

ment gives him, and we should be so far indirectly repealing the act. The seventh section of 16 Vic., ch. 180, provides that the six months within which the action must be brought are to reckon from the day on which the act was committed. In other words, from the time of the wrong done by the justice. At least, so we construe the act. If in consequence of the enactment in the second section of the act, which makes it necessary to have the conviction quashed before an action can be brought, the party is advised that the six months can be legally computed from the time of setting aside the conviction, he can proceed at the peril, perhaps, of having an application made to set aside the proceedings under the sixth clause of the act, or at any rate of having the lateness of the action urged in a more formal shape.

Conviction quashed.

COMMON PLEAS.

(Reported by E. C. JONES, Esq., Barrister-at-Law, Reporter to the Court.)

MUNSON v. MUNICIPALITY OF COLLINGWOOD.

School teacher—Salary—Action for—Mandamus.

Held, that the Municipal Corporation Act does not authorise the acceptance by the treasurer of orders for school teacher's salary, although permitted to pay such orders on presentation, nor has the treasurer authority to bind the corporation by his acceptance of orders.

Held, also, that the board of school trustees of a town have authority to levy and collect a rate for the payment of school teacher's salaries and expenses, and that they are liable in a action for such expenses, or can be compelled by mandamus to raise the money.

The declaration contained five counts. 1st. On an order made by the chairman of the board of school trustees, directed to the treasurer of the defendants requiring him to pay plaintiff or order £37 10s., which order defendants under the hand of their treasurer accepted. 2nd. On a similar order for \$150. 3rd. For money had and received. 4th. That plaintiff was a common school teacher for one year next before the 10th of January, 1859, in the town of Collingwood; that on the 28th of March, 1858, the trustees of that school prepared and laid before the defendants an estimate of the sum they judged expedient for paying the salary of the plaintiff as such school teacher by levying and collecting a rate, and it then became defendants' duty to provide the said sum in manner aforesaid. That the trustees, on the 10th of January, 1859, gave plaintiff an order for £37 10s. on the treasurer, being plaintiff's salary as aforesaid; yet defendants would not provide that sum, or levy, impose, or collect a rate for payment thereof, but wholly neglected, &c. 5th. A similar count to the fourth, for the plaintiff's salary for six months, ending the 4th of July, 1859, being \$150.

Pleas—1st. A denial of the defendant's acceptance of the order mentioned in the first count. 2nd. Payment to the first count. 3rd. To the second count denial of the defendants' acceptance of the order. 4th. To the third count, never indebted. 5th. To the fourth count, that the defendants did provide the sum in that count mentioned, and did levy, impose, and collect a rate for payment thereof. 6th. To the fifth count, similar, to the 5th plea. 7th. To the fifth count, that on receiving the estimate of the school trustees the defendants did impose a rate, and delivered the roll containing the rate so imposed to the collectors of the town; that the time passed for the return of the collector's roll has not expired, and defendants have not as yet received money. Issues.

The trial took place at Barrie, in October, 1859, before Sir J. B. Robinson, C. J. The acceptance by the treasurer of the corporation of the town of Collingwood of the orders set out in the first and second counts was proved. The clerk of the defendants produced an estimate of the money to be raised in the year 1858 for school purposes, in which the plaintiff's salary was included, and he said a by-law was passed to raise that money, but on its being produced it appeared to be a by-law to raise money for school houses, library and apparatus, and it appeared that the sum required for school teachers was raised by a rate imposed by resolution. He produced the minutes of the council of the 19th of April, 1858, shewing what the estimate embraced; that money was levied. He also produced the estimates of school moneys required for the year 1859, which included the teacher's salary. A by-law was introduced to raise that money by assessment, but had not yet passed. It was read a second time on the 25th of July, 1859,

and since then nothing had been done. A small portion only of the taxes for 1858 had been collected. The clerk thought enough had been collected generally on the roll to pay the teacher's salary, but he could not say whether enough of the rate imposed for that purpose had been collected. The chairman of the board of school trustees was also called. He stated that in 1858, the first year of the incorporation of the town of Collingwood, the corporation paid people employed by them on the streets, &c., by orders on the treasurer, and those orders got into circulation, and many people paid their taxes with them, so that enough has not been collected in money to pay the school teacher: the government grant would be received by the end of June; the rest for the year is to be raised by a rate. No separate rate was imposed in Collingwood. The government grant for the first six months of 1859 had not been paid to defendants. The witness was a member of the town council of Collingwood as well as chairman of the Board of school trustees.

On the defence it was objected: 1st. That this action will not lie against the defendants. 2nd. That no acceptance by defendants was proved.

The jury, under the direction of the learned Chief Justice, found a verdict for the plaintiff on the 1st, 2nd, 4th, and 5th counts, and £65 damages, it being admitted that £10 was paid, and for the defendants on the 3rd count.

In Michaelmas Term, *R. A. Harrison*, obtained a rule nisi to arrest the judgment on the 1st, 2nd, 4th and 5th counts, or for a new trial on the law and evidence, the acceptance proven not being under the seal of the corporation, and the treasurer having no authority to bind them by his acceptance, and as to the causes of action set forth in the 4th and 5th counts, that the plaintiff's remedy is not by action.

McMichael shewed cause in the following terms: He referred to the Common School Act of U. C. 13 & 14 Vic., ch. 48, sec. 18, subsec. 1, and sec. 24, subsec. 6, 7, & 8, and *Gibbs v. Trustees of the Liverpool Docks* (in error) 3 H. & N. 164.

Harrison, contra, contended the action would not lie, that the plaintiff had a remedy under 16 Vic., ch. 185, sec. 22, subsec. 6, and a mandamus also would lie. The complaint in the 4th and 5th counts is the right to pass a by-law, which is a matter between the school trustees and these defendants.—Tapping on *Mandamus*, 93 & 347. Even if the treasurer has funds he holds them as the servant of the corporation, and must apply them according to the direction he receives. As to the 1st and 2nd counts, no authority has been shewn for the treasurer binding the municipal corporation of which he is a member by his acceptance.

DRAPER, C. J.—The School Act of 1850, section 18: 1st. Enacts, that it shall be the duty of the municipality of each township to levy such sums by assessment upon the taxable school property in any school sections for the purchase of a school site, the erection, repairs, renting, and furnishing of a school house, the purchase of apparatus and text books for the school, books for the library, and salary of the teacher, as shall be desired by the trustees of such school section on behalf of the majority of the freeholders or householders at a public meeting. Section 21.—The council of each incorporated town in Upper Canada shall be, and is hereby invested, and shall be subject to the same obligations as are the municipal council of each county, and the municipality of each township by the 18 & 27 sec. of this act. Section 24. The board of school trustees for each town are constituted a corporation, and it shall be their duty.

Sixthly.—To prepare from time to time, and lay before the municipal council of the town an estimate of the sums which they shall judge expedient for paying the whole or part of the salaries of teachers, for purchasing or renting premises, &c., and it shall be the duty of the council of such town to provide such sum or sums in such manner as shall be desired by the said boards of school trustees.

Sevently.—The board of school trustees may levy at their discretion any rates upon the parents or guardians of children attending any school under their charge, and may employ the same means for collecting such rates as trustees of common schools in any townships may do under the 12th sec. of this act.

The 12th section authorises the trustees of every school section to apply to the treasurer of the township, or employ their own