That the Trustees were not bound to levy a rate themselves, but were entitled to call upon the Municipal Council, whose duty it became to provide the amount; and if that was refused, a mandamus was the proper course, to compel performance of the duty declared by the statute, &c.—16 Vic., ch. 185, secs. 1 & 6.

MACAULAY, C. J.—The 13 & 14 Vic. c. 48, sec 21, No. 6, enacts that it shall be the duty of the Board of School Trustees, &c., among other things, to *prepare* from time to time and *lay before* the Municipal Council, &c., an estimate of the sum or sums which they shall judge expedient, &c., for the purchasing school premises and for building school houses, &c.; and that it shall be the duty of the Common Council to *provide* such sum or sums in such *manner* as shall be desired by the said Board of School Trustees.

I am disposed to think, that instead of this the Board of School Trustees may levy a rate for such purposes without reference to the Municipal Council of the town—16 Vic. c. 185, sec. 1, and sec. 6, 21.—But whether or not, I think that application may be made to, and that if properly made, it is the duty of, the Municipal Council to provide the monies in manner desired; and that if refused, a mandamus may be moved.

I do not think a vote of the ratepayers necessary in the case of cities and towns, &c., as it is within school sections of townships (16 Vic. c. 185, sec. 6), as was decided in the case of The School Trustees of Brockville v. The Town Council of Brockville (9 U. C. Q. B. R. 302; 13 & 14 Vic. c. 48; sec. 24, Nos. 1, 6, and Nos. 4, 6, sec. 18, No. 1, and sec. 12, No. 7.)

But on the present application, I do not think, first, That the proper estimate is shewn to have been *prepared* and *laid* before the Municipal Council; for I do not consider the communication of a resolution of the Board of Trustees that the chairman do order the secretary to notify the Town Council to *furnish* the Board with £2,500, *immediately*, for the following purposes—namely, £500 for purchasing a site for a central school house, and £2,000 for the erection of a school house thereon—such an estimate as the statute contemplates, and as the Town Council, when called upon to pay so large a sum out of the funds of the municipality, may reasonably expect, or that the courts are bound, as a matter of course, to enforce such a general demand. It is merely a peremptory requisition for a large sum of money; and if twice or ten times as much were right, the court might as well be moved to enforce the payment without any additional explanation to shew it a reasonable exercise of the very wide discretion and powers vested in the Board. Nor do I think a demand to furnish such a sum *immediately* reasonable, without showing that the municipality possessed funds ready to be so applied at a moment's notice.

We are not asked to compel performance of what the resolution required merely to compel the Municipal Council to furnish the £2,500 immediately, but to order them to levy a rate, &c.

To enforce the levy of a rate is not to compel that which the Board of Trustees demand. If we were moved to grant a mandamus to order the immediate furnishing of the amount according to the resolution of the Board of Trustees, I apprehend we would not be prepared to do so without more appearing than is shewn on this application;—then, in place thereof we are asked to direct that to be done which the Municipal Council was not asked to do; nor do I consider that which was asked was equivalent. It appears that the funds were already in hand, not that the process of a rate was required to be resorted to.

In exercising the large powers vested in the Board of Trustees when a direct taxation to so large an amount is to be imposed upon the inhabitants, not by the Board directly, but through the Municipal Council upon their requisition, we must see that the terms and substance of what the statutes and the law require have been correctly complied with. One thing required is the preparation of an estimate; another is, a distinct application to the council to do that which we are called upon to enforce. My impression is that the present proceedings are deficient in both these respects.

McLEAN, J., and RICHARDS, J., concurred.

Rule discharged without costs.

JOSEPH McKAY v. JAMES HALL.—JAMES CHARLES JOHNSTON ET AL. v. JAMES HALL.

A Judge of the County Court has power to grant a certificate for speedy execution.

[4 U. C. C. P. Rep. 145.]

These cases were brought down by writ of trial before the Judge of the County Court of the United Counties of York, Ontario and Peel, who certified on the same day that in his opinion execution ought to issue forthwith for the verdicts. In Michaelmas Term last *Eccles* obtained in each case respectively rules calling on the plaintiff to shew cause why the judgments entered and the executions issued thereon should not be set aside, on the grounds—That no formal returns had been made by the Judge upon the said writs of trial; that the writs of trial had not been first returned and filed in the Crown-office, or remained there for the space of six days; that the Judge of the County Court had no authority to grant such certificate as aforesaid.

Hagarty, Q.C, shewed cause, and contended that there is no reason why the judge of the County Court should not certify for immediate execution after a judge of the Superior Court has said the cause was a proper one to be tried by him; that the judge of the County Court is the only person who can certify for costs, because the act says it must be done by the judge who tried the cause; that the certificate of a judge, erroneously made up, may be amended.—3 & 4 Wm. IV ch. 42, sec. 10.

Eccles supported the rule.—That the Imperial statute 1 W. IV. applies to judges of the superior court, and the Act which authorizes the writ of trial was passed after; that the judge who tries the cause has the right to make certain amendments: that the Act of 1852 cannot be carried back and embodied in the Act of 1815: that no power can be given to judges of the County Court to grant certificates for immediate execution except by express enactments; that his being a judge of the County Court does not make him a judge under the Act with power to certify; that he is only delegated by the Act and writ to try the writ, and then his power ceases; that amendments are different from the granting certificates, because amendments are made during the course of the trial, but after the jury find their verdict he has no power except to endorse his verdict and make his return; that the 56th section of the statute 8 Vic. directs what is to be done, after the verdict, and that the judgment shall not be entered for six days; that the Act authorizing the writ of trial cannot be altered except by an Act with express enactments referring to the former Act; that the judge of the County Court has no authority to order a judgment to be entered in a superior court before the time for entering judgment regularly in that court.

MACAULAY, C.J., delivered the judgment of the Court. (a)

It seems clear that the Judges of the County Court are Judges within the statute 16 Vic. ch. 175, sec. 27, from the circumstance of their being spoken of as such in that section, which includes both the Superior and County Courts. I think the writ of trial is virtually a record, although not so termed, and that the certificate of the Judge of the County Court

(a) The following statutes show the powers conferred on the Judges of the County Court, and are applicable to this case:—8 Vic. ch. 13, 12 Vic. c. 63, 13 & 14 Vic. c. 52, Imp. stat. 1 Wm. IV. c. 7; 3 & 4. W. IV. c. 42.