

ditch? Or does the award have to stand two years before quashing it? If so, can the council refuse to do any more work in the old ditch?

We do not understand why the engineer, in making his award, laid out this drain in the wrong place. Having done so, however, if the time prescribed by the Ditches and Watercourses Act, (R. S. O., 1897, chapter 285) has expired, the award will stand, notwithstanding any defects in it as originally made. See section 24 of the Act. If served with a notice under section 35 of the Act, the council can be compelled to clean out and put in a proper state of repair, that part of the drain they were required to construct and maintain. They cannot, however, be compelled to do impossibilities. If the weather and state of the ground, is such that the work cannot be done now, the council is not compelled to go on with it until it is physically possible to do so. If the ditch has proved insufficient for the purpose for which it was constructed and has caused an overflow of water upon any lands along the ditch, occasioning damage to the same, any owner (party to the award) may take proceedings for the reconsideration of the award, at any time after the expiration of six months after the completion of the ditch, your municipality being located east of the county of Frontenac. See sub-section 2 of section 26 of the Act. In any case, if the drain is a covered one, proceedings for reconsideration may be taken within one year, and if open, within two years, from the completion of the construction of the drain. See sub-section 1 of section 36.

Can Same Person be Clerk and Treasurer in Township in District—Master of Titles and Arrears of Taxes—Election Expenses.

148—W. F.—1. Is it legal for a township council to appoint the same man to position of clerk and treasurer? If so, give authority.

2. A treasurer in a municipality in a district has to perform the duties as to making returns re arrears of taxes, etc., as though working in connection with a county treasurer. Does that mean that he, having all the information necessary, must make returns to himself and keep another set of books, as if he were county treasurer?

3. Has arrears of taxes to be reported to the local master of titles for this part of the district in order to keep them alive, and a lien on the property?

4. Must there be a by-law passed for municipal election expenses in a municipality where there are no polling sub-divisions, the clerk acting as returning officer?

1 and 2. We have frequently given it as our opinion, that the offices of clerk and treasurer of a municipality, in municipalities having county organization, can be held by one and the same person, but in a township municipality in a district, these offices should be held by different persons. Although the provisions of chapter 225, R. S. O., 1897, do not, in terms, prohibit the holding of these offices by the same person in townships in districts, yet they render them incompatible. By section 53 it is enacted, that the treasurer of a township in districts, is to perform the same duties in regard to the collection of arrears

of taxes, as treasurers of counties in other municipalities. This involves the receiving and sending certain returns and statements by the treasurer, from and to the clerk, and, therefore, we think that the Act contemplates that these officials should be separate persons.

3. No.

4. Section 22 of chapter 225, R. S. O., 1897, provides that the council of a township in districts, shall pass by-laws from time to time, fixing the place within the municipality, where the nomination shall be held annually. This by-law should also provide a place for the holding of a poll, in case one should be demanded, and for the payment of the expenses of holding the election. See also sec. 206 of the Municipal Act.

Township Treasurer Disqualified as County Councillor.

149—C. R.—Is a township treasurer disqualified for the office of county councillor?

Section 60, page 460, of the statutes of 1897, is plain, but the revised statute is not so plain.

Yes. See our answer to question 139 in this issue.

Appointment of Township Engineer.

150—A SUBSCRIBER—I understand that Justice Meredith, in *Turtle vs. Euphemia*, decided that three things must be done in order to appoint an engineer under the Ditches and Watercourses' Act, viz: revoke previous appointment by by-law. 2nd. Notify former engineer of his dismissal. And 3rd. Pass a by-law appointing another engineer.

1. If an appointment is made after the demise of an engineer, would it be necessary to revoke his appointment and notify him that council had removed him from office?

2. If so, how should council proceed to revoke a deceased man's appointment, and how notify him to quit?

The decision referred to has no application to the case which you put. If an engineer dies, all that need be done is to pass a by-law appointing another.

Clearing Township Roads of Snow, and Liability for Neglect to Do So.

151—A. T.—1. There is no by-law in this township regulating the shovelling of snow on roads? Is there any Dominion or Provincial law, and could you refer to the statutes?

2. If a road becomes badly blocked with snow and the owner of adjoining land gives permission to make a sleigh road through his field, can pathmaster request the travelling public to use it while advantageous?

3. In the event of a snow storm, if a horse gets into deep snow, on any road, and shafts of rig broken, is municipality liable?

4. If a person is delayed, and has to stop over, paying his board, in consequence of a road being blocked with snow, can he come on municipality for loss of time and expenses?

1. The following statutes and sections of statutes have reference to snow on roads: Sub-section 5 of section 545 of the Municipal Act, chapter 240 (R. S. O., 1897), sub-section 1 and 2 of section 539 of the Municipal Act, sub-section 4 of section 658 of the Municipal Act, chapter 537 (R. S. O., 1897), sub-section 3 of section 537 of the Municipal Act. sub-section 8 of section 561 of the Act. The most important are the two last mentioned sub-sections which provide for keeping open township roads in winter, and the allowance of statute labor for doing work.

2. The public are not compelled to use the road through the fields instead of the highway.

3. No.

4. No.

Triennial Assessment

152—W. D.—Will you please give the meaning of section 42, and sub-section 2, thereto of chap. 225, R. S. O., 1897. Does this only apply to the first assessment in a new municipality? Your answer to No. 79, Feb., M. W., is "No." Would you state your reasons for your reply?

Sub-section 1 of section 42 of chapter 225, 1897, applies to the assessment in a new municipality after the first, and sub-section 2 to subsequent assessments. The change in each case from the ordinary method of making annual assessments should be made by law of the council, and, in any case, a new assessment must be made within three years from the date on which the last assessment roll was finally revised. Our answer to clause 3 question No. 79, 1901, is correct. The *Municipal Act* (chapter 223, R. S. O., 1897) makes no provision for the making of any other than an annual assessment. The question referred to by you is as follows: "Does the Municipal Act give councils power to adopt a three years' assessment? We understand this question the same as if the subscriber had asked whether a council could pass a by-law, fixing a certain rate of assessment for a period of three years, and if we have understood the question aright, such a by-law, if passed, would not be valid under the Municipal Institutions Act.

Council Should Build Bridge.

153—W. D. M.—Kindly give your opinion as to the liability of the municipality in a case where they opened up a new road allowance which is crossed by a river. The river has a good gravel bottom, and the council did not wish to incur the expense of building a bridge, and we would like to know if they would be incurring a liability, should an accident occur at such stream through want of a bridge. The road will not be travelled a great deal, and it has been suggested that a notice be put up warning the public. Would that be any use in the eyes of the law?

The council should build as soon as possible, such a bridge over the river on this road, as will render public travel thereon, reasonably safe. By opening the road the municipality has, in effect, invited the public to use it, and it is incumbent upon them to put it in a safe condition for travel. If they do not, and an accident happens by reason of the absence of the bridge, the municipality will be answerable in damages. While the bridge is being built, the best possible warning notices should be conspicuously posted up.

Council Cannot Compel Railway to Make Crossing.—Assessment of Friend.

154—SUBSCRIBER.—1. Can a council force a railway company to open and make a crossing in a concession to take out a few farmers? The railway company has refused before to open such a crossing, pretending it would be too close to a boundary crossing. The distance is about five acres.