

## LEGAL DEPARTMENT.

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## Drainage.

## THE DRAINAGE ACT, 1894.

Sec. 70 of this act makes provision for the maintenance and keeping in repair of any drains constructed prior to the passing of the said act, under the Ontario Drainage Act or any act, in amendment thereof, or under a by-law passed by a county council. Sub-section 1 of this section provides for such maintenance and keeping in repair when the drain does not extend beyond the limits of the municipality undertaking the work, and sub-section 2, when the drain extends into another municipality. It might be well to call attention to sub-section 3 of the section which provides that a drainage work, which commences on a road allowance between the municipalities, shall, for the purpose of this section, be deemed to commence in the municipality next adjoining that half of the road allowance upon which the drainage work is begun—sub-section 1 of section 71, provides that the council of any municipality undertaking the repair of any drainage work under secs. 68, 69 or 70 of this act, shall, *before commencing the repairs*, serve upon the head of any municipality liable to contribute any portion of the cost of such repairs, a *certified* copy of the by-law for undertaking the repairs, as the same has been provisionally adopted. This sub-section also states what shall be recited in such by-law, and makes provision for an appeal therefrom by the council of the municipality so served to the drainage referee—within thirty days after said service has been effected—the grounds of such appeal may be that the amount assessed against lands and roads in the municipality so appealing is excessive, or that the work provided for in the by-law is unnecessary, or that such drainage work has never been completed through the default or neglect of the municipality—whose duty it was to do the work—sub-section 2 renders it incumbent on the council of the municipality on which service has been effected as before-mentioned within four months after such service to pass a by-law to raise and shall within said period raise and pay over to the treasurer of the initiating municipality the amount finally settled upon, as being assessed against lands and roads in the municipality. Sec. 72 contains important provisions as to the varying of the proportions of assessments for the maintenance of any drainage work, by the council of the municipality which is liable for such maintenance. Such variation may be made in the report and assessment of an engineer appointed by the council to examine and report on the condition of the work or the portion thereof as the case may be, and on the liability to contribute for land and roads not assessed for the original contribution

of the drainage work and which has become liable to assessment under the act. In his report the engineer may assess lands and roads in the municipality undertaking the repairs and in any other municipality or municipalities from which water flows through the drainage work into the municipality undertaking the repairs. The engineer shall not, however, except after leave given by the referee on an application, of which notice has been given to the head of the municipality affected, assess for such repairs any lands or roads, lying in the municipality or municipalities into which water flows through the drainage work from the municipality undertaking the repairs. Sub-section 2 of this section provides that the proceedings upon such report and assessment shall be the same or nearly, as may be upon the report for the construction of the drainage work. Sub-section 3 provides that any council served with a copy of the engineer's report and assessment may appeal from the finding of the engineer, as to the proportion of the cost of the work for which the municipality is liable to the referee, the proceedings in such appeal shall be the same as in other cases of appeal to the referee under the act. In section 73 provision is made for the case of a municipality refusing or neglecting to maintain any drainage work after reasonable notice in writing shall have been received from any person or municipality interested therein, and who or whose property is injuriously affected by the condition of the drainage work. In such case the municipality is compellable by mandamus issued by the referee or other court of competent jurisdiction to maintain the work, and is liable in pecuniary damages to any person or municipality who or whose property is injuriously affected by reason of such neglect or refusal. The notice referred to above may be set aside, or the work required thereby may be varied as follows: Any municipality after receiving such notice may, within fourteen days thereafter, apply to the referee to set aside the notice. Sub-sections a, b, c, d, e and f set forth fully the formalities to be observed in carrying through proceedings of this kind.

## LEGAL DECISIONS.

## COOK VS. TATE.

Fences—Division Fences—Proper Mode of Construction—Trespass—Fence Viewers—R. S. O. ch. 219, sec. 3—Toronto City By-law No. 2447.

The Line Fence Act, R. S. O. ch. 219, sec. 3, provides that "owners of occupied adjoining lands shall make, keep up and repair a just proportion of the fence which marks the boundary between them."

Held, per Ferguson, J., affirming the decision of Armour, C. J., that a boundary fence under R. S. O. ch. 219, should be so placed that when completed the vertical centre of the board wall will coincide with the limit between the lands

of the parties, each owner being bound to support it by appliances placed on his own land:

Held, per Boyd, C., contra, that if the boundary line be between the posts on one side of the fence, and the scantling and boards on the other, so that there is practical equality in the amount of space, occupied by the posts and that occupied by the continuous boards, and if that method is sanctioned by local usage, neither owner has legal ground for complaint.

## THE QUEEN EX REL. ST. LOUIS VS. REAUME ET AL.

Quo Warranto—Election of Deputy-Reeve—Irregular Addition of Names to Voters' List—Quashing Election—55 Vic. ch. 42 (O.), secs. 175 and 191.

An election, though by a majority of sixty-six votes, of deputy-reeve of a municipality, who had participated in a transaction by which before polling-day some eighty names were added to the voters' list over and above those certified by the judge to be properly there, was quashed, although only some thirty one of those illegally added cast votes, notwithstanding 55 Vic. ch. 42 (O.), sec. 175, which provides that no election shall be invalid for want of compliance with the principles of the act when the result is not affected.

The meaning of 55 Vic. ch. 42 (O.) sec. 191, is that cases which have so much in common that they can conveniently be tried together, may be combined in one proceeding.

## IN RE UNION SCHOOL SECTION EAST AND WEST WAWANOSH.

Public Schools—Readjustment of Boundaries of Union School Sections—Arbitration—Finality of Award—54 Vic. ch. 55, sec. 88 (O.)

An award of arbitrators under secs. 87-88 of the Public Schools Act, 1891, as to readjustment of union school sections is conclusive for five years, though the award be that no change be made in the boundaries.

## REGINA EX REL THORNTON VS. DEWAR.

Municipal Corporations—Municipal Elections—Bribery—Agents—Quo Warranto—Consolidated Municipal Act, 1892, 55 Vic., ch. 42 (O), sections 209-213.

A person cannot be found guilty of bribery under sections 209-213 of the Consolidated Municipal Act, 1892, 55 Vic., ch. 42 (O), unless the evidence discloses in him an intention to commit the offence. A candidate desiring and intending to have a pure election cannot be made a quasi criminal by the act of an agent who, without the knowledge or desire of the principal, violates the statute to advance the election of such candidate.

Municipal elections are not voided for bribery of agents without authority where the candidate has a majority of votes cast.

## RE M'FARLANE VS. MILLER ET AL.

Statutes—Drainage and Watercourses Act, 1894, 57 Vic. ch. 55, sec. 22, sub-sec. 6 (O), R. S. O., ch. 220, sec. 11, sub-sec. 5—Directory.

The provisions of sub-section 6 of section 22 of 57 Vic., chapter 55 (O), the