THE MUNICIPAL WORLD

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

Vol. 11. No. 10. ST. THOMAS, ONTARIO, OCTOBER, 1901. Whole No. 130.

Contents:

	PAGE
Editorial Notes	150
Communications	150
Municipal Debentures and the Money Market	151
Municipal Ownership	152
Engineering Department—	
Street Improvement	153
Ventilation of Sewers	154
Use of Acetylene for Lighting Purposes	155
Country Roads	155
Cement Concrete Sidewalks	156
A Co-operative Telephone Company	156
A Municipal Doctor	156
Question Drawer—	
429 Compelling Removal of Obstruction in Watercourses	
430 Damages Caused by Diversion of Course of Creek	
431 Payment of Account of Local Board of Health	
432 Liability of Police Villages and Townships to Construct Bridges and Culverts	
433 Liability of Police Village and Township to Construct Culverts and Bridges	
434 Proceedings to Fill Vacancy Caused by Death of Reeve—Conduct of Business of Special Meeting	
435 Title to Road Allowance—Poundage Fees	
436 Tenant Only Should be Assessed in this Instance	
437 Council can Pass More By-Laws Than One for Levy of Township Rate	
438 A Drain Under the Ditches and Watercourses Act is Needed	
439 Liability of Railway for Drainage	
440 Impounding of Cattle for Trespassing	
441 The Poundage Act and Animals Running at Large	
442 Maintenance of Sidewalks on Townline—Construction of Sidewalks in Incorporated Villages—Statute Labor on Lands Aggregating More Than Two Hundred Acres	
443 A Question Under the Voters' List Act—Meaning of the Word "Occupied"—Debenture Liability of Lands Transferred from One School Section to Another	
444 Assessment of Lake	
445 Payment of Cost and Extension of Waterworks in Village	
446 Parent Not Liable Under Truancy Act.	
Taxation of Church Property	160
Assessor's Pay for Equalizing Union School Section Assessment	160
Should Mortgages be Taxed ?	160
Legal Department—	
Re Township of Mersea and Gosfield North Gosfield South and Tp. of Rochester	161
Watson vs. Township of Dunwich	161
Hopkin vs. Hamilton Electric L. and C. Power Company	162
Re McMaster Estate and City of Toronto	162
Re McPherson vs. Public School Trustees Section 7, Township of Osborne	162
Fee vs. Township of Ops	163
McPherson vs. McTague	163
Steenson vs. Town of Palmerston	163
Town of Peterborough vs. G. T. R. Co	163
McKim vs. Township of East Luther	164
Reg vs. McMillan	164
Currie vs. Township of Dunwich	164
The township of Grenville vs. Ward	164
Niagara and St. Catharines Electric Rail. Co. vs. Town of St. Catharines	164

Calendar for October and November, 1901.

Legal, Educational, Municipal and Other Appointments.

OCTOBER.

1. Last day for returning Assessment Roll to Clerk in cities, towns and incorporated villages where assessment is taken between 1st July and 30th September.—Assessment Act, section 58.

Last day for delivery by Clerks of Municipality to Collectors, of Collectors Rolls, unless some other day be prescribed by by-law of the municipality,—Assessment Act, section 131.

Notice by Trustees of cities, towns, incorporated villages and township boards to Municipal Clerk to hold Trustee elections on same day as Municipal elections, due.—Public Schools Act, section 61 (1).

Night Schools open (session 1901-1902).

5. Make returns of deaths by contagious diseases registered during September, R. S. O., chap. 44, section 11.

Copy of Roll, or summarized statement of the same, as the case may be, to be transmitted to County Clerk.—Assessment Act, section 83; Assessment Amendment Act, 1899, section 7.

10. Selectors of Jurors meet in every municipality.—Jurors Act, section 18.

31. Last day for passing by-laws for holding first election in junior townships after separation.—Municipal Act, section 98.

NOVEMBER.

2. Last day for transmission by local clerks to County Treasurer of taxes on lands of non-residents.—Assessment Act, section 132.

Last day for transmission of Tree Inspector's Report to Provincial Treasurer.—Tree Planting Act, section 5.

10. Last day for Collector to demand taxes on lands omitted from the roll.—Assessment Act, section 126.

NOTICE.

The publisher desires to ensure the regular and prompt delivery of THE WORLD to every subscriber, and requests that any cause of complaint in this particular be reported at once at the office of publication. Subscribers who may change their address should also give prompt notice of same, and in doing so should give both the old and new address.

The Municipal World

PUBLISHED MONTHLY

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

K. W. McKAY, Editor,

A. W. Campbell, C. E. } Associate
J. M. Glenn, K. C., LL.B. } Editors

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

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

CHANGE OF ADDRESS. — Subscribers, who may change their address, should give prompt notice of same, and in doing so, give both old and new address.

COMMUNICATIONS.— Contributions of interest to municipal officers are cordially invited.

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

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

Address all communications to

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

ST. THOMAS, OCTOBER 1, 1901.

The Municipal World offices were last month moved to 334 Talbot street, St. Thomas, where 5000 square feet of floor space has been especially arranged to meet the growing requirements of this paper and its supply department. Offices of the telephone and telegraph companies, Canadian Pacific, American and Dominion express companies are conveniently situated in the same block, and as in former years, we will endeavor to send out all orders the day they are received. We will be pleased to have a call from municipal officers visiting St. Thomas.

* * *

Mr. Joseph Oakley, of Fort William, has succeeded Mr. Geo. King as clerk of the township of Neebing.

* * *

A by-law to prohibit the use of trading stamps has been passed by the council of the town of Peterborough.

* * *

Mr. R. R. Smith, who for thirty years was clerk of the township of Saltfleet, has been succeeded by Mr. J. M. Carpenter, ex-M. P.

* * *

Mr. D. Kirkwood, who was clerk of the township of Caledon for twenty-nine years, has been succeeded by Mr. J. L. Meek, of Alton.

* * *

Mr. George Rook has been appointed clerk, pro tem, of the town of Prescott, in succession to Mr. Ezra W. Lane, who recently lost his life in a drowning accident.

* * *

The electors of Stratford have passed a by-law to raise by the issue of debentures the sum of $20,000, $14,000 of which is to be applied towards paying off the floating debt of the city and the balance in completing the sewerage disposal plant.

* * *

A by-law authorizing the issue of debentures to the amount of $8,000 to pay the cost of the erection of two bridges, was recently submitted to and carried by the electors of the township of Woolwich by a majority of seventy-three votes.

* * *

The council of an Ontario township recently passed the following resolution: "That the clerk be instructed to carry out the provisions of section 215a Municipal Amendment Act, 1901, regarding vacancies in the council." A reference to section 12, of the Municipal Amendment Act, 1901, will show that the section thereby added to the Municipal Act, (215a) does not apply to TOWNSHIP municipalities, and therefore the council of a township has no legal authority to pass such a resolution as the above, or the clerk to act thereunder.

* * *

COMMUNICATIONS.

St. Catharines, Sept. 23, 1901.

To the Municipal World:

Sirs:—Enclosed please find copy of by-law for commuting the statute labor of the township of Louth, in the county of Lincoln, of the Province of Ontario.

The old statute labor system was very popular for over 100 years, not only in Canada, but in nearly every state of the American Union. Its great popularity was in the fact that the roadmaking was in the hands of the people; that is the roads were made just as the people wanted them made.

The enclosed by-law is an adaptation of the old statute labor system to the new system of commuting the same. We have done away with the pathmasters, and in places have district overseers having very nearly the same duties. By this system all commuted statute labor must be expended in its own district. This is a principle that is very dear to each and every farmer. He wants his statute labor, or, when commuted, the money expended on the road nearest his farm. Although he has no objections to having the leading roads improved at the expense of the general fund. This by-law has been in operation this season and has given good satisfaction. All our roadmaking was done before July 1st. Our roads were never better scraped and shaped up than they were this year. We also found that having a Road and Bridge Committee resulted in a considerable saving of committee fees.

Respectfully,
Joseph Chellew,
Councillor of Louth.

BY-LAW NO. 426.

Whereas, the highways of the municipality of Louth have been maintained by statute labor, one-half of which has been performed thereon, the other half commuted or paid in cash and then expended on the roads supplemented by sufficient grants from the township levies to meet all the expenditures connected therewith.

And *whereas*, it is expedient to commute all of the statute labor, be it therefore enacted by the municipal council of the township of Louth and it is hereby enacted as follows:

Section 1.—Upon, from and after the passing of this by-law, all statute labor to which any person, resident or non-resident, may be liable in this municipality shall be commuted at the fixed rate of forty cents (40 cts.) for each day's labor, except for the villages of Jordan, Jordan Station and Vineland, in each of which each day's statute labor shall be commuted at the fixed rate of seventy-five cents (75 cts.) and the amount of each person's commutation tax shall be added in a separate column opposite such person's name in the collector's roll.

Section 2.—The subdivision of the public highways of the township into road divisions as at present, is hereby abolished, and in lieu thereof the township shall be divided for road purposes, into twenty road districts. (Here is inserted the several road divisions into which the township is divided).

Section 3.—Over each of these road districts there shall be appointed an overseer to be styled for the purposes of this by-law "Road Overseer," who shall hold office continuously during the pleasure of the council, and who shall have the control and management of the maintenance, repair and improvement of all public roads, streets, bridges and highways in his road district, including the township boundary line roads bordering the same, in so far as the commutation and other moneys belonging to or appropriated to his road district will enable him to do, subject always to such written instructions as he may from time to time receive from the road and bridge committee. The road overseers shall mutually agree to divide the roads between road districts so as to be just to both, subject to the approval of the road and bridge committee. In road districts numbered 21, 22 and 23 the road overseers shall also be sidewalk directors, and they may use the commuted statute labor of their road districts in the repair and maintenance of the streets and alleys in said road districts or in constructing and repairing the sidewalks therein.

Section 4.—Each road overseer shall keep an accurate record of the men and teams employed by him, the number of hours the road machine, including teams and operators, is operated in his road district, and the amount he expends for material, and he shall furnish to the reeve

in such written form and at such time as his instructions may require, properly itemized statements made up from these records and duly certified by him, accompanied by the receipts or vouchers pertaining thereto. The reeve, upon being satisfied of the correctness of such statement, may issue his cheque upon the proper fund from which payment should be made. He shall have such plowing done as he may deem necessary, and all preparations made for the road machine in good time, and shall give the foreman operating the road machine all needed instructions for operating the said machine throughout his road district. He shall employ, direct and discharge all men and teams he may require to carry on his work. He shall begin the annual labor as early in the spring as the condition of the roads will permit.

All road machine work shall be done by July 15th of each year. He shall plane or scrape the roads in his road district whenever, in his judgment, they may require it. He shall keep the bridges, sluices and ditches in his road district open and in repair, and the highways free from obstruction at all times, and if, in case of unforeseen occurences, his funds are not sufficient, he shall notify the road and bridge committee, in writing, of said occurrences. He shall see that the provisions of the Act to prevent the spread of thistles and noxious weeds upon the highways and road allowances, are carried out. He shall properly protect by railings or otherwise, all places dangerous to travel. He shall cause the roads within his district, that are used by the public in winter, to be kept open during the season of sleighing. He shall perform such other services as may be required of him under the written instructions of the road and bridge committee. But at no time shall his expenditure exceed the amount appropriated to the credit of his road district as shown by the township clerk's statement issued on May the eighth of each year, to each road overseer, as ascertained from the assessment roll of said year.

Section 5.—The clerk of this municipality shall prepare a statement for the regular meeting of the council in June, showing the number of days of statute labor in each road district, as appears by the assessment roll of that year, and showing the money equivalent of said statute labor due to each road district as per section 1 of this by-law. The council shall proceed to make the appropriations to each and every road district of the amount as shown by this statement.

Section 6.—The treasurer shall open an account with each of the road districts in this municipality, crediting to said accounts such an amount as the council may appropriate to said road district, the said money to be taken from the general fund of this municipality, and any unexpended balance in any of these accounts on December the fifteenth of any year, shall be returned to the general fund.

Section 7.—All expenditure for road material, tools or machinery for jobs or contracts similar to what have hitherto been met out of the general fund of this municipality, shall continue to be met from the same source, to be still known as the general fund, leaving the commuted statute labor monies of each year to be applied in that year exclusively towards the maintenance and repair of the highways of the township, in place of the statute labor which has heretofore been used for that purpose.

