

owing to the number of scholars attending the said schools having gradually increased, does not afford quite adequate accommodation; this council is willing to take all proper steps for raising within a reasonable time such sum as may be necessary for enlarging the said school, so as to afford the accommodation required by law; but this council cannot comply with the request of the Board of Education for so very large a sum as \$16,000, and consider any scheme involving the expenditure of anything like that sum as unwise in the extreme.

On the 20th February, 1876, the secretary of the Joint Board of Education, acting under the instructions of the board, wrote to the council of the town, giving a detailed estimate of the sums required. The estimate was made up as follows:—

Price of land.....	\$ 2,500
Contract for building .....	11,845
Plans and cost of Inspector.....	500
Furnaces .....	400
Out-building.....	100
Slating.....	300
Fencing.....	500
<b>Total.....</b>	<b>\$16,145</b>
	Say, \$16,000

The letter concluded by stating, under the instructions of the board, that if the municipal corporation had not the money on hand out of which to pay the sum required, the board would be willing to accept debentures of the town, properly issued and payable at a period not exceeding twenty years, or notes of the town payable on the collection of the taxes of the town for the present year.

On the 6th of March, 1876, the introduction of a by-law for the purpose of raising the amount failed to carry in the council, there being five for the motion and five against it.

On the 20th March, 1876, a motion to introduce a by-law to raise the money met the same fate as the former motion, and on the same division—five to five.

The council, at the same meeting and on the same division negatived a motion for the appointment of a committee to consult with the Board of Education, as to whether they would not be willing to erect the building on a particular site named, and reduce the estimate to \$15,000.

On the 10th April, 1876, the Board of Education again requested the council of the town to provide the \$16,000, being the amount first required.

A resolution of the council, again introduced in reference thereto, was again negatived on the same division as before, the council again refusing to take any steps towards providing the sum required.

The Inspector of Schools reported the school accommodation in Perth quite inadequate, except for public school purposes, and in consequence the Chief Superintendent of Education, on the 27th of November, 1875, wrote, insisting upon further accommodation being provided for high school purposes.

The legislative grant for the last year (1875) was withheld until the board informed the Department of Public Instruction that they had purchased the site, and given out the contract for the erection of the school building.

Still the council of the town refused to provide the amount required, or to pass any by-law as to the same.

On the 24th March, 1876, the Board of Education instructed counsel to take the necessary legal proceedings to compel, if possible, the town to provide the amount required.

During this term, May 29, 1876, *Armour, Q.C.*, (*J. K. Kerr, Q.C.*, with him) shewed cause. The Board of Education are not the proper applicants, and the application should have been made at the instance of the trustees of the high school board: 16 Vic. ch. 186, sec. 11, sub-sec. 4; 16 Vic. ch. 185, sec. 8; Consol. Stat. U. C. ch. 63, sec. 25, sub-sec. 7; *Ib.* ch. 64, sec. 79, sub-sec. 9; 23 Vic. ch. 49, sec. 10; 29 Vic. ch. 23, sec. 5; 37 Vic. ch. 27, sec. 63 O.; 37 Vic. ch. 28, sec. 26, sub-sec. 10, O.; *Ib.* sec. 87, sub-sec. 6; *Ib.* sec. 151, sub-sec. 9; *Board of Trenton and Corporation of Trenton*, 26 U. C. R. 353; *Joint Board of Caledonia v. Farrell*, 27 U. C. R. 321; *Oliver v. The Union Board of Ingersoll*, 29 U. C. R. 409. And even if the applicants are the right applicants, there is no such duty cast on the town as contended: 37 Vic. ch. 27, secs. 44, 45; 34 Vic. ch. 33, secs. 33, 40; 37 Vic. ch. 27, sec. 47, sub-secs. 1, 2, 3; *Ib.* sec. 61, sub-sec. 5; Consol. Stat. U. C. ch. 63, sec. 25, sub-sec. 5; *Re Trustees of Weston Grammar School v. The Corporation of the United Counties of York and Peel*, 13 C. P. 423; 12 Vic. ch. 81, sec. 41, sub-sec. 3; 37 Vic. ch. 48, sec. 383, sub-secs. 5, 6; and no legal change of site was shewn: 37 Vic. ch. 27, sec. 36. The demand is extravagant, and the Court, on the merits, should refuse

the writ: *Regina v. Garland*, L. R. 5 Q. B. 269; *School Trustees of Port Hope v. Town Council of Port Hope*, 4 C. P. 418.

