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THE MUNICIPAL WORLD

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

Vol. 10. No. 11 ST. THOMAS, ONTARIO, NOVEMBER, 1900. Whole No. 119

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The Municipal World

PUBLISHED MONTHLY

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

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

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

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

Address all communications to

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

ST. THOMAS, NOVEMBER 1, 1900.

County Council Elections.

The day for receiving nominations of candidates for the office of county councillors throughout the Province will, this year, be Monday, the 24th day of December, (the Monday in the week preceding the week before polling-day.) The Act provides that notice of such nomination meeting and of the election shall be given by "nominating officer" in each county council division, by advertisement in two weekly newspapers in the county, to be published for at least two successive weeks prior to nomination day; or by giving sufficient public notice thereof by printed posters. When posters are used, the Act is not clear as to the time for which they should be posted up prior to nomination day. To do away with all possible doubt, we would suggest that the posting up be completed at least, two weeks before the day fixed by the statute for receiving nominations.

To enable them to comply with the provisions of the Act, and to prevent delays and inconvenience, it would be well for officials having the conduct of these elections, to supply themselves with the necessary forms and materials prior to the 1st day of December, next.

Taxation of Personal Property and Income.

The statistics published by the Bureau of Industries show that the proportion of taxes paid on assessments for personal property and income varies greatly. In townships the proportion is 1-149; in villages, 1-15; in towns, 1-12; and in cities, 1-9 of the total tax.

Previous to 1886, when farm stock was placed on the list of exemptions, the assessment on personal property and income was 1-16 of the whole.

The present basis of assessment in townships is the value of land and improvements. An important question for the assessment commission to decide will be whether this should be changed and a general law passed applicable to all municipalities.

Telephones for Farmers.

Wisconsin has a statute which is likely to encourage experiments in municipal ownership of a telephone business. The Act, passed last winter, authorizes any municipality to issue negotiable bonds, on the petition of a majority of the freeholders, for the establishment and maintenance of a telephone system. Few know what motive was behind this action; but since it was taken a Farmers' Telephone Company has been incorporated, with a capital of $500,000. This company is offering to establish a telephone plant in any town on a guarantee of 100 subscribers at $12 a year, taking its pay in township bonds drawing 5% interest, and running 20 years, 5% of the principal to be appropriated yearly to a sinking fund. It is assumed that the income of the lines will pay the operating expenses, maintenance, interest and sinking fund. When the bonds mature, the plant is to become the unincumbered property of the township. It is not stated that any towns have yet taken up with this proposition, but the scheme is a tempting one, unless there are conditions not set forth in the case before us. A cheap telephone system in a country town would be a great promoter of sociability and contentment in the winter season.

While the question of ownership of public utilities still remains an open one on this side of the Atlantic, the city of Bradford, in England, has taken a new departure in that direction, wholly unexpected, and not even discussed as a remote possibility in America. In making improvements in the streets, the city corporation acquired a public house, which will be replaced by a first-class hotel managed by the municipality, with a view to applying the profits to civic purposes. This is not an attempt to apply the Guttenburg system but simply an application in practice of the principle that the municipality itself should be directly responsible for the manner in which the liquor business and the business of accommodating travellers is conducted within its borders.—*Bulletin.*

* * *

A case of damage to cattle done by barbed wire fence was heard by Judge Morgan, at Markham Division Court, recently, and the decision given may interest farmers and others who are using that kind of fencing. His Honor decided that barbed wire fences were a public nuisance, and if placed along a sideline or road the party owning them is responsible for damage done to cattle. In this case he assessed $10 and costs.

Climatic Conditions Absolve a City From Liability for Damages Caused by a Fall on a Slippery Sidewalk.

The case of Georgine d'Estimonville vs. the City of Montreal, an action for damages for a fall on the sidewalk, was decided recently by Mr. Justice Archibald. The action was for damages for injuries received from a fall on a slippery sidewalk on the 14th of February, 1900. "In this case," said Judge Archibald, "there is no question as to the bad condition of the sidewalk at the point where the accident happened, but it is contended on behalf of the city that the climatic conditions were such as to exempt it from liability. The point to be determined, therefore, is whether, in view of such climatic conditions, the ordinary obligation of the defendant to keep the sidewalks in good order was suspended."

His Honor then reviewed the evidence in the case, pointing out that it was shown that the weather was such on the day of the accident that any portion of the sidewalks which had not received attention that morning could not have been safe to walk upon in such a gale of wind.

"It is manifest," His Honor said, "that it would be difficult, if not impossible, for the city, by the engagement of men under their own control, to go all over the side walks of the city on the occasion of such weather to have them put in safe condition, but the city had contrived a plan by which this duty is to be performed by the tenants of property facing on the streets, and by the proprietors of such properties as are vacant, and has secured the approval of the legislature to that plan of proceeding."

In view of this it could not be held that the city was responsible, and the judge said :

"In this case I find that the climatic conditions were such that the city could not possibly have remedied the condition of the sidewalk before the accident happened, and the accident, therefore, must be attributed to force majeure, or to the imprudence of the plaintiff who should not have ventured upon so dangerous a sidewalk in a gale of wind." The action was therefore dismissed.

He Got Careless.

A veteran of the civil war was explaining at a camp fire about the bullet in his face, received at Bull Run. "Bull Run!" exclaimed a hearer, "how in thunder did you get hit in the face?" "Oh!" replied the veteran, "after I'd run about ten or fifteen miles I got kinder careless and looked 'round."

The council of the township of Drummond intend submitting a by-law to the ratepayers of the township at the January elections, to abolish the present system of statute labor, and substitute therefor a special rate for road purposes.

Ontario's Road Reformer.

Another Province has organized for road reform and better roads. Representative citizens from all over the Province of British Columbia assembled on the 27th of October last, at Kamloops, and formed the British Columbia Good Roads Association. Quebec, New Brunswick, and now British Columbia, have already followed the example set by Ontario in 1894, and it is significant to note that the object of the newest association, as outlined in the constitution, is closely modelled after that of Ontario. It is inspiriting to see that Ontario sets the example for Canada in all these reforms, and while, in a few of the States of the American Union, an effort is being made to raise money in large sums for this purpose, yet in a great majority of the States now organizing for reform, the policy of Ontario, viz., organization, agitation, education and legislation, and operation is being adopted.

When Mr. Andrew Pattullo, M. P. P., first conceived the wisdom and necessity for organizing for this purpose in Ontario, he was met with considerable discouragement by many men prominent in municipal and national advancement. Notwithstanding this, his own experience in other matters of reform, and his close and intimate knowledge of all public questions, and especially those affecting not only the individual but the nation, had led him to study the problems so closely and carefully as to assure himself of the wisdom of such a movement, and undaunted by prejudice and opposition, he succeeded in attracting, through his speeches and writings, the attention of a sufficient number of progressive men throughout the country as to be able to organize and provide the machinery for bringing about what must be conceded a most desirable and economical municipal reform. The wonderful work performed by him for the advancement of the dairying interest, while president of that association, together with such a successful launching of the movement for better roads, is more success than can be expected by the average statesman. Not satisfied with this, he has taken up an active crusade against municipal bonus granting, and his speeches on this question in the Ontario Legislature have attracted widespread attention. The result of his efforts in this regard have been much appreciated, and no doubt will tend to remedy the grievous system which has burdened so many villages, towns and cities with excessive taxation.

A great deal of Mr. Pattullo's success has arisen from the fact that he is not an extremist, but a man who believes in reform by evolution rather than by revolution. At the Good Roads Congress in Port Huron, so strikingly noticeable was this feature of his carefully directed remarks, that representatives from different parts of the United States, where improvements of this description have been sought by revolutionary measures, and where legislation is often hastily obtained, at several congresses since held, have repeated and acted upon his advice. The remarkable feature is, that in no country in the civilized world, so young as Ontario, has greater progress been made along these lines, and in the question of road reform many of the older countries, that have been building for centuries, and thoughtlessly following old and incompetent methods, have received inspiration from Ontario's example.

ANDREW PATTULLO, M. P. P.

A journalist and parliamentary leader, Mr. Pattullo is a busy man, but whether at home or abroad, for he has travelled extensively, he has been a student of public affairs, and his close observation, quick comprehension and originality make it easy for him to accomplish more than falls to the lot of even the few whose ambition leads them into public life. Unlike most public men who content themselves with vague suggestions, Mr. Pattullo designs skilfully and carefully, following every detail, letting nothing divert his attention until these plans are put into successful operation.

In addition to his prominence in municipal matters, may be mentioned his term as president of the Canadian Press Association. His entrance to Parliament followed the retirement of Sir Oliver Mowat, whom he succeeded as representative for North Oxford. Of him a contemporary has said, "One of the best writers on the Canadian press, he is also a graceful and convincing platform speaker, and a man who is disposed to do his own thinking."

A department of THE MUNICIPAL WORLD has been devoted to the road question for several years, and we can, perhaps, appreciate more than can most others, Mr. Pattullo's efforts in this regard.

The Municipal Drainage Act.

Mr. Alex. Bell, clerk of the township of Dereham, has favored us with a copy of a paper on this subject, read by him at the recent meeting of the Oxford Municipal Clerks' Association. The paper contains an exhaustive resume of the provisions of the above Act, and the following comments and suggestion:

"Before entering upon a discussion of the drainage law as we understand it, I will venture a remark to the effect that all the laws we have ever had, or have at the present time, permit an invasion upon private or vested rights. While we boast of liberty of action and protection of property, our fond boasting is occasionally rudely shocked by the provisions of our drainage laws. Yet I am not prepared to say that our laws are unjust.

Certainly the best interests of our country require in many cases, other means than the individual consent of all concerned, or the work of advancement and improvement of wet lands would be very slow.

The plan embodied in our present drainage laws is certainly the best that we have every had, and undoubtly the best that we will have for some time. While amendments are loudly called for from some quarters, I fail to see where amendments could be made, except in some minor points, that would give us a better law, for the purpose of meeting all cases in which the provisions of a drainage act are required."

"Appeals to court of revision should be in writing, setting forth clearly and distinctly the grounds of complaint. In case an appeal should be carried to a county judge, a written appeal is necessary. If the grounds of complaint are not

distinctly set forth, a judge would no doubt dismiss the case, and justly to.

While custom may have permitted evidence in such cases to be given in a random way, sometimes bearing on the case and sometimes very remote, the responsibility that rests upon courts of revision is too great to be passed over lightly. It sometimes occurs that persons do not file their appeal within the time allowed by law. At other times persons appear in person at the court, apparently thinking that their presence is all that is necessary to constitute an appeal. I am of opinion that court by resolution at its first sitting, may allow such appeals to be heard upon such conditions as may seem just, yet it would not be wise to hear the case until an appeal has been filed with the clerk."

"While there are several points in the drainage laws of our province that are somewhat obscure to laymen, our courts are quite unanimous in holding municipalities strictly to the letter of the Act. Proceedings must comply with the Act. An encroachment on private rights, beyond the provisions of the Act, are sure to prove fatal to proceedings taken, while, on the other hand, when works are once constructed, a neglect to protect the interests of private individuals is courting defeat and all the attending consequences."

Public Ownership and Business Methods.

The opponents of municipal ownership are doing a serviceable work in calling public attention to the lack of business methods in the conduct of public affairs While it is put forth as an argument against the operation of public service industries by the municipality, it is at the same time a strong force in awakening the sense of public officials and private citizens to the necessity of adopting business methods and the securing of competent men to attend to the public interests.

"Unless the operation of public service industries can be accompanied with proper economy and with a due regard to sound business principles, it will be wiser for municipalities to contract such service from private individuals," says a prominent writer. This is all very true, but is there any particular reason why the operation of such industries cannot "be accompanied with proper economy and with a due regard to sound business principles?" The writer knows of several instances in this state where municipal water and light works are so conducted, and the result is that public ownership in such cases has achieved wonderful success as compared with the former operation under private ownership. Without business methods, the measure of success would not be as great or possibly the service would not be equal to that supplied by private endeavor, or the cost might be more.

