

moneys as provided in the by-law of 1857 and 1860, and under the resolution of 1856, and produce the same effect that that by-law now in question does, so that upon that ground alone we ought not to interfere.

But irrespective of that view of the case, I am not prepared to say that these moneys so specifically appropriated by by-laws under the authority of the 20 Vic. ch. 61, in 1856 and in 1860, are within section 48, sub-sec. 4 of the Act of 1874, 37 Vic. ch. 28, O. That sub-section contemplates moneys otherwise specifically appropriated, and exempts such moneys from its operation.

On the part of the Council it was contended that the mode of distribution provided for by the by-law was the best for all purposes, and was a by-law practically in effect as one passed under section 153 of the Act—which provides that any Municipal Corporation having surplus moneys set apart for educational purposes, may by by-law grant any portion of such moneys or other general funds by way of gift to aid poor sections within the municipality—as by the distribution of the moneys it tended to aid and to influence the poorer schools to keep them open.

I think myself that it is the most equitable mode for the distribution of such a fund, as according to the work done, and it is one of the modes which the Legislature has authorized for the distribution of the yearly government grant, for the sub-sec. 3 of section 129 of the same Act of 1874, provides if the Chief Superintendent deems it expedient to direct the distribution of the public school fund among the several school sections according to the length of time in the year during which a school has been kept open.

It appears there are 21 school sections in the township, and the aggregate amount derived from the fund and distributed in 1874 was about \$950, and it is complained that seven sections did not get their ratable share, the whole amount alleged to be wrongly appropriated being about \$200, and one section, No. 13, containing the village of Odessa, claiming of that amount about \$100, as that section pays in salaries about one-sixth of the aggregate amount paid by the 21 sections, and it is for the benefit of that section that this application is principally made, and it is evident that these seven sections are the wealthiest and most populous, and the municipality under the authority of section 153, could have done what the by-law is alleged to do, distributing the fund as it has done by aiding the poorer schools, by adopting another mode.

On the whole, we do not think we ought to interfere by making the rule absolute, but as the case may be said to be one not free from doubt, there will be no costs.

HARRISON, C. J., concurred.

WILSON, J., was not present at the argument, and took no part in the judgment.

Rule discharged.

2. IN THE MATTER OF THE NIAGARA HIGH SCHOOL BOARD AND THE CORPORATION OF THE TOWNSHIP OF NIAGARA.

High Schools—37 Vic. ch. 27, O.

Held, on rehearing, affirming the judgment of Wilson, J., 37 U. C. R. 529, that under 37 Vic. ch. 27, O., the High School Board for a district consisting of two municipalities, a town and a township, could call upon one of the municipalities, the township, to contribute towards the erection of a school-house in the other municipality, and not merely towards its maintenance.

REHEARING, from a decision of Wilson, J., sitting alone.

In Michaelmas term, James A. Miller obtained a rule nisi for a mandamus to compel the township of Niagara and the reeve, &c., of the township forthwith to raise \$2,008.47, the amount or proportion required to be raised and paid by the said township for the purpose of providing for school accommodation for the Niagara High School, as required by the demand of the said board, in pursuance of the powers given them by the Consolidated High School Act of 1874.

On the 7th January, 1876, Wilson, J., gave judgment, making the rule absolute.

The application will be found reported in 37 U. C. R. 529.

During this term, May 30, 1876, the motion came on by way of rehearing.

M. C. Cameron, Q. C., for the parties moved against.

James A. Miller, contra.

The argument was similar to that before Wilson, J.

June 28th, 1876. HARRISON, U. J.—This is a re-hearing from the decision of Wilson, J., in vacation, reported 37 U. C. R. 529, making absolute a rule for a writ of mandamus.

The only question argued before us was, as to the obligation of the township of Niagara to contribute towards the erection of a

High School in the high school district, consisting of the town and township of Niagara.

Other questions might have been presented—see *Re Board of Education of Perth and the Corporation of the town of Perth*, 39 U. C. R. 34,—but as the proceeding is in the nature of an appeal, we shall dispose of it on the ground of appeal taken, and on no other ground.

The decision of the question raised must depend upon the construction to be placed upon sections 45 and 46 of the Act consolidating and amending the law as to Collegiate Institutes and High Schools: 37 Vic. ch. 27, O.

In order rightly to understand the meaning of the two sections, it is necessary to go back a little in the Act and examine some of the preceding sections.

The Act is intitled “An Act to amend and consolidate the law relating to the Council of Public Instruction, the Normal Schools, Collegiate Institutes, and High Schools.”

It has the appearance of being arranged with more than ordinary care and skill.

It is preceded by the following table of contents:—

- | | |
|------|--|
| Part | I. Constitution and duties of the Council of Public Instruction. |
| “ | II. Appointment and duties of the Chief Superintendent. |
| “ | III. High Schools and their districts. |
| “ | IV. Municipal councils and their duties. |
| “ | V. High School trustees and their duties. |
| “ | VI. High School grants and other moneys. |
| “ | VII. High School masters and teachers. |
| “ | VIII. High School sites and other property. |
| “ | IX. Miscellaneous provisions. |
| “ | X. Repealing and confirming clauses. |

Some of these heads are afterwards subdivided in the body of the Act.

In construing the Act we may properly refer to these headings and sub-headings in matters of doubt: See *Lawrie v. Rathburn*, 38 U. C. R. 255.

In the present case we are only concerned with headings 3 and 4, and the sections thereunder placed.

They are as follows:—

Part III. High Schools and their districts.

1. Existing divisions—Agreements.
2. Name of High School—Place of holding the school—Its discontinuance.
3. High School districts to be defined.
4. Establishment of new High Schools.
5. Powers of boards in High School districts.
6. Cities and towns separated to be counties.
7. High School districts in towns separated.

1. Existing divisions—Agreements.

All High School and Collegiate Institute divisions and districts, &c., existing since the Act took effect, are to continue subject to the provisions of the Act: Sec. 34.

2. Name of High School—Place of holding the school—its discontinuance.

There is to be a High School or High Schools or Collegiate Institute in every county or union of counties, to be distinguished by prefixing to the words High School or Collegiate Institute the name of the city, town, or village within the limits of which any High School or Institute may be situate: Sec. 35.

The place of holding any High School in a county or union of counties may be changed at the end of the then civil year by the county within which it is established, by a by-law or resolution passed for that purpose, &c.: Sec. 36.

Every county council, at or before its June session in any year, has authority (with the consent of the Lieutenant-Governor, on the report and recommendation of the Chief Superintendent of Education), to decide upon the discontinuance at the end of the then civil year of any existing High School in any part of the county within the jurisdiction of the county council: Sec. 37.

3. High School districts to be defined.

The County Council is from time to time to determine the limits of a High School district for each High School or Collegiate Institute existing within the county and within its municipal jurisdiction: Sec. 38.

The County Council may (under the restrictions presented in the next succeeding section), form a village or town and the whole or part of one or more adjoining townships within its jurisdiction into a new or additional High School district in the county: Sec. 39.

4. Establishment of new High Schools.

No additional High School is to be established by a County Council in any county except at or before its June session in any year, nor unless the High School Fund shall be sufficient to allow