lowing circumstances: Defendants in 1894 ordered a bill of lumber from th plaintiff, amounting to $615. This lumber was supplied, and afterwards a further quantity was ordered. Payments were made on account of the $615 order, some of which were after the second order was given. The plaintiff's claim in the action was limited as he contended to the lumber supplied on the second order. Defendant pleaded "never indebted." On the cross examination of the plaintiff at the trial, the order for $615 was mentioned, and defendant's counsel contended that the account sued on was a part of an unsettled account exceeding $600, that the two orders for lumber constituted a running account, and that some of the items charged in the account sued on were included in the $615 order. The County Court judge found that the $615 order was a separate transaction, and had been settled, and that the account sued on was a different account and had never been settled. After some evidence had been given, the trial was adjourned, when the defendant moved for prohibition.

Held, that it was competent, and indeed necessary, for the judge to inquire into and decide the facts which would determine the question of jurisdiction, and as the County Court judge had decided the facts in favour of jurisdiction, the Court above should not interfere by reviewing his decision, except under very exceptional circumstances. *Joseph* v. *Henry*, 19 L.J.Q.B. 368, and *Elston* v. *Rose*, L. R. 4, Q. B. 4 followed. Application dismissed with costs.

Wilson, for plaintiff. *McKerchar*, for defendant.

Bain, J.] WINNIPEG *v.* C. P. R. Co. [Oct. 15.

Municipality—Construction of contract—Municipal taxes do not include school taxes.

This was a demurrer to the plaintiff's replication in an action commenced before the coming into force of the Queen's Bench Act, 1895, against the defendants for school taxes levied upon their property. Defendants had pleaded exemption under a by-law of the city, passed in 1881, by which it had been enacted that all property of the defendants then or thereafter to be owned by them for railway purposes within the city should be exempt for ever from all municipal taxes, rates, levies and assessments of every nature and kind. The replication simply set out the by-law in full.

Held, that school taxes are not included in the term "municipal taxes" and that under section 135 of the Assessment Act, R.S.M., c. 101, as amended by 57 Vict, c. 21, s. 3, the plaintiffs had a right to sue for them, being merely constituted by the legislature as the agents through whom the school corporation levies the amounts they require for education purposes. Judgment for plaintiffs on the demurrer.

Howell, Q.C., and *Campbell*, Q.C., for plaintiffs. *Aikins*, Q.C., and *Culver*, Q.C., for defendants.