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

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ST. THOMAS, JUNE 1, 1898.

Mr. H. J. Lytle, formerly Clerk Township of Fenelon, and publisher of the "Rate Tables," who has recently been appointed manager of the Ontario Bank at Lindsay, writes as follows in reference to leaving the ranks of the municipal clerks: "Amongst my most pleasing memories of a twenty-year service are the many kindly expressions of help my little rate tables have afforded so many of my confreres. I hope that the future may bring forth a class of councillors who will appreciate their clerk's services at a nearer approximate to their financial value."

* * *

The Department of Crown Lands has issued a special circular to municipalities in reference to the law relating to the survey of boundary lines, R. S. O., chap. 181, secs. 14 and 15. Under the old act, surveys performed on the application of the council interested were sometimes set aside by the courts on a technicality, involving expense and often leading to litigation. This is now prevented by the Commissioner of Crown Lands who gives notice of the return of a survey, and fixes a date on which the same is to be considered, and parties affected thereby, heard, with a view to amending or correcting the report before it is finally confirmed, after which it is binding on all parties.

* * *

An exchange says that "Councillor Martin of Woodstock claims to have been bribed for his vote in the purchase of a steam roller. He has given the money to the mayor." It is quite evident that the system of doing business with Municipal Corporations in the United States is being introduced in Ontario by agents who have had experience. Canadian manufacturers should be encouraged to build all road machinery required. The protective tariff and the money expended on bribery by their competitors should give them a good margin to work on.

School Section Appeals.

Re School Section No. 16 of the Township of Hamilton.—Judgment on motion by the trustees of the school section to set aside an award made by the arbitrators appointed by the municipal council of the united counties of Northumberland and Durham, to consider and decide upon an appeal to the council in regard to the boundaries of the school section. Held, that the change made in the Public Schools Act by the amendment contained in section 82 of 54 Victoria, chapter 85, has in some respects limited the right of appeal to the county council. Before the amendment the township council had power to pass by-laws (1) to alter the boundaries of a school section; (2) to divide an existing section into two or more sections; (3) to unite portions of an existing section with another section or with any new section; R. S. O., 1887, chapter 225, section 81. By section 82 of that Act, an appeal was given to the council against any by-law for the formation, division, union or alteration of school section or sections and against the neglect or refusal of the township to form, divide, unite, or alter the boundaries of school sections. The change made by the act of 1891 is that the latter appeal is limited to neglect or refusal to alter the boundaries of a school section. The question was whether the words "alteration of boundaries" were large enough to cover union and division. Giving words their fair meaning, and having regard to the particular grouping of words, the better and only interpretation appears to be that a limited meaning should be given to these words. What was sought in this case was the division of school section 16 into two equal parts, each of which was large enough to become a section by itself. The present law (carried on from 1891 into the consolidation of 1896) gives no appeal in such a case, and all proceedings thereafter, culminating in the majority award, fall to the ground as ultra vires. Order made setting aside award without costs.

The fence tax arises from the time, material and expense of erecting and maintaining unnecessary fences.

* * *

A clerk writes suggesting that it would be a good idea to exchange compliments by sending copies of Voters' Lists, Auditors' Reports and other printed matter to neighboring clerks.

* * *

The Government Grants to Public and Separate Schools for 1898 have been apportioned on population returns for 1897 as follows:

Counties	131,871
Cities	53,306
Towns	38,055
Villages	16,883
Districts	35,000
Total	275,115

Municipal Taxation.

The most important duty of every Municipal Council is the raising of money by direct taxation. It is the one feature of local government in which all are interested.

The underlying and essential principles of a just, and the same time efficient system of taxation are supposed to be embodied in the Laws enacted in accordance with the powers conferred by the ninety-second section of The British North America Act, which gives to the Legislature of every Province full control over Municipal Institutions.

That the system of taxation in Ontario is not entirely satisfactory is shown by the fact that a Municipal Tax Convention was held during last year at the request of the Toronto County Council.

This was attended by delegates from many city, town and village councils who were not prepared to discuss the question.

Members of Municipal Councils whose tenure of office is indefinite, are not expected to devote the time necessary to an exhaustive investigation of so dry a question. There are no authorative text books on taxation, and no evidence that the subject is properly taught if taught at all in our higher institutions of learning. During recent years economists and the Political Science departments of many Universities in the United States have devoted considerable attention to the subject and published the results of their investigations of Municipal Systems and Taxation, all of which contain practical suggestions worthy of consideration by any one interested in the improvement of the laws relating to taxation in Ontario.

A Model Supervisor.

Lower Merion township, Montgomery county, Pa., is entitled to the credit of having developed and faithfully maintained the most accomplished road surpervisor in the State, says the Philadelphia Times. Nineteen years ago the people there nominated A. J. Cassatt, one of the greatest of our railroad men, and he accepted the office with a full understanding of its duties.

Supervisor Cassatt started in to make first-class roads in Merion township. His methods startled most of the farmers of that region, and some of them were even appalled at what they regarded as his extravagance. He did not waste the taxes of the people in petty repairs which accomplish nothing, but he made first-class roads from the start, and although he had desperate battles for two or three years to win the supervisorship of his township, the tax-payers saw that they were getting more than one hundred cents for every dollar that was expended; that their good roads improved the value of their farms tenfold more than all the roads cost; that they could use the roads at all seasons with comfort, and they learned to appreciate an honest, competent supervisor.

Municipal Officers of Ontario.

Clerk, Township of Hay.

Mr. Hess was born in Germany in 1846, and received a good public school training in German. He learned the trade of wagonmaking, and when 19 years of age came to Canada with his father and settled in the township of Hay, Huron County. He worked as a journeyman until 1867, since which time he has carried on a successful carriage business in the village of Zurich. He has always taken an active interest in public and municipal affairs. He was elected a member of the Township Council in 1888, and in 1892 was elected reeve. He was appointed treasurer two years later, and in July, 1895, he resigned to accept

MR. FRED. HESS.

the office of township clerk. He has held numerous positions of trust, and has been secretary-treasurer of the Zurich public school for twenty-three years. Although Mr. Hess never received any special instruction in the English language, he is now competent to discharge the multifarious duties of his office in both languages.

One of the best election jokes of the campaign was on Dr. McLurg, who was speaking for Mr. Patullo at Ferguson's school house. The doctor, with all seriousness, was asking:

"Who has done more for the dairy industry than Mr. Patullo?"

In the the silence that followed such a startling query came the reply, "the cow."

Keep the roads clean, and the attention thus called to them will soon result in their being still further improved.

Clerk, Town of Dundas.

Mr. More is a native of Scotland, and in 1847 he came out to Canada, having

MR. JAMES MORE.

engaged with the firm of A. & T. C. Kerr, wholesale merchants, of Hamilton. He afterwards removed to Paris and engaged in business for himself, and finally re-

MR. JOSEPH BRISEBOIS.

turned to Dundas, where he was engaged in the agricultural implement business for some years. He was collector of taxes for two years, and is secretary-treasurer of the Board of Education. He was appointed clerk and treasurer of the town of Dundas in 1890.

Clerk, Township of Alfred.

Mr. Brisebois was born at Alfred in 1872, and was educated at the public school. He attended the Plantagenet Model School, and afterwards went to St. Joachim de Ruscomb, Essex County, where he taught for four years. He then returned to Alfred, and is at present engaged as head teacher of the Roman Catholic separate school there. He was appointed township clerk in 1896.

Clerk and Treasurer, Township of Nepean.

Mr. Harmer was born in the town of Stroud, Gloucestershire, England, in 1823, where for a number of years he carried on business as bookseller, claiming that "dealing in ideas was the top of all trades." He gradually acquired fanciful notions as to the delights of farm life in Canada, and in 1858 moved with his family to Ontario, and entered upon the work of converting

MR. F. W. HARMER.

100 acres of unimproved land into a model farm. It proved to be an experimental farm only; the delights were slower in coming than the difficulties and cares, and in 1865, when the clerkship of the Division Court was offered to him, he buried his ambition to be an agriculturalist and gladly accepted. In the following year he was appointed township clerk of Neepean, and in 1881 was appointed township treasurer. In 1894 the village of Hintonburgh was incorporated, and Mr. Harmer's services were in requisition for the purpose of starting the new corporation, and for a time he occupied an unusual position as clerk and treasurer of two municipalities.

In maintaining a road one of the most important considerations is to prevent the formation of ruts by keeping the surface so uniform that travel will be distributed over it and not follow in beaten tracks.

The Public School.

By W. Atkin, Esq., Inspector of Public Schools, County of Elgin.

III.

PUBLIC SCHOOL MEETINGS.

In any portion of the province not surveyed into townships, the inhabitants, who are at least twenty one years of age, may hold a public meeting to elect three of their number to serve as public school trustees. As the method of calling such meeting is not prescribed by the School Act, it is presumed that any method, that will give sufficient publicity, as to the time, place and object of the meeting will be recognized. The method of conducting the meeting should be the same as that practiced at a first meeting in a new section in an organized township.

In a township where a Municipal Government has not been established, after the inspector has formed a school section, any two of the petitioners for the formation of the section may call the first school meeting. In calling and conducting this meeting the same procedure is to be followed, as for a first meeting in a new section in an organized township.

When a new school section is formed in an organized township, the clerk of the municipality, shall cause the notices calling the first meeting, to be posted. The time of holding this first meeting is to be the same as for annual meetings in organized school sections. The business of this meeting is the election of three trustees. The first elected shall continue in office for three years, the second for two years and the third for one year.

Ratepayers only have a right to vote at the election of trustees or on any other school question. A ratepayer is defined as any one who is entered on the last revised assessment roll as a public school supporter or who has a vote at municipal elections as a farmer's son. Any resident ratepayer is eligible for election as trustee.

ANNUAL SCHOOL MEETING.

An annual school meeting of the ratepayers shall be held in every school section on the last Wednesday in the year, or if that be a holiday, then on the day following, commencing at the hour of ten o'clock in the forenoon.

Should the annual or the first school meeting not be held at the proper time, from lack of proper notice or other cause, the inspector or any two ratepayers may call a school meeting. The same mode of calling and conducting this meeting shall be observed as for a regular annual meeting.

The ratepayers present at any school meeting shall organize the meeting by electing one of their number to act as chairman and appointing a secretary.

CHAIRMAN.

The chairman shall submit all motions to the meeting in the manner desired by a majority of the ratepayers present. Motions should be so framed that the ratepayers may express their will on each question before the meeting, separate from other questions. In case of an equality of votes the chairman shall give the casting vote but no other. His decision on any point of order shall be subject to an appeal to the meeting. It is also the duty of the chairman to send a correct copy of the proceedings of the meeting to the inspector forthwith.

SECRETARY.

It is the duty of the secretary appointed to make an accurate minute of the proceedings of the meeting and to notify in writing each person elected as trustee. Every person so notified of this election shall be considered as having accepted such office; unless a notice to the contrary effect be delivered by him to the chairman within twenty days of the date of the meeting.

A trustee may resign his office with the consent expressed in writing of his colleagues. A retiring trustee may be re-elected with his own consent, otherwise he shall be exempt from serving as trustee for four years next after leaving office. A trustee elected to fill a vacancy shall hold office only for the unexpired term of the person in whose place he has been elected.

ORDER OF BUSINESS.

The following order of business at an annual school meeting is suggested by the Education Department:

1. Organization of the meeting.
2. Receiving the annual report of the trustees and disposing of the same.
3. Receiving the annual report of the auditors and disposing of the same.
4. Election of an auditor for the following year.
5. Miscellaneous business.
6. Passing a resolution instructing trustees to insure school house and furniture.
7. Fixing amount to be paid the secretary or secretary-treasurer of the trustee board for the following year, for his services as secretary and for attending to repairs of school house and premises.
8. Election of trustee or trustees.

SPECIAL MEETINGS.

