The agency of the Council is used to levy and collect school rates from considerations of convenience and economy, as the Council has already in existence and operation all the apparatus of rolls, collectors, &c., necessary for the purpose.

New Village Boards of Trustees.—The incorporation of a village supersedes, of course, the school sections included within the limits of the Corporation, and renders necessary the election of a separate Board of School Trustees for the Village, the new board succeeding to all the rights and obligations of the old Trustees.

Towns and Villages cannot be divided into School Sections.—The Board of School Trustees may establish schools for particular parts or wards of its town or village, and appoint a committee of three, to the special charge of each such school; but a city, or town, or village, cannot be so divided into *School sections*, as to render each a corporation with its own Trustees.

II. RECENT JUDGMENTS OF THE SUPERIOR COURTS.

(*Continued from the Journal of Education for April, 1819, page 49.*)

IN THE COURT OF CHANCERY.

(Reported for the Upper Canada Law Journal, by Thomas Hodgins, Esq. LL.B., Barrister-at-Law.)

School property—Mistake—Volunteers—Municipal Council—Preparation of Deed—School Trustees v. Farrell.

A school site had been granted to certain parties, in 1831, and a school-house erected thereon; but, by mistake, the wrong site was conveyed. The grantor subsequently made a mortgage on his estate, but exempted the portion reserved for a school site. He died shortly afterwards, leaving his son and heir-at-law, a minor. The defendant, during the minority of the heir, obtained a lease of the premises, excepting the site in question; but, on the coming of age of the heir, obtained a deed from the said heir, without any reservation of the school site. About the same time, or a little before, he also obtained an assignment of the mortgage, so as to perfect his title. **He then claimed the land on which the school-house was erected, on the ground that, in consequence of the mistake, no title was vested in the trustees:**—whereupon the trustees of the school section filed a bill against him, and it was

Held, that he had express notice of the trustees' title; and that even if the trustees were volunteers as to this piece of land, the defendant was also a volunteer; and being prior to him, they had a right to the aid of equity to have his title to said piece of land cancelled, or a conveyance thereof from said defendant.

Held also, that the Township Council was a necessary party to the suit.

Held further, that it was the duty of the defendant to prepare the proper deeds of the lot, so as to have the mistake rectified.

The following is a summary of the statutes relating to common school property:

1816.—56 Geo. III. cap. 36, provided (sec. 2), that it should be lawful for the inhabitants of any town, township, village or place, to meet together annually before the 1st June in each year, for the purpose of making arrangements for common schools therein; and (sec. 3) that so soon as they should build or provide a suitable school-house, furnish twenty scholars, and in part provide for the payment of a teacher, then it should be lawful for such inhabitants to elect three trustees to said common school, who should have power to employ the teacher therefor. This act made no provision for the trustees' holding school property, or for their incorporation or succession. It was continued by the acts 60 Geo. III. or 1 Geo. IV.) cap. 7, and 4 Geo. IV. cap. 8 (1824.)

1841.—4 and 5 Vic. cap. 18, repealed the foregoing, and provided (sec. 7, clause 1) for the election of common school commissioners in each township, who should, whenever funds were provided by the council, acquire a site for a common school-house in each school district where no such school-house existed; and also provided (sec. 9) that the common school-houses in each township now acquired, or hereafter to be acquired under this act, with the ground whereon they are situate, &c., should henceforward vest in and be held and possessed by the common school commissioners of the township and their successors in office forever as trustees for the purposes of the act.

1843.—7 Vic. cap. 29, repealed the preceding act, so far as it related to Upper Canada; abolished township school commissioners, and provided (sec. 43) for the annual election of three trustees for each school, and empowered them (sec. 44, clause 1) to have the custody and safe-keeping of the common school-house of their school district or section. This act further required (sec. 49) that any school-house to be thereafter erected, should be upon ground owned or to be acquired by the township, town or city for that purpose.

