

3. If H. is not satisfied with the present line, and employs a surveyor to locate it, he cannot compel T. to pay any portion of the surveyor's fees or expenses.

4. No.

Payment of Cost of Nursing Party Under Quarantine.

452—J. C. R.—A lady over 21 years of age who had always lived at home with her father, who is a wealthy farmer, went to Toronto on a visit. She came home sick and her father called in a doctor, who pronounced her case one of small-pox. The physician then notified Dr. Bryce, of Toronto, who is head of the Provincial Board of Health. Dr. Bryce sent up a lady nurse, who is also an M. D. This nurse claims she was engaged at \$10 a day. It was a mild case and the nurse remained only 23 days. The local Board of Health had no notice of the case till after the nurse was in charge. The local board paid all outside expenses, also \$30 to the nurse for disinfecting the premises.

Has the nurse any further claim on the municipality? If not, who should pay her?

If this lady's father is financially able to pay the nurse's account (as appears to be the case) he is liable for the amount and should be compelled to pay it. We do not consider the municipality in any way liable for its payment. See section 93 of The Public Health Act (R. S. O., 1897, chapter 248).

Power of Railway to Cross Highways.

453—H. L. P.—A certain railway built a switch across a side-road and allows cars to stand on same.

1. Have they a right to build the switch across a road?

2. If not, how will the municipality proceed to cause them to remove it?

1. It is not stated whether this railway is under the jurisdiction of the Dominion Parliament or Provincial Legislature. If the former is the case, the company cannot build a switch across an existing highway without having first obtained leave to do so from the Board of Railway Commissioners for Canada, as provided in section 184 of The Railway Act (Dominion), 1903, unless it has the right to do so under some special Act, but as we do not know what railway company is referred to, we cannot say whether it has such power or not. If the Provincial Legislature has authority in the matter (which is very improbable) the company may cross this highway in the line of the railway without the consent of the council, but the line cannot be carried along the highway without such consent. (See section 29 of chapter 207, R. S. O., 1897).

2. If the railway is under the jurisdiction of the Dominion Parliament, the council should lay the matter before the Board of Railway Commissioners for Canada, which alone has power to deal with it.

Extension of Tax Exemption.

454—J. L. L.—At a recent council meeting a deputation waited on us asking for an extension of their exemption to the fall of 1904, as an Act was passed in 1903 giving the municipal council power to do this. A motion was passed extending their exemption accordingly. The council consists of the reeve and four councillors. One of the councillors being a member of one of the firms, did not vote, and one member voted "nay," but the motion was carried by three out of five. When looking up the Act it was discovered that it requires a two-thirds vote. As one member did not vote, some claim three votes out of the four recorded is sufficient.

1. Does the two-thirds vote mean two-thirds of the council board or two-thirds of the votes recorded? How would the vote count that was not given?

2. If three votes were not enough what steps should the council take to have the error righted? Is it necessary to rescind this motion?

3. If it is not legal, and the council refuses to rescind this motion, what can be done?

1. Section 591b of The Consolidated Municipal Act, 1903, provides that this exemption may be renewed by a municipal council by a two-thirds vote of the MEMBERS THEREOF, that is two-thirds of the members constituting

the council at the time of the vote must vote in favor of the by-law providing for this extension. The member who did not vote must be considered when ascertaining whether the required number has voted in favor of the by-law or not. A resolution is not sufficient for this purpose—it is necessary that a by-law should be passed.

3. We do not consider this resolution legal, and if it was, it did not receive the vote the statute requires to pass it. If the council will not rescind this resolution, it may be quashed at the instance of any ratepayer.

Payment of Separate School Debenture Rate.

455—W. N. D.—I forgot to mention about a debenture rate for school purposes rated on the land in question before it was purchased by the public school supporter.

Can the separate school trustees collect the debenture rate now that the property changed hands?

The Separate Schools Act (R. S. O., 1897, chapter 294,) makes no provision for a case of this kind, and we are of opinion that the land is no longer liable for its share of the separate school debenture levy, after it has been purchased by a public school supporter.

Payment of Assessor for Equalizing Union School Assessments.

456—J. D. F.—What is the meaning of section 4, chapter 32, 1903, Statutes of Ontario?

This section means that the fees of assessors for equalizing the assessment of union school sections in their respective municipalities, and in case of disagreement between them of the inspector, who acts as arbitrator, shall be borne and be paid by the municipalities out of portions of which this union school section is formed in the same proportion as the equalized assessments of the municipalities bear to each other. The further provision in this section that the above costs "shall be borne and be paid by the municipality in which the union school section is situate" is meaningless, as ALL union school sections are composed of portions of two or more municipalities.

Wrongful Digging of Ditch Along Highway—Statute Labor By-Laws.

457—C. N. McD.—A farmer who owned a farm in the Township of E. dug a ditch some two feet deeper than the natural water-course in clay and shell rock, and diverted the water down a steep hill on the adjoining farm, where it floods over the other farmers' fields and washed the ground down on a low field, so that the farmer that owns the land below the hill cannot get it cropped this spring,

1. Can the farmer whose land is flooded by the water diverted by the farmer above the hill compel him to carry the water to a proper outlet some 60 rods below the hill?

2. Can the farmer whose land is flooded come on the farmer who diverted the water down the hill for damages?

3. A portion of the water diverted by the farmer above the hill finds its way to the public highway, and the road ditches are not large enough to carry the water to a proper outlet. Can the council order him to fill this ditch; he dug two feet below the natural depth?

The council of E. Township passed a by-law at its first meeting in January, 1904, abolishing statute labor entirely in the township of E. without repealing the by-law passed by the council of E. Township, 1903, commuting statute labor at 50 cents per day.

4. Is the by-law passed by the council of 1904 legal when they did not repeal the by-law passed by the council of 1903?

5. Can the council raise money under the by-law passed in 1904, when the by-law of 1903 was not repealed or revoked?

1. The owner of the lands flooded can obtain from the courts an injunction restraining the owner who has diverted this water from its natural course and deposited it upon his land from further offending in this way.

2. Yes.

3. Yes, and they should require him to do so. If he refuses he may be indicted for creating a nuisance on the highway and maintaining it there.