THE MUNICIPAL WORLD

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

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Contents:

Calendar for July and August, 1902.

Legal, Educational, Municipal and Other Appointments.

JULY 1. Dominion Day (Tuesday.)
All wells to be cleaned out on or before this date.—Section 112, Public Health Act, and Section 13 of By-Law, Schedule B.
Last day for Council to pass By-law that nominations of members of Township Councils shall be on Third Monday preceding the day for polling.—Municipal Act, Section 125.
Before or after this date Court of Revision may, in certain cases, remit or reduce taxes—Assessment Act, Section 74.
Last day for revision of rolls by County Council with a view to equalization.—Assessment Act, Section 87.
Last day for establishing new High Schools by County Councils.—High School Act, Section 9
Treasurer to prepare half-yearly statement for council.—Section 292, Municipal Act.
Treasurer to prepare statement of amount required to be raised for sinking fund to be laid before Council previous to striking annual rate.—Municipal Act, section 418, (4)
Last day for completion of duties of Court of Revision.—Assessment Act, Section 71, sub section 19.
5. Last day for service of notice of appeal from Court of Revision.—Assessment Act, Section 75.
Make returns of deaths by contagious diseases registered during June.
15. Last day for making returns of births, deaths and marriages registered for half year ending 1st July.—R. S. O., Chapter 44, Section 11.
20. Last day for performance of statute labor in unincorporated townships.—Assessment Act, Section 122.
31. Last day to which judgment on appeals, Court of Revision, may be deferred, except as provided in the Act respecting the establishment of Municipal Institutions in territorial districts.—Assessment Act, Section 75, sub-section 7.

AUGUST. 1 Last day for decisions by Court in complaints of municipalities respecting equalization.—Assessment Act, Section 88, sub-section 7.
Notice by Trustees to Municipal Council respecting indigent children due. Public Schools Act, Section 65, (8); Separate Schools Act, Section 28, (13.)
Estimates from School Boards to Municipal Councils for assessment for school purposes, due.—High Schools Act, Section 16, (5); Public School Act, Section 65, (9); Separate Schools Act, Section 28, (9); Section 28, (13.)
High School Trustees to certify to County Treasurer the amount collected from County pupils.—High Schools Act, Section 16, (9.)

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

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THE MUNICIPAL WORLD,
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ST. THOMAS, JULY 1, 1902.

The village of Alexandria is seeking incorporation as a town.

* * *

Mr. R. J. Fletcher, of Barrie, has been appointed clerk of the county of Simcoe, to succeed Mr. R. T. Banting, deceased.

* * *

The electors of the town of Welland have passed a by-law exempting the Canadian Steel Co. from taxation for twenty years.

* * *

From Germany comes the statement: "It depends on the state of roads to improve the soil, to put to profit the forests, mines and industrial plants."

* * *

Under municipal ownership, the water works system of Berlin has proved to be an unqualified success, and this should lead the property owners to take over the lighting plants of the town and operate them.—News-Record.

* * *

A board of county judges, composed of county judges McDougall, of Toronto, McGibbon, Brampton, and McCrimmon, Whitby, in the case of re Toronto Railway Company and the city of Toronto, some time ago, held that, under the Assessment Act, the trolley cars of the company were assessable as part of or attached to the real estate of the company, applying the principle laid down in the case of the Bank of Montreal vs. Kirkpatrick, (2, O. L. R., 113.) The Toronto Railway Company appealed from this d cision to the Court of Appeal for Ontario, and on Saturday this court handed out its decision, dismissing the company's appeal with costs, and following its own decision in the case cited.

Municipal Debentures and the Money Market.

By Messrs. G. A. Stimson & Co., Debenture Brokers.

The relationship of the debenture and money market is very close, and municipal officers generally watch with interest the course followed in these matters. A year ago it was rather expected, especially if the war came to a close, that money conditions would be slightly more favorable, and municipal securities advance, correspondingly in value. This, however, has not been realized. The fact is cessation of war operations was fully discounted long before the declaration of peace, and money rates have therefore continued, with the exception of a few ups and downs, due to speculative operations on much the same basis as was recorded for last year.

The English money situation will always have a certain bearing upon Canada, and it is more effective in our interests than that of the American market. The money in England has been absorbed argely in the borrowings for war purposes, and also it is going freely into the development and restoration of business in South Africa. This, in addition to the local demands, which have been held back pending favorable opportunities to place them, will, we think, keep the English money market for some time to come in its present condition. We do not look for any special demand for Canadian securities, there for at least some time, owing to the above mentioned situation. So far as Canada is concerned it was thought that our commercial activity had reached the top of the hill last year. It is now a question if the business of this year will not exceed that of last, thus demonstrating that the top of this commercial wave is not yet at hand. There has never been perhaps in the history of our country such an inrush of settlers as is now taking place in Manitoba and the Northwest, and the extra demands by this large increase will maintain business and commercial operations in the East to their full capacity. Should the present favorable crop outlook continue and a similar result be obtained to that of last year, it is hard to estimate what effect such accumulation of surplus wealth will have. It is not likely to act otherwise than favorably upon all business, and therefore for another year at least, we feel safe in counting upon equally good times. Good times, however, are not to the advantage of the municipalities obtaining better prices for their debentures. It is in good times that the investor has many more and attractive opportunities to invest his surplus, and owing to success, he is willing to take a little more risk for the sake of a greater return. Debentures sell at the best figures when other classes of investment are uncertain and times generally bad. We think, however, that the municipality should be willing to accept the proposition as it now stands, because the slight difference in value as to their debentures is not for a moment to be considered as comparing with the wonderful advantages to the country at large during the prosperous conditions. Since the last low interest rates, which prevailed for municipal securi ies, there have been a number of changes relating to investment, which will, to our minds effect largely the value of such securities. We refer more particularly to the extended privileges afforded by parliament to large monetary institutions for investment of their funds. The range now covered in this particular is very extensive, including, as it does almost every well established class of trade. The stability and earning capacity of our leading lines of railway and industrial enterprises will always keep them a favorite with investors, owing to better returns afforded thereby. The draft made upon investment funds generally will always effect the value of municipal securities, and we doubt very much if the municipalities will obtain the former favorable prices for their debentures for some litt'e time to come.

We find investors are paying the same careful attention to the municipalities financial statement. They also pay some regard to the tax-rate, and to its proportion for schools debt and running expenses. There is little objection made to a town or municipality providing water, sewage system, electric light and gas for citizens, especially where it is shown that such operations are self sustaining. The favorable view accepted regarding such undertakings is encouraged and sustained to a certain extent by the opinion held in general that public utilities can be successfully administered by the municipalities. This is particularly so as regards waterworks. We also find some expressions to the effect that debentures for electric light plants should not extend beyond twenty years, because such a plant, owing to its very nature is not as durable and permanent as a waterworks system, and is more subject to machinery improvement. The action taken by the different municipalities in putting down permanent sidewalks and building permanent roadways is well thought of. Judging from the conditions as they at present exist, and the chances for the future, we would not suggest that the towns in Ontario issue their bonds at a less rate than four per cent. and we think they will find prices for the present year on a par with the past one.

Mr. John Haggan, clerk of the township of Malahide, has resigned and Mr. M. E. Lyon of the town of Aylmer has been appointed to succeed him.

* * *

Mr. John R. Peckham, who was formerly treasurer of Niagara Falls, was short in his accounts for 1897, $3,200. He was recently extradited from the United States, and was last month committed, by magistrate Logan, for trial at the next court of competent jurisdiction.

Municipal Officers of Ontario.

Clerk of Township of Huntingdon.

Mr. Haggarty was born in the year 1833, in the township of Huntingdon. He was

MR. JAMES HAGGARTY.

educated in the common schools of that township and was granted a second class county certificate. He taught under this until 1856 when he attended the Normal School, Toronto, for two sessions, receiving therefrom the Provincial Certificate. He then taught in the village of Stirling for six years, when he resigned and engaged in farming on farm on which he was born. He was a member of council of his township for twenty-five years as reeve, deputy-reeve and councillor. For twenty-one years president of the West Huntingdon cheese company, for a number of years president of the township and county agricultural societies, and is now an honorary director of the North Hastings Agricultural society. He has been also county master of the Orange Order. He was elected to the legislature as member for North Hastings in 1894 as an Independent Conservative. He was appointed clerk in 1899.

MR. J. A. LEMIEUX.

Clerk of the Township of Rayside.

Mr. Lemieux was born at Curran in 1876. He was educated at the public school in that town and at Bourget College in Rigaud, Quebec. He graduated in the commercial course in 1892. He taught school until 1901, when he began business at Blezard Valley. He was appointed clerk of the municipality in January 1902.

MR. DENIS DOYLE.

Clerk and Treasurer Town of Dundas.

Mr. Fry was born in the village of Rockton in 1860, and was educated in the public schools of that village and West Flamborough, the Dundas high school, and Rochester, N. Y., Business College. He was for many years editor of the Dundas *Star*, was employed in the Hamilton street railway offices and was appointed clerk and treasurer in 1900. He was for four years assessor, and for the same time auditor for the municipality.

Clerk of the Town of Hawkesbury.

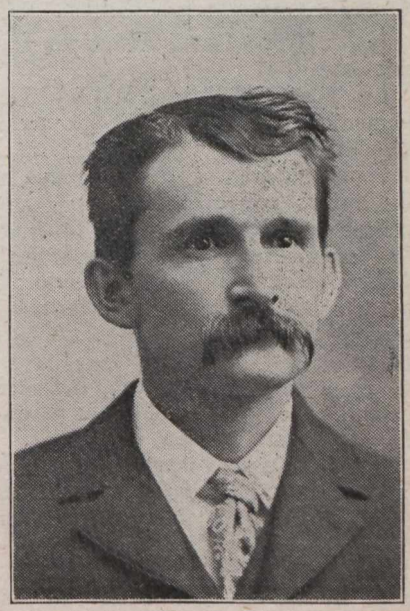
Mr. Doyle was born in Hawkesbury in 1842, where he has been engaged in merchantile business for about forty years. Many years ago he was clerk of Hawkesbury when it was yet a village. He resigned that office owing to pressure of other duties. In January last he was appointed clerk of the town.

Clerk of the Village of Casselman.

Mr. Riddell was born in the township

MR. JOHN S. FRY.

of Edwardsburg in 1863, and was educated in the public schools of that township. He served his apprenticeship as a tinsmith in the town of Prescott. He removed to the village of Casselman in 1886 where he engaged in the tinsmithing business. He was appointed clerk in the year 1896; he is also secretary of the public school board, appraiser for the London and Canadian Loan Company and carries on a real estate and conveyancing business.



MR. J. A. RIDDELL.

Engineering Department

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

Vitrified Brick.

An ideal paving material for all purposes has not yet been discovered. Asphalt is too costly, except for large cities and on streets where traffic is heavy, and a clean, quiet pavement very desirable. In laying it, and keeping it in repair, an expensive plant is required, so that unless a large amount is laid, the outlay in this respect becomes disproportionate.

Its principal substitute for the business streets of smaller towns and cities is vitrified brick. The cost is much less than that of asphalt, and neither expert labor nor an expensive plant are needed in laying it. In Ontario, outside of Toronto, vitrified brick has been laid on the business streets of St. Thomas and Chatham. In Toronto, it is used chiefly on residential streets, but for this purpose is objected to on account of the noise. Vitrified brick, as commonly constructed, has been found a noisy pavement, this being its most objectionable feature. In other respects its merits are many, and its more general adoption for the main streets of the larger towns would be a decided improvement upon the roadways now commonly found.

The pavement consists of:

(1) A properly excavated and graded sub-soil thoroughly compacted with a heavy roller.

(2) A foundation of broken stone, or of gravel, of broken stone and gravel combined, or of concrete. This foundation in thickness, is usually a foot or so of broken stone or gravel are used, and from four to six inches in thickness if concrete is used.

(3) A layer of sand about one inch in thickness.

(4) The vitrified brick laid on edge, the joints filled with sand and grouted with cement mortar.

Along the edge of the pavement, when the bricks are being laid, a board is placed on edge. When the brick are in the board is removed and the space filled with a mixture of tar and sand. This permits the pavement to contract and expand under varying temperatures, and prevents any "arching" of the brick, which is believed to be, to a considerable extent, the cause of the pavements reputation for noisiness.

