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AN ACT RESPECTING THE ASSESSMENT  
OF PROPERTY.

*(R. S. O. 1887, with amendments, 1888, 1889, 1890, 1891.)*

(CONTINUED.)

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COURT OF REVISION.

**55.** If the council of the municipality consists of not more than five members, such five members shall be the court of revision for the municipality. R. S. O. 1877, c. 180, s. 47.

**56.** If the council consists of more than five members, such council shall appoint five of its members to be the court of revision. R. S. O. 1877, c. 180, s. 48.

NOTE.—By 53 V. c. 54, s. 4, it is enacted that:  
“Notwithstanding anything contained in sections 55 and 56 of *The Assessment Act*, the council of any city having a population of 40,000 or over,

may by by-law appoint in each year as the court of revision for the municipality three persons, none of whom shall be a member or officer of, or in the employment of the city council, and may provide by the same or any other by-law for the payment of the members of such court of revision; and such persons so appointed shall be a court of revision for such city, and the court shall have the same powers as a court of revision appointed under the above sections, and those sections of *The Assessment Act* and *The Municipal Act* which apply to courts of revision, and are not inconsistent herewith shall apply hereto, and this section may be read therewith."

**57.** Every member of the court of revision, before entering upon his duties, shall take and subscribe, before the clerk of the municipality, the following oath or affirmation in cases where, by law, affirmation is allowed :

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will, to the best of my judgment and ability, and without fear, favor or partiality, honestly decide the appeals to the court of revision, which may be brought before me for trial as a member of said court." R. S. O. 1877, c. 180, s. 49.

NOTE.—In case of the death or absence of the clerk, the oath or affirmation should be taken and subscribed before a justice of the peace for the county.

**58.** Three members of the court of revision shall be a quorum; and a majority of a quorum may decide all questions before the court. R. S. O. 1877, c. 180, s. 50.

**59.** The clerk of the municipality shall be clerk of the court, and shall record the proceedings thereof. R. S. O. 1877, c. 180, s. 51.

**60.** The court may meet and adjourn, from time to time, at pleasure, or may be summoned to meet at any time by the head of the municipality; but the first sitting of the court of revision shall not be held until after the expiration of at least ten days from the expiration of the time within which notice of appeals may be given to the clerk of the municipality. R. S. O. 1877, c. 180, s. 52.

**61.** At the times or time appointed, the court shall meet and try all complaints in regard to persons wrongfully

placed upon or omitted from the roll, or assessed at too high or too low a sum. R. S. O. 1877, c. 180, s. 53.

**62.** The court or some member thereof, may administer an oath to any party or witness, before his evidence is taken, and may issue a summons to any witness to attend such court. R. S. O. 1877, c. 180, s. 54. *See sec. 64 (16).*

**63.** If a person summoned to attend the court of revision as a witness, fails, without good and sufficient reason, to attend (having been tendered compensation for his time at the rate of fifty cents a day), he shall incur a penalty of \$20, to be recoverable, with costs, by and to the use of any person suing for the same, either by suit in the proper division court, or in any way in which penalties incurred under any by-law of the municipality may be recovered. R. S. O. 1877, c. 180, s. 55.

**64.—(1)** Any person complaining of an error or omission in regard to himself, as having been wrongfully inserted on or omitted from the roll, or as having been undercharged or overcharged by the assessor in the roll, may personally, or by his agent give notice in writing to the clerk of the municipality (or assessment commissioner, if any there be), that he considers himself aggrieved for any or all of the causes aforesaid.

(2) The notice shall be given to the clerk (or assessment commissioner, if any there be), within fourteen days after day upon which the roll is required by law to be returned, or within fourteen days after the return of the roll, in case the same is not returned within the time fixed for that purpose.

(3) If a municipal elector thinks that any person has been assessed too low or too high, or has been wrongfully inserted on or omitted from the roll, he may within the time limited by the preceding sub-section, give notice in writing to the clerk of the municipality (or assessment commissioner, as the case may be), and the clerk shall give notice to such person and to the assessor, of the time when the matter will be tried by the court of revision; and the matter shall be decided in the same manner as complaints by a person assessed.

(4) The clerk of the court shall post up in some convenient and public place within the municipality or ward, a list of all complainants, on their own behalf, against the assessors' return, and of all complainants on account of the assessment of other persons, stating the names of each,



the local municipality, the clerk shall cause the notice to be left at the person's residence or place of business.

(11) If the person is not known, then the notice shall be left with some grown person on the assessed premises, if there is any such person there resident; or if the person is not resident in the municipality, then the notice shall be addressed to such person through the post office.

(12) Every notice hereby required, whether by publication, advertisement, letter or otherwise, shall be completed at least six days before the sittings of the court.

(13) Where necessary, the clerk of the municipality may, at the cost of the municipality, call to his aid such assistance as may be required to effect the services which he is required by law to make; and in the event of his failure to effect such services in time for the first sitting of the court, the court, in its discretion, may appoint an adjourned sitting, for the purpose of hearing the appeals for which the services were not effected in time for the first day, and the proper services shall be made for such adjourned day.

(14) If the party assessed complains of an overcharge on his personal property or taxable income, he or his agent may appear before the court, and make a declaration, in case the complainant appears in person, in the form of Schedule C, D. or E. to this Act, according to the fact; and if the complainant appears by agent, such agent may make the declaration in the form of Schedule F., G. or H., as the case may be; and no abatement shall be made from the amount of income on account of debts due, nor from the value of personal property, other than income in respect of debts, except debts due for or on account of such personal property; and the court shall thereupon enter the person assessed at such an amount of personal property or taxable income as is specified in such declaration, unless such court is dissatisfied with the declaration, in which case the party making the declaration, and any witnesses whom it may be desirable to examine, may be examined on oath by such court, respecting the correctness of such declaration; and such court shall confirm, alter or amend the roll as the evidence seems to warrant. R. S. O. 1877, c. 180, s. 56 (1-14).

(15) In other cases, the court, after hearing the complainant, and the assessor or assessors, and any witness adduced, and, if deemed desirable, the party complained

against, shall determine the matter, and confirm or amend the roll accordingly. And in all cases which come before the said court it may increase the assessment or change it by assessing the right person, the clerk giving the latter or his agent four days' notice of such assessment, within which time he must appeal to said court if he objects to such assessment. R. S. O. 1877, c. 180, s. 56 (15); 44 V. c. 25, s. 3.

(16) It shall not be necessary to hear upon oath the complainant or assessor, or the party complained against, unless where the court deems it necessary or proper, or the evidence of the party is tendered on his own behalf or required by the opposite party.

(17) If either party fails to appear, either in person or by an agent, the court may proceed *ex parte*.

(18) Where it appears that there are palpable errors which needs correction, the court may extend the time for making complaints ten days further, and may then meet and determine the additional matter complained of, and the assessor may, for such purpose, be the complainant.

(19) Subject to the provisions of sections 52 and 54, all the duties of the court of revision, which relate to the matter aforesaid, shall be completed and the rolls finally revised by the court, before the first day of July in every year—except in the municipality of Shuniah, in which municipality all the duties of the court of revision which relate to the matters aforesaid shall be completed, and the rolls finally revised by the court, before the 15th day of July in every year, and except in municipalities coming within the provisions of chapter 185 of these Revised Statutes. R. S. O. 1877, c. 180, s. 56 (16-19).

(20) In case any person appeals against his assessment upon any ground, the court of revision, or the judge of the county court, as the case may be, may re-open the whole question of the assessment, so that omissions or errors in the assessment may be corrected, and the accurate amount for which the assessment should be made be placed on the assessment roll by the court or judge before handing the same over to the clerk of the municipality. 44 V. c. 25, s. 4.

NOTE.—It is important that all notices to be given by electors or clerk, should be so given *within the time prescribed in each case, excluding the first day from which the notice is to be given.* See note to s. 19 Municipal Act (page 34 of JOURNAL).

**65.** The roll, as finally passed by the court, and certified by the clerk as passed, shall, except in so far as the same may be further amended on appeal to the judge of the county court, be valid, and bind all parties concerned, notwithstanding any defect or error committed in or with regard to such roll, or any defect, error or misstatement in the notice required by section 47 of this act, or the omission to deliver or transmit such notice. R. S. O. 1877, c. 180, s. 57.

NOTE.—This section operates as a saving clause to section 47, after the assessment roll has been finally revised by the court.

**66.** A copy of any assessment roll, or portion of any assessment roll, written or printed, without any erasure or interlineation, and under the seal of the corporation, and certified to be a true copy by the clerk of the municipality, shall be received as *prima facie* evidence in any court of justice without proof of the seal or signature, or the production of the original assessment roll, of which such certified copy purports to be a copy, or a part thereof. 50 V. c. 32, s. 4.

**67.** The court shall also, before or after the 1st day of July, and with or without notice, receive and decide upon the petition from any person assessed for a tenement which has remained vacant during more than three months in the year for which the assessment has been made, or from any person who declares himself, from sickness or extreme poverty, unable to pay the taxes, or who, by reason of any gross and manifest error in the roll as finally passed by the court, has been overcharged more than twenty-five per cent. on the sum he ought to be charged; and the court may, subject to the provisions of any by-law in this behalf, remit or reduce the taxes due by any such person, or reject the petition; and the council of any local municipality may, from time to time, make such by-laws, and repeal or amend the same. R. S. O. 1877, c. 180, s. 58.

NOTE.—The court may consider a petition at any time, under this section, asking for a reduction in assessments or taxes for any of the reasons enumerated herein.

## APPEALS FROM THE COURT OF REVISION.

**68.**—(1) An appeal to the county judge shall lie, not only against a decision of the court of revision on an appeal to said court, but also against the omission, neglect or refusal of said court to hear or decide an appeal.

(2) The person appealing shall, in person or by his solicitor or agent, serve upon the clerk of the municipality (or assessment commissioner, if any there be), within five days after the date herein limited for closing the court of revision, a written notice of his intention to appeal to the county judge—except in the municipality of Shuniah, in which municipality the notice shall be given within ten days after the 1st day of August in every year, and except in municipalities coming within the provisions of chapter 185 of these Revised Statutes. R. S. O. 1877, c. 180, s. 59 (1, 2).

(3) The clerk shall, immediately after the time limited for filing said appeals, forward a list of the same to the judge, who shall then notify the clerk of the day he appoints for the hearing thereof; and shall, if in his opinion the appeals or any of them appear to involve the calling or examination of witnesses, fix the place for holding such court within the municipality from the court of revision of which such appeal is made, or at the place nearest thereto where the sittings of the division court within his jurisdiction are held. 50 V. c. 32, s. 5; 53 V. c. 54, s. 2.

(4) The clerk shall thereupon give notice to all the parties appealed against in the same manner as is provided for giving notice on a complaint under section 64 of this Act; but in the event of failure by the clerk to have the required service in any appeal made, or to have the same made in proper time, the judge may direct service to be made for some subsequent day upon which he may sit.

(5) The clerk of the municipality shall cause a conspicuous notice to be posted up in his office, or the place where the council of the municipality hold their sittings, containing the names of all the appellants and parties appealed against, with a brief statement of the ground or cause of appeal, together with the date at which a court will be held to hear appeals.

(6) The clerk of the municipality shall be the clerk of such court.



(7) At the court so holden, the judge shall hear the appeals, and may adjourn the hearing from time to time, and defer judgment thereon at his pleasure, but so that all the appeals may be determined before the 1st day of August—except in the municipality of Shuniah (in which municipality all such appeals shall be determined before the 15th day of September in every year), and except in the cases provided for in sections 52 and 54, and except in municipalities coming within the provisions of chapter 185 of these Revised Statutes. R. S. O. 1877, c. 180, s. 59 (4-7).

**69.** At the court to be holden by the county judge, or acting judge of the court, to hear the appeals hereinbefore provided for, the person having charge of the assessment roll passed by the court of revision shall appear and produce such roll, and all papers and writings in his custody connected with the matter of appeal, and such roll shall be altered and amended according to the decision of the judge, if then given, who shall write his initials against any part of the said roll in which any mistake, error or omission is corrected or supplied; and if the decision is not then given, the clerk of the court shall, when the same is given, forthwith alter and amend the roll, according to the same, and shall write his name against every such alteration or correction. R. S. O. 1877, c. 180, s. 60.

**70.** In all proceedings before the county judge or acting judge of the court, under or for the purposes of this Act, such judge shall possess all such powers for compelling the attendance of, and for the examination on oath of all parties, whether claiming or objecting or objected to, and all other persons whatsoever, and for the production of books, papers, rolls and documents, and for the enforcement of his orders, decisions and judgments, as belong to or might be exercised by him, in the division court or in the county court. R. S. O. 1877, c. 180, s. 61.

**71.** All process or other proceedings in, about or by way of appeal, may be entitled as follows;

In the matter of appeal from the court of revision of  
the \_\_\_\_\_, of \_\_\_\_\_,

\_\_\_\_\_, Appellant,

and

\_\_\_\_\_, Respondent,

and the same need not be otherwise entitled. R. S. O. 1877, c. 180, s. 62.

**72.** The cost of any proceeding before the court of revision or before the judge as aforesaid shall be paid by or apportioned between the parties in such manner as the court or judge thinks fit, and where costs are ordered to be paid by any party claiming or objecting or objected to, or by any assessor, clerk of a municipality, or other person, the same shall be enforced, when ordered by the court of revision, by a distress warrant under the hand of the clerk and the corporate seal of the municipality, and when ordered by the judge, by execution to be issued as the judge may direct, either from the county court or the division court within the county in which the municipality or assessment district, or some part thereof, is situated, in the same manner as upon an ordinary judgment for costs recovered in such court. R. S. O. 1877, c. 180, s. 63.

**73.** The costs chargeable or to be awarded in any case may be the costs of witnesses, and of procuring their attendance, and none other; and the same are to be taxed according to the allowance in the division court for such costs; and in cases where execution issues, the costs thereof as in the like court, and of enforcing the same, may also be collected thereunder. R. S. O. 1877, c. 180, s. 64.

**74.** The decision and judgment of the judge or acting judge shall be final and conclusive in every case adjudicated, and the clerk of the municipality shall amend the rolls accordingly. R. S. O. 1877, c. 180, s. 65.

**75.** When, after the appeal provided by this Act, the assessment roll has been finally revised and corrected, the clerk of the municipality shall, without delay, transmit to the county clerk a certified copy thereof. R. S. O. 1877, c. 180, s. 66.

**76.—(1)** Where there is an appeal from any court of revision under section 68 of this Act to the county court judge of the county in which the assessment is made, and a person, partnership or corporation desiring to appeal has been assessed on one or more properties to an amount aggregating \$50,000, such person, partnership or corporation shall, on depositing with the clerk of the court of revision appealed from the sum of \$50 to pay the travelling expenses of the board or judge to be called in as herein-after mentioned, have the right to have the appeal from the said court of revision heard by a board consisting of the judges of the counties which constitute the county court district, if the property assessed be in a county which

forms part of a county court district, and if not, then the party or corporation appealing may request, in writing, the said county court judge to associate with himself in hearing the said appeal, the judge or acting judge of the county court of the county whose county town is nearest to the court house where the said appeal will be heard, and the said appeal shall thereupon be heard by the county court judge and the said judge so called in as aforesaid, and in such cases the clerk of the municipality shall forthwith notify each of the judges, whose duty it shall be to attend upon such appeal as aforesaid, by post, prepaid, of all notices of appeal coming within the provisions of this section, which are from time to time served upon him, and the judge of the county in which the city, town, township or village lies, the decision of whose court of revision has been appealed against, shall arrange a day for the hearing of such appeals, and shall notify the clerk thereof, and the clerk shall immediately notify, by post, prepaid, the other judge or judges and the parties appealing.

(2) Where an appeal against an assessment lies from a court of revision to the stipendiary magistrate of the district or provisional county in which the property assessed is situate, and a person or corporation desiring to appeal is assessed on one or more properties in any township or union of townships to an amount in the aggregate exceeding \$50,000, such person or corporation shall have the right to appeal either to the said stipendiary magistrate or (on depositing with the clerk of the municipality the sum of \$50 to defray the travelling expenses of the county court judge hereinafter mentioned) to the judge of the county court of the county to which the said provisional county or district is attached for judicial purposes; the notice of such appeal, the time for bringing the same on, and the procedure generally, to be the same as in the case of an ordinary appeal from a court of revision to a county court judge.

(3) Sections 68 to 77 inclusive, shall apply to all appeals taken under the preceding two sub-sections, and the said judges shall have the powers and duties which by the said sections 68 to 77, are assigned to the county court judge therein referred to.

(4) When two judges hear the appeal, and differ in their opinion as to the allowance of the said appeal or otherwise, then the said assessment appealed from shall stand confirmed.

(5) The clerk with whom any money is deposited to pay the travelling expenses as aforesaid shall pay out of the moneys so deposited, upon requisition by the judge, such sum as the said judge shall certify to him as his travelling expenses in connection with the said appeal, and shall repay the balance if any, to the person or corporation depositing the same.

(6) The provisions of this section shall also be held as applying in any case where the person, partnership or corporation desiring to appeal has been assessed on properties to an amount not less than \$20,000, and not exceeding \$50,000, provided that the matter of appeal involves questions of law, and does not involve only the question of the value at which such properties have been so assessed. 48 V. c. 42, s. 16.

