a mere sinecure, or the duties to be learned without years of practice and application.

## U. C. REPORTS.

### GENERAL LAW.

ORR *v.* RANNEY AND OTHERS.

*Authority of School Trustees—16 Vic. ch. 185, sec. 6.*

Two of the Trustees of a school section are not competent to act in all cases without consulting the third; nor can the whole body, without any reference to the freeholders, determine upon the site for the school-house, and purchase it, and impose a rate to meet the expense.*

This was an action of Trespass for taking the plaintiff's property.

The defendants pleaded that the plaintiff and the defendants, Lawrence Ranney and Thomas Rundle, before the said time when, &c.—to wit, during 1853—were and now are resident householders in school section No. 15 of the township of Westminster, and were during the said year liable to be rated and assessed for the school purposes of said section; that before and after the said time when, &c.—to wit, during the said year—one Isaac Campbell and the said Lawrence Ranney and Thomas Rundle were and now are trustees of the said school section No. 15 of the said township; and that, there being no suitable school-house in or belonging to the said school section, they, the said Lawrence Ranney and Thomas Rundle, being a majority of the said trustees of the said school section, on the 14th day of March in the said year, purchased and acquired a site within the said section for the common school therein: that afterwards, and before the said time when, &c.—to wit, on, &c.—the said Lawrence Ranney and Thomas Rundle, being the majority of the said trustees of the said section, judged it expedient to build a school-house in and for the said section on the said site; and thereupon, immediately afterwards, did cause to be built on the said site so required as aforesaid a suitable school-house for the said section; that in order to pay for the said site, and for the building of the said school-house and the incidental expenses attending the same, they, as such trustees, assessed an equal rate upon the assessable property of the said section; and thereupon made out a list of the names of all the persons rated by them for the said school purposes of such section, and the amount rated upon and payable by each person in the said section: that they did, on the 7th day of November in the year aforesaid, duly annex to the said list a warrant, under the corporate seal of the said trustees of the said section, directed to the said William Beattie, who was then the collector of the said section, by which said warrant they authorized and required the said William Beattie, after ten days from the date thereof, to collect from the several individuals in the rate-bill thereto annexed mentioned the sum of money set opposite the respective names of the said parties mentioned in the said list, and to pay within thirty days from the date thereof the amount so collected, after retaining his own fees, to the secretary treasurer, whose discharge should be his acquittance for the sum so paid; and in default of payment on demand by any person so rated, he was thereby authorized and required to levy the amount by distress and sale of the goods and chattels of the person or persons making default: that the said plaintiff, being a resident householder in the said section, was assessed and rated on the said list attached to the said warrant for £9 16s. 8d.; that the said William Beattie, by virtue of the said warrant, on, &c., did demand of the said plaintiff the sum of £9 16s. 8d., being the sum for which he was so rated and assessed, which the plaintiff neglected and refused to pay; and thereupon the said William Beattie, at the said time when, &c., seized and took the said goods and chattels in the said declaration mentioned, and sold and disposed thereof, as he lawfully might, for the cause aforesaid—which are the trespasses in the said declaration mentioned. Verification.

*Demurrer.*—The causes assigned sufficiently appear in the judgment.

*Eccles* for the demurrer. *Cameron, Q.C.*, contra.

ROBINSON, C. J., delivered the judgment of the court.

The plaintiff is entitled to judgment on the demurrer, which, we believe, was conceded by the defendants on the argument. Whether the plea is to be determined upon with reference to the last school act, 16 Vic. ch. 185, sec. 6, or the former act, 13 & 14 Vic. ch. 48, as governing the trustees in the matters set forth in the plea, it would in either case be impossible to sustain the plea. The defendants have assumed that two only of the three trustees could, as the majority, do any act, however important, without consulting with the third, or giving him any notice or opportunity of uniting with, or opposing them. That is clearly not so. Then under either of the two acts (and it appears to us the 16 Vic. ch. 185, sec. 6 was the statute in force at the time, and which required to be observed in this matter) the whole body of trustees were not competent, without any reference to the freeholders, to determine upon the site of the school-house and purchase it, and impose the rate for raising the money to meet these charges; and yet the plea proceeds on the assumption that the trustees, and even a majority of them, could, without any formality, do all that they judged it desirable to do.

Judgment for plaintiff on demurrer.

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*In re* COMPLAINT OF THE MUNICIPALITY OF THE TOWNSHIP OF AUGUSTA *v.* THE MUNICIPAL COUNCIL OF THE UNITED COUNTIES OF LEEDS AND GRENVILLE.

*Application for Mandamus—Entitling of affidavits.*

*Semble*, That affidavits in moving for a rule *nisi* for a mandamus may be entitled *In re Complaint of* —— v. ——, though it is more proper to entitle them only in the court.

[QUEEN'S BENCH, T. T. 18 Vic.]

*Connor, Q.C.*, moved for rule on the Municipal Council of Leeds and Grenville, to shew cause why a mandamus should not issue, commanding them forthwith to plank, gravel, or macadamize the road assumed by the Municipal Council between Maitland and North Augusta, in the township of Augusta, being part of the road known as the County Toll Road from Merrickville to Maitland, in the said united counties.

The affidavits were entitled as above; and, there being some doubt as to the propriety of any entitling at all at this stage of the proceedings, the court, at the request of the learned counsel, took time to consider this point before granting the rule.

ROBINSON, C. J., delivered the judgment of the court.

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[NOTE—*In reference to School Trustees, we give also the following late decision.—*Ed. L. J.*]

The Trustees of a school section being a corporation under the statute 13 & 14 Vic. c. 48, are not liable to pay for a school-house erected for and accepted by them, not having contracted for the erection of the same under seal.
[Macaulay C. J. dissentient.]
Marshall v. The School Trustees, &c., of Kitley. 4, U.C.C.P. Rep, 373.

This case is here alluded to as interesting to School Trustees. The point materially in question, as to what contracts with Corporations, are exceptions to the general rule of law, requiring the same to be under the corporate seal, arose in Clark es. The Hamilton and Gore Mechanics' Institute, 12 U. C. B. R. Rep. 179. A difference of opinion existing among the Judges in both these cases, it is not improbable that the point may hereafter come up before the Court of Appeal.—[*Ed. L. J.*]