

that were in arrears and could not be collected off until sale of land for taxes. Having paid each year the amount asked for by each section, can the township be compelled to pay over the excess levied before they realize on same from the non-resident lands?

2. Have they any right to levy any amount in excess or can they be compelled to pay over the excess even when collected?

3. In paying over rates can losses (indigent or personal property not collected) be provided for?

1. The township must pay over all moneys collected.

2. Only such amount as is required should be levied.

3. The council should impose a sufficient rate to raise the amount required by the trustees. Section 203, Consolidated Assessment Act, provides that councils are not to be held answerable for any deficiency arising from the abatements of or inability to collect, the taxes on personal property other than for county rates.

#### Liability of Treasurer's Surety.

124.—T. C.—In our village, the offices of clerk, treasurer and collector were amalgamated, and G was appointed to fill the three. B became his bondsman. In 1889, 1890 and 1891, the auditors reported everything straight and right, and the council accepted said reports in each and every year, and further on 5th June, 1892, the minute book of council shows the acceptance of treasurer's statement of account, village owing treasurer \$9, which was paid. At the end of 1892 the clerk, treasurer and collector absconded, that is, G absconded, and the council appointed a sub-committee to examine the books and accounts of the municipality, and they reported as follows in 1889: Committee found a discrepancy of \$44 in 1890, \$600 in 1891, \$700 in 1892; that, by forgery and otherwise, the treasurer was defaulter to an amount sufficient to bring the total discrepancy to about \$8,000. In July, 1893, our council pressed B, and he settled with the village by paying \$1,100, thinking himself legally liable. In 1896 B entered action against the village to recover \$1,100. From the outline before you, has he any chance of recovering any part or all of the said \$1,100.

The rule of law is that money voluntarily paid under a mistake of law, but with a knowledge of all the facts, cannot be recovered back. But money paid under a mistake of a material fact may be recovered back. Before we can express our opinion as to whether B can succeed or not, it will be necessary to know the grounds upon which he seeks to have the money repaid to him. What are the material facts which he now claims he was not in possession of when he paid the money? Were there any misrepresentations made to him, to induce him to pay the money, and if so, what were they? We may say upon the facts as they are given, that he probably has a difficult task before him.

#### School Teacher, Councillor or Contractor—Assessor or Collector.

125.—W. J. B.—Is it legal for a school teacher who is also a councillor (being a ratepayer) to take contract of building a school house in section where he is at present teaching?

2. At the first meeting of council we appointed an assessor who was at the time collector, not knowing at that time it was illegal. Will it be necessary to appoint another assessor, as the collector will not finish his collecting until May?

1. We have been unable to find any statutory provisions making such a contract illegal.

2. Yes. Another assessor ought to be appointed.

#### Qualification of Councillors.

126.—SUBSCRIBER, NIPSSING.—A was assessed as owner of lot 6 in 3rd concession since 1890, was elected reeve and took declaration of qualification on said property in 1897. B was at the time of the election the registered owner of that same property, but before A took declaration of qualification, B had declared by affidavit before a J. P. that A was the owner of that same property since three years, and he (B) had no claim whatever on said property since three years.

Could A be unseated on the ground that he was not the owner of the property at the time of his election?

If A was entitled to vote at the election, and in addition to the qualification of a voter he was assessed in the assessment roll, for at least \$200 freehold, he would be qualified.

#### New School Section—Financial Settlement.

127.—CLERK.—On the 25th December last came into force a township by-law detaching from public school sections A, B and C, and forming into a new public school section on certain lands. The school property in section A is of comparatively little value and the trustees, for the purpose apparently, of avoiding the trouble of making a settlement with the new section levied no school rates in 1896 and therefore have little or no money on hand. Sections B and C levied their ordinary rates and have a considerable balance on hand and will be required to pay over to the new section in respect of each lot attached an amount probably equal to two or three years' rates, such as they have heretofore been paying.

Must these moneys be paid over to the trustees and applied generally to the benefit of the new sections or can such an adjustment be made under Sec. 40 of the act as will result in each ratepayer getting credit for such moneys only as his property was the means of bringing into the section? If applied generally it would seem that those detached from section A will be given an unjust advantage over the others in the new section.

We are of the opinion that the arbitrators have power under section 40, to adjust and settle all matters in a just and equitable manner, and that they are not bound to give those persons whose properties were detached from A, the advantage which a general application of the balance in hand in sections B and C would give them.

#### Tenants on Assessment Roll—When to Vote.

128.—P. R.—In your answer No. 49, Question Drawer, February number of THE MUNICIPAL WORLD, you have omitted to answer the latter clause of the question asked. I will now put the question in another form, viz:

Has a party who is placed on an assessment roll as a tenant, but who is not rated for any amount, and pays no taxes, a right to vote at municipal elections?

Yes, if he comes within sections 80 and 85 of the Consolidated Municipal Act.

#### Clerk's Duties and Salary.

129.—B. C.—I ask your legal adviser's advice on R. S. O., chapter 184, Municipal Act, section 97 (2), section 120, section 124, duties of returning officer. The same law seems to govern Dominion and Provincial returning offi-

cers. The question is, Have I, as returning officer, a right to be paid for distributing the ballot boxes and ballots? It is claimed that it is included in clerk's duties as clerk.

If you are paid by salary you are required to discharge all duties imposed upon you as clerk without any further remuneration, except for services for which the Legislature has provided extra remuneration; for example, services under the Ditches and Watercourses Act. See subsection 2 of section 4 of that act, and section 278 Consolidated Municipal Act, 1892.

#### Transient Trader's License—Purchaser of Bankrupt Stock—Selling Other Goods.

130.—F. J. C.—We have a by-law in this town imposing a license on transient traders. Some time ago a party bought a bankrupt stock which became bankrupt in the town, and immediately commenced selling the same, and also began purchasing other goods and selling them with his bankrupt stock. Now our by-law is in the words of Sec. 9A of Sec. 489, Municipal Act, 1892. Would the purchase and sale of other goods, not the bankrupt stock, subject the party to pay the license demanded by the by-law?

We are of the opinion that the party referred to must pay the license to entitle him to sell the other purchased goods. The intention of the legislature, though it used perhaps more words than were necessary, was to exempt the stock of an insolvent estate only.

#### Improper Assessment—Arrears of Taxes and Sale.

131.—J. H. M.—Certain lands in this township have been improperly assessed, as to description, for the past three years. The accumulated taxes with interest and costs amount to upwards of \$100. The county treasurer, when advertising his tax sales, discovered that these lands were improperly described, and of course could not include them in the advertisement. Will the township have to bear this loss? If not, what means can be taken to recover same?

From the facts stated we are unable to say who should bear the loss. On receipt of further particulars we will be pleased to give an extended answer to the question, as it is of the greatest importance to all municipalities having land in arrears for taxes.

#### Sale of Tax Sale Purchase by Council—Treasurer's Payment to Trustees.

132.—A. W.—There was some land bought in by this municipality in 1895 at land sale, now what I want to know is:

1. How should we proceed to sell the said land?

2. How should the order be drawn for school levy in the name of the treasurer of school section or in the name of the township treasurer?

1. Pass a by-law authorizing the reeve and clerk to sign deed to purchaser.

2. The money is payable to the secretary-treasurer of the section. The amount of the order on the township treasurer should be filled in by the clerk and forwarded to the secretary-treasurer, who should secure the signature of the trustees and attach seal of the section to the order as the authority for township treasurer's payment to him.