#### APPEALS BY NON-RESIDENTS.

77. In case any non-resident, whose land within the limits of any city, town, incorporated village or township, has been assessed in any revised or corrected assessment roll, complains by petition to the proper municipal council, at any time before the 1st day of May in the year next following that in which the assessment is made, such council shall, at its first meeting, after one week's notice to the appellant, try and decide upon such complaint; and all decisions of municipal councils under this act may be appealed from, tried and decided, as provided by section 68 and following sections of this Act; and if the lands are found to have been assessed twenty-five per centum higher than similar land belonging to residents, the council or judge shall order the taxes rated on such excess to be struck off; and, in all such cases, where the land has been subdivided into park, village or town lots, if the same are owned by the same person or persons, the statute labor tax shall be charged only upon the aggregate of the assessment, according to the provisions of this Act; but no roll shall be amended, under this section of this Act, if the complaint was tried and decided before such roll was finally revised and corrected, under the provisions of sections 64 to 75 of this Act. R. S. O. 1877, c. 180, s. 67.

NOTE.—Provision is herein made for an appeal by non-residents against excessive assessments, although the assessment roll has been revised and corrected, if the complaint has not been made, tried and

decided before the roll was finally revised and corrected.

#### EQUALIZATION OF ASSESSMENTS.

**78.** The council of every county shall, yearly, before imposing any county rate, and except as provided by sections 52 and 54, not later than the 1st day of July, examine the assessment rolls of the different townships, towns and villages in the county, for the preceding financial year, for the purpose of ascertaining whether the valuations made by the assessors in each township, town or village, bear a just relation one to another, and may, for the purpose of county rates, increase or decrease the aggregate valuations of real and personal property in any township, town or village, adding or deducting so much per centum as may, in their opinion, be necessary to produce a just relation between the valuations of real and personal estate in the county; but they shall not reduce the aggregate valuation thereof for the whole county as made by the assessors. R. S. O. 1877, c. 180, s. 68 (1); 46 V. c. 24, s. 1.

NOTE.—The county council is required to equalize the valuations in the various municipalities of the county, but cannot reduce the aggregate valuations as made by the assessors.

**79.** If any municipality is dissatisfied with the action of any county council in increasing or decreasing, or refusing to increase or decrease the valuation of any municipality, the proceedings shall be as follows:

1. The municipality so dissatisfied may appeal from the decision of the council at any time within ten days after such decision, by giving to the clerk of the county council notice in writing, which notice shall state whether the municipality appealing is willing to have the final equalization of the assessment made by the county judge;

2. Every county council, at the same session in which the assessment has been equalized, shall determine whether the said council is willing to have the final equalization of the assessment, in the case of appeal, made by the county judge;

3. Upon receiving notice of appeal, in case any party to the appeal has objected to the final equalization of the assessment being made by the county judge, the clerk of the county council shall forthwith notify in writing the

Provincial Secretary of such objection, giving the name or names of the municipality or municipalities so objecting; 43 V. c. 27, s. 18 (1-3).

4. The Lieutenant-Governor in Council, upon receiving the notice in writing from the clerk of any county council, may appoint two persons, one of whom shall be the sheriff or registrar of the county in which the appeal is made, and the other a judge of another county, who together with the county judge shall form a court, and the said court shall at such time and place as the Lieutenant-Governor in Council may appoint, proceed to hear and determine the matter of appeal either with or without the evidence of witnesses, or with such evidence as they may decide upon having, and may examine witnesses under oath or otherwise, and may adjourn from time to time, and, except as provided in sections 52 and 54, the judgment of the said court shall not be deferred beyond the 1st day of August next after the notice of the appeal; and the court shall equalize the whole assessment of the county. 42 V. c. 31, s. 33 (3); 43 V. c. 27, s. 18 (4); 48 V. c. 42, s. 15; 52 V. c. 39, s. 4.

5. The judge of the other county shall be entitled to a reasonable allowance for his services, the same not to exceed \$10 a day, besides his travelling and other expenses, and the county judge, sheriff or registrar, shall also receive a reasonable sum, not to exceed \$10 each, per day, and to be paid by the county. 43 V. c. 27, s. 18 (5); 52 V. c. 39, s. 5.

6. Any two members of such court shall constitute a quorum, and such court may proceed and adjudicate upon such appeal, notwithstanding the office of sheriff or of registrar or of county judge is vacant. 42 V. c. 31, s. 33 (5).

7. Where all the parties to the appeal have agreed, as above provided, to have the final equalization of the assessment made by the county judge, the clerk of the county council shall forthwith notify in writing the county judge, and the county judge shall appoint a day for hearing the appeal, not later than ten days from the receipt of such notice of the appeal, and may on such day proceed to hear and determine the matter of appeal, and may adjourn the hearing from time to time, but, except as provided in sections 52 and 54, the judgment shall not be deferred beyond the 1st day of August next after such appeal; and the judge shall equalize the whole assessment of the county. 43 V. c. 27, s. 18 (6).

8. The right of appeal shall exist whether county valuers have been appointed or not, and upon any such appeal the report of the county valuers shall be open to review by the court or judge as herein provided. 41 V. c. 13, s. 1; 52 V. c. 39, s. 6.

9. In the event of the assessment of any one or more municipalities being reduced or increased by the county judge or the court, directions shall be given by the said judge or court to the clerk of the county council, to increase or reduce the rate imposed by the by-law of the county council, so that such rate will, calculated upon the finally revised and equalized assessment, produce the sum which such by-law is intended to provide. 52 V. c. 39, s. 6.

80. If the clerk of the municipality has neglected to transmit a certified copy of the assessment roll, such neglect shall not prevent the county council from equalizing the valuations in the several municipalities according to the best information obtainable; and any rate imposed, according to the equalized assessment, shall be as valid as if all the assessment rolls had been transmitted. R. S. O. 1877, c. 180, s. 69.

81. In cases where valuers are appointed by the council to value all the real and personal property within the county, they shall attest their report by oath or affirmation in the same manner as assessors are required to verify their rolls by section 142 of this Act. R. S. O. 1877, c. 180, s. 70.

82. The council of a county, in apportioning a county rate among the different townships, towns and villages within the county, shall, in order that the same may be assessed equally on the whole ratable property of the county, make the amount of property returned on the assessment rolls of such townships, towns and villages, or reported by the valuers as finally revised and equalized for the preceding year, the basis upon which the apportionment is made. R. S. O. 1877, c. 180, s. 71.

83. Where a new municipality is erected within a county, so that there are no assessment or valuers' rolls of the new municipality for the next preceding year, the county council shall, by examining the rolls of the former municipality or municipalities of which the new municipality then formed part, ascertain to the best of their judgment, what part of the assessment of the municipality or municipalities had relation to the new municipality, and what part

should continue to be accounted as the assessment of the original municipality, and their several shares of the county tax shall be apportioned between them accordingly. R. S. O. 1877, c. 180, s. 72.

**84.** Where a sum is to be levied for county purposes, or by the county for the purposes of a particular locality, the council of the county shall ascertain, and, by by-law, direct what portion of such sum shall be levied in each township, town or village in such county or locality. R. S. O. 1877, c. 180, s. 73.

**85.** Subject to the provisions of sections 52 and 54 the county clerk shall, before the 15th day of August in each year, certify to the clerk of each municipality in the county, the total amount which has been so directed to be levied therein for the then current year, for county purposes, or for the purposes of any such locality; and the clerk of the municipality shall calculate and insert the same in the collector's roll for that year. R. S. O. 1877, c. 180, s. 74.

**86.** Nothing in this Act contained shall alter or invalidate any special provisions for the collection of a rate for interest on county debentures, whether such provisions are contained in any municipal Act now or formerly in force in this province, or in any act respecting the Consolidated Municipal Loan Fund in Ontario or in any general or special act authorizing the issue of debentures, or in any by-law of the county council providing for the issue of the same. R. S. O. 1877, c. 180, s. 75.

#### STATUTE LABOR.

No person in Her Majesty's Naval or Military Service on full pay, or on actual service, shall be liable to perform statute labor or to commute therefor; nor shall any non-commissioned officer or private of the Volunteer Force, certified by the officer commanding the company to which such volunteer belongs or is attached as being an efficient volunteer; but this last exemption shall not apply to any volunteer who is assessed for property. R. S. O. 1877, c. 180, s. 76. (*Firemen exempted in certain cases. See Cap. 188, s. 6.*)

**88.** Every other male inhabitant of a city, town or village of the age of twenty-one years and upwards, and under sixty years of age (and not otherwise exempted by law from performing statute labor), who has not been



assessed upon the assessment roll of the city, town or village, or whose taxes do not amount to \$1, shall, instead of such labor, be taxed at \$2 yearly therefor, to be levied and collected at such time, by such person, and in such manner as the council of the municipality may, by by-law direct, and such inhabitant shall not be required to have any property qualification. R. S. O. 1877, c.] 180, s. 77; 54 V. c. 46, s. 4.

**89.** The council of every city, town and incorporated village, may pass a by-law or by-laws to reduce or abolish the amount to be paid in lieu of statute labor, as provided by the next preceding section. 46 V. c. 24, s. 2.

**90.** Subject to the provisions of the next preceding section, no person shall be exempt from the tax in section 88 mentioned, unless he produces a certificate of his having performed statute labor or paid the tax elsewhere. R. S. O. 1877, c. 180, s. 78.

**91.** Subject to the provisions of the next succeeding section, every male inhabitant of a township, between the ages aforesaid, who is not otherwise assessed, and who is not exempt by law from performing statute labor, shall be liable to one day of statute labor on the roads and highways in the township. R. S. O. 1877. c. 180, s. 79; 54 V. c. 45, s. 5.

**92.** The council of every township shall have the power to pass by-laws to reduce the amount of statute labor to be performed by the ratepayers or others within the township, or to entirely abolish such statute labor and the performance thereof by all persons within said township. 43 V. c. 27, s. 21.

**93.**—(1) Every person assessed upon the assessment roll of a township shall, if his property is assessed at not more than \$300, be liable to two days statute labor; at more than \$300 but not more than \$500, three days; at more than \$500 but not more than \$700, four days; at more than \$700 but not more than \$900, five days; and for every \$300 over \$900, or any fractional part thereof over \$150, one additional day; but the council of any township, by a by-law operating generally and ratably, may reduce or increase the number of days' labor to which all the parties, rated on the assessment roll or otherwise, shall be respectively liable, so that the number of days' labor to which each person is liable shall be in proportion to the amount at which he is assessed.

(2) In townships where farm lots have been subdivided into park or village lots, and the owners are not resident, and have not required their names to be entered on the assessment roll, the statute labor shall be commuted by the township clerk in making out the list required under section 121 of this Act, where such lots are under the value of \$200, to a rate not exceeding one-half per centum on the valuation; but the council may direct a less rate to be imposed by a general by-law affecting such village lots. R. S. O. 1877, c. 180, s. 80.

NOTE.—See sec. 100 (2).

**94.** The council of any township may, by by-law, direct that a sum not exceeding \$1 a day shall be paid as commutation of statute labor, for the whole or any part of such township, in which case the commutation tax shall be added in a separate column in the collector's roll, and shall be collected and accounted for like other taxes. R. S. O. 1877, c. 180, s. 81; 51 V. c. 29, s. 6.

**95.** Any local municipal council may, by a by-law passed for that purpose, fix the rate at which parties may commute their statute labor, at any sum not exceeding \$1 for each day's labor, and the sum so fixed shall apply equally to residents who are subject to statute labor, and non-residents in respect to their property. R. S. O. 1877, c. 180, s. 82.

**96.** Where no such by-law has been passed, the statute labor in townships, in respect of lands of non-residents, shall be commuted at the rate of \$1 for each day's labor. R. S. O. 1877, c. 180, s. 83.

**97.** Every farmer's son rated and entered as such on the assessment roll of any municipality, shall, if not otherwise exempted by law, be liable to perform statute labor or commute therefor, as if he were not so rated and assessed.

(2) Every tenant farmer's son *bona fide* resident on the farm of his father or mother, shall be exempt from statute labor in the same manner as if he were the son of an owner and jointly assessed for the property upon which he resides as provided by section 2 of *The Franchise Assessment Act of 1889*. R. S. O. 1877, c. 180, s. 84; 54 V. c. 45, s. 6 (2).

**98.**—(1) Any person liable to pay the sum named in section 88, or any sum for statute labor commuted under section 94 of this Act, shall pay the same to the collector to

be appointed to collect the same, within two days after demand thereof by the said collector; and in case of neglect or refusal to pay the same, the collector may levy the same by distress of goods and chattels of the defaulter, with costs of the distress; and if no sufficient distress can be found, then upon summary conviction before a justice of the peace of the county in which the local municipality is situate, of his refusal or neglect to pay the said sum, and of there being no sufficient distress, he shall incur a penalty of \$5 with costs, and in default of payment at such time as the convicting justice shall order, shall be committed to the common gaol of the county, and be there put to hard labor for any time not exceeding ten days, unless such penalty and costs and the costs of the warrant of commitment and of conveying the said person to gaol are sooner paid.

(2) Any person liable to perform statute labor under section 91 of this Act not commuted, shall perform the same when required so to do by the pathmaster or other officer of the municipality appointed for the purpose; and, in case of wilful neglect or refusal to perform such labor after six days' notice requiring him to do the same, shall incur a penalty of \$5, and upon summary conviction thereof before a justice of the peace aforesaid, such justice shall order the same, together with the costs of prosecution and distress, to be levied by distress of the offender's goods and chattels, and, in case there is no sufficient distress, such offender may be committed to the common gaol of the county and there put to hard labor for any time not exceeding ten days, unless such penalty and costs and the costs of the warrant of commitment and of conveying the said person to gaol are sooner paid.

(3) All sums and penalties, other than costs, recovered under this section, shall be paid to the treasurer of the local municipality, and form part of the statute labor fund thereof. R. S. O. 1877, c. 180, s. 85. See cap. 197, s. 7.

99. No non-resident who has not required his name to be entered on the roll, shall be permitted to perform statute labor in respect of any land owned by him, but a commutation tax shall be charged against every separate lot or parcel according to its assessed value; and, in all cases in which the statute labor of a non-resident is paid in money, the municipal council shall order the same to be expended in the statute labor division where the property is situate, or where the said statute labor tax is levied. R. S. O. 1877, c. 180, s. 86.

NOTE.—In case a non-resident has not required his name to be entered on the assessment roll, commuted statute labor tax will be charged against each separate lot.

**100**—(1) In case any non-resident, whose name has been entered on the resident roll, does not perform his statute labor or pay commutation for the same, the overseer of highways in whose division he is placed shall return him as a defaulter to the clerk of the municipality, before the 15th day of August, and the clerk shall in that case, enter the commutation for statute labor against his name in the collector's roll ; and in all cases both of residents and non-residents, the statute labor shall be rated and charged against every separate lot or parcel according to its assessed value.

(2) Whenever one person is assessed for lots or parts of several lots in one municipality, not exceeding in the aggregate two hundred acres, the said part or parts shall be rated and charged for statute labor as if the same were one lot, and the statute labor shall be rated and charged against any excess of said parts in like manner ; but every resident shall have the right to perform his whole statute labor in the statute labor division in which his residence is situate, unless otherwise ordered by the municipal council. R. S. O. 1877, c. 180, s. 87.

NOTE.—Sub-sections (1) and (2) are somewhat conflicting as to the rating of *parts of lots* for statute labor ; s.s. (1) appears to relate to cases where the statute labor is *not performed*, and s.s. (2) to the performance of statute labor. It is manifestly unfair that sub-divisions of lots owned by one person in any municipality should be severally rated for statute labor. Provision is here made whereby such lots or parts of lots, up to 200 acres, shall be rated on the aggregate value, at least where the statute labor is performed.

**101**—(1) Where a resident owner, tenant or occupant who has been entered upon the assessment roll, after notice or demand, makes default in performing his statute labor or in payment of commutation of the same, the overseer of the highways in whose division he is placed, shall return

him as a defaulter to the clerk of the municipality before the 15th day of August, and the clerk shall in that case enter the commutation for statute labor against his name in the collector's roll, and the same shall be collected by the collector.

(2) In every such case the clerk shall notify the overseer of highways, that may be appointed for such division in the following year, of the amount of such commutation, and the overseer shall expend the amount of such commutation upon the roads in the statute labor division where the property is situate, and shall give an order upon the treasurer of the municipality to the person performing the work. 50 V. c. 32, s. 6.

## THE MUNICIPAL ACT.

(R. S. O. 1887, Cap. 184.)

(CONTINUED.)

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RETURNING OFFICERS AND DEPUTY-RETURNING OFFICERS.

**97.**—(1) The council of every municipality in which the election is to be made by wards or polling subdivisions, shall, from time to time, by by-law appoint:

- (a) The places for holding the nominations for each ward;
- (b) The returning officers who shall respectively hold the nominations for each ward;
- (c) The places at which polls will be opened in the municipality in case a poll is required;
- (d) The deputy-returning officers who shall preside at the respective polling places.

(2) The clerk of the municipality shall be the returning officer for the whole municipality, and in the case of a poll being required, the deputy-returning officers shall make to him the returns for their respective wards or polling subdivisions. 46 V. c. 18, s. 97.

NOTE.—The returns must be made to the clerk or other returning officer for the time being *forthwith*. See s. 155, ss. 3.

**98.** In the case of a municipality in which the election is not to be by wards or polling subdivisions, the clerk shall be the returning officer to hold the nomination of candidates at all elections after the first, and shall also perform all the duties hereinafter assigned to deputy-returning officers. 46 V. c. 18, s. 98.

