LEGAL DEPARTMENT.

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Municipal Councils.

THEIR POWERS AND JURISDICTION—HIGHWAYS.

Section 546 of the Consolidated Municipal Act 1892, lays down the formalities to be observed by a council preliminary to passing a by-law for stopping up, altering, widening, diverting, or selling any original allowance for road, or for establishing, opening, stopping up, altering, widening, diverting, selling, any other public highway, road, street or lane. Sub section 1, of section 550, of the said act gives to municipal councils the powers which are by implication given to them by the first mentioned section. It was at one time contended, that municipal councils had only authority to change the direction of existing roads, and to widen or otherwise alter them, but not to make new roads; but it is now settled, that such councils have power to make new roads through any persons lands, not merely to substitute for other roads running near and between same points, but to afford a passage from one point to another, where there has been no passage before. As to stopping up, etc., it is not necessary for the council to do more than close, or abolish the highway by their enacment. They are not required to fence it in or to place any physical obstruction in the way of persons passing. They only put an end to the right of using it, and consequently to all obligation on the part of any person to respect it as a highway. Care should be taken in framing a by-law to close a road, to accurately define the road intended, as it had been judicially decided that, where there was more than one road across a lot a by-law closing one of them was void for uncertainty in not showing which road was meant. The provisions as to the posting up of notices mentioned, in subsection 1, of said section 546, are conditioned precedent to the right of the council to pass the by-law. It is intended that the notices should be in the English language, and should state the day on which the council proposes to consider the by-law. It would be well that the corporation should in every case, preserve proof of regular notices by the affidavit of the person employed to put them up in the event of any question arising as to the sufficiency of such notices. It is not necessary, however, that these notices should be framed in a specially formal manner—a substantial compliance with the provision of the section making provision for posting up of same being all that is required. The municipal council cannot validly bind itself to make a by-law for the opening of a street—it is discretionary with, and not obligatory upon such council to open a road allowance, and the fact that a by-law has been passed, does not create such an obligation. It seems doubtful whether power is given to every municipal body to close a section of a road running through more than one municipality. It might be well to observe that said section 550, sub section 1, has no reference to the levelling, raising or lowering of streets as was the case in the old statute, but by section 483 provision is made for compensation to the owners, of lands taken or injured by the municipal corporation in the exercise of its corporate powers. It has been judicially stated, that it is within the general and incidental powers of a municipal corporation, to maintain, repair and improve the public streets of the corporation (town) placed under their charge and in doing so to raise or lower them as may be found necessary judicious or convenient for the public use, not exceeding what is reasonably, requsite and proper, and doing no unnecessary injury, to the property of others, but using due care and precaution to avoid injury to the same. But if the work cannot be justified on such grounds, then, in the absence of any by-law, the defendants would be responsible to the injured parties. Whatever is cast upon the corporation as executive duties under the statutes in relation to the maintainance and repairs of the roads, or whatever is fairly included in those terms, they may do without a by-law. When not so, and it is only within their discretion and the exercise of their legislative power it would be otherwise. No power now exists in expressed terms to change the level of the street to the prejudice of owners of land abutting thereon. The general rule is, that when private rights are interfered with for the public advantage, compensation is given. An interference with the enjoyment of property belonging to another, prima-facie, gives a right of action. This being so, the right to mainain the action exists, unless shown to have been taken away by Act of Parliament. The burden of showing that it has been taken away, rests with those who interfer with the enjoyment of the property of others, in all civilized countries, however, social duties and obligations are par amount to individual rights and interests, by which is meant the right of the public to appropriate private property for public uses. This right is generally subject, however, to the limitation that private property shall not be taken for public use without due compensation.

Legal Decisions.

BRYCE VS. LOUTIT, ET AL.

In this case the Court of Appeal for Ontario, recently held that one who dams up surface water upon his own land, is responsible for damage caused by the breaking of the dam, and the consequence escape of this water, but the municipal corporations who have built under a highway a culvert for the drainage of this surface water in ordinary course are not liable, because the water when suddenly discharged, rushes through this culvert, an causes damage to lands on the other side of the highway.

TORONTO VS. CONSUMERS GAS COMPANY.

This was an appeal by the Gas Company from the Court of Revision of the city of Toronto, which had confimed the assessment for the year 1894, of the property of the appellants, the Consumers Gas Company as follows:

Land, $45,750.—building and rent, $653,000.—It was admitted on the argument before the county judge, that, as to the latter sum, $153,000 was charged on buildings and plant and $500,000 on gas main under public streets, and there was no dispute as to the assessment, except as to these mains. It was agreed that the buildings and plant instead of being placed at $153,000 as specified, should be increased by adding to the buildings and plant $64,950, making the total valuation of the buildings and plant, $217,950.

It was held,—1 That gas mains are assessable as machinery forming an indivisible part of their plant, and appurtenant thing the land actually owned.

2. That sub-section 7, of the interpretation clause of the Municipal Act, is to be read into the Assessment Act, and in that case an easement is expressly named as a taxable interest; and if the Gas Company's interest in their mains is only an easement, it is expressly assessable.

3. That even if the above clause is not read into the Assessment Act, the words "real property" and "real estate," in the Assessment Act, covers and include an easement.

4. The interest or estate of a gas company, in the mains and soil, in which they are laid is a hereditament rather than an easement, and as such taxable as land.

5. Gas mains are not exempt from taxation, because laid on a public highway.

6. Exemption of highway streets from taxation should be directly construed, and confined to the interest of the crown and municipality therein.

REGINA VS. WHITAKER.

In this case, it was held that, where a city by-law passed under sub-section 25 of section 489 of the Municipal Act, 1892, prohibited exhibitions of wax works, menageries, circus riding and other such like shows, usually exhibited by showmen, this would not support a conviction for exhibiting a machine called a "marry-go-round," as contributing no offence under the by-law, or clause. This was an application to quash a conviction of the owner of the "merry-go-round," under the city by-law, and it was judicially remarked that the conviction was bad, the evidence showing no offence against the by law or statute, there being no exhibition at all shown within the meaning of sub-section 25 of section 489 of the Con. Mun. Act, 1892.