The wr ter also suspects that there are several municipalities in the state where municipal water and lighting plants are not properly managed. The time is coming, perhaps quickly, when these cases will be publicly stated and the attention of citizens called to the fact that their public works are not being prudently conducted. And when the citizens see what they a e losing, as compared with cities where sound business principles prevail, there will be a demand for a change of administration, and it will come.

In other words, public ownership is liable to bring about that which is most desired, public economy, by bringing home to the citizenship the necessity therefor. Of course it would be better for the municipality to adopt sound business methods prior to attempting to operate public utilities; for if they do so attempt without first inaugurating proper methods in all public matters, the venture will not be productive of wholly satisfactory results. Ultimatly, however, the necessity for the adoption of sound business principles will be apparent that economy will prevail.—*California Municipalities.*

Municipal Loans.

A NEW VENTURE BY THE DOUGLAS CORPORATION.

The Douglas corporation is in need of money for waterworks purposes, and has decided to borrow locally, direct from the people who have it to lend, and in such sums, small or large, as the people have for investment. Mr. Robertson, the town clerk, considers that the most advisable means to induce lenders of small sums to invest their money would be to issue debentures, repayable or renewable at different periods, such as one, two, three or four years. He proposes that loans for one or two years should bear interest at the rate of 3½ per cent, payable half-yearly, and that those for three or four years should bear interest at 3½ per cent., payable half-yearly. He points out that many English corporations are adopting similar means for raising large or small sums at fixed rates of interest, varying from 3 to 3¾ per cent.

Municipal councils will do well to observe the following decision rendered recently in the case of Huffman vs. township of Bayham, in which the plaintiff secured $1,500 damages. The case dealt with obstructions on highways and the Court of Appeals decision was as follows: A milkstand built on a highway by or adjoining property and projecting over the travelled way is such an obstruction to the highway as to constitute want of repair within the m aning of the Municipal Act, and where such an obstruction was shown to have existed for three years and the municipal corporation having jurisdiction over the road in question, had taken no steps to have it removed, they were held liable in damages for an accident caused by it.

Costliness of Wooden Sidewalks.

The Finance Committee, of Montreal, a few days ago discussed the many evils which come to the city through wooden sidewalks, and also announced that the city, in order to abolish such sidewalks, would bear half the cost with proprietors for laying down of permanent walks. During the discussion it was shown that in addition to the unsightliness of old and worm-eaten wooden sidewalks, they were a fruitful source of expense to the city, through accidents they caused to pedestrians. The merest glance at the actions annually taken against the corporation proved this assertion to be only too true; the amount paid out for such accidents being almost beyond belief.

In connection with the attempt of the alderman to interest proprietors in assisting to lay permanent sidewalks, comes a statement from Chicago showing the sore straits that city has got itself into through the dangerous wooden sidewalks. The statement shows that there are pending against the city, at the present time, lawsuits for personal injuries resulting from accidents by wooden sidewalks, aggregating the enormous sum of thirty million dollars. In addition to this there are also outstanding judgments against the Windy City to the amount of two millions. It is little wonder that Chicago, in the face of such astonishing figures as these, should, like Montreal, be anxiously advocating the abolition of wooden sidewalks and the putting down of permanent walks. Recently statistics were published in the United States, in *Civic Government*, which proved, without a shadow of doubt, that with permanent sidewalks actions for accidents upon them were practically unknown.

It may safely be said that in most of the large cities wooden sidewalks have almost entirely disappeared. Wherever they have survived the advance of modern improvements they should be promptly abolished. Such sidewalks were never anything better than a poor substitute for the surface of the ground. Being porous they have also been a danger to health. The truth is, too, that the cost of concrete and bituminous walks is but little greater than that of wooden walks, while they are kept in repair for a tithe of what must be spent on wooden walks.

However, the by laws of our cities are such that the aldermen can accomplish but very little, in this much needed reform, unless proprietors first show an interest in having wooden sidewalks abolished. With the facts referred to, as to the cost, dangerousness, etc., of wooden sidewalks, this interest should certainly be promptly evinced.

The municipality of the township of Toronto is going to give the ratepayers an opportunity, by ballot at the elections in January, to say if they are in favor of abolishing statute labor or not.

Engineering Department

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

Street-Paving.

Well-paved streets are the most important of municipal improvements, and their value in enhancing the appearance of a town and rendering it a more desirable place of residence, can hardly be overestimated. There is apt to be some uncertainty, however, as to the paving materials available. This need not be the case, for while there are very many different kinds which may be employed, only a few kinds are commonly used.

ASPHALT.

With cement-concrete sidewalks, stone curbing, and a roadway surfaced with asphalt, little is left to be desired in the design of a street, so far as it is now possible to reach the ideal. If there is an electric railway on the street, paving-blocks or paving brick should be placed between and adjacent to the rails, as the vibration caused by electric railway cars is destructive to asphalt.

While much is to be said in favor of asphalt, it is not to be considered faultless. It does not afford a good footing for horses, it is dusty, it is difficult to repair, or to relay after the street has been excavated for the purpose of laying sewer connections, gas or water services. It is expensive, and for that reason alone is not very acceptable, except where property is of a proportionate value.

The material of which asphalt pavements are composed, may be either natural or artificial. Natural asphalt is obtained by grinding to powder bituminous limestone, found in Texas, Utah and elsewhere, or the bituminous sandstones found in California, Kentucky, Texas, etc. This powder is then heated until soft and is spread while hot on the roadway.

The chief source of artificial asphalt is the Island of Trinidad, W. I., where crude asphaltum is obtained; is then refined and mixed with sand and stone dust; is heated and applied to the roadway. The artificial asphalt pavement is composed of about 90% sand and 10% bitumen, so that the quality of sand used is as important as that of the asphalt proper. Underneath this layer, which should be about two inches thick, should be a foundation bed of concrete, about six inches in thickness. Owing to the skilled labor and machinery needed in laying this pavement it is found most satisfactory to have it laid and kept in repair by contract. When properly laid, its durability cannot be questioned, but there is some difficulty in surrounding a contract with such safeguards as will ensure first-class material and workmanship. A reliable company should be employed and the maintenance of the pavement guaranteed for 15 years, which is its surface life. A common guarantee is for a term of five years, but this is not sufficient. Breaks in asphalt pavement must be immediately repaired, otherwise moisture enters, causing rapid decay.

VITRIFIED BRICK.

Vitrified bricks are different in composition and manufacture from the ordinary building brick. They are made from clay, shale, or a mixture of the two, which is heated to the point of vitrification and then slowly and gradually cooled. The size of each brick is about 2½ x 4 x 8½ inches. The durability is not equal to that of asphalt or stone blocks, but they are less noisy than stone blocks. They are manufactured in Toronto, in the States of Ohio, New York and Pennsylvania, and elsewhere. There is room for much variation in the quality of brick. The process of manufacture is one which requires an expensive plant and much skill in burning. In laying a vitrified brick pavement, the natural earth is first prepared by draining, grading, and rolling with a steam roller. On this a layer of concrete is laid, six inches in thickness. On this is spread a layer of sand about one inch in thickness, and in this the bricks are embedded. They are laid on edge, in courses, at right angles to the street line, and with broken joints, the joints being cemented or "grouted."

STONE SETTS.

Stone setts, or blocks, form one of the oldest paving materials, is extensively used in cities, and is the strongest and most durable that can be had. It is well adapted steep graded up to ten per cent., requires little repair, and suits all classes of traffic. It is, however, very noisy, and is rough. It is, therefore, not suited to residence streets or business streets where there are retail stores. It is best adapted to streets occupied by wholesale houses in which there is much slow and heavy traffic. Stone blocks are also suitable for paving between street railway tracks. The stone generally used is granite or trap, which few cities can find convenient. The stone should be cut into rectangular blocks about seven inches deep, three inches wide, and nine inches long. The price paid for carrying and making these blocks will average thirty dollars per thousand. In constructing the pavement they are laid on a concrete base, in much the same manner as vitrified bricks.

BROKEN STONE, (MACADAM.)

Excavate the roadbed to the required dimensions, giving the sub-grade a uniform crown, seven inches higher in the centre than at the sides, lay a row of five-inch porous tile in the roadway, two feet from each of the kerb lines, and parallel with them, these tiles to be laid two feet beneath the sub-grade and have a regular and uniform fall in the catch-basin or outlets. Lay lateral drains of porous tile, four inches in diameter, extending diagonally into the roadway at an angle of forty-five degrees with the side-drains, these drains to be at intervals of fifty feet. Make the trenches to receive the tiles as narrow as possible, and fill them with coarse gravel. The surface of the sub-grade to be rolled until it is thoroughly compacted. During the process of rolling fill any settlement or depressions with gravel or other suitable material. Place the kerbing at each side of the roadway in the usual manner.

On the sub grade thus prepared, place a single layer of flake stone about five inches in thickness. This stone to be laid as closely as possible, and the opening between them carefully filled with stone chips or coarse broken stone. Upon this and over the flake stone place a layer of broken stone, such as will pass through a two and one-half inch ring, the layer to be seven inches deep in the centre, and five inches deep at the kerb, and sprinkle upon it fine stone screening until all the voids are filled. Sprinkle this layer with water from the watering cart, and by the use of harrow work the fine screening into a mass. Pass a roller over it three times. Upon this place a layer, two inches in depth, of one and one-half inch crushed stone. Apply fine screening and sprinkle as above specified, over this place a single layer of one inch crushed stone, and cover with screenings until all the voids are filled. Then sprinkle and harrow as above specified, adding the fine screenings until all the voids are filled, and sprinkle and roll until the mass is thoroughly consolidated, and the surface made hard and smooth.

While the rolling of the finishing surface is in process, the material should be kept moist by sprinkling, but not wet, and in no case should sufficient water be used to reach the foundation.

TAR MACADAM.

The method of construction is, in preliminary steps, similar to ordinary macadam; the last two layers only, of broken stone, together with a top-dressing of fine material, being treated with tar. The process of saturating the stone with tar is a simple one. The stone is first allowed to become thoroughly dry in the sun. The mixing is done on the platform. While the boiling tar is being applied, the stone is turned and re-turned with shovels, after a manner similar to concrete mixing. The mixture is then carried in wheelbarrows to the work, spread to the desired thickness, and each layer rolled. On the surface of the tarred stone is spread a one inch layer of tarred gravel and fine crushed stone, which is rolled to a hard finish. A light color may be obtained by sprinkling a light coating of cement as with an asphalt pavement.

CEDAR BLOCKS.

Cedar blocks are probably as cheap a material as can be adopted, but they decay rapidly, becoming offensive and unsanitary. The surface quickly roughens, so that the

life of this pavement in which good service is rendered, is such that renewal is necessary in from five to seven years. If retained longer than this they become a source of annoyance, and a discredit to the municipality. The quality of cedar obtainable is becoming less sound and more expensive, so that it is not likely these pavements will be as satisfactory in the future as in the past.

A GRAVEL ROADWAY.

On many lightly travelled streets a cheap and serviceable form of pavement can be made by laying a foundation of quarry flake-stone in the bottom, laying over this about four inches of coarse broken stone, and surfacing with clean gravel of a uniform size. This style of pavement for light driving is most attractive, it is easily and cheaply repaired, and with a little careful attention is applicable to many streets.

COST OF PAVEMENTS.

The cost of pavements varies with many circumstances, so that a fixed scale of prices cannot be laid down. Heavy asphalt, however, in Toronto, with six inch concrete base and a ten years guarantee, costs $2.80 per square yard. The repairs for the succeeding five years cost 30 cents per square yard. At the end of fifteen years, the asphalt surface can be renewed, on the old concrete base, for $1.70 per square yard. Light asphalt with a five years guarantee will average $2 30 per square yard. To maintain this for the succeeding ten years, will cost 40 cents per square yard, at the end of which term, it may be renewed on the old concrete base for $1.50 per square yard. Vitrified brick on four inches of concrete, costs $1.80 per square yard. During a term of fifteen years it will cost about thirty cents per square yard for repairs. At the end of fifteen years it will require rebricking, at about $1.20 a square yard. Broken stone (macadam) roadways cost in Toronto about 90 cents per square yard. In fifteen years with proper care, macadam roadways should be as good as new, with an outlay during that term equal to the original cost. Tar macadam costing from 80 cents to $1.00 a square yard will probably come under the same rule. Granite setts and scoria block on concrete cost about $4.00 a square yard, should require no repairs in fifteen years, and at the end of that time be in good condition.