**99.** In any case where a deputy-returning officer refuses or neglects to attend at the time and place he is required by the returning officer to receive his voters' lists, and other election papers, the clerk of the municipality as returning officer shall appoint another person to act in his place and stead, and the person so appointed shall have all the powers and authority that he would have had if he had been appointed by by-law. In case, at the time appointed for holding a nomination or poll, the person appointed to be returning officer or deputy-returning officer has died, or does not attend to hold the nomination or poll within an hour after the time appointed, or in case no returning officer or deputy-returning officer has been appointed, the electors present at the place for holding the nomination or poll may choose from amongst themselves a returning officer or deputy-returning officer, and such returning officer or deputy-returning officer shall have all the powers, and shall forthwith proceed to hold the nomination or poll, and perform all the other duties of a returning officer or deputy-returning officer. 46 V. c. 18, s. 99; 50 V. c. 29, s. 4.

NOTE.—This is an important section, and the electors of every municipality should be made acquainted with its provisions, as in many cases a deputy-returning officer appointed in a sparsely settled subdivision might not attend, and unless an appointment should be made by the electors present it would cause a new election to be held. Again, the returning officer *shall* appoint *another person* to act as deputy-returning officer when the person appointed *refuses or neglects to attend at the time and place, etc., to receive the voters' lists and other election papers.* From this clause it may be inferred that all deputy-returning officers should, after notification of their appointment, *attend* at the office of the clerk as returning officer, to receive his papers and take his declaration, etc., and if he does not so attend the returning officer should appoint another person to act as deputy-returning officer. In case a *returning officer* does not attend at the proper time for holding a nomination (at noon on the last Monday in December), an hour must elapse before the electors can legally appoint a returning officer in

his place, and it may be inferred that any returning officer or deputy-returning officer properly appointed by the electors must continue to hold the position during the election. See sec. 489, s. 1 (b). When a polling place cannot be obtained after being fixed by by-law, the clerk may choose a suitable place in lieu thereof.

**100.** Every returning officer and deputy-returning officer shall, during the days of the election, or of the voting of electors upon a by-law, act as a conservator of the peace for the city or county in which the election or voting is held; and he, or any Justice of the Peace having jurisdiction in the municipality in which the election or voting is held, may cause to be arrested, and may summarily try and punish by fine or imprisonment, or both, or may imprison or bind over to keep the peace, or for trial, any riotous or disorderly person, who assaults, beats, molests or threatens any voter coming to, or remaining at, or going from the election or voting; and, when thereto required, all constables and persons present at the election or voting, shall assist the returning officer, or deputy-returning officer, or Justice of the Peace. 46 V. c. 18, s. 100.

**101.** Every returning officer, or deputy-returning officer, or Justice of the Peace may appoint and swear in any number of special constables to assist in the preservation of the peace and of order at an election or at the voting of electors upon a by-law; and any person liable to serve as constable, and required to be sworn in as a special constable by a returning officer or deputy-returning officer, or justice, shall, if he refuses to be sworn in or to serve, be liable to a penalty of \$20, to be recovered to the use of any one who will sue therefor. 46 V. c. 18, s. 101.

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#### OATHS.

**102.** The only oaths or affirmations to be required of a person claiming to vote in respect of a freehold, shall be as follows, or to the like effect:

You swear (or solemnly affirm) that you are the person named, or purporting to be named, in the list (or supplementary list) of voters now shewn to you (*showing the list to the voter*);



*(In the case of an unmarried woman or widow claiming to vote.)* That you are unmarried (or a widow, as the case may be);

That you are in your own right (or your wife is) a freeholder within this municipality. 53 V. c. 50, s. 55.

That you are a natural born (or naturalized) subject of Her Majesty, and of the full age of twenty-one years;

*(In the case of municipalities not divided into wards.)* That you have not voted before at this election, either at this or any other polling place.

*(In the case of municipalities divided into wards.)* That you have not voted before at this election, either at this or any other polling place in this Ward and (if the elector is tendering his vote for Mayor, Reeve, or Deputy-Reeve) that you have not voted before or elsewhere in this municipality at this election for Mayor, (Reeve or Deputy-Reeve as the case may be);

That you have not directly or indirectly received any reward or gift, nor do you expect to receive any, for the vote which you tender at this election;

That you have not received anything, nor has anything been promised to you, directly or indirectly, either to induce you to vote at this election, or for loss of time, traveling expenses, hire of team, or any other service connected with this election;

And that you have not, directly or indirectly, paid or promised anything to any person either to induce him to vote or refrain from voting at this election;

So help you God.

*(In the case of a new municipality in which there has not been any assessment roll, then instead of referring to the list of voters, the person offering to vote may be required to state in the oath the property in respect of which he claims to vote. 46 V. c. 18, s. 102; 47 V. c. 32. s. 4; 53 V. c. 50, s. 5.*

**103.** The oath or affirmation to be required of a person claiming to vote as householder or tenant, shall be as follows, or to the like effect:

You swear (or solemnly affirm) that you are the person named, or purporting to be named, in the list (or supplementary list) of voters now shewn to you (*shewing the list to the voter*);

*(In the case of an unmarried woman or widow claiming to vote)* That you are unmarried (or a widow, as the case may be);

That on the \_\_\_\_\_ day of \_\_\_\_\_ 18 (the day certified by the clerk of the municipality as the date of the return, or of the final revision and correction of the assessment roll upon which the voters' list used at the election is based) you were actually, truly, and in good faith, possessed to your own use and benefit, as tenant or occupant, of the real estate in respect of which your name is entered on the said list;

That you are (or your wife is) a householder or tenant within this municipality;

That you have been resident within this municipality for one month next before this election;

That you are a natural born (or naturalized) subject of Her Majesty, and of the full age of twenty-one years;

*(In the case of municipalities not divided into wards.)* That you have not voted before at this election, either at this or any other polling place:

*(In the case of municipalities divided into wards.)* That you have not voted before at this election, either at this or any other polling place in this ward, and (if the elector is tendering his vote for Mayor, Reeve or Deputy-Reeve) that you have not voted before or elsewhere in this municipality at this election for Mayor, (Reeve or Deputy-Reeve, as the case may be);

That you have not, directly or indirectly, received any reward or gift, nor do you expect to receive any, for the vote which you tender at this election;

That you have not received anything, nor has anything been promised to you, directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected with this election;

And that you have not, directly or indirectly, paid or promised anything to any person either to induce him to vote or refrain from voting at this election;

So help you God.

*(In the case of a new municipality in which there has not been any assessment roll, then, instead of swearing to residence for one month next before the election, and refer-*

*ring to the list of voters, the person offering to vote may be required to state in the oath the property in respect of which he claims to vote, and that he is a resident of such municipality.)* 46 V. c. 18, s. 103; 47 V. c. 32, s. 4.

**104.** The oath or affirmation to be required of a person claiming to vote in respect of income shall be as follows :

You swear (or solemnly affirm) that you are the person named (or purporting to be named by the name of \_\_\_\_\_) on the list (or supplementary list) of voters now shewn to you (*shewing the list to the voter*) ;

(*In the case of a widow or unmarried woman claiming to vote.*) That you are unmarried (or a widow as the case may be) ;

That on the \_\_\_\_\_ day of \_\_\_\_\_ 18 (the day certified by the clerk of the municipality as the date of the final revision and correction of the assessment roll upon which the voters' list used at the election is based), you were, and thenceforward have been continuously, and still are, a resident of this Township (City, Town or Village, as the case may be) ;

That at the said date, and for twelve months previously, you were in receipt of an income from your trade (office, calling, or profession, as the case may be) of a sum of not less than \$400 ;

That you are a subject of Her Majesty by birth or naturalization, as the case may be) ; and are of the full age of twenty-one years ;

(*In the case of municipalities not divided into wards.*) That you have not voted before at this election, either at this or any other polling place ;

(*In the case of municipalities divided into wards.*) That you have not voted before at this election, either at this or any other polling place in this ward, and (*if the elector is tendering his vote for Mayor, Reeve or Deputy-Reeve*) that you have not voted before or elsewhere in this municipality at this election for Mayor (Reeve or Deputy-Reeve, as the case may be) ;

That you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected with this election ;

And that you have not, directly or indirectly, paid or promised anything to any person, either to induce him to vote or refrain from voting at this election;

So help you God. 46 V. c. 18, s. 104; 47 V. c. 32, s. 4.

**105.** The oath or affirmation to be required from a farmer's son claiming to be entitled to vote shall be as follows:

You swear (or solemnly affirm) that you are the person named (or purporting to be named by the name of \_\_\_\_\_,) in the list (or supplementary list) of voters now shewn to you (*shewing the list to the voter*);

That on the \_\_\_\_\_ day of \_\_\_\_\_ 18 (the day certified by the clerk of the municipality as the date of the return, or of the final revision and correction of the assessment roll upon which the voters' list used at the election is based, as the case requires). A. B. (naming him or her), was actually, truly, and in good faith possessed to his (or her) own use and benefit as owner, as you verily believe, of the real estate in respect of which your name is so as aforesaid entered on said list of voters;

That you are a son of the said A. B.;

That you resided on the said property for twelve months next before the said day, not having been absent during that period, except temporarily, and not more than four months in all;

That you are still a resident of this municipality, and entitled to vote at this election;

That you are a subject of Her Majesty by birth (or naturalization, as the case may be); and are of the full age of twenty-one years;

(*In the case of municipalities not divided into wards.*) That you have not voted before at this election, either at this or any other polling place;

(*In the case of municipalities divided into wards.*) That you have not voted before at this election, either at this or any other polling place in this ward, and (*if the elector is tendering his vote for Mayor, Reeve or Deputy-Reeve*) that you have not voted before or elsewhere in the municipality at this election for Mayor (Reeve or Deputy-Reeve, as the case may be);

That you have not received anything, nor has anything been promised you, directly or indirectly, either to induce

you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected with this election ;

And that you have not, directly or indirectly, paid or promised anything to any person, either to induce him to vote or refrain from voting at this election ;

So help you God. 46 V. c. 18, s. 105.

**106.** Such oaths or affirmations shall be administered by the returning officer or deputy-returning officer as the case may be, at the request of any candidate or his authorized agent, and no inquiries shall be made of any voter, except with respect to the facts specified in such oaths or affirmations. 46 V. c. 18, s. 106.

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#### PROCEEDINGS PRELIMINARY TO THE POLL.

**107.** A meeting of the electors shall take place for the nomination of candidates for the office of mayor in cities, and for mayor, reeve and deputy-reeves in towns, at the hall of the municipality, on the last Monday in the month of December, annually, at ten of the clock in the forenoon, and the deputy-reeves shall be designated as first, second, third, etc., according to the number to be elected. 46 V. c. 18, s. 107 ; 51 V. c. 28, s. 10.

(2) The council of any incorporated town, divided into wards may, by by-law, provide that the nomination for councillors for the several wards shall be held at the same time and place as the nomination for mayor, reeve and deputy-reeve.

(3) Where no such by-law is passed the nomination of councillors in such town shall take place as provided by section 109 of this Act.

(4) Notwithstanding anything herein contained, the council of any incorporated town or village may by by-law provide that the nomination for mayor, reeve, deputy-reeve or reeves and councillors may be held at half-past seven o'clock in the evening instead of at the hours and times in this Act mentioned.

NOTE.—Formerly (by 29, 30 V. c. 51) nominations were held *on the last Monday but one* in December, which was preferable to the present system, as the clerk had ample time to give the necessary notices

for elections (when required) and prepare and serve all notices within the time limited by the Act. Candidates had also a fair opportunity, in large township municipalities, of meeting and addressing the electors prior to the polling day. The work to be performed by the clerk in relation to elections has become much greater and more intricate, and in some instances the notices for election are in type before nomination, with blanks in which to particularize the several offices (if any), for which more than one candidate has been nominated; and the notices are at once printed and posted in order to give the required six days notice for the election. But see sec. 113.

**108.** The clerk of the municipality shall be the returning officer to preside at such meeting, or in case of his absence, the council shall appoint a person to preside in his place; and if the clerk or the person so appointed does not attend, the electors present shall choose a chairman or person to officiate from among themselves, and such clerk or chairman shall have all the powers of a returning officer. 46 V. c. 18, s. 108.

**109.** A meeting of the electors shall take place for the nomination of candidates for the offices of aldermen in cities, councillors in towns, and of reeves, deputy-reeves and councillors in townships not divided into wards, and incorporated villages, at noon, on the last Monday in December, annually, at the town hall of such municipalities, or at such place therein, and in cities and towns at such places in each ward thereof, as may from time to time be fixed by by-law, subject, in the case of townships, to the provisions of section 111; and the deputy-reeves shall be designated as first, second, third, etc., according to the number to be elected, and the hour for the nomination of candidates for the offices of aldermen in cities, may, in and by the by-law fixing the places for such nomination, be fixed at half-past seven o'clock in the evening, instead of at noon. 46 V. c. 18, s. 109; 51 V. c. 28, s. 11.

**110.** In townships divided into wards, the nomination of candidates for the office of reeve shall be held at ten of the clock in the forenoon on the last Monday in December, at such place in the township as may from time to time be

fixed by by-law, and the township clerk shall preside; the nomination of candidates for the office of councillor, to be elected for each ward, shall take place at noon, at the town hall of the township or at such place in the township or in each ward as may be fixed by by-law; subject, however, to the provisions of section 111. 46 V. c. 18, s. 110.

**111.** Where a township is so situated that the territory of such township adjoins the limits of any city, town, or incorporated village, such city, town, or village may be designated by by-law as the place of meeting for the nomination of candidates for the offices of reeves, deputy-reeves, and councillors, as the case may be, under and in accordance with the provisions of the preceding two sections of this Act. 48 V. c. 39, s. 5.

NOTE.—Nominations for a township council may be held in an adjoining city, town or incorporated village.

**112.** When the last Monday in December happens to be Christmas day, the nomination of candidates for the offices of mayor and aldermen in cities, and of mayor, reeve, deputy-reeve and councillors in other municipalities, shall take place on the preceding Friday, at the times and places and in the manner prescribed by law. 46 V. c. 18, s. 111.

**113.**—(1) Every county council may, by by-law, made on or before the 1st day of July in any year, provide that the day for the nomination of candidates for reeve, deputy-reeves, and councillors in townships shall be upon the last Monday but one in December, but all the other provisions of law relating to municipal elections shall apply to the elections in such townships.

(2) Forthwith, after the passing of such by-law, the county clerk shall transmit a copy thereof to the clerks of the townships to which the same relates. 46 V. c. 18, s. 112.

**114.** The returning officer appointed for each ward, as in section 97 mentioned, or the clerk as the case may be, shall respectively preside at the meeting for the nomination of candidates, and in case of the absence of such presiding officer, the meeting may choose a chairman. 46 V. c. 18, s. 113.

**115.** The clerk or other returning officer whose duty it is to preside at the meeting for the nomination of candi-

dates shall give at least six days' notice of such meeting. 46 V. c. 18, s. 114.

**116.** At the said meetings, the person or persons to fill each office shall be proposed and seconded *seriatim*; and if only one candidate for any particular office is proposed, the clerk or other returning officer or chairman shall, after the lapse of one hour from the time fixed for holding the meeting, declare such candidate duly elected for such office. But if two or more candidates are proposed for any particular office, and if a poll is required by them respectively, or by any elector, the clerk or other returning officer or chairman shall adjourn the proceedings for filling such office until the first Monday in January next thereafter, when a poll or polls shall be opened in each ward or polling subdivision, at such place or places respectively as may be fixed by the by-law of the said councils for the election, at nine of the clock in the morning, and shall continue open until five of the clock in the afternoon, and no longer. 46 V. c. 18, s. 115.

NOTE.—The person or persons to fill each office shall be proposed and seconded *seriatim*. It might be held that after nominations for reeve had been called for, and one or more candidates had been proposed and seconded, the returning officer, after calling for nominations for first deputy-reeve or councillor, could legally refuse to accept further nominations for reeve or other office not then before the electors.

**117.** At the nomination meeting or at any time within two days thereafter, any person proposed for one or more offices may resign, or elect for which office he is to remain nominated; and in default he shall be taken as nominated for the office in respect of which he was first proposed and seconded; the clerk or other returning officer or chairman shall, on the day following that of the nomination, post up in the office of the clerk of the municipality the names of the persons proposed for the respective offices; provided always, that the resignation after the nomination meeting of any person so proposed shall be in writing, signed by him and attested by a witness, and shall, within said two days, be delivered to the clerk of the municipality; provided, also, that if by reason of such resignation only one candidate remains proposed for a particular office, the clerk or other returning officer shall declare such candidate duly elected for such office. 47 V. c. 32, s. 5.



**118.** In case of a poll at an election of persons to serve in municipal councils, the votes shall be given by ballot. 46 V. c. 18, s. 117.

**119.**—(1) On or before the day of nomination of candidates, if the collectors' roll has been returned to the treasurer of the municipality, the treasurer shall prepare and verify on oath, or if the collector's roll has not been so returned, the collector shall prepare and verify on oath, a correct alphabetical list of—

- (a) All persons who, being on the voters' list (that is to say the first and second parts thereof) by reason of their income only, have not paid their municipal taxes on such income on or before the 14th day of December preceding the election; and,
- (b) In municipalities which have passed by-laws under sub-section 2 of section 489 of this Act, all persons on the voters' list (that is to say the first and second parts thereof), who have been assessed for real property, but have not paid their municipal taxes on such property on or before the 14th day of December preceding the election.

(2) Where a municipality is divided into polling subdivisions, such a list of defaulters shall be made for each polling subdivision.

