

I may say that there has been a great difference of opinion in our council as to how those two sections (namely 77a and 10a) would apply. Would you outline the meaning of those two sections?

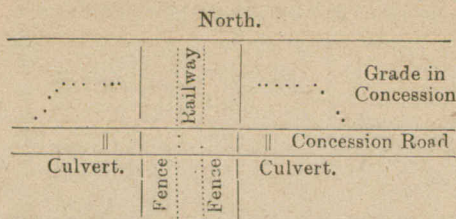
There is a drain in our township which has been brought under the Drainage Act where three parties form the drainage area, namely, A, owner of 100 acres, B, owner of 100 acres and the township. We have been notified by A that this drain is in a bad state of repair and that he holds the township responsible, etc. The preliminary expenses would be about \$90, while \$50 would relieve A. We have met A and B with a view to each party doing a portion of the drain without bringing on an engineer, but B refused. Would section 10a apply to such a case, or would the drain first have to be repaired with money, and a provision in the report that after it is repaired so much would be A, B and township's share as laid out in report?

We must confess that the sections you refer to are somewhat difficult of construction and application, in the absence of judicial interpretation of their meaning, and connection with the other sections of the Act. However, we are of the opinion that when a petition for the construction of a new drain is presented to the council, or it becomes necessary to repair or improve an existing drain under section 75 of the Drainage Act, a by-law may be passed providing for the future maintenance and repair of the drain, by owners assessed for benefit "to the extent and in the manner or proportion and for the distance determined by the engineer," pursuant to section 77a, and that the engineer in his report for the construction or cleaning out, repair, etc., of the drain, as the case may be, should state the proportion of drain which shall be, by each owner assessed for benefit, etc., cleaned out and kept clean, etc." Proceedings must first be commenced for the construction or cleaning out, repair, etc., of a drain, before the provisions of these sections can be invoked. In the case in hand the engineer must make an examination and report under section 75, and the engineer may, in his report, invoke the powers contained in sections 77a and 10a and the council may then pass a by-law under the powers of these two sections giving effect to the engineer's report.

Opening Road Across Railway.

375.—W. R. M.—We are opening a concession across railway track; the land on either side of the railway is low and the railroad track is raised up by filling in. There will be two culverts required one on each side of railway. These culverts would be outside of railway's line fence but close to the fence and under the grade made to cross over the railway track. The railroad roadmaster says the company will put in one on the west side of tracks and the townships will have to put in the one on the east side.

1. Whose duty is it to put in these culverts?
2. Can the railroad be compelled to put in both?
3. Is there a legal grade that railway companies must follow in making crossings over their tracks?
4. If there is, what is it?



1. The duty of the municipality, unless the railway company agrees or consents to do the work or part of it.

2. No.

3 and 4. Yes. See subsection 3 of section 207, R. S. O., 1897; chapter 241, R. S. O., 1897, and sections 184, 185, 186 and 187 of the Railway Act passed by the parliament of Canada on the 22nd May, 1888. These provisions do not appear to apply to this case because the highway was not opened up for public travel at the time the railway was constructed. These provisions appear to apply to a case where the railway is constructed along or across a highway *de facto*, that is, one which has been graded up and made fit for public travel.

Subway for Cattle—Road By-Law.

376.—A. R.—Our council wishes to allow a man to make a subway for cattle under the road. Will it have to be advertised the same as opening a road? What steps should be taken?

2. Our council in 1869 passed a by-law opening a line of road commencing at the shore of the lake and continued on across lots and parts of three lakes. The people understood that it was intended for a winter road only, but by-law does not say anything about winter road. An agreement is found from the person whose land the road crosses (or part of it) and receipt for \$— in full for damage for land taken, but to be used for winter travel. The road has never had any work or statute labor done thereon. Can the council be compelled to put said road in repair or can it be closed up?

1. The council should pass a by-law pursuant to subsection 5 of section 637 of the Municipal Act. It need not be advertised.

2. The language used in the by-law as passed by the council must govern, and the road can be closed only by by-law passed by the council, under the provisions set out in section 632 of the Municipal Act. As long as the road remains open, it must be kept in repair and in a safe condition for public travel by the council.

Who Pays the Surveyor.

377.—J. B. M.—A certain public road being a concession, having never been opened for public travel, being too rough. At our last meeting of the council one or two of the farmers living adjacent applied to the council to have the road surveyed so as to give them the right line on which to build their fences. The council objected, saying they would have to employ the surveyor at their own expense. Were they justified in so doing, or would the township have to employ the surveyor and pay him to find the right line for these farmers?

The council does not appear to be interested in this matter in any way, and acted properly in refusing the request of the farmers. If the employment of a surveyor is necessary to ascertain the

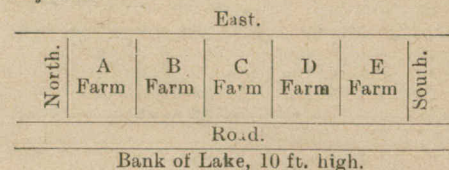
boundaries of their farms, they should employ and pay him themselves.

Expropriation of Land for Widening Road.

378.—ENQUIRER.—1. A, B, C, E have built breakwaters down to the water's edge and caught the sand that comes up out of the lake and thereby prevented the water from washing away the road in front of their farms. D has not done this and the water has washed away the road in front of his farm until it is no longer safe for travelling. Can the council compel D to give sufficient land from his farm to widen the road?

2. If so, how?

3. If the council have to buy the land from D and he asks more for it than they feel disposed to give him, how can the price be adjusted?



1 and 2. If it is necessary for the safety and convenience of the public that the road should be widened opposite D's land, the council may, after passing the necessary by-law, enter upon, take and use such portion of D's land as may be necessary for the purpose. See sub-secs. 1 and 2 of section 637 of the Municipal Act.

3. If the price to be paid for the land so taken cannot be mutually agreed upon between the council and D, it should be determined by arbitration under the Municipal Act. See the latter part of section 437. As to the appointment of arbitrators, see section 448 and following sections of the Act. As to the mode of procedure of the arbitrators and the method of conducting the arbitration, see section 458 and following sections of the Act.

Cattle at Large on Railway.

379.—R. A. S.—1. Is there any Act in force which would make corporation liable to railway company for any damage done by cows running at large? This question came up as follows: A few days ago a cow running at large attempted to cross one of the railway cattle guards and in so doing got her foot caught in the guard. Had the cow got caught a few minutes earlier she would have been run into by the train and might have caused considerable damage to the company's property. This brought up the liability of the corporation. The station agent contended that the corporation would have been liable to any damage sustained by the company through the cow being on the track. In looking up the Railway Act of 1888 I find that no cattle are allowed to run within one-half a mile of railway crossing or track, but can find nothing making the corporation liable. We have a by-law in force which allows cows to run at large on the streets under certain conditions as to the hours they are to run. Would this by-law make the corporation liability any greater?

2. I see by the R. S. O., vol. 2, page 3211 pounds (2) which reads as follows: "The owner of any animal not permitted to run at large by by-laws of the municipality, etc." Would this mean that if this municipality did not pass a by-law permitting cattle to run, that under the Pounds Act cattle could not run? I would like to know if such is the construction you put on the Act.

1. We are of opinion that the municipal corporation would not have been liable to