

ing of the by-law, and by by-law appoint another engineer to act in his stead under the authority of sub-section 1 of section 4 of The Ditches and Watercourses Act (R. S. O., 1897, chapter 285). The sub-section quoted provides that "every municipal council shall name and appoint by by-law *one person* to be the engineer, etc." This precludes the appointment of two engineers in the same township to carry out the provisions of the Act.

2. Any owner, party to the original award, may take proceedings, as provided in section 36 of the above Act to have the award reconsidered and a new one made. The engineer, in making the new award, is not bound to cause the drain to be constructed the same length and dimensions as in the original award, or otherwise follow its provisions. He should use his discretion and provide for the construction of such a drain—open or tiled—as will properly and effectually drain the locality.

3. There is no special duty cast upon either road commissioners or pathmasters to keep the highways in the municipality free of obstructions, but the council should take care that the roads are kept reasonably safe for public travel in order to protect the municipality against liability for accidents.

Election of School Trustees.

165—X. Y. Z.—Four new members were needed and were elected for school board.

Do the four draw lots to see which member shall retire at the end of one year? Does section 61 and sub-section 6 apply in this case?

Since this municipality is a town, if the trustees have, by resolution, passed under the authority of sub-section 6 of section 61 of The Public Schools Act, 1901, limited the number of trustees constituting the public school board to six to be elected by the general vote of the ratepayers of the municipality, unless the election referred to was the first held after the passing of the above resolution, which we do not gather was the case, the provisions of sub-section 6 of section 61 as to the determining by lot of the trustees who shall retire at the end of the year, do not apply. An election of three trustees to fill the places of those retiring in regular rotation should have been held in the ordinary way. If it was necessary to elect another trustee to fill a vacancy on the board, a separate election should have been held for this purpose, and "the person thereupon elected shall hold his seat for the remainder of the term for which his predecessor was elected," as provided in the latter part of sub-section 1 of section 62 of the Act.

Liability for Accident on Hill.

166—J. W.—Mr. R. was driving down a hill with a load of logs he put a lock on his sleigh before starting down. After going some distance the lock came undone, there being a crook in the road just there, (although the road is wide enough for two teams abreast at this particular point) the neckyoke broke letting both horses, load and driver go over a steep bank, killing one horse, but no injury to the other three; being no railing there, although the council had ordered the commissioner to put one there. Will the council be liable for the price of the horse killed or not?

It is difficult to give an opinion on a question of this kind, so much depends upon the circumstances of each particular case. In order to succeed against the municipality, the claimant must show that the highway was out of repair at the time when, and at the place where the accident, resulting in damages, happened—that this non-repair was due to negligence on the part of the municipal corporation, and that the damage was sustained by reason of the non-repair. There must be direct evidence of the neglect of some duty on the part of the corporation which is sued. In this instance, however, from the statement of facts, it would appear that the council considered the point in the highway where the

accident occurred dangerous without a railing, and ordered one to be erected there. Since the railing had not been erected when the accident happened, we think the safest course for the council to pursue is to settle as favorably as possible with the owner of the horse killed.

Ratepayers Outside of Three Mile Limit Must Pay School Taxes.

167—T. P. N.—Kindly inform me if a ratepayer owning property over three miles from a school is obliged by law to pay the general school tax and requisition?

We assume that the ratepayer owns property in some school section and is a public school supporter in the municipality. If this is so, since this is an organized township, sub-section 3 of section 25 of The Public Schools Act, 1901, has no application, and the fact that the ratepayer's property is located more than three miles from the school, does not absolve him from payment of school taxes.

Drain Should be Constructed Under The Ditches and Watercourses Act.

168—C. W. C.—A. lives in 4th concession; B. lives in 3rd concession; water ran from A's property into and through B's property by natural watercourse. The bank in B's property has slid in and caused the water to back up on A's property.

1. Can A. make B. open the watercourse?
2. Can A. open the watercourse, if so, at whose expense, A's or B's?

3. State proper course to take to open ditch?

1, 2 and 3. We think this is a case where proceedings should be instituted for the construction of a drain under The Ditches and Watercourses Act (R. S. O., 1897, chapter 285) whereby the rights and liabilities of all parties interested can be equitably adjusted.

Liability of Lessee for Statute Labor.

169—G. M.—A person rents land at E. from railway company paying them yearly for the use of the land; they pay the taxes on land. This person has erected a summer cottage on the land. Can this person be made to do statute labor? The council have assessed him \$150 for the cottage and levied 56 cents taxes and \$2.00 statute labor; will this person have to pay the \$2.00 statute labor?

Yes.

Business Assessment of Tailor—Of Laundryman—Income Assessment.

170—A. G.—A tailor employs two or three hands the year round. He does not carry a stock but makes up all goods that may be brought to him, either from the stores or from private parties.

1. Is he liable for business tax?
2. Are Chinese laundrymen liable for business assessment?

In 1905 a man got a large salary and was assessed on income. In 1906 he was not employed and was not assessed. He has been engaged for 1907 at a large salary. He claims he is not assessable as there is no way of estimating. He contends that it must be estimated on the income of last year.

3. Can I assess him this year?
4. What are the proceedings to take if he refuses to fill out and return schedule E?

1. This tailor is carrying on business as such, and we are of opinion that he is liable to the business assessment mentioned in clause (h) of sub-section 1 of section 10 of The Assessment Act, 1904, calculated on the assessed value of the premises used and occupied by him in carrying on his business.

2. Yes, to that mentioned in clause (h) of sub-section 1 of section 10 of the Act.

3. If the income this year is a salary or fixed amount, capable of being estimated, it should be assessed. If the income is not a salary or fixed amount capable of being estimated, the income received for last year must form the basis of assessment. (See sub-section 2 of section 11 of the above Act).