In framing a system so complicated as that established by the Common School Acts, it is impossible to foresee and provide for all possible circumstances. The statutes are not explicit on this particular point of indemnifying the school trustees (as trustees in other cases are indemnified) against legal charges thrown upon them in the discharge of their duty, where they had not exposed themselves to such charges by any misconduct on their part, but we think it comes fairly under the general provision respecting expenses.

In the case of Stark v. Montague et al. (14 U. C. R. 473) we had this general question before us, and we then took the same view of this question. There is no ground, we think, for any of the other objections taken.

BURNS, J.—It appears to me the rule for quashing the by-law should be discharged. At present I think the trustees had power to assess, or call upon the municipal council to assess, the school division for the costs they are put to in defending a suit unjustly brought against them. If the trustees were obliged to advance the necessary funds to carry on the defence out of their own pockets, and trust to be reimbursed by process of law against the person who brought such a suit, I am afraid few would be willing to accept a trust which imposed such a liability. The trustees are a corporation, and in this instance were sued as such, and there is nothing improper in their being, I mean as a corporation, placed in funds to meet the demands which the defence of a lawsuit rendered necessary. Corporations cannot, any more than individuals, carry on the defence of lawsuits without the means to do so; and it cannot be expected that the individual members who compose the governing body of the corporation are to pay in the first instance from their own means, and trust to chance or a new set of trustees to provide the means to reimburse them at a subsequent period. There can be no question that it was legal for the governing body to provide the means of discharging their liability, without waiting to see if the costs could be made from Ann Tiernan.

The chief ground of complaint is, that the complainant and others set themselves off as a separate school, being Roman Catholics, and therefore that they should not be assessed to pay these expenses. They, it appears, did give notice to the Reeve, under the 4th section of 18 Vic., cap. 131, but the suit, the expenses of the defence of which the by-law is to provide for, was commenced before their separation. The 12th section of the same act provides that whoever shall belong to a separate school, and a supporter of it, shall be exempted from the payment of all rates imposed for the support of common schools, and of common school libraries, for the year next following after the first of February in any year, provided they give notice before the first of February to the clerk of the municpality. Two things are provided for, and nothing more, that they shall be exempted from contributing to, and even those only upon giving notice that they belong to and support a separate school. I incline to think they would not, even if they gave notice to the clerk of the municipality of their supporting a separate school, be exempted from the payment of their share of the expenses of the defence of a lawsuit incurred before the separation, but in this case it does not appear that the relator has taken the necessary step to prevent his being rated the same as other proprietors or tenants. It appears to be absolutely necessary that he should show he is a supprrter of a separate school, for a separate school may have been asked for, and yet the person may not be a supporter of it. I do not mean to say, if that had been shown, that the applicant would in this case have been excused contributing to the expenses, but I take it that showing he is a supporter of a separate school, and that he notified the clerk of the fact, are preliminary steps to asking that the by-law shall be quashed. The rule should, I think, be discharged with costs.

McLEAN, J., concurred.

Rule discharged.

CARSCALLEN v. MOODIE (SHERIFF) AND DAFOE, (DEPUTY SHERIFF.)

Bill of sale—Execution—Time allowed for filing—Priority—Change of possession—Land and chattels assigned together—12 Vic., cap. 74, 13 & 14 Vic., cap. 62.

An execution coming in before the filing of an assignment which requires to be filed, is entitled to prevail, though a reasonable time for filing may not have elapsed since the execution of the assignment.

Where the land and buildings on which chattels are, are conveyed by the same deed as the chattels, the assignee, though held to be in possession of the land by virtue of his deed, is not to be looked upon as having taken possession of the chattels also, so as to dispense with filing the assignment; he must either actually take possession of the buildings, or the assignor must go out.

C. owning a mill, with the machinery in it, assigning the whole property, both real and personal, including the lumber, stock in trade, &c., on the premises, to the plaintiff, in trust for himself and other creditors. The deed was registered in the registry office on the day of execution, *but was not filed in the county court*, when, *on the day after its execution*, the sheriff seized the machinery, &c., under a *fi. fa.* against goods, nor was it afterwards filed. The assignor did not leave the mill, but continued to work it with his men for the benefit of the assignee.

Held 1. That there was not such an actual and continued change of possession as to dispense with filing the assignment, and

2. That for want of such filing the *fi. fa.* must prevail.

(15 Q. B. R. 92.)

TRESPASS *quare clausum fregit*, and seizing goods and chattels of the plaintiff, and converting them, &c., and tearing down and removing and converting fixtures.

Pleas—1. Not guilty.

2. As to taking the goods, that they were not the plaintiff's goods.

3. That the *fixtures*, goods and chattels, &c., were not the fixtures, goods and chattels of the plaintiff.

4. That the close and building mentioned in the declaration were not the property of the plaintiff.

5. Justification under a *fi. fa.* against the goods of one Cadwell, at the suit of R. and R. S. Patterson, upon a judgment in the Common Pleas, and entering upon the close and in the building to seize goods of Cadwell, which were then there.

The plaintiff took issue on the first four pleas, and replied *de injuria* to the fifth plea.

At the trial, at Belleville, before *Robinson, C.J.*, it appeared that one Cadwell, having become involved in debt, on the 30th of October, 1855, made an assignment by deed of certain real estate in and near Belleville, to the plaintiff Carscallen and one Hancock, reciting that it was for the purpose of securing his debt to them of £800, and for the benefit of his other creditors, whose names, with the debts due to them, were mentioned in a schedule annexed to the deed.

And by the same deed he assigned to Carscallen and Hancock all the goods and chattels, stock in trade, plank road stock, and steam-boat stock set forth in another schedule attached to the deed. The whole was assigned upon trust to be sold, and the proceeds applied, first, in reimbursing all expenses attending the trust; next, to paying to Carscallen and Hancock the debt of £800 due to them in full, and to divide the residue rateably among the creditors mentioned in the schedule, "who may think proper to avail themselves of the same," any surplus to be paid over to the assignor.

On the 4th of January, 1856, Hancock released to the plaintiff Carscallen all his interest under the assignment.

The debts in the schedule exceeded in all £4000, one of them to H. Bull & Co. being set down at £2,400, and in the schedule Messrs. Patterson were set down as creditors to the amount of £150.

In the other schedule of goods and chattels assigned, among other things, were set down one planing machine, one small ditto, one shingle machine, one rip-saw and frame, one tenoning machine, three circular saws, one circular wood-saw, one sticker, one boring machine, and a turning lathe.

Cadwell had been the owner in fee of land included in this assignment, on which a large building was erected that had been put up as a steam grist-mill. The assignment was drawn up in proper form by an attorney, who proved its execution, and that it was correctly dated.