LEGAL DEPARTMENT.

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In assuming the management of this department of the MUNICIPAL WORLD I am fully aware of the magnitude of the undertaking and of the importance of the subjects to be dealt with therein. Many municipal officers are engaged in other pursuits and have but a limited time to devote to their official duties. From personal experience I can fully appreciate the value of convenient sources of information and will endeavor to compile for insertion in these columns all decisions of our courts or other competent authority in any way affecting municipal corporations. Other subjects of interest suggested by subscribers and within the province of this department will receive attention.

Treasurer and Collector One Official.

The following question has been submitted by a municipal officer, "Are the Offices of Treasurer and Collector Incompatible ?"

The office of collector is no longer profitable or necessary in township administration except from a legal standpoint. The question as to whether one person can legally hold the offices of clerk and collector, treasurer and collector, or clerk, treasurer and collector of a municipality at the same time, is gradually becoming one of considerable importance, and is worthy, we think, of discussion in the columns of THE MUNICIPAL WORLD. It is well known that in a large number of municipalities the collector is a temporary official, annually appointed and often changed, and whose place of residence in rural municipalities is generally in a remote corner of a township. The clerk and the treasurer, on the contrary, are at least to an appreciable extent, permanent officials accustomed to and well trained in general office work, whose places of business are usually located in some town or village centrally and conveniently situated, and the ratepayers would in most instances find it more convenient to pay their shares of the annual levies to either of the latter, then the former official. In this paper we will devote our attention to the compatibility of the office of treasurer and collector. A careful perusal and consideration of the municipal and assessment acts, particularly of those clauses relating to the duties of the treasurer and collector, we think, warrant us in arriving at the conclusion that one and the same person cannot legally hold and perform the duties of the two offices. We cannot find that our legislators have in some words positively forbidden the holding of these two offices by one and the same person, but the spirit of the act is decidedly against it. We must draw the inference from the reading of the several sections that the offices in question are, and are intended to be, separate and distinct. Special and particular duties are assigned to each of these officials which cannot be consistently performed by the same person. For instance when a collector has found it necessary to distrain for taxes and at the sale of the property destrained surplus has been realized in excess of the sum necessary to pay the amount of the taxes and the cost of seizure, in the event of a dispute as to the ownership and such surplus, Sec. 130 of the assessment act provides that "such surplus money shall be paid over by the collector to the treasurer of the local municipality who shall retain the same until the respective rights of the parties have been determined by action or otherwise." It is manifest that the legislature in enacting this section intended that the treasurer should be a third and disinterested party to whom the surplus money in question should be paid by the collecter, who "would be thereby discharged or relieved from acting at the suit of the rival claimants or either of them." As Mr. Harrison states in his Municipal Manuel (note C. to the above section) is the fair intendment of the section. Again, Sec. 132 of the same act enacts that the collector shall return the roll and pay over all moneys collected by him to the treasurer of the municipality within the time and in the manner therein specified, and shall also "make oath *before the treasurer* that the date of the demand of payment and transmission of statement and demand of taxes required by Secs. 123 and 125 in each case has been truly stated by him on the roll." It will be observed that the oath in question must be made *before the treasurer*. This is a positive enactment which cannot be disregarde , and the collector cannot therefore take the oath in question before any other person or official. The treasurer therefore must certainly be an official distict from the collector as he could not possibly administer an oath to himself. But, we think, the strongest point in favor of our contention is to be found in Sec. 231 of the assessment act, which defines the summary proceedings to be taken against a collector who "refuses or neglects to pay to the proper treasurer or other person legally authorized to receive the same, the sums contained in his roll or duly to account for the same as uncollected." In this event the section in question enacts that "the *treasurer* shall, within twenty days after the time when the payment ought to have been made, issue a warrant under his hand and seal, directed to the sheriff of the county or city (as the case may be) commanding him to levy on the goods, chattels, lands and tenements of the collector and his sureties, such sum as remains unaccounted for with costs, and to pay to the *treasurer* the sum so unaccounted for, and to return the warrant within forty days after the date thereof." Now, by way of comment, if, when the emergency suggested in the above section should arise, the same individual filled the offices of treasurer and collector, the treasurer would be compelled to issue the warrant against himself, which is on the face of it an absurdity, and when the sheriff shall have realized the amount not paid over or accounted for he is directed to pay over the same, and return the warrant to the treasurer, who as collector has already proved himself a defaulter and unworthy of confidence. In view of the foregoing it is quite unnecessary to further particularize instances in which the duties of the two officials as defined by the acts in question would clash. It only remains for us to add that the general idea and intention of the legislature on this subject is that one of these officials (the treasurer) should be a check on the other (the collector), and that the duty thereby imposed on the collector of making his payments and returns to the treasurer should be a safeguard agaist fraud, neglect and mistakes. We are of opinion that if one and the same person were appointed to both these offices as the law now stands, the object of the legislature on the subject would be in a great measure defeated.