1846.—9 Vic. cap. 20, repealed the preceding act, except such portions of it as repealed former acts; and provided (sec. 10, proviso, and sec. 26) that the title to any common school-house, and the land and premises appurtenant thereto, now vested in trustees or other persons to and for the use of any common school, or hereafter to be purchased, acquired and conveyed for such use, shall be vested in the municipal council of the district (county) in which such school-houses and lands are situate, in trust for the use of such school, respectively; and expressly declared (sec. 25) that the trustee corporation should not at any time hold real property. But, notwithstanding this restriction, the trustees are authorized to take possession of all common school property, which may have been acquired or given for common school purposes in such section, and to hold personal property, &c.

1847.—10 and 11 Vic. cap. 19, relating to cities and towns, vested (sec. 4) all lands, houses and tenements acquired for common school purposes therein, in the corporation of the city or town, but authorized (sec. 5, clause 1) the boards of trustees to take possession of all such property so vested in said corporations.

1849.—12 Vic. cap. 83, repealed the two last preceding acts, continued the restriction (sec. 28) that the trustees should not at any time hold real property, and continued the authority to such trustees (sec. 30, clause 2) to take possession of all property acquired for common school purposes in their section. This act also provided (sec. 42) that all lands, houses, tenements, and property of every description heretofore acquired for common school purposes, and vested in the district council, or in the hands of trustees in any township, town or city, should be vested in the municipal council of the township, town or city; and also that all such property to be hereafter acquired for common school purposes, should be so vested in such councils in trust for the sections to which they shall respectively belong.

1849.—12 Vic. cap. 81.—The Municipal Act (sec. 31, clause 3) authorizes the municipality of each township, village, town and city, **to pass by-laws for the purchase and acquirement of such real** property as may be required for common school purposes.

1850.—13 and 14 Vic. cap. 48.—The school act now in force, repeals 7 Vic. cap. 29, and 12 Vic. cap. 83, and repeats the provisions of two former acts in regard to common school property. Trustees are authorized (sec. 12, clause 3) "to take possession" (as in 9 Vic. cap. 20, sec. 27. cl. 3; 12 Vic. cap. 83, sec. 30, cl. 2) and "have the custody and safe-keeping" (as in 7 Vic. cap. 29, sec. 44. cl. 1) of all common school property which may have been acquired or given for common school purposes; and to acquire and hold as a corporation, by any title whatsoever, any "land" (the power given to councils by 9 Vic. cap. 20, and 12 Vic. cap. 83,) moveable property, moneys or income (the power given to trustees by 9 Vic. cap. 20, and 12 Vic. cap. 83), for common school purposes, &c., and to apply the same according to the terms of acquiring or receiving them.

1853.—16 Vic. cap. 185, prescribes (sec. 6) how trustees shall acquire new school sites, or change old sites.

The case came on for argument in June 1855, and judgment was given in December of the same year.

ESTEN, V. C., delivered the judgment of the court.

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After the judgment, the defendant Farrell, through his solicitors, intimated to the plaintiffs' solicitors that he was willing to accept the judgment of the court, and to execute conveyances to rectify the mistake, but insisted that the plantiffs should prepare both deeds. The plaintiffs declined, as the defendant Farrell had been in the wrong by compelling them to come to court, but offered to prepare one of the deeds. The offer was refused, and the Township Municipality refusing to join as co-plaintiffs, as directed by the court, they were added as defendants: and on the bill being taken *pro confesso* against them, the cause was again set down for a hearing.

T. Hodgins, for the Plaintiffs, contended that Farrell was the proper party to prepare the deeds. He had full notice of the plaintiffs' claim, and by his own wrong obtained a deed of land which neither he nor his grantor had any estate in. The plaintiffs had so far shown a willingness to settle that they prepared a draft deed, and submitted it to the defendant, but he refused to do his part. If it was to be held that both parties should have prepared deeds, then, according to *Jones* v. *Barclay* (2 Doug. 684,) where there are mutual conditions to be performed at the same time, and one shows that he is ready to do his part, but the other stops him by an intention not to perform his part, it is not necessary for the first to go further and do a nugatory act. That was a case similar to the present. Besides, the rule which governs in the preparation of deeds in specific performance may apply here. He referred to 9