ROLLING.

A steam roller may be freely used on streets, but not in such a way as to produce the best results. The roller should be liberally used on the natural sub-soil, thoroughly harden and consolidate it before any stone is applied. The sub-soil should, before any stone is applied, be brought to a constant grade by filling with earth or gravel wherever depressions are made by the roller. That insufficient attention has been paid to the sub-grade is often evident from the undulating surface of many roadways. An essential of all roads and pavements is a hard and compact foundation, and to secure this, thorough rolling and drainage is necessary.

SCRAPING, SWEEPING AND SPRINKLING.

It is a mistake to provide for the original cost of pavements, without at the same time insuring the investment by providing for their proper care and maintenance. If an asphalt pavement is allowed to go uncared for, in a very short time, an accumulation of dirt, brought on by traffic and other means, will make it discreditable. But where these high-class pavements are laid, provision is always made for scraping, sweeping and sprinkling, so that their best qualities are always fully realized. But the cheaper class of pavements, such as macadam and gravel, are generally neglected, and in consequence, wrongly condemned. Quite as much, often more, filth from outside sources is carried to a macadam or gravel roadway than to asphalt, and to realize the most from the investment, similar attention, though not so constant, should be given. Three or four times during the summer season, these streets should be swept with a revolving sweeper. In the spring and fall, gutters and catch-basins should be scraped and cleaned. During the dry season, sprinkling will lay the dust and lessen the wear.

Dust and Pavements.

The consensus of opinion respecting the relative sanitary qualities, of the various kinds of pavements, has been that those most absorbative and most subject to decay, form the greatest menace to health. From this point of view, wooden pavements, especially cedar blocks, which analysis has proven to contain the greatest number of bacteria, have been regarded as most objectionable. Asphalt, vitrified brick, and similarly smooth, and stony pavements, on the other hand, have been considered most desirable in this respect.

A recent writer in *Engineering News* presents another phase, in a lengthy article, which combats the heretofore popular verdict, and argues that those pavements which are least pervious and which permit the street filth to be blown in dust, most readily, are most likely to produce disease. From a series of experiments, it was found that the dust from asphalt pavements contained the greatest number of bacteria, while cedar block was among the least objectionable. The writer says:

"There exists a popular prejudice against wood block pavements on the ground that they are unhealthful. This prejudice appears to be based on the reports of several investigators who have analyzed samples taken from the surface of pavements, and found the wood block samples teeming with germs, whereas asphalt and brick were practically free from them. There seems to be, however, one element that has not been taken into account by these investigators; they have drawn their conclusions on the basis that the most unhealthful pavement is the one that contains, or retains, the greatest number of germs. This inference is, perhaps, rather hasty, for it must be admitted that, that pavement is the most unsanitary which transmits or allows to be transmitted, the greatest number of germs, to the human system. And it is possible that the pavement that contains, or holds, the greatest number of bacteria, may not be unsanitary, provided that it retains them, and does not permit them to escape into the air."

After recounting the result of a series of experiments, he says:

"The writers firmly believe that the unhealthfulness of a pavement depends not upon the power that a pavement may have to retain and breed germs, but upon the ease with which the dust, including bacteria, is stirred from its surface, by the wind; and that clouds of dust arising from the pavement are sure indications that clouds of germs are also escaping into the air.

It may remain to be proven that the clouds of bacteria thus escaping into the air include pathogenic, (disease producing) forms. It might be argued that the damp, fibrous pavement allowed the germs to multiply in great numbers, while the dry impervious pavement would tend to destroy them, leaving only those that are not dangerous. As to the possibility of pathogenic forms occuring on the pavement, it is only necessary to mention that the sputum of consumptives and otherwise diseased persons, and the offal of horses and other animals that may be diseased, finds lodgment upon the pavements, and being ground up into fine particles by the wheels, sooner or later becomes flying dust.

A somewhat limited study was made into the wind velocities required to move the dust from the various pavements, and it was found that under the local conditions obtaining on the different pavements, dust was moved on sheet asphalt by a velocity of about 300 feet per minute, on brick about 500 feet per minute. Wooden block was almost entirely free from dust clouds. These wind velocities are doubtless dependent upon local conditions. It is not believed that they should be generally accepted, but that the safest guide towards judging the sanitary value of any pavement is by direct observation as to the dust clouds given up by the pavement; such observations must be comparative between the different kinds of pavements, and must extend over long periods. In short, the safest guide to the amount of dust would, perhaps, be the testimony of residents having had experience with the various pavements.

Evidently the remedy for this condition of things is better methods of cleaning, these systematically carried out, or else generous sprinkling which will lay the dust and furnish a moist surface that will retain the finer dust and bacteria.

Qualities of Paving Materials.

Classifying the streets, and determining the pavement for each is a matter of great municipal importance. A well-laid gravel roadway, costing fifty cents per square yard, may be just as serviceable and as efficient on an outlying street as an asphalt pavement costing three dollars a yard would be in the central part of the city. But these, again, if interchanged, would be entirely out of keeping with traffic and surroundings. Classification, wisely made would tend to secure suitable pavements, and influence the ratepayers in petitioning for such improvements. If, however, they should desire, and are willing to pay for a more costly pavement, it could be granted.

In classifying the streets, and determining the pavement for each, many things must be taken into consideration, in order to make them harmonize with the locality, requirements of traffic, assessed value of the property, etc. This is a matter which requires careful consideration.

The desirable qualites of a pavement are:

1. That it affords a secure and pleasant footing for horses.
2. That it be smooth so as to render travelling and traction agreeable, easy and noiseless.
3. That it present a good appearance.
4. That it be sanitary; the form and material such that it will be impervious, liquids will not have permanent lodgment, and dust will not be easily produced.
5. That it will be economical, the durability and service rendered commensurate with the cost of construction and repair.
6. That it be easy of repair, of removal and displacement, at reasonable cost, and with appliances and materials within the control of the municipality.

In view of the foregoing, it becomes apparent that an ideal pavement material has not been discovered.

Of the pavements commonly used, asphalt, vitrified brick, stone sets, cedar block, scoria block, broken stone (macadam,) gravel, none is capable of general or even special application, filling all the above conditions, but each possessing merits making it most suitable for streets of a certain class.

Asphalt is a material most suitable for business streets, occupied by retail stores and offices, and indeed for all business districts, except in a purely wholesale section, where slow, rough, and very heavy traffic is concentrated, upon which latter broken stone should be laid. Asphalt, of course, may be used on residential streets, but is too expensive and does not possess as many desirable qualities as first-class macadam, properly laid and maintained. Vitrified brick pavements are suitable for many business streets subjected to slow, steady and not very heavy traffic, to moderate traffic. But owing to its noisiness it is not desirable for residential streets, or streets subjected to light, frequent and rapid travel. Broken stone, (macadam,) should be the standard pavement for streets generally, excepting those where asphalt, stone sets, or vitrified brick are necessary. Cedar block should be discarded.

Praise for Ontario.

The President of the Connecticut Valley Highway Association, Mr. I. Dickinson, of Springfield, Mass., while on a trip through Canada recently, devoted a considerable portion of his time to a study of the streets and roads of this country, and our methods of making and maintaining them. In the course of an interview published in the *Springfield Union* Mr. Dickinson says:

The roads of Canada have improved very much during the past few years, more especially in the Provinces of Ontario, New Brunswick and Nova Scotia.

The people recognize the fact that they cannot afford poor roads. The question of good roads is being discussed both in the cities and the towns with the result that the roads are gradually being improved, and in many instances the country roads will compare favorably with some of the improved gravel roads of the United States.

In many localities the people have not yet learned how to use to advantage the local deposits of road material. Oftentimes these deposits can be plainly seen along the sides of the main arteries of travel.

Many sections have natural gravel roads extending for miles. These are maintained in a very cheap manner, with an ordinary road machine.

In other localities there is nothing but an apology for a road. Riding over some of these, the grade reminds one very forcibly of a half-demolished toboggan slide, as the road slopes in two directions at the same time. On the low lands, the mud, stones and ruts are so plentiful that one could imagine oneself travelling through a deep, hollow swamp.

The parliament of the Province of Ontario has taken the first step in giving state aid, and this only in a small way, but it will surely encourage the people and enlighten them as to the benefits to be secured from having good roads.

Under the law, as passed by the Ontario parliament, provision is made for the appointment of an instructor of public highways, whose duty it is to visit the different localities and advise and instruct the people in the construction and maintenance of roads. A practical man with a wide experience was appointed to this position, with the result that he is gradually gaining the confidence of the people, and his good work is bearing fruit.

Ontario is the first and only province in Canada that has taken this progressive step, but the good results obtained will certainly lead the other provinces to pass a similar law.

There are a great many toll roads in Canada, especially in the province of Quebec, but these will undoubtedly be abolished as soon as the people become better educated on this road question.

Sewer Connections.

The connection between the sewers and opposite houses and storm water inlets are of an importance second only to the sewer mains. Any defect in one of the connections, while limited in the range of its effect, is fully as detrimental within that range to the proper working of the systam as a defect in the main itself. Since the house-connections are subject to extreme fluctuations of discharge and hence to stoppages, as also to the formation of grease deposits, it is desirable that they be equally as accessible as sewer-mains for both inspection and cleaning, and also that their grade and alignment be given equal care in both the design and the construction. They should, if possible, be given a uniform grade of not less than 2½%. Where the house sits back from the street an observation-hole should be placed at the fence-line, and one should be placed wherever there is a change in the line or grade. There should also be a hand hole in the pipe just after it enters the cellar. The junctions with the sewer should be made by means of branches, either Y or T. It should never be made in pipe sewers by breaking a hole into the shell and inserting a pipe. If the sewer be larger than 20 to 24-inch, a T is advisable, both because this offers easier inspection of the house-connection from its lower end, which inspection can be made by a person entering the sewer, and because the branch can be placed entirely above the ordinary level of the sewage, which position it should occupy when possible so as to cause no interference with the sewage flow. When the sewer is too small to admit a man, which size will not admit of raising the branch entirely above the ordinary sewage flow without giving it too steep a pitch, a Y branch is preferable, because this will retard the flow less than a T, and because the house-sewage will enter the sewer at a less angle with its flow. The vertical angle which the branch makes with the horizontal should not ordinarily exceed 45° in small sewers, because of the interference with the flow and of the splashing caused by a vertical drop of sewage into the relatively small stream, and because of the danger that weight of the house connection may break in the crown of the sewer.

It is well to so place the branch in brick sewers that a trickling discharge from it will flow over the brick for the least possible distance, that deposits from such discharge may be avoided. In the case of combined sewers this would call for placing the branch but a short distance above the invert, but it should be given such a grade as to bring it higher than the crown of the sewer when it reaches the cellar.

Some engineers always use T branches, more always use Y branches, for house-connections; but the practice here recommended seems the best to utilize

the advantages and avoid the disadvantages of each.

The connection with inlets should never enter the sewer at an angle with its axis greater than 45°, on account of the great disturbance to the flow which would be occasioned. Where possible, and particularly in small sewer-mains, a man-hole should be placed where each connection enters the sewer and the connection continued by a curved invert in the bottom of the man-hole.

It is difficult to calculate the proper size for a storm water connection, but since there is little disadvantage in having it larger than is actually required, while the effect of too small a pipe may be disastrous, it is advisable to make the size fully ample to discharge all the run-off from the heaviest storm.

Meetings to Discuss Road Reform.

In a number of the townships a by-law for the abolition or commutation of statute labor will be submitted to the people at the coming municipal elections. Thirty-seven townships in Ontario have already taken this step, operating under the new system for from one to five years. In every instance the change has proven profitable and satisfactory. It requires, however, that the system, to take the place of statute labor, should be thoroughly understood by the ratepayers before the v te can be successfully taken to secure its passage. Many townships have, unfortunately, submitted this by-law, leaving the matter, as they thought, entirely in the hands of the people to say whether the old system should be continued or changed ; the councillors believing that it was the part of wisdom for them to say or do nothing that might influence or prejudice the vote ; that it was a matter that belonged entirely to the people and for that reason should rest entirely with them ; and that the council were doing all that they should do by submitting the by-law and asking, "Are you in favor of abolishing statute labor?"

