

## 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 \$1 is enclosed with request for private reply.**

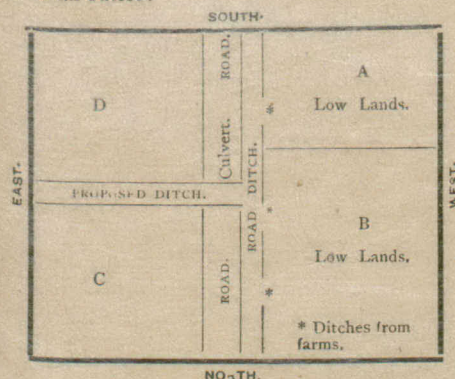
#### Road By-Laws in Districts—Ditches and Watercourses Liability.

347.—W. C.—To begin with there are no surveyed allowances for roads, the country being so broken by rocks. The government reserves five per cent. of the land to the crown for road purposes. The roads are built where possible to get through, many of them are away from the division lines between farms. Some years ago a colonization road was built by the government in this township, in one place wholly on one man's farm.

1. The question is would this be considered in law an original allowance for road? The council last year changed this road on to line between farms.

2. Would the by-law changing this road be legal without the approval of the district judge? To assist you I refer you to chap. 45, statutes of 1892, also subsection 2 of section 567 of Municipal Act. I have been contending with the rest of the council that their by-law was not complete without the approval of the judge, they contending that there was no original allowance for road, therefore the approval of the judge was not necessary. If this is not an original allowance for road there are none in the district, and chap. 45 is no use.

3. The next question is in regard to section 6 of the Ditches and Watercourses Act. The accompanying diagram will assist you in answering the question as to whether the parties A and B are liable to be assessed for the construction of the contemplated ditch. A new road was opened alongside the farms of A and B with good ditches. They had no outlet before for surface water, in fact the land was of little use to them being low, flat land. They took immediate advantage of the road ditches to take the water off their lands. This summer the council have had to take action to get an outlet for the water in the road ditches which naturally runs through the farm of C. The water runs from west to east, also from north and south to indicated culvert which is placed in lowest part of valley. Are A and B liable for the construction of any part of the ditch which has to be dug through the farm of C to an outlet?



1. No.

2. After having given this our best consideration, we are of the opinion that the contention of the other members of the council is the right one.

3. A and B, under section 6, appear to be liable for direct benefit only. The highway ought not to be used for draining water for the benefit of land-owners. We do not know the exact course of the water, but if it lies through part of A's and part of B's lands we would suggest that the engineer should provide for the construction of the drain through these lands, without regard to the existing drain along the highway, and let the connections which A and B have made with the existing drain be stopped up. Section 6 is not very clear, but if your engineer is a competent man he can very easily direct the course of the drain so as to compel A and B to contribute their just proportion towards the work.

#### Reeves and Deputies—Election in Townships.

348.—COUNCILLOR.—The township of B is now and has been for a number of years divided into wards, the reeve is elected by a general vote and the councillors by each ward. By the amendment of the Municipal Act, 1898, I notice sec. 73, R. S. O., 1897, is amended by striking out all the words from word "councillors" in second line and substituting "who shall be elected by general vote."

Section 101 of R. S. O., 1897, permits the division of the township into wards.

1. Without a by-law of council abolishing the wards will the councillors for 1899 be still elected by the several wards, or will the election of reeve and councillors be by general vote?

2. Will it be necessary in future to nominate and elect deputy-reeves?

1. The election of reeves and councillors will be by general vote.

2. Yes.

#### Effect of Treasurer's Certificates—Taxes Due and in Arrears.

349.—P. S.—The taxes on a lot of non-resident land have not been paid since 1889, nor has any statute labor been done since then or paid for. The arrears of taxes have been carried forward on the collectors' roll of this municipality until 1893 when they were returned, or appear by a remark made in the collectors' roll of that year to have been returned to the county treasurer. The arrears accrued since then were again returned to county treasurer in 1895 and 1896. The whole amount of taxes now in arrears on said lots are \$132. Said lots are now about to be sold and the solicitor for the party so assessed for them has written to our municipal treasurer that he holds certificates from the county treasurer dated January 20, 1890, and June 19th, 1896, that no taxes were in arrears or due against said lots (lots 32 and 33, concession 16, township of Denbigh) on those dates. That the county treasurer claims returns were not made to him regarding arrears of taxes on said lots according to law, and that therefore his clients will only pay the taxes from 1895. The solicitor further mentions that at various times chattel property had been on the said lots out of which the taxes would have been made without charging them on the lands. The fact is that the place has been unoccupied and unfenced since 1889, and cattle have occasionally in the summer time strayed thereon in search of pasture, but I think that no cattle have been on the place in the fall and winter when our collector was collecting the rates of this municipality.

1. Will the possession of the county treasurer's certificates, stating that no taxes were in

arrears in June, 1896, legally enable the owner of said lots to refuse the payment of all the taxes charged in our collector's rolls against them prior to the issue of the certificate?

2. If the parties in arrears succeed in proving that cattle or horses have at various times been pasturing on said lots or have been astray or trespassing on them, could they refuse the payment of taxes on that account?

3. Do you think this municipality, under the circumstances stated, is entitled to all the taxes charged against said lots since 1889, and if so which would be the proper proceeding to get them if the parties persist in their refusal to pay those prior to 1896?

4. Kindly give any further advice you may think of advantage to me in this matter.

1. We do not think that the treasurer's certificates, if they were incorrect in stating that certain taxes had been paid, would relieve the person who ought to have paid them, provided he still continued to be the owner of the lands against which they were charged, but if a stranger bought the lands relying upon such certificates we think that the treasurer could not sell the lands to the prejudice of the purchaser.

2. We do not think so unless these parties can show, not only that there were chattels on the lands liable to seizure for taxes, but that it was through the negligence of the collector the amount of the taxes was not realized.

3. If we understand the course taken by the municipality, we have to say that it was improper and unauthorized. You say that the arrears of taxes were carried forward on the collector's roll. There is no authority for doing that. Section 157 of the Assessment Act, cap. 224, R. S. O., 1897, requires the treasurer of every township and village to furnish the county treasurer with a statement of the arrears of taxes within fourteen days after the time appointed for the return and final settlement of the collector's roll, and before the 8th day of April in every year. Section 160 authorizes the county treasurer to alone receive arrears of taxes after this statement has been furnished. Section 152 requires the county treasurer to furnish the clerk with a list of lands in respect of which taxes have been in arrears for three years, and it is the duty of the clerk to furnish the assessor with copies of such list, so that he may inquire and ascertain if the lands have since become occupied, in order that in case of occupation the arrears may be put on the collector's roll, and this is the only provision that we are aware of which authorizes placing the arrears of taxes in one year upon the roll of a subsequent year.

4. If the officers of the municipality have not taken the steps provided by section 152 and subsequent sections of the Assessment Act for realizing the arrears of taxes the municipality must bear the loss.

#### Appointment of Auditors.

350.—F. J. C.—Under sec. 299, R. S. O., 1897, the council of every municipality except cities are required to appoint two auditors. Now in case of the death of one of these auditors has the council any authority to fill the vacancy, and if so, what section gives them such authority?