The cost of brick paving is, of course, not constant. It varies with the extent of the work, with the cost of labor, of material and with the locality. In Toronto common labor costs 18 cents an hour in all city contracts. In smaller places, 15 cents an hour, or even less is an average wage. The cost of brick, and of Portland cement, varies from season to season. In no two towns is the cost of broken stone, sand, or gravel likely to be the same, varying largely with the length of haul. Freight charges vary with the distance from the manufacturer's yard. The cost of laying a street crossing of vitrified brick will manifestly be greater per square yard of surface, than for the average square yard of a pavement.

What has been done in one place is therefore not a certain index as to what can be done in another, but affords a basis for an approximate estimate. A pavement laid on Talbot Street, St. Thomas, in 1898-99, on a broken stone and gravel foundation, cost $1.50 a square yard exclusive of curb. The paving of King Street, Chatham, on an eight inch concrete foundation cost $1.80 a square yard, exclusive of curb. The cost in Toronto for vitrified brick on broken stone varies from $1.55 to $1.64 a square yard, and from $1.80 to $2.00 on concrete. The price of labor in Toronto is not favorable to a low cost of pavement and smaller places could, as a rule, do work of any extent, for a less average cost.

A Good Roads Report.

The sixth annual report of the commissioner of highways for Ontario, recently issued, contains a considerable amount of information which should be of interest to all township and county councillors, and to all others who feel interested in obtaining good roads. The terms of the recent "Act for the Improvement of Highways," under which one million dollars has been appropriated to road improvement, are discussed in some details. County and township road system are commented upon, and numerous recommendations as to systematic supervision are made. Reports from many townships are given, showing a general trend toward reformed methods of road management. The actual work of roadmaking is dealt with including the making of gravel, broken stone and dirt roads, road drainage, road machinery, concrete culverts and abutments, wide tires, the use of highways by electric railways, and many other phases of the road question.

The report shows that about sixteen per cent. of the townships have made radical changes in their systems of road management, the chief points of the improved methods being:

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.

The township, if desired, is divided into a convenient number of road divisions for road purposes, usually two, three or four, and a road commissioner is appointed over each.

The duties of the road commissioner 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, drains and culvert obstructions, bridge failures and other unforeseen 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 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.

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.

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 commissioner or 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 commissioner to follow.

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

Roads of importance should not be less than twenty-four feet between the inside edges of the open ditches. No roads should be of less than eighteen feet.

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

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 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.

Macadam for a Business Street.

The following form of specification is suggested as suitable for towns contemplating the macadamizing of a business street.

Specification for grading, curbing and macadamizing.....street with broken stone, from.....street to.....street, a distance of about.....lineal feet.

The excavation and grading of this street is to be made to the depths shown on the schedule furnished by the superintendent in charge of the work, to a width of.....feet between the curbing of the street, and widening to.....feet at street intersections.

The sub-grade of the street, after being thoroughly rolled to the satisfaction of the superintendent, shall have the form of a true curve, with a crown of.....inches in the centre.

Should it be necessary to change the grade of the street after the contract is awarded, the contractor will be allowed fifteen cents per cubic yard for any extra grading that may be required and the same amount will be deducted from the contract should any less excavation be required.

The earth taken from the excavation in the street is to be used in filling in any part of the roadway which may be beneath the sub-grade of the proposed work. The surplus earth is to be deposited where directed by the superintendent in charge of the work.

Any soft or perishable matter that may be found at sub-grade level shall be removed and the space filled in with gravel or other material approved by the engineer in charge of the work; the contractor to be paid fifteen cents per cubic yard of fill for this work.

Should the contractor in grading, excavate below the proper level of the sub-grade, the deficiency is to be made up with gravel or other approved material, well sprinkled and rolled at the contractor's expense.

The sub-grade must be rolled and thoroughly compacted and made to truly conform to the required cross-section as shown on the plans attached, to the satisfaction of the superintendent in charge of the work.

The curbing is to be composed of sound, white cedar plank, three inches in thickness by ten inches in depth and not less than twelve feet long. The posts are to be of good, sound cedar, with bark taken off, to be three feet long, and not less than six inches in diameter at the small end. These posts are to be set in the earth to the depth of two and one-half feet below the sub-grade, and not less than six feet apart centre to centre. They are to be bevelled to the width of the curb, the planks to be secured to the posts with seven inch wire nails, three nails at each bearing. The planks are to be neatly and securely jointed. The whole of the curbing is to be laid perfectly straight, and true to the curb line, the top of it to be ten inches above the levels given for the sub-grade at each side of the street. The back of the curbing is to be properly filled with earth which is to be firmly rammed in. Returns and off-sets are to be made if necessary around any gullies and waterworks standpipes, the contractor to exercise due care that injury is not done to any of these fixtures, for which he will be responsible.

All man-holes, gullies, and street fixtures that it may be necessary to raise or lower to suit the grade of the roadbed, will be so raised or lowered by the contractor at his expense.

The contractor is to furnish the tile and construct a three-inch field tile drain along the inside of the curb line on each side of the street. The tile is to be placed in a six inch trench, eighteen inches deep under the sub-grade of the roadway. These tile are to be laid on a uniform grade to a suitable outlet, and are to be of a quality approved by the superintendent in charge of the work.

The surface of the roadway is to be covered with crushed stone to a depth of twelve inches after consolidation, to be regularly and perfectly spread over the whole of the roadbed to the depth specified and to the width of the roadway which will be.....feet between the curbs, widening to.....feet at street intersections. In securing this depth of material, crushed stone to pass through a three and one-half inch ring is to be placed over the whole of the sub-grade to the depth of seven inches, the interstices to be filled with stone chips and screenings and to be watered and rolled until thoroughly compact to the satisfaction of the superintendent in charge of the work. Crushed stone to pass through an inch and one-half ring is to be placed over the whole of the roadbed to a depth of three inches, this course to be filled with stone screenings, watered and rolled to the satisfaction of the superintendent in charge of the work. Crushed stone to pass through a one-inch ring shall then be placed over the whole of the roadbed to bring it to the finished grade, making the total depth of consolidated material twelve inches, this course to be filled with screenings, harrowed, watered and rolled until it is perfectly hard, smooth and firm, and to the satisfaction of the superintendent in charge of the work.

In quality, the stone must conform to the sample in the office of the.....of the town of ..... and shall in all respects be approved by the superintendent in charge of the work.

During the whole of the rolling herein specified, a sprinkling cart is to pass immediately in front of the roller so that at all times the surface of the road will be saturated with water. The water is to be obtained from hydrants for which a charge of one cent per lineal foot of roadway must be paid the corporation of.....by the contractor.

The contractor is to break up the street in such lengths and at such points as may be directed by the superintendent in charge of the work, and no part of the street shall be broken or torn up without the order of the superintendent.

The contractor, if so ordered by the superintendent, will keep ten feet of the roadway nearest the curb line open for the use of the public from 7 a. m. to 7 p. m. and will keep the work properly barricaded and protected at night with lanterns.

The contractor will be required to carry out the work continuously from the time of the commencement until the completion of the contract. The work is to be completed by the.....day of .....1902, under a penalty of a deduction of $5 per day for every day thereafter the work remains unfinished.

Wherever the word "superintendent" is used in these specifications it refers to the engineer, or other person placed in charge of the work by, and representing the council of the town of.....and by whom all directions necessary for the satisfactory prosecution and completion of the work described in these specifications shall be given.

Tenders are to be made in the form of a lump sum which must be taken to cover the cost of all necessary implements, labor, tools, etc., material of every kind to complete the work of grading, boulevarding and macadamizing the said street. A deposit of $100 must accompany each tender.

Payments to the extent of eighty-five per cent. of the value of the work done each week shall be made upon the certificate of the superintendent in charge of the work, such certificate to be binding as regards progress and one week after the completion of the work, the superintendent shall issue a certificate for the balance.

Is there no way of making roads that will not only stand the wear of travel, but also endure the effects of rain and cold in winter? We answer unhesitatingly that there is. The reason our roads get bad is that the surface is of such soft and yielding materials that when wet they yield to the weight of the loads that pass over them. Into the tracks thus formed water collects, and the next load makes the tracks deeper. If the rainy weather continues, we have muddy roads, while holes full of water appear, especially on the level places. Our carriages become covered with mud, and our loads draw heavily. If the surface is made of sufficiently hard material to turn the water,

and if this material is placed upon a foundation that will not yield to the weight of loads or heave with the frost, a road good for all the year through is the result. This is not theory, for hundreds of miles of such roads have been built, and use has demonstrated their permanence.

Municipal Ownership in Great Britain.

The consular reports of the United States government frequently possess great interest because of valuable information they contain, and no one who can obtain access to them should neglect the opportunity of doing so.

Among the most interesting is one from Mr. James Boyle, at one time a Canadian journalist, now consul at Liverpool, on the subject of municipal ownership as they have it in England.

The consular report referred to states that as late as a quarter of a century ago the capital invested in municipal undertakings in England amounted to $460,000,000. A year ago that amount had grown to $1,500,000,000.

There are in Great Britian some 990, in plain figures 931, municipalities owning waterworks, 99 owning the street railroads, 240 owning the gas works and 181 supplying electricity. Most of these are in England. Municipalities were not allowed to work the tramways until 1896, but in the few years which have succeeded the cars have been taken over by some cities and more contemplate doing so. Glasgow has one-cent and two-cent fares on the city tram cars. On Liverpool's fine system of double-track electric cars the fares range from two cents for three miles or less, up to eight cents for something over eight miles. Sheffield also has taken over the tramways, but it does not seem to run on the cheap fare principal, for the city has been able to appropriate nearly $100,000 for the erection of stores and other producing buildings. The wisdom of this course is open to serious question, as rents may be hazardous, while traffic in such a city as Sheffield is certain, and is not likely to decrease. Mr. Boyle asserts that fully half the gas works in England are the property of the citizens of the municipality in which they are located.

Liverpool appears to have led in the matter of housing the poor in a satisfactory manner, and with due regard to the principles of sanitation. Municipal tenements three or four stories high are built in blocks. The flats have single fixtures, including gas supplies on the "penny in the slot" plan. A single room can be had as low as 45 cents a week. The rent of two rooms ranges from 69 to 80 cents; that of three rooms from $1 to $1.10; that of four rooms (the largest suites provided) from $1.25 to $1.50. In a few dwellings hot water is supplied.

Mr. Boyle does not pass over the objections raised by so many to civic proprietorship of public utilities. He points to the example of the city in which he is consul as a proof that such ownership does not promote public extravagance or discourage in any degree private enterprise. It appears rather from his sentiments that in Liverpool the efforts of the city have stirred up private enterprise and inaugurated a system of public relief which would probably never have been witnessed but for the public examples set.

In Canada we have not yet arrived at the stage of our existence necessitating certain phases of municipal ownership which are dealt with in Britain. But the matter is a debateable one, and as the readers of the public press know the acquisition of the chief items in the list of public utilities is openly advocated by a great many people. The issue may be within the range of practical discussion sooner than we may imagine, and whatever is published concerning it calculated to cast light on the workings of the system wherever it may be found in operation cannot but be instructive and valuable as a guide.—*Brantford Expositor.*

School Property Not an Asset of a Municipality.

