

for the breach of his contract, but he cannot be compelled to complete it.

3. The council should see that the road is put in a condition of safety at as early a date as possible, and, in the meantime, that notices and signals warning the public of its dangerous condition are placed at either end of it, and at points where it is intersected by other roads (if any).

4. Section 630 of the Municipal Act provides that no municipal council (except that of a city or town,) shall lay out any road or street more than one hundred, or less than sixty-six feet in width, etc., but any road, when altered, shall be of the same width as formerly. With the consent of the council, passed by a three-fourths vote of the members thereof, a highway or street less than sixty-six feet in width may be laid out by the owner of land. By section 35, of Chap. 225, R. S. O., 1897, councils in townships, in the District of Algoma, etc., may open roads less than sixty-six feet in width, subject to the regulations of the Crown Lands Department.

Removal of Sand Adjoining Road Allowance—Right of Township to Sell Sand and Gravel—Tenant's Covenant to Pay Taxes.

488.—A SUBSCRIBER.—1. A has a sand pit on his farm, close beside the road. Has he a legal right to remove the sand so near to the line as to cause a large and dangerous hole in the side of the road?

2. Has the council of a township authority to sell sand or gravel from the road allowance? Give authority.

3. A rented a farm on which he agreed to pay taxes. This year a school-house was built and paid for by one yearly rate. Must A pay the tax levied for building the school?

1. No.

2. Yes. Sub-section 7, of section 640, of the Municipal Act, provides that the council of every county, township, etc., may pass by-laws for preserving or selling timber, trees, stone, SAND, or GRAVEL, on any allowance or appropriation for a public road.

3. If the lease is the ordinary short form, containing a covenant on the part of the lessee to pay taxes, and these taxes are not specially excepted, A will have to pay them. The covenant to pay taxes means, "and also will pay all taxes, rates, duties and assessments whatsoever, whether municipal or otherwise, now charged or HEREFTER to be charged upon the demised premises, or upon the said lessor on account thereof, etc." See page 1177, of vol. 1, R. S. O., 1897, clause 2, and sec. 17, chap. 170, R. S. O., 1897, sec. 26 of Assessment Act. In the matter of *George Michie and the corporation of the city of Toronto*, 11 U. C. C., P. 379, the court of Common Pleas held that an ordinary lease containing the words "and to pay taxes," covered a special rate created by a corporation by-law, as well as all other taxes, and in the case of *Boulton vs. Blake*, 12 O. R., 532, Mr. Justice Ferguson held that, under the wording of the covenant to pay "all taxes,

rates, duties and assessments whatsoever, now charged or hereafter to be charged upon the said demised premises," the defendant was liable for local improvement taxes, and for the additions made under the Assessment Act year by year, to the amount of the taxes in arrears, or additions made by the municipality.

Limit of License for Billiard and Bagatelle Tables.

489.—C. B.—Has township council power to fix the sum to be paid for licensing billiard or bagatelle tables too high to make it profitable for the person to carry on the business? Cap. 223, s. 583, s. s. 4 and 5.

Yes. In *re Neilly and the town of Owen Sound*, (37, U. C. R., p. 289.) A motion was made to quash a by-law, which provided that licenses for billiard tables, etc., for hire or gain, or to be had or kept in a house of public entertainment within the municipality, might be issued on payment of a fee of \$300, on the ground (among others) that it was unreasonable and oppressive and was in fact, a by-law to prohibit such tables and therefore void. The motion was refused with costs, and in the course of its judgment, the court remarked, "that the trade or profession of keeping a billiard table for profit is not like that of buying or selling the necessities of life. It is not like a license to a butcher, or a baker, or a seller of firewood and such like articles of daily necessity. If this corporation imposed a license duty of \$300 on every seller of firewood, or of meat or bread, the effect might be to prohibit the exercise of such trades. We know of market prices for wood, meat or bread, but we have no such knowledge as to the cost properly chargeable for playing billiards. It is merely a matter, not of necessity, but of pleasure and luxury.

Compulsory Destruction of Barberry Hedge.

490.—L. B.—A petition has been presented to our council asking for the removal and destruction of certain barberry shrub fences. The hedge was planted some years ago on farm lands. Those living in vicinity of said lands claim that it is the cause of rust on grain, hence the petition asking for removal under an Act passed by the legislature of the Province of Ontario. Some think the Act not very clear. Would you be kind enough to explain the Act? To what extent have councils power to enter on farm lands for the destruction of the barberry shrub? How should they proceed with the matter?

Chap. 48, of the Ontario Statutes, 1900, sec. 2, empowers municipal councils to require the removal and destruction of hedges or fences formed by the barberry shrub, planted prior to the passing of the Act, (30th April, 1900.) The council should pass a by-law providing for the removal and destruction of such hedges, and notify, in writing, the owner or owners to remove or destroy the same. In case the owner refuses or neglects to destroy or remove the hedge within one month from the date of the service of the notice, the council may cause the hedge to be destroyed or removed, and in this case the owners will not be entitled to any compensation. The notice should be served personally on the owner. If the owner

complies with the terms of the notice he will be entitled to compensation fixed in the manner provided by section 3, of the Act.

Owner on Road Proposed to be Closed Should Have Outlet—Payment for Necessaries to Persons Quarantined.

491.—E. B.—1. The Monck road crossing Gull river from was changed and the old road is applied by owner of lot to be handed over and closed. If the council hands over and passes a by-law closing said road it would close a settler in, settled close to the river, there being a road allowance of four rods on bank of river, but almost impassable and impossible to make. Could this settler force the council to make this river road or buy him a right of way of a road to the main road?

2. Is a council liable for the cost of doctor's attendance and things necessary, as provisions and clothing, supplied to a family which has diphtheria, while quarantined under the Public Health Act, they being able to pay their own way?

1. Yes. The council must either leave the present road open for the settler, or, if they close it, must, in addition to compensation, also provide for the use of such settler some other convenient road or way of access to his lands and residence. See section 629, of the Municipal Act.

2. This is a matter that should be looked after by the *Local Board of Health* of your municipality. The Board is not liable for the costs or expenses referred to unless the person afflicted, or his parents, or other person or persons liable for his support are unable to pay the same. See section 93, of the Public Health Act, Chap. 248, R. S. O., 1897.

Opening New Road and Closing Old.

492.—R. M.—There is a road in this municipality leading to a county bridge between the counties of E and M. A portion of said road in the spring of the year during a freshet is for a few days covered to quite a depth with water. A few years ago B, a councillor of this municipality, wanted the township council to change the site of said road for a distance of forty rods from the bridge or on the river flats to a higher site. The then council took no action then and B thought he could construct said new road with gratis work and told the council so. He started to work and partly made said new road, but never completed it, and hired help and paid for said work or promised to do so to the several parties. Now for some years he wanted the council to adopt said road and they complete it or he will agree to complete said road for the sum of \$200, and he wants \$200 more for what has already been done. Now the council consider that as the question has been an unsettled one handed down from year to year, it would be well to submit the question to a vote of the electors at the coming municipal elections in January next, and passed a resolution unanimously to that effect. Now what is the proper course to pursue in regard to submitting it to the electors. Will it require a by-law stating the estimated cost of said new road, or will a ballot with the question, "Are you in favor of the adoption of said new road," yes or no be sufficient? As the question at issue really is, are the people in favor of the change of the road. The present road has been in use for public travel for quite a number of years and the present council would like to have the feeling of the electors to see if they are in favor of the new or old road.

The proceedings in this matter appear