

fiat does not mention the seal, but it is placed, as in the case cited, opposite the clerk's signature.

On the merits, it is sufficient for us to refer to the case decided last term, *In re Scott and the Corporation of Peterborough*, quashing the county by-law directing Smith and Harvey to levy these rates 25 U. C. R. 453.

The statutes there and on this application referred to, direct the assessment and levy to be made on a certain class of individuals, viz., the proprietors of the lands in each concession or part of a concession interested. The by-law before us directs the rate to be assessed and collected, not on or from individuals, but "on all lands patented, leased, sold, agreed to be sold, and located as free grants, within said township of Harvey." We think this wide departure from the statute cannot be allowed.

As to the objections to the re-survey of the whole township, instead of each concession or part of a concession, we think the argument against the legality of such a course is of great weight, and probably might be fatal to the by-law if it stood alone.

We found our judgment on the other point and the decided cases, leaving it still open for argument should the point again arise.

Rule absolute.

IN THE MATTER OF SCOTT AND THE CORPORATION OF THE COUNTY OF PETERBOROUGH.

C. S. U. C. ch. 93—Re-survey of Township.

The County Council, under Consol. Stat., U. C. ch. 93, sec. 6, having caused the re-survey of an entire township, and directed a certain sum to be levied for the expenses, by a by-law which had been quashed, by a subsequent by-law directed the collection of a further sum for the purpose, to be levied on the proprietors of land in the township in proportion to the quantity of land held by them respectively in such township. This by-law was quashed, on the grounds, 1. That the statute does not authorise the re-survey of a whole township. 2. That it directs the expense of each concession to be borne by the proprietors of land there.

[Q. B., T. T., 1866.]

Robert A. Harrison, in Trinity term last, obtained a rule nisi to quash by-law No. 281 of the county of Peterborough, passed on the 28th June, 1866, entitled "A by-law to provide for the raising of a sum of money in connection with the re-survey of the township of Harvey"—on these grounds:

1. That the same is a continuation of and dependent on a portion of by-law No. 262 of the said corporation, which has been quashed. 2. That the corporation had no power to pass two concurrent by-laws to defray the expenses of the re-survey of the township of Harvey, nor to pass either of said by-laws for that purpose. 3. That the jurisdiction or power, if any, of said corporation to levy or direct the levy by the township of Harvey of the sum of \$218 is not shown on the face of the by-law, nor that such a survey as the statute contemplates had previously been made. 4. That the survey was not in fact such a survey as the statute contemplates. 5. That the said sum, if leviable at all on the proprietors of lands in said township, should be directly levied on them by a by-law of the county, and not delegated by the county to the township corporation. 6. That if leviable by a general by-law of either corporation, then not only lands patented, but lands sold or agreed

to be sold by the Crown should be subject to said levy.

The by-law recited that in addition to the sum of money mentioned in by-law 262, in relation to the expenses incurred in the re-survey of the township of Harvey, a further sum of \$218 was necessary to be raised for the purpose of paying the balance in arrear of such expenses: and be it enacted, &c., "that the corporation of the township of Harvey do cause to be levied on the proprietors of lands within the said township of Harvey, in proportion to the quantity of land held by them respectively in the said township, the said sum of \$218 for the purpose aforesaid, in the same manner as any other sum required for any other purpose authorized by law, may be levied."

It was proved by affidavit that the by-law 262 above quoted was quashed by rule of this court a few months ago, and the certified copy of that by-law then filed was re-filed by leave of the court on this application. The clause of that by-law which had been quashed was as follows: "And be it further enacted, that the municipality of Smith and Harvey be required, and they are hereby required, to levy and collect from the patented and leased lands of the township of Harvey such a rate as will produce the sum of \$2,541 05 to reimburse the expense of the re-survey of the said township of Harvey."

During this term, *C. S. Patterson* shewed cause, citing *Fisher v. Municipal Council of Vaughan*, 10 U. C. R. 492.

Robert A. Harrison supported the rule, and cited *Moore v. Hynes*, 22 U. C. R. 107; *Scott and the Corporation of Peterborough*, 25 U. C. R. 453.

HAGARTY, J.—After a full consideration of the statutes we have arrived at the conclusion that such a re-survey of an entire township as appears to have taken place here does not fall within the powers given by the legislature.

Section 6 of the Upper Canada Survey Act, ch. 93, says: "Whereas in several of the townships in Upper Canada some of the concession lines, or parts of the concession lines, were not run in the original survey performed under competent authority, and the surveys of some concession lines or parts of concession lines have been obliterated, and owing to the want of such lines the inhabitants of such concessions are subject to serious inconvenience; therefore the county council of the county in which any township in Upper Canada is situate, may, on application of one-half of the resident land-holders in any concession, (or may without such application) make application to the Governor requesting him to cause any such line to be surveyed, and marked, * * at the cost of the proprietors of the lands in each concession or part of a concession interested."

Section 7 directs that "the lines shall be so drawn as to leave each of the adjacent concessions of a depth proportionate to that intended in the original survey."

Section 9. "The council shall cause to be laid before them an estimate of the sum requisite to defray the expenses to be incurred, in order that the same may be levied on the said proprietors, in proportion to the quantity of land held by them respectively in such concession or part of a concession, in the same manner as any sum