16 U. C. R. 32; *Griffith and Municipality of Grantham*, 6 C. P. 274; *Re Ness and Municipality of the Township of Saltfleet*, 13 U. C. R. 408; *Re Ley and the Municipality of the Township of Clarke*, 13 U. C. R. 433; and *Patterson and the Corporation of the Township of Hope*, 30 U. C. R. 484, do not apply here because they were cases founded on motions to quash the by-laws complained of, and were not therefore in any way proceedings which affected the formation or existence of a corporation.

The cases of *Haacke* v. *Marr*, 8 C. P. 441; *Coleman* v. *Kerr*, 27 U. C. R. 5; *Harling* v. *Mayville*, 21 C. P. 499, and *Free* v. *McHugh*, 24 C. P. 13, were none of them impeaching the validity of the corporation. They each showed some defect in the making of the by-law.

Williams v. *School Trustees of Section 8, Plympton*, 7 C. P. 559, was an action for levying a rate to pay for expenses attending the wrongful change of the school site; and *Craig* v. *Rankin*, 10 C. P. 186, does not apply.

The plaintiff does not complain that the defendants had power to pass the by-law if they were duly incorporated. He desires to defeat the incorporation of the trustees in a collateral proceeding, which he certainly cannot do.

Then he alleges that the inspector of public schools of the county did not transmit to the respective clerks of the municipalities of Raleigh and Tilbury East any copy of the resolution of the formation of the alleged union school section, under 34 Vic. ch. 33 sec. 18. No doubt that was an omission of the inspector, for it is made expressly his duty to do it.

It is not said for what purpose the notice is required to be given, but very likely in order that the township municipal authorities may have formal notice of the change made, in order that the township councils may respectively undo such change if they please, and that the clerks may be able to give the necessary information to the local superintendent, and that they may also prepare the maps of the townships respectively, showing the different school sections, under Consol. Stat. U. C. ch. 64 secs. 47, 48, 49, and 34 Vic. ch. 33, sec. 19. The notice of the resolution does not seem to be required as a condition precedent, or as an essential act, to enable the trustees to levy the rate now in question.

Then the plaintiff says that the reeves of the two townships, with the inspector or otherwise, did not equalize the assessment on the ratable property within the union school section, under the 34 Vic. ch. 43, sec. 18.

That enactment is, "That it shall be competent for any county inspector to a call a meeting of the parties authorized to form and alter union school sections, and it shall be lawful for, and the duty of, the reeves of the townships out of which the section is formed with the county inspector, to equalize the assessment."

The plea of the plaintiff does not allege that the county inspector did not call the meeting just mentioned; it merely states that the assessment was not equalized. If there was a meeting called, and the proper parties attended, it may be that no equalization was necessary, and that the assessments were permitted to remain as they were as and in place of the best equalization that could have been made.

The whole system of equalization of the assessments of different municipalities for a common or joint purpose is based upon an examination of the rolls of the respective municipalities for the purpose of ascertaining whether the valuation in each municipality bears a just relation to the valuation made in all the municipalies so joined for the common purpose: 32 Vic. ch. 36, sec. 71.

And in the case of counties in which there are towns and villages, there must of necessity be an equalization between the assessments in them and in the townships of the county.

But here it is two townships which compose the union school section, and there may be no equalization required. Whether the objection could be sustained even if it was alleged that an equaliztion was necessary without the plaintiff alleging that the want of it had made any, and if so what difference in his assessment, I need not enquire. I am disposed to think it could not, for by-laws are not even to be quashed on technical or fanciful grounds, far less to be impeached in this collateral and incidental manner.

I give judgment for the defendants on demurrer.

Judgment for defendants.

February 21, 1876. The case was brought on for re-hearing before the full Court.

F. Osler, for plaintiff. *J. K. Kerr*, contra. The arguments and cases cited were in substance those used on the hearing before the single Judge.

March 17, 1876, HARRISON, C. J.—I agree in the decision of the learned Judge who determined this case and in the reasons which he gives for his decision.

The replications admit that the defendants, before and at the time of the alleged taking of the plaintiff's goods, were trustees *de facto* of the Union School Section No. 2, Raleigh and Tilbury East: that the rate was imposed by the said trustees to raise the sum necessary to purchase a school site for the union school section, and that the plaintiff was rated in respect thereof.