Our attention has been drawn recently to an auditor's report in which the school houses and lands are included amongst the assets of the municipal corporation. A communication has also been sent to us, urging the soundness of the position taken by the auditors in this regard. A brief comment will be conducive to a correct understanding of the matter. Webster's dictionary defines the term "assets" as meaning "the entire property of all sorts BELONGING to a person, a *corporation* or an estate." Therefore, only such property as is actually owned by a municipal corporation can be included amongst its assets. A municipal corporation possesses none of the elements or accessories of ownership in school property. It does not purchase or pay for the same, has no voice in its management or control, cannot sell, dispose of, convey it, nor can it in any way, or under any circumstances be made available for the payment or satisfaction of the debts of the municipality. Subsection 12, of section 65, of the Public Schools' Act, 1901, provides that it shall be the duty of the trustees of all public schools, and they shall have power "to take possession of all property which has been acquired or given for public school purposes, and to HOLD the same according to the terms on which it was acquired or received; and *to dispose, by sale or otherwise*, of any school site or property not required in consequence of a change of site, or other cause; to CONVEY the same under their corporate seal, and to apply the proceeds thereof to their lawful purposes, or as directed by this Act." Nowhere in the Municipal Act, or elsewhere in the statutes are similar powers as to school property conferred on municipal corporations, and these, being the creatures of the statutes, can hold only such property as the legislature empowers them to acquire and possess. Section 10, of the Public Schools' Act, 1901, provides that "the trustees of every school section shall be a corporation under the name of 'The Board of Public School Trustees for school section ...., of the township of ...., in the county of ....,' or as the case may be." Section 56 contains a similar provision applicable to urban municipalities. A board of public school trustees has an existence wholly separate from the municipal corporation, and its status as a business concern is distinct and independent. The municipal auditors have nothing to do with the accounts, etc., of a school corporation in their municipality, except in urban municipalities, to the extent authorized by sub-section 11, of section 65, of the Act. It is true that all moneys required by a school corporation for school purposes are raised and levied by council of the muncipal corporation from and against the public school supporters of each school section, or of the municipalitiy, as the case may be, at the request of the board of the public school trustees, or the public school board. This, however, is an executive duty imposed by the statutes upon the municipal council, and it has no property in, or control over, the money when raised, or voice in its application or expenditure. It is required to be paid over by the council to the trustees of the school corporation, which alone has the right to decide as to what lawful school purposes it shall be applied. In the course of his communication, our correspondent asserts that there is no incompatibility in the two positions. (1) That the schools are the property of the school section ratepayers (more properly speaking the board of public school trustees); and (2) that they are also an asset of the municipal corporation. The anomaly involved in this assertion is, after what we have said, so apparent on the face of it, that no effort need here be made to explain and demonstrate its inconsistency.

Good Roads.

It would be possible to abandon few miles of road in any county at this time, unless a more favorably located substitute were provided. The attempt would meet with such opposition that those who proposed it would be compelled to yield. Nor is it likely that our roads will be less frequently used. Travel may be diverted from one road to another, but its volume is bound to increase. People of this day own more and better vehicles than did our fathers. There is more of interest in the country to demand travel. Our light vehicles now in so constant use cannot stand the rough knocks that the heavy farm wagons of days gone by endured. Hence our roads must be made passable, for they are here to stay. The beginning of the twenty-first century will see fully as many miles of them as are here now. Will that century find them in the same condition?

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.

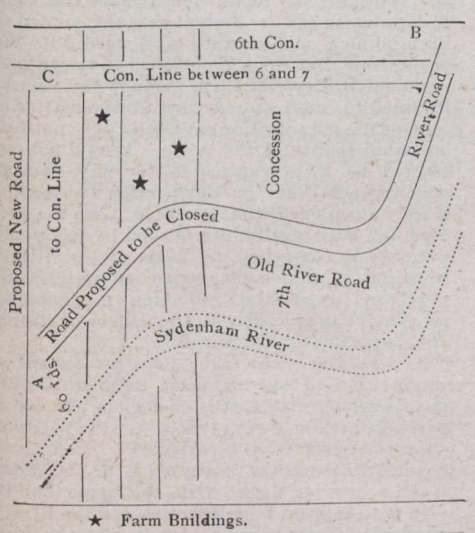
Communications requiring immediate attention will be answered free by post, on receipt of a stamp addressed envelope. All Questions answered will be published unless $1 is enclosed with request for private reply.

Counties Should Build and Maintain Bridge Over Stream on Townline—Right of Parties to Ingress and Egress to and From Road Proposed to be Closed.

317—H. J. F.—1. Is it the duty of the adjoining counties to build and maintain a bridge 50 ft. long which is on the county line, and it is also the townline between two municipalities. The stream the bridge crosses is 25 feet wide at low-water mark and 150 feet wide at high-water mark. One of the two municipalities mentioned is in L.....county and the other in K..... The statutes do not make it clear to me as they do not mention a creek such as this which I have reference to.

2. Have the municipal council of a township power to close a road that has been used as a government surveyed road for 75 years, where it would compel three parties to move all their buildings about sixty rods in order to get out on a concession line? If they have the power, would they not have to compensate these parties for their expenses in moving to the nearest road? Below I give you a diagram and position of old road and proposed new road. The proposition is to close that portion of river road from A to B and buy a new road from A to C, as the river road has got so narrow in places that the council find it necessary to either buy more land along said river road or change it as marked.

3. If the municipal council pass the necessary by-laws for closing such roads, is it necessary to have these by-laws confirmed by the county council?



1. We are of the opinion that it is the duty of the adjoining counties to build this bridge, as it is a bridge over a stream crossing a boundary line between two counties. Sub-section 1, of section 617, of the Municipal Act, provides that "in case of a bridge over a river, stream, pond or lake forming, or crossing a boundary line between two or more counties, etc., such bridge shall be erected and maintained by the councils of the counties." The stream you refer to is one within the meaning of this sub-section.

2. If the proposed closing of the road will exclude the owners referred to from ingress and egress to and from their lands, over such road, the council will have to compensate the owners for the injury to their lands, and must provide some other convenient road or way of access. See section 629, of the Municipal Act.

3. If the council has power to pass a by-law closing this road, being an original road allowance, the by-law will have no force or effect until confirmed by a by-law of the council in the county in which the township is situated. See clause 6, of sub-section 2, of section 660, of the Municipal Act.

Ratepayer Cannot Compel Council to Open Road for Him Only.

318—SUBSCRIBER.—Can one ratepayer compel a township council to purchase and open up a right of way for road through private property, where it is impossible to build a road on the regular road allowance?

No. It is discretionary with a township council as to whether it purchases and opens up a new road or not. It should not do so, if the road when opened would be for the use and convenience of one individual only.

Traction Engine and Threshing Machine are Assessable.

319.—R. O. S.—Is the owner of a traction engine and threshing machine assessable for it, if he also carries on the general business of farming? In explanation: The farmer and two sons own and work 75 acres, and also own the threshing outfit and move about from farm to farm for three or four months in the autumn. The sons are probably the actual owners, but they are all jointly assessed for both farm and thresher. As there are more cases like this in Ontario, it will be of general advantage to have an answer in the WORLD.

The threshing machine and traction engine are not "farming implements," within the meaning of sub-section 16, of section 7, of the Assessment Act, and are not exempt from taxation pursuant to the provisions of this sub-section. They are used, not in the tilling and cultivation of the owner's farm, but as the means of carrying on the separate business of threshing grain, etc. Unless the value of the threshing machine and engine is under one hundred dollars, (and therefore exempt from taxation under the provisions of sub-section 25, of section 7) they should be assessed at their actual cash value, as provided by section 28, of the Act.

Law as to Laying of Granolithic Walks.

320—C. T.—Our council propose putting down some granolithic sidewalk. Kindly inform us as to the proper steps to take in the matter. Is there any special law in regard to laying these walks?

It is not stated whether the council purposes paying the cost of this sidewalk out of the general funds of the municipality, or to raise the funds required by an assessment of the frontage of properties benefited pursuant to section 664, and following sections of the Municipal Act. If the former, there is no SPECIAL provision on the subject. If the latter, the law is contained in the sections of the Municipal Act above referred to.

Township's Liability for Improper Construction of Drainage Works.

321—G. L.—1. We have a drain constructed under the Drainage Act which was cleaned out under the same Act last year, and was passed by the commissioner, at that time reeve of the township, also by the township engineer, and the contractor was paid in full for work, no objection being raised by any one at that time. Ratepayer now claims to council that drain was not completed according to specifications, and demands that council shall so complete it at the expense of township. What action should council take, if any?

2. We are constructing drain under Drainage Act. Contractor claims work all done, and I understand township engineer is going to report work complete. Ratepayer on drain has neither depth nor width called for by specifications, and threatens action against township if council accept drain as it is.

What is council's duty?

1. If the work in connection with this drainage scheme was performed in accordance with the report, plans and specifications of the engineer, and injury was thereby occasioned any owner, such owner is entitled to compensation for the injury he has sustained. If the work was done negligently, any person injured has a right of action against the municipality for damages for the injury he has sustained.

2. The council should do all that lies in its power to insure the proper construction of this drain. Any person injured thereby will be entitled to compensation, and if there was negligence in the construction of the drainage works, parties injured will have rights of action against the municipality for damages.

Adjustment of Union School Section Assessments on Formation of New Section.

322.—F. G. J.—Arbitrators were appointed under section 43 of the Public Schools Act and a new union school section was formed composed of parts of two townships, also parts of two counties. The new union school section was made up on our side of the townline, of portions of each of two existing sections and part of an already existing union school section. Equalization of the union school took place more than a year ago and our portion of the moneys to be levied fixed at sixty-one per cent. The other portion of this section is not affected by the new union school.

1. Has the portion left of the former union school section still to raise sixty-one per cent of the amount required? or

2. Must a new equalization take place?

3. If the latter, who must call the meeting of the assessors to equalize—the school-house being in the adjoining township?

4. If the assessor of the adjoining township, what steps should be taken to have a meeting called at once?

1, 2, 3 and 4. We are of the opinion that the assessors of the two townships should equalize and determine the amount to be contributed by each municipality to make up the annual requisition by the trustees, because the last equalization is inapplicable to the new union school section. It is the duty of the assessor of the township in which the union school is situate to call the meeting of the assessors.

Seat of Councillor Becomes Vacant on His Making an Assignment.

323—R. M. T.—Can a councillor who qualified by his own assessment, although his wife had property to qualify him, and who since his election has assigned for the benefit of his creditors, still hold his seat as councillor, although his wife's property was not affected by his assignment?

Section 207, of the Municipal Act, makes provision for a case of this kind. It provides that "if, after the election of a person as a member of a council he assigns his property for the benefit of his creditors, ... his seat in the council shall thereby become vacant, and the council shall forthwith declare the seat vacant, and order a new election." The fact of this person's wife having property sufficient to qualify him under the Act does not counteract the effect of the statutory provision.

A By-law Locally Restraining Running at Large of Cattle.—Fines can be Imposed on Owners of Cattle Running at Large.

324 C. D. C.—I enclose a copy of by-law and would be obliged for an expression of opinion as to the power of the municipal council to enact the clauses marked. The town plot of M. was laid out by the government and plan registered. The village of M. (not incorporated) is situated on part of this town plot The following are the clauses marked: "4. Except as provided in the preceding section, and except in the town plot for the village of Minden, horned cattle may run at large on the common or on the highways of the municipality."

"14. Any person may lay an information against the owner of any animal unlawfully running at large, although the animal may not have been impounded.

15. No bulls, rams, horses, donkeys, mules or goats shall run at large under a penalty of not less than fifty cents or more than two dollars.

16. No cattle known to be breechy shall run at large under a penalty of one dollar each.

17. No pigs shall run at large under a penalty of fifty cents each.

18. No sheep shall run at large under a penalty of ten cents each."

We are of opinion that the council was acting within its powers in enacting clause 4, of the by-law, in so far as it relates to the restraining of the running at large of cattle on the highways of the unincorporated village of M. It is in the power of the corporation to enforce the provisions of a by-law of this kind by the imposition of a fine on the owners of the animals running at large. (Smith vs. Riorden, 5 U. C., Q. B., O. S., 647,) as is done by clauses 14, 15, 16, 17 and 18, of this by-law. See, also, re John Milloy and the municipal council of the township of Onondaga. (6, O. R., 573.)

Trustees Should Keep School-House in Repair.

325—SUBSCRIBER Child accidentally breaks window glass. Teacher sends word to father that it must be paid for and accordingly the money was sent to the teacher. Some time after the trustees meet to repair, etc., around school-house. This particular pane was passed over, and instructed teacher to send word "that the pane must be replaced as soon as possible," and tells the father how to get the key, etc. Money was returned.

1. Is the father obliged to go and replace the pane under the circumstances?

2. Has teacher or trustee power to direct or compel children or any one else to work or repair around the school premises?

3. How should this window be replaced and paid for legally?

1. If the father is willing to pay the cost of replacing the pane of glass accidentally broken by his child, that is all he can be expected to do.

