

**PAGES**

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# THE MUNICIPAL WORLD

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

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### Legal, Educational, Municipal and Other Appointments

#### MAY.

2. Last day for treasurers to furnish Bureau of Industries, on form furnished by Department statistics regarding finances of their municipalities.—Municipal Act, section 293.
- County Treasurers to complete and balance their books, charging lands with arrears of taxes.—Assessment Act, section 164.
4. Arbor Day.
5. Make returns of deaths by contagious diseases registered during April.
15. Last day for issuing Tavern and Shop Licenses.—Liquor License Act, Section 8.
- Contents of earth closets to be removed on or before this date.—Public Health Act, Schedule B. Rule 2 of section 14.
23. Empire Day.
24. Queen's Birthday.
31. Assessors to settle basis of taxation in Union School Sections—Public Schools Act, section 51 (1).

#### JUNE.

1. Public and Separate School Boards to appoint representatives on the High School Entrance Examination Board of Examiners—High Schools Act, section 38 (2).
- By-law to alter school boundaries, last day for passing.—Public Schools Act, section 38 (3).
20. Earliest date upon which Statute Labor is to be performed in unincorporated Townships.—Assessment Act, section 122.

## NOTICE.

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# The Municipal World

PUBLISHED MONTHLY

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

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J. M. GLENN, Q. C., LL.B. } Editors

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ST. THOMAS, MAY 1, 1900

The example of the municipalities of the village of Athens and the township of Rear of Yonge and Escott in moving towards the abolishment of toll-gates in their municipalities is worthy of emulation. For many years in these counties it is an admitted fact that the maintenance of toll-gates is no guarantee of good roads and yet the roads are full of these relics of a by-gone age. Brockville is surrounded on every side by these barriers to trade, and its citizens hope that this closing year of the nineteenth century will see these nuisances completely wiped out from Leeds and Grenville counties.

\* \* \*

His Honor Judge Hardy has handed out his judgment in the case Cornell vs. Township of Brantford, dismissing the action against the township.

The case is of considerable importance to the municipal authorities, as it was contended on behalf of the plaintiff that all roads in the township should be kept free from snow during the winter.

In the present case the road leading from Brantford to Lynden was drifted full of snow two to eight feet deep, for about fifty rods, early in the winter of 1898. Instead of trying to dig this drift out, the council opened up a driveway to the east side of the road. Just after the new year the plaintiff in turning off the sideroad to the centre, broke his horse's leg. This action was for \$200, the value of the horse.

The Judge holds that the council used proper judgment in opening up a road around the drift instead of attempting to dig it out. This decision will apply to all country roads.

\* \* \*

Mono township council has bought a road-grader.

Thinks it a Farce.

A clause in the Municipal Act that is badly in need of amendment is that providing for a property qualification for municipal councillors. Either such qualification should be abolished or steps should be taken to make it of some effect. At present, men who are judgment proof and head over heels in debt, can sit in the city council, although the spirit of the act is that a man should be solvent and have some stake in the community. The act is so easily evaded that it is merely a by-word, and should not be allowed to cumber the statute-book unless it is made more stringent. — *Toronto News*.

Mr. D. B. Eaton who is an American who thinks it is time for a change in the municipal system as it exists in the United States, has given \$100,000 each to Harvard and Columbia on the understanding that the money is to be devoted to inculcating correct principles of municipal government. Mr. Eaton says:

A true and safe municipal system is yet to be created in the United States. Nowhere is patriotic and wise leadership on such a subject more needed, or would be more useful, than in the city of New York. To determine a definite sphere within which cities and villages shall substantially control their own affairs; to fairly mark the limits of co-operation between them and the state beyond their sphere; to provide the best methods of municipal administration; to create councils in cities and villages which shall, in substance, exercise their local authority and represent their public opinion rather than their party opinion; to greatly reduce the number and frequency of elections in municipalities, to prevent the control of their affairs by parties and factions, and to make good government the ambition and endeavor of the worthiest citizens; these seem to me to be the great problems of statesmanship, towards the solution of which I trust this professorship will largely contribute.

\* \* \*

Councillor Day who was elected at the last election for Brantford township, has been compelled to vacate his seat, on the application of one of the unsuccessful candidates, William Croome. Mr. Day had become bondsman for collector Westbrook for the municipal year, 1899. The last year's council extended Mr. Westbrook's time for collecting taxes till it overlapped into this year, the year in which Mr. Day had been elected. The Municipal Act says clearly that no one who was financially interested in the affairs of the township could sit at the council, so he had to retire.

\* \* \*

Orangeville wants a cement works in that town, and will vote on a \$5,000 bonus by-law.

Anten Mills School Case.

An interesting decision has been given by Mr. Morgan, the Public School Inspector, in an investigation lately held as to the regularity of the School Election at Anten Mills. As it was given with considerable care and deliberation, and with the assistance of the County Judge and the Minister of Education, it will doubtless become a precedent for all school elections.

The sitting trustee, J. J. Inkley, contended that the assessment roll was the standard and the only standard, and that it governed, right or wrong, and with all its errors or omissions.

Mr. Knapp, his opponent, as strenuously urged that it was an open question of qualification, and that the roll did not necessarily govern.

Judgment has been given upholding Mr. Inkley's contention.

A Municipal Experiment.

The municipal council of the borough of St. Helen's, Lancashire, England, has apparently taken a new step in the evolution of municipal ownership of public utilities. For some years the gas works have belonged to the municipality. This year, in order to increase the use of gas among the people for all purposes, the council offers to supply, free of charge, cooking stove and heating apparatus to all householders, providing only that they use the gas furnished by the municipality as fuel. The plan has worked well and, it is said, has proven profitable to the municipality.

Thompson vs. City of Toronto.

Judgment on appeal by defendants from judgment of Robinson, J., in favor of plaintiff upon special findings of jury in action for negligence. The plaintiff's son while looking at a fire, was knocked down and injured on Victoria street, Toronto, by the runaway horses of one of the steam fire engines. The appellants contended that the evidence did not support the special findings of negligence and therefore the case was distinguishable from *Hasketh vs. City of Toronto*, 25 O. R. 449. Held, MacLennan, J. A., *dubitate*, that the finding of the jury cannot be set aside. Appeal dismissed with costs.

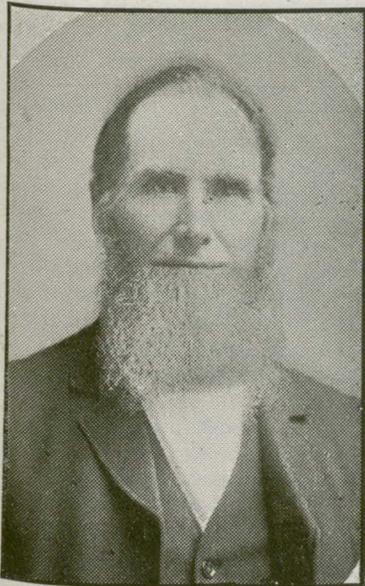
Township of Chinguacousy vs. McLellan.

Judgment on appeal by defendant from judgment of Rose J., granting an injunction and mandamus. In 1883 the plaintiffs, pursuant to an old agreement between them and defendant, filled in two old culverts and constructed a new one across the highway in front of defendant's lands and dug a ditch or watercourse across his lands to the river. The defendant objected to the ditch being dug without paying him a compensation, and had partly filled it in when this action was commenced. Appeal dismissed with costs.

# Municipal Officers of Ontario.

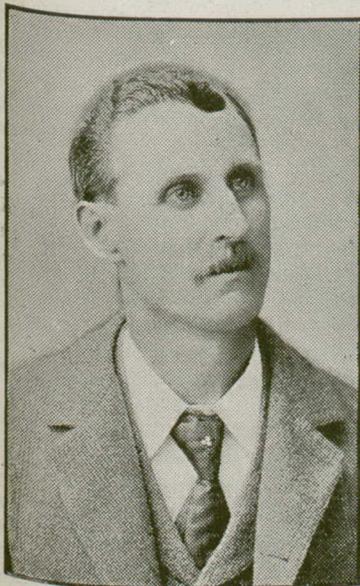
Clerk of the Township of Roxburgh.

Mr. McIntosh was born in the township of Cornwall in the year 1845. He was educated at the common schools of



MR. DONALD MCINTOSH.

that neighborhood, and taught school for three years. He embarked in the mercantile business, carrying it on for two years, and he then bought the farm on which he now resides. He was clerk of the township in 1879 and 1880 and was reappointed in 1899. He is also clerk of



MR. H. G. GILL.

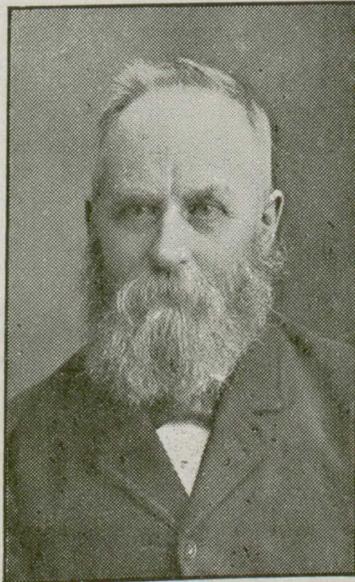
the Division Court, Postmaster at Strathmore and carries on a general conveyancing business.

Clerk of the Township of Toronto.

Mr. Gill was born in Kenilworth, Warwickshire, England, in 1861, and came to Canada in 1872, settling in the township of Toronto. He was collector of the township from 1895 to 1898, when he was appointed clerk. He has conducted a general store in Dixie for many years, and is also postmaster at that place.

Clerk Township of Keppel.

Mr. Atkey was born in the Isle of Wight, and was educated at private schools in his native land. He came to Montreal in 1854, and to the township of Keppel in 1855, where he took up land, and engaged in farming and lumbering. He has been at different times auditor, collector and



MR. GEORGE ATKEY.

assessor of his township, and was appointed clerk in 1885. He is also a Justice of the Peace, issuer of marriage licenses, and carries on a general loan and conveyancing business.

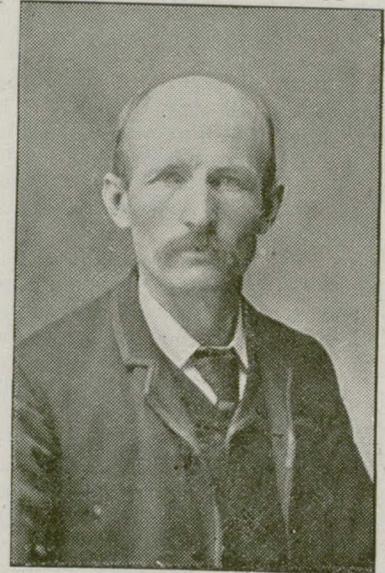
Clerk of Township of Anderdon.

Mr. Mailloux was born in 1863, in the township of Malden and moved to Anderdon in 1868. He was educated at the Separate schools and Assumption College, Sandwich. He started farming in 1882 and was appointed clerk in 1897.

Clerk of Township of Limerick.

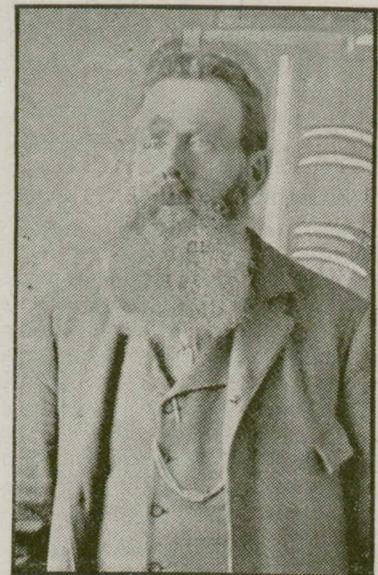
Mr. Ham was born in the township of Rawdon in 1843, and was educated at the public schools in the township. He was appointed clerk in 1887, and was also treasurer of the township from 1892 to 1897.

A judgment just given by Judge McDougall disposes of a very important question relating to local improvement taxes on lands on the outskirts of the city. Mr. John Wills owned a large block on Danford avenue containing about fourteen acres between Pope and Carlaw avenues. These streets were opened up and the cost of sewers and block pavements, etc., had to be paid out of the land. During the boom when the land was supposed to



MR. A. C. MAILLOUX.

be immensely valuable, the city assessed merely the frontage but later on when the front had been sold for taxes they sought to take in the whole block and in fact did put on the taxes for some years. As the taxes amounted to nearly \$1200 a year it is out of the question to pay and the whole property, including the residence and buildings were in danger of being



MR. JAMES W. HAM.

sold. An appeal was taken to Judge McDougall and he has now decided that the local improvement taxes must be confined to the original strip along the front and the rest of the block is free.

# Engineering Department

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

## Road Reform in Pelham.

The statement so frequently made that, while the statute labor system is an inferior one, the council is unable to frame a better one to take its place, should have answer in the following by-law, recently passed in Pelham township. This will repay careful study, as it is an exceedingly good measure. In this township it is looked upon as a most important one, and has been carefully discussed and considered by the council and in public meetings. The by-law is the result of mature deliberation.

