

ratepayer freeing the municipality from all liability in the matter on receiving the \$10. Now said ratepayer asks the present council to give him back the bond, as the tile drain works satisfactory and likely to continue doing so. Some of the council are willing to give the bond up if it is legal so to do, provided the municipality would not get into trouble at some future time and request that the matter be submitted to THE MUNICIPAL WORLD.

The council should not have given this ratepayer the privilege of constructing a drain on, along and across the highway to enable him to drain his land, nor have granted him the \$10 to aid him in doing so. He should have been left to his remedy under The Ditches and Watercourses Act (R. S. O., 1897, chapter 285). By an award made under this Act the rights of all parties interested could have been properly adjusted. The giving of the bond does not absolve the council from its liability to persons who may be injured by the construction of this drain, and in the event of the obtaining of a judgment against the municipality for damages sustained by reason of the construction of this drain, a question might arise as to whether the municipality could recover the amount from the ratepayer under the bond. We may say that we doubt very much if the council has any authority to take a bond for such a purpose.

#### Fencing Land Used for Park—Closing Road.

435—J. A. W.—There is a hill that has never been fenced in, and has been used as a public park as long as any person living at the present time can recollect. Originally it belonged to the adjoining farm. Recently the farm has passed into other hands. The present owner claims the hill or park, and is going to fence it in.

1. Can he legally do so? If not, what means should be taken to stop him?

There is a path along the top of the lake bank that has been used by the public as long as the oldest inhabitant can recollect, being at one time an old Indian trail. The former owner placed a wire fence across it, but placed steps to get over it. The present owner of the farm removed the steps and claims people have no right to use the path.

2. Can he be compelled to replace the steps? If so, what action would be necessary to compel him to replace them?

3. Would a person be justified in cutting the wires?

1. There does not appear to have ever been a dedication or conveyance of this hill by the owner of the land to the public represented by the municipality or otherwise for the purposes of a public park, and we are of opinion that the owner can fence it in when he so desires. The simple fact that the owner suffered the public to temporarily occupy it from time to time for purposes of pleasure or recreation does not vest in them any right to do so for all time to come as against the owner.

2. No.

3. No.

#### Proceedings to Provide Drainage for Cemetery.

436—C. O. D.—In our municipality there is a cemetery requires draining. Parties along the stream where the outlet is object to the draining of the cemetery into the stream. The cemetery committee are asking the council to allow them to drain on the road allowance and to put in a cesspool. Will it be necessary for the council to prepare a by-law, to put up notices and advertise the by-law so as to give any ratepayer a chance to appeal against the by-law?

We advise the council to leave the cemetery company to take such action as it may be advised to take, because it is difficult to anticipate the difficulties which the council might get into by passing a by-law as suggested.

#### Time for Submitting By-Law the Second Time.

437—F. J. C.—A by-law was submitted on the 26th inst. to the electors of S., and was defeated by a vote of 121 in favor to 251 against. How long a time must elapse before we can submit another by-law for the same purpose to the people?

The object of this by-law is not stated. If it was a by-law providing for the raising of money by the issue of debentures to aid a manufacturing institution, the council

may re-submit the by-law at any time. If, on the other hand, this is a case where the law makes special provision for delaying the re-submission of the by-law until after the expiration of a certain time (as in sub-section 2 of section 141 of The Liquor License Act, R. S. O., 1897, chapter 245,) it cannot be re-submitted until after the expiry of the time limited.

#### Duties of Court of Revision.

438—D. McD.—A. was appointed assessor for our township and assesses B., who is a farmer owning a threshing machine and traction engine, which A. assesses also, leaving a schedule with him, and after a few days he sends him a second schedule raising him two or three hundred dollars. B. appeals to the Court of Revision in the ordinary way before the 15th day of May, sending in the first schedule, leaving the second schedule without notice of appeal; therefore the council refused to hear the appeal.

Did the council do right, or should the council receive and dispose of the case on the first schedule, which was legally appealed against, or could the council still take up the appeal and dispose of it at the final Court of Revision to be held in the latter part of June? Would this procedure be legal?

Assuming that this owner filed an appeal in accordance with sub-section 1 of section 71 of The Assessment Act within the time mentioned in sub-section 2 of this section, the Court of Revision should take into consideration his assessment as entered in the assessment roll, and reduce, increase, or confirm it, as it may deem just, regardless of the amount mentioned in either schedule of assessment handed to the owner appealing, by the assessor.

#### Construction and Maintenance of Drain on Town Line.

439—A. D. H.—Along the boundary line between the township of H. and D. the Government constructed a mile of ditch on both sides of the road, at the east end of the mile where the ditch empties is a river and the volume of water passing down a hill close to the river caused a washout damaging the road. The township of H. receives a notice from the township of D, ordering it to change the watercourse and repair the road.

1. Is the township of H. liable for damage to road, the Government having cut the ditch before said township was an organized municipality?

2. Should not the township of D. have ascertained the watercourse before notifying the township of H.?

3. As the belt of land being very level the ditch after being made created a watercourse. Which municipality is liable for damages done. Please advise the proper steps to be taken?

1, 2 and 3. This drain is apparently on the boundary line between these two townships, which is under their joint jurisdiction, and they are jointly bound to keep it in repair. Neither township seems to be responsible for occasioning the damage to this road, as the drain which causes it was constructed by the Government, and the road should be put in a safe condition for travel at the joint expense of the two municipalities. Proceedings should be instituted either in pursuance of The Municipal Drainage Act (R. S. O., 1897, chapter 226,) or The Ditches and Watercourses Act (R. S. O., 1897, chapter 285,) as the circumstances require, for the construction of a drain. The proper watercourse would then be ascertained and followed by a competent engineer, and the rights of all parties interested properly adjusted.

#### Expense of Submitting Sectional By-Law.

440—P. P.—1. Should the expenses of submitting a sectional bonus by-law in aid of a railway to the ratepayers of a township be charged against the section of the same petitioning for the by-law or should it be paid out of the general funds of the township?

2. Is it necessary for a council to promulgate such a by-law if finally passed as provided in section 375 of the Municipal Act?

1. There is no provision made for charging these expenses against the ratepayers in the municipality chargeable with the payment of the bonus debentures alone, and they will therefore have to be paid out of the general funds.