A special school meeting is necessary:

1. To fill a vacancy caused by the removal of trustee from office.
2. For the selection of a school site.
3. To authorize, by resolution of the ratepayers present, the trustees to apply to the township council for funds for the purchase of a school site, for the erection of a school house or an addition thereto or for the purchase or erection of a teacher's residence.
4. For the appointment of an auditor, and as the "Act" states for any other lawful purpose.

It is the duty of the Secretary of the board of trustees to call every annual school meeting and to call a special meeting of the ratepayers when directed to do so by the trustees or when petitioned to do so by ten ratepayers. He shall call any of these meetings by causing notices of the time, place and objects of such meeting to be posted in three or more public places in the section.

POLLING A VOTE.

A poll may be demanded by any two ratepayers at any school meeting for the election of trustees or for the settlement of any school question and such poll shall be granted by the chairman forthwith, if demanded within ten minutes after the vote of the meeting has been declared from the chair.

The poll shall not close before twelve o'clock noon, but may close at any time thereafter when a full hour has elapsed, without any vote being polled and shall not be kept open after four o'clock in the afternoon, of the day when the voting began.

The chairman and secretary shall count the votes polled and the chairman shall declare the candidates elected or the question carried for which the highest number of votes was polled. In case of a tie the chairman shall give the casting vote.

A correct copy of the poll-book shall be returned, with the minutes of the meeting, to the inspector.

When complaint in writing is made to the inspector by any ratepayer within twenty days after the date of the meeting complained of, that the proceedings of any meeting were not conducted in conformity with the provisions of the School Act, the inspector shall investigate the matter and confirm or set aside the proceedings complained of. If the proceedings are set aside the inspector shall appoint a time and place for a new meeting, when the matter complained of shall be reconsidered by the ratepayers.

ELECTION OF TRUSTEES.

The intention of the School Act is that no school corporation shall cease to exist by reason of the want of trustees, as each trustee who is not otherwise disqualified, than by lapse of time, shall continue in office until his successor has been elected. But should a want of trustees exist, any two ratepayers or the inspector may call a meeting of the ratepayers for the election of the necessary trustees. The mode of calling and conducting the meeting shall be the same as for a regular annual meeting.

When the ratepayers of any school section, for two years, neglect or refuse to elect trustees, the township council may appoint trustees for such school section, who shall hold office for the same term as if elected by the ratepayers, or the township council may by by-law declare such section disolved and shall in that case attach the same, in such proportions as they may deem expedient to adjoining sections. The assets of a section so disolved shall be disposed of, as may be determined by the municipal council.

ENGINEERING DEPARTMENT.

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

Surface Drainage.

In small cities and towns the disposal of storm water is generally a matter of little importance. The houses are separated by open tracts of such extent that the rainfall, unless very heavy, is largely taken up by percolation. The streets with impervious surfaces are rarely of any considerable length, so there is a comparatively small area from which the water is shed rapidly. Under such circumstances, the tendency has been of late to build a sewerage system in which provision is made for little or no rainwater, this last being left to flow away over the surface, or be intercepted by small catch-basins having short out-lets leading to neighboring watercourses.

Such a method of storm water-disposal is general y considered perfectly satisfactory, even in comparatively large cities, yet the experience is showing that surface drainage presents a problem of considerable importance. As a community grows in importance, it increases the extent of its improved streets, and no longer tolerates mud and slush in the gutters. In some localities it is necessary to build a system of storm-water sewers to keep the streets dry, but it is often possible to carry off the rainfall to the streams passing through the town. In the latter case, the streams are generally small brooks, passing under the highways in box channels. If the storm water from a considerable area is d scharged by improved means of surface drainage into these brooks, the old box and drain culverts will be found inequadate for their new duty. It, th refore, is important for the engineer of every town growing rapidly to build the culverts under streets of ample size to pass a considerably larger volume of storm water than has occured in the past.

This is a trival matter, however, compared with the tendency of private parties to consider neighboring brooks as nuisances or dumping places. They choke the waterways, unmindful of the fact that the rain falls just as in the past and must find an outlet; that if they choke its natural channel, it will overflow and cause trouble. Then when improved streets are built and houses are constructed, increasing the ratio of water-shedding to water-absorbing surface, the storm run-off becomes more rapid, larger volumes of water per minute are discharged into the obstructed channel, and trouble ensues. It teaches very clearly the importance of straightening and deepening the natural drainage channels when land is cheap and little difficulty will be experienced in doing the work properly.

The principles of good government are far from easy to learn accurately, and very much harder to put in practice.

Highway Improvement in Rhode Island.

The improvement of highways in Rhode Island under the direction of the State Highway Commissioner, as at present carried on, dates back more than three years, when a statute was passed by the General Assembly providing for the improvement of the principal highways and making provision for state aid to towns in road-making. No comprehensive scheme of general improvement of all the highways has been entered upon, but the work has been of an educational nature by the extension of aid to communities desiring the construction within their borders of sample half-miles of improved roads. There seems, however, to be an opinion in some quarters that the public interests would best be served by taking up the matter in different form, and an act is now in the hands of a committee of the General Assembly providing for the appointment of a state highway commission, which, in organization and operation, will follow closely the example of its Massachusetts neighbors. On May 1, 1897, nine of the sample half-miles of improved road had been constructed in as many townships, and nine more townships had applications on file to be taken up in turn. The method pursued by the commissioner is to prepare a plan and profile of the section of the road asked for by the townships, establish the grade, and if the road is not of proper width agree on new lines which will make it of proper width. If the street has already been platted and grades established by the township this work is omitted. If any capable contractor in the township desires to take the contract for building the sample half-mile and satisfactory terms can be made with him, the work is let in this way, otherwise roadbuilders from other parts of the State are asked to figure on the work. The letting of the contract to residents of the township is favored in order that the people in the township may have an opportunity to learn as much as possible about the proper way of constructing macadamized roads, and, further, that the people may have the benefit of the money expended. This plan has been found to work satisfactorily. In several cases the township road commissioner took the contract and carried it out in a satisfactory and economical manner.

Lady Visitor (at office of eminent physician)—I have called, doctor, to ask if there is any cure for sleep-walking. I have had the habit for years, and lately it has become worse. Dr. Highprice—It can be cured, madam. Take this prescription and have it filled at Cold, Steele & Co. Lady visitor—Cold, Steele & Co.? Why, that is not a drug store. That is a hardware firm. Dr. Highprice—Yes, madam, the prescriction calls for a paper of tacks. Dose, two tablespoonfuls scattered about the floor before retiring.

A Mining Report.

The status which mining industries are attracting in Ontario is strikingly presented by the last report of the Bureau of Mines now being circulated by the Ontario Government. The information is of a character which should be in the hands of every resident of the Province, and will certainly not fail to impress the public of other lands with the magnificent resources of Canada. The greater part of the report deals with gold production, but other minerals commented upon are: cement, petroleum, natural gas, calcium carbide, peat fuel, apatite, graphite, mica, salt, gypsum, iron, copper, nickel actinoline, building and other stone. This is not a complete list of Ontario's minerals, and to consider those available in Canada with an area of over three and a half million square miles—an extent of territory slightly larger than the United States including Alaska—should not fail to convince us of the richness of our heritage. Much of this territory is, it is true, possessed of a rigorously cold climate, but the discoveries in the Klondike are already vindicating its enormous value notwithstanding the many drawbacks. The extended knowledge which is every year coming to us of our own land, seems likely to convince us that our neighbors to the south, with the vast barren plains of their central states, and the enervating climate of their southern states, do not possess a discouragingly large proportion of the North American continent.

What is of special interest to the readers of THE MUNICIPAL WORLD is that part of the report referring to cement production, which says:

"The cement industry is steadily winning its way forward in Ontario. Both the natural rock and Portland cements are showing a large increase of production, and manufacturers are establishing a good reputation for the qualities of cements they are putting on the market. The increase, however, is not shown in the number of establishments, which are two less now than they were four years ago; but in number the of men employed and amount of wages paid for labor, in quantity of cements produced and in their value there is gratifying evidence of progress. The number of men employed in these four years has increased from 168 to 231, the wages paid for labor from $44,878 to $89,060, the quantity of cement manufactured from 85,903 barrels to 181,495 barrels, and the value of the cement from $109,834 to $246,425. The greatest increase, however, has taken place in the production of Portland cement, which has gone up from 30,580 barrels to 96,825, while the natural rock cement has only increased from 55,323 barrels to 84,670. In value natural rock cement shows an increase of $27,349, while Portland cement shows an increase of $109,242. This, no doubt, is largely if not chiefly owing to the growing interest in the building of good roads."

Classification of Roads in California.

Investigation into the experiences of European countries and of the progressive Eastern States, which show conclusively that this action must be along the line of State management of the main highways, and consideration of the conditions peculiar to California have led to the conclusion that the following plan would best subserve the interests of our State: The division of roads of California into three distinct classes, (1) State highways, (2) county thoroughfares, (3) district roads.

The State highways should be the great arteries of a road system from which branch out the minor highways serving counties and districts. They should be located along those lines which the physical features of the State forever fix as the easiest lines of communication, and should be constructed and maintained by the State. The bureau has mapped out such a system as would traverse the great belts of timber, fruit, agricultural and mineral wealth within our State, connect all the large centres of population with the limits of the State, reach the county seat of every county and tap the lines of county roads.

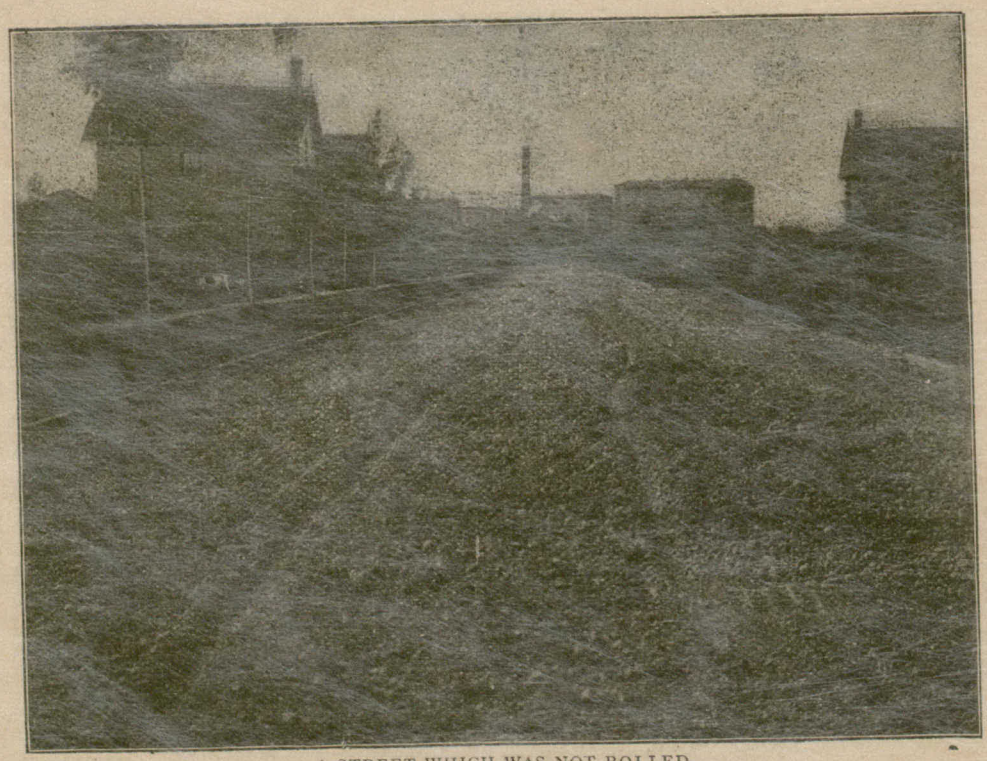
The county roads should comprise the most important roads in each county, as set apart and so declared by the boards of supervisors of the several counties. They should be the feeders of the great State highways.

