

ing to law, as owner and occupant, the collector's roll showing that they were assessed as freeholder and householder.

3. That it was not proved that the defendant had any authority to collect taxes at the time the seizure was made.

4. That the collector's rolls shew that the plaintiff's name is not set down in full as required by the Statute, and that the amount which is chargeable is not put down on either roll as "Town Rate," or for what purpose the party was assessed.

There were other objections taken both at the trial and on the appeal book, but the foregoing were all that were taken at the trial and relied on the hearing of the appeal. There was another objection taken on the appeal book, but it did not appear to have been raised in the Court below, and it was not, therefore, argued.

The principal facts in evidence appeared to be as follows: The defendant put in two collector's rolls for 1865—one for the town taxes of the Town of Belleville, the other for school tax. In each of these the property was assessed, as No. 43, west of Front Street, and it was proved that it was a stone house of which James Blacklock was entered on the roll as the "Householder," and the plaintiff, by the name of C. L. Coleman, as the "Freeholder." It was proved that each of these rolls was made out by the Town Clerk, and after certifying them he delivered them to the Treasurer, who handed them to the defendant. A By-law was proved, passed by the Town Council in relation to the town tax. The Town Clerk proved that he got notice from the Treasurer of the Board of School Trustees of the rate imposed by them, but he could not say if it was in writing: he got no copy of the resolution under their corporate seal. It was also proved that the school rate was levied by resolution, and not by by-law of the School Trustees; and that Board, by a resolution passed on the 27th of November, 1865, appointed the defendant their collector for 1865. He was collector of the town taxes for Ketcheson and Coleman Wards in 1864, 5, and 6.

There was sufficient proof that the defendant demanded the taxes of the plaintiff, who refused to pay them, insisting on their being collected from Blacklock, who it appeared continued to reside in Belleville, though he gave up possession of these premises in April, 1865, after which it was sworn that the plaintiff had possession of them. The plaintiff was present when the seizure was made. He admitted that a demand had been made on him, and he then refused to pay. At that time the town tax was mentioned as being \$40, and the school tax \$16, and it was understood to be for premises formerly occupied by Blacklock.

It was agreed that a verdict should be entered for the defendant, with leave to the plaintiff to move to enter a verdict for himself, the goods being admitted to be equal in value to the taxes claimed. A rule nisi in pursuance of the leave reserved having been obtained, and after argument discharged, the plaintiff appealed.

C. S. Patterson for the appellant, Dougall, contra.

DRAPER, C. J., delivered the judgment of the Court.

As to the first objection: the Board of School Trustees apparently intended to act (though we must say, as far as is shewn, with very inadequate attention to the language of the Statute) under the 11th subsection of sec. 79 of the Common School Act, Consol. Stat. U. C., ch. 64, which authorizes them to prepare and lay before the Municipal Council an estimate of the sums they consider requisite for the Common School purposes of the year. It is proved that they passed a resolution for this purpose. A book containing it was produced at the trial, but no copy of it is before us. No objection seems to have arisen as to its being sufficient in terms, if a resolution and not a by-law constituted an "estimate" within the Statute. The Treasurer of the School Trustees gave notice of it to the Town Clerk of Belleville, whether in writing or not he could not say, though it certainly was not authenticated by the corporate seal of the Board of School Trustees. This mode of proceeding would, we have little doubt, have been held insufficient on an application for a mandamus to the Town Council to enforce payment, (see *School Trustees v. Port Hope*, 4 C. P. 418; *School Trustees v. City of Toronto*, 20 U. C. R. 302); but no objection was raised by the town corporation, and their Clerk acted upon the communication made to him as an estimate laid before the municipality. Under these circumstances, we are of opinion that an individual rate-payer cannot be heard to take the objection.

The second objection is rested upon sec. 24 of the Assessment Act, which declares that when the land is assessed against both owner and occupant the assessor shall on the roll add to the name of the owner the word "owner," and to the name of the occupant the word "occupant," and the taxes may be recovered from either. But this is the collector's, not the assessor's roll. It is made out under sec. 89, which requires the name of the person assessed, but does not require either the word "owner" or "occupant" to be added thereto. The objection, therefore, has not the foundation on which it was said to be based, and assuming that the Statute

was imperative on the assessor, and not merely directory, it does not extend to the collector's roll.

