

equalized roll, for each municipality, shall be considered the aggregate valuation for the purpose of rating it, for any county or township tax.

Sec. 34 says that the county clerk shall, on or before the first day of August in each year, certify the several municipal clerks the total amount which shall have been directed to be levied in the then current year, for county purposes, and that such municipal clerk shall calculate and insert the same in the collector's roll.

Sec. 31 places in the hands of the County Council the power of fixing the county rate, making it simply the duty of the several municipalities to collect the same.

Sec. 34 would seem to place that duty in the hands of the municipal clerks, leaving them to make the necessary calculation, after having been informed of the amount required for county purposes.

It may at first sight appear a matter of little consequence in whose hands the duty is placed; not so, however, in the following instance. In the year 1858, the counties of Huron and Bruce passed a by-law imposing a rate to raise \$58,021, of which \$8,000 was to meet non-resident rates, or 4-29ths of the whole sum. 3-13ths of the present year's roll of one of the villages in this county is non-resident, and consequently if no higher rate than that imposed by the County Council can be collected, it follows that the amount collected must fall short of the sum certified by the county clerk as being payable to the counties by the village. The rates imposed on the lands of non-residents being in another table.

If the Village Council, in making their yearly estimate, have a right to make the amount payable to the counties one of the items for which they have to provide, and to make due allowance for taxes on non-resident lands which may not be collected, as under the Assessment Act (Sec. 31) I think they have, then in such case have they not a right to altogether ignore the by-law of the County Council imposing a county rate?

I cannot conceive the use of imposing a rate based on a roll on which the taxes are not computed or collected. Compelling township and village councils to collect an arbitrary rate, must in many cases compel such municipalities to raise more or less than the sum required.

An explanation of the difficulty will oblige. Yours, &c.

VILLAGE CLERK.

[It is provided by the Assessment Act of 1853, first that each township, &c., shall make estimates of all sums that may be required for the lawful purposes of any such township, and to pass a by-law or by-laws authorizing the levy and collection of a rate sufficient to raise the sums required. This rate is to be so much in the pound upon the assessed value of the property in the township (sec. 31). So far provision is made for the collection of a sum or sums required for township purposes only.

It is then provided, that where any sum is to be levied for county purposes the Municipal Council of the county shall ascertain and by by-law direct what portion of such sum shall be levied in each township, &c. (s. 34). Thereupon it is made the duty of the county clerk, before a day named, to certify to the clerk of each township the total amount directed to be levied in the township during the year for county purposes (s. 34). When this is done, it becomes the duty of the township clerk, &c., to calculate and insert the same in the collector's roll (s. 34). We can see no difficulty in the law.]—EDS. L. J.

TO THE EDITORS OF THE LAW JOURNAL.

*Municipal Laws—Election of Mayor in case of resignation.*

Stratford, August 27, 1859.

GENTLEMEN,—Your opinion is respectfully requested on the following points:

In January last, Mr. Daly was duly elected Mayor of Strat-

ford, by the people. In July he resigned, and at the beginning of August his resignation was accepted, and Mr. Smith, the Reeve (and also a Councillor), was elected by the Council to fill the vacancy, by virtue of sec. 148 of the Municipal Act. Mr. Smith continues to hold the three offices of Mayor, Reeve and Councillor, and holds that he can do so legally.

1. The question arises—had the Council the power to fill the vacancy in the manner mentioned?

2. If the new Mayor be not duly elected, what steps should be taken to set the election aside?

3. If held to be duly elected, is he not bound to resign his position as Reeve or Councillor, or both? The law provides that Town Councils shall be composed of a Mayor, and three Councillors for each ward. We have now, by the action of the Mayor, an incomplete Council, because his ward is only represented by two Councillors.

4. Supposing the election to be declared illegal, would the acts of the Council subsequent to such election be therefore nullified?

5. What is the meaning of the word "Bankrupt," as applied in sec. 121, when there is no bankrupt law? If a man has been summoned before the Judge of the Division Court, under a judgment summons, and has admitted his inability to make immediate payment of his debts, is he therefore to be deemed "Bankrupt" or "Insolvent?"

AN ELECTOR.

[1. Yes.

2. See sections 127 and 128.

3. We think so. The intention of the act seems to be that the office of Mayor should be separate from that of Councillor, and therefore from that of Reeve; otherwise the Council, as defined in the 66th section, "in towns," would be incomplete. As stated in note (i) in sec. 122, to Harrison's Municipal Manual, the words "or otherwise" refer to every state of circumstances that may render a new election necessary, and as such the courts may apply them as referring to cases like the present.

4. No.

5. He must be properly "declared a Bankrupt," or "apply for relief as an Insolvent Debtor," before his seat can become vacant.]—EDS. L. J.

## MONTHLY REPERTORY.

### COMMON LAW.

C. C. R. REGINA v. AVERY AND ANOTHER. April, 30.

*Adulterer—Adultery—Larceny—Taking goods of husband with privity of wife.*

A. and B. took the goods of a husband without his consent, and with the intent to deprive him absolutely of his property in them, but with the consent and privity of the wife. There was no evidence that the wife had committed, or intended to commit adultery with either of them.

*Held*, that inasmuch as it was not left to the jury to say which was the principal in taking the goods, the wife or the strangers, it must be considered that the wife took them, and that the strangers assisted, in which case no larceny was committed.

C. C. R. REGINA v. SUNLEY. April, 30.

*Illegal possession—Custody and keeping of naval stores—Evidence—Constructive possession.*

Where A, residing at Portsmouth, being illegally possessed of naval stores, sent them by a railway, directed them to B. at the London terminus of that railway, directing them to be delivered to C. They were not so delivered, but kept by B. at the London terminus.

*Held*, that under the circumstances given below, there was evidence that such goods were in the possession, custody and keeping of A., within the meaning of 9 & 10, Wm. III., c. 41, s. 2.