

## QUESTION DRAWER.

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MUSKOKA—"A" having transferred his property to "B" after the court of revision, can the council alter the name on the roll at the December meeting?

No.

O—A pond is close by our school play-ground and is supposed to injure the school-house well-water. Who should drain it? The owner of the land on which is the pond, the school section or the township corporation?

We consider this a case to be handled by the local board of health of your municipality. Complaint should be made to the board as provided in the Public Health Act, sec. 58. Full power is conferred on the board by subsequent section of said Act to cause an investigation to be made of the matter by their medical health officer or otherwise. The locality and circumstances should be thoroughly examined and the evidence of any witnesses that may be thought necessary should be taken. If the owner of the land is responsible for the creation and maintenance of the nuisance, if it is found to be such, he should be notified by the board to abate and remove it within a reasonable time, and, if the notice be not complied with the board may cause the removal and abatement of the nuisance at the expense of the party creating and maintaining the same. See section 62 of the said Act, as to payment of expenses. In a word, the party who creates and maintains a nuisance is the one who should abate the same. In the case mentioned by our correspondent, it may be necessary to bring into play, the machinery of the Ditches and Watercourses' Act.

A READER—A drain has been constructed by the township council under the Ditches and Watercourses' Act, and surveyed by an engineer through part of a village lot, afterwards a house was built on said lot within a few feet of drain. Again, in course of time, the drain was cleaned, deepened and widened to accommodate the surplus water from lands draining into it. Since said cleaning has been done the water has been wearing the earth away on the side of the drain opposite to the house in question, and allowed the house to settle down, and the owner claims damages for injury to house. The present owner purchased house and lot since drain was constructed.

1. Is the council liable for damage to house?

2. If liable, who should pay, the whole township or those interested in drain?

We have every reason to believe that the drain referred to by our correspondent was constructed under the provisions of the drainage sections of the Municipal Act and not under the Ditches and Watercourses' Act, (R.S.O.) chap. 220. With this understanding we will answer the questions.

1. Under the circumstances mentioned, we would say that the municipality constructing the drain is liable for damages to the owner of the house, to the extent of the injury he has sustained, if clearly caused by the cleaning, deepening and

widening of the drain. See section 591 of "The Consolidated Municipal Act, 1892."

2. The municipality being found liable to the party injured, has the right to charge *pro rata* upon the lands and roads liable to assessment for the drainage works, all such damages or any sum of money that may be required to enable the corporation to comply with any such judgment, order or award, as may have been given or made against them in the premises.

R.—A vote is to be taken in a municipality on two (2) by-laws granting aid to certain public enterprises. The vote on both by-laws is to be taken on the same day, separate ballot papers being used for each by-law. Will it be necessary to have two ballot boxes in each polling place, one for each set of ballots, or may all the ballots be deposited in a single ballot box indiscriminately?

One ballot box in each polling place is all that is necessary under circumstances mentioned by our correspondent.

T. U.—I wish to ask a question in regard to the preparation of the voters' list, as it is now under discussion in this municipality.

1. Is it proper to enter a locatee in the free grant districts as owner before he has got his patent?

2. If it is not right so to enter him in the voters' list, in what way should he be designated? It is argued by some that in an election for the legislative assembly, a voter might be safely challenged on ground of ownership, even though qualified under the Manhood Franchise, yet, being wrongly entered on the voters' list, he would lose his vote. Since making out my voters' list, I have been notified of a mistake that I had entered a voter as owner instead of tenant which is correct enough, but I followed the assessment roll strictly in the case. I was notified of this error just two days before I should have applied to the judge for a certified copy of the voters' list. In that case would it be necessary to circulate the corrected copy and then wait thirty days before I can apply for a certified copy from the stipendiary magistrate?

1. We think a locatee of land in a free grant district can be considered to come within the definition of an "owner" given in sec. 2, sub-sec. 1 of the Ontario Election Act, and can be so assessed on your assessment roll and placed on your voters' list.

2. We must assume that the notification of a mistake in your voters' list which you mention was a complaint filed pursuant to and in accordance with sec. 13 of "The Ontario Voters' List Act, 1889." Such being the case it would be necessary that you report to the judge or stipendiary magistrate, as the case may be, and obtain his order for the holding of a court for the revision of your voters' list, as provided in the said last mentioned Act. After the court has been held the judge or stipendiary will certify to your list, and no further circulation of the list will be necessary.

P. X. Z.—About thirty-eight years ago, when Lot A (in diagram) still belonged to the Canada Company, the township council was petitioned to have a road opened across the lot, owing to a creek running on the concession road allowance surveyed, a plan of which is in possession of the clerk. The travelled road, however, is now, and has always been between the surveyed road and the creek, and the owner of Lot A has it fenced

up to the travelled road, and the concession road allowance has never been fenced.

(1) If the council and the owner of Lot A are agreed to have the road where it is now, what width of road is the township entitled to?

(2) There is a gravel pit at roadside. Does this gravel belong to the township or to the owner of Lot A?

(1) Section 545 of the Consolidated Municipal Act, 1892, enacts that no council, except the council of a city or town, shall lay out any road or street more than one hundred or less than sixty-six feet in width, unless with the authority and permission in the said section mentioned. We, therefore, think the road should have a width of at least sixty-six feet. We would suggest that the proper steps be taken by the different parties in interest to have the surveyed road, abandoned by the municipality, shut up, and the title thereto vested in the owner of Lot A, and to cause the general assumption and establishing of the travelled road, as the latter seems to best suit the convenience of the public.

(2) Our correspondent does not mention the width of the travelled road, nor state whether the gravel pit or any portion thereof is on the travelled road. From the location given us we would say the gravel pit belongs to the owner of Lot A.

T. U.—J. B. has notified the council that when the time required by law for legal notice of closing up a trespass road expires he will close up a certain deviation from the original survey of a side road, the said deviation was originally made to avoid a swamp by the settlers, about fourteen years ago, and has been used by the public without any complaint or hindrance ever since. The deviation is about forty rods in length, and is through the bush and does not come in contact with any field or fence or any improvement that could make it a trespass.

(1) Can he legally close the road in question at all?

(2) If he can, how long time must he give notice before doing so?

We assume that the road mentioned by our correspondent is one which has been dedicated to the public either actually or permissively, for uses as a public highway, and that it comes within the definition of a highway given in section 524 of the Consolidated Municipal Act, 1892. Probably public money has been expended, for opening the same, or on which the statute labor has usually been performed. This being the case J. B. has no legal right to close or obstruct the road used. See section 524 of the Municipal Act and Mr. Harrison's note (a) thereto, and the following sections of said act relating to highways.

TOWNSHIP TREASURER—The trustees of a school section in a township had debentures issued in the regular way, by by-law of council, etc.

1. Now, the question is who has to keep an account of these debentures, is it the township treasurer or is it the treasurer of the school section?

2. Has the township treasurer to pay these debentures out of part of the trustees' taxes, and pay over to the treasurer of that section the balance? Or is the township treasurer to pay over the whole trustees' taxes and let the treasurer of the school section pay the debentures.