

mand of the said Board, in pursuance of the powers given to them by The Consolidated High School Act of 1874.

*McMichael*, Q.C., shewed cause. The township can only be called upon to assist in the maintenance of the school, as the school-house is not in the township. The municipality in which the school-house is must provide the school accommodation: 37 Vic. ch. 27, sec. 45.

*J. A. Miller*, contra. 37 Vic. ch. 27, secs. 38, 39, 40, 41, 43 and 46, shew that High School districts may be formed, the municipalities comprising which will be responsible both for school maintenance and accommodation. He referred also to secs. 42, 61, 66, et seq.

January 7, 1876. *WILSON*, J.—The question is, whether the High School Board for a district consisting of two municipalities, the Town and Township of Niagara, can call upon one of the municipalities to contribute towards the erection of a school-house which is built, or is to be built, in the other municipality?

The statute in question is the 37 Vic. ch. 27. The applicants rely on the 46th section chiefly, which enacts that "The council of any municipality, or the councils of the respective municipalities, out of which the whole or part of such High School districts is formed, shall, upon the application of the High School Board, raise the proportion required to be paid by such municipality or part of the municipality, from the whole or part of the municipality, as the case may be."

That section certainly assumes that a High School district may be formed out of respective municipalities; and secs. 38, 39, 40, 41, 43 directly sanction and assume also that a High School district may be so formed.

It was contended also by the counsel for the township, that as the school-house is not in the township, but in the town, the township can be called on by the Board to contribute towards the maintenance only of the High School, and not towards its maintenance and accommodation.

The Act provides for cities, and for towns separated for municipal purposes from the county, being counties by themselves, for all High School purposes: sec. 42.

A town separated from a county may also have attached to it the whole or any part of an adjoining township or townships "so as to form a High School district; and the whole of such district shall be within the jurisdiction of the Town Council and High School Board for all High School purposes": sec. 43.

By sec. 44 provision is then made for the accommodation and support of High Schools in cities, or in towns withdrawn from the jurisdiction of the county.

Then follows sec. 45, upon which the township contends for exemption from liability for providing for the accommodation of the High School. It reads as follows:—"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 shall be paid by the Municipal Council of the County in which such 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 of the said High School shall be provided by the High School district, upon the application of the High School Board; such sums shall be raised in the manner provided in the next section."

The next section is the 46th section, before given.

By the 45th section, which applies to a High School in a town not withdrawn from the county, or in an incorporated village or township, reference is made to those sections of the Act, from 66 to 71, by which the Government is to pay certain sums, but which do not apply to building of school-houses. Then the county council pays at least one-half of the amount which the Government pays.

Then follows the portion of the section which creates the contention: "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." That assumes that the High School district is co-terminous with the municipality in which the High School is situated. If that was not so, it would be at variance with the 46th and other sections of the Act, and be more particularly at variance with what immediately follows the last quotation as part of the same (45th) section: "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 of the said High School shall be provided by the High School

district, upon the application of the High School Board. Such sums shall be raised in the manner provided in the next section."

The two cases provided for by this section are, that such other sums which are "required for the maintenance and school accommodation of the said High School" beyond the amount which the Government and county council contribute, is to be raised by the county council of the municipality "in which the High School is situated,"—that is, as I construe the Act, in case the High School district is co-terminous with the municipality in which the High School is situated.

The language is not, I admit, very precise, and it may be said it is improbable that a town not separated from a county, or an incorporated village, or a township, will alone constitute a High School district.

The other case is, that 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," that is, besides those the Government and county council contribute, shall be provided by the High School district, "as may be required for the maintenance of the said High School," omitting the words "and school accommodation," as in the previous part of the section—which omission I look upon as an inadvertency, and not as intentional, and which omission is sufficiently supplied so as to add the burden of school accommodation to that of maintenance, if the word maintenance be thought not to include both terms.

It never could have been intended that the municipality in which the High School stands should build, at its own expense, the High School for a larger district, in which other municipalities should participate equally without contributing more than its share of the maintenance of the building, and the small proportion which should fall upon it as the one-fourth part of the charges which the Government and county did not pay.

The same section says that in the event last mentioned, just as has happened, two municipalities, part of a county, formed into a High School district, "such sums shall be raised in the manner provided in the next section."

And the next section provides that the councils of the municipalities shall "raise the proportion required" by the High School Board by each municipality. That proportion, it was argued on behalf of the township, meant its proportion for the maintenance only.

I think it does not. The meaning is a proportionate part of the total sum required for the district. And sec. 61, sub-sec. (a) shows that.

On a just consideration of the purpose and intent of the Act, and of the different provisions affecting this question, I am of opinion the Township of Niagara is bound to contribute towards the maintenance and school accommodation of the High School erected in the district of which the township forms a part, although the High School is situated in the Town of Niagara, and that the rule must be made absolute for a mandamus to issue as moved for.

*Rule absolute.*

### 3. COUNTY BY-LAW TO ANNEX TO A SECTION A PORTION OF THE TOWNSHIP WHERE THERE WAS NO SCHOOL.

The County Judge of the County of Norfolk has given judgment in a school case which possesses both interest and importance. The Municipal Council of the Township of Walsingham has passed a by-law attaching Long Point on Lake Erie to one of the existing school sections of the township. The Long Point Company refused to pay their school tax, and the section entered an action to recover the amount. It was admitted by the plaintiff's counsel that the part of Long Point nearest to Port Rowan, the site of the school, is distant four miles, communication being by water, and that the part furthest off is twenty-five miles. The by-law was declared by the Judge to be both *ultra vires* of the Council, and contrary to the intention and reasonable interpretation of the School Acts. The by-law was held to be beyond the competence of the Council to pass, because, although the School Law confers upon township councils the right to form into school sections portions of the township where no schools have been established, and to unite two or more sections into one at the request of a majority of the assessed freeholders and householders, it nowhere authorizes a Council to annex a portion of the township where there is no school to another portion where there is one. It was further held that the manifest intent of the school law is to bring the means of obtaining an education within the reach of all, and that the Act itself contains provisions guarding against the creation of insurmountable physical obstacles to the attendance of the children of the section at school. This intention was completely frustrated by the by-law in question, the great distance between the Point and the mainland being of itself sufficient to preclude attendance at Port Rowan school. A verdict was, therefore, entered for the defendants, with costs.