### PREAMBLE.

Whereas the highways of this municipality have been maintained by statute labor performed thereon, supplemented by sufficient grants from the township levies to meet all the expenditure connected therewith ;

And whereas for several years an agitation has been gaining strength to have the statute labor commuted or paid in money instead of worked out, as heretofore, by the ratepayers, under the direction of pathmasters chosen for each road or locality ;

And whereas the ratepayers of the township, at a public meeting recently called by this council to discuss, with the Good Roads Commissioner of the province, the advantages of the commutation system, did express themselves as desiring its adoption, and the council believes that better results would be possible if the change asked for were inaugurated, and the commutation moneys thus available judiciously expended where most needed by one or two competent overseers to be placed in charge of all the public highways of the municipality ;

Be it therefore enacted by the municipal council of the township of Pelham, and it is hereby enacted, as follows :

### ALL LABOR TO BE COMMUTED.

1. Upon, from and after the passing of this by-law, all statute labor to which any person (resident or non-resident) may be liable in this municipality shall be commuted at the fixed rate of fifty cents (50c.) for each day's labor ; and the amount of each person's commutation tax shall be added in a separate column opposite such person's name in the collector's roll, and shall be kept by the treasurer in a separate account, to be known as "The Commuted Statute Labor Account."

### TWO ROAD DIVISIONS ONLY.

2. The subdivision of the public highways of the township into ninety-three statute labor districts, as at present, is hereby abolished, and in lieu thereof the township shall be divided for road purposes into two districts or divisions only (to be as nearly equal as may be), to be known as North Division and South Divi-

sion ; North Division to comprise and include Concessions One to Seven inclusive, and South Division the remaining Concessions, Eight to Fourteen inclusive. The west half of the concession line road which separates these two divisions shall belong to the South Division, and the east half to the North Division.

### TWO ROAD COMMISSIONERS ONLY.

3. Over each of these two road divisions there shall be appointed a single overseer, to be styled, for the purposes of this by law, a "Road Commissioner," who shall hold office continuously during the pleasure of the council, and who shall have the exclusive control and management of the maintenance, repair and improvement of all the public roads, streets, bridges and highways in his division, including the township boundary line roads bordering same, in so far as the commutation and other monies belonging or appropriated to his division will enable him to do so, subject always to such written instructions as he may from time to time receive from the road and bridge committee of his division.

### GENERAL DUTIES OF ROAD COMMISSIONERS

4. It shall be the duty of each of the two road commissioners who may be appointed to carry out the provisions of this by-law.

(1) To acquaint himself with the best and most modern methods of constructing and maintaining good roads, and of advantageously operating the tools and implements with which he may be supplied for that purpose ;

(2) To employ, direct and discharge all men and teams he may require to carry on his work ;

(3) To begin the annual labor as early in the spring of each year as the condition of the roads will permit and work continuously till the appropriation to his division for the year is exhausted.

(4) To plane or scrape any of the roads in his division whenever in his judgment they may require it ;

(5) To keep the bridges, sluices, and ditches in his jurisdiction open and in repair, and the highways free from obstructions at all times ;

(6) To properly protect by railings or otherwise, all pits, precipices, deep waters and other places dangerous to travel ;

(7) To see that the provisions of the Act to prevent the spreading of thistles and noxious weeds upon highways and road allowances are carried out ;

(8) To cause the roads within his division that are used by the public in winter to be made and kept open during the season of sleighing in each year ;

(9) To crown or round the roadways in the centre so as to shed the water to the side ditches, the crown on level roads not to exceed one inch of raise to each foot of width from side to centre ; and

(10) To perform such other services as may be required of him from time to time under the written instructions of the road and bridge committee of his division.

### COMMUTED LABOR TO BE SUPPLEMENTED FROM GENERAL FUNDS AS HERETOFORE

5. All expenditure for road material, tools, or machinery, for jobs or contracts similar to what have hitherto been met out of the general funds of the municipality, shall continue to be met from the same source to be still known as the road and bridge account, leaving the commuted statute labor monies of each year to be applied in that year exclusively towards the maintenance and repair of the highways of the township in place of the statute labor which has heretofore been used for that purpose. The total commutation monies received shall be annually apportioned between and expended in the two divisions established by this by-law upon the basis of the assessed value of the property in each division, as ascertained from the assessment roll of that year, and the treasurer shall charge each payment made by him to the fund and division to which same belongs as defined by this section.

### PAYING FOR WORK DONE.

6. Each commissioner shall keep an accurate record of the men employed and the work done by him under this by-law, and he shall furnish to the reeve in such written form and at such intervals as his instructions may require, properly itemized statements made up from these records and duly certified by him, accompanied by any vouchers pertaining thereto. The reeve upon being satisfied of the correctness of such statements may issue his cheque upon the proper fund from which payment should be made, as per section 5 above.

### ROADWAYS.

7. In order to remedy the inequalities that at present exist throughout the township in the width of those portions of its highways which are intended respectively for the use of vehicles and of persons travelling on foot, it is hereby further enacted that hereafter the road commissioners in reconstructing or regrading any highway shall aim at a uniform standard width of track or roadway for vehicles of not less than twenty nor more than twenty-eight feet (according to the importance of the road) in the centre of each highway between the inside edges of the side ditches, unless the confinement of the road is such as to justify a deviation from this rule.

### GUTTERS.

8. Ditches or gutters shall be constructed to drain every highway immediately adjacent to and parallel with the travelled roadway, and separating same from the footpaths set apart by the next section. Every side-ditch shall be of such width and depth as its capacity may require, and shall have an outlet to which the water will flow freely and not be held to soak into and soften the foundation of

the travelled roadway. The inside edges of all ditches shall be lined true and straight and the sides evenly sloped. Shoulders must not be allowed to form next the roadway.

FOOTPATHS.

9. All those portions of every highway outside of the side ditches on both sides thereof (whether the ditches as at present constructed or as they will be when made in accordance with this by-law) shall be and the same are hereby set apart as footpaths or walks for the convenience or use of persons travelling on foot; and it shall not be lawful for any person to travel thereon on horseback or in wheeled vehicles drawn by beasts of burden or propelled by steam or electricity, under a penalty of not less than one dollar nor more than five dollars and costs, to be recovered before any justice of the peace in the county.

REMUNERATION OF COMMISSIONERS AND OTHERS.

10. A day's work for all persons engaged by the commissioners, under this by-law, shall consist of ten hours' faithful service, exclusive of the time spent going to and coming from work, but payment in all cases, except upon job and contract work, shall be by the hour. The remuneration to each of the two commissioners shall be fifteen cents for every hour necessarily devoted by him to his duties hereunder, and to the operators of the grading machines twelve and a-half cents per hour; all others in the employ of the commissioners shall be paid such price per hour as may be agreed with the commissioner. The commissioners shall include a memorandum of their own and their employees' time in the statements to be furnished to the reeve under section 6 above.

Chapter 474, the Statute Labor By-Law, and chapter 527, respecting statute labor in the villages of Fenwick and Fonthill and all other by-laws and resolutions of council inconsistent herewith are hereby repealed.

Read a third time and finally passed in council this 4th day of April, A. D. 1900.  
(Sgd.) J. H. JOHNSTON, Reeve.  
(Sgd.) J. C. CROW, Clerk.

INSTRUCTIONS TO PELHAM ROAD COMMISSIONERS FOR 1900.

The written instructions referred to in subsection 10, section 4, of this by-law, are illustrated in the following, which has been issued to each of the two commissioners. It will be observed that these instructions may be very comprehensive, and as they are subject to constant revision, will become perfected by experience.

"The council trusts that you fully realize your responsibility in assuming the charge of the seventy-five miles or thereabouts of public roads in your division, which have heretofore been divided among half a hundred pathmasters. At the outset, it is quite apparent that the commutation system has at least one decided advantage over the system it supercedes,

namely, that instead of distributing or scattering the labor annually as heretofore over all the roads of the municipality regardless of their condition or needs, with the result that none of them got enough labor to put them in really good condition, it will now be possible to concentrate the labor and apply it where most needed, thus bringing the roads up to a more uniform standard of excellence. At the same time it will be your duty neither to neglect any road nor to give any road more than its due share of attention. A good deal will depend upon your judgment in these particulars. In addition to the general directions to you contained in the commutation by-law, you will also observe and carry out the instructions below, which are issued to govern you for the year 1900, as provided by said by-law:

1. While the by-law requires all instructions to you from the Road and Bridge Committee to be in writing, that regulation is not intended to prevent you from consulting and advising with any member of the committee whenever you may desire to do so. The R. & B. Committees, as now re-organized for 1900, are as follows: North Division, Reeve Johnson and Councillors Norris and Beckett.

South Division, Reeve Johnson and Councillors Ward and Brown. It will be your duty in letting any job or contract, the probable cost of which will exceed \$10, to confer with the member of the committee living nearest to the job to be done.

2. In employing labor and letting contracts, you will divide the work as much as possible among those residents of the township who desire employment upon the roads, and who are in a position to do the work to your satisfaction, giving the preference to those living in the vicinity of the work to be done.

3. Let out all work by tender or job or day's work, as you think most prudent, contracts of \$10 and upwards to be in writing, if required by the committee. Regulate the size of loads, the number of trips, the length of hauls, etc., as desired, and have gravel hauled by contract to be by the yard.

4. Keep the same operators and teams as far as possible upon the road machine throughout the season. In your absence leave the machine operator in charge of the work.

5. Appoint any foremen you may require in any locality to keep roads open in winter or supervise any work or take charge of any duty which you may think it wise and in the interests of the municipality for them to perform; report the names of any such to your R. & B. Committee, and include their time in your statements to the reeve under section 6 of the by-law.

6. Keep enough commutation money back to repair roads, bridges and sluices, whenever signs of wear appear, and to keep roads open in winter, and be punctual in repairing sudden breaches caused by freshets or floods.

7. Dispose of surface water in small quantities and by its natural outlet, and underdrain quicksand and soggy spots. Strike out all ditches or watercourses with a plow or other implement, so as to have the edges straight and in line, and so as to secure the standard width of roadway fixed by section 7 of the by-law.

8. Don't work roads when they have been rendered unfit by protracted wet weather.

9. Do not gravel any roads until they have been properly graded and crowned, and side ditches made with sufficient fall and outlet to carry water off and keep the roadbed dry and firm. Use gravel of good, clean quality only, stripping, blasting and screening when necessary to obtain such. Be careful that the crown of roads you may gravel does not exceed the limit fixed by the by-law (1 inch in 12), when the gravelling is completed and rolled down. Make a depression in the crown for the gravel, if necessary, so that, when spread out, it will be of a uniform width of 8 feet, and so that the crown of the road will be even and uniform.

Get gravel for the highways at Metler's hill, Fisher's hill, Clark's hill and Ridgeville hill, and from such other places as committee may direct.

10. Be careful in planning the work to be done this year in your division, not to exceed the following estimate of commuted labor moneys to go to each division, viz.:

Total commutation moneys available estimated at \$1,600, 43% of which, or \$736, goes, under the by-law, to North Division, and 54%, or \$864, to South Division, out of which keep back \$25 in each division to repair sudden breaches and keep road open in winter. Do not omit to take into account the salaries or wages of the commissioners and operators and teams which are to be paid from those amounts under the by-law.

11. Report to your R. & B. Committee what shovels, picks and other tools and implements you may require, and take proper care of all implements, tools and machinery in your charge and have same housed when not in use.

12. Require from your employees ten hours as a day's work, but pay all at a rate per hour.

13. Get road plank at the most convenient places. Give vouchers or receipts for same in all cases. Do not pay more than \$18 per thousand for good, sound, white-oak plank, without permission of your Committee.

14. Post up in conspicuous places in your division, copies of the commutation by-law in such printed form as they may be supplied to you.

15. Pay 25 cents per hour for teams to plow, scrape, etc.

16. Give the townline roads proper attention, and divide the territory with overseers of the other townships if you think desirable.

17. Give people, who have roadwork in arrear, the privilege of working same out at the old scale under your directions. Report to the clerk in August all who have not complied.

18. At least each month furnish to the reeve, upon forms to be supplied, the certified statements required by sec. 8 of the commutation by-law.

All of which is respectfully submitted.

..... }  
..... } Road and Bridge Commit-  
..... } tee for..... Division.

Adopted this 13th April, 1900.

## Question Drawer.

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

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

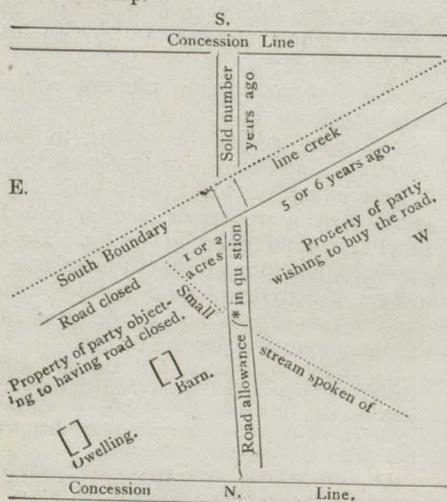
### Special Meeting—Collection of Income Tax—Closing and Sale of Road.

