

S. E. M.—I observe in your May issue a question by "W. D. McL.", "2. Can the owner of the land adjoining a highway, when the road is blocked with snow, refuse to allow a road to be opened through his fields, and . . . ." To this you answer "Yes."

I am somewhat interested in the accuracy of this reply, and take time to give you some quotations from "Angell on Highways," 3rd edition, 1886, Boston, Little, Brown & Co., a recognized authority on the subject.

Section 353, Page 478.

"The right to go upon adjoining lands where the highway is impassable. In England the rule of law is well settled, that where a highway becomes obstructed and impassable from temporary causes, a traveller has a right to go upon adjoining lands without being guilty of trespass. In this country (U. S.) the same principle has often been incidentally recognized and treated as well settled law, and in the case of Campbell vs. Race has been directly affirmed. Highways being established for the use and benefit of the whole community, a due regard for the welfare of all, requires that when temporarily obstructed the right of travel should not be interrupted, and this right therefore rests upon the maxim of the common law, that where public convenience and necessity come in conflict with private right, the latter must yield to the former. Its exercise may also be justified upon the familiar doctrine that inevitable necessity or accident may be shown in excuse for an alleged trespass. If a traveller in a highway, by unexpected and unforeseen occurrences, such as a sudden flood, heavy drifts of snow, or the falling of a tree, is shut out from the travelled paths, so that he cannot reach his destination without passing upon adjacent lands; he is under a necessity so to do; that is to say, the act to be done can only be accomplished in that way. Such a temporary and avoidable use of private property must be regarded as one of those incidental burdens to which all property in a civilized community is subject."

And Section 355 says:

"Having its origin in necessity, this right, it has been said, must be limited by that necessity; *cessante ratione, cessat, ipsa lex*. Such a right is not to be exercised from convenience merely, nor when, by the exercise of due care, after notice of obstructions, other ways may be selected and the obstructions avoided. But it is to be confined to those cases of inevitable necessity or unavoidable accident, arising from sudden and recent causes which have occasioned temporary and impassable obstructions in the highway. What shall constitute such inevitable necessity or unavoidable accident must depend upon the various circumstances attending each particular case. The nature of the obstruction in the road, the length of time during which it has existed, the vicinity or distance of other public ways, the exigencies of the traveller, are some of the many considerations which would enter into the enquiry, and upon which it is the exclusive province of the jury to pass, in order to determine whether any necessity really existed which would justify or excuse the traveller."

In a local case, a charge brought by A against B for that he, the said B, did unlawfully use violence to prevent the said A from doing what he had a lawful right to do, to wit, to pass over the land of the said B at a place where the highway was blocked with snow. It was decided that A had the right, and convicted B accordingly.

As your reply to your correspondent conflicts with my view of the case I shall be glad if you will look fully into the matter again, and if you agree with me, revise your previous reply.

The law, as quoted by our correspondent, is founded on Duncombe's case (Cro. Car. 366), in which it was shown that the public had been from time immemorial accustomed to deviate.

The case of Arnold vs. Holbrook, L. R. 8, Q. B. 96, appears to be an authority against the proposition that there is the right to go upon adjoining lands when a highway is impassable. Burns, in his work on "Justices of the Peace," in volume 3, pages 509 and 510, says: "And it is clear law, established by a number of cases, particularly that of Absor vs. French, 2 Show, 21, and Henn's case, that where a common highway is out of repair by the overflowing of a river or any other cause, passengers have a right to go upon the adjacent ground, but in the argument in the case of Arnold vs. Holbrook, Blackburn J., on Henn's case being cited, said: 'That is not an authority, the Attorney-General merely mentions that case in his argument,' and upon Absor vs. French being cited, he said: 'There the owner of the soil had obstructed the way.' But even if the law would justify a person in going upon the adjoining lands, upon the ground of inevitable necessity, we do not think that we could, in answer to the question submitted by 'W. O. McL.," say 'That the owner of land adjoining a highway which is blocked with snow has not the right to refuse to allow a road to be opened through his fields, because this would give the impression that a road could be forced through his land for the use of the public generally. The rights of each person are not the same. In each case of alleged trespass it would be necessary to consider, among other things, the exigencies of the traveller, to determine whether it was absolutely necessary for him to go upon the adjoining lands."

