

(expressed by resolution in writing,) the public interest requires."

If the above section was not complied with in the case you mention, in so far as the place of holding the meeting was concerned, we know of no authority that would lead us to the opinion that the business done at such meeting was transacted illegally.

2. Section 83, of the said act, provides that, "In case a member of the council of any municipality, either in his own name or in the name of another, and either alone or jointly with another, enters into a contract of any kind, or makes a purchase or sale in which the municipality is a party interested, the contract, purchase or sale shall be held void in any action against the municipality."

Creek—Course Changed by Tenant in Township Municipality—Causing Damage to Village Municipality—Remedy.

328.—SUBSCRIBER, Boston.—There is a small creek crossing the concession line just outside the limits of the village. Its natural and usual course has been across the corner of a field on the next concession line, but some seven or eight years ago the tenant occupying the farm turned the water down the side of the road which belongs to the township, where it enters into the village limits and runs down the village street, turns the corner and follows the street for about three-quarters of a mile. The water damages the road considerably, keeping it wet. The bed of the ditch fills up and floods the water over the side and it proves to be a considerable nuisance to the village.

1. Could the township be compelled to have the water run in its natural course—they claiming that they did not divert the stream, but that the tenant on the farm did so? To whom would the village corporation look for redress? To the township council, or the owners of the land who refused to allow the water to go over their premises, the land now being held by the county council for house of industry purposes?

The tenant had no right to turn the water out of its natural course, and cause it to flow upon the street in your village, thereby damaging it, and an action might have been brought against him to restrain him. We understand that the county council now owns the land which the tenant occupied at that time, and if the diversion of the water is from the land itself, the county corporation must take steps to prevent the continuance of the discharge of water upon the village street. If, on the other hand, the diversion was made upon the concession line itself by the tenant, the township council must remedy the matter. We are of the opinion that, if a private land owner wrongfully diverts water upon the public highway within one municipality, and causes water to flow upon the road in another municipality, to the damage of such other road, such other municipality cannot escape liability upon the ground that it did not divert the water, but the council of that municipality in such case should, in the first place, be notified and asked to remedy the wrong and if it refuses to do so within a reasonable time, we think that such municipality would be held by the court to have adopted the act of the origi-

nal wrong-doer. This principle was laid down in the case of *Stalker vs. Dunwich*.

Special Assessment Boulevarding and Tree Planting.

329.—J. W. N.—Can the town tax me for boulevarding and tree planting on the street in front of my lot? Also can they charge me for watering same if I can show that I am over-taxed on the whole. Can the council single out any one property that may be under assessed and raise me on this, which would increase the amount over-taxed still more. The time for appeal is past so that I would in such a case have no recourse until next year.

Your property can be charged with its boulevarding. See sub-section 2, of section 664, of the municipal act, which provides among other things, for curbing, sodding or planking any street, etc., but there is no authority to assess your property for the cost of planting trees. The council has power, under chap. 243, of R. S. O., 1897, to pass by-laws granting tree bonuses. The council has power, under section 686, of the municipal act, to pass by-laws as therein provided for watering streets, and imposing a special rate upon the assessed real property within the area provided by by-law.

The council has nothing to do with the assessment of your property, except through the court of revision. It is the duty of the assessor, under section 28, of the assessment act, to assess all property at its actual cash value. Though street improvements have increased the value of your property, the assessor cannot make any reduction in the assessment, because your property has been specially assessed for such improvements. It is his duty to assess all property at its actual cash value, without any regard whatever to any causes which have increased its value. If the time for appealing against the special rate imposed upon your property for street improvements has elapsed you are without remedy, and as the time for appealing against your assessment for this year has gone by you can do nothing, you will have to wait until next year, and if you find you are again assessed for too much, appeal to the court of revision under section 71, of the assessment act.

Fence Viewers Award—Appeal—Irregular Decision.

330.—F. D. Mc. —During the year 1898 Mr. S— of the township of Finch notified three fence-viewers of the municipality (all of whom were duly qualified) to arbitrate on a disputed line fence between himself and his neighbor, Mr. H—. Said fence-viewers did view said disputed line fence and made and filed their award in the office of the township clerk according to law. Mr. S— appealed against said award to the division court on account of its being not in conformity with the line fence by-law of the township of Finch, the award having acknowledged a stump or root fence as a lawful fence which is contrary to the by-law. The appeal was heard at the division court sitting in January and adjourned until the next sitting of the court on the 30th of March in order to give the fence-viewers an opportunity to amend their award which they agreed to do. When the case came up at court on the 30th March the fence-viewers, although present, had neglected to file an amended award as ordered by the January trial, con-

sequently the judge dismissed the case with costs against the fence-viewers.

1. Who is responsible for these costs. Is it Mr. S— who ordered the fence-viewers to view the fence or the municipality which appointed them or are the fence-viewers personally responsible on account of their not making their award in accordance with the township by-law? They claim that they were not supplied with a copy of said by-law.

2. Under the circumstances are the fence-viewers entitled to the fees allowed them per by-law? If they are whose duty is it to pay them? Is it the party who ordered them to do the work or is the municipality liable for their wages?

1. We do not understand why the judge made the order which you say was made by him in this case. Sub-section 4 of section 11 of the Line Fences Act, empowers the judge to set aside, alter or affirm the award correcting any error therein, etc. And it provides that he may order payment of the costs by either party and fix the amount of such costs. We cannot understand why he adjourned the case to enable the fence-viewers to correct or amend the award. After the fence-viewers made the award they had no further power or authority in regard to it; they were *functus officio*. We do not think the judge had any power to order the fence-viewers to pay the costs. His authority is to order the payment of the costs by either party and we do not think that the word "party" includes the fence-viewers at all. So far as Mr. S— is concerned, he is not liable to pay any fees unless the award requires him to pay them. He is not liable to pay any fees simply because he initiated proceeding.

2. Sub-section 1 of section 12 provides: "The fence-viewers shall be entitled to the sum of \$2 each for every days work under this act, etc.," and sub-section 2 provides: "The municipality shall, at the expiration of the time for appeal or after the time for appeal, as the case may be, pay to the fence-viewers their fees, and shall, unless the same be forthwith paid by the persons awarded or adjudged to pay the same, place the amount upon the collector's roll, etc." As we have not the award or a copy of it, we cannot express an opinion as to whether the fence-viewers can enforce payment of their fees or not. You say that the appeal was dismissed. If that is so, the fence-viewers' award stands, and if it provides for the payment of the fence-viewers' fees, we think they are entitled to them. If, however, the judge set aside the award, or struck out of the award the provision for the fence-viewers' fees, we do not think the fence-viewers can recover their fees, because the municipality would have no power to place them upon the collector's roll, and have them collected in the manner provided by sub-section 2.

Good Boy—Mother says I can't go out on my bicycle this afternoon; I've got to stay in the house.

Bad Boy—Aw shucks! Dat's de way wid some women. Dey'd sooner have deir kids grow up to be reconcentrados dan rough riders.