

much more, and on the other hand others again swear that the value of those so far as gone do not exceed that of those on the land. Be that as it may, I do not see how I can trust the expenditure of that money on Mr. *Reynold's* property as means available in any way to satisfy the plaintiffs' debt. It does not appear that the expenditure of money took place with a view of depriving the plaintiff, or any one of means they could reach or attach in any way. It is matter of inference that the expenditure of money upon another property was a fraud upon creditors. It may be a fraud according to circumstances. I do not see enough on these documents to adjudge that it was a fraud on the plaintiffs.

3rd. It is urged that the defendant retains an interest in a mill property which might be available. The affidavits in reply completely answer the point made against the defendant. If the defendant's statement be untrue it is very easy for the plaintiffs to take steps at law which would sift the matter before a jury. The answers might be insufficient, and upon an application for the defendant's discharge I might not discharge him, but that is a different question from committing to custody because the defendant has the means of paying the debt or a portion of it.

The summons must be discharged.

IN RE THE BOARD OF SCHOOL TRUSTEES OF THE INCORPORATED VILLAGE OF GALT AND THE MUNICIPALITY OF THE VILLAGE OF GALT.

(Reported by C. Robinson, Esq., Barrister-at-Law.)

Duty of municipality to raise money on request of trustees—Mode of proceeding by trustees—13 & 14 Vic., ch. 43, secs. 24, 25, 26—16 Vic., ch. 185, sec. 1.

The school trustees of an incorporated village applied to the village municipality to levy a sum of money required to pay for a school site which they had contracted to purchase. The municipality refused to do so, and the trustees applied for a mandamus. It did not appear that the trustees had appointed a secretary-treasurer, if they are empowered to do so by the 16 Vic., ch. 185, secs. 1, 6.

Held, that the trustees should first have given an order to the person from whom they had agreed to purchase upon the treasurer of the municipality, and on this ground the application was refused.

Quære, however, whether a mandamus would have gone, independently of this objection.

[13 U. C. Q. B. R. 511.]

In Trinity Term last *D. B. Read* obtained a rule calling on the Municipality of Galt to shew cause why a writ of mandamus should not be issued against them, commanding them to levy or cause to be levied £750, required by the said Board of School Trustees for the purchase of, or to pay for, a school site and premises in the incorporated village of Galt, or for the payment of the school site and premises already purchased by the said Board of School Trustees in the said village from J. Harris.

From the affidavits and papers filed in support of the rule, it appeared that on the 17th of August, 1855, a notice was served on J. Davidson, Esq., reeve of the municipality, by the solicitor for the Board of Trustees, that he was retained to institute proceedings to enforce the raising of money or other means to fulfil the engagement entered into by the Board of Trustees and Mr. James Harris for the purchase of a lot as a school site; and "you will please take notice and govern yourselves with respect to your assessments and actions accordingly." No direct answer was given to this notice; but the reeve, on the 27th of August, informed the solicitor verbally that the Municipality would take no steps towards raising the money unless compelled so to do.

On the 29th of March, 1855, P. Cook, the secretary of the Board of School Trustees, addressed a letter to the reeve and council of the Municipality, stating that the Trustees had bargained with Mr. James Harris for a lot of land containing two acres and five perches, for £750, payable as follows: cash to be paid on the execution of the deed £225, less £25, which Mr. Harris gave for school prizes; the balance £525, payable in four equal annual instalments, with interest, giving to Mr.

Harris at the same time ample security for the payment of the balance and interest; and according to the School Act of 1850, sec. 24, sub-sec. 6, confirmed by the Act of 1853, laying before the Municipality the foregoing statement, and requesting the Municipality to make provision for carrying out the arrangement.

On the 26th of April, 1855, Mr. Cook, pursuant to a resolution of the Trustees, requested a reply to the letter of the 29th of March, inquiring whether it was the intention of the council to make provision for the payment of the school site purchased from Mr. Harris.

On the 9th of May, 1855, the clerk of the Municipality transmitted a copy of a resolution as follows: "That the council do make such provision as may be necessary to enable the Trustees to redeem their engagements with Mr. Harris, but are opposed to the idea of central schools in this village at present; would therefore recommend that the said lot be placed at the disposal of the council, and purchase a lot on the west side of the river for additional school-house accommodation, which, with an outlay of £500 or £600 along with the present school-house, would be accommodation for a number of years."

By memorandum of agreement, under the seal of the corporation of the School Trustees and of James Harris, dated the 21st of June, 1855, Harris agreed to sell, and the trustees agreed to purchase, a piece of ground in Galt (described) containing two acres and six perches, for £750, payable as follows: £25 to be appropriated as prizes to the pupils attending the common schools for the school to be built on the property; the balance, £725, with interest from the 26th of March, 1855, to be paid on the signature of the deed, barring right of dower, subject to a discount of £7.10s. on payment as aforesaid; the payment and the completion of the transfer to be made on or before the 31st of October, 1855.

On the 9th of August, 1855, Mr. Cook, by direction of the Board of Trustees, addressed a letter to the Municipality to ask whether, "in view of the rejection by the rate-payers on the 4th instant of the by-law for issuing debentures to the amount of £750 to pay for the school lot purchased from Mr. Harris, and for which the Board is under sealed engagements, it is still the intention of the Council to raise that sum by assessment this year in the ordinary way and within the ordinary time of collecting the assessments, or to raise it by some other means."

On the 11th of August, 1855, the Municipality clerk, by way of reply, sent to Mr. Cook a copy of the resolution following, passed the preceding evening: "Resolved, that the council refuse to raise the sum of £750 to pay Mr. Harris for the lot of ground purchased by the School Trustees for erecting thereon a central school-house, in consequence of the qualified electors of this Municipality objecting by a majority of votes to sanction the Council passing a by-law to raise the said amount by debentures for that purpose."

The affidavit of Peter Cook, secretary of the Board of Trustees, verified all the foregoing papers, and stated that a verbal agreement between the Trustees and Harris was entered into before the 29th of March, containing the same terms as were afterwards reduced to writing by the agreement of the 21st of June, 1855.

In this term *M. C. Cameron* shewed cause. He filed the affidavit of John Davidson, reeve of the Municipality of Galt, setting forth that no common school meeting had been called by the Board of School Trustees to consider the steps to be taken by said Trustees for procuring a school site on which to erect a new school-house. He referred especially to the letter of the 29th of March last, containing the terms of the original agreement, and stated that on the 13th of April last a conference took place between the Trustees and the Village Council, when the Trustees intimated that they should require over £1000 to build a school-house: that in consequence of these