

its character as a highway. We are therefore of opinion that the owner of the adjoining lands has no legal right to close this highway.

2. No.

#### Obstruction of Sidewalks—Punishment of Vagrants.

**455**—SUBSCRIBER 1. A wholesale house backs its drays across the public sidewalk to the door of its premises and discharges all the freight. In doing this the sidewalk is blocked and people have to go around the horse and through the mud to use the street. What is the Dominion, Provincial and municipal law or penalty and duty of council in this matter? Can a street be blocked at all for any period of time? Is it the duty of the ratepayers or the council or the constable to look after this grievance? Give full particulars.

2. Re Vagrants or Tramps. What is amended criminal code or municipal law? Is it one or two J. P.'s required in this matter? What is the full extent of sentence and is it county jail or Central Prison?

1. The Municipal council should pass a by-law under the authority of section 560 of the Municipal Act and this by-law should fix the penalty to be incurred for its contravention within the limits prescribed by section 702 of the Act.

It has been laid down as a legal principle that "every unauthorized obstruction of the King's highway to the annoyance of his subjects is a nuisance" and that "the primary object of the street is for the free passage of the public, and anything which impedes that free passage *without necessity* is a nuisance." (Rex v. Russell, 6 East, 427.) A person may use a public highway for his private purposes for a reasonable time, and when it is necessary to do so, although for the time such use may amount to an obstruction. The right of any one person lawfully to use the street is subject to the right of every other person to make a corresponding use thereof, thus the carrying and delivery of goods, etc., is a legitimate use of the street, although it may result in the temporary obstruction of public transit. Because building is necessary, stones, bricks, lime, sand and other materials may be placed on the street, provided it is done in the most convenient manner. A cart or wagon may be unloaded at a gateway, but this must be done with promptness. On the other hand, a man has no right to occupy one side of a street before his warehouses in loading and unloading his wagons, for several hours at a time both day and night, so that no carriage can pass on that side of the street, although there be room for two carriages to pass on the opposite side of the street. As to whether an obstruction of a highway amounts to a nuisance depends to a very great extent upon the circumstances of each particular case. It is the duty of the peace officers and other municipal authorities to see that the highways therein are kept clear and safe for travel, and any person aggrieved has the right to make a complaint and have the guilty parties punished.

2. The council of the municipality should pass a by-law pursuant to sub-

section 6 of section 549 of the Municipal Act for restraining and punishing vagrants. The by-law should fix a penalty for offences committed against it pursuant to section 702 of the act. Payment of this fine may be enforced pursuant to sub-section 3 of the latter section. If imprisonment is found to be necessary, it should be in the "common goal, house of correction, or lock-up house of the county or municipality with or without hard labor for any period not exceeding six months." The offender can be prosecuted before one justice of the peace for the county or of the municipality in which the offence was committed, or where the offender resides. (See section 705.) Section 208 of the Criminal Code provides: "Every loose, idle or disorderly person or vagrant is liable on summary conviction to a fine not exceeding \$50 or to be imprisoned with or without hard labor for any term not exceeding six months or both."

#### Right to Withdraw From Support of Nearest School.

**456** F. L. T. I wish to withdraw my support from the school nearest to me about two miles, and join a section farther from me about three miles. Have I the power to do it, by giving the necessary notice to the council?

2. Is it compulsory on me that I should belong to the nearest school?

1. If the school referred to is a public school within the meaning of the Public Schools Act, 1901, you cannot withdraw your support from the nearest school, assuming of course, that it is the school for and belonging to the section in which your land is located. So long as your land remains part of that school section, it must bear its proportionate share of the rates necessary to maintain its school. Sections number 21 and 95 of the Public Schools Act apply to the circumstances of your case. If, on the other hand the school is a Separate school, you are in a similar position, as section 44 of the Separate Schools Act, (R. S. O., 1897, chapter 294), provides that "any supporter of a Separate school whose residence is within three miles of two or more Separate schools, shall, after the first day of January, 1897, be *ipso facto*, ("by that fact itself") a supporter of the Separate school nearest to his place of residence."

2. Yes for the reasons above assigned.

#### Collection of Arrears of Taxes on Cheese Factory.

**457**—I. A.—Our council wished me to write you regarding arrears of taxes they hold against a party who is a non-resident of this county. This party used to live in this municipality and had a cheese factory and paid taxes on same while here, but he moved away and let the taxes go in arrears until they amounted to \$15.00 and finally he sold the factory and the party who purchased the same pulled it down and removed it to the adjoining municipality and rebuilt it there. Can our council follow the lumber for payment of arrears of taxes or can they follow the party who formerly owned it and is now a resident in another county. It appears the party who owned the factory had no claim on the ground it was built on so that this cannot be sold to cover the arrears. Please give full particulars as to how to proceed if it can be collected.

It is not made clear how these premises were assessed. We infer, however, that the factory and the land upon which it was erected, were assessed separately. If so, the assessment was an improper one, as the factory should have been regarded as a fixture and part of the land, and the land and the factory should have been assessed together as LAND. The taxes should have been realized in the manner provided by the Assessment Act, by the collector, out of the chattels of the person assessed, on the premises, or any where within the county, at the time they became due and if they could not have been made in this way, by reason of there having been no chattels liable to seizure, they should have been returned by the collector to the treasurer in the regular way. If after all the special methods prescribed by the Act for enforcing payment of these taxes, had been exhausted and they still remained unpaid, an action at law could have been brought against the person assessed, for their recovery. If the above provisions of the Act were not observed the taxes cannot now be collected from the person originally assessed, and in no event can they be recovered from the purchaser.

#### Jurisdiction of J. P. in Cases of Theft—Obstruction of Railway Crossing and Public Highway.

**458**—Subscriber.—1. Can one J. P. try a case of stealing vegetables out of a garden?

2. Does it come under Municipal law?

3. If the party who owns the garden will not lay an information, and prosecute, then can any other party do so?

4. How many minutes can a railway stop up a crossing, and how many minutes can a merchant stop up a sidewalk with a dray employing goods.

1. If the offence is the first offence one justice of the peace has jurisdiction to try the case and finally dispose of it. See sections 341 and 842 of the Criminal Code.

2. No.

3. Yes.

4. Five minutes. See sub section 1 of section 261 of the Dominion Railway Act. As to the latter part of the question see our answer to question No. 455 in this issue.

#### Vacancy in Council Through Absence—New Election.

**459**—W. D.—A councillor was absent from three consecutive meetings held June 27th, August 16th and October 4th. An election will be called to fill the vacancy. Please inform me:

1. Is the business transacted at last meeting void and illegal, a majority of the council being present?

2. After six days notice to R. O. can election be held any day or should it be on a Monday?

3. At what date can next meeting of council be held, after election of councillor to fill the vacancy?

1. Your municipality being a township the council is composed of five members, and the concurrent votes of at least three of these is necessary to carry any resolu-