

QUESTION DRAWER.

Subscribers are entitled to answers to all questions submitted, if they pertain to Municipal matters. It is particularly requested that all facts and circumstances of each case submitted for an opinion should be stated as clearly and explicitly as possible. Unless this request is complied with it is impossible to give adequate advice.

Questions to insure insertion in the following issue of paper should be received at office of publication on or before the 20th of the month.

Communications requiring immediate attention will be answered free by post, on receipt of a stamped addressed envelope. All questions answered will be published, unless it is enclosed with request for private reply.

Government Road Trespass.

424.—B.—1. The government officials opened a road through our township 20 years ago. This road trespassed on private lands, in one place crossing a gore lot of 40 or 50 acres where the proper road-bed was lost on account of the lake, and the lake shore being so rough. The road was taken in a distance from the shore on a bluff, it being bluff and rough land between shore and road-bed. The owner of this land on which the road trespassed sued our council for damages this year and received \$100 and costs, his plea being that the road was not reserved in his deed, that he owned the road and deserved payment. Our defence being that the road was a benefit to him instead of a loss and we produced witnesses who swore the farm was of as much value with the road where it was as it would be if built on lake shore. The proprietor swore that the road was \$200 damage to his farm, and one witness swore the damage to be \$175. The judge's decision was \$100 for damage and not for price of road-bed. Do we now own the road-bed or does the proprietor of the farm still own it?

2. And can we demand a road four rods in width or only the width of a wagon road as it now exists? I also wish to state that statute labor has been performed on this road and the proprietor of farm has performed his statute labor there.

3. There are other trespass roads on gore lots in this township and owners are asking for payment. If we offer what we consider right or offer to settle by arbitration and they refuse our offer and also refuse to settle by arbitration, what course should we follow next, supposing the council consider their price unreasonable, those roads also having been built with government monies?

4. Supposing a witness is subpoenaed on a case by both plaintiff and defendant does he receive payment in full from both parties or does the side losing the case pay him the same fee according as other witnesses subpoenaed by only defendant?

1. Without the pleadings and a copy of the judges decision, we cannot express an opinion upon this. We do not, however, see how the judge in an ordinary action, could make any order by which the road itself would be vested in the municipality. You do not show how the damages were made up. We think you told the wrong cause, unless you were advised that it could be shown that the road was a highway originally or had become so by use of dedication. You should have paid a by-law expropriating the land for a road, and the owner would then have to submit to an arbitration to determine the value of the land and that would have been the end of it.

2. We cannot understand this question under the circumstances. If there had been sufficient usage to make the road a highway, how was it the judge found damage against the municipality? The rule is that where a road is claimed and shown to be a highway by user and the performance of statute labor upon it, only so much as has been actually used as such can be held by the municipality.

3. Unless you are satisfied that you can prove that these roads have become highways by use or dedication, your course is to pass a by-law under the provisions of section 632, cap. 233, R.S.O., 1897.

4. The witness is only entitled to payment once and if both parties have paid any particular witness he should return all but his proper conduct money for the distance travelled by him and for his time.

Distress for Taxes.

425.—G. M. B.—A having a rented farm, B hires the use of a barn of A. B stores in said barn feed from his own place and implements.

1. Can collector seize said articles for taxes?
2. Could he seize stock that was pasturing on A's place (hired)?

Before answering the above questions we would like to know who ought to pay the taxes? There is nothing to show whether the taxes are taxes which A or B or somebody else ought to pay. Are the taxes payable in respect of the rented farm, or are the taxes upon personal property, or partly upon the farm and partly upon personal property? and, if so, how much in each? If A is the person who ought to pay, was he actually assessed for the premises—that is, the farm—and does his name appear upon the assessment roll for the year as liable therefor? Who is the owner, and is he assessed also? Who has possession of the property mentioned?

Subsection 1, of section 135 of the Assessment Act, provides that a levy may be made, "1, upon the goods and chattels wherever found, within the county in which the local municipality lies, belonging to or in the possession of the person who is actually assessed for the premises, and whose name appears upon the collectors roll for the year as liable therefor, (and who is hereinafter called the "person assessed"), and as is further provided by the same section, "and subject to the provisions of the preceding clause, numbered 4, where the owner or person assessed is not in possession, the goods and chattels on the premises not belonging to the owner or person assessed shall not be subject to seizure."

Exemption from Distress for Taxes.

426.—W. T.—What household effects are exempt from seizure for taxes by collector?

1. The bed, bedding and bedsteads (including a cradle) in ordinary use by the debtor and his family.

2. The necessary and ordinary wearing apparel of the debtor and his family.

3. One cooking stove with pipes and furnishings, one other heating stove with pipes, one crane and its appendages, one

pair of andirons, one set of cooking utensils, one pair of tongs and shovel, one coal scuttle, one lamp, one table, six chairs, one washstand with furnishings, six towels, one looking-glass, one hair brush, one comb, one bureau, one clothes press, one clock, one carpet, one cupboard, one broom, twelve knives, twelve forks, twelve plates, twelve tea cups, twelve saucers, one sugar basin, one milk jug, one teapot, twelve spoons, two pails, one wash tub, one scrubbing brush, one blacking brush, one wash-board, three smoothing irons, all spinning wheels and weaving looms in domestic use, one sewing machine and attachments in domestic use, thirty volumes of books, one axe, one saw, one gun, six traps, and such fishing nets and seines as are in common use, the articles in this sub-division enumerated not exceeding in value the sum of \$150.

4. All necessary fuel, meat, fish, flour vegetables actually provided for family use, not more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value the sum of \$40.

5. One cow, six sheep, four hogs and twelve hens, in all not exceeding the value of \$75 and food therefor for thirty days, and one dog.

6. Tools and implements or chattels ordinarily used in the debtors occupation, to the value of \$100.

7. Bees reared and kept in hives, to the extent of fifteen hives. R.S.O., 1897, chap. 64, section 2.

Section 135, sub-section 4 (2) chap. 224, R. S. O., 1897, provides: "The goods and chattels exempt by law from seizure under execution shall not be liable to seizure by distress unless they are the property of the person who is actually assessed for the premises, and whose name also appears upon the collector's roll for the year as liable therefor."

You will observe that by reason of the above provision of the Assessment Act, the person who is actually assessed for the premises and whose name also appears upon the collector's roll for the year as liable therefor, is not entitled to claim any exemption.

Cemetery Company and Burial of Paupers.

427.—P. H. B.—There is a misunderstanding here as to a certain clause of the Cemetery Act referring to the burial of paupers and the right of the cemetery to furnish free lot and grave on the certificate of mayor or clergyman. The municipal council objected to a demand made by the cemetery company and now the company refuse to accept the burial of an indigent unless a fee of \$3.50 is paid in advance. Our cemetery company is not composed of men likely to be over liberal, and it becomes a question, must the municipality administer to their greed, or are they bound by the Municipal Act to bury without charge. Be kind enough to acquaint me with the custom and law in the case.

You do not state what clause of the act you refer to, nor do you give any particulars in regard to the subject in question. In cases within section 13 of chapter 213, R. S. O., 1897, the cemetery company must furnish graves