S. R. - In the year 1889 the council



of the corporation of the village of W., had a special Act of the Ontario legislature passed to permit them to submit a by-law to the people of said village for the purpose of raising \$10,000 as a bonus for the erection and maintenance of a pork packing industry in said village of W. The by-law was passed, the debentures issued, but not sold. The council have not been successful in getting the industry located in W., but in the meantime, and since the passing of the by-law, three yearly assessments of \$768.80 have been levied against the rateable property of the municipality to meet the instalments due each year.

1. Is it legal for the council to raise the annual amount of \$768.80 when the debentures have not been sold? Please give your reasons also stating cases decided on this matter.

2. To whom must the money so collected be paid back?

3. Provided parties owning real estate in the year 1900, and have paid the assessments for 1899 and 1900, and have since then sold the said real estate, and in the event of the moneys collected being paid back, who are the proper persons to receive the assessments refunded?

4. If any freeholder refused to pay the assessment for the pork packing debentures, could the council enforce the collecting of the same?

5. If so, how?

6. What process is the legal one to pay the money back to the property holders?

7. Can the council legally do so?

1. We do not think so. The debentures in question were never *issued*, in the sense of sub section 3, of section 384, of the Municipal Act, and therefore no debt has arisen. In *Folks vs. Yost*, 54 Mo., App. 55, it was held that to *issue* tax bills is ordinarily understood to imply a delivery to some one, and in *State vs. Pierce*, 52 Kan. 528, it was said: "To *issue* county warrants or orders means to send out; to deliver; to put forth; to put into circulation; to emit; as to issue bank notes, bonds, scrip, etc. A county warrant or order is *issued* when made out, and placed in the hands of a person authorized to receive it, or actually delivered or taken away. So long as a county warrant or order is not delivered or put into circulation, it is not *issued*." See also *Levy vs. Abercorris State, etc, Co.*, 37 ch. D., 264. Although we have not the by-law in this case before us, we believe there is sufficient information to satisfy us that it does not comply with section 384, (3) above referred to, and that it is too late to dispose of the debentures now. The council should not have collected any rates until the debentures had been sold, and a debt or obligation had been created.

2. The money having been illegally collected, it should be paid back to the parties who paid it.

3. The persons who paid the assessments. The purchasers of the lands can have no claim upon these moneys which never formed any charge upon the lands.

4. No.

5. The answer to 4 disposes of this question.

6. The council should pass a by-law setting forth the facts, and directing the treasurer to pay the moneys back. A schedule can be attached to the by-law containing the names of the persons entitled to a return of their assessment,

and the amount to which each is entitled.

7. Yes.

See, in addition to the above authorities, *Bogart vs. King*, 32, O. R., 135, and same case in 1, O. R., 496, (1901.)

#### No Legislative Provision for Enlargement of Police Villages.

505—H. W.—H. is a police village, and comprises certain defined territory. We are desirous of increasing its boundaries and taking in additional territory. In petitioning the county council do we have to advertise the procedure or give notice to that effect?

Section 50, of the Municipal Amendment Act, 1900, authorizes county councils to pass by-laws erecting an unincorporated village into a police village, on the petition of a majority of the ratepayers resident therein, but there is no provision for extending the limits of a police village once established. In the case of incorporated villages, express provision is made for extending their boundaries. See sections 11 and 16, of the Municipal Act. The legislature having considered it necessary to authorize the extension of an incorporated village, as it has done by s. 11 and 16 of Act, it follows, we think, that a police village cannot be enlarged in absence of express legislative authority for so doing. If county councils have such power a petition signed by a majority of the ratepayers resident in the whole area, that is, the area combining the present police village, and that part proposed to be added, is all that is required by section 50, of the Municipal Amendment Act, 1900; but as we have stated, we do not think they have such power. If it is important that the police village in question should be enlarged, your course is to ask the legislature at its next session to amend the present law, so as to enable your county council to pass a by-law for the purpose.

#### Police Commissioners Legally Control Expenditure of Moneys in Police Village.—Statute Labor—Fencing of Railway Switches.

