THE MUNICIPAL WORLD

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

Vol. 13. No. 4. ST. THOMAS, ONTARIO, APRIL, 1903. Whole No. 148.

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Calendar for April and May, 1903.

APRIL 1. Clerks of counties, cities and towns, separated from counties, to make return of population to Education Department.—P. S. Act, section 73.
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 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, (9) R. S. O., 1897, chapter 223.
Last day for Boards of Park Management to report their estimates to the council.—Public Parks Act, section 17.
5. Make return of deaths, by contagious diseases, registered during March.—R. S. O., 1897, c. 44, s. 11.
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.
9. High Schools, second term, and Public and Separate Schools close.—H. S. Act, section 45, P. S. Act, section 96; Separate Schools Act, section 81.
10. Good Friday.
15. Reports on night schools due to Education Department (session 1902-1903.)
20. Last day for non-resident land holders to give notice to clerk of ownership of lands to avoid assessment as lands of non-resident.—Assessment Act, section 3.
High Schools, third term, and Public and Separate Schools open after Easter holidays.—H. S. Act, section 45; P. S. Act, section 96; Separate Schools Act, section 81.
25. Last day for clerk to make up and deliver to the assessor, lists of persons requiring their names to be entered in the roll.—Assessment Act, section 3.
30. Last day for completion of roll by assessor. Assessment Act, section 56.
Last day for non-residents to complain of assessment to proper Municipal Council.—Assessment Act, section 86.
Last day for License Commissioners to pass regulations, etc.—Liquor License Act section 4.

MAY 1. Last day for treasurers to furnish Bureau of Industries, on form furnished by Department, statistics regarding finances of their municipalities.—Municipal Act, section 293.
County treasurers to complete and balance their books, charging lands with arrears of taxes.—Assessment Act, section 164.
Arbor Day.

The Municipal World

PUBLISHED MONTHLY

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

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J. M. GLENN, K. C., LL.B. } Editors

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

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

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

OFFICES—334 Talbot St., St. Thomas Telephone 101

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THE MUNICIPAL WORLD,
Box 1321, - - St. Thomas, Ont.

ST. THOMAS APRIL 1, 1903.

Mr. A. J. Brewster, clerk and treasurer of the town of Hespeler, died last month.

* * *

Mr. J. E. Jones, of Stamford P. O., has been appointed clerk of the township of Stamford to succeed the late Mr. F. A. Hutt.

* * *

Mr. Edward Godin, of Griffith, P. O., has been appointed clerk of the township of Griffith, in the place of Mr. John Holly, of Balvenie.

* * *

The county council of Elgin has petitioned the Ontario Legislature to provide for the election of one-half of the members of township and village councils annually, the reeves to be elected each year as at present.

* * *

Mr. Patrick Hart, who for thirteen years past has been clerk of the township of Bromley, has resigned that position to accept a situation as book-keeper for a large lumber firm in the town of North Bay and Mr. J. E. Dooner has been appointed clerk in his stead.

* * *

We received last month five sets of questions unaccompanied by the names of the senders. We call the attention of our readers to the conditions on which we will answer questions submitted to us, printed at the head of the first column of our editorial page. It will thus be observed that SUBSCRIBERS only are entitled to replies to their questions on municipal matters, and unless correspondents send in their names with their communications, we cannot tell whether they are entitled, under our rules, to answers or not, and therefore must refuse to answer or publish them.

Right to use Adjoining Land When Highway Impassable.

From questions and enquiries we have received from time to time an erroneous idea seems to exist, generally, as to when, and to what extent, persons travelling along a highway can enter upon adjoining lands when, by reason of obstructions or lack of repair, the highway has become impassable. We therefore deem it advisable to draw attention to the law on the subject as it at present exists in the Province of Ontario. The case of Carrick vs. Johnston, reported in 26 U. C. Q B. Reports at page 65 contains a clear and concise exposition of the present law in the matter. This was an action brought by the plaintiff against the defendant for trespassing upon his lands. The alleged trespass appeared to have been the entry by the defendant upon the lands of the plaintiff by reason of the highway adjoining them being out of repair and thus impassable. The defendant pleaded that at the time of the alleged trespass there was a highway adjoining the plaintiffs' lands which said highway was in certain places impassable and out of repair, wherefore, the defendant, for the purpose of using said highway, necessarily deviated a little therefrom on to the plaintiff's land, going no further from the highway than was necessary and returning thereto as soon as practicable and doing no damage in that behalf. The plaintiff demurred to this plea and on the hearing of the demurrer, the court, by Mr. Justice Haggarty held the plea to be good. Lord Mansfield, in the case of Taylor vs. Whitehead (Douglas 749) remarks that "highways are for the public service and if the usual tract is impassable it is for the general good that people should be entitled to pass in another line." Mr. Justice Haggarty in the course of his judgment in the above case of Carrick vs. Johnston, states as follows: "the usual question that arises in most of the cases is whether, in the case of private ways which had become "founderous" and impassable, there could be a deviation through the adjoining lands and in the case just cited (i. e. Taylor vs. Whitehead) the distinction is pointed out, but no one seems to have questioned the right to deviate in the case of "founderous" highways." In Woolrych on Ways, 2nd Edition, page 78, it is laid down that "with respect to a highway it seems to be made clear that if there be any obstruction a passenger may go over the adjoining land. If the ordinary track be so dangerous as to compel them to leave the road, they may go *extra viam* passing as soon to the original way as possible." Burns, Justice, 29th edition, vol 3, page 529 says, "If the highway be impassable from being out of repair, or otherwise the public have a right to pass in another line, and for this purpose can go on the adjoining ground, and it makes no difference whether it be sown with grain or not." It is to be observed that if a person travelling along a highway finds it necessary to deviate and enter upon the lands of adjoining owners in order to overcome an obstruction in the highway, or to pass by a space which is dangerously out of repair, in doing so he must occasion as little damage as possible to the lands of the adjoining owner. He is expected to do only what is absolutely necessary in order to enable him to reach the other side of the dangerous or obstructed highway.

Grand Rapids has rejected private ownership in its water service, light service, and telephone service, and has adopted a form of public ownership unique in many respects. In its water service municipal ownership, as usually adopted in other cities, has been resorted to. The local telephone service, while not under municipal ownership, is under a plan of public, co-operative ownership which is unique, there being only two other cities in the United States which have the same plan. The saving resulting to the people from this system is calculated at $7,000. The plan of lighting service grew out of it, and is similar to the plan of the telephone service, and the rates, without making allowance for dividends, are forty-five per cent less than the rates charged by neighboring cities for similar service. The saving resulting from the system is calculated at $5,000 annually, as compared with what would be paid if the rates of neighboring cities were charged. The telephone and light service plans, thus make for the city an annual saving of $12,000.

* * *

A recent decision of the Supreme Court of Minnesota, in a telephone company case, is interesting. It holds that the company need not remove its poles and wires from the streets after the expiration of its franchise. The telephone company was granted the exclusive right to put up poles and wires for the period of ten years. After the time limit had expired the council, in event of the said company refusing to submit a bid for a new franchise, granted a franchise to another company and ordered the removal of the first mentioned company's wires and poles. The court sustained the defendant company's refusal to remove its property on the ground that the company, having established its plant under the provisions of the general law, has acquired the right to extend its system within the city as occasion might require, and had thus obtained vested rights which could not be revoked by the city except within the exercise of its police power.

* * *

Mr. Henry Elliott has completed his 50 years as treasurer of the township of Darlington. A fact that seems almost incredible is that every page in the treasurer's books during the whole term is in Mr Elliott's handwriting. Half a century of unremitting and efficient service is almost without a parallel in municipal government.

Meaning of "Time of Election."

We have repeatedly given it as our opinion in these columns that the expression "time of election" used in section 76 of the Municipal Act, begins with nomination day, and that persons placed in nomination as candidates for election to municipal office, should possess the statutory qualifications upon that day, in order to meet the requirements of the law.

We noticed a letter in the St. Catharines *Journal* of the 12th of March, signed by one, David Jackson, in which the writer questions the soundness of this opinion. The following is a reprint of this letter :

To the Editor of the Journal :

SIR,—The time when a School Trustee could resign and be eligible as a member of the municipal council has been a matter of interest for some time. THE MUNICIPAL WORLD, usually a good authority on such matters, says he must resign before nomination day. With all due difference to THE WORLD'S opinion, the writer begs leave to differ, and to take a common sense view of the question, they would seem to be wrong. In the Municipal Act there are two separate divisions each of which makes the matter plain. Div. 1, under the head of "Qualifications" says a person must have "at the time of his election" so much property, etc., to be eligible, and it is mentioned four times in that section in connection with the proper qualifications, also in declaration of office it says, "at the time of my election," etc. Now that point is quite clear, if he does not have property enough on nomination day and is elected he could be disqualified. Div. 2, under the head of "Disqualification" says "no member of a school board where rates are levied" shall be a member of the council of any municipal corporation. There is nothing said about "time of election" but plainly "he cannot be a member of a council." Therefore it is perfectly clear that if he resigns from the school board according to law before election day and is elected he cannot be disqualified ; he would then be a member of the council but not a trustee and, in that case, doing all the law requires. Nomination last year was Dec. 22, election Jan. 5, school trustee elected Dec. 31. How could he resign from being a trustee before nomination day. The point is, "time of my election" refers to property qualifications and no other. Div. 2 makes it clear, he could resign between nomination day and election unless elected by acclamation which would then be his election day.

(Signed) DAVID JACKSON.

Fulton, March 5th, 1903.

The opinions we have given on this question were based on a number of decisions of our court. Last month Mr. Chief Justice Falconbridge handed out his decision in the case of Rex ex rel, Zimmerman v. Steele, in which the point discussed by Mr. Jackson was directly in question. His Lordship confirms our opinion in the matter, as will be seen from a perusal of the facts of the case, and the judge's conclusion, which are as follows :

REX EX REL ; ZIMMERMAN V. STEELE.

This was an appeal by relator from order of Deputy Judge of county court of Welland dismissing the relator's motion in the nature of a *quo warranto* to void the election of the respondent as councillor for the third county council division of the county of Welland, upon the ground that at the time of the election the respondent was a member of the school board of school section 9 of the township of Humberstone, and was therefore not qualified to be a member of the county council. By 2 Edward VII., chapter 29, section 5, section 80 of the Municipal Act was amended, making a member of "a school board for which rates are levied" ineligible as a county councillor. *The chief question in this case was, whether the respondent by resigning his membership in the school board after the nomination and before the polling day had rendered himself eligible as a county councillor.* There was no school within the boundaries of this particular section, and no teacher taught within its limits. But the section was organized, with a secretary and treasurer, and the school rates levied on the section and other moneys received by the board under the act were paid by the board to the board of an adjoining section, which possessed accommodation for the school children living in section 9. Held, that the trustees of section 9 fell within the terms of the amending act, for rates were levied in this section at the instance of the school board for the section, and the ultimate destination of the money did not affect the point. Held, on the other point that, even assuming that section 76 of the Municipal Act does not, in view of the interpretation clause (section 2, sub-section 9) apply in terms to a county council, that section deals with qualification only, while section 80 deals with disqualification, and disqualification has relation to the *time of the election*, and not to the time of the acceptance of office. *The day appointed for the nomination is the day of the election, and the disqualification of a candidate has reference to that date.* Regina ex rel, Rollo v. Beard, 3 P. R. 367, and Regina ex rel Adamson v. Boyd, 4 P. R., 204, followed. No objection to the qualification was taken until the day of polling, on which day notices were posted up in five out of the twelve polling booths (there being no evidence as to the other seven), containing a warning to the electors not to vote for the respondent. Held, not a notice sufficient to entitle the relator to the seat. Appeal allowed, and order made declaring election of respondent invalid, and directing a new election, with costs to relator here and below.

We understand that the legislation disqualifying candidates who are members of school boards, will be repealed at the present session of the Ontario Legislature.

Townships Granting Bonuses to Builders of Wire Fences.

A correspondent has requested us to give a list of townships whose councils have passed by-laws granting bonuses for the erection of wire fences therein. The following is a list of such municipalities, with the names and post office addresses of their respective clerks :

TOWNSHIP.	CLERK.	POST OFFICE.	BONUS PER ROD.
Maryborough. .	Ed. Dynes.....	Moorefield.....	12½ cts.
Holland.....	J. P. Hare.....	Holland Centre.	20 "
Orillia	J. C. Rose.....	Orillia.....	25 "
Waterloo	G. A. Tilt.....	Blair.....	20 "
Wellesley	P. F. Schummer	St. Clements....	.....

Municipalities Owning Stone Crushers.

A subscriber has requested us to furnish a list of municipalities which own and operate stone crushers. Below are the names of these municipalities with the names and post office addresses of their respective municipal clerks :

TOWNSHIP.	CLERK.	P. O. ADDRESS
Derby.....	Wm. Beaton...	Kilsyth ....
Markham....	C. H. Stiver...	Unionville..
Ameliasburg..	Jas. Benson ...	Ameliasburg.
Winchester...	Geo. Quart ...	Winchester..
Drummond..	T. B. Moore...	Perth .....
Cornwall	John Mullin.	Cornwall Cen.
Nottawasaga..	L. Macalister..	Duntroon...
Smith.....	F. J. Bell	Peterborough
Mountain....	Hugh Martin..	Hallville ....
St. Vincent. .	G. G. Albery..	Meaford ....
Hawesbury, E.	L. J. LaBrosse..	St. Eugene..
"	F. W. Thistlethwaite ...	Vankleek Hill
Kingston	John Simpson.	Cataraqui...
Hallowell....	T. H. Morgan.	Bloomfield..
Thessalon....	T. E. Clinton..	Thessalon...

Engineering Department

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

Road Management in Townships.

The chief points in the system of road management, in townships where improved methods have been adopted, include the following:

Statute labor is commuted at a fixed rate per day, and the amount is collected at the same time as the other taxes, by the township tax collector; or in place of commuting statute labor, a special rate on the township assessment may be levied for road purposes, thereby entirely doing away with statute labor.

One road overseer is appointed for the entire township; or, if desired, the township is divided into a convenient number of divisions for road purposes, usually two, three or four, and a road overseer is appointed over each. This practically amounts to a reduction of the number of pathmasters and the enlarging of road beats, and is essential to the success of the proposed system. To merely commute statute labor and retain the former number of pathmasters, giving each a small amount to spend, means a perpetuation of many of the defects of the statute labor system.

The duties of the road overseer are:

(a) To supervise all work and repairs done on the roads and bridges within his division.

(b) To acquaint himself with the best methods of constructing and maintaining good roads, and of operating graders and other road machinery, used by the township.

(c) To employ, direct and discharge all men and teams required to carry on the work, and to purchase necessary materials.

(d) To see that all washouts, drain and culvert obstructions, bridge failures and other unforseen defects, are repaired or protected with the least possible delay, so as to prevent further injury to the road or accident to the users of the road, and to otherwise act promptly in all cases of emergency.

(e) To report to the council early in each year as to the work required during the coming season, and to carry out the instructions of the council with regard thereto, and to perform such other services as may be required of him from time to time, under the written instructions of the council.

(f) To collect the poll-tax in his road division.

(g) To keep an accurate record of the men employed and the work done, and to furnish this written form to the reeve at proper intervals, in order that the reeve, upon being satisfied of the correctness of the statement, may issue cheques for payment thereof.

(h) To stake out all works and see that they are undertaken systematically, so that no time will be lost in taking men, teams and machinery from one part of the township to another.

(i) To supervise the performance of all work done by contract, and certify as to completion, acting as inspector for the township.

(j) To supervise the opening of snow roads under such regulations thereto as, in the opinion of the council, the needs of the township may require.

