THE MUNICIPAL WORLD

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By-law to alter school boundaries, last day for passing.—Public Schools Act, section 41 (3).

5. Make returns of deaths by contagious diseases registered during May.—R. S. O., 1897, chapter 44, section 11.

18. Kindergarten examinations at Hamilton, London, Ottawa and Toronto begin.

20. Earliest date upon which statute labor is to be performed in incorporated townships.—Assessment Act, section 122.

24. High School Entrance Examinations begin.

Public School Leaving Examinations begin.

29. High, Public and Separate Schools close.—P. S. Act, section No. 99, (1); H. S. Act, section 45; S. S. Act, section 81 (1).

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JULY 1. Dominion Day (Wednesday).

All wells to be cleaned out on or before this date.—Section 122, Public Health Act, and section 13 of By-law, Schedule B.

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Before or after this date Court of Revision may, in certain cases, remit or reduce taxes.—Assessment Act, section 74.

Last day for revision of rolls by County Council with a view to equalization.—Assessment Act, section 87.

Last day for establishing new High Schools by County Councils—High Schools Act, section 9.

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The Municipal World

PUBLISHED MONTHLY

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

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

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ST. THOMAS. JUNE 1, 1903.

The council of the Township of Montague has purchased a stone crusher for the use of the corporation.

* * *

Mr. G. A. Jordison, of Maynooth, has been appointed clerk of the united townships of Monteagle and Herschel, in the place of Mr. Wm. Gloster.

* * *

Our next issue will contain all the Legislation enacted at the present session of the Legislature relating to municipal assessment and public and high school matters.

* * *

The council of the Township of King, at a recent meeting, increased the salary of its clerk, Mr. J. L. Jenkins, from $300 to $350. This is an example that might well be followed by other municipalities in the Province.

* * *

Some time ago at a meeting of the Associated Charities in the city hall, Toronto, a resolution was passed calling the attention of the Ontario government to the necessity for passing an Act compelling every county or group of counties, to erect and maintain its own House of Refuge. At the present session of the Legislature the Hon. Mr. Stratton has introduced a bill to accomplish the object of the above resolution.

* * *

A meeting of representatives from the several local municipalities in the County of Essex, was recently held at the town of Essex, to consider the question of the improvement of the roads in that county. The participants in this meeting were unable to decide on any definite line of action in the matter.

High Municipal Standard.

Poulteney Bigelow, a well-known American writer, has been enlightening the people of this continent in regard to the high standard of municipal life in Germany. "It would take some stretch of imagination to place the president of Harvard, or Thomas Edison, or Capt. Mahan, in the councils of the New York Board of Aldermen," he writes. "Yet I have seen in the municipal senate of Berlin, Mommsen, the historian; Prof. Koch, the bacteriologist, and others of that caste, giving their time and precious judgment on matters affecting the health and happiness of their fellow citizens, giving it cheerfully and without money payment." In the administration of municipal affairs Germany is almost as progressive as Great Britain and the study of many of its institutions will afford many surprises to those who are in the habit of thinking that all wisdom in regard to public affairs is confined to America.

Another citizen of the United States, Mr. Walter Wyckoff, a distinguished student of social conditions, in a recent number of Scribner's Magazine, pays a high tribute to the way in which London has grappled with the mighty problems which the growth of its vast population has called upon it to deal with. He is particularly warm in his praise of the board schools in the east end of the city and notes what a change the education given by them has brought in habits of cleanliness, obedience and good manners. He agrees with Sir Walter Besant in saying that these schools have so far abolished in the last generation the savagery of the old East London that it remains a vanished world, "one to be left to the region of poetry and fancy, to the unwritten, to the suggested, to the half-whispered; for it exists no longer; it has been improved." This does not mean that the slums are not to be found in East London, with conditions of appalling congestion, and all the attendant miseries of extreme destitution, but that, whatever may once have been the character of the city and of its people, the East End is no longer a city of slums, and its people, far from being "submerged" are a skilful, industrious, peaceful working population of high average intelligence, and equal, it is likely, to any reasonable competitive struggle.

Municipal problems in both England and Germany have claimed the attention of the brightest minds of both nations with the most happy results. A most admirable training ground for activity in the general affairs of state has been provided, while good city government has made national life sound at the core. No matter with what ability or integrity the central government is carried on, the effort of national statesmen will be largely futile unless at the head of local administrations we have men with a high sense of their responsibility and with the capacity necessary to carry on successfully the affairs committed to their charge.—Sentinel Review.

A Suggestion as to County Councils.

To the Editor of the Municipal World:

SIR,—As there seems to be a determination on the part of our legislators to alter the "County Council Act," without discussing the pro's and cons of the said Act or the wisdom of tinkering (as it seems) with the constitution, permit me to make a suggestion.

Years ago we heard a great deal about "dual representation" and the law was changed so that a man could not be a member of both houses at the same time. No doubt Hon. Mr. Hardy had this in view when he introduced the new Council Act, and it was to overcome any collusion that might exist between the township and county councils, that the members of the latter were created as a separate body; also it was thought that by not being members of the local councils, they would have broader interests and not be so much governed by locality.

That there is a decided advantage in separate representation, is apparent. For instance, the closing of an old road or the opening of a new one. The County Councillors Act as senators, confirming or not confirming the by-law passed by the township council and signed by the reeve.

Now is it not better in this case as well as in the case of school section boundaries, etc., for the county representative to be free from the turmoil and predjudice usually engendered in such cases, and could he not give a more judicial decision. The greatest objection to the present Act is that it creates strife, and that each municipality should be represented—then why not retain the virtues of the old and new systems in an amendment to the "County Council Act," giving each municipality a county representative who is not the reeve or mayor.

But, as Mr. Whitney maintains let the system be uniform throughout the Province.

D. JACKSON
Warden Lincoln County.

[ED.—The above communication is most opportune in view of the lively interest taken in the bill amending the clauses of the Municipal Act relating to the election of county councillors introduced in the Legislature at its present session by the member for North Middlesex. We will be pleased to receive and publish communications from all other subscribers who desire to give their opinions on this question].

Mr. S. Steacy has been appointed treasurer of the united counties of Stormont, Dundas and Glengarry to succeed Mr. C J. Mattice, deceased.

Duties of Auditors and Other Officials as to Municipal Accounts.

The report of the provincial municipal auditor for 1902 contains numerous suggestions and recommendations which municipal auditors and other officials throughout the province would do well to bear in mind and comply with. Mr. John McEachren in his report of his examination of the financial affairs of the township of Sunnidale makes the following recommendations :

1. That your treasurer use the authorized Government cash book. This has not been done, although the Statutes provide a penalty for not using same.

3. That your treasurer keep a bills payable book, in which a proper record be kept of all monies borrowed.

3. That your treasurer keep a debenture book, showing a proper record of all debentures issued.

4. That your treasurer keep a bank account, in accordance with the provisions of the Statutes.

5. That all by-laws passed be kept in a regular by-law book, to be kept for that purpose, and that each by-law be signed by the clerk and reeve and the township seal affixed to same.

I find a number of the by-laws passed by your council have not been signed by the reeve.

6. That all reports of committees be incorporated in the minutes of your council, or be copied in a book kept for that purpose.

7. That all awards made by drainage engineer, fence viewers, etc., etc., be copied by your clerk in a book to be kept for that purpose, so that your auditors can check same to see that amounts have been paid or included in the next collector's roll.

8. That the clerk forward the additions on each page of the collector's roll, so that the totals on last page would show the amount raised on each levy.

9. That no change be made in the collector roll by the clerk after it had been handed to the collector, unless authorized by resolution of council, of which notice in writing shall be given to the collector and treasurer.

10. That a summary of your collector's roll be published in your auditor's report each year, so that the ratepayers could see the amount raised on each particular levy.

11. That the collector on returning the roll must verify by affidavit the amount of uncollected taxes, etc., as the Statute requires.

I find in some cases that this has not been done by the collector.

12. That the proper return of the collector to the Treasurer should be made on or before the 14th December, but the time for doing this may be extended in the proper manner by the council to any subsequent day not later than the 1st day of February following.

14. That all orders for work done be endorsed or receipted by the party or parties actually entitled to payment for same.

This is the only voucher your auditors should accept. I find a great many of the orders issued are endorsed by your Clerk, Reeve, and in some cases by a Councillor, and no receipt is produced from the party entitled to payment.

15. That where accounts or claims for work done on town lines are presented to your council, that you only pay your proportion of same, leaving the contractor to collect the balance from the township interested.

I find in a number of cases, where your Council has paid the whole account, it has been impossible to collect from the other municipality.

16. Where it is necessary to make a charge or claim against another municipality, your Clerk should notify your Treasurer in writing, giving particulars and amounts, so that the Treasurer can make the proper charge in his books.

It is then the duty of the Treasurer to see that the amounts are collected. The same written notice should be given the Treasurer when charges are made against individuals for rent of hall, use of road machinery, pile driver, etc.

17. In connection with Division Court fees due your township, I find one or two municipalities have never paid their share of these fees.

In future, unless the fees are paid promptly each year, action should be taken at once, as it is much more difficult to collect when allowed to stand for years.

18. That school sections be credited with the amount actually collected ; not the amount asked for by trustees' requisitions, as you have been in the habit of doing.

There is usually a difference between the amount asked for and the amount raised, owing to the manner in which the rate is struck at a certain fraction, or by a part of the taxes being uncollectable.

This would apply to any special levy on a certain portion of the municipality.

19. That a strict account be kept of road scrapers, road machinery, or other material bought for the township, as they are just as much an asset as the taxes, and some system should be adopted for keeping them, so that they will be available when required.

The following statement will show the amount paid for scrapers in the course of a few years :

1887, 6 scrapers	$ 55 50
1888, 6 scrapers	54 50
1891, 5 scrapers	44 50
1892, 1 scraper	8 5
1893, 6 scrapers	38 10
24	$201 10

I would suggest that a receipt be taken from each path-master, covering the scrapers and other township property in his possession, and that he be held responsible for same until handed over to his successor.

20. That a fire-proof safe be purchased and placed in hall, so that the rolls, by-laws, and other books and papers can be preserved with a reasonable degree of safety.

The following important duties should be performed by your auditors, and your Council should see that they are carried out :

(1) Compare assessment rolls with Collector's rolls to see that assessed values on which rates are levied are correctly entered.

(2) Compare school section entries with school section map, and check valuations on which school rates have been levied.

(3) Check all entries and additions on the rolls.

(4) Verify the correctness of all the rates and taxes levied by by-laws, proceedings of Council, Engineer's drainage, awards and certificates, statute labor lists, fence viewers' awards, County Treasurers' accounts, School Trustees' requisitions, or other authority.

(5) The Collector's accounts with the Treasurer should be examined, and also settlement of roll, which should be verified under oath, and in accordance with rections 147 and 148 of the Assessment Act.

(6) Every stub of the Treasurer's receipt book, and every voucher, document or roll audited should be properly stamped, as required by the Act of 1898.

(7) The Treasurer's vouchers should be carefully examined, to see that each payment was authorized by proper authority, and that proper receipt is attached.

(8) The Auditors should refer to the condition of the Treasurer's security, and also to the insurance on corporation property.

(9) The Auditors should show what cash balance, if any, is due from the Treasurer to the municipality, and where such balance is deposited ; if no bank account is kept, they should count the cash to see that it is correct.

(10) If any source of revenue has ceased to exist, or if last payment has been made on any special assessment, the Auditors should make a report to that effect.

(11) It is very important that the Auditors should make themselves familiar with the by-laws of the municipality, and it is incumbent on them to make a special report on any payment made contrary to law.

Mr. F. H. Macpherson, in his report of the inspection examination, and audit of the accounts of the township of Sandwich East, recommends as follows :

1. That the clerk prepare a separate school supporters' index book, as required by the Separate Schools Act.

2. That the clerk be required to carefully keep on file the following returns or copies thereof :
(a) List of all lands liable to be sold.
(b) Assessor's occupied return.
(c) Return of taxes on occupied lands.

3. That the clerk shall copy all by-laws of the township in the by-law book promptly, and carefully file and preserve the originals.

4. That all records of courts of revision of the assessment roll and of appeals against drainage assessment be kept in a book provided for that purpose, and decisions given in all appeals to the judge to be noted thereon.

6. That the by-laws striking the rates shall show in detail the sums to be levied on account of the township's contribution under the several drainage by-laws.

6. That special collectors' roll be prepared in accordance with the provisions of the Assessment Act, a suitable form for which is supplied herewith.

7. That the clerk be required to have the collector's roll ready by the time specified by statute, and that the roll shall be completed in every respect (and properly certified), and with warrant attached previous to its being handed to the collector.

8. That the clerk procure a book ruled as per the form supplied with this report, entering therein all assessments on account of the drains already in force ; all assessments on drainage works under by-laws hereafter passed to be entered promptly upon the final passing of each by-law.

9. That original by-laws shall not be filled or pasted in the by-law book, but shall be carefully filed away in the tin boxes recommended to be purchased.

10. That a proper index of all by-laws be prepared, under number and title.

11. That the attention of the township assessors be called to the omissions and errors in former assessors' rolls, as pointed out in this report, with instructions hereafter to conform closely to the requirements of the Assessment Act.

12. That the assessor shall include in his roll all property in the township, that entitled to exemption being so marked, and that a complete list of exempted properties, valued as they would be if subjected to assessment, be entered at the back of the roll for assessment purposes.

13. That changes in drainage assessments be made only upon the certificate of the township engineer.

14. That the council shall comply with the provisions of the Assessment Act, which contemplates the appointment of a collector in time to commence his duties by October 1st each year.

(Continued on page 104.)

Specification for Township Collector's Roll.

1 Number of Section.	2 Assessed Value.	3 Total Trustees' Requisition.	4 Raised by General Rate.	5 Balance Raised by Trustees' Rate.	6 Rate in $ for Trustee's Rate	7 Required School Debentures.	8 Rate in $ for Debentures.	9 Amount in Collector's Roll	10 Remarks as to Number of Teachers and Assessors' Equalization of Union Sections.
1									
2									
3									
4									
	General Public School Rate to be levied on whole of township with the exception of separate school lands and the lands of union sections composed of parts of a township and a town or village.								
	County Levy for General Purposes.								
	Township Levy for General Purposes.								
	Special Rates (specify).								
	General Debenture Rates, By-Law No.....								
	General Debenture Rates, By-Law No.....								
	Special Debenture Rates, By-Law, No..... (When for Drainage give name of Drain.)								
	Arrears of Taxes.								
	Ditches and Watercourses Award Costs. (Give Number and Name of Award.)								
	Fenceviewers' Award Costs. (Give Name of Award. Etc.)								
	Statute Labor.								
	Division No.....								
	Total								

The preparation of the collector's roll is one of the most important duties that a clerk has to perform. On it depends the regularity of the financial business between the ratepayers and the municipality.

