

Bonus for Trees Planted—Property in.

86.—R. B. W.—1. If trees are planted fifteen feet apart, have councils a right to bonus every alternate tree?

2. Trees left for protection or ornament on public highways, are such trees the property of the owner of land adjacent to them? Have municipal councils a right to sell same?

1. Yes. The latter part of section 4, of the Ontario Tree Planting Act, (R. S. O., cap. 243,) provides that, "in no case shall the council be liable to pay a larger sum in respect of trees planted under this Act than would be payable if the same had been planted at a distance of thirty feet apart, and in no case shall a bonus be granted where the trees are *less than* fifteen feet apart.

2. The owner has a special property in such trees, but they can be cut down, removed or sold under the provisions of a by-law passed by the council pursuant to the provisions of section 574, of the Municipal Act, if and when such removal is deemed necessary for public improvement.

Ice and Snow on Streets and Sidewalks—Liability for Accidents.

87.—R. M.—Our streets are all glare ice. If any person gets hurt can they come upon the corporation for damages?

What is the law respecting this case?

Sub-section 2, of section 606, of the Municipal Act, provides that "No municipal corporation shall be liable for accidents arising from persons falling, owing to snow or ice upon the sidewalks, unless in case of gross negligence on the part of the corporation." This legislation was passed in 1894, (57 Vic., c. 50, s. 13, Ont. Act.) Since then the question has, on several occasions, been judicially considered. It will be necessary to cite only one case to indicate the present position of the subject. The circumstances resulting in the recent case of O'Brien vs. the city of Toronto, were similar to those you suggest. The plaintiff, while walking along a sidewalk in Toronto, slipped and fell violently, seriously injuring herself. It appeared that the sidewalk in question was a granolithic pavement, and had been in a slippery condition since the inception of the winter; that at the time of the accident it was covered with thin, slippery ice, and that the walk had been so covered for five days prior to the accident. County Judge Morgan, (County York,) before whom the case was tried, held that a municipal corporation has a right to select such material for sidewalks as in its discretion, it may think best, so long as it is a material which is generally used or adaptable for the purposes required, and the corporation is *not* liable for damages which may result, merely because such pavement becomes at any time so affected by natural causes, OVER WHICH THE CORPORATION HAS NO CONTROL; that more than ordinary caution is required by the public using such sidewalks to prevent accidents. In the result the action was dismissed. The case will be found more fully reported on page 61, of THE MUNICIPAL WORLD for 1898, (Vol. 8.) The section above referred to is confined to

sidewalks, so that if an accident happened upon some other part of the road, or street, it would not apply. To answer your question, we cannot do better than to give you the language of the late Mr. Justice Wilson, who delivered the judgment of the court in the case of Carswell vs. St. Mary's Road Co., 28 U. C. Q. B., 247, at page 251, he says: "It is by no means an easy matter to lay down any general rule on the subject, but it is clear that the company cannot be required to clear the snow off the ground whenever it falls, or even to remove the ice which may form there. It would frequently be an impossible work to attempt it, and it would be mischievous, and a nuisance in some cases to effect it. Snow is looked for in this country, and provided for as forming the best and most suitable means of travelling during the winter; and even when it falls to a great and unusual depth, it is not the duty of any person, or body of persons, to remove it from the roads. Those who use them at such a time must use them as best they can while this natural and unavoidable impediment lasts. Nor can any one be required to remove the mud and mire from the road, caused by rain or by melting of the snow, for this, too, is an obstruction, caused by a usual natural process. There are, however, cases where snow and ice, and mud, may and must be removed from the road. If a particular part of it for two or three rods in length happens to be in a very dangerous condition, exceptionally and particularly dangerous, as distinct from the rest of the road, and it can be put in a safe state, and at a reasonable expense, there is no reason why it should not be made safe for travel, although it was caused by rain, snow or ice, or what might be called natural means.

Bonus to Telephone Company.

88.—A. C. W.—Can a village council legally grant money to the Bell Telephone Company as an inducement to come to the village, out of the village treasury by resolution or by-law? No.

Farm Crossing over Road Ditch.

89.—C. B.—Re crossway over road ditch or drain. If the said crossway over the drain becomes an obstruction and causes the drain to overflow is the municipality obliged to put a new crossway if they cause the old structure to be removed for the purpose of deepening and widening the drain, or can they compel the occupant of the premises to build the same? The structure as it is was built years ago by one of the councillors and recently repaired (by recovering with new plank) by the occupant.

In the recent case of re Lindsay and township of Albion an award was made by arbitrators respecting injury caused to a farm by a ditch constructed on behalf of the municipality along the wayside opposite the farm and a motion to set aside the award was refused by Mr. Chief Justice Armour following. In re Youmans and the corporation of the county of Wellington 43 U. C. Q. B. 522, where an award granting compensation to the owners of property abutting upon a

public highway 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 regress to and from their property abutting upon the highway, which they had formerly enjoyed, and to make a new approach necessary, was upheld. Assuming that the construction of the drain in question in the first instance would have affected the land, of the owner, injuriously so as to have entitled him to compensation, it seems to us that the removal of the bridge, if necessary for an approach to his lands would entitle him to compensation for the injury sustained by reason of its removal. In the case of McCarthy vs. Oshawa 19 U. C. Q. B., p. 245, Robinson C. J. at p. 247 says: "Then as to the other ground of action introduced by the amendment, namely, the neglect of the defendants of an alleged duty to provide a bridge or crossing from the street to the plaintiff's land and house. No authority has been shown for asserting that to be a duty incumbent on the corporation, and we do not think it is. The public crossings or bridges over the side ditch at the intersections of streets is all that we see the corporations of cities, town and villages do in fact provide, and we do not think that the duty could reasonably be entered further. If the plaintiff in this case had walked a few yards further along the street he would have had the advantage of the public crossing over the ditch into the other street which intersected it and from there could have got conveniently upon his own land." In view of this decision it is not incumbent upon a municipality to provide an approach just where a landowner wants it when it appears that he can reach the highway at some other point though such point may not be so convenient.

Members of Local Board of Health.

90.—M. R.—How many new, and which officers are appointed on Board of Health every year?

The local Board of Health in townships and villages is composed of the reeve and clerk, and three ratepayers to be appointed by the municipal council in the following manner: one member to be appointed for three years, one for two years and one for one year, each member retiring to be replaced by a member appointed for three years after the date of his appointment. See section 48, sub-section 1, of The Public Health Act (R. S. O., 1897, chap. 248.) Each year therefore after the original formation of the local board of health, but one appointment to membership is necessary, that is one ratepayer for a term of three years.

Poll-Tax Liability.

91.—E. S.—1. Is a volunteer exempt from poll-tax on account of his being a volunteer?

2. Is a person living in a village exempt because he has land in a township and does road work there?