2. No.

3. It is the duty of the school trustees to keep the school premises in repair. (See sub section 4, of section 65, of the Public Schools Act, 1901,) and they should see that the pane of glass is replaced.

Township Where Local Option in Force.

326—E. G.—Kindly let me know if there is a township in Ontario which has the Local Option Act in force, and if so, what is the name of the clerk and his address?

We perceive that you refer to by-laws passed pursuant to section 141 of the Liquor License Act, (R. S O., 1897, chap. 245.) We believe that there is a by-law of the kind at present in force in the township of Mariposa. J. B. Weldon, clerk, Little Britain P. O.

Removal of Fences From Highway

327—J. C. C.—One of the main travelled roads in this township is the highway extending from Niagara Falls West, I think to St Thomas, and which has no doubt been used as a highway for sixty or seventy years. Here it is called the Canboro Road, and further west I believe it is know as Talbot street. For three-quarters of the way across this township it is not upon any original road allowance, and the road is constantly getting narrower because of property owners moving out from time to time as they rebuild their fences. In some places the road is as narrow as 35 feet. Complaints of this encroachment are frequently heard and some advise that these trespassers be compelled to widen the road to its former dimensions. Does the statute prescribe any maximum or minimum width for an old established given highway such as this in a township? Can we compel these people to move back? How?

Section 630, which deals with the width of roads, hardly seems to apply to a road long in use, but rather to roads now being laid out.

If this road is only a trespass road, the public are entitled to hold, as against adjoining private owners of land, only such portion as has been, and is being, travelled as a public highway. We are inclined to think, however, that, if the road is a continuation of the Talbot Road, as you suggest, it has been, at some time, regularly laid out and surveyed by the government. If this is a fact, its width and limits would be fixed by the survey. The report and field notes of the engineer who did this work will easily be found in the office of the Crown Lands Department, in Toronto. A search should be made in this and in the registry office in the county, and for the road reports of quarter sessions and by-laws of old district or county council. These may be in office of clerk of peace or clerk of county council. And as soon as the correct limits of the road have been ascertained, the council should pass a by-law providing for the removal of all such fences as have been erected, and are now standing on the highway.

Agreement as to Maintenance of Townline—Opening of Road in Lieu of Townline—Repeal of By law Abolishing Dog-Tax.

328—C. B.—1. Nearly five years ago our council agreed with the adjoining municipality to divide the townline. Commissioners were appointed by both councils to meet and decide the matter. They divided townline as per diagram, then tossed up for choice. The adjoining municipality won and took the north portion, our municipality having to accept the south side of all the portions opened up and travelled. A by-law was passed by both councils accepting the divisions as above given There was no time specified how long this agreement should exist. Now the present council are dissatisfied finding they have to keep in repair the more expensive portion and desire to break the agreement so made. Can the council do so by notifying the adjoining municipality of the fact, and also pass a by-law to repeal the former by-law which confirmed the agreement? If not the proper course, what proceeding ought to be taken in the matter?

2. On account of existing difficulties in putting our portion of townline in reasonable repair, the cost of which would be excessive, the council were desirous of opening a new road about 200 acres west of townline in lieu of same, as a splendid road could be purchased and kept in good repair for a much less sum. A deputation of our council met the council of the adjoining municipality and agreed to the proposition, but since the council of the adjoining municipality met, they, through their clerk, declined to take any action in the matter of closing the old townline road, who duly notified our municipality of the same. Would not our council be held responsible for any damage which might occur on our portion of townline if they abandoned the townline when the new road had been legally established? and would not they be compelled to keep said portion of townline in reasonable repair as well as the purchased road the adjoining municipality refusing to take action in the matter of closing of this portion of the townline?

3. Some ten years ago the then council on the petition of the requisite number of ratepayers asking that the tax on dogs be abolished, passed a by-law giving effect to the petition, since then no tax has been levied. The present council are desirious of reviving the act imposing the tax on dogs. Can the council on its own motion, pass a by-lay repealing the by-law abolishing the tax, or will it require a petition of the ratepayers asking for the repeal of the said by-law?

1. Councils of adjoining municipalities may, under section 625, of the Municipal Act, enter into an agreement for dividing a townline in the manner therein mentioned, for any term of years not exceeding ten years. If the agreement and by-laws in the case did not specify any term, we think the agreement is simply one at will, and either council can pass a by-law putting an end to it.

2. The council will be liable in damages

to any person injured by reason of the occurrence of an accident on its portion of the townline, unless it is closed according to law. Your township council cannot, alone, close this townline.

3. We see no reason why the council cannot repeal the by-law. If that is done, chapter 271, of the R. S. O., 1897, will, upon the passing of such by law, come into operation.

Payment of Damages for Sheep Killed Where no Dog-Tax Collected—Authority to Kill Dog Worrying Sheep—Owner of dog Must pay Damages for Sheep Killed.

329—F. H. G.—1. In district of Rainy River a certain municipality has no dog-tax. Are the council held reponsible for sheep killed by dogs?

2. The dog was caught in the act of killing the sheep. Can the owner of the sheep follow that dog home and shoot him without first consulting owner of dog? The dog was shot at the owner's house.

3. Is the man who owned the dog held responsible for sheep killed after the sheep owner has killed his dog?

4. Can any action be taken against the man who shot the dog without first getting permission, to recover remuneration for dog?

1. If the council passed a by-law under the authority of section 2, of chap. 271, R. S. O., 1897, or under section 8, the municipality is not liable, but in the absence of any such by-law chap. 271 is in force in the municipality, and we do not think that the neglect to collect the tax will afford an answer to a claim made for damages caused by dogs to sheep. See section 18, of the Act.

2. Yes. See clauses (a & c) of section 9, of the above Act.

3. Yes. The killing of the dog is no compensation for the damages the owner of the sheep has sustained.

4. The man who shot the dog is not liable in damages to the owner of the dog for having killed it under the circumstances you mention. If the owner of the dog enters an action against him, he can plead not guilty by statute, as provided in section 10, of the Act.

Qualification of Pathmaster — Allowance of Statute Labor for Shovelling Snow.

330—D.D.—1. Is a pathmaster who accepts his road list from the clerk, legally pathmaster, when he declines to sign the declaration of office?

2. Is it legal for the clerk to enter in the collector's roll the statue labor of those who refuse to work under this pathmaster?

3 In the year 1901 all the statute labor on a certain road division was performed in the early part of the summer. When the winter snow drifts filled the road the people were warned out to shovel snow. Now some of those who shovelled snow refuse to perform their statute labor for 1902, claiming that the work performed in the winter should exempt them from statute labor for 1902. Can they legally claim such exemption?

1. The statute labor list should not have been delivered to this pathmaster by the clerk until he had made the declaration of office required by section 312, of the Municipal Act. His refusal to make the declaration was equivalent to a refusal to accept the office, and the council should have appointed another person to have acted in his stead. Since however, this man has received the list, and undertaken the performance of the duties of the office, his failure to make the declaration of office does not, *ipso facto*, render void his official acts done in the meantime. (See Lewis vs. Brady, 17, O. R., 377.)

2. Yes. These parties were aware, or should have been aware, that they had a certain amount of statute labor to perform, and the neglect or misconduct of the pathmaster in charge of their road division was no excuse for its non-performance.

3. It is not stated whether the council passed a by-law pursuant to sub-section 3, of section 537, of the Municipal Act. If it did, and these parties shovelled snow upon the *order*, and under the pathmasters thereby appointed, they should be allowed for such work in their next season's statute labor.

Closing of Street for Railway Company.

331—SUBSCRIBER—The railway company are trying to get our council to close up a street for them. Kindly tell me all the legal proceedings necessary and also what means must be taken to oppose it. Can any ratepayer or property holder object? How many is necessary to defeat it? Can council insist on closing street? Is there any appeal?

Section 637, of the Municipal Act, gives the council power to pass a by-law providing for the closing of this street, after the preliminary proceedings prescribed by section 632, of the Act, have first been taken. It is in the discretion of the council whether they close the street or not, and they should not pass a by law doing so, if the convenience and requirements of the public would be thereby prejudiced. If, in closing the road, any person or persons would be excluded from ingress and egress to and from his or their premises, the road cannot be closed unless the council, in addition to compensation, provides for the use of such person or persons some other convenient road or way of access to his or their premises.

Duties of Bailiff When Seizing for Taxes.

332—H. G. T.—A collector of taxes for a township issues his warrant, and sends his bailiff to collect taxes from a party in default. The bailiff has to travel from his own dwelling (which is in the adjoining township) fifteen miles, or from the dwelling of the collector twelve miles, to the dwelling or office of the party in default. The bailiff makes a seizure, but before the matter goes any further the defaulter says he will pay his taxes (say sixty dollars) and does so with costs.

1. How much in this case are the costs? which the bailiff is by law authorized to collect?

2. What is "Enforcing a warrant?"

3. What is the proper way to make a seizure?

4. Has the bailiff to lay his hand on the article he seizes, or can he legally seize without touching the article?

5. If the bailiff does not seize, but collects the amount of taxes is he entitled to his commission of three per cent. or not?

6. If a bailiff has two or more warrants to collect from different persons who live near each other, is he entitled to full mileage? (that is from his own home or the home of the collector) in each case? As I understand the law, if a bailiff makes a seizure, he is paid so much for it. He gets fees for making out an inventory and for appraising and putting up notices of sale, and if he is entitled to three per cent., is he entitled to collect three per cent. if he does not make a seizure, and if not, why not? What is the allowance of three per cent for?

1 If the amount of taxes in this case is over twenty dollars, but not over sixty dollars, and the taxes were paid after seizure and before sale of the goods, the bailiff is entitled to the following fees: Enforcing warrant, 75c.; mileage, twelve miles, at 12c. per mile, $1.44; schedule of property seized, 50c.; and three per cent. on the amount of taxes paid.

2. "Enforcing a warrant," means and includes all the steps necessary to be taken by the bailiff in order to effect a seizure of the goods and make the money.

3. The bailiff can enter, take actual possession of the whole or that part of the goods necessary to be seized and sold to satisfy the amount named in the warrant, in the name of all such goods, or he may intimate to the owner and party liable for payment, the fact that he intends to, and has seized the goods, and serve the owner with an inventory of the goods seized, and intended to be sold.

4. It is not essential to a valid seizure that the bailiff should lay his hands on, or actually take possession of all or any of the goods intended to be seized. An intimation by the bailiff to the owner and party liable for payment, of his intention to seize, and the service by the bailiff upon such owner of an inventory of the goods seized and intended to be sold to satisfy the warrant, is sufficient.

5 No.

6. The bailiff is entitled to mileage from the office of the collector to the place where the warrant is to be executed, at the rate of twelve cents per mile. He can collect only for the number of miles NECESSARILY travelled in order to execute a warrant. If he has warrants to collect from a number of persons residing near each other, he is entitled to mileage from the collector's office to the residence of the person on whom he first calls, thence mileage to the next one, and so on until he has exhausted the list. It must be borne in mind that the bailiff must, in going to execute these warrants, travel by the shortest route, as he is only entitled to mileage for the number of miles he actually and necessarily travels in order to do the work. If the bailiff sells the goods seized he is entitled to five per cent. on the amount realized, not three per cent. He is entitled to the latter commission if the claim is settled after seizure and before sale of the goods. If no seizure is made the bailiff is not entitled to any percentage. This percentage is allowed to the bailiff as additional pay for his care and trouble in realizing the amount of the claim placed in his hands for collection.

Provincial Municipal Auditor Can Appoint Place for Audit

333—J. R.—The Provincial Auditor "on his own motion" (as per chap. 228, section 9 R. S. O.) notifies our treasurer that he will be in our county town on the 17th inst., to examine the books, etc., of the township. Is the treasurer compelled to go to the county town, distant some thirty-five miles, when other places are much more convenient, or must he go to any place chosen?