A collector's roll should be audited annually with the other accounts. This should include not only a verification of additions but an examination of the various by-laws, awards, etc., in the clerk's office to ascertain that all sums due by the ratepayers have been entered in the roll. In townships particular attention should be given to school section rates which are now raised in various ways.

The above specification will assist in directing attention to the different rates to be entered in the roll. This will serve as a guide to the clerk, and, when properly prepared, will serve as a check on his work and enable the auditors to verify the same.

In beginning the preparation of a collector's roll, care should be taken to see that no mistakes are made in transferring particulars from the assessment roll. When the roll is completed, a statement, in form similar to the above, should be attached to the roll to show the particulars of the total taxes levied. A copy of this form should also be sent to the treasurer so that he may properly charge the collector with the amount of taxes on the roll and also credit the various special accounts with the amounts levied therefor.

Duties of Auditors and Other Officials as to Municipal Accounts.

(*Concluded from page 103.*)

15. That the collector of taxes shall return his roll previous to the 8th day of April in each year, and he shall make his return of "uncollected taxes" in the form required by statute.

16. That suitable tin receptables be provided marked for each year, and that the records of the township be arranged in proper order and deposited therein.

17. That the treasurer be required to keep on file the following returns, or copies thereof :

(a) List of lands liable to be sold.

(b) Assessors' occupied return.

(c) Return of taxes on unoccupied lands.

18. That the treasurer shall decline to pay warrants when presented by other than the party to whom payable, unless (1) properly endorsed, (2) upon written order authorizing payment to another, which order shall be attached to the warrant after being endorsed by the person presenting it.

19. That where a person unable to write has occasion to endorse by "his X mark," such shall be witnessed by some disinterested party.

20. That the treasurer shall notify the council in writing at each meeting of debentures maturing, for which provision to pay promptly should be made.

CONCLUSIONS.

The attention of the council is called to section 14 of chapter 228, R. S. O., 1897, which requires that all recommendations made in this report shall be carried into effect.

Plans for waterworks and electric light systems have been prepared for the town of Whitby.

Engineering Department

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

Road Graders.

Roadmaking, as with other branches of construction, has been much influenced by the introduction of machinery, and to-day by its use, roads can be built more perfectly, quickly, and at less cost than ever before. A few years ago the most pretentious road machine in any of the township municipalities was the drag scraper. The most widely used of the more modern implements is the road grader, and this has almost revolutionized the cost of preliminary earthwork, while it is exceedingly useful in the repair of old roads. There are new townships in the Province which have graders, the majority only one, quite a number have two, while others have three and even four. With about 300 in all throughout the Province, the outlay for graders above, at an average cost of $250 each, represents a total investment of $75.000.

Road graders are now so commonly employed in the construction and repair of roads, and their utility is so generally recognized, that it is scarcely necessary to urge their adoption. They are modern, labor saving implements which do their work better and more cheaply than can be done by hand, and that nearly 300 townships of Ontario have purchased them is forcible evidence of their value. It is not their use which it now seems necessary to urge, but rather there is need of guarding against their misuse.

In too many townships the councils have rested content with merely buying a grader, and having done this seem to be satisfied that they have done their duty. Unfortunately the grading machine is not possessed of intelligence, it does not know when or how a road should be graded. So that, unless a method is established, and unless a capable man is engaged to operate it, the grader is likely to give but little service.

COMMENCE EARLY.

Arrangements should be made every spring to have the grader ready and in use as soon as the ground is sufficiently dry. The soil is then in its best condition for manipulation, having been mellowed by frost, the roads are rough and most in need of treatment. Roads which are properly graded early in the spring are at once compacted by traffic and they will remain in their best condition all summer. If the work is left until late in the season clay soils become baked and hardened, difficult to handle, and rough when finished. Sandy soils, if loosened up late in the year, will be much more dusty than if treated early in the spring, when they are damp and readily compacted by traffic.

FOLLOW A DEFINITE PLAN.

It should be the duty of the township road commissioners, councillors, or a committee of the council (according to the local system of road management) to go over the roads early in the year and determine what grading is required.

This work should be staked out according to definite widths and dimensions of the roads as required by township regulations. The grader, when it commences in the spring, should proceed to each place of work consecutively, and should be in use continuously until all the grading is done for that year.

At the present time it is customary for the grading machines to go here and there over the township without method—one day on one side of the township, next day on the opposite side, then to another distant part, backward and forward, wasting a considerable part of the wages of man and teams in moving from one part of the township to another. By following a well-considered schedule the cost of moving the machine between the different pieces of work is reduced to a minimum.

Some distinction should be made between the grading of new roads and repair of old roads. Where the roads are being metalled from year to year with gravel or broken stone, it is not, as a rule, advisable to grade a greater length of road than can be gravelled or macadamized the same year.

SELECT THE RIGHT MAN AS OPERATOR.

One of the first essentials in providing that the roads will be properly graded is to select the right man to operate the grader. He should be an active and energetic man with some mechanical experience ; one who will take an interest in his work, who will make a study of road-making and who will be willing to follow the instructions given him by the township road commissioner or councillor having supervision of the work.

PROFIT BY HIS EXPERIENCE.

When such a man is found he should be engaged from year to year so that his growing experience will render him more efficient.

There are many townships which do not employ a regular operator, but instead allow the grading machine to be handled by anyone and everyone. In some cases it is even passed around in the performance of statute labor from beat to beat. Managed in so careless a manner a grading machine will be a source of disappointment only.

USE THE HORSES FOR THE SEASON.

The same horses should be used in operating the grader for an entire season, at least. "Green" horses are very awkward, will not pull together, waste much time, and even a reliable man as operator, cannot, under such circumstances, perform good work. It is a great waste in many ways to attempt to use a grading machine with horses provided, as is sometimes done, as a part of statute labor. Horses used continuously become accustomed to the work, to each other, and to the driver, and will produce much better results.

OR USE A TRACTION ENGINE.

Some townships, instead of horses, use a traction engine. Where one can be rented from a local thresher, it can usually be obtained very cheaply in the early part of the year. Where a considerable stretch has to be graded without turning, as in cutting off the shoulders of old gravel roads, a traction engine is much preferable to horses. It is more steady and does not stop to rest.

CROWN AND WIDTH OF GRADE.

The township regulations as to the width and dimensions of road should be closely followed in grading. These generally provide for a width of twenty-four feet between the inside edges of the open drains or roads of greatest travel ; twenty feet on roads of moderate travel, and eighteen feet on roads of least travel. A rise of from half an inch to one inch to the foot, from the inside edge of the drain to the centre of the road is ample crown for a new road, after the gravel or stone has been placed on it. More than this is unnecessary and an injury. There is a tendency in the use of graders to crown the roads excessively, and this should be guarded against.

REPAIRING OLD ROADS.

Road graders are much in use in the repair of old gravel and stone roads, in restoring the crown, but, unfortunately, it is no exaggeration to say that miles of road have been ruined by misuse of graders in this work. Old roads are commonly flat, sometimes concave, with square shoulders at the side. In repairing these shoulders there may be a small amount of stone which has been crowded out by the wheels of vehicles, and which it is safe to draw again to the centre of the road. On no account should the square shoulders at the side be drawn to the centre of the road. These shoulders are composed of earth and sod, and if placed on top of the old gravel or stone foundation will merely turn to slush in wet weather and utterly ruin the road. The only way to repair such roads is to cut off these shoulders, throwing them away from the road across the open ditch, if necessary, and then to restore the crown by placing a coating of new gravel in the centre of the road.

The ratepayers of Port Arthur have approved of a by-law to construct a waterworks system. The system provides for pumping from Thunder Bay to a reservoir on a hill 250 feet high, from which water would be distributed by gravitation.

Repairs of Roads.

Roads should be repaired, not once a year, not twice, but as soon as signs of wear appear. Ruts should not be allowed to form in a gravel or stone road when once properly constructed, but material should be kept in place by a constant use of the rake. This is especially necessary if gravel or stone is placed loosely on the road and left for traffic to consolidate. Settlements and hollows should not be allowed to hold water and to create pitchholes for want of a load of metal. Drains should not be allowed to become obstructed, thereby saturating and softening the whole roadbed. Culverts should not stand full of water to be burst by the expanding ice because of a neglected outlet. An almost inexhaustible list of these everyday occurrences could be mentioned which, in themselves apparently trifling, become in the aggregate of very great importance. Road-making is made up of details none of which can be overlooked, except at a loss.

The overseer should give immediate attention to all emergency work rendered necessary by washouts, etc., either by personal or hired labor. He should be able to send a man over the roads as often as necessary to repair the effect of ordinary wear. Better still, a man should be employed to devote his whole time to a certain mileage of roads, to make repairs as they become necessary. Every farmer, too, should appreciate the value of good roads sufficiently to voluntarily devote time to the roads passing his property, rather than permit them to become bad or impassable because of neglect.

It is one of the great advantages of the new systems of road management being adopted by townships and counties, that men can be employed to work on the roads whenever and wherever needed. Neglect to keep the surface of a road smooth and in repair permits it to break up badly in spring and fall, and the gravel or stone is largely wasted, being mixed with the mud from beneath. When this occurs a comparatively great expenditure is needed to make the road as good as before.

Foundation for Brick Pavements.

The best foundation for a brick pavement is always the concrete foundation, with as thin a "sand pad," as possible, not more than one inch, if the upper surface of the concrete is as smooth as it should be. The best foundation may sometimes be a waste of money, however, for the lightness of traffic, the excellence of the soil, the completeness of drainage and the perfection of the construction may be such that the brick surface will practically retain its uniformity upon a much less expensive foundation. Just what this foundation should be will depend upon the quality of the construction and materials in the items just mentioned. There are excellent streets on rolled gravel foundations, and there are poor streets laid with foundations of broken stone or bricks laid flat, the difference being mainly in the quality of the sub-grade and the perfection of the drainage. It would not be safe to choose between the two methods of construction without intimate knowledge of the materials and power to fix the method of drainage. The principles on which the choice should be made, may, however, be stated.

The loads which may be concentrated upon wheels rolling over the pavement are a prominent factor. On a busy city street they demand a concrete foundation On a residence street in a village, heavy loads are so infrequent that they need not be considered, and the choice of foundation may be made on other grounds. On streets intermediate in this respect the question must be considered and a broken stone foundation may be required for the loads on a business street in one town, while another would require concrete and another would be well served by a gravel foundation.

A common cause of the failure of brick streets on other than concrete foundations is the lack of effective drainage. If water can collect in the foundation or in the soil beneath in sufficient quantity, it will expand in freezing sufficiently to heave the pavement, or it will, at least temporarily, make the soil unequal in compactness, and thus permit uneven settlement, and finally cause the destruction of the smoothness of the pavement if not of the pavement itself. It is not necessary for this effect that the foundation be full of water. If it is retentive enough so that the particles of water in freezing will expand more than enough to fill the voids adjacent to them, the same effect, possibly in less degree, will be produced. The broken stone or gravel foundation gives the necessary size of voids to prevent this heaving effect. If the water fills the voids in any portion of the foundation these materials will be heaved by the frost in the same manner as less porous materials, or those with smaller voids, but it is seldom that the drainage of a brick pavement is so greatly neglected as this occurrence would indicate. And, in fact, the porosity of the gravel and broken stone foundations is such as to lead the water to the outer limits of the pavement and thus under most of its area there is none to freeze and heave. Even with a sand filler the amount of water getting through the joints to the foundation is very slight, except that defects in surface or in drainage cause the water to stand, in which case small amounts may find their way to the soil beneath. This will happen even with asphalt or tar filler, because this filler will soften and run out of the joints in hot weather, and thus escape its duty, except fortunately in the gutters, where an impervious filler is most to be desired.

If these principles are applied to the packed sand and gravel foundation their effect can be estimated. If the foundation is rolled in place it is very difficult to pick out all the soft spots and to get the foundation uniformly compact, so that a heavy concentrated load could easily make injurious depressed spots in passing over the pavement. The smaller size of voids might give opportunity for the freezing of water and heaving of pavement as described, and then for the depressions from concentrated loads on account of unequal solidity. Perfect drainage would remove this danger. Water tight joints would add to the security, if they can be obtained.

If the sub-soil is excavated and thoroughly rolled, and the sand and gravel are filled in and compacted as they are put in place, greater uniformity in solidity can be secured. If the proportion of fine gravel and sand is not too great, the retention of water with slightly imperfect sub-soil drainage will be less, and the durability of the pavement will probably be greater. As stated in the beginning, the probabilities of success in the cases under consideration can be judged only with intimate knowledge of the materials and conditions.

With either gravel or broken stone foundation the voids must be filled to such an extent that the sand cushion will keep its place on top. Otherwise its leakage into the voids below it, will cause inequalities in the brick surface. The surface of the stone or gravel should be rolled until it is smooth, so that the sand cushion can be made as thin as possible. This is especially so if any of it is likely to leak into the foundation, for the less thickness of cushion the less unevenness in brick surface from its disappearance.—*Municipal Engineering.*

Dirt Roads.

For six months of the year a dirt road is often as good a driveway as could be desired for light travel. In order to extend its usefulness the greatest care must be taken to see that drains and culverts are placed wherever needed, and that they are always in good working order. It should be well-crowned, or rounded up, so as to shed the water freely to the side ditches ; but in making this crown, sod and vegetable mold should be carefully excluded. A great deal of injury is done to this kind of road by running a grading machine along the edges, bringing loose sod and stones to the centre. This material should be thrown outwards and across the open drain. Under-drains should be used judiciously; while a complete system may not be used, tile drains should at least be placed where the water does not leave the side of the road early in the spring, or wherever the ground appears to be continually damp. If open drains are kept in good working order, and if the road is kept properly crowned, its condition in fall and spring will indicate the points at which tile drainage is most needed.

Dirt roads can be materially improved for summer travel, by passing a grader or planer lightly over them early in the spring, before the ground has become hard and baked by the sun. It is much more satisfactory to make a road good by the use of machinery, than to wear it down by travel. If a grader is not available for this work, a second hand railroad rail, one weighing from 50 to 70 pounds per yard, can be dragged by a team of horses up one side of the road and down the other with excellent effect, one round trip is usually sufficient. A steel beam is equally as good. The object of this treatment, is to smooth down the ridges and fill the ruts and hollows. The blade of the grader, or the rail, should be kept nearly square across the road so as to carry a sufficient amount of earth before them to fill depressions. It is most important that this work should be done while the ground is slightly moist.

It is not advisable to repair holes in an earth road by filling them with gravel or broken stone. The latter materials do not wear down so rapidly as the earth around them, with the result that they become bumps or ridges, and the result is to make two holes, where there was originally only one.

