

cities, towns, townships or villages, to pass such a by-law.

2. No.

3. That duty must be performed by the collector. The treasurer has no right, by virtue of his office, to perform that duty.

Dam in Creek.

66.—T. M.—1. A man has a farm in this township made up of lots 18 and 19 in same concession. There is a small lake—part of it in lot 19 and part in lot 20 in same range. A small creek runs out of said lake across said lots 18 and 19 and thence through lots 17, 16 and 15 all in same range. Said man wants to put a small dam on said creek on lot 18 to hold water for summer for his cattle as the creek flows between lake and buildings. Man on lot 15 objects to dam. Can man on lot 15 hinder said man from putting dam on said creek. Creek runs dry after spring flood on all mentioned lots and if dam is placed thereon it holds water for said farmer?

2. What proceedings should man on lot 15 take before he could make man on lots 18 and 19 take away said dam when it is placed thereon?

1. In the course of a natural watercourse each proprietor of land through which such watercourse runs has the right to use the water for domestic purposes, the watering of cattle and the like, though such water may diminish the volume of the stream, to the detriment of lower proprietors. (It has been held by one of the American courts that he can do this even though in such case he consumes the entire stream.) Applying this authority to the case in hand we do not think the owner of lot 15 can compel the owner of lot 18 to remove the dam. It has also been held by one of the American courts that a man has the right to draw water in a natural watercourse for the purpose of making a fish pond.

2. If the owner of lot 15 thinks that the owner of lot 18 is making an unreasonable use of the water his remedy is by action in the courts to compel him to remove the dam, but we do not think he would succeed.

Good Ballot—Water Rates.

67.—SUBSCRIBER.—1. A municipal candidate had one ballot marked for him with two crosses instead of one. The deputy-returning officer held the ballot spoiled. Was he right?

2. What is the proper way to commence in making vacant town lots pay a half water rate? What part of Municipal Act covers it?

1. No.

2. In order to enable us to answer this question intelligently you will please let us know what you mean by "water-rate," is it a rate being levied to pay for constructing or acquiring water works, to pay for water consumed or the expense of watering the streets of your municipality or otherwise?

Appointment of Assessor—By-law Directing Mode of Assessment.

68.—G. T. W.—1. Would a by-law appointing an assessor containing directions as to amounts at which property should be assessed be legal?

2. Would an assessment made under these circumstances be legal? What would you advise a municipality to do circumstanced this way? Values are almost impossible to deter-

mine and any attempt to do so would likely result in a large number of appeals to Court of Revision?

1. Your council has no authority to pass such a by-law as the one which it has passed. See sub-section 1 of section 40 of chapter 225, R. S. O., 1897, and section 28 of the Assessment Act.

2. The assessor should assess lands without regard to the by-law, but the mere fact that adopted the rule laid down in the by-law in making his assessment, would not make it illegal, and in the absence of appeal the assessment would stand good. See also section 1 of the affidavit required to be made by the assessor, schedule E.

Notice Under the Separate Schools' Act.

69.—F. B.—Would a Roman Catholic, after giving notice to the municipal clerk, that he wishes to withdraw his support from the R. C. Separate School and support a public school, be obliged to renew his notice to the clerk from year to year if he wishes to remain a public school supporter?

We are of the opinion that it is not necessary to renew the notice from year to year. Section 47 of the Separate Schools Act enables a Roman Catholic to withdraw his support from a separate school, and once he has given such notice in the manner and within the time fixed by the section the assessor shall assess him as a public school supporter until he has given a notice as required by section 42 of the same act, that he is a Roman Catholic and a separate school supporter. See section 48 as to the duty of the clerk to keep an index-book of supporters of separate schools and the duty of the assessor to be guided by the entries which he finds in that book.

A Collector in Default.

70.—J. M.—The township collector, in 1894, returned a lot of land to the treasurer, and the treasurer returned same to county. The owner of said lot has now got a receipt from same collector. This lot would have been sold before this, but the county treasurer returned said amount to me to place again on collector's roll, as lot was occupied, but owner would not pay same, so it was returned the second time. Now, should council pay same to county treasurer, and collect from the collector, or should council let lot be sold. This lot on collector's roll was not paid for when the collector gave up roll, and collector had this lot in his returns to the treasurer, so council never got the taxes in any way, and we believe this receipt was given two years ago after the lot was returned.

How should council act in such matter?

Unless the council can show that the receipt given by the collector to the owner of the land, and now held by the latter, is not a genuine one, or was obtained fraudulently, and by collusion between the parties, they cannot collect the amount of the taxes from the owner. Their only remedy is an action or suit in court against the collector and his sureties. The land could not be legally offered for sale, as it appears on the face of the facts furnished that it should never have been returned to either the local or county treasurer as in arrears for taxes. The council does not require, and ought not to pay, the amount of the tax to the treasurer.

A Negligent Collector.

71.—W. K. W.—A collector does not return his roll for 1897. By his not returning his roll legally, and not returning it against land that he could not find anything to distrain, can the taxes be collected and how will we have to proceed?

Section 144 of the Assessment Act fixes the time for the return of his roll by the collector in each year. Section 145 provides that "In case the collector fails or omits to collect the taxes or any portion thereof by the day appointed as in the last preceding section (144) mentioned, the council of the town, village or township may, by resolution, authorize the collector or some other person in his stead, to continue the levy and collection of the unpaid taxes, in the manner and with the powers provided by law for the general levy and collection of taxes."

Your council should endeavor to collect the unpaid taxes in the manner mentioned in section 145. This reply is given upon the assumption that the roll has not yet been returned. If it has been returned the authority of section 145 cannot be invoked.

Railway Company's Liability for Crossings—Assessment of Railway Company's Lands—Telegraph Poles and Watch Tower.

72.—R. M.—1. Is a railway company liable to maintain the railway crossings on the public roads in the same condition as the rest of the road on each side of the railway crossing?

2. If the railway company finds the road gravelled, and in constructing their road-bed they destroy the gravel, can they not be compelled to gravel it as it was before they got it, the company claiming that the township has nothing to do with the road-bed on their property?

3. Can railway lands be assessed as high as the adjoining lands?

4. Can not the telegraph poles be assessed and made to pay their proportion of taxes like other property?

5. The railway has a watch-tower at a crossing of another railway. Is said tower liable to be assessed like other buildings?

1 and 2. Section 12, of the Dominion Railway Act, (Rev. statutes of Canada, 1886, chap 109,) and section 29, of the Ontario Railway Act (R. S. O., 1897,) provide as follows: "The railway shall not be carried along an existing highway, but shall merely cross the same on the line of the railway, unless leave has been obtained from the proper municipal or local authority therefor; and no obstruction of such highway with the works shall be made without turning the highway so as to leave an open and good passage for carriages, and, on completion of the work, replacing the highway; and every company which violates the provisions of this section shall incur a penalty of not less than \$40 for each such violation; but in either case the rail itself, if it does not rise above or sink below the surface of the road more than one inch, shall be deemed an obstruction."

2. No part of the railway which crosses any highway without being carried over it by a bridge, or under it by a tunnel, shall rise above or sink below the level of the highway more than one inch, and the rail-