

territory composing one or more school sections becoming incorporated as an urban municipality the boundaries of such school section or sections shall continue in force and shall be deemed a union school section, etc." See also sections 51, 70, 71 and 72.

Error in School Section Rates—Correction—Clerk or Deputy-Returning Officer.

419.—F. M.—1. There is a union school section in this township, to which we have to contribute nine-sixteenths of the maintenance. In 1891 when the law was changed, so that we had to provide \$100.00 for each school, their share was \$47.37, being nine-sixteenths of \$100. Now they, that is the trustees of that section, claim that our clerk has made a mistake each year for five years, and raised the full amount they asked for by special rate on the section without allowing them this \$47.37, and they now claim from the township \$47.37 by five—\$236.85. Can they collect it? What would be the mode of procedure, and what should the council do?

2. What is the reason a township clerk is not qualified for deputy-returning officer at municipal elections?

1. Section 67, sub-section 3, of the Public Schools Act, provides for the correction of errors in collection of rates in previous years. The council should, in levying the trustees' rates for the union section, take the errors into consideration and levy an amount sufficient to correct any errors that may have been made during the previous three years.

2. The Municipal Act, section 136, contemplates the appointment of other persons as deputy-returning officers, except in the case of municipalities which are not divided into wards, when the clerk is authorized to perform the duties imposed in other cases upon deputy returning officers. The Municipal Act of 1896 requires the clerks in cities and towns to be at their offices to receive the ballot-boxes, which are to be delivered the same day after the close of the poll. In these municipalities the clerk should not be appointed a deputy-returning officer. Section 97, sub section 2, and section 98, of the Municipal Act, show when a clerk is to be returning officer and when he may act as deputy.

Trustees Police Village Cannot Overdraw—Provincial Auditors Act Applies.

420—SUBSCRIBER.—1. Can Police Trustees of an unincorporated village draw on the township treasurer for more money than they asked to be levied, which was passed by municipal council during each or any year?

2. Was there an Act passed at the 3rd session of legislature to make better provision for the keeping and auditing of municipal and school accounts? and if so, was Police Trustee villages included in this Act?

1. No. See sections 663, 664 and 665, Consolidated Municipal Act, 1892.

2. Yes.

Taxation of Telegraph or Telephone Poles.

421—J. M. D.—1. What powers have townships with regard to telephone or telegraph poles? In our township a number of poles are obstructing the winter travel on the sides of the public highways. Can we order the company to remove them to a part of the highway where they will not obstruct?

2. Can we tax them same as towns or cities, or can we prohibit them from using our highways?

1. Section 2, chapter 71, Ontario Statutes, 1882, provides, "The Bell Telephone Company of Canada may construct, erect and maintain its line or lines of telephone along the sides of and across or under any public highways, streets, bridges, watercourses or other such places, provided the said company shall not interfere with the public right of travelling on or using such highways, etc." Under this Act, if the poles obstruct the public travel the company can be compelled to remove them to a part of the highway where they will not obstruct the travel.

2. There has been a diversity of opinion among the judges as to whether property of this kind is the subject of taxation. The question was discussed in the case of the Consumers' Gas Company vs. Toronto, which was carried to the Supreme Court. Some years ago it was held in the Toronto Street Railway vs. Fleming, that the rails laid along the public streets were not assessable, and upon the strength of this decision we expressed the opinion in a previous number that telephone poles and wires were not assessable, and in the Consumers' Gas Company's case Mr. Justice Osler held, upon the authority of the same case, that the mains and pipes of the gas company laid in the public streets were not assessable, but the rest of the court did not agree with him. Chief Justice Strong, in the Gas Company's case, referring to the Fleming case, said: "The Chancellor attempted to distinguish that case from the present, but I confess I do not think it is susceptible of distinction. I was a party to that decision, but I do not hesitate to say that I now think the rails were 'things affixed to the land,' and as such liable to assessment as real property, and that that case was consequently wrongly determined." The Chancellor, in giving his judgment, quoting James, L. J., says: "Where any part of the soil is permanently occupied by anybody for profitable purposes, as for instance, where it is occupied by a company by means of its water or gas pipes or telegraph poles, then the persons so occupying is rateable in respect of such occupation." Two of our county judges have held that telephone poles and wires are assessable. In view of these decisions, your telephone poles and wires ought to be assessed, but you cannot prohibit the company from using the highway.

Monthly Cattle Fairs.

422.—J.—1. What power have municipal councils in regulating monthly cattle fairs?

2. Have such councils power to rent grounds and compel sellers at such fair to sell on those grounds?

3. Can council prevent hotelkeepers from opening yards in connection with hotel and running opposition fair grounds?

Sub-section 10 of section 495, Municipal Act, 1892, authorizes the councils of counties, cities and separate towns to pass

by-laws regulating public fairs. We are of opinion that these councils may rent grounds for fair purposes, but cannot compel sellers at such fairs to sell on these grounds, and that the council cannot prevent hotel-keepers from running opposition yards.

Deputy-Reeves to be Elected.

423—J. S. I.—Are first and second Deputy-Reeves to be elected for the coming year 1898, the same as they were last January?

Yes.

Impounded in Adjoining Municipalities Illegal.

424.—G. W. T.—A has a cow which breaks into B's garden. B threatens to impound said cow, and in doing so drives her into another municipality to pound. Can B legally collect damages, and also the pound-keeper collect expenses from A, there being other pound-keepers living in the municipality in which A and B live? I can see nothing in the Pounds Act governing such a case.

We do not think that A is liable to either B or the pound-keeper under the Pounds Act. It cannot be said that A's cow was running at large in the other municipality; she was driven there by B. The pound-keeper had no legal right under the circumstances to receive her, because as she was not running at large in his municipality there was no breach of the pound by-law in that municipality.

Taxation of Alligator Boat or Tug.

425.—H. L. M.—I would like to know if a steam boat or what is known here as alligator on inland lakes and rivers for towing saw-logs can be assessed or not?

No. Sub section 28 of section 6, Consolidated Assessment Act, 1892, exempts the following property from taxation: Vessel property of the following description, namely, steamboats, sailing vessels, tow barges and tugs, but the income earned by or derived through and from any such property shall be liable to be assessed.

Line Fences—Trespass on Tax Sale Lands—Assessor or Collector.

426—P. M.—1. A and B live on adjoining lots; A has notified B to make his part of the line fence lawful, and B has not done so, stating that there has been nothing crossed the fence as yet. Can A compel him and how?

2. Who has power to stop trespassing on lands sold for taxes for the year following after the sale is made?

3. Can an assessor legally act as collector, not having jurors selected at the time of his appointment?

1. Yes. He may take proceedings under the Line Fences Act, Chapter 219 R. S. O., 1887.

2. Under section 174, Consolidated Assessment Act, 1892, the purchaser has certain rights of action, but if the owner is in possession and his crops are damaged by trespassing animals he would no doubt have a right of action against the owner of the animals for the damage sustained by him.

3. The fact that the jurors have not been selected would not prevent the assessor from collecting taxes if the council authorized him to do so. Section 254,