(k) To report to the council at the close of each year, showing in detail the character, location and cost of each separate work undertaken.

(l) Works, the cost of which will exceed a certain fixed amount (ordinarily from $10 to $20, as may be determined by the council), may be let by contract to the lowest satisfactory bidder, but in the event of any work being duly advertised to be let by contract, and the tenders being too high, in the opinion of the commissioner or the reeve, it should be the duty of the former to undertake the work by day labor under his own direction.

The commissioner should be retained in office as permanently as circumstances permit, in order that his experience, increasing from year to year, may enable him to do more perfect and economical work. He should have exclusive control and management of the maintenance, repair and improvement of all the public roads and bridges within his division, in so far as the commutation and other moneys belonging or appropriated to his division will enable him to do so, subject always to such written instructions as he may receive from the council, or from the road and bridge committee of his division.

It is exceedingly important that the commissioners should be men of good judgment, practical, with ability to direct labor to advantage. The selection of suitable men as commissioners is of the greatest necessity, as upon them will depend the success of any system adopted.

It is unwise for councillors to act as road commissioners. Councillors, like the pathmasters of the old statute labor system, are elected annually, and cannot become experienced. There is a tendency for them to use their office, not so much for the benefit of the roads, as to gain votes for the next election. The ratepayers are apt to become dissatisfied, unless councillors perform the duties of commissioner without remuneration.

Work is distributed throughout the different sections of each road division as evenly as possible, always endeavoring to make the roads permanent, giving preference in this respect to highways most used by the public.

The division of the township is made, not only to separate the work of the overseers, but also to assist in adjusting the expenditure. Any method which seems to concentrate expenditure on a few roads will meet with disapproval.

The council should constitute itself a "Road and Bridge Committee," to suit the road divisions, in order that the road overseers may consult the councillors as occasion arises, with regard to details of the work.

Work for the grading machine should be staked out in advance by the overseer, so that each piece can be taken up consecutively. Otherwise much time is lost in moving the machine from one part of the township to another. The grader should start work early in the spring, and be kept continuously in operation until the season's work is completed.

The usual road appropriation is made from the general funds of the township, this to be used for the purchase of tools, machinery and materials, or for small jobs and contracts.

The residents of the township are employed to do the work, provided they come properly equipped, and will do a fair amount of work, preference being given to ratepayers of the division in which the work is being done, in order that as many as desire may have an opportunity to earn back the amount of their commuted statute labor.

Work is paid for in cash, if desired, but preferably by cheque; payment to be made in accordance with the pay roll submitted by the road overseer, accompanied by necessary vouchers and such information as may be considered necessary.

A general plan for road improvement should be laid down by the council for the overseer to follow.

This plan shhuld specify the width to be graded, width and depth of road metal, character of drainage, etc., of all roads.

All roadmaking machines should be under the care of the road overseer.

The same man and teams should be hired to operate the machinery for the entire season, as they become proficient and do better work. This applies particularly to the operation of a road grader.

The council or overseer appoints foremen in different parts of the township to collect the necessary labor, and act promptly when roads are blocked with snow, the men employed to be paid in cash by the council.

A public meeting at Toronto Junction favored a municipal telephone system, owing to what are considered the excessive rates of the Bell Telephone Co.

* * *

A by-law to erect a town hall at a cost of $10,000 was defeated in Cobourg.

Ruts.

With gravel roads there is a pronounced tendency to rut, and when ruts begin to appear on the surface, great care should be used in selecting new materials with which they should be immediately filled. Every hole or rut in the roadway, if not tamped full of some good material, like that of which the road is constructed, will become filled with water and will be made deeper and wider by each passing vehicle. A hole which could have been filled with a shovelful of material will soon need a cartful. The rut or hole to be repaired should be cleared of dust, mud, or water, and just sufficient good, fresh gravel placed in it to be even with the surrounding surface after having been thoroughly consolidated with a pounder. Sod should not be placed on the surface, neither should the surface be ruined by throwing upon it the worn out material from the gutters alongside. Ruts and holes in earth roads should not be filled with stone nor gravel unless a considerable section is to be so treated; for if such material is dumped into the holes or ruts, it does not wear uniformly with the rest of the road, but produces lumps and ridges and in many cases results in making two holes for every one repaired.

Reversible road machines are often used in drawing the material out of ditches to the centre of the roadway, which is left there to be washed again into the ditches by the first heavy rain. A far more satisfactory method, when the roadway is sufficiently high, and where a heavy roller cannot be had, is to trim the shoulders and ridges off and smooth the surface with the machine. This work should begin in the centre of the road, and the loose dirt should be gradually pushed to the ditches and finally shoved off the roadway or deposited where it will not be washed back into the ditches by rain. Where this method is followed, a smooth, firm surface is immediately secured, and such a surface will resist the action of rain, frost and narrow tires much longer than one composed of loose and worn-out material thrown up from the ditches.

In making extensive repairs, plows or scoops should never be used, for such implements break up the compact surface which age and traffic have made tolerable. Earth roads can be rapidly repaired by a judicious use of road machines and road rollers. The road machine places the material where it is most needed and the roller compacts and keeps it there. These two labor saving machines are just as effectual and necessary in modern road work as the mower, self-binder, and thrasher are in modern farm work. Road machines and rollers are the modern inventions necessary to satisfactory and economical road construction and repair. Two good men with two teams can build or repair more road in one day with a roller and road machine than many times that number can with picks, shovels, scoops and plows, and do it more uniformly and thoroughly.

One of the best waya to prevent the formation of ruts and to keep roads in repair is by the use of wide tires on all wagons carrying heavy burdens. In most foreign countries they not only use from 4 to 6 inch tires on market wagons but on many of the four-wheel freight wagons, in addition to wide tires, the rear axles are made 14 inches longer than the front ones, so that the hind wheels will not track and form ruts. Water and narrow tires aid one another in destroying the roads, while on the other hand wide tires are roadmakers. They roll and harden the surface, and every loaded wagon becomes, in effect, a road roller. The difference between the action of a narrow tire and a wide one is about the same as the difference between a crowbar and a tamper; the one tears up and the other packs down. By using wide tires on heavy wagons the cost of keeping roads in repair would be greatly reduced. The introduction in recent years of wide, metal tires which can be placed on the wheels of any narrow-tired vehicle at a nominal cost, has removed a very serious objection to the proposed substitution of broad tires for the narrow ones now in use. The formation of deep ruts has been prevented on some of the toll roads of Pennsylvania by lengthening the doubletrees on wagons and by hitching the horses so that they will walk directly in front of the wheels, a device worthy of consideration.

Testing Portland Cement.

The testing of cement, although a simple process, requires much experience, skilful manipulation, and careful observation to secure sufficiently accurate results. Numerous tests have been suggested, but many of them are of uncertain value, others are exceedingly difficult of application, or require expensive instruments.

The accompanying specifications cover the principle points which are necessary to a safe cement, and which can be readily enforced.

Test No. 3, indicates the degree of fineness to which the cement is ground, upon which its strength greatly depends. While fineness is not a certain proof of the value of the cement, yet all cements are improved by fine grinding. If otherwise good, the finer the cement, the greater the amount of sand it will take in making a good mortar.

Test No. 4, shows the time a cement will take to set, and while not indicating the ultimate strength of the cement, it is a guide as to the work to which the cement is adapted. For submarine work, a quick setting cement is often a necessity, but for work in the open air, a cement should not require too rapid manipulation in mixing and putting in place before it begins to set, especially for sidewalk, curb and similar construction.

Test No. 5 (a), is most valuable and necessary, as it serves to detect one of the most dangerous of defects, an excess of free lime. Some cements stand well for short periods, but owing to the presence of free lime disintegrate after a few months. If at the end of three days in water, the thin edges of the pats show no signs of cracking, curling, and disintegrating, technically known as "blowing," the cement may be considered safe, in this regard. Fine air cracks on the upper surface of the pats, which cross and recross one another, are not due to blowing, but are caused by changes in temperature.

The cracks caused by blowing are usually accompanied by a certain amount of disintegration, are wedge shaped, running from the centre of the pat. The boiling test, No. 5 (b), is an accelerated condition to show in a few hours what would otherwise take a much longer period. It is frequently regarded as too severe for all cases, but most sound cements can pass it, and where blowing is developed it should call for a careful consideration rather than its rejection.

Test No. 6 is also indicative of the soundness of the cement, and any change in either expansion or contraction should cause the rejection of the cement. The bottle may be watched for signs of blowing as in No. 5.

In test No. 7, in which pats of neat cement are allowed to set and remain in air, the color should continue uniform throughout, yellow blotches indicating an excess of clay, or that the cement is not sufficiently burned. Under the latter conditions it is probably quick setting and deficient in strength.

A deficiency in tensile strength shown by test No. 9 indicates the presence of too much magnesia, over 3% making a cement unreliable. This test is important, and is the only one demanding an instrument involving any special expense. Moulds are required in which to form the briquettes with exactness, and a means of applying and indicating a tensile strain is required, various kinds being in use for this purpose. This test requires considerable time to perform it pertectly, more than can be ordinarily taken. Some cements develop considerable strength during a short interval, but fail to maintain it for a longer period. It is generally conceded, however, that for a brand of good reputation, the one day test will show whether or not the sample is of its average quality, the seven-day test being, of course, preferable. It is sometimes required that manufacturers shall furnish a sworn statement as to the results of this test, with each lot of cement delivered.

SPECIFICATION FOR PORTLAND CEMENT.

1.—Quality and Packing.—All cement must be of a well and favorably known brand of Canadian Portland cement and shall be delivered in barrels or equally weather-proof packages, each labelled with the name of the brand and the manufacturer. Any barrels or packages broken o

torn at the time of delivery will be rejected.

2.—Storage.—Immediately upon delivery, it is to be stored in a dry, well-covered and well ventilated building, or to be otherwise protected from rain and dampness by a suitable covering. Any cement affected by moisture before or after delivery shall be rejected from any work.

3.—Fineness.—At least ninety per cent. by weight shall pass through a No. 100 sieve having 10,000 meshes per square inch.

4.—Rate of Setting.—A pat of neat cement made as in Section No. 5 following, must not have its initial set within thirty minutes nor its final set within one hour after water is first added, the pat being kept in a moist air at a temperature between 65 and 70 degrees Fahr. The "initial set" and "final set" shall mean the time when the pat of cement will sustain a wire one-twelfth of an inch in diameter weighted to one-fourth of a pound, and a wire one-twenty-fourth of an inch in diameter, weighted to one pound respectively to rest upon it without penetration.

5.—Soundness.—(a) Pats of neat cement with thin edges, half an inch thick in the centre, and from two to three inches in diameter, moulded on pieces of glass, and immersed in water after "final set," shall not at any time thereafter show expansion cracks, distortion, curling of the thin edges, nor disintegration.

(b) Similar pats allowed to set in air, then placed in boiling water 48 hours shall not show any of the foregoing defects.

6.—Change of Volumn.—A quantity of the cement is to be mixed with sufficient quantity of water to enable it to be pressed into a glass tube of about one half inch diameter or into a narrow necked glass bottle. Should the cement swell so as to burst the glass, or shrink so as to become loose, either defect will be cause for the rejection of the cement.

7.—Color.—Pats moulded in the manner described in section 5 of this specification and kept in air must remain of a uniform bluish or greenish-grey color, exhibiting no yellow blotches nor discoloration.

8.—Tensile Strength.—Samples of cement shall be made into the consistency of a stiff mortar, and firmly pressed into moulds to form briquettes one square inch in cross section. These covered with a damp cloth and allowed to develop "final set" in air, then immersed in water, shall show the following tensile strengths per square inch :

Age.	Strength.
24 hours (in water after "final set")	125 lbs.
7 days (1 day in air, 6 days in water)	400 "
28 days (1 day in air, 27 days in water)	500 "
7 days (1 day in air, 6 days in water), 1 part of cement to 3 parts of sand	125 "
28 days (1 day in air, 27 days in water), 1 of cement to 3 of sand	200 lbs.

The sand used in the above mortar tests shall be clean and sharp, of the standard size, that passing a No. 20 sieve, but refused by a No. 30 sieve.

The Binder.

A binder is some fine material such as screenings, (stone dust and chips produced in crushing), sand or fine gravel which is spread over a layer of stone on the roadbed, and is then flushed or harrowed into the stone, to fill the voids, and to form a bond between the stones when the layer is rolled or compressed. Clean broken stone or gravel, wholly free from stone dust or other fine material cannot be thoroughly consolidated by rolling, unless the stone is so soft that it crushes and pulverizes under the weight of the roller. Nor will these materials consolidate under traffic until a quantity of dust has been created to fill the voids in the stone.

The voids in a layer of stones such as will pass through a two-inch ring, loosely spread on the roadway, amount to about 40 per cent of the entire mass, and compression with a roller will reduce this to about 25 per cent, varying somewhat with the toughness of the stone. This still leaves the mass very porous, but by the addition of a binder, the vacuum can be reduced to about four per cent.

Pit gravel usually has too much sand or earthy material mixed with it naturally. Lakeshore gravel is very often deficient in this respect. In the case of broken stone, the best practice favors the addition of a quantity of screenings, instead of sand or other foreign material. Stone-dust possesses a quality, as a binder, which sand and other materials do not, in that it forms a weak cement. The value of any variety of stone for road purposes depends very largely upon the degree to which its dust will cement and re-cement in the roadway. Good cementing power is one of the most important properties possessed by a good road metal. If the fine material binds well, it prevents water getting into the foundation of the road, it withstands better all atmospheric conditions of wind, heat, frost and rain and protects the stones beneath from wear. For this reason the relative utility of granite and limestone is not by any means proportional to the difference of the stones in hardness, since pulverized limestone forms a better cement than do the screenings of granite.

Sand, when used as a binder, has not the cementicious or crystallizing property possessed by stone dust, and is dependent upon a certain amount of moisture to hold it together. A similar action may be observed on a lake shore, the sand which is kept wet being hard and pleasant to walk on, whereas the dry sand farther up on the beach, is soft and yielding. In the same manner the asphalt surface of a pavement consists of about ninety per cent sand and the remainder mineral pitch and oil, which fills the voids and holds the sand together. Similarly a wet sand road is pleasant for driving, but when dry is one of the most disagreeable.

When sand is used as a binder, if the weather is very dry, the road disintegrates, loose stones appear on the surface ; it "unravels". When the weather is very wet, or under the action of frost, the sand again loses its strength as a binder, and rutting takes place more readily. In very wet seasons the sand oozes to the surface and has to be carted away. Nor does sand permit the firm mechanical clasp and interlocking which one stone takes upon another, in the process of rolling.

The advantage of sand is that with less rolling, the road metal can be made compact, but the results are not so permanent as when dependence is placed upon stone dust, or screenings.

Clay should never be used as a binder if it can be avoided. It is very weak both in wet and dry weather. When moderately moist it encourages rapid consolidation of a gravel or stone road, and for this reason, makes a very good summer road, but in fall and spring the road will be very much cut up and its durability greatly impaired, under the action of traffic, water and frost.

Water should be freely used to saturate the road metal when consolidating with a roller. It carrys the binder into the voids of the stone, and assists cementation. For this reason it is well to roll the roads in rainy weather. In the case of gravel, if it is not to be rolled, it is best to put it on the roads just before the wet seasons.

It was anticipated that the Berlin gas and electric light works would be taken over by the town on March 1st, but an unexpected delay occurred, owing to the difficulty in selling the debentures or borrowing the necessary amount of $90,000, untill the elapse of three months after the passing of the by-law. This period being necessary, in accordance with the published notice, to validate any irregularities in the by-law.

