

contended he was not, as far as the assessment upon that farm was concerned, liable for the Separate School tax. The judge reserved his decision. The judgment is as follows:—

"This cause was tried before me at the last sitting at Frankville, and I then reserved judgment.

"I have given the matter most careful consideration, and the principal difficulty with which I have been met is this: That if the defendant is compelled to pay this tax, the farm upon which the assessment was made, will have been taxed for the support of two schools. Out of this also arises a possible question of the tenant having to pay taxes towards the support of a public school and of a Roman Catholic Separate School, as he is under the terms of his lease, obliged to pay taxes.

"Again, on the other hand, if the collector of the public school tax applied to the owner for payment of that assessment the latter could refuse to pay it on the ground that he was a supporter of the Roman Catholic Separate School, and not liable to pay a public school tax.

"The seventh section of the Separate School Act of 1863, 26 Victoria, chap. 5, enacts that, 'The Trustees of Separate Schools forming a body corporate under this Act, shall have the power to impose, levy, and collect school rates or subscriptions upon and from persons sending children to or subscribing towards the support of such schools, and shall have all the powers in respect of Separate Schools, that the Trustees of Common Schools have and possess under the provisions of the Act relating to Common Schools.'

"The fourteenth section of the same Act of 1863, amongst other things, enacts that, 'Every person paying rates, whether as proprietor or tenant, who, by himself or his agent, on or before the first day of March in any year gives, or who, on or before the first day of March of the present year, has given to the Clerk of the Municipality notice in writing that he is a Roman Catholic, and a supporter of a Separate School, situated in the said Municipality, or in a Municipality contiguous thereto, shall be exempted from the payment of all rates imposed for the support of Common Schools, and of Common School Libraries, or for the purchase of land or erection of buildings for Common School purposes, within the city, town, incorporated village, or section in which he resides, for the then current year, and every subsequent year thereafter, while he continues a supporter of a Separate School; and such notice shall not be required to be renewed annually.'

"In my humble judgment the defendant, being a Roman Catholic, and a supporter of the Separate School, under the provisions of the 14th section above mentioned, is wholly exempt from the payment of Public School rates, while under the provisions of the seventh section the Trustees of the Separate School had power to impose school rates or subscriptions upon him, and have power to collect the same. My judgment is therefore against the defendant.

"In my opinion the action should have been brought in the name of 'the Trustees of the Roman Catholic Separate School for the section number seven in the Township of Kitley,' and I direct that the summons, particulars of claim, and other papers and proceedings be amended accordingly. No objection was taken by the defendant as to the action having been brought in the name of the wrong plaintiff, but I myself raised the question.

"Judgment for the plaintiff for the amount claimed, together with costs."—*Evening Recorder*, Feb. 6, 1877.

## 2. IN THE MATTER OF THE BOARD OF EDUCATION OF THE TOWN OF PERTH AND THE CORPORATION OF THE TOWN OF PERTH.

*Board of Education—Constitution and powers—37 Vic. chs. 27, 28—Mandamus to raise money for High School purposes—Demand.*

Upon the affidavits and facts stated below, a mandamus nisi was ordered, on the application of the Joint Board of Education of the Town of Perth, commanding the Corporation of the Town to provide \$16,000, as required by said Board, for the maintenance and accommodation of the High School, to pay for a school site and building of a school-house and premises connected therewith, as shewn by the estimates prepared and submitted by said Board to the Corporation. It was held that the Joint Board of Education were the proper applicants, and not the Trustees of the High School Board.

The sections of the High School and Public School Acts, 37 Vic. chs. 27, 28, O., which confer on the joint board the powers of each board, mean the powers possessed by each board for the purpose for which such board was created, before the creation of the joint board.

It seems, that the demand here was not in form sufficient; but the council having resisted the application on other grounds, effect was not given to the objection.

Hoyles, in the vacation after Hilary term last, April 28, 1876, obtained a rule, returnable before the full Court on the first day of Easter term last, calling on the Corporation of the Town of Perth

to shew cause why a writ of mandamus should not issue out of this Court, commanding the Corporation of the Town of Perth to provide the sum of \$16,000 for the Board of Education of the Town of Perth, as required and demanded by the said board, to pay for a school site and building of a school-house and premises connected therewith, and for school accommodation, as shewn upon and according to the estimates prepared by the said board, and furnished by them to the council of the Corporation of the Town of Perth; or why the said corporation should not be commanded by the said writ to provide the sum shewn by the said estimates to be necessary for erecting said buildings and for maintenance and school accommodation, as shewn upon affidavits and papers filed; and why such other order should not be made herein as to costs as to the Court may seem fit; and on grounds disclosed in affidavits and papers filed.

The affidavits and papers filed disclosed the following, among other facts:—

The Board of Education of the Town of Perth was established in 1851, by the union of the then existing grammar school or high school, and the common or public school trustees.

The existing accommodation in the Town of Perth, for the schools under the control of the Board of Education, consists of lot 6, on the south side of Foster street, containing one quarter of an acre, on which is erected a two-story stone building, containing eight rooms, six of which are used for the public school, and two for the high school.

The board also hold what is known as the old grammar school lot, being a part of lot 6, on the north side of Craig street, and containing about one quarter of an acre of land, upon which no building is erected.

The number of pupils on the register of the public school is 437, and the number of pupils on the register of the high school is 91.

The last school census shews the number of children in the town between the ages of five and sixteen, to be 611, not including children attending, or supposed to attend, the Roman Catholic separate school in the town.

The population of the town is about 2,800, and the amount of the whole rateable property of the town, according to the last revised assessment roll, is \$102,750.

The Board of Education and the School Inspector are of opinion that the existing school accommodation is altogether insufficient and unsuitable for the requirements of the town.

The board last year decided that it was necessary to obtain increased accommodation, both with regard to a school site and school building, and with that object treated with several parties as to the purchase of a site, obtained plans and specifications for a school building, and advertised for tenders for the erection of such a building.

The board during the present year purchased a school site at the price of \$2,500, and entered into a contract for the erection of a suitable school building thereon, for the sum of \$11,845.

The quantity of land purchased for the school site, is five acres; the price agreed \$2,500, to be paid at any time up to 1st of August, 1876, with interest at seven per cent. from 1st of November, 1875. The agreement for the sale, which was in writing, dated 1st of February, 1876, gave liberty to the board to enter upon the land and deposit thereon materials required for the erection of the new high school.

The agreement for the erection of the school-house was dated 12th January, 1876. It bound the contractors to have the building erected on or before the 15th of November, 1876. The price was \$11,845, by instalments of \$85 for every \$100 worth of work done, and materials provided, the first instalment to be paid on the 15th April, 1876, and the remaining instalments to become due and payable every two weeks until the building should be fully completed. The balance of the price was payable on the completion of the work.

On the 21st January, 1876, the secretary of the Joint Board of Education, under the instructions of the board, addressed a letter to the corporation of the town, requesting that corporation "to raise and pay over to the said Board of Education the sum of \$16,000, for the purchase of a site for, and the erection, completion and furnishing of a new high school building, for the said Town of Perth, pursuant to the statute in that behalf."

On the 21st February last, the following resolution was introduced by a member of the council and negatived on a tie vote: That in the opinion of this council the amount asked for by the Board of Education, namely, \$16,000, is a very extraordinary one, it being more than the whole amount of taxes levied in the town for all purposes for two years. That whereas we have in the town two school sites (besides that of the separate school), one of which is an acre in extent, and has on it a two-story stone school-house, in which the high and public schools are at present held, but which,