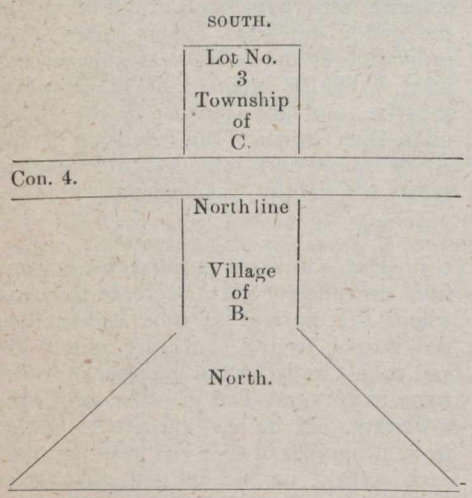
We are of opinion that the Provincial Auditor has power to compel the attendance of the treasurer of the township at the place, and for the purpose named by him. (See sections 10 and 12, of the Act referred to.) We think, however, that if it be represented to the Provincial Auditor that the attendance of the treasurer at the place appointed would involve that official and the municipality in considerable trouble and expense, he would, we have no doubt, appoint some more convenient place for the audit.

Ownership of Boundary Between Village and Township

334—CLERK.—The corporation line surveyed and by-law of a village says the division line between the village B and the township of C shall be north line of concession 4, lot No. 3, township of C, all of the village lands lying north of this concession.

1. Is the village liable for one-half of the statute labor across lot No. 3?

2. In closing and selling this road, would they be intitled to one-half the money received, for road allowance across concession 4?



1. The boundary line between the village and the township is not the 4th concession, but the northern limit of the concession. Therefore the road referred to is wholly within the township municipality, and the village is not liable to share in its maintenance. There is no such thing as *statute labor* chargeable against, or to be performed in respect of property in an incorporated village.

2. No. Since the road lies wholly within the limits of the township municipality, it alone is entitled to receive the proceeds of the sale.

A Naturalized Voter.

335—D. M. M.—We had a ratepayer out to vote last fall and he was sworn on the ground of his not being a British subject. Since then he has taken out papers and the oath of allegiance. He has only been in Canada one year. Has he a right to his franchise in Canada? Some of our council hold that he has to live in Canada three years before he is a subject of our country. What do you say?

The Naturalization Act requires a residence of three years in Canada, or three years in the service of the government of Canada, before the certificate of naturalization will be granted. (See section 8, of the Act.) We presume, however, that evidence must have been given that he had resided in Canada for three years prior to the application for the certificate, and we think the certificate is final.

Collection of Taxes From Non-Resident Assessed for Income and Personalty.

336—J. P. B.—1. Is a person assessed for income or personalty or both who leaves the municipality and county before the rate is struck or before the assessment roll is finally revised, liable for the taxes thereon?

2. Can same be collected, and if so, what is the procedure?

1. Yes. Assuming that the person is assessed made no appeal to the court of revision, or if he filed an appeal, the court refused to disturb the assessment.

2. Yes. If the person assessed has, at the time of the collection of taxes in the municipality, goods in the county not by law exempt from seizure for taxes, wholly or partially sufficient to realize the amount of these taxes, they should be seized and sold, and the proceeds applied in payment of the taxes, and costs of seizure and sale, in so far as they will go. If no such goods are to be found, then the amount of these taxes becomes a debt due from the person assessed to the municipality, and can be collected by ordinary action at law. (See section 142, of the Assessment Act.)

Rent of Polling Booths at Provincial Elections.

337—J. H. B.—Will you kindly advise me if the municipality (a town) or the returning officer pays for polling booths used for election of members of the Legislative Assembly of Ontario, and quote section of the Act governing same.

Section 203, of the Ontario Election Act, provides that "the fees in Schedule B, to this Act mentioned, in respect of the matters therein contained, and no others shall be allowed to the several officers therein mentioned respectively, for the services and disbursements in the said schedule specified." Item 18, of this schedule, is as follows: "For each POLLING BOOTH, actual cost not exceeding four dollars, to be paid by the township treasurer, on the order of the deputy-returning officer, unless the township council provide suitable polling places at their own expense;" and item 21 provides for payment of "the like charge paid in the same manner, for polling-booths, as in rural polling places." The latter item relates to cities and towns only. Therefore, the rent of the polling-booths in your town should be paid by the town treasurer, on the order of the several deputy-returning officers. Section 204 makes provision for the payment of the rent of polling-booths in cities.

Payment of Negligent Engineer — No Amendment of Drainage Act as to Railway Lands.

338—M. S. B.—1. Could a civil engineer under the Municipal Drainage Act collect pay for what work he has done, providing he was dismissed before filing his report, after having been granted an extension of time from time to time and still failing to file his report?

2. If he could collect pay would he have to furnish the council a report of what work he has done?

3. Has there been any amendment to the Drainage Act re crossing railroad lands since 1897?

1. It is not easy to express an opinion in this case. If the engineer was negligent in not making his report within a reasonable time, we do not think he can recover anything. On the other hand, we may say that we do not think the council can escape liability by dismissing him before he has had reasonable time to finish his work.

2. Yes. Otherwise the council would not know what work he has done, for which he is entitled to be paid.

3. No.

Opening of Boundary Line Between Two Townships.

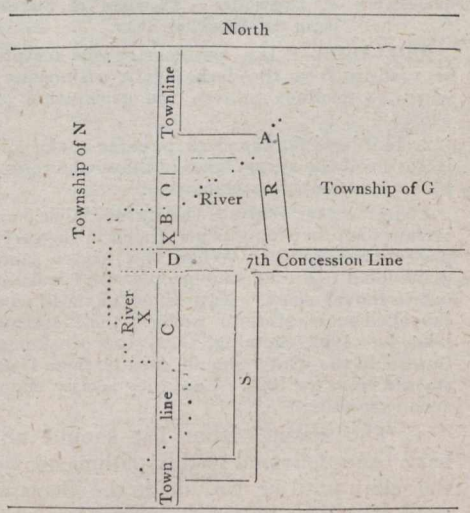
339—A. B.—About ten ratepayers have asked council of township of G to have the fence at D removed and also to have that part of townline marked C opened up so that cattle can get to river for water.

1. Can council be compelled to open same seeing that it is of no use whatever as a highway?

2. Would council be justified in opening same owing to agreement with county re bridge at A?

3. Would it not be better to either sell or rent this piece of highway?

In 1887 the townships of G and N entered into a bond with the county that if they would assume bridge at A, which the county has, that townships would never ask to have one built at B, and townships sold those parts of townline marked X & O. The person who owns that part marked X also owns the piece of land in township N marked X and has enclosed along with it that portion of townline marked C and has a fence and gate across concession line at D and occupies the whole piece as a pasture, and offers to give access to river by fencing a roadway marked .....



J—County Bridge.
R and S—Road in Lieu of Townline.

1. It is optional with a municipal council whether it passes a by-law to open a road

or not, pursuant to the authority of section 637, of the Municipal Act, after the preliminary steps mentioned in section 632 have first been taken. It should not do so unless the convenience of the general public requires it. This piece of road, being a portion of the original townline between the townships of N and G, cannot be opened by the council of G alone. Joint action, with this object in view, would have to be taken by the councils of N and G.

2. Even if your council had power to open this road, it should not do so, in view of the agreement with the county, and the fact that the owner of land marked X is willing to give the owners of cattle in the neighborhood access to the river through his lands.

3. We are of opinion that the best way of settling this question is to close up, sell and dispose of this piece of road, pursuant to sections 637 and 632, of the Municipal Act. But in order to do this the councils of the townships of G and N would require to act jointly in the matter.

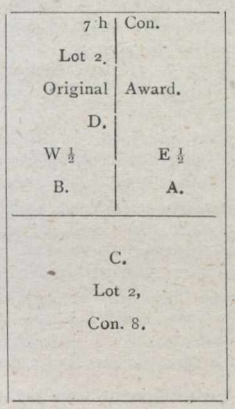
A Line Fence Dispute—Duties of Pathmasters—of Township Engineer Under the Ditches and Watercourses' Act.

340—X. Y. Z.—D owned lot 2, concession 7, C owned lot 2, concession 8, abutting lot 2, concession 7. Fence was mutually divided. C built the west half of the line fence between the two lots, opposite the part of lot 2, concession 7, now owned by B. A and B bought respectively, the east half, and west half, lot 2, concession 7. The fence between east half lot 2, concession 7, and lot 2, concession 8, is in bad condition, part of it is burnt down. A now wants C, owner of lot 2, concession 8, to build half of line fence between his property and C's. C contends that he has no right to build it, that all of lot 2, concession 7, is responsible for the building of that part of fence, and if any other one than A should build it, it should be B, which B refuses. C says let B build the half of fence abutting east half of 2, and I will exchange half that I have built, and assume the half built against east half 2. If A brings on fenceviewers, can they rightly make C build half of fence? Owing to the dispute, should C call on fenceviewers, so as to have the fenceviewers divide the whole fence equitably, and place a value on the one-half of fence built by C, between west half 2, concession 7, and C's property, and award B to pay that amount to C, and that C build half of fence between east half 2, and his property? What procedure would you suggest? If A called on the fenceviewers on the dispute between C and him, could B be made a party to the award, if he was also notified by A to be present?

If C called a friendly meeting among A, B, and C, and B did not come near, and will not do anything to settle dispute, should the fenceviewers put all cost of fenceviewers on B? If fenceviewers award some of costs of making award, and awards B to pay C the value of or to furnish fence material for, say two-thirds of the one-half of fence between A and C, and C to build the remainder of one-half of said fence, would C have good grounds for appeal?

2. Can pathmaster compel ratepayers to furnish teams, etc., to grade road in their road-beat by statute labor, if they have no team or teams? If council and pathmaster desire to grade part of the road division, will the pathmaster be forced to accept the services of any ratepayer, or man hired by ratepayer who offers to work, whose only tool is a spade, if the pathmaster notified them to bring teams, scraper, etc., to grade road? If pathmaster has no work in road-beat, nor teams to draw gravel on road beat, can he send ratepayer into gravel-pit to work, loading gravel for teams of other road-beats?

3. If a township engineer called under the Ditches and Watercourses' Act, at a regularly called meeting, should that day at the request only of directly interested persons, lay out, describe depth and size of tile, etc., of a drain up stream from the place of commencement of drain in the request, and include said description in his award—full provision having been made in the awarded drain for the confinement of said water, would the award be invalid?



1. We gather that no award was ever made by fenceviewers under the provisions of the Line Fences' Act, (R. S. O., 1897, chap. 284,) fixing the proportionate part of this line fence to be made and maintained by D and C respectively. If by the expression "fence was mutually divided," it is meant that an agreement was entered into between these parties under the provisions of this Act, and filed, or registered, as provided in section 14, of the Act, C's rights thereunder cannot now be interfered with, or altered without his consent. A and B should have looked after and protected their rights in and to the maintenance of this fence at the time they purchased their lands from A. If the agreement between D and C was only a verbal or informal one, made without any reference to, or consideration of, the provisions of the Line Fences' Act, it is not binding on any of the parties now concerned, and any one of them, (A, B or C,) may institute proceedings under the Act to have all differences amongst them settled by an award of the fenceviewers made, filed and registered under the Act.

2. Persons liable to perform statute labor cannot be required to furnish teams to work in their respective road divisions if they are not the owners of such teams, and they can be required to bring with them for working purposes only such tools as they own. These persons cannot be required to do work outside of their respective road divisions, unless directed by the council to do so. (See the latter part of sub-section 2, of section 109, of the Assessment Act.)

3. The point of commencement of the drain should not be fixed by the requisition filed with the clerk under the provisions of section 13, of the Ditches and Watercourses' Act, (R. S. O., 1897, chap. 283,) (Form E.) This point should be located by the engineer who has been requested to make his award under the Act, and the owner of any lands within seventy-five rods from the sides and point of commencement of the drain, may be made liable for its construction. (See section 6, of the Act.) The drain must be carried to a sufficient outlet, and must have sufficient capacity to carry away all water it was designed to carry off. (See sub-section 1, of section 5.) If the parties are not satisfied with the engineer's award, they should appeal to the county judge, as provided in section 22, of the Act.

Responsibility for Lowering Sidewalk in Unincorporated Village

341—G. A M.—In this township there is an unincorporated village the sidewalks in which are maintained by the township council. At one place in the village for a distance of about 30 yards the sidewalk is about 3 feet higher than the roadway. The sidewalk when built first was built on a level with the road, but the roadway was lowered about 15 years ago for the better drainage of the road and the sidewalk was left in its former position. The walk has been repaired from time to time as required but not lowered. The side of the walk next the road on account of the earth falling away is now supported by posts. Can the property owners along the sidewalk prevent the road commissioner from lowering the sidewalk now to the level of the roadway?

