

of two-thirds of all the ratepayers entitled to vote, or 128 is necessary. (See section 366 a of the Municipal Act, as enacted by section 8 of the Municipal Amendment Act, 1900.)

Members of Drainage Court of Revision not Entitled to Pay—Time for Passing of Supplementary By-law—Distribution of Surplus—Collection of Assessments Omitted—Personal Liability of Councillors.

457—Y. R. H.—1. Council and reeve charge for Court of Revision, and other services re drains, can this be considered part of the cost of the work?

2. How long after work completed or debentures paid can council levy by supplementary by-law for deficiency?

3. Drainage work account shows a surplus due ratepayers. All assessments have been paid in accordance with by-law. Can council now distribute the surplus pro rata in cash to owners of lands assessed for original construction?

4. Assessments not levied on first collector's roll after by-law passed. In case of five yearly payments, can an assessment be levied in the sixth year for the first omitted?

5. If any annual assessment is omitted can it be put on the following or any subsequent year?

6. Is it compulsory to levy assessments each year after drainage by-law passed? Will issue of debentures, non-completion of work, or proceedings to quash, affect answer to this?

7. If a council in any year instructs council or clerk not to enter a drain assessment, or a collector not to collect it, after it is entered on the roll, and it is afterwards uncollectible, who is liable to municipality for loss?

1. The Municipal Drainage Act. (R. S. O., 1897, chapter 226), makes no provision for the payment of any fee or allowance for expenses to a reeve or councillor for sitting as a member of a court of revision of a drainage assessment, as section 50 of the act does in the case of a judge who hears an appeal from such a court of revision and we know of no other services which a reeve or councillor could be called upon to perform, for which he would be entitled to any fee or allowance that would be properly chargeable against the drainage works.

2. The statute prescribes no definite time limit in either of these instances, but the council should pass the supplementary by-law, providing for the levy of the deficiency, as soon as possible and without delay, after it has been ascertained. See section 66 of the Municipal Drainage Act.

3. No. The only provision the statute makes for the disposition of a surplus of this kind is that contained in sub-section 3 of section 66 of this Act.

4. No.

5. No.

6. Yes. If the by-law as finally passed so provides, as it usually does following the form given in schedule B to the Municipal Drainage Act. (See clauses 3 and 4 of the by-law.) The levy cannot legally be made, however, until the debentures have been actually issued. (See Bogart vs. Township of King, 1 O. L. R., 496) and the debentures should be issued within

two years after the passing of the by-law. (See sub-section 3 of section 384 of the Municipal Act, as enacted by section 84 of the Municipal Amendment Act 1903.) The non-completion of the work, or the taking of proceedings to quash the by-law, does not alone absolve the council from its duty to make the levy each year after the by-law has been passed and the debentures issued thereunder.

7. Provided these assessments are such as by law are required to be entered on the collector's roll and when so entered are legally collectible, the members of the council responsible for their not having been entered upon the collector's roll, or for their non-collection when so entered, can be held individually responsible for the amounts thus lost to the municipality.

Power of Village Council to Assist in Erecting Grand Stand for Regatta Club.

458—J. M. A. W.—1. Has the village council power to grant legally five hundred dollars for the purpose of assisting to build a grand stand within the village limits to be used in connection with a Regatta or Rowing Club?

2. If it can legally be done, how many rate-payers petitioning against (what proportion) would it require to prevent the council from doing so?

1. Section 42 of the Municipal Amendment Act, 1900, enables councils of villages to pass by-laws for aiding and encouraging amateur athletic or aquatic sports.

2. The council is not bound to act in accordance with the wish of the rate-payers.

Trimming and Removal of Trees on Highway.

459—G. L.—In our township there is a small village, not incorporated. On the road leading through the village, there are some maple shade trees opposite a certain property and I believe they were planted by the present owner. Trees are outside of sidewalk, branches are very low down and overhang roadway, are a nuisance to the driving public. Complaints have been made to council about the same. Property owner claims they cannot be trimmed without his consent. What action should the council take to have same trimmed or removed?

By section 606 of The Municipal Act, the liability for keeping in repair the highways therein is cast upon the corporation. This liability extends not only to the surface of the highway, but to whatever may be above it. Every municipality has an inherent common law right to deal with trees growing on the highways, so as to make them passable. If the branches of any tree adjoining a highway extend to such a distance on the roadway, or are so low down as to obstruct the highway and occasion a nuisance thereon, the council has authority to trim or lop off the offending branches, doing no more damage to the tree than is necessary to remove the obstruction from the highway. This power should be exercised by by law or special resolution of the council. See in re Allen and town of Napanee, 4 O. L. R., 582). In the case of Ferguson vs. township of Southwold, (27 O. R., 66), it was held that anything which exists or is allowed to remain above the highway, interfering with its ordinary and reason-

able use constitutes want of repair and a breach of duty on the part of the municipality having jurisdiction over the highway; In this case a branch of a tree growing by the side of a highway, to the knowledge of the defendants, extended over the line of travel at a height of about eleven feet. The plaintiff in endeavoring to pass under the branch on the top of a load of hay, was brushed off and injured. The jury at the trial having found that the highway was out of repair, the Chancery Divisional Court, held, on appeal, that the defendants were liable, and refused to interfere with the verdict for \$1,200 damages which the jury had found against them. If the council desires to remove any shade tree in front of a man's land it must comply with sub-section (a) of section 574, chapter 223, R. S. O., 1897.

Distribution of Intestates' Estates—Rights and Liabilities of Parties to Agreement for Sale of Land.

460—J. P. O.—1. James, a man, got married to L. After they had been married for a while John, the father of L, gave by deed a farm to L.

(a) Should James' wife die, who would inherit the land in case James and L have no children?

(b) If they have children?

(c) In either event can John claim the property?

2. A married man who has property has children. This man dies without a will having been made, etc.

(a) Will the property descend to the wife alone?

(b) Will it descend to the children alone?

(c) Will it descend to the wife and children together?

(d) If to both, in what proportion would it be divided?

3. A man makes an agreement to sell his land to John without letting his wife know and without her consent. The man's wife does not want to release her dower, that is, she does not want to sign the deed, unless she receives a certain amount of money from the sale. John wants to get the land as per agreement and cannot do so.

(a) Will the law oblige the man's wife to sign the deed?

(b) If not, what can John do in this case?

4. A agrees to sell his land to B, and B agrees to buy the land. B gives \$100 more or less to A to make the bargain binding. Can A or B break the bargain, and can B receive back his money?

1. (a) James would be entitled to one-half and the balance would go and devolve as if her husband had predeceased her. (See section 5 of chapter 127, R. S. O., 1897).

(b) James would be entitled to one-third and the balance would go and devolve as if her husband had predeceased her. (See above section of the Act.)

(c) He is entitled to one-third if there are children and to one-half if there are no children.

2. (a) No.

(b) No.

(c) Yes.

(d) One-third to wife, the residue to the children, share and share alike.

3. (a) No.

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