* * *

The town hall at Fort William was completely destroyed by fire on March 10th, involving the loss of all the town papers and records, and the central station equipment of the municipal telephone system. The value of the building was estimated at $18,000, the insurance being $13,000; and the telephone equipment valued at $6,000 is fully covered by insurance.

* * *

A by-law was carried in Stratford, providing for the purchase of the waterworks system for $98,000, and expending $8,000 on street improvement.

The Township System

Not an increased expenditure on the roads, but better methods of applying the present outlay is the great object to be attained by the good roads movement in Ontario. The townships of this Province are, as a rule, dealing very generously with their roads in so far as the amount of money and labor spent on them is concerned. The great difficulty is that this money and labor is not so directed as to secure the greatest and most lasting results. It would appear that the farmers of this country have been so actively engaged in improving their methods of farm work, and in advancing what seem to be their more personal interests, that the importance of making similar progress with regard to road management has been overlooked.

The advantages of methodical and systematic management are becoming more and more recognized in all departments of industry, from the most simple and common place, to the most complex and comprehensive. In none is it more noticeable than in farming, and in the sowing and rotation of crops, the handling of stock, the use of machinery, every farmer can, from his own experience, find instances of new and better method and system. Between good management and bad, between suitable methods and unsuitable, between system and the absence of system, there is all the difference between the successful and the unsuccessful farmer. Good management and bad management, good roads and bad roads, stand on precisely the same footing.

While in a number of instances, and with excellent effect, county councils take charge of the main highways, yet the great body of roads must still remain under the exclusive control of township councils, and the township methods with respect to road improvement, are therefore in the highest degree important. In the township system the general rule has been, for many years, that the roads are maintained by statute labor, together with money grants made annually by the coun il. The roads of each township are divided into beats or divisions, and a pathmaster is appointed to each. The average length of road divisions varies in different townships, but is commonly one or two blocks in length, thus ranging from about one and a quarter to three miles. The number of pathmasters thus varies in accordance with the size of the township and the length of road beats, there being ordinarily from 50 to 150 in each township. A pathmaster is appointed for one year only, and rarely does he hold office for two years in succession. It is considered that by appointing a different man from year to year, it enables each to make such improvement as he thinks desirable in front of his own farm.

Early in the year, after his appointment, each pathmaster receives from the township clerk, a list of those required to do work in his division, with the number of days each should perform. This number of days is fixed by the Assessment Act, according to the assessed value of property, but each township council has the privilege of adopting a schedule of its own. This many have done, and in place of using the assessed value as a basis for levying the statute labor, some determine it according to acreage.

After receiving the statute labor roll for his division, the pathmaster "calls out" for a certain day or days those on his list. Each man appears with such implements as he wishes to use. If he brings a team of horses, this with a driver, is estimated as the equivalent of two days. Under the direction of the pathmaster, who is not himself required to work, the labor is performed.

The statute labor system, as thus outlined, was in keeping with the spirit of pioneer days, when the need for roads was urgently felt, when the work consisted of cutting down trees, clearing the road allowance of logs and stumps, of corduroying swamps, and throwing up a dirt grade. For such conditions, and for such improvement, statute labor was admirably adapted, and did a vast amount of good.

To day, circumstances are very different. The need of roads is not so keenly felt as in the time of early settlement, and there is not the same incentive for hard and careful work. Men work on the roads very much as they work on their farms. Some are shiftless, some lazy, some stupid, some careless, and so the list might be carried on. Each works, plans the work, or oversees it according to his own ideas. The statute labor system in this respect, is not so much a system as entire absence of system.

Township roads, however, are not kept up by statute labor alone. The rate payers of many townships who know only of the grants for small repairs, scattered here and there over the township, do not realize how much money is, in the aggregate, spent on their roads in the course of a year. The amount is in no sense objectionable, and if the money were applied to the best advantage there are few townships which could not spend even more than they are now doing on road improvement.

The difficulty arises from the fact that this money is spent on the statute labor basis. The making of money appropriations was commenced many years ago, with a view to supplementing statute labor. They were then very small amounts, but with the growth of the Province, this practice has increased, until in many instances, the total money appropriation exceeds the statute labor for the year valued at one dollar a day. Thus the money spent has constantly increased until it is of greater consequence than the statute labor, but the latter is permitted to govern the expenditure of the former. It has become a case of "the tail wagging the dog."

Ottawa Good Roads Convention.

The good roads convention held at Ottawa on March 12th and 13th, as with the two previous annual conventions of the Eastern Ontario Good Roads Association, was a pronounced success in bringing together experienced and enthusiastic municipal men, each with a fund of practical information brought out in interesting addresses and discussions. The different sessions were presided over by Ex-warden Cummings, of Carleton county. Mr. F. E. Caldwell, of Manotick, was one of the first speakers, and in detail related the experience of Gloucester township, where statute labor has been commuted during the past two seasons, and the work done under five road commissioners. The result has been a saving of money under the new system, while the roads are 75% better.

Mr. D. R. Reid, of Hamilton, addressed the convention with reference to the new county road system of Wentworth, and the abolition of toll roads in that county. Mr. W. H. Kerr, warden of Huron county, told what is being done in Huron in behalf of better roads. Major Jas. Sheppard, of Queenston, discussed road-making machinery, and W. J. Hill, Ex-M. P. P., of York, dealt with the use of concrete in municipal work. Bridge construction was dealt with by County Councillor MacDonald, of Carleton, and County councillor S. B. Morris, of Elgin. The secretary of the Association, Mr. H. B. Cowan, outlined last year's work of the association, and of the "Good roads train."

It was decided to hold a Dominion good roads convention next March, and every municipality in the Dominion will be asked to send representatives. The following motion was carried unanimously:

"That this convention, realizing the great need for a Dominion division for good roads as a means of instruction and of bringing about a more uniform system of road construction, good road laws, etc., would earnestly recommend the establishment by the Dominion Government of such a division. With the object of showing the necessity of such an appointment, we would further recommend that this association co-operate with the various good road associations in Canada in the holding next year at Ottawa of a Dominion good roads convention. This association endorses the appreciation of the services of Mr. H. B. Cowan in connection with the good roads movement since its inception."

The ratepayers of Midland on March 14th, approved of a by-law authorizing the council to purchase and extend the local electric light plant, $20,000 to be raised for this purpose. The town is now paying $1,000 annually for street lighting. A similar by-lay was carried two years ago, but was not acted upon.

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.

Clerk's Salary—Cost of Building Culvert Across Railway.

213.—ESSEX.—1. The clerk is appointed to do the general work of the township. Would this include registration of births, deaths and marriages ?

2. Would he be entitled to extra pay ?

3. A drain was constructed across a railroad and completed and received by an engineer, but afterwards it was not sufficient to carry the water. The railroad was notified and they put in another culvert. Who pays for the culvert, the drain or township or railroad company ?

1. No. Unless the council so specifies at the time the clerk is engaged.

2. This depends entirely on the terms of the contract made between the council and the clerk, at the time he is hired—and as we do not know these terms, we cannot definitely answer this. See our answer to question No. 218 in this issue.

3. If the railway company voluntarily did this work, they should pay for it. If it was constructed by the railway as the result of an agreement entered into between the municipality and the railway company, the cost of the work, should be paid in the first instance out of the general funds of the municipality, and afterwards assessed against the lands and roads liable for the construction of the drainage works pursuant to section 85 of the Drainage Act, (R. S. O., 1897, Chap. 226), provided such agreement was entered into in accordance with sub-section 2 of this section. We are assuming, of course, that this drain was constructed under the provisions of the Municipal Drainage Act.

Assessment of Telegraph and Telephone Companies.

214—Ayr.—How should telephone and telegraph companies be assessed, and what value can be placed on poles and instruments ?

For an answer to this question see our article on page number forty-two of our issue for February last (1903).

Duty of Treasurer as to Keeping of Bank Account.

215.—G. H. B.—1. Can a municipal treasurer legally transfer the funds of the municipality from one chartered bank to another chartered bank without the consent and approval of the council ?

2. Will you please give me your interpretation of sub-section 5 of section 291 of the Municipal Act relating to above ?

1. No.

2. This section renders it obligatory on the part of a municipal treasurer to open an account and deposit all money belonging to the municipality in such of the chartered banks of Canada or other places of deposit *as may be approved of by the council.* The treasurer should strictly follow the instructions of the council by whom he is employed, in this regard.

More than one School can be Built in a Section—Municipal and Legislative Grants for—

216—R. J. B.—1. In one of our school sections the present school is near one corner of the section. Can the trustees build another school in the same section for the accommodation of those who cannot reach present school ?

2. If they do build such school, what amount would they be entitled to from the municipality, and from the Education Department ?

3. Above school section is No. 1. No. 2 lies mostly to the north, but a part of it lies to the east. The children living in the portion east of No. 1 are nearer the school in No. 1 than they are to No. 2. Can the trustees of No. 2 make arrangements with the trustees of No. 1 whereby these children could attend No. 1 school, and the trustees of No. 2 pay to the trustees of No. 1 the amount of the taxes levied for special public school purposes on the lots in No. 2 from which the children are to attend No. 1 ?

1. Subsection 3 of section 65 of the Public Schools Act, 1901, empowers the trustees of all rural public schools to provide adequate accomodation for two-thirds of the children between the ages of five and sixteen resident in the section. If the present school-house is not large enough to accommodate all such children the trustees can and should either cause the erection of a new school-house, or the enlargement of the existing one, whichever they may deem best under the circumstances. (See also subsecs. 4 and 5 of this section.)

2. In this event of the council of the municipality should levy in the school-section such sum as the trustees request them to levy under subsec. 9 of section 65 of the Public Schools Act, 1901, and against the public school supporters of the whole township, the sum of $150 at least for EACH of the schools in this section (or $300) provided they have been kept open the whole year exclusive of vacations, under the authority of subsection 1 of section 70 of the Act, otherwise such proportionate part of the $300 as this subsection directs. The building of the additional school-house will make no change in the share in the Legislative grant to which the school section is entitled, as this is estimated on the basis of attendance—the amount payable in every rural school in the territorial districts shall be at least $100 (see section 7 of chapter 38, R. S. O., 1897).

3. Subsection 1 of section 95 of the Public Schools Act, 1901, provides that "the trustees of every public school shall admit to their school any non-resident pupils who reside nearer such school than the school in their own section." Subsection 2 enacts that "the parents or guardians of such non-resident children shall pay to the treasurer of the school to which their children have been admitted, such fees monthly as may be mutually agreed upon, etc.," and subsection 3 that "any person residing in one school-section and sending his children to a neighboring school, shall be liable for the payment of all rates assessed on his taxable property for the school purposes of the section in which he resides, but it SHALL BE LAWFUL for any board of trustees to remit the fees paid to the trustees of the neighboring section." When the children attending the neighboring section are three miles or more distant in a direct line from the school-house in the section to which they belong, it is COMPULSORY that the trustees of the section in which such children are resident, remit as much of the taxes chargeable upon the parents or guardians of such children for school purposes as would be at least equal to the fees paid to such neighboring section.

Mayor Not Member of Committees by Statute.

217.—J. M.—This town owns and operates an electric railway and light system. The systems are managed by a Board of Commissioners, composed of five members, three of whom are elected by the people, the fourth elected by by-law of the council and the mayor for the time being is by statute a member. The board for operating the system appoint sub-committees. Is the mayor ex-officio a member of the sub-committees ?

2. The town owns a telephone system managed by a committee of the council. Is the mayor ex-officio a member of this committee ?

3. The general business of the town is managed by committees of the council, for instance, finance, fire, water and light, etc. Is the mayor ex-officio a member of all these committees ?

1. No. The statutes do not so provide. It is customary and advisable that a Board of Commissioners of this kind frame and adopt rules of order for the conduct of their business. One of these rules generally provides that the CHAIRMAN of the board, for the time being, shall be ex-officio a member of every standing or select committe of the board. The mayor of the corporation is not, by virtue of his office, chairman of the board—any member of the board, may be selected to fill this office.

2 and 3. No. For the same reasons as those given above, substituting the word "council" for the words "Board of Commissioners."

Clerk's Salary.

218.—J. M.—1. Please state what extras a clerk is legally entitled to over and above his salary ?

2. Is he entitled to extra pay as clerk of Board of Health ?

3. Should he be paid extra for selecting jurors ?

4. Has council a right to pay clerk extra over and above salary for registering births, deaths and marriages ?

5. Please state chapter and section in statutes where clerk's duties are defined.

1. The clerk of a municipality is entitled to such extras only, over and above his salary, as the council agrees to allow him at the time of his appointment, or as are allowed him by some statutory provision requiring the performance of some duty by him, and the council when employing him, does not specify that the salary agreed upon is to cover *and* include the fees allowed by statute for the performance of these special duties.

2. No. Unless it is so specified in the contract of employment.

3. No. Unless the council agrees to allow him such.

4. Yes. Unless at the time of appointing him, the council specifies that his salary is to cover and include the amount of these fees. See section 35 of Chap. 44, R. S. O., 1897.

5. The general duties of the clerk will be found in section 282 and following sections of the Municipal Act. In addition to the services required of him by these sections there are numerous other statutes requiring him to perform duties under their provisions, for instance: The Ditches and Watercourses Act, (R. S. O. 1897, Chap. 285.) The Municipal Drainage Act, (Chap. 226.) The Assessment Act, (Chap. 224.) The Jurors' Act, (Chap. 61.) The Act respecting the Registration of Births, Deaths and Marriages, (Chap. 44.) The Ontario Voters' Lists Act (Chap. 7.) The Act Respecting Line Fences, (Chap. 284), The Act Respecting Pounds, (Chap. 272), etc.

Power of Reeve and Clerk to Call Special Meetings.

219—J. L.—1. This week the reeve called a special meeting of council for the purpose of quashing by-laws re the liquor licenses of 1902. Said by-laws were repealed by one motion, viz., that the liquor by-laws of 1902 be repealed. A few days later three of the councillors requisitioned the reeve to call a special meeting of council to pass a by-law to fix the duty to be paid by liquor license holders. He refused. Later they requisitioned the clerk to call a meeting, which he did. The reeve persuaded one of the three not to come to the meeting, as it was not legal. I hold that the said by-laws, which were numbered 17 and 18, could not be repealed together without even the number of said by-laws put in the motion, and that they ought to be repealed separately. I hold that the clerk was right in calling the meeting, and that anything done at said meeting would be legal if passed by a majority of the council. Am I right?

It is not stated whether these by-laws were passed pursuant to section 42 of the Liquor License Act, or not, but assuming that they were, they could be repeated only by a BY-LAW or BY-LAWS of the council. If the duty imposed by them is in excess of $200, the by-law or by-laws repealing them would require the approval of the electors of the municipality before their final passing. If these are local option by-laws passed in accordance with section 141 of the Act, the provisions of sub-section 2 of this section must be observed before repealing by-laws can be passed. We do not think the clerk was legally justified in calling the special meeting. The reeve or head of the council was not dead or absent, and it is only in one of these emergencies that the clerk is authorized, to call a special meeting of the council, upon a special requisition to him, signed by a majority of the members of the council. (See Sub-section 2 of section 270 of the Municipal Act.)

Local Option By-Law Must be Assented to by Electors.

220—G. S.—Has the council of an incorporated village power to bring in "Local Option" without a vote of the ratepayers?

No. See section 141 of the Liquor License Act. (R. S. O., 1897, Chap. 245.)

Local Treasurer Cannot be County Councillor—Custody of Treasurer's Bond—Inspection of Documents in Clerk's Hands.

221—J. M.—1. Let us know if a county councillor can be appointed a township treasurer while holding the county councillorship without resigning.

