

amount of road allowance of his property. A makes demand on council within one year from passing by-law for compensation for fencing. A has since sold property along sideroad to C, C has no other outlet but by said road

1. Can A compel council to pay for half the expense of said fence?

2. Can a municipal council be compelled to pay the expenses of fencing when no compensation has been given for road allowance?

1. If A has made his claim for compensation before conveying his land to C, We think that he should be allowed something for fencing. Section 437 of The Municipal Act provides that compensation shall include cost of fencing where required. Where land is taken off the lands of two adjoining owners, it entails extra fencing, and we do not see why arbitrators should not take that fact into consideration when they are called upon to fix compensation to be paid by a municipal corporation in such a case. But A having sold the land to C, we do not think that he is now entitled to be paid a half of the cost of the fence built along the road and subsequently conveyed with the land to C.

2. Where a man is entitled to compensation for land taken for a road, we can see nothing to prevent the owner from limiting his compensation to the extra cost of fencing, but if the owner expressly makes a gift of the land for the purpose of a road we do not think he can afterwards claim compensation for fencing. In giving compensation under section 437, a deduction must be made for any advantage which the road is to the owner.

Building New Road

122.—A. F.—1. Is a municipality compelled by law to expend money in opening and building a road on a concession line if a person owns land in the concession, but is not living on the land?

2. If he were living on it would the municipality be compelled to build an expensive road through three quarters of a mile of swamp to his land?

1. No.

2. No. In the case of *Hislop v. McGillivray*, 17 S. C. R., 479, it was held that the courts of Ontario have no jurisdiction to compel a municipality at the suit of a private individual to open an original road allowance and make it fit for public travel.

Qualification of Councillor.

123.—SUBSCRIBER.—A town municipal councillor is assessed on the roll for \$1,350 as Freeholder. It is found at the Registry office that the deed is in another man's name, not even his relation and that there is a loan of \$700 mortgage on the property against the other man. Can the councillor be unseated?

You do not say when the transfer of the property for which the person elected as councillor, was assessed took place, before or after the election. Subsection 1 of section 76 of The Municipal Act provides that the candidate must be possessed of the property qualification therein mentioned at the time of the election. If such was not the case the councillor can be unseated, provided the necessary proceedings for that purpose can be and are taken within the time mentioned in sec. 220 of the act, unless the circumstances

are such that the qualification is saved by sub-section 2 of section 76.

Separate School Taxes.

124.—CLERK.—Under section 24 of The Assessment Act, a lot of land in this municipality is assessed against owner and tenant. The former a R. C., and supporter of the the separate school, the latter a Protestant, and objects to pay the school rate charged in the separate school which is much higher than in the public school. For the past two years the land was assessed in the same way, to owner and tenant, and they seemed to have compromised matters; but the owner is now in the North West. To which section should the school rate this year be paid under the circumstances? The 53rd section of the Separate School Act, R. S. O., 1897, bears on the point.

The 53rd section of The Separate School Act seems to answer this question. It provides that in such a case as you mention, "the occupant or tenant shall be deemed and taken to be the person primarily liable for the payment of school rate, and for determining whether such rate shall be applied to public or separate school purposes, and no agreement between the owner or tenant as to the payment of taxes as between themselves shall be allowed to alter or to affect this provision otherwise"

Illegal By-Law.

125.—C. S.—Our council intends to pass a by law not to have an assessor for the next two years, that is to levy the rates according to the present assessment roll during that time in order to save expense.

1. Can any ratepayer legally object to this by-law, or refuse to pay his taxes?

2. In case any one comes to live in this township inside of those two years, could they not be put on at the Court of Revision that will be held as usual?

1. Your council has no legal authority to pass the by-law you mention. Section 55 of The Assessment Act provides that subject to the provisions of sections 58, 59 and 61, every assessor shall begin to make his roll, in each year not later than the 15th day of February, etc. Any ratepayer could object to the by-law, and refuse to pay taxes until they are levied in a proper manner. See also section 295 of The Municipal Act which makes it the duty of council as soon as may be convenient after the annual election to appoint assessors for the municipality.

2. No.

Qualification of Candidate in Parry Sound.

126.—W. T.—1. Is the qualification for reeve or councillor the same in the district of Parry Sound as in the other portions of the Province? 2. If not what is it?

On the last revised assessment roll X was assessed for \$300. A short time after the Court of Revision X sold part of his property for \$250. He was elected councillor at the last election and before taking the declaration of qualification he was asked if he thought himself qualified to sit as councillor. He said he was and took the oath that he was worth at least \$200.

3. Is he legally qualified?

4. If not, what steps should be taken to have him removed?

1. No.

2. See section 76, sub-section 1 of The Municipal Act, R. S. O., 1897, chap. 223,

clauses e and f, provide that the value of the property, on which the person elected, or to be elected seeks to qualify in the District of Parry Sound, should be rated on the last revised assessment roll of the municipality as follows:

(e) In townships and villages, freehold \$100, or leasehold to \$200.

(f) In towns, freehold to \$400, or leasehold to \$800.

3. No, the person elected should have or his wife should have *at the time of the election* as owner or tenant, etc., the property mentioned in section 76, sub-section 1, rated in his own name or that of his wife on *the last revised assessment roll* of the municipality to the amount mentioned in question 2.

4. You will find the proceedings necessary to be taken for this purpose, provided in sec. 219 and following secs. of Municipal Act. They should be commenced within 6 weeks after election, or one month after acceptance of office by the person elected.

Farm Crossing on Railways.

127.—J. T. C.—The Great Western Railway Company when putting the London Huron & Bruce division through the township of Stanley received a bonus from the township on certain conditions contained in a by-law, one of which conditions reads as follows: "That if the line of said railway is not located on or adjoining to what is commonly called the "Blind Line" in this township, then the company shall construct cattle guards and erect two guards at every farm crossing in the said township of Stanley through which the line of the said railway shall be built." The company fulfilled its agreement, but last fall took away the guards at every farm crossing and the farmers want them replaced. Can the company be compelled to maintain them, since there is no claim to that effect, or does the fact of their putting them in as per agreement bind them to maintain them? The line goes through the centre of farms.

In the absence of some special arrangement to the contrary, a railway company is not bound by the statutes to construct and maintain cattle-guards at farm crossings. The duty imposed on them is to erect and maintain cattle-guards at all road crossings, suitable and sufficient to prevent cattle and animals from getting on the railway, fences on each side of the railway, of the height and strength of an ordinary division fence, *with openings or gates or bars therein* at farm crossings of the road for the use of the proprietors of the lands adjoining the railway. Since the agreement you mention does not bind the company to *maintain* the cattle-guards at farm crossings, we are of the opinion that the farmers are without a remedy against the company, if the latter refuse or neglect to do so. See section 30, chap. 207, R. S. O., 1897 and section 13 of chap. 106, R. S. C., 1886.

Liability of Board of Health—Of Railway Companies for Drainage—Of Counties for Maintenance of Bridges.

128.—SUBSCRIBER.—1. If the board of health finds a contagious disease in a house and placards the house, has a municipality a right to find a man to see to the family while the house is placarded; and also is the municipality bound to pay all doctor bills whether the parties are able to pay or not?