the taxable property in the section, a sufficient sum for the payment of the interest on the sum so borrowed, and a sum sufficient to pay off the principal within ten years.

The by-law recites this clause as giving the councils authority to levy and collect by special rate in school-sections that have become indebted to them by loan. The clause contains no such authority, and one can hardly understand how any one having the statute before him could put such a construction on the section.

The by-law further recites, that school-section No. 11 did, on the 26th of December, 1862, borrow of the municipality the sum of $400 *on the above condition*. What is meant or intended by the above condition we cannot make out; and after stating in what manner the $400 are to be repaid, the by-law enacts that there be raised, &c., from the rateable property of shool-section No. 11 the sum of $262, to meet a certain portion of the loan made on the 27th of December, 1862, amounting to $400 and interest, due on the first of January, 1865. What certain portion this refers to does not appear, or for what amount of principal or interest.

On the face of the by-law no authority appears for the loan made by the municipality in 1862 to the school-section, nor was any authority by statute or otherwise cited or referred to in the argument authorizing any such loan. It does not even appear by the by-law that it was a loan for any school purpose, or for what purpose it was made, or upon whose application.

The only affidavit filed on the part of the municipality is that of Mr. Parker, the now deputy reeve of the township, who states that he was reeve of the township at the time the loan of $400, in 1862, to the trustees was made, and that as far as he was aware he had no knowledge that there was any difficulty between the ratepayers of the section and the school trustees, although subsequent circumstances indicated that one of the council might have known that there was. How or under what circumstances the loan was made he does not state, although his attention must have been drawn to the affidavits filed on the application, shewing the loan was asked for on the personal responsibility of two of the then trustees, and granted on giving notes of hand, signed by them, for the amount.

Mr. Parker further states, that the loan was made to the trustees out of the Clergy Reserve funds of the township. With reference to this latter statement, it was mentioned during the argument by the counsel for the municipality, that the corporation had authority to apply the Clergy Reserve funds for educational purposes, and to lend such funds to school-sections, and it was argued that the loan in question being made by the township council out of their own Clergy Reserve funds to the trustees, such a proceeding was in effect giving to the trustees authority to borrow the amount loaned to them under the provisions of the 35th section of the School Act; but on referring to the statute 27 Vic., ch. 17, which gives the authority to township councils to loan surplus moneys derived from the Clergy Reserve fund to school-sections, and also authorizes trustees to borrow such moneys for purchasing school sites, &c., we find that statute was not passed until the 15th of October, 1863, while the loan in this case was made on the 27th of December, 1862, near a year before the passing of the act, and consequently not under the authority of that act.

As to the third objection, the legislature wisely enacted, and made it compulsory, by the 35th section of the School Act, upon township councils, in the event of their granting authority to school-sections to borrow money for any of the purposes referred to, that the township council should also provide the means for securing repayment of the amount borrowed, by the levying in each year through their own collector, by a special rate on the taxable property in the school-section, sums sufficient to pay off the interest and principal within ten years. In the present case the by-law only provides for the levying of a sum to pay off a portion of the principal and interest, and no provision is made for payment of the balance.

Upon these several grounds we are of opinion the by-law should be quashed with costs.

Rule absolute.

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### In re Scott and the Corporation of the County of Peterborough.

*Survey—C. S. U. C., ch. 93, secs. 6-9—C. S. C. ch. 77, secs. 58-59.*

The county council passed a by-law directing a township municipality to levy and collect from *the patented and leased lands* of the township, a certain sum required to reimburse the expenses incurred in a re-survey of the township. *Held*, that the by-law illegal, for the statute directs that such expense shall be defrayed by the "*proprietors*" of the lands issued.

*Semble*, that the jurisdiction to pass such a by-law should appear on the face of it, by shewing a survey such as the statute contemplates.

*Quære*, whether the act authorizes the re-survey of a whole township.

[Q. B., E. T., 1866.[

*Robt. A. Harrison* obtained a rule during last Hilary term, calling on the defendants to shew cause why so much of a by-law, No. 262, of the corporation of the County of Peterborough, which enacts that the municipality of Smith and Harvey be required to levy and collect from the patented and leased lands of the township of Harvey such a rate as will produce $2541·5, to reimburse the expenses of the re-survey of the township of Harvey, should not be quashed without costs, for illegality, on several grounds: among others—1. That the jurisdiction or power of the corporation to levy or direct the levy of the $2541·5, is not shewn on the face of the by-law, in this, that it is not shewn that such a survey as the statute contemplated had been previously made as the statute directs; and that the survey was not in fact one such as the statute contemplated. 2. That a direction to levy the same from the patented and leased lands of the township of Harvey, and not from the resident landholders, as mentioned in sec. 6, ch. 69, Consol. Stat. U. C., and sec. 68, ch. 77, Consol. Stat. C., or the proprietors, as mentioned in sec. 9 of the first mentioned statute, and sec. 61, of the last mentioned statute, is bad.

During this term *C. S. Patterson* shewed cause, citing *Hodgson* v. *The Municipal Council of York and Peel*, 13 U. C. Q. B. 268; *Tylee* v. *The Municipal Council of Waterloo*, 9 U. C. Q. B. 572.

*Robert A. Harrison*, in support of the rule, cited *Cooper* v. *Wellbanks*, 14 U. C. C. P. 364; *Grierson* v. *The Municipality of Ontario*, 9 U. C. Q. B. 630; *Tanner* v. *Bissell*, 21 U. C. Q. B. 553.