

building for his claim in the above circumstances, or can the other creditors of A take proceedings to recover the amount due them from A, and what proceedings should they take and what will the cost of the proceedings be? The material put in this building amounts in all to \$50 or \$60, besides the labor of erecting, so that if the cost of procedure would be too much, it might not be worth while, but if not too much would like to recover value of material.

Though B had no legal right to remove the building in question upon his own lands, A's creditors may have some difficulty in accomplishing anything because we suppose their claims are small, within the competence of the division court, and the building now on B's lands may be so constructed as to form part of the lands, and if so, we cannot see how creditors having small claims can realize on their claims in the Division Court. If the building is a mere chattel, it can be seized under a Division Court exemption and sold, but, even in that case, the creditor having the first execution would take the whole proceeds or a sufficient part thereof to satisfy his claim. It seems to us to be a case where it will be best for creditors to put up with their loss.

Abandonment of Drainage By-Law.

359—COUNCILLOR.—The enclosed diagram represents a portion of a township which has been drained by the drainage scheme outlined in black ink. The drainage was found insufficient during the wet seasons of 1901 and 1902. Late in the summer of 1902, the township council was petitioned by a large majority of ratepayers interested to bring on an engineer to report on the best method of improving the said drainage. This was done. The engineer reported in favor of a diagonal drain, marked A. B. C. in diagram. The necessary steps were taken and the by-law passed in accordance with the Ontario Drainage Act. The work was commenced and partially done from B to C, but not completed owing to the onset of winter, and it has since been partly done to A. The value of the work done is \$250 and the estimated cost of the drain \$800. This drain did not prove satisfactory to those whose farms were crossed by the diagonal drain, although they took no steps to quash the by-law adopting said drain A. B. C. In March or April 1903, these, whose farms were crossed by the diagonal drain on their own responsibility and at their own expense, secured the services of a second engineer who reported in favor of drain A. D. E. as shown in red ink on diagram. This report together with a petition signed by a large majority of ratepayers interested and asking that drain A. B. C. be not completed, and that drain A. D. E. be constructed instead, have been placed before the township council. A minority of those interested want drain A. B. C. completed in accordance with the by-law passed on the report of the engineer employed by the township. They contend that drain A. B. C. is the most efficient as well as the cheapest drain. Has the council any power to act in the matter, other than to complete the drain A. B. C. as now begun? If so, what sections of the Ontario Drainage Act will govern the case?

We do not think the council has any alternative other than to proceed with the construction of this drain under the by-law providing for so doing, passed in the summer of 1902. The drain therein provided for has been partially constructed throughout its entire length and a liability of \$250 incurred therefor. The by-law having been acted upon to this extent

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	C	E			27
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	D	A			23
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cannot now be repealed or abandoned and the council cannot collect the amount of the liability incurred on account of this drain from the ratepayers generally—but it must be collected from the several owners of the lands benefited by the construction of this drain in accordance with the assessment schedule contained in by the by-law.

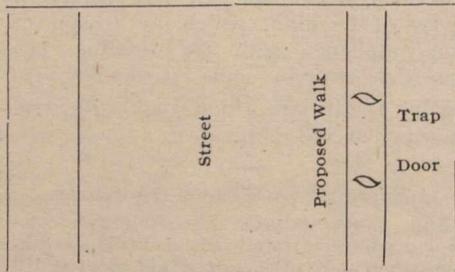
Councils of Villages Cannot Compel Owners to Cut Weeds on Highway.

360—E. C. C.—Would you be kind enough to let me know whether municipal councils of villages have the power to compel owners of property to cut the weeds on the highways in front of their property?

No.

Council can Close up Trap door in Sidewalk.

361—J. M.—Our council is contemplating laying some cement pavement and on the street where they propose laying it is a trap door over a cellarway belonging to one of our merchants. We want to know if the council can compel the merchant to close up the trap door. This trap door has been in existence for a great number of years.



If this trap door is in the sidewalk on the highway which is vested in and under the control of the municipality and for the keeping of which in a proper state of repair it is responsible, there is nothing to prevent the closing of it by the council in building the cement walk, if such a course is deemed necessary.

Councillor Can be Appointed Commissioner And Paid for Services.

362—W. D.—Is it legal to appoint by resolution a member of the council a commissioner to superintend the construction of any work under the authority of the council and can he legally collect pay for his work?

Yes. Clause (a) of sub-section 1 of section 537 of the Municipal Act provides that "nothing in this Act shall prevent any member of a corporation from acting as commissioner, etc., over any road or work undertaken and carried on, in part or in whole, at the expense of the municipality; and it shall be lawful for the municipality to pay such member of the corporation acting as such commissioner, etc."

By-Law Restraining Running at Large of Cattle

363—Our council passed a by-law many years ago, which is still unrepealed, in which the following words occur:

1. "No cattle, horses, bulls, sheep, pigs or geese shall be allowed to run at large within the township of —, the only exception being milch cows, which (if not breachy), may be allowed to run at large from the first day of April to the first day of December in each year." Some persons hold that they, the council, have no authority for passing such a by-law to allow any animals to run at large. Please give section of Municipal Act, referring to cattle running at large.

A by-law containing the clause mentioned can legally be passed by the council of a township. Section 546 of the Municipal Act provides that councils of townships may pass by-laws "for restraining and regulating the running at large or trespassing of ANY animals, etc." (See also chapter 272, R. S. O., 1897).

Election of Trustee to Fill Vacancy.

364—J. D. K.—Trustees give notice of annual meeting in December 1902. Afterwards one of trustees accepts nomination for county councillor. On school meeting day he decides to resign as school trustee, he having another year to serve. They re-elect the retiring trustee and elect another in the place of the one resigned to serve one year. Now is the one for one year elected legally, no notice having been given, but usual form for annual meeting?

We are of opinion that there is no legal objection to the election of the ratepayer who was elected trustee for one year only, assuming, of course, that he was otherwise qualified, under the provisions of the Public Schools Act, 1901. He was elected to fill a vacancy caused by the resignation of one of the trustees, and section 16 of the Act provides that "a trustee elected to fill a vacancy shall hold office only for the unexpired term of the person in whose place he has been elected."

All Townships in County Should be Included in County Road Scheme.

365—J. H. B.—1. When county road system carries in a county can the county council let one township drop out and hold the others to it?

2. The boundary line between the two townships was designated as one of the county roads. If that township is allowed to drop out can it be held responsible for half share of boundary line?

1. No.

2. Our answer to question number 1 renders it unnecessary to reply to this.

Town Should Maintain Streets and Sidewalks Around County Buildings.

366—J. H.—In case the county buildings of a municipality are situated in a town, such