

# THE MUNICIPAL WORLD

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## Calendar for March and April, 1901.

MAR. 1.	Auditors' reports on the accounts of High School Boards, and the Boards of cities, towns and villages should be mailed to Education Department, Separate School supporters to notify municipal clerk.—Separate School Act, section 42.
	Inspector's Annual Reports to the Department due.—Public Schools Act, section 83 (5).
	Financial Statement of Teachers' Association to the Department due.
5.	Make return of deaths by contagious diseases registered during February. R. S. O., chapter 45, section 11.
31.	Last day for Councils of cities, towns, villages and townships to pass by-laws limiting number of shop licenses therein for ensuing year.—Liquor License Act, section 33.
	Night Schools close (1900-1901).
APRIL 1.	Clerks of counties, cities and towns, separated from counties, to make return of population to Education Department.—P. S. Act, section 69.
	Last day for Free Library Board to report estimates to the council.—Public Libraries Act, section 12.
	Last day for petitions for Tavern and Shop Licenses to be presented.—Liquor License Act, sections 11 and 31.
	Last day for the removal of Snow Fences erected by councils of townships, cities, towns or villages.—Snow Fences Act, section 3.
	From this date no person compelled to remain on Market to sell after Nine a. m.—Municipal Act, section 579, (6) R. S. O., 1897.
	Last day for Boards of Park management to report their estimates to the council.—Public Parks Act, section 17.
4.	High Schools, second term, and Public and Separate Schools close.—H.S. Act, section 41; P. S. Act, section 89; Sep. Sch. Act, section 81.
5.	GOOD FRIDAY.
7.	Last day for Treasurers of Local Municipalities to furnish County Treasurers with statement of all unpaid taxes and school rates.—Assessment Act, section 157.
8.	Last day for collector to return to the Treasurer the names of persons in arrears for water rates in Municipalities.—Municipal Waterworks Act, section 22.

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# The Municipal World

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K. W. MCKAY, EDITOR,

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

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ST. THOMAS, MARCH 1, 1901.

Mr. W. A. Husband has been clerk of the town of Preston for the past forty-four years.

\* \* \*

Mr. H. McK. Wilson, K. C., for many years clerk and solicitor of the county of Brant, died last month, at his home in Brantford.

\* \* \*

Mr. Hector MacFarlane, who was clerk of the township of Ekfrid for forty-two years, resigned his office at the beginning of the present year, and Mr. A. P. MacDougall was appointed to fill his place.

\* \* \*

Mr. Henry Stone, who, for thirty-eight years was clerk of the township of Tecumseth, died at his home in Tottenham, on the 29th January last. A portrait and biographical sketch of Mr. Stone appeared in the issue of the WORLD, for February last.

\* \* \*

The town of Paris voted on the 14th February last on a by-law for the purchase of the electric light plant and 100-horse water power, the amount being \$15,000, and carried it. The vote being 174 for the by-law and 27 against, being a majority of 147.

\* \* \*

The village of Tottenham has a model council. The Caldwell *Sentinel*, referring to them says: We must congratulate the new council on the promptness with which they put in an appearance, and the business-like way in which they performed their work. They took up each question *seriatim*, and stayed at it until it was disposed of before proceeding to the consideration of another; lost no time in desultory conversation, and, when the work was done, got up and went home.

## The Cattle Tag By-Law.

The case of Ross vs. Township of East Nissouri, in which a by-law of this kind is in question, and which was reported and commented upon, on page 154 of the MUNICIPAL WORLD for 1900, has again been before the courts. The plaintiff appealed from the decision of Mr. Justice Rose, upholding the legality of the by-law, and the by-law was again sustained. The judgment of the court was given by Mr. Chancellor Boyd and is as follows:

On appeal by Alexander Ross from a judgment refusing application to quash by-law No. 367, of East Nissouri. By-law 308 provides that it shall not be lawful for cattle to run at large in the township, and the by-law in question (367) enacts that it shall be lawful for milch-cows and heifers and steers, under two years old, to graze upon the highways upon the owner paying an annual fee of \$2 for each animal, and it provides for the appointment of inspectors to see to its enforcement. It was objected that an appeal does not lie because the jurisdiction to quash upon summary proceedings, is vested in the High Court by statute and has in this case been exercised. Section 75 of the Judicature Act is limited to cases in which an action having been brought the High Court has inherent jurisdiction. The right to appeal to the Court of Appeal is now included in section 76 of the Judicature Act, and the appeal is only to that court. Held, that an appeal lies. Rule 788 tallies precisely with the description of the court in the Municipal Act. Under section 378, the application to quash may be to the High Court of Justice, and that is afterwards explained by section 382 as being to "a Judge of the High Court." Held, on the merits, that by the law of Ontario it is not, as at common law, trespass if cattle are found depasturing on the highway when such a use has been legalized by the municipal authorities, in whom the highway is vested. See R. S. O., chapter 272, section 2, and R. S. O., chap. 223, section 546 (2). The law makes the municipality owner as trustee for the public, and involves a right to repair, cut down grass, etc., and sell it also, and therefore involves the right to let cattle graze. Thus in this respect the by-law is unimpeachable. What may be done particularly by individual contract may be done generally by public by-law whereby all have equal rights of access to the pasturage on reasonable terms. By-law affirmed with costs of appeal. No costs of preliminary objection.

Municipal representatives shorten their civic life by being indolent for eleven months of the year.

\* \* \*

The city solicitor would probably vote for the abolition of statute labor.

Mayor Silver, of Collingwood, in his opening address, said: The new century presents to us the brightest of prospects, and I desire that we, as a council, shall have inscribed on the walls of the council chamber, during this year, "a true government, an honest government, and a government for the people of Collingwood, both rich and poor." We can only be great by all growing together, the capitalist cannot grow at the expense of labor, they should both be linked together by the strongest tie that can bind them, both doing their very best to serve each other well, which will mean happy homes and prosperity to all. Show me a town where labor is building its little homes of comfort, and I will show you a prosperous town, and as capital stands back and looks on at these homes they can say "we helped bring it about." And when such capitalists have passed away they will have left behind the grandest monument they could leave. I desire that we shall assist in every way the uniting of capital and labor. They must go hand in hand, and as the large burden of bonuses have to be met and paid, each workingman doing his part as he did in the carrying of the by-laws. I trust that capital will see that, in all cases, the men who assisted them in the carrying of such bonuses, will receive the largest and quickest help that can be given them at their hands, and at all times give preference to home labor. I am sure this will be done in every case, as the gentlemen who are interested in our enterprises are gentlemen of whom, not only Collingwood, but Canada should be, and is, proud.—*Bulletin*.

\* \* \*

The Municipal Good Roads Association, of which J. A. Ramsden, county clerk of York, is Secretary, has addressed a circular to county councils, requesting them to consider the following questions, in reference to government aid for road improvement and advise him of their conclusions in reference thereto:

1. If aid is granted, should county councils designate the roads to be improved and supervise the construction, or would you prefer some other method?

2. Would you favor the cost of constructing the road, to be divided between the government and county or between the government, county and local municipality through which the road passes?

3. Where roads are built by government and county, what would you recommend regarding the statute labor on lands adjoining such roads?

4. Would you favor allowing counties to apply a portion of their government grant for road purposes, to the purchase of improved road-making machinery?

5. Have you any other suggestions of a general character to offer?

We made some suggestions in reference to government aid, in the January issue and believe that it is the most important question county councils have had to consider for many years. A majority of the county councils have agreed with us and township councils have petitioned for consideration when roads are to be assumed.

## Communications.

CAIRO, FEB. 4, 1901.

To the Editor of the *Municipal World*,  
St. Thomas, Ont.:

DEAR SIR,—How to get along without the financial statement is a question worthy of consideration. My plan would be to change the council meeting from 15th of December to the 1st of December when school and all other orders for the year could be issued just as well as on the 15th, but let only such orders be issued just as would be payable on the 15th or after, when all taxes are, or supposed to be, collected. The auditors could then prepare their report for distribution by the 20th of the month. Of course a report dated on the 1st of December would evidently show a larger list of assets and liabilities than a report dated, as at present, on the 31st of December, but that would make no difference in the amount of assets over liabilities or liabilities over assets, as the case may be. The rates have all been struck or levied and the auditors can know as well on the 1st of December how the township finances stand as on the 15th, since the council or commissioners scarcely ever let jobs or contracts after the 1st of December. Any small jobs let after that date would of course appear in the next audit. Commissioners could say at nomination if any jobs had been let after the first of December.

Very truly yours,

G. A. ANNETT.

PORT ROBINSON, JAN. 28, 1901.

To the Editor of the *Municipal World*,  
St. Thomas, Ont.:

May I ask a favor of calling the attention of my brother clerks and their assistants to bring a matter before the member of parliament in regard to a change in the way of distributing the "Voters Lists?" As it is at present, we are required to mail two copies to each master or masters of the schools, and I do not think this municipality any exception, but when the time for the summer vacation and perhaps not more than two or three of the teachers are residents of the municipality, and by the Voters' List Book we have to make oath, that we have done as the law directs, and by fulfilling the letter of the law the lists have been mailed entirely outside of the municipality and therefore lose their usefulness. Again, not a few teachers close their term at the time above mentioned. Would it not be a move in the right direction to change the Act and have the secretary treasurer of the school section inserted instead?

By writing the member for each county and calling his attention to the fact a change would no doubt be effected.

W. D. MISENER,  
Clerk, Crowland Township.

## Wrongful Abuse of Councillors.

To the Editor of the *World*:

DEAR SIR,—When there is cause for abuse, the council know enough to keep the rate-payers in the dark as much as possible. The third series of losses of this corporation culminated in 1899, but further losses are still occurring through members of the council disregarding their declaration of office. It would be interesting to know if last year's council, who rejected a guaranteed offer to save the corporation \$200 and lost it could be made to refund this \$200. The worst instance I have observed of councils ignoring their declaration of office was one of the council screening the treasurer from a provincial audit, though the treasurer afterwards asserted he had told this member of the council that he was behind in his accounts. Is there sufficient grounds to sue this man for the loss resulting from his declaring a provincial audit a useless expense? I assess the loss at about \$10,000. Each year, from 1897, the council have been notified that they are losing money, and that the accounts are wrong. They were cooking and putting a false gloss on them.

Yours, etc.,

A SUBSCRIBER.

[Ed.—There is no ground for suing for the loss you mention.]

## Improper Method of Appointing Officers.

At least one township in the Province has a very dubious way of appointing its officers, judging from the newspaper accounts of the proceedings at the meeting of its council held in February last. The municipality is large and important, having an assessed value of over two and a-half million dollars, and we can safely infer that the satisfactory transaction of its business requires care, skill and competency on the part of its executive officers. The clerk formerly received \$350 per annum, (with some extras), and the treasurer \$150. By allowing the several applicants for these offices to indulge in the very undignified practice of "bidding" against each other, the council succeeded in hiring a clerk for \$50 per annum, and a treasurer for \$95. The council could have gone only one step further to thoroughly contravene the provisions of section 320, of the Municipal Act, and that would have been to publicly advertise for tenders for these offices. Sub-section 2, of this section, provides that "No municipal council shall assume to make any appointment to office, or any arrangement for the discharge of the duties thereof, by tender, or to applicants at the lowest remuneration." The lowest tender is not always the most satisfactory for acceptance; and so much has this been found the case in the management of municipal affairs, that the legislature has been compelled to interfere. *Poor pay, poor service*, is generally the rule. Good pay to good servants will, in the long run, be found to be true economy. Notwithstanding, this provision is apparently intended to prevent public offices from being put up to public competition, public officials too frequently receive the lowest remuneration upon the ground that others can be found to fill the office for even a less sum.

## Good Roads.

The question of good roads is here to stay. Attention is being turned to the improvement of our highways all over this continent. At Chicago, recently, there was a gathering of the advocates of good roads, from several of the States and also from Canada. This is a people's question. We have spent millions upon our railways, colonization roads and canals. Now we want to smooth the way from the farms to the waterways and railways. When our country roads are improved then the chain between our farms and our canals and railways will be complete. The public money that has been so generously given to our railway and canal building might now, to a large extent, be diverted toward the improvement of our country roads.

By means of State aid, New Jersey has constructed, in various parts of the State, 150 miles of good roads this year. The result has been pronounced satisfactory, and the good work will go on.

The people of this province expect the government to come down at the approaching session with a well-considered scheme for improving our roads and with a generous offer of assistance to the municipalities. At the last municipal elections a large number of municipalities voted on the question of doing away with statute labor and in many of them a vote was taken on a plan, embracing the improvement of roads in the whole township.

## Civic Government.

The American Municipal League, which has for its object the improvement of civic government, has framed a "model charter," embodying the best ideas on the subject. One feature of it is worthy of note in view of the proposal to elect aldermen by a general vote of the electors and do away with the ward system. This model charter does not abolish the ward system, but combines it with the plan of electing by a general vote. Thus in the case of the city of Buffalo, which is now considering a change in the method of its government, the "model charter" provides that the city shall be divided into four sections, each one of which shall elect an alderman, then three more are to be elected by the citizens at large. We think this scheme is preferable to the one which would require us to elect all the aldermen by a general vote.