2. Would the township council be liable for damages were the sidewalk so lowered?

3. Would the council be liable if any person were to fall or slip off the sidewalk as it is now situated, and sustain injury?

1 and 2. Persons owning property along this sidewalk cannot prevent the council from lowering it if the safety of the public and its own protection require such a course to be pursued.

3. This question is one of fact. If the sidewalk in its present condition is dangerous, we think that a person sustaining injuries, without contributory negligence, would be entitled to recover damages from the municipality.

A Special Audit Required.

342—E. B. S.—1. It being notorious that the affairs of our township are in a deplorable condition, please say what steps are necessary to compel a public audit of the books, etc.?

2. How many ratepayers' signatures are necessary, and to whom should the appeal be made?

1. Steps should be taken to have the books of the municpality audited by, or under the direction of the Provincial municipal auditor, appointed under the provisions of chap. 228, of the revised statutes of Ontario, 1897.

2. The Provincial municipal auditor MAY make this audit on his own motion, or whenever requested by any two members of a municipal council, and when required by a requisition in writing, signed by THIRTY ratepayers resident in the municipality, and directed by the Lieutenant-Governor-in-Council, he SHALL make such an audit. (See section 9, of the Act.)

Fences Across Drain — Time for Payment of Drainage Debentures — Compelling Repair of Drain.

343—A. B. C.— 1. A drain under the Municipal Drainage Act, passes through a man's farm. Can the council prevent him from extending his fences across the drain?

2. Is it lawful for a council to issue drainage debentures for a longer period than seven years

3. Can one ratepayer on a drain compel the council to repair or enlarge the drain, or does it require a petition signed by a majority of the ratepayers?

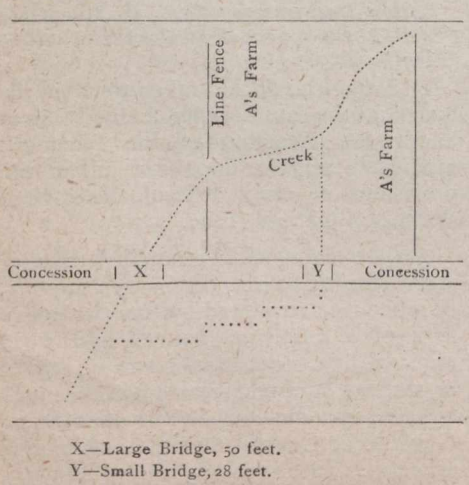
1. No But if the building of the fences obstructs or occasions injury or damage to the drain, the person or persons erecting them will be liable to the action and penalty mentioned in section 79, of the Municipal Drainage Act. (R. S. O., 1897, chap. 226.)

2. Yes. sub-section 2, of section 19, of the Municipal Drainage Act, authorizes a council to issue debentures repayable within twenty years from date, to raise money for the construction of drainage works, except in the case of pumping and embanking drainage works, when the debentures shall be payable within thirty years from their date. Where the debentures are issued for the cost of REPAIRS other than those undertaken and carried out pursuant to the provisions of section 75, of the Act, (in which case the debentures are to be payable within twenty years), the debentures shall be payable within seven years from their date.

3. A council may undertake the repair, improvement and enlargement of a drain under the provisions of section 75, of the Act. This may be done at the request of one ratepayer interested, or by the council of its own motion, and a person interested in the drain may compel a council to repair if repairs are necessary.

Closing of Bridge.

344—REEVE. — Our council wish to close small bridge shown on accompanying illustration. The water does not run through small bridge unless it rises to a high degree and A is willing to have bridge closed if council pay him a certain sum as he claims it would bank the water back on his flats longer at certain times of the year. We would like to know if council has a right to pay A damages, or if they can go on and close bridge without paying A any damages, as council think the larger bridge is all that is needed and would not damage A's farm in the least?



X—Large Bridge, 50 feet.
Y—Small Bridge, 28 feet.

If the closing of this bridge would cause A no damage, as is intimated, there is no reason why the council should not close it without incurring any liability for damages to A. If this small bridge is over a living stream having well defined banks, it should not be closed, because every person owning land along the banks is entitled to have the water flow in its natural state.

Apportionment of Cleaning out of Municipal Drain.

345—W. D. M—In 1900 an amendment was made to the drainage act, making it lawful for any municipality to pass a by-law providing it shall be the duty of the owner of every lot benefited, to clean out the drain and keep it free from obstructions etc.

1. Does this amendment apply to drains which have been constructed, or on which the engineer had his report filed previous to 1900?

2. Is it necessary previous to the passing of said by-law, that the council should get the report of an engineer as to who, and for what amount each are responsible for maintenance?

3. How can expenses of engineer for this purpose be collected? Is the municipality responsible, or can it be assessed against and collected from the parties interested?

1. The amendment you refer to applies to drains constructed under the provisions of the Drainage Act, either before or after its passing. (See sub-section 2.)

2. Before passing a by-law pursuant to this amendment, the council should obtain the report of an engineer as to the extent and manner or proportion, and distance each person whose land is assessed for benefit, is to clean out the drain and keep it free from obstructions. (See sub-section 1.)

3. The amendment makes no provision for the collection of these expenses and in the absence of express provision to that effect, the council would have no authority to charge the parties originally assessed for the construction of the drain. If the engineer is making a report pursuant to instructions from the council, as to the construction, repair, cleaning out, improvement, etc., of a drain under the provisions of the Drainage Act, he may therein make provision for the requirements of this section, and the costs of his so doing, will be part of the general expenses, properly chargeable against, and collectable from the owners to be assessed. It is to be observed that this section purports to add two new sections to the Drainage Act, 10a and 77a. Section 10a refers to "such by-law." It is difficult to say what by-law is meant, as no by-law of any kind is mentioned in the Act prior to section 10a. It also refers to "the ABOVE section 77a, of this Act." Whereas 77a is many sections BELOW section 10a in the Act. We would not advise the taking of any steps by a council pursuant to the section under review until its meaning has been more definitely stated by future legislation.

Court of Revision Can Alter Assessment Only When Appeal Filed.

346.—SUBSCRIBER. — 1. After the assessor returns his roll and there is no appeal against any man's assessment, can the council as Court of Revision give notice to a man and open up his assessment and raise or reduce it as they see fit?

2. Since the assessment was closed a party builds a home on his vacant lot. Can the court of revision open up and assess for the house just built?

3. Who administers oath, and who is chairman of court of revision?

1. No.

2. No.

3. If you mean the oath required to be taken by the MEMBERS of a court of revision, the clerk is the proper person to administer it. See section 64, of the Assessment Act. If the oath to be administered to a party to an appeal pending, or a witness, it should be administered by the court, or some member thereof. (See section 69, of the Act.) The chairman is such member of the court of revision as the others select to fill the position.

Agent Insuring Township Property not Disqualified as Councillor.

347.—P. C.—A is an Insurance Agent for a local township company and he is also a member of a township council.

1. Can A take a fire risk on his township municipal hall and charge the township, whose councillor he is, his usual fee?

2. Would such an act unseat or disqualify a councillor?

1. Yes. In the case of Regina ex rel. Bugg vs. Smith, (1 C. L. J. N. S., 129,) it was held that the agent of an insurance company, paid by salary or commission, who, both before and after the election, had, on behalf of his company, effected insurance on several public buildings, the property of the corporation, was not disqualified. The fact that he is agent for a company which has a contract with the corporation is not enough to disqualify him.

2. No.

When Taxes Should be Paid to the County Treasurer Only.

348.—T. W. W.—In re taxes. The Collector gave his report to the Municipal treasurer on the 27th of April; the municipal treasurer sent return to county treasurer on 1st May. The collector made no report to the clerk of the township. The collector received a cheque for taxes on the 2nd May, the cheque dated 1st May. He gave it to the council 8th of May. On the 12th May clerk sent the cheque back to the person who sent it. Now the one who sent the cheque for taxes is trying to compel the township collector to take it. Is it proper for him to do so? or will the party who owes the taxes have to pay the same to the county treasurer?

The collector having returned his roll, and delivered the account mentioned in section 147, of the Assessment Act, to the township treasurer, on the 27th April, had no right to collect any taxes after that date. The local treasurer, having sent to the county treasurer the statement mentioned in sub-section 1, of section 152, of the Act, on the 1st May, had no authority to receive any taxes after that date, but they should be paid to the COUNTY treasurer only pursuant to the provisions of section 160, of the Act. The collector

should have furnished to the clerk of his municipality a duplicate of the account he filed with the local treasurer on returning his roll, as required by the latter part of section 147, of the Act His not having done so, however, does not affect the rights of the parties as regards the payment of the taxes in question

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A Town By-law Under the Act for the Destruction of Noxious Weeds.

349—J. C.—We have issued notices to the ratepayers of the town of which the following is a copy:

PUBLIC NOTICE.

All property owners and occupants are hereby requested to cut grass and noxious weeds, and prune trees opposite their several properties, in conformity with By-law No. 251, passed by the council of this corporation last year.

Sections 1 and 3 of By-law No 251 read as follows:

"1 That some fit and proper person shall, from time to time, be appointed by this council to hold the office of inspector of noxious weeds.

"3. That it shall be the duty of such person as inspector of noxious weeds to enforce the provisions of an Act to prevent the spread of noxious weeds and of diseases affecting fruit trees, being Revised Statutes of Ontario, 1897, Chap. 279 and amending Acts, and see that noxious and useless weeds, plants and rubbish, on the streets and public places in the town of B, are cut and removed."

By order of council, dated the 2nd day of June, A. D. 1902.

(Sgd) A. B.
Chairman Roads and Bridges Committee.

The following is a copy of a correspondent's criticism thereon :

"An absurd by-law has been passed by our town council to the effect that the owners and occupants of property in Brampton shall cut the weeds and grass from the roadside opposite their property. We feel certain that such a by law is ultra vires and would be quashed on appeal. Sometimes weeds and grass extend one-third of the width on each side on some of our quiet streets, with not more than sufficient clearing road for a team to pass on. The roadside in front of the owners and occupants does not belong to such owners and occupants, and the council has no right to compel such occupants to cut grass and weeds from corporation property. Revised Statutes of Ontario chap. 279, does not apply to this at all. It is intended for farm lands, and distinctly says that "such noxious weeds growing on his land," and says nothing about weeds growing on the roadside. Let the weeds be cut in a proper manner by the corporation employees as in all other cities or towns, and don't harass and annoy the residents by any such uncalled for by-law."

Now what I desire to know is: Can we legally enforce the by-law mentioned in the notice although I believe the majority are willing to comply, and indeed are doing so. There is considerably grumbling in some quarters.

The notice in so far as it requires owners or occupants to cut grass and noxious weeds, etc., opposite their respective properties, is unauthorized, and if By-Law No. 251 contains any such provisions they are *ultra vires* of the council, cannot be enforced, and may be quashed upon application duly made for the purpose. The council of the town may pass by-laws pursuant to sub-section 3, of section 686, of the Municipal Act, providing for the cutting of grass and weeds, and for the collecting of the cost of so doing, by means of a special rate on the real property on the street in which the work is done, according to the frontage thereof, or according to the assessed value thereof when only such latter system of assessment shall have been adopted by a three-fourths vote of the full council. Chap. 279, R. S. O., 1897, makes provision for the enforcement of the cutting of obnoxious weeds ON THE LANDS of such owners and occupants only. It is the duty of the inspectors appointed pursuant to sub-section 4, of section 3, of the Act, to see to the cutting of such weeds, etc., on the streets, in cities, towns and villages, at the general expense of the municipality, and of the overseers of highways or pathmasters in townships. (See section 8, of the Act.) In the latter case the work may be performed as part of the ordinary statute labor, or may be paid for at a reasonable rate by the treasurer of the municipality, as the council may direct. The sections of the by-law set forth in the notice appear to be legal, as they refer only to the cutting of weeds, etc., on "streets and public places" in the town. The Act, (chap. 279,) applies to every municipality in Ontario. (See sub-section 1, of section 3 and section 11, of the Act, and sub-section 2, of section 542, of the Municipal Act.)