2. Who is the proper official or where should the treasurer's bonds be kept?

3. If any township official hold the treasurer's bonds should they be forthcoming for the committee who is appointed by the council at the January session to examine the treasurer's security, or for the township auditors to examine?

4. Should all returns sent by the county treasurer or county clerk to our township clerk be brought to the township council by the clerk and read as correspondence?

5. The Assessment and Collectors Act states that the collector will return his roll to the township treasurer. Now if the council wants to see the defaulters roll, should not they, by asking for it, have the privilege of examining it to see who the defaulters are?

1. Yes, but his appointment to and acceptance of the office of treasurer of a local municipality in his county, will disqualify him from membership in the council of his county. Subsection 1 of section 80 of the Municipal Act provides that "no TREASURER of ANY municipality shall be qualified to be a member of the council of ANY municipal corporation."

2. The clerk is the proper custodian of the bond of the treasurer as well as of other municipal records.

3. It is the duty of the clerk to allow a committee of the council, or any other person or persons, to inspect the bond of the treasurer or any other official document in his possession or under his control at all reasonable times. (See Subsec. 1 of section 284 of the Municipal Act.)

4. No.

5. Yes.

Law as to Registration of Births, Marriages and Deaths.

222—C. M.—1. Is the clerk of incorporated village compelled to register births, marriages and deaths from outside municipalities?

2. Must the village pay for such?

3. Can village compel the surrounding municipalities to refund the same amount?

4. Can the clerk of the outside municipalities collect for the same when forwarded to him from village clerk?

1. No, and his doing so would be a contravention of the statutes. Sec. 9 of chap. 44, R. S. O., provides that every incorporated village shall be a registration division for the purposes of the Act, and subsection 1 of section 11 that the clerk shall be the division registrar. Sections 15, 20 and 22 require the registration of births, deaths and marriages with the registrar of the division in which the birth or death takes place or the marriage is celebrated. The nearest division registrar is required to issue burial permits when deaths occur in a township and forward particulars to the proper registrar. (See subsection 2 section 24.)

2. No, and it has no authority to do so.

3. No and a question of this kind could not by any possibility arise, if the several division registrars properly performed the duties required of them by the Act, respecting the registration of births, deaths and marriages.

4. Yes, if he is the proper division registrar to receive and register them under the provisions of the above statute.

Assessment of Land in adjoining Municipality for Drainage Works—Liability for Road out of Repair.

223—D. L. W.—1. The council of a township received a duly signed petition for a drain under the provisions of the Drainage Act. This drain (at the upper end) is expected to extend to the boundary line between two counties. One lot in the adjoining county will be benefited, and the owner of this lot signed the petition to get the drain extended through part of his land. Can the council take action on this petition, or will it be necessary to strike off the name of the petitioner in the adjoining township before proceeding with the work?

2. A new school section was formed in this township four years ago, and about a year after the council opened a sideroad for convenience of the ratepayers of said section. About one-third of this sideroad is swamp and it has not yet been made fit for travel. One ratepayer requested the council to improve the road to enable his children to get to school (they are over three miles from any other school). Last December he asked the council to refund his school tax, and as they did not comply he is now entering an action against them for negligence in not having the road fit for his children to travel. Would it be legal for the council to refund the tax, or can they be held liable for not having the road made passable?

1. If, in the preparation and presentation to the council of this petition, the provisions of section 3 of the Act have been observed, there is no reason why the council should not act on it, simply because a lot in an adjoining municipality will be assessed for a part of the cost of the construction of the proposed drain. Subsection 1 of section 57 of the Municipal Drainage Act (R. S. O., 1897, chapter 226), provides that "Where any drainage work is not continued into any other than the initiating municipality, any lands or roads in this initiating municipality or in any other municipality, or roads between two or more municipalities which will, in the opinion of the Engineer or Surveyor, be benefited by such work or furnished with an improved outlet or relieved from liability for causing water to flow upon and injure lands or roads, may be assessed for such proportion of the cost of the work as to the Engineer or Surveyor

seems just "and sub.-Section 2 provides that" a drainage work shall not be deemed to be continued into a municipality other than the initiating municipality merely by reason of such drainage work or some part thereof being constucted on a road allowance forming the boundary line between two or more municipalities."

2. This section being located in an organized township, the council has no authority to remit this ratepayer's school taxes. The council was not bound to open this road in the first instance, but having done so, it must put and keep the road allowance, so long as it remains open as a public highway, in such a condition for public travel, as the nature of the locality, amount of traffic over it, and other attendent clrcumstances would render sufficient,—but we do not think the municipality is liable in an action for damages. The person aggrieved by reason of the road being out of repair might have indicted the township but he did not take that course which was his only remedy.

Not Entitled to Vote for Public School Trustee.

224—J. C.—A rents a property from B at annual rental of $50. A agrees to perform statute labor and B to pay all other taxes. A took possession on the 15th day of April last, but was not entered on the assessment roll for 1902. A is a public school supporter and claims under section 13 Public Schools Act, 1901, the right to vote. Can A vote for trustee?

A is not under the circumstances a ratepayer and is not entitled to vote for a public school trustee.

Duty of Deputy-Returning Officer to Furnish Compartments.

225—F. M. F.—With respect to the liability or otherwise of a township to pay for polling booths for the referendum, let me direct your attention to the fact that in the statute three expressions are used as relating to the locality where the voting takes place, namely, "polling place" (sections 10 and 11), "polling compartments," section 93, and "polling booth" in item 11 of schedule "B," referred to in section 92. I find these definitions in the Standard Dictionary:

"Polling place"—A place where, at elections, votes are received and registered.

"Polling booth"—A closet-like structure erected at the polls for the convenience of voters at an election.

"Compartment"—One of the parts into which an enclosed space is sub-divided by lines or partitions.

I confess I think the Act uses the expression "polling compartments" and "polling booths" as meaning one and the same thing, that is, a division of a polling place, and unless you attach no meaning to the words "polling compartments" in section 93, 2 Edward VII., chapter 33, that must prevail rather than the words of a mere schedule, and the Province (not the municipality) should pay the sum of four dollars per polling place for taking the referendum vote.

We fully expressed our opinion and our reasons for it on these sections of the Liquor Act, 1902, in our answer to question No. 87 (clause 1) in our issue for February of the present year and see no reason for changing it in any way. Taking the definitions given from the standard dictionary, we can easily see, in view of the prevailing nature of the place at which the votes of electors are now taken, how the words "polling-place" and "polling-booth" might be taken as meaning the same thing. As the polling-booths generally used at elections are in most instances anything but "closet-like structures." In this polling-booth or polling-place it is the duty of the deputy-returning officer to furnish as many "compartments" (parts into which the polling booth or polling place is sub-divided) as the circumstances of the case may require, into which the electors are to retire to mark their ballots. (See sections 11 and 38 of the Act). It is the cost of furnishing the latter in the polling booth or polling place, which is to be included in the bill of the Deputy Return-Officer, rendered to the Returning Officer as a disbursement. This sum together with the other lawful items in the bill, is to be paid by the Province to the returning officer, to be by the latter paid and allowed to the deputy-returning officer, as provided in section 93 of the Act. Section 92 and schedule B (which is by section 92 expressly made part of that section) provide for payment of the rent of the polling booths, by which, in our judgment, is meant the polling places mentioned in section 10 of the Act. If the construction you suggest in this particular were placed on section 93 of the Act, section 92, embodying schedule B, would provide that the cost of the polling compartments is to be paid by the municipal treasurer on the order of the deputy-returning officer, and section 93 that the same item of expenditure should be paid by the Treasurer of the Province, which would be inconsistent and absurd. We may also say that we have no doubt whatever but that the Provincial Treasurer's department interprets the Act just as we do, and we venture to say that the Provincial Treasurer will not pay the expenses of furnishing polling booths in any case.

Person Elected to Office to Disclaim Before His Election is Complained of.

226—H. G. T.—In the question (No. 120, February,) submitted, six candidates were nominated and contested the election, of whom four of course were elected. The election of one of the four declared elected was complained of, he being a school trustee. He disclaimed (sections 240 and 241 of the Municipal Act) and the candidate having the next highest number of votes became the member (section 241) I submit that a qualified councillor whose election is not complained of, has no right under the statute to disclaim, consequently the last elected councillor who disclaimed and whose election was not complained of acted illegally and his disclaimer is a nullity. A qualified councillor legally elected is bound to accept the position or he leaves himself liable to a fine is he refuses to accept it. (See section 319.) His only way out is by resignation accepted by a majority of the members present, to be entered upon the minutes of the council (section 21), and had Mr. E. done so, Mr. A. could not claim the seat nor should he be declared elected. The case you cite as proof of your contention is not at all a similar case. If Mr. E. was disqualified then your answer would be correct. Should you still think that Mr. A. was legally elected I will be very glad if you will point out where I am wrong.

We adhere to out former opinion, because section 240 of the Municipal Act expressly authorizes a person elected to disclaim at any time before his election is complained of. This section reads as follows: "When there has been a contested election, the person elected may at any time after the election, and before his election is complained of, deliver to the clerk of the municipality a disclaimer signed by him as follows, etc." Section 319 does not prevent any person who has been elected from disclaiming the office and as soon as he disclaims the candidate having the next highest number of votes becomes entitled to the seat, and he is not personally concerned in the penalty which the person disclaiming may have incurred under section 319.

By-Law to Loan Money—Deduct From List, Voters Who Have Died—Others not to be Deducted—By-Law to Weigh on Village Scales

227—E. E. D.—A bonus by-law was voted on and the clerk has to report whether the number of votes in favor of the by-law is three-fifths of total vote shewn by the roll and voters' list, section 366 (a). The by-law was to loan money to a partnership firm, five of whom are shewn by the roll and list as voters. Can he deduct them from the total?

2. A number of those shewn to be voters have died since the roll and list were made. Has he any authority to deduct them from the total?

3. A number of those who apparently have votes, are not really entitled to be assessed as owners. Can he deduct these?

4. Has the village power to pass a by-law compelling every person to weigh on the village scales, and if they do so, can anyone else weigh and charge a fee?

1. The proportion required is three-fifths of all the ratepayers *entitled to vote on the by-law*. These parties were not qualified under sections 353 or 354 of the Act to vote on the by-law, as they expected to receive some reward or gift for the votes tendered, but as there is possibly a question as to whether these persons are all partners, and by reason thereof interested in the by-law, it seems to us that it is a matter for the county judge on a scrutiny to determine whether the by-law received a sufficient number of good votes to carry it, and that it is not a matter for the clerk to deal with.

2. Yes.

3. No.

4. The village council has power, under subsection 5 of section 580 of the Municipal Act, to pass a by-law requiring every person to weigh everything mentioned in that subsection on the village scales and to impose penalties upon every person who weighs any of these things anywhere else in the village.

Council Has No Right to Disturb the Purchaser.

228—G. P.—Last summer the clerk of the council of S. W. wrote you about a road allowance belonging to the township of S. W. whether they owned it all or the village owned

one-quarter of it, so they sold it to me and gave me a deed of it. Now the town notifies me that they own one-quarter of it, and are going to repeal their by-law and throw the road open as a road. The reeve of the township gave me possession of it 10 months ago. I have ploughed it and fenced it in; since then the council of the township has claimed it all and sold it to me, given me a deed and got their pay for the whole of it. Can the town throw it open again, the whole road or any part of it?

Upon the facts as previously given us, we gave the opinion that the township municipality was the sole owner of this road allowance, and alone had the power to dispose of it. If the township council passed a by-law, correct in form, pursuant to section 637 of the Municipal Act, after the preliminary proceedings prescribed by section 632 had been strictly observed, for the stopping up and sale of this road allowance, and duly executed and delivered to the purchaser a deed thereof, the council of the village or any one else has no right to disturb him in his possession of it.

March Assessment Lawful.

229—W. H.—Is it lawful to assess in March in a rural district?

Yes. Section 55 of the Assessment Act provides that "subject to the provisions of sections 58, 59 and 61, every assessor shall begin to make his roll not later than the 15th day of February, and shall complete the same, on or before the 30th day of April, etc." And sub-section 1 of section 61 provides that "county councils may pass by-laws for taking the assessment in towns, TOWNSHIPS and villages, between the 1st day of February and the 1st day of July."

Council Cannot Change the Boundaries of School Section.

230—A. O.—During last year, on petition of ratepayers, our council by by-law formed a school section. The ratepayers now wish to have certain lots in other sections added, as they think the valuation is too small and some of the lots to be added are over three miles from existing schools.

1. Can council change boundaries?

2. Can ratepayers in the older section who are too far away from school ask to be and be placed in new section formed last year?

3. Can council place lots in the two pre-existing sections in the new section without consent of ratepayers so changed?

1. We assume that the new school section was formed out of existing school sections in the township, pursuant to the provisions of section 41 of the Public Schools Act, 1901, and that the by-law forming the new school section was not appealed against in the manner or within the time mentioned in section 42, or if appealed against, that the county council made no change in the township's settlement of the matter. If this is so, the township council cannot now change the boundaries of this section. As subsection 3 of section 41 provides that a by-law of this kind must be passed not later than the 1st day of June in any year, etc., and shall remain in force for a period of FIVE years.

2. Not at present, as the council is powerless to act in the matter until the expiration of the time mentioned in sub-section 3 of section 41.

3. Not until after the expiration of the time mentioned in sub-section 3 of section 41, and then the council can use its discretion as to adding lands to this section, without the consent of the ratepayers, after notice given pursuant to sub-section 2 of section 41.

Basis of Assessment of Realty.

231—J. A. R.—In previous years this municipality has been assessed on a one-third basis. The council this year passed a resolution that the assessment be made on a full value basis. The assessor objected, claiming that the council had no authority to pass such a resolution. Will you please give me your opinion on the matter?

Neither the council, assessor, nor any other person has any authority to fix any basis for the valuation for assessment purposes of the assessable property in the municipality other than that prescribed by section 28 of the Assessment Act which provides that "real and personal property shall be estimated at their ACTUAL CASH VALUE as they would be appraised in payment of a just debt from a solvent debtor." Though the council has no power to control the assessor in regard to the manner of assessing property the council in this case is right in its idea that property should be assessed at its full value.

Payment of School Debenture.

232—T. C.—In our school section nine years ago we built a new school house, and the council gave the money and took debentures on the school section and the last debenture was due last December and the township treasurer sent the money to the trustees at the same time that he sent the other money, that is the money that the trustees levied on the section to run the school with and the township clerk levied the debenture money and it was the treasurer that paid the debenture before this year and he sent it to the trustees to pay the debenture, and instead of paying the debenture they took it and made out their auditor's report and said at the school meeting that everything was paid for and $120 on hand. Now I want to know if the trustees have power to change the annual report, and how they can get out of it, and if they can raise it on the school section again, and if not, what steps would I have to take to stop them, or if the council could raise it again when they have raised it once, and how can they pay it or have they to pay it out of their own pockets.

As we understand this matter, the township council levied on the property of the public school supporters within the limits of the school section the amount required to meet this debenture at maturity, and that, after it had been collected, the township treasurer paid over this amount to the trustees of the school section looking to them to pay the debenture, that the trustees did not pay the debenture, but devoted the money sent them by the township treasurer for the purpose of some other object. and that the debenture still remains unpaid. The township treasurer acted illegally in handing the money over to the trustees to pay this debenture. He should have paid it himself with the moneys levied and collected from the school section for the purpose, as debentures of this kind are issued by the township, and the municipality as a whole is responsible for their payment. The trustees should not have accepted it, but having done so, should have seen that the debenture was retired at maturity. This amount cannot be again levied against and collected from the public school supporters of the section, and if the council attempts to do this, it can be restrained by injunction through the courts. A school trustee who KNOWINGLY SIGNS a false report is liable to the penalty mentioned in sub-section 1 of section 119 of the Public Schools Act 1901, and under section 120 the trustees of every school section shall be personally responsible for the amount of any school moneys forfeited by or lost to the school section in consequence of the neglect of duty of the trustees during their continuance in office. The trustees should either pay the debenture out of the moneys on hand or should pay the amount necessary to retire it to the treasurer.

