

The statute 37 Vic. ch. 27, is intituled "An Act to amend and consolidate the law relating to the council of public instruction, the normal schools, collegiate institutes, and high schools."

The statute 37 Vic. ch. 28, is intituled "An Act to amend and consolidate the public school law."

Both of these Acts profess not only to be consolidations of preceding Acts, but to be amending Acts, and so far as inconsistent with preceding Acts are to be deemed new laws.

The intention of the Legislature can be collected from no other evidence than its own declaration, that is, from the Act itself: per Tindal, C. J., in *Salkeld v. Johnson*, 2 C. B. 757.

The first question is, as to the constitution of the joint board of education and its powers when constituted.

It is by sec. 63, of 37 Vic. ch. 27 declared that:—

"In all cases of the union of high school or collegiate institute and public trustee corporations now existing, all the members of both corporations shall constitute a joint board, and shall, as long as the union exists, be a corporation under the name of the board of education for the city, town, or incorporated village of—, or in school section No. —, in the township of—, as the case may be;

(a.) Seven members of the board shall form a quorum, and such board shall have the powers of the trustees of both the public and high schools; * *

(b.) The union may be dissolved at the end of any year by resolution of a majority present at any lawful meeting of the said board of education called for that purpose;

(c.) On the dissolution of such union, the school property held or possessed by the board of education at the time, shall be divided or applied to school purposes, as may be agreed upon by a majority of the public school trustees and of the high school or collegiate institute trustees respectively, present at meetings called for that purpose; * *

(d.) After the 1st day of July, 1874, no public school or department thereof, shall be united with a high school or collegiate institute."

A similar provision will be found in sec. 151 of the public school Act, 37 Vic. ch. 28.

These provisions are inconsistent with the idea that the joint board is a mere committee of management, representing the two boards, such as was the joint board under former Acts of Parliament and the decisions thereunder. See 16 Vic. ch. 186, sec. 11, sub-sec. 4; Consol. Stat. U. C. ch. 63, sec. 25, sub-sec. 7; *Ib.* ch. 64, sec. 79, sub-sec. 9. See also *The Board of Trenton and the Corporation of Trenton*, 26 U. C. R. 353; *The United Joint Board of Caledonia v. Farrell*, 27 U. C. R. 321; *Oliver v. The Union Board of Ingersoll*, 29 U. C. R. 409.

While the union exists there is but one Board composed of the members of the two separate boards. That board is a corporation, and possessed of all the powers of each of the separate boards.

The application, therefore, for the mandamus is rightly made in the name of the joint board, and not in the name of the trustees of the high school.

It is now necessary to examine the powers of the separate boards, which powers are, as it were, under the operation of the Act, transferred to the joint board.

First, as to the high school board.

The trustees of every high school or collegiate institute is a corporation by the name of "The High School" (or collegiate institute) "Board," prefixing to the high or collegiate institute, the name of the city, town, or incorporated village, within which such high school or collegiate institute is situated, and shall have and possess all the powers usually employed by corporations, so far as the same are necessary for carrying out the purposes of this Act: 37 Vic. ch. 27, sec. 60.

All property heretofore given or acquired in any municipality, and vested in any person or persons, or corporation for high school or collegiate institute purposes, or which hereafter may be so given or acquired, vests absolutely in the corporation of high school or collegiate institute trustees having the care of the same, subject to such trusts as may be declared in the deed or instrument under which the property is held: *Ib.* sec. 87.

It is the duty of the trustees of every high school or collegiate institute board to take charge of the high school or collegiate institute for which they have been appointed trustees, and the buildings and lands appertaining to it: sec. 61, sub-sec. 4. And to do whatsoever they may deem expedient with regard to erecting, repairing, warming, furnishing and keeping in order the buildings of such school or institute, and its appendages, lands and enclosures belonging thereto: sub-sec. 5. And to apply (as the case may be) to the municipal council of the city, or of the town separated from the county for municipal purposes, for such sum or sums which said board may require for the support, management, and school accommoda-

tion, and other necessary expenses of the high school or collegiate institute, and which said council is required by this Act to raise by local assessment for such purposes: sub-sec. 6.

The school board, and not the municipal council, is to judge of the expediency of the expenditure intended by the preceding sub-section.

The words "support, management, and school accommodation," as used in that sub-section, manifestly embrace "erecting, repairing, warming, furnishing, and keeping in order the buildings" mentioned in the fifth sub-section.

An obligation to provide proper school accommodation, necessarily involves maintenance and repair. See per Hagarty, C. J., in *Regina v. Law Society*, 20 C. P., 390, 494, and per Gwynne, J., *Ib.* 512.

In the case of a high school in a town not withdrawn from the county, or in an incorporated village or township, one half of the amount paid by the Government is to be paid by the municipal council of the county in which the high school or collegiate institute is situated, upon the application of the high school board, and "such other sums as may be required for the maintenance and school accommodation of the said high school" shall be raised by the council of the municipality in which the high school is situated, upon the application of the high school board, or in the event of the county council forming the whole or part of a county into one or more high school districts, then "such other sums as may be required for the maintenance (quære, and accommodation) of the said high school, shall be provided by the high school district, upon the application of the high school board: sec. 45. See *In Re Niagara High School Board, and Corporation of Niagara*, 37 U. C. R. 529.

The manifest object of the section is to provide for "the maintenance and school accommodation of the high school." That object is to be attained by a fund, of which part shall be by the government, part by the municipal council of the county in which the high school is situate, and

1. If the county council have not formed the county or part of the county into one or more high school districts, the remaining money required for maintenance and school accommodation "shall be raised by the council of the municipality in which the high school is situate," &c., upon the application of the high school board.

2. Or if the county council have formed the whole or part of the county into one or more high school districts, then the remaining money required for the maintenance, (quære, and school accommodation)—shall be provided by the high school district, upon the application of the high school board. See *Re Tyrrell and Corporation of York*, 35 U. C. R. 247.

It is not shewn that the county council formed the county or part of the county into one or more high school districts, and I assume the contrary for the purpose of the present decision.

The word "shall," as used in the last quoted section, is obligatory: *Regina v. Court of Revision of the Town of Cornwall*, 25 U. C. R. 286: and in this respect a change has been made in the law for the support of grammar and high schools since 1863, when *Re Trustees Weston Grammar School and Corporation of United Counties of York and Peel*, 13 C. P. 423, was decided.

The change was first made by 34 Vic. ch. 33, sec. 36, under which *Re Trustees Port Rowan High School and Corporation of Walsingham*, 23 C. P. 11, was decided.

The council of any municipality, or the councils of the respective municipalities, out of which the whole or part of a high school district is formed, shall, upon the application of the high school board, raise the proportion required to be paid by such municipality or part of a municipality from the whole or part of a municipality, as the case may be.

The foregoing enactments, sec. 44 to 46, inclusive, are in the Act, under the heading of "Obligatory municipal assessment for high schools." Then follows, under the heading "Voluntary municipal assessments": sec. 47. It is as follows:—

The council of every county, city, and town, separated from the county for municipal purposes, may pass by-laws for municipal purposes:—

1. For making provision by local assessment (in addition to that required to be made by this Act) for procuring sites for high schools, for erecting buildings, repairing, furnishing, warming, and keeping in order high school houses and their appendages.

2. For obtaining within the county, or in any city or town separated from the county, as the wants of the people may require, the real property requisite for erecting high school houses thereon, and for other high school purposes, and for preserving, improving, and repairing such high school houses, and of disposing of such property when no longer required.

5. For making provision (additional to that required to be made by this Act) in aid of such high schools as may be deemed expedient by the Council, &c.