Placing of Arrears of Taxes on the Assessment Roll.

350—F. J. C.—Lands upon which the taxes have not been paid for three years have been returned by the treasurer of the town, to me, and have been entered a second time on the collector's roll for collection.

Now these taxes have not yet been collected, and the treasurer wishes me to enter them again on the collector's roll for collection. Have I the legal authority to comply with his request and enter these taxes again for collection, that work having been done once already? In other words, will the law justify me in entering a second time such taxes as have already been entered once?

The only sections I can find on the subject, are sections 152 to 159 Assessment Act as amended by 62 Vic. chap 27 and 62 Vic. (1) chap. 2 schedule.

There is nothing in the statute to render illegal the placing of these arrears of taxes upon the collector's roll the second, third or further number of times until they have been paid, or the lands sold for taxes pursuant to section 173 and following sections of the Assessment Act. Only one entry of these arrears on the collector's roll of the municipality is compulsory, however, previous to the sale—the latter part of section 158 providing that "such arrears NEED not again be placed upon the collector's roll for collection." The time for the enforced collection of these taxes having extended beyond the three years, such extension should have been authorized by by-law of the town.

Quarantining of Small-Pox Suspects.

351.—J. H. M.—About the last of March one of my daughters and also some three or four of our neighbor's family had what is supposed to be a mild form of small-pox. Then about the last of April and first of May it broke out again in three or four different houses. About the 17th June we had a meeting of the board of health and quarantined three houses and appointed a sanitary inspector. The sanitary inspector reported to the chairman of the board of health that I, secretary of the board of health had been into one of those infected houses for several hours the night previous to attending meeting of board of health and several other times through the week, which I can prove to be false. The consequence was the chairman wrote out a quarantine paper and had me shut in too.

1. Can the chairman or even two members of the board of health shut a man in on the strength of a report told them and sign paper by order of chairman of board of health?

2. Had I, as secretary and ex-officer of board of health power or authority to order sanitary inspector to remove said paper, I knowing that I was not in those places and that we had cleansed our house a month and a half before this?

3. Are those parties liable for shutting me in as I was put to a great disadvantage and loss by not being able to attend to my business? Is it legal to put up those notices about fifty rods from a man's residence?

1. The chairman and all members of the local board of health are health officers within the meaning of section 58, of the Public Health Act. Section 93, of the Act, authorizes the health officers, or the local board of health to make effective provision in the manner which, to them, seems best for the puplic safety in the case of a person residing in the municipality, who is infected, or lately before has been infected with, or exposed to small-pox, or other infectious disease, by removing such person to a separate house, or by otherwise isolating him, etc. If any health officer deemed it expedient in the interests of the public safety, under the circumstances, and upon the information he has received, that your premises should be isolated pending an investigation of the facts, he is justified in so doing.

2. Since you are a person directly interested personally in the matter, you should not give an order of this kind to the sanitary inspector, nor should he carry it out when given. The matter should be referred to the local board of health and medical health officer, to be dealt with by them on the evidence as to the facts adduced by you before them.

3. If these parties acted in good faith in this matter, in the *bona fide* belief that they were discharging a duty required of them by the Public Health Act, they are not liable—it is otherwise if the quarantining was the outcome of malice. Notices or placards authorized to be posted up by the Act, should be posted up "on, or near the door of any house or dwelling in which the person or persons affected is, or are." (See sub-section 1, of section 85, of the Act.) As to whether the notices in this case were posted sufficiently near to the house to meet the requirements of the law, is a question of fact upon which we cannot pronounce definitely here.

Should Construct a Drain Under the Drainage Acts.

352—J. M. F.—I have been asked by ratepayers residing on lots in fifth concession of township, to know what action should be taken against the owner of lots in sixth concession, for water that comes off their lots and floods their lands spring and fall. Lots in sixth concession are higher in most places than the lots in fifth concession, or would it be the duty of

council to have drain dug across fifth concession to creek, at the expence of all ratepayers of township?

The council has no authority to construct a ditch for the drainage of these lands at the expense of the municipality. Any party desirous of having the water taken away can initiate proceedings for the purpose under the provisions of the Ditches and Watercourses' Act. (R. S. O., 1897, chap. 285.) Or if the drainage works will be of greater magnitude than those contemplated by that Act, (see section 5,) the drain required could be constructed under the provisions of the Municipal Drainage Act. (R S. O., 1897, chap. 226), after the petition mentioned in section 3, of the latter Act, has been presented to the council.

Opening Road Through Private Property.

353.—H. We wish to open a new road and will require to go through private property. If we post up the notices as to the intention to open said road and publish the notices that we are going to open said road and pass by-law, and if no objection is made, are we then at liberty to pass by-law and open road? Do we not require to publish by-law. Kindly let me know as to above, also the proper steps to take in opening said road?

Section 637, of the Municipal Act empowers the council of townships to pass by-laws providing for the opening of new roads in the municipality, and for entering upon, breaking up, taking or using any land in any way necessary or convenient for the purpose. Before such by-law is passed, however, the council must take the preliminary steps mentioned in section 632, of the Act, as to posting up and publication of notices, etc. The only publication of the by-law that is necessary, is that required by clause (b) of sub-section 1, of section 632. If the council and owner or owners of the lands required for the new road mutually agree as to the price of, or compensation to be paid for such lands, the publication of the by-law required by clause (b) shall be dispensed with. In this case, the council may accept a deed for the same, which deed is to be registered as provided by section 633, of the Act. (See sub-section 4, of section 632.) In case the council and the owner or owners of the lands required for the road cannot agree upon the price or compensation to be paid therefor, the differences between them will have to be settled by arbitration proceedings, instituted pursuant to section 437 and following sections of the Act. By section 633, of the Municipal Act, a by-law passed expropriating private lands for a road must be registered.

Charging of Farm Lands in Towns with Cost of Local Improvement.

354—J. W.—We are about building some silex stone sidewalks, and in completing one of the streets we have to pass a small field which has never been surveyed into town lots, but is within the corporation. The owner claims that it is farming land, although there are a couple of small houses thereon, occupied by tenants. Has the corporation authority to build this portion of the sidewalk and assess the cost thereof against the property on which it fronts? Kindly say on what conditions the town can build it.

I may add that for years we have adopted the frontage system of levying the cost of sidewalks against the property on which they front.

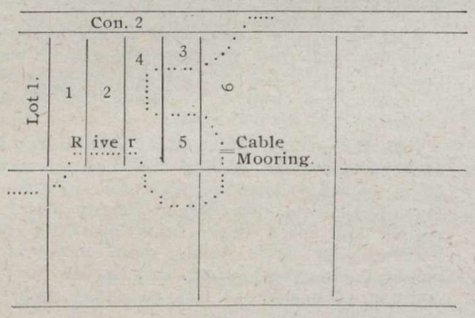
If the lands come under the definition of "farm lands," contained in sub-section 1, of section 8, of the Assessment Act, they can be exempted wholly or partially from assessment for the construction of these sidewalks in the manner and upon the terms and conditions set forth in sub-sec. 2, and following sub secs. of the sec. If they do not come under this definition they are chargeable for their proportionate share of the cost of construction according to their frontage, the same as any other lands in the town.

Council Should not Construct Road for Private Parties.

355.—J. G. A.—I enclose a diagram showing what I submit for your consideration.

1. A had a mile square of land about seventeen years ago, he sold it all by pieces like the following numbers corresponding with these 1, 2, 3, 4 and kept the number 5 for himself, stating he did not need any road, the river was enough for him, and then bought 14 acres marked 6 on diagram of another lot. Now the 5 and 6 are sold to two parties and they want us, the council, to give them a road through No. 4 or build them a scow as last year's council gave them a cable of $43 to put across the river. What should the council do?

2. Has the council a right to collect municipal taxes from them if we do not give them a road or a scow?



1. The council is not bound to open and construct a road or build a scow for the accommodation of these parties. Unless the general needs of the community demand it, the council should take no action whatever in the matter.

2. Yes. At the time th se parties purchased these lands there was no road or scow whereby they could gain ingress and egress to and from their respective properties, and they purchased in the light of this knowledge, so they have no cause now to complain.

Council Cannot Prohibit Running at Large of Dogs and Also Collect Dog-Tax.

356.—L. T. M.—Has a municipality that prohibits dogs from running at large the right to impose a dog-tax? The town council has passed a by-law for prohibiting dogs from running at large and I do not see why I should have to pay a kennel license when I cannot let a dog run out.

Yes. Sub-section 3, of section 540, of the Municipal Act, confers on the councils of towns—in addition to the powers conferred by sub-sections 1 and 2, to pass by laws to restrain, regulate, and, if necessay, to kill dogs—the power to pass by-laws for imposing a tax upon the owners, possessors or harborers of dogs. It was judicially remarked in the case of McKenzie vs. Campbell, (1, U. C. R., 241) that "the imposing of a tax is to be looked upon rather as a measure of revenue than as a mode intended to be pointed out for directly restraining or prohibiting the keeping of dogs by imposing a tax on them."

Liabilty for Payment of Dog-Tax.

357—W. D.—Would you let me know if we can compel a ratepayer to pay his dog-tax, as we have a by-law to the effect, but he claims that he leaves his dog in the township, his house being half in the village and half in the township. There is no tax in the township. He has represented the village as reeve some years ago, but declines paying his dog-tax.

This person's place of residence, being partially located in the village municipality, he can and should be considered the owner, possessor, or harborer of a dog therein, and is therefore liable for the dog tax. The place where the dog is kept does not affect the question in any way. It is the place of residence of the owner that determines the municipality to which the owner should pay the tax. If no by-law was in force in your municipality imposing a tax on dogs, they should be levied anyway pursuant to chap. 271, R. S. O., 1897.

Township's Liability for Damages for Accident.

358—J. J.—In our township we have a long hill on our gravel road which has been fenced for about 15 years and this fence has been destroyed by timbers rotting so that in the course of time it entirely disappeared and for the last 20 years or thereabouts, there has been no fence. A few weeks ago a lady and her daughter were driving up the hill during a severe wind and rain storm. A gust of wind and rain caused the horse to turn across the road and back the buggy over the edge of the road and completely wrecked the buggy. The daughter managed to jump out, but the lady went over with the buggy and received some bruises, but had a wonderful escape from serious injury. The hill where the accident happened is about four feet higher than natural lay of land, but some parts of the hill are about eight feet higher. The road is about twenty-four feet wide and in good condition all through the hill. Is the council liable for damages on account of such a hill not being feuced? The council has offered to repair the buggy so that it shall be in as good condition as before the accident. No claim has been made for personal injury other than for a bottle of liniment which the council has offered to pay.

As to whether this road, at the point where the accident happened, was in a reasonable condition of safety, although not fenced, is a question of fact, to be decided by the judge who tries an action of this kind, on the evidence adduced before him at the trial. It seems to us, however, that, under the circumstances stated, the municipality would be held liable to these parties for damages for the injuries they sustained, especially in view of the fact that the council formerly considered it necessary to erect and maintain a railing on either side of this embankment. If the council can effect a settlement with, and obtain a release of all demands from these parties by paying for the cost of the repairs to the buggy and the bottle of liniment, we have no hesitation in advising the completion of the settlement along these lines.

Legal Department.

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

Rex vs. McGregor.