Tugs Exempt From Assessment.

233—CLERK.—Ratepayers in our municipality own tugs. Said tugs are in our harbor all winter and work here in summer. Can owners be assessed for them?

Subsection 29 of section 7 of the Assessment Act exempts from assessment and taxation all vessel property of the following description, namely, steamboats, sailing vessels, tow barges and TUGS, but the INCOME earned by or derived through or from any such property is liable to be assessed.

Hiring and Payment of Teacher.

234—J. A. C.—1. Teacher was hired for one year in urban public school; started January 5th, 1903; taught till February 20th and resigned. What proportion of teaching days is teacher entitled to?

2. How many teaching days are there in a year, or the number of days in each term?

1. Unless the agreement between the teacher and trustees otherwise provides, the teacher is not entitled to the benefit of sub-section (4) of section 81 of the Public School Act not having taught for three months or over.

2. We cannot give the exact number of teaching days in any year, as the number varies, as sometimes the day set apart as a statutory holiday falls on Sunday. The number of teaching days in any year can, however, be ascertained by deducting from the 365 days, all school holidays, Sundays and other statutory holidays. As to what constitutes a public school term see section 96 of the Act.

Advertising Sales of Lands for Arrears of Taxes.

235—W. M. B.—Is it necessary now to advertise land sales in Ontario Gazette, or any other paper outside the county or district in which sale is to take place? If not, when did the change come into effect. Kindly give me reference to the same and oblige?

By section 53 of chapter 225 (R. S. O. 1897), section 177 of the Assessment Act is made to apply to municipalities in districts selling lands for taxes. The latter section requires that these sales be advertised in the *Ontario Gazette*, as well as the local papers. The only change which has been made in the provisions of this section since the revision of the statutes in 1897 was one in 1898, which applies to cities only.

Alteration of Boundaries of School Sections.

236—A. K. D.—Can a council change school sections before the expiration of five years from the time the school sections were laid out? If so, what steps have to be taken? Should the ratepayers get notice that such a change is to be made, or would it require a vote of the ratepayers? If so, would it take two-thirds of the vote to carry?

As I am one of the council and do not know much, I want to know something about changing school sections before I vote on it. I will try and state as near as I can how this change is wanted. The council of 1901 laid out the municipality into school sections as required by law so that every ratepayer was in a school section, but this did not please all the ratepayers, and now they want the sections changed again. It is claimed by some of the people that what the council of 1901 passed was not legal, as the reeve was a license commissioner at the time of his election. I do not know, but I think the reeve was legal, as there were no steps taken to disqualify him. If the reeve was not qualified and the sections changed now, it would be the same as it is now, as there are two of our council for this year school trustees. If our law makers keep on making new laws in regard to councilmen, the municipalities will have to get a safe to keep their councilmen in.

There is no statutory provision rendering it necessary that school sections formed by the township council under the authority of section 12 of the Public Schools Act, 1901 (as we assume these were), should remain as originally laid out for at least five years after the passing of the by-law, giving effect to the sub-division of the township into school sections. The boundaries of any of these sections may, at any time after the township has been sub-divided into school sections, be altered by by-law of the council passed pursuant to section 41 of the Act. Before this by-law is passed, the notices mentioned in subsection 2 must be given, and it must be passed not later than the 1st day of June in any year, and shall remain in force for a period of five years. (See subsection 3.) The fact that the reeve last year was disqualified from membership in the township council, does not render ANY of the business transacted by that council illegal.

Treasurer's Bonds—Compensation for Damages Caused by Drainage Works—Drainage Referee Paid by Salary.

237—C. W. D.—1. Has the township treasurer to furnish new bonds each year if he has the same bondsmen as he had the year previous, and is it necessary for the new council to receive and accept the bonds of the treasurer, although there is no change in the bondsmen?

2. There is a municipal drain going through a farm lot, and the owner of the lot thinks the contractor of the drain has put the earth that came out of the drain over his land so as to injure the land and crops alongside of the drain. What is the proper course for this party to take to get relief?

3. Does the provincial referee get pay for work on drains along with the salary attached to the office? If so, what amount?

1. Before we can definitely answer this question, we should know whether this treasurer is appointed for an indefinite period, or for one year certain, and whether the liability of the sureties is, by the bond, limited to any particular time or extends indefinitely over the whole period for which a treasurer was appointed. In the Township of Adjala vs. McElroy, (9 O. R., 480), it was held that, where a treasurer was re-appointed annually for several years, the re-appointments were not equivalent to removals and re-appointments, but were rather a retention in office of the same treasurer and that his sureties were not discharged in consequence thereof, and the latter part of section 285 of the Municipal Act makes it the duty of every council in each and every year, to inquire into the sufficiency of the security given by the treasurer and to report thereon.

2. If this person thinks himself entitled to damages or compensation by reason of the construction of this drain through his premises, he should take proceedings to enforce his claim before the drainage referee pursuant to the provisions of section 93 of chapter 226, R. S. O., 1897, (as enacted by section 4 of chapter 30 of the Ontario Statutes, 1901). The claim for compensation should be made within one year. See section 438 of the Municipal Act.

3. No. The referee is paid a salary and reasonable travelling expenses. (See sub-section 6 of section 88 and section 108 of the Municipal Drainage Act. (R. S. O. 1897, chapter 226.)

Qualification of Voters on By-Law to Raise Money to Build Town Hall.

238—J. C. G.—Kindly let me know who can vote on a twenty year by-law to build town hall, and what proportion or majority it requires to carry the same?

We assume that the by-law referred to is one to provide for the issue of debentures to raise the money required to build the town hall, payable in twenty years. If this is so, the persons qualified to vote on the by-law are those mentioned in sections 353 and 354 of the Municipal Act. Since this by-law is not to be passed for any of the purposes mentioned in section 366 or 366a (enacted by section 8 of the Municipal Amendment Act, 1900,) of the Municipal Act, a majority of the electors voting on the by-law is all that is necessary to carry it. (See section 264 of the Act).

Councils Liability When Contract Executed.

239—X. Y. Z.—In 1902 A, B and C a partnership enter into contract with municipal corporation to the extent of $4000.00. The contract was completed in 1902, the partners having assigned the collection of the same to the bank for advances made them. The corporation paid to the bank in 1902, $3500 on account of the contract, leaving a balance due of $500. At the municipal elections of 1903, A is elected to the mayoralty of said corporation by acclamation. Subsequently, the account for the balance due A, B and C of $500, together with interest is presented by the bank for payment, which is refused by the council on the ground that the account is void.

1- State the authority of the council for this refusal?

2. And the procedure of A, B and C to collect their account of $500 with interest?

1. As we understand this case neither A nor any of his partners was a member of the council when the contract was entered into. The work was completed in 1902. The council paid $3500 on account leaving a balance of $500 unpaid and the bank to which this balance was assigned asks the council to pay it. The contract appears to have been executed and as it was not made in violation of any law we do not see how the council can refuse to pay the balance due. It is said that the council claims that the contract is void but the ground upon which it is claimed to be void is not stated. The fact that A is now a member of the council cannot prejudice the bank so as to render void a contract which appears to have been valid and enforceable at the time A was elected. (See Brown v. Town of Lindsay, 35 U. C. R. 509.)

2. The claim against the Municipality under this contract having been assigned to the bank, the bank is the party entitled to enforce payment, and it can enforce payment by action in the proper courts.

Hotel Keepers Qualification—Separate School Supporters Should Support Nearest Separate School.

240—P. F. S.—1. One of our councillors has purchased a hotel. I suppose he cannot hold out his term and cannot take license in his father's name? Will have to have nomination if he resigns.

2. According to section 44 chapter 294, Separate Schools Act, a Catholic can leave a separate school and join another separate school. We have two separate schools, only about three miles apart, and about three or four families who live in between them want to come to our village school. Can they do this by instructing the assessor to place them in separate school column for our school and quit the school they have been belonging to for years, and must the assessor place them in column they want him to?

1. The purchase of a hotel does not disqualify a person from being elected a councillor, nor does the fact that he is a hotelkeeper, unless he is the holder of a license to sell liquor. If his father procures a license to sell liquors, the son may sell his father's liquors, acting for him without violating any law and without voiding his seat in the council. If on the other hand he sells his own liquor he is then a person selling liquor without a license and renders himself liable to the penalties imposed by the Liquor Act, but his violations of that Act will not disqualify him. (See Reg. ex. rel. Clancy vs. Conway, 46 U. C., Q. B. 85).

2. We cannot see that the section you quote gives the supporters of separate schools any such power as you mention. It simply provides that where the resi-

dence of any supporter of a separate school is situated within three miles of two or more separate schools (as appear to be the case in this instance) that fact itself compels him to support the separate school NEAREST to his place of residence. Unless the village separate school is nearest to the place of residence of these separate school supporters and located within the three-mile limit, they cannot become supporters of it.

Powers of Court of Revision and County Judge When Drain Extended into Another Municipality.

241—J. E. H.—Our council has passed a drainage by-law, which drain was also extended into another township. The latter passed their by-law and got it registered before us while we had to have Court of Revision and Judge's Court of Revision, both of which made an additional levy on other township, which says neither our council nor Judge had any right so to do. Our by-law is amended according to Court of Revision. The additional levy on other township is $22.00.

1. Is the Judge right in placing it there after they passed their by-law ?

2. How shall we amend ours now ?

3. What can legally be done with the $22.00 as now placed on other township ?

There were no appeals in other township. We have not yet registered our by-law and wish to know what to do.

1. We are of opinion that neither the Court of Revision nor the County Judge, on appeal to him, had any authority to make any change in the proportionate parts of the cost of the construction of these drainage works, chargeable against the municipalities interested respectively as fixed by the engineer in his report. They can only deal with the assessments against the lands and roads in the municipality, whose council provisionally passed the by-law containing the assessment schedule appealed against. If the council initiating the drainage scheme after considering the engineer's report, deems the amount therein charged against the servient municipality too low it should reject the report, or refer it back to the engineer for amendment. If the servient municipality is dissatisfied with the amount charged against it, it has the right to appeal to the drainage referee, as provided by section 63 of the Municipal Drainage Act (R. S. O., 1897, chapter 226, and see also section 93 of the Act as enacted by section 4 of chapter 30 of the Ontario statutes, 1901).

2. We do not think the council has any authority to amend its by-law with a view to collecting the $22 from the servient municipality.

3. The $22 cannot legally be charged by the Court of Revision or County Judge against the servient municipality on appeal to them, but should be paid by the lands and roads in the initiating municipality. The servient municipality cannot, in this way, be forced to make provision for the payment of this sum, and the by-law of the initiating municipality cannot legally be amended so as to provide for the payment of this sum by the servient municipality.

Cement Mixture for Granolithic Walks.

242—F. K—I have been directed by the municipal council of our town to enquire of you whether, in your opinion the following mixtures for the construction of granolithic sidewalks are suitable for walks to be built on clay soil after the foundation is prepared viz :

Base concrete to consist of seven parts of lake shore gravel, and one part best quality cement; or four parts broken stone, three parts course sand, and one part best cement one inch thick.

The usual requirements for a concrete walk are :

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

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

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

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

A concrete base seven inches in thickness would appear to be unnecessarily heavy, if the foundation layer has been properly made. Three inches is ordinarily required on a favorable soil, and four inches where the sub-soil is of clay or where for other reasons, the drainage is not thought sufficient.

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

With proportions of one of cement, three of sand and four of stone, while making no doubt a durable walk, there is an excess of mortar, in proportion to the voids in the stone.

Where gravel is used to form the concrete base, the usual proportions are one of cement to five or six of gravel. The gravel used in mixing concrete, should be free from clay, loam, or earthy material and should contain about thirty per cent sand. As there is apt to be some uncertainty as to the quality of the gravel and the uniformity with which sand is intermixed with it, a greater proportion of cement is required, than with a carefully adjusted mixture of cement, sand and broken stone.

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

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

Township Treasurer May Act as Deputy-Returning Officer.

243—ENQUIRER.—Is it legal for a township treasurer to act as deputy-returning officer at municipal elections ? I am aware that the municipal law states that an official of the township cannot enter into any contract. However, I presume that acting as such is not in contract form, but an allowance for services performed by him.

We are of the opinion that the treasurer can legally act as deputy-returning officer at the municipal elections in his municipality.

Ministers' Residence Not Exempt From Assessment and Taxation.

244—M. G.—Are church manses and parsonages exempt from taxation ?

Sub-section 3 of section 7 of the Assessment Act exempts from assessment and taxation "Every place of worship, and land used in connection therewith, churchyard or burying ground," but church manses and parsonages and all other residences of ministers are assessable the same as any other realty.

Tenants Voting Qualification. Effect of Failure to Make Declaration of Office.

245—K. C.—Re 208 last issue question 3. Should a non-resident tenant or leaseholder have a vote if he leases land for seven years at a time? Ans. If this tenant possesses the other qualifications required by section 86 of the Municipal Act, if he has resided in the municipality in which the election is held, for one month next before the election, and is, or his wife is, a tenant in the municipality at the date of the election, he is entitled to vote thereat. Beg to say that the above question referred to a leaseholder who is not a resident of the township at any time of the year, but simply leases land for the above named time, works it and pays his taxes in the ordinary way, same as non-resident owners.

1. How would sub-section 3 section 86 apply in this case ? 212 of last issue states "The fact that these officials have not made the required declaration of office does not render any of their official acts illegal." We know of cases where judges, it is said, voided official acts because declarations were not made. One judge held that a re-appointment required a new declaration of office.

2. Do you know of decisions supporting your contention ?

1. Sub-section 3 of section 86 does not apply to this case at all. It is confined to farmers sons. Sub-section 2 provides as follows,—"Farm" shall mean land actually occupied by the OWNER thereof, and not less in quantity than twenty acres," and sub-section 3 provides "any leaseholder the term of whose lease is not less than five years shall be deemed an owner within the meaning of this section." The combined effect of these two sub-sections is that if a man has a lease of not less than 20 acres of a term of not less than 5 years he is to be deemed an owner for the purpose of entitling his sons to vote provided they bring themselves within the other provisions of the Act.

2. We adhere to the answer quoted. In Lewis v. Brady (17 O. R. 377) it was held that the effect of a collector not having made and subscribed the declaration required by section 271 of the Municipal Act, R. S. O. chapter 184 (now section 312 of chapter 223, R. S. O. 1897) was not to make his acts void. Additional authorities to this effect are, Margate Pier Co. v. Hannan, 3 B and Ald. 266. Rex v. Justices of Hertfordshire, 1 Chitty, 700, and Town of Peterborough v. Hatton, 30 C. P. 455. The officers named in section 319 of the Act may, however, be liable to the penalties prescribed by that section for neglecting or refusing to make and subscribe the declaration of office within the prescribed time. We have no particular fault to find with the decision of the judge who held that a re-appointment to an office required the making of a new declaration. Although in Township of Adjala v. McElroy (9 O. R. 580) it was held that where a Treasurer was re-appointed annually for several years, the re-appointments were not equivalent to removals and re-appointments, but were rather a retention in office of the same treasurer.

Public Library Existing on Establishment of Police Village to be Continued.

