

Payment of Assistant to Medical Health Officer.—Barbed Wire Can be Made a Lawful Fence.

**291**—SUBSCRIBER.—1. At the first meeting of our board of health, the medical health officer reported one case of supposed small-pox, and he asked the advice of the board as to sending to London for Dr. .... to visit the case. Board objected, not thinking it at all necessary, however, the medical health officer sent for the above named doctor, and together they visited the case, which the doctor claimed was not small-pox. Medical health officer now wants council to pay for Dr. ....'s visit, \$20. Will the council have to pay it?

2. Have township council power to pass by-law making barb wire fence a lawful fence?

1. We are of opinion that neither the local board of health nor the council of the township is liable for the payment of this account. The visiting physician was employed by the medical health officer on his own responsibility, and, apparently, contrary to the express instructions of the local board of health, and there is, or was, no contract of any kind between the visiting physician and the local board of health or council.

2. Yes. See subsections 2, 3 and 4 of section 545 of the Municipal Act.

Appeal Against Assessment by Council.—Liability of Council to Pay Damages for Sheep Killed when Dogs Known.—Neglect of Collector.

**292**—A. O.—1. Our council wish to appeal against some assessments which they think too low. They propose instructing the clerk to make the appeals in the name of the corporation. Should they do so, can the council sit upon the cases, and can the clerk act as clerk of Court of Revision legally?

2. A ratepayer has sheep killed by dogs. They captured two dogs, and know the owners thereof, but there were four dogs concerned in the killing. Will the owners have to pay for all sheep killed or only a portion, and will the municipality have to pay a share of damages done?

3. Our collector of taxes neglected to serve a tax-bill upon a ratepayer when serving him with the forms, tax, etc., and it remained overlooked until there was a charge of five per cent. extra upon the taxes unpaid by by-law. The ratepayer was then served but would not pay the extra, but claims that had he been served with his tax-slip he would have got five per cent. discount, which makes a difference of ten per cent. to taxpayer. Now, who should lose this ten per cent., the collector or the municipality? The ratepayer was properly assessed, and knew of his property being taxed. On the other hand, it seems hardly fair that the collector should lose the ten per cent., as it was a clear case of oversight. Is there anything in the statutes covering such a case, or is it a matter of equity between ratepayer, collector and council?

1. If the clerk is an elector he may appeal. See subsection 3 of section 71 of the Assessment Act, and the court of revision can deal with the appeal.

2. Under the circumstances the municipality is not liable.

3. The ratepayer is not liable to pay the extra 5% under the circumstances, because he was entitled to receive notice from the collector in sufficient time to have enabled him to pay his taxes and avoid the extra charge of 5%. We do not think he is entitled to a rebate of 5% as a matter of law. The mistake was that of the collector, and he is liable for the loss.

Assessment of Type and Pressroom Furnishings.

**293**—G. A.—Kindly let me know if it is legal to assess the type and furniture in the pressroom of a printing office, and if so, what per cent. of cash value?

Yes, unless the property is under \$100 in value (in which case it is exempt), it should be assessed at its actual cash value.

An Assessment Appeal.

**294**—LEX.—If a case is appealed to a Court of Revision for a reduction of assessment, and the court thinks from the evidence produced that the assessment is too low, have they a right to raise it without an outside party appealing for an increase?

Yes. See subsection 20 of section 71 of the Assessment Act, as amended by section 5 of the Assessment Amendment Act, 1899.

Equalization of Union School Assessments.

**295**—R. G. R.—I beg to thank you for your letter of April 17th, re equalization of urban union school sections, and I think your opinion is indisputable. Now, it is a fact that lots Nos. 25 and 26, concession 2, W, have been united with L...., as a union section, for about forty years. The clerk of L.... got an abstract of assessment roll of the township of W every year, and levied and collected L....'s school rate on our ratepayers on said lots, among said ratepayers being the G. T. R. Co., which passes through one of the lots, (No. 25.) Our assessor should equalize the rural unions on our boundary this year, and as the school-house is in L...., the notice for equalization should come from their assessor. If no notice is sent, what course would you advise?