194—CLERK.—1. The council having been called by the reeve for a special session, can any other business be legally transacted except that for which the special meeting was called?

2. The collector having returned the roll, and a statement, showing amount of taxes unpaid, the same being against parties assessed for income only, how can they be made to pay their taxes, they having refused to do so?

3. A party presents petition containing a large number of names praying that a certain road may be closed and sold. Before council passed by-law owner of land on one side of the road in question, left a letter with the reeve, notifying the council not to close the said road, as it was required to get to a creek and would be shut from about one or two acres of the farm (a small ditch always dry except in the spring and after a heavy fall of rain.)

At the place marked \* on map there is at the present time a very dangerous bridge and there has not been any statute labor done on the road allowance since the given road was closed, as shown on map.



1. If the meeting is called for a special purpose, and that purpose is specified in the notice calling the meeting, no business other than that mentioned can be transacted, unless all the members of the council are present and consent to other business being transacted.

2. The collector should have proceeded to collect the taxes in question, in the manner provided in section 135 a, of the Assessment Act. (See section 11 of the Assessment Amendment Act, 1899.) If he did not do this, the roll having been returned by him, the municipality has lost the remedy unless it can be shown that the person assessed has no goods which might have been distrained, and if that is the fact the taxes may be recovered from the person by whom the same are payable, with interest and costs, as a debt due to the municipality. See section 142

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

of the Assessment Act and notes (f) and (g) thereto on page 15 of Glenn's Collector's Guide (2nd edition.)

3. If the road is required by the owner of the land giving the notice and objecting to its closing as a means of ingress and egress to and from his land or any part of it, the council cannot close it without compensating such owner and providing him with some other adequate means of access to his land. See section 629 of the Municipal Act. If the council and the owner cannot agree on the amount of the compensation, the matter must be left to arbitration as provided in the Act.

### Levy in Police Village—Liability of for Damages—Formation of School Section.

195.—T. Y.—1. After a police village is established is the property within the village liable, as usual in common with the rest of the municipality, for levy for township purposes, or does the levy to meet the requirements of the trustees referred to in section 738 of the Municipal Act take the place of the township levy?

2. In your reply to part four of question 146, March number, you answer "Yes." On the other hand would the police village be liable for share of damages that might accrue from like causes in other parts of the municipality, outside the limits of said village?

3. Can a school section be formed though the area is more than four square miles, if the required number of children (50) is not contained within the limits of the proposed section?

1. This depends on the agreement made between the police trustees and the municipal council. Section 740 of the Municipal Act provides that "the rate levied for police village purposes by the council of the township in which the police village is situated upon the property liable to assessment in such village, shall be in lieu of such proportion of the township rate now levied for the same or like purposes within such village as the trustees and the council may by agreement provide.

2. Yes.

3. If the school section is more than four square miles in area, the section can be formed, although such area contains less than fifty children.

### Meeting on Statutory Holiday - Railway Liability Under Ditches and Watercourses Act—Liability of Engineer

196.—J. M.—1. Our council is adjourned to meet on Easter Monday. Now is Easter Monday a statutory holiday? Will business transacted on that day be legal? If not, how can we legally change the date without having a meeting of council?

2. Our township engineer made an award under the Ditches and Watercourses Act, and assessed the G. T. Railway a certain portion for outlet. They refused to perform, and the engineer let their portion by auction. The

council paid the amount on engineer's certificate. Is the G. T. R. liable? If not, please quote statute bearing on case.

3. If G. T. R. is not liable, had the engineer any right to act as he did?

4. Is the engineer liable for the money paid out by the council, or how is the council to get the money back?

1. Easter Monday is a statutory holiday, but your council may lawfully transact business on that day.

2. The engineer had no legal authority to assess the construction of any portion of the drain against the Railway Co., nor are they legally bound to perform the work, and the council had no right to pay the amount of the engineer's certificate. See section 21 of the Ditches and Watercourses Act, (R. S. O., 1897, c. 285.) See also chapter 286. The courts have held that the Ditches and Watercourses Act does not apply to the lands of railways under the jurisdiction of the Canadian Parliament.

3. No the engineer did not act as required by the statutes.

4. The council can neither make the engineer repay it, nor can it recover the money from the contractor.

### Township Reeve's Proclamation.

197.—J. M.—Can township reeve proclaim a half-day or one day holiday? Is it legal?

No. See subsection 16 of section 8, chapter 1, R. S. O., 1897.

### Accident on Highway.

198.—R. M.—A while driving on a good gravelled road apparently, and while crossing over where a sewer pipe had been put in across said road last fall, and which owing to the high water and the looseness of the soil, had washed out a vacancy around the piping which was six inch piping, but on top of the said road all appeared firm, however, his horse's hind foot broke through a hole about the size of his foot, owing to the washout around and on top of the piping, the ground being frozen on each side of where broken through. The horse's leg was broken and on the advice of a veterinary surgeon, was killed. Now A wants the municipal council to pay the value of the horse. Is the council liable for said loss?

If you had given us the date of the accident and sent us the notice given by A or a copy of it, we could then advise you whether the township could take advantage of the provisions of sub-section (3) of section 606 of the Municipal Act, which provides that no action shall be brought to enforce a claim for damages under this section unless notice in writing of the accident and the cause thereof has been served upon or mailed through the post-office to the mayor, reeve, or other head of the corporation, or to the clerk of the municipality, within thirty days of the happening of the accident where the action is against a township, and within seven days where the action is against a city, town, or village. If a notice has been given in accordance with the foregoing section, it remains then to consider whether the municipality is liable under the circumstances stated. A, in order to succeed in an action against the municipality, must show that the municipality either had actual notice of the defect in the road and neglected to repair it within

a reasonable time or neglected to warn the public of the dangerous condition of the road, or that the municipality was negligent in not having discovered the defect. As the defect does not appear to have been a patent one we may assume that the municipality did not have any actual notice of the defect. We have now only to consider the question whether the municipality was negligent in not having discovered the defect, that is, whether it had, what is called constructive notice of the defect, and neglected to remedy it or to warn the public of the dangerous condition of the road. In regard to this question we can only state the rule of law applicable where it is sought to fasten liability upon a municipality upon the ground of constructive notice and it is this: Where a defect is of such a character that it would not be detected upon reasonable supervision, or where it has not existed for a sufficient time to enable its existence to come to the knowledge of the corporation, there will be no liability. But if it has existed for such a time that the corporation by the exercise of ordinary care and diligence could have discovered it, the corporation will be responsible to any individual damaged by its existence.

Liability for Hall for Holding Division Court.

199.—R. A.—We have had an account put before our council for the use of a hall in our township for holding Division Courts. Until about a year ago the sittings of the court were held in our township hall, and of course without any expense to the township. This hall was about in the centre of the township, but a change was made in the division by which part of another municipality was joined on to ours for court purposes, and the Judge ordered court to be held in a different place and not so convenient for a large share of our ratepayers. Should we pay any share of the cost of the hall, as the hall, where it was formerly held, is perfectly suitable for the purpose, and we are still willing it should be used as before. The Judge some years ago changed it for a couple of sittings before division was changed and personally paid the cost of hall.

Section 8 of the Division Courts' Act in part enacts as follows: "the judge may appoint, and from time to time, alter the times and places within such divisions, when and at which such courts shall be holden." Sub-section 2 of section 11 makes provision for payment of the rent of the building used for this purpose, and sub-section 3 makes provision for the apportioning of the amount of this rental between the several municipalities within which the division is. The changing of the place for holding the sittings of the division court is discretionary with the judge and your municipality will have to pay its share of the rental, fixed in accordance with sub-section 3 of sec. 11.

Care of Diseased Indigent.

200.—J. B.—There is at present a transient laborer in this township. He has lived in it just one month and has a son with a leg that has been sore for four years, and a request has been made by three ratepayers to the council to have the boy sent to an hospital for treatment at the township's expense, because his father has not the means. Is the council obliged to help the boy?

That you may get a more intelligent knowledge of the case of which I write, I will give you more particulars of it. The laborer referred to, came from an adjoining municipality into this one just one month ago, and so far as I can learn has not at any previous time been a ratepayer in this municipality, but is just here to cut 100 cords of wood and does not know where he will go when this is done. It just depends upon where he can get work. His son has a leg with some bone disease, a running sore just above the knee. It has been sore for four years. Three ratepayers in this township applied to me as reeve of the township, to have the boy sent to an hospital for treatment at the township's expense, as the local doctors could do nothing for him and his father had no means. What I want to know is, to what extent the council is responsible for the care of the boy?

Your township is not legally responsible for the care of the boy; nor is the council in any way liable to furnish or supply him with medicine, nursing or medical treatment or attendance.

Assessment of Vacant Lot.

201.—J. E. M.—If A is assessed for vacant village lot for \$30 should he be put on the roll as M. F. and F.? If not, how should he be put on?

"A" should be assessed on the roll for the vacant lot as M. F. and F, if a resident of the municipality, and the owner.

Assessment of Reversioners.

202.—J. R.—Mrs. A. inherits property, she has the use of it during her life, after which it is to be divided equally among several children. The assessor is asked to put those children with the mother on the roll, claiming that they have an interest in the property. Are they entitled to a vote as well as the mother?

Mrs. A. could not inherit an estate for life. We assume that the property was devised to her for life with remainder to the children. Sub-section (2) of section 86 defines "owner" as follows: "Owner" shall mean a person who is proprietor in his own right, or whose wife is proprietor in her own right, of an estate for life, or any greater estate, either legal or equitable; except where the owner is a widow, in which case the word "owner," shall mean proprietor in her own right of any such estate." In view of this definition, we do not think the children have any right to have their names on the voters' list, or to vote in respect of the property.

Mistaken Assessment—Collector's Second Call.

203.—A. M.—Our assessor assessed ratepayers for more on his roll than he puts in the schedule. One in particular was assessed for two lots \$750 on the roll, and when he took it down on his schedule, he marks \$500. He came to the council to make it right. The council gives him an order for the difference, afterwards the assessor says the \$750 was right and talked of, although he made a mistake in putting \$500 on the schedule instead of \$750, also our clerk in making the collector's roll in some cases failed to carry in total all taxes due on some lots, in one case arrears were not carried out, and in another case the school rates were not carried out. In another case the last year's tax was not carried out, and in another case lots assessed and not put on collector's roll.

1. Is there any remedy when there is less on schedule than on the roll, if the assessor claims the roll is right?

2. When a ratepayer gets his money back or does not have to pay the amount on roll,

council giving an order for balance, can the council recall amount if assessor swears the roll is right?

3. Could the council cause the assessor to pay should they wish to do so?

4. Can the collectors make the second demand when the full amount was not in the total, therefore not being demanded?

5. Is there any other way in which council could get balance?

6. When a lot is left off the collector's roll, what remedy has the council to get tax?

7. If no other remedy, could we assess as lots left off Assessment Roll?

8. If the collector calls the second time for taxes can he seize without demanding tax to get paid for his trip? Collector claims he has not to call the second time.

1. No See sub-section 72 of the Assessment Act.

2. No.

3. No.

4. No. He can collect only such taxes as are entered on his roll. If, however, he makes a mistake in his demand and does not demand the full amount on the collector's roll, he may make a further demand for the balance of the amount which he ought to have demanded.

5. No.

6. No. Section 166 of the Assessment Act lays down the procedure in the case where a lot has not been assessed at all. But we do not understand this to be a case of that kind. We understand the case to be that the lot was assessed, but that the taxes against it were not entered on the collector's roll. If that is the fact it cannot be assessed in order to rectify the error in leaving it off the collector's roll.

7. No.

8. The collector cannot charge anything extra for a second trip.

Collector's and Treasurer's Bond.

204.—T. L.—Collector returns roll to treasurer with all money collected, except say \$180, which collector states is uncollectable. At following meeting of council collector reports that he has completed his duties, receives his salary and requests the return of his bond.

1. Should the bond be returned?

2. Should a collector's or treasurer's bond ever be returned?

1. No.

2. No. They are public municipal records to be kept on file by the clerk, who is their proper custodian.

Fining Owner of Cattle Running at Large.

205.—W. H.—With reference to running at large of domestic animals, if a township council pass a by-law making it so that if animals not at liberty to run at large are allowed to do so, the owner can be brought before a magistrate and fined without parties being under the necessity of taking the animals to the pound. Would such a by-law be within the statute and could it be enforced?

