

be free to claim such damages as he may be entitled to recover. Now the questions are :

1. A claims the township is liable owing to the culvert being only 16 feet long and some more to one side of the road, not fair in the centre. Does the law require a stated length that a culvert should be ?

2. A admits that the culvert was good only says it was covered up with snow and he did not see the end of it. Now said culvert was about 2½ feet wide and about the same depth. Does the law require a railing on such culvert ?

3. Which of A's bills is the correct one, the \$13.90 or the \$33.40, or can he keep adding to the amount at pleasure ?

4. A attributes it to the culvert being covered with snow but I think the accident occurred through lack of snow and him following along the edge of the ditch and in that way went over. The end of the road is about 28 or 30 feet wide where the accident occurred. Would the council require to have a railing at the edge of the ditch on the sides of the road ?

1. No, but a culvert should be of such length and other dimensions as to a court or judge would seem sufficient for the safety of the public, under the circumstances of the case.

2. We have not sufficient information to enable us to say whether the council, in order to avoid responsibility for accidents should erect and maintain railings at either end of this culvert. If the culvert is sound, free from obstruction, with a way for travellers sixteen feet wide between the ends of the culvert, (as we infer from the statement contained in question number one), and is generally in such a condition, that any person exercising reasonable care and caution, could travel over it, without meeting with any accident, by reason of the absence of railings, we do not think their erection by the council is necessary.

3. We cannot tell. If A is entitled to recover anything at all from the municipality, it is only the amount of the damages he has actually sustained. The sum mentioned in any demand he may make, does not in any way, fix the amount for which the municipality is liable.

4. If the highway at this point is from 28 to 30 feet in width, well graded, and free from obstructions, and in such a condition generally, that any person, exercising reasonable care, can travel along it, without incurring any danger of accident by reason of the absence of railings along the ditches on either side of it, their erection by the council is not a legal requirement.

Collection of Damages for Injuries to Horse.

346—I. A.—Can a man collect damages for injuries to his horse caused by a defective bridge, and if so, what proof must he have as to the injury, and how much can he collect, and would it make any difference in the case if he was aware before crossing the bridge that it was in a dangerous condition ?

Damages can be recovered for injuries to the horse, if the claimant can prove to the satisfaction of the court hearing the case that the bridge was, as a matter of fact, out of repair, 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 some direct

evidence of the neglect of some duty on the part of the corporation which is sued. If the non repair of the bridge was due to the act of some third party the corporation will not be held responsible in damages, unless, (1) the corporation has had express notice of the existence of the obstruction or defect, or (2) it had been there so long as to warrant the finding that the corporation was aware of it, and might have amended or removed it. Before the action is instituted notice of the accident and the cause thereof must be given by the claimant to the municipality within thirty days after the happening of the accident, pursuant to subsection 3 of section 606 of the Municipal Act, and the action must be brought within three months after the damages have been sustained. (See sub-section 1 of section 606.) We cannot say what sum can be collected as damages in the case, as we do not know the value of the horse or the extent to which it was injured. If the claimant was aware of the existence of such a defect in the bridge as would likely result in injury to himself or his horse, when he drove over it, and, notwithstanding this knowledge, he persisted in driving over it, he is guilty of contributory negligence and not entitled to recover anything from the municipality.

Duties of Assessor as to "Aliens."

347—SUBSCRIBER 1. The assessor in making the assessment of a township marked in column No. 4, persons that are not British subjects and residents "F. Alien." Was the assessor justified in doing so ?

2. Should the clerk in preparing the voters list, leave those names off the list ?

1. No.

2. No.

Powers of Private Parties to Drain on to Highways ?

348—G. G. A.—In a certain work on municipal law the following occurs : "Draining to a road—Lands adjoining a road or highway where the natural course of the water is towards the road may be drained thereon and the municipality is required to provide an outlet for the surface and other water which naturally flow to such road. In case no such outlet is provided, the municipality is liable for any damage that may be thereby occasioned other property that may be flooded."

In a matter which came up for consideration today, the reeve referred to the above, and we were both surprised to find it stated as the law. I am under the impression that as regards drainage, the lands occupied as highways of the municipality are in the same position as to those of private individuals, or more properly expressed, a private owner has, as regards draining his lands, no more extensive right against the municipality than a private owner whose lands are adjacent to his. In fact, the municipality as regards its highways, is now an "owner" under the Ditches and Watercourses Act, by section 1 of the Drainage Amendment Act, 1899. If the above quotation were correct the highways in some localities might be converted into canals or watercourses at the instance of any private individuals. Do you think a landowner can collect water in a ditch and thus turn it on to adjoining highway merely because it runs that way, without taking proceedings under the D. and W. Act, and having the cost of maintaining the ditches apportioned as between such owner, the municipality and others ? I con-

tend that, apart from the provisions of the above Act, the municipality cannot be compelled to receive drainage from adjoining lands by ditches or drains, but only such water as comes by natural percolation. Am I right in this ?

We do not agree with the interpretation of the law on this subject as contained in the quotation given, but consider your view of the matter substantially correct. A case in point is *Darby v. the township of Crowland* (38 Q. B. 338). There had been for many years a culvert across a highway adjoining the plaintiff's land, through which the surface water from his land had been accustomed to pass, but the pathmaster closed it up, and made the roadbed solid, by which the flow of surface water from the plaintiff's land was impeded, and the land remained wet longer than it would otherwise have done. The corporation, by resolution, approved of the pathmaster's action. It was held that the plaintiff had no cause of action, *for there was no right of drainage across the highway for the surface water*, and the corporation could not be liable for not exercising its discretionary powers with regard to drainage of lands. Owners of lands desirous of draining them upon or across highways should take proceedings to have a drain or drains constructed under the provisions of the Ditches and Watercourses Act.

Registration of Deaths.

349—A. B.—Will you please pardon me for dissenting with your answer to question 293.

1. Your quotation is wrong, section 36 instead of 26.

2. Section 36 provides that every municipality shall pay annually to the division registrar appointed therefor under this act a fee of twenty cents each complete registration of a birth, marriage or death returned according to the schedules provided under this Act, etc.

3. Section 24 requires a certificate of registration before burial (a complete registration). Sub-section 2 of section 24 confers the duties of registering deaths upon the nearest division registrar. (That must be a complete registration), but such division registrar shall forward the original certificate to the registrar of the division in which the death occurred. There is another complete registration.

I had some difficulty in understanding this matter. I corresponded with Dr. Bryce and was informed that the registrations should be complete in all such cases. The facts are reported to the department, a certificate to the treasurer of the municipality is issued. The obligation is then imperative. The treasurer shall pay it. I am assured that the registrar general acknowledges double registrations, and issues certificates for the payment of the fees.

1. This was simply a typographical error. The proper section is 36.

2. This point is not free from doubt, but if the registrar general, (on whose certificate the division registrar's fees are to be paid), construes section 24 of the Act, (R. S. O., 1897, chapter 44), as meaning that the same death can be registered twice in full and the fee provided by section 36, paid for each registration, this will ensure the receipt by each division registrar of his fee for the registration.