

2. It is necessary that proper returns of arrears of taxes be made to the county treasurer. See section 152, and following sections of the Assessment Act, under the head, "Arrears of Taxes." We have frequently pointed out the necessity for strict observance of the duties of treasurers, clerks, and assessors under the above sections. Section 149 was never intended to enable these officers to ignore their statutory duties in regard to arrears of taxes.

Forms for collectors returns may be obtained at this office.

Farmer's Sons Vote.

437.—SUBSCRIBER.—The questions may not have been plain enough in No. 421 in the November issue of the WORLD. The assessor understood the parties were away from the farm more than six months, part of the time teaching and part of the time student, and put them on the roll as M. F., and the clerk put them on part 3 of the voters' list, which I think was his duty to do. There was an appeal made to get them on part 1 as M. F. and they were put on. I think by the Municipal Act, Sec. 86, they must be working on the farm with their father or mother for six months out of the twelve before the return of the roll, and the oath of a farmer's son in Sec. 115 appears to be the same. I think that being a student, etc., has no reference to a farmer's son's vote for municipal purposes. I think by Sec. 15 of the Assessment Act and Schedule B of the same act, and form 16 of the Election Act, that students have a right to be put on part 3 of the voters' list, to vote at a legislative election.

What I wanted to know was, if a boy was not working on a farm with his father or mother for at least six months out of twelve, before the return of the assessment roll by the assessor,

1. Could he legally be placed on part one to vote at a municipal election?

2. If so, could he legally take the oath of a farmer's son?

3. If he does would it be perjury?

My son was teaching some years ago and the assessor put him on as F. S. He boarded at home and worked on the farm every Saturday and during vacations and the judge put him off the list.

1. The act does not require that the son shall have worked on the farm for the time mentioned. It only requires residence. We agree with you that for the purposes of the Municipal Act occasional or temporary absence is not confined to the clauses named in the Election Act, but is general in its application. If the boy did not reside on the farm for the period required the assessor ought not to have put him on the assessment roll, but having done so, it is not the business of the clerk to sit in appeal from the assessor, and take evidence, but to make out a voters' list from the evidence which the roll furnishes.

2. Being on the list does not help the voter so far as the oath is concerned. If he was not a resident on the farm for the time required how can he take the oath?

3. Yes, if wilfully and corruptly done.

Collection of Income Tax.

438.—J. D. S.—How had the municipality best proceed to collect taxes levied on income that have been in arrears since 1894 and following years inclusive of 1897? If those for 1894 were sued for (alone) would it be held that those of the following years had been aban-

oned? I presume lands and houses occupied by delinquents as tenants cannot be offered for sale for arrears of taxes, provided the tax on real estate has been paid by the owners. To sue for all the years would involve bringing a Superior Court action, whereas a single year's tax could be sued for in Division Court.

Section 142 of chapter 224, R. S. O., 1897, provides, "If taxes payable by any person cannot be recovered in any special manner provided by this act, they may be recovered with interest and costs as a debt due to the local municipality, etc." Section 79, of the Division Court Act, chapter 60, R. S. O., 1897, provides, "A cause of action shall not be divided into two or more actions for the purpose of bringing the same within the jurisdiction of a division court etc." We do not think that the several years taxes are so connected as to form one cause of action within the meaning of the above section. They appear to be distinct debts which may be sued separately in the division court. If you sue for the taxes for the first year in which there were arrears and you obtain judgment, the judgment will be no bar to your right to sue for each of the other years in the same way.

A Drainage Case.

439.—R. H.—I fail to find a case parallel to mine in Ditches and Drainage Act, or in the many questions asked and answered through your valuable paper.

I own a piece of land, through which there is a watercourse which drains a large tract of land surrounding. After it leaves my property it crossed a roadway 66 feet with drain-box or culvert. It then runs through adjoining property which has been used for pasture but is now being ploughed up. Can the owner or tenant plow across that ditch, thus backing up the water into my cellar and upon my property? So far for 4 years I have kept the ditch open.

2. What recourse have I as I do not see anything directly bearing on the case in the Statutes? The waterway is an established one and has drained the surrounding property since water ran and snows melted.

Many persons have erroneous ideas as to what constitutes a watercourse. In the case of *Queer vs. Stroud*, 19 O. R. 10, Mr. Justice Street defined a watercourse as follows: "A watercourse entitled to the protection of the law is constituted if there is a sufficient natural and accustomed flow of water to form and maintain a distinct and defined channel. It is not essential that the supply of water should be continuous on from perennial living source. It is enough if the flow arises periodically from natural causes and reaches a plainly defined channel of a permanent character." Now though you use the word, "Watercourse," it does not appear to be such a watercourse which gives you any right of flowage over your neighbors land, within the definition of a watercourse, according to the foregoing authority, nor does it appear that you have acquired a right of drainage by prescription across your neighbors land. The law requires a user for twenty years at least before a man can acquire an easement over another man's property. If an owner of land cannot show a watercourse or a right by prescription, that is a twenty years user, his only remedy is

under the Ditches and Watercourse Act. This act was passed to enable adjoining land owners to drain low lands, each one bearing his share of the cost of the drain required according to benefit.

Councillor and Contractor.

440.—G. R. B.—What position does a councillor place himself in who, when commissioned to have certain work done, performs the same himself, and has the order drawn on the treasurer in favor of himself?

A member of a council may act as a commissioner and receive payment for his services as such. See section 537, cap. 224, R.S.O., 1897. The councillor in this case has done more than this. He cannot receive anything from the municipality for the work. See section 83 of the same act which provides: "In case a member of a council of any municipality, either in his own name or in the name of another, enters into a contract of any kind, or makes a purchase or sale in which the municipality is a party interested, the contract, purchase or sale shall be held void in any action against the municipality." Section 80 of the same act disqualifies a person from being a candidate for councillor who is interested in a contract with the corporation.

Where to Perform Statute Labor

441.—L. N. P.—1. Has a ratepayer who owns property in several road divisions the right to perform his statute labor in these divisions?

2. Can he be compelled to perform all the labor in the division in which he lives, there being no tenants on the outlying properties. The property is all in one municipality?

The latter part of sub-section (2) of section 109, of the Assessment Act, provides, "but every resident shall have the right to perform his whole statute labor in the statute labor division in which his residence is situate, unless otherwise ordered by the municipal council." The council has power to determine where a ratepayer shall perform his statute labor, and may pass a by-law for that purpose. See section 561 of the Municipal Act. If the council do not pass any by-law then we think that the ratepayer may do the work rated against each lot or piece of property in the division in which it is situated, but he has the privilege of doing the whole in the division in which he resides.

2. Yes, the council may so order. It should be by by-law and the by-law should be made so as to operate alike upon all ratepayers having property in different divisions.

Nominations in Writing.—Nominating Officer or Township Clerk.

442.—D.—1. Is it compulsory that all nominations be made in writing signed by the mover and seconder?

2. If so, are there any legal forms for that purpose, and at about what price per hundred?

3. Can a nominating officer for county councillor be a candidate for any office in the township council?

1. Section 128 (1) chap. 223, R.S.O., 1897, provides: "At such meetings the person or persons to fill such office shall