(3) The person preparing the said defaulters' lists, shall furnish to all persons applying for the same, certified copies thereof and of the affidavit verifying the same, in the same manner and for the same compensation as copies of the voters' list are to be furnished. 46 V. c. 18, s. 118.

NOTE.—ss. 1, (a) 2 and 3 are imperative (b) conditional on a by-law being passed by the council. See sections 251 and 489.

**120.**—(1) Where a poll is required, the clerk of the municipality shall procure or cause to be procured as many boxes (hereinafter called ballot boxes) as there are wards or polling subdivisions within the municipality.

(2) The ballot boxes shall be made of some durable material, shall be provided with a lock and key, and shall be so constructed that the ballot paper can be introduced therein, and cannot be withdrawn therefrom unless the box be unlocked.

(3) When it becomes necessary for the purpose of an election to use the ballot boxes, it shall be the duty of the clerk of the municipality, two days at least before the polling day, to deliver one of the ballot boxes to every deputy-returning officer appointed for the purposes of the election.

(4) The ballot boxes, when returned to the clerk after the election, shall be preserved by him for use at elections for the municipality; and it shall be the duty of the clerk to have ready for use, at all times, as many ballot boxes as there are wards or polling subdivisions in the municipality.

(5) If the clerk fails to furnish ballot boxes in the manner herein provided, he shall incur a penalty of \$100 in respect of every ballot box which he has failed to furnish in the manner prescribed.

(6) It shall be the duty of the deputy-returning officer in every ward or polling subdivision not supplied with a ballot box within the time prescribed, forthwith to procure one to be made, and he may issue his order upon the treasurer of the municipality in which such ward or polling subdivision is situate for the cost of the ballot box, and the treasurer shall pay to the deputy-returning officer the amount of the order. 46 V. c. 18, s. 119.

NOTE.—The clerk is here required to furnish ballot boxes to deputy-returning officers two days before polling day. It may be inferred by sec. 99 that the deputy-returning officer is required to attend at a time and place appointed by the returning officer to receive his voters' lists and other election papers.

**121.**—(1) Where a poll is required, the clerk of the municipality shall forthwith cause to be printed, at the expense of the municipality, such a number of ballot papers as will be sufficient for the purposes of the election.

(2) Every ballot paper shall contain the names of the duly nominated candidates, arranged alphabetically in the order of their surnames; or if there are two or more candidates with the same surname, then in the order of their other names. 46 V. c. 18, s. 120.

**122.**—(1) The names of the candidates for mayor in cities, and for mayor, reeve and deputy-reeves in towns, shall not be included in the same ballot paper with the names of the candidates for aldermen and councillors respectively; but

(2) In cities one kind or set of ballot papers shall be prepared for all the wards or polling subdivisions, containing the names of the candidates for mayor, and another kind or set shall be prepared for each ward or polling subdivision containing the names of the candidates for aldermen in the ward; and

(3) In towns one kind or set of ballot papers shall be prepared for all the wards or polling subdivisions, containing the names of the candidates for mayor and reeve and deputy-reeve, and another kind or set shall be prepared for each ward or polling subdivision, containing the names of the candidates for councillors in the ward; and

(4) In townships divided into wards, one kind or set of ballot papers shall be prepared for all the wards, containing the names of the candidates for reeve, and another kind or set shall be prepared for each ward, containing the names of the candidates for councillors in the ward. 46 V. c. 18, s. 121.

**123.** The ballot papers shall be in the form of Schedule A to this Act. 46 V. c. 18, s. 122.

**124.** In case of municipalities which are divided into wards or polling subdivisions, the clerk of the municipality shall, before the opening of the poll, deliver, or cause to be delivered, to every deputy-returning officer the ballot papers which have been prepared for use in the ward or polling subdivision for which such deputy-returning officer has been appointed to act, and shall also furnish to the deputy-returning officer or see that he is furnished with the necessary materials for voters to mark the ballot papers; and such materials shall be kept at the polling place by the deputy-returning officer for the convenient use of voters. 46 V. c. 18, s. 123.

NOTE.—The clerk must deliver, or cause to be delivered, ballot papers, and furnish necessary materials to every deputy-returning officer.

**125.** Every polling place shall be furnished with a compartment in which the voters can mark their votes screened from observation; and it shall be the duty of the clerk of the municipality and deputy-returning officers respectively, to see that a proper compartment for that purpose is provided at each polling place. 46 V. c. 18, s. 124.

**126.** In case of municipalities divided into wards or polling subdivisions, the clerk of the municipality shall, before the opening of the poll, deliver, or cause to be delivered, to every deputy-returning officer such number of printed directions for the guidance of voters in voting, as he may deem sufficient, and shall so deliver or cause to be so delivered at least ten copies of such printed directions; such directions shall be printed in conspicuous characters, and may be according to the form in Schedule B to this Act. 46 V. c. 18, s. 125.

NOTE.—The clerk must deliver to every deputy-returning officer at least *ten copies* of printed directions for the guidance of voters in voting according to Schedule B of this Act. For further duties of clerks and returning officers in respect to elections see sections 129, 130, 131, 132, 133, 135, 136, 141, 155; ss. 5, 156, 157, 160, 162, 163, 166, 167 (3), 168, 170, 176, 181, 184, 185, 204, 217, 222.

**127.** Every deputy-returning officer shall, before the opening of the poll, or immediately after he has received the printed directions from the clerk of the municipality, if he did not receive the same before the opening of the poll, cause the printed directions to be placarded outside the polling place for which he is appointed to act, and also in every compartment of the polling place, and shall see that they remain so placarded until the close of the polling. 46 V. c. 18, s. 126.

NOTE.—Deputy-returning officers should carefully examine sections 97 (2), 99–106 (119, 489), 120 (6), 124–135, 141–159, 167–172, 222.

**128.** Subject to the provisions of the next following three sections the proper list of voters to be used at an election shall be the first and second parts of the last list of voters certified by the Judge and delivered or transmitted to the clerk of the peace under *The Voters' Lists Act*. 46 V. c. 18, s. 127.

**129.** For the first election of a new municipality for which there is no separate assessment roll, the clerk of the municipality shall provide every deputy-returning officer with a poll book, prepared according to the form of Schedule C to this Act, instead of a voters' list, and either the deputy-returning officer or his sworn poll clerk shall there-

in enter in the proper column, the name of every person offering to vote, and at the request of any candidate or voter, shall note the property on which the person claims to vote opposite his name. 46 V. c. 18, s. 128

**130.**—(1) Where any territory is added for municipal purposes, to any city, town or village, or where a town with additional territory is erected into a city, or a village with additional territory is erected into a town, or where a new village is formed, and an election takes place before voters' lists including the names of the persons entitled to vote in such territory are made out, or before such lists are certified by the County Judge—in all such cases, the clerk of the new or enlarged city, town or village, shall extract the names of the several persons who would be entitled to vote in the territory composing or added to (as the case may be) the city, town or village, if such territory had remained separate from the city, town or village, from the last filed or certified voters' list of the municipality or municipalities to which such territory formerly belonged, containing the names of the persons entitled to vote in respect of such territory, and shall place such names in lists or supplementary lists (as the case may be).

(2) Such lists or supplementary lists shall be made in the form of Schedule C to this Act, and shall be signed by the clerk, and delivered by him to the proper deputy-returning officer for the purpose of enabling the persons named in such lists to vote at the election. 46 V. c. 18, s. 129.

**NOTE.**—Persons who would have been qualified electors in the municipality from which their property has become detached are entitled to vote in the municipality to which their property has been added. See note to sec. 73.

**131.**—(1) In any municipality for which there is a separate assessment roll, but for which no voters' list for the municipality has been filed with the clerk of the peace or certified by the County Judge under *The Voters' Lists Act*, the clerk of the municipality shall, before the poll is opened, prepare and deliver to the deputy-returning officer for every or any ward or polling subdivision, a list in the form of Schedule C to this Act, containing the names, arranged alphabetically, of all male persons appearing by the then last revised assessment roll to be entitled to vote in that ward or polling subdivision, and shall attest the

said list by his solemn declaration in writing under his hand.

(2) In the case of—

(a) Income voters, and

(b) Persons assessed for real property, if the municipality has passed a by-law under sub-section 2 of section 489 of this Act,

the clerk shall exclude from the list such persons as may be returned to him by the treasurer or collector as being, in default for not having paid their municipal taxes respectively on or before the 14th day of December preceding the election; and every list of voters so prepared shall be the proper voters' list to be used at the elections. 46 V. c. 18, s. 130.

NOTE.—Difficulties are likely to arise in consequence of excluding the names of defaulters from the list. See ss. 81, 82, 143 (1).

**132.** In the case of municipalities which are divided into wards or polling subdivisions, the clerk of the municipality shall, before the poll is opened, deliver to the deputy-returning officer for every ward or polling subdivision a copy "either printed or written, or partly printed and partly written, certified to be a correct list of voters for the ward or polling subdivision under section 128 and following sections, together with a blank poll book according to the form of Schedule C to this Act, and also a copy of the proper defaulter's list for the polling subdivision certified by the treasurer or collector pursuant to section 119 of this Act." 46 V. c. 18, s. 131; 54 V. c. 42, s. 3.

**133.** The copies of the voters' list in the next preceding section mentioned, may be prepared by the clerk of the municipality, or may be procured from the clerk of the peace, if filed under *The Voters' Lists Act*, and in the latter case the clerk of the peace shall be entitled to receive the sum of six cents for every ten voters whose names are on the list. 46 V. c. 18, s. 132.

**134.** The defaulters' lists, furnished and verified by the treasurer or collector as aforesaid, shall be the evidence on which the deputy-returning officers shall act in ascertaining the payment or non-payment of taxes by persons claiming to vote in respect of income, or in respect of real property,

in the cases mentioned in section 119 of this Act. 46 V. c. 18, s. 133.

**135.**—(1) The clerk of the municipality shall, before the opening of the poll, deliver, or cause to be delivered, to every deputy-returning officer a certificate (which may be in the form of Schedule D to this Act), of (a) the day when the assessment roll upon which the voters' list to be used at the election is based, was returned by the assessor, and also (b) of the day when the said assessment roll was finally revised and corrected.

(2) The clerk shall also give such certificate upon payment of the sum of twenty-five cents, to any person applying for the same, under a penalty of \$200 in case of neglect or refusal.

(3) The certificate, when delivered to the deputy-returning officer, shall be the evidence upon which he shall act in inserting in the oath to be administered to voters the date of the return or final revision and correction of the assessment roll as the case may be.

(4) An assessment roll shall be understood to be finally revised and corrected when it has been so revised and corrected by the court of revision for the municipality, or by the Judge of the County Court in case of an appeal, as provided by the *Assessment Act*, or when the time during which such appeal may be made has elapsed, and not before. 46 V. c. 18, s. 134.

**136.** In case of municipalities which are not divided into wards or polling subdivisions, the clerk shall perform the duties which in other cases are performed by deputy-returning officers, and shall provide himself with the necessary ballot papers, and also with the materials for marking ballot papers, printed directions before mentioned, copies of the poll book and defaulters' list, and certificate of the dates of the return and final revision of the assessment roll, similar to those required to be furnished to deputy-returning officers; and the clerk shall perform the like duties with respect to the whole municipality as are imposed upon a deputy-returning officer in respect of a ward or polling subdivision. 46 V. c. 18, s. 135; 54 V. c. 42, s. 4.

**137.** In towns and cities, every elector may vote in each ward in which he has been rated for the necessary property qualification, but in case of mayor of cities, mayor, reeve or deputy-reeve of towns, the elector is limited to one vote. 46 V. c. 18, s. 136.

**138.** In townships and incorporated villages divided into wards or polling subdivisions, no elector shall vote in more than one ward or polling subdivision for the same candidate. 46 V. c. 18, s. 137.

**139.** Every elector who is entitled to a vote in more than one ward or polling subdivision shall vote for mayor in cities, and for mayor, reeve, and deputy-reeve in towns, and for reeve in townships divided into wards, at the polling place of the ward or polling subdivision in which he is resident, if qualified to vote therein; or when he is a non-resident or is not entitled to vote in the ward or polling subdivision where he resides, then where he first votes and there only. 46 V. c. 18, s. 138; 50 V. c. 29, s. 5.

**140.**—(1) Any person who votes for mayor, reeve, or in towns or townships for deputy-reeve, after having already voted for mayor, reeve, or deputy-reeve at some other polling place at that election, shall incur a penalty of \$50, to be recovered, with full costs of suit, by any person who will sue for the same in the Division Court having jurisdiction where the offence was committed; and any person against whom judgment is rendered shall be ineligible either as a candidate or elector at the next annual elections. 46 V. c. 18, s. 139.

(2) The receipt by any voter of a ballot paper within the polling booth shall be *prima facie* evidence that he has there and then voted. 50 V. c. 29, s. 6.

**NOTE.**—Deputy-returning officers should enquire of electors offering to vote for mayor, reeve, etc., as herein specified, as to whether they had voted before for such mayor, reeve or deputy-reeve, as an elector *might* innocently vote more than once for such candidate, and unprincipled persons, unless cautioned, *would* probably vote for their favorite candidate in every ward where their names appeared on the voters' list, and plead ignorance of this section and the preceding one when the offence was discovered.

**141.**—(1) The clerk of the municipality, on the request of any elector, entitled to vote at one of the polling places, who has been appointed deputy-returning officer or poll clerk, or who has been named as an agent of a candidate to attend at any polling place other than the one where he is



entitled to vote, shall give to such elector a certificate that he is entitled to vote at the polling place where he is to be stationed during the polling day; and the certificate shall also state the property or other qualification in respect of which he is entitled to vote.

(2) On the production of the certificate, the deputy-returning officer, poll clerk or agent, shall have the right to vote at the polling place where he is stationed during the polling day, instead of at the polling station where he would otherwise have been entitled to vote; and the deputy-returning officer shall attach the certificate to the voters' list; but no such certificate shall entitle such elector to vote at such polling place unless he has been actually engaged as such deputy-returning officer, poll clerk, or agent during the day of polling; nor to vote for aldermen in cities, or councillors in municipalities divided into wards, except in the ward where he would otherwise be entitled so to vote.

(3) In case of a deputy-returning officer voting at the polling station where he has been appointed, the poll clerk appointed to act at the polling place, or in the absence of the poll clerk any elector authorized to be present, may administer to the deputy-returning officer the oath required by law to be taken by voters. 46 V. c. 18, s. 140.

**142.** The deputy-returning officer shall, immediately before the commencement of the poll, shew the ballot box to such persons as are present in the polling place, so that they may see that it is empty, and he shall then lock the box and place his seal upon it in such manner as to prevent its being opened without breaking the seal; and he shall then place the box in his view for the receipt of ballot papers, and shall keep it so locked and sealed. 46 V. c. 18, s. 141.

NOTE.—The agents of the candidates should be present before the commencement of the poll to examine the ballot box and be enabled, of his own knowledge, to report the whole proceedings.

**143.** Where a person claiming to be entitled to vote presents himself for the purpose of voting, the deputy-returning officer shall proceed as follows:

1. He shall ascertain that the name of such person is entered or purports to be entered upon the voters' list for

the ward or polling subdivision for which such deputy-returning officer is appointed to act.

2. He shall record or cause to be recorded by the poll clerk in the proper columns of the poll book the name, qualification, residence and legal addition of such person.

3. If such person takes the oath or affirmation required to be taken by voters in the manner directed by sections 102 to 105 inclusive of this Act, the deputy-returning officer shall enter or cause to be entered opposite such person's name, in the proper column of the said poll book, the word "*Sworn*," or "*Affirmed*," according to the fact.

4. Where the vote is objected to by any candidate or his agent, the deputy-returning officer shall enter the objection, or cause the same to be entered in the poll book, by writing opposite the name of such person in the proper column, the words "*Objected to*," stating, at the same time, by which candidate or on behalf of which candidate the objection has been made, by adding after the words "*Objected to*," the name only of such candidate.

5. Where such person has been required to take the oath or affirmation, and refuses to take the same, the deputy-returning officer shall enter or cause to be entered opposite the name of such person, in the proper column of the poll book, the words, "*Refused to be Sworn*," or "*Refused to Affirm*," according to the fact; and the vote of such person shall not be taken or received; and if the deputy-returning officer takes or receives such vote, or causes the same to be taken or received, he shall incur a penalty of \$200.

6. Where the proper entries respecting the person so claimed to vote have been made in the poll book in the manner prescribed, the deputy-returning officer shall, before signing his name or initials on the back of the ballot paper, place or caused to be placed a check or mark opposite to the name of the voter in the certified voter's list to indicate that the name of such person has been entered in the poll book and the person allowed to vote.

7. The ballot paper shall be delivered to such person.

8. The deputy-returning officer may, and upon request shall, either personally or through his sworn poll clerk, explain to the voter, as concisely as possible, the mode of voting. 46 V. c. 18, s. 142; 54 V. c. 42, ss. 5, 6, 7.

NOTE.—Sub-section 6 of section 143 is repealed by 54 V. c. 42, s. 5, and inadvertently the imperative

direction to the deputy-returning officer that he "shall sign his name or initials upon the back of the ballot paper," is omitted, it may still be inferred that he should so sign his name or initials on the back of the ballot paper as reference is made to such duty in sections 144 and 146.

