

Claims for Damages

CORPORATIONS CANNOT BE HELD RESPONSIBLE FOR UNFORSEEN ACCIDENTS.

For many years the funds of municipal corporations have been constantly depleted by a series of drafts upon them caused by actions at law for damage, the result of accidents to private citizens owing to defective sidewalks, bad roads, etc. In the past it has been found more profitable to arrive at a settlement with the injured citizen than to allow the case to go to court, as a jury will always favor the individual against the corporation. The result has been that parties having the slightest claims for suffering loss make a point of asking enormous recompense for their injuries. This has been the case all over the Dominion. Pictou, N. S., has suffered so much from this cause that the corporation decided to carry the case of Geldert vs municipality of Pictou to the Privy Council, as it was considered that the verdict against the corporation was unjust. The decision given was unanimous, to the effect that the municipalities are not liable for injuries sustained through non repair of the streets, but only for accidents caused by wilful neglect on the part of the corporation to repair the same. This is a reversal of the decision of the Supreme Court, and will cause a revolution in the carrying of such cases before the courts. Hitherto it has been customary to mulct a municipality in damages for injuries sustained by the bounding of a plank on the walk, owing to a nail becoming loose, plank suddenly giving way in the centre, or a washout immediately after a heavy storm. By this rendering of the law such accidents cannot be charged against the municipality, it being necessary to prove that the authorities were wilfully negligent in repairing such places.

—*Ottawa Free Press.*

The Michigan authorities have passed a law, making it possible for magistrates to offer habitual drunkards the alternative of taking a gold cure treatment at some recognised institute in lieu of a sentence of imprisonment. It has been suggested that the Ontario legislature should pass a similar law and that a person accepting this option be allowed on suspended sentence for three months. A strong impulse would then be given him not to run away from the institute, leaving his cure only half finished.

A correspondent in *The Globe*, referring to the matter, suggests that in case of the penalty of a person preventing him to pay for the gold cure treatment that the costs be borne in equal proportion by the municipality and the province. This is a suggestion worthy of consideration by the councils of the towns and cities in the province, and one that, if put in force and found to work successfully, should do as much good as a prohibition plebescite.

QUESTION DRAWER.

SUBSCRIBERS only are entitled to opinions through the paper on all questions submitted if they pertain to municipal matters. Write each question on a separate paper on one side only. When submitting questions state as briefly as possible all the facts, as many received do not contain sufficient information to enable us to give a satisfactory answer.—ED.

E. G.—School trustees of section 5 made a requisition in 1892 for \$400. Council failed to strike rate high enough to collect it. Is present council compelled to pay full amount? If so, how is it to be paid when amount was not collected?

2. A. has a claim on a lot here which is held by the government. He refused to be assessed for it this spring, but is now cutting the hay. Can collector seize hay for taxes?

1. If the amount levied for and received by the trustees last year was not sufficient for their purposes, they should ask the present council for an amount sufficient to cover what they require this year, and last year's deficiency, and see that the council levy the amount.

2. No.

C. F.—Under the local improvement sections of the Municipal Act 1892, commencing with section 612, and following, the council took steps without petition to lay down a tile drain on one of our streets. Our surveyor made his plan, and assessment on the various properties to be benefited. Parties interested were notified of the measurements and assessments, and of the date of the court of revision. Now, supposing that all things have been legally done up to the meeting of the court, and certain appeals have been entered, and certain allowances have been made to certain parties on such appeals; the question arises, what is to be done with such allowances, can they be charged to the other properties benefited, or must the municipality at large assume such allowances? This has no reference to corner lots, or triangular pieces of property, but simply where the court's judgment differs from that of the surveyor, as to the benefit derived by such property as compared with other property to be benefited by such local improvement. The council must raise so much money, and if they reduce any particular property, they must make up that reduction in some way, and the question is, what is the legal way to make such reduction good? Is it to be charged to the other properties benefited, or paid out of the general fund of the town?

The allowances made should be assessed against all the properties benefited (including the properties in respect of which the allowances were made) pro rata according to the original assessment.

T. K.—In our municipality, about the middle of July, we had to appoint a new clerk. In doing so we appointed a man who is reeve of an adjoining municipality. Is the appointment legal or can he hold the two offices? He is also a ratepayer in our township.

We do not think the appointment mentioned by our correspondent was illegal, but it is doubtful as to whether the appointee could still hold his office of reeve of the adjoining municipality. The language of section 77 of the Municipal Act is very broad, and it is quite possible that the appointee would be held disqualified thereunder as reeve.

C. J.—Incidentally you touched upon a question that is now being discussed with a good deal of warmth in this town, and which is of such general application and importance that I think it not out of place to call your attention to the matter, and ask for your opinion and the grounds upon which you base your opinion.

In paragraph No. 2, page 117 MUNICIPAL WORLD for August, 1893, you used these words: "And the amount of any special rate imposed under debenture by-laws should be the amount required for debentures and coupons payable during the year 1894. These words imply that the council have power to raise taxes this year to pay a debt that falls due next year. Now it is contended that a council has no power to levy a rate or to collect taxes to pay a debt falling due next year, but must confine themselves exclusively to providing the means for paying debts falling due in the year in which the rate is levied.

Under sub-section 10, section 107 Public School Act, 1891, the public school board must confine its requisition to the then current year, and cannot ask for money beyond the 31st of December of the year in which the requisition is made.

Now the question is, can the council levy this year a rate to pay a claim that falls due next year? or must the rate be confined exclusively to raising an amount necessary to meet the claims of the current year, in which the rate is levied.

It should be borne in mind by our correspondent that the remarks referred to and quoted by him above do not apply to general rates but only to special rates levied and collected to pay debentures and coupons. In order to meet the payment of debentures and coupons maturing the 1st of January next, or thereafter previous to the collection of rates for 1894, the amounts should be levied and collected this year.—See section 342 of the Municipal Act, sub-section 2.

G. E.—The council representing this township for 1891 engaged a collector, and accepted bonds from him which were not good. The collector proceeded to collect, and during his term of office was burned out, fire catching in the roof where stove pipe passed through. Collector was in the house at the time, about twelve o'clock noon. Collector claims that \$313 of township money burned in the house. Collector then cleared out engaging another party to finish collecting. The latter gave receipts to different ratepayers to the amount of about \$100 in excess of amount marked paid on roll, and collected by him. The treasurer's books agree with the roll in regard to his collecting, but shows \$11.62 collected by first collector, besides amount burned; which does not appear in treasurer's books. Who is liable for the missing funds?

The collector and his sureties are liable for the missing funds. The members of municipal councils, cannot, as trustees for the ratepayers, be too careful in seeing that the receipt and expenditure of the money of the ratepayers is properly secured, and in case of gross negligence in the choice of bondsmen, or the wilful selections of persons, whom they know to be worthless, it is quite possible that the members themselves would be held personally responsible.

CLERK.—A man is assessed for three lots in different road divisions; one hundred acres in each; respectively, \$950.00, \$1,150.00, \$125.00, how many days' road work has he?

We cannot answer this question definitely, because our correspondent has not informed us, as to the scale of statute labor in force in his municipality, but sub-section 2 of section 100 of the Consolidated Assessment Act, provides that "Whenever one person is assessed for lots or parts of lots in one municipality, not exceeding in the aggregate 200 acres, the said part or parts shall be rated and charged for statute labor as if the same were one lot,