

cannot get in or out on the public road without a culvert or crossing; if the engineer says that the municipality has to build the crossing and pay for it out of the township funds, is the township council compelled to do so?

2. If a township council cuts a hill opposite a farmer's gate so as he can't get on the public road, is the township council compelled to grade it so as he can get on the public road, and pay for it out of the township funds, or has the farmer to do it himself?

1. The engineer has no authority to order the municipality to build the culvert or crossing. The law does not require the council of a municipality to build culverts, crossings or bridges over ditches extending in front of a man's farm, to give him ingress or egress to and from the same, but the farmer may perhaps be entitled to compensation if he can show that his lands have been injuriously affected by the work which has been done. Re Lindsay and the township of Albion recently before the courts is of importance in connection with this question. The following is a note of the judgment delivered by Chief Justice Armour:

Re Lindsay and Township of Albion.—Judgment on appeal by the contestants, the municipal corporation of the township of Albion, from an award of arbitrators allowing the claimants, William Lindsay and William Norris, compensation for injury to lands by the corporation opening up and maintaining a ditch on the road allowance in front of the lands, namely half of lot 2 in 6th concession of the township. The arbitrators awarded the claimant, William Lindsay, the owner of the lands, \$40, and the claimant William Norris, the tenant, \$10. Held that there was no ground for interfering with the award. The arbitrators have found that the land was injuriously affected, within the meaning of the law, by the work done by the corporation upon the highway in front thereof, by the exercise of their powers, and it matters not that this was done by the corporation in the performance of its duty to keep the highway in repair, under the law as laid down in Re Yeomans and County of Wellington, 43 U. C. R., 522, 4 A. R., 301. And there is no ground for holding that the finding of the arbitrators was wrong.

2. If the council were acting within the scope of their corporate powers in cutting the hill, and performed the work within the line of the road as originally laid out, for the purpose of making reasonably necessary repairs to the highway, the council cannot be compelled to grade the hill for the benefit of the farmer, who may have been inconvenienced by the doing of the work. It was stated by Chancellor Boyd in the case of Pratt vs. Stratford, that "an owner of lands has by common law no vested right to a continuance of the highway at the level it was when he purchased. The corporation, or owners, or trustees for the public have the right to repair and in repairing to improve streets or bridges without a by-law for that purpose." There may, however, be a right to compensation in this case

under the authority of the cases above referred to.

#### Drainage Assessment—Two Municipalities—Disposal of Surplus Money.

480.—A. M.—A drain is repaired by an initiating municipality, which extends into an adjoining municipality, upon the report of an engineer, at the joint expense of the lands and roads affected in both municipalities. By-laws were passed by both municipal councils, and debentures issued under said by-laws were sold and the money paid into the hands of the treasurer of the initiating municipality. The repair did not cost the amount raised for the purpose of repair, and, consequently, a surplus remains. There is a fact, and the latter part of sub-section 3 of section 66, chapter 226, R. S. O., 1897, says when a certain fact takes place, that is if in the case of two municipalities taking part in a drainage work, if a surplus remains the money shall be divided pro rata among the contributing municipalities. What authority does the treasurer of the initiating municipality, in whose hands the surplus remains, require in order to make the refund? Must it be by by-law, as in the former part of the sub-section, or by resolution of council, or would he under authority of the words "shall be divided" be justified in refunding the money due the other municipality, to the treasurer thereof, or what course must be pursued, say for both municipalities?

The treasurer of the initiating municipality should be authorized by by-law to pay over to the contributing municipality the *pro rata* share of the surplus moneys to which the latter is entitled, and the money when paid over must be applied by the council pro rata according to the assessment in payment of the rates imposed by it for the work in each and every year after the completion of the work. The payment in this case also should be under the authority of a by-law of the council.

#### Clerk's Fees Ditches and Watercourses Act.

481.—SUBSCRIBER.—By-law appointing clerk contains a clause stating that the clerk shall be paid \$2.00 for each day he is attending a court under the Ditches and Watercourses Act, or meeting the owners of property interested, and fifty cents for each subpoena issued, and ten cents a mile, one way, for serving each subpoena when necessary for him to do so. In 1899 A files declaration of ownership (sec. 7, Ditches and Watercourses, 1894) with clerk, who thereupon issues subpoenas to parties whose names were given him by A. Meeting of owners was held, agreement made and reduced to writing by clerk. Council pay clerk's fees according to by-law.

1. Can council now collect fees paid clerk from A and other parties interested or subpoenaed? If so what would be a proper mode of procedure?

2. If at a meeting of owners no agreement is reached, and no further action is taken by A, how, if answer to 1 is "yes," how would council proceed?

3. If the council, to have a watercourse opened for benefit of highway, call meeting of owners (sec. 9, Ditches and Watercourses Act) and no agreement arrived at, and no further action taken, who then is liable for costs?

4. Can railway company be required to open ditch and enlarge culvert on railway, in accordance with dimensions of ditch in engineer's award, if ditch passes through railway property?

We assume by "subpoenas" you mean the notices required to be served on interested parties by sections 8, (Form C.), and 14, (Form F.) You will observe that it is not the clerk's duty to fill in or serve

these notices, but that of the person initiating the construction of the drain. By sub-section 2 of section 9, the municipality is required to keep printed copies of all forms required by the act. These will be kept by the clerk and all he is required to do is to hand them to persons applying for same. In view of the above, unless the fees paid by the council to the clerk were mentioned in the agreement, and the parties thereto or some or one of them therein agreed to pay the clerk's fees, the council cannot collect them from A, and the other parties interested, nor can they be collected in the manner provided by section 27 of the act. If the clerk's fees are provided for in the agreement, they can be collected in the same manner as if an award had been made in the case by an engineer, subsequent to the failure of the parties to agree.

2. Do you mean to collect the costs? If so, the only costs incurred would be a fee to the person attending the meeting as the council's representative (in case the municipality was an interested party) and this should be paid by the council. If the municipality is not an interested party in the proceedings there should be no costs to be paid to the clerk or anyone else, as no one, on the council's behalf, need attend the meeting, and the clerk's work (if any) previous to the meeting should be paid for by the initiating party, or other person employing him to do it.

3. The council must act in the same way that a private owner would do, under similar circumstances.

4. With the consent of the railway company the council may exercise the powers conferred upon it by section 21 of the act.

#### Qualification of Deputy-Returning Officer.

482.—"Pt. Ed."—1. Can a person nineteen years of age act as deputy-returning officer for a municipal election?

2. Must the deputy returning officer be on the assessment rolls?

1. Yes.

2. No.

#### Use of Drain by Non-Contributory Party—Local Drain.

483.—H. L.—Townline running east and west, local drain starting at C's farm on south side of townline running west, H on north side of town line, half a mile west of C's farm, claiming at the time said drain was constructed that it was no use to him and was not assessed for said drain, but has since put a culvert across the road in said drain and has drained a part of his land in said drain. The township council paid him for the pipe across the road and he did the work. Please inform me as to the legal steps to take to have the culvert removed?

You do not say whether the drain was constructed under the provisions of the Ditches and Watercourses Act or the Drainage Act, or made by the council along the road for the purpose of draining it. We should have this information. We infer, however, that the drain was constructed under the Ditches and Watercourses Act, and if so, A cannot use it until he complies with the provisions of section 32 of the act.