

prescribed by section 319 of the Act, C will be subject to the penalties imposed by that section, but failure to make the declaration does not *ipso facto* render void his official acts done in the meantime.

3. (A and B). The council has no power to build crib-work or an embankment along the Lake shore to protect the lands of private owners, nor can it be compelled to purchase and establish a highway in lieu of one which has been washed away. The council may, however, in its discretion, expropriate lands for and construct and establish a new road to take the place of that which has disappeared, if it is of opinion that the needs of the public require it, and erect such embankments as may be necessary to protect it from the encroachment of the waters of the Lake, and pay the cost of doing so out of the general funds of the municipality.

#### **Surety to Municipality Cannot be its Treasurer.**

176—ENQUIRER.—A township council borrows a sum of money and lends same to A, B and C, without interest, for the purchase of a steamboat to be used in the local trade of the municipality. The by-law authorizing this action had been duly submitted to and carried by the necessary majority of the ratepayers and legalized by Act of the Ontario Legislature. D, son of A, owns no interest in the steamboat, but joins A, B and C in a promissory note securing the repayment of the loan to the municipality. Is D. disqualified for the position of township treasurer in this municipality?

D cannot qualify for the office of treasurer of this municipality. A treasurer, before entering upon the discharge of the duties of his office is required to make the declaration mentioned in section 312 of The Consolidated Municipal Act, 1903. The latter part of this declaration is to the effect that he has not by himself or partner, either directly or indirectly, any interest in any contract with or on behalf of the corporation of which he has been appointed treasurer. A surety to the corporation cannot make this declaration.

#### **Liability for Neglect to Maintain D. and W. Drain—Obligation of Engineer—Appeal Under D. and W. Act Cannot be Withdrawn—Council Not Bound to Entertain Drainage Petition—Limit of Time for Doing so.**

177—J. S.—A certain award was made by an engineer under the Ditches and Watercourses Act whereby the maintenance of a ditch was assigned to several persons each of whom had a portion to maintain. One of said parties had totally neglected the maintenance of his portion.

1. If damage is caused who is liable, the man who neglected to maintain, or whom?

2. The engineer, being an official of the township, does it follow that the council are obliged to see that all ditches constructed under his instructions are maintained as he awards?

3. Can an appeal to the Judge against an award under The Ditches and Watercourses Act be withdrawn, and how?

4. A petition duly signed by a sufficient number of land owners is presented to the council asking that a certain drain be constructed under The Drainage Act. Is the council obliged to take action in the matter or can they use their own judgment?

5. If they are obliged to take action can they wait several months if it is found in the public interest so to do?

6. What is the limit of time for taking action under a drainage petition?

1. There is no provision for the recovery of damages in a case of this kind by action at law. A remedy for parties aggrieved by the failure of any party to an award, made pursuant to the provisions of The Ditches and Watercourses Act (R. S. O., 1897, chapter 285), to maintain his portion of the drain, is afforded by section 35 of the Act. Proceedings should be taken under this section to enforce the maintenance of his portion of the drain, by the defaulter.

2. No. The municipality is interested in a drain of this kind only to the extent of constructing and maintaining its portion of the drain (if any) in accordance with the terms of the award.

3. The Act does not make any provision for discontinuing an appeal by giving a notice to that effect, but the party who has given a notice of appeal is not bound to prosecute it.

4. No. It is optional with the council as to whether it entertains a petition for the construction of Drainage works or not. (See sub-section 1 of section 3 of The Municipal Drainage Act (R. S. O., 1897, chapter 226).)

5. Our answer to question number four renders it unnecessary to reply to this.

6. The statute does not limit the time within which a council should take action on a drainage petition, but if it purposes to entertain it, it should take action within a reasonable time after the filing, so as to avoid such changes in circumstances and conditions as would render the petition insufficient under the Act.

#### **Compulsory Clearing of Obstructions from Streams.**

178—T. F. B.—A stream or small river crosses our township, it or part of it has been put under The Drainage Act, and has been cleared of logs, trees and obstructions, etc. Now timbermen and others who are cutting timber on the adjacent lands are felling trees into said stream, and leaving therein the tops of trees and the useless parts thereof, thus causing new obstructions, etc., in said stream to the detriment of the municipality and a number of ratepayers whose property was drained when said stream was put under The Drainage Act.

1. Can the municipality hinder lumbermen and others from throwing and leaving in said stream tops and useless parts of trees, if so what course shall the municipality pursue?

2. Have private individuals whose lands are injuriously affected redress?

3. Can adjoining municipalities be compelled by us to hinder trees, etc., being thrown and left in said stream in their municipality?

4. Can we appoint an inspector whose duty it shall be to watch and report as to persons throwing trees, etc., into said stream?

1. We do not see that the municipality has any authority to take any action in the matter, since this stream is a municipal drain. Section 78 of The Municipal Drainage Act (R. S. O., 1897, chapter 226), is inapplicable, as the refuse is not being put in the drain by the owners of adjoining lands, and sub-section 11 of section 562 of The Consolidated Municipal Act, 1903, applies only to such obstructions as fences, water-gates, etc.

2. If owners of lands sustain injury by reason of the placing of these obstructions in the drain, they can recover the amount of the damage they have sustained from the guilty parties, and restrain them from further offending by mandamus.

3. No. Section 563 of The Consolidated Municipal Act, 1903, does not apply to this case.

4. No. The only provision for the appointment of a drainage inspector is that contained in section 78 of The Municipal Drainage Act, and as we have stated above, this section is inapplicable.

#### **County Councillor Cannot be Local Treasurer—Qualification for County Councillor—Council Should Not Interfere in Private Road Dispute—Council Should Not Construct Drains for Private Parties—Disinfection of Premises.**

179—J. P. Mc.—1. Can a county councillor act as treasurer for the municipality he is representing?

2. Can a reeve of a municipality resign at the end of the year before nomination and be elected for following year for county councillor, or will he have to be out of the township council a year?

3. When there is a road allowance left between two concessions and at one side of the township the road was never opened and we do not think it will ever be required for a road as there is a road through the concession. There are some parties who are disputing about the road allowance. Has the council a right to interfere or let the parties themselves?