

the decision of the Court on the demurrers, be tried in this action: Con. Stat. U. C., ch. 64, secs. 40-41, 45-46: The trustees having applied to the townships for authority to borrow the money necessary to build a school house, and, not having obtained the necessary authority, might afterwards use their own lawful authority: Con. Stat. U. C., ch. 64, sec. 27, sub-sec. 12; 37 Vic., ch. 28, sec. 26, sub-sec. 14. As it was not contemplated or intended that the collector should receive remuneration for his services, there was nothing to prevent his being one of the two trustees who appointed him: Con. Stat. U. C., ch. 64, sec. 27, sub-sec. 2; 23 Vic., ch. 49, sec. 6; 37 Vic., ch. 28 O., secs. 24-25, 28, sub-sec. 1; sec. 29, sec. 86, sub-sec. 1a, and the rate was not unequal: *Harling v. Mayville*, 21 C. P. 499.

C. Robinson, Q. C., contra. The addition of a portion of one section to another is not a union, but an alteration of sections: Con. Stat. U. C., ch. 64, secs. 41, 45-46; 23 Vic., ch. 49, sec. 55. Here there was no union of sections: *In re Proper and the Corporation of the Township of Oakland*, 34 U. C. R. 273. The plaintiff may be precluded from shewing in this action that the defendants were not duly elected trustees, but ought not to be precluded from shewing that there is no section for which they can be trustees. The warrant not being signed by a majority of the trustees, excluding the collector, is not a valid warrant: 37 Vic., ch. 28, secs. 25, 28-29. The rate is an unequal one: Con. Stat. U. C. ch. 64, sec. 46; 37 Vic. ch. 28, sec. 51; *Harling v. Mayville*, 21 C. P. 499, 508. The trustees, after applying to the township councils for authority to borrow the money, have no power themselves to levy the rate: Con. Stat. U. C. ch. 64, sec. 27, sub-sec. 12.

September 26, 1876. HARRISON, C. J.—The Common or Public School Acts for the past twenty years have made a plain distinction between the alteration of the boundaries of a section and the union of two or more school sections.

The Courts, in several cases, have recognized this distinction, and endeavoured to give effect to it: See *Re Gill and Jackson et al.*, 14 U. C. R. 119; *School Trustees of School Section No. 2, in the Township of Moore and McKee*, 12 U. C. R. 525; *In re Morrison and the Municipality of the Township of Arthur*, 13 U. C. R. 279; *In re Ness and the Corporation of the Township of Saltfleet*, Ibid. 408; *In re Ley and the Municipality of the Township of Clarke*, Ibid. 433; *School Trustees of School Section No. 4, in the Township of Ha'lowell and Storm*, 14 U. C. R. 541; *In re Hart and the Municipality of Vespra and Sunnidale*, 16 U. C. R. 32; *In re Isaac and the Municipality of Euphrasia*, 17 U. C. R. 205; *In re Proper and the Corporation of the Township of Oakland*, 34 U. C. R. 266, 273.

The power to form and alter school sections at discretion was at one time vested in the council of each district: 9 Vic. ch. 20, sec. 9; and when this was the case there was no difficulty arising from the circumstance that the section proposed to be formed or altered consisted in parts of two or more townships. See *In re Ness and the Municipality of the Township of Saltfleet*, 13 U. C. R. 408.

When the population of the Province increased, when the number of school sections was correspondingly increased, and when the sections themselves became less in size, the power to form or alter sections was divided and attempted to be conferred on smaller bodies than district councils, such as township councils, &c.

The power to take from or to add to the boundaries of a school section, or to form two or more sections in a union, is a legislative power which can only be exercised by the Legislature of the Province, or those to whom the power has been delegated by the Legislature.

On 24th December, 1873, the reeves of the Townships of Tilbury East and Raleigh, in conjunction with the Inspector of Public Schools for the County of Kent, assumed by by-law to form a new school section, formed, in part, of the whole of school section No. 6, in Tilbury East, with the addition of some lots and parts of lots from the Township of Raleigh, and called it "Union School Section No. 2, Raleigh and Tilbury East."

