

period of not more than three years from the date upon which the last Assessment Roll was finally revised."

2. Yes, unless the want of repair was caused by the act of some third party, in which case the municipality will not be held responsible in damages unless (1) the corporation has had express notice of the existence of the defect, or (2) it has been there so long as to warrant a jury in finding that they were aware of it, and might have remedied it. (See *McGregor vs. Township of Harwich*, 29, S. C. R., 443.)

Law as to Enlargement of Boundaries of Village.

116—S. L. M.—The village of K desires to enlarge its boundaries under section 16 of the Municipal Act. Will you kindly advise me what preliminary steps it will be necessary to take in order to obtain the order in council. The reason for the move is that the present boundary is irregular in shape and does not include valuable improved property immediately adjoining it. This property is residential and the owners enjoy all the privileges of the improvements of the town without having to bear its expenses. The present limit includes at least 100 acres less than the town is allowed by law, and the proposed addition will not add 50 acres to the area. The owners of the added property while not consenting thereto, will not actively oppose the application as the justice of it is apparent.

The village council should instruct their solicitor to frame a petition to be executed in due form by the council and forwarded to the Lieutenant-Governor, praying him to add the territory therein described to the village. The present area and population of the village should be explicitly stated in the petition and it should also fully set forth the nature and extent of the territory proposed to be added, and the reason for requesting its addition, care should be taken that the provisions of sub-sections 2 and 3 of section 12 of the Act are not transgressed in any way.

Collection of Arrears of Taxes.

117—A. C. M. Can the tax collector appointed for 1902 collect the arrears of taxes mentioned in question No. 78 in this issue from the tenant of 1899, if he can, how should he proceed?

The collector for 1903 has no authority to enforce payment of these arrears by the tenant for 1899. The law is that taxes cannot be recovered by action except where it can be shown that they could not be recovered in any other way. See section 142 of the Assessment Act.

Opening of Road Allowance.

118—J. M.—In our township about thirty-five years ago, the council opened the blind line. It never was surveyed. About four years ago the people interested in the road wanted it surveyed, so the council made out a short agreement that all parties who had land joining blind line would move back their fences to the right place without any recompense. So they all signed the agreement, and when it was surveyed, there were two who would not move their fences. I don't think there ever was a by-law establishing the road. The road is now not more than twenty-eight feet between fences. One man planted shade trees about middle of where the centre of road ought to be.

1. Can council compel these parties to move their fences to the right place without any recompense?

2. Is it legal to establish a road three rods wide, this being all that was asked by the people that owned the land?

3. Is it legal for the surveyor to run line when two men show him the stake on sideroad No. 3 and another on No. 6 sideroad, dividing lots between those sideroads where the blind line is, or should the surveyor find the line himself or what is the legal way?

1. Assuming that the "blind line" is an original road allowance and subject to the provisions of section 642 of the Municipal Act, the council can compel all owners of land adjoining this road allowance to move their fences to the proper line. The council should first, however, be satisfied that it has located the road allowance in the proper place.

2. Section 620 of the Municipal Act provides that "no municipal council, except the council of a city or town, shall lay out any road or street more than 100 or less than 66 feet in width, except where an existing road or street is widened, or unless with the permission of the council of the county in which the municipality is situated, but any road, when altered, may be of the same width as formerly."

3. Sub-section 1 of section 39 of The Surveys Act (R. S. O., 1897, Chap. 181), provides that "all land surveyors employed in establishing or re-establishing the boundaries of any road, etc., shown on the plans or surveys mentioned in this section, shall follow the method adopted in making the original survey of the same, etc." Section 41 provides that for better ascertaining the original limits of any township, concession, etc., every land surveyor, etc., shall and may administer an oath to any person concerning any boundary, post, or monument, or any original land mark, etc., and section 42 prescribes the method in which this evidence is to be taken and preserved. If the surveyor in this case deems the evidence of the three men as to the location of the stakes on sideroads Nos. 3 and 6 sufficient to enable him to define the limits of this road allowance, he has a legal right to act on it in making his survey, but his survey is not binding and conclusive upon the parties interested.

Liability for Payment of School Debenture.

119—J. B.—Some years ago our village built a new public school house to pay for which debentures were issued. A certain property was at that time owned by a separate school supporter. As we have a separate school in the village, said property was not liable for the debenture tax. The property is now owned by a public school supporter. Is he liable now for said debenture tax?

Yes. The land is liable now for its proportionate share of the levy annually made to meet the debentures as they fall due. It is exempt from payment of this and other public school rates only so long as the owner or tenant is paying his school taxes towards the support of a Separate school under the provisions of the statutes in that behalf.

Election by Resignations.

120—H. G. T.—At the municipal elections held on the 5th of January, 1903, six candidates which for convenience we will call A. B. C. D. E. F. ran for councillors, four only being required as this is an incorporated village. Of the six Mr. A. and Mr. F. secured the smallest number of votes and of course the remaining four were declared elected by the Returning Officer. Next day it was learned that one of them Mr. B. was a member of the Public School Board and therefore disqualified. He (Mr. B.) then disclaimed his right to the seat and Mr. F. having the next highest number of votes was declared elected, but Mr. F. did not like to accept the seat because the electors did not elect him and refused to accept the seat and disclaimed his right thereto without having made the declaration of office or qualification. Under the circumstances is Mr. A. entitled to the seat and should the Returning Officer declare him elected or should there be a new election to fill the place vacated by Mr. F.?

Under these circumstances Mr. A. is entitled to the seat and should be declared elected thereto by the returning officer. In the case of *Regina ex Rel Percy v. Worth* (23 O. R. 688), it was held that what took place constituted an election of the respondent and entitled him to the seat, the circumstances were as follows: At an election under the Municipal Act, (then 55 Vic., Chap. 42), for a deputy reeve of a town, there were three candidates, and after the election and before the first meeting of the council, the two who had received the highest number of votes SUCCESSIVELY disclaimed, whereupon the remaining candidate who had received the lowest number of votes, made the declaration of office and took his seat. The candidate who had received the highest number of votes made a motion in the nature of a *quo warranto* to have it declared that there was no election and that the seat was vacant, with the above result.

Control of Pathmasters.

121—J. B.—Has a council power to compel pathmasters by by-law to keep the roads open during the winter season? If so, must the council furnish him with money to do so or can they compel the ratepayers to do so by statute labor?

Sub-section 3 of section 537 of the Municipal Act empowers the councils of townships to pass by-laws "for appointing overseers of highways or pathmasters to perform the duty of making and keeping open township roads during the season of sleighing in each year. Such overseers and pathmasters shall have full power to call out persons liable to perform statute labor within their respective municipalities, to assist in keeping open such roads, and they may give to persons so employed certificates of having performed statute labor to the amount of the day's work done; and such persons shall be allowed for such work in their next season's statute labor."

Owing to the large number of questions received this month 29 have to be held for insertion in our next issue.