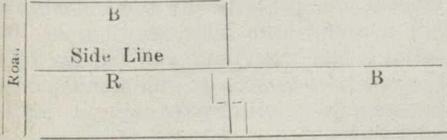


Line Fence Dispute.

301.—J. E.—There is a dispute between two neighbors as to whether the fence-viewers have authority to say where the fence should be placed between B and R. They have built a stone fence between them on side line, two feet on each side of line. B owns a lot abutting R's. R has put up a part of a stone fence next to B's corner. B has notified R to remove it and place it on his, R's, side of the line and he, B, will build his part on his side of the line which would appear thus, — R wants to build it the same as side line half on each. It is the custom to put half on each side of line.

1. Can B force R to remove fence built?
2. Can R put half on each side of line?
3. Have fenceviewers authority to act?



1. No, if the fence is a lawful fence, or of a kind customary in the locality and, it is half on his land and half on R's. If a by-law has been passed pursuant to sub-section 3 of section 545 of the Municipal Act, it should be referred to in ascertaining what constitutes a lawful division fence in the municipality.

2. Yes. In the case of Cook vs. Tate, 26 Ontario reports, page 403, it was held by Mr. Justice Ferguson, affirming the decision of Mr. Chief Justice Armour, the judge at the trial, that a boundary fence under R. S. O., chap. 219, (now R. S. O., chap. 284) should be so placed when completed that the vertical centre of the board wall will coincide with the limit between the lands of the parties each owner being bound to support it, by appliances placed on his own land, and in the same case Mr. Chancellor Boyd in the course of a dissenting judgment says: "It (the fence) should be consistent with local custom and usage and fitness of situation placed as far as possible equally on the lands of each." The subject matter of that case it may be observed was a board fence, but the principle thereby laid down, will apply to this case.

Voting on Bonus By-Law.—Municipal Amendment Act 1900.

302.—A. A. H.—An elector is entitled to vote in each ward (Municipal Act, s. 355.) In certifying as to the two-thirds or three-fifths proportions mentioned in 63 Vic., c. 33, s. 8, should such a ratepayer be counted more than once? I would think so seeing that he is entitled to vote more than once.

2. I understand section 348 of the Municipal Act to mean that I have to write in the poll-book the names, etc., of the duly qualified electors, and not hand a blank poll-book to the deputy-returning officer, as is done at the election of the council. Should I insert in this list the names of men who have died since the voters' list was made out, and how should dead men be dealt with in estimating the two-thirds and three-fifths proportions necessary to carry the by-law?

1. The question you have raised is one upon which the courts have not, so far as we are aware, yet passed. Section 355, of the Municipal Act, entitles a ratepayer to vote in each ward in which he has the qualification necessary to entitle him to vote, and by the section you quote the assent of

two-thirds or three-fifths (as the case may be,) of all the ratepayers entitled to vote on the by-law is necessary. The words "all the ratepayers" mean all the ratepayers of the municipality, and in ascertaining the whole number, a ratepayer cannot be counted more than once, though he has two or more votes in the municipality. The clerk, under section 364, is required to cast up the votes for and against the by-law, and if he finds that there is a majority of votes for or against the by-law, he must so certify, and we have no doubt but that if there is a majority of the votes cast for the by-law, such majority is sufficient, provided that the other requirements of the section you quote are not lacking. This view is confirmed by reference to the clause in the last mentioned section, which provides that "In addition to the certificate required by section 364, of the Act, the clerk, in case the majority of votes being in favor of the by-law, shall further certify, etc." From this it will be observed that the clerk is required to give a further certificate in case of the majority of votes being in favor of the by-law. The legislature does not say a majority of the ratepayers, but a majority of the votes. Where the legislature speaks of two-thirds or three-fifths of the ratepayers, we are perfectly satisfied that the clerk has no right to multiply a ratepayer who is a voter in each of three wards, by three, and thereby make three ratepayers out of him. We are not concerned with what was really in the mind of the legislature who had this enactment placed upon the statute books, nor with the question as to whether it is fair to count individuals only in one case, and votes in the other case or not, we have simply to ascertain what the legislature meant by what it has actually said.

2. Your view of section 248, as to the voters' list or poll-book is correct. This section provides that the voters' list shall be a list "of all persons appearing by the then last revised assessment roll, to be entitled, under the provisions of sections 353 and 354, to vote, etc," and the clerk should make up his list from the assessment roll alone; but we do not think that the names of ratepayers who are dead can be counted in ascertaining whether a sufficient number of ratepayers have voted for the by-law, because a dead ratepayer cannot be regarded as a ratepayer entitled to vote.

Refusal to Pay Taxes.—Election to Fill Vacancy in Council.

303.—J. S.—1. A ratepayer in our municipality, in 1897, refused to pay his taxes for some reason of his own. The collector neglected to distrain and taxes were not paid. The man owns the farm and has been living there all along. Can those taxes be put on collector's roll for 1900 or can they be collected at all?

2. There was a vacancy in our council, I called for a meeting of the ratepayers to nominate a councillor; gave them three weeks notice. There was only one party came to the meeting besides myself; there was no candidate nominated. What is to be done now in a case of this kind?

1. These taxes cannot be placed on the collector's roll for the current year. Assuming that the roll for 1897 has been returned by the collector for that year, the taxes cannot now be collected by distress and sale of the goods of the party liable, nor can they be collected by sale of the land. The municipality has no remedy by action against the party under section 142, of The Assessment Act. As no attempt has been made to collect the taxes in any special manner provided by the Act, the corporation's only remedy is against the collector, through whose negligent default the taxes were lost to the municipality. We are assuming that the taxes might have been made out of the goods of the party assessed.

2. The other members of the council in office—since they exceed the half of the council when complete—should appoint some person qualified under the Act for the office of councillor to fill the vacancy. See section 218, of the Municipal Act.

Maintenance of Road Ditch—Crossing to Schoolhouse.

304.—SUBSCRIBER.—Some years ago our council deepened a ditch along road, some four or five feet, some fifty or sixty chains, to oblige some farmers, turning water out of natural course, going through some knolls. Now some of the farmers wish the council to deepen and clean out said ditch, claiming that the council, having once made a ditch of this kind, are bound to maintain it.

1. Are the council bound to maintain said ditch, or can they put culvert across road and let water take old course? The farmer across whose land the natural course is has forbid the council to turn water across road into old course across his farm.

2. A deputation of public school trustees in the township waited upon our council asking us to put tile in road ditch opposite schoolhouse, and fill in with dirt in order to make a level crossing, claiming that the council was bound to fill in all ditches opposite public buildings. The length of ditch to be filled in this case was about four chains, costing \$30 or \$40. Is a council bound to make crossings of this kind, or is the school section to make their own crossings?

1. No, the council is not bound to maintain the old drain, nor can they build a culvert across the road, if by so doing, water would be discharged on lands to their damage or injury. Councils cannot legally divert water from its natural course to please farmers, or for any other reason. Proceedings should be taken under the Ditches and Watercourses Act (R. S. O., 1897, chap. 285) or the Municipal Drainage Act (R. S. O., 1897, chap. 226) whichever is applicable to the circumstances of the case.

2. We are of the opinion that the council is not bound to make the crossing you mention. Councils are required to construct and maintain ditches and culverts or crossings, in such a way as to best suit the requirements of the highway and the public using the same. If the trustees, for the special benefit of their school, require anything to be done to the ditch in front of their school-house in addition to the above, they must do the work, or cause it to be done at the expense of the school section, and in such a way that they will not interfere with the proper use of the drain by the municipality.