246—J. I. P.—We established a public library in this place, a police village, in 1897 under section 23 of the Public Libraries Act, and elected our Board of Management under the law as it then stood and have elected them in the same way ever since, that is by vote of the members of the public library. Now in 1898 sub-section (1a) section 9 of the Act was passed making the police trustees and others selected by the school board in the police village the Board of Management of Libraries in police villages. Does this last named subsection apply to our case, or in other words is our present Board of Mrnagement illegally constituted, having regard to this later legislation ?

We are of opinion that section 4 a of the Public Libraries Act as enacted by section 1 of chapter 27 of the Ontario Statistics, 1898, and the other provisions of the latter Act have no application to the existing public library in your village. The Act of 1898 was passed in order to enable the inhabitants of police villages to establish public libfaries therein under the provisions of part 1 of the Public Libraries Act, in cases where public libraries had not been already established under part III. of the Act. We therefore think your present Board of Management is legally constituted.

Village Can be Divided into Sections for Commissioner's Purposes.

247—F. W. L.—Can our council pass a by-law dividing our village into four divisions, a councillor as commissioner for each division ?

If the council thinks it necessary, in order to more efficiently transact the business of the municipality, to divide the village into four divisions and appoint a councillor, a commissioner to oversee the work in each, it can do so. Sub-section 1 of section 537 of the Municipal Act empowers councils of villages to pass by-laws appointing such road commissioners as are necessary in the affairs of the corporation.

Rectification of Mistake in Drainage Payment.

248—X.—The adjoining township of M. served the head of our municipality with a copy of plans, report, etc., in connection with a drainage scheme in which the engineer assessed a few hundred acres of land in our township for outlet liability. The parties interested wished to avail themselves of the drain and the council promptly adopted the report. The clerk then proceeded to prepare the by-law and found that the amounts assessed against lands and roads in this municipality was not as much as stated in the report and paid over to the treasurer of M., the engineer's addition being wrong.

1. Which obtains, the amount asked for, or the amount provided for by assessment ?

2. In the latter case how are we to get our money back ?

1. We gather from your statement of this case that the initiating municipality (the township of M) was paid the amount shown by the engineer's report, to be payable by the servient municipality, before the latter had finally passed its by-law providing for the levy of the amount against the lands and roads against which it was charged. This was somewhat premature. The sum tnat the servient municipality should pay to the initiating municipality (M) is the correct amount charged against the lands and roads in the former municipality, not the erroneous total.

2. This amount having been paid by one municipality to the other under a mistake as to the facts can be recovered by the servient municipality from the initiating municipality, if the latter refuse to pay on demand, by ordinary action at law.

Effect of Defective Declaration of Property Qualification — Hour of Holding Nomination to Fill Vacancy.

249—Rex Manitoba.—1. In the declarations of property qualifications made by the councillors, the word "Her" preceding the word "Majesty" in the blank form used was not changed to "His". Does this invalidate the municipal business transacted by these councillors ?

2. One of the councillors has resigned. A meeting for the nomination of candidates to fill the vacancy thus created, has been called for 7.30 p. m., on the day appointed. Is this a legal hour for holding this nominating meeting, or should it be twelve o'clock noon ?

1. This objection to the declaration of office is a very frivolous one. The omission to make the change mentioned does NOT invalidate any of the business transacted by the council and under the authority of Lewis v. Brady, (17 O. R., 377.) Even the failure or omission of the councillors to make these declarations at all would not invalidate the municipal business done by them.

2. Section 214 of the Municipal Act provides that an election to fill a vacancy "shall in respect to notices and other matters be conducted in the same manner as the annual elections," but though it would have been better as a matter of precaution to have fixed the same hour as the hour fixed by the Legislature for the general annual elections, we do not think it illegal to fix a different hour in the case of a bye-election.

Auditors Should be Appointed by By-law No By-law Necessary to Confirm Engineer's Award.

250—Reeve.—1. Is it necessary to pass a by-law to confirm the appointment of auditors ;

2. Is it necessary to pass a by-law to confirm engineer's award under the Ditches and Watercourses Act ? If so, please state section.

1. Sub-section 1 of section 299 of the Municipal Act as amended by section 8 of chapter 23 of the Ontario Statutes, 1898, requires every council, at its first meeting in every year, to appoint two auditors, and this appointment should be made by by-law of the council.

2. No. Such a by-law would be a mere nullity.

Qualification of Reeve.

251—T. J. C.—Previous to the nominations for the office of reeve, councillors and school trustee in our township, which is in an unorganized district, the reeve held the dual office of reeve and trustee of public school, but his term as trustee having expired or would have expired on the 31st day of December, 1902, he was again nominated for reeve and trustee, and there being no opposition was declared elected reeve and trustee, but on learning that he could not legally hold both offices he declined to act as trustee and tendered his resignetion, which was duly accepted by the board and the secretsry notified the council to have the vacancy filled as provided by law. Now what I want to know is this, as there have been no proceedings taken to have the reeve disqualified and the seat declared vacant under the circumstances can the reeve legally hold office without first resigning and being re-elected ? I cannot find anything in the statutes covering this case.

The fact that the reeve was a public school trustee operated as a disqualification from holding a seat in the council and it became his duty to resign his seat in the council as provided by section 208 of the Municipal Act. Instead of doing so he ignored that section and resigned his position as trustee and retained his seat in the council. We may say, however, that so long as no complaint is made the acts of the council will be valid and the municipality will not suffer by reason of the reeve continuing in the council.

Disposition of Fines by Police Magistrate.

252—C. W.—Is the police magistrate allowed to pay the accumulation from fines into the town treasury in which he resides ? His district is not confined to the town, but also a part of the said county, but his office is in our town.

Fines and penalties received by justices or magistrates, are to paid over by them as specially directed by the particular statute under which the conviction is made. Formerly if no such provision was made the justice or magistrate was required to pay over the fines in the manner provided by section 806 of the Criminal Code but by the Dominion Statute, 1900, C 46 section 806 is repealed and a new section, 927, is substituted for that section of the original code, under the provisions of which all fines and penalties imposed and recovered by justices and magistrates and

the proceeds of all estreated recognizances are now to be paid to the Provincial Treasurer, if no other provision is made by the particular statute respecting the offence. From the foregoing it will be seen that whenever a fine is imposed resort must be had to the Act dealing with it and the fine must be applied in the manner directed and if there is no provision as to its application the fine must be paid to the Provincial Treasurer except as otherwise provided by chapter 107 R. S. O. 1897.

Appointment of Town Treasurer, Collector of Water Rates.

253—W. M.—Last evening our council met and appointed our treasurer, collector of water and electric light rates, giving him "something acceptable," viz., an increase of salary. It has been asserted by some who imagine they know more about municipal law than the man who made the book, that the council can not appoint him as such collector. Of course we know about not being allowed to collect taxes, but we have looked up the statutes and find nothing saying, he is disqualified to collect such rates. We would feel very much obliged to you for your opinion in the matter. Corporation owns the plants.

Subsection 1 of section 21 of chapter 235 (R. S. O., 1897) provides that "the corporation may from time to time make and enforce necessary by-laws, rules and regulations, for the general maintenance, management and conduct of the water-works and officers and others employed in connection with them, not inconsistent with this act and for the collection of the water rent and the water rate, and for fixing the time and times when, and the places where the same shall be payable." Sub-section 2 of section 40 confers the right to exercise and enjoy the powers, rights, authorities and immunities, conferred by the Act upon the corporation of the municipality, upon the commissioners when elected, but in view of the provisions of sections 22 and 23 it is doubtful whether the treasurer can be authorized to act as collector of these rates because section 22 provides among other things that in the event of the rate remaining uncollected and unpaid, and continuing a lien upon the premises the amount of the rate so in arrears shall be returned *by the collectors to the treasurer* of the municipality. The language of this section appears to contemplate the appointment of some other person than the treasurer as collector of these rates. If the council considers it convenient to have the water-rates paid into the treasurer's hand direct by the consumers of the water we see no harm in passing a by-law for that purpose, but we think that the council should formally authorize the ordinary collector to collect all water rates which are not voluntarily paid into the treasurer's hands so that he may take all other proceedings necessary to enforce payment of arrears and make the returns provided by the Act.

Sale of Crown Lands for Taxes—Councillor or Municipal Officer May Purchase at Tax Sale.

254—J M.—1. Can lands that have been located but allowed to run up in three years back taxes, be sold by the municipality? These lands have no improvements.

2. Is a councillor or any other municipal officer debarred from buying lands, sold for arrears of taxes, from the municipality he represents?

1. Yes, but by section 188 of the Assessment Act, it is provided that if the treasurer sells any interest in land of which the fee is in the Crown he shall only sell the INTEREST therein of the lessee, licensee, or locatee, etc.

2. The county treasurer in selling lands for arrears of taxes does not in so doing act as an officer of the county municipality, but as a persona designata performing a statutory duty independently of the county council. The same principle applies in the case of other officers authorized to sell lands for arrears of taxes, but such treasurer or other officer authorized to sell lands for arrears of taxes, cannot be a buyer himself, because it is against public policy to permit such an officer to be both a buyer and a seller.

Payment of Cost of Maintenance of Bridges Over Drainage Works.

255—W. H. N. In 1902 we constructed three cement bridges over tap drains. Our clerk made a mistake in the Assessment of said drainage area. Hence the trouble. It appears our clerk made out the assessment according to plans made out by engineer for cleaning out said tap drains, instead of the original plans of construction. My belief is that when tap drains are constructed, the drainage area should assume all costs of bridges, etc., but when they are worn out by travelling public they should be replaced by the people, or in other words cost of such bridges to come out of general funds, or could our council establish a bridge fund? Do you think my belief would be lawful if our council should carry such a motion? The error of our clerk has been rectified by our giving a rebate to the parties assessed.

If these bridges are crossing a public highway or the travelled portion thereof and were rendered necessary by the construction of the drainage works, the cost of their construction, enlargement or improvement should be apportioned by the engineer in his report between the drainage work and the municipality or municipalities having jurisdiction over such public highway, as to him may seem just. These bridges must thereafter be kept in repair by the municipality and the cost of such repairs paid out of its general funds. (See sub-section 1 of section 9 of the Municipal Drainage Act, R. S. O., 1897, chapter 226.) If the bridges are built over the drains between the highway and private lands, they shall, for the purposes of both construction and MAINTENANCE, be deemed part of the drainage work, and paid for pro rata by the lands and roads assessed for the construction or maintenance of such drainage works. (See sub-section 2). If these bridges are crossing the drain upon the lands of any owner, the lands and roads assessed for the drainage works, shall pay pro rata for their original construction or enlargement but neither the lands assessed for the drainage work nor the municipal corporation shall be liable for keeping such bridges in repair.

There is no objection to the council requiring its treasurer to open a bridge account in his books, and to charge all expenditure out of the general funds of the municipality on bridges to that account.

Compensation for Infected Articles Destroyed by Order of Local Board of Health.

256—R. B. C.—A number of school books were ordered to be destroyed by a medical doctor, who was sent here by the Provincial Board of Health.

1. Is a local Board of Health obliged to replace the books destroyed or pay for them, as they were ordered to be destroyed to prevent any contagion of small-pox?

2. Is a local Board of Health obliged to pay for any household goods ordered by any member or officer of the board to be destroyed to prevent any spreading of the said disease?

1 and 2. Section 100 of the Public Health Act provides that any local Board of Health MAY direct the destruction of bedding, clothing or other articles which have been exposed to infection, and MAY give compensation for the same. In the case of the Township of Logan v. Hurlburt (23 A. R. 628) the word "MAY" at the end of the fifth line of section 93 was construed to mean "shall" and it is probable that a similar construction would be placed upon this word in section 100.

Taxes to be Collected From Party Actually Assessed.

257—J. B.—1. Can we collect tax from a tenant who moved here since last assessment was taken, his name not being on the assessment roll, or must we return it unpaid to the council?

2. An owner lives on the property, but is very poor, has nothing but his household goods and very little of that. Are they not exempt from seizure for tax? What can we do in such a case?

1. Since this tenant is not "actually assessed" for the premises in respect of which the taxes are payable, and his name does not appear upon the collector's roll for the year as liable therefor, his goods and chattels cannot be seized and sold to realize the amount. (See sub-section 1 of section 135 of the Assessment Act.)

2. If the owner is "actually assessed" for these premises, and his name appears upon the collector's roll for the year as liable therefor, none of his goods and chattels are exempt from seizure and sale to satisfy the amount. The case may be a hard one, but the collector has no alternative other than to perform his duty in this regard as laid down in the statute. (See sub-section 3 of section 135.)

Finality of Assessment Roll.

258—S. C.—Last year the village and township were one in municipal matters. There is a Mining Company holds lands in the municipality, and at the Court of Revision last year held on June 3rd, 1902, the representative of the Mining Company appealed on over assessment. A reduction was made and the Mining Company paid their taxes last year (1902). Since then the village and township have separated in consequence of the village becom-

ing incorporated. That is, each has started municipal housekeeping for themselves separately. Now the Mining Company claim that last year (1902) they were assessed for much more land than they held in the municipality last year, and now claim a rebate from the township. The said Mining Company holds property in both village and township. Can the aforesaid Mining Company compel the township to make this refund, it being now a separate municipality, and the matter being adjusted last June?

The council of the township has no legal authority to make the rebate asked for by the Mining Co. Section 72 of the Assessment Act provides "that the roll (that is the assessment roll) as finally passed by the court, (that is the Court of Revision) and certified to by the clerk as passed shall, except in so far as the same may be further amended on appeal to the judge of the county court be valid and BIND ALL PARTIES CONCERNED, notwithstanding any defect or error committed in or with regard to such roll, or any defect, error or mis-tatement in the notice required by section 51 of this Act, or the omission to deliver or transmit such notice."

An Unauthorized Drain Along the Highway.

259—J. H. W.—A digs a ditch on the side of the public road, without permission of township council, along the front of his property, and the property of B who must cross this ditch to get access to his property. B caused tile to be placed in said ditch and covered with earth to enable conveyances to cross. A now claims that the ditch does not take the water off his property as fast as it should since B did this work.

1. Whose place is it to give B proper access to his property across said ditch?

2. Is it B's place to put in a larger drain where he crosses the ditch to get to his property?

1. A had no authority to dig the drain along the highway, and he is the person who should furnish B with a proper and sufficient approach over the drain to the latter's premises.

2. No.

This is a case where A should invoke the provision of the ditches and watercourses Act (R. S. O. 1897, chapter 285) when the rights of all interested parties could be properly adjusted.

School Section Having No School House.

260—T. B. M.—Our school section, No. 8, was divided last summer by arbitration and a new section formed to be known as S. S. No. 5. They held their annual meeting at the proper time, elected trustees, etc., but have not selected a site or made any offer to build a new school house, but still send their children to section 8 the same as if no new section had been formed. Now what we want to know is:

1. Is S. S. No. 5 entitled to the $150 from the township according to section 66, as they have no school house in their section, but using the school house of section 8 the same as if no new school section was formed, or can the trustees of No. 5 be compelled to build a new school house in their section when they can send their children to No. 8 the same as usual. S. S. No. 8 was not too large and we think should not have been divided.

2. Is No. 5 entitled to the Government grant, or how is No. 8 to collect from No. 5 for the support of the school, as they use our school, No. 8, the same as if no division had been made.

1. The section quoted is now section 70 of the Public Schools Act 1901. The municipal council should not raise the $150 mentioned in the section for school section 5, or a proportionate part thereof, as no public school has been kept open in this section for the whole year exclusive of vacations, or any part thereof. It is the duty of the trustees under sub-section 3 of section 65 of the Act to provide adequate acccommodation for two-thirds of the children between the ages of five and sixteen years resident in the section. They can be compelled by mandamus obtained from the courts to perform this duty.