506—J. C.—1. Re township and police villages. Our township raises a rate of five mills on the dollar. About one-half of said rate is spent on roads, etc. The township allows police villages an equal proportion of said expenditure according to proportionate assessment for streets and sidewalks. But council claims said moneys are to be spent under the supervision of the township commissioner, and not by the trustees, and that township treasurer has no right to pay orders passed by trustees for said moneys. The trustees claim that the township commissioner has no right to handle police village share of said moneys, and that the trustees have the sole right to spend their share in streets and sidewalks under their own supervision, and that the township council must deposit police village's share in township treasurer's hands, and said treasurer to pay trustees' orders issued by them. Which are right, council or trustees?

2. Mr. A. has property assessed at \$700, which would be four days' road work, but \$650 was in police village, and \$50 outside of police village. The clerk, in making our road lists, charged Mr. A. as two separate parties full amount of road work. Was that right? or should Mr. A. be four days, and divided according to assessment?

3. Can chartered companies who run railway switches off main line be compelled to fence said switches for the first half mile from main line for safety of cattle?

1. We quite agree with the contention of the trustees of the police village. The council of the township in which the police village is located, or its road commissioner have nothing to do with the expenditure, in the police village, of moneys levied under secs. 738 and 740 of the Municipal Act, or any other moneys to which the trustees are entitled—this is exclusively the duty of the police trustees. As to the payment of the order of the trustees by the township treasurer, sec. 742 of the Act is quite clear. It provides that, "The township treasurer shall from time to time, if he has moneys of the municipality in his hands not otherwise appropriated, pay any order given in favor of any person by the inspecting trustee or by any two of the trustees, to the extent of the amount required to be levied as aforesaid, although the same may not have been collected, and he shall in like manner pay any such order to the extent of the moneys received by him for licenses under any by-law passed by the police trustees of the police village, and for breaches of any such by-law, and for penalties under sec. 747 of the Municipal Act."

2. We do not think that the clerk made a correct calculation of this statute labor. It should be estimated on the valuation of \$700 as a whole, according to the schedule in vogue in your municipality—this, from what you say, would be four days. This statute labor should be apportioned between the police village and the township municipality, in such manner as may be agreed upon by the police trustees and council of the municipality.

3. The Dominion Railway Act requires railway companies to construct sufficient cattle guards at all highway crossings and to erect good and sufficient fences along both sides of their land. (Sec. 194.) Until they do this they are liable in damages for the death of or injury to cattle, etc., straying on the railway lands.

#### Medical Health Officers' Account—Clerk Cannot Act as Deputy-Returning Officer in Townships Divided into Wards or Polling Subdivisions.

507—C. B. A.—We have had several cases of small-pox in our township during the past summer. The chairman of the local Board of Health sent the medical health officer appointed by by-law of the township council at a salary of so much per year, to investigate and report on some of the cases. He, the M. H. O., now sends in an account to the local Board of Health for those visits, also for attending meeting of the local Board of Health, called in connection with said small-pox epidemic. The local B. of H. refers it to the council for settlement.

1. Has the township council a right to pay said account?

2. Has medical health officer a right to investigate and report on infectious and contagious diseases in the municipality, when requested to do so by the local Board of Health, without any remuneration over and above his salary?



3. The township clerk having to act as returning-officer for the township, is it legal for said returning-officer to act as deputy-returning-officer at a polling sub-division in his own township?

1 and 2. Assuming that the medical health officer was aware of his appointment at a certain salary per year, he should have repudiated the appointment at that salary if he was dissatisfied. If he acted as medical health officer with that knowledge, we do not think he can collect more than that amount. It appears that he has been appointed regularly for a number of years at a small salary per year and the probability is that he knew of his appointment for the present year at the salary mentioned in the by-law appointing him, and if he did he is not entitled to more than that amount. Sec. 34 (1) of the Public Health Act empowers a council, upon a two-thirds vote, to dismiss its medical health officer, and sub-section (2) of the same section provides: "The medical health officer shall be entitled to compensation for services actually rendered up to the time of such dismissal, but the amount of such compensation shall not exceed the salary he would have earned up to the time of such dismissal, but the amount of such compensation shall not exceed the salary he would have earned up to the time of such dismissal, and if his salary up to such time is paid such payment shall be a bar to any other claims for services rendered."

