

3. The length of time the water has been running in its present channel or channels does not affect the question.

4. The council should do nothing, but leave the parties interested to the remedy provided by the Ditches and Watercourses Act, unless the construction of a new drain or the improvement of the existing drain is necessary to put and keep the roadway in a condition of safety, when the council can initiate proceedings under the Act.

5. Yes. See section 22 of the Ditches and Watercourses Act. (R. S. O., 1897, chap. 285.)

6. A can initiate proceedings under the provisions of the Ditches and Watercourses Act, to have an award made by a competent engineer, whereby the rights and interests of all parties concerned can be properly adjusted.

Pulling Down Buildings to Prevent Spread of Fire— By-law Prohibiting Deposit of Rubbish on Streets.

268—H. S. N.—1. How should a fire brigade be organized, so that when it is thought a building which is not already on fire, should be destroyed in order to prevent spread, the same may be done even against the protest of owner and insurance recovered on said property, or where there is no insurance, no person will be held responsible? Upon what authority and under whose instructions should such destruction of property be proceeded with?

2. How would we proceed to make a worthless character in village remove unsightly objects from street side, such as remains of old buggies, etc., without the municipality being at any cost?

1. Subsection 12, of section 542, of the Municipal Act, empowers councils of villages to pass by-laws "for making regulations for suppressing fire, and for pulling down or demolishing adjacent houses or other erections, when necessary to prevent the spreading of fire," but the rights of private property are subordinate to the higher demand of public welfare, and therefore in cases of imminent and urgent public necessity any individual or municipal officer may, independently of any statute or by-law, and without responsibility to the owner for damages, pull down, or demolish, houses or other combustible structures in a city or compact town (or village) in order to prevent the spread of an existing conflagration. (Dillon on municipal corporations, section 955, et seq.) and this right has long been recognized by the law of England. An ordinary fire insurance policy would cover a loss of this kind.

2. The council should pass a by-law, pursuant to subsection 6, of section 557, of the Municipal Act, as amended by section 28 of the Municipal Amendment Act, 1900, imposing a penalty on persons depositing rubbish on the streets of the municipality. As to the authority for imposing the penalty, see clause (b) of subsection 2 of section 702 of the Act.

Conduct of Business at Council Meeting.

269—OLD SUBSCRIBER—Our reeve had to go to hospital for medical treatment. Our council

adjourned at the January meeting to the 5th February. Reeve wanted clerk to put back meeting for a few weeks if he would not be back before then. The clerk notified three members of the council. They said if it was necessary to hold the meeting to hold it on the 15th February. The clerk said it was necessary, that an assessor had to be appointed and other important business had to be transacted. We held the meeting; three councillors were present; reeve and one councillor were absent. We appointed a chairman in absence of the reeve and proceeded with business. The reeve holds that the meeting is illegal, that the clerk had every right to put back the meeting and that as reeve, he will not sign the minutes transacted at said meeting at the June meeting.

1. Is the clerk justified in doing what he did under the circumstances?

2. Are the proceedings of the meeting legal, being transacted in a straightforward manner by three councillors?

1. Yes. He could not have legally acted otherwise. The council, at its January meeting, appointed the 15th of February as the date of its next meeting, by resolution, and the clerk had no power to alter the date of the latter meeting.

2. Yes. Your council being composed of five members, three constitutes a quorum, and they were present at the meeting. (See section 268, of the Municipal Act.) All motions or resolutions submitted to the council at the meeting should have received the concurrent votes of all three members present in order to carry. (See section 269.)

3. As we understand it, the reeve did not preside, nor was he present at the meeting of the 15th of February. Therefore he is not the proper party to sign the minutes of that meeting. They should be signed by the clerk, and by the member of the council who was selected to and did preside at the meeting.

Placing of Non-Resident Tenant on Voters List

270—G. S. Cannot agree with you as to placing name of non-resident tenant in part 1 of the voters list, as I think that one of the requisites for a party to have his name on part one of the voters list is that he is entitled to vote for a member of the legislature, and unless a person is resident of the municipality at the time provided by statute for beginning to make the assessment roll in the municipality, he is not so entitled. See Sec. 15 of the Assessment Act. Am, however, open for conviction.

We must adhere to our reply to question No. 202 (1902, April issue) for the reason there given and in our answer to question No. 165 (1902, March issue). The section you quote has reference entirely to parties possessing the manhood franchise qualification only.

Road in Possession of Private Individual—Opening of, and Sale of Timber On It.

271—A SUBSCRIBER—I have and own the land on each side of a concession line and have had it (the concession) fenced in with the land for 40 years. The council are talking of selling the timber off concession line. Can they sell it without my permission? or can they open the concession without paying me for the same?

The fact of your having had this portion of the concession road allowance fenced in with your land for forty years, does not give you any interest or title therein, or in the timber growing thereon.

The council has power to pass a by-law for the sale of this timber (subsection 7 of section 640 of the Municipal Act) and for opening the road allowance (section 642 of the Act) without your permission before doing so. If, however, the case is one within the provisions of section 642, the council should, before passing the by-law for the opening of the road allowance, give you the notice mentioned in subsection 2 of this section.

Acquisition by Town of Land for Park Purposes.

272—G. G. A.—On 16th January, 1886, the mayor and treasurer execute a tax deed of a town lot which deed recites that: (in the statutory form)

"Whereas by virtue of a warrant under the hand of the mayor and seal of the said town, bearing date the 26th day of August, A.D., 1884, commanding the treasurer of the said town to levy upon the lands hereinafter mentioned for the arrears of taxes due thereon with his costs, the treasurer of the said town, did on the 9th day of December A.D., 1884, sell by public auction to A. T., who assigned the same to the corporation of the town of M., in the county of . . . that certain parcel or tract of land, etc.," and the operative words are as in the statutory form;

"Do hereby grant, bargain and sell unto the said corporation of the town of M., their successors and assigns, etc."

There appears to be now no proof that notice in writing of the intention of the council to purchase was given under section 184, (3) of the Assessment Act. The land has been held (and enclosed by fences) by the town corporation since the date of the deed as a public park; but no by-law appears to have been passed authorizing the entering upon, taking, using, or acquiring the land for a park.

1. Is the tax-deed mentioned sufficient to pass the fee in the land to the town corporation as it purports to do?

2. On the question of notice of the intention of the council to purchase the lands, would such notice be now presumed, having regard to the lapse of many years since?

3. Would a fresh tax-deed now issued to A. T. above named "in trust and to the use of the corporation of the town of M." be sufficient to convey the fee simple in the lands to the town corporation? There seems no authority under the Act to convey land in trust.

4. I might add that no adverse claim appears to have been made to the lands, and the former owners appear to have been under no legal disability, and under these circumstances would not the Statute of Limitations bar any adverse claim at this date?

If the deed was sufficient to convey the fee simple in the lands to the town corporation, I presume the absence of a by-law authorizing a park, etc., for which the land was acquired, would place the lands under the Mortmain Acts, since they were not sold within three years. It occurred to me that one way to get over the difficulty would be for the mayor and treasurer to issue a fresh tax-deed to A. T. and have him execute a quit claim deed to the town corporation, but A. T.'s wife refuses to sign the deed and her dower would attach on the execution of the tax deed to A. T. unless such tax-deed were made in trust or to the use of the town corporation.

We cannot find any authority for the course adopted in this case. Though you do not say so expressly, we infer that the sale of the lands in question to A. T. was made for the benefit of the corporation of M, to which A. T. assigned the lands. A municipal corporation cannot purchase land except under some statute authorizing the purchase, and in the manne