

Collector's Seizure.

147—A. H.—A tenant had a verbal agreement with his landlord to pay \$5 per month rent for a house in Lindsay. During November he left the house, being behind in both rent and taxes. Before leaving for the West he went to his landlord and paid him \$20 on the debt agreeing to send the balance as soon as he was able. In January, 1899, he left town with his wife and family, taking some household effects with him. He did not have sufficient funds to prepay all his luggage, however, and one box was left in the baggage-room to be forwarded to his address as soon as the funds were sent. In the meantime the freight agent notified tenant's mother-in-law that the storage would be 25 cents per day and tenant's mother-in-law had same removed to her house. Tax collector happened to be in the house and espied the box bearing tenant's address. He forthwith demanded possession of the box, which the mother-in-law delivered to him. The tax collector sold the box to a second-hand dealer for the sum of \$9, being the amount of arrearage in taxes which tenant owed on landlord's house. The second-hand dealer, being on friendly terms, holds the box, which the tenant can claim. The box contained blankets, children's clothing and trinkets belonging to tenant's wife. The tax gatherer did not notify tenant that he was selling the box.

1. Was the seizure illegal?
  2. If so, can tenant recover damages from tax collector or is his case against corporation?
1. Yes, because the collector could not lawfully sell without six days notice and advertizing in the manner provided by section 138 of the Assessment Act.
  2. The tenant's right of action is against the collector.

Cutting Trees Adjoining Road—Taxes on Post Office.

148.—HILLIER—In our township there is a concession line road that was opened a number of years ago and it was never opened its full width, and some of the timber and brush has been left standing and the road has become dangerous by reason of leaning trees and the council has been frequently notified of its condition and the owner of adjoining lands has been notified verbally to remove the leaning trees, some of which stood over the fence, which he failed to do. Last year the council was notified that if steps were not taken within a certain date to remove the danger the parties would apply to the courts to compel the council to take action. After being served with notice the council took action and had the timber and brush removed, the party that did the work taking the wood for part pay the council paying the balance. Now the owner of the adjoining land comes on and claims damages, says his father left these trees standing as shade trees; also claims the wood. The council also cut leaning trees over the fence but did not remove them. Were the council within their rights in cleaning the road without first passing a by-law, and is it necessary to pass by-law to cut leaning trees, so long as they do not go outside of sixty-six feet, and was it necessary to give the party notice in writing?

If the present council settles this claim would it have any bearing on any future action the council might take towards opening the road its full width?

2. A is postmaster in a country place, the office being in his house. What share of the house should be exempt from taxes?

1. The owner of land adjoining the highway has a special property in trees on the side of the highway, which were left standing for the purpose of shade or ornament, and before cutting such trees the council should pass a by-law under sub-section 2 of section 574 of the Muni-

cipal Act. As to the right of property in the owner, see sub-section (4) of section 2, chap. 243, R. S. S., 1897. If the owner can show that the trees are within the meaning of sub-section (4), cap. 243, he can recover the value of the trees unless the council can prove a sufficient by-law and ten days notice as required by section 574. The settlement of the claim would not affect any other case.

2. Unless some part of the house is leased to the post office department, we do not see how the owner can claim any exemption.

Number of Polling Sub-Divisions.

149.—G. M. E.—The answers to questions 1 and 2, number 72 of, February number, does not give me the exact information I wished. I will put the question like this: We have about 950 ratepayers and have five booths. Would we be entitled to seven? I will explain why I did not understand. You say that 200 is the maximum. Then you say the sub-divisions may contain a less number than 200, but did not say how much less and as we had about 250 ratepayers I did know if we could reduce them to allow us seven booths or not.

The act does not fix a minimum number of electors. It fixes a maximum to prevent a polling sub-division being inconveniently large. We can, therefore, see no reason why the council cannot divide the municipality into 7 polling sub-divisions if it thinks the votes of the electors could be taken more conveniently by having that number. The alteration must be made within the time limited by the act. See sections 535 and 536.