**144.** Every deputy-returning officer refusing or wilfully omitting to sign his name or initials upon the back of the ballot paper, as provided for by sub-section 6 of section 143 of this Act, shall forfeit to any person aggrieved by such refusal, or omission, the sum of \$10, in respect of every ballot paper deposited at his polling subdivision, upon which the said deputy-returning officer has not signed his name or initials as aforesaid; and the same may be recovered in the manner provided for the recovery of penalties by section 214 of this Act. 46 V. c. 18, s. 143.

NOTE.—This section refers to 46 V. c. 18, s. 142, s. 6.

**145.** The deputy-returning officer shall place, or cause to be placed, in the columns of the poll book, headed "*Mayor*," "*Reeve*," (or "*Mayor and Reeve*,") "*Alderman*," and "*Councillor*," as the case may be, his initials opposite the name of every voter receiving a ballot paper, to denote that the voter has received a ballot paper for mayor, reeve, alderman or councillor, as the case may be. 46 V. c. 18, s. 144; 54 V. c. 42, s. 6.

**146.** Upon receiving from the deputy-returning officer the ballot paper so prepared as aforesaid, the person receiving the same shall forthwith proceed into the compartment provided for the purpose, and shall then and therein mark his ballot paper in the manner mentioned in the directions contained in Schedule B to this Act, by placing a cross, thus **X**, on the right-hand side, opposite the name of any candidate for whom he desires to vote, or at any other place within the division which contains the name of such candidate, and he shall then fold the ballot paper across, so as to conceal the names of the candidates, and the marks upon the face of such paper, and so as to expose the initials of the deputy-returning officer, and leaving the compartment, shall, without delay, and without shewing the front to any one or so displaying the ballot paper as to make known to any person the names of the candidates for or against whom he has marked his vote, deliver the ballot paper so folded to the deputy-returning officer, who shall,

without unfolding the same, or in any way disclosing the names of the candidates, or the marks made by such elector, verify his own initials, and at once deposit the same in the ballot box in the presence of all persons entitled to be present and then present in the polling place; and the voter shall forthwith leave the polling place. 46 V. c. 18, s. 145.

**147.** While a voter is in a balloting compartment for the purpose of marking his ballot paper, no other person shall be allowed to enter the compartment, or to be in any position from which he can observe the mode in which the voter marks his ballot paper. 46 V. c. 18, s. 146.

**148.** No person who has received a ballot paper from the deputy-returning officer shall take the same out of the polling place; and any person having so received a ballot paper, who leaves the polling place without first delivering the same to the deputy-returning officer in the manner prescribed, shall thereby forfeit his right to vote; and the deputy-returning officer shall make an entry in the poll-book, in the column for remarks, to the effect that such person received a ballot paper, but took the same out of the polling place, or returned the same declining to vote, as the case may be; and in the latter case the deputy-returning officer shall immediately write the word "*Declined*" upon such ballot paper, and shall preserve the same; and in case the clerk of the municipality is not himself performing the duties of deputy-returning officer, the deputy-returning officer shall return said ballot paper to the clerk of the municipality, as hereinafter directed. 46 V. c. 18, s. 147. 54 V. c. 42, s. 6.

**149.** In case of an application by a person claiming to be entitled to vote, who is incapacitated by blindness or other physical cause from marking his ballot paper, or in case of a person claiming to be entitled to vote who makes a declaration that he is unable to read, the proceedings shall be as follows:

1. The deputy-returning officer shall, in the presence of the agents of the candidates, cause the vote of such person to be marked on a ballot paper in manner directed by such person, and shall place the ballot paper in the ballot box.

2. The deputy returning officer shall state or cause to be stated in the poll book, by an entry opposite the name of such person in the proper column of the voters' list, that the vote of such person is marked in pursuance of this section, and the reason why it is so marked.

3. The declaration of inability to read, or of incapacity to mark a ballot paper, may be in the form of Schedule E to this Act, and shall be made by the person claiming to be entitled to vote, at the time of the polling, before the deputy-returning officer, who shall attest the same as nearly as may be according to the form given in Schedule F to this Act, and the said declaration shall be given to the deputy-returning officer at the time of voting. 46 V. c. 18, s. 148; 54 V. c. 42, s. 6.

**150.** A person claiming to be entitled to vote who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the deputy-returning officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the deputy-returning officer, obtain another ballot paper in the place of the ballot paper so delivered up, and the deputy-returning officer shall immediately write the word "*Cancelled*" upon the ballot paper, and preserve the same; and in case the clerk of the municipality is not himself performing the duties of deputy-returning officer, the deputy-returning officer shall return the ballot paper to the clerk of the municipality as hereinafter directed. 46 V. c. 18, s. 149.

**151.** During the time appointed for polling no person shall be entitled or permitted to be present in a polling place, other than the officers, candidates, clerks or agents, authorized to attend at the polling place, and such voter as is for the time being actually engaged in voting; it shall at all times be lawful for the deputy-returning officer to have present or to summon to his assistance in the polling place, any police constable or peace officer, for the purpose of maintaining order, or of preserving the public peace, or preventing any breach thereof, or of removing any person who may, in the opinion of the deputy-returning officer, be obstructing the polling or wilfully violating any of the provisions of this Act. 46 V. c. 18, 150.

NOTE.—See sections 170-172.

**152.** Immediately after the close of the poll in every polling place, the deputy-returning officer shall, in the presence of the poll clerk (if any) and of such of the candidates or of their agents as may then be present, open the ballot box, and proceed to count the votes as follows:

1. He shall examine the ballot papers, and any ballot paper which has not on its back the name or initials of the

deputy-returning officer, or on which more votes are given than the elector is entitled to give, or on which anything, except the initials or name of the deputy-returning officer on the back, is written or marked, by which the voter can be identified, shall be void, and shall not be counted; and any ballot paper on which votes are given for a greater number of candidates for any office than the voter is entitled to vote for, shall be void as regards all the candidates for such office, but shall be good as regards the votes for any other offices in respect to which the voter has not voted for more candidates than he is entitled to vote for.

2. The deputy-returning officer shall take a note of any objection made by a candidate, his agent or any elector authorized to be present, to any ballot paper found in the ballot box, and shall decide any question arising out of the objection.

3. Every objection shall be numbered, and a corresponding number placed on the back of the ballot paper, and initialed by the deputy-returning officer.

4. The deputy-returning officer shall endorse "*Rejected*" on any ballot paper which he rejects as invalid, and shall endorse "*Rejection objected to,*" if any objection is made to his decision.

5. The deputy-returning officer shall then count up the votes given for each candidate upon the ballot papers not rejected, and make up a written statement, in words as well as in figures, of the number of votes given for each candidate, and of the number of ballot papers rejected and not counted by him which shall be made under the several heads—

- (a) Name or number of ward or polling subdivision and of the municipality and the date of election;
- (b) Number of votes for each candidate;
- (c) Rejected ballot papers.

6. Upon the completion of the written statement, it shall be forthwith signed by the deputy-returning officer, the poll clerk, if any, and such of the candidates or their agents as may be present, and desire to sign such statement. 46 V. c. 18, s. 151.

NOTE.—But see sec. 163, s. s. (8) 2.

**153.** No more than two agents for any candidate shall be entitled to be present at the same time at the counting of the votes. 46 V. c. 18, s. 152.

**154.** Every deputy-returning officer, upon being requested so to do, shall deliver to the persons authorized to attend at his polling place, a certificate of the number of votes given at that polling place, for each candidate, and of the number of rejected ballot papers. 46 V. c. 18, s. 153.

**155.—(1)** Every deputy-returning officer shall, at the close of the poll, certify under his signature on the voters' list in full words the total number of persons who have voted at the polling place at which he has been appointed to preside, and at the completion of the counting of votes after the close of the poll, shall, in the presence of the agents of the candidates, make up into separate packets, sealed with his own seal, and the seals of such agents of the candidate as desire to fix their seals, and marked upon the outside with a short statement of the contents of such packet, the date of the day of the election, the name of the deputy-returning officer, and of the ward or polling subdivision and municipality.

- (a) The statement of votes given for each candidate and of the rejected ballot papers ;
- (b) The used ballot papers which have not been objected to and have been counted ;
- (c) The ballot papers which have been objected to, but which have been counted by the deputy-returning officer ;
- (d) The rejected ballot papers ;
- (e) The spoiled ballot papers ;
- (f) The unused ballot papers ;
- (g) A statement of the number of voters whose votes are marked by the deputy-returning officer under the heads "Physical incapacity," and "Unable to read," with the declarations of inability ; and the notes taken of objections made to ballot papers found in the ballot-box.

(2) Before returning the voters' list to the clerk of the municipality, the deputy-returning officer shall make and subscribe before such clerk, or a Justice of the Peace or the poll clerk, his declaration under oath that the voters' list was used in the manner prescribed by law, and that the entries required by law to be made therein were correctly made ; which declaration shall be in form of Schedule G to this Act, and shall thereafter be annexed to the voters' list, and such voters' list and declaration may be inspected

at any time, in presence of the clerk, by any elector of the municipality.

(3) If the clerk of the municipality is not himself performing the duties of deputy-returning officer, the deputy-returning officer shall forthwith deliver such packets personally to the clerk of the municipality; and if he is unable to do so, owing to illness or other cause, he shall deliver such packets to a person chosen by him for the purpose of delivering the same to the clerk; and shall mention on the outside of the cover of each of the packets the name of the person to whom the same had been so delivered, and shall take a proper receipt therefor, he shall also forthwith return the ballot-box to the clerk of the municipality.

(4) The packets shall be accompanied by a statement made by the deputy-returning officer, shewing the number of ballot papers entrusted to him, and accounting for them under the heads of (1) Counted; (2) Rejected; (3) Unused; (4) Spoiled; (5) Ballot papers given to voters who afterwards returned the same, declining to vote; and (6) Ballot papers taken from the polling place; which statement shall give the number of papers under each head, and is in this Act referred to as the "Ballot Paper Account."

(5) If the deputy-returning officer and one or more of the candidates or of the agents of the candidates present at the examination and counting of the ballot papers are unable to agree as to the written statement to be made by the deputy-returning officer the packages of ballot papers shall be broken open by the clerk of the municipality, in the presence of the deputy-returning officer and such of the candidates or of their agents as may be present on the day succeeding the polling day, at an hour and place to be appointed, and of which they have been notified by the deputy-returning officer, unless the distance necessary to be travelled is such that the appointed place cannot be reached on the day following the poll, in which case a reasonable time shall be allowed, and no more, for the purpose of coming before the clerk of the municipality; and the clerk of the municipality, after examining the ballot papers, shall finally determine the matter in dispute, and sign the written statement hereinbefore mentioned: and the clerk of the municipality shall forthwith, in the presence of the deputy-returning officer and such of the candidates or of their agents as may then be present, securely seal up the ballot papers which have been examined by him into their several packages as before. 46 V. c. 18, s. 154.



**156.** The clerk of the municipality, after he has received the ballot papers and statements before mentioned of the number of votes given in each polling place, shall, without opening any of the sealed packets of ballot papers, cast up the number of votes for each candidate from such statements; and shall, at the town hall, or, if there is no town hall, at some other public place, at noon on the day following the return of such ballot papers and statements, publicly declare to be elected the candidate or candidates having the highest number of votes, and shall also put up in some conspicuous place a statement under his hand shewing the number of votes for each candidate. 46 V. c. 18, s. 155.

**157.**—(1) In case it appears, upon the casting up of the votes as aforesaid, that two or more candidates have an equal number of votes, the clerk of the municipality, or other person appointed by by-law to discharge his duties of clerk in his absence or incapacity through illness, and whether otherwise qualified or not, shall, at the time he declares the result of the poll, give a vote for one or more of such candidates, so as to decide the election.

(2) Except in such case, no clerk of the municipality shall vote at any municipal election held in his municipality. See sec. 319.

(3) All deputy-returning officers and persons employed as deputy-returning officers and poll clerks, if otherwise qualified, shall be entitled to vote. 46 V. c. 18, s. 156.

**158.** In case, by reason of riot or other emergency, an election is not commenced on the proper day, or is interrupted after being commenced and before the lawful closing thereof, the returning officer, or deputy-returning officer, as the case may be, shall hold or resume the election on the following day at the hour of ten o'clock in the forenoon, and continue the same from day to day, if necessary, for four days, until the poll has been opened without interruption, and with free access to voters for twelve hours in all, or thereabouts, in order that all the electors so intending may have had a fair opportunity to vote. 46 V. c. 18, s. 157.

**159.** In case the election has not, by the end of the fourth day from the day the same commenced or should have commenced, been kept open for the said twelve hours, the returning officer, or deputy-returning officer, as the case may be, shall not return any person as elected, but shall return his voters' list and ballot papers on the following

day to the head of the municipality, certifying the cause of there not having been an election; and a new election shall take place, and the head of the municipality shall forthwith issue his warrant therefor. 46 V. c. 18, 158. *See also sec. 181.*

**160.** When a poll has been duly held in each of such wards or polling subdivisions, and the ballot papers and statements hereby directed to be returned to the clerk have been so returned to him, the clerk shall, without opening any of the sealed packets of ballot papers, cast up from said statements the number of votes given for each candidate for any office in respect whereof the election has not been previously declared, together with the votes appearing by the statements previously returned for other wards to be given for the candidate, and shall at noon on the next day, at the town hall, or if there is no town hall, at some other public place, publicly declare to be elected the candidate or candidates having the largest number of votes polled. 46 V. c. 18, s. 159.

**161.** The person or persons so elected shall make the necessary declarations of office and qualification and assume office accordingly. 46 V. c. 18, s. 160.

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#### MISCELLANEOUS PROVISIONS.

**162.** The clerk of the municipality shall retain for one month all ballot papers received by him or forwarded to him in pursuance of this Act by deputy-returning officers, and then, unless otherwise directed by an order of a Court or Judge of competent jurisdiction, shall cause them to be destroyed in the presence of two witnesses, whose declaration that they have witnessed the destruction of such papers shall be taken before the head of the municipality, and filed amongst the records of the municipality by the said clerk. 46 V. c. 18, s. 161.

NOTE.—The word month in this section must be construed to mean a *calendar* month, see 12 V. c. 10, Consolidated Statutes, Canada c. 5, s. 6; the instructions to the clerk are imperative, and he should not fail to destroy the ballot papers at the time and in the manner directed, subject to the penalties mentioned in sec. 168.

**163.**—(1) No person shall be allowed to inspect any ballot papers in the custody of the clerk of the municipality except under the order of a Court or Judge of competent jurisdiction, to be granted by the Court or Judge on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers shall be obeyed by the clerk of the municipality.

(2) The order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the Court or Judge making the order thinks expedient.

(3) In case it is made to appear, on the affidavit of a credible person, to the County Judge of the county in which the municipality is situated, at any time within fourteen days from the time the ballot papers are received by the clerk of the municipality, that a deputy-returning officer at any election in such municipality for mayor, alderman, reeve, deputy-reeve, councillor, or water commissioner, in counting the votes has improperly counted or rejected any ballot papers at such election, the County Judge may appoint a time to re-count the votes, and shall give notice in writing to the candidates of the time and place at which he will proceed to re-count the same.

(4) At the time of the application for a re-count, the applicant shall deposit with the clerk of the County Court the sum of \$25 as security for the payment of costs, charges and expenses that may become payable by the applicant, and the said sum shall not be paid out by the clerk without the order of the Judge.

(5) The County Judge, the clerk of the municipality with the ballot boxes, and each candidate and his agent appointed to attend the re-count of votes, and no other person except with the sanction of the County Judge shall be present at the re-count of the votes.

(6) At the time and place appointed the County Judge shall proceed to re-count all the votes or ballot papers received by the clerk of the municipality, and shall in the presence of the parties aforesaid, if they attend, or in the presence of such of them as do attend, open the sealed packets containing (a) the used ballot papers which have

not been objected to and have been counted; (b) the ballot papers which have been objected to, but which have been counted by the deputy-returning officer; (c) the rejected ballot papers; (d) the spoiled ballot papers; (e) the unused ballot papers; and in re-counting the votes care shall be taken that the mode in which any particular voter has voted shall not be discovered.

(7) The County Judge shall, as far as practicable, proceed continuously with the re-count of the votes, allowing only time for refreshment, excluding only Sundays, and, on other days (except so far as he and the parties aforesaid agree), the hours between six o'clock in the evening and nine on the succeeding morning. During the excluded time the County Judge shall place the ballot papers and other documents relating to the election under his own seal, and the seals of such other of the parties as desire to affix their seals, and shall otherwise take precautions for the security of the papers and documents.

(8) The County Judge shall proceed to re-count the vote as follows:

1. He shall examine the ballot papers.
2. Any ballot paper on which votes are given to more candidates than are to be elected, or on which anything except the name or initials of the deputy-returning officer on the back is written or marked by which the voter can be identified, shall be void and shall not be counted, but a ballot paper on which votes are given for a greater number of candidates for any office than the voter is entitled to vote for shall be void as regards all the candidates for such office, but shall be good as regards the votes for any other offices in respect to which the voter has not voted for more candidates than he is entitled to vote for, but no word or mark written or made, or omitted to be written or made by the deputy-returning officer on a ballot paper, shall avoid the same.
3. The County Judge shall take a note of any objection made by a candidate or by his agent to any ballot paper found in the ballot box, and shall decide any question arising out of the objection, and the decision of the County Judge shall be final.
4. The County Judge shall then count up the votes given for each candidate upon the ballot papers not rejected, and make up a written statement, in words as well as in figures, of the number of votes given for each candidate, and of the

number of ballot papers rejected and not counted by him, which statement shall be made under the several heads following :

- (a) Name of municipality ;
- (b) Names of the candidates ;
- (c) Number of votes for each candidate ;
- (d) Papers wanting signature or initials of deputy-returning officer ;
- (e) Papers rejected as voting for more candidates than entitled to ;
- (f) Papers rejected as having a writing or mark by which voters could be identified ;
- (g) Papers rejected as unmarked or void for uncertainty.