Section 8.—The municipality of Louth shall have one or more road machines, and when required to be used on the roads, shall be provided with good teams and competent operators, one of whom shall be the foreman.

The foreman shall receive his instructions as to which road district he shall operate the machine in, from the road and bridge committee, in writing. He shall operate said road machine in said road district under the direction of the road overseer of said road district, until the work to be done in said road district is completed. The foreman of the road machine shall keep the time in hours that said road machine was operated in each and every district that the said machine was operated in, and to make a proper detailed report in writing once a week, being properly signed, to any member of the road and bridge committee. The services of the road machine shall be a uniform rate of so much per hour as the council may decide on by resolution.

Section 9.—The road and bridge committee shall report to the council a detailed statement of all the work performed by the road machine, giving the time in hours that the machine was operated in each road district, which the council shall reduce to its money equivalent and charge to the several road districts. These several amounts shall be debited in the general fund, on which the council may issue its order to pay the expenses of operating the road machine.

Section 10.—There shall be a road and bridge committee appointed by the council of Louth, that shall have a general supervision over all the highways of this municipality, direct the operations of the road-machine, receive reports from the foreman of the road-machine, and to see that the road overseers are diligent in the performance of their duties. And to make written reports to the council, when necessary, concerning all matters coming before them.

Section 11.—A day's work for all persons engaged by and under this by-law, shall consist of ten hours actual labor actually performed, but payment shall be by the hour. The remuneration of the road overseers ahall be a uniform amount for every hour necessarily devoted by them to their duties, as may be determined on by resolution of the council. The road overseers shall include a memorandum of their own and their employees' time in their statements to be furnished to the reeve under this by-law.

Section 12.—The expenses of operating the road-machine shall be paid in the first place out of the general fund, by order of the council, and when all the work is completed, that is after July 15th of each year. At the first meeting of the council after July 15th, the council shall proceed to apportion the expenses of operating the road-machine among the said road districts at a uniform rate of so much per hour as the council may order by resolution, according to the number of hours said road-machinc was operated in each and every road district, and the treasurer shall charge these several amounts to these several road districts.

Section 13.—All by-laws and resolutions of the council of this municipality inconsistent herewith are hereby repealed.

Passed in council this 28th day of March, 1901.

Municipal Debentures and the Money Market.

By Messrs. Geo. A. Stimson & Co. Brokers, Toronto, Ontario.

Since we last had the pleasure of answering your enquiry respecting municipal debenture values and the money market generally, things have gone along about on the same basis, especially so far as the Canadian market is concerned.

Money keeps comparatively dear but we see no reason why it should continue so much longer. Commercial activity seems to be about at its height, but it may be kept in much the same position by the very prosperous condition of the farming community, especially in the Northwest where there has been another record year. The large amount of wealth produced by such abundant crops must keep up the demand for goods of the eastern manufacturers and thus commercial activity will be greatly maintained. The war ceased to be much of a factor in the money market and we find the English money situation considerably changed from last year. At present the Bank of England rate is three per cent. and the market rate about two and a quarter per cent. We believe it would go lower but from fear of loss of gold which has been steadily accumulating till the reserve of the bank amounts to some $38,000,000, at present. This may however, be about all needed before the end of the year as trade returns continue to show that the Englishman is buying more from foreign countries than he is selling to them. The French money market is also in an easy condition, the official bank rate of interest being about two per cent., and would be still easier if not slightly more attractive. The United States market keeps fairly dear owing to the speculative demand for money.

Just what effect the enormous consolidation schemes will have on money in the long run will be hard to judge. One thing is certain, Canada is becoming more and more a factor and we find large

operators getting a footing in more than one line of business in this country.

As expressed above we do not know any cause for continued dear money here, and as its value recedes, the value of municipal debentures enhances and municipalities will then obtain slightly better prices.

The average investor is paying more attention to the financial condition of municipalities. This is owing partly to the general increase shown in their indebtedness caused largely by the acquisition of water and electric light plants and fire protection, all most desirable objects for urban municipalities. It is a question however, just where to draw the line. A municipality, like an individual, can always see many excellent oportunities for the investment of money, but the former is much less likely to appreciate the fact that it has gone as far as the safety line in expenditure. The facility with which a municipality can go into debt is apt to obscure this truth. It is often obvious that a certain expenditure will increase the value of some municipal property. But it is not so obvious, though quite as true, that the expenditure contemplated must lessen the value of other municipal property. It is not the average burden but the total burden, that falls on the productive activities of the municipality. If all the customers of a certain merchant should make a slight reduction in their weekly purchases it might ruin his business. The average reduction might be slight but the aggregate enormous. And if the general reduction in the purchases ls due to taxation through excessive municipal debt, the burden may be sufficient to turn the balance between progress and retrogression.

There has been a general tendency of municipalities, especially towns, to enter into commercial enterprises, such as the development and supply of electric energy. Doubtless the conservative expenditure on the part of the small towns in establishing or acquiring electric light plants for lighting purposes has previously been very satisfactory, and how far this will be the case where the enterprise is overlooked in the anticipation of attracting manufacturing industries, remains to be seen. While the general indebtedness of most of our towns has been increased, it has been, as above mentioned, either for waterworks, electric light or for fire protection, and in most cases the net revenue produced from such undertakings is sufficient to meet all charges in connection with it and to provide a surplus to apply toward the general taxation. At the same time the indebtedness shows a vaster proportionate growth than the assessment in most cases. We might, however, recognize the desire upon the part of our different towns to acquire modern conveniences (waterworks, sewers, etc.) in order that the people may have equal advantages to those living in the larger places, otherwise the wealthier population of the community is iable to drift to the centres where such conveniences are provided. Investers do not object so much to the debt growing where there is a substantial and permanent improvement representing it, but very frequently they remark on the indebtedness of a municipality where it has been contracted for commercial enterprises or bonuses to manufactories.

Referring again to the enormous consolidation of commercial enterprises affecting the United States, it is a question how far the method will extend until the climax is reached and in the meantime what labor difficulties, such as the present strike in steel industries, will have to be encountered before the normal situation is arrived at under the new plan of operation. While such labor disturbances, such as we are at present witnessing, are liable to occur, there will be more or less financial uncertainty in commercial investments. Canada at present affords a very small opportunity for investing in commercial enterprises as compared with the various opportunities in the United States, although this year finds a number of industries put on the market in which the Canadian public have an opportunity of taking an interest. Even so far, some of them have not proven so advantageous to the investor. The recent census does not show the increase in our population that we anticipated and just how far our manufactories can be developed by the demand of our present population will depend upon our ability to supply the demand for foreign markets, and from what we can learn our manufactured goods seem to be very well regarded in other countries, so that with the great iron and steel developments now taking place owing to the favorable condition of produce, the metal should give us more than an equal chance in many of the outside markets.

We may say that trade activity is now pretty well overdone in England and consequently the money that has been employed in that direction this last few years will be gradually seeking investments in first-class securities, such as our municipal debentures and we therefore think that before another year comes around the value of such securities will have materially increased.

Municipal Ownership.

(*From Insurance and Finance Chronicle.*)

The tendency of this generation to draw conclusions from economic, social and political ex eriments before time has been given to develop their possible phases, has been illustrated repeatedly. Impatience is the note of the times. The entrance of municipalities in the sphere of mercantile enterprise as producers and purveyors of gas and electric light; as owners and operators of street railways; and as, in Norway, the sole vendors of alcoholic beverages, has resulted in socialistic experiments of deep interest to students of economic questions. The public has been led to anticipate from their movements a deliverance from dependence upon private capital for certain conveniences and necessities, by which freedom their cost would be materially reduced and other advantages realized. As these experiments are becoming more and more mature they are developing features that depreciate their value. Municipal ownership of street railways is losing its charm, as extended experience demonstrates that it has serious drawbacks which offset its alleged economy. When the ratepayers and public at large regard the street railway system as their property they are found to assert proprietary rights to an extent that handicaps the management. Hence, while fares are lower for municipally owned street cars, taxes are higher, because of a portion of the running expenses having to be charged on the rates. This has also been the case with municipalities that owned and operated lighting plants. The services have been found unsatisfactory; the dealing with municipal officials has proved very unpopular; the bringing the service up to local needs in an expanding locality has been found too tedious; so that municipal ownership of lighting plants is becoming a discredited system. As to the monopoly of the liquor traffic by municipalities, which exists in Norway and Sweden, and which is strenuously advocated here, it is so utterly antagonistic to the social habits of the people of this country, and is so objectionable to both sides in the liquor trade controversy, that municipal saloons may be regarded as not likely to become a live question in Canada.

Municipal ownership of mercantile enterprises is open to several grave objections. It is inadvisable for an organized community, such as a municipality, to extend its operations outside its natural sphere more than is absolutely necessary for the full exercise of its functions and responsibilities as a governing body, a body charged with the protection of the people, the maintenance of law and order within its bounds, and the enforcement of sanitary laws essential to public health. In discharging those duties a municipal body serves the interests of every dweller therein, of every age and every class; it does for them what they cannot do for themseles individually, or, by any narrower form of government, or organization. Those services justify the devolution upon a municipal body of powers over the actions of its constituents, the people at large, that would otherwise be arbitrary and intolerable. One of the highest services of a municipal government is the administration of a city or town in such a way as leaves capital, enterprise, industry, all free to exert their respective powers in developing the material well-being of the community. If, however, a municipal body trenches upon the mercantile sphere, if it becomes a competitor with capital, or engages in business, industrial enterprises, it, to that extent, abandons its own natural sphere and undertakes duties and respon-

(*Continued on last page.*)

Engineering Department

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

Street Improvement.

Much money has been wasted in many municipalities through ill-advised expenditure arising out of indifference founded on the idea that the streets are as good as they can be made; that the methods which have held ever since the time of the first settlers are the only methods, and that streets are of little consequence in any case.

Good streets are of prime necessity to the the welfare of a town. They are the object of an annual outlay which, if wasted, reacts in a two-fold manner by increasing taxes, at the same time permitting the evils of bad streets to remain; and it should be understood at the outset that the object of the road and street reform movement is not to urge increased expenditure but to obtain a better use of the money now expended.

The defects most observable as a rule arise from the fact that durable and permanent work is not undertaken; in order to correct which, there is need of reforming the present systems of street management in two particulars—the method of expenditure, and the method of oversight.

THE EXPENDITURE.

The expenditure should not be distributed over the street area in patchwork and repairs, but a reasonable amount should be provided for permanent work. Small sums of five, ten or one hundred dollars quickly eat up an entire yearly appropriation, whereas one-half the appropriation spent in properly macadamizing a few blocks would in a few years revolutionize the condition of streets in most towns.

The annual expenditure is usually divided among the different streets and wards of a town, and this is again sub divided by the ward representative in doing odd jobs here and there. It is not spent in accordance with the needs of the work, but as certain electors think it should be spent. The logical outcome of the system is that this money becomes a legitimate campaign fund; the people expect it and the council has no other course to pursue. It is the inevitable result of such a system that too much money is provided for one piece of work, and not enough is devoted to another—usually the latter. It is productive of shoddy roadways, and is always wasteful in the end.

Many towns have been making an effort to keep in repair a class of roadways not suited to the traffic over them. They might be considered fairly good township roads. Cheap in first construction, they are expensive to maintain, and after a term of years are very costly. The repairs made to these streets are supposed to be such as will eventually provide a solid roadway; but this method of sinking stone in the mud year by year, and in the spring carting off the mud which has been forced to the surface, is an extravagant and useless process, which will not make streets. The waste that arises is of a two-fold nature, combining high taxation and bad streets. It is not to be supposed that streets can be built without money, but when the expenditure is made as now, it should be to provide good streets.

In order to get the best results in street construction, the work has to be undertaken on a proper scale. A roadway, like a house or any other structure, should be built from the foundation upwards, and should be completed, if only in short sections, before it is used. The roadbed should first be graded, underdrained and otherwise prepared to receive the gravel, broken stone or other road metal; which last should be placed on the roadway with proper machinery and in accordance with the best principles of roadmaking. To do this, the expenditure now extended over a term of years on a badly formed roadway, should be concentrated so as to secure permanent and durable work.

To this end there are three courses open: 1. To set apart a portion of the present annual appropriation. 2. To issue debentures for the amount necessary to do finished work. 3. To adopt the frontage tax system.

OVERSIGHT.

The oversight should be delegated to a competent supervisor, instead of being left to the council or a committee.