We are of the opinion that a municipal council has authority to pass by-laws to prevent cattle from running at large and to impose fines for a violation of such a by-law. Sub-section 2 of section 546 of the Municipal Act provides that councils may pass by-laws for restraining and regulating the running at large or trespassing of any animals, etc., and subsection 1 of section 702 empowers municipal councils to pass by-laws for inflicting reasonable fines and penalties for breach of any of

the by-laws of the corporation. Without a copy of your by-law we cannot express any opinion as to its sufficiency in point and fines.

#### Mayor's Vote.

**206.**—P. R. McM.—The 31st section of a by-law to regulate the proceedings of the corporation of the town of Prescott, passed September 5th, 1898, reads as follows:

(31.) "No standing rule or order of council shall be suspended except by a vote of two-thirds of the members present; nor shall any rule or order be repealed or amended without notice of such motion therefor being given at the previous meeting, unless a majority of the whole council shall concur therein."

1. Does the mayor, or in his absence his substitute, the chairman, count as to the making up of the two-thirds necessary?

2. And can the mayor or his substitute, the chairman, vote on any resolution that grows out of the section (31) referred to?

1. Yes.

2. Yes. Section 274 of the Municipal Act provides, that "The head of the council, or the presiding officer or chairman of any meeting of any council, may vote with the other members on ALL questions.

#### Appointment of Assessors—Councillor's Qualification.

**207.**—P. R. McM.—Prescott is a town. Our board of aldermen consist of six councillors and a mayor. At the time and place of our annual nomination, a surplus of Candidates for these seven officials, was nominated. Several resignations before 9 p. m. the next day left only five councillors and a mayor, who were declared elected by acclamation. In the attempts to appoint assessors (three or four) several times there resulted a dead-lock or failure. A special meeting convened by the mayor on February 13th, for the purpose of appointing assessors resulted in a dead-lock. Two assessors are appointed annually here by by-law. The last by-law reading "assessors for 1899." The two assessors appointed for 1899 neither died, resigned, withdrew, or refused to act. An election on March 12th, resulted in a sixth councillor being elected. By the clerk he was declared elected at 12 o'clock, noon, on March 13th, executed the oath of office at 2 p. m., and at 3 p. m. of the same day took his seat at the council board and two new assessors were appointed for 1900.

1. In consideration of February 15th being the last day for assessors to begin to fill up the roll, do the assessors for 1899 hold over and should they have been directed to proceed with the duties of assessment in 1900?

2. Is it competent for the council to elect other assessors on March 13th, and are their acts for 1900 legal?

3. Inasmuch as the town's business was harmfully injured by the long delay in filling the vacancy does such long delay invalidate the seat of the sixth councillor?

1. No.

2. Yes.

3. No.

#### Removal of Fences From Highways.

**208.**—J. F. H.—The municipal council of the municipality of M posted notices throughout the municipality on June 30th, 1899, warning all persons whose fences were on the road allowance to remove the same within six months from date of notice.

1. Is such notice legal, or must each party be notified individually whose fence is on the road allowance?

2. If such notice is legal have the pathmasters power after the expiration of the six months notice, to put on men and remove the fences and have the work charged to the offending parties in their taxes?

1 and 2. Section 557 of the Municipal Act, subsection 3, gives the councils of townships power to pass *by-laws* "for the removal of any fence, etc, placed upon any highway under the control of the council, excepting material that is to be used for road or bridge purposes." Subsection 4 "for providing that the person placing any such obstructions or materials upon any highway shall, after notice to remove the same, and upon default for five days after such notice, be liable for the expense of the removal of the same." Subsection 5 makes provision for the enforcing of the enactments of such by-law by the pathmasters. The council should pass a by-law for this purpose, and specific notice should be given to each person offending against its provisions. Subsection 4 appears to be confined to the persons placing an obstruction upon the highway.

#### Signatures Necessary to Township Orders.

**209.**—A. B.—At different times I have seen it stated, in your answers to questions, that the clerk should sign orders made by the head of council for the payment of accounts. I am free to confess that I do not yet see the necessity that is in the absence of any rule, resolution, or by-law requiring such. With a view to getting the correct idea, I beg to submit the following question: I have asked advice from fellow clerks, but so far have failed to get a satisfactory answer, consequently I have concluded that there are others in the same boat with myself. Some clerks make a practise of signing the orders, others do not, but it seems to me there must be some stronger reason than custom.

Is it necessary that orders issued by head of council in payment of accounts should be signed by the clerk? If so, why?

The method of paying accounts by municipal councils and their officers given in our answers to questions No. 33 and 191 (1900) is, in our opinion, safe, legal, and business-like, a failure to adhere to ordinary business rules, is the frequent occasion of landing councils and their officers in difficult situations and heavy expenditures. There is no section or statute which in terms lays down any particular method or rule to be followed. But the exigencies and necessities of the case, and the fact that a corporation must act through its officers, renders the course we suggest necessary. The clerk and treasurer are seldom the same person, often have their offices some distance apart, and the treasurer could not tell whether the council had authorized payment to a party applying to him for his money, unless the latter also produced a certified copy of the resolution. If he did not the treasurer would have no authority to pay, or if he did pay, no voucher for the payment.

#### Powers of Bailiff—Of Finance Committee as to Collection of Taxes.

**210.**—TAXPAYER.—1. Has a bailiff power to collect all arrears of taxes—water, light, etc?

2. If so, must he be appointed by the council, or can he be appointed by the Finance Committee?

3. Has the Finance Committee power to instruct a bailiff to distrain for arrears of taxes and ground rents?

1. A bailiff, simply because he happens to be such an officer, has no right attaching to this office to collect ordinary taxes. The taxes must be placed by the clerk on the collector's roll for the municipality, and such roll is to be delivered by the clerk to the collector on or before the 1st day of October in each year. As to the duty of the council to appoint a collector each year see section 295 of the Municipal Act. Section 133 of the Assessment Act provides that "The collector upon receiving his collection roll, shall proceed to collect the taxes therein mentioned." If a ratepayer neglects to pay his taxes within the time mentioned in section 135 of the latter act, the collector may employ a bailiff or agent to enforce payment by seizure. See section 135. In case the collector fails to collect the taxes or any portion thereof by the day appointed by statute (1st February) then the council may, by resolution, authorize the collector, or some other person in his stead, to continue the levy and collection, etc. See section 145.

2. If the person enforcing payment by seizure is acting as bailiff or agent, under section 135, he should be appointed by the collector, or if continuing the collection under section 145, by resolution of the council.

3. The Finance Committee has nothing to do with instructing a bailiff to distrain for arrears of taxes.

What we have stated above has reference to ordinary taxes only. For the procedure provided for the collection of rates, charges or rents in respect of lighting, we refer you to section 10 of chapter 234, R. S. O., 1897. The council should appoint a bailiff for the purpose of collecting such rates. For the procedure provided for the collection of water rates. We refer you to sections 20, 21, 22 and 23 of chapter 235, R. S. O., 1897. The council should in this case also appoint a bailiff to collect their rates in the manner provided.

#### Commutation of Statute Labor in Part.

**211.**—D. M.—Has a municipal council power to commute statute labor in one portion of a township at say 35c. or 40c. per diem, and leave the remaining part to either perform the labor or pay 75c per day?

Yes. Section 103 of the Assessment Act provides, that "the council of any township may, by by-law, direct that a sum, not exceeding \$1.00 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.

#### Qualification for County Councillor—Wire Fences—Opening of Original Road Allowance.

**212.**—J. B. S.—1. Can a reeve, acting actually as reeve in a township and till the end of the year, be nominated and hold election, elected or not by acclamation for county councillor without resigning his seat at the end of the year?

2. If any resignation required to that effect, what length of time has to elapse for resignation before nomination takes place for county councillor according to law?

3. What is the amount required to qualify as county councillor?

4. Is there any special form required for such resignation, or follow others?

5. Can fence wire be constructed and be lawful for line fence between two neighbors? A neighbor objecting to the building of fence wire. What right has he to object against said fence wire? Can he compel said other neighbor to build rail fence, cedar in place of fence wire, or if both are legal, or which one is preferable to the other? Point what the law says in a similar case?

6. A Municipal council has a road allowance, or nine mile road not opened and left in possession of a neighbor of this road allowance till it was needed. One might say in possession of this neighbor for 9, 12, 15, 20 years consecutive and benefited as to one-half, the other half is yet in bush.

Can a municipal council take possession of said road allowance, or nine-mile road at any time as soon as this council is or is not petitioned by a sufficient number of ratepayers needing the opening of road in question to public travellers?

1. Section 81 of the Municipal Act provides that "any person having the necessary qualification, and not otherwise disqualified, who is a member of a local municipal council for the year in which nominations are held for the election of members of the county council, shall be eligible for nomination and election as a member of the county council at such election."

2. In view of the foregoing section no resignation is necessary.

3. Section 77 of the Municipal Act provides, that "every member of a county council shall possess the same property qualification as the mayor of a town is required to possess, and shall also be a resident of the county council division for which he is a county councillor." The qualification required for mayor is \$600, freehold, or \$1200 leasehold. See section 76 of the Municipal Act.

4. No resignation is necessary. See answer to question 2.

5. The building of a wire fence on the line between adjoining farms is not illegal and neither owner can object to the other building such a fence. We are not in a position to express an opinion as to whether a wire or cedar-rail fence is preferable in the locality, this would depend largely on the idea of the owner building it and the requirements of the vicinity. If the adjoining owners cannot agree the matter is one to be settled by the fence-viewers.

6. The council has the right to take possession of the road and open it for public travel, at any time, whether petitioned for or not

Notes Should be Recorded—Councillor not Compelled to Vote.

213.—SUBSCRIBER.—1. A by-law has its three readings all carried. After the third reading, could councillor demand to open the matter by asking the yeas and nays? The chair ruled him out of order. Was the ruling correct?

2. Can mayor compel all councillors to vote on a question?

1. If the proceedings of the council were conducted as the statutes require, it would be unnecessary for the councillor to press for the information you mention, as it would be matter recorded by the clerk and open to the inspection of any person de-iring to see it. Section 19, subsection 2 of the Municipal Amendment Act, 1899, provides as follows, "whenever a division is taken in a municipal council, etc., each member of the council present voting, shall announce his vote upon the question openly and individually in the council, and the clerk shall record the same, etc."

2. No. ———  
Votes of Tenants on Railway Lands.

214.—TOWNSHIP ASSESSOR.—1. A railway section foreman occupies a house belonging to the Railway Co. at a yearly rental of \$30.00. Can he be legally placed upon the Assessment Roll as tenant, with the privilege of a municipal vote, he paying no taxes?

2. Can a station agent, paying no rent or taxes but occupying station house, be given a municipal vote?

1. Yes, if the property is assessed to the amount mentioned in section 87 of the Municipal Act, and the person is possessed of the other qualifications set out in section 86 of the act. The amount of the annual rental paid makes no difference.

2. Yes, if he is assessed for a sufficient amount and is possessed of the other qualifications as above.

Claim for Sheep Killed by Dogs.

215.—SUBSCRIBER.—Our council levied a tax on dogs in the years 1888 and 1889 and applied the same towards the remuneration of owners of sheep killed by dogs. The balance of said tax of course went into the general fund. At a meeting of the council on the 2nd of April, 1900, a petition was presented, signed by the required number of ratepayers, asking that no tax be levied on dogs for the year 1900. The petition of said ratepayers was granted and a by-law passed accordingly. But previous to passing of said by-law a claim for a sheep killed by dogs in 1900, was presented to the council. Was the council liable for such claim on account of tax not being collected in 1900?

Yes, assuming that there was at the time of the presentation of the claim a balance to the credit of the dog fund of your municipality, and the claim was made within the time, and in accordance with the provisions of R. S. O., 1897, chap. 271.

Collection of Payments by Board of Health for Family Quarantined.

216.—S. N.—A family had scarlet fever, was placarded according to law; he then demanded attention, which was supplied, the council paying for it. How long after can the council bring an action to make the man pay it back, and what would be the procedure?

The aggregate of the sums paid by the Board of Health constitute a civil debt due from the person or persons isolated, or his or their parents or other persons liable for his or their support. See section 93 of the Public Health Act, and if not paid by the person or persons liable, may be collected from him or them by the Board of Health, in a court of competent jurisdiction, at any time within six years from the time the indebtedness arose.

We use the term "Board of Health" instead of "Council" as the "Council" has no authority to deal with matters of this kind.

Assessment of Severed Timber—Of Building on Road Allowance—Sueing for Taxes—Statement under Sec. 47, Assessment Act—Assessment of Partnership.

217.—BILLINGS.—1. Is timber, piled up on shore, assessable. The greater part of this timber having been hauled from the adjoining township, which is unorganized, which proves said timber was not assessed, standing on land assessed. What difference would it make if the land this timber was grown on was assessed with timber standing on at time of last assessment? If timber be removed, which it will be before collector can collect taxes, can he sue the parties who owned timber for tax on same?

2. Are buildings on four rod allowance of shore road and marine allowance assessable?

3. Suppose proprietor of wild land in our township lives in a town some miles away in another township, can we sue him for taxes, there being nothing on land we can seize?

