

being assessed for several items of real estate and the total as carried out being in excess by several hundred dollars, etc. According to sec. 72, of the assessment act, the said errors must remain and bind all parties concerned, notwithstanding such errors. To do so will raise a breeze, when the collector calls for the taxes. The time has gone by to appeal to the County Judge. Can you suggest a remedy?

It is unfortunate that this assessment roll was accepted by the council in its apparently imperfect and unsatisfactory state. It affords practical evidence as to the advisability of checking over an assessor's work, before his roll is accepted, and his salary paid. We do not see that the several parties affected by the errors in the roll have any remedy, unless they can show the circumstances to be within the purview of either section 74 or section 166, of the Assessment Act, and obtain redress under either of these sections. Though we refer to these sections we doubt very much if they apply to the matter involved in this case.

#### By-law Granting Railway Franchise.

**386.**—D. J.—Please answer the following: You will find enclosed sections of by-law, the main is sec. 33. The warden demanded a cash deposit, they would not give it, consequently no agreement was signed, which, according to sec. 30, should have been done. Now can the council legally repeal said by-law and give franchise to another company. Sec. 7 has not been complied with, although the company has commenced a little work in one of the townships, but not on the county road. The company lay the blame on the warden, and say they were ready to sign an agreement and claim "security" did not mean cash.

By section 34 of your by-law the security to be furnished thereunder, by the company, was to be to the satisfaction of the warden and county solicitor. If the only security satisfactory to them was a cash deposit of \$1,000 that is the security that the company should have furnished to comply with the terms of your by-law. Sec. 30 of your by-law is as follows:

30. "This by-law and the powers and privileges hereby granted shall not take effect or be binding on the said corporation unless formally accepted by the railway company within two months after the passing of the by-law, by an agreement executed which shall legally bind the said company to perform, observe and comply with the agreements, obligations, terms and conditions herein contained."

You say no agreement was signed in accordance with the provisions of this section, therefore the by-law and the powers and privileges thereby granted do not take effect or become binding on the corporation, and the council can pass a by-law granting a franchise to a new company whether the by-law passed on the 8th of February, 1901, is first repealed or not.

Peddling Cannot be Prohibited or Restricted to any Particular Class.

**387.**—SUBSCRIBER.—Please give me all information as to by-laws re peddlars. Can we raise the license way up? Can we prohibit peddling in the municipality? We are annoyed with an army of Assyrians, men and women, peddling almost day and night. They bought

a couple of licenses, but seem to hand them around and are hard to identify.

Your town cannot pass a by-law prohibiting peddling in your municipality. Sub-section 14 of section 583, of the Municipal Act, empowers councils of towns, to pass by-laws for "licensing, regulating and governing" hawkers, etc., but confer no express power to "prevent," "prohibit" or "restrain" peddling in the municipality. The judicial committee of the privy council decided that this sub-section did not confer the power to "prohibit" peddling, etc., in the case of *Virgo vs. City of Toronto*. (A. C. P. 88.) And in *Bollander vs. City of Ottawa*, (30 O. R., P. 7) a similar decision was given in reference to auctioneers. Neither can your municipality pass a by-law discriminating in favor of or against any particular class or individual. Except in the case of cities having a population of more than 100,000, apparently no limit is given by sub-section 16 of section 583, to the amount that may be exacted for the payment of the license, but it must be reasonable, and what amount would be considered reasonable depends upon the circumstances of each particular case. (See note (w) on page 360 and 361, and note (m) on page 416 of the fifth addition of Harrison's Municipal manual.)

#### Assessment of Postoffice—Illegal Flooding of Land By-law Changing Road.

**388.**—SOURCE.—1. In a rural district where the postmaster is paid according to the amount of business done in his office, office 10x12 feet attached to dwelling house. Can office and dwelling house be exempted from taxation?

2. In a village district of Parry Sound, skating rink in suburbs on a plateau according to diagram. In spring of year the surplus water from skating rink flows over the street and fills all the cellars across the street. The street has been graded this summer. Can pathmaster grade the road in such a manner as to carry all the water in spring down to farm A, and put a culvert across the road and flood a garden on farm A, after he has been notified by owner of farm A, in writing not to do so?

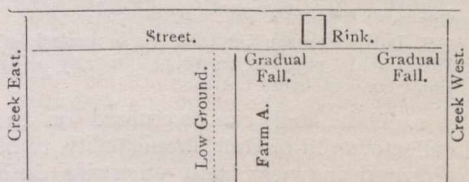
3. Who is liable for damages, pathmaster or township?

4. Can township be compelled to make proprietors of rink cease flooding street in spring?

5. Give form of by-law to change government road from one part of lot to another.

6. Is it necessary first to pass by-law before closing old and opening new road?

7. If one ratepayer objects to change of road will it be sufficient to stop proceedings?



1. That part of the building which is actually used as a post-office is exempted from assessment and taxation by sub sec. 1 of section 7 of the Assessment Act, but we see no reason why the portion used and occupied as a dwelling should not be assessed and liable to taxation in the usual way.

2. No.

3. On the authority of the case of *Stalker vs. Township of Dunwich* (15 Ont. Rep., p. 342) the municipality is liable for the amount of the damages sustained by the owners of the farm, whether the pathmaster in doing the work complained of, acted in such a manner as to disentitle him to the protection of chapter 88, R. S. O., 1897, or not. If the pathmaster, professing to act as such, uses his position to promote his private interests, making his private interest paramount to his public duty, he may be proceeded against for any act so done by him as if he were a private individual, and is equally liable with the municipality for the damage sustained.

4. The township municipality, as well as any individual injuriously affected, can institute proceedings to restrain the proprietors of the rink from flooding their respective lands.

5. If this is a GOVERNMENT road we do not see that the municipal council has any authority to deal with it in any way. If it is a road over which the township municipality has jurisdiction, if the council deems such a course advisable in the public interest, it may pass a by-law closing the old and opening the new road, pursuant to section 637 of the Municipal Act, after the preliminary proceedings provided by section 632 have been taken. In case the lands of private persons are taken for the purposes of the new road, the question of making compensation for the lands taken will have to be considered. Section 437 and following sections of the Act embody the statutory provisions applicable. If you will furnish us with an exact description of the lands intended to be taken for the road and of the part of the government road to be closed we can prepare a by-law for you. A special by-law is required. But as we have stated, if this is a government road, the council cannot close it. It is possible, however, that you mean an original allowance for road and if that is what you mean, the council can close it.

6. Yes.

7. No. It is optional with the council whether they make the change or not.

#### Council Should Build Bridge or Close Road.

**389.**—J. S.—A man has a farm with a side-road along it (government survey). Statute labor has been performed for years on it. A creek crosses it. Can he, by law, compel the council to build a bridge across it? It will only be of service to a very few. The council refuses to do so, and he threatens legal proceedings.

The council should either build the bridge, or, if it is not necessary for the convenience of the public that it should remain open, close the road. As long as the road remains open, the public is tacitly invited to use it as a highway, and it should be kept in a reasonable condition of safety. In refusing to build the bridge while allowing the road to remain open, the council is running a double risk, that is, an indictment may be preferred, or if an accident happen, the municipality may be liable for damages.