The district roads should embrace all the existing roads now recognized and set apart by law, not previously enumerated, together with such roads as may be laid out to serve the needs of particular localities.

To meet the cost of the State highways a tax levy of a quarter mill on the dollar of the entire assessed valuation of property in the State would suffice. The county thoroughfares should be built by the county under the direction of the local authorities. The district roads should be constructed by the residents of the particular locality to be benefited, who should be authorized to form road districts after the manner in which school districts are organized and construct roads of such character as they deem necessary to suit their needs.

This classification is practically that which at all times and in all countries had been found advisable wherever road-building has been systematically undertaken, as is shown by a study of the great Peruvian and Roman systems of ancient times, and those of France, England and other European countries, as well as those of Massachusetts, New Jersey, Connecticut and Rhode Island in modern times. If the plans proposed be inaugurated in our State we should have, instead of our present utterly unsystematic methods of indiscriminate expenditure, for which comparatively little return has been made, a highway system that would place California in the rank of the progressive States of the Union and contribute more materially than any other cause to the prosperity of of the State.

It was the recognition of the essentiality of good roads to prosperity, and the realization of the defects of the present system, or rather lack of system, that led to the creation of the State Bureau of Highways by the last Legislature at a time when public sentiment was unfavorable to the establishment of commissions. In other States similar commissions have been appointed and Good Roads Leagues are being organized, to the end that general reform of highway conditions may be brought about.—*Report of Bureau of Highways.*



A STREET WHICH WAS NOT ROLLED.

Sewer Construction.

A sewer, the outlet of which is higher than the head, one in which fifteen or twenty pipes in a continuous line are found broken within three or four years after its construction, one in which some parts are so uneven as to form a succession of running traps, one in which a connection with a manhole is made by several brick laid lengthways, one in which these and other defects are found cannot be considered a profitable investment no matter how low the cost of construction may have been. Yet these are defects which numerous towns and cities have found to exist in their sewers.

Sometimes the fault lies in the first design. The council decides to build a sewer. A surveyor or engineer is told to give a grade line and plant stakes. The council lets the contract and employs a man to "inspect" the work. When another street petitions for a sewer, the same routine is gone through.

Such a method can have but one result. The first section of sewer was laid without any regard to the ultimate requirements of the town, and when other lateral sections are laid the first will be found to have pipes which are too small, and laid at an insufficient depth to afford a proper fall for the new sections. The inspector had no means of checking the levels, and was at the mercy of the contractor.

Many contractors are conscientious, but they are contractors, not engineers. They require careful supervision to see that they do not now and again alter the grade line, the quality or dimensions of pipe, use inferior material, or construct the manhole in a careless manner. An engineer does not always find his hardest task in designing a work, but very commonly the greatest difficulty is to compel the contractor to follow the specifications. By providing no other check than an inspector, who generally knows less of the work than the contractor, there are towns in Ontario which at a great expense, have constructed sewers little better than useless.

When a sewer is desired, an examination should be made by the engineer, of the entire town. Plans will be prepared by him, with a report and specifications. The whole system may not be constructed at once, but such sections as are laid from time to time will conform to the general plan, and the best means of drainage thereby provided. The supervision of this work should rest with the engineer who should be assisted by an inspector. An inspector not even assisted by the engineer who designed the work, is generall an employee who looses for the town many times the amount of his salary.

LEGAL DEPARTMENT.

JAMES MORRISON GLENN, LL. B.,
of Osgoode Hall, Barrister-at-Law,
Editor.

HIGHWAYS.

Defect—Notice—Repair.

Section 606 of the Municipal Act, cap. 223, R. S. O., 1897, provides: "Every public road, street, etc., shall be kept in repair by the corporation," etc. To render a municipal corporation liable in damages under this section, proof that the highway was out of repair and that injury resulted by reason of such want of repair is not alone sufficient in all cases. Negligence on the part of the corporation must be shown. The negligence of municipal corporations consists in acts of commission and acts of omission, the former being frequently termed acts of misfeasance and the latter acts of non-feasance. To say whether a municipal corporation is liable in damages in a particular case under the above section it is important to determine whether it is a case of misfeasance or one of non-feasance. Where a municipal corporation undertakes some work, such as the building of a bridge or a sidewalk on a highway, it is liable for negligence in the prosecution of the work. It knows of the necessity of the exercise of care throughout the entire work, and if it does not take proper care to protect people from danger it is liable without notice, but where a municipal corporation has neglected to keep its highways in repair, before it can be made responsible for damages resulting from such neglect, it must be shown that the corporation was under some duty to act. If a municipal corporation, in building a bridge which it is required to build on a highway, builds it defectively by using defective timber or timber of insufficient strength so that it is not reasonably safe for public travel and an accident happens, the corporation is not entitled to notice because it had notice at the time the bridge was being built that it was defective. But in considering negligent omission to repair, that is a case of non-feasance, two kinds have to be considered, (1) Where the negligence consists in not repairing a defect on the highway within a reasonable time after knowledge of the defect, and (2) Where the negligence consists in not having discovered and remedied the defect. Where a corporation has notice of a defect it is its duty to repair the defect within a reasonable time and to take proper precaution to warn people of its danger. Notice to any officer of the corporation having control or supervision over the streets is notice to the corporation. If, therefore, an overseer of a highway knows of the existence of a defect in the highway he should have it remedied, or if he has not the authority or means to do so he should bring the matter before the council in order that it may be remedied. It has been held in the State of Michigan that notice to a member of the council is notice to the corporation. See Dundas v. City of Lansing, where Champlin, J., says: "Now, while an individual alderman, not acting in the meeting of the council, has no control or supervision over the streets any more than a private citizen, yet when he meets in council he does have a voice in saying what repairs shall be made, and, if a meeting of the council has been held after knowledge by or notice to him, there is no good reason why such knowledge or notice should not be imputed to the body of which he is a member, based upon the duty which he owes to the public to impart his knowledge affecting the public interest to the council."

According to the report which we have received of the judgment of the Court of Appeal in Rice vs. Whitby, that court held that the fact that a member of the council saw the building which was being moved on the road an hour before the accident, was not notice to the corporation but the report does not show for what reason there was not notice and we think it must have been because of the very short time that elapsed and not because notice to a member is not notice to the council. It is the duty of the corporation upon notice to it of a defect to remedy it within a reasonable time. What is a reasonable time is a question for the judge or jury trying the case. If the corporation has notice of a defect and it does not remedy the defect within a reasonable time it is liable in damages to a person who sustains injury by reason of it. But a municipal corporation may be held liable in damages, under this section, though there is no evidence that it had actual knowledge of the defect. The duty cast upon municipal corporations under this section is not discharged by the repair of such defects as come to their knowledge. It is their duty to exercise reasonable care to discover defects. They know that bridges and sidewalks will decay, and that water, particularly in time of freshets, will cut gutters in the highways and thereby render them unsafe for public travel, and the law requires that municipal corporations shall take reasonable precaution to discover defects arising from these and other causes. It is said that "negligent ignorance is no less a breach of duty than wilful neglect." Whether a corporation has been negligent in not discovering a defect in a particular case depends upon circumstances. If the street upon which the defect exists is a much travelled thoroughfare greater care is required than in the case of a street upon which there is little travel. If the defect is one which is easily seen and palpably dangerous there is less excuse for its not having been discovered by the corporation.

In Bateman vs. the City of Hamilton 33 U. C. R., 244, an action to recover damages occasioned by the overflow of water upon the plaintiff's lands. Justice Morrison, who delivered the judgment of the court, at page 251 says: "It did not appear, however, when the mud accumulated in the culvert or when the stone fell at its mouth. The mere existence of these obstructions was not in my opinion, enough to establish negligence. There was no evidence that the defendants or their officers had any notice of these obstructions, nor did it appear that they were of so notorious a character or had continued so long as to charge the defendants with constructive notice of them."

In Duck vs. Toronto, 5 O. R., 295, Wilson J. during the argument said "The evidence would seem to show that posts were there for a sufficient length of time to constitute evidence of notice to the defendants. They were there apparently for at least 24 hours and that might be sufficient to constitute notice. It might be better therefore for the defendants to consent to the verdict standing instead of going to the expense of a new trial." In this case a drain 2½ feet wide was opened accross one of the most travelled streets in Toronto. It was filled in with loose earth, but a rain storm washed it out so that there was a depression and the accident happened there. From what has been said it will be seen that what length of time a defect must exist in order to charge a municipality with constructive notice depends upon the character of the defect and the place where it exists. If it is an obstruction, excavation or danger that will be readily perceived, the neglect to observe and remedy it is greater than if it is a defect discoverable only by close examination; and if it exists in a much travelled city street the danger of injury is greater and the inattention of the authorities is more censurable than if it is in a highway upon which there is little travel. It has been held that section 606 applies to cases of misfeasance only, that is to those cases where the corporation has neglected its duty to repair and not to cases of misfeasance, that is cases where the corporation has been guilty of some positive act of commission.

Rowe vs. Corporation of Leeds and Grenville, 13 U. C. R. 515 was a case of this kind. There the defendants, a Road Company for the purpose of repairing their road, placed on the side thereof heaps of gravel etc., and took no precaution to prevent parties passing along the road from running against these heaps, in consequence whereof the plaintiff, driving at night ran against one of them and upset and broke his wagon. The corporation set up the defence that the action was not brought within three months, but Mr. Justice Wilson in delivering the judgment of the Court at page 518 says "Now, the only defence to this is, that the action should have been brought within three months from the happening of the damage, but this protection arising under the section of the Municipal Act before referred to does not apply to the cause of action set forth in this record.

LEGAL DECISIONS.

Saunders vs. City of Toronto.

Municipal Corporations—Carters Employed to Remove Street Sweepings—Master and Servant—Negligence—Liability.

In an action brought against a city corporation for injuries sustained by the plaintiff, he being run down while riding a bicycle along one of the streets, by a licensed carter employed in removing to a dumping ground, street sweepings which were placed in piles on the side of the street, it was shown that the carter owned the horse and cart he was driving, but was hired by the officer of the city corporation having charge of this work, and received his orders from the foreman of the street's commissioner's department, which were where to get the stuff and where to dump it, and to go and return by the shortest route, and for failure to carry out his orders he was subject to dismissal. He worked all day, consisting of nine hours, and was paid twenty-eight cents an hour. He had been occasionally hired in the spring and fall of the year, when this work required to be done, and had been at work off and on during this particular season, and for two weeks constantly prior to the accident happening. A city by-law was proved which provided that the committee which had charge of this work might provide such scavenger carts as they might deem necessary, each cart to be supplied with one horse and the necessary appurtenances and controlled by one man, the man and cart to be under the charge of the officers of the department whose duty it was to see to the cleaning of the lanes and streets.

Held, that the relationship of master and servant existed between the city corporation and the carter at the time the accident occurred, and a non-suit entered at the trial was set aside, and a new trial directed.

McDonald vs. Township of Yarmouth.

Municipal Corporations—Tiles Placed on Side of Highway—Accident—Negligence.

On the side of a township road there was a fill of about fourteen feet, with railings on either side, and for the purpose of repairing a culvert which ran through the fill, a quantity of tiles of a large size and a light gray color, were piled on the side of the highway, in a slight hollow behind the railing, having some planks thrown over them, and a board nailed between the two boards forming the railing, so as to further hide the tiles from view.

Held, that this did not constitute evidence of negligence on the defendants' part so as to render them liable for injuries sustained by the plaintiff by reason of the horse which he was driving becoming frightened at the tiles and running away.

Ewing vs. City of Toronto.

Municipal Corporations—Highway—Non-Repair—Hinge on Trap Door on Sidewalk—Accident—Negligence.