Nearly all roads in Ontario have at one time been "dirt" roads. By a process of evolution some have become gravel or broken stone roads. A dirt road nicely crowned and well drained will make an excellent foundation on which to place a layer of gravel. A driveway which has passed through an apprenticeship as a dirt road, and has, during that time, had due attention given to its drainage requirements, will have indicated the points at which open drains, culverts and underdrains are most needed. With these provided, gravel can be applied to the best advantage.

Statute Labor.

The inefficiency of statute labor is forcibly illustrated by an extract from a report of the clerk of the township of Tuckersmith, (Huron County), to the commissioner of highways :

"We annually let contracts for laying on about 200 cords of gravel, (this year 191 cords, at an average cost of $1.52), which is under the direct supervision of the council. This is a great help to the roads, and is nearly always put on to good advantage.

We have 2812 days statute labor which this year laid down for us 3676 loads. We showed the electors at nomination that if the above days were commuted at 75 cents per day, the proceeds (at same cost as our job work $1.52 per cord) would lay down 600 yards, clear of all expenses, and would be better material, more intelligently laid down, it seemed to almost stagger those who had never given the matter serious thought.

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

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

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

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

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

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

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

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

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

The citizens of Coldwater are considering installation of public waterworks system.

The Road Roller.

The advantages to be derived from a road roller in the construction of a broken stone road are becoming more and more appreciated. Unless a roller is used, the stone must be spread loosely on the road, and left for traffic to consolidate. A road should be made for traffic, not by it. To leave loose gravel and stone in the roadway is neither an agreeable method of constructing a road, nor will it produce the most durable road.

The consolidation of loosely spread stone or gravel by traffic is a slow process, causing much inconvenience to travel, during which the earth of the subsoil becomes mixed with the stone. Earth intermixed with stone prevents the strong mechanical bond which clean metal will assume when the stones are wedged one against the other by a roller. The particles of earth, when wet, have a lubricating influence on the stone, and under the action of wheels the surface is more readily broken up. By the use of a roller the earth subsoil should be first thoroughly consolidated. The stone should be placed on this foundation in layers, and each layer well compacted. In this way a smooth, durable, waterproof coating of stone, free from earthy material, can be laid over a firm foundation.

Among the benefits to be derived from the use of a roller on country roads are :

(1) A good road is at once made for vehicles.

(2) A dirt track is not made near the pitch, to avoid a pile of loose stone or gravel so that the side of the road is not cut up in such a way as to interfere with surface drainage.

(3) Traffic is not inconvenienced in the fall by being forced to drive through loose gravel or crushed stone.

(4) The gravel or stone is not forced down into the sub-soil by the wheels and feet of the horses ; is not churned and mixed with the earth, and there is in this way a great saving in the amount of metal.

(5) There is a great saving in manual labor, and repairs are more easily and effectually made.

An impediment to the use of heavy rollers in a good many townships, is the insufficient strength of bridges and culverts ; and, while valid in some instances, the objection is liable to exaggeration in others. Weak, wooden bridges and culverts could, in many cases, be temporarily strengthened sufficiently ; while in others, they could be entirely avoided by first completing the rolling on one side, and then passing around a block or so, to commence work on the other.

There are different classes of rollers. The horse roller, weighing six or eight tons, will do fairly well if a steam roller cannot be afforded, but the horse roller is not sufficiently heavy for the best results. It has to be much longer than the steam roller. The feet of the horses, in exerting sufficient strength to move the roller, sink into and disturb the road metal, and injure the shape and quality of the roadway, while on hills it is at a disadvantage.

The steam rollers are of various weights ranging from eight to twenty tons. Rollers of fifteen tons weight are those generally used by the towns and cities of Ontario. The cost of horse rollers is usually about $90 per ton, or from $400 to $600 each. Horse rollers are, however, generally so constructed that the weight may be increased by iron castings ; so that a roller of five tons may be made to weigh about six. Steam rollers cost about $3,000. For operation, a horse roller, with two teams, will cost $6 per day. A steam roller will cost $10 a day, including interest and depreciation, but will do several times the amount of work done by a horse roller, so that the saving in operation is considerable.

The amount of rolling which can be done in a day varies according to the quality of metal used, the kind and amount of binder, the thickness of the layer of stone rolled, and the weight and type of roller. With broken limestone, rolled by a twelve ton steam roller, the amount of stone compacted will average between forty and fifty cubic yards in a day of ten hours.

The Stone Crusher.

The stone crusher is one of the most important of modern additions to the list of road-making machines. By their use stone can be crushed much more cheaply than by the old method of hand breaking. So far as cost is concerned, stone roads are within the reach of every municipality having suitable rock in the vicinity. In the treatment of gravel a crusher is frequently very valuable, since, if containing many large stones and boulders, it will be possible to place a crusher in the pit and pass all the gravel through.

They are principally used in the eastern part of the Province, where good stone is plentiful and gravel is scarce. In some cases an engine is purchased, and in others, the engine is rented from some one in the vicinity owning a threshing engine. A traction engine is an exceedingly valuable part of a road-making outfit, as it can be used for operating the crusher ; if portable for moving it from place to place; and for operating a grading machine. Crushers are owned by numerous towns and cities in all parts of the Province. Townships owning them are: West Hawkesbury, Hallowell, Collingwood, St. Vincent, Markham, Ameliasburg, Winchester, Thessalon, (township), Smith, Cornwall, Nattawasaga, Drummond, North Grimsby and Derby. Crushers are owned by private parties, and used for municipal purposes in Earnesttown, Rear Young and Escott, Front Leeds and Lansdowne, Beckwith, Pittsburg, Elizabethtown and Kitley. There are also well known quarries at Amherstburg, Hagersville and other places on the Grand River, in the vicinity of Hamilton, at St. Marys, Kingston, Brockville, Ottawa and other points. The County of Hastings uses a crusher for the county roads, and the counties of Victoria and Peel have purchased a crusher which is supplied to the minor municipalities as they require it.

These machines are made after various patterns, the main division being into rotary and jaw crushers. Some of smaller size are set on wheels and may be moved readily from place to place. Others are for stationary work, in a quarry, or at a point to which stone, field boulders. etc., are brought to be broken. They are operated by steam power, a traction engine, or stationary engine, or by an electric motor, as circumstances render most advantageous. Some municipalities owning a steam roller obtain power from it, but this is apt to injure the roller.

One of the most valuable features of a crusher is that by attaching to it a rotary screen, the crushed stone may be separated into grades according to size, usually such as will pass through a three-inch ring ; such as will pass a one and one-half inch ring ; and fine chips and screenings. By placing the coarse stone in the bottom of the road, and the finest on top, a smoother and more durable road is obtained. An average cost of a crusher is $800 or $900, and with it stone at the crusher may be crushed for from 20 cents to 30 cents per cubic yard, according to the kind of crusher, the quality of the stone, and the facilities for handling the stone.

In municipalities where field boulders are plentiful, the property owners are very glad, as a rule, to have a means of disposing of them, especially when they can be hauled in winter time. If the stone is stored for future crushing, it should be put in piles on both sides of where the crusher is to be set up. Much can be saved by setting up a crusher so that it can be fed directly from the wagons, instead of wheeling the stone in barrows.

The broken stone should always be received into bins from the crusher, and from these, a wagon containing a quarter of a cord, can be loaded in from two to four minutes.

Bracebridge has water, light and power plants operated by the municipality with great success. Until two years ago the water and light service paid the town about $2,000 a year. Of late the town has installed a plant which, by utilizing the local water power, has enabled it to offer electrical energy to manufacturers at $12.50 per year per horsepower for a ten hours service. At present the yearly expenditure is $8,000, and the cash receipts are over $7,500. Estimating the street lighting and fire protection at slightly under $2,000 a year, the plant yields a profit of $1,500 a year. In addition the town has cheap power for sale.

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.

Village Can Acquire Land for Park Purposes.

335—J. B.—Have village councils the power to acquire lands for park purposes by purchase or expropriation?

Yes. Sub-section 1 of section 576 of the Municipal Act provides that councils of counties, cities, townships, towns and VILLAGES may pass by-laws, "for entering upon, taking and using and acquiring so much real property as may be required for the use of the corporation for public parks, etc., in the municipality and adjoining local municipalities, without the consent of the owners of such real property, making due compensation therefor to the persons entitled thereto, to be determined under the provisions of this Act, by arbitration where the parties do not agree."

Assessment of and Collection of Taxes From Railway Co.—Notice to Tax Defaulters by Clerk—Collection of Commuted Statute Labor—Fees of Township Constable.

336—I. F. C. T.—The municipality of A is a district comprised of three townships B, C, D. The E. F. railway runs across the municipality, occupying 65 acres. The right of way runs across two school sections. The assessment in revised roll takes up two lines, thus, E. E. Ry. Co., S. S. 1, township B, lots 1 to 20, 48.12 acrs; S. S. 2, township C. D., 14.95 acres; 65 acres. The clerk made up collector's roll the same way. Collector billed company several times, getting answer that they do not consider the statement correctly covers the company's property and to consult with the clerk with a view to getting property correctly entered on the rolls. The company have been asked to point out the deficiency but do not give a satisfactory reply. Collector has returned roll to treasurer, swearing not sufficient property to seize, though some claim that if proper diligence had been used there was property to cover taxes. I enclose bill as made out.

1. How should the assessment have been entered in roll? Each lot separate with amount of right of way on each?

2. Should treasurer register as so many fractions of lots the right of way across? Understand that right of way cannot be sold after the lapse of three years.

3. If registered as one item against right of way across municipality (each fraction of lots not being specified) and entered on collector's roll three years hence, could the company raise objections to paying other than that there was sufficient distress at time the collector had this roll?

4. What is the latest date that the clerk may send out notices of uncollected taxes on return of roll? We have great difficulty in inducing collector to return roll by April. They will not seize if they can get out of it.

5. The statutes direct that statute labor commuted in taxes shall be paid out to the order of the pathmaster in the road division it was derived from. What is the right disposition of commutation money paid in as arrears, it often being necessary to hunt back on three years' rolls to find what amount is for statute labor if any?

6. A township constable is engaged under bylaw at $1.75 per day or fraction thereof when his services are required. What other additional fees can he collect, none other being mentioned in bylaw? He wants 25 cents for each summons, 10 cents per mile and board.

1. We are of opinion that this property was not properly entered on the assessment roll. The quantity of land owned by the railway company in each lot and concession in the municipality should have been entered on the assessment roll and valued in separate parcels. The same proceedure should be followed by the clerk in preparing his collector's roll, and the taxes should be calculated upon and entered therein against each separate parcel. The company might pay the taxes on a part of their lands in the municipality and if it became necessary to sell the lands of the company to realize the balance, the treasurer could not ascertain what lands were to be sold, unless they were entered on the assessment roll as above, and returned to him in separate parcels. The company should have transmitted to the clerk on or before the 1st day of February, the statement mentioned in section 31 of the Assessment Act, and the assessor should have delivered to the company, the notice mentioned in the latter part of sub-section 3 of this section. However, the omission to observe these requirements of the law would not invalidate the assessment. They would only be subjects of complaint to the Court of Revision. (Great Western Ry. Co. vs. Rogers, 27 U. C. Q. B., 245). Section 72 of the Act makes the roll as finally passed by the Court of Revision binding, notwithstanding any defect or error committed in or with regard to such roll. The company could not have escaped payment of their taxes by reason of these irregularities, but since the collector has now returned his roll, he has no further authority to take the necessary steps to enforce payment. If, as a matter of fact, the company had goods and chattels out of which the taxes could have been made, while the roll was in the collector's possession, and the collector neglected to seize, the taxes cannot now be collected, either by distress and sale of the goods of the company, sale of the lands, action against the company or otherwise. Even if the collector's return is correct, we do not see how the lands of the company or a sufficient part thereof, can be sold to realize the amount of these taxes—as we do not see how the treasurer can make such entries in his books, as will enable him to identify the lands intended to be sold.

2. The treasurer should enter arrears of taxes in his books against each lot or part of lot in respect of which they are payable. The lands of railway companies can be sold for taxes under the same conditions, and at the same time after the taxes have become payable, as any other lands in the municipality. (See section 173 of the Assessment Act.)

3. We do not see how the treasurer could make an entry of this kind in his books, and if he succeeded in doing so, the company could successfully resist payment of the taxes, as it would be almost impossible to identify the lands, in respect of which the taxes are alleged to be payable.

4. This depends upon the length of time the collector has been given, within which to return his roll, by resolution passed pursuant to section 145 of the Assessment Act. The latter part of section 147 requires the clerk, *upon receiving a duplicate of the collector's account to the treasurer*, to mail a notice to each person appearing on the roll with respect to whose land any taxes appear to be in arrear for the year.

5. The statutory direction to which attention is drawn, applies only to the commutation money paid by RESIDENT defaulters. If the provisions of sub-section 2 of section 110 of the Assessment Act are observed, there can be no necessity for looking over the collector's rolls for three previous years as the overseer of highways for the division for the year following that in which default has been made, is the proper official to expend the money, and give his order on the treasurer for the amount. As to the expenditure of the commutation moneys paid in by NON-residents, see section 108 of the Act.

6. We assume that this constable was appointed pursuant to section 37 of chapter 225, R. S. O., 1897, which empowers councils of townships in districts to appoint constables, and to regulate the fees to be paid to them. If this is the case, this constable is entitled to be paid such fee only as the council has provided should be paid to him, namely $1.75 per day or fraction thereof when actually performing his duties.

By-Law Regulating Hawkers and Peddlers.

337—T. C.—A by-law is in force in this town relating to hawkers, Pedlars and petty chapmen. The first section reads as follows: "that no person shall within the town of —— act as a hawker, pedlar or petty chapman and carry on petty trades and go from place to place or to other men's houses on foot or with an animal or animals bearing or drawing or otherwise carrying any goods, wares or merchandise for sale, or being an agent for any person or persons not resident within the said town, shall sell or offer for sale tea, dry goods, watches, platedware, silverware, furniture, carpets, upholstery and millinery or jewellery or carry and expose samples or patterns of any such goods to be afterwards delivered within the said town, to any person not being a wholesale

or retail dealer in such goods, wares or merchandise without a license to be obtained as hereinafter mentioned."

1. Would persons from an adjoining municipality calling and taking orders for groceries, dry-goods, etc, and delivering them the following day require a license ?

2. Would butchers from an adjoining municipality require a license under the above section ?

3. Is beef classed as the growth and produce of the Province ? Please give sections in statutes giving power to councils of towns to pass by-laws to regulate the sale of meat in towns.

4. Can council pass a by-law to make butchers from an adjoining municipality procure a license to sell meat without making it apply to butchers of our own town ?

