THE TRUSTEES OF SCHOOL SECTION No. 2, OF THE TOWNSHIP OF DUNWICH v. GEORGE McBEATH, EXECUTOR OF THOMAS TALBOT.

Exchequer—Corporation.

A resolution of the freeholders and householders of a school section, passed at their annual meeting, that the trustees should tax the property in such section to pay the teachers' salary, &c., followed in a resolution of the trustees of such school section directing a rate to be levied on the ratable property in said section to raise the sum required and the preparation of rate bills, &c., is sufficient to render a non-resident having real estate within such section liable for the sum rated by the school trustees of such section according to the assessed value of his real property, and that being so liable, defendant, as his executor and representing his estate is liable in an action of the same nature to which the testator might have been subjected.

A corporation aggregate is not bound to appear at the trial as witnesses, under a notice served on their attorney, under statute 16 Vic., ch. 19, sec. 2.

[1 C. C. P. Rep. 228.]

DEBT for £21 8s. Declaration states that after the provincial statute 13 & 14 Vic., ch. 18, it was decided upon by a majority of the freeholders and householders of the said school section, duly assembled at the annual school meeting of the said section, &c., that the salary of the teacher and the expenses for fuel for the common school of said section for the year 1851, the then current year, should be provided for by a tax upon the property in the said school section; and the majority of the said freeholders and householders, &c., thereupon desired the plaintiffs to tax the property in the said school section, and employ all lawful means to collect the sum required: that £100 was required. Whereupon *plaintiffs made a rate or tax* for the year 1851 of one penny and three-fifths of a penny per pound of the assessed value of taxable property in the said section as expressed in the assessor's or collector's roll of said township, which was necessary to raise the requisite sum; which said rate was due and payable on or before the 31st of December, 1851: that before and till his death the said Thomas Talbot was a *freeholder* in the said section and seized and possessed of real estate therein, and rated (quære, in what year) at £3,210, &c., and was rated *by plaintiffs* in £21 8s. in *respect thereof;* that the said £21 8s. was not paid when payable, though he had notice thereof, and it was demanded by the collector when payable: and that he resided out of the limits of said section; whereby an action hath accrued against the defendants as executors, &c.

Pleas—1st. Never indebted. 2nd. Testator never indebted. 3rd. That plaintiffs did not by a by-law under seal direct a rate *modo et forma*. 4th. That plaintiffs did not make *any* by-law. 5th. That plaintiffs did not make or impose said rate or tax. 6th. That testator as such freeholder was not liable to be rated in the said sum of £3,210. 7th. That he was not a freeholder.—All the pleas concluding to the country and issues.

At the trial, before the honourable the Chief Justice of the Court of Queen's Bench, Coyne, one of the school trustees, was received as a witness for plaintiffs, though objected to by defendant's counsel, and proved a resolution passed the 8th of January, 1851, at the annual meeting of the freeholders and householders as follows:

"TYRCONNEL, *January 8th*, 1851.

"At the annual school meeting held in the school house in school section No. 2 in the township of Dunwich, the meeting was organized by electing Archibald Hamilton chairman and John Ridden secretay.

"No. 2. Moved by Thomas G. Coyne, seconded by Thomas Dewitt,—That the trustees be required to tax the property in this section to pay the teacher's salary and the expenses of fuel for this school for the year ensuing.—Carried unanimously.

"Signed, A. HAMILTON, *Chairman.*
"[L.S.]" JOHN RIDDEN, *Secretary.*"

9th of January, 1851.

"At a trustees meeting, held this evening, on motion of John Ridden, seconded by John Pearce, Thomas G. Coyne was appointed treasurer for the ensuing year. On motion of John Pearce, seconded by John Ridden, it was resolved to employ Mr. Benson for the ensuing year at the rate of £50 per year."

Also a by-law, passed on the 10th of January, directing the rate of one penny and three-fifths of a penny in the pound to be levied on the ratable property in this section to raise £50, or so much thereof as is necessary to pay the teacher's salary for this year.

"By-Law No. 4.—It is hereby enacted by the trustees of school section No. 2 in the township of Dunwich, that the sum of £50 shall be assessed on the ratable property of this school section, or so much thereof as can be raised by an assessment of one penny and three-fifths of a penny in the pound, to pay the teacher's salary for the ensuing year.

"Passed January 10th, 1851.

"Signed, THOMAS G. COYNE.
"[L.S.] *Secretary and Treasurer.*"

He said it was sealed by the seal always used by plaintiffs, who had no other seal.

It was admitted that the testator was a freeholder of lands in that section, and usually resided in school section No. 1 of the same township. A rate bill for the £50 was produced, and testator rated at £3210 value of property, assessed at one penny and three-fifths of a penny, equal to £21 8s. for 1851, made up in November from the collector's roll of that year.

The amount was demanded of Mr. Beecher, his agent, in his lifetime, who answered in writing, refusing to pay &c.

On cross-examination, the witness said the by-law was sealed the day it passed, but though now entered in a book and sealed he could not be certain it was so entered the day of the date, or that it was sealed on that day, and could not explain an alteration in the date, nor state whether the by-law had been read over to all the trustees when passed.

The other trustees, Stafford and Pearce, were not present at the trial. The defendant's counsel objected—1st That the by-law was illegal on the face of it. 2nd. That there was no president or chairman's signature thereto. 3rd. That non-residents were not liable. 4th. That the executor (defendant) was not liable, only the heir or devizee of the testator as running with the land only, and not being personal debt.

These objections were overruled for the time. But the Chief Justice did not consider the proof of the by-law at all satisfactory, and seriously doubted its being made as stated, from the way the witness answered respecting it.

On the 17th September the defendant's attorney served a notice on the plaintiffs' attorney that upon the trial the defendant would require the plaintiffs to be *personally* present to be sworn and examined as witnesses on the part of the defendant, pursuant to the statute. The cause was tried the 1st of October. Pearce and Stafford did not appear, but the case was not taken *pro confesso* by the learned Chief Justice at Nisi Prius, and plaintiffs had a verdict for £21 8s.

In Michaelmas Term last, *Beecher* for defendant, obtained a rule on the plaintiffs to set aside such verdict without costs, as being contrary to law and evidence, and for misdirection, the plaintiffs' non-appearence at the trial, &c., or to arrest judgment on the ground that the declaration does not shew defendant's liability as executor, to this action, &c.

On the argument, he contended that the plaintiffs have admitted that a by-law was necessary, by setting it out in their declaration: that the plaintiffs were bound to appear and give evidence under the notice.

In arrest of judgment he contended—1st. That the by-law should be set out in the declaration.—Wilcox on Corporations, 173 sec. 425. 2nd. That it should have been averred in the declaration that defendant lived without the section.