Wherever such a by-law has been submitted before fullest information as to what plan shall be substituted, and fullest details of how it would be operated, had been given to the people, the vote has been adverse. It matters not how crude, useless or incompetent a system may be, to point out its defects is not sufficient unless a remedy is prescribed, and while the opinion among the more progressive citizens is that the statute labor system, as at present operated, is not the most competent, its weaknesses must be clearly shown and a complete plan of what is to take its place must be clearly understood before it can be rea-ona-ly expected that the people will vote for the removal of the old system. Wherever the by-law is to be voted on, public meetings should be held at convenient points in the municipality, so as to permit every elector to hear the matter discussed. If the council thinks it advisable, speakers should be brought from townships where the new system has been tried, or the services of the Provincial Engineer of Highways should be secured, it being among Mr. Campbell's duties to perform such a service, when requested by a council. Among the townshlps that have already arranged meetings preparatory to the vote are: East Williams, Nassagaweya, Trafalgar, Nelson, Esquesing and others.

It is the duty of every township submitting the question, to see that the fullest and freest discussion is provided, for with this, even if the by law is defeated, much good will result from the information obtained. Many councils fear to call the people together for th s purpose, but in that very fear lies a great weakness, because the people understand the benefit which results from such discussion, and where there is even a suspicion that improved methods would result in better work, there is just reason for an agitation, and where the evidence of other municipalities is so strongly in favor of the change, the council need fear nothing from the results.

Cattle Running at Large.

In many townships by-laws are passed regulating the height of fences, and stating whether cattle may or may not run at large. Municipal councils are permitted by statute to pass such by-laws ; but THE MUNICIPAL WORLD entertains the conviction held by some of our best legal authorities, that while councils may permit cattle to run at large upon the highway, this does not free the owners from responsibility where damage is done to crops. It is affirmed, that under general law, an owner of land bordering on a highway is not bound to erect a fence along said highway to protect his crops against cattle doing damage notwithstanding any such permissable by-law. The general law has been interpreted to assume that owners of animals must attend to them—as it is not compulsory upon any man owning land bordering on a highway to fence out his neighbor's cattle. If a person keeps a domestic animal he is bound to t ke care of it If this be the general law, the sooner township councils repeal their by laws allowing certain animals to run at large, the better, as they are misleading. Ratepayers entertain the notion that where such by-laws do exist they are not liable for their cattle trespassing on lands bordering on highways in their respective municipalities. Moreover, if the general law is against the principle involved by these permissable by laws the legislature should repeal the power now given to pass such regulations. No doubt the general law is common sense ; for no one man should be allowed to keep animals at the expense of his neighbor's comfort and civil rights.—Newmarket *Era*.

The *Mercury* says that the Renfrew corporation gravel pit, outside that town, saved the ratepayers $3,700 on the concrete walks on one street.

Street Lighting.

There are electric light plants in about 128 municipalities of Ontario, the great majority being owned and operated by private companies. Brockville has very recently purchased from a company, to be operated by the municipality, an electric light plant for $85,000. The citizens of Ottawa have recently decided, by popular vote, to own a municipal plant, and a similar step is anticipated in Kingston. The question of municipal ownership of an electric plant is one which is discussed in the different municipalities with growing frequency, the matter being agitated at the present time in Woodstock and Lindsay. Other places which own municipal plants are: Alexandria, Campbellford, Niagara, Mitchell, Goderich, Tilbury, Collingwood, Bracebridge, Orillia and Newmarket. The last-mentioned town, Newmarket has recently decided to expend $10,000 on additions and improvements to their plant.

Parish Councillors in England.

TENURE OF OFFICE TO BE INCREASED TO THREE YEARS.

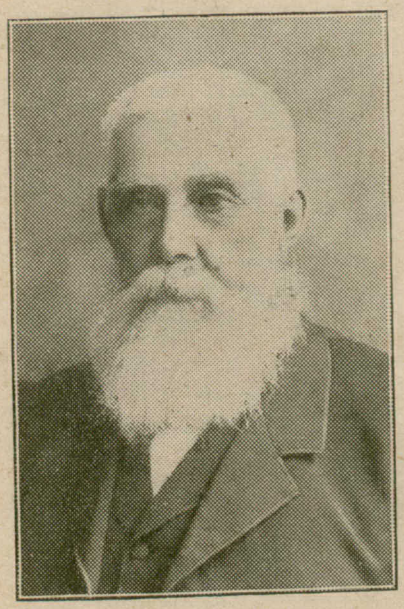
A circular has be n issued by the Local Government Board, calling attention to the Parish Counci lors (Tenure of Office) Act, 1899, which makes an important alteration in the law relative to the tenure of office of parish councillors. It will be remembered that the Local Government Act, 1894, provide : that the term of office of a parish councillor should be one year, and that on the 15th of April, in each year, the parish councillors should go out of office, and their places be filled by newly-elected councillors. The new Act repealed these enactments as from and after the 1st of January, 1900, and provided that the term of office of a parish councillor shall be three years. The councillors who now hold office will continue to do so till the 15th of April, 1901, when their tenure of office will expire, and they will give place to the parish councillors, who will be elected on the ordinary day of electi n in that year, and who will then remain in office until the 15th of April, 1904.

In other respects the law as to the election of parish councillors is not affected by the new Act. It will still be necessary to hold an annual meeting of the parish council on or within seven days of the 15th of April, in each year. This is specially prescribed by the new Act, which takes the place of a similar provision of the Local Government Act, 1894. The circular adds that it should be borne in mind that the provision of the new Act with regard to the term of office of parish councillors, will not apply to the chairman of the parish council, who must still be elected annually at the annual meeting of that body.

Municipal Officers of Ontario.

Clerk, Township of Nelson.

Mr. McLaren was born in the township of Nelson, in the year 1826. He was educated in the common schools in that township, and has always followed the occupation of a farmer. He was first elected to the municipal council in the year 1853, and afterwards served as deputy reeve for years. He was appointed clerk and treasurer in 1880.



MR. D. MCLAREN.

The Municipal Officer.

His Importance in History and in Modern Local Government.—Town Clerks as Governmental Advisers.

(By Mr. G. L. Gomme, in the London County Council Gazette.)

It is not putting the matter too strongly to say that at the present moment municipal institutions are at once more important to the country, and more on their trial as part of the machinery of government, than at any other period in the world's history, not perhaps even excepting the period when the institution of the Roman Empire was practically based on municipal institutions. All will readily appreciate the statement that municipal government carries with it duties of great magnitude, which are more likely to be increased in the future than decreased.

OFFICERS V. COUNCILLORS.

If I were to suggest that municipal officers were more important to the stability of municipal institutions than even the representative councillors themselves, it might be supposed that the representative element was being belittled; but in truth this is not so. The functions of the two are so different that they scarcely compare, except in this, that the functions of the municipal officer become more and more important because the details of work, the principle of which is settled by the representatives in the course of a comparatively short time, remain for all time to be executed and carried out by the permanent officials.

Historically the municipal officer is an extremely important personage, whether we trace his influence upon English institutions by noting the oft-quoted work of the Portreeve of London, the less known but heroic Sheriff of London, Ainsgar by name, who fought by the side of Harold at Hastings; or by noting the apparently humbler officers who were among the necessary equipment of tow s just emerging from the state of village communities, or whether we trace out the enormous influence which the municipal officer has exercised in the development of institutions, in India, Russia and other countries not so advanced in political development as our own. The fact must always remain, that perhaps of no body of men has more been required from time to time than from the municipal officers of the country.

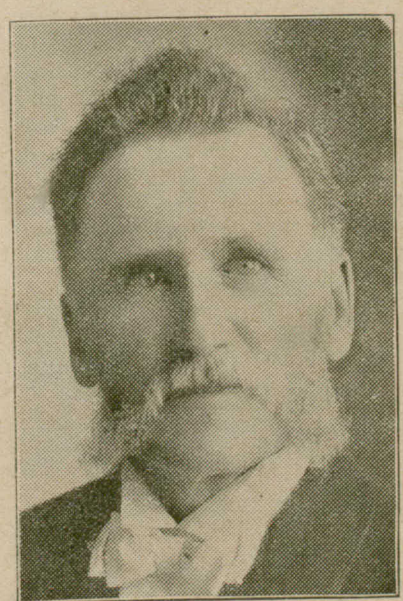
GOVERNMENT AND MUNICIPAL OFFICERS.

It is quite true that during the long period of obscurity which put back municipal institutions during the reigns of the Stuarts and the early Georges, the municipal officer suffered, but every one who has read the parliamentary reports and evidences on this subject will a ree that the obscurity was as undeserved as it was impolitic. Now, that that state of things has ceased, we see the government expecting much from municipal officers. Mr. Oxford Smith, the town clerk of Birmingham, assisted as a member of the Royal Commission on the Amalgamation of the city and county of London, and now sits on the Royal Commission on Local Taxation; Mr. Harcourt Clare, late town clerk Liverpool, is a member of the Local Taxation Commission; Sir Samuel Johnson, town clerk of Nottingham, has been called upon to assist t e government in the technical difficulties under the London Government Act of this year, while Dr. Shirley Murphy, our colleague, is a member of the Royal Commission on Tuberculosis. I cannot help thinking that this call is not only indicative of the position which municipal officers may expect to occupy, but that it is essentially a wise policy, which might be more definitely elaborated by the governments of the future.

SUGGESTED IMPROVEMENTS.

To perfect a system of municipal service, many improvements are undoubtedly required. In olden days, municipal offi cers were servants of the community, not of the council elected by the community. Town clerk, not clerk of the council, borough surveyor, not engineer of the council, and so on; and this conception of the officers' position adds to its dignity and importance without detracting one iota from their subordination to the electe authority who appoint them and direct their doings. And there is an important principle which, I think, is essential to the creation of a municipal civil service, namely, that councils should employ the best officers available in the kingdom. If an officer comes from Nottingham to London, or *vice versa*, he comes with the experience learnt in one municipality to place at the disposal of his new employers, and his experience should count. Such a plan would have the effect of meeting the requirements for services of a high character, and of placing at the disposal of every local authority in the kingdom, men who belong to a large class of workers from whom selection could be made.

These notes are designed to focus opinions which already exist among most of us rather than to suggest anything new, but it is always wise to occasionally pause and take stock of events and t ings happening in our midst. The pausing places in man's history are marked with almost all that is worth remembering, and one of the most momentous pausing places in t e history of municipal officers is that which we have now reached.



MR. WM. BEATON.

Clerk, Township of Derby.

Mr. Beaton was born in the township of Vaughan, in 1836, and moved with his parents to Derby in 1852, where he taught school for five years. He afterwards engaged in farming, and in 1867 moved to the village of Kilsyth where he embarked in the general store business. He was appointed clerk in 1864. Mr. Beaton also carries on an extensive business as an auctioneer, conveyancer, land, loan and insurance agent. He is a commissioner in H. C. J. and an issuer of marriage licenses.

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 atten ion 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.

Time for Filing Appeals Against Voters' List.

388.—T. S.—Voters' List was first posted up on the 24th day of August. Which is the last day that appeals can be handed in, the 23rd or the 24th of September?

Section 17, of the Voters' List Act, provides that notice of complaint against the list should be filed with the clerk of the municipality within thirty days after the posting of the list in the clerk's office. In estimating the period of thirty days the day of the posting is excluded. Therefore in your case, the last of the thirty days was the 23rd of September, which was a Sunday. On page 129, Note S, of Ermatinger's Franchise Act, it is stated that "no exception is made for Sundays or statutory holidays in the computed time under the Act. The notice may be served on *Sunday*, it not being process of a judicial character, under 29 Car. 11, c. 7, or on a holiday," and cases are cited as authority for these propositions. Subsection 16, of section 8, of the Interpretation Act, (R. S. O., 1897, chap. 1,) provides that the word "holiday" shall include Sundays, and sub-section 17 enacts that "if the time limit d by an Act for any proceeding, or for the doing of anything under its provisions, expires or fal s upon a holiday, the time so limited shall extend to, and such thing may be done on the day next following, which is not a holiday." These sub-sections are general in their applicati n, and since the calculation of the time within which the notice of complaint against a voters' list are to be filed, is not excep ed from their operati n, we are of opinion that the 24th of September was the last day for the filing the notices of complaint against your voters' list.