5. Upon the completion of the re-count, or as soon as he has thus ascertained the result of the poll, the County Judge shall seal up all the ballot papers in separate packets, and shall forthwith certify the result to the clerk of the municipality, who shall then declare to be elected the candidate having the highest number of votes ; and in case of an equality of votes, the clerk of the municipality shall have the casting vote as provided in section 157 of this Act. 46 V. c. 18, s. 162 ; 52 V. c. 36, s. 6.

NOTE.—It would appear that under this section as amended by 52 V. c. 36, s. 6, the omission of the deputy-returning officer's name or initials on the back of a ballot paper which is otherwise good will not invalidate the vote, and that it must be counted.

**164.** Nothing in the preceding section contained shall destroy or prevent any remedy which any person may now have under or by *quo warranto* or otherwise. 46 V. c. 18, s. 163.

**165.**—(1) All costs, charges and expenses of, and incidental to an application for a re-count and to the proceedings consequent thereon, shall be defrayed by the parties to the application in such manner and in such proportion as the Judge may determine, regard being had to the disallowance of any costs, charges or expenses which may in the opinion of the Judge have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the applicant or the respondent, and regard being had to the discouragement of any needless

expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful.

(2) The costs may be taxed in the same manner, and according to the same principles as costs are taxed between solicitor and client in the County Court.

(3) The payment of any costs ordered to be paid by the Judge may be enforced by an execution against goods and chattels, to be issued from any County Court, upon filing therein the order of the Judge and a certificate shewing the amount at which the costs were taxed and an affidavit of the non-payment thereof. 46 V. c. 18, s. 164.

**166.** Where a rule or order is made for the production by the clerk of the municipality, of any document in his possession relating to a specified election, the production of the document by the clerk, in such manner as may be directed by the rule or order, shall be conclusive evidence that the document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by the clerk, shall be evidence of such papers being what they are stated to be by the endorsement. 46 V. c. 18, s. 165.

**167.**—(1) No person shall—

- (a) Without due authority supply any ballot paper to any person; or
- (b) Fraudulently put into any ballot box any paper other than the ballot paper, which he is authorized by law to put in; or
- (c) Fraudulently take out of the polling place any ballot paper; or
- (d) Without due authority destroy, take, open, or otherwise interfere with any ballot box or packet of ballot papers then in use for the purposes of the election.
- (e) Apply for a ballot paper in the name of some other person, whether that name is of a person living or dead, or of a fictitious person, or having voted once and not being entitled to vote again at an election shall apply at the same election for a ballot paper in his own name. This provision is not to be construed as including a person who applies for such ballot paper believing

that he is the person intended by the name entered on the voters' list in respect of which he so applies for a ballot paper.

(2) No person shall attempt to commit any offence specified in this section.

(3) A person guilty of any violation of this section shall be liable, if he is the clerk of the municipality, to imprisonment for any term not exceeding two years, with or without hard labor; and if he is any other person, to imprisonment for a term not exceeding six months, with or without hard labor. 46 V. c. 18, s. 166.

NOTE.—The amendment (51 V. c. 28, s. 12) (e) is intended to prevent personation at the polls.

**168.** Every officer and clerk who is guilty of any wilful misfeasance, or any wilful act or omission in contravention of sections 119 to 167, inclusive, of this Act, shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act or omission, a penal sum of \$400. 46 V. c. 18, s. 167.

**169.**—(1) Every officer, clerk and agent in attendance at a polling place shall maintain and aid in maintaining the secrecy of the voting at the polling place.

(2) No officer, clerk or agent, and no person whatsoever shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain at the polling place information as to the candidate or candidates for whom any voter at such polling place is about to vote or has voted.

(3) No officer, clerk, agent or other person shall communicate at any time to any person any information obtained at a polling place as to the candidate or candidates for whom any voter at such polling place is about to vote or has voted.

(4) Every officer, clerk and agent in attendance at the counting of the votes, shall maintain and aid in maintaining the secrecy of the voting, and shall not communicate or attempt to communicate any information obtained at such counting as to the candidate or candidates for whom any vote is given in any particular ballot paper.

(5) No person shall, directly or indirectly, induce a voter to display his ballot paper after he has marked the same,

so as to make known to any person the name of any candidate or candidates for or against whom he has marked his vote.

(6) Every person who acts in contravention of this section shall be liable, on summary conviction before a Stipendiary Magistrate, Police Magistrate, or two Justices of the Peace, to imprisonment for any term not exceeding six months, with or without hard labor. 46 V. c. 18, s. 168.

NOTE.—The requirements contained in this section should be strictly observed.

**170.** The clerk of the municipality, and every officer, clerk or agent, authorized to attend a polling place or at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy in the presence, if he is the clerk of the municipality, of a Justice of the Peace, and if he is any other officer, or clerk, in the presence of a Justice of the Peace or of the clerk of the municipality; and if he is an agent of a candidate, in the presence of a Justice of the Peace or of the clerk of the municipality, or of the deputy-returning officer at whose polling place he is appointed agent; and such statutory declaration of secrecy shall be in the form mentioned in Schedule H to this Act, or to the like effect. 46 V. c. 18, s. 169.

**171.** No person who has voted at an election shall in any legal proceeding to question the election or return, be required to state for whom he has voted. 46 V. c. 18, s. 170.

**172.** A candidate may himself undertake the duties which any agent of his, if appointed, might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may in pursuance of this Act be authorized to attend, but no candidate shall be present at the marking of a ballot by an incapacitated voter, or a voter unable to read, under section 149. 46 V. c. 18, s. 171.

NOTE.—A candidate may himself, or by his agent, attend at a polling place during the polling and counting of votes. See sec. 151.

**173.** When in the sections of this Act numbered from 119 to 172 inclusive, expressions are used, requiring or authorizing any act or thing to be done, or inferring that



any act or thing is to be done in the presence of the agents of the candidate, such expressions shall be deemed to refer to the presence of such agents of the candidates as are authorized to attend, and as have in fact attended, at the time and place where such act or thing is being done; and the non-attendance of any agent at such time and place shall not, if the act or thing is otherwise duly done, invalidate in anywise the act or thing done. 46 V. c. 18, s. 172.

**174.** In reckoning time for the purposes of the said sections, Sunday and any day set apart by any act of lawful authority for a public holiday, fast or thanksgiving, shall be excluded; and where anything is required by this Act to be done on a day which falls on such days, such things may be done on the next juridical day; but nothing in this section contained shall extend or apply to the days fixed by this Act for the nomination or election of candidates for the offices of mayor and aldermen in cities, and mayor, reeve, deputy-reeves and councillors in other municipalities. 46 V. c. 18, s. 173.

**175.** No election shall be declared invalid by reason of a non-compliance with the rules contained in this Act as to the taking of the poll or the counting of the votes, or by reason of any mistake in the use of the forms contained in the schedules to this Act, or by reason of any irregularity, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in this Act, and that such non-compliance or mistake or irregularity did not affect the result of the election. 46 V. c. 18, s. 174.

NOTE.—This saving clause provides, that so long as any departure from the rules and provisions contained in the Act for conducting an election, does not affect *the result*, such non-compliance shall not invalidate the election.

**176.** The reasonable expenses incurred by the clerk of the municipality and by the other officers and clerks for printing, providing ballot boxes, ballot papers, materials for marking ballot papers, polling compartments, transmission of the packets required to be transmitted by this Act, and reasonable fees and allowances for services rendered under this Act, shall be paid to the clerk of the municipality by the treasurer of the municipality, and shall be distributed by the clerk of the municipality to the several persons entitled thereto. 46 V. c. 18, s. 175.

## VACANCIES IN COUNCIL.

**177.** If after the election of a person as member of a council he is convicted of felony or infamous crime, or becomes insolvent within the meaning of the Insolvent Acts, or applies for relief as an indigent debtor, or remains in close custody, or assigns his property for the use of his creditors, or absents himself from the meetings of the council for three months without being authorized so to do by a resolution of the council entered in its minutes, his seat in the council shall thereby become vacant, and the council shall declare the seat vacant and order a new election. 46 V. c. 18, s. 176.

**178.** In the event of a member of a municipal council forfeiting his seat at the council or his right thereto, or of his becoming disqualified to hold his seat, or of his seat becoming vacant by disqualification or otherwise, he shall forthwith vacate his seat, and in the event of his omitting to do so at any time after his election, proceedings by *quo warranto* to unseat such member, as provided by sections 187 to 208, both inclusive, of this Act, may be had and taken, and such sections shall, for the purposes of such proceedings, apply to any such forfeiture, disqualification or vacancy. 46 V. c. 18, s. 177.

NOTE.—In the event of a member being insolvent in any of the cases enumerated in section 177, his seat becomes vacant by force of the Act, and the council shall declare the seat vacant, etc., under section 178 he must forthwith vacate his seat.

**179.** Any mayor or other member of a council may, with the consent of the majority of the members present, to be entered on the minutes of the council, resign his seat in the council. 46 V. c. 18, s. 178.

**180.** The warden of a county may resign his office by verbal intimation to the council while in session, or by letter to the county clerk if not in session, in which cases, and in case of vacancy by death or otherwise, the clerk shall notify all the members of the council, and shall, if required by a majority of the members of the county council, call a special meeting to fill such vacancy. 46 V. c. 18, s. 179.

**181.** In case no return is made for one or more wards or polling subdivisions, in consequence of non-election owing

to interruption by riot or other cause, or in case a person elected to a council neglects or refuses to accept office, or to make the necessary declarations of office within the time required, or in case a vacancy occurs in the council caused by resignation, death, judicial decision or otherwise, the head of the council for the time being, or in case of his absence, or of his office being vacant, the clerk, or in case of the like absence or vacancy in the office of the clerk, one of the members of the council shall forthwith, by warrant, under the signature of such head, clerk or member, if procurable, require the returning officers and deputy-returning officers appointed to hold the last election for the municipality, ward and polling subdivision respectively, or any other persons duly appointed to those offices, to hold a new election to fill the place of the person neglecting or refusing as aforesaid, or to fill the vacancy. 46 V. c. 18, s. 180.

**182.** In case the office of mayor of a city or town becomes vacant after the first day of December in any year, and an election to fill the vacancy has not been ordered by the Court or a Judge, the council may either direct that an election be held to fill the vacancy, or may elect one of their number to fill the office during the residue of the term. 48 V. c. 39, s. 6.

**183.** The person thereupon elected shall hold his seat for the residue of the term for which his predecessor was elected, or for which the office is to be filled. 46 V. c. 18, s. 181.

**184.** In case such non-election, neglect or refusal as aforesaid, occurs previous to the organization of the council for the year, the warrant for the new election shall be issued by the head or a member of the council for the previous year, or by the clerk, in like manner, as provided by section 181, but such neglect or refusal shall not interfere with the immediate organization of the new council, provided a majority are present of the full number of the council. 46 V. c. 18, s. 182.

**185.** The returning officers and deputy-returning officers shall hold the new election at furthest within fifteen days after receiving the warrant, and the clerk shall appoint a day and place for the nomination of candidates, and the election shall, in respect to notices and other matters, be conducted in the same manner as the annual elections. 48 V. c. 39, s. 7.

**186.** In case, at an annual or other election, the electors, from any cause not provided for by sections 158 or 159, neglect or decline to elect the members of council for a municipality on the day appointed, or to elect the requisite number of members, the new members of the council, if they equal or exceed the half of the council when complete, or a majority of such new members, or if a half of such members are not elected, then the members for the preceding year, or a majority of them,—shall appoint as many qualified persons as will constitute or complete the number of members requisite; and the persons so appointed shall accept office and make the necessary declarations under the same penalty, in case of refusal or neglect, as if elected. 46 V. c. 18, s. 184.

NOTE.—See note to section 88.

AN ACT CONSOLIDATING AND REVISING  
THE PUBLIC SCHOOLS ACTS.

(54 Vic. 1891.)

(CONTINUED.)

RURAL SCHOOL SITES.

**64.** Before any steps are taken by the trustees for securing a site on which to erect a new school house or for changing the site of a school house they shall call a special meeting of the ratepayers of the section to consider the site selected by them; and no site shall be adopted or change of school site made except in the manner hereinafter provided, without the consent of the majority of such special meeting. R. S. O. c. 225, s. 64. (*Amended.*)

NOTE.—At least six days' notice should be given.  
See secs. 18, 29, 40, s. s. 11.

**65.** In case a majority of the ratepayers present at such special meeting differ as to the suitability of the site selected by the trustees, each party shall then and there choose an arbitrator, and the county inspector, or, in case of his inability to act, any person appointed by him to act on his behalf, shall be a third arbitrator; and such three arbitrators, or a majority of them present at any lawful meeting, shall have authority to make and publish an award upon the matter or matters submitted to them. R. S. O. c. 225, s. 65.

NOTE.—Provision is made by sec. 68 for the neglect or failure of either party to appoint an arbitrator.

**66.** With the consent, or at the request of the parties to the reference, the arbitrators, or a majority of them, shall have authority, within one month from the date of their award, to reconsider such award and within two months thereafter to make and publish a second award, which

award (or the previous one, if not reconsidered by the arbitrators) shall be binding upon all the parties concerned for at least five years from the date thereof. R. S. O. c. 225, s. 66. (*Amended.*)

NOTE.—It would appear that the award made under sec. 65 would not be complete and binding until after one month had elapsed, and upon a reconsideration being had, that two months additional time should elapse before the second award would be binding.

**67.** If the owner of the land selected for a new school site, or required for the enlargement of school premises, refuses to sell the same, or demands therefor a price deemed unreasonable by the trustees of any section, then such owner and the trustees shall each forthwith appoint an arbitrator, and the arbitrators thus appointed, together with the inspector, or, in case of his inability to act, any person appointed by him on his behalf as third arbitrator, or any two of them, shall appraise the damages for such land. R. S. O. c. 225, s. 67.

**68.** If the majority of the school trustees, or the majority of a public school meeting, neglect or refuse, where there is a difference in regard to the selection of a school site, to appoint an arbitrator, as provided in this Act, or if the owner of land selected as a school site, neglects or refuses to appoint an arbitrator, it shall be competent for the inspector with the arbitrator appointed, to meet and determine the matter; and the inspector in case of such refusal or neglect, shall have a second or casting vote if he and the arbitrator appointed do not agree. R. S. O. s. 225, s. 68.

NOTE.—In case of such "second or casting vote" being given by the inspector, the award should contain a clause setting forth the fact that "he and the arbitrator appointed do not agree," so that "if there be no conveyance" as mentioned in sec. 71, no exception could be taken to the title on account of the arbitrator not being a party to the award.

**69.** (1) The arbitrators aforesaid, or any two of them, shall have the power to settle all claims or rights of incumbancers, lessees, tenants, or other persons, as well as those

of the owner, in respect of the land required for the purpose of the school site, upon notice in writing to every such claimant, and after hearing and determining his claims or rights.

(2) Upon the tender of payment of the amount of such damage to the owner or other person entitled thereto, or to any part of such amount, by the school trustees, the land shall be taken and used for the purpose aforesaid. R. S. O. c. 225, s. 69.

**70.** If only a majority of the arbitrators appointed to decide any case arising under the authority of this Act are present at any lawful meeting, in consequence of the neglect or the refusal of the other arbitrator to meet them, it shall be competent for those present to make and publish an award upon the matter or matters submitted to them, or to adjourn the meeting for any period not exceeding ten days, and give the absent arbitrator notice of the adjournment. R. S. O. c. 225, s. 70.

NOTE.—In case of an adjournment, the absent arbitrator should be notified.

**71.** Any award for a school site made and published under this Act, if there be no conveyance, shall thereafter be deemed to be the title of the trustees to the land mentioned in it, and shall be a good title thereto against all persons interested in the property in any manner whatever, and shall be registered in the proper registry office on the affidavit of the secretary-treasurer of the board of trustees verifying the same. R. S. O. c. 225, s. 71.

**72.** The parties concerned in all such disputes shall pay all the expenses incurred in them, according to the award or decision of the arbitrators. R. S. O. c. 225, s. 72.

**73.** A school site shall not be selected in a township within a hundred yards of the garden, orchard, pleasure ground, or dwelling house of the owner of the site without his consent. R. S. O. c. 225, s. 73.

**74.** Where the area of a school site is less than is required by the regulations of the Education Department the trustees may, without reference to a special meeting of the ratepayers, enlarge the same, but no such enlargement shall be made in the direction of, or including an orchard, garden, or dwelling house, without the consent of the owner of the land required, unless the school site cannot be otherwise enlarged. R. S. O. c. 225, s. 74 (1).

NOTE.—“In the direction of” this is not prohibitory, unless the enlargement would be a violation of sec. 73. It may be inferred, that, if “*the school site cannot be otherwise enlarged,*” the limitation herein will not prevent the enlargement.

**75.** All corporations and persons whatever, tenants in tail or for life, guardians executors, administrators, and all other trustees whatsoever, not only for and on behalf of themselves, their heirs and successors, but also for and on behalf of those they represent, whether infants, issue unborn, lunatics, idiots, females, or other person, seised, possessed of or interested in any land, may contract for, sell or convey all or part thereof to school trustees for a school site or an addition to the school site, or for a teacher's residence; and any contract, agreement, sale, conveyance and assurance so made shall be valid and effectual to all intents and purposes whatsoever; and the corporations or persons so conveying are hereby indemnified for what they respectively do by virtue of or in pursuance of this Act. R. S. O. c. 225, s. 75.

