

tion were intended to have been merged into any other body which was not a corporation.

The separate existence of the grammar and common school corporations, after their union, is no argument against the corporate existence and active exercise of corporate powers by the joint board, for the continued existence of the constituent bodies is expressly provided for. The joint board is to be selected from the constituent boards, and they are to resume their original functions on a dissolution taking place. So also, in the case of a union of common school sections, "the several parts of any altered or united school sections shall have respectively the same right to a share of the common school fund for the year of the alteration or union, as if they had not been altered or united: sec. 43.

In my opinion, then, these defendants had the power to contract for the work which is the subject of this suit, and they were therefore liable to be sued for it as a corporate body, and the joint board, I think, is a corporation capable as such of suing and of being sued.

The facts of this case are not the same as they were in the case against Farrell. Perhaps the cases are not reconcilable. However that may be, the only conclusion I can form is, that the rule fails in law.

MORRISON, J., concurred.

Rule discharged.

THE TRUSTEES OF SCHOOL SECTION NUMBER SEVEN,
IN THE TOWNSHIP OF STEPHEN, v. MITCHELL.

School Trustees—Action against Secretary-Treasurer.

Held, affirming the judgment of the County Court, that a Board of School Trustees could maintain an action for money had and received against their secretary-treasurer, to recover a balance of money in his hands not expended or accounted for.

[29 U. C. Q. B. 382.]

Appeal from the County Court of Huron.

The defendant, it appeared, had been secretary-treasurer of the plaintiffs for several years, and this action was brought to recover from him a balance of money proved to be in his hands as secretary-treasurer, unexpended or unaccounted for by him.

The only question raised at the trial was the right of the plaintiffs to recover the amount proved in this action for money had and received. The learned County Court Judge held that the plaintiffs could recover, and a verdict was rendered for them for \$66 20.

In the term following a rule *nisi* was granted to set aside the verdict and for a new trial, which after argument was discharged, and the defendant appealed.

Moss, for the appellant, cited *Bartlett v. Dimond*, 14 M. & W. 49; *Pardoe v. Price*, 16 M. & W. 451; *Edwards v. Bates*, 7 M. & G. 590.

C. S. Patterson, contra.

MORRISON, J.—To support this action all that is necessary to be proved is, that the defendant received the money in question for the purposes of the corporation, the plaintiffs. What was contended on the argument was, that the defendant did not stand in the relation of agent of the plaintiffs: that the moneys he received were received not for the use of the corporation, but for school purposes: that the relation between the defendant and the plaintiffs was that of trust

and *cestui que trust*: and that the remedy was only in equity for an account.

I must confess that I would consider it to be a great misfortune if we were compelled to hold, in a case of this kind, that a suit in equity was necessary to ascertain or rather to enable the plaintiffs to recover the balance of moneys withheld from them by their treasurer. We however, think that it is quite clear that the legal title to recover moneys in the hands of the secretary-treasurer of school trustees, and withheld from them, is in the corporation, and that it can be recovered in this form of action.

By the 27th section of the School Act, Consol. Stat. U. C. ch. 64, the school trustees are authorised to appoint one of their number (as in this case) to be secretary-treasurer of the corporation, who shall give security for the correct and safe keeping, and forthcoming (when called for) of the papers and moneys belonging to the corporation, and for the receiving and accounting for all school moneys, &c., and the disbursing of such moneys in the manner directed by the majority of the trustees. These provisions clearly indicate that the defendant, as the officer and treasurer of the plaintiffs, received the school moneys in question as for and belonging to the corporation, and when his term of office expires or ceases his duty is to hand over whatever money may be in his custody to the corporation, and if he refuses to do so, the same may be recovered from him in this form of action. We are therefore of opinion that the view taken by the learned Judge in the court below was correct, and that the appeal should be dismissed with costs.

WILSON, J. concurred.

Appeal dismissed.

SERGEANT V. ALLEN.

Pound-keeper—Sale by after security given—Right of action

The plaintiff sued defendant, a pound-keeper, for selling the plaintiff's horses impounded, after the plaintiff had given him satisfactory security as required by the statute, (Municipal Act of 1866, sec. 355,) and demanded the horses. A count in trover was added; and the plaintiff had a verdict on both. On motion for a nonsuit, because the first count did not allege that the act complained of was done maliciously:

Held, affirming the judgment of the County Court, that the verdict was right on both counts, for the special count shewed a case in excess of jurisdiction, and within sec. 1, therefore, not sec. 2, of Consol. Stat. U. C. ch. 126.

The proper mode of taking the objection would have been by demurrer, or in arrest of judgment.

[29 U. C. Q. B. 384.]

Appeal from the County Court of Grey.

The declaration contained three counts:

1. That defendant, as pound-keeper, received two colts of the plaintiff, and impounded the same for certain alleged damages and costs charged upon the same, and sold them at a gross under-value.

2. That defendant, as pound-keeper, having received the colts, the plaintiff offered to defendant and gave to him satisfactory security, as required by 29-30 Vic. ch. 51, sec. 355 (Municipal Act of 1866) for all costs, &c.; and that the plaintiff demanded the colts from defendant, yet defendant refused to give them to the plaintiff, and wrongfully sold them.

3. Trover.