Another good feature of the Buffalo "model charter" is that the people will have the right of passing directly upon all important civic matters, such as the granting of franchises, etc. Those who are interested in civic improvement might, with advantage, study this "model charter," prepared by the American League.—*Kingston News*.

Mayor and aldermen: You cannot clean the civic slate, there's no use trying.

## LEGAL DECISIONS.

*Sherwood vs. Corporation of the Town of Peterborough.*

This was a case tried recently at the Peterborough assizes, in which Mrs. Hattie M. Sherwood claimed \$2,000 damages for injuries alleged to have been sustained by her on the 2nd day of February, 1900, while passing along west side of George st., Peterboro', near Y. M. C. A. The accident was caused, it was alleged, by a ridge of ice which had formed on the pavement about a month before. The statement of claim held defendants guilty of gross negligence in permitting the accumulation of such ice and snow and the grade of the granolithic walk was alleged to have been struck too low.

The corporation, in defense, claimed that the sidewalk was properly constructed and that the alleged condition of the sidewalk was due to climatic changes and deny that the ridge of ice had formed a month previous to the accident, or that they are guilty of any negligence, or were informed of the alleged bad condition of the sidewalk.

The plaintiff had sustained a severe fracture of the left leg, from the effects of which she is still suffering. Her claim is that the accident occurred at a point a few feet south of the corner of the building, and called a number of witnesses to prove that the pavement at this point was covered with ice and snow, and in a very dangerous condition.

The defence contended that the accident occurred at a point four feet north of the place where the plaintiff said she fell and called witnesses to prove that they picked up plaintiff after the accident, and that she was beside the water-pipe when she fell. Judge Ferguson, accordingly, gave judgment, dismissing the case without costs on the ground that the preponderance of testimony pointed to the happening of the accident at a point where no fault could be found with the condition of the pavement.

*Jones vs. Township of Westminster.*

Plaintiff, appealed from judgment of Street, J., dismissing action brought to recover damages for injuries sustained by plaintiff, who was thrown from his bicycle on the Pipe Line road, owing, as alleged, to its being out of repair. The earth over a tile drain formed a mound, which caused the accident. It was contended for appellant that upon the evidence the highway was out of repair, which was the sole and only cause of the injury; that the weight of evidence was in his favor and that he had not been found guilty of contributory negligence. Appeal dismissed, with costs.

*An Arbitration Case.*

The city of Brantford has been mulcted in the sum of \$6,100 and costs, in the

arbitration between the city and Thomas Elliott, H. McK. Wilson and Robert Henry, regarding the gravel lines on the Grand River below the G. T. R. bridge. For some time the city has been taking gravel from the river bed and from the land immediately upon the left bank of it, and using the same for corporation purposes. It is estimated that from 30,000 to 40,000 yards has been taken, and there still remains of the twelve acres of property a vast quantity of material. The three gentlemen named laid claim to the ownership of the land, which the city had hitherto regarded as river-bed and common property. While the real deep gravel bed extended to twelve acres, the total area under dispute was seventeen acres. The land was expropriated by the city, and Mr. Thomas Elliott on behalf of the proprietors entered into negotiations with the city for the value of the land. The sum named by the proprietors was \$6,000, and that offered by the city was \$1,700. The disparity in the figures was so great that there was no hope of a settlement. As a result the matter was left to arbitration. Sheriff William Watt acted for the city. Mr. A. H. Baird, of Paris, for the proprietors, and Judge Snider, of Hamilton, acted as referee. A great deal of evidence was taken, and the award was made on Saturday. It gives Messrs. Elliott, Henry and Wilson, \$6,100 for the property, \$140 for interest on that sum at 5 per cent. from June 4, 1900, and directs that all expenses of the arbitration be paid by the city. Sheriff Watt, acting for the city, dissented from the view of the majority, and refused to sign the award.

*Noble Mayors.*

The acceptance of municipal honors and responsibilities by a number of British peers is a significant departure both for the aristocracy and for the municipalities. A few years ago it would have been considered derogatory for a duke to be a candidate for a mayoralty. Even in as democratic a city as in Montreal there are gentlemen, much lower in rank than dukes, who despise civic honors. The example set by the Duke of Norfolk and other peers may have a good effect throughout the Empire. It is, however, upon the British aristocracy itself that the new departure is likely to have the most important influence. The traditions of feudalism, the possession of land and the courage and patriotism which characterize the upper classes in the United Kingdom, have given them a preponderating influence in control of the nation. But a class cannot rule forever on the strength of a tradition; the decrease in the value of land and the altered agricultural conditions have greatly weakened the influence of landlordism; courage and patriotism are not confined to any class and spread of education has given intelligent direction to the courage and patriotism of practically all classes of the people.

One of the surprises of the South African war was, that the rank and file of the army showed up to better advantage than the officers, except in the matter of personal bravery. Another, and probably the greatest, cause of all, of the movement of the centre of gravity of political power in the Old Country is the enormous development of capital apart from the landed interests. A rich merchant, or manufacturer, is a greater political power than a poor peer. The noble lords, who aspire to be mayors and aldermen, show that they have an intelligent appreciation of changed conditions and prevailing tendencies. The change does not mean that the best families in the Old Country are going to lose their influence in the nation. Blood will always tell, and the lords will gain rather than forfeit the respect of the people by their frank recognition of the new conditions.

Two most important conventions were held last month for the discussion of road reform; one, a convention of all municipal officers in Simcoe county, held at Barrie, under the auspices of the Orillia Board of Trade; the other, a convention of municipal officers of the Ottawa Valley, held at Ottawa, under the auspices of the county council of Carleton, and was the outcome of the agitation for road reform, so successfully carried on by Mr. H. B. Cowan, editor of the *Ottawa Valley Journal*. At both of these conventions the problems of road reform were considered in all their branches.

Delegates were present from every township council in Simcoe county, and from the councils of a large territory surrounding Ottawa. The formation of county systems of roads was considered in each case, and resolutions favorable to the management, by the county council, of leading roads, such roads as are of county importance, were heartily carried in each case. Such conventions, if held in every county, would do very much to remove present misconceptions with regard to the proposed county systems, and would encourage county and township councils to work together with a better understanding, for the common good.

The Ottawa convention was addressed by the Hon. Sydney Fisher, Dominion Minister of Agriculture; Hon. F. R. Latchford, Ontario Minister of Public Works; Mr. A. F. Wood, of Madoc; Warden Bradley, of Carleton; Warden Foster, of Pembroke; Prof. Robertson; Mr. Campbell and others. During the afternoon session, Her Excellency, Lady Minto was an interested listener to the addresses and discussions.

In point of attendance, addresses and conclusions reached, the Ottawa convention was a marked success, as was also that at Barrie, and important results should follow. At the time of going to press, a series of meetings is being held in Welland county, under the auspices of the county council.

# 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.

imperative that the council pay all officers, printing and other necessary expenses out of the balance? We have no debenture debt.

3. If the attention of the council is called to above section, and they continue to spend all municipal taxes, fifty per cent. on roads and bridges, and fifty per cent. on general expenses, what recourse have ratepayers?

4. Is any school rate a municipal rate, re above section?

1. It is impossible for us to answer this question, not knowing the locality, and the amount of labor and trouble a person would have in collecting the taxes. Your council should be the best judges as to this. They should employ a competent man to do the work, at a salary to be mutually agreed upon.

2. The council should expend in each township in the union the whole of the amount of taxes collected therein in any year, less ten per centum thereof, and the costs of collecting such taxes, "on roads, bridges and other works of the like kind." Sub-section 2 provides that "the council of the said union shall be at liberty to retain and appropriate for the general and other expenses of the municipality, the reservation of ten per centum, and the expense of collection." The general expenses of the municipality include the salaries of officers, printing and other necessary expenses, and should be paid out of the fund created by the reservation of ten per centum of the taxes collected in each township forming the union.

3. If the council of the municipality persist in refusing to collect and disburse the taxes, as required by this section, they could be restrained by injunction proceeding from future transgressions of the law.

4. No.  
Surety for Collector for 1900 Cannot be Auditor for 1901.

100—J. F. M.—Can a bondsman for our collector of rates for the year 1900 act as one of our auditors for same year legally?

We presume you mean that this person was appointed by the council for 1901 to audit the accounts of the municipality for 1900. This being the case he cannot be appointed. As surety for the collector for 1900 he had a share or interest in a contract or employment with or on behalf of the corporation. See section 299 (S. S. 1.) of the Municipal Act, and he cannot take the solemn declaration required by section 314 of the Act before commencing his duties.

Mortgagee to Council of Township Cannot be Its Auditor.

101—W. E. A.—"A," resident ratepayer, bought land and property from a municipal corporation, and gave in payment a mortgage upon the same with payment falling due on the 15th of November each year, during term of mortgage. At the first meeting of council, 1901, this party was selected as one of the township auditors, but he declined to take the declaration of office on the ground that a contract existed between himself and the corporation. The land mortgaged is in the township. Is the party disqualified from acting as auditor until the mortgage is paid off?

Yes.

Remuneration of Councillors in Village.

102—P. B. R.—1. Our council are desirous of obtaining for this year, remuneration for their services. I am aware that they can vote the reeve a certain sum but not the councillors.

## Liability for Accident when Sheep Allowed to Run.—Compulsory Completion of Ditches and Watercourses Drain.

96—H. M.—Our council has a by-law allowing sheep to run on the highway.

1. If they lie on the road and a rig gets upset, or a horse shies and runs away, causing damage to rig, would the council have to pay damages, or would the owner be liable?

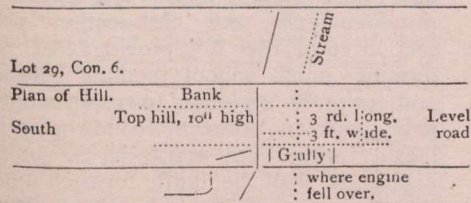
2. A ratepayer calls on the township engineer under the Ditches and Watercourses' Act, and the engineer awards that a ditch be constructed, beginning at a creek on lot 25, thence west, crossing the sideroad, thence along the west side of sideroad, thence west through lots 26 and 27. The owners of lots 26 and 27 complete the ditch to sideroad, but the owner of lot 25 neglects to complete his part, and the water is brought to sideroad, and left there without an outlet. Can the council take any action against the owner of lot 25 to complete his part of the ditch?

1. We do not think that either the owner or the municipality is liable for this accident.

2. The owners of lots numbers 26 and 27 are not liable to any action, or punishable in any way, because they have simply done their legal duty, by completing the portions of the drain, awarded by the engineer, to be constructed by them. Section 28, of the Ditches and Watercourses Act, provides for notice to the engineer in case any of the persons directed by the award to do any portion of the work, make default.

### Municipality's Liability for Accident.

97—G. W. T.—On January 13th, a ratepayer of this township was coming down a small hill (being icy at the time, and some ten or eighteen inches higher on the east side than on the west,) with an engine. On this part of the hill the engine slewed off the road and toppled over an embankment at the foot of the hill into a gully some three or four feet below, doing considerable damage to the engine. The road at the foot of the hill is only eight or nine feet wide, no guards having ever been placed on the sides for protection. The man has now informed council that he will hold the township responsible for all damages and expenses. Enclosed you will find a plan of said road. Would you, in your opinion, under the circumstances, think council would be acting right in settling with this man?



This is a question of fact rather than one of law. If the road at the place where the accident happened was reasonably safe for public travel, having in view

the amount of travel upon it and the means at the disposal of the municipality to keep it in repair, the municipality is not liable. But it strikes us that the person who was injured may be able to show that the road at the spot where the accident happened was so narrow and somewhat crowned that it was for that reason a dangerous place in some seasons of the year. The legal editor of the WORLD had a case about three years ago very similar in its facts to this where a small ravine was filled up. The surface of the filling was about eight or nine feet wide. Twenty years before the accident a railing had been placed on either side but shortly before the accident about sixteen feet of the railing on one side fell down leaving a gap of sixteen feet. A man was driving an engine down a slight decline to the filling when horses, man and engine went through the gap. Mr. C. Justice Armour held the municipality liable in this case. As far as we can judge from the facts which you have given us we think this is a case for settlement unless the municipality has some other defence such as want of notice required to be given by the Municipal Act. See subsection 3 of section 606 of the Municipal Act.

### Cannot Adopt Prior Assessment.

98—P. L.—Can a township council, like here, adopt the previous assessment to levy the taxes on for this year, dispensing with the payment of an assessor? If so, what chap., section and statute would you refer to? Is the amendment of 1899, sections 26 and 27, applicable in that case, or does it apply to territorial districts only?

Your township, being in the county of Prescott, cannot legally adopt the assessment of the previous year as the assessment for the present year. An assessor must be appointed by the council each year (see sec. 295 of the Municipal Act) who must make an assessment in accordance with the provisions of the Assessment Act. We cannot tell what statute you refer to, as you do not give us the chapter, but sec. 42 of chap. 225, R. S. O., 1899, applies to municipalities as territorial districts only.

### Appropriation of Taxes in Rainy River District.

99—R. W.—Two townships in Rainy River District are united for municipal purposes. Chap. 225, sec. 51, sub-sec. 2, R. S. O., 1897, reads, "ten per centum and cost of collection to be appropriated for general and other expenses, the balance to be spent on roads and bridges."