The third objection attacks the proof of the authority, and it may be said the authority itself, of the collector to collect the taxes at the time the seizure was made.

This objection seems to concede that the collector had at one time the necessary authority, and the argument in support of it involved that concession, for it was pointed out that the collector was appointed only for the year 1865, and the 104th section of the Assessment Act was expressly referred to for the purpose of shewing that he should have returned his roll on the 14th of December, and it was urged that the time was not legally extended; and moreover it was strenuously argued that the case of *Newberry v. Stephens* (16 U. C. R. 65) was distinguishable, on the ground that there the time had been extended, while here no extension was proved.

The difficulty arising from there being two rolls, which, unless blended into one, would not shew that both town and school tax were directed to be levied and collected, and from the want of any proof that the Town Clerk was authorized by the Municipal Council to act upon the estimate of the Board of School Trustees, was not presented on this objection for our consideration, although it was admitted during the argument of the defendant's counsel (who evidently rested his case on the theory that the distress was made under the authority of the School Trustees), that the estimate never was laid before the Town Council. We take the only question which we are to dispose of on this objection to be, whether the defendant had a continuing authority to collect and enforce payment of these taxes when he made the distress.

The facts are simply, that he was duly appointed collector of the municipality for the year 1865-1866. This, as regards 1865, is conceded both by the form of the objection and by the argument used in support of it, that the time for returning his roll was not extended. He received the two rolls spoken of in 1865, and he held them both in 1866, when he made the distress.

The plaintiff contends that under these circumstances, as the Statute required him to return his roll on the 14th of December, 1865, he became *functus officio*, at least as regarded the compulsory powers of enforcing payment.

On the other hand, the defendant relies on the 174th section of the Municipal Act: "The Chamberlain or Treasurer may be paid a salary or per centage, and all officers appointed by a council shall hold office until removed by the council."

The case of *Newberry v. Stephens* (16 U. C. R. 65), appears to us to be in the defendant's favour, though the Court were not unanimous. But Robinson, C. J., and Burns, J., both held that the collector for 1855, who was again collector for 1856, could in the latter year enforce by distress payment of rates imposed for 1855, though at the time he distrained there was no resolution in force extending the time for him to return his roll. This decision does not appear to be rested either on the ground that the same person was the collector for both years, or that there had been an extension which expired before, and that another extension was made after the distress was made. If the collector was *quoad* the taxes of 1855 *functus officio* on the termination of the first extension, he was without authority when he distrained. The subsequent extension could not have an *ex post facto* operation.

This Court acted upon *Newberry v. Stephens*, or at least in accordance with its principle, in the *Chief Superintendent of Schools v. Farrell*, (21 U. C. R. 441); and the Court of Common Pleas recognized its authority in *McBride v. Gardham*, (8 C. P. 296).

On these authorities, we think this objection untenable.

There remains only the fourth objection. So far as it regards the not setting down the plaintiff's name in full, it was, we think, properly given up on the argument; but strong reliance was placed on the allegation that the two collector's rolls shew that the amount which is chargeable against the plaintiff is not put down in either as a "Town Rate," nor is it otherwise shewn for what purpose he was assessed.

Each of these rolls is headed "Collector's Roll for the Town of Belleville," and to this heading is added in one roll, "Town Purposes," in which in the column headed "Town or Village Rate," nothing is entered; but in another column headed "Total Taxes. Amount," are inserted the figures, "\$40."

In the other there are added to the general heading the words, "School Purposes," and there is a column headed, "General School Rate," in which are added the figures "\$16," and in the column headed "Total Taxes. Amount," there is nothing entered. In each roll the names James Blacklock and C. L. Coleman are entered, and the property and the valuations thereof are alike in each.

We are constrained to the conclusion that this objection has not been displaced. Treating the two rolls as constituting in law one collector's roll, this one roll constituted his sole authority in the