On business principles there is every reason for placing this work in the hands of one man. Street construction is a matter requiring experience and special training. The plan of leaving it to the councillors, is the pathmaster system of the towns. It is even more objectionable in the towns, since the streets demand more skill than do country roads. The supervision of street construction should rest with one who has a knowledge of the subject, together with good business ability.

The supervisor would prepare plans and specifications for all work. These having been submitted to and passed upon by the board of works and council, he would further relieve the council by taking full direction of the work.

CLASSIFYING THE STREETS.

One of the first duties of a supervisor in arriving at a plan whereby street improvement may be undertaken systematically would be to classify the streets according to the traffic over them, the character of the street, whether a residential or business thoroughfare, the nature of the soil, grades, etc., of roadway required.

Certain streets, the main business streets, have a large amount of heavy traffic over them, and a strong form of pavement is needed.

Another class would include the thoroughfares over which traffic from the country reaches the centre of the towns. That these are residence streets, and that the travel is less severe than on the main streets, should evidently influence the character of the pavement.

A third class would include such streets as are residential, but are not called upon to support either heavy or frequent travel, and the roadway should be built accordingly, at a correspondingly less cost.

By placing before a council such a report upon the streets, showing the present requirements, the probable future requirements, the special improvements in the way of culverts, grading, etc., the council would be in a position to undertake the improvement of streets on an intelligent basis. At present there is apt to be no definite object in view. When permanent improvements are undertaken, much of the work now being done will be found premature or unnecessary, and will be torn up. This is specially true of the grading and the coatings of broken stone and gravel.

There should be definite plans, which successive councils can follow, and toward which all work and expenditure will tend.

EARTHWORK.

The present practice in most towns is to merely spread crushed stone or gravel over the travelled roadway, without having prepared the subsoil to receive it.

The first step in properly constructing a macadam roadway is for an engineer to take a series of levels on the streets, so that a suitable grade may be decided upon. The width of the roadway to be metalled can then be staked out, to be excavated in accordance with the required grade, and to form a receptacle for the stone.

To properly grade and excavate will frequently necessitate the handling of a good deal of earth. This earth should be used as far as possible in leveling the sides of the streets and filling in low lots adjacent to the roadway, disposing of the remainder as circumstances may dictate.

DRAINAGE OF STREETS.

Good drainage is essential for all classes of pavement, and none more than macadam. It must be understood that it is the natural soil which really sustains the weight of traffic and that broken stone piled on a wet soil cannot be made sufficiently strong to support heavy vehicles, and water permitted to accumulate and stand on the surface of the roadway will cause the pavement to be rapidly churned into ruts and mud.

Underdrainage by means of common field tile is very often necessary. Water falling in the form of rain passes at once

through the soil until it reaches a strata of rock, compact clay or other impenetrable layer. If there is an outlet along the strata of rock or clay, it will issue in the form of springs. If not, it will rise higher and higher until it reaches the top, when it will overflow. Tile drains provide an outlet for this water before it reaches the surface of the soil, and thereby maintain a firmer foundation of earth on which the broken stone may rest. These tile drains should be placed at a depth of about three feet.

Surface draining is provided by rounding up (crowning) the surface of the roadway, thus draining the water to the gutters at the sides of the road, which latter are so graded as to permit the water to flow along them to suitable outlets. Deep ditches are not needed, but the road should be curbed and the angle between the surface of the road and the curb will serve as a sufficient waterway. The surface drainage is further aided by a coating of broken stone or gravel. And it is of prime importance that this coating should be made smooth, hard and compact by rolling so that water will not pass through, thereby softening the earth supporting it.

FOUNDATION.

A firm, unyielding foundation is an absolute necessity for any kind of pavement. All road coverings, whether broken stone, asphalt, stone blocks, vitrified bricks, wooden block, form merely a wearing surface. The weight of the load must be borne by the foundation beneath. The natural soil, if kept in a dry state will support any load. Common practice appears to be an effort to cover and fill up wet places by dumping into them loads of broken stone, rather than by removing the water in drains. In this way, the roadways on many of the streets are raised away above the elevation of the sidewalks and adjoining property.

A foundation for a macadam road is obtained by drainage of the roadbed, and thoroughly consolidating it with a roller. In certain cases, especially on clay soils, and for the most durable class of broken stone roads, a foundation layer of large stones may be placed on edge, the projecting points being chipped off and wedged into the interstices. But for ordinary cases, the layers of crushed stone may be placed directly on the natural earth.

A ROAD ROLLER.

A roller is of great value in the construction of macadam roadways. It is needed first to compact the earth on which the broken stone rests. The stone or gravel is then placed in the roadbed in successive layers of about four inches thickness, each layer being consolidated before the next is applied.

The common method is to spread the stone over the roadbed, leaving it for traffic to consolidate. When done in this way the stone is forced down into the soil, and the soil comes to the surface in the form of dust, which has to be carried away every spring. There is no real bond between the stones thus mixed with the earth.

But when, by rolling, the sub-soil has been thoroughly consolidated and the metal has been placed on the road in a compact coating, each stone of which is wedged firmly, there is a mechanical clasp which will not yield to at all the same degree. The stone covering becomes, under a roller, a roof as well as a floor, and will not permit the water to pass through and soften the earth foundation below; but being smooth, and properly crowned, the water is at once shed to the gutters.

A CRUSHER.

Stone can be broken to best advantage by the use of a crusher.

The stone crusher should have a screen attachment whereby the stone could be separated into various grades according to size, the larger stones to be placed in the lower layers of the roadway and the finer on top. The grades frequently are: 1st. Such as will pass through a 2½ inch ring. 2nd. Such as will pass through a 1½ inch ring. 3rd. Such as will pass through a 1 inch ring. 4th. Chips and dust screenings.

When stones are laid on the roadway, large and small indiscriminately, the smaller wear more quickly than the larger and a rough surface will result. The larger stones have a tendency to loosen, as their bearing is not so perfect, and they will be found rolling under the feet of horses and under the wheels of vehicles.

A crusher with screen attachment is needed also to properly utilize most gravel, especially if it is of very irregular size, ranging from large boulders to sand, and containing a large amount of clay. By placing a crusher and screen in the pits, and passing the material through, the material would be broken into a suitable size, and the clay and sand would be removed. In dry weather clay and sand assist in making a smooth road, but in wet weather they retain moisture, soften, diminish the strength of the roadway, ruts rapidly appear and the roads "break up." Clean material of proper size is necessary, and, to this end a crusher with screen attachment is exceedingly useful.

Ventilation of Sewers.

In every sewer there is a space above the sewage filled with air, and this air, it is evident, will generally be far from pure unless kept in motion and frequently renewed. The odor accompanying all sewage, even where there is no decomposition proceeding in the sewer, is communicated to this air; there will frequently be given off some gases due to putrefaction; and it is possible that malefic germs may escape in vapor from the sewage or from deposits in the sewer, to be carried along by the air-currents. This air probably is seldom motionless. It is influenced by the sewage to move down the sewer; it is warmer in winter and often in summer than the outside air, which condition occasions motion when there is communication between the two; it is driven out of or along the sewer by sudden inflows of sewage from house-connections or branches and sucked in by decrease in the volume of flow; near the outlet the direction and force of the wind affect it, driving it up the sewer or sucking it out; last, and most important, it passes into empty or partly empty house connections and into proximity to, if not into the air of, connected residences. Herein lies the danger. There is no "sewer gas" which is deadly to human life, but it is known that air which has been confined in contact with decomposing sewage is charged with an ever varying mixture of gases; and of those that are deleterious the more prominent are sulphuretted hydrogen, sulphide of ammonia, and carburetted hydrogen; while ammonia, carbolic acid, and occasionally carbonic oxide derived from leakage of illuminating gas into sewers are present in more or less large proportions.

While the vitiation referred to is not that of sewer-air exclusively, this is included among the causes of it and produces the same effect. Unfortunately the most numerous and fruitful sources of gases are found, not in the sewer, but in the house-connections or soil-pipes, and consequently not directly under the control of the authorities.

It is evident that the danger from sewer-air may be avoided, or at least lessened, in two ways, by preventing the creation of gases, and by preventing the sewer-air from reaching human beings in dangerous quantities or under dangerous conditions. No method has yet been found for perfectly accomplishing either of these aims in practice, but both may be partially attained.

To prevent air from the sewer entering houses, two general methods are in use: placing a barrier in the house-connection and removing the sewer-air through other outlets. The former is one of the aims of the plumber and is usually attempted by the use of traps. The latter has been aimed at by the use of many ventilating devices, in few or none of which has positive action been successfully obtained. A combination of these two methods gives reasonably good results in most cases, a partial obstruction in the air being placed in the house-connection or its branches in the shape of water-sealed traps, and the power of the air to force its way through these being lessened by ventilation.

Many expedients for ventilation have been devised and tried, among them connecting the sewers to street lamps, where a suction is caused and the gas burned by a constant flame; placing in the crown of brick sewers small perforated pipes connected with "up-take shafts," expected to cause a continuous removal of the gases; leading pipes from the

sewer to special flues constructed in houses, within the body of the walls adjacent to the chimney, or upon the outside of the house and running up above all windows; leaving the main house-drains untrapped and extending them above the roofs; placing flap-doors in the sewers, opening downward for the sewage, but closed to air, which can escape through openings just above such flaps; placing in the street centre at intervals along the sewer manholes or other ventilating shafts with perforated covers; connecting the sewers by untrapped pipes with street inlets at the curb line. In connection with these, charcoal and other deodorizers are sometimes placed at the air-outlets.

The use of storm water inlets for this purpose is much opposed by many, who contend that the sewer-air should not be discharged so near to passers-by upon the sidewalk. In fact, this same argument is used by a few against ventilation through manholes in the centre of the street. It is probable that the danger from this cause is very slight, if it exists at all, since it is dependent, not upon the gases, which are enormously diluted upon reaching the outer air, but upon the presence of disease germs in the exhalations, which is not proven. Moreover, the average catch-basin, even if just cleaned (as this cleaning is ordinarily done), is more offensive than any rightly designed sewer is at all likely to become; and it is extremely doubtful if, in connection with its odors, any contribution of air from the sewer could be detected. For these reasons it seems desirable to connect the sewer with the street-inlets by ventilating-pipes and to place manholes with perforated heads at intervals. Since the latter are apt to be sealed in winter by ice and snow, and in summer by mud, the additional ventilation through the street-inlets would seem to be advisable, particularly if the sewer be not ventilated through the house drains. A small amount of snow will not ordinarily stop the openings in a manhole-cover owing to the warm air of the sewer, but a heavy storm or frozen mud may easily do so.

For house-sewers, ventilating manhole-heads and untrapped house-drains; for combined sewers, these with the addition of untrapped street-inlets; and for storm-sewers, manholes and inlets—these, with flap-doors on steep grades, seem the best methods so far devised for ventilation; and without ventilation any system will most surely become a nuisance and a danger. The aim should be to secure, by whatever method, the greatest possible number and freedom of communications between the sewer and the outer air; and there is little doubt but that, when this is realized, the sewer air becomes so diluted and the organic matter floating in it so oxydized as to render it less dangerous aud objectionable than air of a crowded church or theatre. When this is not true the sewers are probably in great need of cleaning and flushing.

Use of Acetylene Gas for Lighting Purposes.

It is of but a very recent period that the use of acetylene gas for public lighting has been considered to any extent, but inventors have very rapidly taken advantage of the new opportunity, and already a great number of acetylene generators have been placed on the market. An excellent article on the new illuminant appears in *The Cosmopolitan* for September, in which the requirements for a good stationary acetylene generator for house lighting are summed up as follows:

1. The carbide should be dropped into the water. (This rejects all water-feed generators.)

2. There must be no possibility of mixing air with the acetylene gas.

3. Construction must be such that an addition to the charge of carbide can be made at any time without affecting the lights.

4. Generators must be built of substantial materials, well adapted to their purpose.

5. They must be entirely automatic in their action; that is to say, after a generator has been charged it must need no further attention until the carbide has been entirely exhausted.

6. There must be a simple method of determining the amount of unconsumed carbide.

7. The various operations of discharging the refuse, filling with fresh water, charging with carbide and starting the generator should be so arranged that it is not possible to do them out of their proper order.

8. The operations mentioned above must be so simple that the generator can be tended by unskilled labor without danger of accident.

9. The gas pressure at every point of delivery should remain practically constant irrespective of the number of jets burning, or quantity of carbide or of gas in the generator.