1. What per centum would be a reasonable sum for "cost of collection?"

2. What amount of each dollar collected should be spent on roads and bridges, and is it

How can the councillors get their pay? Can a council vote themselves so much per regular sitting during the year, or would it be better to divide the village into sections and appoint a councillor as commissioner for each section and derive his pay for acting as commissioner for all work done in this section?

2. Also we propose introducing a by-law for collecting the dog-tax by means of dog-tags. What is the proper method to enforce the purchasing of said tags? Would it be advisable to supply the assessor with them and for him to sell them when he makes his assessment?

1. *Councillors* of a village are not legally entitled to any pay for their services, nor can they vote themselves such, either as councillors or as commissioners as you suggest. Section 280 of the Municipal Act makes provision for the remuneration of the head of the village council (reeve), and sec. 538, sub-section 1, authorizes the councils of counties and townships to pass by-laws for paying members of such councils.

2. The usual and proper way of disposing of dog-tags is to supply them to who your assessor, when starting his work, will furnish them to owners of dogs on receipt of the amount of the tax imposed.

#### Rights as to Private Drain.

103—H. C.—A private drain runs through my lot to the river, which was put in for the purpose of draining a cellar of a house across the street. Two other parties made connection with said drain and one of them built a cess-pool on his lot with an overflow into the drain, which connects with the one that goes through my place, as a result of which a great nuisance has been committed. Can I permanently close up the drain where it enters my lot?

You do not say under what authority the private drain through your lot was originally constructed. Without this information we cannot say whether you have the legal right to obstruct the drain at your line or not. As to the other two drains, if they were constructed and joined to your drain without your consent, you can apply to the courts for an order restraining the persons conducting water through your drain from doing so.

#### Duty of Assessor.

104—G. H. S.—Is it the clerk's duty, or the assessor's, to number the names on the assessment roll, and also mark the jurors?

Section 56 of the Assessment Act requires the assessor to return his roll to the clerk *completed* (that is completed in accordance with the provisions of the Assessment Act) on or before the 30th day of April in each year. Part of his duty under the Assessment Act is to properly fill in the several columns of his roll, as mentioned in sub-section 4 of section 13 of the Act. Column 1 is to contain "the successive number on the roll," and the assessor must fill it in. The assessor has nothing to do with marking the jurors on the assessment roll. This is a duty imposed by sec. 23 of the Jurors' Act (R. S. O. 1897, chap. 61) on the clerk of a municipality when preparing his *voters' list*. The clerk ascertains from

reference to the assessment roll of his municipality whether a person is qualified to act as a juror or not.

#### Clerk Can Perform Treasurer's Duties.

105—A SUBSCRIBER.—Is it legal for the clerk to do the work of the township treasurer? The declaration says no officer shall take any work or contract on or behalf of the corporation save that arising out of his own office. Would it disqualify him in doing the same, both being separate offices?

If both these officers are agreeable to such an arrangement it is not illegal. In doing this work the clerk is performing it for the treasurer personally, and not for the corporation. As the law is at present, the same person can hold these two offices.

#### Statute Labor By-Law.

106—H. H. M.—If council of rural municipality pass a by-law to commute statute labor, can they fix a time that the by-law must remain in force, say two, three or five years? If they do so can a newly elected council repeal said by-law at any time before time is up?

It is not usual to pass a by-law commuting statute labor for a fixed period. The usual practice is to pass a by-law which does not fix any time during which it is to remain in force and such a by-law will remain in force until repealed. Fixing a period during which a by-law is to remain in force does not however render it invalid but a newly elected council can repeal it.

#### Statute Labor By-Law.

107—R. R.—Our council, last year, commuted statute labor at sixty cents per day, and levied on the collector's roll that amount for this year's labor. Some ratepayers refuse to pay their taxes on the ground that they did their statute labor last year, and then have to pay the tax also in the same year. There are some men, on rented farms, who are leaving the township, and they refuse to pay also. We have had one meeting of council, and have not settled the matter. Some of the council want to go back to the old system, others want to give it a trial. We scarcely know what to do now. There was no complaint until the collector went around. The by-law was passed on the 20th of August, so there was no complaint within three months after the by-law was passed. I have advice from a solicitor, but would like your opinion on the matter.

The commutation tax for the year 1901 should not have been entered on the roll for 1900. See answer to question No. 89 (1), February, this year.

#### Ratio of Statute Labor.

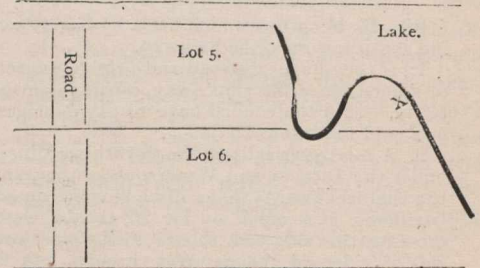
108—W. D.—Has a municipal council the power to add half days or hours to their statute labor scale for the purpose of doing statute labor according to assessment?

Sub-section 1 of section 102 of the Assessment Act, lays down the number of full *days* statute labor to be performed by persons assessed in a municipality, until and unless a by-law has been passed pursuant to the latter part of the sub-section, reducing or increasing the number of *days* statute labor to which such persons shall

be respectively liable. The statutes do not recognize or authorize the performance of anything less than a full day's statute labor.

#### Must do Your Statute Labor.

109—W. R.—I own point of land, two acres, running into lake marked X. I cannot get to it except by trespassing or with permission of owner of lot 6. The only way of getting to it legitimately is by water. I am assessed at \$100, and two days' statute labor. Am I compelled to pay or do the two days' statute labor?



Yes.

#### By-Law Cannot be Amended by Resolution.

110—R. C.—Can salary of an official appointed by by-law and salary fixed by same, be raised by motion in council, no notice being given to amend by-law? If so, how long does salary remain amended by said resolution?

A by-law of a municipal council cannot be amended by a resolution of that body. The passing of an amending by-law is necessary to have such effect, and the increase in the salary will begin with the passing of the amending by-law unless such by-law itself states the time when such increase shall take effect.

#### Dissolution of Union School Section in Manitoulin Island.

111—CLERK.—We are an organized municipality on Manitoulin Island, District of Algoma. We have a school section composed of forty lots, which was formed by our council in the year 1884. In the year 1885 the then inspector of public schools for Algoma added nine lots in the unorganized township adjoining to said section, making it a union. Can we, as a council, form a section out of the said forty lots, leaving out the nine lots that were added in the year 1885, or in other words, form a section which will not be a union? If so, what proceedings will we have to take?

Section 42 of the Public Schools Act provides that all union school sections that existed, in fact, on the 1st day of April, 1896, and whether formed in accordance with the provisions of the law in that behalf or not, shall be deemed to have been legally formed and shall continue to exist, etc. Sub-section 7 of section 26 of the Act, provides that, "In forming union school sections between and out of an *organized* township municipality and an *unorganized* township or locality within any territorial or judicial district, it shall be lawful for such union school section to be formed or *altered* according to the provisions of this Act, except that the inspector shall act for the unorganized township or locality, and the reeve of the organized township for his

township." The provisions for the forming, altering or dissolving of an existing school sect on will be found in section 43 and following sections of the Act. It is to be observed that sub-section 7 of section 26 has no reference to the *dissolving* of such a union school section as you mention, and we are of opinion that, as the law is at present, your council cannot legally accomplish what you state they desire to do.

Parties Floating Logs Liable for Damage to Bridge on Stream.

112—G. E.—It is necessary to rebuild a bridge over a mill stream which crosses a public road. The present bridge is twenty feet between the piers. It would be cheaper to rebuild to have only sixteen feet between piers, and would answer every public purpose. The owner of the mill below the bridge runs logs through under said bridge, and has notified the council not to rebuild less than twenty feet between piers, and wants glance piers erected, says if bridge is injured in any way by logs will not be answerable. Is a municipal council obliged to build bridges to suit lumbermen or sawmillers, or to erect glance booms or piers to protect said bridges from injury when driving saw logs.

The municipal council is obliged to build such a bridge at this point as will best suit the safety and convenience of the public requiring to use the same for purposes of travel. If parties floating logs or timber down the stream do damage to a bridge, we are of the opinion that they will render themselves liable for such damage. The council is certainly not bound to do what the mill owners seem to think they have the right to require.

Illegal Letting of Contracts by Reeve.

113—C. N. McD.—Is it legal for a reeve of a township to post up notices, stating that he is going to let contracts for two bridges, before the appropriations for roads and bridges are passed by the council for the year 1901? Where does he get his authority for going on with such work? Has the council a voice in the matter? We want some light on this subject.

Unless the reeve has been appointed commissioner for this purpose by the council, or has been authorized by resolution of the council to let these contracts, he has no legal right to do so, and cannot bind the corporation by so doing.

Parties to the Award Should Participate in the Cost.

114—J. M. D.—By way of further explanation of Question No. 95, in issue for February, 1901: A claims that when the basin (1) filled in the spring before he opened ditch (3) that the natural flow of the overflow for some weeks in the spring, afterwards the basin would absorb it, was through an old culvert on the road larger than the present one, thence onto B's farm, over which it flowed without hindrance until B put in a covered drain (5) too small to take all the water at the end of which he placed a bank damming back the water until the drain would take it. Would his covered drain come under the Ditches and Watercourses' Act, and compel A to pay part of the cost of enlarging? Would the above statements make any difference in your answer?

The question you submitted is one that can be settled only by the engineer for your township, employed under the provisions of the Ditches and Watercourses Act, in his award made after

proceedings have been initiated under the Act or by the county judge on appeal from such award. If B's tile are laid in the course which the engineer provides in his award, should be followed by the drain, and are sufficient in dimensions for B's drainage purposes, and the bringing down of water from the lands of A and probably other lands, would necessitate the enlargement of B's tile, A and the other owners of land above B, parties to the award, should proportionately pay the cost of such enlargement.

Repair of Roads in Sparsely Settled Locality.

115—J. W.—In this township, as in the adjoining townships, the land is rough, stony, rocky and hilly, diversified by marshes, creeks, rivers and lakes. As a consequence, the country is sparsely settled by a people who are unable by their statute labor to make new roads and repair old ones. The Ontario government have frequently given grants of money to assist in making roads, but this money, like the statute labor, has to be made go a long way, and frequently holes are found near the wagon track, which the road maker had dug to cover up rocks where it was impossible to plow or grade in the usual way, or stones have been dug out and rolled to one side, or stumps are left near the track. In a country like what I describe, where it is almost impossible to keep the main wagon track in a passable condition for driving, would a council be liable for damages by teams running against stumps, stones or into holes? Or what width would a road require to be free of such obstructions to free a council of liabilities in a rough country?

The general rule is that a council of a municipal corporation, in order to escape liability for damages in cases of accidents happening on roads under their jurisdiction, must keep and maintain such roads in a reasonably safe condition for travel, taking into consideration the topographical nature of the locality, the requirements of the settlers and the means at the command of the council, to be devoted to this purpose. To illustrate, the law does not require the same degree of excellence on roads in such a locality as you describe as in a level and well-settled district, free from boulders and rock. Keeping the above in view, your council should keep their roads in the best state of repair that the circumstance will permit.

Right to Manufacture Acetylene Gas by Private Individual, and to Lay Down Gas Mains.

116 SUBSCRIBER.—1. Is it necessary for a municipal council to pass a by-law to allow a private individual to lay down gas mains on the streets of a village, or would motion of council be sufficient?

2. If by-law is necessary, could both be put in one by-law?

1 and 2. Sub-section 3 of section 566 of the Municipal Act, impowers the council of a village to pass by-laws for authorizing any gas or water company to lay down pipes or conduits for the conveyance of water or gas under streets or public squares, subject to such regulations as the council see fit. It will be observed that the power given is to be exercised in favor of a company. We are, therefore, of the opinion that the council has no power to grant such an easement in the highway to an individual.

Road Laid Out Through Unpatented Lands—Assessment of Dredges, Scows, Etc.—Local Improvements Under Section 678, Municipal Act.

117—G. G. A. By by-law No 16, for A. D. 1867, the township council established a road or highway, which crosses portions of two township lots. I presume these lots had not at the time of the passing of the by-law been granted by the Crown, as a Crown Patent or Grant was issued recently to a farmer. I also presume the by-law was legally passed, in so far as complying with all the requirements of the law as to notices, etc. The grantee now claims that the township council had no power to establish the highway on these lots, that the grant to him overrides any by-law of the council, and he now demands that the highway be closed up, so that he may possess the land.

1. Is the highway legally established, or rather can the municipality legally hold or maintain the highway as against the grantee?

2. Is the grantee entitled to any compensation for the portion of township lots expropriated for the highway?

There are three dredges laid up in the harbor at this town, with the accompanying scows, cranes, etc., being the property of private persons and companies, engaged in work under government contracts. I cannot find this kind of property exempt under 7 (29) or other sections of The Assessment Act.

3. Are these dredges, scows, cranes and other personal property used in the harbor works, owned by the private persons or companies, liable to assessment and taxation by this municipality?