4. Can we compel proprietors of a fishing boat to give up their books, or give a statement of earnings of said boat, that we may know if we can assess their income or not? We suppose if they earn more than \$700 per annum the balance is assessable.

5. If more than one have an equal share in boat, does the \$700 stand for all just as if one man owned all?

1. The timber is personal estate, and as such is liable to assessment, subject to the provisions of sub-sections 24 and 25 of section 7 of the Assessment Act. The former exempts so much of the personal property of any person as is equal to the just debts owed by him on account of such property, and the latter, the net personal property of any person, provided the same is under \$100 in value.

2. Yes.

3. The owners of the land cannot be sued for the amount of the taxes as provided by section 142 of the Assessment Act, unless it can be shown that the taxes cannot be recovered in any special manner provided by the Act. The lands should be offered for sale for the taxes in arrears in the regular way under the Act, and if the amount cannot be realized in this way, an action may be brought against the owner to recover the balance.

4. The fishermen could not be compelled to give up their books for the purpose you mention, but if the assessor has reasonable doubt as to the correctness of the information he obtains from them, he should insist on the furnishing by them of the statement mentioned in section 47 of the Assessment Act. See section 50 of the Act for the penalty for refusing to deliver this statement, or for making false statements therein. The balance over \$400 is assessable.

5. If the fishermen form a partnership, then the firm should be assessed for the amount of the income over and above \$400. At the request of any member of the partnership the assessor is to assess such member for his individual share or interest in the partnership. See sub section 2 of section 25 of the Assessment Act. In case neither member of the firm makes such a request, the income in excess of \$400 should be assessed against the firm.

Appointment of Assessors and Assessment in Unorganized Districts—Suit for Taxes.

218. — F. B. — 1. Our council have this year appointed three assessors in order to have all properties assessed to their real value as near as possible, and thereby have this year's assessment do for the next two years. Now by referring to the answer to the question 125 of the March No. of THE MUNICIPAL WORLD, it seems that the council would not have any legal authority to do so, and again by referring to the R. S. O., 1897, chap. 225, section 42. In unorganized districts such as Nipissing, Algoma, etc., it would seem that the council can take the assessment of the previous year, providing that it will not be more than three years before a new assessment is taken. Please give your opinion on the matter.

2. There are young men in this municipality who are located for and hold land, but make no improvements whatever, and are assessed and have been assessed for a number of years, but have never paid any taxes, there being nothing on the land for the collector to sell. Would not the collector have a right to collect those taxes in the way of an ordinary debt and garnish those young men's wages for their taxes?

Your municipality being situated in the unorganized district of Nipissing, is acting within its statutory authority in appointing the three assessors. See section 40 of chapter 225, R. S. O., 1897, and the assessment made by them can stand as the assessment for the next two years—subject to revision, as provided in the Act, in the case of the first assessment—provided the council pass the necessary by-law, annually adopting it as such, and the period of three years from the date upon which the last assessment roll was finally revised, has not elapsed. Question number 125 related to municipalities in organized territory.

2. The interest of these parties in the lands located can be sold in the regular way to realize the amount of the arrears of taxes. See section 188 of the Assessment Act, subject to the provisions of section 185 and following sections of the act. The taxes must be realized out of the land, if possible, and if any balance, then remains, a civil action may be brought for the recovery of the balance but not until all the special remedies are exhausted. See section 142. The collector, however, has no authority to bring such an action. It must be brought in the name of the municipality.

Concrete in Piers for Iron Bridges.

219. — SUBSCRIBER. — 1. In building piers for iron bridges of 100 foot span or over, what kind of concrete would you recommend, concrete or what is termed rubble?

2. What size should the stone be for making concrete, that is the diameter of ring it should pass through?

3. Do you believe that so called rubble will take the bond as well as the small broken angular stone and hold together as well?

1. A pier of rubble concrete, if properly made, should be very satisfactory for highway bridges of 100 feet span and over. Rubble concrete is used in railway bridges, in which strain and vibration is severe. This class of work is described in sections 4 and 5 of an article entitled "A Cement Arch Concrete Culvert," in the April number of the MUNICIPAL WORLD. Rubble concrete should not be

confused with rubble-masonry, the latter term being applicable to a very inferior class of masonry for this work. Rubble concrete should be built carefully, should be thoroughly bonded with fine concrete, and the fine concrete should form a casing of at least six inches in thickness surrounding and properly uniting with the rubble. Fine concrete alone would perhaps demand less skill in securing substantial work, but rubble concrete built as described, will reduce the cost. Care must be taken that the large stones are not decayed from exposure, and that they are not coated with mould or other foreign material.

2. For fine concrete, the stone should be crushed so as to pass through a ring two inches in diameter. In rubble concrete the stones should weigh twenty pounds and upwards.

3. Rubble concrete, properly built, but not rubble masonry, should give as satisfactory results as a structure composed wholly of fine concrete.

Assessment of Personality—Tax Sales—Negligent Collector—Powers of Reeve.

220. — W. G. H. — We have a ratepayer who carries on farming, and is a contractor with the lumbermen, and also has and travels a threshing machine and has a number of horses additional to the work of his farm, and hay press which he travels through the municipality and uses under those contracts.

1. Are those exempt from taxes, or should they be assessed under valuation or part and if so, what part. By your answering us this will settle a dispute?

2. We have a number of lots belonging to the municipality. Should they be assessed as non-resident and brought to the land sale?

3. What can we do with lands that have been assessed as resident and can not get the taxes, nor have not for some years?

4. Our collector has not all the rates in. Can we take the roll and put arrears on the next year's roll, or what will we do?

5. The reeve orders a snow drift to be opened so as to allow the mail stage to get through and causes him to be paid by the treasurer. Has the reeve this power? What legal power has he or any member on any block on road?

1. We are of opinion that the articles mentioned, except the horses, do not come within the exemption mentioned in subsection 16 of section 7 of the Assessment Act, and section 1 of the Assessment Amendment Act, 1899, and therefore liable to assessment subject to the provisions of subsection 23 and 24 of the Assessment Act.

2. These lots being the property of the municipality, are exempt from assessment and taxation. See subsection 7 of section 7 of the Assessment Act. The municipality must sell such lands within seven years from the time when they were acquired. See subsection 3 of section 148 of the Assessment Act.

3. If these taxes have been due for and in the third year, or for more than three years preceding the current year, they should be offered for sale for the taxes in arrear, pursuant to the provisions of section 173 and following sections of the Assessment Act.

4. Section 145 of the Assessment Act provides that "In case the collector fails

or omits to collect the taxes or any portion thereof by the day appointed, the council may, by resolution, authorize the collector, or some other person in his stead, to continue the levy and collection of the unpaid taxes, etc. In case the taxes cannot be collected by reason of absence of property to distrain, the lands should be returned by the collector or person appointed by the council to collect in his stead, to the treasurer on his "no property" list, to be forwarded by the latter to the county treasurer. When these taxes shall have been due for and in the third year, or for more than three years preceding the year then current, the land should be advertised and offered for sale to realize the amount of the arrears of taxes. In this connection it must be borne in mind that once the roll is returned the council cannot authorize any person under section 145 to continue the collection of taxes.

5. The reeve had the power to order the opening of the road for the purpose mentioned, but the payment of the cost of so doing should have been directed by resolution of the council in the usual way. Generally speaking, the reeve, or a member of the council, or a pathmaster may, in a case of emergency and where the cost is small remove obstacles on the highway obstructing travel, or occasioning danger and the cost of so doing should be paid by the council. Where the work is likely to be expensive, a special meeting of the council should be at once convened to consider the matter.

Finality of Assessment Roll.

221. — J. F. — 1. A ratepayer was assessed for residence and shop, separate properties. Sometime after the assessor made assessment, he discovered that ratepayer had a dog. Before returning roll he assessed dog, but it was not entered on assessor's bill held by ratepayer. For that reason he refuses to pay dog-tax. If collector collected dog-tax, would ratepayer have cause for action against municipality?

2. Ratepayer denies receiving assessor's bill for shop and refuses to pay taxes thereon. Assessor claims he presented ratepayer with assessor's bill, can we collect tax on shop?

1. No. Section 72 of the Assessment Act provides, that "The roll, as finally passed by the court, and certified by the clerk as passed, shall be, 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 51 of the act, or the omission to deliver or transmit such notice."

2. Yes. See the section above quoted.

Seizure Outside of County.

222. — CLERK. — A is assessed for land in this township, but lives across the boundary line in another township and county. He has no buildings or stock on the land he owns in this township. Can the tax collector go across the boundary line into another township and county and seize property held by A there, for the taxes due this township on the warrant issued by this township?

No. Section 135 of the Assessment Act, subsection 1, clause 1, authorizes the collector to seize, for taxes, "goods and chattels" of the person liable, "wherever found within the county in which the local municipality lies," etc. His authority therefore does not extend beyond the county.

#### By-Law Forming New School Section.

223.—Q. U. E. D.—A by-law was passed in 1898, forming a new school section No. 10, out of school sections Nos. 9, 11, and 13 in this township, thus altering the boundaries of these three sections. Can these three sections be again altered to form another new section, or can they be altered in any way before five years, or does five year's time only apply to the new section No. 10?

The five year limit applies only to the new section, number 10. The application to the council was not for the passing of a by-law to alter the boundaries of school sections numbers 9, 11 and 13 but to form the new section out of these sections. Sections 9, 11 and 13 may be altered further in such manner as may seem advisable by the local council, or arbitrators on appeal, within the five years, so long as the boundaries of the new section (No. 10) are not interfered with.

#### Taxes on Land Placed in School Section by Mistake.

224.—C. W. S.—1. How many years of taxes can a school section collect on land that was wrongfully transferred by by-law from one section to another? The trustees of section from which it was taken were never notified or asked for the change. It was a mistake admitted by all parties.

2. If taxes can be collected for past years, which should pay it, school section or municipality?

It was a mistake of township council.

1. If the land was transferred from one school section to another by a by-law duly passed and not yet set aside, it would then be liable to contribute its share of the taxes in the school section to which it was transferred.

2. Assuming that the by-law was valid, the taxes were properly paid to the school section to which the land was transferred and cannot be recovered for the school section from which the land was transferred either by that section or the municipality.

#### Opening of New Post-Office.

225.—SUBSCRIBER.—We are very much isolated in our neighborhood from any post-office. How are we to proceed to have a post-office in our locality? There are about 20 farmers that will be directly benefited and want to have an office.

Prepare a petition, setting forth the facts, and your wishes. Have it signed by as many as possible of the residents of the vicinity, who desire the opening of the new post office. Direct and send it to the Hon. Wm. Mulock, Postmaster-General for the Dominion of Canada, and he will probably instruct the Post-office Inspector to enquire into the necessities of the case, and report to his department. On the receipt of this report, the department will likely decide as to whether the establishment of a new post-office is necessary or not.

#### Preparation of Voters' List—Date of Closing Court of Revision—Assessment of Tenant—Collection of Taxes Half-yearly or Quarterly.

226.—G. G. A.—1. Where a resident of a town municipality owns property in two or more wards, and resides in one of such wards, should the clerk in preparing the Voters' List enter such person's name in part 1 for each of such wards, or for part 1 for the ward in which such person is a resident, and in part 2 of the other wards in which properties (other than his residence) are situated; the lands of course being of sufficient value to entitle the owner to vote at municipal elections, and he being qualified to vote under the Ontario Election Act? I beg to refer you to Vol. 4, pages 140 and 166 of THE MUNICIPAL WORLD. Our County Judge at that time concurred in the decision referred to, but lately he has followed the practice consistent with the view passed by your correspondent on page 166.

2. Where assessment is taken between 15th of February and the 30th of April in town municipality, and where there are no appeals from the Court of Revision under section 75 of the Assessment Act, on what day within the meaning of section 6 (16) of the Ontario Voters' List Act is the Assessment Roll regarded as finally revised?

3. Where real property is assessed to a person as tenant and the owner's name is entered in column 6 of Assessment Roll, should any letters such as "F.," "M. F.," be entered opposite owner's name in column 4 of the roll?

4. In such a case as stated in (3) above, should the clerk in preparing the Collector's Roll show the name of both owner and tenant as assessed for the property?

5. Are the tenant and owner in such case (3 above) both "persons actually assessed" within the meaning of section 135 of the Assessment Act and in the absence of any agreement between the parties, or of positive evidence as to which should pay the taxes (if you hold both are liable) to which, in the first instance, should the collector look for payment of the taxes on the property in case of default?

6. Where assessment is made between 15th February and 30th April in a town municipality, and where there are no appeals from the Court of Revision under section 75 of the Assessment Act, on what day within the meaning of section 6 (16) of the Ontario Voters' List Act is the Assessment Roll regarded as finally revised?

