

and no person except the actual owner of such wood has any right to it as against A. The law in that case presumes A to be the owner of such driftwood and the onus rests upon any other person claiming it to prove against A that he is the actual owner of it, assuming that rights do not extend beyond high water mark. He has no property in driftwood below that point but driftwood which is cast upon his land is his property except as against the man who can prove that it belongs to him and his prima facie right to it cannot be taken away by a person who succeeds in removing it without his knowledge.

2. The owner of the land upon which it happens to be, is prima facie the owner.

#### Damage to Property by Raising Level of Sidewalk.

**325.**—J. M. H.—Our town council propose laying a cement sidewalk along one of our business streets. To get the walk to right grade and level, it will be necessary to raise it about eighteen inches higher than the present wooden sidewalk opposite a brick building built close to the street line. The new walk will then come about fifteen inches higher than the door sill of this building. The building was erected in a low part of the town before any grade line was established and the street has been raised all of eighteen inches since the building was erected.

1. Would the owner of this building have a good claim for damages against the corporation should the new concrete walk be put through at the proposed level?

2. Would the council be acting within their right or would it be legal for them to agree with the owner of the building to grant a certain sum for damages before the work is proceeded with?

3. Would the better way be for both parties to appoint arbitrators to assess the damages before the work is gone on with?

4. Or after the work is completed?

1. If, in the exercise of the council's corporate powers, it is necessary to raise the sidewalk in front of the brick building, and there is no negligence on the part of the corporation in carrying out the work, the owner will be entitled to compensation under the arbitration clauses of the Municipal Act, if his lands are thereby injuriously affected. See *Adams vs. City of Toronto* (12 Ont. Reports, p. 243.). In a similar case, *In re Youmans and the Corporation of the County of Wellington*, (43, Q. B. p. 522), it was held that the owners of the property affected were entitled to compensation under the provisions of the Municipal Act, for injury sustained by reason of the municipality having, for the public convenience, raised the highway in such a manner as to cut off the ingress and egress to and from their property abutting upon the highway, which they had formerly enjoyed, and to make a new approach necessary.

2. We think so, but the agreement should provide that the amount agreed upon is only to be payable in the event of the work being done.

3 and 4. If the corporation and owner of the building cannot agree as to the compensation to which the latter is entitled arbitrators should be appointed as provided by the Municipal Act. The arbitrators should not be appointed until the work is

completed, because until then they cannot determine what would be proper to be allowed by way of compensation, and besides, this Act says that compensation shall be made for lands taken or injuriously affected, which implies the doing of the work before arbitrating. See section 437, of the Municipal Act.

#### Tax Defaulters Vote.—Tenants Qualification Jurisdiction of Police Magistrate

**326.**—SUBSCRIBER.—1. We are passing a by-law to prevent voting unless tax is paid. Does it extend to future years?

2. Must we advertise it? Please give all particulars, etc.

3. Our assessor has assessed in this way, saying a place worth \$3000, with five tenants, he assessed each tenant at \$200 of the realty to entitle him to vote, and balance \$2000 to landlord. Now suppose landlord pays his share, but tenants do not, can landlord vote on this property, or suppose tenants pay and landlord does not, can tenants vote on the property, or if all but one tenant pay in full, who can vote?

4. In making out voters' list A's property is assessed for \$1000, he has five tenants, how many are placed on the voters' list and whom?

5. The police magistrate at Sudbury has within his jurisdiction the town of Sudbury as well as parts of the district of Nipissing and Algoma, but the appointment is a general one made by the government. The town has no police magistrate of its own. Have the town mayor and justices of the peace power at all times to act in town cases, violating of by-laws, etc.?

1. We assume that you refer to a by-law passed under sec. 533 of Mun. Act subsection 1. Such a by-law will remain in force until repealed and apply to tax defaulters for the current year and all future years, until the by-law is repealed, if it is stated that it is to continue in force from year to year.

2. No, the subsection above referred to will give you all the particulars you require. (See also sections 88-137 (1) (b) and 151 (2) (b) 3. Since your municipality is a town where the population does not exceed 3,000, and assuming that the landlord and tenants possess the other qualifications mentioned in the Municipal Act entitling them to vote, they are all assessed for a sufficient amount. One tenant is not responsible for the default of another tenant and is therefore not a defaulter if he has paid all the taxes for which he is liable himself. In regard to the landlord the assessor did not assess him according to law. (See sections 20 24 of the Assessment Act.) According to these sections the landlord ought to have been assessed for the whole and, if he had been, he would be a defaulter if the whole tax were not paid within the time limited by the Act. As he has not, however, been assessed for more than \$2,000, he is only liable for taxes upon that sum.

4. A has the right to be placed on the voters' list, as owner of the premises, and on the same assumption as the preceding question, if all the tenants are assessed for an equal amount, namely \$200, they have all a right to be placed on the voters' list, and they have such right, if assessed jointly. (See section 93 of the Act.) If the tenants are not assessed for an equal amount, we cannot tell which of

them should be placed on the voters' list until you give us the amount of the assessment of each, except that any one not assessed for \$200 will not be entitled to vote.

5. We assume that the police magistrate was appointed under the authority of section 18 of chapter 87, R. S. O., 1897, and, if we are right in this assumption, justices of the peace may act in all cases in which they would have power to act, if there was no police magistrate except in those cases which they are precluded from trying by section 22, chapter 87. Section 22 is not so broad as sections 7 and 17. The only limit which section 22 places upon justices of the peace is that it prevents them from interfering with cases initiated before a police magistrate, but even in cases where the initiating proceedings were taken by or before the police magistrate, they may act in respect of such cases at the general session of the peace, or in the case of the illness or absence or at the request of the police magistrate. (See also section 23.)

#### Renting Fishing Privileges.—Ownership of Fish.

**327.**—A SUBSCRIBER.—1. A ratepayer in this township has rented his mill-pond to city people to fish. The dam, which is public road is given in lieu of the allowance crossing the pond and is not more than twenty feet wide to the water's edge mostly kept up by the township grants. Can people fish on the road or dam, the width of the allowance sixty-six feet?

2. Has the owner the right to rent the road or balance that is in the water?

3. To whom do the fish belong?

4. Are fish government property?

1. Yes, provided that in so doing they do not obstruct or in any way interfere with the use of the road by the public.

2. The owner of the pond can rent only what he owns. If the dam forming the roadway is vested in the municipality for a width of 66 feet no portion of it can be leased by the owner of the pond.

3. If the mill pond be the property of a private party, as it appears to be, the fish in it belong to the owner of the pond.

4. Yes, in public lakes, rivers and streams, but not in a pond owned by a private individual.

#### Rebate of Income Tax.

**328.**—J. M.—In 1899 A B who was assessed on \$1500 income claimed he had no income and appealed to the court of revision. The assessment was sustained, and finding endorsed on slip by chairman of court and slip returned. A B claims that he thought the income assessment was wiped out and consequently failed to appeal to judge's court. He was therefore obliged to pay taxes on this assessment. This year he produced evidence at court of revision showing he had no income assessable either this or last year and the assessment was wiped out. Now he claims that he is entitled to have amount of last year's taxes returned to him. Can the council legally vote him a rebate of this amount?

No.

#### Payment and Collection of School Money.

**329.**—J. J.—The trustees of a union school section connected with this Municipality have annually for the last six years sent in an ac-