4. If not, kindly refer me to the authorities on the subject.

The council of this town intend constructing sidewalks on some of the principal streets, and to levy a portion of the cost thereof on the private lands abutting on such streets. I experience a difficulty in interpreting the Local Improvement sections 624 686, of The Municipal Act. The council has not adopted the Local Improvement system. I desire to know:

5. If the local improvements to be carried out under section 678 can be initiated under any one of the three methods provided for by sections 668 (1) to (2) and 669; and can the municipal council, acting under section 678, pass by-laws in the short form under section 670, and (3) hold Courts of Revision to hear complaints, etc. In short, is all the procedure given in sections 628 to 686, applicable to, or available for, improvements to be carried out under section 678?

1. At page 472 of the fourth edition of Harrison's Municipal Law the following statement is made. "In this respect 50, Geo. III., chap. 1., altered the law, and it would now seem that if once a road acquires the legal character of a highway, by reason of the original survey or otherwise, it is out of the power of the crown, by grant of the soil and freehold thereof to a private person, to deprive the public of their right to use the road. See The Queen vs. the Bishop of Huron, 8 U. C. C. P., 253; the Queen vs. Hunt, 16, U. C. C. P., 143; S. C., 17 U. C. C. P., 443." We have examined these cases and we do not think they support the law as laid down above. In the case of Rae vs. Trim, 27 Gant's Chancery Reports, p. 374, a case heard before Vice-Chancellor Blake, the head note reads: "A by-law passed by a municipal corporation cannot have the effect of taking any lands of the crown in addition to those appropriated by the crown for the purpose of highways in order to the opening up of the country. Neither can parties on crown lands before patent issued dedicate any

portion of the same; parties so in possession, however, may so far bind themselves by their acts as that when a patent shall issue to them the lands granted would be bound by any right or easement to which their sanction has been obtained.

2. The council not having power to pass the by-law in question, the owner of the land is not bound to accept compensation as he would have been in the case of a valid expropriation. If the council deem it necessary in the public interest to establish a road along the line of the present road, a by-law must be passed for that purpose and then if the council and the owner cannot agree the compensation will have to be settled by arbitration.

3 and 4. We are of the opinion that the property in question is liable to assessment but where it should be assessed we cannot say. In order to determine where it should be assessed we refer you to sections 38, 40, 41, 42 and following sections of the Assessment Act.

5. The local improvement sections of the Municipal Act, are complicated and very difficult to work out. In the case you put, we think that the council should act under either section 668 or section 669, and the by-law should either be published, with a notice appended to it, stating the time and place of holding a court of revision; or notice should be given in the manner provided by section 671. If the council desire to advance 40 per cent. from the general funds of the municipality under section 678, the by-law should be aptly worded for that purpose. Instead of using the short form of by-law provided by the Act we would advise you to prepare a long by-law.

#### Alteration of School Section Boundaries in Districts.

118—JUSTICE.—In the year 1888 the inhabitants of Blair called a public meeting for the purpose of forming a school section; said inhabitants were in an unorganized territory. It was decided by a vote of said meeting that a union school section should be formed of part of the following townships: A, B, C and D, said boundaries were defined as follows: All land situated between E and F, Indian reserves on the east and west side, the Conestoga River on south side, and extending north three miles. Said petition was forwarded to school inspector. He replied to said petition advising them to enlarge said section. This was voted down, and school boundaries were defined as above stated by the inspector. Now the township is formed into a municipality, and council are desirous of enlarging said boundaries of Blair Public school one mile north. The inhabitants in said territory object on the following grounds:

They were willing to go into said section when formed at first, if the school-house was placed in centre of section. This was rejected. It was claimed that the school-house should be placed where there were the most children to attend. To gain this object this one mile in dispute was struck off. Now when they have school-house built, and are in debt, they claim they have a right to enlarge their boundaries.

By leaving the boundaries of Blair public school section as formed, there is ample territory to form a school section within the boundaries of said municipality, viz., three and a-half miles north and south, by four miles east and west. Said inhabitants are desirous of forming said section.

1. May council legally alter said boundaries of Blair school section?

2. When school section boundaries are altered have they not to remain in force for five years?

3. Is there any redress if said question, (viz., school boundaries,) is carried to a higher court?

4. If the law compels us to join Blair school section, have we to share the responsibility of its debt?

5. May we compel the school-house to be placed in the centre of the section?

1. Sub-section 2 of section 38 of the Public Schools Act gives every township council the power to alter the boundaries of a school section, etc., in case it clearly appears that all persons to be affected by the proposed alteration, etc., have been duly notified, in such manner as the council may deem expedient, of the proceeding for this purpose or of any application made to the council to do so. This sub-section applies to your township (an organized township in Rainy River District) and if the notice referred to in the above sub-section has been given, the council may, if they deem it to the advantage of all parties concerned, pass a by-law altering the boundaries of the existing school section by adding thereto additional territory you mention, or such portion of it as they deem best, provided they do not transgress the provisions of sub-sections 1 and 3 of sec. 11 of the Act.

2. Yes. See sub-section 2 of sec. 38.

3. There being no county organization in your district the provisions of section 39 and following sections of the Act providing for an appeal to the county council from the decision of the township council in the matter, do not apply. The council, in passing a by-law pursuant to the provisions of section 38, would be simply exercising the discretion thereby conferred on them, and we are of the opinion that no court would interfere with their decision.

4. This point is not clear, but, after the best consideration, we have been able to give it, we are of the opinion that your property will not be liable to taxation for the cost of the school house, or that part of it remaining unpaid, if a part of it has already been paid, for these reasons. Section 70 of the Public Schools Act requires the sanction of the ratepayers before the trustees can make an application to the municipal council for money to build a school-house, and it seems to us that it follows, that ratepayers brought into a section after a school has been built cannot be taxed for a share of its cost because it would be imposing a liability upon them in a matter in which they have had no voice.

5. A change in the school site can only be effected under the authority of section 31 of the Public Schools Act.

#### Highway Crossing Over Railway.

119—M. E.—A R. R. Co. proposes to repair or grade up the approaches to the crossings by covering up the gravel, which forms the present road bed, with clay and sand. Can the township hinder them in so doing and compel them to continue the use of gravel? About thirteen years has elapsed since the R. R. and approaches were built and a considerable part of this time the company have not kept the grade up to the requirements of the law, and now it is proposed to extend the grade beyond

the requirements of law, but to do it with earth. As that kind of road-bed cuts up deeply in the wet season, we believe it will be very objectionable to the public.

You do not say whether the railway is under the jurisdiction of the Dominion or Provincial Parliament. Assuming that it is under the former, (as most of the railways in Ontario are,) section 186 of the Dominion Railways Act (C. S. C., chap. 109) requires the grade of highway approaches to railway tracks to be not less than one foot in twenty, but the Act is silent as to the material of which such grade is to be constructed. We are of opinion that the only redress the council has, in case the railway Co., after having been requested to do so, refuse to gravel the new grade is to apply to the Railway Committee of the Privy Council for the settlement of the difference between it and the Railway Company.

#### Election to Fill Vacancy in Council.

120—CLERK.—After the last municipal election two members resigned and I was thereupon directed to hold an election to fill the two vacancies. At the nomination meeting five persons were nominated. Within the time allowed by law, four persons sent in their resignations. Should I receive the four resignations, or should I refuse to receive the last resignation sent in, and declare the person who did not send in his resignation and the last one who tendered his resignation, elected?

You should have received all four resignations, and the remaining members of the council, (including the one newly elected) since they exceed in number, half of the full council, or a majority of them, should order the holding of a new election, to be held in the manner provided by the Municipal Act for the purpose of electing a person to fill the vacancy still remaining in your council. See section 130 of the Municipal Act. We might further draw attention to the fact that this section, in terms, applies to an annual or other municipal election.

Is Clerk, of Town of Less than 4000 Inhabitants, Member of Board of Health.—Salary as Secretary.

121—A. J. F.—Is a clerk of a town containing more than four thousand inhabitants a member of the Board of Health? Sub-section 3, section 48, Public Health Act. I contend that he is an officer of the board as provided by section 53. Can the board fix his salary and ask council to pay it, or is clerk obliged to do the work and claim no remuneration for his services? The Municipal Act is silent on it.

The members of the local Board of Health in a town containing more than 4000 inhabitants are those named in sub-section 3 of section 48, of the Public Health Act, that is, the mayor of the town and six ratepayers, appointed as in the sub-section directed. The clerk is not a member of the board, but by section 53 of the Act he is constituted the secretary of such a board. Section 56 authorizes the council of the town to vote such sums as are deemed necessary by the local board for carrying on its work and section 57 directs the treasurer to forthwith pay on demand, "out of any moneys of the municipality in his hands," the amount of any order given by the members of the local board or any two of them



for services performed under their direction by virtue of the Act. The Public Health Act makes no provision for payment of the clerk for his services as secretary and therefore he is not entitled to any.

#### Defaulting Collector.

**122**—C. W. B. The collector appointed for the years 1893, 1894 and 1895, the same man had been appointed for those three years. During that time he was in default to the amount of \$1150. This amount had been collected by the said collector and never paid to the treasurer of the municipality. The collector himself is not worth anything. His securities are in the same position and the bonds are defective. Who is responsible and are we barred from taking proceedings by the Statutes of Limitation?

We are of opinion that your municipality is not barred from proceeding to collect the amount in default by the Statute of Limitations, but any proceedings taken with this end in view would be barren of results if the defaulting collector is worthless, and there are such defects in the bond as to absolve the sureties from liability for his delinquencies. As to whether the latter is a fact or not we cannot say without seeing the bond or a correct copy of it.

#### Appointing Municipal Officers by Tender—Councillor can be Secretary of Board of School Trustees.

**123**—R. B. W.—1. Can a council lawfully accept applications for clerk or treasurer for less remuneration? Are applications tenders? State how such offices should be filled.

2. Can a councillor hold office of secretary of school trustee board?

1. Sub-section 2 of section 320 of the Municipal Act provides that "No municipal council shall assume to make any appointment to office or any arrangement for the discharge of the duties thereof, by tender, or to applicants at the lowest remuneration." The council should select a competent man, willing to assume the responsibilities of the office at a salary to be mutually agreed upon between him and the council.

#### Rights of a Peddler.

**124**—F. L. T.—Has not a man the right to peddle groceries in his own township by permission of the ratepayers; or has he to have the permission of the majority of the council? The man in question is a farmer and has started to peddle groceries by permission of the head of the council only, and the grocers of Mattawa are trying to have him arrested.

Your township is a municipality in a district having no county organization. Section 34 of chapter 225 (R. S. O., 1897), makes sub-section 14 of section 583 of the Municipal Act applicable to such a municipality, therefore, your municipality has power to pass by-laws "for licensing, regulating and governing hawkers, peddlers and petty chapmen, etc." You do not say whether your municipality has passed a by-law pursuant to the provisions of this sub-section or not. If it has, persons hawking or peddling goods in violation of this by-law, are amenable to its provisions, and if there is no such by-law in existence there is nothing to prevent this man

peddling groceries. The permission given by the head of the council does not affect the case either one way or the other.

#### Dispensing with Application of Dog-Tax—Qualification as Councillor of Mortgagor to Municipality.

**125**—X. Y. Z.—In the year 1898 the dog-taxes were collected in this township. In 1899 a petition was presented, signed by the necessary number of ratepayers, praying to have said tax discontinued and a by-law was passed accordingly. The losses sustained by owners of sheep being killed by dogs has since been paid out of money collected in the year stated. There is still a considerable balance on hand.

1. Can this council pass a by-law, declaring that this fund be dispensed with, and that the balance be used for other municipal purposes as stated in section 8, chapter 271?

2. Can a member of the council, who has money borrowed from the municipality on a mortgage on his real estate, legally hold his position as councillor?

1. We are of opinion that section 8 of chapter 271 (R. S. O., 1897), is not applicable to your case, but that the fund, until exhausted, will have to be devoted to payment of losses sustained by owners of sheep killed or damaged by dogs. Section 8 applies only when the council "deems it advisable that the tax by the Act established should be maintained, but that the application of the proceeds thereof, by the Act provided, should be dispensed with; in other words, we do not think that such a by-law applies to taxes paid in before its passage.

2. No, but proceedings to unseat him must be instituted within the time mentioned in sections 208 or 220 of the Municipal Act, as the circumstances warrant.

#### Mode of Assessing Realty in Districts.

**126**—R. A. C.—At the nomination of the municipality a great deal was said re the equalization of the lands in our township, and since then I have been asked as one of the councillors, to see what can be done. First, I will relate to you the circumstances and would ask you, through the next volume of your journal, to give me some light on the subject.

The municipality in question is that of Oliver in the District of Thunder Bay. Some years past a great portion of the township was bought by speculators, in large sections, and is still held by them, unimproved, and they are taxed at \$3 per acre, whereas, the man on the next farm goes to work, clears up his land, improves his property and is taxed \$6 per acre on all improved lands and \$3 per acre on wild lands. A farmer thus treated, has got to pay a tax for the sweat of his brow while the speculator sits in his office, holds his land from year to year, waits until his neighbor improves his and then when asked what he wants per acre, will say, a few years ago I would have taken \$3 or so per acre, now I want \$5, see what a good farm Mr. So and So has along side of me.

The present idea is to try and equalize the assessment so that the farmer will not have to pay a tax to benefit his neighbor, who is only acting as a hindrance to the community. We cannot get our township settled up because of this circumstance existing.

