

## ONTARIO REPORTS.

## QUEEN'S BENCH.

(Reported by C. ROBINSON, Esq., J. C. Reporter to the Court.)

## GRANT AND THE CORPORATION OF THE TOWNSHIP OF PUSLINCH.

*Town Hall—By-law to erect—Provision for payment*

▲ Township corporation passed a by-law on the 15th June, 1867, authorizing the purchase of a site for and the erection of a town hall, but not making provision for meeting the expense, for which it did not appear that there were surplus moneys on hand. On the 31st of August they passed the annual by-law for ordinary expenditure, and, in addition to the sum required therefor, provided by the same by-law for raising the amount required for the site and building. On application to quash these by-laws it appeared, in answer, that the site had been conveyed to the corporation and paid for, and the hall completed, and that there were funds in the treasurer's hands to pay for it.

*Held*, that although the corporation might not have been strictly regular, the by-laws should not now be quashed, and the rule was discharged, but without costs.

[Q. B., H. T., 31 Vic., 1868.]

In this case *Walsh*, during last term, obtained a rule nisi calling upon the Corporation of the Township of Puslinch, to show cause why by-laws Nos. 144, 145, and 146, or some of them, or some parts thereof, should not be set aside, with costs, on various grounds: 1. That it does not appear by said by-laws, or either of them, at what time the debt or obligation thereby created should fall due or be dischargeable. 2. That the debts, as to the purchase of a site of a town hall and the erection thereof, is not an ordinary expense of the Township. 3. That the amount of the ratable property of the Township for the year 1867, according to the last revised assessment roll, is not recited in either of said by-laws. 4. That it is not stated whether the corporation had at the time of passing the by-laws respectively other or any existing debts, whereby it might be known whether the rate for this debt would be beyond the power of the Council to contract. 5. That the corporation had not surplus funds or moneys in their hands at the time of passing any of the by-laws for the purchase of the site of the town hall, or the erection of the building thereon. 6. That the said by-laws, or so much of them as relates to the site and the erection of the hall, is bad and voidable. 7. That the by-laws were not submitted to the ratepayers, according to the Statute. 8. That by-laws Nos. 144 and 145 do not shew on what day or at what time they go into effect.

The application was made on sworn copies of the by-laws and affidavits, shewing that the site for the town hall had been purchased and a contract entered into for the erection of the building, and that the works were in progress.

The facts in the case, from the affidavits filed, appeared to be these:—that the Council of the Township on the 15th June, 1867, passed a by-law, No. 144, authorizing the purchase of a particular piece of land for a site for a town hall, paying therefor \$384, which the Treasurer was to pay out of the funds of the corporation: that on the 29th July they passed a by-law, No. 145, to raise by rate moneys for the general purposes of the corporation, and also to provide means to pay for the town hall and site.—(It is unnecessary to notice this by-law at length, as it was never acted upon and was repealed); and that

on the 31st August 1867, they passed by-law No. 146. This by-law recited that by-law 145 had not been acted upon, and after reciting that estimates had been made for the lawful purposes of the township for the year 1867, it provided that in addition to the rate for County purposes, &c., there must be levied for a site and the erection of a town hall authorized by by-law 144, \$2000. It then enacted that by-law 145 be repealed, and it provided for the raising and collecting upon the ratable property in the Township for the then present year, besides the sum required for the ordinary purposes, \$2000 for the site and building, and for that purpose imposed a rate of 2 mills in the \$, which would be sufficient to meet that amount.

It also appeared that the town hall was much wanted, and that it was the desire of the ratepayers that one should be erected that the township was a wealthy one, and without any debt: that it was not intended to create any debt on account of this site and hall to be erected thereon, but that the whole amount required should be imposed by a rate for that purpose, and collected and paid over during the then current year: that \$3029 had been collected of the rate imposed by by-law 146, without any distress being made: that the site was paid for out of these rates: that on the 5th December the town hall was completed and pronounced satisfactory by the Township Inspector: that according to the terms of the contract, a copy of which was attached to the Treasurer's affidavit, the building was only to be paid for when completed and passed by the Inspector; and the Treasurer swore there was more than enough in his hands to pay the full amount of the contract price.

C. Robinson, Q. C., and Guthrie shewed cause during the same term, referring to the Municipal Institutions Act 1866, secs. 191, 234, 235, 226, 226, 227, 246, sub-sec. 1, 269, sub-sec. 3, 279, 282; *Fletcher and the Municipality of Euphrasia*, 13 U. C. R. 129; *Grierson and the Municipality of Ontario*, 9 U. C. R. 629.

Freeman, Q. C., supported the rule, citing *McMaster and the Corporation of Newmarket*, 11 C. P. 398.

MORRISON, J. delivered the judgment of the Court.

A perusal of the affidavits filed shews very clearly that the merits of the case are entirely with the corporation. It is quite evident that the by-law 146 is not a by-law, nor was it intended to be one, within the provisions of sec. 226 of the Municipal Act. It is merely a by-law for the raising funds for the ordinary purposes of the municipality for the current year, containing a provision for raising by special rate during the same year an amount necessary to defray the purchase of the site and the expenses of erecting a town hall. Nothing appears shewing in the slightest degree that the Council were not acting *bonâ fide*, or contrary to the wishes of the ratepayers.

The case is quite distinguishable from *McMaster and The Corporation of Newmarket* (11 C. P. 398), relied on by the applicant's counsel. There no provision was made by rate to raise the necessary amount to pay for the site and the erection of the hall, nor were the funds on hand to meet the demand when due, and a debt was contracted which had to be paid by funds during the ensu-