10. The pressure should remain equal in all parts of the machine, and must never exceed that of a six-inch column of water.

11. The pressure in service pipe should never exceed that of a three-inch column of water, and provision must be made to blow off in the air at the pressure of a six-inch column.

12. The water capacity of the generator must be at least one gallon to one pound of carbide.

13. There must be a convenient way of getting rid of the slaked carbide without escape of gas.

14. When the lights are out, the generation of gas should cease.

15. The gas should be delivered to the burners clean, cool and dry.

16. Heat of generator must not exceed two hundred degrees Fahrenheit.

17. When generator is recharged, there should be no escape of gas.

18. If the generator is left idle for a long time, there should be no deterioration of the carbide.

19. The gas holder should be of ample capacity and made gas tight with a water seal.

20. The carbide should be automatically fed into the water in proportion to the gas consumption.

Country Roads.

Interest in road improvement is invariably most widespread and earnest during the late fall, winter and spring months. It is in these seasons of the year that the true condition of the roads becomes apparent, and a journey through mud and mire to the market goes very far towards making converts to the good roads movement.

When summer comes, and even the common dirt roads are smooth and convenient for travel, confidence in the old system of making roads is restored, and at the time of statute labor the feeling is apt to grow that, after all, the midsummer picnic on the King's highway is an easy and profitable method of keeping up the roads. Those who have become, during the past summer, impressed with this idea are shortly to have their opinions rudely disturbed, for the season of rain, snow and frost, and muddy roads, is almost upon us.

There are many, however, who, even during our period of good roads, have not forgotten the actual facts as they existed throughout the Province. Of this one of the most striking evidences has been the Good Roads Train, carrying on this work in the eastern counties. A further evidence, and one which seems likely to bear fruit in a short time, is the attention which has been given to the recent provincial measure for appropriating $1,000,000 towards highway improvement. A number of county councils have taken steps, more or less important, to consider the means whereby their constituents may reap the benefit of this Act. Township councils have been consulted, and their views obtained, with the result that a proper understanding reached as to the objects to be obtained, there seems every likelihood of systems of county roads being established satisfactory to all. Among the county councils which have evinced an interest in the Act are those of Welland, Wentworth, Victoria, Dufferin, York, Elgin, Hastings and Renfrew.

That a county system of roads, consisting of the highways supporting exceptionally heavy travel, can be maintained more economically through the means which a county council can adopt, in the way of machinery and constant attention, is becoming universally recognized. These heavily travelled roads are but a small percentage of the road mileage in each township and county, and by including them in a county system it merely relieves the township councils from a work which

they do not find themselves disposed to undertake with the means at their disposal

Cement Concrete Sidewalks.

The use of cement concrete in sidewalk construction has been very much extended during the past year, and in many municipalities the rule has been established that all plank sidewalks requiring renewal shall be replaced with the more durable material, concrete.

In spite of the many warnings which have been given, it is hardly probable that towns and villages, during the past season, will have entirely escaped inferior workmanship and inferior material, so that unsatisfactory results will, no doubt, have to be recorded in some instances.

One of the most common errors arising at this season of the year is the laying of concrete sidewalks in frosty weather. There appear to be certain qualities of cement with which this can be done, while expedients may be adopted to overcome the injurious effect of frost. Municipalties, however, will be on the safe side if all cement concrete sidewalk construction is now ended for the present year, as defects which arise through the action of frost on concrete which has not become set are more easily avoided than remedied.

A Co-Operative Telephone Company.

In evidence given before the industrial commission at Washington, one of the witnesses referring to the co-operative telephone company in Grand Rapids, Wis., said:

There is a co operative telephone there which operates on the same principles as the public system, namely, for the benefit of all who are concerned in the service and wherever the voluntary co-operative plan is possible, I believe it is preferable even to the public system in the present state of our civilization, so that I regard this example as one of the finest that we have. I have kept track of the enterprize for several years. Here is a letter just received a week or so ago. The present condition of things, in brief, is this: They have about 300 lines; the average cost is $42 for construction; the cost of maintenance and operation is about 75 cents a month for each line. The prima facie charges are $1 a month for a residence and $2.25 for a business telephone per month, Each subscriber has a right to take one share of stock and is urged to do so, $50 per share; and nearly all, over four-fifths, do take one share each. One and one-half per cent. dividends per month are paid back upon these shares, amounting to 75 cents for each shareholder. So that the actual charge for a residence 'phone is 25 cents a month and the actual charge for a business 'phone is $1.50 a month. The actual cost to the subscriber is $3 a year for a residence 'phone and $18 a year for a business 'phone. They are continually reducing their rates, and even after paying these dividends they have a surplus fund for improvements. The former Bell Company was charging $36 a year for a residence 'phone and $48 for a business 'phone, and refused to reduce their rates. They said, just as they say now in Washington, that they could not afford to reduce rates. Yet the people of Grand Rapids are now receiving telephone service at one-third to one-twelfth of the former monopoly rates.

A Municipal Doctor.

"A city council in Ontario, west of Toronto, has appointed a medical health officer, and his duties as outlined in the by-law appointing him, cover twelve clauses. Here are a few of them: He will discharge duties as required by the Health Act; devote his whole time to his duties; attend to the inmates of the jail and poor-house, also any indigent poor and any foremen or police injured in the discharge of their duty; vaccinate the poor; attend all meetings of the Board of Health, and superintend the sanitary inspectors. His salary was fixed at $1,000 a year, although there were several applicants at $800.

"Here is an excellent example for all municipalities. Every township and village might have its municipal doctor, paid an annual salary by general taxation. His object would be to keep the people under his charge in good health. He would visit every household regularly, and see in what state the inmates were. If the slightest sign of ill-health was noticed preventive means would be taken at once. He would not merely open the patient's mouth and keep his own closed, but it would be to his own interest to instruct the householder in hygiene and sanitary rules, and insist on cleanliness, bathing, frequent changing of underclothes, ventilation and proper food. On the appearance of infectious disease he would have no more friendship for one householder than another, self-interest would be wholly in favor of suppressing the contagion with the first case. As to the cost, it would be slight to each householder, and the man struck by the misfortune of illness would not be ruined with medical bills. The communal principle that is admitted and accepted in our public schools, would be as justly applied in the appointment of municipal doctors, the man of good health being well able to bear the expense, rather than the man who is ill and incapacitated. This plan will certainly be adopted in time, for the present system is most unwise and inequitable, a burden upon the sickly, and a constant danger to the healthy. It makes not the slightest effort towards preventing every tendency, every interest is in a directly opposite direction to what it should be."—*Ex*

In the September supplement to the MUNICIPAL WORLD, descriptive of municipal works in Brockville, reference was made to the valuation of the gas and electric plants. The basis of valuation required by the Municipal Act has in numerous instances operated unfairly towards municipalities, as instanced by the difference between Mr. Chipman's valuation and the amount finally accepted by the company. In this case, however, it should be pointed out that, at the time of the valuation, the spring of 1900, the prices of iron pipe, copper and machinery had reached an unusually high point; if made to-day the valuation would be 15% less, and if made in 1898, would have been 20% to 25% less. Mr. Chipman, it may be mentioned, was town engineer of Brockville from 1887 to 1892, and the excellent sewerage system possessed by the town was designed by him and constructed under his supervision. On the waterworks system, too, Mr. Chipman spent several years, having as recently as last year reported on improvements and extensions now being carried out. The present town engineer is Mr. W. B. Smillie.

Municipal ownership of street railways is gaining ground greatly in Europe, writes the United States consul in Zurich, Switzerland. It seems that in Zurich most of the lines are owned by the municipality, and those that are not are soon to be acquired. Although the lines are constructed very expensively, and soft coal costs from $6.37 to $7.72 a ton, yet the fare charged on the street railway is but a shade over two cents a ride when tickets are purchased. There are twenty-five miles of municipal tracks in Zurich. They have no poles to disfigure the streets in that city, as the trolley wires are almost invariably fastened to the houses on each side of the streets, a special sound-breaker being used to prevent the transmissions of sounds in the buildings. Where houses could not be used tubular steel poles are set up, which are also made use of for gas or electric lights.

Over thirty of the ratepayers of the township of Sandwich East have petitioned the Ontario government for an audit of townships accounts by the provincial auditor. This prayer of the petition has been granted and Mr. J. B. Laing, provincial auditor, has been in Windsor to make preliminary arrangement for such an audit. There are no specific charges of a shortage in the township's accounts, but it was thought desirable by a number of ratepayers that an audit should be made.

"We need a short item to fill up the last column," said the foreman of the Pike County Farmers' Monthly Visitor, "and then we kin go to press."

"H'm!" mused the editor. "Suppose ye stick this in: William McKinley, who appointed Zeke Rubens, our efficient and obliging postmaster, was re-elected president early in the month.—From the Catholic Standard and Times.

Question Drawer.

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

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

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

Compelling Removal of Obstruction in Watercourse.

429—H. E.—A creek runs through this township O. It runs through the back part of it and is mostly bush on both sides of it, but some settlers have settled in north of the creek, and the council have built roads over it on the first five concessions. The creek is about eighteen feet wide, and runs through an elm flat. It has very little current, and the timber men in taking out this elm for staves have felled a lot of tree tops into the creek, and they dam the water back and flood the land and roads near the creek. The men settled along the creek came to the council and want the tops taken out. Can the council compel the men who threw them in to take them out or not, or what is the course for them to take? It is a natural watercourse.

By subsection 12 of section 562 of the Municipal Act, township councils may pass by-laws for *preventing* the obstruction of streams, creeks and watercourses, by trees, brushwood, timber and other materials, and for clearing away and removing such obstruction at the expense of the *offenders* or otherwise. We assume, however, that the council of your township has not yet passed any by-law under this subsection, and if not, we would not advise the council to take any steps to compel the removal of the obstructions in the creek in question, because as there is no by-law, the persons who put the tree tops in the creek cannot be said to be offenders within the provisions or meaning of this subsection. In other words we doubt if a by-law passed under this subsection will be retroactive. If the creek is a natural watercourse no person has any right as against riparian owners, that is, persons who own lands along the banks of the creek, to obstruct the natural flow of the water to their prejudice.

Damages Caused by Diversion of Course of Creek.

430—J. C.—1. A has a farm and B has a farm across sideroad opposite it. Creek comes out of A, crosses road into B, takes quarter acre off B, crosses back into A. Pathmaster takes some earth off A's side to put on road without council's permission, and when high water comes creek washes out a course, and now runs down on A's side of road, which deprives B of water. Remaining so for eight or nine years. Can B come on council for damages.

2. Creek runs into C, taking off one-eighth of an acre, comes back on D. C gave his consent to one councillor to lower ditch on D side of road which caused creek to leave C Can C make council put creek back? or can he claim damages after giving permission?

1. Assuming that the creek in question is a natural watercourse, that is, a creek having a channel with defined banks, we are of the opinion that both the municipality and A are liable for diverting the water.

2. The principle involved in this question is the same as in the first one but it is said that C, who now complains, gave his consent to the ditch along the side of the road being deepened, and if that is true the work having been done with his consent he is now estopped from complaining.

Payment of Account of Local Board of Health.

431.—C. N. M.—1. Can a medical health officer of a township charge the municipality for the vaccine he uses when the individual pays him for the vaccination? Where does he get the authority for charging the municipality with the vaccine?

2. Can a member of the township Board of Health act as constable in connection with an outbreak of small-pox, and legally charge the township council for his services?

3. Is it legal for a medical health officer to bill the township council with his account without giving a detailed statement of his account?

4. Has Board of Health a legal right to audit up all accounts before they are presented to the township council for payment?

1. We do not think the medical health officer is entitled to anything from the township for his services in the case. See section 4 (1) and section 12 of the Act respecting vaccination and inocculation. Chapter 249, R. S. O., 1897.

2. No.

3. We are of the opinion that the township council is entitled to receive a detailed statement from the medical health officer of his account so that it may judge of its reasonableness.

4. It is the duty of the Board of Health to examine all accounts for services under the Public Health Act, and it is the duty of the treasurer of the municipality upon demand to pay them out of any monies of the municipality in his hands upon an order from the Board of health for that payment. See section 57 of the Public Health Act.

Liability of Police Villages and Townships to Construct Bridges and Culverts.

