

minutes of the board, his seat by that fact itself, became vacant, and the remaining trustees should have declared his seat vacant and forthwith ordered a new election. (See section 104 of the Act.)

5. No.

6. This is answered by our reply to No.

4.

7. If the school board wins the suit, it will have to pay only its own witness fees and its lawyer's charges for conducting the defense.

8. This is answered by our reply to No. 3.

9. If a trustee absents himself from the meetings of the school board for three consecutive months without being authorized by resolution of the board, his seat thereby becomes vacant and no formal resignation of it is necessary, (see section 104) and a new trustee can and should be elected to fill the vacancy for the balance of the term as provided in section 62 of the Act.

10. From your statement of the facts, we are of opinion that the trustees should succeed.

#### Township Not Liable For Damages Caused by Cow Running at Large.

525—M. M.—A by-law is in force in our municipality prohibiting cows and other cattle from running at large. A ratepayer was driving along in his buggy one day and on the approach to a bridge, met a cow which he attempted to pass, but owing to the approach being fenced on both sides the cow backed against his buggy and damaged it. Now under the provisions of said by-law to whom should he look to recover damages, the council or the owner of the cow?

The highway appears to have been in a proper state of repair where this accident happened, at least the accident was not occasioned by any defect therein. We do not therefore consider the municipality in any way liable to the owner of the buggy for the damage he sustained.

#### Leasing of Original Road Allowance For Mining Purposes.

526 P. S.—Some time ago the council of this municipality agreed to lease a piece of as yet unused original road allowance for mining purposes, to one of our ratepayers for a certain term of years, and accepted \$2.00 cash in advance on the first year's rent thereof. Some of our ratepayers object to this transaction, claiming that the minerals upon or under an original road allowance belong to the Government, and that therefore a municipal council has no right to sell or lease the mining right thereon. Others object only to the manner in which the transaction was made, and claim that if the council has the legal right to lease the mining rights they should have been put up to public competition, so as to realize the highest amount for them. The notices required by sub-section 2 of section 657 of the Municipal Act have been duly posted up, but no by-law has as yet been passed nor lease executed.

1. Will you kindly advise us if (as I personally think they can) the council or corporation of this municipality can lease the mineral rights on or under original road allowance in any manner they see fit?

2. If the council, upon reconsideration of the agreement made with the ratepayer above referred to, should decline to carry out the

terms of said agreement and to execute a lease of the road allowance, and tender or offer to return to the said party the \$2.00 received on the rental thereof, could the said party refuse to accept the money and put either the corporation or the councillors personally to any trouble or expense for not carrying out the terms and conditions made in the agreement referred to?

1. We are of opinion that the council of the township has power by by-law to lease the right to remove minerals found upon or under the original road allowance, pursuant to the provisions of sub-section 1 of section 657 of the Consolidated Municipal Act, 1903, subject, of course, to the conditions imposed by sub-sections 2 and 3. The lease should be of the *right to take* the minerals, not of the highway itself. However, in Re Ontario Natural Gas Co. and Township of Gosfield South, (19, O. R. 591; 18 A. R., 626), it was held that where the lease was for a portion of the highway, "for the purpose of boring and taking therefrom all gas or other minerals" the quantity of land being no more than was required for the company's purposes, and the rights of the public being fully protected, the practical difference was so small as not to constitute a ground for quashing the by-law. The council may lease this right upon such terms and conditions, (so long as the travelling public are properly protected) and for such length of time, as it may deem expedient and either by public auction or otherwise as is provided by sub-section 1 of section 657.

2. It is not stated how this agreement was entered into. If it was in writing signed by the parties concerned and ratified by a by-law of the municipality the lessee could compel its specific performance, and recover damages from the municipality for its breach. If, on the contrary, it was an informal verbal affair, it is not binding on the municipality, and neither the council nor its individual members will incur any liability, if the money paid on account of the first year's rent is returned to the proposed lessee and further negotiations dropped.

#### Assessment for Drainage Works - Addition of New Land<sup>s</sup> to School Sections.

527—INVICTA—1. When drainage by-law of township has been finally passed by council, works partly done (Court of Revision duly held and closed), drainage debentures for part of total cost issued and sold, what is the proper course for ratepayers interested to get some of the drains extended further, say a distance of 200 rods, also new ditches added say a distance of one and one-quarter miles, small ditch under section 74 or 75?

And how should cost of same be met, by a levy on those interested only, or over the whole of the drainage scheme, and can more drainage debentures be issued under original by-law, the same as if cost had exceeded engineer's estimate?

2. Would like to know how you reconcile your answer to part 2 of question 411 of July, 1903, to sub-sections 2 and 6 of section 545?

3. When previous township councils have not put outlying parts of the township into some school section, as per Public School Act, when can the council of 1903 do so and how can they get school taxes for 1903, on lots so missed and held by non-resident owners?

1. If the work required is simply the extension of the outlet of drains already constructed, and the cost of the work does not exceed \$400, the council may proceed under section 74 of the Municipal Drainage Act, (R. S. O., 1897, chapter 226) and if the cost is not above one-fifth of the cost of the construction and does not exceed \$400 in any case; and if the cost exceeds \$400, proceedings must be taken under section 75. In the former case the cost of the work is to be collected by a pro rata assessment on the lands assessed for the original construction of the drain. In the latter, such cost shall be charged and collected as directed in the report of the engineer. If it is meant that new drains are to be constructed, having their outlets in that provided for under the original by-law, proceedings must be taken under section 3 of the Act and the cost of the work assessed and charged against the lands to be benefited by the construction of such new drain or drains and for outlet liability and relief from injury liability.

2. We cannot see any connection between clause 2 of question 411, 1903, and the sub-sections mentioned. The former had reference to a by-law respecting cattle running at large. Sub-section 2 of section 545 of the Consolidated Municipal Act, 1903, relates to by-laws regulating the height, etc., of fences and sub-section 6 to those relating to the erection of water gates in drains.

3. We assume that reference is made to the formation of the township into school sections pursuant to section 12 of the Public Schools Act, 1901. If this is so, the Act makes no provision for the remedying of an omission of the kind mentioned unless the owners of the lands not now included in any school section in the township consent to be taken into some school section. Without some legislation on the subject, we do not see how the council can compel them to come in, or how it can compel them to pay any part of the trustees annual school levy in any school section in the municipality.

#### Payment of Costs of Vaccination and Disinfection of Premises of Persons Afflicted With Contagious Disease.

528—CLERK—1. Our township has had an epidemic of small-pox. The Board of Health put the compulsory Vaccination Act in force and sent the medical health officer from house to house to vaccinate every resident. Who should pay for this work?

2. The board had to fumigate every house after the disease was stamped out at a cost of about \$15 for each house. Who should pay for this work?

1. It is the duty of the council of the municipality and not the Local Board of Health to enforce compulsory vaccination. (See section 16 of chapter 249, R. S. O., 1897.) The Act does not authorize the appointment of a medical health officer or practitioner to make house to house visitations for vaccination purposes. Adults are required to present themselves and their children for vaccination in the