

lawful authority as they may deem expedient for the raising and collecting of all sums authorised in the manner hereinbefore provided to be collected from the freeholders and householders of such section, by rate according to the valuation of taxable property, as expressed in the assessor's or collector's roll.

Section 24. Seventhly continued.—Provided always that all monies thus collected shall be paid into the hands of the chamberlain or treasurer of such town for the common school purposes of the same, and shall be subject to the order of the said board of school trustees.

Eightily.—To give orders to teachers and other school officers and creditors upon the treasurer of such town, for the sum or sums which shall be due them.

The first and second counts are rested upon the provisions in the common school act of 1870, sec. 24. Eightily. The giving to the plaintiff an order on the treasurer for her salary is sufficient evidence of her right to receive the sum therein named. The treasurer's duty is defined in the Consolidated Statutes of Upper Canada, ch. 51, sec. 160, to be, to pay out the moneys belonging to the corporation to such persons and in such manner as the laws of the province and the lawful by-laws or resolutions of the council direct.

The acceptance by the treasurer of such an order as set forth in these counts, must import an undertaking to pay it to the person entitled according to its terms. The duty of the treasurer as officer of the corporation required him to pay, but the statute does not in terms at least authorise him to accept such an order. He is a depository of the corporation and school moneys; these or similar orders would be authorities to him to make immediate payment, and vouchers that he had done so; but he was not, so far as I can see, authorised to turn them into evidences of debt on the part of the corporation, and against them.

The evidence given at the trial shews, however, that a practice had grown up for the defendants to give orders on their treasurer, which, when he had accepted them, got into circulation, and at last found their way into the collectors' hands in payment of taxes. Such a practice seem to me at variance with the spirit, if not the intention of the municipal act, (Consolidated statutes, U.C., ch. 34, sec. 215,) which enacts that no council shall act as a banker, or issue any bond, bill, note, debenture, or other undertaking of any kind or in any form in the nature of a bank bill or note, or intended to form a circulating medium, or to pass as money, and any bond, bill, note, debenture, or other undertaking issued in contravention of this section shall be void. The orders drawn by the defendants themselves upon, and accepted by the treasurer and left outstanding, might soon produce the mischief this enactment was intended to prevent, and orders drawn by other bodies or parties on the treasurer and accepted by him, would, if such acceptance was binding on the defendants, tend to a similar result. But it appears to me that the treasurer had no legal authority to bind this municipal corporation, even if an acceptance of these particular orders under their corporate seal would have bound them, in which it is unnecessary to pronounce. I think, therefore, that these counts founded upon orders drawn by the board of school trustees upon the defendants' treasurer, and accepted under his hand, do not give the plaintiffs a right to recover.

The fourth and fifth counts are framed in tort; they vary only in respect to the period for which the plaintiff was entitled to a salary as school teacher: the one setting forth that she was such teacher for 1858, the other for the first six months in 1859. Then each states that the board of school trustees did prepare and lay before the defendants an estimate of the sum which they judged expedient for the purpose of paying the whole of the salary (respectively) by levying and collecting a rate on the taxable inhabitants of the town that it became defendants duty to provide the sum in manner aforesaid, and that although the trustees gave the plaintiff an order for her said salary so required to be levied and raised on the defendants' treasurer, yet defendants would not provide the said sum, nor levy, impose, or collect a rate for the same, but neglected and refused so to do, whereby the plaintiff is deprived of her said salary.

It has not, I believe, been actually decided whether the board of school trustees of a town have "lawful authority," such as is given to the trustees of a school section by the 13 & 14 Vic., ch.

48, sec. 12, ninthly,—and by 16 Vic., ch. 184, sec. 6, to raise and collect moneys for school purposes without reference to the municipal corporation. The first section of 16 Vic., ch. 185, is large enough at first sight to confer the authority, through the 13 & 14 Vic. certainly did not give it. By the first section it is enacted, that the board of school trustees in each town shall, in addition to the powers with which they are now legally invested, possess and exercise as far as they shall judge expedient in regard to such town, all the powers with which the trustees of each school section are or may be invested by law, in regard to such school section. In the case of *The School Trustees of Galt v. The Municipality of Galt*, (13 U. C. Q. B. 511,) I expressed an opinion that the 6th section of that act of 16 Vic., did not extend to boards of school trustees, from the conflict that a contrary conclusion would create with other provisions of the school acts affecting such boards. The language used in the first section shews that the new powers are in addition to, not in abrogation of the powers previously possessed, and still less of duties previously imposed, and the words, "shall possess and exercise as far as they shall deem expedient," seems to imply, that they may possess a power and yet be under no obligation or duty to make use of it.

The sixth section of the 16 Vic. has, however, no application to teachers' salaries, or the other school expenses which under section 12 of 13 & 14 Vic., the trustees of school sections had power to raise and collect by the employment of "their own lawful authority;" and in the case of *The School Trustees of Port Hope v. The Town Council of Port Hope*, (4 U. C. Q. B. 118.) *Mendenhall, C. J.*, was disposed to think the board of school trustees might levy a rate for such purposes. I am unable to make a consistent construction of all the enactments if this view be adopted, but it has in its favour the consideration that it tends to assimilate the powers and duties of school trustees in townships, and in cities and towns, and I am therefore disposed to adopt the suggestion as the proper mode of construing the statute.

But in determining that the board of trustees could themselves have raised and collected the sums for which they laid an estimate before the defendants, it appears to me a great obstacle is thrown in the way of the plaintiff's recovery. Her contract was with the board, and the power to give an order on the treasurer of the municipality is a very different thing from what it was when they had no power to raise the money themselves. It appears to me, that if no order had been given to the plaintiff on the defendants' treasurer, it would have been impossible for her to have sustained either the fourth or fifth counts, and I feel great difficulty in holding that the giving the order vests in her such a right that she can treat, the non-compliance with the requisition of the board of trustees as a breach of duty for which she can maintain an action. If such a consequence follows in her case, it must follow in the case of every other school officer and creditor of the board whose demand was included in the estimate prepared and laid before the defendants. This alone would, I think, be a great inconvenience, while at the same time the board of trustees, having the power to raise the money, would, as appears to me, still remain liable to the different claimants. Besides, it appears to me, it cannot be truly said that this alleged damage to the plaintiff is so immediately connected with the nonfeasance of the defendants that she can be said to have lost her salary by reason thereof. If I am right as to the board of trustees, she has a claim on them, and if an action would not be maintainable, I should think she might sustain an application for a mandamus to them to raise the money.

Per cur.—New trial without costs

SCHOOL TRUSTEES OF ARTHUR v. TOWNSHIP COUNCIL OF ARTHUR AND LUTHER.

School rate on non-resident lands—How collectable

Held that it is the duty of the local municipality to make up and supply out of their general fund any deficiency that may exist in the school rate of any township upon notice being given them at the end of the current year by the collector of school rates, and that such notice need not be under the seal of the trustees.

(C. P., H. T. 23 Vic.)

The declaration stated that the collector appointed by plaintiffs for the said school section for 1856, being unable to collect the