Judgment on motion by defendant to make absolute a rule *nisi* to quash conviction of defendant by the police magistrate for the city of Windsor for that defendant "being agent of the Queen City Oil Company, did keep at one time in a house or shop within the city limits, a larger quantity than three barrels of coal oil, rock oil, water oil, or oth r similar oil, and a larger quantity than one barrel of crude oil, burning fluid, naphtha, benzole, benzine, or other combustible or dangerous material, contrary to the city by-law for prevention of fires and other purposes therein mentioned." It was contended, *inter alia*, that the by-law was *ultra vires*, not being within any of the powers conferred by section 542, of the Municipal Act; and that sub-section 17, of sub section 542 is *ultra vires*. It was urged that the *ejusdem generis* rule should be applied to the words "and other combustible or dangerous materials," and that they therefore apply only to articles or things which are combustible or dangerous, as gunpowder is, and they must therefore be confined to explosives. Held, referring to Anderson vs. Anderson, (1895,) 1 Q. B., 794, re Stockport Co., (1898,) 2 Chy. 687, 696, and Parker vs. Marchant, 1 Y., and C. C., 290, that general words are to be given their common meaning unless there is something reasonably plain on the face of the instrument to show that they are n t used with that meaning, and that the mere fact that general words follow specific words is not enough. But, even if the general words were to be given a restricted meaning, looking at the evident purpose of the whole section—the prevention of fires—and the powers given by the various subsections to enable councils to pass by-laws to that end, the sense in which the word "combustible" and the word "dangerous" are used, is that of liability to c use or spread fire. It was argued in support of the other objection to the by-law that, inasmuch as the parliament of Canada, by the Petroleum Inspection Act, 62 and 63, Vic., ch. 27, has legislated on the subject of the storing of petroleum and naphtha, the provincial legislation in so far as it deals with the same subject, is superseded by the Dominion legislation. Held, that the Dominion Acts, and the regulations made thereunder do not supersede the provincial legislations or any by-laws passed under the authority of that legislation. The provincial legislation was intended to confer power to make regulations in the nature of police or municipal regulations of a merely local character, for the prevention of fires and the destruction of property by fires, and (Hodge vs. The Queen, 9 App. Cas. at p. 131,) as such cannot be said to interfere with the general regulation of trade and commerce, and does not conflict with the provision of the Petroleum Inspection Act, 1899, or the regulations as to the storage of petroleum and naphtha, which are in force under the authority of that Act. Rule *nisi* discharged with costs.

Holmes vs. Town of Goderich.

Judgment in action tried with a jury at Goderich. Action to restrain defendants from discounting or in any way dealing with promissory note for $2,500 made for the purpose of providing funds for security for appeal to Supreme Court of Canada in a former action of Holmes vs. town for Goderich and for delivery up of note of cancellation. The note in question was signed by the mayor and treasurer of the town and sealed with the seal of the town corporation. The council of the town had previously passed by-laws authorizing the mayor and treasurer to borrow $22,000 from the bank of Montreal for current expenditure of the corporation. These by-laws were acted upon, and from time to time moneys were drawn from the bank as required for current expenditure, notes being delivered to the bank for such sums as were required. At the time the note in question was given $5,000 of the $22,000 remained to be borrowed. Held, that the by-laws authorizing the borrowing of the $22,000 were not *ultra vires* of the council, and the defendants, the corporation, had the right to use the $22,000 to pay into court as security in the former action.

C. P. R. Co. vs. City of Toronto.

Judgment on appeal by defendants from judgment of Street, J., consolidating with this action a motion to quash a by-law and declaring the latter invalid. The by-law (No. 3,757) passed 16th October, 1899, authorized licensed cabs, carriages and express wagons, to the number of eight, to stand for hire on Station s reet, in the city of Toronto, half an hour before and after the arrival of any train at the Union Station. An injunction was also granted restraining the defendants from passing another by-law. The agreement of 26th July, 1892, between the C. P. R. and G. T. R. companies and defendants, with reference to the Union Station site and adjacent land, is contained in the appendix to 55 Vict. ch. 90 (O.) and 56 Vict. ch. 48 (D.), and sec 13. is in the following words:—"The G. T. R. Co. will dedicate to the public a street not less than 66 feet wide, extending along the north side of the Union Station block, from Simcoe street to York street. The city agrees that at the request of the G. T. R. Co and C. P. R. Co. a part of the said street shall be designated as a stand for cabs or express wagons, but this shall not be done except upon such request." Held, that the true construction of the agreement was the one placed upon it by Street, J., viz.:—That no part of Station street shall be set aside as a stand for cabs, etc., except upon the request of the railway companies, and there is jurisdiction in the court to enjoin any breach of it. There is jurisdiction also to set aside the by-law passed in breach, altogether irrespective of the provisions of the municipal act in relation to quashing by-law, just as the court has jurisdiction in the case of an individual to prevent a breach by him of his agreement. The by-law was clearly illegal under the authorities, having been passed not in the interest of the general public, but in the interest of a particular class. Appeal dismissed with costs.

Lamphier v. Stafford.

Judgment on appeal by defendant from judgment of Falconbridge, C. J., for $5 damages and an injunction. Action for damages for tresspass to land by alleged unlawful entry on defendant's land by plaintiff and the digging by him of a ditch. The defend nt justified his acts under the ditches and watercourses act, R. S. O., ch. 285, and the award thereunder of the engineer of the township of Richmond, in which the land is situate. The award provides for clearing out and deepening the existing ditch on the east side of the road allowance between the township of Richmond and Tyendinaga, and also a ditch on the land in question, part of lot 2 in the second concession of Richmond, and directs one English, the owner of the south half of lot 2 to deepen the latter ditch five inches and clean out, so as to allow the water to run freely to the road ditch, and imposes on plaintiff the duty of maintaining the latter ditch after being cleaned and deepened by English. After English had finished the plaintiff filled up the ditch. The engineer then assumed to let the work of cleaning out to defendant, who was proceeding to do so when stopped by the injunction in this action. The award is objected to *inter alia* because (1) the requisition being for the construction of a ditch for the purpose of draining the land of one McHenry the engineer acted without authority in providing by his award for the "construction" of a ditch but for the cleaning out of existing ditches; (2) the work of cleaning out the ditch in question having been done by English pursuant to the award there was no justification for the act of the engineer in letting the work and authorizing the defendant to do it again or for the defendant's entering on the plaintiff's land and cleaning out the ditch. Held, that the objections must prevail. Appeal dismissed with costs.

Rex ex Rel; Ivision vs. Irwin.

Judgment on appeal by respondent, William Irwin, from judgment of senior judge of county of Essex, declaring void and setting aside the election of respondent as a councillor of the town of Leamington. Held, that it was improper for the county court judge to admit evidence of voters to show how they voted, since to do so would be a direct violation of the act, which requires secrecy, but that the improper reception of such evidence cannot affect the judgment appealed against, as without such evidence there was the evidence of thirty-three voters to which credence was given by the county court judge, which, together with the scrutiny of the ballots made by him, was considered ample evidence that ballots were tampered with after the ballot papers had been deposited in the ballot.box at the close of p ll. Held, also, that it was discretionary with the county court judge in the present case, after the trial had commenced, to refuse leave to cross-examine, and that it is impossible to say that the irregularities shown to have been committed in this case did not affect the result of the election.

Minns v. Village of Omemee.

Judgment on appeal by plaintiffs from judgment of Boyd, C. (2 O. L. R. 579). The plaintiffs are husband and wife. The defendant Graham is a hotelkeeper in the Village of Omemee. The plaintiffs allege that the corporation permitted and allowed defendant Graham to make, keep and maintain an opening or hole in the sidewalk on George street, adjoining his hotel, for the purpose of an outside opening to his cellar, and that def ndants did keep and maintain the opening, and left a loose plank beside it, and did not guard the openi g in any way or place a light at it. On the 14th September, 1900, at 8 p. m., the plaintiff Margaret Ellen Minns struck her foot against the plank and fell forward into the opening and was injured. The question for decision was whether the limitation provision of sec. 606 of the municipal act, requiring that actions for damages for which a municipality is responsible, for its default in keeping its roads, streets, bridges and highway in repair, be brought within three months after the damages have been sustained, is applicable to the appellants' claim, and therefore a bar to their action, assuming the respondents' liability for the damages sustained to have been made out. The Chancellor was of opinion that the provision was applicable, the liability being for non-feasance. Semble, that the view of the Chancellor was right. But at all events held, assuming that in the absence of a statutory provision limiting its liability, a municipality which gives, under the authority of a statute, such a permission as was in this case given to defendant Graham is answerable for the negligence of its licensee, it is clear, looking at all the provisions of the municipal act having a bearing thereon, that the legislature did not intend that a municipality giving the permission which by sec. 639 it is empowered to give, should be under any liability for the acts or omissions of its licensees, except in so far as liability is declared or created by sec. 606, and if that be so it follows that, the action not having been brought within three months, the claim was barred. Appeal dismissed with costs.

Re Rex. vs. Meehan.

Judgment on motion by the prosecutor, A. D. Turner, to make absolute a rule calling on the police magistrate for the city of St. Thomas and the defendant to show cause why the magistrate should not be directed to receive the oath of Turner to an information against the defendant. The rule was granted under R S. O., ch. 88, section 6. The information sought to be laid against the defendant was for that he did, on January 6, last, at St. Thomas, after having voted once, and not being entitled to vote again at the election of aldermen, wilfully and corruptly apply for a ballot-paper, in his own name, and did wilfully and corruptly vote three times for aldermen, and did thereby commit an interference with an election. The magistrate held (see 1, O. W. R, 136,) that he had no jurisdiction to hear the case and dispose of it summarily, or to hold a preliminary investigation and determine whether the accused should be committed for trial if the evidence warranted him in so doing. By 1 Edw. VII., ch. 26, section 9, (O.,) it is provided that in towns and cities where aldermen are elected by general vote, every elector shall be limited to one vote. Section 193, of the Municipal Act, declares (f) that no person shall, having voted once, and not being entitled to vote again, apply for a ballot-paper in his own name, and by sub-section 3, a person guilty of any violation of this section shall be liable to imprisonment for a term not exceeding six months. By section 138, of the criminal code, every one is guilty of an indictable offence, and liable to one year's imprisonment who, without lawful excuse, disobeys any act of the Parliament of Canada, or of any legislature in Canada, by wilfully doing any act which it forbids, unless some penalty or other mode of punishment is expressly provided by law. Held, that, as the section of the act of 1 Edw. VII., above referred to, does not contain a particular mode of enforcing the prohibition, and the offence is new, the only remedy is by indictment, as provided by section 138, of the code. Therefore, the magistrate had jurisdiction to take the information in question, and to issue a summons to the defendant to hear and answer the charge, and to hear the case and determine whether the defendant should be committed for trial, and, moreover, that he was bound to do so. And, as the magistrate had not exercised any discretion, but had simply declined jurisdiction, it was the duty of the court to order him to exercise his jurisdiction. Rule absolute. Costs of applicant to be paid by defendant.

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

Judgment on appeals by plaintiff in each case from orders of Meredith, C. J., staying proceedings and refusing to direct references to J. B. Rankin, esquire, drainage referee, as a referee under sec. 29 of the arbitration act. There is pending a drainage matter commenced by notice served and filed pursuant to the municipal drainage act, and amendment I. Edw. VII., ch. 30, sec. 4, wherein the plaintiffs in these a tions are asking for damages and other relief, and they will be heard in due course before the drainage referee. The plaintiffs allege that the matters arising in this action, as well as those in the drainage matters, have each to do with the same lands and locality, which require local inspection and investigation and a specific or scientific knowledge, in order that a proper adjudication may be made, and they, therefore, applied to a Judge in Chambers for an order of reference. The Chief Justice refused the references on the ground that the drainage referee is not an official referee within sec. 29, and stayed proceedings until the conclusion of the drainage matters, so that thereafter, if necessary, the plaintiffs could proceed if in these actions as to questions raised outside the scope of sec. 4 of the act of 1901. Held, that before the passing of ch. 30, there would have been no difficulty, as R. S. O., ch. 226, sec. 94, gave the court or Judge power to refer, but that sec 1 has been repealed by sec. 4, and under the arbitration act, if the parties agree, the question may be referred to a special referee. Here they do not agree, but the court is of opinion that the drainage referee is a referee within sec. 29. There is no statutory definition of official referee, but sec. 141 of the judicature act names persons by their office who are official referees, and the drainage referee is not there named. The drainage act, R. S. O., ch. 226, secs. 88 and 89, makes the drainage referee (1) an officer of the High Court; (2) confers upon him all the powers of an official referee under the judicature and arbitration acts. Official referee is only "official" in the sense of being an officer of the High Court. The drainage referee, being such an officer, with all necessary powers, is an official referee for the purposes and within the meaning of the arbitration act. Rule 12 makes all officers auxiliary to one another. See also sub-sec. 22, sec. 8, of the interpretation act. For these reasons and the drainage referee being specially qualified by sec. 89 of the drainage act, with the powers of referee under the arbitration act, the appeal should be allowed and the case referred to him. Costs of appeal to plaintiff in any event.