

1. No. Sub-section 5 of section 65 of The Assessment Act, 1904, provides that "no alteration shall be made in the roll unless under a complaint formally made according to the above provisions.

2. The assessor or some other municipal elector should have filed the notice of complaint mentioned in sub-section 2 of section 65 of the Act, with the clerk, within the time mentioned in this sub-section, and thereafter the proceedings prescribed by the subsequent sub-sections of section 65 should have been taken.

3. The assessor should assess the saw mill, and the land used in connection therewith, at their actual value. The engine was exempt from assessment under the provisions of paragraph 16 of section 5 of the above Act, as it is fixed machinery used for manufacturing purposes, and the owners of the mill should also be assessed for the business assessment mentioned in clause (d) of sub-section 1 of section 10 of the Act.

4. We think the assessor erred in this view. He should have assessed the property at its actual value as required by section 36 of the act. The buying price is not conclusive as to this value, but, in this case, since the transfer was a recent one, it is good evidence of what the actual and assessable value of the property should be.

Payment of Veterinary for Inspecting Horse Suspected of Having Glanders.

441—J. H.—Information was laid before J. J. B. F., police magistrate for the town of B, that a horse in the township of H was in all probability afflicted with glanders, ordered a veterinary surgeon to inspect said horse. The veterinary inspected him and presented his bill to the council for \$5.05 for examination and medicine. Will the council have to pay the bill?

Under the circumstances stated, we do not think the council can be compelled to pay this bill. The matter should come before the Court of Summary Jurisdiction as constituted by chapter 273, (R.S.O., 1897) and before the veterinary surgeon is entitled to his pay he should present to the treasurer of the municipality the order of the court mentioned in section 11 of the Act.

Powers of Road Commissioner Appointed by Council.

442—W. H. H.—Our council has appointed Mr. W. as commissioner at \$3 a day to superintend the building of concrete sidewalks within the corporation. Mr. W. is a member of the council, he is also by occupation a contractor in concrete work, and when acting as commissioner he takes full charge of the job as if working on a contract of his own, and performs a great deal of manual labor, although he is not required by the council to do any more than superintend the job.

1. Is the appointment valid?

Clause (a) of sub-section 1 of section 537 of The Consolidated Municipal Act, 1903, authorizes the council to appoint one of its members a commissioner to oversee or superintend any work undertaken by the corporation, and to pay him for so doing. This provision does not, however, allow the councillor so appointed to supply material for, and actually do the work, or any part of it, and receive payment for same, in addition to his allowance as overseer or superintendent. If he does this, he is disqualified as a member of the council.

Liability of Municipality for Death of Horse.

443—P.—A ratepayer of this township named P was proceeding home from his work along the highway. He was driving a span of horses attached to a stone boat. A neighbor driving a team and waggon overtook him and P fastened up his horses' lines and got into the neighbor's wagon to ride home, allowing his own team to walk behind. Something scared P's horses and they dashed past the waggon in which P and his neighbor were riding, turned sharp off the road into another road running at right angles, crossed a bridge, and in doing so one of the horses broke through a defective plank at the extreme end of the bridge, and fell and broke her leg. The horse afterwards had to be shot. The council of this township

contends that if P had been driving his horses the accident could not have taken place, as the defective spot in the plank was at the extreme end of the bridge, almost under the railing, and no man driving a team would have allowed them to step so close to the end (or rather side) of the bridge. On the other hand, P contends that if there had been no defective spot in the plank his horse would not have broken through the plank nor got her leg broken.

Is the council of this township, in your opinion, liable for damages for loss of the horse?

Under the circumstances stated we are of opinion that the municipality cannot be held responsible in damages for the accident to this horse.

A Road Dispute.

444—E. G.—There are two ratepayers living in the back part of our township, and their road out runs through another man's farm living along the Government road. This road is not in the line, but has been opened and travelled for over twenty years, and statute labor performed on it every year. Now this man wants the road changed, but still letting it run through his land, and the council told him he could make the change to suit himself as long as he made the new road just as good as the old one, and that he could have the old road in lieu of the new one, but at his own expense. This he refused to do.

There is a line which they say is possible running at the end of this man's lots, but it would cost the municipality from \$200 to \$300 to open it up, and would make the road longer. There were quite a few changes of roads made in the municipality, and that was what was done. Change road to suit themselves and at own expense.

1. Can the council hold this road, it being opened and travelled and labor done on it for over twenty years?

2. Can this man close this road and compel the council to open up a line?

1. We are of opinion that the council should not interfere in this matter. It cannot be compelled to open a road, simply to accommodate one or two ratepayers, as is the case here, nor should it open and establish a road unless the needs of the general public require it. If there is any dispute between the two ratepayers and the owner of this land through which the road at present used, runs, as to the right of the two ratepayers to use the road, or its location or otherwise, the council should leave it to them to fight the matter out amongst themselves.

2. We have not sufficient particulars to enable us to say whether the owner of this land through which it runs can close the road, as against the public, but if he does, the council cannot be compelled to open up an original road allowance, or any other road, in its stead.

Location of Fence Along a Highway.

445—F. M. O.—Has a person the right to put a road fence where he likes? This road is around a 20-acre swamp. It never has been fenced on one side. For a few years at the corner of the swamp which is on the concession, there was a saw mill; the mill is gone now. The swamp is sold now, and the buyer has put a fence on the one end, not more than 24 feet from the other fence. He says he will not move the fence.

Can a single owner force a survey on a township in a dispute over putting down a road fence?

This owner has no legal authority to erect his fence other than on the correct line. If the council deems it in the general public interest to cause the opening of the road to its full width, and the limit of the road upon which the fence should be erected has not been definitely ascertained, the council should engage a duly qualified land surveyor to locate it at the council's expense. When this has been done, the council may pass a by-law under the authority of sub-sections 3, 4 and 5 of section 657 of The Consolidated Municipal Act, 1903, requiring the adjoining owner to remove his fence from the road.

Payment of Cost of Building Cement Walks by Township Council.

446—E. R. B.—Has the council of a township power to pay out money out of general township funds to assist in building cement sidewalks either on public roads or village streets in small villages