Removal of Obstructions from Creek.

389.—J. J.—Three of our ratepayers have low land which they think can be drained if a creek near to their land would be cleaned out thoroughly from fallen logs and brush. Part of the creek runs through land that is cleared on both sides and part is through bush land.

Has the township engineer power, under the Ditches and Watercourses Act or Drainage Act, to order the cleaning of the creek from obstructions of logs and brush so that the water could be carried off without such interruptions in its course?

No. But where a petition is presented to a council under section 3, of The Drainage Act, a stream, creek or watercourse may be cleared of obstruction as part of the work. See also section 619, of The Municipal Act.

Wife's Dower.—(1. Tax Sale, 2 Sheriff's Sale.)—Use of Street in Building.

390.—SUBSCRIBER.—1. Does deed given by virtue of land tax sale leave property clear of wife's dow r?

2. Land is sold for debt by virtue of execution in sheriff's hands. Does the purchaser get title deed clear and full of wife's dower?

3. Is it safe to buy land where wife does not bar dower? What is result?

4. In building a house or store, what power has council to grant permit to use sidewalk or street, and what power does it give builder?

1. Yes. See sections 149, 203 and 208 of The Municipal Act.

2. No.

3. If the wife does not sign the deed of land conveyed in fee simple by her husband, for the purpose of barring her dower in such land, the purchaser takes the land subject to the wife's dower. In such a case the purchaser's right becomes absolu e if the wife predeceases her husband, but if she survives him she then becomes entitled to a life estate in the third of the lands in any event, and if the husband dies intestate to take a one-third interest in the lands absolutely.

4. The council should not grant permits of this kind, nor is such necessary. The law allows parties erecting buildings to use the street and sidewalks, with due consideration for the safety of the public, for such a reasonable time and extent as may be necesary, to deposit materials, erect scaffolding, etc. Mr. Dillon, in his work on Municipal Corporations, says that "there need be no absolute necessity; it suffices that the necessity may be a reasonable one; but th s will never justify the leaving the street or way in an unsafe and dangerous condition, or its use in an unreasonable manner, or for an unreasonable time."

Statute Labor.

391.—W. H. N.—A ratepayer is assessed for property in the township, but lives in a house on another man's property, for whom he works. Is he liable for one day's additional statute labor tax, as an occupant of this house?

No. If the ratepayer is not assessed for the house he lives in, he is not chargeable with any statute labor in respect of it. Bei g assessed for other property in the township, he is "otherwise assessed," within the meaning of section 100, of The Assessment Act, and therefore is not liable to perform the one day's statute labor mentioned in that section.

Qualification of Jurors.

392.—J. R.—1. In section 22, (4) of Juror's Act, the following words are found, "but shall not select from the names of any persons that were written down and selected from and returned the preceding year." Suppose A, B and C were written down but were not among those returned. Are A, B and C exempt from being selected the succeeding year, or only those returned from the last letter used exempt?

2. As I understand section 7 of the Jurors' Act, the reeve and councillors of the township may be chosen to serve as Grand or Petit Jurors in Her Majesty's High Courts. Am I right?

1. A B and C are not exempt from selection for service as jurors the succeeding year. Only those whose names were written down and selected from and *returned* the preceding year are exempt.

2. We agree with you for these reasons. Section 37, of The Jurors' Act, states those who are qualified and liable to serve as grand or pettit jurors in the High Court and other Courts.

Section 6 exempts certain persons, but not those referred to by you. Section 7 exempts others, but the exemptions under this section are confined to grand or pettit jurors in the inferior courts.

Defaulters' Statute Labor.

393.—J. O. S.—A ratepayer in our municipality is located on rear ¼ of section, one-half mile from the road. The pathmaster called him to perform his statute labor on main road, he refused to do so, claimed he should be allowed to perform his statute labor between his own place and main road. He performed his number of days with some extra time on the sideroad. The sideroad is almost impassible and parts of main road are in a bad condition. Pathmaster returned his statute labor undone. Has the council power to allow his labor as being done, or will it have to be placed on collector's roll for 1901?

The council gave pathmaster no instructions in regard to where he was to have any one's labor performed when he was appointed.

A ratepayer must perform his statute labor in the proper division under the direcli n of the pathmaster of that division, and if he neglects to so perform it he becomes a defaulter, and may be returned as such by the pathmaster, under section 110, of The Assessment Act. The ratepayer in this case was returned as a defaulter, and it is the duty of the clerk to place him upon the collector's roll for the following year for the amount at which the statute labor is commutable. This duty is a statutory one, not subject to the control of the council. Moreover, it is not a case in which the council should interfere, because it might encourage others to ignore the authority of the pathmaster.

Enforcing an Award Under the Ditches and Watercourses Act.

394.—F. W. F.—1. In an award ditch, B constructs a portion on C, and C maintains the whole on his land. What steps must A, another party to award, take to enforce its completion, neither party having made it the required depth, and over six months having passed since the date fixed for completion?

2. Is B no longer bound, and if not, must C take out extra depth in whole?

1. The amendment of section 28, of The Ditches and Watercourses' Act, by section 3, of The Drainage Amendment Act, 1899, limits the power of the engineer to inspect and let the work, or any portion of it, if not completed within the time, or in the manner mentioned in the award to six months after the time fixed for the completion of the ditch. Since no steps have been taken to enforce the proper completion of the ditch within the time, the parties to the award have lost their remedy under section 28, as amended by section 3, of The Drainage Amendment Act, 1899. The only course left open to A, under the existing award, is to take proceedings pursuant to section 35 of the Act, to enforce the *maintenance* of the ditch by the other parties to the award, in accordance with its provisions.

2. There appears to be, now, no way of compelling B to complete his portion of the drain in accordance with the award, and, since he has no part of the drain to maintain, *he* cannot be affected by proceedings instituted under section 35. C will have to clean out and keep in repair to the dimensions authorized in the award, *all* the portion or portions of the drain he is therein required to maintain.

Drainage Connection.

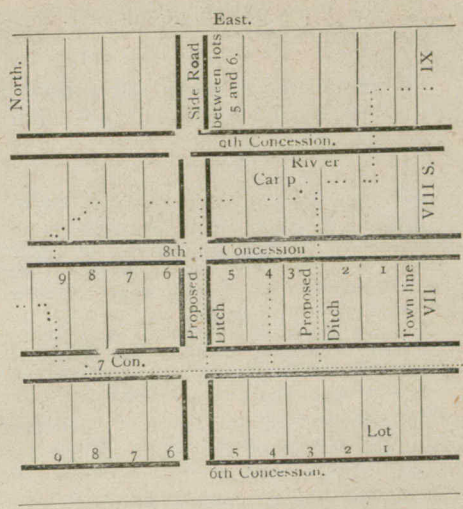
395.—A. M.—The water coming off all the lots from 1 to 8 inclusive in the 6th concession is emptied into the corporation ditch on the 7th concession line. The present outlets from this ditch are through lots 4 and 5 in the 7th concession, coming on to the unoccupied road allowance between 5 and 6, thence along the road allowance to the Carp River, in the 8th concession. From lot 4 the water on the 7th concession line is conducted to the Carp River through lot 9. Those outlets through the lots are not water courses with defined banks.

Owing to the amount of water that is being carried in this ditch, the 7th concession line opposite lots 6, 7 and 8 is being cut away to such an extent as to make it dangerous to the public travel. Now the point I want information on is this: If the corporation sends the township engineer to make an award under the Ditches and Watercourses Act, and he should award that the water be taken from the 7th concession line, in ditch, (marked proposed ditch on the accompanying drawing) between lots 2 and 3 to the Carp River, and that the water on the said line between lots 4 and 5, be taken on the unoccupied road allowance in ditch (marked proposed ditch) to connect with the water now coming on to side-road through lots 4 and 5. Can the engineer compel the owners of those lots in the 6th concession, to make a part of those proposed ditches situated, as many of their lands would be at a greater distance than 75 rods from the nearest point of where the work of construction is being done?

An answer such as, "The owners of those lots in the 6th concession have no right to use the corporation ditch," is no use. The owners of those lots are using this ditch and will continue to use it.

1. Can they be compelled to assist in providing ditches to conduct the water coming on to the highway, off their lands, to the Carp River?

2. Can they be compelled to do a certain portion of the work each, in opening up those proposed ditches so that the water may be taken to the Carp River, which is the only outlet, without injury being done to any of the parties interested?



1 and 2. The provisions of the Ditches and Watercourses Act, (sections 5 and 6,) must be observed. Therefore, the owners of lands lying beyond a distance of seventy-five rods from the side and point of commencement of the proposed ditch, cannot be made liable for the construction of any portion thereof. Nor can they be compelled to assist in providing ditches to conduct the water flowing on the highway off their lands to the Carp River. If the petition required by sub-section 1, of section 3, of The Drainage Act, (R. S. O., 1897, chap. 226,) could be obtained, the drainage works could be constructed under the provisions of that Act, and all parties to be benefitted made to contribute towards its cost.

Withdrawal of Portion of High School District.

396—G. I.—There is a petition before the council, from the ratepayers in part of a High School District, asking that they be allowed to withdraw from said High School District. Now as it requires a two-thirds petition of the ratepayers for the council to petition the county council—

1. If the petitioners present what they say is two-thirds of the ratepayers, in the portion to be detached, but the clerk refused to give a certificate for the following reason: he claims all ratepayers, whether resident of the section or not, as counting. Now, can the Canada Company count as one or not as a ratepayer of the section?

2. Can a petition be amended by adding names, or taking from the same after the petition is placed before the council?

3. The school act says every person qualified to vote as farmer's son shall be entitled to vote on any school question whatsoever. Do their names count on said petition?

4. What would you define as the last revised assessment roll as to ratepayers' names on said petition? Is it the municipal Court of Revision, or if no appeal from that, but say the judge at the Court of Revision of the voters' list strikes off one of the ratepayers, and adds on a new name as owner of one of the lots in said section, which ratepayer ought to be counted on said section.

1. A ratepayer is a person who pays taxes, whether a resident of the municipality or not. There is nothing in The High Schools Act to limit or qualify this meaning of the word; therefore, the Canada Company is a ratepayer in any municipality in which it owns lands in respect of which taxes are payable.

2. No. After the petition has been presented to the council, it becomes one of the records of the municipality, in the custody of the clerk, and cannot be altered.

3. A farmer's son, assessed as such, is not a ratepayer within the meaning of section 8, of The High Schools' Act. The fact of his having been given a vote on school matters by The Public Schools' Act does not constitute him such.

4. The last revised assessment roll of a municipality is that last revised by the Court of Revision of the municipality. In the absence of appeals therefrom, or if appeals are taken to the County Judge, that finally revised by him on hearing and determining the appeals. The voters' list, or any changes made in it on revision, are not to be taken into consideration.

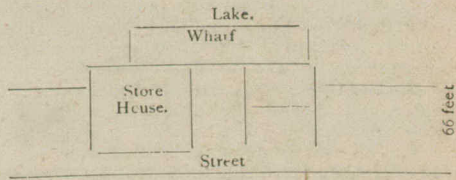
Unlicensed Use of Crown Lands.

397.—W. D.—About thirty years back a person built a dock and wharf buildings on the shore of the lake for a steamboat landing and collected tolls for freight etc., and has done so ever since. He had no grant from government or sanction from the municipality for this privilege and has enjoyed it without payment of taxes or rent of any kind. Will you please inform me,

1. If he has acquired an indisputable right to the erections and water front by use so many years?

2. If he can transfer this right (if so acquired) to another by deed or agreement?

I may state for your guidance that the buildings and wharf stand partly on a road allowance on shore of lake and extend over the water. The storehouse, which is on the roadway, has been assessed each year and paid taxes. The steamers deliver mail at the wharf daily.



