

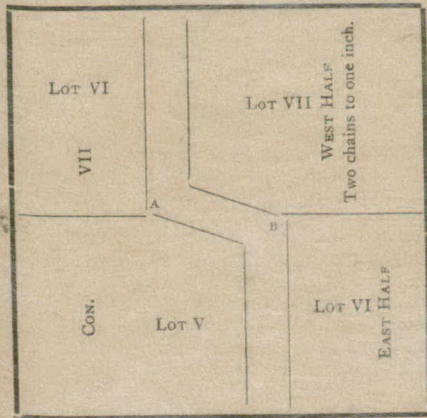
limited to those particular localities where the drifting of snow makes it necessary to remove fences or have a different description of fence made.

2. No.

Width of Jog in Highway—Collector's Liability—Rate payer Sold Out and Left Municipality.

214.—G. W. T.—1. In enclosed plan, jog, as indicated by A—B, was given by the then owner some thirty years ago as a roadway to join main road. No record can be found of the transaction. Jog is too narrow. The township wish to widen it, and to do so are willing to purchase whole width of roadway, but present owner asks exorbitant price. Cannot the council hold said jog by right of possession when statute labor and money have been expended on it, and would not the owner be liable to prosecution if he moves his fence out to the centre line of concession?

2. A ratepayer sells off all his goods and chattels off his farm and skips, on or about February 1st, without paying his taxes. Are the collector and his sureties liable to the township for the amount of taxes? (Bond perfectly legal), he not having demanded taxes from said ratepayer either on delivery of tax bill or afterwards; council extending his time to collect to 1st March?



1. If it can be proved that the piece between A and B was given by the owner thirty years ago for a roadway it is a highway, we have no doubt. The conveyance of the land subsequently would not destroy the rights of the public. A writing was not necessary. The question is whether the owner of the land dedicated it for the purpose of a highway or not. If you cannot prove by evidence of an expenditure that the owner thirty years ago intended to give the land for a public road, still we are of the opinion that it is a public highway. The necessity of this short piece to connect the two original allowances, its long use and the expenditure of statute labor and money upon it are circumstances from which a dedication would be implied even if the township failed to prove an express dedication, and the owner would be liable to prosecution if he should obstruct it in any way. But only so much as has been actually used by the public is a public highway, because a road or street which becomes a public highway by use is of no established width in law; its width as used at the time when the rights of the public become complete is the established or legal width of highway.

2. It is not sufficient to show that a taxpayer had property sufficient to pay the

taxes while the collector had the roll in his hands. He cannot watch all the taxpayers in the municipality, but he is liable for taxes which he might have collected by reasonable diligence, but which, by reason of his negligence having been left uncollected, have been lost. The liability of the sureties is a different matter. The collector is liable to his employer for negligence, but the liability of the sureties depends upon the contract entered into by them, and that is contained in the bond. The nature and extent of that liability we cannot express an opinion on without the bond or a copy of it.

Cannot Close Road by Resolution.

215.—J. H.—Our municipal council at a former meeting of council at the request of one of my neighbors closed a public road by resolution of council which has been travelled by the public for the last forty years with municipal funds and statute labor expended thereon during said time, it being the leading road to the school house and post office. Her Majesty's mail run on said road twice a week these last eight years. The council was petitioned by six interested ratepayers including the postmaster to keep said road open for travel, but they closed the road by resolution and made a suggestion that the postmaster go through his own lots east instead of west to a proving line not as suitable to any body. Just verbally the public road the most convenient to all concerned is the one closed, which action caused the postmaster to let the public travel through his land and did not offer him any recompense. It stands to reason that there should be a road to a post office, and a public one at that. In my opinion the council have left themselves liable, and the reeve is the cause of the whole trouble. He promised one party that he would close up this road, and even wrote the notice that these parties would close up said road after three months. I hold all these documents in my possession.

1. Can the council stand by closing the road by resolution of council or by by-law, under the circumstances?
2. Can the parties interested keep the road open until closed by the due course of law?
3. Can the postmaster recover damages for the road now used through his property? I hear he will sue.
4. Is the municipality liable?

In order to close the road in question and to open or establish a new one the council must proceed in a manner provided by section 632, chapter 223, R. S. O., 1897. Until the present road is closed in a legal way the public is entitled to use it. So far as the postmaster is concerned we cannot see what right he has against the municipality for damages if it is the municipality he is looking to for damages. He need not permit any person to travel over his own land unless he likes, and there is nothing to prevent him using the old road. He may take proceedings to have the resolution quashed.

Drainage Assessment Tax Sale Property—Statute Labor.

216.—T. L.—1. If a township council pass a drainage by-law and some of the lots included are non-resident and of little value, are sent up to the county and sold, in the event of their not bringing the amount of the drainage assessment against them, who makes good the default, the parties included in the by-law or the township as a whole?

2. How should the statute labor be rated and charged against a person owning land in two or more road divisions? Should it be rated separ-

ately for each road division, or rated as if all in one division?

1. We doubt very much if the framers of the Drainage Act had in mind such a case as this, for we cannot find any provision in the Act which entirely fits this case. Section 77 indicates that it was not the intention that the municipality as a whole should have to provide for any part of the costs of the drainage work. The territory assessed constitutes a sort of quasi municipality save in regard to the work and the cost of it, and we think that the lands within the territory should bear the loss pro rata. We think section 66 will authorize this.

2. The statute labor should be rated against each parcel of land, but the owner, if a resident, has the right to perform the whole of his statute labor in the division in which his residence is unless the council otherwise orders.

Reeve May be Second—Uneducated Pathmaster—Assessor's Error and Guide.

217.—H. M. S.—1. Has the reeve of a township the right to second a councilman's motion in amendment, the other three councilmen carrying the first motion?

2. Is it legal for a man who can neither read nor write to act as pathmaster?

3. Can one man act as collector and pathmaster?

4. If an assessor makes a mistake in improperly assessing a ratepayer as owner would he be accountable, providing the ratepayer got into trouble?

5. Who is to furnish the Assessor's Guide, the council or the assessor?

1. There is nothing to prevent him from so doing, but we cannot see how it would serve any purpose to exercise that right in this case.

2. Yes.

3. Yes.

4. You do not state whether any trouble has arisen, and if so, what the nature of it is. The assessor may have made, and probably did make, the mistake innocently, but if he served the usual assessment slip the person against whom the mistake was made ought to have taken the proper steps to have the mistake rectified.

5. It is in the interest of the municipality that the assessor should be as well equipped as possible to properly discharge his duties, and the council should furnish him with a guide.

Statute Labor.

218.—J. R.—In making out road lists I have met with a difficulty at the outset, and therefore again apply to THE MUNICIPAL WORLD. Below I give a sample of several assessments on our roll:

D. Jno, Sr., F., 2 Con., N.  $\frac{1}{2}$  Lot 17, \$2,600  
D. Jno, Jr., F., 2 Con., N.  $\frac{1}{4}$  Lot 17, \$1,250

Total, \$3,850

Now the total, \$3,850, calls for only five days' statute labor, while \$2,600 calls for four days, and \$1,250 calls for two days, making six days, a difference in this case of one day. On consulting the old lists I find that statute labor was charged in every similar case on the total, making a difference in some cases of three days. Shall I charge on the total, as has been the custom, or each separate amount?

The number of days statute labor should be based upon the total value, \$3,850.