3. You do not say whether your township is divided into wards or polling sub-divisions or not. Section 157 of the Municipal Act provides that: "In case of municipalities which are not divided into wards or polling sub-divisions, the clerk shall perform the duties which in other cases are performed by deputy-returning officers, etc." If your township is divided into wards or polling sub-divisions, your clerk cannot act as deputy-returning-officer at municipal elections.

**Electric Railway Company—Townships Power to Grant Right of Way—Terms of Agreement with—Liability for Accidents—Width of Road.**

508.—A. B. C.—There is a company being formed in our county town for the purpose of building and operating an electric railway through a certain portion of the county. They propose to run this line on our highways and with that object in view are visiting the township councils of the different municipalities through which they propose to run the road, asking that they be granted the right of way and exemption from taxation for twenty-one years. Some of the townships have already granted them this, while others think that the highway is not the proper place for a road of this kind as they claim it will be dangerous to public travel and also spoil our roads in winter, as when they use a snow plough on their road it will leave the snow in such a way as to spoil our road. Now as this road is to pass through the township I wish to ask you for some information on the subject.

1. Have township councils the power to grant right of way to the company?
2. Suppose they have the power, do you think it would be advisable to grant right of way to said company?
3. The agreement that they wish to make with the municipalities states that they will be

responsible for any damage caused by them. Would this include an accident caused by a horse jumping into a deep ditch, say four feet deep? or would the council have to build a guard along all such deep ditches more than two and one-half feet deep.

4. As the company proposes to grade up a portion of the road, near the fence, for their railroad, this would leave our road less than the legal width of 66 feet. Would this leave the township liable to have to buy land at the other side of the road to make their road the correct width?

1. Yes. See section 9 (c) and (b) and section 37 of the Electric Railway Act, chap. 209, R. S. O., 1897.

2. We cannot say. This appears to be a matter for the council to determine. They ought to be best judges—at all events they ought to be better judges than we are.

3. The railway company cannot be held liable unless it can be proved that it has been guilty of negligence. We cannot express an opinion upon the liability of the company under the circumstances stated, without seeing the agreement which it proposes to enter into.

4. The council is not required to buy land to make up for the part of the road occupied by the railway. If the council find that by reason of the occupation of a part of the road by the railway, the road would be dangerous, it should require the company to construct its railway in such a way as to leave the road reasonably safe for public travel. We would advise the council to employ some careful solicitor to put the agreement in shape so as to protect the municipality. It is a very important kind of an agreement and the council should take the precaution to see that it properly safeguards the municipality.

**Collector's Costs for Seizure for Taxes—Cannot Break Outside Lock.**

509.—M. L.—1. A is tax collector, B is tax payer. A delivers B his tax bill and in one month goes to seize. B tenders A the amount of taxes. Is A compelled to take it without any cost, having travelled ten miles?

2. A seizes B's chattels for taxes. Is it lawful for A to allow B to settle any time before the sale takes place, B being willing to pay the cost?

3. A goes to seize and B is away from home. Can A force an entrance or charge for an extra trip?

1. Yes. A tax collector cannot collect any costs from the taxpayer until he actually makes a seizure.

2. Yes. It is his duty to do so.

3. The collector cannot legally break into a house where goods are stored in order to distrain them for taxes. If he can get through the outer door lawfully he can then break through an inner door, but the general rule appears to be that he cannot break through an outer door. The collector cannot legally charge for an extra trip.

**Assessor's Pay for Equalizing Union School Sections.**

510.—S. J.—Does the municipality pay the assessor for equalizing union school sections, or do the sections?

This question can best be answered by quoting the contents of a letter written on

the subject by the Deputy Minister of Education, to a school inspector in Chatham. They are as follows:

"DEAR SIR,—I am directed by the Minister of Education to state in reply to your letter, that the work of the assessors becomes that of referees or arbitrators when engaged in equalizing the union school sections' proportions, and their payment should be from the funds of the union section."

Your obedient servant,

JOHN MILLER,

Deputy-Minister.

Toronto, Feb. 20th, 1896.

