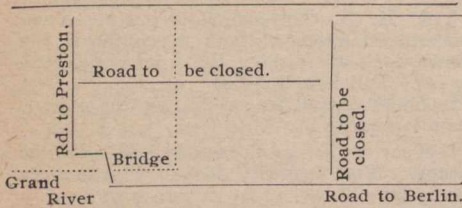


2. How must council proceed to get possession of land for road?

3. Can the council force owner to arbitrate?

4. Is the township liable for any damage that may occur when people cross the open ford in the river?

1. The council is empowered by section 637 of the Consolidated Municipal Act, 1903, to open this road if it deems that the convenience of the public requires it. The preliminary proceedings prescribed by section 532 of the Act must first be strictly observed.



2. The council has power, under section 637 to take possession of such lands as may be necessary for opening and establishing a legal road in this locality and if the owner or owners of the land so taken and the council fail to agree as to the compensation to be allowed to the former, their differences must be settled by arbitration under the Act. (See section 437.)

3. Yes. See sections 451 to 454, (inclusive), of the Consolidated Municipal Act, 1903, particularly section 454.

4. This depends on the circumstances of each particular case. As long as this road remains open, it amounts to a tacit invitation to travellers to use it, and if an accident should happen, by reason of the absence of a bridge at the river ends of the road, to a stranger to the locality at night or otherwise, without any contributory negligence on the part of the person who sustains injury, the municipality would most likely be held responsible in damages. It would be different if the accident happened to a person well acquainted with the locality and the nature and condition of the road, as it would then be safe to assume that he was using it at his own risk. In any event, the municipality should have conspicuous notices at either end of the road, warning travellers of the dangerous condition of the river crossing.

#### Liability For Expenses of Burying Unclaimed Body.

**512**—C. A. W.—A resident of an incorporated village leaves his home in the evening and goes into the adjoining township, and is killed by a passing train. Is the township liable for his funeral expenses and all other expenses concerned, he having been a resident of the village for a number of years and well known?

If there is an inspector for anatomy for this locality, the body of the deceased should have been placed under his control as directed by section 2 of chapter 177, R. S. O., 1897. If there is no such official in the locality, this unclaimed body having been found dead within the limits of the township municipality should be

buried at the expense of the corporation of such township, as directed by section 19 of the Act, but such corporation may recover such expense from the estate of the deceased, (if any.)

#### Timber on Original Road Allowance to be Sold Subject to Right of Government Licensee.

**513**—R. A. B.—Will you inform me if a municipal council has the right of selling timber on road allowances, whether such lots are included in lumbermen's limits or not?

By "lumbermen's limits" we infer that reference is made to the limits included in licenses issued pursuant to section 2 of chapter 32, R. S. O., 1897. If this is so, the Government may include the timber on any Government road allowance in any such license. See section 7 of the Act. And as regards such timber, the council of the municipality can exercise the authority to sell it, conferred by sub-section 7 of section 640 of the Consolidated Municipal Act, 1903, subject only to the provisions of section 7 and following sections of chapter 32, R. S. O., 1897.

#### Council's Liability for Sheep Killed by Dogs—Killing of Dogs—Council's Liability for Death of Cow.

**514**—J. S.—1. A ratepayer has sheep killed by dogs, and the owner of the dogs is found. In case the owner of dogs is not worth price of sheep killed, or refuses to pay, can owner recover from council?

2. A neighbor shot the dogs while pursuing the sheep and has received notice that he will be prosecuted. Was he perfectly justified in shooting the dogs?

3. A cow was being driven home to milk along a public road and stepped through a hole in a culvert and broke its leg and had to be destroyed. Can owner recover full value from township council?

1. Section 15 of chapter 271, R. S. O., 1897, makes provision for the recovery by the owner of sheep killed or injured by dogs, of the amount of the damage occasioned, from the owners or keepers of such dogs, by summary proceedings before a justice of the peace. If, as a result of these proceedings, a conviction of the offender is obtained, and the owner of the sheep killed is unable to levy the amount ordered to be paid, for want of sufficient distress to levy the same, section 17 of the Act provides that the council of the municipality in which the offender resided at the time of the injury, shall order their treasurer to pay to the aggrieved party two-thirds of the amount ordered to be paid by the public under the conviction, in addition to the costs of the proceedings before the justice and before the council. The mere refusal by the owner of the dogs to pay the amount of the damages sustained by the owner of the sheep killed will not justify the council in paying the latter such amount.

2. Yes. Clause (a) of section 9 of the Act provides that "any person may kill (a) any dog which he sees pursuing, worrying or wounding any sheep or lamb."

3. If the owner of this cow can show that by reason of the hole in the culvert, the highway was out of repair, that this

non-repair was due to negligence on the part of the municipal corporation, that the damage, (the loss of the cow), was sustained by reason of the non-repair, and that the conduct or knowledge of the driver did not contribute to the happening of the accident, the owner of the cow can recover the amount of damage he has sustained from the municipality. Notice of the accident and the cause thereof must be served upon, or mailed to the head of the corporation or the clerk within thirty days after the happening of the accident, and the action must be brought within three months after the damages have been sustained. (See section 606 of the Consolidated Municipal Act, 1903.)

#### Vote Required to Carry Resolution—Councillor Supplying Material to Corporation Contractor Disqualified.

**515**—G. H. B.—Our village council engaged a man to water streets at \$12.00 per week, during the pleasure of the council. At a meeting of the council with the reeve and two councillors present, they cancelled the contract.

1. Was this legal with only three members of the council present?

2. The village constructed a quantity of granolithic sidewalk by contract. One of the councillors furnished the contractor with cement for the job. Can the said councillor be unseated and disqualified for so doing?

1. If the reeve and the two members of the council present, were not disqualified to vote on the question, and all voted in favor of the cancellation of this contract, this was sufficient for the purpose. Since the council of this municipality is composed of only five members, section 269 of the Consolidated Municipal Act, 1903, is applicable.

2. Sub-section 1 of section 80 of the Consolidated Municipal Act, 1903, amongst other things provides that "no person having a contract for the supply of goods or materials to a contractor for work for which the corporation pays, or is liable directly or indirectly to pay, or which is subject to the control or supervision of the council, or of an officer thereof on behalf of the council, shall be qualified to be a member of the council of any municipal corporation." The councillor has transgressed the provisions of this section and proceedings may be instituted against him to unseat him as provided in section 208 of the Act and the other sections of the Act, therein mentioned.

#### Removal of Fence on Road Allowance.

**516**—J. B.—A ratepayer made a complaint to our council that a certain fence was on the road allowance and he wished the council to have it removed. The owners of the farm were notified to have the fence removed by a certain time. They object to do so until they are satisfied the fence is on the road. Who are the proper persons to employ a surveyor and pay for the same?

If there is any doubt as to whether this fence is on the correct line or not, the council cannot safely take any proceedings to enforce its removal, until this point has been definitely settled. In order to accomplish this, the council should employ a competent land surveyor to locate the