manner as a bank or other trading corporation would be liable upon a cheque or bill accepted by their cashier.

Whether the corporation were bound to pay an order drawn on their treasurer, and when, and under what circumstances, must depend upon something more than the fact of the treasurer having accepted their order. He has not power, I think, to bind the corporation by his personal acceptance to pay immediately, without regard to any other consideration but merely the fact of his having written "accepted" upon the order.

The statutes give no general power in terms to the treasurers of municipal corporations to bind the corporations by their acceptance, and we must find something in the statute from which such a power can be properly implied in any particular case before we can hold that it is given or implied in such case.

As to school moneys, we find they come in part from provincial funds, and in part from funds to be raised by assessments, and regard must be had to the fact whether the corporation is in funds to make any payment out of school moneys upon an order of school trustees at the time of such order being presented; and if they are not in funds, the right to demand payment nevertheless may depend upon questions which the treasurer has not the discretion to settle by his acceptance. This acceptance, I think, has no other effect than to mark the time and fact of the order being presented, which may be of consequence to the teacher as regards the order of payment under circumstances that may sometimes exist.

I think, therefore, that judgment should be arrested as regards the three first counts

With respect to the last three counts, we find no instance of an action against a municipal corporation for not levying a rate for a public purpose, in which rate the individual bringing the action has no other interest than as one of a class who would have a claim to be paid out of such assessment if it were raised; and if an action on such a cause as is set out in the last three counts respectfully is not maintainable, that objection cannot be held to be cured by pleading over, for it is not only a substantial objection, but one that goes to the very root of the action. No authority has been cited in support of the declaration as regards these counts, and we ought not to decide in its favour except upon the clearest ground, when we consider that it cannot be truly said that the plaintiff's salary is unpaid, because the municipal corporation has not imposed and collected a rate for school purposes, for by the School Act the school trustees who contracted with the plaintiff to employ him and pay him, have express authority given to them to levy themselves whatever money might be necessary for enabling them to fulfil their contract.

I am of opinion that the rule must be made absolute for arresting the judgment on the last three counts, as well as on the first three.

BURNS, J.—With respect to the first three counts, I think the plaintiff cannot maintain an action against the corporation, treating it as bound by the acceptance of the orders of the trustees. The effect of so holding would be treating the orders in the nature of bills of exchange. These orders were given in compliance with the 8th sub-section of section 24, of the school act, 1850, and with them in his hand the plaintiff was entitled to call on the treasurer for payment, but the treasurer could not bind the corporation by any acceptance he might write upon them. The liability to pay must depend upon something else than what the treasurer may choose to say about it.

Then with respect to the last three counts, charging the defendants with a breach of duty in not levying a rate in order to pay the orders, after some doubt and hesitation I have at last settled into the opinion that the plaintiff cannot maintain such an action. If it were shewn that the rate was levied and the money in hand, I have no doubt an action for breach of duty in not paying it would lie. The school trustees having done all that was required on their part, and given the teacher the requisite order to receive the amount due to him, would entitle the teacher to be paid if the money were there for that purpose, and it would be a breach of duty in the corporation not to pay. In that case the breach of duty is individually applicable to the teacher, the person who suffers by not being paid.

The charge in this case—namely not levying a rate—applies to a class of persons, and the question is whether there is such a breach of duty in such a matter to each individually as gives a right of action. The 21st section of the act enacts that this corporation, being a town, shall be liable to the same obligations as are enacted in respect of townships under the 18th section, and councils of counties under the 27th section. This section is very plain, that no teacher shall be obliged to wait for the collection of the rate, but the treasurer shall pay in anticipation of it; but still it shews that a rate is to be imposed for the purpose of providing the fund in time or to reimburse the corporation.

The corporation is to impose the rate at the request of the trustees, and it is asserted in this case that the trustees did request it to be done. I have met with no authority shewing that an action can be maintained for not complying such a request. The plaintiff is not a contractor with the defendants, but has contracted with another corporate body altogether, and therefore no obligation arises on the defendants beyond what grows out of the provisions of the school acts. These obligations are, I take it, in the first place to comply with the request of the school trust and levy a rate, and when that has been done, then, secondly, the treasurer shall comply with the orders of the trustees by paying from any moneys in his hands.

The first of these obligations, I take it, must be enforced by mandamus, and *that* I think is the proper remedy, and not an action of this description. It would be very inconvenient if the corporation should be exposed to an action by every individual of a class of persons for a breach of duty, when it might be in the power of the corporation to shew that there existed something in the request of the trustees which might be illegal.

It is a pity the plaintiff has been advised to try an experimental action when the other remedy was so plain, and about which there there could be no doubt. The best consideration I can bestow upon it leads me to the conclusion this action is not sustainable.

MCLEAN, J., concurred.

Rule absolute to arrest judgment.

CHAMBERS.

(*Reported by* ROBT. A. HARRISON, Esq., *Barrister-at-Law*)

MCGINNIS V. THE CORPORATION OF YORKVILLE.

Action against a Municipal Corporation—Common Counts—Extra Work—Pleas.

A plea that the cause of action, if any, arose for and concerning a debt incurred and falling due during the preceding year to that in which action brought, which was not within the ordinary expenditure of the corporation for that year, and for which no estimate was made and no rate imposed, cannot be allowed on an application to plead several matters with other pleas, going to the merits of the cause of action. [April, 3rd 1861.

This was an action on the common counts for work and labor, materials, &c. *Jas. Paterson* obtained a summons calling on the plaintiff to show cause why defendants should not have leave to plead the following pleas:—

1. Never indebted.

2. That the work, &c, was for building a new Town Hall in Yorkville under special contract, setting out some of the terms and conditions, and averring that the defendants paid all plaintiff is entitled to under the contract for contract work, extra work, or otherwise.

3. A similar plea, setting out another condition, that the work should be completed on or before 15th August, 1860, under a penalty of £10 for every week during which it should be left incomplete beyond that day: that there were no weekly returns of extra work according to conditions, and that no extra work was in fact done; that the work was not completed until 31st Dec, 1860, being nineteen weeks after said 15th August, 1860, whereby plaintiff had forfeited £190, and that after deducting that sum defendants had paid in full for all contract work, extra work, or otherwise howsoever.

4. Plea setting out that the work was done under a contract under seal, setting out terms and conditions relative to extra work, conditions, &c., also a clause providing for a reference to William Hay, Architect, in case of difference: that defendants had paid contract price in full: that differences having arisen as to deductions and extra work, said William Hay took upon himself the burthen of the reference, and within proper time, according