

an existing school section and therefore cannot apply to such a case as this, where the by-law establishing the section is invalid.

4. The council should pass a by-law repealing the by-law in question.

5. Unless the council has passed a by-law pursuant to section 104 of the Assessment Act or subsections 2 and 4 of section 561 of the Municipal Act; the clerk has no authority to enter any sum as commutation money opposite the names of *resident defaulters* on the collector's roll. Section 105 of the Assessment Act applies only to the lands of non-residents. The Assessment Act gives the council power to fix the amount at which statute labor shall be commuted and, if it has neglected to do this, we cannot find anywhere any power given to the clerk to fix the commutation.

6. In the absence of a by-law fixing the commutation the council has no remedy.

#### Liabilities of Pathmasters.—Prohibiting the Erection of Barbed Wire Fences in Townships.

282—H. S. M.—1. Pathmasters are usually appointed in March by municipal corporations. The statute requires the clerk to notify all municipal officers as soon as convenient after appointment. In by-laws of some township councils pathmasters are given forty days to qualify. Who is the legal pathmaster during this time that elapses between the appointment and qualification? How is the retiring pathmaster to know when his responsibilities cease if not like other municipal officers, at end of year? Should any damage accrue from defective culverts or washouts, which is customary at this season of the year, who would be responsible, the retiring pathmaster, believing his powers ceased upon the appointment of his successor, and his successor, believing his actions would be illegal until he signed declaration of office.

2. Can municipal councils of townships pass by-laws prohibiting the erection of barbed wire division fences? Chap. 223, section 545, sub-section 4, R. S. O., 1897, seems to answer in the negative, except in cities and towns.

1. The responsibilities of the retiring pathmaster cease on the passing of a by-law appointing his successor in office. The new pathmasters should qualify for the office as soon as possible after the receipt of notice of their appointment. If damages are sustained by reason of culverts being defective, the municipality, and not the pathmasters, will be liable.

2. The councils of townships may pass by-laws for providing proper and sufficient protection against injury to persons or animals by fences constructed wholly or in part of barbed wire, but they have no authority to wholly prohibit their construction or erection.

#### A Deviation of an Original Road Allowance.

283—S. J.—1. Our council has a road that deviates into a man's farm to avoid a steep hill. They have had peaceable possession of the road for fifty or sixty years. Can the owner of the farm through which the road runs make council pay for or close road up? There are no writings or by-laws to show how the council got possession of the road.

2. Can owner of farm on opposite side of the old original road allowance prevent council from selling timber off road? He has already notified the parties that were taking timber off road not to cut any timber. He claims that the cutting

of timber depreciates the value of his farm?

3. Can owner of the farm last referred to prevent council from selling or giving road in lieu of road occupied by council?

4. If council decides to sell or give original road should, I put up notices and advertise in the usual way?

1. It is, we are of opinion, now too late for the owner to object to the public using the road in question, and particularly so if statute labor and money have been expended on it, but the public is entitled to use only so much as has been actually used as a highway.

2. No.

3. No.

4. Yes.

#### A Separate School Question.

284—J. W.—In question 46 in February, 1901, the question is asked:

1. Is the separate school section entitled to the school tax? You answer that the separate school is entitled to the whole tax.

2. Will B's farm be exempt from paying anything towards improvement on the school-house? You answer "No."

I do not see how these two questions agree, if the money that was levied on B's farm for the improvement of the school-house in school section No. 6, where the farm is located, has to be paid to separate school section No. 4. You refer D. B. G. to section 42 of the Separate Schools Act, which says that a Roman Catholic and supporter of a separate school shall be exempt from rates for public school purposes within the city, town, incorporated village or section in which he resides. Now this lot is not in the section in which he resides but away in another section. Section 46 says if he is the owner of unoccupied land within the distance of three miles in the direct line of the site of the separate school, he can have it assessed for separate school purposes, but it does not say that he can have an improved rented farm away out of his own section assessed for school purposes. If there is anything in the School Act authorizing it, please give me the section as I do not know of any.

If you will carefully read section 42, sub-section 1, of the Separate Schools Act you will be convinced that there is no inconsistency in our answers to the questions you quote. This sub-section provides that "every person, paying rates, whether as owner or tenant, etc., shall be exempted from the payment of all rates imposed for the support of public schools, etc." The owner or tenant of the land, as the case may be, is exempt from the payment of the public school rates, after he has given the notice to the clerk of the municipality mentioned in sub-section 1 of section 42, and so long as he has not given the notice mentioned in sub-section 1 of section 47, the land itself is nowhere in the statutes exempted. Section 46 of the Act has no application in the case suggested by D. B. G. It applies only to unoccupied land located, as is in the said section mentioned. Sub-section 1 of section 42 provides that an owner paying rates, giving notice to the clerk that he is a Roman Catholic, and supporter of a separate school situated in the municipality or in a municipality contiguous thereto, shall be exempted, etc." Therefore, if the farm owned by A and occupied by B is located in the same municipality as the separate school section to the support of which the taxes are to be applied (as we

understand it to be) or in a municipality contiguous thereto, the taxes on this farm should properly be applied to the support of that separate school section, in case A has given the notice required by section 42, sub-section 1, and has not withdrawn it, pursuant to sub-section 1 of section 47.

#### Fences on Street Allowance.

285—T. S.—1. On a certain street in this municipality there are a number of property owners, whose fences are on said street allowance, but it is very hard to define the street in question owing to the fact that nearly all the surveyor's stakes are pulled up. The council as well as the ratepayers are desirous to have the fence in proper place but, for reasons already mentioned, cannot tell where proper place is. Has the council power to employ a P. L. surveyor and survey said street and make each property owner on said street pay proportionate costs for such work? Or are the costs to be paid by the corporation?

2. There are streets in the municipality which were surveyed many years ago but which have not been opened for traffic. But now there are residences being erected near said streets and the owners thereof have asked the council to locate and open said streets for ingress and egress. Is the council compelled to employ a P. L. S. to do said work and pay the costs thereof?

3. A certain street has been used for public travel for nearly twenty years. At a certain point on said street it has been discovered that the public have been travelling off the street allowance during the time mentioned, and the owner of the portion of the land, which has been used as a road, has closed up the street and torn up the approach. Can the owner in question do this without first obtaining permission from council?

4. Can council compel said owner to build said approach in its proper place at owner's expense.

1. The council should take proceedings under the provisions of section 15 of the Surveys Act (chapter 181, R. S. O., 1897). This section provides that "whenever the municipal council of any township, etc., adopts a resolution, on application of one-half the resident landholders to be affected thereby, or upon its own motion, that it is desirable to place stone or other durable monuments at the front or at the rear, or at the front and rear angles of the lot, in any concession, or range, or block, or part of a concession, range or block, in their township, such council may make application to the Lieutenant-Governor, in the same manner as is provided in section 14 of the Act, praying him to cause a survey of such concession or range or block, or part of a concession or range or block to be made, and such boundaries to be planted, under the authority of the commissioner of crown lands. Sub-section 3 of this section provides that the cost of such survey may be on the proprietors of the lands to be affected thereby, in the manner provided by sub-section 5 of section 4 of the Act.

2. The council is not bound to employ a surveyor to do this work, and to pay the cost of doing it.

3. Yes, but it would be more courteous if the owner would notify the council, so that they would have an opportunity of opening the road on the right line before that in use was closed.

4. No.