432.—W. B.-In the township of W. G. there is the village of B, and on January 1st it was turned into a police village by the county. Now, what we want to know is this: There is a small creek running through the village, and it is dry in the summer unless there is a big rain, we had one lately, and there was a culvert on one street which was washed out. The former size of it was four feet wide, five feet high, and eighteen feet long, and now it would need a culvert eight feet wide, and the police trustees refuse to build it on account of it being a large culvert, and they claim it is a bridge and the township has to build it. Please let us know whose duty it is to build it; also define the difference between a culvert and a bridge.

Section 741 of the Municipal Act empowers the trustees of every police village to pass by-laws for letting contracts for building sidewalks, culverts, etc. Where the structure is a bridge as distinguished from a mere culvert, the trustees have no jurisdiction over it. This question involves the point as to whether the structure required is a bridge or a culvert. We think it is a bridge and if so, the township must build it. But even if it is not a bridge, it is doubtful whether the trustees of the police village are bound to build it, because the power given by section 741 is permissive. We do not think that the township council can compel the police trustees to build the culvert, and if the trustees neglect or refuse to build it, the council cannot safely leave it unbuilt, because if it does, and an accident happen, the municipality would be liable in damages. It is not easy to define the difference between a bridge and a culvert. The opinion of an engineer would be of more value than ours. The question is pretty fully discussed by Mr. Justice Ferguson in the case of North Dorchester vs. Middlesex, 16, O. R. At page 666 he says: "As to the Caddy creek bridge, the span is said to be nine feet only. The witness said that a *culvert* would be sufficient in this place. It is true that a culvert may mean a larger or a smaller watetway but the line must be drawn somewhere. I apprehend that Mr. Justice Patterson used the word and intended to use it according to its ordinary signification, and with reference to culverts as commonly used in the construction of roads, etc." Mr. Justice Ferguson in this case held that the structure referred to was a culvert and that the county was not bound to maintain it. In the same case Mr. Justice Ferguson held that a structure over Daly's creek, having a span of 67 feet, and one over Kettle creek, having a span of 31 feet 9 inches, were bridges.

Liability of Police Villages and Township to Construct Culverts and Bridges.

433.—J. S.—In our township is situated a police village, the trustees of which were elected for the first time last municipal election. There has been no agreement between trustees and council as to their liability for the maintenance of bridges and culverts. There are two bridges that both parties claim the township are liable for, but there are others which the trustees claim are bridges, and the council say they are culverts, and hold that they are not liable for their repairs.

1. Should there have been an agreement between police village and township, and when and how long would it be binding?

2. In connection with bridges and highways, what rates are the police village liable for?

3. Define what is a bridge and what is a culvert, and what is the difference between them?

1. There is no authority by virtue of which an agreement can be made between the trustees of a police village and the council of the township in which it is situate, respecting bridges. Section 740 of the Municipal Act, authorizes the making of an agreement in regard to the

rate to be levied for police village purposes; but this is the only provision of the kind which we can find and it has no application to the matter in hand.

2. Section 740 of the Municipal Act enables police trustees and township councils to enter into an agreement in regard to the rates to be levied for purposes within the province of such trustees, but this section does not include bridges.

3. Whether a structure is a bridge or a mere culvert is a question of fact rather than law, and a capable engineer after an examination of such a structure is better able to say whether it is a bridge or a culvert than a lawyer. See our answer to question No. 432.

Proceedings to Fill Vacancy Caused by Death of Reeve. Conduct of Business of Special Meeting.

434—CLERK.—The reeve of our township died on the 28th of August, and on the same date our council met and transacted all the business which came before the meeting, and adjourned to meet again on Nov. 2nd, 1901. When the meeting adjourned they were not aware that the reeve was dead.

1. Will it be necessary to appoint a reeve to fill the vacancy for the residue of the term, or will it be legal for the council to meet on Nov. 2nd, and do business without a reeve by appointing one of their number chairman.

2. If a reeve has to be elected will it require a special meeting of the council to declare the seat vacant and order a new election, or has the clerk power to issue a proclamation for an election to fill the vacancy without orders from the council?

3 Can any one of the present councillors run for the office of reeve by calling a special meeting and accepting his resignation as councillor?

4. Would it be legal to transact any other business at special meeting only that for which the meeting was called.

1. It was the duty of the clerk to forthwith after the death of the reeve, to have taken the necessary steps to fill the vacancy. For the procedure in such a case, see section 212 of the Municipal Act.

2. No meeting of the council to delare a vacancy is necessary and is improper. The procedure is plainly provided for by section 212 of the Municipal Act.

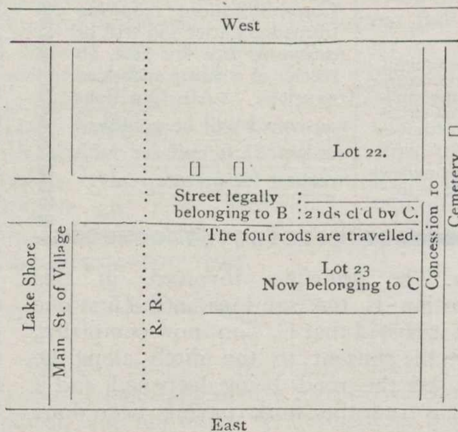
3. Yes.

4. No.

Title to Road Allowance—Poundage Fees.

435—A SUBSCRIBER.—1. In the year 1890 A purchased lots 22 and 23, concession 10, township of B, from B. During the same year A gave a road allowance of four rods, two rods off one side of lot 22, two rods off one side of lot 23, to the village municipality, but gave no deed of the road to the council. The road leads to the cemetery, has been travelled for ten years, and the village council have expended money in making and keeping the roads in repair. I may mention that the lots, though mainly farm lots, are within the village municipality. A was unable to finish paying lot 23, and in the year 1900 he abandoned the lot, which fell back to B. In the year 1900 B sold the lot to C, and gave C a deed. C now claims the two rods of lot 23, which were originally given by A to the village council. Have the village council a legal right to the road at the present time? Does peaceable possession for ten years give to village council the right to keep the road open.

2. Is the poundkeeper entitled to all the poundage fees provided by by-law of the council, or should the poundkeeper pay part of the poundage fees to the council?



1. You do not explain how the lots sold by B to A *"fell back to B,"* using your own language. B may have sold to A, agreeing to give A a deed when he paid for the lots, or B may have made a deed to A taking a mortgage back. It does not, however, matter, because it is not likely that A was more than an equitable owner, and as such he could not, as against B, make a good dedication of a part of the lots to the public for the purpose of a road. It follows, therefore, that the municipality cannot hold the lands as against B. If it is important that the public should have the road kept open the only course is to have a by-law passed expropriating so much of the lots as may be necessary for a road under the provisions of the Municipal Act.

2. We are of opinion that the poundkeeper is entitled to the whole of the poundage fee.

Tenant Only Should be Assessed in this Instance.

436—D. C. M.—Kindly let me know to which part of the voters' list the following belongs?

A B, who is a tenant, is entered on the assessment roll as follows:

	Col. 4.	Col. 6.	Col. 17.
A B, Laborer..	F	C D, Owner.	$150

Which of these two has a vote at the municipal election?

A B alone is entitled to be placed on the voters' list and should be placed in part one.

Council can Pass More By-Laws Than One for Levy of Township Rate.

437—J. R.—The council of this municipality finds that the levy for township purposes should be $200 more than the by-law already passed authorizes. I hold that chap. 223, section 405, allows the passing of another by-law for any additional sum. Am I right?

You are quite right.

A Drain Under the Ditches and Watercourses' Act is Needed.

438—SUBSCRIBER.—My farm drains into a large open ditch on adjoining farm, owned by A, thence along the next two farms into an open drain, constructed under the Drainage Act, which I was assessed for. About thirty years ago I assisted the former owner to construct the ditch on farm now owned by A, since then A has twice assisted to clean and deepen the ditch up to my line. For the last fifteen years I have maintained a portion of the ditch with his consent by verbal agreement.

1. Have I legal right to drain into said ditch? If so, please give authority.

2. Could A put small tile in ditch sufficient for what he calls his water and then fill?

3. Does the fact of my being assessed for outlet under the Drainage Act give me any right or privilege between my farm and said drain?

1. No.

2. Yes.

3. No. Proceedings must first be taken under the Ditches and Watercourses Act, to make provision for the construction of a drain between your land and the outlet, and for the adjustment of the respective interests of all parties concerned. Unless you attain the right to convey the waters off your lands across A's farm, under this Act you cannot legally discharge these waters upon or legally conduct them over his land.

Liability of Railway for Drainage.

439—A. S L.—The township of———, in the county of———, has a railway running through a marsh, and in grading road-bed they have left a ditch without providing any means of escape for the water, and it is becoming a nuisance to the people living in the vicinity of this stagnant pool. Is railroad liable to township, or must township abate nuisance? Before building of railroad there was a creek draining this marsh, but I understand railroad has no culvert.

The railway company is not liable to the township nor is the township bound to abate the nuisance.

Impounding of Cattle for Trespassing.

440—A. B—In your answer of March 1901, Question 143, you partially answer a question that has given rise to much discussion. To further answer questions that reasonably follow the answer already given, can live stock, that is legally entitled to run at large, be lawfully impounded for trespassing upon lands adjoining highways, such lands having no fence adjoining the highway, or insufficiently fenced to keep stock off such adjoining lands.

Yes. We cannot see why a man who owns land along a highway should be compelled to build a fence along the whole front of his farm for the benefit of his neighbor who desires to pasture his stock upon the highway, even though there is a by-law permitting him to allow his stock to run at large upon the highway.

The Poundage Act and Animals Running at Large.

441—CLERK. Your reply to question 410 (1) in September issue of THE MUNICIPAL WORLD reads as follows: "By the Common Law all cattle are permitted to run at large on the public highways, and are legally at large on a highway of a municipality until the council has passed a by-law pursuant to sub-section 2, of section 546, of the Municipal Act restraining them from so doing."

How do you justify this opinion in view of the provisions of "An Act repecting Pounds," chap. 272, R S. O., 1897, which is declared to be in force in every township, city, town and incorporated village in Ontario, until varied or other provisions are made by by-laws passed under the authority of section 546, of the Municipal Act?

We were aware of the section of the Act Respecting Pounds, to which you refer, when answering the question referred to. It does not affect the question raised in any way. There is no provision in the Act Respecting Pounds prohibiting the running at large of any cattle within a municipality. Sec. 2 mentions "owners of animals not permitted to run at large by the *by-laws of the municipality*," and sec. 3 has reference to the animals therein named "distrained for *unlawfully* running at large, etc."

Maintenance of Sidewalks on Townline.—Construction of Sidewalks in Incorporated Villages.—Statute Labor on Lands Aggregating More Than Two Hundred Acres.

442—A. B.—On the boundary between townships A and B, there is a sidewalk made and kept in repair jointly by the two townships. It is about half a mile in length, and is on the side of A township On the side of B there is also a sidewalk about four rods in length. The ratepayers of A always object to any expenditure on the B side no matter how small

1. Can the B council be released from the responsiblity of building and keeping in repair the sidewalk on the A side? If so, would the sidewalk have to be taken up, or could the B council notify the A council, and allow them to assume it if they wished.

2. If B can get rid of the responsibility, and A refuses to act by passing a by-law to that effect, or refuses to remove the sidewalk, or to act so as to release B, what action would the B council have to take to be released?

3 By agreement between the two councils, could each release the other if each wished to assume their side of the road for sidewalk or other purposes?

4. Is it obligatory to have a sidewalk in an unincorporated village, or is it sufficient to have the centre of the road passable.

In section 109, s. s. 2, of the Assessment Act, it states: "Wherever one person is assessed for lots or part of lots in one municipality not exceeding in the aggregate two hundred acres, the said part or parts shall be rated and charged for statute labor as if the same were one lot."

5 Is the above clause for non-residents only or does it include residents and non-residents?

1 and 2. The sidewalk having been built, it is an invitation to pedestrians to use it, and if an accident happen by reason of want of repair, both municipalities will be liable for the damages resulting from such want of repair. If township B does not desire to maintain the sidewalk, it should notify township A to put it in repair, and if it neglects or refuses to do so, we see no reason why township B should not have the right to tear it up if there is danger that an accident may happen by reason of its defective condition, because we do not think that either township was or is bound to build a sidewalk at all.

3. Under section 625 the two councils may enter into an agreement upon the terms therein provided for the maintenance of the boundary line.