R. McL.—Please give calculations for issue of debentures \$1,500, seven years, at four and one-half per cent.?

Equal annual payment, \$254.55.

J. B. F.—Is a person otherwise entitled to pay poll tax in the municipality where he resides exempt if he pays more than \$2 municipal taxes in another municipality in the province?

Yes, subject to provisions of section 90 of the Consolidated Assessment Act, which requires the production of certificate of having performed statute labor or paid the tax elsewhere.

T. W. T.—1. Has a municipal council power to use the public money raised by the general taxation for building sidewalks in a village within the boundaries of said municipality?

2. Has a municipal council power to pass a by-law to impose a frontage tax on village property within the boundaries of said municipality for the purpose of building sidewalks in said village?

3. Has a municipal council power to pass a by-law appropriating money received from hotel licenses for any special purpose they deem proper?

1. Yes.

2. Yes. See section 612, Municipal Act.

3. Yes, if authorized to spend money for the purpose.

W. E. D.—1. A municipal council instruct the assessor to value property according to certain rules, so much an acre for cleared land, so much for uncleared; and so much for "broken" or unworkable land. Has the council any authority to give such instructions?

2. A school board levies a certain sum upon the section, and send requisition for such amount to the council, but a certain proportion of the taxes of the section prove to be uncollectable. Is that proportion deducted from the amount received by the section, or do the trustees get the full amount that they apply for?

1. Section 13 of the Consolidated Assessment Act, 1892, gives to councils power to prescribe regulations for governing assessors in the performance of their duties, but it would seem best to leave the valuing of the land to the judgment of a competent assessor.

2. The trustees should get the full amount applied for. See section 203, Assessment Act.

J. W. C.—Public road crosses farmer's lot between fifth and sixth concession, said road was built along river bank and has been used for over twenty years as a public road. About ten years ago the river washed in side of road, and said road was moved back on lot about twenty feet, also bridge built by municipal council. The owner raising no objections to moving of road at the time. The farm has since been sold and the present owner now wants pay from council for the road. In the expending of public money by local government on road, the owner refused to let them take land from side for filling in bridge, the fence is almost on road now, allowing only space for wagon track.

1. Can owner compel council to pay for the road.

2. Can pathmaster compel farmer to move fence back and give the road its proper width, if so, what steps would he take.

3. Is road established for every purpose as a public highway.

4. Can municipal council give right of lot redeemed at land sale in the name of municipality to one of its own members, said lot being redeemed for \$5.00 when amount of taxes against lot was \$50.

1. No.

2. No.

3. Yes.

4. Yes, but member purchasing same would be disqualified from holding his seat in council.

ENQUIRER—A rented a farm to B. A was assessed as owner and B as tenant, when the clerk of the township made out the list he charged the owner with the statute labor and charged B with two days as though he had not been assessed for the farm. B put in eight days work for the farm and two extra days for himself as per road list.

1. Was it right for the clerk to put the two extra days on?

2. If not how shall he proceed to get righted?

1. No.

2. He should apply to and be allowed by the council remuneration for the said work.

CLERK - 1(a) Can a holder of a hotel license be clerk of a municipality, (b) if so would a small breach of the License Act disqualify him from holding the office?

2. If a council establishes a certain road by by-law and an appropriation from Ontario Government is given to open up the said road, can the Government Road Commissioner change the proposed route of said road as mentioned in the by-law providing the route described in the said by-law is favorable to the majority of the ratepayers?

1. (a) Yes. (b) No, see section 279, Municipal Act.

2. Without further information on the subject; we think not.