1. If these persons are the owners of the respective businesses mentioned in the adjoining municipality, they cannot be required to obtain licenses under the town by-law, before they can legally do business in this way in the municipality. In the case of Reg. v. Henderson (18 O. R., 144), the defendant, a wholesale and retail tea dealer residing and carrying on business in the city of Hamilton, sold tea by samples in the County of Halton to persons not being wholesale or retail dealers therein, and forwarded the orders to his own place of business at Hamilton, whence the tea, made up in parcels, ready for delivery, was sent to him at Milton for distribution to the purchasers. He was convicted of carrying on a petty trade. On appeal from this conviction it was held, following the authority of Reg. vs. Coutts, (5 O. R., 644), that he was not a hawker, "since he was not carrying goods for sale," nor did the amendment of sub-section 14 by clause (a), bring him within its purview, since the Act as amended, applies only to "agents" and does not include a principal. See also Reg. v. Marshall, (12, O.R. 55).

2. He may procure orders and deliver the meat afterwards without taking out a peddler's license.

3. (a) Beef is classed as part of the growth and produce of this Province. if the animals producing it are raised and grown in this Province. (b) Sub-section 5 of section 580 and sub-section 1 of section 581 of the Municipal Act.

4. No. A by-law of this time cannot legally discriminate against any particular class of butchers, but should apply to all persons engaging in this trade within the limits of the town, whether resident or non-resident.

Borrowing Powers of Councils—Fees of Members of Local Boards of Health - Collector Cannot be Dispensed With—Sale of Land for Taxes in Districts—Closing Old Road and Opening New.

338—G. D. D.—1. Has a township council any power to borrow money for the present years' expenses (to be repaid when the taxes are collected in the fall) without an appeal to the ratepayers ? If so state how to proceed ?

2. Can a local board of health pass a motion that the members be paid a certain amount for each meeting, and collect it ?

3. Can a council, by bylaw or otherwise, dispense with the collector and direct that all taxes be paid to the treasurer ?

4. Can a council sell the land liable to be sold for taxes, without giving it to the sheriff, or is it compulsory that the sheriff must do that kind of work ?

5. The concession in this township at a certain place is impassable on account of rock. The farmers, without any authority, made a road around this rock and kept as near as possible to the road allowance. Considerable work has been put on this deviation (statute labor) and no objection made by the owner who was not a resident in this township. He has since sold this place and now the present owner wishes to close this deviation. Road has been travelled for about ten years and the land is deeded. Can he close this road ? Should he do so, what recourse have the settlers who have been using it ?

1. Yes, if it is the ordinary current expenditure for the year. (See sub-section 1 of section 435 of the Municipal Act).

2. No. The Public Health Act, (R. S. O., 1897, chapter 248), makes no provision for the payment of any fee or salary to members of a Local Board of Health, for their attendance at its meetings.

3. A municipal council cannot legally dispense with the employment of a collector. A by-law may be passed under the authority of sub-section 1 of section 60 of the Assessment Act, (as enacted by section 4, of chapter 27 of the Ontario Statutes, 1899), requiring the payment of taxes to be made into the office of the treasurer or collector by any day or days to be named therein, but if payment of any of these taxes has to be enforced by distress of the goods and chattels of the defaulter, the seizure and sale will have to be effected by the collector or his bailiff.

4. A local municipal council in the unorganized districts has no authority to sell lands for taxes. The duties of municipalities and of their respective officers in relation to the sale of lands for arrears of taxes are contained in section 152 and following sections of the Assessment Act. This municipality being located in the District of Muskoka, section 56 of chapter 225, R. S. O., 1897, applies, and it provides that "the duties and powers imposed by the Assessment Act upon the treasurer of a county in respect to the collection of arrears of taxes, and in respect to the sale of land for taxes, shall be exercised and performed by the sheriff of the district." (See also section 53 of chapter 225, R. S. O., 1897).

5. The statement of the facts is ambiguous. If the assertion, "the land is deeded," means that the land forming the roadway was conveyed by the private owner to the municipality, to be used as a public highway, that settles the matter, and no one can interfere with its use as a public road. If, on the other hand, the land was not so conveyed, and it has not been expropriated for the purpose of a public highway under the Municipal Act, nor a by-law passed pursuant to section 637 of the Act (after the provisions of section 632 have been strictly observed) nor dedicated to the public as a highway by the owner of the land, by implication or otherwise, (which does not appear to have been the case), the present owner of the land may close it up. In this event the only redress the settlers have is to request the council to pass a by-law pursuant to section 637 of the Act, establishing a road in this locality. It is optional with the council as to whether it complies with this request or not, and, unless the general convenience of the public demands it, it should not do so.

Owners of Premises to Find Place for Disposal of Garbage.

339—T. C. N.—1. Is a town under any obligations to supply a dumping ground for the garbage, etc., of its own municipality ?

2. What is to be done when the Board of Health demands that every citizen shall remove from his premises all kinds of offensive rubbish when at the same time the by-laws of said municipality as well as those of all surrounding municipalities wisely forbid it being dumped on streets or public property ? Of course it stands to reason that no owner of private property would allow it on his premises nor would he care to sell a portion of his property to be used for such a purpose.

1. No.

2. Every person is subject to the provisions of sections 4 and 5 of the by-law at the end of the Public Health Act, and it is no excuse that the council of the municipality has not provided a place where garbage can be deposited. Every person must get rid of his garbage in some way as best he can, so as not to incur any liability for non-compliance with these sections.

Quarantining of Scarlet Fever Patient—Paying Expenses of Furnishing of Infectious Disease Reports to Physicians.

340—J. E. H.—1. A, who lives at least one quarter of a mile from any resident, was quarantined on account of his son taking scarlet fever. Was health officer compelled to remove child to a tent or hospital and provide a nurse for same at the expense of the township ?

2. Not doing so, are they liable for A's wages and board on account of thus being quarantined for six weeks, he claiming one week was sufficient had the child been removed ?

3. Had secretary or any health officer a right to take down placard without certificate from doctor that all was right ? Could A not take it down or the doctor in attendance ?

4. How do you interpret sections 91, 93, 94 and 106 Public Health Act ?

5. Must the party or council pay expense of all this ?

6. What can A legally claim as damages in this case, he being off work for that time and having destroyed produce and also clothing ?

Law says blank forms should be supplied to all practitioners in township.

7. How is the secretary to know where the doctors come from ?

8. Must board of health be at expense of supplying doctors from these places with placards, blank forms, etc., or just those residing in municipality ?

1. No.

2. No. But the Local Board of Health should furnish H and his family with nurses and other assistances and necessaries at his own cost and charge if he is able to pay the same, otherwise at the cost and charge of the municipality. (See section 93 of the Public Health Act.)

3. Rule 5 of section 17 of schedule B to the Public Health Act, provides that "No person shall remove such card (that is the placard mentioned in rule 4) without the permission of the Local Board of Health or one of its officers," and section 18 of this schedule prescribes the penalty to be imposed for the transgression of this rule.

4. Section 91 provides that no person, (except the attending physician or clergyman) who is affected with any of the diseases therein mentioned, or who has had access to any person affected with any of the said diseases, shall mingle with the general public, until such precautions have been taken, as in the opinion of the Local Board or attending physician, are necessary to prevent the spread of the disease. Section 93 requires a Local Board of Health, under the circumstances therein mentioned to take the steps therein prescribed at the expense and charge of the person affected with the contagious disease, or of his parents, or other person or persons liable for his support if able to pay the same, otherwise at the expense and charge of the municipality. Section 94 provides that the persons affected with any such disease shall not leave the place of quarantine, until they shall have been granted by the attending physician or medical health officer the certificate in the section mentioned. The provisions of section 106 are not usually taken advantage of by Local Boards of Health or municipal councils, except in cases of epidemics of contagious diseases, or in cases where they deem it impossible to stamp out or prevent the spreading of the disease, by simply quaranting the persons affected in their respective places of residence. If they deem the latter course sufficient, the extraordinary expense of erecting an hospital or tent need not be incurred.

5. The person affected, or his parents or other person or persons liable for his support must pay these expenses if able (except the expense of erecting a tent or hospital, if this is done) otherwise the municipality will have to pay them.

6. A can claim nothing by way of damages in this case, if the Local Board of Health and its officers have simply taken the precautions authorized by the Public Health Act to prevent the spread of this disease. Section 100 of this Act provides that a Local Board of Health MAY give compensation for any bedding, clothing or other articles which have been exposed to infection, and destroyed under its direction, and this section further provides that the board may give compensation for the same. The question then is whether it is compulsory on the part of the board to give compensation, or whether it is optional to do so. Subsection 2 of section 8 of the Interpretation Act, declares "The word "shall" shall be construed as imperative and the word "May" as permissive. Reading this subsection along with section 100 we think that it is optional with the board whether it will award compensation or not, but as the power is given to award compensation we think it should do so, because it is pretty hard upon the person quarantined to have his property destroyed and to have to bear the loss himself.

7 and 8. Rule 1 of section 17 of schedule B appended to the Public Health Act provides that "The medical health officer (or secretary of the Local Board of Health) shall provide each medical practitioner practising *within this municipality* with blank forms etc." It does not signify where the physician permanently resides, so long as he practices his profession wholly or in part in the municipality. If he does the latter, he is entitled to be supplied with these forms if he applies for them.

County Council Not Liable to Build Bridge in Township.

341—A. C.—We have a bridge over or about 120 feet long in our township but not on a township line. Is it the County council's duty to build or in any way to contribute to the building of a bridge of so great a length? By way of explanation, it is not a new bridge, and the present one is past repairing so that a new structure will be required.

The county council is under no obligation to contribute anything towards the building of this bridge, unless it has been assumed by a by-law of the county council with the consent of the township municipality. (See sub-section 2 of section 613 and sub-section 1 of section 616 of the Municipal Act).

Effect of Purchase by Municipalities of Lands at Tax Sales.

342—T. P. N.—1. This council bought in several lands at a sale of those lands for arrearages in taxes, and has deeds for them. Do those deeds hold good for all time or only for a certain number of years?

2. If only for a certain number of years, how many?

1 and 2. Assuming that all the proceedings leading up to the sale of these lands for taxes and their purchase by the municipality are valid, the deeds given to the municipality therefor, if properly prepared and executed, vest the lands therein described in the municipality, until disposed of by the latter, unless they are sooner redeemed as provided in section 200 of the Assessment Act. Sub-section 3 of section 184 of the Act provides that "it shall be the duty of the council of the local municipality to sell any lands so acquired within *seven* years from the time when they were acquired."

Grant of Lake Front.

343—T. J. R.—A lake front adjoins the town road and is used by people in boating. Can an individual or company obtain a patent for a part of the water front to build a boat house on?

Yes. If the lake front is vested in the Crown and the Crown Lands Department sees fit to make the grant and issue the patent.

Assessment of Lumber, Timber, Logs and Rails of Railroad Company.

344—A. O.—We have several saw mills in this township which have escaped assessment upon their stocks on the plea that the banks are supplying the capital to run them. Now we wish to know

1. Are logs liable to assessment when laid at the mill to be cut if owned by the mill owner (or if owned by the bank should the bank be assessed for them?)

3. Is the lumber when cut and piled in the township liable for assessment in the name of the parties cutting it or in the name of the company or bank for which it is cut?

3. We also have parties taking out timber and storing it along the railroad until they can ship it. We wish to know if it is liable to be assessed, and further, in tne event of its being assessed, but before the collector's roll is made, the property is removed, could we recover our taxes from the different companies that were assessed for timber, bark, etc.?

4. Are rails on the railroad liable for assessment outside of the roadbed, which is assessed by the acre?

5. We have mills that cut their logs in other townships (not organized) and float or draw their logs to the mills which are in this township. Can we assess them on such logs or where the mills are in other townships (both organized and unorganized) who pile their stocks of lumber in this township for the purpose of shipping and selling?

1. Subject to the provisions of subsections 24 and 25 of section 7 of the Assessment Act, these logs should be assessed in the name of the owner (whether the bank or the mill owner) as well as in the name of the trustee, agent, or other person (if any) who is in the possession or control thereof. (See subsections 1 and 2 of section 38 of the Act.)

2. Yes. This lumber is assessable in the same manner and to the same extent as the logs mentioned in question number one.

3. Yes. This timber is assessable as above stated. The municipality being in a district without county organization, if the parties assessed have no, or insufficient, goods within the municipality liable to seizure for taxes, the corporation can recover the amount, or balance, of the taxes payable by them, by ordinary action at law. (See section 142 of the Act.)

4. No. It is only the land occupied by the road, not the superstructure, that is liable to assessment. This was judicially decided in the case of Great Western Railway Co. v. Rouse (15 U. C. Q. B., 168) and a number of other cases.

5. These logs and the lumber are assessable in the municipality as stated in our answers to questions number one and two.

Enforcement of Claim for Damages for Injury to Cutter and Harness.

345—G. I.—A, a resident of N, while driving along a concession road in this township on the 8th day of Feburary last, with a horse and cutter, drove, so he says, over the end of a culvert and damaged his cutter and harness to the amount of $3.90, and his horse damaged to the extent of $10, and on Febuary 21st left a bill with the janitor of the hall to hand to the reeve, which was done, claiming $13.90 in all. On April 24th the reeve received a claim by A's solicitor for $33.40, and stating if claim was not settled within one week that A would

be free to claim such damages as he may be entitled to recover. Now the questions are :

1. A claims the township is liable owing to the culvert being only 16 feet long and some more to one side of the road, not fair in the centre. Does the law require a stated length that a culvert should be ?

2. A admits that the culvert was good only says it was covered up with snow and he did not see the end of it. Now said culvert was about 2½ feet wide and about the same depth. Does the law require a railing on such culvert ?

3. Which of A's bills is the correct one, the $13.90 or the $33.40, or can he keep adding to the amount at pleasure ?

4. A attributes it to the culvert being covered with snow but I think the accident occurred through lack of snow and him following along the edge of the ditch and in that way went over. The end of the road is about 28 or 30 feet wide where the accident occurred. Would the council require to have a railing at the edge of the ditch on the sides of the road ?

1. No, but a culvert should be of such length and other dimensions as to a court or judge would seem sufficient for the safety of the public, under the circumstances of the case.

2. We have not sufficient information to enable us to say whether the council, in order to avoid responsibility for accidents should erect and maintain railings at either end of this culvert. If the culvert is sound, free from obstruction, with a way for travellers sixteen feet wide between the ends of the culvert, (as we infer from the statement contained in question number one), and is generally in such a condition, that any person exercising reasonable care and caution, could travel over it, without meeting with any accident, by reason of the absence of railings, we do not think their erection by the council is necessary.

3. We cannot tell. If A is entitled to recover anything at all from the municipality, it is only the amount of the damages he has actually sustained. The sum mentioned in any demand he may make, does not in any way, fix the amount for which the municipality is liable.

4. If the highway at this point is from 28 to 30 feet in width, well graded, and free from obstructions, and in such a condition generally, that any person, exercising reasonable care, can travel along it, without incurring any danger of accident by reason of the absence of railings along the ditches on either side of it, their erection by the council is not a legal requirement.

