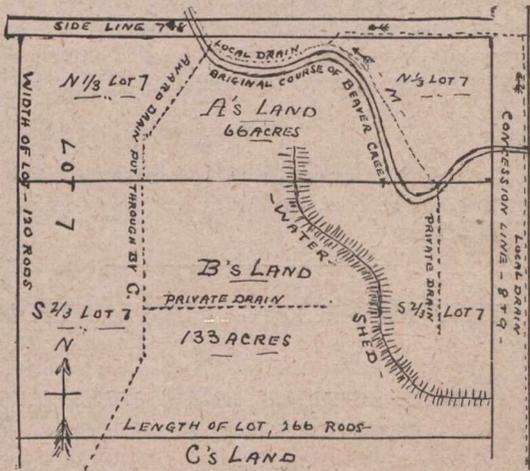


his land. B went on and dug the drain at his own expense under the provisions of by-law No. 10, section 6, thinking it would be cheaper for him to dig the whole drain than pay his share of the engineer to have it put through under an award.

After B repaired the drain A filled it up. B now asks the pathmaster of the road division to compel A to re-open said drain re by-law 10, section 5.

1. Can the pathmaster compel A to re-open said drain ?
2. Can B be compelled to take all his water to the award drain, it being much more expensive to take it that way, also being out of its natural course ?
3. Can A, by bringing on the engineer, cause the drain to be closed after it has remained open for 30 years, if B objects to the closing thereof ?
4. Can the pathmaster be punished for refusing to have anything to do with it after being notified by B to compel A to open said drain ?



1 and 2. We do not understand from the statement of the facts that the drain "M" was constructed under the provisions of any Drainage Act then in force, but pursuant to a private, informal arrangement between A and B. If this is so, we do not think that the pathmaster can compel A to open up the drain throughout his portion of it, nor can B enter on A's land for the purpose without A's consent. If "M" is the natural course for the water, B should institute proceedings for the construction of a drain under The Ditches and Watercourses Act (R. S. O., 1897, chapter 285) and in this way the rights and liabilities of all parties concerned can be properly adjusted.

3. If A institutes proceedings under the Act, and the engineer makes an award in pursuance thereof, he will cause such a drain to be constructed by the several owners interested, as he deems the locality requires.

4. No. We do not think that the by-law submitted to us has any application to a drain of this kind.

Power to Abolish Pounds.

388—C. H. G.—1. What is your opinion as to the legal construction of the within enclosed by-law No. 414 ?

2. Have township councils power to abolish pounds and to inflict fines thereon upon any person violating the same ?

1. We are of opinion that the by-law submitted to us is sufficient for the purposes for which it was passed.

2. In the case of Milloy v. Township of Onondaga (6 O. R., p. 573) it was held that a township council could, by poundage by-law, legally impose a fine on persons transgressing its provisions, and we are of opinion that the council may dispense with pounds and pound-keepers, and in a by-law regulating the running at large of cattle impose a fine for offences against its provisions. Application of Section 18a of The Consolidated Municipal Act, 1903.

389—W. C. D.—Does sub-section 9 of section 18 of The Con-

solidated Municipal Act, 1904, apply to section 18 only, or does it also apply to section 18a ? If not, has the council of any town or incorporated village power to enter into a special agreement with the owners of lands in the corporation used wholly for farming purposes, granting them a reduction on the rate of taxation as set forth in said section 18a ?

Section 18 makes provision for the separation of farming lands from towns or incorporated villages, and sub-section 9 renders the whole of the section inapplicable to any town which is separated from the county for municipal purposes, and to any town incorporated as such town since the 15th day of August, 1866. Section 18a relates to a different matter altogether, namely, agreements with owners of farm lands in towns and villages as to the rate of taxation thereon. The latter section applies to ALL towns and incorporated villages in which are situated lands wholly used for farming purposes.

Effect of Undermining Road to the Injury of Adjoining Owners.

390—E. M.—We have drawn gravel for the last thirty years from a ridge of gravel, and it crosses a corner of my farm and crosses the road to another farm, and the owner forbids us to come any further and threatens to prosecute if we undermine his fence. Kindly inform us what steps to take, as parties want to start drawing.

The municipality has no legal right to excavate the highway for the purpose of removing gravel to such an extent as to injure the fences or cause the subsidence of the lands of owners adjoining the highway. If it does so, the owners thus injured are entitled to damages for the injury they have sustained. The municipality should purchase what gravel it needs from the owner. If they are unable to agree as to the price to be paid for the gravel, the council should proceed to expropriate the required quantity under the authority of sub-section 10 of section 640 of The Consolidated Municipal Act, 1903, and the price can then be settled by arbitration under the Act as provided in clause (a) of this sub-section.

Election to Fill Vacancy in Council.

391—X. Y. Z.—A vacancy has occurred in the council of our township through the resignation of a member. Can it be filled in any other way than by a regular election which, of course, may acclamation at the nomination meeting ?

I notice in a city near by they are going to fill a like vacancy by accepting the candidate who stood highest among the defeated candidates in the last municipal election in the city. Can this be done in a township also ?

We are of opinion that a new election must be held to fill this vacancy. We presume that the city referred to is one in which the aldermen are elected by a general vote, and that the provisions of section 215a of The Consolidated Municipal Act, 1903, are being followed in filling the vacancy. This section, however, does not apply to township municipalities. Had the vacancy occurred after the 1st day of November, it would have been in the discretion of the council as to whether it directed that an election be held to fill the vacancy or otherwise.

Liability to Assessment of Hall Rented by Municipality.

392—A. J. M.—Our township council rents a hall for municipal purposes by the year. The hall is the second story of a general store. The proprietor contends that the hall is exempt from taxation under sub-section 4 of section 5 of The Assessment Act and consequently that his assessment for the building and business should be reduced. What is your view ?

The clause quoted exempts "every city, town and township hall, or any hall by by-law of a township council declared to be a public hall" from assessment and taxation. The hall rented by the council cannot be termed a "township hall" within the meaning of paragraph 4 of section 5 of The Assessment Act, 1904, and, unless it has been declared to be a public hall by by-law of the township council, it is liable to assessment and taxation in the usual way.