

No by-law being necessary, of course none need be set out in the declaration, and it was not necessary for plaintiffs to allege that the defendant was resident out of the limits of their school section. They were authorized by law to sue in case he did live out of the section, and that fact was proved so as to entitle them to recover.

It appears to me that no sufficient grounds have been shewn to interfere with the verdict or to arrest the judgment, and that the plaintiffs are entitled to the postea.

RICHARDS, J., concurred.

Rule discharged.

IN THE MATTER OF THE SCHOOL TRUSTEES OF THE TOWN OF
PORT HOPE v. THE TOWN COUNCIL OF THE TOWN OF PORT
HOPE.

School Trustees—Municipal Council.

The communication by a Board of School Trustees to the Municipal Council of the town of a resolution of the Board that the chairman do authorize the secretary of the Board to notify the Town Council to furnish the Board with a sum of money immediately, for the purpose of purchasing a site for a school house and erecting a school house thereon,—a copy of which resolution was sent to the Town Council,—is not such a compliance with the provisions of the statute 13 & 14 Vic. c. 48, as to render the Town Council liable to be compelled to pay the amount by mandamus.

[4 U. C. C. P. Rep. 418.]

Rule nisi for a mandamus. This was a rule upon the Town Council of Port Hope to shew cause why a mandamus should not issue, commanding them to levy by rate upon all the real and personal estate of the freeholders and householders of the said town the sum of £2500 and the costs of collecting the same, and to pay over the said sum of £2500 to the Board of School Trustees of the town of Port Hope, for the purpose of purchasing a school site and erecting a school house thereon, in compliance with the request of the said Board of School Trustees, upon the affidavit and papers filed, and why they should not pay the costs of the application.

The affidavit of W. Waller, secretary to the Board of School Trustees of the town of Port Hope, sworn the 15th of June, 1854.—That a resolution, of which a copy was annexed, was passed by the said Board, and that in compliance therewith he did on the 15th of May, 1854, transmit a copy of the letter annexed containing copies of two resolutions passed by the said Board, and that such letter was laid before the Town Council of Port Hope, of which he is also clerk; and that the said Town Council have not furnished the said Board with the sum of £2,500 or any part thereof, but have neglected and refused so to do. The letter referred to is as follows:—

“TOWN HALL, Port Hope, 15th May, 1854.

“To the Town Council of Port Hope:

“GENTLEMEN,—I am directed by the Board of Common School Trustees to transmit you the following resolutions passed by the said Board on Saturday last, the 13th of May, 1854—namely:—“Moved by the Rev. J. Baird, seconded by Mr. Warren, that the chairman of this Board do order the Town Council to furnish this board with the sum of £2,500 immediately, for the following purposes—namely, £500 for purchasing a site for a central school, and £2,000 for the erection of a school house thereon.—Carried.”

“(Signed) W. BURNHAM, Chairman.

“Moved by Mr. Gillett, seconded by Mr. Baird, that this Board will require from the Town Council the sum of £200, to meet the incidental expenses of this Board for the current year, and that the Town Council be notified of the same.—Carried.”

“(Signed) W. BURNHAM, Chairman.

“I have the honour to be, gentlemen,

“Your obedient servant,

“(Signed) W. WALLER, Secretary.”

Affidavit of W. Burnham, chairman of the Board of School Trustees of the town of Port Hope, sworn the 16th of June,

1854.—That at a meeting held by the said School Trustees at the town of Port Hope, on the 13th of May, 1854, a resolution was passed to raise £2,500—namely, £500 for purchasing a site, and £2,000 for the erection of a school house thereon; that in pursuance thereof the said Town Council were requested to furnish the said Board with the said sum of £2,500 for the purpose aforesaid; that the said Town Council have neglected and refused to furnish the same, and that the said Board of School Trustees have contracted to purchase a site for the said school house, and have agreed to pay for the same the sum of £500.

Wilson, Q. C., shewed cause, referring to The School Trustees of Brockville v. The Town Council of Brockville, 9 U. C. Q. B. R. 302, which seemed to deny any discretion in the Municipal Council when properly called upon.

He contended—1st, That the application is to levy a rate, whereas it should have been to pass a by-law for that purpose, or to raise the money, if not in hand, as the Council might prefer.

2nd, That the demand was not to levy a rate or pass a by-law, but to furnish £2500 immediately: an unreasonable, if not an impracticable request; and at all events not that which the court is now called upon to enforce by mandamus: that one thing was demanded and another sought to be enforced.

3rd, That the demand should be of something specific and duly authorized—Regina v. The Bristol and Exeter Railway Company, 4 Q. B. 162; whereas there was nothing to shew the proposed school house necessary, nor any estimate prepared and laid before the Council, as the Act required—referring to 12 Vic. c. 81, sec. 177; Municipal Act of 1851, sec. 4; 13 & 14 Vic. c. 48, sec. 12 No. 12; sec. 18 No. 1; sec. 20, 21, 24, Nos. 3, 4, 6, and 9; and 16 Vic. c. 185, secs. 1 and 6;—that it was a mere arbitrary requisition for a large sum, without anything satisfactory to justify it.

4th. That the Trustees were bound to call a public meeting in like manner and under the same regulations as school trustees of township school sections—16 Vic. c. 185, sec. 5.

5th, That the Board of Trustees might impose a rate themselves, and having a remedy in their own hands, are not entitled to ask the aid of a mandamus.

He also read an affidavit in reply of Duncan McLeod, sworn the 26th of August, 1854.—“That he is a member of the Town Council of Port Hope, and that no public or school meeting of the freeholders and householders and other taxable inhabitants of the said town or any ward therein was called by the said Board of School Trustees, nor was any notice given by them of any such meeting, nor did any such take place, to consider the question of the purchase of a site for a central school and for the erection of a school house thereon, at any time since the 24th of July, 1850, so far as he could recollect and inform himself; and that since the day and year aforesaid, so far as he can recollect and inform himself, no application has been made and no estimates have been laid before the said Town Council by the said Board of School Trustees on behalf of the majority of the freeholders, &c., of the said town, at any public meeting before then called for the purpose aforesaid;” and submitted that their proceedings were not regular or according to the statutes, and were too loose and general to support the present application.

Richards, in reply, relied on the 13 & 14 Vic., ch. 48, sec. 24, No. 6, as authorizing the steps taken: he denied that any more specific estimate was necessary, the amount resting in the discretion of the Board of Trustees, who must be supposed to have satisfied themselves of the propriety and expediency of the expenditure. He contended that no public meeting or vote was a necessary preliminary, and that the passing a by-law was involved in the levying a rate, which could not be done without it; wherefore, if material, the one was equivalent to the other, and that the council were to provide the money in the manner desired by the Board.