Collection of Damages for Injuries to Horse.

346—I. A.—Can a man collect damages for injuries to his horse caused by a defective bridge, and if so, what proof must he have as to the injury, and how much can he collect, and would it make any difference in the case if he was aware before crossing the bridge that it was in a dangerous condition ?

Damages can be recovered for injuries to the horse, if the claimant can prove to the satisfaction of the court hearing the case that the bridge was, as a matter of fact, out of repair, that this non-repair was due to negligence on the part of the municipal corporation, and that the damage was sustained by reason of the non-repair. There must be some direct evidence of the neglect of some duty on the part of the corporation which is sued. If the non repair of the bridge was due to the act of some third party the corporation will not be held responsible in damages, unless, (1) the corporation has had express notice of the existence of the obstruction or defect. or (2) it had been there so long as to warrant the finding that the corporation was aware of it, and might have amended or removed it. Before the action is instituted notice of the accident and the cause thereof must be given by the claimant to the municipality within thirty days after the happening of the accident, pursuant to subsection 3 of section 606 of the Municipal Act, and the action must be brought within three months after the damages have been sustained. (See sub- section 1 of section 606.) We cannot say what sum can be collected as damages in the case, as we do not know the value of the horse or the extent to which it was injured. If the claimant was aware of the existence of such a defect in the bridge as would likely result in injury to himself or his horse, when he drove over it, and, notwithstanding this knowledge, he persisted in driving over it, he is guilty of contributory negligence and not entitled to recover anything from the municipality.

Duties of Assessor as to "Aliens."

347—SUBSCRIBER 1. The assessor in making the assessment of a township marked in column No. 4, persons that are not British subjects and residents "F. Alien." Was the assessor justified in doing so ?

2. Should the clerk in preparing the voters list, leave those names off the list ?

1. No.

2. No.

Powers of Private Parties to Drain on to Highways ?

348—G. G. A.—In a certain work on municipal law the following occurs : "Draining to a road—Lands adjoining a road or highway where the natural course of the water is towards the road may be drained thereon and the municipality is required to provide an outlet for the surface and other water which naturally flow to such road. In case no such outlet is provided, the municipality is liable for any damage that may be thereby occasioned other property that may be flooded."

In a matter which came up for consideration today, the reeve referred to the above, and we were both surprised to find it stated as the law. I am under the impression that as regards drainage, the lands occupied as highways of the municipality are in the same position as to those of private individuals, or more properly expressed, a private owner has, as regards draining his lands, no more extensive right against the municipality than a private owner whose lands are adjacent to his. In fact, the municlpality as regards its highways, is now an "owner" under the Ditches and Watercourses Act, by section 1 of the Drainage Amendment Act, 1899. If the above quotation were correct the highways in some localities might be converted into canals or watercourses at the instance of any private individuals. Do you think a landowner can collect water in a ditch and thus turn it on to adjoining highway merely because it runs that way, without taking proceedings under the D. and W. Act, and having the cost of maintaining the ditches apportioned as between such owner, the municipality and others ? I contend that, apart from the provisions of the above Act, the municipality cannot be compelled to receive drainage from adjoining lands by ditches or drains, but only such water as comes by natural percolation. Am I right in this ?

We do not agree with the interpretation of the law on this subject as contained in the quotation given, but consider your view of the matter substantially correct. A case in point is Darby v. the township of Crowland (38 Q. B. 338). There had been for many years a culvert across a highway adjoining the plaintiff's land, through which the surface water from his land had been accustomed to pass, but the pathmaster closed it up, and made the roadbed solid, by which the flow of surface water from the plaintiff's land was impeded, and the land remained wet longer than it would otherwise have done. The corporation, by resolution, approved of the pathmaster's action. It was held that the plaintiff had no cause of action, *for there was no right of drainage across the highway for the surface water*, and the corporation could not be liable for not exercising its discretionary powers with regard to drainage of lands. Owners of lands desirous of draining them upon or across highways should take proceedings to have a drain or drains constructed under the provisions of the Ditches and Watercourses Act.

Registration of Deaths.

349—A. B.—Will yon please pardon me for dissenting with your answer to question 293.

1. Your quotation is wrong, section 36 instead of 26.

2. Section 36 provides that every municipality shall pay annually to the division registrar appointed therefor under this act a fee of twenty cents each complete registration of a birth, marriage or death returned according to the schedules provided under this Act, etc.

3. Section 24 requires a certificate of registration before burial (a complete registration). Sub-section 2 of section 24 confers the duties of registering deaths upon the nearest division registrar. (That must be a complete registration), but such division registrar shall forward the original certificate to the registrar of the division in which the death occured. There is another complete registration.

I had some difficulty in understanding this matter. I corresponded with Dr. Bryce and was informed that the registrations should be complete in all such cases. The facts are reported to the department, a certificate to the treasurer of the municipality is issued. The obligation is then imperative. The treasurer shall pay it. I am assured that the registrar general acknowledges double registrations, and issues certificates for the payment of the fees.

1. This was simply a typographical error. The proper section is 36.

2. This point is not free from doubt, but if the registrar general, (on whose certificate the division registrar's fees are to be paid), construes section 24 of the Act, (R. S. O., 1897, chapter 44), as meaning that the same death can be registered twice in full and the fee provided by section 36, paid for each registration, this will ensure the receipt by each division registrar of his fee for the registration.

Opening of Part of Road Allowance.

350—D. J. S.—Can a council open 33 feet of a side road that has never been open, they having some time ago previously leased the other 33 feet to a railroad company for a track ?

If the the 33 feet proposed to be opened is part of an original road allowance, there is no reason why the council should not open it, if they deem it in the public interest to do so.

Constructing Drain Over Lands of Railway Company.

351—W. W.—About two years ago a municipal drain was dug up to a G. T. R. track. The engineer in charge assessed lands above the track for the outlet. J. H., one of the owners of lands so assessed threatens an action against the township to compel the council to refund the amount already paid for outlet and agree not to collect any more of the ditch assessment against his land until a proper outlet has been provided across the railroad property, there being no outlet for this water across the track up to the present time.

1. Was the engineer justified in so assessing the lands above the track, there being no outlet for the water provided by the scheme ?

2. Can the council compel the company to provide an outlet across its property for the water off the lands assessed ?

3. If the company can be compelled or is willing to put in a culvert across the track, who should bear the expense ?

4. What would you advise the council to do under the circumstances ?

1. The engineer should have continued these drainage works to a sufficient outlet, that is to a point where no injury would be done to either lands or roads, if such a course was possible, or, if in his opinion, it was the better course, he should have proceeded as authorized by section 1 of chapter 32 of the Ontario Statutes, 1901. Before instructing the engineer to make his report and examination of the proposed drainage works, the council should have arranged with the railway company for crossing their property as provided in section 85 of chapter 226, R. S. O., 1897.

2. No.

3. The only way the drainage works can be carried across the railway lands is under an agreement with the company entered into pursuant to section 85 of chapter 227, R. S. O., 1897, and the company is not compelled to enter into such an agreement.

4. The council should endeavor to enter into an agreement with the railway company under the above section, and, in the meantime, refrain from collecting any further assessments until the drainage works are properly completed.

By-law Prohibiting Cattle From Running at Large.

352—SUBSCRIBER 1. At present in our township we have a by-law in regard to cattle running at large which allows only two cows to run at large in our township on our roads. Can a person turn out all his cattle on road if he has a man to herd with them. Some say according to the British herd law he can.

2. We are about passing a bylaw that all cattle must be herded (that is on our highways). Can we frame the by-law so as two cows per family could be allowed and then, of course, these to be herded ?

3. Is a person compelled to keep up a road fence ?

4. If a person has no fence along the road and some cattle get on his crop and do damage, is the owner of the cattle responsible ?

1. We assume you mean that the by-law allows two cows for *each owner* in your township, to run at large. If cattle are being "herded," that is are in charge of some person on the highway, they are not "running at large."

2. If the by-law proposed to be passed, provides that ALL cattle on the highway shall be "herded," that is in charge or under the control of some person, it will mean that NO cattle shall be allowed to run at large in the township.

4. Yes. The owner of the cattle should take care of them, so that they occasion no injury or damage to any other person.

Preliminaries to Passing By-law Granting Bonus to Manufacturing Industry.

353—W. L.—1. A company applies to a municipal corporation for a bonus towards the establishment of some industry. Before the municipal council can introduce such a by-law must they not have a petition presented representing a certain percentage of voters and of the assessed value of the property owners concerned ? If so, what number ?

2. Also in order to have valid a by-law of this nature has it to be approved of by the Legislative Assembly ?

3. Also say where it gives the law regarding the petitioning. I notice several times in the Act relating to granting bonuses, the matter of petition is referred to.

1. We assume that the industry referred to is a MANUFACTURING industry. If so, a petition from the voters or ratepayers of the municipality is not a necessary preliminary to the passing of a by-law of this kind. But it must be passed in accordance with the provisions of sections 8, 9 and 10 of chapter 36 of the Ontario Statutes, 1900.

2. No.

3. There is no such law. The petition you saw mentioned was probably a request by a council that had passed a by-law of the kind, which by reason of non-compliance with the existing law was defective in some particulars, to legalize the by-law, which would otherwise be irregular and inoperative.

Assessment of Goods in Store of Fish Company.

354 COMMUNICATION—A certain fish company carries on a store business during the fishing season, and as the store is not started till after the assessor has returned the roll, the goods are not assessed at all. There is no by-law in force imposing a tax on goods.

1. Can the goods be assessed any time before Court of Revision ?

2. If not, what proceedings should the council take in the matter ?

1 and 2. By saying that "there is no by-law in force imposing a tax on goods, we assume that it is meant that the council of the municipality has not passed a by-law pursuant to section 36 of the Assessment Act. These goods cannot be assessed between the term of the return of the assessment roll by the assessor, in accordance with the provisions of the Assessment Act, and the sittings of the Court of Revision. No alteration or addition can be made in or to the assessment roll after it has been duly returned by the assessor, except under the authority of the Court of Revision, or Judge, or Stipendiary Magistrate on appeal to him from such court.

Assessment of Uncompleted Buildings.

355—INQUIRER—Has an assessor in an incorporated village any authority to exempt from assessment a property upon which is erected a dwelling house and stable but not quite finished ready for occupation ? Does the fact of the buildings not being finished exempt them from any taxation.

No.

By-law Establishing New Road.

356—J. D.—1. Is it necessary for a township council to pass a by-law to open up and establish a new road apart from the regular highway if none of it has to be forced ?

2. If so, would the previous notice be required ?

3. Should the by-law be passed before money is expended on making the road ?

1. Yes. See section 637 of the Municipal Act.

2. Yes. See section 632 of the Act.

3. Yes.

Formation of Union School Section.

357—W. D. M.—A union school section was formed four years ago from portions of existing sections in two municipalities. A movement is now on foot to establish another union section in which some of the sections will be affected that were affected by the former union. Can any of the sections whose boundaries were changed by a former union be altered for a period of five yeaas, as mentioned in sub-section 11 of section 43, chapter 292, R. S. O., 1897, or does this section not apply to this case ?

The law governing the matter is now to be found in sub-section 11 of section 46 of chapter 39 of the Ontario Statutes, 1901. As we understand it the formation of the proposed new union school section will in no way alter or interfere with the boundaries of the union school section formed four years ago, but that the new union school section will be partly composed of portions of the sections, out of which the existing union school section was formed. There is nothing in the School Act to prevent the including of portions of these school sections, other than those included in the existing union school section, in the union school section proposed to be now formed.

Collection of Claims Against Owner of Buildings on Highway.

358—I. A.—A certain party called A, purchased lumber and shingles and building material to erect a photograph gallery, and had the gallery erected on the public highway. A, the party who bought the lumber and built the gallery, left the country without paying any of his creditors for the material used in the building. Another party called B, and who had a small claim against A, after A had left, removed the building, which was set on blocks, from the highway on to his own premises, adjoining the public highway, without taking any legal steps in the matter. What I wish to know is, can B hold this

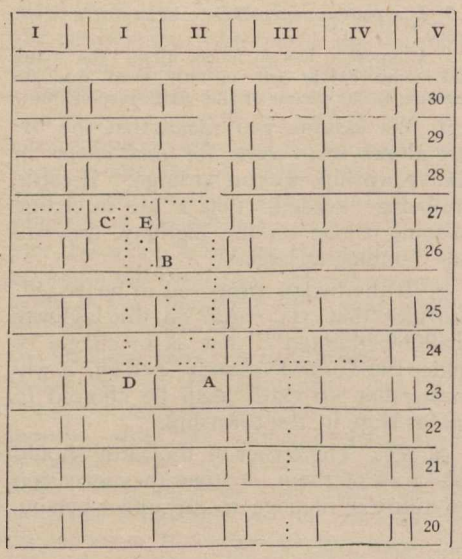
building for his claim in the above circumstances, or can the other creditors of A take proceedings to recover the amount due them from A, and what proceedings should they take and what will the cost of the proceedings be? The material put in this building amounts in all to $50 or $60, besides the labor of erecting, so that if the cost of procedure would be too much, it might not be worth while, but if not too much would like to recover value of material.

Though B had no legal right to remove the building in question upon his own lands, A's creditors may have some difficulty in accomplishing anything because we suppose their claims are small, within the competence of the division court, and the building now on B's lands may be so constructed as to form part of the lands, and if so, we cannot see how creditors having small claims can realize on their claims in the Division Court. If the building is a mere chattel, it can be seized under a Division Court exemption and sold, but, even in that case, the creditor having the first execution would take the whole proceeds or a sufficient part thereof to satisfy his claim. It seems to us to be a case where it will be best for creditors to put up with their loss.

Abandonment of Drainage By-Law.

359—COUNCILLOR.—The enclosed diagram represents a portion of a township which has been drained by the drainage scheme outlined in black ink. The drainage was found insufficient during the wet seasons of 1901 and 1902. Late in the summer of 1902, the township council was petitioned by a large majority of ratepayers interested to bring on an engineer to report on the best method of improving the said drainage. This was done. The engineer reported in favor of a diagonal drain, marked A. B. C. in diagram. The necessary steps were taken and the by-law passed in accordance with the Ontario Drainage Act. The work was commenced and partially done from B to C, but not completed owing to the onset of winter, and it has since been partly done to A. The value of the work done is $250 and the estimated cost of the drain $800. This drain did not prove satisfactory to those whose farms were crossed by the diagonal drain, although they took no steps to quash the by-law adopting said drain A. B. C. In March or April 1903, these, whose farms were crossed by the diagonal drain on their own responsibility and at their own expense, secured the services of a second engineer who reported in favor of drain A. D. E. as shewn in red ink on diagram. This report together with a petition signed by a large majority of ratepayers interested and asking that drain A. B. C. be not completed, and that drain A. D. E. be constructed instead, have been placed before the township council. A minority of those interested want drain A. B. C. completed in accordance with the by-law passed on the report of the engineer employed by the township. They contend that drain A. B. C. is the most efficient as well as the cheapest drain. Has the council any power to act in the matter, other than to complete the drain A. B. C. as now begun? If so, what sections of the Ontario Drainage Act will govern the case?

