

Removal of Fences on Highway—Compensation for Lands Taken for Roads.

**390.** C. W.—A public highway was established by by-law on a line on which the adjoining neighbors A and B had a common fence at, or near the middle, and the parties were notified to build their fences at proper distance from the centre line. As this road was only for the use of one man T, this man employed a P. L. S. to prove the centre of the line and A built his fence according to it, but B did not, after repeated warnings. At last the council appointed, by resolution, the man T to throw down the fence after a certain date, (about two weeks after the last warning). A few days previous to that date, B notified the reeve that the P. L. S. declined to swear to the exact site of the line, as the post from which he started had been partly destroyed by fire. The reeve immediately notified T not to proceed until further orders from the council. T held that the reeve had no authority to suspend a resolution of the council and threw down the fence.

1. Has the reeve power, in urgent cases, to suspend a resolution of the council?

2. Has B any claim on council for the destruction of his fence?

3. Has T any claim on council for work performed?

4. The greater part of roads in this township are not on original road allowances, but were given free and without compensation by settlers to their less favorably situated back neighbors. Sixteen years ago the council established by by-law a certain road which had been used by a number of settlers for 20 years previous. R, who had lately purchased a lot through which the said road runs, put in a claim for compensation, and the council appointed an arbitrator and notified R to do the same, to value the damages. R changed his mind and thought it better to do as others had done, and did not respond, and the matter dropped into oblivion. R is dead now and his son threatens to take proceedings to re-open arbitration. Can R make any claim yet for compensation after such a long lapse of time?

1. No. He should summon a special meeting of his council pursuant to section 270, of the Municipal Act, to consider the matter in urgent cases.

2. There are not sufficient facts before us to enable us to fully answer this question. If A and B had entered into a binding agreement with the council to give sufficient land on either side of the line fixed by the surveyor to make the road, and to build their fences free of compensation, they can be compelled to do so. If, on the other hand, the lands necessary for the building of the road have to be expropriated or taken from A and B under the provisions of the Municipal Act, they are entitled to compensation under the provisions of section 437, of the Act, and if the building or removal of a fence becomes necessary, the trouble and expense of so doing are proper subjects for compensation. Then, again, there seems to have been some doubts as to the line upon which B should properly build his fence. This line should have been definitely established before the council proceeded to destroy the existing fence.

4. The council having appointed T to do the work unreservedly, they should pay him what it is worth for doing it.

4. No. Section 348, of the Municipal Act, as enacted by section 27, of the Municipal Amendment Act, 1899, provides

that "Every such claim (that is for lands taken,) except in cases of infants, lunatics and persons of unsound mind, shall be made within one year from the date when the real property was entered upon, taken and used, etc."

Liability to Replace Farm Crossing Moved by Pathmaster.

**391.**—T. I.—A ratepayer has a small crossing of plank over ditch on road at entrance to his gate. When pathmaster in doing statute labor with road grader, he finds it necessary to remove this crossing to properly grade the road.

1. Must the pathmaster or council replace said crossing?

2. If previous covering is not sufficient, (in case your answer to No. 1 is "yes") would pathmaster or council have to furnish other material required?

It has been decided that a municipality is not bound to provide a crossing to enable an owner of land to reach the highway but this case, according to a recent decision, appears to come within the principle laid down in *re Youmans vs. the Corporation of Wellington*, where the law is propounded thus: the owners of property abutting on a public highway are entitled to compensation from the municipality under the Municipal Act for injury sustained by reason of the municipality, having for the public convenience raised the highway in such a manner as to cut off the ingress and regress to and from their property abutting on the highway which they had formerly enjoyed, and to make a new approach necessary. According to this decision, it appears that where a man's approach to a highway is destroyed by work done on the highway for its improvement so as to require a new approach, he is entitled to compensation, and as that compensation would be measured by the cost of making a new approach it would amount in dollars and cents to the same thing as if the council restored the crossing.

Correction of Error in Assessment Roll.

**392.**—T. S.—The court of revision met on the 3rd of June. As there were no appeals the assessment roll was finally passed. Since the above date the clerk has discovered many errors, viz.: 17 ratepayers left off the roll, some of whom were assessed and whose names were marked on the first roll, but were not copied on the roll which was confirmed and passed by court of revision.

1. Can said errors be rectified immediately, and if so, what steps must be taken?

2. Is the assessor liable for these omissions? What is his position in regard to any additional costs incurred therein?

1. These lands can be entered on the collector's roll of your municipality to be prepared this year, and otherwise dealt with in the manner provided by section 166 of the Assessment Act.

2. Unless it can be shown that the assessor has wilfully and intentionally committed the errors complained of, we are of the opinion that he cannot be punished or held liable for the penalty mentioned in section 251 of the Assessment Act nor can he be held responsible

for the extra expenses, if any, necessitated by the defects in his roll.

Payment of Rent of House for Holding Inquest.

**393.**—F. A. E.—In the district of Muskoka a short time ago, an inquest was held over the body of a man who died while visiting his son-in-law.

1. Can the son-in-law collect pay for the use of his house for holding the inquest in?

2. And to whom should he look for his pay?

1 and 2. Unless some special bargain was made by some one with the son-in-law for the use of the house for the purpose of holding the inquest we do not know from whom he can collect his pay. The municipality is not liable. There is no statutory provision authorizing the coroner to hire a hall or room for the purpose of holding an inquest and render any municipality liable for the price agreed to be paid for the use of such hall. In this connection see *Dark vs. The Municipal Council of Huron and Bruce*, 7 C. P., p. 378.

Removal of Fence Obstructing Road Allowance.

**394.**—J. J.—In our township there is an original road allowance that has never been open for public travel. On one side of the road the farm is cleared right up to the said road allowance. On the other side the lot has not been cleared up to the road, but the owner has some bush land along the limit of said allowance for road. This bush is fenced in with the clearing. The owner of the land that is cleared has no fence at the back of his clearing, but has run a fence across the road allowance and joined it to the other party's fence at the edge of the bush, thus obstructing the road so that the owner of the bush land cannot get to his bush land without throwing down the fence that is placed across the road. What steps should the party owning the bush land take in order to have access to and from his bush without having to open the fence across said road allowance? Or what are the proper steps for the council to take to have the fence removed from the road, and also have stone piles removed which have been placed on the same road allowance?

2. We have a by-law defining the duties of pathmasters which I enclose. Has the pathmaster under clause 12 of said by-law, power to compel the removal of said fence and stones?

1. Your council should pass a by-law, pursuant to subsection 3 of section 557 of the Municipal Act, providing for the removal of any fence, timber, stone, etc., placed upon any highway, under their control. In this by-law provisions can be made under authority of subsec. 4 of this sec. that the person placing any such obstruction upon any highways, shall, after notice to remove the same, and upon default for five days after such notice, be liable for the expense of the removal of the same. Subsection 5 authorizes the council to empower the pathmaster in their several road divisions to carry out the provisions of the by-law.

2. No. We are of opinion that the clause is not sufficient for the purpose, and we know of no authority for the imposition of a penalty for disobedience of the order of the pathmaster as is provided in this clause.