

the School should be held; 16 Vic. ch. 186, sec. 15. leaving this, I presume, to be arranged by the Trustees. A union of the Grammar School with one of the Common Schools was effected; Ib. sec. 27 pl. 7; but at what date does not appear. Afterwards, viz., on the 4th May, 1864, it seems to have been determined to make use of the grant which had been received from the County Council so many years before; and with this view, the following resolution was passed by the Joint Board of the Grammar and Common Schools: "That the present site of the Grammar School house be selected as a permanent site for the new Grammar School building." The Board also resolved to call a special School section meeting for the 14th of the same month "for the purpose of receiving a report of the Trustees on the selection of a site for the new Grammar School building." This meeting took place accordingly; and two resolutions were moved—first, that the meeting do adjourn until it should be ascertained whether more land could be purchased adjoining the present Grammar School; and, in amendment, "that the resolution adopted by the Trustees selecting the present Grammar School site for a permanent site, be adopted by this meeting." The latter resolution was carried.

It appears to have been subsequently ascertained that A. Glover, who owned the adjoining land, would not part with any of it; and the Board on the 16th August, 1865, resolved, "That a public meeting be called for the purpose of deciding whether the Board shall proceed to build upon the present site, or not; as Mr. Glover refuses at present to sell more land." This meeting took place accordingly, on the 23rd August, and a majority of the ratepayers then voted against building on the present site.

Afterwards Henry Glover, who owned a corner lot not far from the present site, having offered this lot to the Board on terms which were satisfactory, the Board on the 30th August, passed a resolution accepting his offer; and subsequently called a meeting of the ratepayers. The object of this meeting was stated in the official notice of the meeting to be, "for the purpose of considering the matter of selecting a new School site. The Trustees having chosen the lot owned by Henry Glover, known as the corner lot, as being the most central and eligible, and another lot having been offered near the grove, the ratepayers are requested to say which they prefer; and should both prove unacceptable to them, to make choice of some other." The meeting took place on the 13th September,—when a majority of the voters present voted against the choice of the Board, and in favour of a lot which the plaintiff had offered. Neither party appointed an arbitrator to settle the difference which thus arose between the Board and the ratepayers; Ib. ch. 64, sec. 30. The resolution of the meeting was transmitted to the County Council: and on the 12th January, 1866, the Council passed a by-law reciting the resolution, and a petition from the ratepayers founded upon it; and enacting and declaring the site so chosen to be, "the site to erect a County Grammar School thereon for the Scotland Grammar School." The Board do not appear to have taken any steps to complete the purchase of the land thus selected; and on the 18th March, 1867, they determined to build on

the old site. On the 10th May, the plaintiff's solicitors wrote to the Board threatening a suit if this resolution was proceeded with; but the Board declined to desist; and on the 11th June this bill was filed, praying for an injunction against proceeding with the work; that the Trustees who were parties to the alleged wrong should refund what School money they had expended on the building; and for other relief. The building was begun in May, was finished in September or October, and has been occupied since December (1867).

The by-law of the County Council fixing the site is not mentioned in the bill, and both the bill and the answer treat the case as if the School had been a Common School instead of a Union School, and as if the money had been granted for the erection of a Common School. This is not correct; but so viewing the case, it was contended on behalf of the defendants, on various grounds, that the proceedings were ineffectual to change the existing site. It was argued, that the existing site having been adopted in May, 1864, by the Board and by the ratepayers, it could not afterwards be changed. I think there is no ground whatever for that contention. In support of it reference was made to the case of *Ryland v. King*; 12 U. C. C. P. 198. See also *Williams v. The School Trustees of Plympton*, 7 Ib. 559; but all that the Court of Common Pleas held there was, that after a difference of opinion between the Trustees and a meeting of ratepayers, the question between them must be decided by arbitration; and that a resolution passed a subsequent meeting of ratepayers in the same year adopting the view of the Trustees was of no force. That decision was not concurred in by the Court of Queen's Bench in the subsequent case of *Vance v. King*; 21 U. C. Q. B. 198; and whether it was a correct decision or not, it has no application to the present case.

Then it was argued, that the proceedings went for nothing, because the ratepayers did not appoint an arbitrator to decide the point of difference between the meeting and the Board. It was as much the duty of the Trustees to appoint their arbitrator as for the ratepayers to appoint one; and as the matter was overlooked by the ratepayers at the meeting in question, perhaps from assuming that the Board would acquiesce in the decision of the meeting, another meeting might have been called by the Trustees to have the omission supplied. Some other points that were urged, I expressed my opinion upon at the hearing.

The County Council has power to change the place of holding any Grammar School established since 1st January, 1854; Consol. U. C. ch. 63, sec. 3; and I think this power is not destroyed by the Union of the Grammar School with a Common School; though, if the change has not the sanction of the authority required in the case of the Common School, it may render necessary a separation of the Union. The defendants, therefore, had no right to expend this money for the building of a Grammar School on the old site. But as the by-law of the Council was not mentioned in the bill, the defendants should have an opportunity of shewing by affidavit that they were prejudiced by the omission; and in that case I shall make such order as may seem just. Failing this, I think the defendants should