

for £50. The school acts appear to have made special provision for raising by assessment the moneys necessary for building school houses, as well as for defraying other school charges, and in some cases the trustees are made personally liable, so that we cannot conclude that there is no remedy in the power of the plaintiff but seizing and selling a property held in trust for the inhabitants of the section, and given by the donor upon the express condition that it should never be used for other than school purposes.

I refer to the statutes 13 & 14 Vic., ch. 48, sec. 12, sub-secs. 3, 4, 7, 9, 16, and sec. 18, sub-sec. 1; also, to 16 Vic., ch. 185, secs. 6 & 17.

In my opinion, a verdict should be entered for the defendants.

BURNS, J.—The question presented by this case is one of great public importance, for if the school houses and lands thereto attached throughout the province are liable to be sold upon execution at the suit of any one who has obtained a judgment against the corporation for a debt due, the same principle should hold good against the corporations of counties and cities, and we should have creditors claiming to sell the public court houses and gaols upon writs of execution. I have been unable to find any direct authority upon the subject either one way or the other in England, but I think the history of the proceedings of Mr. Robert Hennings Parr against the Corporation of Poole does throw some light upon the question. Upon the passing of the statute 5 & 6 W., IV., ch. 76, the Municipal Corporation Act, Mr. Parr was dismissed from his office of town clerk of the town and county of Poole. He claimed compensation, and the corporation awarded him £4,500, for which the corporation gave a bond payable by instalments out of the funds of the borough. The payments not being all made he brought an action against the corporation and recovered judgment by default, and upon the judgment he caused an *elegit* to be extended, and thereupon brought an action of ejectment to recover a piece of land used as a meat market, together with the Guild-hall and other erections and buildings thereon, then used and occupied by the corporation for the public purposes of the town. Previous to this some of the rate-payers filed an information to restrain the town council from paying Mr. Parr, and to test the legality of imposing a rate for the purpose; and Mr. Parr also applied to the Court of Queen's Bench for a mandamus against the mayor, aldermen and councillors of the town, to compel them to impose a rate to pay the demand. In the ejectment a rule for judgment was obtained unless the persons in possession should appear and plead. On behalf of the mayor, aldermen and councillors an application was made to the court to be permitted to defend without confessing possession, and the ground of asking to defend was that the Guild-hall was the only place in which they had been accustomed to transact the public business, and that the sessions for the borough were held in the Guild-hall, and the same was used by the justices for public purposes only. Lord Denman, in giving judgment upon the application, said the court was not called upon in that stage of the proceedings to decide whether their property, applicable to public purposes only, was liable to be taken in execution; but he said the court wished to be understood as not giving any countenance to the supposition that corporate property, though applied to public purposes, was protected from the lawful claims of persons having demands upon the corporation. See *The Attorney-General v. Corporation of Poole* (2 Keen 190, 4 M. & Cr. 17.), *Regina v. Ledgard* (1 Q. B. 619), *Parr v. The Attorney-General* (8 Cl. & F. 409 and 6 Jur. 245), *Doe Parr v. Roe*, (1 Q. B. 700).

It will be observed in Parr's case that there was other property, such as the meat-market, and other erections and buildings besides the Guild-hall, which latter was used for public purposes and the courts, for which the action was brought, and the defendants sought to defend the action inasmuch as the Guild-hall was used for those purposes.

In the case before us it is the school house and the land belonging to it used for the purposes of the school which has been sold, and we are called upon to say whether that can legally be done. The statute 13 & 14 Vic., ch. 48, sec. 12, sub sec. 3, enables the trustees to acquire and hold as a corporation, by any title whatsoever, any land for common school purposes until the power should be taken away or modified, and to apply the same according to the terms of acquiring or receiving them. By the terms of the conveyance to the trustees of the land in question it was to be

held in trust for the use of a common school for the united sections; provided, and it was, as the instrument expresses it, the true intent and meaning of the deed of conveyance, that if the premises should at any time cease to be used for common school purposes for the space of three years, then the said premises should revert to the grantor. Now, if the plaintiff can be at liberty to sell the premises upon his judgment and execution, and buy it, and then can dispossess the trustees, so that the same can no longer be used for common school purposes, the plaintiff's act can neither be beneficial to himself nor the corporation. But independent of the terms upon which this particular school house and premises are held, I think it is against public policy to permit the public property of this description to be sold upon execution.

By the 7th sub-section of the section of the act quoted, it is the duty of the trustees to provide for the salaries of teachers and all other expenses of the school in such manner as the majority of freeholders or householders of the section may desire; and if the sums be insufficient to defray all the expenses, the trustees shall have authority to assess and cause to be collected any additional rate in order to pay the balance.

It is not for us in this action to point out to the plaintiff what remedy he may have in order to procure payment of the debt for which he recovered judgment against the corporation, or indeed to say whether he has any remedy. It is admitted that the debt due the plaintiff was for building the school house, and in such case we see that for the erection of the school house, the 6th section of 16 Vic., ch. 185, enables the trustees to assess the section for that purpose. The 16th sub-section of section 12 of 13 & 14 Vic., ch. 48, enacts that in case any of the trustees shall wilfully neglect or refuse to exercise such powers as are vested in them for the fulfilment of any contract or agreement made by them, they shall be personally responsible for the fulfilment of such contract or agreement.

Looking at the whole of the school acts, and the objects and intents for which the same have been enacted, and the duties imposed upon the trustees with regard to the fulfilling of contracts made by them, and the power given them enabling them to do so, the liability and responsibility cast upon them individually if they neglect to perform their duty, I think the effect is to create these corporations for public beneficial and charitable purposes, and that the property should be held and administered for the ends and purposes for which it was given and held.

It is sufficient to hold, in this action of ejectment, to recover the school house, that it is contrary to public policy to hold that property which is held for such purposes as this can be sold upon execution against the corporation. The corporation possibly may hold property the uses of which would be for the public, or the profits of which might be appropriated to the maintenance of the school, and which it would be right to hold might be sold upon execution, but that is different from selling the school house itself, which is as much in daily use for the children of the section as the court house is for the holding of the courts, or the prisons for confining prisoners of the counties, and I apprehend it could not possibly be held that these latter are liable to be sold upon execution.

I think the *postea* should therefore be given to the defendants.

McLEAN, J. concurred.

Judgment for defendants.

THE CHIEF SUPERINTENDENT OF SCHOOLS (*Appellant*).
IN THE MATTER BETWEEN WILLIAM MILNE (*Plaintiff*) AND GEORGE H. SYLVESTER, PHILLIP WIDKMAN, and ROBERT JOHNSON, TRUSTEES OF UNION SCHOOL SECTION No. 2, IN WHITCHURCH, and No. 7, IN MARRHAM (*Defendants*).

Suit by teacher against trustees—Reference to arbitration—Appeal.

Where an action in the Division Court by a school teacher against the trustees was referred to arbitration by order of the judge, with the consent of the parties. *Held*, that the decision of the arbitrator could not be appealed from under the 16 Vic., ch. 185, sec. 24.

Remarks as to the defendants' remedy by prohibition.

APPEAL from the second Division Court of the United Counties of York and Peel.

The plaintiff was engaged as teacher in the above school section (of which the defendants are trustees) from the 3rd of January to