Can the municipal council make a by-law authorizing the assessor to make this change? or has the township to act through the county council, and if so, how would our council act when there is no organized county council, or has the county judge power, upon the appeal of the municipal council, to grant such an appeal and what would be the likely cost upon the municipality? We claim a man has a perfect right to pay as much on his unimproved land,

that is good farming land if cleared, as the man that is making improvements, or in fact, he should pay more for being a hindrance to the settlement of a community.

Sub-section 1 of section 40 of "The Act respecting the establishment of Municipal Institutions in Territorial Districts" (which applies to municipalities in the district of Thunder Bay), provides that the assessor to be appointed by the council, as soon as convenient after its first meeting, shall state on his roll the amount of all real and personal property owned by persons in the municipality and the actual value thereof. The council has nothing whatever to do with fixing the notice or rate at which their assessor shall assess lands or other assessable property in the municipality. A competent man should be appointed to the office of assessor, who, without and regardless of any interference on the part of the council, should assess all rateable property in the municipality at its actual value according to the best of his judgment or ability. If parties are dissatisfied, they can appeal from the assessment, as provided by section 43 and following sections of the Act. A man has a right to deal with his own property as he sees fit, so long as he does not cause actual damage or injury to others. He can till and build upon his land, or hold it in a state of nature (possibly for speculative purposes) as he deems best. Neither the township council, county council, county judge, nor any other body or person can legally cause these lands to be assessed for other than their actual value.

#### Appointment, Powers and Responsibilities of Treasurer and Collector, in Villages, in Districts.

**127**—M. V.—Our village (incorporated by special Act, in 1896) has never had a collector, but has appointed the treasurer each year, to receive the taxes at his office, in order to save expense of a collector. This year there are considerable arrears of taxes from 1900 not paid and the council wishes to appoint a collector to collect them.

1. Can the treasurer in a village, in Muskoka, receive the taxes, there being no collector?

2. Would his sending the tax-papers, by mail, to the ratepayers, asking them to remit to him, be a demand for payment within the meaning of the Act?

3. If appointed as receiver for 1901, by by-law, can his appointment be cancelled?

4. What special authority, if any, should a collector have from the council, to collect by distress?

5. Is the municipality, or are the members of council, responsible for the acts of the collector in collecting by distress?

6. Can the collector appointed now, collect taxes levied in 1899 under a by-law for local purposes, granted that the by-law was legal? This was a special rate on certain property levied under the Surveys Act. Several parties refused to pay this special rate, (but paid the balance of their taxes) claiming that the by-law was illegal. It is now over a year since it was passed. The council have not till now done anything to enforce the payment.

1. No. There is no authority given by the special Act incorporating your village, by the Municipal Act or chapter 225, R. S. O., 1897, or otherwise to your council to dispense with the services of a collector, or to the treasurer to receive

the taxes other than from the duly appointed collector as and when he collects the same. Sub-section 1 of section 295 of the Municipal Act provides that the council of every city, town, township and village shall, as soon as may be convenient after the annual election, appoint as many assessors and collectors for the municipality as they may think necessary, etc." This was one of the powers conferred upon incorporated villages at the time of the passing of the Act incorporating your village, the latter part of section 1, of which provides that your village "shall have and enjoy all the powers, rights and privileges, then enjoyed by or conferred upon, or which shall or may be conferred upon incorporated villages in the province of Ontario."

2. No.

3. Yes, and the appointment should be cancelled by a by-law repealing the by-law appointing him.

4. None. You will find the collector's duties defined in section 133 and following sections of the Assessment Act. See also sections 52 of the chap. 225, R. S. O., 1897, which confers on collectors in districts the same powers as are conferred on collectors by the Assessment Act.

5. The municipality will not be liable unless the council has instructed the collector to make a particular seizure which is unlawful.

6. No.

#### Dog-Tax Must be Levied.

128—J. H.—Is it compulsory to levy a tax on dogs by council?

Section 1, of chap. 271, R. S. O., 1897, provides that "subject to the provisions in the next following section, there shall be levied annually in EVERY municipality in Ontario, upon the owner, possessor or harbinger of each dog therein, an annual tax of \$1 for a dog, and \$2 for a bitch." Your council must, therefore, levy and collect this tax, unless and until the council shall have passed a by-law pursuant to sub-section 2, of the Act.

#### Councillors Need not Take Oath of Allegiance.

129—TOWNSHIP CLERK.—1. Is it necessary that township councillors take the oath of allegiance to the present sovereign before they can legally transact any business?

2. If so, can township clerk administer same, he not having taken the oath himself.

1. No.

2. Our answer to Question No. 1 renders it unnecessary to answer this.

#### Failure of Township Auditors to Perform Their Duties.

130—JONES—If township auditors, appointed under by-law at last January meeting, fail to make proper declaration of office or to send in their resignation, or to make the required audit and report within specified 30 days, what steps should be taken to get the accounts for 1900 properly audited?

Sub-section 2, of section 304, of the Municipal Act, provides that "the auditor shall, under a penalty of \$20, in case of default, transmit by mail in a registered package, one copy of the abstract, and one copy of the detailed statement, on

such form as shall have been submitted to the council, to the secretary of the Bureau of Industries, Toronto, and shall file the other abstract, together with the other detailed statement, and report in the office of the clerk of the council, within one month after their appointment." If the auditors have not complied with the provisions of this section, they are liable to the penalty therein mentioned, and the by-law appointing them should be repealed, and a new by-law passed appointing auditors who will assume and perform the duties of the office.

#### Not Liable to Pay Nurse for Indigent—Appointment of New Treasurer.

131—J. M. D.—I. B, a poor man with family, takes a homestead in our municipality, under the Rainy River Free Grant Act, but does not make any improvements or live on it and is a resident of the municipality of Chapple, adjoining ours. Last fall he was taken sick with typhoid fever and the doctor ordered a nurse to attend to him. B being unable to pay the nurse; which, or is either municipality liable for nurse's wages—the taxes being paid for B's homestead for which he was assessed and also on the place where he resides in Chapple municipality?

2. A was appointed clerk and treasurer of a municipality, in 1899. B was appointed treasurer in 1901, without dismissing A, no cause being given other than to reduce the salary, and A not being asked to accept less. Is this act on the part of the council lawful? If not, has A an action against the council for wrongful dismissal?

1. Neither municipality is liable for the nurse's wages.

2. We cannot answer this question properly without first seeing the by-law appointing A clerk and treasurer, and that appointing B treasurer, or correct copies of them. If the by-law appointing A did not mention any time during which the appointment was to last, he could be dismissed at the pleasure of the council, without any cause for so doing. But, if A was engaged for a definite time, the municipality would be liable in damages for wrongful dismissal, if the council discharged him without sufficient cause shown prior to the expiration of that time. We may say, however, that Mr. Justice Ferguson, and Mr. Justice Meredith, in the case of Vernon vs. Smith's Falls, 21 O. R. 331, held that a chief constable could be dismissed at any time, even though engaged for a particular time, but this case is inconsistent with previous authorities.

#### Duty of Treasurer as to Bank Account—Payment of Premium on Guarantee Bond.

132—SUBSCRIBER.—1. The treasurer has refused to pay moneys as received by him into bank, as directed by the council, on the general ground that he finds his own security and is responsible for the money. Can the council compel him to do as directed, if not, why not?

2. In your opinion should the council pay premium on treasurer's bonds or allow said amount if he finds his own security?

1. Sub-section 5, of section 291, of the Municipal Act, provides that "the treasurer shall open an account in the name of the municipality, in such of the chartered banks of Canada, or at such other place of deposit as may be approved of by the

Council, and shall deposit to the credit of such account all moneys received by him."

The treasurer cannot justify disobedience of the council's orders in this regard, or on the ground given, or otherwise. If he obeys these orders, and, in consequence of his doing so, the money is lost, neither the treasurer nor his securities will be liable.

2. If the council requires as security from their treasurer a policy in some Guarantee Company, it should pay him a sufficient salary to enable him to pay the annual premium, and also justly compensate him for his work.

#### The Clause Passed.

133—J. A. R.—At last session of the county council, of Huron county, a request was made for a grant to the Huron volunteers. This was referred (by rule) to the executive committee. The exact phraseology of motions, reports, etc., I do not know, but give the main facts. The executive committee reported on the matter in (say) clause five, recommending that \$600 be granted. On this report the council went into committee of the whole, an ordinary member (not a member of said committee) in the chair, the warden on the floor, and all the members present. Clause five passed on a vote of eight to seven, and the chairman reported it carried in committee. Council resumed, the warden in the chair. A written motion was made and seconded, that clause five be struck out. For this motion eight voted, seven voting nay. The warden then voted nay, making an equality of votes, declared the motion lost, and clause five carried. Was this legal?

I argued that the ruling was illegal. By chap. 223, section 274, R. S. O., 1897, the warden had a right of voting. The claim is made that making an equality of votes, the question was negatived, and the contention is, that the question was "shall clause five be struck out?" I submit that the main question was "shall \$600 be granted the volunteers?" Eight members say "No," eight others, including the warden, say "Yes." I submit that the grant was lost. Suppose a difference of procedure, also quite according to rule. In council, suppose the warden says "shall the report be adopted?" There is dissent. He then says, "shall clause 1 pass?" Assented to and carried, and so on to clause five. On that there is dissent, and the warden says "all in favor of clause five stand up." Seven members stand up, and the clerk records the names. "All against clause five stand up." Eight members stand. The warden then votes with the minority, making an equality of votes. Under those circumstances, I think no one would contend that the clause was carried. Surely so slight a difference in procedure could not legitimately lead to opposite results. The main facts are that, on this question of a grant, the council was evenly divided, and therefore it could not carry.

In your statement of facts, you say that the motion made, seconded, submitted to and voted upon by the council, was "that clause 5 be struck out." The subject matter of clause 5 had been already passed upon and settled by the committee of the whole. The warden had a legal right to vote on the question, under sec. 274 of the Municipal Act. Since his vote created an equality of votes, by the provisions of the same section, the motion was negatived or defeated, that is, clause 5, as framed, settled and passed by the committee of the whole, remained in and formed part of the report, as finally adopted. This means that the council

authorized a grant of \$600 to the volunteers.

#### Municipality Can Pay Premium on Treasurer's Security

134.—R. G.—Is it lawful for municipalities to pay a guarantee company the per centage they require for bonds for the treasurer? Do you know of any municipalities that are paying any company for bonds for their treasurer?

Section 323 of the Municipal Act authorizes municipal councils to accept policies in a guarantee company for the integrity and faithful accounting of public officers, etc. We are of the opinion that a council can legally pay the premium on such a policy, or pay the officer required to furnish it, such a sum in addition to his ordinary salary, as will enable him to do so.

#### Disposition of Municipal Taxes in Rainy River District.

135.—F. H. W.—Would you please give us a plain and definite interpretation of chapter 225, R. S. O., section 51, sub-section 2, regarding Rainy River District?

This sub-section gives the council of the municipality (composed of the several municipalities forming the union) the liberty to retain ten per centum of the amount of the taxes collected in each of the townships forming the union, and appropriate such ten per cent in paying the general and other expenses of the municipality or union. These expenses include salaries of officers of the municipality or union, cost of printing and all other necessary expenses. The council of the municipality is also authorized to retain out of the amount of the taxes collected in each township, the expenses of collecting the same. The balance of the amount of taxes collected in each township in the union, over and above ten per centum thereof, and the costs of collecting, is to be expended in the township in which the same was levied "on roads, bridges and other works of the like kind necessary for opening up and settling the said township." See sub-section 1 of section 51, and our answer to question 99 in this issue.

#### Elector can Vote in More Than One Ward.

136—J. F.—Can an elector who owns property in different parts of a town, vote at more than one polling division in the case where the ward system has been abolished in said town, and where the elector votes for six councillors in the one polling division?

We assume that by the abolition of the ward system you mean that your town now elects six councillors by a general vote, instead of one or more councillors for each ward, as formerly. This being the case, the wards have not ceased to exist, and each voter is entitled to vote in as many wards (for six councillors each time) as he is possessed of the necessary qualification. Section 158 of the Municipal Act, as re-enacted by section 13 of the Municipal Amendment Act, 1899, and as amended by section 6 of the Municipal Amendment Act, 1900, provides as follows:

"In towns and cities in which the

councillors or aldermen are elected by wards or in two divisions or by a *general vote*, every elector may vote in each ward in which he has been rated for the necessary property qualification for councillors or aldermen, but the elector shall be limited to one vote for mayor of a city or town."

#### Assessment of Tenants of Railway Company's Lands.

137—J. D.—The I. B. and Ottawa railway runs across this township. The said railway have erected some cottages on their property. These cottages are occupied by their employees, who have families, and who send their children to the public schools.

Can these employees of the railway be assessed for municipal purposes?

These employees send their children to the public school, and refuse to pay or give any remuneration to the school section.

We presume you mean these employees are tenants of the railway company, and as such can and should be assessed for municipal purposes. The railway company is, or ought to be, assessed as owner of the lands and cottages, and pay all the taxes and charges, municipal, school and otherwise, chargeable and payable in respect to same.

#### Government Grant for Roads.

138—R. E. S.—I saw a paragraph in a newspaper that government would duplicate every dollar laid out or advanced for road improvement by the local municipality if statute labor were commuted. Now, I have a circular that, under a proposed provincial law to establish a county road system, taxes would be largely increased. Will you kindly throw some light on the subject?