4. It is not obligatory to build a sidewalk in an unincorporated village.

5. This section applies to any person assessed. A non-resident has the right to be assessed by giving the proper notice, and if he does and is assessed he is in the same position as a resident assessed under this section. The section does not, however, apply to a non-resident who is not assessed.

A Question Under the Voters' Lists' Act—Meaning of the Word "Occupied."—Debenture Liability of Lands Transferred from One School Section to Another.

443 G. G. A.—1. What is the meaning of section 6, sub-sections (1) and (16,) and section 14, sub-section (2,) of the Ontario Voters' List Act, when taken together? Section 6 (1) requires the list of voters to be prepared by the clerk after the final revision of the assessment roll, and section 14, (2) contemplates the existence of the list of voters before the final revision and correction of the assessment roll. If a clerk should prepare and print his list of voters before the final revision of the assessment roll, and if at such final revision changes were made in the roll necessitating additions to or revisions of the list of voters based thereon, strictly speaking, would not the clerk be chargeable with costs under section 34, (1) of the Act?

2. What is the meaning of the word "occupied" in section 155 of the Assessment Act? Is land occupied (1) when the owner does not reside thereon, but is assessed for it and farms the land? (2) When it is assessed to the owner though non-resident, and is not farmed or worked? (3) When it is assessed to the owner resident in the municipality, and not farmed by him? (4) When assessed to the owner, though not resident thereon, and farmed by a person not assessed for it? (5) When it is not assessed to any one but is worked or farmed by one not being the owner, nor residing thereon? In some of these cases the land ought not to be assessed, or ought to be assessed in a different manner, but leave out the propriety of the assessment in these cases.

3. Are lands taken from school section 10 and added to school section 4, liable to the rates in school section 4, levied for repaying a loan effected (under section 74, of the Public Schools Act,) by School Section 4, prior to the addition thereto of such lands? Section 74, (3) provides for a converse proposition.

1. We do not see that there are any inconsistencies in the provisions of the sections and subsections you quote. Subsection 1 of section 6 requires the clerk of the municipality to prepare his voters' list immediately after the final revision and correction of the assessment roll of his municipality. Sub-section 16 fixes the time when the assessment roll shall be understood to be finally revised. Subsection 2 of section 14 is also plain. It applies to persons who are declared entitled to apply to have their names entered upon the voters' list by reason of the fact that the person originally and otherwise entitled died or disposed of his property before the final revision of the assessment roll. This section does not concern the clerk. His sole authority is the revised assessment roll in making out his list and these persons must apply to the judge if they desire to be in a position to vote in respect to such property. The clerk can take no notice of any changes which take place but which do not appear upon the assessment roll. If the clerk makes up his list from the revised assessment roll and that alone he need not have any fear of rendering himself liable for any costs under section 34, 1.

2. (1) Yes. In order to be an occupant it is not necessary that a person should have his home upon his premises, and there is no reason why a person living upon his own lands, cultivating and raising crops upon other lands not his own situate in the same municipality should not be liable to have such lands assessed to him as an occupier, the same as if he actually resided upon them. (2) and (3) The land under the circumstances stated in these queries, is not occupied. (4) The land under the circumstances stated in this query is occupied by the person who is actually working it. The fact that he is not assessed can make no difference in determining whether the land is occupied or not, this question being one of fact.

3. At the time the loan was effected by S. S. No. 5, a by-law was no doubt passed in accordance with the Act, providing for the levy of the sums necessary to repay the loan, and defining the territory (that is the lands then comprised in S. S. No. 4) against which sums were to be levied. The territory defined in the by-law, and that territory only, remains liable for the repayment of the loan until it is fully paid. There is no provision made in the Public Schools Act or elsewhere for fixing any portion of this liability on lands added to S. S. No. 4 after the by-law was passed and had come into force. There might be circumstances making it a great hardship if a man's lands became liable to contribute towards the repayment of debentures isued for the purpose of a school section to which his lands were subsequently transferred. Suppose that A resides in school section No. 1, and suppose that two new school houses are built in sections 1 and 2, costing $1,000 each, and debentures are issued for borrowing the money and levying it upon the property in these two sections. Suppose that immediately afterwards A's land is transferred to section 2. His land, under the plain provisions of the School Act, would remain liable for its share of the debentures issued for school section No. 1. Would it also immediately become liable under the by-law passed for school section 2? We do not think so.

Assessment of Lake.

444—J. C.—The small inland lakes in this township are still held by government. A chartered company has now leased said lakes from government for a large number of years, for the manufacture of cement Now the company are operating on said lake. The assessor assessed said lake last spring, and the clerk put the road-work on the list with other ratepayers, but when the pathmaster notified the company of their road-work they refused to do it or pay taxes for said lake because it was only leased from government. Now, can said company be compelled to do road-work and pay taxes for said lake leased from government, or are they exempt from all taxes?

We do not think the lake in question is liable for either taxes or road-work under the circumstances stated.

Payment of Cost and Extension of Waterworks in Village.

445—A. B. C.—1. Some time ago the council voted $10,000 for waterworks. This has been

spent almost entirely in the centre of the village, leaving the outskirts without fire protection. Can they compel the residents of the outskirts to pay their share of the water rate, they deriving no benefit from it? If not, state how the people should act.

2. A gentleman builds a house in the south end of the village and asks the council to extend the waterworks to it. At the same time the north-enders ask to have it extended north. The majority of the council votes in favor of it and submits a by-law to the people but part of the council works against it and it is defeated. Now they want to extend the waterworks to the house in the south end. Can they legally do this and charge to current expenses?

1. You do not say how this money was raised, but we assume that it was legally borrowed for waterworks purposes, under the authority of the Municipal Act and the Municipal Waterworks Act, and that the repayment of the loan was a liability of the village municipality. This being the case the whole of the property not exempt from taxation within the corporation limits are liable for this debt.

2. We see no reason why the council cannot extend the water-pipes in this way, and charge the cost of so doing to the ordinary current expenditure of the village, if they deem it in the interest of the municipality to do so, provided the payment of cost of work does not be extended beyond the year within which the debt was incurred.

Parent Not Liable Under the Truancy Act.

446—A. B.—A truant officer gives the parents of a child twelve years of age notice, under section 7, of the Truancy Act, that his child is not attending school as required by the Act. Assuming that the parent is engaged in a kind of business which takes him away from his home a great deal, and that for that reason he cannot control the conduct of his child as well as if he were home most of his time, and assuming that he is anxious to have his child attend school, and that he orders him to attend school, and punishes him for not attending school, is the parent nevertheless liable to the penalty imposed by the Act, by force of the words "neglects or refuses to cause such child to attend some school?"

We do not think so, for these reasons: The word "neglect" in section 8 of the Act, in our opinion, means "to omit by carelessness or design," and how could a parent be said "to neglect by carelessness or design," to send his child to school under the circumstances above stated?. In the case of Vogel vs. The Grand Trunk Railway Co., 10 A. R. 162, Burton, J. A., at p. 170, uses the following language: "I can hardly believe that if a specific penalty had been given, payable to a party suing, that he could have recovered under this statute as it originally stood, without proof of *intentional neglect* or refusal on the part of the company." The statute referred to gave a right of action to the party aggrieved by any *neglect* or *refusal* of the company to start trains at the advertised hours, with sufficient accomodation for the transport of passengers or goods, etc." It seems to us that there is stronger reason for holding that neglect under Truancy Act must be by carelessness or design, because punishment provided is of a *quasi* criminal character.

Taxation of Church Property.

On what reasonable grounds can church property be exempted from taxation?

Some reasons have been advanced for the exemption, but they will scarcely bear scrutiny. It is said that churches are beneficial to the morals of the community. But so are many other things and it would never do to assess anything on the ground of its moral worth to the community.

It is urged that as the churches are the common property of all, no one would be benefited by taxing the churches since all would have to pay. Yes, but all would reap the benefit of it, and besides the taxation of church property would so diminish the rate that a man would have to pay less on his own property.

Religion should be encouraged, it is said. That is true, but will the church, which is truly religious, seek to avoid its obligations to the community for the benefits received by it? True religion usually pays its debts.

Other reasons have been advanced in favor of this exemption, but an examination of them will show that they are not based on reasonable grounds. Church property should be taxed just the same as other property.—Kingston *News*.

Assessor's Pay for Equalizing Union School Section Assessment.

We observe from newspaper accounts of council meetings throughout the Province, that it is a common practice for township councils to pay their assessors their fees for equalizing the assessed value of union school sections under the provisions of sec. 54 of the Public Schools Act (1901). This mode of procedure is irregular and improper, as we have stated in these columns on several occasions in answer to enquiries made by subscribers to that effect. These fees or charges should be paid by the board of trustees of the union school section and included by them in their estimates when making application to the municipal council for imposition of the annual school levy. If the council pays this in the first instance, it is extremely doubtful whether the amount can be charged against the union school section, and retained by the council out of the amount of the next annual school levy payable to the trustees of the union school section. This being the case the amount of such fees or charges would have to be borne and paid by the general fund contributed by all the ratepayers of the municipality. This would be manifestly unfair, as the work was done for, and redounds to the benefit of the ratepayers of the union school section only. Some time ago the school inspector of a western county communicated with the Provincial Minister of Education on the subject, and received the following reply:

Dear Sir,—I am directed by the Minister of Education to state, in reply to your letter of the 17th inst., that the work of the assessors becomes that of referees or arbitrators, when engaged in equalizing the union school sections' proportion, and their payment would be from the *funds of the union section*.

Your obedient servant,
John Millar,
Dep. Minister.

Toronto, Feb. 20th, 1896.

Should Mortgages be Taxed?

It seems unjust that a man who owns a house on which there is a mortgage of $2,000, should pay taxes on the $3,000, while the holder of the mortgage escapes the payment of any tax. Still it is a very difficult matter to find a cure for this. It has been suggested that the owner of the mortgage should be taxed for the amount of it. But it is questionable if that would improve matters. The lender of money would simply put up the rate of interest so as to cover the added expense of paying taxes, and the owner of the property would not gain by it. This plan has been tried in some of the States, but has not been a decided success.—*Ex.*

A large meeting of municipal representatives from the county, township, town and village councils of Victoria County was recently held at Lindsay, to discuss the matter of a county road system, in order to take advantage of the million-dollar appropriation. Warden James Graham, who occupied the chair. Mr. A. W. Campbell, Commissioner of the Highways, and others addressed the meeting, which was of an enthusiastic character. The decision of the meeting, with the exception of three townships, was in favor of a country road system, and those dissenting merely wished further opportunity to consult their constituents before the next meeting of the county council. The movement in favor of a county road system is spreading and has already been planned by a number of counties.

Mr. A. W. Campbell has been invited to speak at a good roads pic-nic at Knowlton, Que., on Tuesday next, and will probably go.—*Globe.*

A municipal union has been formed in Toronto this week for the purpose of watching over and protecting the interests of the municipalities of the province. The intention is all right but the union, which is composed of representatives from the various councils, is likely to suffer from the fact that the tenure of municipal office of its members is, as a rule, fleeting and changing membership is not favorable to continuity, either of interest or of purpose. The union will be made most effective by having a good representation of the permanent heads of the civic departments of Ontario's towns and cities. —*Ex.*

Legal Department.

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

Re Township of Mersea and Gosfield North Gosfield South and Township of Rochester.

