

Sub-section 1 of section 2 of The Line Fences Act (R. S. O., 1897, chapter 284) provides that "in this Act the expression 'occupied lands' shall not include so much of a lot, parcel or farm as is unenclosed, although a part of such lot, parcel, or farm is enclosed and in actual use and occupation." In the instance under review both parcels of land are, at present unenclosed, and unoccupied. Therefore the provisions of the above Act do not apply. If one of the owners desires to enclose his land, he will have to build the necessary fence at his own expense. He cannot compel the other owner to build his share, or pay one-half the cost of building it. When, however, the lands of the latter become occupied, and fences are built to connect with that built by the first mentioned owner, the owner for the time being will be liable to the duty of keeping up and repairing the proportion of the line fence mentioned in section 3 of the Act, "and in that respect shall be in the same position as if the land had been occupied at the time of the original fencing, and shall be liable to the compulsory proceedings in the Act mentioned."

#### Effect of Defective Proceedings Under the D. and W. Act.

492—A. B. R.—In the latter part of 1903, or beginning of 1904, a township engineer laid out a tile ditch, or drain, on the boundary line between two townships, awarding to each lot and each township the portion they had to dig and tile respectively. At least two of the parties did not receive from the clerk of the municipality the proper notice to afford them an opportunity to appeal to the judge against the assessment.

Would these parties, if the drain is forced through, have good ground for an action against the clerk, or would they have to take action against the township, he (the clerk) being the township's official. This ditch is made under the Ditches and Watercourses Act.

We are of the opinion that the award is binding, no appeal having been taken against it within 15 days after it was made. We do not think the township is liable in any way for the neglect of the clerk to mail a proper notice to two of the parties, nor do we think that the clerk is liable for his neglect of duty, unless it can be shown that the parties who did not receive proper notice suffered damages by reason of their not receiving such notice.

#### Duties of Collector as to Collection of Dog Tax.

493—W. L.—The collector of taxes finds, when going his rounds, there are a large number of dogs not on the roll. Can he collect dog tax on these, and if so how must he proceed? The owners refuse to pay because they are not on the roll.

We do not think the collector has any authority to collect the dog tax from the owners or harborers of dogs not mentioned on the assessment or collector's rolls. (See sections 4, 5 and 6 of chapter 271, R. S. O., 1897.)

#### Township's Liability for Accident on Highway.

494—A. J. Mc.—A party was driving along one of our public highways recently, and on approaching a bridge over a watercourse his horse became frightened by either a horse that was grazing on the roadside or a coat which was left on the end of the bridge by some party at present unknown. The horse became unmanageable, and instead of proceeding across the roadway he backed the carriage over the side of the bridge into the watercourse. The carriage was damaged and the party lost a roast of beef and some laundry. There was formerly a guard rail on the bridge, but it was demolished by a party that was removing a building last winter. The council were not advised that this guard rail was demolished. The party that sustained the damage is a frequent traveller on this road. This party now sends in a bill for damages sustained by him on the ground that the bridge was in an unsafe condition through there being no guard rail. Do you consider that the municipality is liable? If liable, would the municipality have any recourse against the party that demolished the guard rail, the owner of the horse, or the owner of the object that caused the horse to become unmanageable?

The fact that there was formerly a guard-rail on the bridge at the place where the accident occurred is evi-

dence that it was necessary, to render the road reasonably safe for travel at that point. The allowing by the council of this place to remain unprotected by a guard-rail since last winter, is evidence of negligence on the part of the municipal authorities. We are therefore of opinion that the council should settle with the claimant as reasonably as possible. If the horse grazing on the road, or the coat hanging on the end of the bridge was the proximate cause of the happening of the accident, the municipality will have a remedy over against the respective owners for the amount it has paid the claimant, under the authority of sub-section 3 of section 609 of The Consolidated Municipal Act, 1903. The municipality has a right of action against the owner of the building for the amount of the damage he did to the bridge.

#### Salary of Medical Health Officer—Assessment of Railway Telegraph Wires.

495—E. B.—Our municipal council having appointed by by-law at the meeting in February a medical officer, and the said officer having been notified to take declaration of office, he did so, and by so doing he claims that he signed an engagement with the council, and the council has to pay him a fixed salary, that is to say, at least \$200 for the year. If the council refuse to do that, he says he could by law compel the council to pay him \$10 for each case of contagious diseases that will occur in the municipality during the current year; that amount of \$10 being the amount of his account for the attendance on the person who would be attended by said officer in an ordinary case and pay his bill.

1. Can the council be compelled to pay the above to said officer; if so, please give me the clause of the Act to that effect.

2. Are the commercial telegraph wires of the C. P. R. assessable in an unorganized township for the purposes of public school maintenance.

1. The Public Health Act (R. S. O., 1897, chapter 248) does not require a medical health officer to make a declaration of office, and the mere fact of his having done so in this instance does not fix the amount of the salary he is to receive from the council. The council can be compelled to pay its medical health officer only such salary as it has agreed to give him. Under sub-section 2 of section 35 of the above Act a medical health officer holds his office at the pleasure of the council. If the medical health officer will not agree with the council as to the terms of his engagement, it had better dismiss him, and appoint another doctor in his stead.

2. Yes.

#### Petition for Drainage Works—Council Not Bound to Entertain.

496—A. J.—1. Upon the receipt of a petition to the municipal council praying for the deepening of a natural creek when asking for a small portion of the creek to be opened and a larger portion of the creek at the head of the stream, the people are against it and refuse to be taxed for outlet. Is two-thirds of the owners of the area to be opened sufficient for a petition to make it legal?

2. Is it compulsory for the council to act on a petition of this kind, if so, can it enter into any agreement with the petitioners or the engineer to indemnify the council against any costs caused by their carelessness or illegal work?

3. Does a petition for this kind of work come under the head of local improvement works or the same as section 668 of the Consolidated Municipal Act, 1903?

1. A petition to the municipal council for this purpose should be filed under the authority of sub-section 1 of section 3 of chapter 226, R. S. O., 1897. If the petition is signed by a majority in number of the resident and non-resident persons (exclusive of farmers' sons not actual owners) as shown by the last revised assessment roll to be owners of land to be benefited in any described area within the municipality, the council may grant the prayer of the petition and pass the by-law necessary for the carrying out of the works desired.

2. It is discretionary with the council as to whether