Connor, Q.C., for plaintiffs.—That the case of Rex. v. Harrison, 3 Bur. 1322, shews the reason for the by-law not being set out; that the by-law was held sufficient by the judge at *Nisi Prius*; that the 13 & 14 Vic., ch. 48, sec. 12, shews how the money is to be raised, and that a by-law is not necessary; that it is not necessary that the by-law should be drawn up and signed at the meeting; that the corporation of three were not bound to attend as witnesses on notice; that the attendance of one was sufficient; that the case not having been allowed to have been taken *pro confesso* by the learned judge, his ruling cannot now be reviewed.

In arrest of judgment—That it was sufficient to aver that defendant's testator lived out of the section.—Adair v. Shaw, 1 G. & D. 264; Eton v. Echers, 1 Chan. C. 121; Williams on Exors. 1351, 1385; Stevens v. Lloyd, 1 W. B. 284; Henningham's case, Dyer 314; Williams on Exors., book 2, section I.

MACAULAY, C.J.—Upon reference to the provincial statutes, 13 & 14 Vic., ch. 48, sec. 6, No. 4, sec. 12, Nos. 2, 7, 8, 9, 11, and sec. 18, No. 1; also to ch. 67, secs. 1, 6, 22, 34, and 37; it appears to me that when lawfully assessed school rates become personal debts, recoverable by the summary proceedings provided in the statutes, or by action, and that as debts the right of action survives against the personal representatives of the person assessed. Such debts may also operate as a lien on the land in respect of which the rate is imposed, but the goods of the owner are likewise and primarily liable. The case of Stevens *v.* Evans (2 Bur. 1152) differs. That case seems to show there is no other remedy after the death of the principal, except against his executors or administrators.

As to what constitutes a declaring or assessing a rate, it is stated in Steven's Municipal Acts (p. 209), that a resolution formally adopted and followed by such steps as the statute prescribes, is sufficient; it may be tested by considering whether a distress to enforce such rate could be justified.

There appears to be a great deal of suspicion touching the by-law bearing date the 10th of January 1851, offered in evidence on the trial of this case; and if it depended upon the necessity for such a by-law, in addition to the other steps which were taken, it might be proper to grant a new trial; if antedated, it is, so far as it is of any validity, confirmatory of the rate. But I think a resolution of the freeholders and householders of the section, at the annual meeting on the 8th of January, 1851, followed by the resolution of the plaintiffs on the 9th of that month, and the preparation of the rate bill, as in evidence, were sufficient to render the testator in his life-time liable, as having been rated by the school trustees of the section, for his portion of the sum required to be raised for teacher's salary, &c., according to the assessed value of his real estate within such section. That as a non-resident, he became liable to be sued therefor as for a debt, and that the defendant, as his executor, and representing his estate since his death, is now liable in an action of the same nature, to which the testator might have been subjected.—See Brown on Actions, 347, that debt is the appropriate remedy; provincial statute 7 Wm. IV., ch. 3, sec. 11.

Then the question is, whether those allegations in the declaration which relate to the alleged by-law being rejected, the declaration would be sufficient after expunging them; rejecting those portions of the declaration, it would still appear on the face thereof that £100 was required to be raised, &c. whereupon the plaintiffs made a rate or tax for the year 1851, of one penny and three-fifths of a penny per pound of the assessed value of taxable property in the section, as expressed in the assessor's or collector's roll of the township, which was necessary to raise the requisite sum, and which said rate was due on or before the 31st of December, 1851; that before and until his death the testator was a freeholder in the said section, and seized and possessed of lands and real estate therein, and rated at £3,210, and was rated by the plaintiffs in £21 8s. in respect thereof; that the said sum of £21 8s. was not paid when payable, although the testator had notice thereof, and it was demanded by the collector after becoming payable, and that he resided out of the limits of the said section; then rejecting the statements respecting the by-law, and adopting the evidence given at the trial irrespective of that which related to such by-law, I think there appears a sufficient declaration sufficiently supported by proof. The third plea, however, denies that the plaintiffs by a by-law under seal directed a rate in manner and form alleged, which is an informal traverse of the by-law stated in the declaration. The fourth plea alleges that the plaintiffs did not make *any* by-law, &c., instead of traversing the one alleged, or demurring to the declaration, if not sufficiently stated. As respects these two issues, I look upon them as immaterial, because it was unnecessary for the plaintiffs to have made a by-law, or to have stated it in the declaration, in order legally to declare the rate. I think it was sufficiently declared independently, and that the necessary averments to show that are made and proved; and as the jury to whom the question seems to have been left have found that a by-law was made, and rendered a verdict for the plaintiffs on all the issues, and as I think the plaintiffs are entitled to maintain the action on the grounds above stated, I am not disposed to disturb the verdict.

As to the notice to the plaintiffs to attend at the trial as witnesses on behalf of the defendant, they, as a corporation, could only appear by attorney and counsel, which they did. The Chief Justice of Upper Canada, who presided at the trial, did not in his discretion decide that the case should be taken *pro confesso* against the plaintiffs for not otherwise attending, and I do not think a corporation aggregate within the meaning of the statute 16 Vic. ch. 19, sec. 2. The individual members of the plaintiffs' corporation might have been subpœnaed, if their personal attendance was required. This does not seem to have been the course adopted; and I do not consider that a notice under the statute addressed to the attorney of the plaintiffs suing in their corporate capacity, is a call upon the several members of such corporation to attend, or that it binds them to attend at the peril of the consequences declared in that act. As to that branch of the rule which seeks to arrest judgment, I think the defendant is liable in law, and that the declaration is sufficient after verdict, although possibly open to some objections, had they been made the ground of special demurrer.

MCLEAN, J.—It appears to me that the plaintiffs on the evidence are entitled to recover. It was sworn that a rate had been imposed; and the list of the names of all the persons rated by plaintiffs for the school purposes of their section, and the amount payable by each, together with a warrant for the collection, were produced under the 12th Vic., sec. 12, sub-sec. 8, and that list, taken according to the valuation of taxable property as expressed in the assessor's or collector's roll, and a warrant directed to the collector of the school section for the collection of the several sums mentioned in the list, afforded sufficient authority for the collection from all resident inhabitants without any by-law being previously passed. The raising money by a rate had previously been decided at a meeting of the school section. The property held by the testator was rated with the other property of the section, but as he was not resident in the township, and had not personal property therein, the amount could not be collected. Under the 11th sub-sec., of sec. 12, it is made the duty of school trustees to sue for and recover by their name of office the amount of school rates or subscriptions *due* from persons without the limits of their school section and making default of payment. The plaintiffs then had a right of action against the testator for the amount of school rate due by him, and as he died without satisfying the amount, it still remains due, and is payable by the defendant, as his executor, the same as any other money due by the testator at the time of his death.