

rate to be levied for police village purposes; but this is the only provision of the kind which we can find and it has no application to the matter in hand.

2. Section 740 of the Municipal Act enables police trustees and township councils to enter into an agreement in regard to the rates to be levied for purposes within the province of such trustees, but this section does not include bridges.

3. Whether a structure is a bridge or a mere culvert is a question of fact rather than law, and a capable engineer after an examination of such a structure is better able to say whether it is a bridge or a culvert than a lawyer. See our answer to question No. 432.

#### Proceedings to Fill Vacancy Caused by Death of Reeve. Conduct of Business of Special Meeting.

**434**—CLERK.—The reeve of our township died on the 28th of August, and on the same date our council met and transacted all the business which came before the meeting, and adjourned to meet again on Nov. 2nd, 1901. When the meeting adjourned they were not aware that the reeve was dead.

1. Will it be necessary to appoint a reeve to fill the vacancy for the residue of the term, or will it be legal for the council to meet on Nov. 2nd, and do business without a reeve by appointing one of their number chairman.

2. If a reeve has to be elected will it require a special meeting of the council to declare the seat vacant and order a new election, or has the clerk power to issue a proclamation for an election to fill the vacancy without orders from the council?

3. Can any one of the present councillors run for the office of reeve by calling a special meeting and accepting his resignation as councillor?

4. Would it be legal to transact any other business at special meeting only that for which the meeting was called.

1. It was the duty of the clerk to forthwith after the death of the reeve, to have taken the necessary steps to fill the vacancy. For the procedure in such a case, see section 212 of the Municipal Act.

2. No meeting of the council to declare a vacancy is necessary and is improper. The procedure is plainly provided for by section 212 of the Municipal Act.

3. Yes.

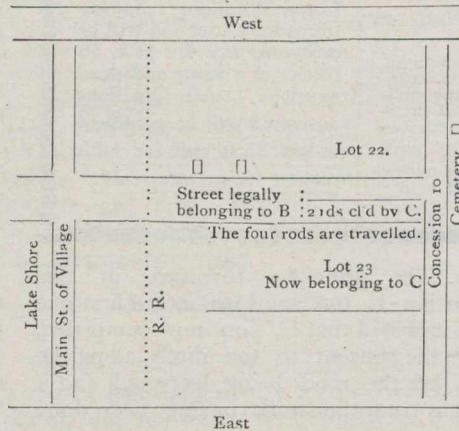
4. No.

#### Title to Road Allowance—Poundage Fees.

**435**—A SUBSCRIBER.—1. In the year 1890 A purchased lots 22 and 23, concession 10, township of B, from B. During the same year A gave a road allowance of four rods, two rods off one side of lot 22, two rods off one side of lot 23, to the village municipality, but gave no deed of the road to the council. The road leads to the cemetery, has been travelled for ten years, and the village council have expended money in making and keeping the roads in repair. I may mention that the lots, though mainly farm lots, are within the village municipality. A was unable to finish paying lot 23, and in the year 1900 he abandoned the lot, which fell back to B. In the year 1900 B sold the lot to C, and gave C a deed. C now claims the two rods of lot 23, which were originally given by A to the village council. Have the village council a legal right to the road at the present time? Does peaceable possession for ten years give to village council the right to keep the road open.

2. Is the poundkeeper entitled to all the poundage fees provided by by-law of the council,

or should the poundkeeper pay part of the poundage fees to the council?



1. You do not explain how the lots sold by B to A "fell back to B," using your own language. B may have sold to A, agreeing to give A a deed when he paid for the lots, or B may have made a deed to A taking a mortgage back. It does not, however, matter, because it is not likely that A was more than an equitable owner, and as such he could not, as against B, make a good dedication of a part of the lots to the public for the purpose of a road. It follows, therefore, that the municipality cannot hold the lands as against B. If it is important that the public should have the road kept open the only course is to have a by-law passed expropriating so much of the lots as may be necessary for a road under the provisions of the Municipal Act.

2. We are of opinion that the poundkeeper is entitled to the whole of the poundage fee.

#### Tenant Only Should be Assessed in this Instance.

**436**—D. C. M.—Kindly let me know to which part of the voters' list the following belongs?

A B, who is a tenant, is entered on the assessment roll as follows:

Col. 4. Col. 6. Col. 17.

A B, Laborer. F C D, Owner. \$150

Which of these two has a vote at the municipal election?

A B alone is entitled to be placed on the voters' list and should be placed in part one.

#### Council can Pass More By-Laws Than One for Levy of Township Rate.

**437**—J. R.—The council of this municipality finds that the levy for township purposes should be \$200 more than the by-law already passed authorizes. I hold that chap. 223, section 405, allows the passing of another by-law for any additional sum. Am I right?

You are quite right.

#### A Drain Under the Ditches and Watercourses' Act is Needed.

**438**—SUBSCRIBER.—My farm drains into a large open ditch on adjoining farm, owned by A, thence along the next two farms into an open drain, constructed under the Drainage Act, which I was assessed for. About thirty years ago I assisted the former owner to construct the ditch on farm now owned by A, since then A has twice assisted to clean and deepen the ditch

up to my line. For the last fifteen years I have maintained a portion of the ditch with his consent by verbal agreement.

1. Have I legal right to drain into said ditch? If so, please give authority.

2. Could A put small tile in ditch sufficient for what he calls his water and then fill?

3. Does the fact of my being assessed for outlet under the Drainage Act give me any right or privilege between my farm and said drain?

1. No.

2. Yes.

3. No. Proceedings must first be taken under the Ditches and Watercourses Act, to make provision for the construction of a drain between your land and the outlet, and for the adjustment of the respective interests of all parties concerned. Unless you attain the right to convey the waters off your lands across A's farm, under this Act you cannot legally discharge these waters upon or legally conduct them over his land.

#### Liability of Railway for Drainage.

**439**—A. S. L.—The township of \_\_\_\_\_, in the county of \_\_\_\_\_, has a railway running through a marsh, and in grading road-bed they have left a ditch without providing any means of escape for the water, and it is becoming a nuisance to the people living in the vicinity of this stagnant pool. Is railroad liable to township, or must township abate nuisance? Before building of railroad there was a creek draining this marsh, but I understand railroad has no culvert.

The railway company is not liable to the township nor is the township bound to abate the nuisance.

#### Impounding of Cattle for Trespassing.

**440**—A. B.—In your answer of March 1901, Question 143, you partially answer a question that has given rise to much discussion. To further answer questions that reasonably follow the answer already given, can live stock, that is legally entitled to run at large, be lawfully impounded for trespassing upon lands adjoining highways, such lands having no fence adjoining the highway, or insufficiently fenced to keep stock off such adjoining lands.

Yes. We cannot see why a man who owns land along a highway should be compelled to build a fence along the whole front of his farm for the benefit of his neighbor who desires to pasture his stock upon the highway, even though there is a by-law permitting him to allow his stock to run at large upon the highway.

#### The Poundage Act and Animals Running at Large.

**441**—CLERK. Your reply to question 410 (1) in September issue of THE MUNICIPAL WORLD reads as follows: "By the Common Law all cattle are permitted to run at large on the public highways, and are legally at large on a highway of a municipality until the council has passed a by-law pursuant to sub-section 2, of section 546, of the Municipal Act restraining them from so doing."

How do you justify this opinion in view of the provisions of "An Act respecting Pounds," chap. 272, R. S. O., 1897, which is declared to be in force in every township, city, town and incorporated village in Ontario, until varied or other provisions are made by by-laws passed under the authority of section 546, of the Municipal Act?