

company, or to construct it, the council is, under the circumstances stated, powerless, in so far as dividing the work or cost of construction amongst the owners other than the railway company is concerned, and to compel them to perform the work or pay such cost. Subsection 1 of section 21 of the Ditches and Watercourses Act (R. S. O., 1897, chapter 285), empowers the council to enter into an agreement with a railway company for the construction of any ditch or culvert on their lands, and to assess the cost of the work and collect it from the owners of lands, parties to the award proportionately as mentioned in this subsection but the council has no authority to enter into such an agreement until it has obtained the consent in writing of two thirds of the owners liable for the construction of the ditch in respect to which the work on the railway lands is to be undertaken. (See subsection 2 of section 21.) In this case neither was the agreement mentioned in subsection 1 entered into with the railway company, nor was the consent mentioned in subsection 2 obtained and filed with the clerk of the municipality.

Hotel-Keeper Can be Clerk.—Council Should Not Dig Ditch Along Road.

385—J. P. McN. 1—Can a hotel-keeper act as clerk for a township council?

2. When a ditch is to be dug along a nine mile road that was never dug when it benefits the farmers who own the land along the road, have they a right to do part of the work, of digging ditch? If they have, what portion would it be right to demand of them or has the township to bear all expenses of ditch?

1. Yes.

2. The council should not and cannot legally bear the expense of digging, this ditch or cause it to be dug, for the purpose of draining the lands of owners along the road. Proceedings should be initiated by one of the parties interested pursuant to the provisions of the Ditches and Watercourses Act (R. S. O., 1897, chapter 285) so that the rights and liabilities of the municipality and other owners interested may be properly adjusted.

Opening of Road—Liability for Placing Obstructions on Highway.

386 CLERK.—1. There is a trespass road that runs to a lake. It has been used over twenty years as a winter road, was used by nearly a quarter of the settlers in the Township. Now the owners of the land have shut the road. The council have been petitioned to get the right of way. The council has tried to purchase it, and has also tried to lease it, for a term of years, but the owners refuse to do either. They say that the settlers would be piling tan-bark and wood on the shore if they could get to the lake. Can the council force a road when it can go no farther than the lake?

2. If they can force the road, could it be opened as a winter road only?

3. Could the parties claim damages for the people piling bark and wood on the 66 feet?

1. The mere fact that this road when established will terminate at the lake, does not preclude the council from opening and establishing it, if the needs of the public require it. It is optional with the council, however, as to whether it estab-

lishes this road or not, pursuant to the authority of section 637 of the Municipal Act, after the provisions of section 632 have been strictly complied with, and it should not do so, unless public convenience demands it.

2. If this road is opened and established as a public highway, the public will have the right to use it as such at any and all times during the year. Its user cannot be confined to the winter months only.

3. If by the sixty-six feet is meant the highway to be established, no one could recover damages from the municipality, by reason of the piling of bark or wood on the highway, unless he met with an accident in consequence of their being there. The parties placing these or any other obstructions on the highway will be liable to be indicted for causing and maintaining a nuisance thereon. It is probable that the proprietors of lands along the lake shore own the land down to the waters edge, so it lies in their power to prevent the piling of bark and wood along the shore.

An Assessment Appeal.

387—A. W.—I have 100 acres of land—I have 80 acres rented—it is all in a good state of cultivation. I have reserved 18 acres—6 acres cleared, balance in woods and pasture. I am living on the 18 acres that I reserved. The buildings are about the same. I am assessed at \$20 per acre and the balance of the farm at \$11.50 per acre. There is no difference in the quality of the land. I have appealed against my assessment. If I cannot get my assessment reduced at the Court of Revision or equalized, what further steps can I take to get justice? Would you advise me to appeal to the County Judge?

Not having definite personal knowledge of the respective values of the lands referred to, we cannot say whether they have been equitably assessed or not. If on appeal to the Municipal Court of Revision, you are not given the redress to which you deem yourself entitled, your only remedy is to appeal from the decision of the court to the county judge.

Production of Treasurer's Books for Provincial Municipal Auditor.

388—INQUIRER.—Our treasurer has been notified by the Provincial Municipal Auditor to bring all books in connection with our last municipal audit to a place twenty miles distant in our county.

Are all treasurers compelled by law to do so? Our books have been audited in the usual way. If all treasurers are compelled to do so, please give act.

We are of opinion that the Provincial Municipal Auditor has power to compel the attendance of the treasurer of the township at the place, and for the purpose named by him. (See sections 10 and 12 of chapter 228, R. S. O., 1897.) We think, however, that if it be represented to the auditor that the attendance of the local treasurer at the place appointed would involve that official and the municipality in considerable trouble and expense, he would, we have no doubt,

appoint some more convenient place for the audit.

Duty of Medical Health Officer as to Isolation—Contagious Disease Patient.

389—J. L. M.—In your last issue you reply "No" to a question of J. E. H. asking if the M. H. O. is forced to remove a scarlet fever patient to an isolation hospital or tent and provide a nurse at the expense of the township.

1. Does your reply mean that the M. H. O. or township is not forced to supply an isolation hospital or tent?

2. Are the new regulations re Scarlet fever passed by the Provincial Board in February 1903 yet in force?

3. What is the meaning of section No. 5 of these regulations?

1. Our reply means that the medical health officer shall at once place the person attacked with scarlet fever in the isolation tent or hospital, *if such an institution has been provided* under the Public Health Act and it is the duty of the council of the municipality, and on the default of the council, of the Local Board of Health, to provide such an institution, when they deem it necessary in order to stamp out or prevent the spread of any contagious disease.

2. Yes. They were made an order-in-council and came into force on the 5th March, 1903.

3. This section means that the medical health officer shall place the patient afflicted with scarlet fever in the isolation tent or hospital, provided one has been provided under the Act, and if no such institution has been provided, it is his duty to take such steps for the isolation of the person afflicted, as, in his opinion, will be most effectual in preventing the spreading of the disease.

Opening of Road Allowance.—Liability to Build Fence Along Highway.—Removal of Obstructions From Road Allowance.

390—C. H. K.—Our township has a piece of road allowance across lots 26, 27 and 28 which is not open. The road on either side is now open and passable. A portion of this unopened road would be very expensive to build.

1. Has our council the power to pass a by-law to open the road across lot 28?

2. Could they be compelled to open it across the three lots if they considered it not in the interests of the township?

3. Could the owner of lot 28 be made to build a fence along said road if opened?

4. Is there any law compelling a man to build a fence along the public highway?

5. Our township opened up a piece of road allowance between lots 15 and 16. The owner of lot 16 disputed the line. Surveyors were employed and staked out the proper line. He still refused to move his fence; the council threatened to serve him with a writ; he then moved it all but a couple of panels promising to do so when it got dry enough. Early this spring before the frost was all out he moved a portion of this fence back in the old place again. The council advertised to sell all the wood on the said road including said fence. He forbid the sale. The council then served him with a writ. He paid all costs but has not yet moved his fence. He now claims that the fence does not belong to him. Has the council the right to advertise and sell all the wood, including said fence?

6. If not, what steps must be taken to make him move his fence?