

taxation for high school purposes, there would not therefore appear to be exemption from taxation.

If the demand here were for public school purposes, there would be no doubt as to the duty of the town to comply, and as to the exemption of the separatists from the rate: 37 Vic. ch. 28, sec. 46, sub-sec. 5, and sec. 67.

But where the demand is for high school purposes it must, by whomsoever demanded, i.e., whether by joint or separate boards, be shewn to be such a demand as is obligatory upon the municipal corporation in the case of a high school.

The demand here, if obligatory at all, can *only* be so held as coming under the operation of sec. 45, and not under sec. 47, of the High School Act.

The board has no power, under sec. 45, to demand the money otherwise than as money required "for the maintenance and school accommodation" of the high school. The board has no power in any year to demand the whole of the money required for these purposes from the municipal council, but only the residue, after deducting the amount paid by Government and the amount paid by the council of the county.

It is under section 46 made the duty of the council of any municipality, or the councils of the respective municipalities, out of which the whole or part of which the high school district is formed, upon the application of the high school board, to raise the *proportion* required to be paid by such municipality or part of the municipality from the whole or part of the municipality, as the case may be.

The mode, division, or proportion, was clearly shewn in the affidavit for the writ of mandamus in *Re Trustees of Port Rowan High School, and the Corporation of the Township of Walsingham*, 23 C.P. 11.

It was there shewn that the whole amount needed for the maintenance and school accommodation of the high school for the year 1871, was..... \$658 43

Of which was received from Government.....\$400 00
From the County Council 200 00
600 00

Leaving \$58 43
required from the municipality.

So for the year 1872, the amount received was..... \$484 83
Of which was received from Government\$171 00
From the County Council 85 50
256 50

Leaving \$228 33
required from the municipality.

The demand here is, not in form for the balance necessary after crediting the amount received from the Government and from the county council, but from what we know of the amount of the Government grant, and the amount of the county council grant, in all probability the balance necessary to be provided by the municipal council is not much, if anything, short of \$16,000.

If the Council had resisted the application on the ground that the demand was not in form sufficient, we might have felt bound to have given effect to the contention, and discharged the rule: *Re School Trustees of Port Hope v. Town Council of the Town of Port Hope*, 4 C. P. 418, but as the resistance is on a wholly different ground, we should not now, according to the authorities, give effect to the objection. See *Board of School Trustees of the Town of Brockville v. The Town Council of Brockville*, 9, U. C. R. 302; *The School Trustees of the City of Toronto v. The Corporation of the City of Toronto*, 20 U.C.R. 302.

The rule must be absolute for the issue of a mandamus in the words of the statute, for the raising by the Council of the Town of Perth, in which municipality the high school is situate, of such sum, naming it, as during the present year is required for the maintenance and accommodation of the high school, after deducting the amounts paid or payable by the Government and county council respectively.

The statute does not direct in what manner the money is to be raised.

It is not for the trustees or for the Court to dictate to the council in what manner the money shall be raised: *School Trustees of Toronto v. The Corporation of the City of Toronto*, 20 U. C. R. 302, 305.

The joint board do not press for the payment of the whole amount in one year, provided the amount be in some manner legally secured, so that the securities shall be made available for the purpose of discharging the obligations contracted by the joint board.

Instead of making the rule absolute for a mandamus, we think it better, under the circumstances, as in *Re Board of School Trustees of Toronto v. Toronto*, 23 U. C. R. 203, to make it absolute for a mandamus *nisi*: in the hope that the parties will come to an under-

standing which will meet the demand of the joint board without being oppressive to the ratepayers; and if not, that the legal questions involved may be formally raised by demurrer or plea—See *Regina v. Vestry of St. Luke's, Chelsea*, 5 L.T.N.S. 744; and in the event of the joint board being ultimately successful, a peremptory writ shall be issued, which the council must obey under pain of attachment.