Let into the sidewalk upon one of the streets of the City of Toronto, there was a trap-door leading to a cellar of abutting premises. The door was about eight feet long, but divided in the centre into two parts, and opening therefrom, having three hinges on each half, fastened to the door by straps or flaps, which were half an inch above the level of the door, the movable part of the hinge extending an inch or an inch and one-sixteenth above the level of the sidewalk, and being of the same length as the width of the flap, and about three quarters of an inch in width. After nightfall, on a night that was not dark, the place also being lighted by an electric lamp on the opposite corner of the street, though plaintiff's body and the shadow from it to some extent obstructed the light, the plaintiff, while walking on the sidewalk, struck his toe against one of the centre hinges and stumbled and fell, injuring himself. The plaintiff was well acquainted with the locality, having passed over the place at least once or twice each day for the previous three years.

Held, that there was no liability imposed on the corporation; for the existence of the hinges, having regard to the purpose for which they were placed where they were, and the other circumstances of the case, did not constitute a breach of the defendents' statutory duty to keep in repair.

In Re McGillivray and Chesterville Public School.

Public Schools—Dissolution of Union School Section—Power of Arbitrators—59 Vic. Chap. 70, O, Sections 43, 44.

Proceedings having been taken under the provisions of The Public Schools Act 1896, 59 Vic. chap. 70, O., for the dissolution of the union school section hereinafter mentioned, arbitrators appointed by the County Council under section 44 of the Act, provided by their award that 'Union school section No. 8 of Winchester Township, comprising the incorporated village of Chesterville and rural section No. 8 in said Township, be dissolved, and that all the parcels of land included within the boundaries of rural section No. 8 be attached to and from the same for school purposes, and that all the parcels of land included within the boundaries of the village of Chesterville shall remain attached to and from the urban section of Chesterville village for such purposes.

Held, that though the language was in part insensible, the effect of it was to dissolve the union, recognizing the village as a corporation subject to the provisions of sections 53 and 54 of the act, and school section No. 8 as a non union school section subject to the provisions of certain other sections, and that the award was valid as an exercise of power under sub-sections 5 or 6 of section 43.

Rice vs. Town of Whitby.

Judgment on appeal by Thomas Deverill, a third party, from judgment of Boyd, C. (28 O. R., 598), in favor of defendants upon their claim for indemnity or relief over against the third party upon the judgment recovered against them by Thomas Rice, the plaintiff, in an action for injuries sustained by plaintiff by reason of Dundas street, in the town of Whitby, being out of repair, as alleged. The alleged want of repair was a building in the course of removal being left over night in the highway, unlighted and unguarded, by which the plaintiff's horse was frightened. The defendants had notice, as found by the Chancellor, but took no steps to warn travellers. The Chancellor held that defendants were liable to plaintiff for damages, which he assessed at $175, and for County Court costs, and that Deverill, the man who left the house on the road, was liable over. The defendants opposed the third party's appeal and appealed from the judgment, fixing liability upon them.

Held, that there was no evidence to fix the corporation with notice or knowledge of the obstruction. The fact that a member of the town council saw it an hour before the accident was not notice to the corporation. Appeal of the defendants allowed with costs and action dismissed with costs. No costs as between the defendants and the third party. C. J. Holman for third party; Aylesworth, Q. C., and Farewell, Q, C., for defendants; W. R. Biddell and C. A. Jones (Oshawa) for plaintiff.

Harris vs. Township of Whitby.

Assessment of Parsonage.

Appeal from the Court of Revision of the Township of Whitby. In 1885 two acres of land were conveyed to the church society in trust for a church-yard and burial ground for the use of the members of the Church of England. A church and subsequently a parsonage was erected thereon.

Held, that since 1890 the parsonage and a reasonable curtilage surrounding it were liable to taxation for municipal purposes.

Grand Trunk Railway Company vs. Port Perry.

Assessment—Railways—Tank and Platform—Sub-Tenant.

Appeal from the Court of Revision of the village of Port Perry.

Held, water tanks and platforms are part of the superstructure of a railway and are not assessable.

The assessment of a sub-tenant of a railway company should be deducted from the total assessment.

The latest improved English electric carriage weighs over a ton, the battery being one-half of the total, and one charge will propel it nearly fifty miles.

QUESTION DRAWER.

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

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

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

Municipal Debentures not Liable to Assessment.

224.—J. McD.—Where a tenant in a village holds debentures of the village for the erection of a school-house, and also holds debentures of adjacent school section in township, are these debentures liable to be assessed to the village, and how ought they to be assessed, as personal property or income?

Not liable to assessment. Sub-sec. 18 of sec. 7 of the Assessment Act, one of the exemption clauses, reads as follows: "So much of the personal property as is invested in the debentures of the Dominion of Canada or of the Province, or of any municipal corporation thereof, and such debentures."

Separate School Supporter's Notice.

225.—A. L.—A non-resident supporter of the separate school has sent the reeve (on the 28th of March) a request to be put as a supporter of the public school. Is it not too late? If yes, when should he have sent his request?

Yes. Section 47 of the Separate Schools Act provides: "Any Roman Catholic who desires to withdraw his support from a separate school, shall give notice in writing to the clerk of the municipality before the second Wednesday in January in any year, otherwise he shall be deemed a supporter of the school.

Wire or Snow Fence Bonus.

226.—W. M.—1. Has a township any authority by statute to levy a tax for the purpose of assisting farmers in the municipality in building wire fences in front of their respective lots?

2. If so, is it necessary to submit a by-law to the ratepayers?

1. No. But the council may allow compensation for the increased expense of erecting fences along a public highway, pursuant to the requirments of a by-law of the municipality, and the amount of such compensation will have to be collected from the whole of the municipality. There are places along the highways where it may be in the interests of the public to have fences of a particular kind which cost more than an ordinary fence sufficient for the landowner, and it is in cases of this kind that provision of this kind is intended to be made. See sub-section 2 of section 545, Municipal Act, R. S. O., 1897.

2. There is no provision for submitting a by-law of the kind referred to in the above section to the ratepayers, and where there is no provision for submitting a question to the rat payers it is improper to submit it.

Section 1, chapter 240, R. S. O., 1897, an act respecting snow fences, authorizes councils to make compensation to the owners for the alteration or removal of fences and the construction of a fence approved by the council. This power is limited to places where the fence causes an accumulation of snow so as to obstruct travel.

Maintenance of Road Used in Lieu of Town Line

227.—T. D. R.—Owing to obstructions on the part of the townline between two townships it was found necessary to purchase and open up a road in lieu of the townline through part of one of the townships. This by-road runs part of the way parallel with the original road, and this part the two townships have kept in repair, and part of the by-road runs almost at right angles with the townline, and this latter part is used as a street in an unincorporated police village. The township through which the road runs and the police village have kept up this part of the road, while the other township has refused to bear a part of the cost of maintenance, although it is the only road used as a townline. Are both townships bound to keep this road in repair or how should it be kept up?

Assuming that the road has been opened up for the purpose stated, owing to the fact that it was impracticable to open up the original allowance on townline between the two townships, we do not see how either township can refuse to bear its share of the expense of keeping the whole road in repair just as it would undoubtedly have to do if the townline itself had been opened up.

Voters' List Clerk's Duty—Name in Column 6.

228.—H. A. L.—1. A owns a farm in this township and lives on it. It is assessed to B as tenant for $3,000. A's name appears only in column 6. Is he properiy assessed?

2. On what part of the Voters' List should A's name be put?

3. If the clerk knows that A is a *bona fide* resident should he put his name on the first part of list?

We have several cases of the above in this township, where a son-in-law or other party works the farm on shares for the owner. In some cases they both live in the same house, in others there are two houses on the farm, and the assessor has ignored the old man.

1. No. Sec. 24 (1), Assess. Act, R.S.O., 1897, requires assessor to place both names of owner and occupant, or owner and tenant within brackets on the roll and "to write opposite the name of the owner the letter 'F,' and opposite the name of the occupant or tenant the letter 'T.' Both names should, therefore, be in column 2.

2 and 3. We would advise that some elector should formally complain of errors in the roll, and have the Court of Revision make the necessary corrections. See sections 55 and 71, Assessment Act, R. S. O., 1897.

Gravel Pit - Purchase in Adjoining Municipality—Trees on Streets Widened.

229.—J. M.—The village of Cannington wishes to procure a gravel pit for the use of streets.

1. Can the council appropriate land in an adjoining municipality for that purpose?

2. What are the first and following steps to be taken to appropriate?

3. When the council intend widening streets can they remove shade trees that are in the way, said trees having been planted for shade or ornamental purposes?

1. Yes, provided it first obtains the consent of such adjoining municipality, such consent to be expressed by resolution. See sub-section 10 of section 640, Municipal Act, R. S. O., 1897.

2. Obtain the consent of the council of the adjoining municipality and then let a by-law be passed pursuant to section 640 (10). In the case of Rose vs. the township of West Wawanosh, 19 O. R. 294, Street J. decided that the meaning of section 550, sub-section 8, R. S. O., 1897, cap. 184, which is the same as section 640 (10), R. S. O., 1897, is that the council may, as necessity arises for their doing so, exercise the right to take gravel, etc., from any particular parcel or parcels of land, having first declared the necessity to exist and chosen and described the land from which the material is to be taken by a by-law; and therefore a by-law purporting to be passed under this section, which authorized and empowered the pathmaster and other employees of the corporation to enter upon any land within the municipality when necessary to do so, save and except orchards, gardens and pleasure grounds, and search for and take any timber, gravel, etc., was upon its face illegal, because it purported to confer upon its officers wider and more extensive powers than the statute authorized.

3. Yes, but if the trees are on the highway the provisions of section 574, Municipal Act, R. S. O., 1897, must be observed.

Floating Bridge—Expense of Same—Rafting Logs.

230.—W. C.—The municipal council built a floating bridge across a river straight on the concession line. The river is not navigable, only for floating saw-logs and timber down. The bridge is built with approach at one end, with glance boom to allow legs and timber to pass through, but at the time logs and timber are going through an extra man is required at the bridge to keep logs and timber from jambing. Can lumber company or any one running timber down the river charge the municipality with the extra cost of having a man at the bridge?

No.

Statute Labor Commutation on Collector's Roll.

231.—R. J.—In the year 1896 the pathmaster warned out the parties to do their labor, and one man did not do it, and when he (the pathmaster) returned his list to the clerk, he told him verbally that this party had not done his labor and it was to be charged as commutation tax, and through the clerk's neglect he did not put it on the collector's roll for that year, and when the collector collected the taxes for the year 1896 this party paid the taxes and got a clear receipt for the taxes for the year 1896, and in the year 1897 the clerk saw his mistake and put it on 1897 collector's roll. Now the question is, who is liable for the mistake, the clerk or the party assessed?

The party assessed made no mistake. He simply did not perform his statute labor, and the amount at which his statute labor could have been commuted ought

to have been placed upon the collector's roll for the following year. The clerk appears to have done his duty in putting it on the roll of 1897 and it ought to have been collected by the collector for 1897. See sec. 110, Assessment Act, R. S. O., 1897, which makes it the duty of the pathmaster to return the defaulter before the 15th November, and the duty of the clerk to enter the commutation against the defaulter's name in the collector's roll for the following year.

Township's Right and Government Timber Dues.

232.—J. F.—Our township has been organized for eleven years. Is this corporation entitled to any percentage of dues collected by the government on pine timber cut in the township?

The only provisions entitling a township council to a percentage of dues in respect of timber that we are aware of are those contained in chapter 2, R. S. O., 1897. See section 10 of that Act. in order to share in such dues it will be seen that a by-law is necessary and that the right is limited to dues in respect of timber cut during the existence of the by-law.

Reeve's Absence - When Seat Vacant.

233—NEWCASTLE—We had a reeve appointed in January last. About March 1st he went away, and on May 1st family left also, taking everything with them. Can we declare seat vacant or can he hold seat till June, or what course should we pursue?

