

a year from the dates at which they were incurred. In one or two cases when a by-law was passed to raise funds for the repair of a drain and the cost of repairs and the sum for which the drain was in debt were both small, the amount of the debt was added to the cost of repairs and the whole was collected by a pro rata levy on the lands assessed for the drain, but in most cases no attempt has been made to collect and the indebtedness has run on from year to year until it now aggregates nearly six thousand dollars.

1. Can we, in your opinion, collect by a special tax all or part of the amounts for which the drains are indebted to the townships?

2. When costs are incurred by an appeal to the referee or by an appeal from the decision of the referees, and the referee or the court of appeal does not decide whether said costs shall be paid by the drainage area or out of the general funds of the township, can said costs be collected from the drainage area, or must the township as a whole foot the bill?

1. The course that your council has pursued in the past in this regard was irregular, and the cost of the repairs, etc., ought to have been raised out of the drainage area from year to year, or as soon as possible after the money was expended. Your by-law creating the assessment and the liability of the rate-payers ought to have been passed without delay, so that the rate for the expenditure would become an assessment and charge upon the respective lands assessed, and then any purchaser of these lands would take them subject to that charge.

2. We are of opinion that these costs are properly chargeable to and collectable from the lands within the drainage area, pursuant to the provisions of subsection 1 of section 95 of the Drainage Act (R. S. O., 1897, chapter 226).

Responsibility of Death of Horse in Snow Bank.

170—INCORPORATED VILLAGE.—On one of the side streets in a part little used, a team of horses being driven along with empty sleigh in the dark, one of the horses gets down in the snow bank softened by recent thaw. One of the horses dies right there in a few minutes. Two days before a team had gone along the same track without trouble. There was a good road around the other side of the block so as to allow him to get where he wanted to go. The bank had not been shovelled out, but several teams had driven over it and until the last day or two before the accident would bear horses up. Do you consider municipality responsible for the price of the horse?

The rule is that the public highway must be kept in a reasonably fit state for travel. If the municipal corporation can be shown to have had actual knowledge of the dangerous condition of the highway, or such condition had existed for such a length of time that the corporation was guilty of negligence in not having discovered it, the corporation will be held liable to pay the owner of the horse damages for the loss of his horse, provided he gives notice of action within the time and in the manner required by subsection 3 of section 606, of the Municipal Act. This man had a right to assume that the road he took was in a reasonably safe condition for travel. He was not bound to make particular enquiries as to this, before entering upon it, or to drive around the block instead to reach his destination.

Proceedings at Nomination—Assessment in Districts Opening a Highway—Right to Timber on Road Allowance.

171—W. T. G.—1. Nomination meeting was held, at which, through an oversight or neglect of ratepayers, reeve and three councillors only were nominated. (Five papers were put in but two of them were for the reeve and was not noticed until the meeting closed.) Two councillors and reeve held office last year, one new member, R. O., held that section 218, chapter 223, R. S. O., 1897, would cover the case, and at first meeting of council appointed one of the old councillors to the vacant seat. Is this appointment regular?

2. Council has adopted assessment of last year as assessment for this year, subject to revision, by by-law, under subsection 2, section 42, chapter 225, and Amendment, 1899, section 16. If any omissions or errors are discovered by any persons before or at the court of revision and is brought to the notice of the court, can the court, make the corrections or revisions?

3. Section 43, chapter 225, R. S. O., 1897, appears to provide that only the person assessed can complain of his assessment, and that subsection 3 of section 71, chap. 224, 1897, does not apply to these districts. Is this the correct view?

4. If a complaint is made this year, under section 43, would the assessor who made the roll last year have to be heard? or what steps should have to be taken if the assessor, who made the roll last year, would not attend the court as assessor, this year? Would the by-law adopting the assessment of the previous year, have to name the assessor, who made the roll, to act under section 44 of this Act?

