

shall and may be lawful for the municipality of each township, from time to time, by any by-law or by-laws to be passed for that purpose, to divide such township into several wards; or when the same shall have been previously so divided, by act either of the district or county municipal council, or of the municipality of the township, then to divide the same anew into several wards as aforesaid, arranging or re-arranging the same, so as more effectually to accomplish the objects aforesaid; every which division by such municipality shall supersede that so to be made by such district or county municipal council, as well as every previous division made by such municipality itself: provided always, nevertheless, that no such *first mentioned by-law* shall be of any force or effect, unless the same shall have been passed by a vote of at least four-fifths of such municipality for the time being. (4)

The objects to be accomplished are stated in the 4th sec. to be, that the several wards shall, as regards the numbers of freeholders and householders entitled to vote at the election of township councillors, be as nearly equal as practicable, regard being however also had to the convenience of such freeholders or householders, and to the rendering each of such rural wards as compact as circumstances will permit.

The term "*first mentioned by-law*" in the proviso to the 8th section may suggest an enquiry whether the necessity for a four-fifths vote is not confined to a by-law to divide townships into several wards, and not to dividing anew, arranging or re-arranging, after the division has once been made.

The 16 Vic., cap. 181, sec. 6, enacts that the majority of freeholders and householders of any township may petition the municipality to have the township divided into wards, or that an existing division may be abolished, or that alterations to be specified in the petition may be made in such division, and makes it imperative in every such case for the municipality to pass a by-law, according to what is asked for: provided such by-law shall contain a recital of the petition, and that it was passed in compliance with the prayer of the petition and the direction of this section. The section contains other provisions as to when such by-law shall be limited to come into effect, and requires a vote of the electors in its favor after it has passed the municipality, and provides that it shall not be obligatory on the municipality to pass such by-law, unless the petition be signed by a majority of the electors named on the collector's-roll, and that four-fifths of the council need not concur in passing it. The 7th section makes provision for taking the votes of the electors on such by-law; and the 8th enacts, that after a by-law so passed has taken effect, as provided in the preceding sections, the municipality shall have no power to repeal it, except on a similar petition and subsequent voting of the electors.

I think it quite clear that these provisions do not repeal sec. 8 of 12 Vic., cap. 81; they provide a mode by which the majority of the freeholders and householders may control the council in the exercise of the powers conferred by that 8th section; but subject to that control, and while it is unexercised, they leave the power untouched. In the present case, it is not pretended that the freeholders and householders have taken a single step in reference to the arranging, re-arranging or dividing anew of the township into rural wards. The fact that they have not done so, and that the by-law is not passed according to the provisions of the statute of 16 Vic., is made the foundation of four out of five of the objections taken. None of these objections have any application, unless the 8th sec. of 12 Vic., cap. 81, is virtually and impliedly repealed. It appears to me too clear to bear argument that the two may well stand together, and that the legislature meant they should do so.

We have then only to consider the first objection. I do not treat the proviso requiring the four-fifths vote, as rendering it

necessary that a formal vote of each member shall be taken, one by one, in order to ascertain that four out of the five members support it. Suppose all five present, if when the question is put no one expresses his dissent, his opposition to its passing, but all acquiesce tacitly, it will be properly, in my opinion, taken to be a unanimous vote. There must be four members at the meeting when such a by-law is passed, and if only four they must be unanimous; but if the passing of such a by-law be moved, be put from the chair, and no dissent be expressed, I think it may properly be taken to have had the assent of all four, and therefore to have passed legally and in accordance with the proviso; and that one of such four councillors should not afterwards be heard to say he was not in favour of the by-law, did not vote for it, and therefore it was not passed by a vote of four-fifths of the council.

Looking at his affidavit closely, he does not assert affirmatively that he voted against it, but that he did not vote for or support it, and that he said he did not think they had power to pass it, and told the other members to have nothing to do with it. To which he adds, that he was opposed to it, without stating that he offered any act of, or expressed any opposition to it.

Perhaps if this had not been met we might have considered that the other members of the municipality were aware of his opposition, and that he was dissenting from the by-law being passed. But to the extent of his offering no opposition, expressing no dissent and offering no vote against, we have four affidavits meeting his negative of supporting or voting for the by-law by a negative of his dissenting or voting against it, and three of these affidavits assert it was passed unanimously, meaning no doubt *nemine contradicente*, and then presuming assent in all.

In the face of these affidavits I do not think we can say it is sufficiently proved to us that the by-law was not passed by a vote of four-fifths of the Municipal Council, and therefore the first objection also fails. And this renders it unnecessary to decide whether the proviso has the limited application suggested or extends to every by-law which might be passed under that section of the statute.

I am of opinion the rule should be discharged.

*Per Cur.*—Rule discharged.

### MCGREGOR v. PRATT.

(Easter Term, 19 Vic.)

*School trustees—Election of.*

In replevin, defendant made cognizance as collector of school section No. 1. It appeared that prior to February 1854, school section No. 1 consisted of the town of Chatham and a part of the township of Harwich; there was also a school section in operation, known as section No. 21. In February 1854 the township council of Harwich passed a resolution dividing the township into sixteen school sections: No. 1 of these new sections was formed of that part of the township of Harwich which together with the town of Chatham, had previously been No. 1 added to the whole of 21 as it existed previously.

In January 1855 an election for No. 1 as created by the resolution of February, 1854, was held, at which one trustee only was elected, and the two other trustees elected the previous year for the then section gave defendant the warrant under which he acted.

*Held*, that there should have been three trustees elected for section No. 1 at the election in January, and that a warrant signed by the other two was inoperative.

(6 C. P. R., 173.)

REPLEVIN for a horse. Writ issued the 24th of December, 1855. The defendant made cognizance as collector for the trustees of school section No. 1 in the township of Harwich, setting forth that plaintiff was a freeholder and a resident within that school section, and was duly assessed in the sum of £7 2s. 3d., as his proportion of a special school rate; that before the said time, when, &c.—viz., on the 11th of January, 1855—John Bennett, Thomas Harrison and David Wilson were duly elected school trustees of the said school section; and thereupon the school rates became their property: that defendant, before, &c., was duly appointed by the said trustees collector, to collect the said special rates: that John Bennett and

(4) Vide sec. 118, as to the vote of the person presiding at the meetings of the council, and 16 Vic., cap. 181, sec. 39, proviso, as to when only four out of five councillors are present.