**76.** If the owner of land duly selected for the said purpose is absent from the county in which the land lies, or is unknown, the trustees may procure from a sworn surveyor a certificate that he is not interested in the matter; that he knows the land and that some certain sum therein named is, in his opinion, a fair compensation for the same; and on filing the said certificate with the Judge of the County Court of the county in which the land lies, accompanied by an affidavit or affidavits which satisfy the Judge that the owner is absent from the county and that, after diligent enquiry, he cannot be found, the Judge may order a notice to be inserted for such time as he sees fit in some newspaper published in the county; and he may in addition thereto, order a notice to be sent to any person by mail, or may direct service of the same to be effected in such other way as he sees fit. R. S. O. c. 225, s. 76.

NOTE.—The surveyor's certificate shall recite the matter herein set forth.

**77.** The notice shall contain a short description of the land, and a declaration of the readiness of the trustees to pay the sum certified as aforesaid; shall give the name of a person to be appointed as the arbitrator of the trustees if their offer of that sum is not accepted; shall name the



time within which the offer is to be accepted, or an arbitrator named by the owner; and shall contain any other particulars which the County Judge may direct. R. S. O. c. 255, s. 77.

**78.** If within such a time as the Judge directs, the owner does not notify the trustees of the acceptance of the sum offered by them, or notify to them the name of a person whom he appoints as arbitrator, the Judge shall, on the application of the trustees, appoint a sworn surveyor to be sole arbitrator for determining the compensation to be paid for the property. R. S. O. c. 225, s. 78.

**79.** Where land is taken by the trustees without the consent of the owner, the compensation to be paid therefor shall stand in the stead of the land; and after the trustees have taken possession of land any claim to, or incumbrance upon the same or any portion thereof, shall as against the trustees, be converted into a claim to the compensation or to a proportion thereof, and the trustees shall be responsible accordingly whenever they have paid such compensation or any part thereof to a party not entitled to receive the same, saving always their recourse against such party. R. S. O. c. 225, s. 79.

**80.** If the trustees have reason to fear any claims or incumbrance, or if any party to whom the compensation or any part thereof is payable refuses to execute the proper conveyance, or if the party entitled to claim the same cannot be found or is unknown to the trustees, or if for any other reason the trustees deem it advisable, they may pay the arbitration and other expenses, and deposit the amount of the compensation with the High Court, or in such other manner as the inspector may direct, with interest thereon for six months, and may deliver therewith an authentic copy of the conveyance, or of the agreement or award if there be no conveyance; and such agreement or award shall thereafter be deemed to be the title of the trustees to the land therein mentioned; and shall be a good title thereto against all persons interested in the property in any manner whatever, and shall be registered in the proper registry office on an affidavit of the secretary-treasurer of the board of trustees verifying the same. R. S. O. c. 225, s. 80.

## AN ACT RESPECTING SEPARATE SCHOOLS.

(*Cap. 227, R. S. O. 1887.*)

(CONTINUED.)

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### ASSESSMENTS.

NOTE.—When a notice is given under sec. 40 the party giving such notice is not required to renew it while he is a supporter of a separate school.

41. Every clerk of a municipality, upon receiving such notice, shall deliver a certificate to the person giving the notice, to the effect that the same has been given, and shewing the date thereof. 49 V. c. 46, s. 42.

42. Any person who fraudulently gives such notice, or wilfully makes any false statement therein, shall not thereby secure any exemption from rates, and shall be liable to a penalty of \$40, recoverable with costs before any Justice of the Peace at the suit of the municipality interested. 49 V. c. 46, s. 43.

43. Nothing in the last preceding three sections contained, shall exempt any person from paying any rate for the support of public schools or public school libraries, or for the erection of a school house or school houses, imposed before the establishment of the separate school. 49 V. c. 46, s. 44.

44. Subject to the other provisions of this Act no person shall be deemed a supporter of a separate school unless he resides within three miles (in a direct line) of the site of the school house. 49 V. c. 46, s. 45.

NOTE.—This section is somewhat ambiguous, since, if the prescribed notices are given under the "other provisions of this Act," then the three miles' limit would be of no effect.

45. When a supporter of a separate school resides without the municipality in which the school is situate, he shall be entitled to vote in the ward or division in which the school house nearest to his place of residence is situate, if within the distance of three miles in a direct line. 49 V. c. 46, s. 46.

46. Any person, who, if resident in a municipality, would be entitled to be a supporter of a separate school existing either therein or in any adjoining municipality, may, in giving notice under section 3 of *The Assessment Act*, that he is the owner of unoccupied land situate in either of the said municipalities, require that all such land as is situate either in the municipality wherein the separate school is situate or within the distance of three miles in a direct line of the site of the separate school shall be assessed for the purposes of the separate school, and the proper assessor shall thereupon enter such person in the assessment roll as a separate school supporter, and the proper entries in that behalf shall be made in the prescribed column for separate school rates, and the land shall be assessed accordingly for the purposes of the separate school and not for public school purposes. 49 V. c. 46, s. 47.

47.—(1) Any Roman Catholic who may desire to withdraw his support from a separate school, shall give notice in writing to the clerk of the municipality, before the second Wednesday in January in any year, otherwise he shall be deemed a supporter of the school.

(2) But any person who has withdrawn his support from a Roman Catholic separate school shall not be exempted from paying any rate for the support of separate schools or separate school libraries, or for the erection of a separate school house, imposed before the time of his withdrawing such support from the separate school. 49 V. c. 46, s. 48.

48.—(1) The assessor or assessors of every municipality shall in the assessment roll set down the religion of the person taxable, distinguishing between Protestant and Roman Catholic, and whether supporters of public or separate schools; but nothing herein contained shall be deemed to interfere with the rights of public school trustees under *The Public Schools Act*.

(2) The assessor shall accept the statement of, or made on behalf of, any ratepayer, that he is a Roman Catholic, as sufficient *prima facie* evidence for placing such person in the proper column of the assessment roll for separate

school supporters, or if the assessor knows personally any ratepayer to be a Roman Catholic this shall also be sufficient for placing him in such last mentioned column.

(3) The Court of Revision shall try and determine all complaints in regard to persons in these particulars alleged to be wrongfully placed upon or omitted from the roll (as the case may be), and any person so complaining, or any ratepayer of the municipality, may give notice in writing to the clerk of the municipality of such complaint, and the provisions of *The Assessment Act*, in reference to giving notice of complaints against the assessment roll, and proceedings for the trial thereof, shall likewise apply to all complaints under this section of this Act. 49 V. c. 46, s. 49.

NOTE.—(1) sec. 40 *Public Schools Act*.

49. The clerk of every municipality, in annually making out the collector's roll, shall place columns therein, so that under the head of "School Rate," the public school rate may be distinguished from the separate school rate, and also under "Special Rate for School Debts," shall distinguish between public and separate school purposes, and the proceeds of any such rate shall be kept distinguished by the collector, and accounted for accordingly. 49 V. c. 46, s. 50.

50. The clerk of any municipality in which any separate school section or part of a section is situate, shall, not later than the 1st day of December in each year, make out and transmit to the county school inspector a statement shewing whether or not any county rate for public school purposes has been placed upon the collector's roll against supporters of separate schools, and if such rate has been so placed upon the roll, giving a list of such supporters with the amount so rated against each, and the total amount so rated. 49 V. c. 46, s. 51.

NOTE.—See sec. 113 *Public Schools Act*.

51. In any case where under section 20 of *The Assessment Act*, land is assessed against both the owner and occupant, or owner and tenant, then the occupant or tenant shall be deemed and taken to be the person primarily liable for the payment of school rates, and for determining whether such rates shall be applied to public or separate school purposes, and no agreement between the owner or tenant as to the payment of taxes as between themselves shall be allowed to alter or to affect this provision other-

wise; and in any case where, as between the owner and tenant or occupant, the owner is not to pay taxes, if by the default of the tenant or occupant to pay the same, the owner is compelled to pay such school rate, he may direct the same to be applied to either public or separate school purposes. 49 V. c. 46. s. 52.

**52.**—(1) A company may, by notice in that behalf to be given to the clerk of any municipality wherein a separate school exists, require any part of the real property of which such company is either the owner and occupant, or, not being such owner, is the tenant, occupant or actual possessor, and any part of the personal property (if any) of such company, liable to assessment, to be entered, rated and assessed for the purposes of said separate school, and the proper assessor shall thereupon enter said company as a separate school supporter, in the assessment roll in respect of the property specially designated in that behalf in or by said notice, and the proper entries in that behalf shall be made in the prescribed column for separate school rates, and so much of the property as shall be so designated shall be assessed accordingly in the name of the company for the purposes of the separate school and not for public school purposes, but all other property of the company shall be separately entered and assessed in the name of the company as for public school purposes; provided always that the share or portion of the property of any company, entered, rated or assessed, in any municipality for separate school purposes under the provisions of this section, shall bear the same ratio and proportion to the whole property of the company assessable within the municipality, as the amount or proportion of the shares or stock of the company, so far as the same are paid, or partly paid up, and are held and possessed by persons who are Roman Catholics, bears to the whole amount of such paid or partly paid up shares or stock of the company.

(2) A notice by the company to the clerk of the local municipality under the provisions of this section may be in the form or to the effect following:

To the clerk of (*describing the municipality*),

Take notice that (*here insert the name of the company so as to sufficiently and reasonably designate it*) pursuant to a resolution in that behalf of the directors of said company requires that hereafter and until this notice is either withdrawn or varied, so much of

the property of the company assessable within (*giving the name of the municipality*), and hereinafter specially designated shall be entered, rated and assessed for separate school purposes, namely, one-fifth (*or as the case may be*) of all real property, and one-fifth (*or as the case may be*) of all personal property of said company, liable to assessment in said municipality.

Given on behalf of the said company this (*here insert date*).

R. S. Secretary of said company.

(3) Any such notice given in pursuance of a resolution in that behalf of the directors of the company shall for all purposes be deemed to be sufficient, and every such notice so given shall be taken as continuing and in force and to be acted upon unless and until the same is withdrawn, varied or cancelled by any notice subsequently given, pursuant to any resolution of the company or of its directors.

(4) Every such notice so given to such clerk shall remain with and be kept by him on file in his office, and shall at all convenient hours be open to inspection and examination by any person entitled to examine or inspect any assessment roll, and the assessor shall in each year, before the completion and return of the assessment roll, search for and examine all notices which may be so on file in the clerk's office, and shall thereupon in respect of said notices (if any) follow and conform thereto and to the provisions of this Act in that behalf.

(5) The word "company" in this section shall mean and include any body corporate. 49 V. c. 46, s. 53. See Cap. 193, s. 21.

NOTE.—See sec. 21 of *The Assessment Act*.

## MISCELLANEOUS.

TRANSLATION OF LIVY'S HISTORY OF ROME, LIBER XL.  
—CONTEST BETWEEN PERSEUS AND DEMETRIUS,  
SONS OF PHILIP, KING OF MACEDONIA.

THE time of the purification of the army now arrived. The ceremony is thus performed :—A dog being cut asunder in the middle, the head, with the forepart and the entrails, is laid on the right side of the road, and the hind part on the left. Between the parts of the victim thus divided, the forces march under arms. In the front of the van are carried the remarkable suits of armour of all the kings of Macedonia, from the remotest origin ; next follows the king himself, with his children ; then the royal cohort and body-guards, and the rest of the national troops close the rear. On this occasion the king was accompanied by his two sons, one on each side of him ; Perseus being now in his thirtieth year, Demetrius five years younger ; the former in the full strength of manhood, the latter in its bloom :—a ripe progeny, capable of rendering their father happy, if sound wisdom had regulated their conduct. The custom was, that when the purification was finished, the troops performed their exercise ; and then, being divided into two equal parties, engaged in representation of a battle. The young princes were appointed commanders in this mock engagement ; not indeed mock engagement as it should have been, for the encounter was as if they were fighting for the throne ; many wounds were given with the foils ; nor was any thing but sharp weapons wanting to render it a regular battle. The party under Demetrius had a great superiority ; and, while Perseus was vexed thereat, his judicious friends rejoiced, and said, that that very circumstance would afford grounds for the heavier charges against his brother.

Each of the princes gave an entertainment that day to the party who had exercised under his command. Perseus was invited to supper by Demetrius, but refused ; however, cheerful hospitality, on such a festival day, and youthful

mirth, led both to drink freely of wine. The conversation of either party turned on the incidents of the mock engagement, and jocular remarks were thrown on their antagonists, without sparing even the commanders themselves. To listen and catch such expressions, a spy was sent from among the guests of Perseus; but, not conducting himself with sufficient caution, he was detected by some young men who happened to come out of the banqueting-room, and severely beaten. Demetrius, knowing nothing of this matter, said, "Why don't we go and join in merriment with my brother; assuaging, by our openness and candour, any remains of his anger that may subsist since the fight?" All cried out at once that they would attend him, except those who were afraid of immediate vengeance for having beaten the spy. These, however, being pressed by Demetrius to go with the rest, concealed swords under their clothes, with which they might defend themselves if any violence should be offered. In the case of domestic discord nothing can be kept secret. Both houses were full of spies and traitors. An informer ran on before to Perseus, and told him that four armed young men were coming with Demetrius. Though he well knew the reason of their fears (for he had heard of the beating given to his guest), yet, for the purpose of giving the matter a bad colour, he ordered his gates to be locked; and from the windows facing the street he called aloud to the revellers, and as if they were come to murder him, not to approach the house. Demetrius, flushed with wine, exclaimed loudly on being shut out. He then went home to his own feast, entirely ignorant of the meaning of this proceeding.

Next day Perseus, as soon as he could be admitted to his father's presence, went into the palace; and, with a countenance expressive of great perturbation, stood silent at a distance. Philip asked him "if all was well, and what was the cause of that sadness?" He answered, "I must tell you, that it is but by mere accident that I am now alive. My brother attacks us not with secret treachery: he came last night to my house with men in arms, to take away my life; and it was by shutting the doors, and keeping the walls between me and him, that I saved myself from his fury." As these words filled his father with horror, mixed with wonder, he added, "If you can prevail on yourself to listen to me, I will give you the clearest proof of the matter." Philip replied that he would certainly listen to him, and ordered Demetrius to be instantly summoned. He then sent for two friends of advanced age, Lysimachus



and Onomastus (who never interfered in the disputes of the brothers, and who, of late, had but seldom appeared in the palace), that he might have the assistance of their advice. In the interim he walked about by himself, revolving many things in his mind. On being told that his friends were arrived, he retired with them into an inner apartment, attended by two of his life-guards, at the same time permitting each of his sons to bring in three persons unarmed. Here, having taken his seat, he said, "Surely I am the most unhappy of fathers, sitting here as judge between my two sons, on a charge of fratricide, made by one of them against the other; so that I must find in my nearest relations the foul stain either of falsehood or of wicked violence. This long time, indeed, I have apprehended an impending storm, not only from your countenances, which showed no sign of brotherly affection, but from some expressions which I have overheard. But I sometimes cherished the hope that the heat of your resentments would cool, and that your mutual suspicions might be cleared up; for I considered that even enemies lay down their arms and become friends; and I trusted that you would some time or other recall the memory of your fraternal relation to each other; of the open freedom and intimacy that subsisted between you in your boyish days; and finally, of my instructions, which, I fear, I have fruitlessly poured into deaf ears. How often have I in your hearing mentioned with abhorrence examples of discord between brothers, and recounted the dreadful consequences of them, by which themselves, their offspring, their houses, and their kingdoms have been utterly ruined. I have represented, on the other hand, more laudable examples; the social intercourse between the two kings of the Lacedæmonians, beneficial to themselves and to their country for many ages; and where the custom of every one arbitrarily seizing on power was quite overturned. Then the brothers Eumenes and Attalus, having raised their dominion (once so low that they were almost ashamed of the title of king) to an equality with mine, or with those of Antiochus, or indeed of any monarch of this age, and principally by brotherly concord. Nor did I decline showing you examples even from among the Romans; some that had fallen under my own observation, others that I had heard; as Titus and Lucius Quintius, who carried on the war with me; the two Scipios, Publius and Lucius, who vanquished Antiochus; and their father and uncle, whose sociality, maintained through life, was

not broken even by death. But neither could the wickedness of the former, attended by a suitable issue, deter you from your foolish quarrels, nor could the sound judgment and good fortune of the latter bend you to wisdom. While I am alive and in health, you have both of you, in your hopes and wishes, laid hold on the succession. You wish me to live just so long as that, surviving one, I should by my death make the other king without a competitor. You cannot endure to have either brother or father. You have no sense of affection or duty; your insatiable passion for rule alone has taken up the place of all other feelings. Come, then, contaminate your father's ears, contend with mutual accusations, as you soon will with the sword; speak out whatever you can with truth, or whatever you may choose to invent. My ears are now open, but henceforward will be shut against all secret charges of one against the other." On his uttering these words with furious passion, every one present burst into tears, and for a long time kept a sorrowful silence.