No, the council cannot declare the seat vacant until the reeve has forfeited his right to it by absence from the meetings of the council for three months as provided by section 207 of the Municipal Act, R. S. O., 1897.

Disposition of Property—Separation of Townships.

234.—J. G. C.—A municipality made an agreement with a land corporation for a piece of land for extension of street, which leaves them a piece of land of no particular use for street purposes, and which they intend to close and apply to municipal purposes. No title has yet passed for the land. The consideration for the land of the company was to be the remittal of their taxes for 1898. At the end of the year 1897 the municipality separates. The land in question lies in the junior township. The senior township claims they have an interest in land so acquired. As no title has passed and all the consideration will be paid by the junior township, in which the land lies, the junior township claims that the senior have no interest in the land at all. Which is right?

Sec. 32, Municipal Act, R. S. O., 1897, provides as follows: "After the dissolution of a union of townships, the following shall be the disposition of the property of the union: The real property of the junior township shall become the property of the junior township, etc." We do not express any opinion upon the right of a municipal corporation to acquire lands which are not required and authorized to be acquired for some purpose because in any view which can be taken of this we cannot see how the senior township can claim it. The most the senior township can ask is payment of what is just for its interest in the property according to subsection 4 of section 32.

Seconder of Motion Absent—Reduction and Payment Town Councillors.

235.—P. P. B.—1. At a meeting of council a motion is prepared for presentation. The seconder allows his name to be placed as seconder, but he is called away. Is there anything irregular in the mover putting the motion with the seconder's name or should he get the name of member as seconder in place of the absent councillor?

2. What steps are to be taken to secure a by-law to reduce the number of councillors to six with a mayor in a town of say seven thousand inhabitants, and can a by-law be passed to pay such councillors say $50.00 each and the mayor say $100.00, of course provisional on consent of Ontario Cabinet or Local House at Toronto?

1. No, but when the resolution is voted on the seconder, being absent, cannot be counted in determining whether it is carried or not.

2. The authority to reduce the number of councillors is to be found in the Municipal Amendment Act, 1898. No reduction can be made except within the limits stated. Section 280 of the Municipal Act, R. S. O., 1897, empowers the council of any county, city, town or village to pay the head of the council such remuneration as the council may determine, but there is no power given to pay councillors except in the case of counties, townships and in cities having a population of 100,000 or over, which have power to do so within the limits of section 538 of the Municipal Act. To pass a by-law provisionally when there is no power is useless and may involve the municipality in litigation.

Drainage Act — Assessment Contractor's Plant — Tax Telegraph and Telephone Poles.

236.—H. E. H.—In section 18 of the Drainage Act, 1894, speaking of the effect of withdrawal from petition for drainage, some difference of opinion exists as to the interpretation of the following:

1. "Should the petition at the close of the said meeting contain the names of the majority of persons shown as aforesaid to be owners benefitted within the area described?" Does the term "area" mean that described in the petition or in the engineer's report, or are the two necessarily the same?

2. Are dredges, derricks, steam pumps, etc., used by contractors on government works taxable in the municipalities where they are located for the time, and if so, under what head?

3. Can a municipality relieve a telegraph or telephone company from taxation, no vote having been taken on the matter?

1. Looking at other sections of the Act the term "Area" appears to have reference to the lands described in the petition. See section 16. But if the engineer's report shows other lands to be assessed upon the ground that they would be benefitted by the proposed drain, the council should not pass a by-law unless the petitioners constitute a majority of the whole number of owners of the lands which the engineer reports will be benefitted.

2. In the municipality or ward where the owner carries on his business. See section 41, Assessment Act, R. S. O., 1897.

3. No.

Assessment of Hall.

237.—CLERK—A new hall was built in our village by four persons, who are not incorporated nor partners. They received a little over $300 from our agricultural society, for which said society has the free use of said hall for exhibition purposes on show day. The rest of the year it is under the control of the parties who built it. The ground it stands upon is owned by one of these parties. The upper part of said hall is fitted up for entertainments, etc., and all revenue from such goes to these parties. The under flat is used for an agricultural implement storage room, conducted by one of these parties. Said hall is assessed, and it is appealed on the grounds of being an agricultural hall. Has the council power to throw off assessment upon the alleged grounds? Assessor also assessed two parsonages, which you answered was correct in the last WORLD, and with which we certainly agree.

Unless the council can find authority under the assessment Act to do so it ought not to interfere. We have examined the Assessment Act carefully and we have not been able to find any such authority. The Court of Revision has limited powers under section 74 of the Assessment Act, R. S. O., 1897, to remit or reduce taxes but this case does not come within that section. See also power of council in case of taxes on non-resident lands, section 161 of same act. These provisions show that the legislature considered it necessary to confer such a power as this expressly and it, therefore, follows that where no provision has been made to do what is proposed to be done here the council cannot do.

Non-Resident Tax Returns—Lands Occupied, Etc.

238.—C. T. O.—1. In what respects do the returns required by section 138 and sub-section 1 of section 155 of the Assessment Act, 1897, differ?

2. For what different purposes are they required by the county treasurer?

3. Could not the return required to be made by the county treasurer under sub-section 2 of section 155 be made in answer to the return received from the township clerk under sec. 153?

4. In making returns to the county treasurer under the above sections, should the township clerk return lands "occupied" or "not occupied" when the owner's name is on the assessment roll, but there is no distress on such lands?

1, 2 and 3. Section 153 makes it the duty of the clerk to furnish copies of the treasurer's lists to the assessor who is required to perform the duties mentioned in the section, and sign and return these lists to the clerk. The clerk is then required to file these lists in his office, and to furnish true copies to the treasurer, certified by him, and such certified copies are receivable in evidence in any court. It will be observed that these certified lists contain all the lots in the list furnished by the treasurer, with the information which the assessor is required to give added. Under section 155 the clerk must furnish the treasurer with a list of the lots which appear on the resident roll as having become occupied, or which have been returned by the assessor as incorrectly described. Section 155 has been in existence for a long time, but that part of section 152 which requires the clerk to furnish the treasurer with true

copies of the lists as returned by the assessor is of recent origin. It appears for the first time in section 20 of chapter 49, Act of 1892. One would have thought that after the amendment it would not have been necessary for the clerk to furnish the list required by section 155, but for some reason the Legislature has not dispensed with the latter list and the clerk should be careful to furnish both lists separately just as these two sections require.

4. The question of occupation is one of fact. If the assessor finds the lands occupied he should so return them whether there is any property on them liable to distress or not.

Collection and Payment of School Rates.

239.—X. L.—School trustees request municipal council to assess their section and raise and collect $200.00. Ratepayers in section do not pay their taxes only in part for two years and are in arrears. Municipality has paid trustees full amount each year although not collected from school section.

1. Is the municipal council obliged to do so?

2. Are they obliged to collect school tax for them again, if requested by trustees?

3. Can municipality refuse?

4. Can school be closed up if not supported by ratepayers in section?

5. What steps should be taken?

1. Yes.

2. Yes.

3. No.

4. No. There is no provision in the Public Schools Act for closing a school because the ratepayers have not supported it. We do not understand why the municipality did not in the past collect, through its collectors, the amount required by the trustees from the ratepayers of the section. See section 67 of the act, chap. 292, R. S. O., 1897. The trustees are not concerned about the past. They appear to require a certain amount now and, if it is not an unreasonable amount, the council of the municipality must see that it is levied and collected upon the taxable property of the section and paid over within the time fixed by statute.

5. In view of what is said above it is not necessary to reply to this further.

Collection of Water and Electric Light Rates.

240.—SUBSCRIBER.—Has a municipality power to seize and collect water and electric light rates in the same way as other taxes are collected? or to register against the land? Please give all particulars.

For the mode of collecting electric light rates we refer you to sections 9 and 10 of chapter 234, R. S. O., 1897, and for the mode of collecting water rates to sections 20 to 22, both inclusive, of chapter 235, R. S. O., 1897.

Equalization Union S. Sec. and Trustees' Requisitions.

241.—O. B.—1. Is it the duty of a secretary of a union S. S. to notify the assessor to equalize the assessment?

2. What way should a secretary proceed to collect taxes in a union S. S.? Should he apply to the clerk in each township or apply to the clerk of the township the school house is in?

3. Has the secretary any right to make out the amount each township has to pay?

1. No. Sec. 51 of the Public Schools Act, chapter 292, R. S. O., 1897, makes it the duty of the assessors once in every three years to equalize union school assessments without waiting to receive notice from any person.

2. The school trustees should submit to the council of each municipality interested, on or before the 1st day of August, an estimate of the expenses of the schools under their charge for the next 12 months following the date of the application, and it is then the duty of each municipality, through its own collectors, to collect its share of the amount required. See sections 46 and 51 and sub-section 9 of section 62 of the Public Schools Act.

3. It is the duty of the trustees to submit estimate of full amount required and to make a demand upon each council for its share. The statement referred to in answer number two should show how much of the total amount required is to be contributed by each municipality. We think that the secretary-treasurer or the treasurer is the most competent person to do this, but the clerk should be in possession of sufficient information to check apportionment before levying the amount.

Widow's Dower Not Assessable.

242.—T. B.—A widow accepts $1,000 a year in lieu of dower in her husband's property, the payment of which is secured by a mortgage on a portion of the property. Is this $1,000 assessable?

No. We think this is exempt under sub-section 18 of section 7 of the Assessment Act, chapter 224, R. S. O., 1897, which exempts so much of the personal property of any person as is invested in mortgage upon land, etc. The mortgage is a security for the payment of money. Money is personal property as defined by sub-section 10 of section 2 of the Assessment Act, and therefore it appears to be the case of personal property invested upon the security of lands.

Pathmaster's Duties.

243.—X. L.—1. Is the pathmaster obliged to have dangerous or damaged bridges repaired on his section, when notified by ratepayers?

2. Can ratepayers be called out by pathmaster to do said work? and have they to accept credit on their next statute labor list, or are the council obliged to pay such bills when presented by the pathmaster?

1. We do not think that he is obliged to do so, but he ought to do so if he is aware of the existence of dangerous places in the highway, because notice to him will be imputed as notice to the corporation, and if reasonable precautions are not taken to prevent accidents the corporation will be liable in damages where injury is sustained by reason of such dangerous places.

2. No. The pathmasters cannot call out the ratepayers to make such repairs. If they happen to exist when statute labor is being performed the pathmaster can no doubt have the repairs done as part of the statute labor, but when a ratepayer has done all the statute labor he cannot be called out to do any more work on the highway. The pathmaster, if he has not been instructed by the council to see that all necessary repairs are made, should notify the council of the necessity to repair and let the responsibility rest with the council.

[Both of the questions referred to are usually determined by by-law of Township Council, passed to regulate the duties of pathmasters and the performance of statute labor. The answers given are applicable where no by-law is in force.]

Statute Labor.

244.—E. D. M.—Is there not a mistake in question, also answer of No. 218? How can one man own N. ½ Lot 17 and another man own the N. ½ of same lot?

2. Why should two men have the totals of their assessments added together and their statute labor proportioned from such total?

1. In answering this question we assumed that there was a clerical error in this case, and that the south half was intended.

2. The separate assessments of two owners of separate parcels cannot be added together, but the statute labor imposed upon one parcel ought to be based upon the total values.

Cannot Compel Council to Open Road.

245.—D. C.—B owns 26, 27 and 28 in the 9th concession and 26 and 27 in the 10th concession. P owns 25 in the 10th concession. P can land with boat on lot 25 but claims there is a better landing at the concession allowance for road on the west side of lot 27, between concessions 9 and 10. The council has given B a letter of occupation of the 10th concession allowance for road until called for. P asks council to open 10th concession allowance as a public road. Council are not inclined to do so. P threatens law. Can P by any process of law compel the council to declare said 10th concession allowance for road opened as a public highway?

