

in the township, there having been a by-law passed some years ago allowing them to run?

4. Can professional men, such as doctors and surveyors, collect higher fees than business men or farmers for attending at court as witnesses?

5. Can a council legally close up a culvert crossing a drain, when constructing another drain crossing the former one?

6. Can a party assessed for said drains compel the council to open up said culvert, claiming the closing of said culvert dams water back on his land?

7. Can a council close up a portion of an old Government road angling across a concession, there being a side road to open up near by and no use for both roads, and the party whose land it angles across being willing to have it closed?

1. Yes.

2. The council can pass such a by-law, and it is not necessary to submit it to the vote of the electors, nor would the council be legally justified in doing so.

3. No.

4. Yes.

5. and 6. We must have a definite statement of all the circumstances in connection with this case, before we can answer these questions.

7. Subject to the provisions of sections 627, 640 (sub-section 11) and 660 (sub-section 2) of the Municipal Act, the council is authorized by section 637 of the Act to pass a by-law for the closing of the road, after having taken all the preliminary proceedings prescribed by section 632.

By-law Closing Road Allowance.

269—I. S.—In this township about four years ago, it being understood that the council intended closing a certain piece of road allowance not in use for travel, one of our ratepayers wrote our council objecting to this road being closed, also a petition was sent in signed by a number of ratepayers asking for the road to be left open. Shortly after the two parties most interested left the township for a short time, and in their absence the council passed a by-law closing the road. The by-law of course was advertised and published to the extent that the law requires and also confirmed by the county council. There were no objections made at the time, as the parties being most interested were not aware of what was taking place.

1. Is a by-law passed on these conditions or under such circumstances legal?

2. If the by-law is legal, has a council power to repeal it and re-open the road?

1. It all the proceedings leading up to the passing of this by-law were regularly taken and the by-law properly drawn, the fact that objection were raised to the closing of the road, and that the by-law was passed in the absence of interested parties will not render it invalid. If the council considered it in the public interest to close this road, they could do so, assuming, of course, that all proceedings prescribed by the Municipal Act in this regard have first been observed.

2. We are of opinion that the council cannot re-open this road by simply repealing the by-law providing for closing it up. If the council desires to establish a road in the place where the closed road was formerly, it must take the proceedings prescribed for opening and establishing roads, by the Municipal Act.

A Ditches and Watercourses Drain.

270—D. R.—Two years ago A applied to municipal council to have ditch constructed under Ditches and Watercourses Act through lands of B and C. The work was proceeded with. Each party did his portion as per engineer's award. No appeals were made. Now the course of this ditch runs for about 70 rods at or near the line between the lands of B and C. This line was not run, part being bush, on both lands with no line fence, and part cleared with fence that was built in early years with many winds in it. The engineer's award states that the ditch is to be on C's land clear of the line. B now finds that the ditch is on his land and says he will fill it in and compel C to construct it on his land according to engineer's award. A is about to apply to council again claiming that ditch is improperly done, in that it is not deep enough to take water off his land.

1. What is the function of the council with regard to the 70 rods of this ditch that is not on right lands as by engineer's award?

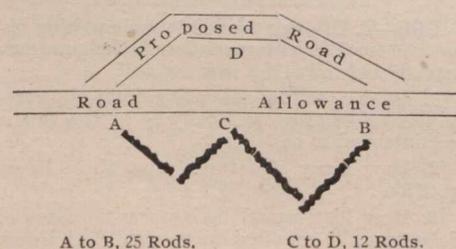
2. Must this ditch be maintained where it is now, or can B compel C to construct another ditch?

1. We do not see what the council had to do with this drain, unless by the terms of the award, it was required by the engineer to make and maintain a portion of the drain. A seems to have been the person who required the construction of the drain to take the water off his lands, and it should have been in the first instance, and should now, be left to him to institute and carry on the proceedings authorized by the Ditches and Watercourses Act. We do not see that the council has anything to do with the matter. If the engineer, in his award, requires the municipality to construct and maintain a portion of the drain that is the extent of their interest.

2. We presume that this drain was constructed in the course staked out by the engineer, and designated in his original award, if so, it must be maintained in this course unless and until it has been changed by award made as a result of proceedings instituted pursuant to the provisions of section 36 of the Ditches and Watercourses Act and B cannot, in the meantime, compel C to construct another drain.

Closing Old Road and Opening New.

271—R. N. B.—The council of the township of S. propose to put in shape for public travel an original road allowance for road at present opened and fenced. Two deep ravines crossing



the road and affecting about 20 rods of the same will require to be filled or bridged at a cost of probably \$200.

1. Have the council power to expropriate the adjoining lands in order to make a road around those ravines, said land being valued at \$20 per acre?

2. If they have the power how should they proceed?

1 and 2. If the council deems it in the interest of the general public to do so, it can close this road, under the authority of section 637 of the Municipal Act and subject to the provisions of section 629, sub-section 11 of section 640 and sub-section 2 of section 660, after the preliminary proceedings prescribed by section 632 of the Act have been taken. The council may also, under the authority of section 637 of the Act by by-law open and establish a road in the place of that closed up, compensating the owners of the lands taken and used for the purpose. If the council and owners of the lands taken cannot agree upon the amount of the compensation to be paid, the matters in difference are to be settled by arbitration pursuant to the provisions of section 437 of the Act.

Construction of Drain on Railway Lands.

272—C. R. W.—A spur line of railway was constructed by the railway company from the main line to a stone quarry about three miles distant. The quarry is no longer used and the rails and ties were taken from the spur line some time ago, and it is no longer used as a railway nor is it likely to be ever used for that purpose again. The portion we are interested in (4 rods wide and 120 rods long) has been used for a pasture field for the last two or three years.

1. Would it be legal to proceed under the provisions of the Ditches and Watercourses Act (not the railway D. and W. Act) to have a drain constructed crossing said spur line property?

2. If so, would the railway company be liable for its share of the work and maintenance, the same as private owners, as provided by section 16 of the Act?

3. Would the railway company be exempt from liability under section 10 of the Railway Ditches and Watercourses Act, notwithstanding the fact that the land exempt is really a pasture field, not a railway?

1. Notwithstanding the fact that this strip has ceased to be used for the purposes of a railway roadbed, it is still land belonging to a railway company and as such is subject to the provisions of section 21 of the Ditches and Watercourses Act, (R. S. O. chapter 285), and of chapter 286, R. S. O., 1897. A reference to sub-section 1 of section 5 of the latter Act will show that it applies only to the deepening, widening and extending of an existing ditch, creek, drain or watercourse bridge or culvert, or to the construction of a new BRIDGE or CULVERT, and not to the CONSTRUCTION of a new drain across or through railway lands. It therefore cannot apply to this case. Before a drain can be constructed across or through these lands an agreement will have to be entered into under and proceedings taken in accordance with the provisions of section 21 of the Ditches and Watercourses Act.

2. No. See section 21 of the Act.