

reasons given in our answer to question number 1.

3. Yes, if he can show that the council has, by artificial drains, caused water to flow upon his land and thereby injured them.

#### Drainage Across Railway Land.

141.—W. D. M.—Last year proceedings were instituted under the provisions of The Municipal Drainage Act for the construction of a drain in our township. The necessary preliminary steps were taken and the engineer examined the ground, and made his report in which it was found that the drain required to pass over two lines of the G. T. R., and also over the lands of the C. P. R. On the C. P. R., the existing stone culvert according to the report of the company's engineer would require to be enlarged and otherwise protected at an estimated cost of \$900. The parties interested in the drain refused to give their consent to the municipality entering into an agreement with the company for construction of the necessary works, as required by section 85 of The Drainage Act, and on this account it seems to us the whole work is blocked. The expenses thus far on the drain have been about \$265, and the question with our council now is; who is liable to pay for the above? Should the parties whose names appear on the original petition be taxed for it alone, or should all the parties who are assessed on the engineer's report be brought in? Also under what section of the Act would the council be empowered to act in this particular case?

Under the circumstances you mention the council cannot proceed with the contemplated drainage works, as the provisions of section 85 cannot be complied with. The engineer has, in good faith performed the work he was instructed by the council to perform, and the council must pay his bill, if it be a reasonable one, and all other necessary expenses. There is no provision in the Drainage Act or elsewhere which enables the council to collect the sum so disbursed, from the original petitioners, the persons assessed in the engineers report or any other person, or persons, or class of persons. Section 18 of the act applies only to the circumstances therein mentioned. The council ought to have procured an indemnity for expenses before incurring any.

#### Powers of Council—Taxes on Crown Lands—Payments to School Trustees—Prosecutions Under R. S. O., 1897, Chap. 44.

142.—F. L. T.—1. Can a by-law be passed by a council on what is not law, or forbidden by law, according to Revised Statutes of Ontario?

2. A man bought last August a squatter's improvements on two lots and requested the taxes on said lots to be put in his own name, but said man found out that said lots were not located, and also found out somewhere that lots not located cannot lawfully be assessed. The lots in question are government lands, free grant for farming purposes. Can that man recover back last year's taxes on said lots? Can such lots be lawfully assessed?

3. Can union school trustees exact a money-order for school-rate money, only on the notice to levy a certain amount on their supporters without afterwards sending a written demand for the order or money?

4. Who is supposed to sue and also to fine persons failing to make returns of births, deaths and marriages to the clerk of the municipality?

1. Municipal councils owe their existence to the statutes, and derive all their powers from the legislative authority

constituting them. As a consequence, a council can pass no by-law or resolution, unless, authorized by statute.

2. Sub-section 1 of section 7 of the Assessment Act exempts from assessment and taxation, lands vested in Her Majesty. Sub-section 2 provides that "where any property mentioned in the preceding clause is occupied by any person otherwise than in an official capacity, the occupant shall be assessed in respect thereof, but the property itself shall not be liable." The occupant was therefore properly assessed in respect of the land he occupied, and cannot recover the taxes he paid. Occupants of such lots can be assessed in respect of the property occupied. We may also say that, even if the lands in question were not liable to taxation the taxes paid could not be recovered, unless they had been paid under compulsion, and it does not appear that they were, in this case.

3. The latter part of sub-section 1 of section 67 of the Public Schools Act provides that "In the case of rural schools (which include a union school) all money collected (by the municipal council) shall be paid to the secretary-treasurer of the section before the 15th day of December." It is the duty of the council to see that the moneys collected for a school section are paid to the secretary-treasurer within the time above mentioned, whether a written order or demand is made on the council by the trustees of the sec. or not.

