

## QUESTION DRAWER.

Subscribers are entitled to answers to all questions submitted, if they pertain to Municipal matters. It is particularly requested that all facts and circumstances of each case submitted for an opinion should be stated as clearly and explicitly as possible. Unless this request is complied with it is impossible to give adequate advice.

Questions to insure insertion in the following issue of paper should be received at office of publication on or before the 20th of the month.

Communications requiring immediate attention will be answered free by post, on receipt of a stamped addressed envelope. All questions answered will be published, unless \$1 is enclosed with request for private reply.

## Road Lines and Fences.

407.—J. H. M.—I would like your opinion on a road running between No. 2 and No. 3 concession, A living on one side, and B on the other. This summer A moved his fence into the road about six feet, then B on the other side moved his in a good deal further, leaving the road about thirty-five feet wide. They refuse to move the fence back without the council runs the line for them.

1. Can we compel them to move the fences back without running the lines.

2. Who will have to bear the expense of running the lines, the council or party concerned?

3. What proceedings should we take to have the fences properly moved?

If the council is satisfied that A, B or one of them is encroaching upon the highway, they may indict them or him, as the case may be, or the council may pass a by-law under sec. 557, cap. 223, R. S. O., 1897, for directing the removal of the fences. The council is not bound to run the lines for them. If proceedings be taken against them they run the risk of having to pay costs, and a fine if it be found that they are encroaching on the road. One of them certainly must be if the road is the ordinary four-rod road.

2. There is no provision which would apply to this case which gives either party the right to have the lines run at the expense of the other. Each one must run the line at his own expense or content himself to take chances upon his being right in case proceedings are instituted. This does not appear to be a case to which sections 14 or 15 of chap. 181, R. S. O., 1897, could apply.

3. If the council is not certain where the boundaries of the road are, they should employ an engineer at their own expense, and have the true lines ascertained, and then take the proceedings above mentioned, if the parties encroaching on the road will not remove the fence.

## School Fees Non-Resident Children.

408.—CLERK.—A resides in — township and sends his children to — village school, it being the nearest school to his residence. Some years ago the township council made a verbal agreement with the village council to refund half of A's school rate each year into village school, they to admit A's children free, which has been done. This year the village council has notified township council to enter the following rates on the collector's roll against

A's land and to pay the same over to the village council, viz. School Debenture By-law, —mills in the dollar; general school rate —mills in the dollar. There is no union formed between the sections only the verbal agreement, nor has any by-law been passed in our council to levy any special rates against A's land, only the regular rates of the township.

1. Would the clerk be justified in placing the said rates on the collector's roll?

2. Could the village council compel A to pay said rates?

3. Could the township council legally collect said rates from A?

1. No.

2. No.

3. No.

## Registration of Plan and Dedication of Streets.

409.—J. K. R.—By a plan dated 1872, A laid out certain parts of the town of R known as P section, and therein laid out a lot known as lot 85, which abutted on Quarry street. Subsequently, in the year 1895, the said A and O registered a joint plan, on which plan they laid out certain streets, among others a street known as a continuation of Barr street, which cuts off a strip twenty feet wide from the northerly side of said lot 85. This plan was registered on the 12th day of July, 1895. The new joint plan of 1895 was based on an agreement between A and O, who owned the land on each side of the said Barr street, and this said Barr street was made by A and O, each giving a twenty-foot strip off the said lands.

The municipal council, by resolution, sanctioned the laying out of this street of a width of 40 feet before the registration. Subsequent to the registration of the 1895 plan the lot 85 was sold by the said A to X, and X registered his deed after the registration of 1895 plan (it is stated that X was aware of the plan of 1895). X's deed reads lot 85 according to the plan of the 1872 plan, but does not describe the lot in feet. This Barr street property has until lately been used as a street, and some little grading done by the corporation since 1895, but this year X has built a fence enclosing the twenty feet of land which has heretofore been used as a street.

Other lots on this plan have been sold by O to other parties. Of course A claims he sold X the lot as shown in plan 1895, and X claims he bought the lot as described in plan 1872, but the deed reads as stated.

The municipal council wants this obstruction removed so as to make the street straight and in compliance with the intentions of the original owners of the street, and who intended by the 1895 plan to donate it to the town. The plan, so far as surveyor's certificate and witnesses before a commissioner and registration is concerned, seems to be all right only so far as it effects said lot 85 and all other lots on the same side of Barr Street, does it appear to be defective, in that they are not properly described.

1. Is the registration of the 1895 plan a sufficient dedication of the land to the town?

2. Can the town have fence removed on strength of this ownership as acquired by above registration?

In asking the foregoing questions I have no reference to our powers of expropriation, but we want to know if the registration of the plan mentioned before, even although it may be defective as regards the lot in question, will give us a free title to it.

3. Does the 1895 plan fulfil the requirements of section 100, chap. 136 of the Registry Act as regards this lot?

1. If the plan of 1895 shows Barr Street, and, as shown on the plan, Barr Street includes the strip which X has fenced in. It does not seem to matter to us that Lot 85 is not numbered. Apart altogether from what the plan shows, the Council may be able to make out a

case of dedication by the owner of the land. An action can be brought against X to remove the fence and in that action evidence of A's intention to dedicate this strip of land, and evidence of X's knowledge of that fact, and that it was not A's intention to convey this particular strip to X can be given. But we will not advise the Council to bring an action if the plan does not show this strip as part of Barr Street.

2. Yes. As we have already intimated we think that the public is entitled to the street, assuming that it was shown on the plan, even though the plan may be defective as to the lot.

3. It does not appear to comply with the act in regard to lot 85.

## Voting on By-Law—Drainage.

410.—A. H. S.—1. Our township council passed a by-law commuting the statute labor system. Can the question be printed on the ballot papers, "Are you in favor of the by-law?" to be voted on next January at the time of municipal elections, or would it be necessary to have two sets of men, one for the other against the by-law to get the opinion of the electors?

2. If a watercourse runs across a road and the owner of above land ditches his land to road, the municipal council ditches road. The owner below will not open ditch through his land. Is it the owner of the land above or the council that should enter action to have said ditch opened?

1. We do not think such a question can be submitted to the electors in either way suggested.

2. Proceedings will have to be commenced by the party who cannot submit to the existing condition of things. Neither party can compel the other to incite proceedings. We refer you to the Ditches and Watercourses Act.

## Drainage.

411.—J. T.—I live in the township of Brooke, and own one hundred acres of land. I have paid about \$400 in taxes for cut-offs and I have no outlet yet. I had a ditch surveyed for one five years ago, and was beat on it, on the ground that I should have gone south instead of west. The year before it was done, the reeve of Brooke signed an agreement with the reeve of Euphemia, that only the lots on first concession of Brooke, and my lot is on the second concession. If the council of B. don't get me the privilege to drain into it, can I come onto the council for damages, and what is the way to get at it, or what would be my best plan to work on?

You do not state sufficient facts to enable us to say what rights or remedies you have. No ground for claiming damage is disclosed. There are two acts relating to drainage, "The Ditches and Watercourses Act" and "The Drainage Act." If the work was done under either of these acts and there was no negligence you would have to work out your remedies under the acts if you were aggrieved. You had better make out a rough plan showing the locality of your lot and the drainage work when the work was done, the act under which it was done, and whether you made any complaint under the provisions of these acts or either of them, and also how you have suffered damages. We should