

required for any other purpose authorized by law may be levied."

In framing these sections it would certainly seem that no general survey of an entire township was contemplated by the legislature. We should incline to give the most liberal constructions to the words used, so as to meet the possible case of an obliteration of all the concession lines in a township. But the difficulty at once arises, that in the re-surveying of the whole township, as here, the cost of the whole in one sum is required from the land-holders in proportion to the quantity of land in the township respectively held by them, whereas the statute throws the burden of the survey of each concession or part of a concession on them in proportion to the quantity of land held by them respectively in each concession or parts of a concession. The county council can have no right to place the burden otherwise than as the statute seems to direct.

Each concession should bear the cost of its re-survey. This by-law throws it on the township generally. If in concession No. 1 there were fifty land-holders each owning 100 acres, the cost of its survey could be easily apportioned amongst them. If concession No. 4 had only thirty land-holders, the same process could be applied. Practically it might be much more costly to run the lines of one than of the other, from the extent of the obliteration.

But if the aggregate cost of both surveys be directed to be levied of all the land-holders in the two concessions according to the quantity of land held by each of them, the burden would not be borne as the law directs. A man owning 100 acres in concession 1 might own 500 in concession 4. The illustration can easily be extended to the case of a re-survey of the township.

Section 7 also seems to point to a survey of a concession only, by providing for leaving each adjacent concession of a depth proportionable to that intended in the original survey. If in one concession or part of a concession, where the line had become obliterated wholly or in part, there was found a deficiency of land in depth, the adjacent concession whose line was still traceable must not suffer diminution. In the re-survey of a whole township this provision would seem not very applicable.

We regret any difficulty that may be caused by the repeated judgments of this court as to these surveys. We have no alternative but to see that the statutes are observed.

We think the by-law must be quashed with costs.

DRAPER, C. J.—I concur in the decision, upon the broad ground that the powers to tax confided to the councils of municipalities can only be exercised in the manner specified by the act, and that where the legislature have seen fit to direct that the expense of a re-survey of each concession shall be borne by the owners of land in that concession, though every concession in that township has been re-surveyed, the expense of each belongs to the land-holders of each, and the whole is not to be levied on all the proprietors of the township.

MORRISON, J., concurred.

Rule absolute.

THE CORPORATION OF THE COUNTY OF PETERBOROUGH V. THE CORPORATION OF THE TOWNSHIP OF SMITH.

Re-survey of townships—Omsol. Stat. U. C. ch. 98—Right of act. on by the County.

Declaration, that the plaintiffs, pursuant to the statute applied to the Governor, to have the concession lines in the defendants' township re-surveyed, which was ordered accordingly, and the expense paid by the plaintiffs; that the plaintiffs thereupon directed the defendants to levy and collect the money so paid, but although they did levy part they refused to pay the same to the plaintiffs. *Plea*, that the only direction was by the plaintiffs' by-law, which before suit was quashed.

Held, on demurrer, that the declaration was bad for not shewing a by-law, as the plaintiffs could proceed only in that way; and that the plea was good. *Querre*, whether the money can be levied before the survey has been actually made.

[Q. B. T. T. 1866.]

Declaration—For that the plaintiffs, under the provisions of the statute in that behalf made, application to the Governor, requesting him to cause the concession lines in the township of Harvey, then united with the said township of Smith, and being the junior township of such union, to be re-surveyed under the direction and order of the Commissioner of Crown Lands, in the manner prescribed by the act respecting the survey of land in Upper Canada, and the Governor in council ordered the same to be done accordingly, and the Commissioner of Crown Lands certified that the sum of \$2511 05 was payable, and ordered the same to be paid by the county treasurer of the said county of Peterborough to the persons employed in the said services, and the same was paid accordingly by the said treasurer. And the plaintiffs thereupon directed the corporation of the then united townships of Smith and Harvey to levy and collect the said sum so paid by them as aforesaid, and it became and was the duty of the said corporation of the then united townships of Smith and Harvey to levy the same as by law directed, and to pay the same to the plaintiffs. And afterwards the said township of Harvey was separated from the said township of Smith in the manner and form prescribed by law. And all conditions were fulfilled, and all things happened, and all times elapsed necessary to entitle the plaintiffs to maintain this action. And although the defendants did levy and collect a large portion of the said sum of money, yet they neglect and refuse to pay the same, or any part thereof, to the plaintiffs. And the plaintiffs say that the said united townships of Smith and Harvey have not, nor have said defendants, levied and paid the said money, as it became and was their duty, and as by law they were required to do.

The defendants were allowed to demur and plead to this declaration, as follows:

Demurrer, on the grounds:—1. That the said first count does not shew any facts from which duty would arise as against the defendants to levy, collect, or to pay over to the plaintiffs the money therein claimed, or any part thereof. 2. That the duty, if any, was upon the corporation of the united townships of Smith and Harvey, and not the defendants. 3. That the said count does not shew how the defendants were directed to levy and collect the said moneys from the persons liable by law to pay the same for the purposes in the first count mentioned. 4. That it is not alleged that the said defendants or the said united townships were directed to levy, or did levy, said moneys from the resident land-