We do not think the council has any alternative other than to proceed with the construction of this drain under the by-law providing for so doing, passed in the summer of 1902. The drain therein provided for has been partially constructed throughout its entire length and a liability of $250 incurred therefor. The by-law having been acted upon to this extent



cannot now be repealed or abandoned and the council cannot collect the amount of the liability incurred on account of this drain from the ratepayers generally—but it must be collected from the several owners of the lands benefited by the construction of this drain in accordance with the assessment schedule contained in in the by-law.

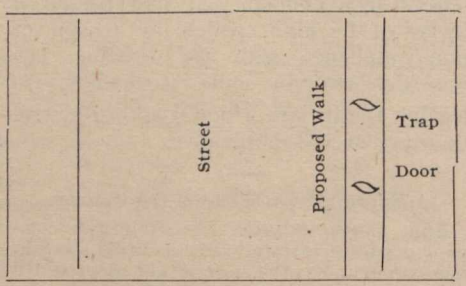
Councils of Villages Cannot Compel Owners to Cut Weeds on Highway.

360—E. C. C.—Would you be kind enough to let me know whether municipal councils of villages have the power to compel owners of property to cut the weeds on the highways in front of their property?

No.

Council can Close up Trap door in Sidewalk.

361—J. M.—Our council is contemplating laying some cement pavement and on the street where they propose laying it is a trap door over a cellarway belonging to one of our merchants. We want to know if the council can compel the merchant to close up the trap door. This trap door has been in existence for a great number of years.



If this trap door is in the sidewalk on the highway which is vested in and under the control of the municipality and for the keeping of which in a proper state of repair it is responsible, there is nothing to prevent the closing of it by the council in building the cement walk, if such a course is deemed necessary.

Councillor Can be Appointed Commissioner And Paid for Services.

362—W. D.—Is it legal to appoint by resolution a member of the council a commissioner to superintend the construction of any work under the authority of the council and can he legally collect pay for his work?

Yes. Clause (a) of sub-section 1 of section 537 of the Municipal Act provides that "nothing in this Act shall prevent any member of a corporation from acting as commissioner, etc., over any road or work undertaken and carried on, in part or in whole, at the expense of the municipality; and it shall be lawful for the municipality to pay such member of the corporation acting as such commissioner, etc."

By-Law Restraining Running at Large of Cattle

363—Our council passed a by-law many years ago, which is still unrepealed, in which the following words occur:

1. "No cattle, horses, bulls, sheep, pigs or geese shall be allowed to run at large within the township of ——, the only exception being milch cows, which (if not breachy), may be allowed to run at large from the first day of April to the first day of December in each year." Some persons hold that they, the council, have no authority for passing such a by-law to allow any animals to run at large. Please give section sf Munieipal Act, referring to cattle running at lerge.

A by-law containing the clause mentioned can legally be passed by the council of a township. Section 546 of the Municipal Act provides that councils of townships may pass by-laws "for restraining and regulating the running at large or trespassing of ANY animals, etc." (See also chapter 272, R. S. O., 1897).

Election of Trustee to Fill Vacancy.

364—J. D. K.—Trustees give notice of annual meeting in December 1902. Afterwards one of trustees accepts nomination for county councillor. On school meeting day he decides to resign as school trustee, he having another year to serve. They re-elect the retiring trustee and elect another in the place of the one resigned to serve one year. Now is the one for one year elected legally, no notice having been given, but usual form for annual meeting?

We are of opinion that there is no legal objection to the election of the ratepayer who was elected trustee for one year only, assuming, of course, that he was otherwise qualified, under the provisions of the Public Schools Act, 1901. He was elected to fill a vacancy caused by the resignation of one of the trustees, and section 16 of the Act provides that "a trustee elected to fill a vacancy shall hold office only for the unexpired term of the person in whose place he has been elected."

All Townships in County Should be Included in County Road Scheme.

365—J. H. B.—1. When county road system carries in a county can the county council let one township drop out and hold the others to it?

2. The boundary line between the two townships was designated as one of the county roads. If that township is allowed to drop out can it be held responsible for half share of boundary line?

1. No.

2. Our answer to question number 1 renders it unnecessary to reply to this.

Town Should Maintain Streets and Sidewalks Around County Buildings.

366—J. H.—In case the county buildings of a municipality are situated in a town, such

town being a part of the county, should the town or the county improve the streets and sidewalks bordering on the county property or should the municipalities undertake the work jointly. Please give legal phase of this question as well as also the practice of the municipalities of the province generally ?

We assume that the court house and goal of the county are the buildings referred to. By sub-section 5 of section 7 of the Assessment Act these buildings are exempted from assessment and taxation, nor are they, or the land on which they stand, liable to be taxed under the local improvement clauses of the Municipal Acts. The streets and sidewalks thereon in the vicinity of and around the county buildings, should be maintained and kept in repair by, and at the general expense of the municipality within whose limits they are located. (See also section 679 of the Municipal Act.)

Secretary of School Board in Unorganized Township Should not be Assessor.

367—A. B. C.—1. Secretary has been appointed by School Board in an unorganized township as assessor, said secretary holding both offices ; he also being convener of Revision Court. Can he legally sit in said court or will the board have to call in another secretary from another section ?

2. What is the best to do in such a case ?

1 and 2. The secretary of the school board should not have been appointed its assessor. The two offices are incompatible and should not be held by the same person. By sub-section 1 of section 26 of the Public Schools Act, 1901, courts for the revision and correction of school assessment rolls in unorganized townships are to be composed of the secretary-treasurers of all school boards in the unorganized townships and a secretary-treasurer of a school board could not sit as a member of a Court of Revision to revise and correct his own work as assessor of a school section. Sub-section 2 of section 27 requires the return of the assessment roll by the assessor to the secretary-treasurer of the school section. A person in his capacity as assessor could not very well make a return to himself in his capacity as secretary-treasurer of the school section. The school board should appoint some competent person other than its secretary-treasurer, to make this assessment and otherwise proceed as required by sections 16 and 27 of the Act.

Sale of Land for Taxes When No Seizure Made by Collector.

368 - J. M.—Can land be sold for arrears of taxes when there was as much crop on the land each year as would have paid the taxes if the collector had sold it ? The taxes of 1902 being paid and if the taxes of this year 1903 be paid when due, can that land be sold for taxes due before 1902 ?

The law is that if there are chattels our of which the taxes might have been made by the collector and by reason of negligence on the part of the collector in making the taxes out of such chattels they are not made, they cannot be returned against the lands.

Village Council Can Purchase Land for Park Purposes, But Not for Exhibition Grounds.

369—J. B.—Our village is in need of a public park or grounds on which games may be played and to hold our fall fair. Can the council purchase the ground and issue debentures to pay for it without submitting the by-law to a vote of the ratepayers ?

Sub-section 1 of section 576 of the Municipal Act empowers the councils of villages to pass by-laws "for entering upon, taking and using and acquiring so much real property as may be required for the use of the corporation for PUBLIC PARKS, etc., and the assent of the duly qualified electors of the municipality is not a necessary preliminary to the passing of a by-law of this kind, unless the amount to be paid for the land acquired for the purpose is not to be paid within the municipal year in which it is acquired. In this case the by-law should receive the assent of the electors as provided by sub-section 1 of section 389 of the Act. A village council is not authorized to purchase lands for EXHIBITION purposes, as are councils of cities and towns by sub-section 3 of section 576, but by sub-section 3 of section 45 of chapter 43, R. S. O., 1897, any municipality owning lands for public purposes may make agreements with any agricultural association for the use of such lands, etc.

Council Cannot Purchase Dumping Ground.

370—C. A. P.—Our council are desirous of purchasing a piece of land either in the municipality or outside to be used for the purpose of depositing the garbage from the village and burying dead animals. Have they power to acquire such lands for the purpose.

No.

Proper Person to Examine and Let Drains—Auditors Duties—Rule as to Passing of By-Laws Restraining Cattle From Running at Large Witness to Will Cannot Take as Beneficiary.

371—J. M.—1. Who is the proper person to examine and let government drains in the township where a by-law is made under the Act ?

2. If the township is threatened by a law suit about a government drain not having a proper outlet, is it not the reeve's place to examine the drain?

3. If township funds are put into a bank, should not the interest coming to the township be properly audited by the township auditors ?

4. How many readings should a by-law have by the council in passing to have it legal ?

5. Are pigs and sheep allowed to run at large on the road, and if damage is done by them who is responsible ?

6. A party makes a will and in witnessing the testators signature after it is read over and explained. The conveyancer is a disinterested person and signed the will as a witness. The other witness was one of the legatees son of the party making the will. All the property was left to the family divided. Is such will legal, or stand good the first witness could swear that there was no undue influence caused or made in the signer of the will ? If the family, which is the other legatee, was all agreeable to this party who signed the will as a witness, to get his part, would not the will be all right.

1. From the way this case is stated we cannot infer that these drainage works are being or were constructed by the Government, or with money loaned by the Government to the municipality for the purpose, but that the work was undertaken under the provisions of the Municipal Drainage Act (R. S. O., chapter 226). Assuming that this is the case, the person whom the council considers competent for the purpose, and appoints to let the work, whether he is a duly qualified engineer or not, is the proper person to do it.

2. It is the duty of the COUNCIL to consider what is the best course to pursue when a lawsuit is threatened, and if the members think that it would be to the advantage of the municipality to have the reeve examine the drain, they can instruct him to do so and report to them. We refer you to sections 73, 74 and 75 of the Drainage Act.

3. Yes.

4. This altogether depends upon the rules of order (if any) adopted by the council. If the council has adopted a rule of order requiring a by-law to be read one, two or three times before it is finally passed, the procedure laid down by the rule of order should be followed. If there is no rule of order regulating this matter a simple resolution of the council that the by-law be passed is all that is required.

5. Yes. Unless a by-law has been passed by the council pursuant to sub-section 2 of section 546 of the Municipal Act, restraining and regulating their running at large. The owners of any animals running at large are responsible for any damage they may commit.

6. The fact that one of the witnesses to the signature of the testator is a beneficiary under the will does not render it invalid, but disentitles the beneficiary who signed as a witness to take anything under the will. If all the legal heirs of the testator are sui juris and are willing to allow the legatee who signed the will to take his share out of the estate there is nothing to prevent them doing so.

Liability in Small-Pox Case.

372—A. M.—In 1901 the medical health officer of the township of A discovered what he said was a case of small-pox in a resident family of the township. The patient was duly isolated and directions left that if any more of the family shewed the same symptoms the medical health officer was to be notified. In a few days a young woman in the family shewed the same symptoms and the medical health officer was duly notified, when the latter paid another visit. Three visits in all were made. About the end of the year 1901 the medical health officer put his bill in to the council for services rendered in the above case. The council paid the account. This year there are some new members on the council board and they have recently sent an account of $40 to the man who was said to have small-pox in 1901 for the services of the medical health officer above referred to. The medical health officer has never been the family doctor and lives about ten miles distant. Can the council recover the amount of $40 from the then small-pox patient

If the salary of the medical health officer did not include the account paid to him in this case, and it is reasonable, we cannot see why the person liable for the support of the patient should not pay to the

municipality the amount paid by it under section 93 of the Public Health Act.

Levy and Collection by County of Moneys Raised for Improvement of Roads.

373—S. M.—I enclose you a copy of by-law of the county of C. asking your opinion on section two of said by-law. After the amount of money set forth opposite the names of the several municipalities in schedule two of the said by-law would have been expended, and found not sufficient to improve or maintain the roads designated, would the county then have to make a levy on the county as a whole or directly on the township requiring such. I have been led to believe that only the money raised on a township can be expended in that township.

The roads designated in the by-law when assumed by by-law of the county council become county roads, and must be improved, maintained and kept in repair by the county. The sum to be raised annually to meet the debentures to be issued for the $270,000 required by the county to improve these roads, must be levied against and collected from each municipality in the county, rateably, according to their equalized assessment. If any further sum is required for the purpose it must be levied and collected in the same way, and the county council has no authority to levy such sum against and collect it from the municipality in which it is expended only.

Qualification of Hotelkeeper to Retain Seat in Council.

374—P. F. S.—We have a member at our board who was elected as a councillor last New Year by acclamation. In March he purchased an hotel, obtained license, moved in the same and is now, according to the unanimous wish of the ratepayers, holding his seat, not however, taking any active part re-motions. Is he legally qualified to hold out his term of office for 1903 and take an active part in the carrying out the councils duties or not?

We assume that this councillor obtained the license in his own name and is selling liquor thereunder, and otherwise conducting the hotel business himself. If this is so, he has become disqualified to hold his seat in the council, by reason of sub-section 1 of section 80 of the Municipal Act. Section 208 of the Act, provides that in this event, "he shall forthwith resign his seat." If he omits to do so within ten days thereafter, proceedings may be taken to unseat him, as provided by sections 219 to 244, inclusive, of the Act. If no such proceedings are taken, he can continue to occupy his seat at the council board, and transact the business of the municipality, the same as any other member of the council.

Assessment on Formation of New Municipality.

375—A. P.—I would like to know if our township has the right to apply the last assessment for a division between this township, a part of which has since been incorporated into a town. That is our assessor was appointed and started his work on the 16th March and kept at it from day to day, and on the 4th April a notice of incorporation was sent to parties with writs for holding their election for aldermen, fixing the date of nomination on the 11th April, the day of voting on 18th April and the day of their first meeting on the 25th, but as stated above, the assessor was doing his work and assessed that part of the township on the 7th, 8th, 9th and 10th of April, and kept on until finished, but as some hold that the division should be made from the assessment roll of 1902 for not having assessed that part which is now incorporated before the 24th April.

It is somewhat difficult to gather from your statement of the case, the exact nature of the information you require. All we can say, until we receive some more satisfactory explanation of what is required, is that the *last revised* assessment roll will govern in both the old and new municipalities, until new assessment rolls are prepared and finally revised in the two municipalities, respectively.

Payment of Cost of Drainage Work in Village.

376—I. N. C.—In our village some years ago a deep outlet ditch was made to drain all the property to the south side of R road. The expense of same was charged up in taxes to the property holders on that side of track. This year the council were obliged to take up and relay new large crock tile on the north side of track on our main street. The old tile not being large enough and being badly broken and filled. Should the expense of this be taken out of the general fund, or can the people on the south side of track compel the citizens on north side to pay for it? When this drain was first put in it was paid out of general funds and has always been kept in repair in same way. I think it should be taken out of general funds.

