in England of Michaelmas term 3 Vic., and the case of Regina v. Hedges, 11 A. & E. 163, showing that under that rule the affidavit must show at whose instance the application is made.

Richards, in reply, insisted that the affidavits in this case, stating distinctly that the copy put in was a true copy of the by-law, furnished more direct evidence of its authenticity than the attaching of the seal would do; that it appeared the clerk had stated that he dared not put the seal; that in Easter term 17 Vic. the court of Queen's Bench, in Morrison v. Municipality of Arthur, granted a rule to quash a by-law, though the clerk had refused to certify it. Supposing the case properly before the court, the other side had not attempted to support the by-law.

DRAPER, C.J.—The 105th sec. of 12 Vic., cap. 81, makes it the duty of the township clerk, on the application of any resident of any township, or any other person having an interest in the provisions of a by-law, and on payment of his fee, to furnish a copy of such by-law, certified under his hand and the seal of the municipal corporation; and either of the superior courts of common law may be moved, "upon production of such copy, and upon affidavit that the same is the copy received" from the clerk. The affidavit of Edmund Savage states that the copy produced is the copy received by him from the clerk of the municipality, and that it is a true copy of the said by-law passed by the Municipality. There are two certificates purporting to be signed by the clerk of the Municipality, one dated the 1st of November, 1855, wafered over the other, which is dated the 11th of October, 1855, and so as partially to conceal it, though it is not apparently cancelled. That of the 1st of November is in these words: "I hereby certify that the within copy of by-law No. 4, passed by the Municipality of the United Townships of Brant and Carrick on the 25th day of June now last past, given under my hand this first day of Nov., 1855. (Signed) A. McVicar, clerk, &c." The other, which is entirely covered by the paper on which the foregoing is written, is as follows: "I hereby certify that the within is a true and correct copy of a by-law passed by the Municipal Council of the United Townships of Brant and Carrick on the 25th day of June last: Brant, 11th October, 1855. (Signed) A. McVicar, secretary." Neither of the foregoing certificates has any seal; and the absence of the seal of the Municipality is accounted for by an affidavit of Malcolm Colin Cameron, that he hath been informed and verily believes and hath good reason to believe, that the clerk of this municipality was requested and refused to place or affix the seal of the said municipality to the certificate annexed to and at the end of the copy of by-laws hereto annexed; alleging as a reason, that 'he dare not do so'; and that for that reason, and none other, the said seal is not placed thereon or thereto. As this affidavit is sworn on the 14th of November last, it may allude to either of the two certificates, one of which is annexed to the copy of the by-law produced by being wafered on to it; and the other (that of the 11th of October) is written at the end of the copy of by-law annexed to the affidavit.

Without saying that there are no circumstances which will induce the court to dispense with any of the formalities, by the observance whereof the by-law is to be considered as verified without other proof, I may observe that I think it incumbent on parties who depart from the directions of the statutes to explain clearly and satisfactorily to the court the grounds on which they substitute other modes of proof of the by-law moved against. There are two things to be established: 1st. That a by-law was passed; 2nd. That the copy offered to the court is a true copy. The 198th section of the statute referred to by Mr. Robinson requires all by-laws to be authenticated by the seal of the corporation, and by the signature of the head thereof, or of the person presiding, &c., and also by that of the clerk of such corporation; and then enacts, that any copy of any such by-law written without erasure or interlineation, sealed with the seal of the corporation, and certified to be a true copy by the clerk, and by any member of the corporation for the time being, shall be deemed authentic, and shall be received in evidence in all courts without proof of the seal or signatures, unless it be pleaded that any of them are forged.

Now, if the certificate of the clerk is informal, and therefore insufficient for the purposes of this application under the 155th section, it becomes necessary to prove the by-law authenticated by what the 198th section requires. In the present case, the by-law, according to the copy produced, was signed by the reeve, and countersigned, "A McVicar, treasurer." He may be the same person who was clerk in October and November following; but unless clerk on the 25th of June, when, according to the certificates signed by A. McVicar, the by-law was passed, it was not duly authenticated, and it does not appear how this was; and there is no direct evidence that the original by-law was sealed; there is only a representation of a seal, indicating that the seal was attached to the original: sufficient if the certificate had been in conformity with the statute; but without that, not by itself sufficient to prove that the original by-law was sealed.

Assuming that if the clerk's refusal to affix the seal were distinctly proved, other proof of the passing of the by-law and of its contents would have been receivable to warrant the issue of this rule, I think the demand and refusal should have been directly proved. That the court ought not, without sufficient cause shown on affidavit, to dispense with the production of a copy certified as the 155th section requires, and that no sufficient proof has been given why the seal is not affixed, to enable us to say, that other proof of the by-law should be received; and I do not think the other proof that is offered goes far enough.

In my opinion, therefore, the rule should be discharged.

Per Cur.—Rule discharged.

THE CHIEF SUPERINTENDENT OF SCHOOLS FOR UPPER CANADA, APPELLANT, IN THE MATTER OF THE TRUSTEES OF SCHOOL SECTION NO. 4 IN THE TOWNSHIP OF HALLOWELL, PLAINTIFFS, AND ROBERT STORE, DEFENDANT.

(Michaelmas Term, 20 Vic.)

(*Reported by C. Robinson, Esq., Barrister-at-Law.*)

The proviso in 16 Vic. cap. 185, sec. 15, applies only to the case of an undivided property extending into more than one school section of the same municipality, not where the land lies in different municipalities.

(14 Q. B. R., 541.)

APPEAL from the Division Court for the county of Prince Edward.

The plaintiffs sued for school rates.

The only question raised at the trial was whether the defendant was liable to pay school rates out of the school section in which he resided, he claiming to come within the proviso of the 15th section of the School Act of 16 Vic., cap. 185.

The following facts appeared in evidence, or were admitted on the trial:—

First—That the defendant appeared on the assessment roll assessed for lot number 1, in the first concession of Hallowell, at £850.

Second—That that lot is partly in the town of Picton, and the defendant has his dwelling house and resides in the town of Picton, and that there is no dwelling house on the said lot No. 1 without the limits of the corporation of Picton; and hat the defendant is the occupant of not only the part lying without the limits of the town, but a considerable part of what lies within the town limits; and that no fence or other erection divides the lot, so as to mark where the division takes place.

Third—That the school section No. 4 is described as comprising the 1st concession of the township of Hallowell north of the carrying place, from the limits of the town of Picton to the township line, and also the second concession from the north side of lot No. 2 to the township line 4.