No.

Fine May be Imposed—Cattle Running at Large—By-Law re Percentage on Taxes.

246.—SUBSCRIBER.—1. We have town by-law to restrain animals from running in the town. We find it would work better if the owner of animals could be summoned and fined for letting their animals run, as sometimes it is hard to capture the animals. Can we do this, and how and by what section of the Municipal Act?

2. We have a by-law allowing 5 per cent. on taxes paid in December, 1897, and imposing 5 per cent. on taxes in arrears. Is it in force for 1898, etc., until repealed?

1. We are of the opinion that the council may pass a by-law for restraining and regulating the running at large of animals, and for imposing a reasonable fine for a violation of the by-law not exceding the limit for fines provided by the Municipal Act. See sub-section 2 of section 546, chapter 223, R. S. O., 1897, and section 702 of the same chapter.

2. Without the by-law or a copy of it we cannot say what its effect is, but we cannot see how a by-law allowing 5 per cent. on taxes paid in December, 1897, can be read as allowing 5 per cent. on taxes paid in December, 1898, and we

would therefore advise you to pass another by-law if you desire to make the like allowance and the like penalty this year.

Approaches to Railway Crossings on Highways.

247.—J. R.—When a railway crosses a highway at an elevation of 2½ feet what should be the grade of the approaches, and whose duty is it to build and maintain the approaches, the railway or the municipality?

Section 48 of the Railway Act, cap. 109, R. S. C., provides that the inclination of the ascent or descent, as the case may be, of any approach by which any roadway is carried upon, over or under any railway shall not be greater than one foot of rise or fall for every twenty feet of the horizontal length of such approach, etc. You do not say what railway is referred to or whether it was constructed some years ago or recently. The above section does not state who shall bear the expense of making the approach, but it provides that in respect of railways which on the 19th of April, 1884, were under construction or already constructed the Railway Committee should determine the proportion in which the cost of providing the fencing for such approach should be borne by the company and the municipality or person interested. Section 74 of the same Act requires the railway company, before constructing its railway over a highway, to submit a plan and profile to the Railway Committee, and the Railway Committee is empowered to deal with the matter and determine what the railway company is to do in respect of such crossing. It will be necessary for you to inquire and ascertain what, if anything, was done pursuant to this section. You do not say whether the municipality ever gave the railway company any authority to cross the highway in question, and, if so, whether there were any conditions imposed upon the railway company in respect of the crossing.

Palpable Errors—Appeals—Adjournment—Court of Revision.

248.—J. H. S.—Re sub-section 18 of section 71, cap. 224, Assessment Act. Would you kindly give me the meaning of above section? Does it mean that the clerk must make out a new list of appeals the same as he does from the 1st to the 14th of May, and proceed in the same manner where the court adjourns for ten days as per section referred to, or do palpable errors simply mean such error or errors in figures, numbers on roll, and such like clerical errors or mistakes (not including the over or under assessment of any party on the roll who has not appealed in the time prescribed by statute), but such errors as the court in going over the roll may discover. I claim that the appeals received by me up to the 14th of May are all the appeals that an outsider can make, but should the court find mistakes made by the assessor (other than over or under assessment) such as above mentioned as palpable errors. The court can adjourn ten days to set those right, and the assessor is the only party necessary to appear before the court, and they can take up any appeal made by the 14th of May if not already decided upon. By giving me your opinion on the subject you will oblige.

We entirely agree with your view of the meaning of the above section. The latter part of sub-section 4 of the section is as follows: "And no alteration shall be made in the roll unless under a complaint formally made according to the above provisions."

Electric Lighting.

249.—W. A. S. (Bothwell)—Can you give me any information regarding lighting by electricity? The council are thinking of lighting the town, and would like to know whether it would be better to put in the plant themselves or by a company, also probable cost for a town this size.

I would be pleased to receive any information and if you cannot give it to me, could you tell me where I would be most likely to get what I want?

Your best course is to communicate with the proper officers in other towns of about the same size as your own town, and ascertain through them as to the cost of putting in plant. As to whether it would be more in the interest of the town to put in plant itself or to contract with a company, the experience of other places will be the best guide for you.

The question of municipal ownership, regarding which enquiry is made, is one round which much discussion has centered for a number of years. The principal objections raised are: (1) That it will open up an avenue for dishonesty on the part of the officials in charge; (2) That public works are not conducted so economically as those under private control; (3) That it removes a legitimate opportunity for private enterprise; (4) That the risks through fire, accidents, etc., are, when under private control, not borne by the public.

In contradiction to these it is affirmed: (1) That while dishonesty and favoritism on the part of the public officials has arisen in some cases, yet the general trend is toward higher ideals in public affairs. While municipal politics in a number of United States cities and towns have brought disaster to municipal ownership, yet under British government better things are to be expected. In England, feeling is growing strongly in favor of municipal ownership, one of the best examples of its success being Glasgow, probably the most economically governed city in the world, where the waterworks, street railway, lighting plants are owned and operated by the city. The experience of cities and towns of Ontario with regard to the public ownership of waterworks is considerable, and is, particularly in the smaller municipalities, exceedingly favorable. (2) While there may be less economy practiced under municipal than under private ownership, yet on the other hand we find a tendency on the part of private corporations to reduce the cost of operation at the expense of the service rendered. (3) While an opportunity is removed from private enterprise, yet, without reaching socialistic ideas, it is the feeling of an increasing civilization that all monoplies with which the public cannot dispense, should be within public control. In the majority of towns, one waterworks plant, one electric plant, one sewer system, is sufficient, two cannot survive, and competition is therefore impossible. Such monopolies should not be subjected to the abuse likely to arise from extortionate charges on the part of a private company anxious to obtain the greatest profits. (4) The municipality is as able to bear the losses which may arise as is a private corporation.

It may be further pointed out that the profits which a private company expects to receive will compensate for a less strict attention to economy of operation; while a municipality can generally borrow the necessary funds more cheaply than can a private company. For the management of a public plant, a board of commisoners composed of the mayor and two others elected by the people, is the usual form of control. For a town of 1200 population, such as Bothwell, under normal conditions, municipal ownership would appear to commend itself.

The plant needed for street lighting by electricity is composed of a power house, with engine, boiler, dynamo, switchboard, wire circuit, poles, lamps, etc. The lamp ordinarily hung at street intersections is an arc lamp of 2000 candle power. A plant of 15 arc lamps, 2000 candle power, would cost about $5,000; a plant of 25 arc lamps, 2000 candle power, would cost about $6,500. More definate information regarding cost of plant can be obtained on application to the companies supplying electrical machinery. Electrical machinery has been reduced to definate forms, and although there is little need of alteration in these, the services of an expert should be employed to guard the interests of the town in case a lighting plant is installed.

Assessment of Post Offices—Court of Revision.

250.—J. D. C.—1. Can a post office be assessed as other property, the office being the property of a private person who rents it to the postmaster at a rental of $75 per annum?

2. Can the court of revision compel the appellant to swear whether or not he would take the amount of the assessment for his property?

1. Yes.

2. We do not think the question a proper one. Section 28 (1) of the Assessment Act provides: "Except in the case of municipal lands hereinafter provided, for real and personal property shall be estimated at their actual cash value, as they would be appraised in payment of a just debt from a solvent debtor." It seems to us that the value of the property can be ascertained by evidence showing what the property is worth, having regard to the value of other property in the same locality similarly situated. The assessor, who is required to discharge his duties honestly, having assessed the property, the onus is upon the appellant to satisfy the members of the Court of Revision that the assessment is too high. If he has given evidence showing that the assessment is too high that is a preponderance of evidence reasonably satisfactory that his property has been assessed too high. We do not think that the court should refuse to reduce the assessment because he refused to answer a question

put to him. He might give as a reason for not selling at the assessed value that a man cannot hunt up another place suitable or convenient to his place of business, and that it cost a good deal to move, carpets have to be cut and altered, etc.

Townships and Sidewalk Accidents.

251.—R. B. W.—1. Are township corporations liable for damages caused by defective sidewalks built by both village and council in unincorporated villages in their townships?

2. Can a justice of the peace cause to be arrested and commit a tramp if there is complaint made, and charge fees to the corporation where he is found?

1. Yes, if such damage is caused by the negligence of the township municipality. A municipality is not liable in every case where damage is sustained. Negligence must be proved. For example, a municipality may show that it had no notice or knowledge that the sidewalk was out of repair, and that the defect was so recent that it could not be presumed to have had notice in law. In that case, it would not be liable for the damage. The village, being unincorporated, is part of the township.

2. No.

June Gravel Contract Completed in Winter—Accident.
See also 265.

252.—T. C. M.—The township road surveyor let a job of building a piece of road in June, 1897, no definite time set for completion of work. The party who took the job drew gravel in the winter and spread on the road, thereby spoiling the same for travel. A ratepayer, hauling a load along the road, broke his harness and injured his sleighs in passing over this piece of road. Who is liable for damages?

The township council knew nothing of the matter until suit was entered for damages. There was a better road to travel about a mile distant, and just as convenient for the party aggrieved.

You do not furnish sufficient information to enable us to say whether the township is liable or not. It does not appear whether the road surveyor had any authority from the council, nor is it explained why the surveyor, letting a job of building a piece of road in June, never took the trouble of seeing whether the work was finished or not. You say that you knew nothing about the matter. Who was the surveyor? Are we to assume that he was a stranger acting without any authority from the council? Surely not. The council must have known something of it. If we assume that the council knew nothing about the matter the municipality is not liable unless it can be shown that the gravel was on the road and made it dangerous, and for such a length of time that the council ought to have known that it was there, and was guilty of negligence in not having discovered it. Section 558 of the Municipal Act, R. S. O., 1897, provides: "No stone, gravel or other material shall be put upon the roads for repairs during the winter months so as to interfere with sleighing. There is no doubt but that the person who put the gravel on the road is liable if the injury was caused by it and was not occasioned by the negligence of the injured party.

By-Laws re Cattle Running at Large.

253.—Q.—The council of this municipality passed a by-law wholly prohibiting horses, sheep, etc., from running at large, but the by-law allows cattle over two years to run at large from 6 a. m. to 8 p. m., during the period of the year from 15th April to 15th November.

1. In view of section 103 of the Railway Act of Ontario, R. S. O., 1897, cap .207, is the above by-law legal, inasmuch as it allows cattle to run at large while the G. T. Railway track enters the municipality and intersects two streets thereof?

2. Is the by-law legal in as much as it allows cattle to run at large while some other animals, such as those mentioned, are wholly prohibited?

1. Unless the by-law professes in express terms to permit cattle to run at large within the limit prohibited by section 103, we do not think it is illegal because it does not expressly except as much of the highways within the municipality as are within the limits provided by that section. We think that a by-law in general terms permitting certain cattle to be at large would be held to operate subject to section 103; that is, that it would apply to so much of the municipality as is outside the limits provided by that section.

2. It does not discriminate between different individuals. There may be a good reason, or at all events some reason, for permitting one class of animals and not permitting another class to run at large.

Voters List—Owners and Tenant—School Rates on Roll.

254.—J. R.—1. Our Court of revision will be held on the 4th June. In case of no appeals to the County Judge, is July the 6th the date at which the assessment roll stands finally revised? If not, what is the proper date?

2. A., B. and C. are assessed as follows:—

A—F
B—T } $200
C—T

Does section 93 Municipal Act apply in such cases as if they were joint owners or joint tenants? If not, who should be placed on the Voters' List?

3.—Is it imperative to place in a seperate column (as has always been done in this township) the amount levied on whole township for schools, i e the $150, for each school?

Reading sub-section 19 of section 71 and sub-section 2 of section 75 of the Assessment Act, R. S. O., 1897, we think that a person complaining of an assessment has the whole of the 6th day of July within which to serve a notice of appeal, so that the roll cannot be said to stand finally revised until the 7th of July in the case you put.