2. By sub-section 2 of section 7 of chapter 38 of the Ontario Statutes 1901, the Minister of Education is empowered to divide alls sums of money apportioned by the Legislative Assembly, for public and separate schools, between public and separate schools according to the average number of pupils attending such schools respectively. Since there is no school in this section for pupils to attend, the section is not entitled to the legislative grant or any part of it. Sub-section 2 of section 95 of the Public Schools Act, 1901, provides that "the parents or guardians of such non-resident children shall pay to the trustees of the school to which their children have been admitted (under the provision of sub-section 1) such fees monthly as may be mutually agreed upon, &c. If the parents or guardians in this case will not agree to pay any fees to school section No. 8, or having agreed to do so, neglect or refuse to pay the fees, the trustees of school section No. 8 should not permit the children to attend their school.

Appointment of Members of Local Boards of Health—Seizure of Down Timber for Taxes.

261—REEVE.—There never was a Board of Health appointed in this municipality. At the first meeting of this year there was none appointed.

1. Can the council lawfully appoint a Board of Health at the next meeting? The statutes say the Board of Health shall be appointed for one year.

2. A is a non-resident holding land in this municipality. A sold the timber off the land to B. After the timber is cut would it be liable for taxes against said land? B claims that as it is his timber it is not liable for taxes.

1. Yes. The latter part of section 49 of the Public Health Act, (R. S. O, 1897 chapter 248), provides that "if for any reason, the appointments (of members of a Local Board of Health), are not made at the proper dates, the same shall be made as soon as may be thereafter." Your municipality being a township, one member of the Local Board of Health should be appointed for three years, another for two years and the third for one year. See sub-section 1 of section 48 of the Act.

2. We are of the opinion that B is right in his contention because standing timber is part of the land upon which it grows and cannot be distrained and sold for taxes and B having as we understand it bought the timber standing, we do not think the tax collector's powers are enlarged so as to give him the right to distrain it after it is cut down.

Mode of Hauling Square Timber.

262—W. S.—I would like to know if it is against the law to draw a square timber on one bob or sleigh on public road when good sleighing?

No.

Non-Resident's Statute Labor.

263—X.—Mr. A. is assessed as a non-resident on the resident roll for $175, but occupies a summer cottage for only a few weeks every year. This man's name is entered on the resident assessment roll with N. R. in column 6, therefore cannot claim the right to have statute labor commuted at one-half per centum as per section 102 (2).

1. Am I right?

2. Has Mr. A. the right to serve the clerk with the necessary notice requiring his name placed on the non-resident roll?

1. A being a person assessed upon the assessment roll of the municipality is liable to perform statute labor according to the ratio in vogue in the municipality in accordance with the provisions of sub-section 1 of section 102 of the Assessment Act. Sub-section 2 does not apply to his case.

2. If A is not satisfied to allow his name to remain on the resident assessment roll, he should appeal within the time prescribed by statute to the court of revision to have his name struck off the resident roll and his property entered on the non-resident roll. If he does not do this, he has no redress.

Closing Road Allowance—Renewal of Township Note—Filing Requisition for Engineer Under Ditches and Watercourses' Act.

264—X. Y.—The township council posted notices, and advertised in the usual way, for closing and selling a road allowance which has not been in use for twenty years. At the meeting of council for hearing those for and against, one person whom I will call C, objected for the reason which I hereby specify: 1. That the road is needed for driving cattle to the river for water. 2. For getting building sand for the use of the public, as there is a pit on the river B. 3. That it has been open to the public for fifty years, and statute labor has been performed on it.

1. Is the township obliged to keep road open for watering cattle.

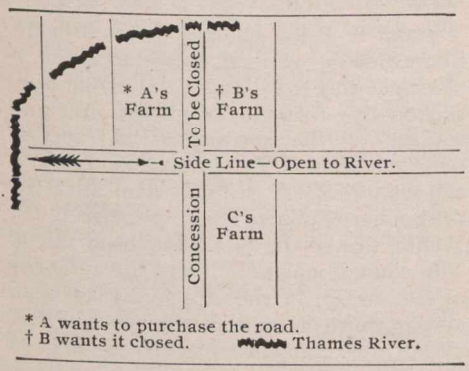
2. Is the township bound to keep road open for the public to get sand from bank of river?

3. If a person drove down this road and fell into the pit that the public has dug, would the township be liable for damages, there being no fence?

4. In 1902 the council passed a by-law authorizing the reeve and treasurer to borrow $1.000 from A for ten months at five per cent interest, giving note due February 10th when due, not having money to pay, the council by resolution, authorized the reeve and treasurer to renew the note. Is this legal, or should the by-law be renewed?

5. In the fall of 1902, A, wishing to have a ditch constructed under the Ditches and Watercoures' Act, gave notice to all interested parties to meet and agree if possible. The meeting was on the18th day of December. It was agreed that it would require an engineer to

lay out the drain, and A was to send requisition to the engineer, but winter set in and he did not proceed any further. Now A wishes to have engineer to come and lay out the ditch. Will it be legal to send requisition now, or will A have to begin again?



* A wants to purchase the road.
† B wants it closed. Thames River.

1. No.

2. No.

3. Yes, unless the municipality could show that the accident was caused by the negligence of the party who sustained the injury.

4. It is not stated whether this money was raised to meet the current expenditure of the municipality for the year 1902 under the provisions of sub-section 1 of section 435 of the Municipal Act or not. If it was the note should have been paid when the taxes for 1902 were collected, and its payment cannot legally be extended beyond that time by by-law or resolution of the council. If it was not raised for this purpose and was not to be paid within the year in which it was raised the by-law could not have been legally passed without first having received the assent of the electors of the municipality. (See sub-section 1 of section 389 of the Act).

5. If all this proceedings leading up to the filing of the requisition have been properly taken under the Ditches and Watercourses Act, and owing to the intervention of the winter months, inclement weather or other sufficient cause, the construction of the drain cannot be presently proceeded with, and the owner starting proceedings has not in terms or in effect abandoned them, he may file this requisition, without beginning these proceedings again.

Proceedure at Council Meeting—Killing of Stray Dogs—Assessment of Threashing Outfit—Appointment of Drainage Inspector—When Dog is Assessable.

265—SUBSCRIBER.—For the purpose of appointing a township assessor this year, our council moved that the reeve vacate the chair and one of the councillors take it, which was done. Then there were two motions made by the council, one motion for each of two men. The councillor in the chair declared both motions lost, then he made a motion for another man, but could not get a seconder. Then the same two motions were made over again and he declared them lost, and so on until one of the applicants withdrew.

1. Did the chairman discharge his duty or should he have declared one of the two elected, when there were only two motions before the board?

2. Is there any statutory law for a person killing a dog straying on his premises between sunset and sunrise, without a by-law to that effect in the township?

3. What is the amount that a man can have invested in a threshing outfit and be exempt from taxation?

4. What is the meaning of sub-section 2 of section 78 of the Drainage Act, 1894? Does it mean that the council only has power to appoint one inspector for the township, and one for each drain, or as many drains as they see fit?

5. Is there any decision by the courts at what age a dog is liable to assessment? It seems wrong to a good many that little pups, say one month old, should be assessed.

1. The chairman had a right to vote upon these motions as he thought best and was quite right in voting against them both, if he saw fit to do so.

2. If the premises are farm lands, clause (c) of section 9 of chapter 271, R.S. O., 1897, empowers any person to kill any dog which any person may find straying between sunrise and sunset on any farm *whereon any sheep or lambs are kept*, but this does not apply to any dog which belongs to or is harbored or kept by the occupant of any premises next adjoining the farm on which it is found straying or next adjoining that part of any highway or lane which abuts on said farm, nor any dog so straying when securely muzzled, or when accompanied by or being within reasonable call or control of any person owning or possessing, or having the charge or care of such dog, unless there is reasonable apprehension that such dog if not killed is likely to pursue, worry, wound or terrify sheep or lambs then on the said farm.

3. A threshing outfit is personal property. If its value is less than $100 (which is not probable), it is exempt from assessment and taxation under the provisions of sub-section 25 of section 7 of the Assessment Act. If its value is more than $100, it is exempt only to the extent of the just debts, owed by the owner on account of the property.

4. Sub-section 2 of sub section 78 of chapter 226, R. S. O., 1897, empowers the council to appoint AN inspector for the purposes mentioned in the preceding sub section, etc. This means that the council has power to appoint one person as drainage inspector under this section for the whole township.

5. No. A dog is a dog as soon as it is born and liable to assessment and taxation under the statutes in that behalf.

By-law Providing for Purchase of Fire Engine, Etc.—Remuneration of Town Councillors.

266—T. C.—Our council intends passing by-laws to issue debentures to buy fire engine (now rented) and to build a new fire hall.

1. Is the petition necessary from the ratepayers before they can legally do so, if a vote is not intended to be taken?

2. How many signatures must there be on petition?

3. How long would by-law for the issue of debentures be required to be published before being passed?

4. Can town councillors in Nipissing collect the three dollars or under per meeting they attend if a by-law is passed to that effect?

1 and 2. There is no provision in the Municipal Act regiving a petition of the ratepayers when the intention is to purchase a fire engine at the expense of the whole municipality. A petition is necessary where it is intended to provide fire protection for a particular area or section of a town or village. See section 544 of the Municipal Act. As we understand it, it is the intention to buy a fire engine at the expense of the whole municipality and to issue debentures running over a number of years to raise the money necessary to pay for the engine and fire hall and if that is the case the proceedings laid down by section 338 and following sections of the Municipal Act mnst be taken.

3. Sub-section 2 of section 338 of the Act prescribes the time during which the by-law must be published.

4. Sub-section 1 of section 538 of the Municipal Act empowers council of township and counties to pass by-laws providing for the payment of members of the council, and sub-section 2 confers similar powers on councils of certain cities. Section 280 auth rizes the payment to the HEAD of the council of any county, city, TOWN or village of such annual sum or other remuneration as the council of the municipality may determine, but nowhere is there any power conferred on council or TOWN to pay the councillors any remuneration for their services as such.

Report of Provincial Auditor.

267—A. M.—I see in your March number Question 202, clause 3, and which is answered very satisfactorily as far as it goes. The question now asked is, after the Provincial Auditor has investigated, should the public have the result at once, and should the municipal council be made acquainted with the facts of the case?

Section 13 of chapter 228, R. S. O., 1897, provides that "the Provincial Auditor or any other person making an audit, inspection or examination, under this Act, shall report thereon to the council of the municipality, and to the Lieutenant-Governor, etc." This report should be made by the auditor as soon as possible, and filed with the clerk of the municipality (who is the proper custodian of all municipal records), where it would be open to inspection by any person, at any reasonable time, the same as any other public document which is the property of the municipality.

By-laws Relating to Cattle Running at Large—Witness Fees of Professional Men—Culverts on Drains—Closing of Road Allowance.

268—C. A. J.—1. Can a township couucil legally pass a by-law and will the by-law be legal to allow cattle to run at large in the township?

2 Can a township council pass a by-law now repealing a by-law passed some years ago allowing cattle to run at large, said by-law to come into effect the first day of December next, or could they leave it to a vote of the ratepayers next January?

3. Can a ratepayer or ratepayers compel the council to prohibit cattle from running at large

in the township, there having been a by-law passed some years ago allowing them to run ?

4. Can professional men, such as doctors and surveyors, collect higher fees than business men or farmers for attending at court as witnesses ?

5. Can a council legally close up a culvert crossing a drain, when constructing another drain crossing the former one ?

6. Can a party assessed for said drains compel the council to open up said culvert, claiming the closing of said culvert dams water back on his land ?

7. Can a council close up a portion of an old Government road angling across a concession, there being a side road to open up near by and no use for both roads, and the party whose land it angles across being willing to have it closed ?

1. Yes.

2. The council can pass such a by-law, and it is not necessary to submit it to the vote of the electors, nor would the council be legally justified in doing so.

3. No.

4. Yes.

5. and 6. We must have a definite statement of all the circumstances in connection with this case, before we can answer these questions.

7. Subject to the provisions of sections 627, 640 (sub-section 11) and 660 (sub-section 2) of the Municipal Act, the council is authorized by section 637 of the Act to pass a by-law for the closing of the road, after having taken all the preliminary proceedings prescribed by section 632.

By-law Closing Road Allowance.

269—I. S.—In this township about four years ago, it being understood that the council intended closing a certain piece of road allowance not in use for travel, one of our ratepayers wrote our council objecting to this road being closed, also a petition was sent in signed by a number of ratepayers asking for the road to be left open. Shortly after the two parties most interested left the township for a short time, and in their absence the council passed a by-law closing the road. The by-law of course was advertised and published to the extent that the law requires and also confirmed by the county council. There were no objections made at the time, as the parties being most interested were not aware of what was taking place.

1. Is a by-law passed on these conditions or under such circumstances legal ?

2. If the by-law is legal, has a council power to repeal it and re-open the road ?

1. It all the proceedings leading up to the passing of this by-law were regularly taken and the by-law properly drawn, the fact that objection were raised to the closing of the road, and that the by-law was passed in the absence of interested parties will not render it invalid. If the council considered it in the public interest to close this road, they could do so, assuming, of course, that all proceedings prescribed by the Municipal Act in this regard have first been observed.

2. We are of opinion that the council cannot re-open this road by simply repealing the by-law providing for closing it up. If the council desires to establish a road in the place where the closed road was formerly, it must take the proceedings prescribed for opening and establishing roads, by the Municipal Act.

A Ditches and Watercourses Drain.

270—D. R.—Two years ago A applied to municipal council to have ditch constructed under Ditches and Watercourses Act through lands of B and C. The work was proceeded with. Each party did his portion as per engineer's award. No appeals were made. Now the course of this ditch runs for about 70 rods at or near the line between the lands of B and C. This line was not run, part being bush, on both lands with no line fence, and part cleared with fence that was built in early years with many winds in it. The engineer's award states that the ditch is to be on C's land clear of the line. B now finds that the ditch is on his land and says he will fill it in and compel C to construct it on his land according to engineer's award, A is about to apply to council again claiming that ditch is improperly done, in that it is not deep enough to take water off his land.

1. What is the function of the council with regard to the 70 rods of this ditch that is not on right lands as by engineer's award ?

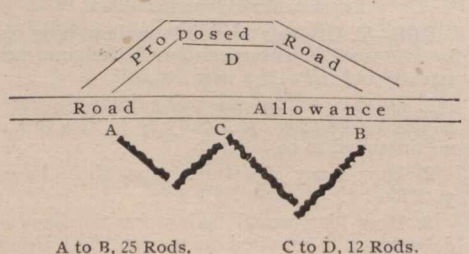
2. Must this ditch be maintained where it is now, or can B compel C to construct another ditch ?

1. We do not see what the council had to do with this drain, unless by the terms of the award, it was required by the engineer to make and maintain a portion of the drain. A seems to have been the person who required the construction of the drain to take the water off his lands, and it should have been in the first instance, and should now, be left to him to institute and carry on the proceedings authorized by the Ditches and Watercourses Act. We do not see that the council has anything to do with the matter. If the engineer, in his award, requires the municipality to construct and maintain a portion of the drain that is the extent of their interest.

2. We presume that this drain was constructed in the course staked out by the engineer, and designated in his original award, if so, it must be maintained in this course unless and until it has been changed by award made as a result of proceedings instituted pursuant to the provisions of section 36 of the Ditches and Watercourses Act and B cannot, in the meantime, compel C to construct another drain.