Judgment on appeal by the township of Rochester from the report of J. B. Rankin, Esquire, referee under the drainage laws, allowing an appeal of the other townships from the report, assessment, etc., of the appellants' engineer in respect of the cleaning out, enlarging, extending and straightening of the River Ruscomb drain in the township of Rochester, and which recommends the construction of a drainage work to cost $33,088, and assesses the cost in certain proportions against the said townships. The referee set aside the report of the engineer and directed the abandonment of the work. Held, that the referee went too far in directing that the proposed drainage work should be abandoned, and the township of Rochester should be allowed to initiate and carry on a fresh proceeding for the same purpose as the proposed drainage work. Per Armour, C. J. O., the construction placed by Gwynne, J. S. C. C., in Sutherland, Innes Co. vs. Romney, 30 S. C. R., 495, upon the words "drainage work" in 57 Vic., ch. 56, sec. 75, now sec. 75 of the municipal drainage act, was erroneous. In arriving at such a construction sec. 3 (of both acts) has been overlooked and is not adverted to, and it in effect defines "drainage work" to mean the construction of a drain or drains, the deepening, straightening, widening, clearing of obstructions or otherwise improving any stream, water or watercourse, and the lowering of waters of any lake or pond, and the words are used throughout the act to signify these subjects and as applicable to each and every one of them. The referee should not therefore have held that the engineer had no power to assess for injuring liability any lands or roads for any part of the proposed work north of the junction of Silver Creek and Ruscomb River. The Engineer was not, however, guided in making his report by the foregoing principles, and his report could not have been upheld by the referee, and the evidence was not sufficient to enable him with the consent of the engineer to amend so as to make the report conform to the principles. Per Osler, J. A. It is not necessary to vary the report of the referee. He was right in holding that the assessment could not stand in view of the decision in the Sutherland case, supra, which he and this court is bound to follow. I agree with the judgment of Gwynne, J., whose familiarity with the drainage laws of the Province, their growth and operation is well known. I think it is right to refer to the fact that a private act 1, Edw. VII., ch. 72, O., was recently passed to validate the by-law and assessment in question in the Sutherland case, notwithstanding the judgment of the Supreme Court of Canada, as well as the by-laws of other townships in conection with the drainage scheme, of which the Romney by law and assessment and form part. The general law as to the construction of the clauses of the drainage act expounded in the judgment of the Supreme Court is left unchanged, and while reasons of policy and peculiar circumstances may have existed sufficient to invite the interference of the legislature in the particular case, it cannot but be thought that (though we must not say that the legislature was inopis consili) it was nevertheless magnas interopes inops in permitting some of the recitals which are found in the preamble of the act to appear there; such, for an example, as the statement that the action in Sutherland vs. Romney was brought by a joint stock company owning lands in the township, "not engaged in agricultural pursuits, but solely in the manufacture of cooperage stock," and setting forth the names of the Judges whose judgments were reversed by the Supreme Court, and of all the judges who took part in the judgment of the latter court, and of those who were absent and took no part in it. Statements of this kind have a novel appearance in the preamble even of a private act, as it is or should be impossible to suppose that the reasons suggested by them can have had any influence with the legislature. There is one precedent in Ontario legislation for counting the judges where the object has been to nullify a decision, but the precedent is a vicious one and ought not to be followed. Per Maclennan, J. A. The referee is bound by the decision in the Sutherland case, and, moreover, part of the drainage work which it is proposed to enlarge, improve and extend, and which lies wholly within the township of Rochester, is out of repair, while the other townships have kept the parts of the work within their limits in repair. It is clear that the latter townships cannot be assessed for benefit, and, if at all, only for outlet or injuring liability. Therefore they have a right to require the work in Rochester to be put in repair before the engineer is called upon to make an assessment for enlargement or extension. The report should be varied and appeal dismissed. Per Moss, J. A. The case of Sutherland vs. Romney must be accepted as governing in the similar cases arising under the same statutory enactment, but to quote the language of the Lord Chancellor in Quinn vs. Leatham. 1 Times L. R. at p. 75: "There are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found; the other is, that a case is only authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it." Per Lister, J. A. The Sutherland case is a conclusive against the right of the appellants to in any way assess lands in the other townships for any part of the proposed work. Why s c. 75 should have been so framed as to make a difference between a purely artifical drainage work and one constructed in a natural watercourse I am unable to perceive. It may be that the legislature will, upon consideration, alter the section so as to bring the latter class of works within its provisions. I cannot assent to the view that a municipality failing to keep a drain within its own limits in repair, as required by sec. 70, sub-sec. 2, must, before proceeding under sec. 75, repair. Both classes of work may be authorized and provided for in a single by law. Report varied as above and appeal dismissed with costs.

Watson vs. Township of Dunwich.

Watson, Q. C., for plaintiff, appealed from judgment of Armour, C. J. O., in action to perpetually restrain defendants from cleaning out extension of outlet to and improvement of a ditch known as the Dunwich and Aldborough Government Drain number one north, passing plaintiff's land, in the latter township. The chief justice held that an injunction could not be obtained restraining defendants from proceeding under their by-law, as it was properly and legally passed and within their jurisdiction, and has not been quashed; that the plaintiff's remedy was in damages as compensation for injury he might sustain. It was contended for plaintiff that he should have been allowed to produce evidence to show that in accepting the engineer's report, which is embodied in their by-law, the defendants were accepting a drainage scheme which did not provide a sufficient outlet, and that it is a condition precedent to accepting and confirming the engineer's report that there be an outlet *prima facie* sufficient; that the plaintiff is not bound to wait until his lands are damaged before taking proceedings, and that he is not bound to arbitrate, nor to show that the by-law has been quashed. Order made that upon payment of costs of trial and appeal within one month plaintiff may amend and set up fraud. Plaintiff also to undertake to bring the action on for new trial at next sittings at St. Thomas. In default of payment and bringing on for new trial, motion dismissed with costs.

Hopkins v. Hamilton Electric L. & C. Power Company.

Judgment in action tried at Hamilton. The plaintiff is the owner of and resided in house No. 366 Victoria avenue north, in the City of Hamilton. The defendants, during the year 1900, built on a lot adjoining the house a brick building, covering the whole lot, in which they placed three large engines for transforming and distributing electric power. The plaintiff, owing to the vibration caused by the engines, has been obliged to vacate the house. The defendants are a consolidation of two companies (one incorporated under 61 Vict. ch. 68, O.), under the Ontario Joint Stock Companies Act. Under R. S. O. ch. 200, sec. 3, they obtained powers to conduct electricity through the streets with the consent of the city, and under sec. 4 they obtained the powers conferred on gas and water companies under R. S. O. ch. 199, secs. 24, 25, 26 and 55, and under ch. 68, supra, secs. 13 to 20 of the Ontario Railway Act are made applicable to them: Held, that the general clause in the Railway Act conferring power to take land, and those clauses providing for surveys and the filing of a plan, etc, with the Commissioner of Crown Lands not having been included in ch. 68 (supra) the defendants have not the powers conferred by secs. 19 and 20, and they have no power to expropriate; that the defendants have committed a nuisance and their liability depends upon a consideration of their duties, powers and the manner in which they have exercised the latter. There is no general rule. A company obliged to serve the public, and clothed by statute with authority to do certain things, may do them as authorized by the statute without committing a nuisance, and without making compensation for injury; Hammersmith v. Brand, L. R. 4 H, L. 471; London v. Truman, 11 A. C. 45; on the other hand, where the powers are permissive and capable of being executed without committing a nuisance, and no provision is made for compensation, the powers must be executed so as not to create a nuisance; Metropolitan v. Hill, 6 A. C. 193; Rapier v. London (1893) 2 ch. 588; C. P. R. v. Parke (1899) A. C. 535. The defendants, here, having no power to expropriate land, not being compellable to exercise their powers, and though permitted to buy land to erect buildings upon and operate works for their business, and not being expressly bound to compensate persons injured by the their operations, are only entitled to exercise their powers so as not to create a nuisance, even though without creating a nuisance they could not conduct their business. Shelfer v. City of London, etc., Co. (1895) 1 c. 287 is conclusive as to relief to which plaintiff is entitled. Injunction granted to come into effect on 1st October next, restraining defendants from carrying on their works so as to occasion a nuisance to plaintiff, who may have a reference as to damages to be assessed under rule 552 down to time of assessment. Costs of action, including discovery, to plaintiff. Costs of reference reserved. Entry of judgment stayed until 25th September next.

Re McMaster Estate and City of Toronto.

Judgment on case stated by the judge of the county of York pursuant to section 85, 1, R. S. O., chapter 234, upon the appeal of the trustees of the estate from the decision of the court of revision of the city of Toronto, confirming the assessment of $20,000 as the income of the trustees derived from the estate, which by order in council approved by the Lieutenant-Governor, was referred to a judge of the Court of Appeal for Ontario, and by him referred (sub-section 7) to the full court for its opinion thereon. There are four trustees, three of whom reside in Toronto and one in London, Ontario. The net income of the estate for the last financial year was $33,248.50, of which $8,504.16 was derived from rents and real estate. After payment of two annuities the trustees paid to the Home Missionary Society $2,000, and to McMaster University $23,064.37. The expenditure of both these institutions exceeds their gross revenue. The sum received by the society went to pay the salary and expenses of the superintendent, who resides in Toronto and pays taxes under section 35 of the Act. The sum received by the university (its only endowment), together with students' fees, constitutes the only fund for payment of salaries of professors and lecturers, who all reside in Toronto, and also pay income tax. The question raised is whether cognizance can be taken of the destination of the income assessed, in determining the liability of the trustees to be assessed in respect of it, and if this is answered in the affirmative, whether under the circumstances the trustees are to be assessed in respect of it. McDougall, County Judge York, held that it was not open to him to apply any equitable constructions to the assessment act if the language is plain: Partington vs. Attorney-General, L. R., 4 E. & I., App. 123 per Lord Cairns; that the apparent intention of the act is to ignore trusts, and the language (secs. 44, 46) is clear that personal property (which includes income) vested in or under the control of trustees, as in this case, must be regarded for the purpose of assessment as their own property, and the income as their income; and that, subject to the $400 exemption allowed upon all incomes derived from any source other than personal earnings, the assessment must be confirmed. Held that being personal property in the sole possession of trustees the income in question is taxable under sec. 46 of the assessment act. The destination of it, whether to university purposes or private beneficiaries, is immaterial, and it is not within sec. 7, sub-sec. 24, the language of which is quite inapt to describe the relation of cestui que trust and trustees, and the latter's duty to pay over the income of the property in his hands. If the legislature had intended to exempt it under the act of 1897, as being devoted to university purposes and as really being the property of the university or taxable only on the footing of the university being the owners, they would doubtless have enacted in regard to it, as they have done in regard to university buildings and grounds by sec. 7, sub-sec. 4. Refer to re Canada Life Assurance Co., 25 A. R. 312. Judgment below affirmed and appeal dismissed with costs.

Re McPherson vs. Public School Trustees Section 7, Township of Osborne.

Judgment on appeal by defendants from order of the Judge of the county of Huron, dismissing motion for a new trial in a plaint in the Fifth Division Court, brought to recover a balance of salary alleged to be due to plaintiff by defendants. The trial judge held that the agreement, dated in 1897, under which the plaintiff had since taught in the school, was void for want of defendants' corporate seal, but that a previous agreement, dated 17 December, 1894, under seal, containing this clause: "(5) This agreement shall also be construed to continue in force from year to year unless and until it is terminated by the notice hereinbefore prescribed," was still in force, not having been terminated as required by sec. 19, ch. 292, R. S. O., the meeting of the trustees not having been duly called. One trustee received at five minutes to 9 in the evening a notice of a meeting to be held at 9, and besides the minutes of the meeting were not duly kept. Judgment was entered for plaintiff under sub-sec. 6 of sec. 77 of the Public Schools Act, for the amount of his salary in arrear, and because it was in arrear for three months additional. Held that the agreement of 1897 was not invalid, a direction having been given to the trustees in the plaintiff's presence to the officer having the custody of the seal to attach it, and the agreement having been acted on for two years, and the plaintiff having upon the faith that it was binding agreed to receive less salary. To permit the defendants to rely on the omission to affix the seal to defeat the agreement would be to permit them to practice a gross fraud upon the plaintiff. Held, also, the Judge below was right in holding that the agreement of 1894 is valid, the one of 1897 never having become operative, according to the defendants' contention, the one of 1894 must continue in force until a new one is made. Instead of suing for wrongful dismissal under an existing agreement, plaintiff might have sued for wages pro rata up to his discharge, adopting it and treating it as unjustifiable: Lilly vs. Erwin, 11 A. & E., N. S., 742. This he has done and he is entitled to succeed because he has earned

the salary, and he is also entitled under the statute to salary to the time of the bringing of the action because his dismissal entitled him to treat the agreements as at an end, and his salary was then in arrear. Held, also, that the agreement of 1894 being valid on its face and having been acted on for several years, the onus of proving that the requirments of sec. 19 had not been fulfilled lay upon the defendants, and they had failed to do so. Appeal dismissed with costs.

Fee vs. Township of Ops.

