LEGAL DEPARTMENT.

H. F. JELL, SOLICITOR,
EDITOR.

Municipal Councils.

THEIR POWERS AND JURISDICTION—HIGHWAYS.

Section 536 of the Consolidated Municipal Act of 1892, provides that all township boundary lines, by which is probably meant a road forming a township boundary not assumed by the county council, shall be opened, maintained and improved by the township councils, except where the necessity arises of erecting or maintaining bridges over rivers, forming or crossing boundary lines between two municipalities. The object of the section is to relieve counties from the burden of keeping roads in repair, and throw the burden upon the local municipalities adjacent thereto. In case of township boundary lines forming also the county boundary lines and not assured or maintained by the respective counties interested, they shall be maintained by the respective township bordering on the same, except in the case of a necessity to erect or maintain such bridges as are referred to in section 536. Section 538 provides that roads lying wholly or partly between the different municipalities in the said section mentioned shall be under the joint jurisdiction of the councils of the municipalities between which the road lies; such road shall not include, however, a bridge over a river forming or crossing a boundary line between two municipalities other than counties.

Under this section a question might arise as to when a road might be considered to be partly between two municipalities. This might best be answered by reference to a decided case, viz., *re* McBride and York. In this case it appears that the road had for more than 50 years been used as a road between the townships of York and Vaughan. The original allowance for the road being to the north of it, and this road being in fact wholly within the township of York, and part of lot 25, the owner of the land had been indicted for closing of this road, and convicted in 1870. The corporation of the township of York then passed a by-law to close it, reciting that there was no further necessity for it by reason of the road allowance. It was held that the road was one dividing the townships, and though, in fact, wholly within the township of York, could not be legally closed by the council of that township.

No by-law of the council of any one of such municipalities with respect to a road lying wholly or partly between a county, town, city or incorporated village, and an adjoining county, etc., or bridge, shall have any force until a by-law has been passed in similar terms as nearly as may be by the other council or councils having joint jurisdiction. In case the other council or councils for six months after notice of the by-law, omit to pass a by-law or by-laws in similar terms, the duty and liabilities of each municipality in respect to the road or bridge shall be referred to arbitration under the provisions of the Municipal Act. The best notice that the council first passing the by-law could give the other council, would be the service on the latter of a copy of the by-law.

Section 544 relates to the closing up of a public road or highway. The power of the municipal council to close up a highway is subject to certain limitation—one of these, under the said section, is against the closing up of a road whereby any person will be excluded from ingrees or egrees to and from his lands or place of residence over said roads. The said section provides that in the case of a council closing such road, as is referred to in the section last quoted, the said council in addition to compensating the person above mentioned, must also provide for the use of such person some other convenient road or way of access to his lands or place of residence.

In the case of McArthur, of Southwold, it was held that this provision applies to cases where the only means or only convenient means of access is over the road closed up, and not where there is another existing, though less convenient way of access. In the absence of mutual agreement, between the council and the owner of the lands, as to the adequacy of the compensation to be paid to such owner by the council or as to the road provided for the owner in lieu of the original road, as a means of ingress and egress, the matter in dispute shall be referred to arbitration, under the provisions of the Municipal Act.

Legal Decisions.

STEAM WHISTLES.

Under this heading on page 108, of volume 3, of THE MUNICIPAL WORLD, are set out the questions at issue in the case of Roe vs. the village of Lucknow. The decision was given at the trial by the judge of the county court of the county of Huron in favor of the plaintiff. The defendent corporation appealed from the said decision to the court of appeal for Ontario.

At a recent sitting of the said court of appeal, the case came on for hearing, and the decision of the said judge of the county court of the county of Huron was reversed; the court of appeal holding that the mere fact that a horse while being driven along the highway has been frightened by the whistle of a steam engine, used by the defendants for the purpose of their lawfully operating waterworks is not sufficient to make them responsible for damages resulting from the horse running away. Some positive evidence of negligence in the use of the whistle must be given, or at least some evidence that its use might be expected to cause such an accident, so as to cause it to be a nuisance to the highway.

DAGENAIS VS. CORPORATION OF TRENTON.

In this case an owner of lands in the town of Trenton, desiring to construct a drain on his land and continue it through an adjoining owner's, served him with the notice provided by the Ditches and Watercourses Act, R. S. O., chap. 220, sec. 5, as amended by 52 Vic., chap. 49 (O), to settle the proportions to be constructed, and, on their failing to agree, served the municipal clerk with the notice, provided for by such act, for the engineer to appoint a day to attend and make his award. The clerk immediately forwarded the notice to the engineer, who was absent, and failed to attend. It was held that a mandamus would not lie against a municipal corporation to compel their engineer to act in the premises.

MACNAMEE VS. CITY OF TORONTO.

A contract, between plaintiff and city of Toronto for laying a conduit pipe across the Toronto bay, provided that all the differences, etc., should be referred to the award, order, arbritament, and final determination of H., the superintendent of said work. It was held that the fact of H. being such superintendent disqualified him from acting as arbritator.

REGINA VS. JUSTIN.

Sub-section 27, of section 496, of the Consolidated Municipal Act, 1892, authorizes a municipal council to pass by-laws for regulating or preventing the encumbering by animals, vehicles, vessels, or other means, of any road, street, alley, lane, bridge, or other communication. In this case it was held that a bicycle is a vehicle within the meaning of the sub-section, and of a by-law of a municipality passed under it so as to support a conviction for riding a bicycle on a sidewalk.

YORK VS. TOWNSHIP OF OSGOODE.

Judgment on appeal by the plaintiffs from the order and decision of the Queen's Bench Divisional Court (24 O. R. 12), affirming the judgment of Falconbridge, J., the trial judge, dismissing the action with costs. Action for an injunction and damages in respect of the construction of a ditch or drain through the plaintiff's lands, pursuant to an award under the Ditches and Watercourses Act, which award the plaintiffs contended was made without jurisdiction. This court did not agree with the court below that the word "owner," as used in the Ditches and Watercourses Act, means the person assessed as owner, and held that the award was made without jurisdiction, and that the plaintiffs were entitled to damages. Appeal allowed with costs, except as against the defendant Lewis, against whom are to be no costs.