

county rate to the county treasurer by draft, or such other way as he may deem safe.

4. Whatever amount is realized as premium on the sale of debentures of this kind, should be placed by the treasurer to the credit of the drainage account. If the council thinks that the treasurer is entitled to anything in addition to his regular salary for his time and trouble in disposing of the debentures it may, by resolution, grant him such sum as it may deem reasonable, and charge the sum so granted to the drainage account.

Filling Vacancy in Township Council.

408—Enquirer.—I have been asked by a large number if the township of D, will have to have an election. The reeve of this township died about ten days ago. What steps will be required? Who orders the election? If it is the county judge, whose duty is it to ask him to do so?

A new election will have to be held to fill this vacancy, and since the office of reeve of your township is vacant, the clerk is the proper person to issue the warrant for the holding of the new election. (See section 212 of the Municipal Act.)

Law as to Traction Engines.

409—S. R. W.—Can owners of traction engines make township council pay for damage received from breaking through bridges? An owner of a traction engine in our township said that he saw in *The Globe* of June 5th, 1902, where an appeal case was decided against the township. Do you know if such is the case?

No. Sub-section 1, of section 10, of chap. 242, R. S. O., 1897, provides that, "Before it shall be lawful to run such engines over any highway whereon no tolls are levied, it shall be the duty of the person or persons proposing to run the same to strengthen, at his or their own expense, all bridges and culverts to be crossed by such engines, and to keep the same in repair so long as the highway is so used." The case referred to is, no doubt, *Pattison vs. Township of Wainfleet*. This was an appeal by the defendant township from a judgment of the county court of the county of Welland, in an action for damages for injury to the plaintiff, and to engine attached to a grain threshing machine which plaintiff was driving over a bridge belonging to defendants, and which bridge, plaintiff alleges, was so defective and unsound that the engine on which he was riding was thrown down into the bed of a creek below. The judge, at the trial, found that the bridge had been out of repair, and unsound, to the knowledge of the defendants, for a considerable time before the damage complained of, and that the engine, NOT BEING A TRACTION ENGINE within the statutory meaning of that term, the statute, (R. S. O., 1897, chap. 242, sections 4, 5, 6 and 10, and sections 1 and 2,) pleaded by the defendants, did not apply so as to relieve them from responsibility, and gave judgment for plaintiff for \$75 and costs. It was held on the appeal that the only question is one of fact, namely, whether the engine is

a traction engine within the meaning of the above mentioned Act, and that the trial judge properly found in favor of the plaintiff. It was also held that the evidence of negligence on the part of defendants was sufficient to justify the finding of the trial judge, and that the damages found by him were reasonable.

Removal of Sand Causing Subsidence of Road.

410—SUBSCRIBER.—A owns a farm that fronts on a lake. A public road runs across the front of his farm. There is a large deposit of sand along the beach, and A sells the sand, and it is taken away by barges that come as close to the shore as they can and suck the sand up out of the water. The constant removal of the sand is causing the road to become narrow. What should the council do to protect the road?

If the removal of the sand is causing a subsidence of the road, that is a falling away of the road, A and all persons causing such subsidence, are doing a legal wrong and may be restrained from doing so upon the principle that an adjoining owner of land has no right to so cut down his own land as to cause a subsidence of his neighbor's land.

Dog-Tax and Protection of Dogs.

411—J. B. H.—As reeve here for some years past I have been annoyed with the question of dogs. Two years ago we passed a dog-tax. Has this to be renewed every year, or does it stand until repealed? We have no sheep, but cows are run and chickens are killed and people are attacked. If his owner pays for a tag, who pays the damages he does perhaps at night, and most often when it cannot be brought home to him? What is to be done for necessary protection against dogs? What can a dog do and still have protection under the dog-tax? What does dog protection mean?

We assume that the council passed a by-law pursuant to section 2 of chapter 271, R. S. O., 1897, dispensing with the collection of dog-tax under the provisions of that statute, and subsequently passed a by-law imposing a tax on dogs in the municipality, pursuant to sub-section 3 of section 540 of the Municipal Act. Unless the operation of the latter by-law is by its terms, confined to one year, it will remain in force, and the tax will be collectible thereunder, until it is repealed. The mere imposition of a dog-tax implies no protection for dogs. If a dog is vicious it should be taken care of or killed by its owner. If it does damage, the owner of the dog is liable for the damages committed. If the dog doing the damages, or its owner cannot be ascertained, that is the misfortune of the party who sustains the injury.

Council Cannot Make Grant to Sufferers by Cyclone.—Rights of Pathmaster.

412—M. S. B.—Re the recent cyclone in the township of Winchester, there was a committee appointed to interview the several councils in the county for aid for those who met with heavy loss. Our council made a grant of one-half a mill on the dollar of the total assessment of the township. Is it contrary to law for the council to make such a grant, or should it be submitted to the people for a vote? Would the council be personally liable if they ordered the township treasurer to pay over the money by resolution?

2. Where a pathmaster does roadwork in his division and applies to the council to give him a receipt for it so as to enable him to hand it to his successor, is it right for council to issue such certificate, or should said pathmaster just give a receipt to his successor that his work is done for another year, or can a pathmaster be allowed for work done by him when he is pathmaster?

1. The council has no legal authority to make a grant for this purpose. If it desires to do so, it will have to obtain special legislation from the Ontario Assembly giving it the power, as did the city of Toronto, in 1900, when desirous of aiding the sufferers by fire in the cities of Ottawa and Hull. (See section 6, of chap. 101, Ontario statutes, 1900.) If the persons this council desires to aid have been reduced by their losses to circumstances of extreme poverty, so as to bring the matter within the provisions of sub-section 1, of section 74, of the Assessment Act, the Court of Revision for the municipality can remit or reduce the amount of their respective taxes. If the members of the council persist in making this illegal grant they may be held personally responsible for so doing.

2. The pathmaster should not, under these circumstances, be granted a certificate to enable him to obtain credit for work on his next year's statute labor. If it was necessary to do any work in his road division in excess of what could be done by the statute labor available, the pathmaster should report and certify it to the council, and the latter should pay its reasonable cost. A pathmaster is not entitled to any credit for any time he devotes to superintending the work in his road division over and above the number of days' statute labor he is liable to perform in accordance with the ratio of statute labor in vogue in the municipality.

Objectionable Tree Near Line Fence.

413—A READER.—I have had some trouble with a line fence between my neighbor and I. She is holding nine inches of my land by possession. There are California maples planted tight up against the present line fence which shade my lot, and in time will spoil the fence. What is the law regarding trees in village which is incorporated being planted too near the line fence and spoiling the property of the neighbor?

We are of opinion that you have no remedy in this matter. The trees appear to be wholly on your neighbor's premises, and there is no law to prevent her planting or allowing them to remain there. Even if the trees were growing on the boundary line between your lot and hers, you would be without a remedy, unless she gave her consent to their removal. (See section 7 of chapter 243, R. S. O., 1897.)

Trustees not Bound to Allow use of School House at Elections.

414 T.—We require the use of a public school house for a polling place at our municipal elections. We pass our by-law for municipal elections appointing the officers required and naming said school house as a place where poll will be held. No objection is taken to our by-law. Our municipality is a township.