It is not shown by the replications that any proceedings have ever been had or taken for the purpose of testing the validity of the formation of the union school section, and I do not think it is open to the plaintiff in the present suit on a mere question of irregularity to raise any such contention.

The reasoning of Tindal, C. J., in *Penney* v *Slade*, 5 Bing. N. C. 331, is directly opposed to any such course.

The language of Sir J. B. Robinson, C. J., in *Gill* v. *Jackson et al.*, 14 U. C. R., 119, 127, where he says, "The learned Judge left out of view that the trustees who imposed and received the rate were the trustees *de facto*, and that until they are removed the acts which they do in the ordinary current business of trustees must of necessity be upheld, or everything will fall into confusion," is equally opposed to any such course.

A similar rule prevails in the United States.

In the *Trustees of Vernon Society* v. *Hills*, 6 Cowen 23, 27, Savage, C. J., is reported to have said: "The plaintiffs have acted as trustees upon the matter in question, and in bringing their suit *colore officii*, and before an objection to their right can be sustained by the defendant on the ground that they were not regularly elected, he must show that proceedings have been instituted against them by the Government, and carried on to the judgment of ouster." See further *Williams* v. *The Inhabitants of School District No. 1 in Lunenburg*, 21 Pick. 72; *Cahill et al.* v. *Kalamazoo Mutual Insurance Co.*, 2 Doug. Mich. 124; *Eaton et al.* v. *Harris*, 42 Ala. 491.

In *High's* Extraordinary Legal Remedies, sec. 629, it is assumed as settled law in the United States that, as to officers *de facto*, the Court will not enquire into their title in collateral proceedings.

It is, to use the language of Tindal, C. J., in *Penney* v. *Slade*, 5 Bing. N. C. 331, obviously a much more convenient course that the validity of the formation of the section should be brought into controversy in a direct way, rather than that a party should lie by till a rate has been made, and then attempt to contest in a suit by or against him in respect of the rate. Besides, if such a course were permitted there would be no certainty or finality in the proceedings. In one suit it might be held that the union was properly constituted; in another, the reverse. And so there might be no end to the trouble and litigation.

Mr. Osler, however, while admitting the soundness of the reasoning on which the foregoing cases proceeded, argued that in this particular case the reasoning is inapplicable. He argued that in the case of school trustees there can be no remedy by *quo warranto*, or otherwise than by suits between parties for the purpose of deciding the controversy.

If his proposition be well founded, his conclusion properly follows.

But I am not satisfied that it is well founded. On the contrary, I believe it is without real foundation.

It is a maxim of corporation law that if a municipal officer is *bona fide* in possession of the office his title shall not be tried otherwise than by information in the nature of *quo warranto:* Per Campbell, C. J., in *Regina* v. *The Mayor, &c., of Chester*, 2. Jur. N. S 114, 116. See further *Regina* v. *Reynolds*, 1 Ir. C. L. R. 158,161; *Regina* v. *The Town Commissioners of Tuam*, 4 Ir. Jur. N. S. Q. B. 48; *Regina* v. *Finnegan*, 10 Ir. C. L. R. 299; *In Re-election of Members of the Board of Police, Brockville*, 3 O. S. 173; *In re Biggar*, 3 U. C. R. 144; *In re Moore and Port Bruce Harbour Co.*, 14 U. C. R. 365.

While Mr. Osler admitted that in the case of a municipal office, properly so called, the remedy would be by *quo warranto*, he argued that in the case of the office of school trustee the remedy is inapplicable, for that the statute 9 Anne, ch. 30, is inapplicable to such an office.

"The mode of proceeding by information in the nature of *quo wavranto* came no doubt in the place of the ancient writ of *quo warranto*. This writ was brought for property of, or franchises derived from, the Crown. The earliest is to be found in the 9 Richard, *Abbreviatio Placitorium*, p. 21, and is against the incumbent of a church, calling on him to show *quo warranto* he holds the church. Then follow many others, in the time of John, Henry II., and Edward I., for lands, for view of frank-pledge, for return of writs, holding of pleas, free warren, plein-age and prisage (*Abbreviatio Brevium*, p. 219; 14 Ed. I.,) emendation of assize of bread and beer, pillory and tumbril, and gallows. Some of these are offices, or in the nature of offices, as in the instance of returns of writs, holding of Courts. The practice of filing informations of this sort by the Attorney-General, in lieu of these writs, is very ancient;