1. In the September number of the WORLD for 1894, we published a judgment delivered by Judge Hughes, senior judge of the county of Elgin, upon the mode of preparing Voters' List and having carefully considered it, we entirely agree with all he says. In that judgment he analyzes section 3 of the Voters' List Act, 1899 (now section 6 of chapter 7, R. S. O., 1897) and explains it so fully and clearly that we cannot understand why any clerk who has read the judgment should have any difficulty in preparing a Voters' List in accordance with the law. One of our correspondents shortly after that judgment was delivered sent us a communication in which he criticized the judgment and among other things said: "I still maintain that the practice prevailing is preferable to the law as laid down." In regard to this statement we have to say that a practice which is not according to law is a dangerous one and ought not to be followed, no matter how convenient it may be to the clerk. In order that municipal clerks may understand how to prepare Voters' Lists we shall endeavor to give the meaning of section 6 as far as it is necessary for the purpose, and in order to do so we shall take (first) the

case of a municipality which is neither divided into polling sub-divisions or wards; (secondly) a municipality which is divided into polling sub-divisions but not into wards, and (thirdly) a municipality which is divided into wards and polling sub-divisions. The first case is so simple that we need not say anything in regard to it. Subsection 1 of section 6 requires the clerk to make a list in three parts. Subsection 2, provides: "The first of the three parts shall contain the names in alphabetical order of all male persons of full age and subjects as aforesaid, appearing by the assessment roll to be entitled to vote in the municipality at both municipal elections and elections for members of the Legislative Assembly." Subsection 3, provides: "The second part shall contain the names in alphabetical order of all male persons of full age and subjects as aforesaid and of all widows and unmarried women of full age and subjects as aforesaid and appearing on the assessment roll to be entitled to vote in the municipality at municipal elections only, and not at elections for members of the Legislative Assembly." Subsection 4, provides: "The third part shall contain the names in alphabetical order of all male persons of full age and subjects as aforesaid, appearing by the assessment roll to be entitled to vote in the municipality at elections for members of the Legislative Assembly only, and not at municipal elections," and subsection 5, provides: "The name of the same person shall not be entered more than once in such part." It is clear that the name of a voter possessing both a municipal and a legislative qualification must be placed in the first part and cannot be placed anywhere else. It is equally clear that the names of persons possessing a municipal qualification only can be entered in the second part only. It is also equally clear that the third part can only contain the names of persons who are entitled to vote at elections for the Legislative Assembly only.

Now let us take the second case, that is where a municipality is divided into polling sub-divisions but not into wards. How is the clerk to make out the list in this case? The answer to this question is found in subsection 6, which is as follows: "Where a municipality is divided into polling sub-divisions, the list (to be in three parts as aforesaid) shall be made for each of the sub-divisions." The meaning of this subsection is very clear. The clerk is required to make out a list in three parts for each polling sub division as aforesaid, that is, in the same manner as is provided in the case of a list for a municipality not divided into polling sub-divisions. We have now to consider the case of a municipality divided into wards and polling sub-divisions. Subsection 11, provides as follows: "Where a ward of any municipality is divided into polling sub-divisions and it appears by the assessment roll that a person is assessed in each of two or more polling sub-divisions

in the ward for property sufficient to entitle him to be a voter at a municipal election, the clerk shall enter his name in the list of voters in one sub-division only, and shall, as hereinbefore required, insert opposite his name the additional words "and other premises;" and where within the knowledge of the clerk a person resides in one of the polling sub-divisions his name shall be entered as aforesaid in the list of voters for that polling sub-division." Where a municipality is divided into wards, there is to be only one list for each ward, but the list must be made in accordance with sub-divisions 2, 3 and 4 and the clerk is required in this case to enter the name of the voter in the division in which he resides, when he knows that the voter resides in that division. Except in this one case, the clerk must prepare his lists from the information contained in the assessment roll.

Subsection 12, makes provision for the case of a person who is assessed in respect of property partly within two or more sub-divisions.

In the view we have taken of the meaning of section 6, it follows that where a person is entitled to vote at an election for the Legislative Assembly and he is also entitled to vote at a municipal election in two or more wards in the municipality, his name must be placed in the first part in each ward, in which he has the necessary qualification.

2. Subsection 19 of section 71 of the Assessment Act, requires the court of revision to have the assessment roll finally revised before the 1st day of July. Therefore the date limited for the closing of the court of revision is the 30th of June. Subsection 1 of section 75 provides that a notice of appeal from the court of revision must be given within five days after the date limited for the closing of the court of revision. The last day for giving notice of appeal is therefore the 5th of July.

3. No.

4. No.

5. The collector is not concerned with any agreement between the owner and tenant as to who should pay the taxes. He may proceed against all the persons assessed and liable for the taxes. A person whose name is placed in column six is not to be regarded as being assessed. See section 22.

6. No. The assessment roll cannot become finally revised before the 6th of July. The rate must be struck after that date, and the clerk has until the 1st day of October to prepare and deliver the collector's roll to the collector, and the collector must then demand the taxes, and until after a demand is made, and fourteen days elapses the taxes are not payable. How, under these circumstances, can taxes be collected half-yearly or quarterly in the case you put?

owners of a water privilege by means of their dam, back the water of their pond onto about 10 feet wide of the road allowance. It has been in this condition for 40 years. The road is still wide enough for the ordinary traffic. The edge of the pond is considered dangerous and the original owner of the mill built a railing along it, which is now rotted down and present owners refuse to renew it, claiming that as it is on the highway, the council should do it.

1. Can they be compelled to bear the expense of a new railing?

2. If they refuse, can they be compelled to take the water of their pond off the allowance?

3. If an accident should happen by some one driving into the pond, who would be responsible?

1. No.

2. A person who erects a dam is responsible for all the injury caused by it. The milling company in this case has no right to overflow the road and thereby damage it. Neither do we think it can successfully claim the right to do so by reason of the fact that it has done so for forty years before. A right by prescription cannot be acquired as against the public. An injunction can therefore be obtained to compel it to abate the nuisance.

3. The municipality would be liable in the first instance, but it is doubtful whether the municipality would be entitled to a remedy over against the company.

#### Cheques for Commuted Statute Labor.

228.—J. C. C. I want to call your attention to section 6 of the by-law commuting statute labor in our township. It is as follows:

"Each Commissioner shall keep an accurate record of the men employed and the work done by him under this by-law and he shall furnish to the reeve in such written form and at such intervals as his instructions may require, properly itemized statements made up from these records and duly certified by him, accompanied by any vouchers pertaining thereto. The reeve upon being satisfied of the correctness of such statements may issue his cheque upon the proper fund from which payment should be made, as per section 5 above."

Should the reeve issue his cheque to each person named in the statement, or pay-sheet, or to the commissioner, supply for the whole amount expended, as shown by the sheet, the commissioner then to pay the various employees?

The reeve should issue a cheque or order on the treasurer for the total amount payable to the persons named on the commissioner's pay list, which should have the form of order attached and blank column for receipt.

#### Election and Powers of Water and Light and Heat Commissioners

229.—In June 1896, the municipality of the town of Prescott, enacted a by-law for the construction of a system of waterworks and sewers, and issued debentures for \$100,000 for that purpose.

On September 5th of the same year the electors of the town of Prescott, enacted a by-law, creating a Board of Waterworks Commissioners that shall consist of the head of the council of the said municipality, who shall be ex-officio a member of the said board, and three other duly qualified members to be elected annually.

At the annual nominations for the municipal officials of Prescott for 1899, three gentlemen were nominated as Waterworks Commissioners, and declared elected by acclamation.

In 1899, they, the said commissioners, fulfilled

the functions of Waterworks Commissioners, and executed contracts with contractors to construct the necessary works for waterworks and sewer purposes and reported to the town council at the end of the year a yet unexpended cash moiety of \$55,000 to continue and complete the waterworks and sewers in 1900.

At the annual nominations for the municipal officials of Prescott for 1900, there was an utter failure to nominate any person at the regular time and place for Waterworks Commissioners. There were nominations for the three gentlemen who were Waterworks Commissioners for 1899, but the nomination papers were written for Heat and Light Commissioners. The mistake was discovered in a few days and a general acknowledgment made of the error by having Waterworks Commissioners nominated on March 5th, this month, and three gentlemen were declared elected by acclamation.

A by-law submitted to the electors of Prescott on the 2nd day of January, 1899, to raise the sum of (\$15,000) fifteen thousand dollars, for the purpose of providing an Electric Light Plant in the town. This by-law was declared carried, passed its third reading by the council, stamped with the seal of the corporation, the debentures for \$15,000 were executed by the mayor and treasurer, and such debentures were placed upon the market, are to be delivered to the purchaser this month and the proceeds to be utilized this year for the further construction of the electric light plant.

The mayor and council took charge of the construction of the electric light plant of 1899, and performed the functions necessary to the carrying out of its erection, and in December, 1899, had placed the engine and dynamo of the electric light plant in the same building within the power-house of the waterworks, so substantially the electric light power and the waterworks power can be forced by the same energy generated in the same building.

On the 6th day of December, 1899, a by-law was submitted to the electors of Prescott and declared carried, and passed its third reading by the council of 1900, on January 8th, at 11 a. m., of this year, with the seal of the corporation stamped thereto. That is more than one week after the regular annual nomination day for officials for 1900. A copy of that by-law as printed and published in the *Prescott Journal*, is enclosed, which it is desired you should publish with this communication, or at least sufficient of it to render this communication explanatory.

It was held the three Waterworks Commissioners elected and duly qualified for 1899, were competent to hold over by continuity of office and become the Waterworks and Electric Light Commissioners as per by-law of December 6th, 1899, and act and perform the functions of Waterworks and Electric Light Commissioners for January and February, and up to March 5th, inclusive, of 1900.

The three Waterworks Commissioners of 1899 did take over to themselves the electric light plant, and did perform the duties of producing electric energy from the said electric light plant, situated in the power-house of the waterworks for January and February, and for the first five days of March of this year, making the necessary expenditures for producing the electric energy, for illuminating the streets and stores and houses in Prescott, and collecting weekly the receipts.

The Waterworks Commissioners declared elected on March 5th, this month, two of whom are the same as in 1899, and one a new commissioner, are now performing the functions of the Waterworks and Electric Light commissioners under the by-law of December 6th, continuing the further construction of the electric light plant, stringing wires, locating poles, etc., making expenditures and collecting the revenue therefrom.

(12) Objection is made to this state of affairs, viz:

(a) That there is to be found no authority in our statutes to amalgamate the Waterworks Commissioners and the Light and Heat Commissioners in one Board. While it is quite

competent for the same individual to be elected to serve on both boards, there is no provision in the statute giving a municipality power to unite both boards in one body as this by-law purposes to do. The caption of the by-law is also misleading, in its indicating and intention to provide for the election of light and heat commissioners only, while clause three of the by-law goes further and is apparently intended to merge the two boards into one; while clause four would seem to continue the powers of the Waterworks Commissioners until the next annual election, viz., until 1901.

(b) It also appears that there was absolutely no nomination of waterworks commissioners on the last regular annual nomination day. The mayor is by statute *ex-officio* one member of the Board of Waterworks Commissioners, the other members are to be elected at the same time and in the same manner as the mayor. There must, therefore, be a nomination in the usual way.

(c) The provisions of the act for filling vacancies occurring in a municipal council, which presumably would also apply to vacancies in the Waterworks Commissioners Board, do not seem to extend to a case of an utter failure to nominate any persons at the regular time and place, but only to resignations, withdrawals, death, etc. and the conclusion would seem to force the belief that it is not found competent to hold another election for water commissioners.

(d) And as to the question whether the former Board of Commissioners still hold office? There is an expressed provision in the act by which municipal councillors continue to hold office until their successors are appointed, but none whatever as to waterworks commissioners, therefore the sequence is forced again that there is at present no Board of Waterworks Commissioners legally in existence. Under these circumstances, the conclusion is reached, that it is quite competent for the municipal council to manage their system of waterworks, just as they would do as if no Board of Commissioners had ever been appointed. It follows also that since there is no existing Board of Waterworks Commissioners, the by-law above referred to, purporting to confer upon such board the function of light and heat commissioners is a nullity, with the obvious result that the council should at once assume the management of its light and heat plant, as well as its waterworks.

1. Do the Waterworks Commissioners of 1899 hold over and hold office by continuity through January, February and up to March 5th, inclusive, 1900? And holding over, were their acts, acting in such capacity, legal or illegal?

2. After an utter failure to nominate any person and elect Waterworks Commissioners at the regular time and place for the year 1900, is it competent thereafter in the same year to hold another election for Waterworks Commissioner? And if declared elected on March 5th, 1900, and they act and continue to act in the capacity of Waterworks Commissioners, are their acting in such capacity legal or illegal?

3. Is there authority in our statutes to amalgamate the Waterworks Commissioners and the Heat and Light Commissioners and such amalgamation shall be known as the Waterworks and Electric Light Commissioners? And if Waterworks Commissioners being duly elected for the balance of the year 1900, viz., since March the 5th, 1900, do act in the capacity of Waterworks and Electric Light Commissioners, are their acts acting in such capacity legal or illegal?

