

32 Vic. ch. 32, sec. 25, to twenty days (a). See *Wray v. Toke*, 12 Q. B. 412.

The indictment may also be objectionable for not stating that King was present at the examination, or for not shewing a summons to have issued, and that the magistrate was authorized to proceed *ex parte* by reason of King's default to appear after service of the summons had been duly made on him.

These exceptions to the validity of the indictment cannot now be taken unless by writ of error, as judgment has been pronounced on the prisoner.

The respiting of execution in this instance is perhaps no favour to the prisoner, as it might have been if his sentence had been a capital one, or had been imprisonment in the penitentiary, or had been in any respect different or more severe than his present imprisonment. The addition of hard labour, that is, such hard labour as our gaols impose or enable to be imposed, is not in fact any addition to the pain of imprisonment.

If the proceedings are not reversed in error, it may be well that the time of imprisonment from sentence pronounced to this time, should be counted as part of the sentence.

The judgment is therefore affirmed.

Conviction affirmed.

OLIVER V. THE UNION BOARD OF SCHOOL TRUSTEES OF INGERSOLL.

Grammar and Common School Trustees—Joint Board—Corporate existence.

A joint board of grammar and common school trustees are a corporate body, capable of contracting and being sued, though the separate corporate existence of each continues; and they were held liable therefore for work done upon a contract made by them with the plaintiff for an addition to the school house.

School Trustees v. Farrell, 27 U. C. R. 321, commented upon.

[33 U. C. Q. B. 409.]

Action on the common counts.

The defendants contended, under the plea of never indebted, that they were not liable in law, not being a corporate body capable of being sued.

The cause was tried at Woodstock, in the Fall of 1868, before Morrison, J. A verdict was rendered for the plaintiff, for \$75 damages, with leave to defendants to move to enter a nonsuit, if the court should be of opinion the defendants were not liable.

In the term thereafter, *Anderson* obtained a rule calling on the plaintiff to shew cause why a nonsuit should not be entered.

In Michaelmas Term last, *M. C. Cameron, Q.C.*, shewed cause. The action is brought to re-

cover the balance of money still due to the plaintiff for building a grammar school, being an addition to the school house in Ingersoll. It is contended by defendants that they are not liable; but the *Con. Stat. U. C. ch. 63, sec. 25, sub-sec. 7, 23 Vic. ch. 49, sec. 10, and 29 Vic. ch. 23, sec. 5*, shew that defendants are a body that have extensive powers, and may hold property. They may therefore contract with respect to it. The contract was made with the defendants, which distinguishes this case from that of *The Joint Board of Grammar and Common School Trustees of Caledonia v. Farrell*, 27 U. C. R. 321.

Anderson supported the rule. The united board does not merge the separate and respective existence of the two trustee corporations which form it. It is simply a board of government, and if legal rights are enforced they must be by or against the constituent part or parts of the board that is or are affected. The case referred to, which was cited by defendants at the trial, is expressly in their favour.

WILSON, J.—The question is, whether the decision in the case referred to is one which we can adopt, if it be applicable to the facts of this case. It was given on a County Court Appeal, and is therefore not as binding on us as a decision which could have been appealed from would have been.

There the Education Office sent to the chairman of the board of grammar school trustees a circular advising him of the payment of \$242 for that school. The money was paid into the Bank of Upper Canada, at Toronto, as agents for the treasurer of the County, and the bank sent a draft to the treasurer's order for the money on the bank agency in Hamilton.

This draft remained in the treasurer's possession from the 11th of July till the 26th of September, at which time the bank stopped payment. The treasurer then sent the draft to the plaintiffs, but they refused it, and sued him for the money.

It was admitted the money was the trustees' apportionment of grammar school funds for the previous six months.

It was contended in the court below that the treasurer was not liable, but if there was a liability that it rested on the county council, and that the trustees as a union board could not sue, as the money belonged to the grammar school board, and not to the united board.

On appeal the learned Judge who delivered judgment appears to have relied chiefly on the fact that "the money was paid to the treasurer as grammar school money * * * If so, and, as we think, the grammar school trustees, notwithstanding the union under the joint board, still existed as a separate corporation, it would seem to follow that it should be sued for by and in the name of such corporation," as the ground for holding the action could not be maintained by the union board.

The general question which the learned judge stated in the earlier part of his judgment—"Is the joint board a corporation capable as such of suing?"—he did not answer. He may have thought it unnecessary, as beyond the requirements of the case.

I am not able therefore to take much benefit from the decision in that case, as I should have

(a) The information was as follows:
CITY OF TORONTO, } The information and complaint of
To wit: } G. A. Mason, of the City of Toronto,
taken on oath before me, A. M., Esquire, police magistrate
of the said city, this sixth day of September, 1869. The
said complainant upon his oath saith he is informed and
believes that James King, Caroline and Duchess, did within
the past three months, to wit, on the seventh day of Sep-
tember, 1869, sell wine, beer, or spirituous liquors, without
having a license so to do, contrary to law. Complainant
therefore prays a summons may issue, that justice may be
done in the premises.
Sworn before me, &c.

(Signed)

G. A. MASON.

(Signed)

A. McNABB, P. M.