The duties the assessors of the several municipalities interested are required to perform, under section 54 of the Public Schools Act, 1901, are imperative, and if the assessor, mentioned in subsection 4, neglects or refuses to perform the duty required of him by this subsection, he can be compelled to do so by mandamus issued at the instance of any party or parties aggrieved by such neglect or refusal.

Requisite of a Drainage By-Law.

**296**—T. W. W.—In regard to draining, a river with well defined banks, from its source to its mouth, and in a state of nature carries down its course a very large body of matter. That while for the most part there is a gradual sloping of the land towards the river down which the water naturally flows; that the artificial drains constructed in many cases lessened the flow of water by taking it to other rivers, and in some cases has increased the flow of water upon the whole, leaving it about the same as in a state of nature. In draining this river the only object is to benefit the flats of bottom land, confining the water in a smaller channel, which comprise about six hundred acres.

1. In getting up a petition would we have to get a majority of the benefited parties in both townships, as it runs through two townships, or enough in the one to overbalance the benefited parties in the other township?

2. Could a by-law be held good if 5,100 acres is assessed for injury \$27,000, and 600 acres benefited is assessed for \$7,000 for benefit, or, in other words, if land is injured by the water from high lands to the extent of \$27,000, when the river land has been relieved of the injury, had it ought to be benefited to the extent of \$27,000 or more?

3. Could a drain be legally constructed to the township line, then in another township to a sufficient outlet, and not assess the other township for benefit? Could one assessed in the first appeal against such an assessment?

4. If a by-law having an injunction restraining the council from proceeding with payments of persons ordered by the council to work on by-law, and by-law was quashed, could the council be compelled to pay these men for work on by-law, it being quashed on the point of not having enough on petition for a majority, those payments being made after the court had quashed the by-law and injunction being raised?

5. Could a by-law stand if the assessment was as follows: Total assessment, \$36,758.00, divided as follows: for benefit, \$6,037.00; outlet, \$322.90; injury, \$27,648.27; township bridges, \$2,750.00; fees, \$3,000.00; farm bridges, \$2,248; for land taken and damage to lands, \$1,114.18; and only \$2,639.55 is for benefit to lands?

1. To ascertain whether the necessary majority has signed a petition for drainage works, under section 3 of chapter 226, R. S. O., 1897 (the Municipal Drainage Act), regard must be had only to the resident and non-resident persons (exclusive of farmers' sons, not actual owners) as shown by the last revised assessment roll to be the owners of lands to be BENEFITED in any described area in any township, etc. The owners of lands assessed for "injuring liability," or "outlet liability," do not count for or against this petition. (See clause (a) of subsection 3 and clause (a) of subsection 4 of section 3 of the Act.) We are of the opinion that the petition must be signed by a majority of the owners of land in the whole area to be drained.

2. Not having the engineer's report, the township by-law passed in pursuance thereof, or a full statement of the facts before us, we cannot answer this enquiry.

3. The law as to continuing a drain into an adjoining municipality is to be found in section 59 and following sections of the Municipal Drainage Act. The proportion of the cost of the drainage work, which is to be borne and paid by the initiating and servient municipalities, respectively, is a matter which will have to be settled by the engineer employed to examine and report in the first instance, and afterwards by the drainage referee, or court of appeal on appeal from the decision of the drainage referee.

4. We do not know what kind of work you refer to, but all parties who performed any *bona fide* service for the municipality in respect of this by-law, before it was quashed, are entitled to receive their pay.

5. We cannot answer this question for the reasons given in our reply to question No. 2.

We may say that we do not think that you have read section 3 of the Drainage Act carefully, or if you did you do not understand it. If you did understand it you would not ask questions Nos. 2 and 5, because there is nothing in section 3 about the values of the lands to be assessed. The question always is: Is the petition signed by a majority in number of the resident and non-resident persons, etc., as shown, etc., to be the owners of the lands to be benefited in any described area, etc.