4. And will you kindly render and publish your conclusions as to all the objections raised in clause twelve of this communication?

5. If answer to question 1 be that it is illegal, what remedy is open to the electors to correct the irregularity, and what procedure in law is necessary?

6. If answer to query 2 be, that it is illegal, what remedy is open to correct this irregularity?

7. If answer to question 3 be, that it is

illegal, what is the proper procedure to put an estoppel to the irregularity?

1. After the best consideration which we have been able to give the first question asked, we are of the opinion that the acts of the water commissioners for 1899, during the present year up to March 5th last, are binding. Section 95 of the Municipal Act provides that the members of the council shall hold office until their successors are elected or sworn into office, and the new council is organized. Section 331 provides that all officers appointed by the council shall hold office until removed by the council, etc. Section 327 provides that a municipal council shall be deemed and considered as always continuing and existing, etc. Subsection (2) of section 40 of the "Municipal Waterworks Act" provides: "upon the election of commissioners, all the powers, rights, authorities or immunities which, under this act, might have been exercised or enjoyed by the council and the officers of the corporation, may be exercised by the commissioners and the officers appointed by the council thenceforth during the continuance of the board of commissioners shall have no authority in respect of such works." Section 54 of the same act provides: "This act shall be read and construed as part of the Municipal Act." These sections afford, we think, a sufficient reason for holding that the acts of the commissioners in this case were valid. Mr. Dillon, in his work on Municipal Corporations, dealing with the question of holding over after the end of the term for which a mayor or alderman has been elected, says, "to guard against lapses, sometimes unavoidable, the provision is almost always made in terms that the officer shall hold until his successor is elected and qualified. But even without such a provision, the American courts have not adopted the strict rule of the English corporations which disables the mayor or chief officer from holding beyond the charter or election day, but rather the analogy of the other corporate officers who hold over until their successors are elected, unless the legislative intent to the contrary be manifested. Thus, in Vermont it is held, there being no statute to the contrary, and such having been the practice, that the school officers elected at the annual meeting hold over until others are elected at another annual meeting, whether more or less than a year from the time of their election.

2. Yes. We regard the provision for holding the elections at a particular time as directory, and if an election is not held on the day fixed by statute it may be held on a subsequent day. It follows, therefore, that the acts of the commissioners are valid.

3. As we understand what was done, there are two boards of commissioners, namely, the Board of Commissioners under the Municipal Heat and Light Act, elected in January, 1900, and the Board of Water Commissioners, elected on the 5th of March last. The business under

the two acts should, under the circumstances, be transacted separately. We think that the electors might have elected three persons to act as Water Commissioners, Heat and Light Commissioners, but we do not think that after separate boards have been elected, a by-law can be passed with the assent of the electors amalgamating the two boards.

4, 5, 6 and 7. What we have said in answer to questions 1, 2 and 3, makes it unnecessary to reply to these questions.

#### Advertising Passing of School Debenture By-law.

230.—A. O.—Is it necessary to advertise that the council has passed a by-law to borrow money when done for school sections, a meeting of rate-payers having been held and a motion passed at the meeting instructing the trustees to apply to council to raise the amount by debenture? The notice I refer to is Chap. 223, section 397, subsection 2.

Yes, if the debentures are issued for a longer term than one year. The only by-laws excepted from the operation of section 396 are those mentioned in section 398, viz: By laws passed under the provisions of the Municipal Drainage Act, and of the provisions of the Municipal Act relating to local improvements.

#### Cost of Drainage Appeal.

231.—I J.—The townships of A and B have a drainage dispute, which is decided by the drainage referee in favor of A. B carries the case to the Court of Appeal, which court sets aside the referee's decision with costs.

1. Must the township of A pay these costs out of its general funds?

2. Or can the township of A levy and collect these from its own rate-payers assessed for the drain about which the dispute arose, in case (a) the construction or repair of said drain is abandoned, or (b) the construction or repair of the drain in question is carried out by subsequent proceedings?

3. If the ratepayers to the said drain are liable for the costs of the Court of Appeal, by which method is the amount of each ratepayers' liability to be ascertained?

You have not furnished us with sufficient data to enable us to answer these questions. We should have all the facts before us, including the full text of the judgment of the Court of Appeal, and their reasons for the judgment.

#### Wires Strung Over Street.

232.—A. C. W.—Is there any stated height for wires crossing over the street so as not to interfere with travel? A man with a seed drill in a sleigh with the tongue of the drill in the air caught on an electric light wire that crosses the street. The plant belongs to a private party. Is the village responsible for the breaking of the drill by being thrown out.

No, unless regulated by agreement between the municipality and the owner of the plant, but the wires should be strung across the street at such a height that there would be no danger to traffic passing along the street through coming in contact with them. We are of opinion that the municipality would be responsible for any damages sustained by the owner of the drill in the way you mention, unless the owner of the drill, through his own negligence, contributed to the happening of the accident. The municipality may possibly have a remedy over against the

owner of the plant, but we cannot express an opinion as to that, without knowing the circumstances under which the wire was strung across the street.

#### Formation and Enlargement of Union School Section.

**233.**—D. R. B.—Certain ratepayers of the townships of Ladysmith and Kimberly wish to form a union school section, for which purpose they petitioned the council of Ladysmith to appoint an arbitrator under section 43 of the Public Schools Act. The council refused to appoint an arbitrator.

1. Will it be necessary to petition the township council of Kimberly? Even if Kimberly were to appoint an arbitrator, the petitioners would still have to go to the county council.

The Kimberly council does not meet until five weeks after the refusal of the Ladysmith council to appoint an arbitrator. If it is necessary to petition the Kimberly council, how is an appeal to be lodged with the county clerk within one month after the refusal of the council of Ladysmith to appoint an arbitrator?

2. May a township council enlarge one union school section by taking land from another union school section? See section 43, subsection 11, Public Schools Act; or must the land be taken from a non-union section? Does the five year limit apply to this?

1. We do not think any appeal lies to the county council until after the petition required by section 43 has been presented to each township council concerned. The difficulty which you point out, can be overcome by giving a notice of appeal as to each township council refusing within the month.

The procedure laid down by subsection 1 of section 43 must be followed before a municipal school section can be formed, altered or dissolved, except that under subsection 11, the council may enlarge a union school section by taking lands from a non-resident section. The five year limit does not apply to prevent the council from making an addition to a union school section by enlarging it at the expense of a non-union section.

#### Cost of Formation of Union School Section.

**234.**—D. A.—Two townships A and B. The schools are situated one and one-quarter miles from the townline. The ratepayers petitioned both councils to form union schools on boundary line. B granted an arbitrator every time. A would not. Application was made to the county council. Arbitrators were appointed. Then union section was established. The award sets forth that each township pays \$54, half cost of arbitration. The money is paid by each township. B objects on the ground of never offering any opposition and wants this amount levied on the interested parties. Two of the schools are in A township, hence the difficulty. Can a by-law be passed by B township levying a special rate to cover this amount on the interested parties?

Under subsection 8 of section 43 of the Public Schools Act, the arbitrators would have the right to award costs against the township, and there is no provision made in the act enabling B to collect its share of the costs from the ratepayers in that portion of the union school section located within its limits.

#### Taxes on Mineral Lands - Advertising Tax Sale—Collect from the Original Locatees

**235.**—W. T. G.—1. Some lots in this municipality were patented under the Mines Act. They were assessed the same as lots held for

agricultural purposes, improved. The tax has been carried forward on the roll as arrears until now a large sum is owing, made up largely as arrears. The patentees are non-residents and the lots are considered worthless, and, if put up for sale would not realize cost of advertising to the township. The trustees of school section that these lots are in have received school taxes from the council every year per requisition. Some of the councillors are in favor of striking the lots off the roll to save expenses, others claim that as it is deeded property it should be put up for sale so as to give the municipality a chance of collecting the arrears, if at any time mining operations are carried on. Under these circumstances what would you advise?

2. If they are put up for sale, must they be advertised in the *Gazette*, section 177, chap 234, by the terms of section 53, chap 225?

3. Some lots have been located and the locatees have asked to be assessed or entered on the assessment roll, which was done by the assessor. They have made no improvements and are in arrears for taxes. Others have jumped the claims and made improvements and eventually have been located by the Crown Lands Department, have refused to pay the arrears charged against the lots to the first locatee. They claim that before they located, the lots had reverted to the crown and therefore arrears of taxes could not be charged against the land. If the arrears can not be collected from the second locatee, can the municipal council claim the amount of school tax levied on these lots, and paid by the township to the trustees of school section annually?

4. What is the best to be done with these arrears?

1. These lots could not legally be struck off the roll. If the taxes have been in arrears the requisite period, the lands should be offered for sale for the arrears as provided by section 173 and following sections of the Assessment Act.

2. Yes.

3. If the lands had in fact reverted to the Crown, when the second locatees were located by the government, and the original locatees had ceased to have any interest in, or claim upon the lands, they cannot now be sold to realize the arrears of taxes. See section 186 and following sections of the Assessment Act. The municipality cannot recover from the trustees the amount of the school-tax levied against these lots, and paid over to them annually.

4. If the original locatees are worth the amount, the municipal corporation can recover the arrears from them by civil action. See section 142 of the Assessment Act.

#### Collection of Taxes After Return of Roll—Assessments of Tenants—Light and Water Rates.

**236.**—SUBSCRIBER—1. The collector as required by by-law returns his roll in December. The council appoint a man to collect until February 1st, of following year. Is this not the end of collecting by the collector on that roll?

2. Is not the treasurer the proper person after that date to receive moneys?

3. Would a seizure after that date be legal?

4. Can the arrears of that roll be carried forward on the new collector's roll made out, and if so can collector seize, etc., as for new taxes?

5. If collecting can be carried on in this way, does it not interfere with list of lands in arrears for taxes being made for sale?

6. John Jones' town lot is assessed for \$500. He has two tenants. It requires an assessment of \$200 for municipal vote. These three could not vote on \$500. In that case would assessor assess two or three?

John Jones \$300, one tenant \$200.

7. The council instruct collector not to seize in some cases in order to give time. He returns his roll accordingly. Does this prevent collector appointed after return of roll in December from seizing and collecting from these parties up to the 1st February, next year?

8. How can we compel houses vacant or otherwise to take water and light and pay same?

1. The council has no right to appoint any one to collect the taxes after the roll has been returned by the collector. Mr. Justice Hagarty in the case of *Holcomb vs. Shaw* (22 U. C. Q. B., p 92) says: "the avowry distinctly avers that the collector's rolls for the years 1855 and 1859, respectively, were returned by the collector as required by law, and that after the return thereof, the defendant was appointed by the council as collector to collect the taxes unpaid thereon. I am of the opinion that after the formal return of the roll by the collector, it is not in the power of the council to appoint any person to collect the unpaid taxes by distress and sale. Another course is pointed out by the statute to enforce payment by sale of the land, etc." An exhaustive article on this subject will be found in the issue of THE MUNICIPAL WORLD for June, 1899, (p. 96). See also note "K" on page 16 of Glenn's Collector's Guide (2nd edition).

2. After the return of the roll and until the local treasurer has furnished to the county treasurer the statement mentioned in section 157 or the Assessment Act, in the case of a township or village, the taxes should be paid to the local treasurer (see section 160) and after the furnishing of such statement to the county treasurer. In the case of a town, the treasurer and mayor are authorized to perform the like duties as warden and county treasurer in townships and villages, and therefore after return of the roll in the case of a town, the taxes in arrears are to be paid to the treasurer. See section 224.

3. A seizure can legally be made so long as the roll has not been returned, but not after its return.

4. No.

5. Our answers to the previous questions render it unnecessary to reply to this.

6. John Jones should be assessed as owner of the premises, and the tenants should be assessed for such portion of the premises as they respectively occupy. Supposing that the value of the part occupied by one tenant is \$300, and the other \$200, then the assessment should be as follows, and all the parties would have a right to a municipal vote:

John Jones,	F. & M. F.	
Thos. Smith,	T. & M. F.	\$300 00
Henry Brown,	T. & M. F.	200 00

7. Such a collector cannot legally be appointed, or if appointed, he has no legal right to make a seizure.

8. If you mean the council of your municipality, it has no such power.

#### Landlord's Notice to Quit.

**237.**—A SUBSCRIBER.—I own a property and lease it at the rate of \$500 a month, but

make an agreement that the term shall not be less than one year. The rent has been paid in payments varying in periods of from one to six months. Can the tenant demand a six months' notice to leave, or is one month's notice sufficient?

Your agreement is equivalent to a lease for a year certain, the rent being payable in monthly instalments of \$5.00 each. If the tenant holds over after the year expires, no notice to quit is necessary.

If the year has expired a long time ago and the tenant has gone on paying rent without any fresh understanding, it is quite possible that a tenancy from year to year has been created, in which case he would be entitled to a six months notice before the end of any year of the tenancy, whether such a tenancy has been created we cannot say without having all the facts before us.

