

have the parties affected quarantined. The M. H. O. was again sent and found three families affected, and them isolated.

Now what I want to know is,

1. Had the authorities of township A right to send the M. H. O. as stated?

2. Are the trustees of the section responsible for the amount paid by the municipality?

(My opinion is that the trustees have a right to refund the amount paid by the council.)

1. Yes.

2. No.

#### Collectors' Roll and Collection of Arrears.

**258.**—X. Y. Z.—On collector's roll appears arrears of taxes for 1896 and 1897. Can collector collecting 1898 taxes, collect the arrears or seize for the whole amount if not paid.

Our correspondent will please inform us under what authority the arrears of taxes referred to were placed on the roll. If not under sections 152 to 155 of the Assessment Act, we are of opinion that they are not properly on the roll and that the collector cannot distrain.

#### Survey and Road Lines.

**259.**—T. D. R.—Our township council employed a surveyor to survey and stake out a road allowance and ordered all parties whose fences occupied a part of said road to have them removed. Several of these persons claim that their fences are already on the proper lines and have them placed on a surveyor's line. The two surveyors do not agree to which line is according to the Government survey, both lines have been made by Ontario Land Surveyors and both lines are intended to mark out a Government road allowance.

1. What action would you advise the council to take to determine which line is correct?

2. (a) Is it necessary for a council to designate road allowance before compelling persons to remove their fences from road? (b) or can council compel them to have lines run and fences placed in proper places?

1. Indict all persons refusing to remove fences after notice.

2. (a) No. (b) No.

#### Vote for Trustees in Union with Urban Municipality.

**260.**—W.—The village of Tweed was incorporated on 1st January, 1890 (it formed part of the Township of Hungerford) and the school section was S. S. No. 8, Hungerford. The village of Tweed contains in or about 400 acres. Outside of Tweed there is a large number of farmers belonging to our school (old No. 8). They pay taxes to our school through the Hungerford council and its treasurer and not directly to our school board. They want to have votes for the Tweed P. S. board.

1. How can they have votes as they are not on our voter's list?

2. Can they be put on the list? If so, to what part of the lists?

3. How will they and their property be designated on the lists?

The list of voters may be obtained from the clerk of the township municipality, and the vote taken as directed in section 49 of the Public Schools Act.

#### No Certificates to Vote in County Council Elections.

**261.**—R. B. C.—Can a ratepayer who has been appointed as a scrutineer for the election of county councillors, have the privilege of voting in the division in which he is appointed although his name on the voters' list is not in that division.

No. See section 160 of the Municipal Act.

#### Collection of Water Rates in Districts.

**262.**—T. M. C.—This municipality is an incorporated village in the District of Muskoka.

1. Should the treasurer of this municipality return the arrears of water rates to the sheriff when returned to him by the collector?

2. Are charges in water services collectable in the same manner as water rates?

3. Should installation charges be returned to the treasurer or sheriff same as water rates?

1. Yes. See section 20, sub-section 2 and section 22, sub-section 2 of the Municipal Waterworks Act, and section 56 of chap. 225, R. S. O.

2 and 3. Yes. See section 17 of the Municipal Waterworks Act.

#### Post-Offices—Taxation of.

We are so often asked whether post-offices or the lands occupied or used therewith are taxable or not that we have considered it of sufficient importance to refer to the statute law and decisions of the courts on the subject.

Section 7 of the Assessment Act declares that all property in the province shall be liable to taxation, subject to certain exemptions mentioned, and among those exemptions are the following:

1. "All property vested in or held by Her Majesty, or vested in any public body or body corporate, officer or person in trust for Her Majesty, or for the public uses of the province; and also all property vested in or held by Her Majesty, or any other person or body corporate, in trust for, or for the use of any tribe or body of Indians, and either unoccupied or occupied by some person in an official capacity.

2. 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 first decision we find on the meaning or effect of the above exemption clauses is *Shaw vs. Shaw*, 12 U. C. C. P., p. 456. In that case certain goods were distrained for taxes and an action of replevin was brought to recover them and the owner of the goods pleaded that the land, house and premises during the years 1855, 1856, 1857 and 1858 were vested in and held by Her Majesty, and for the public uses of this province for a term of years ending on the 1st day of April, 1859, and were occupied by James Hopkins, in his official capacity as collector of the customs for the post of Kingston, and as the custom house of the post of Kingston and for the public uses of the province, and not occupied by the said James Hopkins or by any person otherwise than in an official capacity, or occupied or owned by any private occupant and that the said land, house and premises were exempt from taxation during those four years. Mr.

Justice Morrison in delivering the judgment of the court after referring to sub-sections 1 and 2 of section 9 of the Assessment Act and which are the same as they are now said, "and by the 5th section the word 'property' is to be taken to include both real and personal property. It is therefore clear that the premises in question being held and vested in Her Majesty and for the public uses of the province during the years 1856, 1857, 1858 and 1859 as set out in the plea they were not during those years liable to taxation; but it is contended that leasehold property so held is not exempt, or rather that the reversioner and the land is liable for the taxes assessed during the period it was so vested in Her Majesty; the statute enacts that all property (which includes leasehold) so held or used shall be exempt. If it was intended that the landlord or reversioner should be liable for the taxes, or that the taxes should be a lien as here contended on the land and collectable at the termination of the lease to the Crown the Legislature would have expressed such its intention as it has done in the second subsection where it declares that if such property is occupied by any person other than in an official capacity, the occupant shall be assessed in respect thereof, but the property itself shall not be liable.

The next case on the subject is the *Principal Secretary for War vs. the corporation of the city of Toronto*, 22 U. C. Q. B., p. 551. The facts of this case were as follows: During the year 1862 certain premises situate on King street in St. George's ward, Toronto, were occupied by Her Majesty's troops, as barracks under and by virtue of a certain indenture of lease. The premises were assessed upon the assessment roll for the year 1862. In January, 1863, the collector called upon the commissariat officer in charge at Toronto, for the payment of \$150 taxes on said premises for the year 1862, said officer refusing to pay said taxes on the ground that the premises were not liable to taxation. In the lease there was a covenant by the commissariat officer to pay the taxes. Hon. Justice Adam Wilson in delivering the judgment of the court says at page 554: "The first case relating to the land on King street, is concluded by the judgment of our own court of Common Pleas, in *Shaw vs. Shaw*, (12 C. P. 456) unless the covenant by the lessee to pay 'all taxes or assessments to which the said premises shall be liable' during the lease, can make any difference; but I think this engagement cannot be binding on the crown. The statute expressly exempts this property from liability to taxation; probably this would have been the law if no such provision had been made. The crown cannot be prejudiced in its rights by the acts of any of its officers." The next case on the subject is *Attorney-General of Canada vs. the city of Montreal*, 13 S. C. R., p. 352. The facts of this case were that Her Majesty, by the