Judgment on appeal by plaintiffs from judgment by Falconbridge, C. J., dismissing the action. The plaintiffs (man and wife) are the owners of lot 22, in the 4th concession of the township of Ops. and tile-drained their farm, and in 1879 drained into a natural watercourse west of it. In 1881 defendants constructed a drain west of plaintiffs' land and compelled them to contribute money towards its construction, which, plaintiffs' allege, was so negligently done as to destroy their tile drain and injure their land, and they sought damages and a mandamus for the repair and maintenance by the defendants of their drain. It was contended for plaintiffs that, whether the defendants' drain, which was built under a by-law passed in 1879 (see re McLean and Ops. 45 U. C. R., 325), was constructed for the drainage of the tile-drained lands or not, that it had been proved to have been negligently and improperly constructed and maintained, and as a result surface water was thrown on plaintiffs' land; that having been assessed for and having contributed to the building of the drain, they were entitled to relief if it failed to perform its functions; that having given the notice required by sec. 73, R. S. O., ch. 226, and having a vested interest in the drain, they are entitled to a mandamus; and that if the statute of limitations applied at all it affects only the amount of the damages because they are continuing. Held, that Williams vs. the Tp. of Raleigh (1893), A. C., 540, is conclusive against the claim for damages arising from the construction of the drain, the work having been done under the municipal act upon the report of a duly appointed engineer, and no negligence having been shown, and that sec. 438 of the municipal act is a complete answer to the claim for compensation for injuries arising from the construction of the drain. Besides, the plaintiffs' were petitioners for the work, and agreed to an assessment upon their lands in respect to it; held, also, that the claim for damages for non-repair of the drain and for mandamus is not well founded. As held by the court below, the drain was only intended for taking off the surface water, and was not designed to provide an outlet for tile drainage of the farms intended to be benefitted by its construction. Upon the evidence the filling in of the drain where it has filled in has not increased the flooding, and the fires which swept over that part of the country through which the drain ran have so changed the conditions that it is impossible now to restore it to its original state, and if so restored would be useless. Besides all this, a railway culvert over which respondents have no control, is insufficient to permit the water brought down by the drain to pass through it, and a mandamus should not be granted to compel repair of a drain which will be unnecessary when the new work the respondents have undertaken is completed. Appeal dismissed with costs.

McKinnon vs. McTague.

Judgment in action tried at Berlin brought to recover damages for illegal distress for taxes. Held, that the notice served by defendant Patterson (the collector of taxes,) under subsections 1 and 2, section 134, chapter 224, R. S. O., was insufficient in that there was not written or printed thereon for the information of the ratepayer a schedule specifying the different rates, etc., required by the statute, and that the distress was made before the time of payment had expired, and also that defendant Patterson had not "good reason to believe" that plaintiffs were about to remove the goods before the time for payment expired. No relief was asked against defendant McTague, who is the husband of the owner and urged the distress. Judgment for plaintiff against defendants Patterson and Gillies (bailiff) for $60 damages and costs on High Court scale of action and injunction. Thirty days stay.

Steenson vs. Town of Palmerston.

Judgment in action tried at Guelph. The plaintiff, now the wife of William Steenson, is the widow of Christopher Johnston, who was buried in lot 98, block 1, of the cemetery of the town of Palmerston in 1884. The defendants held the cemetery under sub secs. 8 and 9, sec. 490, ch. 18, of 46 Vict. (O.), now R. S. O., ch. 223, sec. 577. By deed, dated 26th August, 1885, the defendants conveyed to plaintiff lot 98, habendum "to her heirs and assigns to and for her and their sole and only use forever." There are no other terms in the deed. In June, 1888, the defendants caused the body to be removed from lot 98 and buried in some lot which is now unknown, and sold lot 98 to defendant Hyndman, whose deceased wife was buried in it on the 20th of that month, and defendants by deed dated 19th June 1888, similiar in terms to that given by the plaintiff, conveyed the lot to Hyndman, who in June, 1889, erected a monument and put up an iron fence, both of which still remain. This action is brought for damages for trespass and removal of the body of the plaintiff's husband, for a declaration of title and mandamus to compel defendants to remove the body of the wife of the defendant Hyndman and to replace the body of Christopher Johnston. At the trial, it having appeared impossible to discover the whereabouts of the body of the deceased Johnston, the relief sought by mandamus was the defendant undertaking to supply plaintiff with another lot. Held, assuming the deed to plaintiff to be valid, and that it passed the fee, the causes of action are barred by the statute of limitations, the trespass having been committed more than six years before action, and defendant Hyndman having been in possession more than ten years since his erection of the monument and the iron fence which, within the authorities, are acts of ownership. Quaere as to the validity of both deeds under the statute (R. S. O., ch. 223), because they are simply conveyances in fee, without limitation or restriction and, therefore, in violation of its provisions. Action dismissed without costs.

Town of Peterborough vs. G. T. R. Co.

This was an appeal by plaintiffs from judgment of Street J. (32 O. R. 153), dismissing action brought to have it declared that defendants are liable to build and repair the bridge over the creek, as diverted by defendants, where it crosses Smith street, in the town of Peterborough, and to restore the highway to its former state, or so as not to impair its usefulness. The Midland Railway, in 1882, made a cutting across Smith street for the purpose of diverting the creek, and filled in the original b d, providing a culvert still in use, and plaintiffs allege they allowed the cutting to be made without passing a by-law giving permission, but on the agreement between the township of Smith, the town of Peterborough and the company that the latter would build and maintain a proper bridge across the cutting. The land in question has been part of the town since 1894 and the Midla d Railway has been leased by the defendants since 1883. The trial judge held that the alleged agreement had not been proved, and that as the defendants had acted within their rights the plaintiffs' only course was to proceed for compensation under the railway act, and that a mandamus should not be granted in this action. It was contended *inter alia* for plaintiffs that the portion here in question of the Midland Railway was built under 44 Vict., ch. 67 (O.), and did not by the Railway Act of 1879, come under its provisions as to powers, lands and valuation by sub-sec. 2, sec. 2; see also Bowen vs. Canada Southern R. W. Co., 14 A. R., 1, and the railway company was, therefore, still liable under sub-sec. 5, sec. 9, R. S. O., ch. 165, to restore the highway to its former state, or to such a state as not to impair its usefulness. This is a condition, and a continuing one, attached to the right to maintain the railway: Van Allen vs. G. T. R., 29 U. C. R., 436. Appeal dismissed with costs.

McKim vs. Township of East Luther.

Judgment on appeal by defendants from report of the referee under the drainage laws upon a reference in an action for a mandamus and for damages caused to plaintiff's lands owing to the alleged improper construction of a drain, known as number 10, commencing in said township, at Wylde Lake. The plaintiff is the owner of lot 18, in the seventh concession of West Luther, and of lot 19, in the sixth concession of East Luther, and alleges that water has become lodged on her lands, and that the drain has become out of repair. The appellants contended inter alia that the referee erred in directing the maintenance of the drain, as such maintenance would not afford plaintiff any relief. Held, that in cases such as this, the referee may proceed partly on view, but in this case there was no appointment to view, the inspection was made without notice to and in the absence of the parties or their solicitors, and, under such circumstances, the referee's statement as to the condition of the drain, when viewed by him, cannot be considered by the court, but, as it is supported by the evidence, it should not be set aside but affirmed. Held, also, that the letter relied on as being sufficient under section 73 of the Municipal Drainage Act to constitute the written notice under the section was inadequate, and notice being essential to vest in the referee jurisdiction to direct a mandamus, there was no power in this case in him so to direct, and that it is not necessary to plead want of notice. Held, also, that the by-law under which the work was executed should not on the evidence be declared invalid. Appeal allowed in so far as the report directs a mandamus, and varied as to amount of damages by reducing it to $50. No costs of appeal to either party, except cost of objection to the jurisdiction already disposed of.

Reg. vs. McMillan.

Judgment on motion by defendant to make absolute an order nisi to quash conviction of defendant for that being the occupier of a shop in the city of Ottawa for the sale of watches and jewelry by retail, he unlawfully neglected to close and keep closed his said shop from and after 7 o'clock, on June 7, 1900, contrary to an early closing by-law of the said city, passed under sec. 44, ch. 257, R. S. O., and by sub-sec. 18 of that sec. is to be treated as having been passed under the municipal act. Held, that the conviction is bad in that after imposing payment of fine and costs it provides that in default of sufficient distress for the fine and costs, the defendant be imprisoned at hard labor for three days. The imposition of imprisonment, unless both fine and costs are paid, is clearly beyond the authority given by the by-law, which gives power to imprison only for non-payment of the one. Held, also, that there is no power to amend, sec. 709 of the municipal act not applying to this case. Order made absolute with costs. Magistrate is to be protected as usual.

Currie vs. Township of Dunwich.

This was an appeal by the defendants, from judgment of County Court of Elgin, for plaintiff for $150 in action for damages for injuries. The plaintiff, when walking in January, 1900, along the centre of a highway in the township, slipped and fell on the ice upon it, breaking her arm. The trial judge found that the highway was out of repair, that water overflowed from the side ditch into the road, which was in a hollow at the place of the accident, and formed a pool, and that a culvert should have been placed at the spot so as to drain it. It was contended for defendants that, having regard to the nature of the country, the character of its roads, the care exercised by defendants in respect to such roads, the nature and amount of ordinary traffic on them, the number of roads to be kept in repair, the means at the disposal of the defendants for such purposes, the season of the year, the nature of the accident and other considerations, that the road could not be said to be out of repair. Appeal dismissed with costs.

The Township of Grenville vs. Ward.

This was an appeal from the judgment of the Court of King's Bench, Quebec, app al side.—Condemning the defendant to pay the plaintiffs $4,250 damages.

The plaintiffs were the owners of an iron bridge crossing the Rouge river. The defendant was hurriedly floating his logs and timber down the river; and the river suddenly rising, as it often did, a jam was forced, and the plaintiffs bridge was injured. The defendant pleaded that the damage was caused by an irrisistible force over which he had no control.

Held, affirming the judgment that, the river being unnavigable, the defendant had the right to use it as an ordinary highway only; that the defendant must be taken to have been aware of the fact that the river was subject to sudden rising and that the accident was caused not by force majure, but by the negligence of the defendant in placing too many logs in the river at once without having at the same time a correspondingly sufficient number of men to keep abreast of them in order to prevent a jam.

Niagara & St. Catharines Electric Railway Co. vs. Town of St. Catharines.

Judgment on motion by plaintiff to continue an injunction granted by local judge at St. Catharines, restraining defendants from granting a franchise to Hamilton, Grimsby & Beamsville R. W. Co., in breach of alleged agreement with plaintiffs. Motion adjourned until the trial. Costs in the action. Injunction not continued meantime.

(Concluded from page 152.)

sibilities that are not in accord with the interests of all whom it represents.

If a municipality engages in an enterprise within the competence of local capital it is very likely to drive that capital to outside fields of enterprise.

It has been realized, what might have been forseen, that municipal trading enterprises do not keep so closely in touch with public needs, or with the march of improvements, as those sustained by private capital and controlled directly by its owners. A municipal committee cannot be expected to have the energy, stimulus, or the business capacity of those who administer a private enterprise in which they each personally have a large, direct, pecuniary interest. Aldermen, however able, however public spirited, cannot watch over the management of a municipal enterprise with the close scrutiny that is usually given by a board of directors in control of a private enterprise. Nor is a municipal committee as able to act promptly in emergencies, nor is it as amenable to public opinion, or the opinion of the patrons of a public enterprise, as those whose capital therein is at stake. The advantage of economy in working is wholly on the side of private enterprise, though this has been obscured by some municipalities charging some part of the actual working expenses of a municipal trading enterprise to other departments.

Thus a municipality operating a gas supply plant has been known to charge the cost of street openings to lay gas mains, as well as of laying gas services to consumers, to the roads department, other expenses properly chargeable to the gas service, have also been charged to departments having no direct connection with the gas supply business. By this cooking of the accounts the real cost to the citizens of the gas service has been concealed. The loss of income arising from the deprivation of the taxes payable by private enterprises when their business has been undertaken by a municipality, has been overlooked in statements as to the economic result of the municipal ownership of business undertakings. The recent collapse of the Toledo city gas works is an impressive lesson as to the hollowness of the plea that a municipality can supply lighting more cheaply than a private enterprise. It is a significant fact that in Glasgow, where the city corporation has taken up the municipal ownership scheme on a great scale, the taxes are high. The citizens are said to be paying back in their tax bills what they save by cheap car fares, etc. There is a reaction in progress from the movement to provide services of a trade character by municipalities, as experiences have proved, that it is more to the public advantage for mercantile enterprises to be controlled by private capital, and more desirable for economic reasons for a municipal body to confine its activities within the sphere of local government.