Mistake in Statute Labor List.

238.—J. R.—The clerk in making out the road lists left A off the list and afterwards sent word to the pathmaster to put A's name on the list and send it back to the pathmaster to have A perform his work which he refused to do, claiming that he had no right to do this work after the 15th of August. The collector has seized for the same. Now he is going to sue the collector for damages.

Did the council do right in sending the road list back to the pathmaster?

I claim that they did. If not, what steps should they have taken?

Yes. The council were simply correcting an innocent mistake, and requiring A to do work which he was legally liable to perform, and we are of the opinion that he could be called upon to perform his statute labor notwithstanding that he did not have the opportunity of performing it before the 15th of August as required by section 110 of the Assessment Act. You do not state the year for which the statute labor was imposed. The commutation cannot be placed on the collector's roll until the year following the year for which it is imposed.

Reeve Can Make or Second Motions.

239.—E. F. W.—Is it in order for the reeve of a municipality to make or second a motion in the council meetings?

Yes.

Place of and Delay in Burying Dead

240.—SUBSCRIBER.—1. Can a party or a hospital bury their dead on their own premises, or must they bury them in some cemetery?

2. Can a dead person be held two months before being buried?

1. A deceased person can be buried anywhere, so long as the health of the community or neighborhood is not thereby impaired or injured. Unless the municipality has passed a by-law under subsection 3 of section 553 of the Municipal Act, and then the provisions of the by-law would regulate the interment.

2. Yes.

Councils Liability to Build Stone Wall for Building Culvert.

241.—1. A's house is on a hill. The road was made some twenty years before the house was built. The bank was cut down on

an angle of about 45 degrees commencing about 8 feet from A's line fence. With the frosts and rains in the spring, the clay on the slope is melting to some extent. Is the council compelled to build stone wall to protect A's land?

2. B owns land on low side of street. Council want to put culvert at lowest place to carry water across the road, where it always ran before road was made. Is council liable for action for so doing? Some time past council cut drain through hill, but was not deep enough and now filled in. Would this action of cutting ditch alter the case legally.

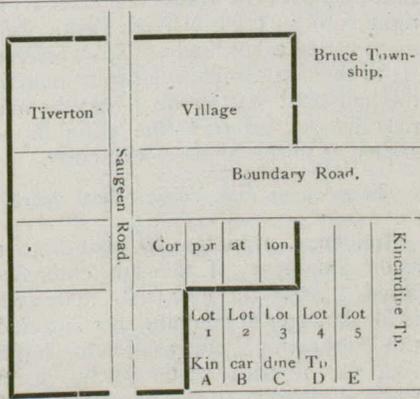
1. No.

2. If the putting in of the culvert or digging of the ditch, results in bringing extra water to B's land and leaving it there to B's injury, the council will be liable for any damages he may sustain. The best course in the case is to take proceedings to have a drain constructed under the Ditches and Watercourses Act, when the rights of all parties interested can be properly adjusted.

Place to Perform Statute Labor—Maintenance of Boundary Road.

242.—R. B. C.—1. A, B and C have part of their land in the village corporation. They have been accustomed to perform statute labor opposite lots 4 and 5 which are outside the village, and the road opposite their lots in the village is neglected. A, B, C, D and E petition the township council to be allowed to perform part of the labor opposite lots 1, 2 and 3 which are inside the village corporation. Can the township council give them power to do so providing the village give an equivalent amount to supplement their labor, or will it be legal to allow them to do so if the village make no grant to aid in improving the road?

2. Is it not necessary that the ratepayers of the other township should assist in maintaining this road as it is a boundary road and leads into the village?



1. The township council has no power to do what it is asked to do in this case.

2. The other township must assist in maintaining that part of the boundary road which is outside of the village corporation, to the extent which such part forms a boundary line between the two townships.

Tenant's Liability for Taxes.

243.—D M.—The council of E. Flamboro are in doubt as to which of the parties named below should pay the tax. (1) Mr. Sutton died having willed the farm to Millard at the death of Mrs. Sutton, who leased the farm to Revell for the remainder of her life. Mrs. Sutton died last July. Binkley bought the farm from Millard subject to Revell's lease

which of course expired with Mrs. Sutton's death. Now the question is whether Revell or Binkley should pay the tax for 1899? I perhaps ought to state that Revell retained undisturbed possession of the premises until his crop was handled. Binkley put in fall crop.

Section 135 of the Assessment Act provides that, "if the taxes are not paid for fourteen days after the notice or demand therein mentioned, the collector may by himself or his agent, levy the same with costs by distress, upon the goods and chattels wherever found within the county within which the local municipality lies, belonging to or in the possession of the person who is actually assessed for the premises, and whose name appears upon the collector's roll for the year, as liable therefor." The collector has only to deal with and collect the taxes from "the person actually assessed for the premises, whose name appears upon the collector's roll for the year, as liable therefor. You do not say which of the persons you name is the person assessed for 1899. The collector or council has nothing to do with the legal rights of these persons to pay the taxes as between themselves as individuals.

Election of Heat and Light Commissioners (See Question No. 229.)

244.—P. R. M.—To your answer to my question, number 3, I quote, "As we understand what was done there are two boards of commissioners, namely, the Board of Commissioners under the Municipal Heat and Light Act, elected in January, 1900 and the Board of Water Commissioners elected on the 5th of March last. The business under the two acts should, under the circumstances, be transacted separately. We think that the electors might have elected three persons to act as Water Commissioners and Heat and Light Commissioners, but we do not think that, after separate Boards have been elected, a by-law can be passed with the assent of the electors amalgamating the two boards."

I find that I have not made myself understood as regards my question 3. According to the by-law of December 6th last, the printed copy of which I sent you, it was not possible to elect Heat and Light Commissioners until the January election, 1901, as the people had not passed upon it at that time, but if you will notice that by-law carefully, it is made retroactive so that Waterworks Commissioners elected in 1900 could act as Heat and Light Commissioners in 1900 without Heat and Light Commissioners being elected. As a matter of fact there was no Heat and Light Commissioners elected for 1900, at the January elections for that year, but the Waterworks Commissioners elected March 5th, the three men elected at that time do act and are acting under that by-law as Heat and Light Commissioners for 1900, when in reality there has never been any Heat and Light Commissioners elected at all. It is really right here where the difficulty comes in; the construction that you must put on my section 3, is: Can the present Waterworks Commissioners, that were elected March 5th, 1900, act in an amalgamating capacity as Waterworks and Electric Light Commissioners? The year before Heat and Light Commissioners ever were elected or could possibly have been elected there never has been two boards elected. There was not at the annual election in 1900 three men elected as Heat and Light Commissioners and different men elected as Water Commissioners, and neither were the same men elected for the two different functions neither were there any elected as Waterworks and Electric Light Commissioners, but only three men elected as Waterworks Commissioners on March 5th.

The statement contained in paragraph 5 of your communication, together with the inference drawn from question 3 led us to conclude that Heat and Light Commissioners had been elected, but that through inadvertence no Water Commissioners were elected at the proper time. In paragraph 5 you say that the nomination papers were made out for Heat and Light Commissioners. Then you ask (question 3) if there is any authority to amalgamate the Waterworks Commissioners and the *Heat and Light Commissioners*, etc.? The form of question 3 is in itself sufficient to give one the impression that Heat and Light Commissioners had been elected. As we now understand the facts, it is not necessary to alter the answers which we have given to questions 1 and 2. In regard to question 3, we are of the opinion that the by-law dated the 6th day of December, 1899, is bad in so far as it enacts, that until the next annual municipal election all the powers, by said act conferred upon commissioners, shall be conferred upon and performed by the Waterworks Commissioners. It may be contended that under sec. 40 of the Municipal Waterworks Act, section 14 of the Municipal Light and Heat Act, commissioners can be elected at the time of passing the by-law. We are of the opinion, however, that the by-law should simply provide for transferring the powers of the council under these acts to a Board of Commissioners to be elected in the same manner as the head of the council, but even if these sections authorize the election of commissioners concurrent with the passing of the by-law, we think that clause 4 of the by-law is objectionable in this, that it does not give the electors the privilege of nominating any person and as many persons as they see fit for commissioners. If the course which we think ought to have been taken had been taken, the electors would have had the opportunity of recommending such persons as they thought proper for commissioners, but by course taken they were deprived of that right. They were compelled either to accept the Water Commissioners for Heat and Light Commissioners, or elect none at all by defeating the by-law. It is not necessary in view of our answer to questions 1 and 2 to say anything in answer to questions 5 and 6. As to question 7 it is not easy to say what is best to be done owing to the most irregular way in which the business in your municipality has been transacted. Nothing has been done, in our judgment, to divest the council of its powers under the Heat and Light Act, and the council ought to have transacted all the business arising under that act itself, instead of the Water Commissioners, and we think that council should now take that department into its own hands and pass such resolutions and by-laws as may be necessary to rectify what has been done.

## Legal Department.

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

### LEGAL DECISIONS.

#### City of Toronto vs. Toronto R. W.

Judgment on appeal by plaintiffs from judgment of Ferguson, J., in so far as it holds that plaintiffs are not entitled to mileage payments in respect of the 950 feet of the street railway track on Queen street, on the Lake Shore road, west of Roncesvalles avenue, Toronto, and against the judgment upon defendants' counter claim for a reference to ascertain the damages sustained by the conversion, by plaintiffs, of the pavements and roadbeds and interest of defendants therein under the contract of sale and conditions and act of incorporation of defendants, and on cross-appeal by defendants from the findings the judgment that plaintiff's contention as to the meaning of the word "turn-out" in clause 15 of the contract is correct, and declining to exclude from payment of mileage any of the tracks where there is more than one double track on the "street railway" part of a street; or where there are "connecting railway tracks," or "Y tracks," or temporary tracks or tracks to sheds, or broken parts of a mile, or tracks in places where plaintiffs have not put down permanent pavements in conjunction with the laying of the tracks. Upon the main appeal the court was of opinion that the judgment below was right as to curves, "Y tracks," etc., but not right as to the track in High Park. Judgment varied accordingly. Costs reserved. As to the counterclaim the court held that the judgment was wrong; that the materials did not belong to the plaintiffs, and appeal as to this allowed with costs.

#### Ferguson vs. Galt Public School Board.

Judgment on motion by plaintiff to set aside judgment of non-suit entered by Boyd, C., and for new trial. The action is for damages at common law and under the Workmen's Compensation for Injuries Act, for injuries sustained by plaintiff while engaged upon the construction of a retaining wall on the school premises, in the town of Galt. It was contended that the evidence showed that when the accident happened the plaintiff was acting under the orders of one Webster, a superior, and that the accident happened on the premises of defendants. Held, that at common law it being undoubtedly the duty of the master to provide good and sufficient apparatus for the servant, there was evidence here to go to the jury that it was insufficient and defective, and that under the act there was evidence to go to the jury; the plaintiff was acting under Webster's orders, and that Webster was plaintiff's superior, whom he was bound to obey, and there was evidence that Webster was a person entrusted by

defendants with the duty of seeing to the condition of the ways, etc., within subsection 1 of section 6 of the act. Garland vs. city of Toronto, 23 A. R., 238, distinguished. Nor is there any evidence, even if material, as plaintiff did not know it, to show that the defendants' workmen were trespassers. New trial directed. Costs of former trial and this motion to plaintiff in any event.

#### Reg. ex rel Horan vs. Evans.

Judgment on appeal by relator from order of Rose, J., dismissing with costs a motion by the relator for leave to exhibit an information of quo warranto to remove a school trustee on the ground of non-residence within the school section in question. The respondent was born and brought up on a farm in the school section, and resided there at all events until his son became the tenant, and afterwards returned there. The judge below held that there was nothing in the evidence to lead to the conclusion that he intended to give up his residence on such farm. Held, Falconbridge, J., dissenting, that the order below was wrong, but that the granting of the order is in sound discretion of the court, and it would not be a proper exercise of discretion to all to allow proceedings to be taken which could result in no practical good as the term of office of the trustee expires January 3, 1900. Had, however, the application come before this court in time the relator would have been debarred by sub-section 8 of section 14 of R. S. O., chapter 292, from making it. Appeal dismissed without costs here or below. Order below to be amended accordingly.

#### County of York vs. Rolls.

Judgment on appeal by plaintiffs from judgment of MacMahon, J., dismissing action with costs. Action to restrain defendants from further proceeding with the filling in or obstructing, of the course of the river Don where it runs along side of or crosses Yonge street on lot ten in the first concession west of Yonge street in the township of York. The plaintiffs allege that the filling-in injures their bridge over the river at York mills. It was contended that no right of action existed against defendants as sued in their capacity as executors of the will of the late Charles Rolls, and that defendant Charles Rolls as tenant for life of the land in question had a right to reclaim it and restore the river to its original channel as existing before the occurrence of a flood in the year 1878. Held, that on the facts and the law the judgment below was right. Appeal dismissed with costs.

**PAGES**

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