The affidavits filed in shewing cause, disclose the following grounds of contention: It is wholly unnecessary to build a high school of the size and at the cost proposed; not more than \$5,000 is necessary for such a purpose, if any change be really necessary. The average attendance at the high school, previous to the time when the present High School Act went into force, was about 53. In February last, the average attendance was 80, in March, 79, in April, 78. The increase of pupils during the last two years has not arisen from any increase of population, but from the circumstances that under the present school Acts, the standard for the qualification of teachers being raised, many of those intending to be teachers, have, during the last two years, attended the high schools at Perth and elsewhere, in order to have one or two years tuition, to qualify them for passing their examination; and this increase is nearly altogether from outside the limits of the high school district. There is no reason to believe there will be an increase in the future. A reason for believing that there will be a decrease rather than an increase, is the opening of the new normal school at Ottawa. The population of Perth is also decreasing of late years. The average attendance at the high school and the public schools is only 456. It is not true that in Perth, between the ages of five and sixteen, excluding separatists, the number of children is 611. The board possesses in the present school house, a large stone structure (of which a photograph was laid before the Court), with an acre of land attached thereto.

A new arrangement of the rooms is all that is necessary to give whatever additional accommodation is required. The situation of the new site was condemned as being neither pleasant nor convenient, and as being near what is known as the "long swamp." The proposed expenditure was characterized as a waste of public money. Facts were stated to shew that those who favoured it in the council and at the school board were not influenced by the most lofty motives. It was shewn that two out of the five of the members of the council were members of the high school board; that a third member of the council in favour of the expenditure had been appointed inspector, or clerk of the works, at a salary of \$200 per annum, and the remaining two were shewn to be related to the three preceding. It was also stated that the motives of those on the high school board favourable to the expenditure, were not solely with a view to the public interest. It was insinuated that the necessities of a person in Perth having a large quantity of unsaleable bricks, and of another person having a large quantity of unsaleable lumber, had more to do with the proposition to build a new high school than the necessities of the public. Some affidavits were filed on the part of the applicants, shewing that the present school house was not healthy; but affidavits to the contrary were filed on the part of the town.

*Bethune, Q. C.*, (*Osler* with him,) supported the rule. The 37 Vic. ch. 27, is to be read as a new law; and so reading it the joint board is a corporation, and not a mere committee of management: sec. 63, sub-sec. (c); and while it exists, the functions of the separate boards are suspended: *Ib.* The applicants therefore are the only corporation capable of applying, and it is the duty of the town council to comply with the request: 37 Vic. ch. 28, sec. 86, sub-sec. 5 a.; sub-sec. 11, b. c. e.; sub-secs. 20, 21; sec. 87, sec. 69, 70, sub-sec. 9; sec. 114; *Re School Trustees of the City of Toronto and Corporation of the City of Toronto*, 23 U. C. R. 203; *Re Trustees of Sandwich and Corporation of Sandwich*, *Ib.* 639. Before the Act the duty was obligatory in regard to public schools, and the joint board has now all the powers of both the separate boards. By the word accommodation is meant support and maintenance: 37 Vic. ch. 27, secs. 44, 45, 46, 47. The discretion as to the expenditure is vested in the joint board, and not in the town council: 37 Vic. ch. 28, sub-sec. 2, of sec. 48. The board is responsible to the rate-payers for their conduct, and the town council have no discretion whatever in the matter.

June 29, 1876, *HARRISON, C. J.*—This rule must be disposed of upon the interpretation to be placed upon different sections of 37 Vic. chs. 27 and 28, O.

Nothing, it has been said by a great authority, is so difficult as to construe properly an Act of Parliament, and nothing so easy as to pull it to pieces: per Lord St. Leonards, in *Flaherty v. McDowell*, 6 H. L. 142, 179.

If his Lordship had ever been called upon to interpret one of our school Acts, he would not have found any occasion to alter the opinion which he above so tersely expressed.

If there were more skill in the first instance employed in the framing of public Acts of Parliament, there would be much less need of frequent amendments, much less perplexity, and much less litigation than at present exists in this Province.