

Fences Across Drain — Time for Payment of Drainage Debentures — Compelling Repair of Drain.

343—A. B. C.—1. A drain under the Municipal Drainage Act, passes through a man's farm. Can the council prevent him from extending his fences across the drain?

2. Is it lawful for a council to issue drainage debentures for a longer period than seven years?

3. Can one ratepayer on a drain compel the council to repair or enlarge the drain, or does it require a petition signed by a majority of the ratepayers?

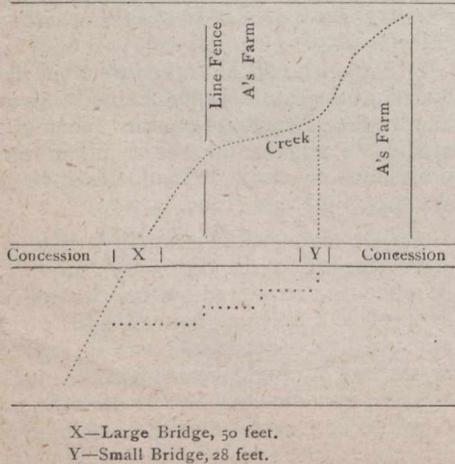
1. No. But if the building of the fences obstructs or occasions injury or damage to the drain, the person or persons erecting them will be liable to the action and penalty mentioned in section 79, of the Municipal Drainage Act. (R. S. O., 1897, chap. 226.)

2. Yes. sub-section 2, of section 19, of the Municipal Drainage Act, authorizes a council to issue debentures repayable within twenty years from date, to raise money for the construction of drainage works, except in the case of pumping and embanking drainage works, when the debentures shall be payable within thirty years from their date. Where the debentures are issued for the cost of REPAIRS other than those undertaken and carried out pursuant to the provisions of section 75, of the Act, (in which case the debentures are to be payable within twenty years), the debentures shall be payable within seven years from their date.

3. A council may undertake the repair, improvement and enlargement of a drain under the provisions of section 75, of the Act. This may be done at the request of one ratepayer interested, or by the council of its own motion, and a person interested in the drain may compel a council to repair if repairs are necessary.

Closing of Bridge.

344—REEVE.—Our council wish to close small bridge shown on accompanying illustration. The water does not run through small bridge unless it rises to a high degree and A is willing to have bridge closed if council pay him a certain sum as he claims it would bank the water back on his flats longer at certain times of the year. We would like to know if council has a right to pay A damages, or if they can go on and close bridge without paying A any damages, as council think the larger bridge is all that is needed and would not damage A's farm in the least?



If the closing of this bridge would cause A no damage, as is intimated, there is no reason why the council should not close it without incurring any liability for damages to A. If this small bridge is over a living stream having well defined banks, it should not be closed, because every person owning land along the banks is entitled to have the water flow in its natural state.

Apportionment of Cleaning out of Municipal Drain.

345—W. D. M.—In 1900 an amendment was made to the drainage act, making it lawful for any municipality to pass a by-law providing it shall be the duty of the owner of every lot benefited, to clean out the drain and keep it free from obstructions etc.

1. Does this amendment apply to drains which have been constructed, or on which the engineer had his report filed previous to 1900?

2. Is it necessary previous to the passing of said by-law, that the council should get the report of an engineer as to who, and for what amount each are responsible for maintenance?

3. How can expenses of engineer for this purpose be collected? Is the municipality responsible, or can it be assessed against and collected from the parties interested?

1. The amendment you refer to applies to drains constructed under the provisions of the Drainage Act, either before or after its passing. (See sub-section 2.)

2. Before passing a by-law pursuant to this amendment, the council should obtain the report of an engineer as to the extent and manner or proportion, and distance each person whose land is assessed for benefit, is to clean out the drain and keep it free from obstructions. (See sub-section 1.)

3. The amendment makes no provision for the collection of these expenses and in the absence of express provision to that effect, the council would have no authority to charge the parties originally assessed for the construction of the drain. If the engineer is making a report pursuant to instructions from the council, as to the construction, repair, cleaning out, improvement, etc., of a drain under the provisions of the Drainage Act, he may therein make provision for the requirements of this section, and the costs of his so doing, will be part of the general expenses, properly chargeable against, and collectable from the owners to be assessed. It is to be observed that this section purports to add two new sections to the Drainage Act, 10a and 77a. Section 10a refers to "such by-law." It is difficult to say what by-law is meant, as no by-law of any kind is mentioned in the Act prior to section 10a. It also refers to "the ABOVE section 77a, of this Act." Whereas 77a is many sections BELOW section 10a in the Act. We would not advise the taking of any steps by a council pursuant to the section under review until its meaning has been more definitely stated by future legislation.

Court of Revision Can Alter Assessment Only When Appeal Filed.

346—SUBSCRIBER.—1. After the assessor returns his roll and there is no appeal against

any man's assessment, can the council as Court of Revision give notice to a man and open up his assessment and raise or reduce it as they see fit?

2. Since the assessment was closed a party builds a home on his vacant lot. Can the court of revision open up and assess for the house just built?

3. Who administers oath, and who is chairman of court of revision?

1. No.

2. No.

3. If you mean the oath required to be taken by the MEMBERS of a court of revision, the clerk is the proper person to administer it. See section 64, of the Assessment Act. If the oath to be administered to a party to an appeal pending, or a witness, it should be administered by the court, or some member thereof. (See section 69, of the Act.) The chairman is such member of the court of revision as the others select to fill the position.

Agent Insuring Township Property not Disqualified as Councillor.

347—P. C.—A is an Insurance Agent for a local township company and he is also a member of a township council.

1. Can A take a fire risk on his township municipal hall and charge the township, whose councillor he is, his usual fee?

2. Would such an act unseat or disqualify a councillor?

1. Yes. In the case of Regina ex rel. Bugg vs. Smith, (1 C. L. J. N. S., 129,) it was held that the agent of an insurance company, paid by salary or commission, who, both before and after the election, had, on behalf of his company, effected insurance on several public buildings, the property of the corporation, was not disqualified. The fact that he is agent for a company which has a contract with the corporation is not enough to disqualify him.

2. No.

When Taxes Should be Paid to the County Treasurer Only.

348—T. W. W.—In re taxes. The Collector gave his report to the Municipal treasurer on the 27th of April; the municipal treasurer sent return to county treasurer on 1st May. The collector made no report to the clerk of the township. The collector received a cheque for taxes on the 2nd May, the cheque dated 1st May. He gave it to the council 8th of May. On the 12th May clerk sent the cheque back to the person who sent it. Now the one who sent the cheque for taxes is trying to compel the township collector to take it. Is it proper for him to do so? or will the party who owes the taxes have to pay the same to the county treasurer?

The collector having returned his roll, and delivered the account mentioned in section 147, of the Assessment Act, to the township treasurer, on the 27th April, had no right to collect any taxes after that date. The local treasurer, having sent to the county treasurer the statement mentioned in sub-section 1, of section 152, of the Act, on the 1st May, had no authority to receive any taxes after that date, but they should be paid to the COUNTY treasurer only pursuant to the provisions of section 160, of the Act. The collector