

soon as the expense and costs are paid by either the school board or municipal council the resolution and by-laws should be repealed."

To fortify its position the township council passed a resolution that the township "guarantee the payment of all legal debts" incurred by the school board "and that the same be deposited with the county treasurer as soon as ascertained."

This meant that the township intended, instead of obeying the mandamus to pay the \$2,000 to the school board, to have an enquiry as to the debts of the board and to pay sufficient to the county treasurer to enable him to pay the creditors—as the mandamus was still in the hands of the Appellate Court, this was not intended to be contumacious, and was only intended to be a means of satisfying the county council, that in the event of repeal the debts would be paid.

As a counter-move the plaintiffs brought this suit to restrain any action upon this resolution.

The county council finally determined to take no action upon the request for repeal and returned the resolution to the township. There is, therefore, nothing in the action now—beyond the question of costs.

The township had no power to divert the money from the school board or in any way to interfere with its affairs. The school board has the right to receive the money it calls for and to arrange and liquidate its own debts. What the township sought to do when it proposed to pay to the county, sufficient to pay the debts of the board to be proved before the county treasurer is quite foreign to anything that is authorized by the Municipal Act and *ultra vires*. This *ultra vires* action of the municipality and improper payment of municipal funds, can, I think, be restrained by a ratepayer in a class action.

Looked at from a broader point of view the costs of this action really form part of the expense of an unsuccessful attempt by the township to get free from an obligation imposed by law, and the fairest disposition of costs is to direct payment out of the township funds rather than to impose the burden on the individual.

For these reasons the injunction may be made perpetual and defendant township should be ordered to pay costs.