

council to have drain dug across fifth concession to creek, at the expense of all ratepayers of township?

The council has no authority to construct a ditch for the drainage of these lands at the expense of the municipality. Any party desirous of having the water taken away can initiate proceedings for the purpose under the provisions of the Ditches and Watercourses' Act. (R. S. O., 1897, chap. 285.) Or if the drainage works will be of greater magnitude than those contemplated by that Act, (see section 5,) the drain required could be constructed under the provisions of the Municipal Drainage Act. (R. S. O., 1897, chap. 226), after the petition mentioned in section 3, of the latter Act, has been presented to the council.

Opening Road Through Private Property.

353.—H. We wish to open a new road and will require to go through private property. If we post up the notices as to the intention to open said road and publish the notices that we are going to open said road and pass by-law, and if no objection is made, are we then at liberty to pass by-law and open road? Do we not require to publish by-law. Kindly let me know as to above, also the proper steps to take in opening said road?

Section 637, of the Municipal Act empowers the council of townships to pass by-laws providing for the opening of new roads in the municipality, and for entering upon, breaking up, taking or using any land in any way necessary or convenient for the purpose. Before such by-law is passed, however, the council must take the preliminary steps mentioned in section 632, of the Act, as to posting up and publication of notices, etc. The only publication of the by-law that is necessary, is that required by clause (b) of sub-section 1, of section 632. If the council and owner or owners of the lands required for the new road mutually agree as to the price of, or compensation to be paid for such lands, the publication of the by-law required by clause (b) shall be dispensed with. In this case, the council may accept a deed for the same, which deed is to be registered as provided by section 633, of the Act. (See sub-section 4, of section 632.) In case the council and the owner or owners of the lands required for the road cannot agree upon the price or compensation to be paid therefor, the differences between them will have to be settled by arbitration proceedings, instituted pursuant to section 437 and following sections of the Act. By section 633, of the Municipal Act, a by-law passed expropriating private lands for a road must be registered.

Charging of Farm Lands in Towns with Cost of Local Improvement.

354.—J. W.—We are about building some silex stone sidewalks, and in completing one of the streets we have to pass a small field which has never been surveyed into town lots, but is within the corporation. The owner claims that it is farming land, although there are a couple of small houses thereon, occupied by tenants. Has the corporation authority to build this portion of the sidewalk and assess the cost thereof against the property on which it fronts? Kindly say on what conditions the town can build it.

I may add that for years we have adopted the frontage system of levying the cost of sidewalks against the property on which they front.

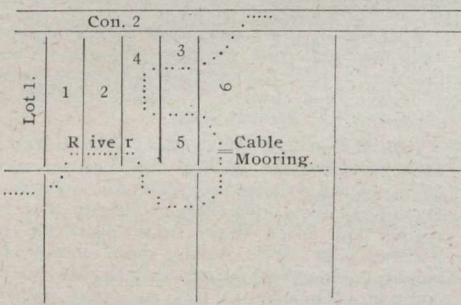
If the lands come under the definition of "farm lands," contained in sub-section 1, of section 8, of the Assessment Act, they can be exempted wholly or partially from assessment for the construction of these sidewalks in the manner and upon the terms and conditions set forth in sub-section 2, and following sub-secs. of the sec. If they do not come under this definition they are chargeable for their proportionate share of the cost of construction according to their frontage, the same as any other lands in the town.

Council Should not Construct Road for Private Parties.

355.—J. G. A.—I enclose a diagram showing what I submit for your consideration.

1. A had a mile square of land about seventeen years ago, he sold it all by pieces like the following numbers corresponding with these 1, 2, 3, 4 and kept the number 5 for himself, stating he did not need any road, the river was enough for him, and then bought 14 acres marked 6 on diagram of another lot. Now the 5 and 6 are sold to two parties and they want us, the council, to give them a road through No. 4 or build them a scow as last year's council gave them a cable of \$43 to put across the river. What should the council do?

2. Has the council a right to collect municipal taxes from them if we do not give them a road or a scow?



1. The council is not bound to open and construct a road or build a scow for the accommodation of these parties. Unless the general needs of the community demand it, the council should take no action whatever in the matter.

2. Yes. At the time these parties purchased these lands there was no road or scow whereby they could gain ingress and egress to and from their respective properties, and they purchased in the light of this knowledge, so they have no cause now to complain.

Council Cannot Prohibit Running at Large of Dogs and Also Collect Dog-Tax.

356.—L. T. M.—Has a municipality that prohibits dogs from running at large the right to impose a dog-tax? The town council has passed a by-law for prohibiting dogs from running at large and I do not see why I should have to pay a kennel license when I cannot let a dog run out.

Yes. Sub-section 3, of section 540, of the Municipal Act, confers on the councils of towns—in addition to the powers conferred by sub-sections 1 and 2, to pass by-laws to restrain, regulate, and, if necessary, to kill dogs—the power to pass by-laws for imposing a tax upon the owners, possessors or harborers of dogs. It was judicially remarked in the case of McKen-

zie vs. Campbell, (1, U. C. R., 241) that "the imposing of a tax is to be looked upon rather as a measure of revenue than as a mode intended to be pointed out for directly restraining or prohibiting the keeping of dogs by imposing a tax on them."

Liability for Payment of Dog-Tax.

357.—W. D.—Would you let me know if we can compel a ratepayer to pay his dog-tax, as we have a by-law to the effect, but he claims that he leaves his dog in the township, his house being half in the village and half in the township. There is no tax in the township. He has represented the village as reeve some years ago, but declines paying his dog-tax.

This person's place of residence, being partially located in the village municipality, he can and should be considered the owner, possessor, or harborer of a dog therein, and is therefore liable for the dog tax. The place where the dog is kept does not affect the question in any way. It is the place of residence of the owner that determines the municipality to which the owner should pay the tax. If no by-law was in force in your municipality imposing a tax on dogs, they should be levied anyway pursuant to chap. 271, R. S. O., 1897.

Township's Liability for Damages for Accident.

358.—J. J.—In our township we have a long hill on our gravel road which has been fenced for about 15 years and this fence has been destroyed by timbers rotting so that in the course of time it entirely disappeared and for the last 20 years or thereabouts, there has been no fence. A few weeks ago a lady and her daughter were driving up the hill during a severe wind and rain storm. A gust of wind and rain caused the horse to turn across the road and back the buggy over the edge of the road and completely wrecked the buggy. The daughter managed to jump out, but the lady went over with the buggy and received some bruises, but had a wonderful escape from serious injury. The hill where the accident happened is about four feet higher than natural lay of land, but some parts of the hill are about eight feet higher. The road is about twenty-four feet wide and in good condition all through the hill. Is the council liable for damages on account of such a hill not being fenced? The council has offered to repair the buggy so that it shall be in as good condition as before the accident. No claim has been made for personal injury other than for a bottle of liniment which the council has offered to pay.

As to whether this road, at the point where the accident happened, was in a reasonable condition of safety, although not fenced, is a question of fact, to be decided by the judge who tries an action of this kind, on the evidence adduced before him at the trial. It seems to us, however, that, under the circumstances stated, the municipality would be held liable to these parties for damages for the injuries they sustained, especially in view of the fact that the council formerly considered it necessary to erect and maintain a railing on either side of this embankment. If the council can effect a settlement with, and obtain a release of all demands from these parties by paying for the cost of the repairs to the buggy and the bottle of liniment, we have no hesitation in advising the completion of the settlement along these lines.