

3. In this municipality there are a number of railroad ties taken and sold to contractors of the Grand Trunk railway and piled on their grounds. Are the ties assessable and to whom?

1. We do not think so. It appears to be property that is intended for shipment, and is only temporarily at the station grounds. See sub-section 15 of section 7 of the Assessment Act.

2. Sub-section 24 of section 7 exempts so much of the personal property of any person as is equal to the just debts owed by him on account of such property, unless such debts are secured by mortgage upon his real estate, or are unpaid on account of the purchase money therefor. We are of the opinion that if the owner borrowed the money at the time of purchase, from the bank, and used such money to pay for the bark, it is exempt, but if he had the money on hand and paid for the bark he cannot escape taxation by showing that he subsequently had to borrow money from the bank. It is only where a man can show that the purchase money has not been paid for the specific property, to the person from whom he bought or to a person from whom he borrowed for the express purpose of paying for that particular property.

3. If the ties belong to the Grand Trunk Railway Company, they are chattels and taxable. If they belong to other parties, and are simply in transit to other places, they are exempt for the same reasons as those given in answer to question 1.

County Council Election—Disclaimer.

154.—NOMINATING OFFICER.—A county councillor elected took the declarations of office and qualification and took part in the proceedings at the county council session, which, I presume, amounts to his assuming the office. An elector took proceedings before the county judge to unseat the councillor on the ground of the latter not having the requisite property qualification, and the councillor filed a disclaimer under section, I presume, 238 of the Municipal Act, R. S. O. 1897. Under section 241 of the Municipal Act, and the circumstances above related, will the "candidate having the next highest number of votes" become the member or officer elected? or, in other words, will the assumption of office by the councillor bar the candidate having the next highest number of votes? On reading note (b) in Harrison's Municipal Manual, 1889, page 150, "If the party, instead of disclaiming under this (200) or section 202 accept office he can only resign under circumstances detailed in section 179 and section 180." I take it that the acceptance of office by the councillor, subsequently unseated, bars the defeated candidate having the next highest number of votes, and that the proceedings provided for in section 217 of the Municipal Act are requisite to fill the vacant office. (The sections of the Municipal Act quoted from Harrison are numbered as in R. S. O. 1897.)

Some nice questions arise under the section to which you refer, and the one which you have asked us involves a point of some nicety, but after having considered it as carefully as possible, we do not agree with your views, or with the opinion expressed in the note contained in Harrison's municipal manual. It is now many years since the late Chief Justice Harrison's death, and for some years be-

fore his death, we believe the revision of his own work was left to others and therefore it is quite possible even probable that he is not responsible for the note to which you refer, and we have further to observe that the construction placed upon the act in Harrison is not supported by any decided case. Section 241 of the Municipal Act provides, such disclaimer shall relieve the party making it from all liability of costs, and where a disclaimer has been made in accordance with the preceding sections, it shall operate as a resignation, and the candidate having the next highest number of votes shall then become the member or officer elected. It seems to us that the words "operate as a resignation" are broad enough to include a person who has taken his seat in the council, as well as a person who has not done so, but has been elected to a seat in the council. Section 243 throws some light upon the question under consideration, and we think supports our views. It provides "no costs shall be awarded against a person duly disclaiming unless the Judge is satisfied that such person consented to his nomination, or accepted the office, in which case the costs shall be in the discretion of the Judge." Now this section speaks of a person disclaiming who has accepted office, and makes it clear to our minds that the acceptance of office does not prevent a disclaimer being delivered in the manner provided by the act and if that is done it operates as a resignation and the candidate having the next highest number of votes becomes the member elected.

Percentage on Taxes—Collector's Authority to Distrain for.

155.—R. G. F.—I am the collector of taxes for the Township of Nepean and the municipal council passed a by-law levying all rates for the year 1898. The by-law further states that all taxes not paid on or before the first day of February, 1899, that five per cent. be added thereto. This means five cents on the dollar. Has the council a perfect right to do so? Will the statutes bear them out in doing so? Some ratepayers are paying without any trouble the per cent. and some are not. One ratepayer called and asked the clerk to take so much money on account of his taxes as he had no bill with him. So the clerk took the money and gave him a receipt on account. When I came to settle with the clerk it turned out that he had left the even money, the amount of his taxes less the per cent. Now if I want that man to pay the balance if I can do so, can I issue a warrant and put in my bailiff's hands for to collect? What kind of a warrant would you use in the matter? Would the ordinary warrant do? (If you have any other kind in stock you might mail me a sample copy.)

The council has power to pass such a by-law under section 60 of the Assessment Act, and the latter part of sub-section (2) provides: "And such additional percentage shall be added to such unpaid tax or assessment, etc., and shall be collected by the collector or otherwise, as if the same had originally been imposed, and formed part of such unpaid tax, etc." So long as you have the roll in your hands, that is if you have not returned it,

you may issue a warrant to levy the unpaid part of the taxes, assuming that you have made a demand already as the statute provides. The usual warrant will do.

Woman may be Clerk.

156.—W. F.—Our town clerk died on the 17th. There are several applications for the position, one of those is from Mrs. Williams, the widow of the late clerk.

1. Can she legally hold the office of clerk of the town?

2. Would she be obliged to attend all meetings of the council and the board of health or could she send one in her place to take the minutes?

1. A woman may hold the office of clerk.

2. The council may by resolution provide that in case the clerk is absent some other person to be named in the resolution or to be appointed under the hand and seal of such clerk shall act, see section 283. Arrangements could no doubt be made so that an assistant, satisfactory to the council, would attend to record the minutes at meetings of council, and board of health.

Owners of Cattle Running at Large to be Fined.

157.—R. A. T.—We have a stock by-law which prohibits stock running at large in the township. We have cattle inspectors which see that cattle, etc., found at large are put into pound. These inspectors are paid from general fund of the township. We would like to assess a certain damage or fine to cattle so found and thus pay inspectors, as we do not think it right for innocent parties to pay for those who break the law by allowing their cattle to run. Is it in our power to do so? If so, what kind of a by-law would be needed?

A reasonable fine may be imposed by by-law against the owner of animals running at large contrary to the provisions of the by-law, but the by-law should not provide that the inspector should be paid by the owner of the animals. The officer should be paid out of the funds of the municipality. See sub-secs. 2 and 4 of sec 546 and sections 702 (b) and 708 of the Municipal Act.

School Section Alterations.

158.—J. W.—We have a little trouble in our township with reference to the alteration of a school section. I will try and explain the case. No. 1 Division lay along the front of township and is the entire length of same, except where there is a Protestant Separate School Section formed out of the centre of said lands. At the extreme north end there are a few settlers. They are about seven miles from where the school-house is built which they belong to. The trustees of school section No. 1 offered them their school taxes each year to do as they wished with it. All the land below separate school section is non-resident but those few families mentioned. Now No. 3 school section wants the council to change the boundaries of 1 and 3 by taking from No. 1 all this non-resident property and giving it to No. 3. The assessment in both sections are about the same. There has been a petition signed asking council to pass a by-law to have same alteration made. This No. 3 division school is more than three miles from those families referred to.

1. Now what I want to know is, is the council obliged to pass a by-law making changes referred to?

2. Can No. 3 take our non-resident lands?

3. If the council is of opinion that the sections should be left as they are can the trustees