was during this latter state of things and before the passing of the 25 Vict. c. 18, sect. 7 that *Reg.* v. *Wells*, 17 U. C. R. (1859) came before our courts. The defendant there demurred to the return, and moved to quash it, and the Court held (i.) that in this country there could be no demurrer to a return, the Imp. 6–7 Vict. c. 67 not being in force here, and (ii.) that the return was insufficient and must be quashed.

It appears from the above that in cases where the return was good upon the face of it, but false in fact, the prosecutor *never had a remedy on motion to quash for this reason:* on the contrary before Imp. 1 Wm. IV. c. 20, (Ont. 28 Vict. c. 18, sect. 3) he had in cases not included within 9 Ann c. 20, no remedy at all under such circumstances, except by bringing an action on the case against the defendant for their false return. Where, however, the return was objected to for any inconsistency or defect *appearing upon the face of it*, it appears that the Court did sometimes, *before* Imp. 6–7 Vict. c. 67, sect. 1 (Ont. 28 Vict. c. 18, sect. 7) in very plain cases decide upon the sufficiency of the return upon a motion to quash it. The question remains whether the Court still has the power to squash a return in such cases?

An application to quash a return to a mandamus nisi, as being on the face of it invalid and frivolous, inasmuch as the cause shown against the mandamus being made absolute, raised points of law already decided against the defendants on the application for the mandamus nisi,—recently came before the Chancery Division in the case of the *School Board of Napanee* v. *the Municipality of Napanee*. The mandamus nisi in this matter was granted by Proudfoot, J. on Nov. 16th ult. as noted in our number for Dec. 1st, p. 452. On Dec. 7th, as noted in our number for Dec. 15th, p. 474, an application was made before the same learned Judge to quash the return made by the defendants on the above grounds, but he refused the application with costs, holding that the mode of procedure, when a return has been made to a mandamus nisi and the plaintiffs are not satisfied with it, is to demur, plead to or traverse the return, to which the defendants may reply, take issue or demur. As appears from his notes, he cited 3 Bl. Com. 264. *Rex* v. *Borough of Lancaster*, 7 Dowl. & Ry. 708, (1826); and *Rex* v. *Payn*, 6 A. & E. 392 (1837). The object of citing the first of these cases was apparently to show that questions already determined on the application for the rule *nisi* may also be again discussed after a return is made. This is all that appears from the case as reported in 7 Dowl. & Ry., while it appears from the report of the same case in 4 B. & C. 876, note (a), that the Court did quash the return in this case, apparently on the ground that the point raised on the return had already been decided on the rule to show cause. But this case was decided in 1826, before either Imp. 1 Wm. IV. c. 20, or Imp. 6-7 Vict. c. 67, and the case was not one that came under 9 Ann. c. 20, and therefore, so far as the question of quashing is concerned, it is no authority as to the present practice. In the other case cited by Proudfoot, J., *Rex* v. *Payn*, 6 A. & E. 392, the Court refused to quash the return. The reasons are not given, but in a subsequent application in the same case reported, 9 L. J. N. S. (Q. B.) 286, Lord Denman. C. J. is reported as saying: "In refusing to order the return in this case to be taken off the file, we did not mean to give any judgment as to its validity. The question before us was, whether it was evasive and frivolous, and that is all we intended to decide. The Court has undoubtedly the power to quash a return summarily on motion; and it is a power with which we do not intend to part; but where it merely decides that a return is not contemptuous, such a decision does not involve the consequence of a judgment on argument that it is good in law." And he held, on that occasion, that the prosecutors were still at liberty to traverse the facts of such return.

But it must be remembered that this case