1. No. The land on which the buildings and erections stand are vested in the Crown, and the occupant cannot, by lapse of time, acquire any rights or privileges against the Crown.

2. Since he has acquired no right, he has none to transfer by deed or agreement, or otherwise, to any other person.

Collection of Taxes on Vacant Lot.

398.—W. D. M.—A certain party owns a vacant lot in the municipality, and refuses to pay taxes when demanded by the collector, said party owns other property (both real and personal) in the county, but in a portion set apart from the county except for electoral and judicial purposes.

Can the collector legally seize and sell any of the property in that portion thus set apart, or would he be justified in returning the taxes as unpaid on the said vacant lot?

Assuming that your municipality is not one coming within the provisions of section 10, of chap. 27, Ont. stats., 1899, the collector can seize any goods (not exempt) of the person who owns and is actually assessed for the vacant land, wherever found in the county, provided the location of the goods seized is within the county as defined by chap. 3, of the R. S. O., 1897. We are of the opinion that a municipality set apart from the county for municipal

purposes, is nevertheless within the county within the meaning of the word "County," in section 135, of The Assessment Act, and t at being so, the taxes cannot be returned against the land if they could have been made out of chattels of the person assessed in any part of the county.

Arrears of Taxes in School Section in Unorganized Township.

399.—TAXES.—A school section was formed in an "Unorganized Township" in an "Unorganized District."

For taxes, the trustees le ied as follows, first year for every acre held by an occupant, as shown on Crown Land departmental maps, two cents per acre. Some paid the tax, some did not.

Second year the trustees appointed an assessor, who went around, took amount of improvements on a roll, not leaving any statement with occupant.

Before holding court of revision, the trustees alter the amount of assessment in some cases without informing the parties concerned, who, not knowing that their assessment has been increased, did not atte d the court of revision.

In collecting the taxes there were no bills or demands delivered and left with the occupant. The collector had a list of names, with the amounts due, which he carried from house to house, informing each occupant of the amount for which he was liable. Again some paid the tax, some did not.

At this time the township became organized, and there being so large an amount of taxes in arrears, a heavy rate is levied on the section, and those who have paid their taxes want to know if there is a possibility of collecting the taxes in arrears.

1. Can the trustees compel the assessor or collector to deliver an assessment notice or tax bill now (this being the third year? The collector and treasurer did not furnish bonds.)

2. Is there any chance that those back taxes can be collected at all? If so, what should the trustees do to have the same collected.

3. The trustees say that they have a right to alter and amend the assessment roll prior to court of revision. Have they? I think not.

4. Can the account be handed over to the municipality for collection, providing its officers are willing?

If the errors can be collected, kindly outline method of procedure. Trustees are having arrears noted in the Crown Land local office. I fail to see much benefit in cases where the patent has been issued.

1 The conduct of the trustees, assessors and collector were irregular, and wholly at variance with the provisions of The Public Schools' Act, (section 24, and following sections.) The first year there was no assessment or collector's roll at all, and the second and third year the assessor and collector failed to perform their duties legally. There would be no advantage in delivering assessment notices or tax bills to the ratepayers now, as payment of taxes cannot be enforced. We assume the collectors' rolls (if any) were returned by the collectors. We have not overlooked sub-section 3, of section 67, of The Public Schools' Act, in considering the question, but we do not think it applies to this case, because we are of the opinion that the powers of the council are confined to rectifying errors which have been made by its own officers. The officers voted prior to the organization of the township were not the officers of the council of the township, and therefore errors made in their time cannot be corrected now.

2. No, if the parties chargeable object to paying them.

3. No.

4. There would be no advantage in doing this, as the council could not enforce payment.

Collection of Taxes on Dogs of Defaulting Tenants.

400.—S. N.—We have quite a number on our assessment roll who are assessed as tenants jointly with the owners of the farms and who are assessed for dogs. The taxes are all carried out as a total.

Can the tax be collected from the owners of the farm, as in many instances the tenant has left the farm before the collector had the roll?

If not, what can be done? Remit?

The tenant's dog-tax cannot be collected from the owner of the land. If the collector cannot collect the tax from the tenant he should proceed as provided in section 6, of chap. 271, R. S. O., 1897, in case the circumstances are such as to enable him to do so.

Alteration of Polling Subdivision by Returning Officer.

401.—M. H. S.—1. Has the returning officer authority to create a second polling subdivision in a municipality when the lists are made up for one only, although there may be a few more than the 300 voters in that one subdivision? If so, where in the statutes is this authority found?

2. Granting that he has the authority, can the division of voters on the lists be made by the letter, i. e., say from A to N, or must the divisions be made by boundaries alone?

1. The returning-officer has no such authority under The Municipal Act. The council of your municipality, (being a village) is empowered to pass by-laws for the purpose by section 536 of the Act as amended by section 25, of chap. 33, Ont. Stats., 1900. Sub-section 3 provides that this must be done before the publication of the voters' list; and see also sub-section 5 as to the alteration of polling sub-divisions after the publication of the voters' list.

2. Under any circumstances the division cannot be made in the way you state. Every polling sub-division "shall have well defined boundaries." See sub-section 1, of section 536. Section 7, of The Franchise Act, (Dominion) authorizes a returning-officer to sub-divide a polling sub-division under these circumstances, and each separate polling station or room shall be designated by the initial letters of voters on the list, who are to vote in such station or room, in the following manner, that is to say: From A to K, and from L to R, and from S to Z, or as the case may be.

Granting of Mill Site on Road Allowance—Statute Labor of Station Agent.

402.—J. M. D.—1. Has a municipal council power to grant a sawmill site on a road allowance, near a wharf on edge of river? The road has never been graded or fenced; the land is in commons; there is very little traffic to the wharf.

2. Has the collector power to enforce the payment of one day's statute labor against a station agent who has no property, but claims he has no right to do it as the company pays taxes and statute labor? The pathmaster refused to take action and returned the day undone, and I put it on collector's roll.

1. No. The public has the right to the use of the road allowance to the full width. The fact that there is little or no traffic on this road does not lessen their right to its uninterrupted user.

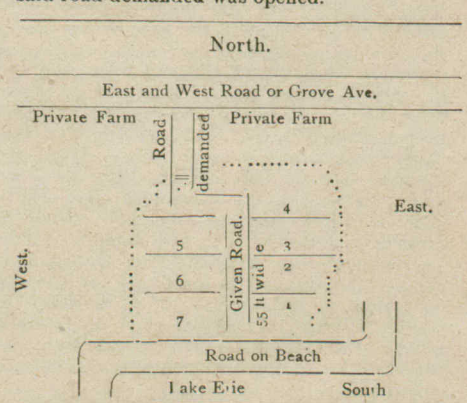
2. If the agent is the lessee or occupant of a house or lands belonging to the railway company, and assessed therefor, he cannot be called on to perform any statute labor over and above that with which the railway lands are chargeable. If he is not otherwise assessed within the meaning of section 100, of The Assessment Act, he is liable to one day of statute labor, as mentioned in the section. If he becomes a defaulter in performing this statute labor there is no authority for placing it on the collector's roll, nor for the enforcement of payment by the collector. Payment should be enforced as provided by sub-section 2, of section 107, of The Assessment Act.

Width of, and Liability of Council to Construct Road.

403.—W. K. W.—I wish to ask a few questions about roads in Pelee Island, Essex County. Our township has a large portion of its surface covered with marshes and when originally surveyed was thought roads would never be needed in them. Now they are reclaimed we have roads laid out in various ways and widths, from forty to fifty feet wide.

1. Can the council accept those roads as legal ones, by the R. S. O., 1897, sub-sec. 630, page 26, 27? I read it requires sixty-six feet wide.

2. Again can the council be compelled to open up a road through private lots for the public use, to make another outlet to lots lately surveyed and sold to several persons. I send a sketch map of lots lately sold, and to be sold, for which the road is demanded. You will see by the said sketch, all the lots in said sketch have an outlet along the beach road to all other roads on the island, but the demanded road would be much shorter and a better road to our churches and schools, post office and docks than by the lake route. The road will be a great convenience but not a necessity. What I want to know is, can the owner of said lots, one to seven inclusive, compel the township council to open up the road and pay for it, or must he do it himself? If not done by someone the lots would not sell as readily as if said road demanded was opened.



Lots numbers 1, 2, 3, 4, 5, 6 and 7 are mostly open marsh with timber around the outside, part of them sold with the promise from the seller to the buyers, that a road would be open north to the East and West Road.

1. Not unless conditions imposed by the sections and sub-section you quote have been fulfilled; that is, if the road is being laid out by the council, the permission of the council of the county in which the local municipality lies must first be

obtained, and if by any owner of land, the consent of the council of the municipality. Such consent to be given by the three-fourths vote of the members of the council.

2. It is optional with the council whether they construct this road or not. They should not do so unless the convenience of the public, and the exigencies of the locality require it. The fact that the building of the road would prove a benefit to the owner of the lots is no reason why the council should build it. If the owner needs the road for his own private purposes, and to enhance the value of his lots, he should buy the land, construct the road, and pay for it himself. See Question No. 342 and 370, 1900.

Assent of the Electors Should be Obtained.

404.—SUBSCRIBER.—Prescott has a population of about three thousand. Minus the exemptions, the rateable assessed valuation for 1900 is $871,041.00. Largely on account of unforseen expenditures in the bonusing of the Imperial Starch Factory, the rate for this year was fixed at the extraordinary sum of twenty-six mills, viz., $2.60 on every hundred dollars of assessment, or $26.00 on a thousand. This includes the debenture debt of Prescott for 1901, requiring an appropriation or provision for the payments as they come due of $9,491.49. This heavy annual financial burden on the taxpayers results partly from bonusing local industries, but mostly from the construction of waterworks, connecting sewers and electric light plant, which the corporation own and operate, but neither of which two last plants has as yet been fully extended and finished in construction, although in workable and satisfactory order, as far as the construction of each plant extends, which extension includes all the populated streets of the municipality where the streets are built upon and occupied, as far as sewers and electric light is concerned. The water pipes for fire purposes being laid and extended with appropriate hydrants to all the street ramifications of the whole town.

It is being voiced about the town that the aldermen to be elected for office for 1901 have the power (without submitting the matter to the ratepayers by by-law, for rejection or approval) to apply to the legislature to allow them, the council for 1901, to issue debentures for unfinished construction of the above two named plants, viz., sewers and electric lights, and the proposition is mooted that the added debenture debt for the finishing of such plant construction should be forty thousand dollars, viz., fifteen thousand dollars for a dynamo and extension of the electric light plant, and twenty-five thousand dollars for a further extension of sewers to follow the already adequately extended ramifications of the water pipes and hydrants.

Now, what the ratepayers of this municipality want to know from you is, is there any such Act, law, precedent, rule or regulation now in force whereby the council of the municipality of the town of Prescott, to be elected for 1901, are, or can be empowered with or without the approval of the legislature, to issue debentures for such purpose or purposes, and hereafter making this added debenture debt binding on the town without submitting the whole matter to the ratepayers for approval or rejection by by-law?

If there be any such Act or law, kindly quote the law in extenso, so the ratepayers can be fully informed before the nomination and election for aldermen for 1901 is consummated and effected.

Section 389, of The Municpal Act, meets your case. It provides that, subject to the provisions of section 388, every by-law, (except for drainage, as provided for under The Municipal Drainage Act, or for a work payable entirely by local assessment,) for raising, upon the credit of the municipality, any money not required for its ordinary expenditure, and not payable within the same municipal year, shall, before the final passing thereof, receive the assent of the electors of the municipality in the manner provided for in section 338 and following sections of the Act. If the council for 1901 made application to the Legislature for special legislation in this matter, the application would likely meet with refusal, because by this legislation to which we have referred, the legislature did not consider it in the interests of the people to vest such large powers in the council, and expressly required that the council, before involving the municipality beyond its ordinary expenditure, should have the sanction of the ratepayers.

Compensation for Sheep Killed on Road.

405.—W. D. C.—We have tax on dogs in our township. A ratepayer gets sheep killed on the road with dogs. He has his sheep running on the road, but he leaves his gate open so that the sheep can get into the farm yard at nights. He thinks the dogs chased the sheep out of the yard and killed it on the road. Has the council a right to pay for the sheep?