4. If any division registrar has reason to know, or to believe that any birth, marriage or death has taken place within his registration division, which the person whose duty it was to register, has neglected to register, it shall be the duty of the division registrar to make diligent enquiry as to the facts, etc., and notify the proper person of his duty to register the same. Upon failure of such person to make the required registration, the division registrar shall forthwith supply the Inspector of Vital Statistics for the Province, with such information as he possesses in regard to the matter. (See section 13 of chapter 44, R. S. O., 1897). If a division registrar neglects or refuses to perform this duty he is liable to the penalty mentioned in section 30 of the act. The duties of the Inspector of Vital Statistics when notified by the division registrar as above, will be found in section 31 of the act.

#### Liability of County Treasurer and Vendor for Arrears of Taxes—Of Mining Lands for School Taxes.

143.—SUBSCRIBER.—1. A is buying a lot. He calls on treasurer for certificate; no tax against it. Later it turns out there are taxes. Can he force the treasurer, or the man he bought from, to pay his tax, the treasurer making an error?

2. Must all mining lands in unorganized districts pay school-tax when school section is established? Do mining lands pay a provincial tax?

1. You do not say whether the treasurer signed and delivered to "A" a certificate to the effect that there were no arrears of taxes in respect of the lands, he was about to purchase. We assume, however, that

he did. If "A" was misled by the certificate of the treasurer, and did not discover the error, until after he had paid over his purchase money, the treasurer can be compelled to indemnify "A" for any loss he may have sustained. If the deed to "A" contains a covenant on the part of the vendor to the effect that the land sold is "free from all encumbrances" "A" can recover the amount of the taxes from the owner who conveyed to him, provided the taxes were taxes on property for which he was assessed. If the taxes accrued previous to his time of holding he would not be liable after delivery of the deed, if the covenant is the ordinary indenture covenant. In our answer to this question we are assuming that the treasurer was treasurer of a municipality having the power to sell lands for arrears of taxes.

2. Yes, unless they still remain vested in Crown Royalties mentioned in s. 26 chap. 36, R.S.O., 1897, are payable to Crown (represented by the Province) in respect of receiving lands located, sold, granted, or leased by the Crown after 1st Jan., 1900. For Royalties prior to this date see sec. 3 and 4 of the Act.

Assessment of Livery Stable.  
144.—J. C.—A rents a livery stable and purchases horses and rigs to the amount of \$1,500.

1. Can A be assessed for said horses and rigs, etc.?

2. If not, can he be assessed for his income of said livery stable having a good income from the same, or is he absolutely free from all assessments and taxes for the same?

1. Yes, the horses and rigs, etc., are personal property within the meaning of The Assessment Act. See sub-section 10 of section 1, of the Act, and are property assessable under the act to the amount of their value over and above \$100. See sub-sec. 25 of sec. 7 of the Act.

2. In view of our answer to question No. 1, it becomes unnecessary to reply to this.

#### School Treasurer's Security—Duties of Auditors.

145.—W. B.—Re security for school moneys. See section 17 of The Public Schools Act.

1. Is it reasonable for the council in safeguarding the interest of the ratepayers to ask trustees to cause the security in this to be deposited with the clerk of the municipality, as directed by this section?

2. Is it within the council's jurisdiction to say that the money collected for school purposes is not to be paid over to the order of the trustees until the necessary security is so deposited?

3. In the event of loss occurring through the absence of such security being taken by the trustees, or exacted by the council, who would be held responsible to the ratepayers, the trustees or the council?

Re auditors' report on treasurer's securities. See sec. 304, sub-sec. 3, of The Municipal Act.

4. Is it the balance shown in the abstract statement on the 31st December, 1899, or that due from the treasurer from the date of the audit, 31st January, 1900, that is to be shown under sub-section 3.

5. Was it proper for the auditors to mail the copies required for the Bureau of Industries before they were submitted to and adopted by the council? Would you consider them authentic before they were finally audited and adopted by resolution of the council? The council never saw the copies that were mailed to the Bureau of Industries. The auditors were appointed on January 8, and the council