Statute Labor Joint Owners' Assessment.

150.—G. C.—A father and two sons, all under sixty years of age, are assessed as joint owners or freeholders of a 150 acre lot. All live together. Assessed value of lot is \$2,850. According to by-law governing statute labor in this township (a copy forwarded) if only one person were assessed he would be liable for six days' labor. In this instance eight days are charged. The assessed parties contend that on account of being assessed jointly they are not liable for any more statute labor than if only one person were assessed for the property.

The by-law, as you will notice, authorizes the clerk to charge in cases of joint assessments an additional day's labor for each party assessed—after the first—if all are residents, except when the senior assessed party is sixty years of age.

Has the council exceeded its power by making this provision in by-law?

We cannot find anything in the Assessment Act authorizing such a provision as the one in question. Under what section of the act did your council profess to act?

Claim to Land by Possession—Trustee Nomination.

151.—E. W. B.—1. A and B own adjoining farms. Many years ago rear of both was unoccupied. A was the first to enclose part of unoccupied but did not put fence out to line, leaving a strip outside. Some years afterward A enclosed remainder but did not move his fence back to the line, but made a "jog" back some five or six rods placing his fence on line to rear. A owns all the fence. In the meantime B enclosed all of the rear of his land. All transactions were prior to 1860. Now B claims the strip by possession. A claims it as unoccupied lands. It is bush pasture. Please give an opinion as to who is right.

2. We have just held a bye-election to fill a vacancy in the school board. 3 or 4 candidates were nominated. The returning officers did not announce the names of the candidates until the time had expired. A candidate present wished to resign orally but could not do so as the meeting was closed before he had time. Had to do it in writing and had to get his nominator to witness. Should not returning officers announce names of candidates as handed in?

1. Before expressing an opinion on this question you should furnish us with a plan showing the lands with the fences as they have stood from the commencement, and the changes made, and full particulars of the acts of possession by B. We may say that B, in order to succeed in his contention against A, the legal owner, must make out a clear title to possession. If the two adjoining owners have a line run between their lands, and afterwards both exercise rights of ownership up to the line on either side, such as cutting fire-wood and timber, such acts will be sufficient to support a claim to title by possession. Or if a man encloses a piece of another man's lands by a fence, and cultivates such part for ten years, he will obtain a title by possession. Where a man runs a line, himself, through a wood, encroaching upon another man's lands, but without the consent of such other party, and he relies upon his having cut timber or fire-wood up to that line for ten years, such acts are not sufficient, because each time that he goes on the other man's land he is a trespasser, and as soon as he goes off he is then again out of possession; but if he were to not only run the line, but to also build a fence along that line so as to enclose the land with his own, and then exercised such acts for ten years, he would acquire a title by possession.

2. As a matter of law we do not think so, but we think it would be a very proper thing for clerks to announce before the hour expired, the names of the persons nominated.

Collector's Seizure in Districts

152.—D. M. G.—Would it be legal for the collector of a town in the judicial district of Maniwoulin to seize for taxes the goods or chattels of a person assessed, if found outside the limits of the town but within the district?

No. We cannot find any authority for going outside of the municipality itself. In the case of counties there is authority to seize in any part of the county, under sub-section 1 of section 135 of the Assessment Act.

Assessment Pulp Wood—Hemlock Bark and Ties.

153.—J. W.—1. In our municipality there is a quantity of pulp wood taken out by the farmers and sold by them to contractors (resident in this municipality) of a pulp wood company (resident in this province). Part of said wood is piled on the station grounds in this municipality and part has been shipped as it arrived at station. Is the pulp wood assessable that is piled on the station grounds, and to whom?

2. At a tannery there is a large amount of bark piled in their yard, said bark being paid for as it is delivered there. The owner claims that it is not assessable because he has drawn on the bank to pay for it. Is it assessable?