No. Section 20, of chap. 271, R. S. O., 1897, provides that "the owner of any sheep or lambs killed or injured while running at large upon any highway or unenclosed land, shall have no claim under the Act, to obtain compensation from any municipality."

Revision of Assessment Rolls in Unorganized Districts.

406.—R. R.—1. At the court of revision 20th May, 1900, the council looked over the assessment roll and found that the assessor had lowered a great many ratepayers and raised some rather high, according to the judgment of the court of revision, so the council raised them that were lowered and lowered some that were raised. Now after that the council found that some were too low on the assessment roll, according to others, so the council raised those few, some $25, some $50. So after court of revision I published the doings of court of revision in a paper here (*Mattawa Tribune*) and there were no complaints. Since the collector's roll went out, those ratepayers are kicking about it, think they should have got a written notice of it after court of revision. What I want to know from you for the council is, if after publishing the court of revision in a paper, I should have given those ratepayers that were raised a written notice of such change or not?

2. Have those ratepayers any ground for making the council take what they raised them, off now?

We gather, from your statement of the facts, that no appeals to the Court of Revision were filed in accordance with section 43, of chap 225, R. S. O., 1897. This being the case, the Court of Revision had no right or authority to change or interfere with the figures on the assesment roll, as fixed by the assessor. In any event, the *council* had no power whatever to make any change after the Court of Revision had dealt with the roll. A Court of Revision cannot, of its own motion, make any alteration in an assessment roll. The basis of, and authority for, their action in this behalf, is an appeal filed as required by the Act. Section 40, and following sections of the Act, above cited, make provision for assessment in unorganized districts, and appeal therefrom to the Court of Revision, and District Judge or stipendiary magistrate, (as the case may be.)

2. The action of the council was wholly unauthorized, and no ratepayer can be compelled to pay taxes on the sum it added to the assessor's figures.

Transient Traders.

407.—CLERK.—1. Early in 1899, A, a resident of another municipality in this county, came here with a stock of goods (not bankrupt) rented a store, became assessed for personal property only (landlord assessed for and paid tax on real estate) A paid his taxes for 1899. Transient traders' license not demanded, although by-law in force. A became similarly assessed in 1900. Has since sold out to B & Co., partners, non-residents before purchase. Do B & Co. come under head of transient traders, and liable to pay fee called for by by-law?

2. Does the fact that fee was not demanded before three months after their purchase exempt them from liability of paying the fee?

3. Should A or B & Co. pay taxes on A's assessment in 1900? A has left this municipality.

1. Whether a person is a transient trader or not is a question of fact to be determined upon the evidence given in the case of a prosecution of a person for violating a by-law of a municipality, passed under the authority of sub-section 30, of section 583, of The Municipal Act. We do not think that the legislature intended to give municipal councils power to exact a fee from a person who purchased the stock of an established business, and who *bona fide* intended to reach persons who purchased goods with the intention of disposing of them in a short time, and then quitting the municipality, and who, in the language of the Act, occupied premises in the municipality temporarily for that purpose. The facts laid before us are not sufficient to enable us to say whether B & Co have bought the goods in question to be run off in a short time, or whether they intended to continue the business, and therefore we cannot express an opinion as to whether they can be regarded as transient traders or not. We think, however, that you will be able, from what we have said, to determine the question yourself.

2. We do not think so. If they are merely transient traders they are liable to be prosecuted for violating the by-law. We do not know how you can recover the fees imposed by the by-law. It appears to us that all that you can do is to prosecute them if they are transient traders, for violating the by-law, and to fine them to the extent of the penalty provided by the by-law and the costs of the prosecution.

3. B & Co. are not liable for the taxes on A's assessment.

Payment of Drainage Assessments Before Issue of Debentures.

408.—R. S.—We have a drain started in adjoining township, and it involves nine other farms in our township and two roads. Well, we served the notices and everything was satisfactory, as far as I know. Nine of the interested parties paid their assessment within

the four months; the other person does not wish to pay. The by-law provided for a five years' debenture, but the party who has not paid his assessment of $227, less amount allowed for work done on same drain some years before of $28, leaving a balance of $199. The question is simply, can we carry out the original by-law or will we make a new one? As I understand it we cannot make out the debentures for less than $50 each, and if so, we could only make it three years for debentures. In the case of a new debenture having to be issued, who will have the expense to pay for preparing, publishing and registering the new one, and issuing the debenture? (All necessary expense.) Could our council carry the debt legally from one year to another without issuing debentures?

Assuming that all proceedings leading up to the issue of the debentures were properly taken in accordance with the provisions of The Drainage Act, (R. S O., 1897, chap. 226,) the sum to be raised by the issue of debentures is the amount mentioned in the original by-law, less the aggregate of the assessments paid before the issue of the debentures, apparently $199. A debenture or debentures for this amount can be issued under the authority of the original by-law—a new by-law is not necessary. Each debenture must be for a sum not less than $50. For example, one debenture for $199, one for $100 and the other for $99, or two for $50 each, and one for $99. The time for payment of the debenture or debentures should be that mentioned in the original by-law. See section 53 and following sections of The Drainage Act. The council has no authority to pay this amount out of the general funds of the municipality, and carry the debt from year to year without issuing debentures.

Diverting of Water from Natural Watercourse — Reeve has Right to Move or Second a Motion— Casting Vote.

409. SUBSCRIBER. — Several years ago the council of our township deepened a road ditch, turning water out of its natural course. They also took a culvert out of road by which water crossed road. The ditch is not deep enough to take the water that was intended. Some of the residents want the council to deepen said ditch, others want council to replace culvert across road in original position to take water in natural course again. Council has refused to do anything in the matter, advising them to take advantage of the Ditches and Watercourses Act to have the water taken away.

1. Has the council the right to replace culvert across road again if they wish?

2. In a township council, has the reeve the right to move or second a motion?

3. If he has, who should give the casting vote?

1. The law is that neither an individual nor a corporation has the right to divert water from its natural course, so as to cause damage to a man's property, nor to collect water by a system of drainage, and to discharge it upon a man's property to its injury. We do not think that the putting in the culvert itself would afford any person a ground of complaint in action at law, but it might be shown that waters were diverted from their natural course by the council and then discharged through the culvert upon a private individual's lands, to their damage, and in that case there would be liability, or it might be shown that the council, by a number of drains, conducted water to and through the culvert, thereby causing damage, in which case, also, there would be liability. Upon the facts as stated by you, the council did an illegal act in bringing water out of its natural course, if the act caused damage. The council can remedy this, however, by filling up the drains, and leaving the parties affected to apply for redress under The Ditches and Watercourses Act.

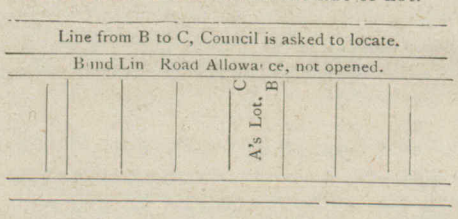
2. Yes.

3. There is a provision made for a casting vote. In the event of a tie, or an equality of votes, for and against a question, the question shall be deemed to be negatived. See section 274, of The Municipal Act.

Who Pays the Surveyor.

410.—W. D. M.—We beg to ask your opinion on the following question, which has arisen in our council: A farmer, whom we shall call A, has a lot, the rear of which butts on a road allowance which is not now open nor will it be for a considerable time. A wishes to have the line surveyed at the rear end of his lot, to obtain a proper line for putting up his fence. He has appealed to the council, asking them to put a surveyor on to run the line. The council wishes to do what is right in the matter, but they are not sure that they are called upon to run a line when they have no interest in having the road opened up at present.

Kindly give us your opinion as to whether the council are bound to run the line or not.



Whether A builds his rear fence on the right line or not is no concern of the council's. This is a matter of business personal to A and if he cannot locate his rear line without the services of a surveyor, he (A) should employ one and pay him himself.

The Sawyer & Massey Co., Limited, recently recovered judgment against one John Robertson, for $1,850, and costs of suit, and a declaration that the agreement entered into between him and the Co. constituted a lien on the lands mentioned in the pleadings in the action. The circumstances of the case were as follows: The company had a crusher and engine on exhibition at the Ottawa fair, in 1898, for which Mr. Robertson gave them an order, and agreed to come to Ottawa and take the machine and engine home. He failed to do this, as the local agent of a rival company persuaded him, by the offer of a lower price, to countermand the order and buy from the latter company—the local agent binding himself in writing to stand between Robertson and the Sawyer & Massey Co. The crusher and engine were left where they were at the time of entering into the bargain, in the railway yard, at Ottawa, and were destroyed in the big fire there, in April last. The Co. sued Robertson for the price of the machines with the above result.

Tax Sales.

JOHN G. FARMER, IN THE CANADA LAW JOURNAL.

A perusal of the authorities cannot fail to lead one to the conclusion that very few sales for taxes, if attacked in time, will stand the test. That this is largely due to the negligence of the officials entrusted with the collection of taxes is another almost inevitable conclusion. These officials, namely, the treasurers, clerks and collectors of municipalities do not appear to be sufficiently versed in their duties, and in the requirements of the statutes, having in view the imperative necessity of strictly conforming thereto.

It must, however, be admitted that the courts are very technical in the construction placed on the Acts dealing with the subject, but for this reason, if for no other, the officials should exercise a far greater degree of care. It may be that in a great many cases properties are sold for such a small sum in arrears, and at such a ridiculously low figure, that the courts are glad to find some flaw in the proceedings to relieve a poor unfortunate, who wakes up to find his property gone like a passing shadow, and now in the hands of some land grabber, who is always to be found lurking about the civic bargain counter. Chief Justice Wilson, in Deverill v. Coe, 11 O. R., at p. 236, says: "It is full time to stop these sales which are used for the benefit of speculators only, and who are furnished by the government with the power of depriving the innocent, but careless land-owner of his property, or of enforcing from him the almost extortionate demand for getting back what is in justice his own." Armour, J, in the says same case at p. 241: "I do not appreciate very highly the hardship to the speculator in the purchase of lands for taxes, whose chief hope of gain lies in the owner of the land being kept in ignorance that his land has been sold for taxes, and who traffics upon the chances of his ignorance continuing until he may be able, as he hopes, to deprive him of his land." The statutes dealing with the subject have come in for much judicial discussion in recent years, but before referring to the cases, it will be well to briefly summarize the duties of the aforementioned officials in regard to sales for arrears of taxes, apart from their other duties, under the Assessment Act, R. S. O., 1897, c. 224.

I. It is the duty of the treasurer:

1. To furnish to the clerk of his municipal a list of all the lands in his municipality, in respect of which any taxes have been in arrear for the three years next preceding the 1st day of January in any year; the list to be furnished on or before the 1st day of February in each year, and headed "List of lands liable to be sold for taxes in the year 1 —".

2. In cases of towns and villages, withtn 14 days after the time appointed for the return and final settlement of the collector's roll, and before the 8th day of

April in every year, to furnish the county treasurer with a statement of all unpaid taxes and school rates, directed in the said collector's roll, or by the school trustees, to be collected. Sub. sec. 2 of s. 157 provides what such returns shall contain.

3. To prepare a list of the lands to be sold, advertise them as provided by s. s. 177, 178, 179, 180 and 181. See s. s. 152, 157, 177, 178, 179, 180 and 181 of the Act, and 61 Vict. c. 25, s. 3.

II. Of the clerk :

1. To deliver the roll certified under his hand to the collector on or before the 1st of October, or such other day as may be provided by by-law of the local municipality.

2. To keep the list furnished by the treasurer on file in his office for public inspection.

3. To deliver the copy of the list to the assessors in each year as soon as they are appointed.

4. To file the list returned by the assessor in his office for public use.

5. To furnish forthwith to the treasurer a copy of the same, certified by him under the seal of the corporation.

6. To examine the assessment roll and certify the lands which have been occupied, and make a return to the treasurer as provided by s. 155 of the Act. See s. s. 131, 153 and 155.

III. Of the assessor :

1. To ascertain if any of the lands, or parcels of land, contained in the list were occupied, or were incorrectly described.

