

sufficient evidence of dedication, and in *Johnston v. Boyle* (8 Q. B., 142) it was held that the placing of a gate across a travelled road after the public had enjoyed it for upwards of twenty years, can never abolish a highway.

2. Section 633 does not affect by-laws passed before the 29th March, 1873, in any way. Prior to that date a by-law passed for the purpose stated in that section did not require registration, and so far as this section is concerned such a by-law, if in other respects valid, is good without registration.

3. Yes.

Council May Refer to Railway Committee of Privy Council.

178.—L. A.—We as D—— township are somewhat perplexed in regard to a subway the G. T. R. is building through D—— township. They are deviating from the old track half a mile south. The deviated line runs on and across the side line. The ratepayers of that part of the township sent a petition to the council to have the subway put in parallel with the side road. The council notified their solicitor. He sent a man to look after it. He came. I met him at the subway. He said they had started to build and it had to go through. Now I would like to know if the Council can stop the building and make them put the subway in straight or if not make the G. T. R. pay damages to the township. If they persist in putting it in on an angle and if we can make them pay damages, how shall we proceed?

The council's remedy is to lay this matter before the Railway Committee of the Privy Council, requesting them to investigate, and adjust all questions relating to this subway between the company and the municipality. Under the Railway Acts the company is liable to a penalty for not replacing a highway after the completion of their railway on and across it.

Impounded Stock to be Taken to Pound of the Division in Which Impounded.

179.—J. R.—Is a ratepayer in duty bound to take stock to the nearest pound, or can he take them to any pound in the same municipality of which he is ratepayer?

Impounded stock should be taken and delivered to the pound keeper for and having jurisdiction in the division in which the person delivering the stock resides. (See sections 3 and 5 of chapter 272, R. S. O., 1897). We assume that no by-law has been passed by the council of the municipality, altering these provisions of the statute, pursuant to section 1. If there is such a by-law, its provisions should also be examined.

Ownership of Road Allowance.

180.—T. B. C.—Over forty years ago when the township was new, there was a road opened where there was no road allowance. It runs in a straight line between two farms. The township has had peaceable possession ever since. Road is well made, parts of it gravelled. Does the municipality own the road having possession so long? Can parties purchasing the farms close the road up or can they collect pay for the land?

Without knowing the nature and extent of the uses of this road by the public, it is

difficult to say whether a court would assume a dedication of the road for the public use. In the case of *Mytton v. Duck* (26, Q. B., 61,) it was held that the user of a road by the general public for thirty years after the patent issued would be conclusive evidence of a dedication as against the owner, and that such dedication was equivalent to a laying out by him, so that the road, under C. S. U. C., chapter 54, section 336, was vested in the municipality. This road appears to have been pretty thoroughly used and travelled by the public for over 40 years and to have been maintained and improved by the expenditure of moneys of the municipality, and would likely be held to have been sufficiently dedicated to the public as a highway. If it was so held the road would be vested in the municipality and the owners of adjoining lands would be entitled to no pay for it. (See also our answer to question No. 177 in this issue.)

Collection of Arrears of Taxes in Towns.

181.—O. L.—1. In the year 1895 a certain portion of this township was by an Act of the Legislature incorporated as a town. At the time of the incorporation there were taxes due (from freeholders, householders and tenants) from that portion of the township which now composes the town. These arrears were left on the old roll. In the year 1897 this roll was handed to our township collectors with instructions from the township council to collect these arrears. The collector succeeded in collecting a certain amount, but there still remained a certain amount uncollected. A couple or three years afterwards, the same old roll was handed to another collector who could not collect but a few cents. This roll is now handed back to the council. Now we are told that these arrears are outlawed and therefore are not collectable. Would you kindly give your opinion as to whether we can yet collect or not?

2. I may further state that we have an agreement entered into between the two corporations at the time of the separation of the town from the township to the effect that said two corporations shall share in any profit or loss from the assets or liabilities at the time of the separation so I presume that in the event of any loss on the part of this municipality on account of the above said taxes or arrears, then the other municipality would have to share with the loss according to agreement.

1. It is not stated whether this roll has ever being returned by the collector to the treasurer in the manner provided in sections 147 and 148 of the Assessment Act, or that the original collector or some other person in his stead, if the roll was not so returned, was authorized by resolution of the council, to continue the levy and collection of the taxes unpaid on the old roll, as provided in section 145 of the Assessment Act. We gather, however, that this old collector's roll was returned several times by the collectors successively appointed, and if this is so, payment of these taxes cannot be enforced by any collector or other person to whom the roll is delivered with directions to collect the arrears of taxes thereon, and since the handling of the roll throughout seems to have been unusual and irregular, we do not think the lands can now be sold to realize the amount of the arrears. We do not see, therefore, how they can now be collected at all.

2. We cannot express any opinion upon this question without having a copy of the agreement referred to.

Duties of D. R. O. After Close of Poll

182.—W. F.—In the last election (municipal) for the town of U—— at the closing of the poll, the deputy returning officer called in an outsider to help him through with the counting up of the ballots, making out of the statements, etc., as he did not understand the duties of the office. This same person handled all the ballots both used and unused and tallied up the reports even going so far as to write them out and then the D. R. O. signed them. One of the agents who was there objected to the outsider doing this thing saying the outsider had no right to be there and he said he had as he was invited there by the D. R. O. to assist him. Had the D. R. O. any right to call in an outsider (viz: one who was not appointed as an agent or who had not taken the oath of secrecy at the polling booth) and what penalty is attached for so doing?

The Deputy-Returning Officer acted improperly, and in a manner unauthorized by the Municipal Act in calling in an outsider to aid him in counting the ballots after the close of the poll. The persons present at the counting of the votes should be only the candidates or any or either of them, their duly authorized agents (not more than two) and the Deputy-Returning Officer and his poll clerk. (See sections 174, 175 and 177 of the Act.) Section 174 provides in every polling place the Deputy-Returning Officer shall immediately after the close of the poll, in the presence of the poll clerk (if any) and of such of the candidates or of their agents as may then be present, etc., and section 175 provides that no more than two agents for any candidate shall be entitled to be present at the same time at the counting of the votes, and section 194 imposes a penalty upon every officer, etc., but after the best consideration which we have been able to give this matter we think it very doubtful whether the clerk is liable to any penalty for what was done by him, and we would not advise that any proceedings be taken against him, though he acted wrongly in allowing a person who does not appear to have had any authority to be present at the counting of the ballots.

Powers of Councils in Dealing with School Estimates.

183.—C. A. P.—1. Has a council power to reduce the estimates of a school board when they ask for more money than is required for school purposes?

2. Has the school board a right to allow their treasurer to use a portion of the school funds in lieu of paying him a salary?

3. Is a school board bound to take into consideration any cash on hand from previous year when submitting their estimates to the council?

1. In the case of *Toronto Public School Board v. the Corporation of the City of Toronto* (4 O. R., 468,) the Court of Appeal for Ontario recently decided that a school board in preparing their estimates for the current year may include everything that in THEIR judgment may be needed to meet legitimate expenditure, that is, expenditure upon objects or for purposes within their lawful authority, and