Closing Old Road and Opening New.

271—R. N. B.—The council of the township of S. propose to put in shape for public travel an original road allowance for road at present opened and fenced. Two deep ravines crossing



the road and affecting about 20 rods of the same will require to be filled or bridged at a cost of probably $200.

1. Have the council power to expropriate the adjoining lands in order to make a road around those ravines, said land being valued at $20 per acre ?

2. If they have the power how should they proceed ?

1 and 2. If the council deems it in the interest of the general public to do so, it can close this road, under the authority of section 637 of the Municipal Act and subject to the provisions of section 629, sub section 11 of section 640 and sub-section 2 of section 660, after the preliminary proceedings prescribed by section 632 of the Act have been taken. The council may also, under the authority of section 637 of the Act by by-law open and establish a road in the place of that closed up, compensating the owners of the lands taken and used for the purpose. If the council and owners of the lands taken cannot agree upon the amount of the compensation to be paid, the matters in difference are to be settled by arbitration pursuant to the provisions of section 437 of the Act.

Construction of Drain on Railway Lands.

272—C. R. W.—A spur line of railway was constructed by the railway company from the main line to a stone quarry about three miles distant. The quarry is no longer used and the rails and ties were taken from the spur line some time ago, and it is no longer used as a railway nor is it likely to be ever used for that purpose again. The portion we are interested in (4 rods wide and 120 rods long) has been used for a pasture field for the last two or three years.

1. Would it be legal to proceed under the provisions of the Ditches and Watercourses Act (not the railway D. and W. Act) to have a drain constructed crossing said spur line property ?

2. If so, would the railway company be liable for its share of the work and maintenance, the same as private owners, as provided by section 16 of the Act ?

3. Would the railway company be exempt from liability under section 10 of the Railway Ditches and Watercourses Act, notwithstanding the fact that the land exempt is really a pasture field, not a railway ?

1. Notwithstanding the fact that this strip has ceased to be used for the purposes of a railway roadbed, it is still land belonging to a railway company and as such is subject to the provisions of section 21 of the Ditches and Watercourses Act, (R. S. O. chapter 285), and of chapter 286, R. S. O., 1897. A reference to sub-section 1 of section 5 of the latter Act will show that it applies only to the deepening, widening and extending of an existing ditch, creek, drain or watercourse bridge or culvert, or to the construction of a new BRIDGE or CULVERT, and not to the CONSTRUCTION of a new drain across or through railway lands. It therefore cannot apply to this case. Before a drain can be constructed across or through these lands an agreement will have to be entered into under and proceedings taken in accordance with the provisions of section 21 of the Ditches and Watercourses Act.

2. No. See section 21 of the Act.

3. As we have stated above, the provisions of the Act do not apply to this case, and even if the circumstances were such that they did, the lands being still the property of the railway company, the latter would not be liable for the cost of any work performed thereon, under the provisions of the Act. If the proceedings are taken under the Ditches and Watercourses Act, the railway company will be only responsible for carrying out the agreement it may see fit to enter into under the provisions of the Act. In answering the above questions we are assuming that the railway in question is one under the jurisdiction of the Parliament of Canada and we may say that there are very few railways in Ontario that are subject to the Legislative Assembly of the Province of Ontario.

Returns to be Made by Collector.

273—E. D.—What is the latest date on which a collector should make his return of unpaid taxes of the previous year in order to protect himself from liability for not distraining where there are sufficient chattels out of which the taxes could be realized? Also the latest date on which returns should be made against properties whether resident or non-resident in order to comply with the statute regarding properties which may be sold for arrears of taxes?

Sub-section 1 of section 144 of the Assessment requires a collector to return his roll to the treasurer on or before the 14th day of December in each year, or on such day in the next year, not later than the 1st day of February, as the council of the municipality may appoint. Sub-section 1 of section 145 provides that "in case the collector fails or omits to collect the taxes or any portion thereof by the day appointed or to be appointed, as is mentioned in section 144, the council of the town may, by resolution, authorize the collector, or some other person, to continue the levy and collection of the unpaid taxes, etc." The effect of these provisions and of the judgment in the case of Holcomb v. Shaw, (22 U. C. Q. B., p. 92), is that so long as the collector is in possession of the roll, he can legally enforce payment of the taxes thereon by distress, and he is not bound to return the roll, until the expiration of the time for which the council of the municipality has by resolution allowed him to retain it. The collector should see that all ratepayers pay their taxes within fourteen days after notice or demand, (as the case may be), and if they do not, after the expiration of the fourteen days, he should enforce payment by distress and sale of the goods and chattels of all delinquents, if such a course be necessary. If any portion of the taxes is lost by the neglect of the collector to perform this duty he and his sureties can be held responsible. A return of the roll by the collector to the treasurer, in accordance with the provisions of sections 147 and 148 of the Act at the expiration of the time for which he has been allowed by the council to retain the roll, is all that is necessary to satisfy the requirements of the statute in this behalf. (See also our article on "Return of Collector's Roll—Collector of Taxes on page 96 of the Municipal World for 1899).

Assessment of Money in Bank.

274—G. S. W.—As assessor of the village of M. I wish to ask you to tell me how to assess, or the proper way to assess, a man living in this village who has $20,000 in a bank in an adjoining municipality?

By sub-section 10 of section 2 of the Assessment Act it is provided that the words "personal property" include "money." If the party referred to has no place of business he should be assessed for the $20,000 in the village of M., where he resides. (See section 42 of the Assessment Act). If he has one place of business, he should be assessed for it, where he carries on his trade, profession, or calling. (See sub-section 1 of section 41). If he has more than one place of business he should be assessed in the manner set forth in sub-section 2 of section 41.

Liability to Build Line Fences—Reeve's Qualification—Collection of Wages.

275—RATEPAYER.—1. Does a person buying a road allowance have to help to build and keep up fences on the sides of the land that was the road allowance, or do the parties that owned the farms have to keep them up?

2. The private banker mentioned in my question No. 109, (February issue 1903) says he can be reeve, as he does not handle the money for the village, but for the treasurer.

3. A party takes a girl when she is about thirteen years old, and she lives with him until she is twenty-five years old. She receives no pay, only a few clothes. Can she collect wages before or after she becomes of age?

1. The purchaser of the road allowance and the owners of lands adjoining it, should make, keep up and repair a just proportion of the line fences, between their respective properties, as provided in section 3 of the Line Fences Act. (R. S. O., 1897, chapter 284.) If they cannot agree upon this proportion the fence viewers should be called on to make an award between them under the Act.

2. This man is handling the moneys of the municipality of which he is reeve and he has no legal right to do this and at the same time fill the office of reeve.

3. No. Unless some agreement to that effect, has been entered into between the parties. She must prove an agreement before she can recover.

Sale of Free Grant Lands for Taxes—A Discriminating Poundage By-Law.

276—P. J. F.—1. Can free grant land in Muskoka, that has been located but not improved, be returned to the sheriff and sold for arrears of taxes?

2. Municipalities in this district are doing so. Is it legal or not?

3. We have a town in about the centre of our township. They have a by-law forbidding cattle to run in said town. The cattle of said town run altogether in township, to the annoyance of the farmers living on the border of the town. In township, cattle are allowed to run, but we want to keep the town cattle from running in the township. How shall we proceed?

1 and 2. Section 186 of the Assessment Act provides that "no sale for taxes shall be made of unpatented lands in the free grant districts where the taxes due thereon are less than $10, if the lands have not been before the 27th day of May, 1893, advertised for sale, nor where no bona fide improvements have been made by or on behalf of the locatee," and section 188 enacts that "if the treasurer (in this case the sheriff) sells any interest in land of which the fee is in the crown, he shall only sell the interest therein of the lessee, licensee, or locatee, etc."

3. The municipality cannot legally pass a by-law discriminating against the cattle of the town people or any other particular class. A by-law of this kind should apply to all cattle of the class or classes mentioned in the by-law and should operate generally and equitably.

General School Levy Should be Raised for Each School in Township.

277—G. F.—A certain school section in this municipality has three school houses, which they keep open through the year. They have, up to date, received from the township treasurer $150 for a general school rate for each school. Now the statute does not seem to be very plain as to this. Do you think the township is bound to raise more than $150 general school rate for any one school section? If so a large section could go on multiplying schools indefinitely at the expense of the rest of the municipality.

Sub-section 1 of section 70 of the Public Schools Act, 1901, provides that "the municipal council of EVERY township shall levy and collect, etc, the sum of at least $150 for EVERY public school which has been kept open the whole year exclusive of vacations," and where the school has been kept open for six months or over a proportionate amount of the said sum of $150 at least shall be levied and collected for each such school. If the schools mentioned have conformed to the requirements of this sub-section, the trustees are entitled to receive from the township the sum of at least $150 for EACH SCHOOL, or a proportionate part of such sum, according to the length of time over six months they have been kept open during the year.

Acting Treasurer Should not be Appointed Collector.

278—T. W. T.—C. E. Y. is our treasurer, and all cheques are signed by her, but her father G. M. Y., is the acting tresurer. Under those circumstances would it be legal for him (G. M. Y.) to be appointed collector of taxes and act in that capacity, by him furnishing separate sureties?

If the council of the municipality officially recognizes G. M. Y. as its acting treasurer, he cannot be appointed collector while acting in that capacity. See sub-section 1 of section 295 of the Municipal Act. But if he is simply acting as attorney or agent for C. E. Y. in her private capacity, we see no objection to such appointment.

Legal Department

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

Slinn v. City of Ottawa.

Judgment on motion by plaintiff to set aside judgment of non-suit and for new trial. Action in the county court of Carleton to recover damages for injuries alleged to have been sustained by plaintiff who carries on a bakery business on lots 16, 17 and 18 on the west side of Creighton street, in Rideau Ward, in the city of Ottawa. At the rear of plaintiff's property there has been for a number of years along the side of the Rideau river a high embankment, upon which is the track of the Canadian Pacific Railway Co., and which has protected the adjacent property from being flooded in the spring of the year. The defendants, O'Leary & Robillard, contractors, in the year 1899, constructed a section of the main drain in the ward, and in carrying the drain under the embankment left a large excavation or opening in it, negligently as alleged, through which water flowed and caused the damage. The trial judge held that the plaintiff had not showed that there was any duty by the defendants to the plaintiff in respect of the matters in question for breach of which he could recover; that plaintiff had not shown that he had an individual right to have the embankment maintained, and that there was not such evidence as to an agreement between the corporation of the village of New Edinburgh and the C. P. R. Co. that the embankment should be built and maintained at a certain height and of the expenditure of public money to that end upon which a jury could be directed, and that even if there had been such evidence the plaintiff had no right of action for breach of such agreement. Held that the trial judge having dispensed with the jury and grappled with the whole case himself the question is not whether there was evidence to go to a jury, but whether the conclusion of the judge was correct. After a perusal of the evidence the court is of opinion that the water that did the injury did not come through the cutting made under the railway in the construction of the sewer by defendants but water that flowed over the railway dyke owing to a freshet, and in such a case the defendants are not liable. Appeal dismissed with costs.

Brown v. City of Hnmilton.

Judgment in action for damages for the permanent loss of the use of plaintiff's left eye owing to the negligence of defendants, who, he alleges, contrary to by-law No. 30, section 84, allowed, permitted and licensed an unlawful and dangerous display and use of fireworks on the market square and at the city hall and on the steps of the latter, and the streets, sidewalks in the latter. The plaintiff was travelling in a street car when he was struck by a portion of explosive substance, a Roman candle, which was being set off by some one in a procession. The by-law was passed under the authority conferred by the Municipal Act. Held, that the passing of the by-law by the defendants was an exercise of the delegated sovereign power entrusted to municipalities, a function the exercise of which is discretionary. The city is free to enact and repeal and re-enact, but having enacted there is no duty cast upon the city to see to its enforcement; that rests with anyone who desires to have it carried into effect; Back v. Holmes, 56 L. T. 713. The decision in Forget v. Montreal, 4 S. C. R. 77, shows that at most the failure to intervene and stop the procession is mere misfeasance. The case cited from the State of Maryland, U. S. A., is opposed to all other American, English and Canadian authorities. The observations of Gwynne, J., in Montreal v. Mulcair, 28 S. C. R. 469, are much in point. Action dismissed with such costs as would be taxed had the point been dealt with as on demurrer under rule 373.

Re Salter and Township of Wainfleet

Judgment on motion by a ratepayer of the township to quash local option by-law No. 328, passed under section 141 of the Liquor License Act. Held that the by-law must be quashed on two grounds, (1) that directions to voters from schedule L, as required by sections 142 and 352 of the Municipal Act, were not furnished to the deputy returning officer. Voters are entitled to the information and direction which the statute provides, and ballots may have been wrongly marked and counted, although in no way spoiled, nor is the omission cured by section 204. It cannot be said, at all events the court ought not to be called upon to say, in the absence of any record before it of what the council did or intended to do in regard to conducting the voting in accordance with the principles laid down in the Act, how the result was affected. (2) That the council did not post up a copy of the by-law at four or more of the most public places in the municipality, the affidavit of proof not showing the time of posting, the person or persons who put up the notices, the time when or the authority for the posting, but the deponent merely swearing that he saw the notices at certain places. Costs to applicant, but not of objections on which he fails nor costs of affidavits showing the qualifications of voters.

Rex. ex Rel. Tolmie vs. Campbell.

Judgment on application by relator for order setting aside election of respondent D. Campbell as reeve of Township of Aldborough, County of Elgin, on the main ground amongst others that each of thirty or more electors received a ballot paper and voted for reeve at more than one polling place in said township at said election. Held, following Woodward vs. Sarsons, L. R. I. O. C. P. 744, that the general principle to guide the courts in such cases is that the election should be set aside if a judge, without being able to say that a majority had been prevented, should be satisfied that there was reasonable ground to believe that a majority of the electors may have been prevented from electing the candidate of their choice. Held, also, that there is not in this case reasonable ground for believing that the result would be different if all illegal votes could be struck off. There being no actual proof in this case that more than four persons voted more than once, held that it cannot be presumed, as against the respondent, that every elector who received a second ballot paper after having once voted actually deposited it in favor of respondent. Order made dismissing motion, but without costs, as the facts are somewhat unusual, and as there was possibly double voting on both sides.

McClure v. Township of Brooke; Bryce v. Township of Brooke.

Judgment on motion by defendants for leave to appeal from the judgment (1 O. W. R. 274) of a Divisional Court (Falconbridge, C. J., Street, J.), allowing the plaintiffs' appeal from an order of Meredith, C. J., staying proceedings in these actions and refusing to direct references to the Drainage Referee, as a referee under section 29 of the Arbitration Act. The Divisional Court held that the Drainage Referee was an official referee within the meaning of the Arbitration Act. Held, that there is a plain and weighty reason for giving leave to appeal in this matter, viz., that the judgment in question involves the status, jurisdiction and authority of a judicial officer and the validity of proceedings which may be taken by him hereafter under the order of the Divisional Court. Plausible reasons have been suggested against the view of the Divisional Court. Order made granting leave to appeal on the usual terms

Wason v. Douglas.

Judgment in action for damages for trespass and for injunction restraining defendant from further trespassing on plaintiff's land, part of lot 12, in the first concession of the township of Dummer in the county of Peterborough. Both plaintiff and defendant derive title from a common grantor; their respective paper titles are undisputed. The main question is as to the boundary line between the land of each party. Held, that the middle of the creek or stream called the Blind River is the true and correct southerly limit or boundary of the plaintiff's land, and that such limit runs along the middle of the most southerly of the said channels at high-water mark. Judgment for plaintiff for $5 and costs. Thirty days stay.