2. A is entitled to vote on the property as owner, and even if B and C are regarded as joint tenants the assessment is sufficient to give each a vote in a township or village, and therefore all three should be put in the Voters' List.

3. Yes. See section 132 of the Assessment, R. S. O., 1897.

Cost of Polling Booths.

255.—CLERK.—A village municipality at the election for the Legislative Assembly prior to the one in March last, furnished for one of the polling divisions of said village a polling booth in the town hall and paid for the other booth. At the last election the returning officer made no application for booths to the council but engaged booths from private persons and the deputies sent into the Council bills for $4.00 each for said booths. Is the village liable for both, one or any of the booths. If not, who is liable?

The village is liable for both. The council ought to have made arrangements before election for providing booths if it desired to do so. If it had provided suitable booths before election and had notified the returning officer and his deputies in proper time, and the returning officer and his deputies had declined to accept them, there would have been some reason for refusing to pay the bills.

What are County Bridges.

256.—G. R. B.—What length of proportions must a bridge be when it shall be built and maintained by the County? Who is responsible for the building and maintaining of of bridges on the boundary between the townships?

In the absence of a by-law of the county the county has to erect and maintain all bridges over streams forming or crossing boundary lines between two local municipalities other than a city or separated town, and this is so without regard to any particular width so long as a bridge is required as distinguishable from a mere culvert. See section 617, Municipal Act, R. S. O, 1897. But the County Council may pass a by-law under sub-section 3 of the same section, that the words "rivers, streams, etc.," mentioned in section 613 or 617, shall not apply to a river or stream less than 80 feet in width, and in the event of a county council passing a by-law the councils of the local municipalities must erect and maintain all bridges required over such streams, etc., less than 80 feet in width. This power is not given to the county councils in respect of bridges over streams which cross or separate boundary lines between counties.

Assess Telegraph and Telephone Poles.

257.—CLERK.—In your answer to question 166 in the April number of THE WORLD 1897, you say you do not think that Telephone and Telegraph Company's are liable to assessment on their poles and attachments, in the municipality in which they happen to be. Will you kindly mentiou on what portion or portions of the Statute you base your opinion.?

If you will look at the November (1897) number of the WORLD you will find that we expressed the opinion that telephone poles are assessable and they ought to be assessed in the municipality where situate. The opinion which we expressed in the April number was based upon the case of Fleming vs. Toronto Street Railway Company, where it was held by the Court of Appeal that the rails laid along the streets were not assessable but Chief Justice Strong who was a party to that decision, said in delivering judgment in the Consumers' Gas Company vs. Toronto in the Supreme Court: "The chancellor attempted to distinguish that case from the present, but I confess I do not think it is susceptible of distinction. I was a party to that decision, but

I do not hesitate to say that I now think the rails were "things affixed to the land" and as such, liable to assessment as real property, and that case was consequently wrongly determined." Chancellor Boyd in giving judgment in the Consumers' Gas Case when it was before him, quoted James, L. J., as having said: "Where any part of the soil is permanently occupied by anybody for profitable purposes, as for instance, where it is occupied by a company by means of its water or gas pipes or telegraph poles, then the person so occupying is rateable in respect of such occupation."

Pathmaster Removed—New Appointment Necessary.

258.—SUBSCRIBER.—A has been appointed pathmaster for road division No. 1 and has since removed to another place in the township. Has the council power to amend the by-law and insert B's name instead of A's. A has taken his declaration of office. Or can A appoint some one in road division No. 1 to act in his place?

The council should amend the by law by naming some other person in A's place. A has no power to delegate his duties to anybody else.

By-laws for Searching for and Taking Gravel or Stone.

259.—O. P. Q.—We require stone to crush for use on the road in our municipality and they are on farms adjoining the roads. Can we enter upon the lands and take the stone, and what proceedings would we take to do so. If the farmer has no more on his property than he requires for building purposes can we take them (if the law allows us to take any)?

Section 640, sub-section 10, empowers the council of every county, township, city, town or village to pass by-laws for searching for and taking such timber, gravel, stone or other materials (within the municipality) as may be necessary for keeping in repair any road or highway within the municipality, etc. The law gives the council this power when the material is necessary but does not make any exception or reservation in favor of the owner, though he may be able to say that he requires the material for building. Considerable care must be taken in cases of this kind, two cases under this section have already been before the court. In the first, "In re the Town of Ingersoll vs. Carrol, 1 O. R., 448, Cameron, J., held that the by-law should have defined the quantity of gravel required to be taken, and the award should have fixed the value of such quantity as well as the amount to be paid for the right of entry to take the same away, and therefore that the award was bad. In the other case, Rose vs. West Wawanosh, 19, O. R., 294, Street, J., held that the meaning of this section is that the council may, as necessity arises for their doing so, exercise the right to take gravel, etc, from any particular parcel or parcels of land having first declared the necessity to exist, and chosen and described the land from which the material is to be taken, by a by-law, and, therefore, a by-law purporting to be passed under this section which authorized and empowered the pathmasters and other employees of the corporation to enter upon any land within the municipality when necessary to do so, save and except orchards, gardens and pleasure grounds, and search for and take any timber, gravel, etc., was upon its face illegal because it purported to confer upon its officers, wider and more extensive powers than the statute authorized.

Fire Protection in Townships.

260.—J. H. C.—Hanover, an unincorporated village, situtated partly in this and also in the adjoining township of Bentinck gave notice to the Councils of the two municipalities respectively by sufficiently signed petitions in each case asking for Fire protection. The councils accepted the petitions and the notices were given as per s. 671 s. s. 2, Municipal Act. A special meeting of both councils was called at the proper time and no counter-petition was presented in either case. The Councils differed as to the interpretation of the Act re local improvements as contained in sections 664 to 665 and amending acts. If all the village property and farm lots and parts thereof are defined on the concurrent assessment rolls to be used (last revised) and only the village lots assessed for the improvement is a special assessment necessary? How would you proceed to assess, should two or more parties be appointed to act together in assessing or fixing the value on the property to be benefitted thereby in both municipalities?

Section 687, cap. 223, R. S. O., 1897, is the only provision which we are aware of authorizing a township council to provide for fire protection. The power conferred by this section is to be exercised under and subject to the provisions of sections 664 to 685. There must be a suffhciently signed petition presented to each council; that is, each council must have a petition signed by a sufficient number of the owners, according to the last revised assessment within its own municipality before it can act. Except as provided by the Municipal Assessment Act of 1898, there is no provision enabling councils to act jointly. When each council has received a petition signed by a sufficient number of the owners within that part of its municipality which is proposed to be assessed for the cost, the councils can, under section 20 of the Municipal Amendment Act of 1898, agree upon the apportionment of the cost of the purchase money and yearly cost of managing and maintaining a fire engine and appliances. When this is done each municipality must pass its own by-law to levy its portion of the cost upon the property within its own limits. It must be borne in mind that the right of the councils to agree upon an apportionment is confined to the expense to be incurred for the purposes mentioned in section 20. Section 664 does not mention fire protection among the subjects dealt with.

Put in Culvert—Closing Street.

261.—G. W. W.—1. Can the council put in a culvert across the road, it being the natural course of the water? There was formerly a culvert there, but is filled up for some time. The party living opposite objects.

2. Can the township council pass a by-law to close a street in a village, it not interfering with any person, only the party who wishes it closed?

1. Yes.

2. Yes, under and subject to the formalities required by section 632 of the Municipal Act, R. S. O., 1897.

Voters' List in Towns.

262.—CLERK.—1. You will confer a favor on the writer, and perhaps others in similar circumstances, by giving some hints on certain points to be observed and certain others to be avoided in the making out of the Voters' List. For example, our town during the past has been divided into three wards, would it be well under the Act as it now is to substitute polling subdivisions for wards?

I presume that it should not have been the intention of the Act to have only one polling subdivision in towns, as during the election, the work could scarcely be got through with in a town of say 4,000 inhabitants.

2 If divided into polling subdivisions, should an elector vote in the division where he resides?

3. If a man has property in various parts of the town, would you group all his property immediately under the name? I take it for granted that an elector's name will appear only once in the Voter's List.

The act of 1898 respecting the constitution of town councils does not effect the preparation of the Voters' List, or the sub-division of the town into polling sub-divisions which should remain the same as formerly, as the council will now be elected by general vote, the same as the reeve or mayor in past years. The Voters' List should be made out the same in polling sub-divisions as required by the Voters' List Act.

Assessment Income Government Official—Voters' List in Towns—Tax Sales in Towns—Return of Collector's Roll.

263.—SUBSCRIBER—1. (*a*) Does the assessment of income apply to salary of government official?

(*b*) How can income tax be collected if party refuses to pay?

(*c*) Was it the intention of the Act to assess people for income who already pay a big tax on real estate?

(*d*) In estimating the amount of income can we deduct rent, and fuel and help, etc., in office, or is it the gross income that is assessed?

2. I believe the ward system is done away with for 1898 Voters' List. Our assessor has made his roll by wards. How will he change the list for general vote?

3. Please give us in a plain simple way the proper course to get list of lands for sale of taxes, in shape in the town. The Act seems long and complicated, we are a town of five years, have had no sales and only the tax roll for a guide. Kindly put us in shape to start at once the right way.

4. What is the right way with return of collector's roll? If roll is returned by law to the treasurer by collector and balanced up, and sworn statement of unpaid taxes, etc., made, then is the power of a collector at an end or can the council let it out again to a collector to collect and seize, etc., and get it extended right along year by year? If this course is followed then can a tax sale of lands be properly prepared. Our 1897 roll is still out with a special collector, who seizes, etc., and we extend it for a period of two months at a time.

1. (*a*) There is no doubt but that the assessment of income applies to salaries of officials appointed by the Provincial Government. Section 7 of the Assessment Act provides "All property in this Province shall be liable to taxation, subject to the following exemptions, that is to

say" Then follows a list of exempted property "Income" is "property" as defined by sub-sections 8 and 10 of section 2 of the same act. The officials whose income is expressly exempted are mentioned in sub-sections 12, 13 and 14 of section 7. By the sub-sections the official income of the Governor General of Canada and the Lieutenant-Governor of Ontario, the full or half pay of officers, etc., of Her Majesty's Regular Army, etc., and all pensions of $200 a year and under payable out of the public moneys of the Dominion of Canada are exempt. The salaries of other Dominion officials are not in express terms exempted and the fact that certain Dominion officials are expressly exempted seems to imply that the Legislature assumed that it had the power to tax and intended to tax the income of the Dominion officials and the Court of the Queen's Bench (Harrison C. J. dissenting) in the case of Leprohon vs. Ottawa U. C. R. 478 held that the Legislature had such power, but Court of Appeal, 2 Ap. R. 522 reversed that decision holding that a Provincial Legislature has no power to impose a tax upon the official income of an officer of the Dominion Government or to confer such power on the municipalities.

(*b*) This raises a nice question. The remedy by way of distress provided by Section 135 of The Assessment Act, R. S. O., 1897 does not appear to apply to the case of income tax, but the tax may be recovered by suit under section 142.

(*c*) Yes.

(*d*) Rent, fuel, help, etc., properly chargeable against earnings should be deducted. Take for example the case of a doctor. Rent of office, fuel, salary of office boy, keep of horse, etc., should be deducted from the gross income and the net amount assessed.

2. The change in the constitution of town councils as provided for in Act of 1898, does not effect the Voters List which is to be made out as heretofore by polling sub-divisions, and the council will be elected by a general vote the same as the mayor or reeve in past years.