We know of no arrangement, statutory or otherwise, that would lead to the inference, stated in the newspaper paragraph. As to the effect that the establishment of a county road system, would have on taxes in any given municipality, the subject is too extensive a one to be discussed in this column. In the other departments of the WORLD, you will frequently meet with articles relating to this important matter. See page 2 in January issue.

#### Township Treasurer Qualified for County Councillor.

139—C. C.—Can a county councillor legally hold the office of township treasurer in one of the municipalities in the C. C. division he represents or will his acceptance of such office void his seat in the county council?

If this person had been duly elected and taken declarations of office and qualification as a county councillor prior to his appointment to and acceptance of the office of township treasurer, the fact of his accepting the office will not vacate his seat in the county council. The result would be different, however, if this person were filling the office of treasurer at the time of the nomination of candidates for the county council. See question No. 349, 1900.

#### Substitute for Clerk not Legally Appointed.

140—G. W. T.—At the first meeting of the council of the township of H., the clerk, who was sick, sent his son to act in his stead, under appointment as follows:

To the Electors, Reeve and Councillors of H.:

I hereby appoint H. A. C. to fill my place as clerk, on account of me being too ill to attend to my duties.

Corporate Seal attached. J. S. C.

The reeve and councillors took the declarations before the appointed clerk, and attended to the business of the day. Certain electors took objection to the course pursued, and one of the council obtained the following advice from a solicitor in P.:

"The township clerk has no authority to appoint any person to perform any of the duties of his office unless he is first authorized by a resolution of the council to do so. When Mr. C. appointed his son to act in his place the appointment was invalid, because there was no resolution of the council authorizing him to do so, and therefore the declarations taken by the members of the new council are not according to the Municipal Act. If the clerk is still unable to take the declarations the members of the council should take them before a J. P., and should then transact over again the business which they have already done in order to make it legal. "R. M. D."

In submitting the case to another solicitor, he said that it being the first meeting of the new council, thought the declarations should be taken before a J. P., or else the reeve take his before a J. P., or the clerk, and then he could take the declarations of the rest of the council, and council pass a resolution confirming the appointment made under section 283, of the Municipal Act. He did not agree with the former part of solicitor's advice, but agreed in the main conclusions, and thought council should again transact their business done at their first meeting.

Being an interested party, I thought that by submitting the case to you as it was to me, that you, through your columns, would be able to give a good word of advice to clerks and councils as to procedure under such circumstances, and would now ask your opinion on the matter.

By section 311 of the Municipal Act, every person elected to a municipal council is required to take the declaration of property qualification mentioned therein, and by section 312 every member of a municipal council is required to make the declaration therein set forth, in each case, "before he enters upon the duties of his office." Section 283 authorizes a council, *by resolution*, to provide, in case of the illness of the clerk and his consequent incapacity to perform his duties, some other person *to be named in the resolution or to be appointed under the hand and seal of such clerk*, shall act in his stead; and this person, so appointed, shall, *while he acts, have all the powers of the clerk*. Sec. 315 gives the names of the officials before whom the declaration of office and qualification, shall be made. They are, some court, judge, police magistrate or other justice of the peace having jurisdiction in the municipality, or the clerk of the municipality. The clerk's son not having been appointed to act in his father's stead, in accordance with the provisions of section 283, had not, nor could he exercise any of the powers of the clerk. The declaration of office and qualification could not be legally made by the members of the council before him, and those made are simply nullities. Since by sections 311 312, these declarations must be made by the members of the council, before entering upon the duties of their office, the business done at the first meeting of the council is null and void and must all be done over again. The council could

not pass a resolution authorizing the appointment of a substitute for the clerk under section 283, until they had taken the declaration of office and qualification. The members should do this before some of the officials named in section 315, before attempting to transact any of the business of the municipality.

#### Voting on Money By-law.

141—W. B.—As the property owners of the town of Listowel at an early date will vote on a by-law for the purpose of giving a loan to a bent chair factory, would you kindly give me the following information by return mail?

1. Supposing an owner of property would dispose of that property and move out of town say to another county, could the present purchaser vote on the by-law, although his name did not appear either on the assessment roll or on the voters' list?

2. Our town is divided into five wards, if an owner has property in each of the five wards, can he vote in each of the wards?

3. If a person or owner rather, is assessed on the assessment roll for say \$150, can he vote on the by-law, or what qualifications does he require to have, as you are aware, if an owner is not assessed for \$200 in towns, although his name did not appear on the voter's list.

4. Have widows, as owners of property, a right to vote on this by-law?

5. Does it take a three-fifths vote to carry the by-law?

1. No. The purchaser is not rated on the last revised assessment roll of the municipality as a freeholder of property of sufficient value to entitle him to vote at any municipal elections, as required by section 353 of the Municipal Act, latter part of sub-section 1.

2. Yes. See section 355 of the Act.

3. No. If an owner is not rated at sufficient value to enable him to vote at a municipal election, on the last revised assessment roll of the municipality he is not entitled to vote on the by-law.

4. Yes, if they possess the necessary property and other qualifications. See sections 353 and 354 of the Act.

5. Section 366 (a), sub-section 1 of the Municipal Amendment Act, provides that "to render valid a by-law of the municipality for granting a bonus in aid of any manufacturing industry, the assent shall be necessary of two-thirds of all the ratepayers who were entitled to vote on the by-law, unless the number of ratepayers voting against such by-law does not exceed one-fifth of the total number entitled to vote, when the assent of three-fifths only of all the ratepayers shall be necessary, etc."

#### Assessment of Telegraph Line—Size of Polling Sub-Divisions.

142—J. C. M.—1. Where a telegraph line runs through a local municipality for ten miles, and have an office in municipality, can the municipality assess such line, and how would it be valued?

2. Vic. 63, Chapter 33, section 25, amends revised statutes, chap. 224, section 536, so as to substitute the figures 300 instead of 200, and 400 instead of 300, wherever they occur. Where less than these numbers occur in polling sub-divisions, can council make more polling divisions? Where fewer than these occur in polling divisions, is it the council's duty to form larger polling divisions so as to make them contain as nearly as possible the 300 voters?

1. The poles and wire of that part of the telegraph line located within your municipality can be assessed at their actual value, as so much dead material, but not as part of a going concern. As a result of the investigation of the assessment commission, an act will be introduced at the present session to abolish this method of assessing telegraph companies, commonly known as the "scrap-iron" mode of Assessment.

2. The councils of townships, cities, towns and villages, may divide their respective municipalities into as many polling subdivisions as the exigencies of the case and convenience of the electors required, provided that no polling subdivision shall contain more than 300 or 400 voters, as the case may be. Each polling subdivision should have well-defined boundaries, and the number of qualified electors in the several polling subdivisions shall be as nearly equal as may be. It is not the duty of the council to rearrange the polling subdivisions so that they shall contain as nearly 300 votes each as possible.

#### Fences Along Highways.

143—R. O. S.—In the township of East Nisouri, the opinion prevails that the municipal council have no power to compel any person, who owns real estate, to build a fence of any description between his property and the highway. But there are a few who believe that it is a part of the council's power (if they see fit to use it), and they quote chapter 223, section 545, sub-section 2, of the R. S. O., 1897, in support of their contention. Your opinion of this section will no doubt aid in settling the dispute either one way or the other.

A township council has no power to compel owners of lands along the highway, to build fences between their lands and the highway. The sub-section you quote, gives such councils power to pass by-laws for the purposes therein mentioned, but their provisions can only apply to fences along the highway, about to be, or erected, in case the owners see fit to build them.

#### What Constitutes Residence.

144—A. R.—A ratepayer, whom we will name John Smith, lived almost continuously in the township of A for nearly half a century, where he built up a good business and reared a large family, who still reside at A and help to carry on the business. Some time ago, he acquired another property in the adjoining township of B, which requires his attention during the greater part of each week. Saturday afternoons and Sundays, he nearly always spends with his family in A, and from Monday to Saturday at the residence in B. His wife, or one of his daughters, generally accompanies him to B, and keeps house for him during the week. In which of the townships should he be entered as resident and entitled to be an M. F. voter?

From what you say, the ratepayer has done nothing to change his residence from A to B, or to evidence an intention of doing so. Generally speaking, a person's domicile is the place where he has his permanent home, that is, where he and his wife and family generally and usually live, eat and sleep.

#### Collection of Dog-Tax.

145—H. S. M.—Did the legislature at last session make the dog-tax compulsory to begin this year not subject to repeal as formerly? I cannot find it in the amendments but think it was published in your WORLD. Please answer and make reference to the section, if correct.

Sections 2 and 8 of chapter 271, R. S. O., 1897, have not been repealed or amended, but are still in force as they appear in the revised statutes. This tax must be levied in each municipality, in Ontario, as provided in section 1, unless and until the council has passed a by-law pursuant to the provisions of section 2 of the Act.

#### Assessor Must Take Declaration of Office.

146—J. R.—By by-law, our council, some years ago, appointed a man as assessor at a salary of \$40 a year. This year the council passed another by-law appointing the same man assessor at a salary of \$5 a year. Now, this man says he was never dismissed by the council, therefore he is still assessor, under the old by-law, at the salary of \$40, and says there is no need of taking the declaration. What constitutes the dismissal of a municipal officer, if passing a by-law appointing another does not? Did the council act properly or not? There were other applicants for the office this year, hence the reduction of salary.

Sub-section 1 of section 295 of the Municipal Act provides that "the council of every city, town, township and village, shall, as soon as may be convenient after the annual election, appoint as many assessors and collectors for the municipality as they may think necessary, etc." The council should pass a by-law each year appointing an assessor or assessors. The same man can be appointed from year to year if the council deem it advisable to do so. A by-law appointing an assessor for an indefinite period, or a term longer than one year, is not in accordance with the above statutory provision and is therefore invalid, or, in any event, would have the effect of appointing the assessor only for the year in which it was passed. A new by-law should be passed yearly, appointing an assessor for the year at a salary to be agreed upon between the council and person appointed. In any event the assessor must make the prescribed declaration of office, before commencing the performance of his duties, etc.

#### Defective Drain Under the Ditches and Watercourses' Act.

147—J. A. R.—A drain under the Ditches and Watercourses Act was made late in the season of 1899, and for reasons not clearly known was not made on the proper watercourse. The engineer stated so at the time of making the award. The ditch has not proved successful. It has not a good waterfall, and consequently fills up. In the award the corporation is to maintain the greater portion of the ditch, and the party concerned in the benefit of the ditch notified the council in the fall of 1900 to clean out the ditch, which they have not done as yet. The party is now attempting to force the corporation to do the said work. Now, can the council be compelled to perform the work at this season of the year? If not, inform me, as the clerk, as to what steps to take in the matter. Can the council annul the said award, and have it made on the proper watercourse without spending any more money in the old

ditch? Or does the award have to stand two years before quashing it? If so, can the council refuse to do any more work in the old ditch?

We do not understand why the engineer, in making his award, laid out this drain in the wrong place. Having done so, however, if the time prescribed by the Ditches and Watercourses Act, (R. S. O., 1897, chapter 285) has expired, the award will stand, notwithstanding any defects in it as originally made. See section 24 of the Act. If served with a notice under section 35 of the Act, the council can be compelled to clean out and put in a proper state of repair, that part of the drain they were required to construct and maintain. They cannot, however, be compelled to do impossibilities. If the weather and state of the ground, is such that the work cannot be done now, the council is not compelled to go on with it until it is physically possible to do so. If the ditch has proved insufficient for the purpose for which it was constructed and has caused an overflow of water upon any lands along the ditch, occasioning damage to the same, any owner (party to the award) may take proceedings for the reconsideration of the award, at any time after the expiration of six months after the completion of the ditch, your municipality being located east of the county of Frontenac. See sub-section 2 of section 26 of the Act. In any case, if the drain is a covered one, proceedings for reconsideration may be taken within one year, and if open, within two years, from the completion of the construction of the drain. See sub-section 1 of section 36.

Can Same Person be Clerk and Treasurer in Township in District—Master of Titles and Arrears of Taxes—Election Expenses.

148—W. F.—1. Is it legal for a township council to appoint the same man to position of clerk and treasurer? If so, give authority.

2. A treasurer in a municipality in a district has to perform the duties as to making returns re arrears of taxes, etc., as though working in connection with a county treasurer. Does that mean that he, having all the information necessary, must make returns to himself and keep another set of books, as if he were county treasurer?

3. Has arrears of taxes to be reported to the local master of titles for this part of the district in order to keep them alive, and a lien on the property?

4. Must there be a by-law passed for municipal election expenses in a municipality where there are no polling sub-divisions, the clerk acting as returning officer?

1 and 2. We have frequently given it as our opinion, that the offices of clerk and treasurer of a municipality, in municipalities having county organization, can be held by one and the same person, but in a township municipality in a district, these offices should be held by different persons. Although the provisions of chapter 225, R. S. O., 1897, do not, in terms, prohibit the holding of these offices by the same person in townships in districts, yet they render them incompatible. By section 53 it is enacted, that the treasurer of a township in districts, is to perform the same duties in regard to the collection of arrears

of taxes, as treasurers of counties in other municipalities. This involves the receiving and sending certain returns and statements by the treasurer, from and to the clerk, and, therefore, we think that the Act contemplates that these officials should be separate persons.

