There were other objections taken both at the trial and on the appeal book, but the foregoing were all that were taken at the trial and relied on at the hearing of the appeal. There was another objection taken on the appeal book, but it did not appear to have been raised in the Court below, and it was not, therefore, argued.

The principal facts in evidence appeared to be as follows: The defendant put in two collector's rolls for 1865—one for the town taxes of the town of Belleville, the other for the school tax. In each of these the property was assessed as No. 43, west of Front Street, and it was proved that it was a stone house of which James Blacklock was entered on the roll as the "Householder," and the plaintiff, by the name of C. L. Coleman, as the "Freeholder." It was proved that each of these rolls was made out by the Town Clerk, and after certifying them he delivered them to the Treasurer, who handed them to the defendant. A By-law was proved, passed by the Town Council in relation to the town tax. The Town Clerk proved that he got notice from the Treasurer of the Board of School Trustees of the rate imposed by them, but he could not say if it was in writing: he got no copy of the resolution under their corporate seal. It was also proved that the school rate was levied by resolution, and not by By-law of the School Trustees; and that Board, by a resolution passed on the 27th of November, 1865, appointed the defendant their collector for 1865. He was collector of the town taxes for Ketcheson and Coleman Wards in 1864, 5, and 6.

There was sufficient proof that the defendant demanded the taxes of the plaintiff, who refused to pay them, insisting on their being collected from Blacklock, who it appeared continued to reside to in Belleville, though he gave up possession of these premises in April, 1865, after which it was sworn that the plaintiff had possession of them. The plaintiff was present when the seizure was made. He admitted that a demand had been mhde on him, and he then refused to pay. At that time the town tax was mentioned as being $40, and the school tax, $16, and it was understood to be for premises formerly occupied by Blacklock.

It was agreed that a verdict should be entered for the defendant, with leave to the plaintiff to move to enter a verdict for himself, the goods being admitted to be equal in value to the taxes claimed. A rule *nisi* in pursuance of the leave reserved having been obtained, and after argument discharged, the plaintiff appealed.

C. S. Patterson for the appellant.

Dougall, contra.

In addition to the Statutes and authorities referred to in the judgment, *Rex* v. *Welbank*, 4 M. & S. 222, was cited for the appellant; and *Municipality of Whitby* v. *Flint*, 9 C.P. 453; *Wilson* v. *Municipality of Port Hope*, 10 U. C. R. 405; *Fraser* v. *Page*, 18 U. C. R. 327; *Hope* v. *Cumming*, 10 C. P. 118, *Skingley* v. *Surridge*, 11 M. & W. 503; and *Allen* v. *Sharp*, 2 Ex. 352, for the respondent.

DRAPER, C. J., delivered the judgment of the Court.

As to the first objection: the Board of School Trustees apparently intended to act (though we must say, as far as is shewn, with very inadequate attention to the language of the Statute) under the 11th subsection of sec. 79 of the Common School Act, Consol. Stat. U. C., ch. 64, which authorizes them to prepare and lay before the Municipal Council an estimate of the sums they consider requisite for the common school purposes of the year. It is proved that they passed a resolution for this purpose. A book containing it was produced at the trial, but no copy of it is before us. No objection seems to have arisen as to its being sufficient in terms, if a resolution and not a by-law constituted an "estimate" within the Statute. The Treasurer of the School Trustees gave notice of it to the Town Clerk of Belleville, whether in writing or not he could not say, though it certainly was not authenticated by the corporate seal of the Board of School Trustees. This mode of proceeding would, we have little doubt, have been held insufficient on an application for a mandamus to the Town Council to enforce payment, (see *School Trustees* v. *Port Hope*, 4 C. P. 418; *School Trustees* v. *City of Toronto*, 20 U. C. R. 802); but no objection was raised by the town corporation, and their Clerk acted upon the communication made to him as an estimate laid before the Municipality. Under these circumstances, we are of opinion that an individual ratepayer cannot be heard to take the objection.

The second objection is rested upon sec. 24 of the Assessment Act, which declares that when the land is assessed against both owner and occupant the assessor shall, on the roll, add to the name of the owner the word "owner," and to the name of the occupant the word "occupant," and the taxes may be recovered from either. But this is the collector's—not the assessor's—roll. It is made out under sec 89, which requires the *name* of the person assessed, but does not require either the word "owner" or "occupant" to be added thereto. The objection, therefore, has not the foundation on which it was said to be based; and, assuming that the Statute was imperative on the assessor, and not merely directory, it does not extend to the collector's roll.

The third objection attacks the proof of the authority and, it may be said, the authority itself, of the collector to collect the taxes at the time the seizure was made.

This objection seems to concede that the collector had at one time the necessary authority, and the argument in support of it involved that concession, for it was pointed out that the collector was appointed only for the year 1865, and the 104th section of the Assessment Act was expressly referred to for the purpose of showing that he should have returned his roll on the 14th of December, and it was urged that the time was not legally extended; and, moreover, it was strenuously argued that the case of *Newberry* v. *Stephens* (16 U. C. R. 65) was distinguishable, on the ground that there the time had been extended, while here no extension was proved

The difficulty arising from there being two rolls, which, unless blended into one, would not show that both town and school tax were directed to be levied and collected, and from the want of any proof that the Town Clerk was authorized by the Municipal Council to act upon the estimate of the Board of School Trustees, was not presented on this objection for our consideration, although it was admitted during the argument of the defendant's counsel (who evidently rested his case on the theory that the distress was made