the Clerk on Saturday morning, the 4th April, that the Judge had delivered him the judgment in writing in the matter, which the agent examined on Tuesday the 7th, and made a copy of for the defendants?

Under the 107th section the defendant might, as I read the Act, at any time within fourteen days after the 7th April, have applied for a new trial for all or any of these irregularities, if he thought proper to do so. There is nothing to shew that he desired to make such application. He permits the plaintiff in the cause to enter judgment and issue execution before he takes any further steps.

I think the proceedings after the 3rd April would be irregularities in the sense most favorable to this defendant, and afford no ground for this motion.

We intimated when the rule was moved that the swearing of the plaintiff in the Court below was no ground for interfering with the proceedings of the Court below; that under the first part of the 102nd section the Judge might of his own mere motion, when he thought it conducive to the ends of Justice, examine either of the parties under oath. We consider the first part of the section a separate provision from the rest of the section, and the examination of a party at the instance of the Judge has nothing to do with giving a judgment for the sum not exceeding $8. By referring to the original sections of the statute before consolidation this appears very plain. There are two sections in the original statute, shewing clearly they are applicable to different matters.

As to the fourth objection, the affidavit of the Clerk shews that the endorsement on the back of the original summons, signed by the Judge, does fix the day, the 18th of April, on which the defendant was ordered to pay the money.

Ringland v. *Lowndes* (9 L. T. N. S. 479) is a recent case. There an arbitrator entered on his duties and investigated the matters in difference between the parties and began to act as arbitrator after the expiration of the time within which he was to have made his award, and when the defendant protested against his right to go on and attended before him under protest, the Court held he was bound by the award, having examined witnesses and given evidence before the arbitrator, though under protest.

On the whole, I should consider it a reproach to our law, if an objection of this kind could prevail under the facts that have been brought before us.

If a party appears before Justices and allows a charge, which they have jurisdiction to hear, to be proceeded with, without objecting, he waives the want of an information or summons: *Reg.* v. *Shaw* (10 Cox, C. C. 66; 11 Jur. N. S. 415; 12 L. T. N. S. 470). That was in a criminal proceeding, when the party was brought before a Justice of the Peace charged with an offence, and there was no summons or information. One of the witnesses sworn was afterwards tried for perjury, and it was objected that the Magistrate, before whom the matter was brought, and by whom the oath was administered had no jurisdiction; the Court held otherwise. In *Turner* v. *Postmaster General* (10 Cox, C. C. 115 B. & S. 756) the same principle is enunciated.

See the remarks of Willes, J., in the *Mayor of London* v. *Cox*, L. R. 2 H. L. Cas. 239, 282, cited in *Pollock* and *Nicol's* Practice of the County Court, pp. 237, 238.

We think this rule should be discharged with costs.

Rule discharged, with costs.

CHANCERY.

(Reported by ALEX. GRANT, *Barrister-at-Law, Reporter to the Court.)*

MALCOLM v. MALCOLM.

School law.

Where a Board of School Trustees passed a resolution professing to adopt a permanent site for the School and the resolution was confirmed at a special meeting of the ratepayers duly called, these proceedings were held not to prevent a change of site in a subsequent year.

Where School Trustees selected a new site for the School house, and at a special meeting of the ratepayers duly called, those present rejected the site so selected and chose another, but neither party named an arbitrator:

Held, that an arbitrator might be appointed by the ratepayers at a subsequent meeting.

The power of a County Council to change the site of a Grammar School is not lost by the union of the Grammar School with a Common School; though, if the new site is not also adopted by the means provided by law for the case of a Common School, the change may render necessary the separation of the Schools.

Where the Joint Board of a Grammar and Common School, after the site for the Grammar School had been changed by the County Council, wrongfully expended School money granted for a Grammar School building; and a bill was filed against the Trustees to restrain further expenditure, and to make them refund what had been expended, the defendants were ordered to pay the costs, but were allowed time to ascertain if all parties concerned would, undes the special circumstances, adopt again the old site.

It is contrary to the rule of this Court, in dealing with persons who have not acted properly, to punish them more severely than justice to others renders necessary; and therefore, where School Trustees wrongfully expended money in building on a site which had been changed by competent authority, relief was only granted to a ratepayer who complained of the Act, subject to equitable terms and conditions.

[15 U. C. C. R. 13.]

Hearing at Brantford in the Spring of 1868.

Hodgins, for the plaintiff.

S. H. Blake, for the defendants.

MOWAT, V. C.—This is a suit by an assessed freeholder and householder of a certain Union School section described in the bill, and which comprehends the Village of Scotland and some adjoining lots in the County of Brant. The bill is on behalf of the plaintiff and all the other assessed freeholders and householders of the section, and complains of the improper expenditure of a grant of $1000, made in 1856 by the County Council to the Trustees of the Grammar School in the village, and which had lain unexpended until last year. The defendants are, the Trustees as a corporate body, and the individual Trustees whose conduct is complained of. The case turns on a controversy in regard to the site of the School.

The County Council established the Grammar School in question on the 4th March, 1856. 16 Vic. ch. 186, sec. 14; Consol. U.C. ch. 63, sec. 17. The grant of money is said in the bill to have been made on the 13th September, 1856. The money was received by the Trustees on the 13th December, 1856. The County Council did not until lately name the place in the village where