5. Township in free grant district, with double fronts road allowances between concessions 2 and 3, 4 and 5, 6 and 7, etc. In the year 1886 or 1887, before the township was organized, the government made a grant to open up a road through the township, to induce settlement. One of the residents was appointed as foreman, by the government, to cut the road, as he says, where it would be of most benefit to the settlers. Part of the way he cut it through on the allowance between concession 4 and 5, then along an allowance on sideroad across one concession to the blind-line between concession 3 and 4, where no allowance is made, and cut the road on what he thought would be the line between these concessions, claiming he had power to take sufficient land of these lots on these concessions, and he run a line because he was a government employee, and was instructed to do so. Several grants have been made by the government to make and repair this road, as it was called the government road, but this employee claimed that it was not a colonization road. This man is not a licensed surveyor. Township was organized, and in 1898 the first statute labor was levied and part applied to this road. Statute labor has been done every year since on this road. A bridge was built across a stream on this road by a grant from government. I should say, in continuing this road through the township he cut it on this line run by him for two and a half miles to a sideroad allowance and along this across concession 4 to the allowance between 4 and 5, along this to the second lot and down through the centre of this lot on the 5th concession to the blind-line between concessions 5 and 6, no allowance, and he run this and cut the road out to the boundary of the township. Some of the settlers objected to the road being made in this place and wanted the road put on the regular allowance between concessions 4 and 5. Now all these concession road allowances are opened and there is not statute labor enough to go over all these roads. There are only about four people living along this road that object to its being closed although it would not affect them in travelling in regards to distance. This party who cut out the road, was a councillor for a number of years and any person who would object to any expenditure on this road or call it in question, was always assured by him that the road was properly constituted,

although no by-law has been passed by the council to expropriate the lands or to assume control of the road. The residents owning the land on the 3rd and 4th concessions are getting the lines run by a provincial land surveyor and in some places the road is away on to the 3rd concession, leaving a strip of land alongside of the road and the blind line. The question we would ask is, does the fact, of allowing statute labor to be performed and the expending of the government grant on this road, constitute it a public highway, under the control of the municipal council? The council has never, at any time, been consulted as to the spending of these government grants. (No special reserve for this road by the crown in the patents granted and no record of this road in the Crown Lands Department, Toronto.)

6. If so, must the council compensate the owners of the land for the land taken?

7. Would a deed have to be executed by each landowner concerned for the land taken? or would a by-law, mentioning the amount of land taken off each lot and registered, be sufficient?

8. In either event, would it not have to be surveyed by a duly qualified land surveyor?

9. In a case arising under section 642, Municipal Act, 1897, and the person in possession has cleared and improved the road allowance. If the council passes a by-law to open the road on that allowance, must the council allow him compensation or pay him for the improvements he has made on the road allowance?

1. We agree with the returning officer.

2. The court of revision can correct errors or supply omissions in the assessment roll, provided an appeal or complaint against the assessment has been filed with the clerk in the manner and within the time mentioned in section 43 of the Act.

3. No provision is made in the Act for the entry of an appeal by any person other than a person assessed, and since this Act makes special provisions for the conduct of courts of revision in districts, we are of opinion that subsection 3 of section 71 of the Assessment Act is not applicable.

4. Neither assessor is bound to attend the court of revision, nor does the Act make any provision for compelling their attendance. The naming of the assessor in the by-law adopting the assessment of the previous year would not make his attendance compulsory.

5, 6, 7 and 8. This road appears to have been constructed by the government through an agent acting under its directions, and to have been maintained with government monies. If this be the case, and the government has not abandoned the road by proclamation pursuant to sec. 627 of the Municipal Act, the council has no authority to interfere with it in any way. If, on the other hand, the road was constructed by the party who made it, on his own responsibility, it is not a public highway.

9. No. A person in possession of a road allowance shall be deemed to be legally possessed thereof, as against any private person (not against the municipality) until a by-law for opening such allowance for road has been passed by the council having jurisdiction over it. The timber on the road allowance belonged to the municipality, and the person in possession had no right to cut, remove or dispose of it in any way until given permission by the council to do so.