None of these drainage works appear to have been constructed or maintained under the provisions of the Municipal Drainage Act, or the local improvement clauses of the Municipal Act. The council has no authority to levy and collect the cost of the repairing of the drains north of the railway line against and from the lands located in that part of the municipality which lies north of the railroad. It must be paid out of the general funds of the municipality.

Municipal Trading.

It is understood that the British Premier will appoint a royal commission to inquire into the subject of municipal trading. The government has long been desirous of grappling with this question, which admittedly rises to an issue of the first importance. The success of municipal trading in certain of the large municipalities is encouraging the smaller bodies to embark in undertakings for which they are hardly financialy strong enough.

Over a dozen municipalities have recently applied to Parliament for power to deal not only with the ordinary administration of electrical systems but also with those developments and accessories which have hitherto been left in private hands. This condition of things has led to a strong demand for an impartial investigation into the probabilities of the future, and into the security that ought to be exacted on behalf of the ratepayers.

Radical members of the House of Commons believe that the Government is anxious to limit the freedom which the municipalities now enjoy in respect to trading, and they have before now prevented the appointment of a Parliamentary committee of inquiry. The establishment of a royal commission will however, lift the question out of the arena of political controversy.

The following interesting opinion was recently given by the county solicitor to the warden of the county of Wellington:

"My opinion has been asked as to the legality of a council granting to a private individual the privilege of damming and backing the water of any stream crossing a public highway, and thereby lengthening the span of the bridge crossing any such stream.

I understand this question is asked with reference to a claim by the mill owner of Armstrong's mill against the county for compensation for having let the water out of his mill dam in order to facilitate the erection by the county of a bridge over the River Speed, on the boundary line between Guelph aud Eramosa. A copy of a memorandum of agreement, dated June, 1874, has been submitted to me. It appears to be an agreement between the then reeves of the townships of Guelph and Eramosa, in accordance with the resolutions of their respective councils, authorizing the same, whereby a payment of $100 from Mr. J. S. Armstrong to them appears to have been accepted in full compensation for damage done to the boundary line between the two townships by water overflowing the same from Armstrong's mill dam. I do not think it necessary, in connection with giving an opinion to the county council, with respect to the claim made against it now, to say what is the effect of the agreement referred to as between the two towhship councils and the mill owner. But, in my opinion, as between the county council and the mill owner, the agreement is not binding on the county.

I consider that the county council, in performing its obligations with respect to the re-building or repairing of the town line bridge, could, at the very least, insist on the water being let out of the dam so as to enable the work to be properly done, and the county council would not be under any abligation to make compensation to the mill-owner in connection with his having let the water out of the dam for that purpose."

Collingwood has purchased a steam road roller and a stone crusher. Lindsay and Napanee have decided to purchase steam rollers. Orillia proposes to buy a steam roller and stone crusher. The county of Wentworth has purchased a roller and several graders. A committee of the county council of Simcoe is considering the purchase of a steam roller and other machinery.

Legal Department

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

Re Allen and Town of Napanee

Counsel for Allen, moved for summary order quashing a resolution of the Town Council that "the Street Committee have instructions to see that the street trees, where necessary, be properly trimmed." The municipal act, R. S. O., ch. 223, sec. 574, sub-sec. 4, relating to the planting and trimming of trees on or adjacent to streets, purports to confer jurisdiction to pass by-laws thereupon to the councils of cities, towns and villages having a population of 40,000 or more. There are no towns and villages in Ontario with such a population. Yet sec. 575 contemplates that by-laws for cutting and trimming and removal of such trees on streets may be passed by towns and villages. Napanee is a town of 3,200 inhabitants. The applicant contended that the resolution was ultra vires. Held, that the proper construction of sec. 574 (4) is that towns and villages may pass by-laws authorizing some officer appointed for that purpose by the council to trim all trees, whether on or adjacent to the streets, whereof the branches extend over the streets. That is to say, power is conferred on the municipality to provide that these trees do not by their growth and extension of branches "obstruct the fair and reasonable use of the thoroughfare." These quoted words are from the tree planting act, R. S. O. ch. 243, sec. 2 (1), and are there applied to the tree itself as first planted, and the section in hand appears to be fairly readable as supplemental to that, so as to provide for the case of a tree rightly planted, and by growth no obstruction as a whole but yet becoming objectionable by its sweep and droop of branch. Taking it that jurisdiction exists, yet the power of general supervision must be exercised by by-law. The power to interfere is conferred by the municipal act, and is to be brought into operation as that act provides by sec. 325. Indeed, section 575 expressly indicates that trimming is to be done under the supervision of a by-law. Waterous v. Palmerston 20 O. R. 411, 19, A. R. 47, 21 S. C. R. 556, referred to. Order made quashing resolution for informality, but, as its validity on the merits is favored, without costs.

Todd v. Town of Meaford.

Judgment in action tried at Walkerton without jury. The claim was for damages sustained by plaintiff by the defendants wrongfully taking certain of plaintiff's lands for the purpose of straightening the Big Head River, thus depriving the plaintiff of the land which he required, or would have in the future required, to meet the needs of his expanding business, and injuring him by increasing the difficulties of access in other ways. The plaintiff had agreed to sell his land to the defendant railway company and to allow them to take immediate possession, without prejudice to him, and subject to the further stipulation that the acceptance of $400 from the company was to be without prejudice to the plaintiff's claim for damages "by flooding (if any) owing to the division of the Big Head River." Held, that neither of the defendants could, in view of this agreement, be held to have been trespassers. The damage anticipated by plaintiff (for the first time in his statement of claim), from his inability to expand his business to the extent he otherwise might have done, were so speculative and uncertain as to be beyond the limits of judicial calculation. Hamilton vs. Pittsburg, 190 Pa. St. 51. The $375 paid into court by defendants was adequate compensation for the land taken and the only damage shown, viz., to plaintiff's rip-rap. Judgment for the $375 in court. Plaintiff to pay costs as if both defendants had appeared by one solicitor, and had been represented by the same counsel at the trial.

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

Judgment in appeal by defendants from order of Divisional Court allowing appeal by plaintiffs from order of Meredith, C. J., dismissing their application to have all matters arising in the action referred to the drainage referee as an official referee The actions were brought for alleged injuries to plaintiffs' lands and crops by reason of the construction of certain drains by the defendants and the obstruction by them of certain ditches. Proceedings had also been begun by the plaintiffs under the Drainage Act for such other damages as could be recovered, if at all, only at a trial before the drainage referee under that Act. Meredith, C. J., had been of opinion that the drainage referee was not an official referee, and that there was therefore no power to refer as asked in the absence of a consent. But the Divisional Court had thought that the drainage referee, being an officer of the court, was an official referee, and referred the actions to him, The township now appealed on the ground that a wrong conclusion had been arrived at as to the effect of the statutory provisions. Held, that no one could be an official referee who was not one of the officers named in section 141 (1) of the Judicature Act, or had not been appointed an official referee by the Lieutenant-Govenor under section 141 (2). The drainage referee, while an officer of the court, and holding office by the same tenure as an official referee under section 88 of the Arbitration Act was not an official referee, his powers being defined by section 39. No reference to him could therefore be directed here except as a special referee by consent. Order of Divisional Court reversed, and that of Meredith, C. J., restored with costs.

Re Voters' Lists for 1901, Town of Carleton Place.

Judgment on case stated by the County Judge of Lanark for the opinion of the Court of Appeal or a judge thereof, under R. S. O., chapter 7, section 38.

Questions:—(1) At the Sittings of the court to hear and determine the several complaints of errors and omissions in the said voters' lists, held on the 12th day of November, inst., and adjournment thereof, it was objected that in the notice of complaint the printed "M. F. and"—did not disclose any ground of complaint within the meaning of the Act. Without calling for evidence I expressed the opinion that "M. F." had in connection with voters' lists matters acquired a meaning of "Manhood Franchise," and the word "and" could be treated as surplusage. Was I right?

(2) The notice of complaint, as filed, consisted of fifteen sheets, each in itself in the form No. 6 in the Act, the lists Nos. 1, 2, 3 and 4 being printed on the back of the notice of complaint, only the notice of complaint on the last sheet was filled out and signed by the complainant, but evidence was given that the whole fifteen sheets were attached together as they now appear when the complainant signed the notice of complaint on the last sheet, and handed the whole to the clerk, I expressed the opinion that, considering it my duty to further the franchise while entertaining great doubts, I thought that sufficient. Was I right?

(3) The complainant asked leave to amend if necessary under section 32 of said Act, by making the signed notice refer explicitly to the annexed sheets; I refused the amendment upon the grounds that if any necessity for it the effect would be to confer jurisdiction on myself, and that section 32 can be satisfied in its words by confining it to notices other than notices of complaint. Am I right?

Held, as to question 1, that it must be answered in the affirmative. The Legislature did not intend to bind parties to exact observance of the words of the form. (Section 4.) What is intended is that the list should afford such information of the nature of the qualification of the person named as will enable the other voters to ascertain by inquiry the truth or untruth of the statement. In this instance it cannot be well imagined that other voters or persons who usually interest themselves in the revision of the lists were being misled by the form of statement. The right of a person to be on the voters' list ought not to depend upon a too critical examination of the forms in the schd ule, which are inserted merely as examep

and are not required to be followed implicitly. The second question must also be answered in the affirmative. It may be treated as really one of fact. It is impossible to say that the lists are not subjoined. They are annexed, or attached. Looking at the lists and reading them in the light of the notice there is no sufficient ambiguity to lead to the rejection of them on the ground that they are not part of the complaint. Question 3 must also be answered in the affirmative in this particular case. In a case of a notice defective in some material respect, e. g., unsigned, which renders it valueless as a foundation for the proceedings, which the Judge is authorized to take upon receipt by the clerk of a notice in conformity to the Act there is no jurisdiction to amend ; but assuming that the notice and lists to be properly before a Judge, a misnomer or plain mistake in description and many other like errors may be amended.

Rex ex Rel. Roberts v. Ponsford.

Judgment on application by relator to set aside the election of eleven persons as aldermen for the city of St. Thomas at the general election held on the 6th January, 1902, upon the ground that the election was not conducted according to law. On the 6th February, 1900, the city council passed a by-law providing for the election of the council by general vote instead of by wards. The first election pursuant to the statutes and this by-law took place in 1901, when under the Municipal Amendment Act, 62 Vict, chapter 26, section 13, every elector was permitted to vote in each ward in which he had been rated for the necessary property qualification for councillors or aldermen. On the 15th April, 1901, an amendment was made by 1 Edw. VII, chapter 26, section 9, by adding to section 158 of the Municipal Act the following section : "158 a. In towns and cities where the councillors or aldermen are elected by general vote every elector shall be limited to one vote for the mayor and one vote for each councillor or alderman to be elected for the town or city, and shall vote at the polling place of the polling subdivision in which he is a res dent, if qualified to vote therein, or when he is a non-resident or is not entitled to vote in the polling subdivision where he resides then where he first votes and there only." . . . . . As to the election now in question, more than 100 witnesses were examined on behalf of the relator in support of this application, the greater number being examined as to the number of times they voted for aldermen. It was shown by these witnesses that there were at least 90 votes polled which should not have been polled, according to the act of 1901. Held, that the evidence wholly failed to support the allegation that these votes were cast by the "deliberate, corrupt and wilful connivance and arrangement of the defendants," but, on the contrary, these votes were cast in the honest belief of the voters that they had the right to cast such votes, and without any instruction from any of the candidates to vote for them more than once. The casting of such ballots was wholly irregular, and they should not have been allowed by the deputy returning officers, if they were aware that the voters had already voted. Rex ex rel. Tolmie v. Campbell, 4 O. L. R. 25 referred to. Even if the 90 votes improperly polled were struck off that would not necessarily interfere with the result of the election, owing to the large majorities of at least ten of the candidates elected over the first unsuccessful candidate. The election of the successful candidates was not affected by the improper votes being counted, and in other respects there was no such irregularity in the carrying out of the election as to affect the result Motion refused with costs.

Gauthier v. City of Ottawa.

Plaintiff appealed from judgment of county court of Carleton in action for damages for injuries sustained by plaintiff, who when walking on the sidewalk on the north side of Hill street stepped on a plank which was rotten and loose and fell, sustaining injury. The trial judge found that the sidewalk was old and unsafe, but that the defect which was responsible for the accident had not been shown to have existed before the accident occurred, and there was no direct or constructive notice to the defendants of any defect, and assessed the damages at $185 in case his finding should be set aside. Counsel for plaintiff on the appeal referred to McGarr v. Prescott, 1 O. W. R. 53. Appeal allowed with costs and judgment directed to be entered for plaintiff for $185 and costs.

Stevens v. City of Chatham.

Judgment on appeal by plaintiffs, husband and wife, from judgment of Street, J., at the trial at Chatham dismissing the action, which was brought to recover damages for injuries received by the wife from a fall on a sidewalk in the city owing to the alleged gross negligence of the defendants in permitting the sidewalk to be and continue in a dangerous state and out of repair owing to an accumulation of snow and ice. The wife on the 11th March, 1900, slipped and fell and broke her thigh bone and sustained other injuries. The sidewalk was a granolithic one, a little lower than the boulevards on each side of it. There was a sort of furrow in the middle of the accumulated snow, with icy ridges on each side. The plaintiffs contended that the condition of the sidewalk was distinctly dangerous and that such condition had existed long enough to make it gross negligence on the part of the defendants to suffer it to continue. Held, that there was no evidence of gross negligence, and that the evidence warranted the finding below. Appeal dismissed with costs.

Whelihan v. Hunter.

Judgment in action tried at Woodstock without a jury. The plaintiff's claim was on behalf of themselves and all ratepayers of the town of St. Mary's against the corporation of the town, and against the members of the Finance and Fire, Water, and Light Committee, of the Council for 1902 as individuals for a declaration that an item of $3,170 in the report of the Finance Committee, which it was alleged was introduced into the estimates for the purpose of building a certain water main, was a valid debt of the corporation which they were bound to provide for during the current year, and for an injunction restraining them from making any payment upon the contract for the water main in question, on the ground that there was no valid or subsisting contract for the work, there having been no by-law authorizing the work till after this action was begun. Held, that in view of sections 402 and 435 of the Municipal Act, R. S. O. ch. 233, it was doubtful if the debt was a valid debt of the corporation, and that this doubt was sufficient reason for dismissing the action since the holders of the note given for the liability in question were not parties. Action dismissed. No order as to costs as between plaintiff and defendant corporation, but plaintiff to pay the costs of the individual defendants except those incurred on the proceedings for the interlocutory injunction.

Rex vs. Murray.

Judgment of James M. Glenn, K. C., police magistrate for St. Thomas.