2. To notify such occupants and owners, if known, whether resident within the municipality or not, upon their respective assessment.

3. To enter on the list "occupied and parties notified," or "unoccupied," or incorrectly described "as the case may be.

4. To sign such list and return it with the assessment roll to the clerk, together with a memorandum of any error discovered therein, and to attach to each such list a certificate, verified by oath, in the form provided by s. 154.

5. If there is not sufficient distress upon the occupied lands to so return it in his roll to the treasurer, showing the amount so collected, if any, and the amount remaining unpaid, and stating the reason why payment has not been made. See ss. 153, 154 and 156. See also s. 147, as amended by 61 Vic., c. 25, s. 2.

The law appears to be well settled that the substantial compliance with the provisions of the above sections relating to the duties of these officials is a condition precedent to the right to sell or to distrain for arrears of taxes. In Deverill vs. Coe, 11 O. R., where no notice of arrears was given to the then owner or occupant, and they were not entered on the roll as required by the Act, and no notice given as required by s. 109, of R. S. O., 1877, (s. 153, of R. S. O., 1897,) that the land was liable to be sold for taxes, it was held that the sale could not be supported, and that the irregularity could not be cured by ss, 155 and 156, of the former Act, (ss. 208 and 209, of the latter Act.) In this case, Wilson, C. J., makes some observations on the impropriety of tax sales as now conducted under the legislative authority, and he suggests a remedy in the following words at p. 236: "But what would be infinitely better would be to put an end to the sale of land for taxes. These sales were adopted here at a time when the country was thinly settled, and large tracts of land were held by absentees and other non-residents, and the taxes could not at that time be collected, which were chargeable against them, and the lands were comparatively of little value. The country is in a different condition now, and it is full time to stop these sales. Means may be devised by the legislature to have these arrears placed yearly upon the collector's roll for collection until they are paid, and if they are not paid in some few years, say five, let the municipality become the owner of such lands upon some terms and conditions which may give the owner a chance of redemption for a longer period, and if not redeemed, with power to the council to sell such lands by public sale, and to apply the proceeds for the benefit of the municipality. If any one is to profit by these sales, let it be the municipality, or, in other words, the public, and not the private and unmeritorious speculator."

It has been held by the court of appeal, that the two years limited by section 209 of R. S. O., 1897, run from the time of making the tax-deed, not from that of the auction sale ; Donovan vs. Hogan, supra. In Deverill vs. Coe the judges question whether the effect of sections 155 and 156 of R. S O., 1877, (sections 208, 209 of R. S. O., 1897,) is to make valid all sales for taxes so long as there are any taxes in arrears, notwithstanding every kind of neglect and misconduct of the municipal officers, they practically come to the contrary conclusion, Armour, J. being particularly emphatic, page 241 ; "The taxes must be legally due, and the arrears must be taxes legally in arrear, so that the land may be legally sold, otherwise sections 155 and 156 of the Assessment Act do not apply." Again, "The owner should be considered, and the sales conducted as ordinary business transactions, as where property is sold by auction with a view to obtain its fair market value, and where the lands have been sold for a grossly inadequate price, as is generally the case, and the same is not redeemed in one year after the sale, as provided by section 208, the sale might still be questioned as not having been openly and fairly conducted within the meaning of that section."

So that the apparent effect of these two sections, 208 and 209, as construed in the light of the above authorities, is :

(a) To make all sales unimpeachable after one year from the time of the auction sale where the taxes are legally due and in arrears, and where all requisite formalities have been observed, and the sale open and fairly conducted ;

(b) To make all sales unimpeachable after two years from date of the making of the tax-deed where the taxes are legally due and in arrears, notwithstanding the fact that the formalities by the statute have not been observed, or that the sale has not been openly and fairly conducted ; but some expression of doubt is thrown even on this conclusion by Wilson ;

(c) To make the sale impeachable after one year from the auction sale, and within two years from the giving of the tax-deed, where the sale has not been openly and fairly conducted, nothwithstanding the fact that the taxes are legally due and in arrears, and that all requisite formalities have been observed ;

(d) That they do not apply at all under certain circumstances referred to by the judges in the above cases, where, for instance, there are no taxes legally due and in arrears.

It is interesting to note that McDougall, C. J. of York, has held that a county municipality is not liable for the cost of advertising the county treasurer's list of sales for arrears of taxes, although sent to the plaintiff by the county treasurer, and that the county treasurer does not act as an officer of the corporation in relation to tax sales, and that the duties connected therewith are not within the scope of his authority as county treasurer. He is merely *persona designata* on behalf of the local municipality, and the creditor must look to him personally.

Sinclair vs. Township of Whitby.

Judgment in action tried at Whitby, brought by a landowner against defendant to recover damages for flooding his land, which lies on both sides of a railway. Judgment for plaintiff for $5 damages and costs, on High Court scale. Injunction granted restraining defendants from causing to flow upon plaintiff's lands by means of the culvert in question any surface water collected by them which would not otherwise come upon him. So much of the costs as is applicable to the claim for damages to the land upon the west side of the railway to be taxed to defendants and set off.

Municipal Successions.

Marshaltown, Iowa, is a little city of 12,000 people that has owned and operated a municipal wat rworks system for the past three years and a municipal street system for the past twelve years, and has no desire to abandon municipal ownership either.

Mr. Charles Dickinson, clerk of the County of Norfolk, died at his home, in the township of Houghton, on Friday, the 5th of October, last.

* * *

Mr. Elias Boughner, of Windham, has been appointed clerk of the County of Norfolk, to succeed Mr. Chas. Dickinson, recently deceased.

Legal Department.

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

Reg, v. Toronto Public School Board.

Judgment on motion of defendants to quash a conviction of defendants, who were charged with an infringement of by-law No. 2,478 (particularly section 13,) by permitting closets to be filled up under Smead-Dowd system and used in a building contrary to the by-law. The police magistrate for the city of Toronto, though the case seemed clearly within the by-law, refused to convict on the ground that the municipality had in this case sanctioned the violation of the by-law. The defendants were, however, on appeal to sessions, convicted, and, having obtained an order nisi then, made this motion. Held, that the information and complaint in this case being for an offence against a by-law of the city of Toronto, passed under the authority of the municipal act. R. S. O., c. 223, sec 551, the criminal code, part 8, sec. 840, does not apply ; so that the authority, if any, for an appeal to General Sessions from an order of dismissal, must be found in the Ontario Summary Convictio s Act, R.S.O., ch. 90, and "conviction or order," in sec. 7 of that act means one of or against the party against whom the information and complaint is laid. Order as there used does not mean order of dismissal. It is for the Legislature to so construe the word if they desire. The words of sec. 103 of the imperial act 5 and 6 Will. IV., ch. 50, are much stronger in favor of an appeal from an order of dismissal than sec. 7 of the Ontario act, yet in Reg. v. Keepers, etc., of Landon, 25 A. B. D, 357, the court held that they did not include an order of dismissal. Conviction quashed without costs.

Pedlow vs. Town of Renfrew.

A note of the judgment at the trial of this action was published on page 57, of THE MUNICIPAL WORLD, 1900. It was an action to restrain defendants from interfering with the fence in front of the plaintiff's property on Barr street, in the town of Renfrew. The Chancellor held that the twenty feet of land in question had been sufficiently dedicated by the owners, and accepted and used by the public to create a new highway, and that the plaintiff, in enclosing it with his fence, was encroaching upon the public street. It was contended *inter alia* for appellant that the strip of land in question had not appeared on any plan, and been established by by-law or otherwise assumed for public use as provided by The Municipal Act ; that there was not sufficient evidence of acceptance by the public ; that no public money had ever been expended on this strip, nor statute labor performed, and that the only acceptance of this street by the town was a resolution passed by its council in July, 1895, accepting a street forty feet wide, and not sixty feet wide, and not including the strip in question, neither had any consent of the council ever been given for the laying out of a sixty-foot street, as required by The Municipal Act, 55 Vic., ch. 42, s. 545. The plaintiff appealed to the Court of Appeal, for Ontario, and, after argument, the judgment below was affirmed and appeal dismissed with costs.

Queen *vs.* Smith.

Municipal Corporations—By-law—Regulation of Hawkers—R. S. O., c. 223, s. 583, s. s. 14—Proviso—Negativing Exception—Conviction—Quashing—Costs.

A by law of a county council recited the provisions of sub. sec. 14, of s. 583 of the Municipal Act, R. S. O., c. 223, and that it was expedient to enact a by law for the purpose mentioned in the sub-section ; it then went on to enact "that no person shall exercise the calling of a hawker, pedler, or petty chapman in the county without a license obtained as in this by-law provided"; but the by-law contained no such exception as is mentioned in the proviso to sub. sec. 14, in favor of the manufacturer or producer and his servants.

Held, that the by-law was ultra vires of the council, and a conviction under it was bad.

Held, also, following Regina v McFarlane (1897) 33 C. L. J. 119, that the conviction was bad because it did not negative the exception contained in the proviso, and there was no power to amend it, because the evidence did not show whether or not the defendant's act came within it. The conviction was therefore quashed, but costs were not given against the informant.

McQuillan vs. Town of St. Marys

Municipal Coroporation—Action of Negligence—Ice on Sidewalk—Notice before Action—Sufficiency of—R. S. O., chap. 223, sec. 606, sub-section 3.

This was an action to recover damages for injuries alleged to have been sustained by plaintiff, owing to his slipping on a quantity of snow and ice, in a street in the town of St. Mary's, which the defendants were alleged to have negligently allowed to accumulate. The statutory notice, R. S. O., ch p. 223, sec. 606, sub-sec. 3, given on behalf of the plaintiff, described it as having taken place opposite to a certain shop, whereas, in fact, it took place opposite a different shop about twenty feet further on, on the same side of the street.

Held, that the notice was sufficient, as it gave information enough to enable the corporation to investigate, and that is all that can be called for.

Ryan vs. Willoughby.

Contract—Breach—Condition Precedent—Inability to Perform—Municipal Corporations—Resignation of Councillor—Disqualification of Councillor.

The defendant, who was a municipal councillor, entered into a sub-contract with the plaintiff to do the brick and mason work under the plaintiff's contract with the municipality to build a town hall, that contract providing that the contractor should not sub-let the work or any part thereof without the consent in writing of the architect and municipality, and this consent the plaintiff was to obtain. The municipality refused to consent to the sub-contract on the ground that the defendant's services would be of value in the oversight of the contract.

Held, that there could not be imported into the defendant's sub-contract an agreement to resign his seat as such an agreement to resign a public trust for private gain would be contrary to public policy and illegal, and the defendant was not liable in damages because of the breach of an implied obligation to resign, though his resignation might, as the plaintiff contended, have enabled the plaintiff to fulfil the condition precedent on his part, of obtaining the municipality's consent.

Semble : if the sub-contract had taken effect the defendant would have been, under section 80 (1) of the Municipal Act, R. S. O., chapter 233, disqualified.

Judgment of a Divisional Court, 30 O. R., 411, reversed.

Horsman *vs.* City of Toronto.

Taxes and Assessment—Arrears of Taxes - Goods on Premises "Purchased" from Owner—R. S. O., c. 224, s. 135, sub. sec. 4 (b).

Held, that the goods purchased from a mortgagee of the owner or person assessed were not goods title whereof is claimed by purchase, gift, transfer or assignment from the owner or person assessed within the meaning of s. 135, sub. sec. 4 (b) of the Assessment Act (R. S. O., c. 224) and could not be levied on for taxes in arrear in respect of the premises owned by the mortgagor of the goods.

Trolleys—Carriages—Right of Way.

The New Jersey Court of Errors and appeals held, in the recent case of Earle vs. Consolidated Traction Company, that trolley cars and ordinary carriages have equal rights upon public streets and crossings, and that the first to reach the crossing has the right to cross over first. In case, however, it appears that the motorman of the trolley does not intend to respect the carriage driver's right of priority, and that the driver cannot, with the use of reasonable prudence, exercise his right, he is guilty of contributory negligence if he fails to wait or turn aside, if he can do so by the use of due care, and thus protect himself from injury.

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