Although called a union school section, it was not a union of school sections, but the addition to an existing section in Tilbury East of some parcels of land situate in the Township of Raleigh,—in other words, an alteration of the boundaries of an existing school section in Tilbury East by an increase of territory from an adjoining township.

But the question is not so much as to the name of the new section, as to the power of those who assumed to exercise it to form the new section in the manner and at the time they passed the by-law of 24th December, 1873.

The statute in force at that time from which the power, if existing, could only be derived, was Con. Stat. U. C. ch. 64, with amendments thereto.

Sec. 39. "Each township council shall form portions of the township where no school sections have been established into school sec-

tions; and shall appoint a person in each new school section to call the first school meeting."

Sec. 40. "In case it clearly appears that all parties to be affected by a proposed alteration in the boundaries of a school section have been duly notified of the intended step or application, *the (not any) township council* may alter such boundaries. But no such alteration * * shall take effect before 25th December next after the alteration has been made."

"Sec. 41. "In case, at a public meeting of each of two or more sections called by the trustees for that purpose, a majority of the freeholders and householders of *each* of the sections to be affected, *request to be united*, then the council shall unite such school sections into one."

Sec. 43. "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. 44. "In case a school site, school house, or other school property be no longer required in consequence of the alteration or the union of school sections, the same shall be disposed of * * in such manner as a majority of the freeholders and householders in the altered or united sections decide at a public meeting called for that purpose, and the inhabitants transferred from one section to another shall be entitled, for the common school purposes of the section to which they are attached, to such a proportion of the proceeds of the sale of such school house or other common school property as the assessed value of their property bears to that of the other inhabitants of the common school section from which they have been so separated, and the residue of such proceeds shall be applied to the erection of a new school house, or to other common school purposes of such altered or united sections."

So far no provision is made for exercise of power by any other body than township councils, and can only be held to extend to school sections situate wholly *within* the particular township.

The 23 Vic. ch. 49, sec. 5, which repealed sections 45 and 46 of Con. Stat. U. C., ch. 64, provided that, "Under the conditions prescribed in the 40th section in respect to alterations of *other* school sections, *union school sections*, consisting of parts of two or more townships or parts of a township, and any town or incorporated village, may be *formed and altered* by the reeves and local superintendent or superintendents of the townships out of part of which such sections are proposed to be formed, * * and each *union school section* composed of portions of adjoining townships, or portions of a township or townships, and a town or incorporated village, shall, for the purposes of the election of trustees under their control, be deemed one school section, and shall be considered, in respect to superintendence and taxation for the erection of a school house, as belonging to the township * * in which the same is situated."

These powers are in effect continued in the existing Public School Act: 37 Vic. ch. 28, sec. 48, sub-sec. 10, secs. 49, 50, 51.

Provision so far is made for:—

1. The alteration of the boundaries of a school section *within* a township by the council of that township.
2. The union of two or more sections within a township by the council of that township, after a meeting of the freeholders and householders of each section requesting to be united.
3. The alteration of the boundaries of a *union school section*, although consisting of parts of two or more townships, by the reeves and local superintendents of the townships.

But no provision is made for the alteration of the boundaries of a school section (not being a union school section), consisting of parts of two or more townships.

Sec. 47 of Con. Stat. U. C. ch. 64, enacts that "Each township council may, under the restrictions imposed by law in regard to the alteration of school sections, *separate* such part of any *union school section* as is situated *within* the limits of its jurisdiction from the union of the sections, and may form the part so separated into a distinct school section, or attach it to one or more existing school sections or parts of sections within its jurisdiction, as such council shall judge expedient."

Sec. 92 enacts, that "The local superintendent of adjoining townships shall determine the sums to be paid from the common school fund of each township in support of the schools of *union school sections* consisting of portions of such townships; and shall also determine the manner in which sums shall be paid."

Sec. 93 enacts, that "In the event of the local superintendents of the townships thus concerned not being able to agree as to the sum to be paid to each such township, the matter shall be referred to the warden of the county for final decision."

We can only judge of the intention of the Legislature from the language which the Legislature has used.

The Legislature has provided for the formation and alteration of