

Sub-section 4 of section 559 of the Municipal Act, empowers councils of cities, town and villages to pass by-laws "for regulating the erection and maintenance of electric light, telegraph and telephone poles and wires within their limits," and by the statutes relating to the Bell Telephone Co., (43 Vic. c. 67 s. 3 (Canada) 45 Vic. c. 95. s. 2. (Canada) 45 Vic. c. 71 (Ontario) s. 2) provision is made as to the height of poles and wires in cities, towns and villages, the location of poles and the opening up of streets for the erection of poles or for carrying wires underground, and it is provided that this shall be done under the direction and supervision of the city, town or village engineer, or of such other officer as the council or corporation may appoint and in such a manner as the council or corporation may direct. Your council has therefore, power to pass such a by-law as you suggest. Under the above legislation it was considered that the Bell Telephone Co., had the right to use the highways of a municipality for the purpose of erecting their poles and wires, without first obtaining the consent of the council the eof. But a recent decision of Mr. Justice Street's (reported on page 95 of the Municipal World for 1902 June issue) it is held that the Co. must obtain the consent of the council before they can make use of the highways of the municipality for the purpose of erecting their poles and wires. The Company has appealed this case, but no judgment has yet been given.

Duties of Engineer and Clerk Under the Ditches and Watercourses Act.

443—H. M.—A landowner under the Ditches and Watercourses act makes a requisition for the township engineer to give him an outlet for surplus water. The engineer attends and after 9 or 10 months sends the township clerk his award. The clerk receives the award the 29th day of August and delivers the notices of having received the award upon the 15th September. The council tries to carry out the provisions of the award, but receives notice from a landowner's solicitor that they will be held responsible for any damage caused by carrying out the award's provisions.

1. As the engineer did not comply with sub-section 2 of section 16 of the Act requiring him to send his award within 30 days, was his award legal and would the council be able to collect pay for his services? Under the circumstances would the council be justified in paying him his account for services rendered?

2. The clerk as per by-law passed by council is paid for services rendered under the Act and section 18 states that on the filing of the award he shall forthwith notify each person affected thereby. Would receiving the award 29th August and notifying the parties 15th September be considered "forthwith"?

3. As the landowner requiring the outlet has been deprived of the use of land for one year, has he any right to damages? If so, is it against the engineer or clerk or both or municipality?

4. Is the municipality in any way liable for the failure of the engineer and clerk to comply with the law?

5. Our by-law engaging the clerk states that he will be held responsible for any loss sustained through his negligence or incapacity if the landowner brings a suit against the municipality, could we collect from the clerk?

6. The council appoints a township engineer, provides by by-law for payment of clerk's services under the D. & W. Act, keeps printed forms, pays the engineer and collects when necessary. Are they responsible for the acts of a clerk after the landowner makes requisition? Is it not outside a council's duties and the landowners responsible for the carrying out of the Act after the council has provided the means enabling him to ditch?

1. In the case of Macfarlane v. Miller (26, O. R. S., 516) it was held that the provision in sub-section 6 of section 22 of the Ditches and Watercourses Act that "it shall be the duty of the judge to hear and determine the appeal or appeals within two months after receiving notice thereof, etc.," is merely directory, and we are of opinion that a similar construction would be put upon the word "shall" in sub-section 2 of section 16 that is if the engineer did not file his award within the 30 days as directed, the fact that he filed it subsequently will not invalidate his award or deprive him of his right to receive pay for his services, or prevent the council from collecting the amount as provided in the Act.

2. When the statutes require an act to be done forthwith, it means that it should be done in such a time as would be considered reasonable under the circumstances. We do not think that the clerk notified the parties to this award within a reasonable time after it was filed with him, as, owing to the delay these parties were deprived of the right to appeal against the award given them by sub-section 1 of section 22 of the Act.

3. If the landowner can show that the neglect of duty of the clerk or engineer was the principal cause of his damage he can recover, but it seems doubtful whether he can show that either as against the engineer or the clerk in this case. As far as the municipality is concerned it is not liable at all.

4. No. Mr. Dillon in his work on municipal corporations says:—"If the duty though devolved by law upon an officer elected or appointed by the corporation, is not a corporate duty, the officers of the corporation performing it do not act for the corporation and hence the corporation, unless expressly declared to be so by statute, is not liable for the omission to perform it, or for the manner in which it is performed," and Mr. Justice Osler in the case of Seymour v Township of Maidstone (Clarke & Scully's drainage cases, page 317) says at page 320, "the engineer is an independent officer, appointed, no doubt by the council, but appointed in fulfilment of a statutory duty cast upon them, and not to carry out the instructions of the council, but those of the persons who require the drain to be made. His duties are fixed and prescribed by the statute. The council exercise no judgment, give him no instructions, and have no control over his proceedings." In other words the clerk and engineer in performing their duties under the provisions of the Ditches and Watercourses Act are not acting as

corporate officers, but are the agents or in the employ of the persons desiring the drain to be constructed.

5. In view of the fact that the municipality is not liable for any damages which may have been caused by the negligence of the clerk it is unnecessary to express any opinion as to the effect of the by law referred to.

6. Neither the council nor the municipality is responsible for what is done by the clerk or engineer in carrying out the provisions of the Ditches and Watercourses Act pursuant to a requisition filed with the clerk under section 13 of the Act.

Council Should not Build or Open Drain on Highway for Private Individual.

444—J. F. C.—Can the council of a township be compelled by law to open a drain on the highway, being dug and enclosed some twenty-six years ago and is now stopped up; has been repaired from time to time since then by council. This drain is on the highway just where the ditch should be, and is covered over for the purpose of sidewalk as it runs through the village, runs parallel with road for about one hundred yards. The water has been banked up on two or three parties in village and drowned out their potato garden, and also filled their cellars on account of drain being blocked. Can parties injured come on council for damages? This drain being opened and repaired by council.

The council cannot be legally compelled to open up this drain, nor can they be held responsible in damages to persons injured by the penning back of water, if they refuse to do so. If the council or finally dug this drain along the highway for the purpose of draining the lands of private individuals, it did what it ought not to have done and should not now open it up and keep it clean. The parties who are suffering or are likely to suffer injury, owing to the closing up of this drain, should take proceedings under the Ditches and Watercourses Act to have a drain properly constructed in the vicinity, and the rights and interests of all persons concerned finally adjusted.

Township Treasurer's Statement—Crossig Over Road Ditch—Payment of Expenses of Abating Nuisance.

445—SUBSCRIBER.—1. Is it the duty of the township treasurer to make an itemized statement of all moneys expended in the township in making his financial statement?

2. Is it the duty of the township to replace a bridge leading from a farm over a ditch about 20 feet wide, to the road. The ditch is along the side of the road and on the road allowance. The bridge was taken away by high water and the drain it was over is now in the hands of the referee, and a steel bridge allowed in the engineer's report when the drain was dug before there was no bridge allowed it was built by the party owning the farm

3. A had a horse die; B notified the Board of Health physician and he sent the clerk to notify A to bury it. Can township council place the expenses on collector's roll, or must they recover by process of Common Law?

1. We do not know what statement is meant. Section 291 of the Municipal Act requires the treasurer to keep a cash book in which all items or accounts affecting the