Legal Department.

J. M. GLENN, Q. C., LL. B.,
OF OSGOODE HALL, BARRISTER-AT-LAW.

Re Toronto Public School Board and City o Toronto.

Judgment on motion by the board for a mandamus directing the corporation to forthwith, in the manner provided by the Public Schools Act and Municipal and Assessment Acts, assess, levy and collect upon the taxable property of the municipality a sufficient sum to pay in full the estimates sent to them on March 28, 1901, for that year. The following items were struck out by the corporation: (a) $41,000 additions to the salaries of teachers for 1900; (b) $8,212.54, made up of several sums, part of the expenses of the previous year or years, deliberately withheld by the board from last year's estimates, as follows: $593.77 for water, $279.89 for gas, $5,200 for fuel, previous to the year 1900, and $2,138.88 for text-books included in the estimates for 1900, but struck out, as alleged, in that year by the board of control with the assent of the school board; (c) $25,000 for ordinary yearly repairs and alterations to school property under the Act based upon the expenditures of the last ten years, and covering thirty-eight printed pages showing details of the contemplated repairs, but without any estimate of the probable amount of their cost; (d) $6,000 for dais and railing in board room, counters, partitions, screens, etc., in offices, but without estimates or particulars showing how made up; (e) $1,000 for "miscellaneous based on the yearly expenditure of past years," but without details; (f) $4,250 out of $11,750, for new furniture in new school-rooms and renewing furniture in existing rooms; $220 for rent of school-rooms to be used by children taken care of by charitable organization known as the Girls' Home. Held, as to item (a) that the amount being for increases to salaries of teachers already under contract passed under a resolution of the board, was properly struck out by the corporation. 1 Edward VII., chap., 39 sec. 81, requires teachers' agreements to be in writing and signed and sealed, and though salaries of contract teachers may be increased by further contract, a mere resolution is not a contract, and such increases are therefore voluntary and unauthorized. As to item (b), that it was not "expenses of the schools for the current year" within the meaning of sec. 65, sub-sec. 9, of the Act. The plain intention of the Act is that the school board shall ask in each year for money sufficient for that year, and the funds for each year's expenses are to be provided in that year, and the school boards are not entitled either to exceed the estimates or to run into debt. Such a course as pursued here is essentially wrong and vicious in principle and cannot be supported, and even if the board of control requested it to be struck out the previous year with the assent of the school board, the transaction was still illegal. as to item (c) that, though the corporation struck off $5,000 and consented to levy $20,000, they were not strictly liable to levy anything, because the estimate furnished was not such a one as complied with the law, they not having any estimate of the cost or anything before them from which the most distant idea could be formed as to whether or not the sum required was a proper one; as to item (d), that the submission to the electors of a by-law, which was defeated, for raising this and other sums did not bind the corporation, there is no direct authority in the Act for the expenditure of money in furnishing board rooms, and the corporation are not bound to levy this sum; as to item (e), that it is reasonable to suppose that in the multitude of the transactions of so large a business as that carried on by a school board, many small and unforseen expenses must be incurred, and it should not have been struck out without asking for particulars, when they were being asked for as to other items; as to item (f), that the estimates given at the request of the corporation, were *prima facie* sufficient and should have been accepted, and this sum should not have been struck out. The costs of the furniture of a school-room is not to be taken as part of the cost of "the erection of a school-house" under sec. 75; as to item (g), that it should not have been struck out. Sec. 67, taken in connection with sec. 65, sub-secs. 3 and 4, seems to authorise this expenditure. Held, also, with regard to small sums struck off a number of other items, that reasonable particulars having been furnished, they should not have been struck out. It is to be borne in mind that when proper estimates are furnished by the board, and the expenditure is within their powers, the corporation has no right to dictate to the board in the exercise of its discretion. It is no doubt an anomaly that the body which is required to levy the taxes should have so little control over the fixing of the amount, and so little check upon its application, but the legislature has thought fit for many years to give this measure of discretion to school boards, and the corporation must carry out the law. With the exception, therefore, of $50 for medals, which does not seem to be covered by the Act, the corporation should have levied all the other amounts only levied in part, and a mandamus should go requiring them to provide for the board the sums asked for, excepting those held supra to have been properly refused. Following London v. City of London, O. L. R. 284, no order is made as to costs.

Greenlees vs. Picton Public School Board.

Judgment on appeal by defendants from order of the judge of the county of Prince Edward, refusing new trial of a plaint in first division court, brought to recover $132.03, balance of two months' salary due to plaintiff as a teacher under a written contract of hiring for one year, dated December 18, 1900. In February, 1901, a special meeting of trustees was called by requisition, upon notice, which did not state the nature of the business to be transacted, and a resolution passed giving the plaintiff a month's notice of dismissal under clause 4 in the contract, which provided for the termination by either party of the engagement "by giving notice in writing to the other of them at least one calendar month previously, and so as to terminate on the last day of a calendar month." It was provided in clause 5 of the contract that it was to continue in force from year to year unless terminated by notice, as provided by clause 4. Held, that what was done by the so-called resolution of the defendants terminating the contract and the notice to the plaintiff in pursuance of it, cannot be considered a fair or proper exercise of the power and option contained in the fourth condition, and the contract was not thereby terminated. Held, also, that the action came within the provisions of R. S. O. ch. 292, sec. 77, sub-sec. 7, and therefore the Division Court had jurisdiction. Appeal dismissed with costs.

Regina v. Playter.

Judgment on motion to make absolute an order *nisi* to quash a conviction of Edward Playter, for, without the consent of the Board of Health of the township of York, in June last, establishing a noxious or offensive trade. The institution was started as a hospital for consumptives. It was contended *inter alia* for defendant (1) that a sanitarium does not come within the act, (2) that Dr. Playter managed the institution in question as a medical practitioner and was not carrying on a trade or business, and what he was doing was not noxious or offensive per se. The original of section 72 of the Public Health Act, under which defendant was prosecuted, is sec. 112, ch. 35, Impl. Stat. 38-9, Vict., with the addition of some other named offensive trades and the words, "or such as may become offensive." Held, following Withington v. Manchester (1893), 2 ch. 19, in its two grounds of decision, viz. (1) *ejusdem generis*, (2) that by the collocation of the sections it was manifest that the earlier set relating to "offensive trades" were segregated from those relating to hospitals and infectious diseases, that the words found in the Canadian Act do not embrace the sort of work carried on by the defendant. Order absolute quashing conviction without costs. Usual protection to magistrate.