At length Perseus spoke to this effect: "I ought then, it seems, to have opened my gate in the night to have admitted those armed revellers, and held out my throat to their swords; since nothing less than the perpetration of the deed can gain belief, and since I, against whom a murderous plot was levelled, am accosted in the same language as if I were a robber and an assassin. It is not without reason that people say that you have but one son, Demetrius, for if I held in your breast the rank of a son, or the affection due to one, you would wreak your anger not on me, who, on detecting a plot against my life, make my complaint but on him who was the author of it; nor would myself be so cheap in your eyes, as that you should neither be moved by the danger which I have already undergone, nor by that to which I must be exposed in future, if the assassins are permitted to go unpunished. If, therefore, it be our doom to die in silence, let us only pray the gods that the wicked design aimed at me may end with me, and that you be not wounded through my sides. But if, as nature itself dictates to people, encompassed with perils in a desert place, to implore aid from men whom they had never seen, so I, on finding a sword drawn against me, may be allowed to raise my voice. I beseech you, then, by your own person, by the name of father (and you long know which of us revers that title most), that you may hear me, in the same manner as you would if, roused by calls and outcries, you

had come up when I was crying for help, and in the dead of night had found Demetrius with armed men in the porch of my house. What I should at that time and in that case have exclaimed against with terror, I now, next day, lay before you in form of a complaint. Brother, it is long since you and I lived together on the terms of mutual hospitality: your chief wish is to be king; your hopes on that head meet obstacles in my age, in the law of nations, in the ancient practice of Macedonia, as well as in my father's judgment. These you can surmount by no other means than by shedding my blood. To this end you leave no scheme or effort untried. Hitherto either my care or fortune has kept me from destruction. Yesterday, on occasion of the purification, the military exercise and mock representation of a fight, you brought on almost a bloody battle; nor was I saved from death by any other means than by suffering myself and my party to be overcome. After this, pretending brotherly sport, you wanted to drag me to your house to supper. Father, can you suppose I should have met there unarmed guests, when they came in arms to my house to drink with me? Do you think there would have been no danger in the night from their swords, when before they were near killing me with foils? Why, Demetrius, did you come at that time of night; why an enemy come to a person provoked; why with young men in arms? I did not dare to trust myself with you as a guest, and shall I admit you to drink with me when you come surrounded with armed men? Father, if the gate had been open, you would at this moment be preparing my funeral instead of hearing my complaint. I do not, as an accuser, urge anything for the purpose of aggravation; neither do I put together doubtful circumstances in a train of artful arguments. For what can he say? Does he deny that he came to my gate with a large party, or that there were armed men with him? Send for the persons; I will name them. I know that they who dared to make this attempt dare to do anything; nevertheless, they will not dare to contradict what I say. If I brought before you any who had been caught within my doors in arms, you would consider this as full proof; and you ought to consider those who make confession of what I have charged them with in the same light as if actually caught in the fact.

“Father! your curses should fall on the ambition for rule. Call up the furies, the avengers of the wrongs of brothers; but let not your curses be indiscriminating.

Examine and distinguish between the plotter and the person plotted against, and pour them on the guilty head. Let him who intended to kill a brother feel the wrath of the gods, and of his father also; and let him who was to have perished by a brother's wickedness, find refuge in his father's compassion and justice; for where else shall I seek refuge, who cannot find safety in the solemn purification of your army, in the exercise of the troops in my own house, in a feast, nor in the night, which nature's bounty granted to mankind for a season of repose. If I go to my brother according to his invitation, I must die. If I admit my brother to a party of pleasure within my own gates, I must die. Neither by going nor by staying can I escape treacherous plots. Whither then shall I betake me? Father, your favour only have I ever courted, and that of the gods. I have not the Romans to fly to. They wish my destruction, because I grieve at the injuries which they have done to you; because I resent your being deprived of so many cities, so many nations, and, but the other day, of the coast of Thrace. They have no hope that Macedonia will ever be their property while either you or I are safe. But, if I should be taken off by the wickedness of my brother, and you by old age, or if even this should not be waited for, they know that both the king and kingdom of Macedonia will become theirs. If the Romans had left you anything beyond the limits of Macedonia, I would suppose that I might there find shelter. But I have protection enough in the Macedonians. You were an eyewitness yesterday of the attack made on me by the soldiers. What did they want but pointed weapons to complete the business? And what they wanted in the day, my brother's guests took to themselves in the night. Why need I mention the greater part of the nobles, who have placed all their hopes of wealth and preferment in the Romans, and in him who can do every thing with the Romans? Nor, in truth, do they prefer him merely to me, his elder brother, but in some measure to yourself, his king and father: for he is the person out of regard to whom the senate remitted to you the intended punishment, who now screens you from the Roman arms; who thinks it fit that your advanced age should be under obligation to and under control of his youth. He is supported by the Romans, by all the cities liberated from your jurisdiction; by the Macedonians who are pleased at the peace with Rome. For me, where is there either hope or support of any kind, except in you, my father?

“What do you suppose to be the intention of the letter sent to you lately by Titus Quintius, in which he not only says that you acted wisely for your own interest in sending Demetrius to Rome, but also advises you to send him back again, with a greater number of ambassadors, and even the first men of Macedonia? Titus Quintius is now his counsellor and master in every thing. You, his father, he has renounced, and has substituted Quintius in your place. Rome is the principal place where their secret plans are digested. When he desires you to send greater numbers, and the chief men of Macedonia, he is seeking assistants in their schemes. For those who go thither pure and uncorrupt, and satisfied that you are really their king, return tainted and infected by Roman poisons. Demetrius alone is every thing with them. They give him the title of king, even in his father's lifetime. If I express my indignation at these things, I am charged with being ambitious for rule; not only by others, but father, even by you. But this charge, if made against both, I do not admit; for whom do I disturb from his place, that I may succeed in his room? My father alone is before me; and that he may long be so, I beseech the gods. If I survive him (and so may I survive him, as I shall deserve that himself may wish it), I shall receive the crown if my father devises it to me. He covets rule, and covets it with criminal passion, who hastily overleaps the order of age, of nature, of Macedonian customs, and of the laws of nations. An elder brother stands in his way; to whom by right, and by the choice of his father, the succession belongs. ‘Let us,’ he cries, ‘put him out of the way. I shall not be the first that acquired a kingdom by killing a brother. My father being old, and left alone by his son's death, will rather fear for himself than revenge the death of his son. The Romans will rejoice, they will approve, they will support the act.’ Father, these prospects are uncertain, but they are not without grounds; for the matter stands thus: it is in your power to ward off danger by punishing those who took arms to kill me; but should their villainy succeed, it will not then be in your power to take vengeance for my death.”

When Perseus ceased speaking; the eyes of all present were turned on Demetrius, as they expected from him an immediate reply: but he kept silence for a long time. It was evident that, drowned as he was in tears, he had not power to utter a word; but at last the necessity that called on him to speak overcame his grief, and he expressed

himself thus: "Father, all the aids of which persons accused could heretofore have availed themselves, my brother has taken from me, and converted to his own purpose. By his tears, counterfeited for the purpose of working another's ruin, he has caused my real tears to be suspected by you. Although, ever since my return from Rome, he has employed himself night and day in plotting my destruction, and holding, for that end, secret consultations with his confederates, yet he now represents me in the character not only of a conspirator, but of an open assassin and murderer. He terrifies you with his danger, in order to hasten through your means the ruin of an innocent brother. He asserts that he has no place of refuge in the world, in order to cut off any remains of hope which I might have, even in you. Circumvented, unsupported, and helpless as I am, he loads me with injurious imputations, respecting interest with foreigners, which, instead of proving useful, is detrimental to me. Then, with what unfair artifice does he act, in blending the charge of last night with invectives against the rest of my conduct; with design, on the one hand, by his representation of the tenour of my behaviour, in other particulars, to throw a colour of guilt on the former, the true nature of which you shall soon understand; and, on the other hand, to support the other groundless insinuations respecting my views, wishes, and designs, by this latter, fictitious, fabricated story. He had at the same time a farther design; that his accusation might appear to be sudden and unpremeditated, as if occasioned by sudden fright and disturbance in the night. But, Perseus, if I were a traitor against my father and his government; if I had formed connexions with the Romans; or with others, enemies of my father, the tale of last night ought not to have been waited for; I ought to have been long ago brought to answer for my treason. And if the other charge were unfounded, and tended to discover your ill-will towards me rather than my guilt, it ought on the present day also to be either omitted or postponed; in order that it might clearly appear whether I plotted against you, or you, with indeed a strange and singular kind of hatred, against me. However, I will, as well as I am able, in my present unforeseen perturbation of mind, distinguish those matters which you have confounded; and I will unveil the plot of the preceding evening, whether mine or yours. Perseus wishes it to be believed that I had formed a design to take his life, with a view, it seems, that having removed the

elder brother, to whom, by the law of nations, by the customs of Macedonia, and likewise by your judgment, as he says, the kingdom was to devolve, I, the younger, should succeed in the room of him whom I had slain. What then can be the meaning of that other part of his speech, where he says that I courted the favour of the Romans, and, from my reliance on them, conceived hopes of the crown? For, if I believed that the Romans possessed such influence that they could impose on Macedonia whatever king they pleased, and if I had such confidence in my interest with them, what need was there of fratricide? Could it be my wish to wear a diadem stained with a brother's blood, or to become odious and execrable in the eyes of those very people with whom, whatever share of interest I might happen to have, was procured by either real, or at least affected integrity of conduct? Can this be possible, I say, unless you believe that Titus Quintius, by whose counsels and advice you allege that I am at present governed, though he lives on a footing of such cordial affection with his own brother, would recommend to me to murder mine? He has assembled together for me, not only the favour of the Romans, but the opinions of the Macedonians, and the concurring sentiments almost of all the gods, and of all mankind, by reason of all which he cannot believe that he would prove equal to me in the competition. Yet the same man accuses me of having (while sensible of my inferiority to him in every mode of proceeding) had recourse to an act of wickedness as my only resource. Are you satisfied that the decision between us shall be made on this principle, that whichever feared lest the other should seem more worthy of the throne shall be deemed guilty of designing his brother's destruction?

“But let us examine the process of the accusation, in whatever manner it has been fabricated. He has arraigned me of attempting his life in several different methods; and all these modes of attack he has brought within the compass of one day. I intended to kill him in the middle of the day, in the course of the exercises; and, in preference of all other days, on that of the purification. I intended, when I invited him to supper, to take him off by poison; I intended, when some armed persons followed me to join his party in their conviviality, to kill him with the sword. You see what sort of opportunities were chosen for this murder;—those of sport, feasting, and revelling;—and on what days, and on what sort of a day! On the day in which the army was purified; in which, after the royal

armour of all the former kings of Macedonia was carried in procession between the divided parts of the victim, when he and I only rode along with you, father, at your side, and the body of the Macedonian troops followed. Now, even supposing that I had formerly been guilty of some crime, could I, after being purified and expiated in this sacred solemnity, at the very time when I was looking at the victim laid on each side of our road, revolve in my mind fratricide; could I have poisons and swords prepared against the feast? With what other sacred rites could I afterward atone for the guilt of a mind thus contaminated with every kind of villainy? But his understanding is so blinded by eagerness to turn every thing into a crime, that he confounds one thing with another. For if, Perseus, I intended to take you off by poison, what could be more incongruous with my design than to provoke you to rage by an obstinate contest and fight? Ought I to have given you reason to refuse, as you did, my invitation to supper? But when in your anger you had refused, whether ought I to have taken pains to pacify you that I might find another opportunity, since I had got the poison ready, or to fly off at once to another plan of killing you with the sword, and on that same day under pretence of feasting with you? If I thought that you declined supping with me through fear for your life, how could I suppose that you would not, through the same fear, have declined admitting me to drink with you?

*(To be continued.)*



# PEDIGREE OF TOWNLEY OF TOWNLEY.

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(Continued.)

<p>Margaret, 2nd wife of Lawrence Fabergham.</p>	<p>Ellen, wife of Byan doek.</p>	<p>Thomas, a base son, named in his father's will.</p>	<p>Richard Townley, 40 years old at his father's death. Calls himself of Burn- ley in his will, dated 7 Feb., 1555.</p>	<p>Elizabeth, daughter of Henry Foljambe, of Melton, co. Derby, and of Bennet his wife. In- denture of marriage, 4 July, 3 Hen. VIII. 1511.</p>	<p>Charles Towne- ley. Widow dated 9th April, 1539. Calls himself of Town- ley. In 1534 had a grant of Lyn- rode from his father.</p>	<p>Elizabeth, daughter of ... Kay, parish of Roshale, widow of John, son of Roger Nowell, of Rend. Dis- pensation dated 20 Dec., 1515.</p>	<p>Helen, wife of Robert Noe- Liven- sedgo, Habergham county York. Dissen- sion dated 1506.</p>	<p>Grace, 1st mar. Sir Robert Hesketh, of Rufford; 2dly, Lawrence Ho- bergham, of Habergham Hall; died within a year, when he mar- ried Margaret, daughter of Jenct Ingham, the reputed daughter of Sir John Townley.</p>	<p>Johanna, 1st mar- ried to Thomas Shir- burne; 2dly, to Ralph Shutele- worth, of Hacking.</p>	<p>Jane, wife of Wili- am, son and heir of Robert Dal- ton.</p>	<p>Elizabeth, wife of John Cooke, of London.</p>	<p>Margaret, wife of Nicholas, son and heir of Richard Banastre, of Alve- tham.</p>
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<p>Ann, wife of Wm. Barecroft, of the Lodge in Pendle.</p>	<p>Ellen, wife of Robert, son and heir of Henry Bar- astre, of Park Hill.</p>	<p>Daughters of Alice Burnley.</p>
<p>Johanna.</p>	<p>John, son of Isabel, wife of Thomas Benthum, reputed to be his base son, so named in his will.</p>	<p>John, son of Duncley or Duncley.</p>
<p>Sir Richard Townley, knighted at the siege of Leith. In- denture of marriage 25 Sept. 28th Hen. VIII. 1536. Made his will 26 July, 1538; died 1540.</p>	<p>Frances, dau. and heiress of Christo- pher Wimbyshie, of Noeton, county Lincoln, and of his wife Mary, dau. of Sir Nicholas By- ron, of Clayton, and heir of her brother, Sir John Byron, who died without issue law- fully begotten. Sir married, 2dly, Elizabeth.</p>	<p>Grace, wife of Hugh Halsted.</p>

All three died young.

Richard Towneley, = Jane, dau. of born April 29, 1599; Redcliffe Sept., mar. 25 May, 1599, Asshe. 1597; In 1601 made a deed of entail. Will dated 20 Sept., 1627, proved 30 July, 1629. Interment, at Saint Clement's, near Temple Bar. "He built the great building upon the north side of the house, where the kitchen is; it was finished about 1626." T. MS.

2. John, born 30 Sept., 1597; buried at Burnley, 30th June, 1632.  
 3. Charles, born 5th Nov., 1593; summer.  
 4. Christopher, born 9th Jan., 1570-1; died 1623, at Pendle Hall; buried at Burnley, 1st Decembar.  
 5. Charles, = Susannah, dau. of .... Rose. born 1572, of Brad- don, co. Lanc. heir; died about 1646.  
 6. Dorothy, = Margaret, wife of Hugh Wadsworth, near Preston. Frances. near Preston.  
 7. Ellen, = Susan, wife of Thos. But- ton, of Ribbles- ton.

8. Theodosia, dau. of ... Tunstall, of the family of Thurhand.  
 9. Charles, = Susan, dau. of Thos. But- ton, of Ribbles- ton.  
 10. Henry, = Susan, wife of Thos. But- ton, of Ribbles- ton.  
 11. Henry, = Susan, wife of Thos. But- ton, of Ribbles- ton.  
 12. Henry, = Susan, wife of Thos. But- ton, of Ribbles- ton.

13. Anne, married William Middle- ton, of Stock- old, co. York, being his second wife; 2dly, married Sir Ed- ward Osborne, of Ryton, co. York.  
 14. Anne, born = John Plumpton, son and heir of Sir Edw. Plum- pton; died about 1628; died July, 1644, at Thorne, in Knare- ton Woods, borough Castle, near Rip- ley, in county of Leicestershire; childbed of Robert, the son and heir; bur. at Spofforth, in the church, in the Plumpton Choir.

Ballioses.

John, Richard Thomas, died Towneley, born 1599.  
 Richard Towneley, born 1599.  
 Thomas, born 1599.  
 Richard Towneley, born 1599.  
 Thomas, born 1599.  
 Richard Towneley, born 1599.  
 Thomas, born 1599.  
 Richard Towneley, born 1599.  
 Thomas, born 1599.  
 Richard Towneley, born 1599.  
 Thomas, born 1599.

Charles Towney, born 22nd April, 1600; slain at the battle of Hoesom Moor, at the raising of the siege of York, 20th Aug 1644; buried in the field of Marston Moor.  
 Mary, dau. of Sir Francis Trappes, wife of the Earl of Harro- gate.  
 John, born Feb., 1600-1.  
 John, born 1602.  
 Christopher Towneley, the indefatigable Transcriber; born 9th Jan. 1603-4; died Aug. 1674; bur. at Burnley; *Vide* Biographical Memoir hereafter. Nailed as of a blapton in his brother's will.

John, born 1600-1.  
 John, born 1602.  
 Alice, dau. of John Bead- dyll, of York- shire, field, Richard Townley, = Carr.  
 Francis, = Anne, born = John Plumpton, son and heir of Sir Edw. Plum- pton; died about 1628; died July, 1644, at Thorne, in Knare- ton Woods, borough Castle, near Rip- ley, in county of Leicestershire; childbed of Robert, the son and heir; bur. at Spofforth, in the church, in the Plumpton Choir.

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(To be Continued.)