The rule will be made absolute. Costs to abide the event.

MORRISON, J., and WILSON, J., concurred.

Rule accordingly.

3. UNION SECTIONS—ASKEW VS. MANNING ET AL.

Replevin—Formation of Union School Sections—Existence of Corporations—Mode of testing.

Replevin. Plea justifying under distress for school rate for a union school section No. 2, Raleigh and Tilbury E. alleged to have been duly formed by the reeves of said townships and the local superintendent, of which section defendants were trustees, and averring that the rate was imposed by defendants to raise the necessary sum to purchase a school site, and that the plaintiff was rated in respect thereof. Replications, 1. That the said section was not formed as alleged. 2. That the alleged union school section was on or about 24th December, 1873, pretended to be formed by the reeves of the said townships and the superintendent by uniting section 6 of Tilbury with parts of sections in Raleigh: that the plaintiff resided and was a ratepayer within one of the sections affected by the proposed formation of said section: that no notice was given to him and others intended to be effected by such formation, or of any alteration in the sections in said townships: that the inspector of the county has not transmitted to the clerks of said townships any copy of the resolution to form said section, or have the reeves of the said townships, with the inspector or otherwise, equalized the assessment with said section.

Held, on demurrer, replications bad, for that it was not open to the plaintiff in this suit to contest the validity of the formation of the school section on the grounds taken, his proper course being by information in the nature of *quo warranto* to determine the defendants' right to the office of trustee.

The plaintiff replied also that the defendants were not on the 24th of December, 1873, a corporation duly formed as alleged. Upon the trial it appeared that the union section for which the defendants assumed to be trustees had been formed by adding to a section in one township parts of two sections in another township: **Held**, that a union school section can be formed only of two sections, not of parts of sections; and that the objection therefore being not to the regular exercise, but to the existence, of the power to form such sections, and the facts being undisputed, the validity of the formation might be questioned in this action.

DEMURRER: Declaration in replevin for three cows, &c.

Second plea, by defendant Manning: That the defendants were, before the time of the alleged taking, to wit, on the 24th December, 1873, a corporation under the name of the Trustees Union School Section No. 2, Raleigh and Tilbury East, duly formed by the reeves of the said respective townships and the local superintendent; and that the plaintiff was liable to be rated for school purposes in the said section: that a rate was imposed by the said trustees to raise the sum necessary to purchase a school site for the said section, and the plaintiff was thereby duly rated for the sum of \$33.32: that a proper warrant was delivered by the said trustees to this defendant Manning, who was duly appointed collector of school rates for the said school section, whereby he was authorized and required to collect from the plaintiff the said sum of \$33.32, for which the plaintiff was duly rated, and by the said warrant the said Manning was further authorized and required, in case the plaintiff should make default in payment of the said sum, to levy the same from the plaintiff by distress of his goods and chattels; and thereafter, and whilst this defendant was such collector, he duly demanded the said sum, being the amount of the said rate, from the plaintiff, which he refused to pay, and so made default in payment of the same: therefore this defendant took the same within the limits of the said school section as a distress for goods the said rate, which are the alleged grievances; and the said Manning well acknowledges the taking of the said goods and unjustly detaining the same as a distress for the said rate, which still remains due and unpaid.

Third plea, by the other two defendants, in effect similar to the second plea by Manning, alleging that they and defendant Manning were the trustees of the section, and gave a warrant to Manning to levy the rate.

Fifth replication to the second and third pleas: that the said Union School Section was not formed as alleged.

Sixth replication to the same pleas: that the alleged Union School Section was, on or about the 24th December, 1873, pretended to be formed by the reeves of the said townships of Raleigh and Tilbury and the local superintendent, by uniting section No. 6 of Tilbury with parts of sections in Raleigh: that the plaintiff was a resident within the boundaries of one of the school sections affected by the proposed formation of the said Union School Section, and was a ratepayer within such boundaries: that no notice