tion 7. In the meantime, on the 10th of January, the ordinary annual meeting was held, and a dispute arose as to whether trustees should not then be elected for the ensuing year; some thought not, and left the meeting, while others remained and proceeded with the election. The Local Superintendent being appealed to, declared the election illegal, considering that No. 7 had become a new section, and appointed a new one to take place at the meeting called for the 16th, when the defendants were appointed the three trustees for No. 7 as a new section. In January, 1855, the dispute was renewed; the defendants appointed a new trustee in the usual way, but another meeting was held, at which a new trustee was elected to succeed the retiring one of those first chosen in 1854, so that there were two sets of trustees claiming the office. The first elected trustees in 1854, all stammed from acting for that year and defendants imposed a rate, which the plaintiff resisted.

Held, (affirming Chief Superintendent of Schools v. McRae, 12 U.C.R. 545) that the alteration did not constitute No. 7 a new section, but that the rate was legal, being imposed by the Trustees *de facto*, who had not been removed.

Quære, whether such alteration could be made by resolution only.

Quære, also, whether the decision of the Local Superintendent can be thus incidentally reviewed in an action to recover back the rate.

See these and other points discussed in the judgment of the court below.

[14 Q. B. R. 119.]

Appeal from the Division Court of the county of Haldimand.

In 1853 application was made to the Municipal Council of Oneida by the resident inhabitants of school section No. 7 of that township for a division of the section as then constituted, and the formation of two sections therefrom in the place of one. Upon this the council, in November of the same year, passed a resolution as follows: "That the school section No. 7 be divided, and the line be struck as follows: between lots Nos. 50 and 51 in the 1st concession, between lots Nos. 21 and 22 in the 2nd concession, and between lots Nos. 21 and 20 in the 3rd concession; said school section to be No. 11." No other description was given, and no by-law dividing the section passed until the month of April, 1855, when one was adopted confirming the resolution, and dividing the section as above expressed, adding the following: "The eastern part to remain No. 7, the western part to be called No. 11." After the resolution, and previous to the by-law, on the 24th day of Dec'r, 1853, the clerk intimated by written notice to Mr. Peter Elder, though upon what authority did not clearly appear, that the council had appointed him, in conformity with the 18th section of the Common School Act, to appoint a time and place for holding a public meeting for the election of three trustees in school sec. No. 7, the notice describing the section as "bounded and known as follows: between lots 50 and 51 in the 1st concession, between 21 and 22 in the 2nd concession, and 21 and 20 in the 3rd concession." Pursuant to these instructions Mr. Elder, on the 5th of January, 1854, gave notice of a meeting to be held for the purpose specified, at the section school-house, on the 16th day of the same month; in which notice the description above stated was varied by naming a starting point at lot No. 40 in the 1st concession, and adding south halves of lots Nos. 26, 27, 28, 29 and 30 in the 4th concession; lots not named in the resolution, nor the clerk's notice following it. At the same time the trustees of the section for the preceding year, of whom Mr. Elder was one, had given a previous notice of a meeting to be held at the same place on the second Wednesday of the same month of January (the day fixed by statute for the annual school meeting) for the purpose as expressed, "of receiving and deciding upon the report of the trustees, and to decide upon the manner the school property is to be disposed of belonging to said section," meaning section No. 7 as existing before any action was taken by the council for altering it. A meeting of the inhabitants of No. 7, as existing in the preceding year, was convened on the 10th, the second Wednesday of January, in accordance with the first notice given, at which meeting the trustees' report for that year was received, and a resolution adopted as to the disposal of the school property mentioned in the notice. This being done, the chairman discontinued further proceedings, considering, as did part of the people assembled there, that the proper business of the meeting had been accomplished, while others claimed that the occasion was the lawful one for electing trustees for the ensuing year for the then No. 7 as altered, as then understood by all parties. They who dissented from this opinion having for the most part left the meeting, the persons remaining appointed another chairman and secretary in place of the first chairman and secretary, both of whom had retired, and elected two new trustees, one to supply the place of the place of the retiring trustee of the year, and the other in place of one who by means of the alteration had become a resident of the other section 11. A disagreement thus existing as to the regularity of the proceedings and election then had, it was settled between the parties contending, (though the plaintiff did not appear to have been present or assenting) that the Local Superintendent of the township should be referred to, to settle the matter in difference; and it being submitted to him, he on the same day declared the election to be illegal, and appointed a new election to be held of other trustees at the time and place named in the notice of Mr. Elder, given, as stated, on the 16th of January. On the 16th of January the second meeting was held, and the present defendants were then chosen as three new trustees, to serve in the same section No. 7, as a new section; and in January, 1855, on the day of the annual meeting, appointed one new trustee in the usual way; a meeting on the same day having also been held, and one new trustee also chosen to succeed the retiring one of those first elected in the foregoing year, so that there were two parties claiming the office of trustees in the section. Having been elected as stated, and pursuant to the vote of a meeting of the resident householders and freeholders of the section understood as the new No. 7, the defendants, in the month of June, 1854, imposed a rate on the taxable property therein, for the purpose of building a school house, and rated against the plaintiff the sum for which this action was brought. The plaintiff disputing the legality of the defendants' election, and their right to exercise the office of trustees, refused payment of the amount, and the defendants proceeding to levy the same of the plaintiff's goods he paid it under protest, notifying them that he would sue to recover it back, and for this the present action was brought.

The following judgment was given by the learned judge in the court below:—

STEVENSON, J.—I think that the election held on the 16th day of January was illegal, and that the claim of the defendants to the office of trustees cannot be sustained.

"Supposing, in the first place, that the school section was legally altered, before the council by their by-law of April 1855, declared it to be so, and that their resolution of 1853 was sufficiently definite to effect the object contemplated, yet the effect of the alteration is not to make two new sections of No. 7 divided, but only to detach part of it for the formation of a new one, No. 11, leaving the section No. 7, No. 7 still. This is the view I held at the trial, and I find it to be in accordance with the construction put by the Court of Queen's Bench upon a similar action of the council in the case of Trustees in the township of Moore v. McRae (12 U.C.R. 525), and is the intention the council in this case clearly expressed in their by-law, which, after separating from No. 7 as originally existing part of its territory for school section No. 11, expresses that the other and remaining part shall "remain No. 7,"—therefore an election to be held on the 10th day of January would in my opinion be the legal election, whether the authority of trustees would extend to No. 7 unaltered, until the by-law, or No. 7 as proposed by the resolution; but the uncertainty of the description contained in the resolution of the alteration made is such that it does not appear from it what are the real boundaries of the sections intended, or if so, what part of the section when altered was in fact to constitute No. 7, and what part of it No. 11; for until the adoption of the by-law, either part, for anything appearing in the proceedings of the council to the contrary, was equally entitled to either denomination, and under this description, as required by the 4th section of the school act, to be communicated to the person appointed to call the first school meeting, and by him to the public concerned, a meeting and election might, in my opinion, have been held with equal propriety in that part of the original school section then supposed to constitute No. 11. The definition of the sections intended by the council was not sufficient to identify either of them (and