3. No.

4. Section 22 of chapter 225, R. S. O., 1897, provides that the council of a township in districts, shall pass by-laws from time to time, fixing the place within the municipality, where the nomination shall be held annually. This by-law should also provide a place for the holding of a poll, in case one should be demanded, and for the payment of the expenses of holding the election. See also sec. 206 of the Municipal Act.

Township Treasurer Disqualified as County Councillor.

149—C. R.—Is a township treasurer disqualified for the office of county councillor?

Section 60, page 460, of the statutes of 1897, is plain, but the revised statute is not so plain.

Yes. See our answer to question 139 in this issue.

Appointment of Township Engineer.

150—A SUBSCRIBER—I understand that Justice Meredith, in *Turtle vs. Euphemia*, decided that three things must be done in order to appoint an engineer under the Ditches and Watercourses' Act, viz: revoke previous appointment by by-law. 2nd. Notify former engineer of his dismissal. And 3rd. Pass a by-law appointing another engineer.

1. If an appointment is made after the demise of an engineer, would it be necessary to revoke his appointment and notify him that council had removed him from office?

2. If so, how should council proceed to revoke a deceased man's appointment, and how notify him to quit?

The decision referred to has no application to the case which you put. If an engineer dies, all that need be done is to pass a by-law appointing another.

Clearing Township Roads of Snow, and Liability for Neglect to Do So.

151—A. T.—1. There is no by-law in this township regulating the shovelling of snow on roads? Is there any Dominion or Provincial law, and could you refer to the statutes?

2. If a road becomes badly blocked with snow and the owner of adjoining land gives permission to make a sleigh road through his field, can pathmaster request the travelling public to use it while advantageous?

3. In the event of a snow storm, if a horse gets into deep snow, on any road, and shafts of rig broken, is municipality liable?

4. If a person is delayed, and has to stop over, paying his board, in consequence of a road being blocked with snow, can he come on municipality for loss of time and expenses?

1. The following statutes and sections of statutes have reference to snow on roads: Sub-section 5 of section 545 of the Municipal Act, chapter 240 (R. S. O., 1897), sub-section 1 and 2 of section 539 of the Municipal Act, sub-section 4 of section 658 of the Municipal Act, chapter 537 (R. S. O., 1897), sub-section 3 of section 537 of the Municipal Act. sub-section 8 of section 561 of the Act. The most important are the two last mentioned sub-sections which provide for keeping open township roads in winter, and the allowance of statute labor for doing work.

2. The public are not compelled to use the road through the fields instead of the highway.

3. No.

4. No.

Triennial Assessment

152—W. D.—Will you please give the meaning of section 42, and sub-section 2, thereto of chap. 225, R. S. O., 1897. Does this only apply to the first assessment in a new municipality? Your answer to No. 79, Feb., M. W., is "No." Would you state your reasons for your reply?

Sub-section 1 of section 42 of chapter 225, 1897, applies to the assessment in a new municipality after the first, and sub-section 2 to subsequent assessments. The change in each case from the ordinary method of making annual assessments should be made by law of the council, and, in any case, a new assessment must be made within three years from the date on which the last assessment roll was finally revised. Our answer to clause 3 question No. 79, 1901, is correct. The *Municipal Act* (chapter 223, R. S. O., 1897) makes no provision for the making of any other than an annual assessment. The question referred to by you is as follows: "Does the Municipal Act give councils power to adopt a three years' assessment? We understand this question the same as if the subscriber had asked whether a council could pass a by-law, fixing a certain rate of assessment for a period of three years, and if we have understood the question aright, such a by-law, if passed, would not be valid under the Municipal Institutions Act.

Council Should Build Bridge.

153—W. D. M.—Kindly give your opinion as to the liability of the municipality in a case where they opened up a new road allowance which is crossed by a river. The river has a good gravel bottom, and the council did not wish to incur the expense of building a bridge, and we would like to know if they would be incurring a liability, should an accident occur at such stream through want of a bridge. The road will not be travelled a great deal, and it has been suggested that a notice be put up warning the public. Would that be any use in the eyes of the law?

The council should build as soon as possible, such a bridge over the river on this road, as will render public travel thereon, reasonably safe. By opening the road the municipality has, in effect, invited the public to use it, and it is incumbent upon them to put it in a safe condition for travel. If they do not, and an accident happens by reason of the absence of the bridge, the municipality will be answerable in damages. While the bridge is being built, the best possible warning notices should be conspicuously posted up.

Council Cannot Compel Railway to Make Crossing.—Assessment of Friend.

154—SUBSCRIBER.—1. Can a council force a railway company to open and make a crossing in a concession to take out a few farmers? The railway company has refused before to open such a crossing, pretending it would be too close to a boundary crossing. The distance is about five acres.

2. Can an owner of lot assess a friend on a part of his lot to give him a right of vote?

1. No.
2. No.

#### A Toll-Road.

155—M. T. B.—A road built by the government, on which toll was collected, was afterwards sold to a company. On that road there are two towns. East of one town there is, say four and a-half miles of toll-road, then there is a break of two miles through the town, then toll-road for, say seven miles, then another break for two miles through the other town, then a trifle under three miles of toll-road, west of the town, as per diagram:

*toll-gate	Town	toll-gate	toll-gate	Town	*toll-gate
3/4 miles of road.	2 miles	7 miles of road	2 miles	2 miles	Less than 3 miles of road.

The whole length of the road is a trifle under fourteen miles.

1. How many gates can they have on that road, that is, pay gates, and how much can they charge at each gate?

2. Starting at, say the east end of the road, can they treat it as a continuous road for the fourteen miles which they own, or must they treat each piece as a separate road, that is, for the purpose of imposing toll and placing gates?

3. In the case of a company owning a road, and a person wishes to proceed against them for taking too much toll, who is the party that can be punished before the magistrate? Can the company, or must it be the gatekeeper?

1. Section 59 of the General Road Companies' Act, R. S. O., 1897, chapter 193, provides that, "Every such company (that is, road company) may erect such number of toll-gates, check-gates and side-bars, in, along or across the said roads, etc., and fix, regulate and collect such tolls, not exceeding the rates hereinbefore provided, (see section 54) to be collected at each gate, check-gate or sidebar, as they deem expedient, and may from time to time, alter the tolls, toll-gates, etc.,"

2. The three sections of the road cannot be regarded as a continuous road, since two towns intervene, but must be regarded as three separate roads.

3. "The renter or collector of tolls at any gate on any road," is the proper person to proceed against. See section 123 of the Act.

#### Rights of Chairman of Rural School Trustees.

156—L. S. T. 1. Has the chairman of board of rural school trustees the privilege of moving or seconding a resolution?

2. Can he vote on any resolution that comes before the board, whether it is a tie vote or not?

3. If he refuses to vote when yeas and nays are called, how should such refusal be recorded? Would among the nays be proper?

1. Yes.
2. Yes.

3. There is no provision in the Public Schools Act requiring a record of the "yeas" and "nays" to be kept.

#### Interest on Debentures.

157—O. J. W. If A purchased \$4,000 (this is estimate and interest) worth of debentures, which are to be redeemed one each year for five years, that is, in equal payments, now the law requires that the interest upon each individual assessment shall be in equal payments for the five years. Carrying that rule out, how does A receive the full interest upon the money advanced the one year? It seems to me that

when the first debenture was redeemed, A would not be getting his full interest, and when the last one was taken up, A would then be receiving interest he should have got when the first one was paid.

You have not furnished us with sufficient information to enable us to answer this question. We should have a copy of the figures as contained in the by-law. If the calculation was properly made the purchaser of the debentures would be receiving full interest on the portion of his principal money invested in the debentures, and remaining unpaid at the end of each year, at the rate mentioned in the by-law.

#### Change of School Site.

158 AN OLD SUBSCRIBER.—A new school-house has to be built in school section No. 5, to replace the old school-house. A dispute arose amongst the ratepayers and trustees as to whether the new school-house should be built on the site of the old one, or a new site purchased half a mile to the south. The trustees and minority of the ratepayers were in favor of building on the old site. The majority of the ratepayers were in favor of purchasing a new site; the matter was finally left to arbitration, each party choosing a man, the Public School Inspector being the third person to the arbitration. The arbitration was held at the school-house, the ratepayers having had due notice. Evidence was given by both parties. After due deliberation the award was given and published, the finding of, which was, that the new schoolhouse should be built upon the site of the old one, and that this arbitration shall be binding for five years from the date of the publication of the award. This was about two years ago. The board of trustees has been changed, only one of the old members remaining on the board, nothing has been done in the way of building since the arbitration. The trustees came before the township council, at its meeting on the 4th day of February, 1901, demanding the council to pass a by-law to raise by debentures the sum of \$1,000, payable in ten equal annual instalments, for the purpose of purchasing a new school site, and for school purposes in said section. At the same time, a petition was presented, signed by thirty-four ratepayers of the section, praying the council not to pass any such by-law as asked for by the trustees, as the matter had been finally settled by arbitration two years ago, and that the same was binding for five years from that time.

1. Would the council be justified in passing the by-law asked for under the circumstances?

2. Would the trustees be justified in building on a new site and ignoring the arbitration?

3. If they build on this new site, do they run the risk of having to pay for it themselves?

4. What would be the best way of settling the matter finally? Could the whole matter be submitted to the county judge for his decision?

1. Assuming that in making the award, the provisions of section 31 were strictly observed and followed, the award is binding upon all parties concerned for at least five years from the date thereof. See latter part of sub-section 3 of section 31. Sub-section 1 of section 70 of the Act, provides, that the municipal council of a township shall pass by-laws, on the application of any board of rural school trustees, for the issue of debentures for the purchase of a school site, "provided always the proposal for such loan has been submitted, by the trustees, to and sanctioned at a special meeting of the ratepayers of the section, called for the purpose." It is the duty of the council to see that this provision has been

observed by the trustees, before passing the by-law. In this case the ratepayers have not sanctioned the purchase of a new school site, nor have the arbitrators so awarded, therefore the council has no power to pass the by law.

2. No.

3. The trustees cannot bind the school section by any contract they may make contrary to the powers conferred on them by the statute, and they can be restrained by injunction proceedings, from taking any steps in the matter, other than authorized by law.

4. Section 31 provides the mode of settling questions of this kind. If the requirements of this section are not observed and carried out by the parties whose duty it is to do so, the courts, on application made to them will set matters right. The county judge has no jurisdiction over the matter, under the Schools Act.

#### Election of Warden.

159—D. J.—Jones is nominated for warden, so is Brown. The vote stands 4 for Jones, 4 against; Brown receives 4, and 4 nays. Does that constitute one ballot or two? Would the one winning the draw be entitled to two votes next year in the event of it again being a tie, without going through the same process again? When should decision be given on second or third vote?

If, during the first day of the election of warden, the tie is not broken, the voting must be proceeded with on the second day. If after two votes are taken no choice is made, the member, who at the last preceding election received the higher number of votes, in the division having the largest equalized assessment, shall have two votes. Where the two county councillors from this division have an equal number of votes, or where they have been elected by acclamation, the clerk shall in open council draw lots to ascertain which one of the two shall give the casting vote. See section 263 of the Municipal Act. Since the passing of section 19, sub-section 1 of the Municipal Amendment Act, 1899, a warden cannot be elected by ballot. The vote you mention constitutes only one vote. A vote consists of each separate and distinct submission of the names of the candidates to be voted upon by the councillors. The process of drawing lots mentioned in clause (b) of section 263 of the Municipal Act should be gone through at each election of a warden, if the circumstances of the case require it.

#### Tax Sale in Newly Incorporated Town in Districts.

160—W. R.—1. If a treasurer of a town in Muskoka and Parry Sound sells lands for arrears of taxes this year, 1901, can he legally include in the sale the taxes for 1897, 1896 and 1895?

2. Is there a date set by law (after incorporation) for the first sale by the town treasurer? If so, when?

3. Or must the treasurer wait until he receives the mayor's warrant?

In explanation of the above, I may say that the incorporation into a town took place on Jan. 1st, 1901, and on Jan. 22nd I received a list of arrears of taxes upon the sheriff's books, with instructions to enter them in my books. I find

upon the said list taxes as far back as 1895, yet the sheriff had a sale of land for taxes in March, 1899. The law, I understand, says that "when taxes are three years in arrears the land may be sold." But the question is can they be allowed to get into arrears more than three years and yet be able to legally collect? In the above list some are behind five and six years.

1. Yes, provided when these taxes had been due for and in the third year, or for more than the three years preceding the then current year, the sheriff of the district was directed by a by-law of the municipality in which the lands were located, to postpone the sale of the lands to realize the amount of the arrears.

2. Section 56 of chapter 225, R. S. O., 1897, provides that "all provisions of the Assessment Act respecting the sale of lands for taxes in counties shall, as far as practicable, and where not inconsistent with this Act, apply to sales under this Act." Section 227 of the Assessment Act defines the duties of the sheriff as to arrears of taxes on the incorporation of a new town in your district. The statutes provide no certain date after incorporation of a new town for holding the sale for taxes. If the taxes returned by the sheriff to your treasurer have been due for and in the third year, or for more than three years now, and the above provisions as to postponement of the sale, have, where necessary, been observed, the lands in arrears can be advertised in the manner and for the time required by law, and sold to realize the amount of arrears.

