

proceedings a large meeting of the rate-payers of the Municipality was holden on the 23rd of April, at which a resolution was passed by a large majority, "That it is unwise, unnecessary, and inexpedient to expend a large sum of money in buying a school site and building new schools this year, and that this meeting do recommend to the Council that they do not assess this year for either or any of the purposes requested by the School Trustees in their late letter to the council." That the Village Council, assuming that the School Trustees were liable to Harris for the completion of the agreement, proposed a by-law, whereby the said sum of £750 might be raised by debentures, and be payable over a period of years; but when this by-law was submitted to the rate-payers (about the 9th of August last) they demanded a poll, and on taking the poll the by-law was lost, and the Municipality was unable to raise the sum by loan; and in consequence of this expression by the rate-payers, the Council felt bound to decline inserting in the annual by-law a sum to cover the purchase money of the school site: that the agreement of the 21st of June, 1855, was entered into after the resolution of the rate-payers at the meeting held on the 23rd of April: that the Municipality have passed a by-law for the payment of the teachers' salaries and the incidental expenses of the Board of Trustees for the current year, ending the 31st of December, 1855.

*D. B. Read* tendered further affidavits by way of reply to those filed on showing cause, which the court refused to receive.

*DRAPER, J.*—Incorporated villages were erected, and provision was made for the erection of others, by 12 Vic., chap. 81, sec. 52. They appear to have been overlooked in the school act of the same session (ch. 83) which makes provisions as to several townships, towns, and cities in each county.

The Act 13 & 14 Vic., chap. 48, sec. 25, provides that the municipality of every incorporated village shall possess and exercise all the powers, and be subject to all the obligations, with regard to the levying and raising of monies for common school purposes, and for the establishment and maintenance of school libraries, which are conferred and imposed by the Act upon the municipal corporations of cities; and it provides for the election of six school trustees, at a meeting of the taxable inhabitants of the village—the trustees to be resident householders. Sec. 26 provides that the trustees shall be a corporation, and shall possess all the powers and be subject to all the obligations, within the limits of such incorporated village, which are conferred and imposed by the 24th section on the trustees of cities or towns. These powers, so far as they apply to the present case, are: to do whatever they may judge expedient with regard to purchasing or renting school sites and premises; building, repairing, furnishing, warming, or keeping in order the school-house or school-houses. To determine the number, sites, kind, and description of schools which shall be established and maintained in such city or town. To prepare from time to time, and lay before the municipal council of such city or town, an estimate of the sum which they shall judge expedient for paying teachers' salaries—for purchasing or renting school premises—for building, renting, repairing, warming, furnishing, and keeping in order the school-houses and their appendages and grounds—for procuring suitable apparatus and text books for the schools—for the establishment and maintenance of school libraries, and for all the necessary expenses of the schools under their charge; and it shall be the duty of the council to provide such sums in manner as shall be desired by the board of trustees. To levy at their discretion any rates upon the parents or guardians of children attending any of the schools under their charge, and to employ the same means for collecting such rates as trustees of common schools may do under the 12th section: provided that all monies thus collected shall be paid into the hands of the chamberlain or treasurer of such city or town, for the common school purposes of the same, and shall be subject to the order of such trustees; to give orders to teachers and other school officers and creditors, upon

the chamberlain or treasurer, for the sums which shall be due them.

There is a difference to be noted between the powers of the trustees of school sections in townships and in cities, towns and incorporated villages. In townships, the school trustees are to apply to the municipality of the township, or to employ their own lawful authority, as they may judge expedient, for the raising and collecting of all sums authorized. And they are to appoint a secretary and treasurer, who is to receive all school moneys and to disburse such moneys as directed by a majority of the trustees. In this respect, the city, town, or village trustees, have not the same power as the trustees in township school sections, to raise and collect money by their own lawful authority. In another respect their own power is greater—viz: as to purchasing school sites or premises, a power vested in the township council, by the 18th section, firstly. Then again in cities, towns and villages, the school trustees have no treasurer. There is another remarkable difference between the powers of the two boards of trustees. In cities, towns and incorporated villages, such boards are not restricted in the exercise of their powers by the necessity of reference to a majority of the freeholders or householders.—See sec. 12, seventhly.

The powers of the municipal council of the incorporated village, and its obligations, are the same as those conferred upon the township and the county councils; both are united; but it must be borne in mind, that in townships the councils are directed to levy for the purchase of a school site, the erection, &c., of a school-house, &c., such sum as shall be desired by the trustees of the school section on behalf of the majority of the freeholders or householders at a public meeting called for such purpose as provided by the 12th section: provided that such municipality may grant to the trustees of any school section authority to borrow any sum which may be necessary in respect to school sites, &c., and cause to be levied upon the taxable property in such section such sum in each year as shall be necessary to pay the interest, and to pay off the principal in ten years.

The 16 Vic., ch. 185, sec. 6, enacts that the trustees of each school section shall have the same authority to assess and collect school rates for the purpose of purchasing school sites and the erection of school-houses, as they are now or may be invested with by law to assess and collect rates for other school purposes: provided they shall take no steps to procure a school site, or change the site of a school-house, without calling a special meeting of the freeholders and householders; and provided that such trustees shall, whenever they impose any rate for school purposes, make a return to the clerk of the municipality of the amount of the rate so imposed by them.

Upon the best consideration I can give this section, I am of opinion that it applies only to the trustees of school sections in townships. *Firstly*, because the board of trustees in cities, towns and incorporated villages, had already power to purchase school sites and build school-houses.—13 & 14 Vic., ch. 48, section 24, 3rdly. *Secondly*, that the proviso would (unless for section 1.) apply only to township school section trustees; observe distinction of corporate name—one is, "The trustees of school section No. —, in the township of —, in the county of —," 13 & 14 Vic., chap. 48, sec. 10: the other is "The Board of School Trustees of the city (or town) of —, in the county of —," *Ib.* sec. 24. The Legislature keeps up this distinction. In section 1 of 16 Vic., ch. 185, they speak of "The Board of School Trustees," and of "The trustees of each school section"; in sec. 6 the latter phrase is used.

The first section of this act, however, declares that the board of school trustees in each city, town and incorporated village, shall, in addition to the powers with which they are now legally vested, possess and exercise, as far as they shall judge expedient, in regard to such city, &c., *all the powers*