See, also, our article on "Assessors' pay for equalizing union school sections assessments" on page 160, of THE WORLD for 1901, (October issue,) and the report of a case involving this point decided against the township of Douro, in the third column, on page 178, (November issue.)

**Destitute Children.**

It may not be generally known that Mr. J. J. Kelso, Superintendent of the Government Department of Neglected and Dependent Children, is prepared to assist municipal officers in looking after and providing for any neglected child that may come under their observation. Even in the smallest towns and villages of the province there is an occasional child or family requiring attention, owing to lack of proper guardianship. It has been frequently pointed out that the worst class of criminals and paupers have been neglected children, and that the only time to do effective preventive work is before the boy or girl reaches the age of ten or twelve. Mr. Kelso will, at any time, on request, furnish advice or literature, and will give assistance in finding foster homes.

One of the chief objects in establishing this branch was to encourage the placing out in families of dependent children, rather than detaining them for lengthy periods in institutions. In this direction there has been a gratifying success. Through the instrumentality of the central office and the auxiliary societies, over two thousand children have been placed in foster homes or situations, where they are cared for without expense to the country. To make sure that these children would receive every reasonable advantage in their adopted homes, Mrs. L. J. Harvie and Mr. William O'Connor have been appointed to make personal visits to each of the children. Their reports indicate that the children, as a rule, are doing remarkably well, and that an extension of this class of work would be desirable.

There certainly seems to be no excuse for any child being homeless or neglected since a letter with particulars of any case, addressed to Mr. Kelso, Parliament Buildings, will bring an answer without delay. Municipalities should also bear in mind that thousands of dollars may be saved as well as the children by attention to this matter.



## Legal Department.

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

### Re Sturgeon Falls Electric Light and Power Co., and Town of Sturgeon Falls.

Judgment on application by the company to enforce an award. The reference was based upon an agreement made in September, 1898, between the municipality and one Bremner, whereby the latter was empowered to establish an electric light plant and appliances in the streets of the town, and to operate same for ten years. It was provided that disputes arising under the agreement as to the working of the power should be referred to arbitration in the usual way, by each party choosing an arbitrator, and they two a third in case of dispute, and the award of a majority to be binding. Provided also, that the town might at any time during the ten years purchase the electric light plant at a valuation fixed by three arbitrators as before indicated, or by a majority of them. On August 6, 1900, the town passed a resolution to purchase the plant and arbitrate as to the price, but meanwhile Bremner had assigned his rights and property in the plant to the Sturgeon Falls Electric Light and Power Co. On September 8, 1900, the municipality appointed Mr. Parker by by-law to be the town arbitrator, and on September 28, Mr. McKee was appointed by the company. Objection was made to Mr. McKee, as not being a disinterested referee, and Mr. Parker declined to proceed on that account, and also because he was notified by the town solicitor that the council declined to proceed further with the arbitration, and notice to that effect was served on the company's solicitor. This recession appeared to be the result of the changed policy of the town, who then sought to proceed under section 566, subsection 4, of the Municipal Act, empowering the construction of such works after fixing a price by by-law to offer for the works of the existing light company. With this intent a by-law was passed by the town on November 15, 1900, fixing the price at \$3,436.16, of which no notice was taken by the company, and no action taken thereon. On November 12 the company served notice on the corporation that Dr. Bolster was appointed arbitrator on behalf of the company, and notified the corporation that after the expiry of seven days he would proceed to make his award in the event of the arbitrator for the corporation refusing to proceed. Early in 1901 Mr. Parker was elected mayor of the town of Sturgeon Falls. On January 31 the company served on the corporation a notice to appoint an arbitrator in the place of Mr. Parker. Nothing having been done or said by the corporation, the company, on February 15, (as was stated by affidavit,) appointed Dr. Bolster as sole arbitrator, but did not

