The method of capitalization alleged in the plea to have been adopted is to the advantage of towns and villages, for if the taxable value had been ascertained as the statute directs, the aggregate sum upon which the rates should be calculated would be larger than it is in the mode adopted. The defendants have not any overcharge to complain of, but broadly deny liability to pay anything until the amount of liability has been settled as the law directs.

We do not understand the plaintiffs to contend that they have followed the 28th and 32nd sections of the Assessment Act, but it has been argued that the 70th section gives to the county council an unfettered discretion to increase or decrease the aggregate valuation of real property in any township, town or village, so as to produce a just relation between all the valuations of real estate in the county so long as they do not reduce the aggregate valuation of real estate for the whole county.

As to this, the authority given is to be exercised for the purpose of ascertaining whether the valuation made by the assessors in each township, &c., bears a just relation to the valuations so made in all the townships, &c.; and for the purpose of county rates the county councils may increase or decrease the aggregate valuation of *real property*, not reducing the aggregate valuation thereof for the whole county This latter restriction renders it necessary, if the valuation made by the assessors for any township, &c., is decreased, to increase the valuation in some one or more of the other townships, &c.,—in other words, they must take the aggregate value of real property in each municipality ascertained in the manner the statute directs, and then, in order to produce the "just relation" spoken of, they may decrease or increase such aggregate value in such of the several municipalities as they judge to be necessary, still preserving the same sum as the aggregate valuation for the whole county as was the result of the assessors' valuation in their several municipalities. Moreover, the authority thus given does not extend to personal property, the yearly value of which is, by section 32, fixed at six per cent of its actual value, the latter value being declared by the assessors subject to appeal, but which is not subjected to a change by the county council. This 70th section does not therefore, in our opinion, afford an answer to the plea as far as real property is concerned, and certainly does not justify the substitution of ten per cent for six per cent in converting yearly into actual value in any case.

The sum total of the *rentals* assessed in towns and villages, as distinguished from the local value of other real property and of personal property, is the subject matter dealt with by the 73rd section. These rentals are to be calculated in making the apportionment of the county rate at ten per cent on the capital represented. The plea observes the distinction thus created, by not objecting that real property actually rented is capitalized at ten and not at six per cent.; the objection is limited to real property held and occupied by the owners, and ratable personal property.

Although we do not enquire into the *modus operandi* by which the county council endeavour to produce a just relation between all the valuations of real estate in the county, we do not think we are at liberty to uphold a violation of the express provision of the statute as to the manner in which the actual values are to be ascertained The plea does not assert either increase or decrease of the aggregate valuation of real property in the town of Niagara, which, so far as the assessors were concerned, would have been expressed in the form of a rental or annual value of each separate parcel.—(See sec. 19. sub-sec 4.) What the plea relies on is that the county council, while adopting the assessors' return of rental and yearly value, have converted the same into capital or actual value in a different manner from that directed by the statute, and this is admitted by the demurrer. We do not agree in the argument that the 73rd section overrides the 28th. The two can well stand together, and must be construed accordingly.

There are two other objections taken as grounds of demurrer, to which it is only necessary to make brief allusion:—First, that by the mode of capitalization adopted the defendants are assessed upon a much less sum than would be the case if the statutory direction had been followed, and it does not lie with them to take the objection. The answer is obvious. Except under the statute the County Council could not impose a rate at all on the defendants, and the mode in which they shall exercise the power conferred being expressly designated, they cannot substitute a different mode leading to a different result. The plaintiffs claim a debt and must show the obligation lawfully created; the foundation of their claim is their by-law, and that depends for its validity on the statute, which it is admitted has not been followed. If there is no legal by-law there is no debt

Secondly.—It is said the defendants should have moved to quash the by-law. On such motions the courts have a discretion to execrcise, but here the plaintiffs come into a court of law to recover under their own by-law; the court have no discretion to deny to the defendants the right of contesting on any legal ground their liability to pay

On the whole, we are of opinion the defendants are entitled to our judgment. In *Secord* v. *The Corporation of Lincoln*, 24 U C Q B 142, we intimated very plainly the leaning of our opinion on this very question, and the present case confirms us in what we then threw out as to the exercise of the powers of the County Council.

Judgment for the defendants on demurrer.

In the matter of McLean and the Corporation of the Township of Bruce.

Temperance Act of 1864.

Upon the affidavits in this case, substantially stated below, the court refused to set aside a by-law passed under "The Temperance Act of 1864," on the ground that the reeve did not "preside" at the meeting at which it was adopted, but the clerk. There was no doubt that he opened and closed the poll, but the affidavits were contradictory as to the length of and reason for his absence in the meantime.

[Q. B., T. T., 1866.]

In Easter Term, *Robert A. Harrison* obtained a rule to quash By-law No. 29, for preventing the sale of intoxicating liquors in the township of Bruce, on three grounds. 1. That no notice of holding the poll was posted up in at least four public places in the municipality. 2. That