3. After the incorporation of a town, the clerk is required to send the non-resident tax roll to the town treasurer, who is also entitled to receive from the collector each year, after he has completed his duties, an account of all taxes remaining due on the roll. The treasurer should have a suitable book for the purpose and enter the arrears of taxes, and on the first day of May in each year should add 10 per cent. thereto. Where the taxes on any property have been in arrear for the three years next preceeding the first of January in any year, the treasurer of the town is required to furnish the Clerk of the municipality with a list of all lands in arrear for the said three years and which are liable to be sold for arrears of taxes during the year. The clerk is required to keep this list, and to deliver a copy thereof to the assessor, and it is the assessor's duty to ascertain if any lot or parcel of land contained in the list is occupied or incorrectly described, and to notify such occupants and also the owners thereof if known, whether resident within the municipality or not, upon the respective assessment notices that the land is liable to be sold for taxes, and to enter into a column reserved for the purpose opposite each lot, the particulars as to whether "occupied" "parties notified" or "not occupied" or "incorrectly described." This return is required to be signed by the assessor and verified by oath of affirmation. After the receipt of this list the clerk is required to make a return to the treasurer showing all lands which have been returned by the assessor as "occupied" or "incorrectly described," and the treasurer is required to furnish the Clerk of the town, an account of all arrears of taxes due in respect of such occupied lands, including percentage so that he may enter them on the collector's roll. After these returns have been made all lots included in the list furnished to the assessor, which are not returned as "occupied" are ready for sale. The Council may extend the time for the enforced collection by sale of non-resident taxes beyond the term of three years by by-law passed for that purpose. This does not relieve the clerk or treaserer of any of the duties above referred to. Before proceeding with the sale, the treasurer is required to receive instructions from the Mayor under the seal of the Municipality, commanding him to levy upon the land for the arrears due thereon with his costs. The treasurer should then prepare a list of lands liable to be sold, and include therein, in a separate column a statement of the proportion of costs chargeable on each lot for advertising and for the commission authorized by the Act to be paid to him, and to cause such list to be published for four weeks in the Ontario Gazette and once a week for 13 weeks in some newspaper published in the municipality, county or adjoining county. The advertisement should contain a notification that unless the arrears and costs are sooner paid, the treasurer will proceed to sell the land for the taxes on a day and at a place named in the advertisement.

The assessment Act is very clear in reference to treasurer's duties in reference to sale of land for taxes. The preliminary proceedings are most important, and in order that he may know exactly what lands are in arrears, and amount of tax and per centage due, he should keep a special book for the purpose, it is very inconvenient to rely on the Collectors rolls which are not supposed to contain the taxes on property assessed as non-resident.

4. The course pursued by the Council ought to be avoided as far as possible. The taxes ought to be collected by the first day of February. See Sec. 144 Assessment Act R. S. O., 1897. If the collector fails to collect them by the day appointed, the Council may authorize the collector or some other person to continue the collection. See Sec. 145. The law is pretty well settled that so long as the roll is unreturned the collector or some other person authorized by the Council may lawfully distrain and collect the taxes and this being so we cannot see why the arrears cannot be returned against the lands and such lands sold provided the subsequent proceedings are regular.

Tax Exemptions Farm Lots in Village.

264.—E. B.—This village embraces within the limits of the corporation, farm and wild lands not laid out in village lots and having no roads or streets running through the same. The owner of some property of this description has applied to the council to pass a by-law to exempt certain specified lands from taxation for expenditure incurred for sidewalks and street lighting as provided by sect. 8. chapter 224 R. S. O. 1897. The village does not strike a seperate rate for lighting or cost of sidewalks, these being included in the general expenditure of the municipality for which the ordinary "village rate" is levied. This being the case, it would appear to be impracticable to exempt the party in question from taxation for lighting and sidewalks, such expenditure not being kept seperate from other expenditures. Please say whether (a) in your opinion this section is intended to apply only where special rates are levied for the purposes therein indicated, and also whether (b) the lands in question must be all under cultivation and used as farm lands (not merely wild lands) in order to claim this exemption?

Where a person who brings himself within sub-section (1) of section 8 gives notice as required by sub-sec. (3), it is the duty of the council to pass a by-law as directed by sub sec. (2). The method adopted or pursued in the levying of rates cannot deprive him of the benefit of this section. (*a*) General rates for the particular objects mentioned in it. (*b*) The section applies to such lands as are held and used as farm lands only.

Spreading Gravel on Road in Winter

See Also No. 252.

265.—T. C. M.—Road surveyor who let job was duly appointed by Council. The Council was aware he let jobs. Job was let in June 1897 but no definite time set for completion. For his own convenience party who undertook job drew gravel in winter of 1898 and spread on public road without providing any other road. A ratepayer in drawing a load broke his sleigh and harness while getting over said job and prefers a claim for damages amounting to $15.00 with instructions to his solicitor to sue the township council, if claim is not paid.

1. Who is liable for claim, party who obstructed the road or township?

2. If the township settles claim with plaintiff can they collect from party who had job?

3. Can Council hold price of job until claim is settled?

4. Could Council settle claim out of price of job as the party who did the work has not yet been paid?

5. Is Council justified in holding price of job until claim is settled?

If the council had no notice that the gravel had been placed where it was and it was not there for such a length of time that it was negligently ignorant of its existence, the municipality is not liable. If the surveyor knew of its existence that

would be notice to the municipality and it would be liable if it did not remedy the defect within a reasonable time. Sec. 558, R. S. O., 1897, prohibits the placing of gravel upon the road for repairs during the winter months so as to interfere with sleighing. From what is stated the person who put the gravel on the road was an independent contractor, that he was not acting as a servant of the Corporation and the municipality would not be liable for his wrong-doing unless there was neglect of duty on its part after having had notice of the defect. For these reasons our answers to the above questions are as follows :

1. The party who placed the gravel on the road and also the municipality if it neglected its duty after having had notice of defect.

2. Yes, but the better course is to have him added as a party to the action.

3. Yes.

4. Yes.

5. Yes.

The above answers are given upon the assumption that the claimant has a good cause for action. It may possibly be shown that the damages were occasioned by his own negligence. And we also assume that the alleged wrong-doer is an independent contractor and not a servant of the corporation. See section 609, Cap. 223, R. S. O., 1897, for remedy over against a wrong doer.

Railway Fences.

266.—J. H. B.—The C. P. R. has not yet fenced their track through this municipality (Nairn, Lorne & Hyman) though often asked to do so, so many animals have been killed and are being killed continually. What steps must be taken to get this fence, or can they be compelled to fence ? Would the fact that some of the land is not in market be a legal excuse for not fencing ? All the land has been surveyed by government.

The company cannot be compelled to fence. By neglecting to fence, the company, under certain circumstances, assume liability for damages.

Mistakes in Collector's Roll.

267.—H. M. R.—Our late clerk made mistakes in carrying out the amount of taxes against certain names on the Collector's roll, by which the township is that much short. Can he be made to pay back to the Municipality the amount, or if not, can the parties be made to pay it ?

The only remedy provided is that contained in section 249, cap. 224, R. S. O., 1897.

Proceed Under Line Fences Act.

268.—E. W.—My land is 200 acres wide in the rear. Two brothers own (including 100 acres in the rear of my neighbor on east) 300 acres in width. A few years ago we divided the fence, the west 100 acre fences were made on that understanding. Last year the brothers divided their land each receiving 150 acres in width. Last year the brother owning the west 150 acres removed my fence on the east side of my 100 acres (about ⅓ across) and substituted one of his own. The other brother has taken away the fence on about same distance on the east side of my east 100 acres and has notified me to make fence at that place.

1. Can he compel me to do so ?
2. What should be my course ?

1. His only remedy is under the Line Fences Act, chapter 284, R. S. O., 1897, and if he takes any steps under that act the fence-viewers will probably do what is just between all parties.

2. We think you should proceed under the Line Fences Act.

Road Wanted—Cattle Guard Insufficient.

269.—W. A. W.—1. A owns lots 18, con. 5, lot 19, con. 6. Lots have been surveyed by provincial surveyor and there is a jog of 17 feet per plan at blind line. Is that 17 feet sufficient to let him out through his own property to public road, con. 5 ? A claims he can compel council to force a road along railway across lot 20, con. 6, to sideroad west, or open up con. 6 around lake shore.

2.—Can council force a road along railroad, it being shortest way out or would they have to open out con. 6 and deviate on lot 20 around lake shore ?

3. Council passes a by-law that certain cattle run at large and those cattle go on railroad and get killed. Can owner make company pay compensation for those killed ? The cattle guards being such that cattle walk right over them and is killed on right of way. If they cannot, what steps can a council take to make company put on cattle-guards that will keep cattle off.

1. We do not think that the council can be compelled to open any road for A.

2. The council, if it sees fit, may open a road across another private individual's lands for the purpose of providing a road in lieu of the original allowance.

3. We think the company is liable, if the cattle-guards were insufficient.

Voters in Towns Under 5000—Collector or Treasurer.

270.—RUSTICUS.—1. In a town divided into wards can an elector qualify in more than one ward, vote for the six councillors to be elected by a general vote under chap. 23 (1898) sec. 2 (now 71a of the Municipal Act) as provided by sec. 158 of the Municipal Act although restricted by last section to one vote as to mayor ? I do not find that said chapter 23 restricts that privilege.

2. A council by by-law appoints the same person treasurer, collector of taxes and collector of water rates. Does not section 295 of said act prohibit it ?

3. What effect will such an appointment have as to the validity of his returns ?

We are not surprised at the view you have taken of the meaning of the sections of the Municipal Act referred to, but we think the Legislature intended that each elector should have only one vote. The difficulty arises from the fact that this act is drawn as if there were no wards in existence, but sub-section 2 indicates the intention that an elector is to have one vote only, because you will observe that it provides that where a town is divided into wards one councillor is to be elected for each ward, and the remaining councillors are to be elected by general vote, as in sub-section 1 provided.

2. Section 225 prohibits the appointment of a treasurer as collector.

3. We do not think that the returns will be affected, but another person ought to be appointed for one or the other of these offices.

Publications Received.

Municipal Statistics—Report of Bureau of Industries for 1896.

The usual tables of statistics, showing rates of assessment, and taxation receipts and expenditure are given. Road and bridge expenditure is the largest controllable item. The five townships in which the expenditure and statute labor are the greatest are as follows :

	ROAD AND BRIDGE EXPENDITURE 1895.	DAYS. STATUTE LABOR.
London	$9,468	6,351
Nottawasaga	3,270	8,980
Pickering	3,549	9,993
Toronto	8,287	5,787
Yarmouth	6,200	5,324

Report of Provincial Board of Health for 1897.

Report of Bureau of Mines, First Part, 1898.

Revised and Consolidated By-Laws, County of Halton.

Minutes and Proceedings of January Session, 1898, County Council of Grey.

Minutes and Proceedings of January Session, 1898, County Council of Renfrew.

Minutes and By-Laws of July and December Sessions, 1896, and first two sessions, 1897, County of Lennox and Addington.

Questions submitted by the Council of the Township of Brant, to Pathmasters and Ratepayers generally, re Statute Labor and Road Improvements.

Minutes and By-Laws of the Township of Sheffield for the year 1897.

Proceedings and By-Laws, Township of Woolwich, 1897, in English and German.

By-Law No. 378, Townships Belmont and Methnen, appointing certain officers for 1898.

Voters' List, Township of Brant, 1897.

Auditors' Report, County of Essex, 1897.

Auditors' Report, Town of Deseronto, 1897.

Auditors' Report, Village of Woodville, 1897.

Auditors' Report, Townships of Belmont and Methnen, 1897.

Auditors' Report, Township of Brant, 1897.

Auditors' Report, Township of Sheffield, 1897.

Auditors' Report, Township of Rawdon, 1897.

Auditors' Report, Township of Grantham, 1897.

Blood is thicker than water, but there isn't near so much of it.

City experts are mistrusted in rural districts because it is believed their methods are too expensive. The true expert, however, is familiar with all conditions, and knows how to accomodate the ways to the means.