notify the corporation of the appointment. On February 20 Dr. Bolster gave notice to the corporation that he appointed February 25 for proceeding in the reference, and in case of failure to attend by the corporation he would proceed *ex parte*. No notice was taken of this by the town, and the award was made by Bolster alone, no cause being shown, on March 18, 1901, fixing the price of the plant at \$10,998.60. By R. S. O., ch. 62, section 8, (b) there is power to the party who has appointed an arbitrator (if the other makes default as specified) to appoint that arbitrator to act as sole arbitrator, and it is provided that the court or judge may set aside any such appointment. Held, that the corporation, not having been notified of the appointment of a sole arbitrator, were not called upon to move against it. But, if the Arbitration Act applied, section 8 did not apply. The last clause of the agreement did not suspend the choice of third arbitrator till there should be a dispute, but it imported, in conformity with the Municipal Act, that the three arbitrators should act from the outset. Re Employers' Liability Assurance Corporation and Excelsior Life Insurance Co., 2, O. L. R. 301, is not so much in point as Gumm vs. Hallett, L. R. 14, Eq. 556. If this proceeding was, as it seemed to be, under the Municipal Act, section 8, of the Arbitrations Act, was not applicable. R. S. O., ch. 223, section 467. Application dismissed with costs.

### Minns vs. Village of Omemeec.

Judgment in action tried at Lindsay, brought by a husband and wife to recover damages. The plaintiffs live in the village. The defendant Graham is a hotelkeeper on the corner of King and George Streets, and left open and unprotected a hole in the sidewalk on George street connecting with his cellar. The female plaintiff fell into the hole and injured herself. Held, that the driver Lamb and the ostler Charlie were acting within the scope of their employment and for the benefit of their master, the defendant Graham, when engaged in unloading and storing the cask of beer by means of opening the trap-door covering the hole, and that their negligence in leaving it unprotected and without a light is attributable to the master, who is liable: Whatman v. Pearson, L. R. 3 C. P. 422; see also Whitehead v. Reader, 1901, 2 Q. B. 48. Held, also as to the corporation that no act of negligence had been proved against it—the opening was not proved to have been used from time to time in such a way as to be dangerous, whereby notice might be attributed to the corporation; and as long as the trap-door was kept closed the street was in good condition

and no possible danger existed. The construction of the area or opening in the sidewalk was an act legalized by the legislature, R. S. O. ch. 223, sec. 639, and no fault is alleged in its construction and maintenance: Homewood v. City of Hamilton, 1 O. L. R. 266 distinguished, but assuming even that that case is conclusive against the corporation, it can only be on the ground of omission, not commission. At the highest the blame is non-repair—an act of non-feasance, not mis-feasance, and thus regarded the action is one which should be brought within three months after the damages have been sustained: Secs 606, 608. Here eight months have elapsed, and time is pleaded. Upon the question of mis-feasance and non-feasance see Lambert v. —, (1901), 1 K. B. 500, explaining dicta in Sydney v. —, (1895), A. C. 433. As to village, action dismissed with such costs as would be taxable had the objection been raised as a question of law presented to the court before the trial, under rule 373. Judgment against defendant Graham for \$550 damages to female plaintiff, and \$250 damages to male plaintiff.

### Sheard vs. Menge.

Judgment in action tried at Toronto, brought for damages and to compel defendant to remove his drain from the plaintiff's premises, lot 7 (sheet number 522), on Manning avenue, Toronto and restrain him from discharging sewage, etc., on plaintiff's premises by said drain. The defendant alleged that he purchased his premises, lot 7 (No. 520), in 1884, from the Scottish, Ontario and Manitoba Loan Co., which was then the owner of both premises, and the drain was then and has since been used, and is necessary for the reasonable use of the premises. Held, that the drain in question, having been constructed in 1882, and forming the communion outlet for the houses on lots 1, 2, 3, 4, 5, 6, 7, 8, the mutual rights enjoyed for such a long period should not be litigated in one action, and then another brought to settle those between 7 and 6, and so on through the series. The rights in the drain, too, may have, according to the evidence from the registry office, arisen prior to the conveyance to the plaintiff's predecessor in title of his lot 8, so that there may be a right of drainage in the common sewer paramount to the plaintiff's title. Plaintiff may amend, as advised, so as to have all owners, using the drain that he desires to have stopped, brought before the court. Costs already incurred to be disposed of by the trial judge when the record is complete, and all issues before him to be disposed of. The learned chancellor suggests that it is for the interest of all parties to agree in making junction with the city sewer which is now available, and equitably adjust expenses, rather than proceed to ascertain strict legal rights which appear to be doubtful.