MOONEY V. SMITH.—This case shows the degree of integrity to be observed by the treasurer of the county who has occasion to sell lands for arrears of taxes. It was shown in evidence that as the time of the sale of certain lands belonging to the defendant for taxes, the plaintiff's husband was treasurer of the county in which the lands sold were situated—that the plaintiff had instructed a third person to bid in the land in question for her, and had informed such third person that she would furnish the money, take an assignment of the tax collector's certificate and pay him for his trouble. It was also given in evidence that the moneys furnished by the plaintiff for the purpose aforesaid were in reality the moneys of her husband, the treasurer. The third person having purchased pursuant to plaintiff's instructions. It was held that the position of the treasurer prevented him from becoming a purchaser at the sale, and that the sale and conveyance to the plaintiff under the above circumstances were void.

MCCORMICK ET AL. V. MUNICIPAL CORPORATION OF THE TOWNSHIP OF PELEE.—A public highway running along the west shore of Pelee Island had by the action of the waters gradually become submerged by the waters of Lake Erie. This was an action for an injunction to compel the defendants to re-open, repair and keep in repair the highway in question. Since the remedy claimed by the plaintiffs could not be given them without requiring the defendants to restore or reconstruct the highway in question, and thereafter to keep the same in repair by building expensive embankments to resist the action of the water, which the law as it now stands does not call on them to do, the plaintiffs' action was dismissed.

HEPBURN V. TOWNSHIP OF ORFORD AND OTHERS.—The engineer appointed by the Township of Orford, for the purpose, had made and filed with the clerk his award on a certain ditch or drain in the said township under the provisions of the "Ditches and Watercourses Act, 1883." The several parties to this action were interested in the said ditch or drain and to each of them was assigned the construction and maintenance of a certain portion thereof on the said award. The plaintiff alleges that defendants had not completed their respective portions of the said drain in accordance with or within the time mentioned in the said award, instituted these proceedings to have defendants ordered to make complete and maintain the said drain and for damages. The plaintiff's action was dismissed on the ground that he had as the remedy against the defendants, under the circumstances, those provided by Sec. 13 of the act respecting ditches and watercourses, 1883.

BEER V. STROUD.—This case is interesting to show what is meant by a natural watercourse. It was instituted by the plaintiff against the defendant for an injunction to restrain defendant from banking up earth on his land in such a way as to prevent water running away from plaintiff's land as it had formerly done. It was held that the plaintiff was entitled to the relief asked for, as it was shown in evidence that the earth placed by defendant had obstructed a well defined watercourse from the plaintiff's land, and although the water flowing through the course in question did not come from a living spring, but was simply surface water, it did not affect prejudicially the plaintiff's right to relief—the channel in question having been formed from natural causes.

ROSE V. TOWNSHIP OF WEST WAWANOSH ET AL.—The council of defendants had passed a by-law purporting to be in pursuance of sub-sec. 8 of Sec. 550 of Chap. 184, R. S. O., to empower "their pathmasters and other employes to enter upon any land within the municipality when necessary to do so, save and except orchards, gardens and pleasure grounds, and search for and take any timber, gravel, stone or other materials necessary for making and keeping in repair any road or highway in the said township, etc." This action was instituted by the plaintiff to restrain the said township and their employes from removing gravel from his land under the authority of the above-mentioned by-law. The defendant was held to be entitled to the relief sought on the ground that the by-law in question did not show the necessity for taking the gravel, etc , to exist, nor did it describe the particular parcel of land from which the gravel was to be taken.

A Good Idea.

Ottawa corporation will clear the snow off the sidewalks this winter and charge the expense to the general funds. This is a good plan for any city or town to adopt. It would be the means of furnishing a few days' work for idle laborers during the winter months, at a time when work is sorely needed.