The treasurer should have the mayor's warrant before proceeding to advertise and sell the lands.

#### Procedure at Council Meetings.

161—SUBSCRIBER.—Would you inform a newly elected councillor where he can procure a pocket manual that would give forms of resolutions for use at council board; also the rules and procedure in a by-law. That is, the proper form of words to use when moving to go into committee of the whole, and also when the committee wish to rise and report, etc.

We know of no work compiled specially for the purpose you mention. There are several manuals published, from which you might obtain the information you desire. For instance, the work on municipal law, by W. H. Anger, of Toronto; Sir J. G. Bourinot's "Procedure at Public Meetings" and Cushing's Manual. The last named would, we think, answer your purpose best, and it can be obtained through any bookseller or stationer.

#### Assessment Rolls Should Have These Columns.

162—J. H. M.—As I have noticed the assessment roll we received this year, from the county clerk, in column 7, the two columns headed "No. of children between the ages of 7 and 13," and as well column headed "No. over 16, and under 21," these columns are both omitted. Are they not necessary? And is it still necessary for the assessor to take the census of the school children between the ages of eight and fourteen years, as provided for under section 17, and sub-section 2, of the Assessment Act, Consolidated Statutes of 1897?

By sub-section 1, of section 17, of the Assessment Act the clerk of the municipality is required to furnish the assessor

with a book in the form of schedule "C" to the Act, in which the assessor is to enter the name, age and residence of every child between the ages of "8 and 14 years" resident in the municipality. Sub-section 2 requires the assessor to make a census annually of all the children in the municipality between the ages of "5 and 21 years." Sub-section 3 of section 62 of the Public Schools Act requires the trustees of all *Public Schools* to provide adequate accommodation for all the children between the ages of "5 and 16 years" resident in the municipality (in case of rural schools for two-thirds of such children resident in the section) as ascertained by the census taken by the municipal council for the next preceding year. In order to facilitate the taking of the census of the two last-named classes of children, the rolls furnished the assessors should contain sub-columns under column number 7 headed respectively "No. of children between the ages of 5 and 21," and "No. of children between the ages of 5 and 16"

#### Pool Table License.

163—MEMBER OF COUNCIL.—Will you be kind enough to give your opinion as regards licensing a pool table. We have an old by-law, fourteen years old, licensing pool tables, which has not been used for the last eight years. Has the clerk power to grant license and receive the amount without the sanction of the council, or the signature of the reeve, which he has done? Is it legal?

Not having seen the by-law you refer to, or a correct copy of it, we cannot express an opinion as to its legality. If the by-law is in proper form, passed pursuant to the provisions of sub-sections 4 and 5 of section 583 of the Municipal Act, or the corresponding section of the Act in force at the time of its passing, has never been repealed, and the clerk acted in accordance with the provisions of the by-law in granting the license, and receiving the prescribed fee, we are of the opinion that his action was legal. Neither the Act in force at the time of the passage of your by-law nor the present act makes any provision for pool tables. The Act speaks of billiard and bagatelle tables. It is a dangerous experiment to use words other than those mentioned in the statute. Pool, as we understand it, is a kind of game played upon a billiard table.

#### Assessment of Banks.

164—ASSESSOR.—Your answer re Assessment of Chartered Banks does not appear to meet our case as sub-section 2 of section 39 of the Assessment Act, referred to by you in your answer in February issue, has reference to a bank which has the principal part of its means invested in real estate, which is assessable wherever it lies. The bank in question is one which does an ordinary mercantile business, and I cannot find anything in the Assessment Act exempting their personal property from taxation.

Your construction of sub-section 2 of section 39 of the Assessment Act, is not right. The words "which invest the whole or the principal part of its means, etc." must be read along with the word "company" only. Putting it in another

way the sub-section must be construed in the same manner as if the word "and" had been used in the place of the word "or."

#### Council Purchasing Lands at Tax Sales in Districts.

165—A. W.—Pursuant to sub-sections 2 and 3, of section 184, of the Assessment Act, our council wishes to become purchasers of certain lots to be sold for taxes, and as we have no county organization, the mode of operation does not seem to be very clear.

1. Is it necessary for the council to appoint one or more of its members to act as commissioners to attend the land sale, to bid on the lots, and to sell them within the time specified?

2. Is the council required to pay the treasurer for the lots at the time of the sale?

3. Would it be legal for the commissioners to execute a deed to the council, or should the treasurer issue tax deed to the council?

1. The council could not conveniently attend such a sale in a body, and should, therefore, appoint some one of their number to attend the tax sale, to purchase the lands, in accordance with the instructions given him by the council, and the provisions of the Assessment Act.

2. Yes.

3. The deed should be made by the treasurer to the municipal corporation, as soon as the period allowed for the redemption of the lands purchased, shall have expired.

#### Triennial Assessments—Council Meeting on Wrong Day—Sale for Taxes—Hiring of School Teacher.

166—L. W. F.—1. Can council make the assessment of 1900 stand for three years' assessments, or must they have an assessment every year?

2. If the council hold their first meeting in January, on the Saturday before the Monday on which the statutes require them to hold same, will business done at such meeting be legal, and will the councillors be personally liable for doing so?

3. Are lands which are assessed on the resident roll, and are three years in arrears for taxes, liable to be sold for taxes, there being no property to distraint?

4. Can the trustees in a rural school section hire a teacher for three or four years at a time and if illegal, do they leave themselves liable?

1. No. Your township being located in a district to which the "Act respecting the establishment of municipal institutions in territorial districts," applies, section 42 of that Act, provides the only method of changing the ordinary mode of assessment.

2. If all the members of the council were present at the Saturday meeting, or a quorum thereof, and consented to the holding of the meeting and transaction of business on that day, and no one was prejudiced thereby, we are of the opinion that the meeting and business done at it, are legal, and that the members of the council incurred no liability by holding their meeting on that day.

3. Yes, provided all the officials, township or otherwise, having to deal with these taxes, have performed all the duties required of them by the Assessment Act, within the proper time.

4. The School Act does not fix any limit of time during which an agreement between trustees and a school teacher,

shall remain in force. The form of agreement provided by the education department, fixes the term at one year and gives either the trustees or the teacher the right to terminate the engagement, by giving notice in writing to the other of them, at least — calendar months previously, and so as to terminate on the last day of a calendar month; and it further provides that the agreement shall also be construed to continue in force, from year to year, unless and until it is terminated by the notice, prescribed by this agreement. We advise all trustees to make use of the form of agreement provided by the education department. Even if trustees could make a binding agreement with a teacher, for a term of years, it would not be a wise or proper thing to do. A trustee is to be elected every year and trustees should not attempt to tie the hands of future trustees by engaging a teacher for a term of years.

#### Collection of Taxes in Haliburton.

167—E. B. M.—Lots 7 and 8, concession 1, township of Snowdon, Provisional County of Haliburton, was assessed N. R. roll for three or more years, and liable for sale. The amount of taxes on each lot was \$24.78. When the assessor was assessing for 1895, he found "A" on these lots, and returned them as occupied and assessed "A," as he said he was the owner. Lists of "lands for sale" was returned to the county treasurer, the amount mentioned above on each lot. "A" came to the council and got a rebate of \$15.80, saying he would pay the balance, \$34.16, but has not done so. Has paid each year since sometimes a little over yearly allowance, and has been given credit on back taxes. The sum of \$33.75 is carried from collector's roll of 1899 to 1900. Can he be made to pay, and how?

We assume that the amount of these arrears were placed by the clerk on the collector's roll for 1895 against the lands of "A", and that, in that year, the council granted "A" the rebate of \$15.80. If "A" had sufficient goods to distrain in 1895, the collector should have seized the same to realize the balance of the amount of these taxes. He could return as uncollected and uncollectable only such part of the amount as "A" did not pay and could not be collected by seizure and sale of his goods. The sum then remaining uncollected should then have been returned by the township treasurer to the county treasurer, and the land sold to realize the same in the manner prescribed by law. The council or clerk has no authority to carry these taxes or any portion of them forward from one year to another. If they could have been collected in any year by seizure of the goods and chattels of "A", and no attempt was made to realize them in this way, and "A" now refuses to pay, he cannot be compelled to do so. Councils should not interfere with the collectors at all, but should leave them to discharge their duties as laid down in the Assessment Act.

#### Assessment of Ties and Saw-Logs.

168—W. J. R.—There is a timber limit in this municipality. They have been taking out

ties and sawlogs for years, and have paid no taxes on timber manufactured in the woods or on the shore. Now, I maintain that they have a right to pay taxes on the timber that they have taken out and piled on the beach.

1. Please let me know if I am right.
2. Are the owners bound to give the assessor the amount taken out?
3. Will timber in the river be the same as piled on the beach?
4. If a farmer takes out railroad ties and piles on the beach for sale, is he liable to have to pay taxes on them?

1. We are of opinion that the timber you refer to is personalty and liable to assessment at its actual value, under the provisions of the Assessment Act, if within the limits of your municipality. If the actual value of the timber does not exceed \$100, it is exempt from assessment under sub-section 25 of section 7 of the Act. If over that sum, the whole amount is assessable.

2. Yes. See section 47 of the Act.
3. Yes, if within the limits of the municipality.
4. Yes, if they are piled on the beach within the municipality assessing them.

#### Assessment of Superstructure on Railway Lands.

169—W. H.—The Canadian Pacific Railway hold, in this municipality, 518.56 acres of land, viz., 478.46 right of way and 40.10 other than roadway, besides four stations with good buildings thereon. They are assessed \$4,350.00, but now claim that their assessment should be only \$2,000.00. Their solicitor entered into an arrangement with the council some years ago whereby both parties agreed on \$4,350.00 as a permanent assessment to hold good for future years. That was some 14 or 15 years ago.

1. Are station buildings, freight sheds, dwelling houses, etc., erected on company's lands, liable to assessment?
2. Are rails, ties, turnstiles, fences, tanks, platforms, bridges, poles, wires, etc., liable to assessment?
3. Can the municipal corporation hold the company to an agreement regarding a fixed assessment made with them some years ago, as mentioned above?

1 and 2. It is only the land occupied by the railway company that is assessable, not the superstructure. All the species of property you enumerate come within the definition of superstructure and are not assessable. See *G. Western R. W. Co. vs. Rouse*, 15 U. C. Q. B., 168; *London vs. G. Western R. W. Co.*, 17 U. C. Q. B., 262; *Toronto vs. G. Western R. W. Co.*, 25 U. C. Q. B., 570.; and see also *Grand Trunk Railway Co. vs. Port Perry*, 34 C. L. J. N. S. 239, and section 31 of Assessment Act.

3. Without the agreement we cannot express any opinion as whether it is binding or not, but we doubt whether such an agreement can be made at all so as to be binding on the municipality.

#### Width of Public Highway.

170—H. C.—How wide should a public highway be made according to law for rigs to travel on? We have approaches to large bridges in our township that have no railings on. Are we liable for damages, where the approach is eight to twelve feet high, without railing? Please state what part of roadway should be protected according to law?

As to what the courts would consider the proper width for a highway depends on the circumstances of each particular case and the requirements of the locality. Generally speaking, a municipality must keep its roads in such condition that they will be reasonably safe for all travel passing along them, taking into consideration the nature and circumstances of the locality, and the means the municipality has at its disposal for the purpose. All dangerous places in highways should be repaired, and where a highway is unsafe without a railing on either or both sides it should be erected by the council as soon as possible, otherwise the municipality will be responsible in damages to any person injured in consequence of the non repair of the highway or neglect to erect the railing.

#### Pathmaster's Duty as to Shovelling Snow.

171—SUBSCRIBER.—1. Is it the pathmaster's duty to see that the road is shovelled out, whether there are snowdrifts or not?

2. Is he responsible for damage if he does not attend to it.

1. You do not say whether your municipal council has passed a by-law under the authority of sub-section 3, of section 532, of the Municipal Act, and sub-section 8 of section 561. In case your council has passed such a by-law, it is the duty of pathmasters, appointed under it, to make and keep open the roads in the municipality, during the season of sleighing. In the absence of such a by-law, no such duty is imposed upon him.

2. No.

#### Collection of Poll-Tax.

172—H. G.—Can poll-tax which should have been paid in 1900, be collected during this year? If so, how should we proceed to do so?

Yes. The proceedings to be taken to enforce payment will be found in section 107 of the Assessment Act.

#### Drain Commissioner's Duties.

173—SUBSCRIBER.—Is it legal for one who was appointed commissioner on drain in 1900 to issue orders on the 1st of January, 1901.

2. If so, should it appear on the auditors' report for 1900, or what would be the right way to handle it?

3. If, when drain is completed, would commissioner be liable for the amount, as he would not act as commissioner for 1901? The work is not yet finished.

1. If his appointment by the council as commissioner, authorized him to make payments for the work by his orders on the treasurer, he can so order payments until the work is completed, or his employment as commissioner ceases. We are of the opinion that the order of the 1st January, 1901, was legally issued.

2. That part of the contract price for this work, that remained unpaid on the 31st December, 1900, should appear on the auditor's report for that year, as a liability of the municipality.

3. The commissioner is not liable for any payment after his appointment or employment as such, is at an end.