

## LEGAL DEPARTMENT.

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## Municipal Councils—Their Powers and Jurisdiction.

The importance of the statutory provisions relating to the control and jurisdiction of municipalities over roads and bridges, lying within their limits, cannot be overestimated. The liability imposed by law on councils of keeping in repair and maintaining the highways and bridges in their respective jurisdictions is worthy of the most direct attention and consideration, as the consequence of wilful or negligent non-repair, is, as a general rule, the recovery of heavy damages against the offending corporation by the person or persons injured. Probably one-half of the business transacted by councils, generally has to do with roads and bridges, and in no other way do they run a greater risk of encroaching upon or clashing with the rights and privileges of the individual, than by inconsiderately or carelessly dealing with questions of this kind. It might be well at the outset, to premise a few words as to the definition of a highway. Section 524 of the Municipal Act, provides, that all allowances made for roads by the crown surveyors in any town, township, or plan, already laid out, or hereafter laid out, and also all roads laid out by virtue of any statute, or any roads whereon the public moneys have been expended for opening the same, or whereon the statute labor has been usually performed, or any roads passing through Indian lands, shall be deemed common and public highways. It would seem that if once a road acquire the legal charter of a highway, by reason of the original survey, or otherwise, it is out of the power of the crown, by grant of the soil and freehold thereof, to a private person, to deprive the public of their right to use the road. A road must have a defined course or definite boundaries, otherwise it will not be deemed a common and public highway. A road closed at one end may be deemed a highway, but not one closed at both ends. The public money referred to in the section quoted, may mean either the money of the government, or the money of the local municipal corporation. It would seem that either would be public money within the meaning of the section. It must be shown, however, that the money was lawfully expended, and expended for the purpose of opening the road. Where an attempt is being made to show that a road is a public highway by reason of statute labor being performed on the same, it must be shown that statute labor was usually performed on the road. In a case decided, a witness stated, that, being path-master for two years, some years since, he directed statute labor to be performed on the road, besides expending money of his own in improving it; it was held that the proof came very far short of what the statute requires. Section 525 vests the soil

and freehold of every highway or road, altered, amended, or laid out in Her Majesty. Section 526 gives to every municipal council, subject to certain provisions and exceptions, jurisdiction over the original allowances for roads and highways and bridges, within the municipality, and section 527 vests every public road, street, bridge, or other highway, in a city, town, township, or incorporated village in the municipality, subject to the rights and exceptions in the said section mentioned. There seems to be some inconsistency between the sections 525 and 527, but they may probably be reconciled by reading section 525 as applicable to roads laid out by public authority of some kind, and section 527 to roads laid out by private individuals over their own lands. The right of the public in either case is simply to use the road for the purpose of a highway, and using it for different purposes, such as excavating soil, or would subject the person so using the road to an action at the suit of the owner of the freehold. Every individual has an equal right to use a public road, street or bridge. The municipal corporations cannot be deemed proprietors, and as such entitled to control the possession any more than any other corporation, or person interested in the streets, roads or highways. Municipal corporations have only a qualified property vested in them to be held and exercised for the benefit of the whole body of the corporation as trustees for the public.

## Legal Decisions.

## SKLITZSKY VS. CROUSTON.

In this case it was decided that a street, or road laid out upon a registered plan of a township lot, where, although houses are clustered around, there is not any incorporated village, continues to be as private street or road, although the owner shall sell a lot fronting on it, until the township council adopted it as a public highway or until the public by travelling upon it, has accepted the dedication offered by the proprietor. It was also held that section 62 of chap. 152 R. S. O., applies only to cities, towns or incorporated villages. It would seem also from this case that a person who purchases lots according to such a plan, abutting upon streets laid out thereon, acquires as against the person who laid out the plan, and sold him the land, a private right to use those streets, subject to the right of the public to make into highways, in which case the private right becomes extinguished, and also that the right to use a private road does not necessarily mean a right over every part of the roadway, but only to such a width as may be necessary for the reasonable enjoyment of it.

## CLOSE ET AL VS. THE CORPORATION OF THE TOWN OF WOODSTOCK.

This was an action brought to recover damages by reason of noxious matter being brought down and deposited on the plaintiffs' lands by means of a drain constructed

through such lands by the defendants. The trial judge directed a reference to ascertain the damages sustained by the plaintiffs, and reserved costs and further directions. The defendants moved to have this judgment set aside, and judgment entered in their favor. It was held that a municipal corporation having constructed a drain without a by-law for the particular portion passing through private property, whereby noxious matter was brought down and deposited thereon, was liable for damages, sustained thereby. Notwithstanding that there were excavations on the land, but for which the noxious matter might have passed off. The owner not being bound to have his land in a state of nature, nor was it any answer that the drain was used for similar purposes by others as well as the corporation.

## IN THE MATTER OF CLARK AND THE CORPORATION OF THE TOWNSHIP OF HOWARD.

This was an appeal from a judgment, quashing a by-law of the township of Howard. On the 21st September, 1868, the municipal council of the said township, under the authority of the statute, 29 and 30, Vic., chap. 51, sections 281 and 282, passed a by-law for the construction of certain drains in different parts of the township. One of the drains was known as the McGregor Creek drain. The lands to be benefited by each of the proposed drains were mentioned and set forth in separate schedules and estimates were prepared, and the assessments for construction properly fixed. On the 11th December, 1883, the municipal council passed another by-law to provide for the repairing and cleaning out of the McGregor Creek drain, and assessed the costs of the work upon the lots assessed for the original construction of the drain, and in the same proportion as in the first by-law. Subsequently however, the council, thinking the assessment inequitable, instructed an engineer to make a report in the matter, and the engineer in his report pointed out that different portions of the land not assessed for the original construction of the McGregor Creek drain, were now benefited by it, and also that certain portions of the township assessed for the original construction of the drain were now being benefited between themselves in the same proportions as had been the case when the original construction took place, and that the assessments should be altered in both respects. The engineer in accordance with his instructions made a new assessment of the amount required for cleaning and repairing, but, by direction of the council against those portions of the township only that were assessed for the original construction of the drain. On the 21st September, 1886, the council passed the by-law in question, adopting the new assessment, as far as any payments yet to be made were concerned. It was held that the provisions of the act of 1869, 32 Vic. chap. 43, section 17, as to maintenance and repair, now section 583 of