This is a case in which an information was laid by the license inspector of West Elgin charging the defendant with having on the 1st day of October, 1902, at the village of Wallacetcwn, in the west riding of Elgin, sold liquor without a license therefor required by law, and it was heard by me on the 27th of October last. It was admitted by the defendant that he sold at the time and place mentioned a certain beverage called "Hop Tonic" and another beverage called "Tonic Porter," and he also admitted that he did not at the time of such sale have a license for selling liquor in the said west riding of Elgin, and the only question to be determined is whether the beverages in question were, or either of them was, liquor within the meaning of "The Liquor License Act." Mr. A. F. McLachlin, a practical druggist and chemist of St. Thomas, gave evidence on behalf of the crown and swore that he had analyzed the contents of two bottles which the license inspector swore he had purchased from the defendant at the said village of Wallacetown on the first day of October last, one of them being a bottle of so-called "Hop Tonic" and the other "Tonic Porter," and according to McLachlin's evidence the "Hop Tonic" contained between 3 and 4 per cent. of alcohol by volume and between 2 and 3

per cent. by weight and the "Tonic Porter" contained between 4 and 5 per cent. of alcohol by volume and between 3 and 4 per cent by weight. The defendant gave evidence on his own behalf and stated that he he had been manufacturing "Hop Tonic" and "Tonic Porter" in the city of London and selling them during the past five years and that they did not contain more than 2 per cent. of alcohol. He said that about seven years ago the license inspector of the city of London had complained that the beverages referred to contained too much alcohol and that in consequence of such complaint he reduced their strength so that they did not contain more than 2 per cent. He also stated that they were not intoxicating. On behalf of the defence Mr. A. V. Seeborn, an assistnnt public analyst of the city of London, was called and gave evidence. He swore that the defendant asked him to analyze the contents of two bottles, one represented to be "Hop Tonic" and the other "Tonic Porter." The defendant in his evidence said that these two bottles contained samples out of the same vessels from which he had supplied the license inspector. According to the evidence of Mr. Seeborn the "Hop Tonic" contained 1.75 per cent. of alcohol by weight and 2.20 per cent. by volume, and the "Tonic Porter" 1.56 per cent. by weight and 1.96 per cent. by volume. The prosecution did not offer any evidence to prove that the beverages in question were intoxicating but relied upon the case of Reg. vs. Wotton, a decision of the learned senior judge of the county of York, reported in volume 34, C. L. J. N. S., p. 746, and asked me to convict the defendant upon the authority of that case for selling liquor without the necessary license therefor.

I have examined that case carefully and have come to the conclusion that it is not an authority warranting me in convicting the defendant upon the evidence given in the case in hand because I find that in Reg. vs. Wotten a great deal of evidence was given for the purpose of showing that the beverage in that case called "Blue Ribbon Beer" was intoxicating and the learned judge must have believed that it was intoxicating for at page 749 he says "No one can be allowed to offer for sale without a license, under the guise of a temperance beverage, a liquor which is capable, if freely drunk, of producing the incipient stages of intoxication. I think Blue Ribbon Beer will do this if used freely by the class of persons last mentioned, though doubtless its effect upon some seasoned drinkers may be questionable." It appears from the decision in Reg. vs. Wotteu that the Blue Ribbon beer in question in that case contained between two and three per cent of alcohol and Mr. Donahue argued that according to Mr. McLachlin's evidence, "Hop Tonic," and "Tonic Porter" contained a greater per centage of alcohol than Blue Ribbon Beer and therefore if I believed his evidence, I might and ought to convict the defendant for unlawfully selling liquor without a license, though he offered no evidence to show that either "Hop Tonic" or "Tonic Porter" was intoxicating, and though the defendant swore that neither of them was intoxicating. I am unable to agree with him. The interpretation clause of "The Liquor License Act," sub-section 1, of section 2, defines "liquors" or "liquor" as follows: "Liquors" or "liquor" shall include all spirituous or malt liquors and all combinations of liquors and drinks and *drinkable liquids which are intoxicating.*" The beverages in question are not spirituous or malt liquors and in my opinion it must be shown that they come within the latter part of the interpretation clause and in order to warrant a conviction it was necessary to have proven that they were intoxicating as was done in the case of Reg. vs. Wotten. The British Revenue Act of 1885 prohibits the sale of any liquor which is made or sold as a description of beer and which on analysis thereof contains more thau 2 per cent of proof spirit which equals 1.14 per cent of absolute alcohol by persons not holding licenses under the Inland Revenue Act, but there is no similar provision in our Liquor License Act. The fact that the Parliament of Great Britain has passed the above Act affords an argument, it seems to me, that it is for the Legislature of this Province to fix the maximum amount of alcohol to be contained in drinks of the kind in question and not for the courts. In the United States courts, authority is divided as to whether alcohol is a spirituous and intoxicating liquor but according to the weight of authority it is not. In the case of Bennett vs. People, 30, Ill. 389, the court speaking of alcohol said, "It is not in common parlance so considered (as an intoxicating liquor), although it is the basis of all spirituous liquors." In the case of Reg. vs. McLean, 35, C. L. J. N. S., p. 241, the senior judge of the county of York held, following the analogy of Reg. vs. Wotten, that diluted lager beer, showing on analysis 2.05 per cent of alcohol, is an intoxicating liquor within the prohibition of the Liquor License Act. The report of this case does not show whether any evidence was given to prove that this lager beer was intoxicating, but I do not think it is necessary to prove that lager beer is intoxicating and therefore that case is distinguishable from the present case. According to the weight of authority in the United States courts, the court will take judicial notice that lager beer is malt liquor and that it is intoxicating. The Liquor License Act expressly mentions *malt liquors* and all combinations of liquors and drinks and lager beer being *malt liquor* it is not necessary to prove that it is intoxicating. The following cases may also be referred to: Reg. vs. Beard, 13 O. R., 608; Northcote vs. Brinker, 14, A. R., p. 373 and Reg. vs. St. John, 36 C. L. J. N. S. p. 30. I must therefore dismiss the case but there will be no costs.

London Street Railway Company v. City of London.

Judgment in action tried without a jury at London. Action to have it declared that by-laws 2,099, 2,100, and 2,101, passed by the council of defendants on the 21st July, 1902, are invalid, and for an injunction restraining defendants from enforcing any of such by-laws; also for a mandamus to compel the Mayor of the defendants to sign and execute by-law 2,083, passed on the 23 June, 1902. This by-law was passed in accordance with a resolution of the council of the 29th April, 1902, authorizing the plaintiffs to extend their tracks on certain streets in the city. The plaintiffs did work on the strength of this by-law and resolution. By the subsequent by-laws the routes were changed and varied. Held, that by-law 2,083, not having been signed by the Mayor, who was the presiding officer at the meeting at which it was passed, was inoperative; R. S. O., chapter 223, section 333; Canada Atlantic Railway Co. v. city of Ottawa, 12 S. C. R. 379; Wigle v. village of Kingsville, 28 O. R. 378. Until a by-law was passed and formally accepted by plaintiffs by an agreement binding on them, they were acting without authority in building a line of railway and running cars thereon. The plaintiffs were, therefor, not entitled to the mandatory order asked for to compel the Mayor to sign the by-law. The plaintiffs asked leave to amend so as to claim, in the alternative, a mandamus to the council to pass a by-law in accordance with the resolution of 29th April. It was urged that, as the council had passed the resolution providing for the building by the plaintiffs of the new lines, and as the plaintiffs had proceeded with and built some of the lines in accordance with the resolution and with the sanction of the city engineer, who furnished the grades for the lines on Beaconsfield avenue and Wortley road, the defendants were bound. Held, that the engineer could not bind defendants by giving the grades; the manager of plaintiffs obtained the grades from the engineer, and proceeded with the building of the lines, taking his chances of the resolution being ratified by by-law. The amendment should not be allowed, as upon the facts plaintiffs are not entitled to the mandamus. Held, also, that the council had authority to pass by-law 2,099, changing and varying the routes, and by-law 2,100, regulating the speed and service of the cars on the various routes, was also valid. As to by-law No. 2,101, requiring plaintiffs to lay down a new line and extend the existing lines to the extent of 7,380 feet of track: Held, that having regard to the taking into the city of London of the village of London west, with its additional street railway mileage, the defendants are not entitled to all the tracks mentioned in by-law No. 2,101, and that by-law is bad. Judgment for plaintiffs declaring that by-law 2,101 is invalid and of no effect. Judgment for

defendants declaring by-laws 2,099 and 2,100 are valid and subsisting by-laws, and awarding defendants a mandatory order (asked for in their counterclaim) compelling plaintiffs to run their cars in accordance with the provisions of the by laws and compelling them immediately to replace the tracks and works illegally removed from Rectory street, restraining them from running their cars on Beaconsfield avenue and Wortley road, and compelling plaintiffs to remove their tracks and works from these streets. Plaintiffs to have so much of the costs of the action as relate to by-law 2,101, and defendants to have the costs of the action, except those relating to by-law 2,101.

Rex ex. Rel. McCallum vs. McKinnon.

Judgment on application by relator to set aside election of respondent as mayor of the Town of Smith's Falls, on the ground that respondent was at the date of such election a member of the Public School Board of that town. Respondent's counsel objected to the quo warranto proceedings on the ground that no proper affidavit was filed in support of the relator's application for a flat, allowing him to serve notice of this application, inasmuch as the paper filed did not contain the words "make oath and say." It was objected that such notice of motion had not been personally served, as required by section 223, Municipal Act. Held, that it is clear from Allen vs. Taylor, L. R., 10 Eq. 52; Phillips vs. Prentice, 2 Hare, 542; in re Newton, 2 DeG., F. and J. 3; in re Torkington, L. R. 9 Ch. 298; Regin ex rel. Linton vs. Jackson, 2 Ch. Ch. R. 26, and Regina ex. rel. Bland vs. Fogg, 6 U. C. L. J. 44, that the affidavit in question is irregular only and not invalid, as was contended by respondent's counsel, and that it was the duty of respondent's counsel, under Bland v. Fogg and Linton v. Jacksan, to have moved to set aside the proceedings in consequence of such irregularity, and that within a reasonable time, as per rule 311. Also held that respondent took a "fresh" step within the meaning of rule 311 when he made and served his affidavits on the merits, before taking the objection. With reference to the objection to the service of the notice of motion, held, following Williams vs. Pigott, 5 Dowl. R. 320; Woodside vs. Toronto S. R. W. Co., 2 Ch. Ch. R. 24, and Keachie v Buchanan, Ib. 42, that the service of notice of motion on respondent was good. As to the merits, held that respondent falls within section 5, chapter 29, 2 Edw. VII. (Ont.), amending section 80 of Municipal Act, and is, therefore, disqualified, notwithstanding the contention that the saving clause in above mentioned amending enactment relieved respondent from disqualification, as he had been elected a member of the school board prior to the passing of 2 Edw. VII. (Ont.) chapter 29, section 5. Held, that the statute deals with the members of the municipality mentioned in section 80 of the Municipal Act, and not to the election of members of school boards. Respecting the question of the time of the disqualification, Regina, ex rel. Rollo v. Beard, 6. U. C. L. J., N. S., 126 referred to. Order made setting aside respondent's election, and ordering that a new election be had. For the reasons mentioned in Regina ex. rel. Rollo vs. Beard, the respondent must be unseated with costs

Hogg vs. Township of Brooke.

Judgment on appeal by plaintiff from judgment of Falconbridge, C. J. (1 O. W. A. 568), dismissing action to recover damages for injuries sustained by plaintiff by reason of the alleged negligence of defendants in permitting an accumulation of snow to remain on part of number 9 sideroad, in the third concession of the township of Brooke, in front of one Pellow's farm, by reason of which, it was alleged, the highway became out of repair and unsafe for travel, and owing to bad and dangerous state of the highway the horses drawing a wagon in which plaintiff was travelling became imbedded in the snow, and were unable to proceed, and plaintiff in assisting the horses to get out of the snow-drift was stepped upon and thrown down, and his knee seriously injured. Held, that it was unnecessary to determine whether or not defendants would have been chargeable with actionable negligence for not removing the snow from the highway so as to make the usually travelled part of it fit for travel. Not only did defendants fail to remove the snow from the travelled part of the highway, but, having in effect provided and invited the public to use as a substitute for it a way on the side of the road, which they knew would become dangerous to those using it for the purpose of driving over with wheeled vehicles, as soon as a thaw set in, permitted it to remain for three days in a condition dangerous to persons so travelling, a thaw having set in making it dangerous for three days before the accident to the plaintiff. In those circumstances it was the duty of defendants to have made the highway reasonably fit for travel either upon the usually travelled part of it or upon the substituted way, which could have been accomplished at a trifling expense, or, failing that, have stopped the use of the road or given warning against the danger to those travelling upon it, and in omitting to do this they made default in keeping the highway in repair within the meaning of section 606 of the Municipal Act, and are answerable to plaintiff in damages. Boswell v. Yarmouth, 4 A. R. 353, Savage v. Bangor, 40 Me. 176, Stickney v. Maidstone, 30 Vt. 738, Page v. Bucksport, 64 Me. 51, McKenvin v. London, 22 O. R. 70, and Laduc v. Exeter, 97 Mich. 450, referred to. Appeal allowed with costs, and judgment to be entered for plaintiff for $600 and costs of action.

Re Southwold School Sections.

Judgment on motion by John Culver and the Board of Public School Trustees for school section number 13 of the township of Southwold, for an order setting aside an award dated the 19th November, 1901, made by arbitrators appointed by the county council of the county of Elgin, under 1 Edw. VII., ch. 39, sec. 42, subsec. 1 to hear an appeal to the county council against the refusal of the Township council of the township of Southwold to alter the boundaries of school sections 12, 13 and 14, for the purposes of enlarging school section 12, by which award the arbitrators purported to consolidate into one an order for payment of the costs of the application. The award was attacked on the ground that the arbitrators had no jurisdiction to make it, inasmuch as no public meeting had been called in school sections 12 or 13 for the purpose of considering the advisability of uniting the sections, and on other grounds. Held, that the arbitrators had no power to unite two school sections, upon an appeal against a refusal to comply with an application to alter boundaries only. The ratepayers must consent by an application to the township council for the specific purpose. Order made, but without costs, for there is no person or corporation against whom they can rightly be awarded.

Municipal Ownership.

Municipal ownership of electric and gas plants is becoming a live topic amongst municipalities at present, and is, no doubt, a wise move. A great many councils appear to be at a loss as to how to proceed, and very often make some unwise moves before calling in any expert opinion. In opening negotiations of this nature it is wise to call in an expert at the start and one who is familiar with these proceedings, who can advise as to values and give such other information as will place the council in such a position that they will be able to deal intelligently.

We would call attention to the card of Mr. H. F. Strickland, of Toronto, who has acted for many places, large and small, for both gas and electric plants and has had an experience in this line extending over a number of years.

The electors of the town of Listowel recently, by a vote of 329 to 90, carried a by-law repealing a by-law passed last fall relating to the sewerage system of the town.