The defendant did not dispute the fact of his being a supporter of the Roman Catholic Separate School, and indeed it was proved that he had been one of the trustees during the previous year. But he contended that his real estate was leased to his son who was to pay the taxes and was a supporter of the public schools, and as such was to pay or had paid the public school tax. He also contended that the assessment had not been equalized, but nothing turned upon this.

The Judge reserved judgment and named a subsequent day and hour for the delivery thereof. He also intimated that in his opinion the action should have been brought in the name of the trustees instead of by the collector, but directed that any necessary amendment as to this might be made.

Judgment was subsequently given as follows:

McDonald, J.J.—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 7th section of the Separate School Act, of 1863, 26 Vict. cap. 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 14th 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 7th 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.

COUNTY COURT—COUNTY OF ONTARIO.

Riddell v. McKay.

38 *Vict. cap.* 26, *O.—Ditches and water courses.—Jurisdiction of fence-viewers.*

The Act respecting Ditching and Water-courses (38 Vict. cap. 26, O.) is only applicable where the lands belonging to *each* of the adjoining owners is benefited by the work.

Where, therefor fence-viewers awarded that R. should pay for and maintain a portion of a drain and water-course, which was only of benefit in draining McK.'s land, the award was set aside.

This was an appeal by Riddell from the award of the fence-viewers of the township of Thorah, which directed him to make and maintain about five rods of ditching, and ordered him to pay the costs or the award, which purported to be made under the Act respecting Ditching and Water-courses, (38 Vict. cap. 26). Riddell is the owner of lot 4, and McKay of lot 5, in the 5th concession of Thorah. Through the land of the former a ravine, or creek, runs in a southerly