As to entitling the affidavits, the applicant must take his chance of their being held regular, after cause shewn. At *present*, we can only say, we would grant the rule, so far as that exception is concerned.

The cases shew that if entitled as in a cause (before rule *nisi* granted), as The Queen *v.* ———, they should be rejected, but we find nothing that would shew this kind of entitling to be fatal. It is clearly unnecessary, and only entitling the affidavits in the court would be better, because then there would be no room for question; but surely these are affidavits in the matter of complaint, &c.; that is, to support a complaint by the one council against the other.

It is for the learned counsel to consider whether he will take his rule subject to the exception to the entitling of his affidavits, which of course the County Council will be at liberty to take; or whether he will withdraw his affidavits and renew his application early next term, upon affidavits free from that exception.

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### *In re* Cæsar and The Municipality of the Township of Cartwright.

*Resolutions of Municipal Corporations.*

The Court has no jurisdiction over resolutions of municipal corporations, to set them aside summarily in the same manner as by-laws. [12 U. C. R. 341.]

*C. Robinson* moved for a rule on the Municipality of Cartwright, to shew cause why the *resolution* passed by them on the 29th of December last, respecting the pay of the councillors for the said township, should not be quashed with costs, on the ground that they have exceeded their jurisdiction and powers in passing such resolution, and that the same is illegal.

This resolution was authenticated in the same manner as by-laws are under the statute 12 Vic., ch. 81, when they are intended to be moved against.

The paper transmitted was in these words:—

"A by-law was brought in by Dr. Howe to empower the council to receive pay for their services for the present year and in future, and to receive the sum of six shillings and three pence per day."

A copy of a resolution passed in council the 29th day of December, 1853.

"Moved by Howe, seconded by Taylor, that the clause referred to in the resolution or by-law respecting the councillors' pay, where it says six shillings and three-pence per day, shall be repealed, and to only be five shillings per day, which was carried."

The clerk certified the above to be a true copy taken from the journal of the Municipal Council of the township of Cartwright; and that there had been no other by-law signed in relation to the above proceedings; and he added, at the foot of this, a certificate that there never was any by-law written; but that it was merely mentioned by Howe, and entered in the council book as above stated.

This was all certified under the date of the 7th of September, 1854.

Daniels *v.* The Municipality of Burford, 10 U. C. R. 478. Grant on Corporations 378, were cited in support of the application.

*Cur. adv. vult.*

Robinson, C. J., delivered the judgment of the court.

The questions are—

1. Is this resolution *properly* before us, as to its mode of being verified.

2. If so, can we notice it, as there is no authority to bring resolutions before us, as in the case of by-laws; or should the motion be for a *certiorari*, in the first place.

3. Does a *certiorari* lie to a municipal council to return their resolutions appropriating money, or are they merely void acts, not being by by-law.

4. Have we authority to quash such resolutions when illegal.

Without going further into these points than is necessary for disposing of this application, we are of opinion that we cannot grant the rule nisi to quash the resolution. It is not before us, so that we can notice it. Nothing is said in the municipal acts of this court quashing resolutions of the councils, but only their by-laws. If they pass illegal resolutions, such acts of theirs are simply void, and we doubt not they incur a liability by so transgressing their authority. The English statute respecting municipal corporations, 7 Wm. IV. and 1 Vic., ch. 78, sec. 44, makes provision for removing resolutions or orders of municipal corporations appropriating monies, in order that, if they are illegal, a convenient remedy may be promptly obtained. We find no such provision in our statutes, and we have no common law jurisdiction over them, to set them summarily aside. They are not like the orders of justices in sessions, which are judicial acts of a court of record.

Rule refused.

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### Gillis *v.* Great Western Railway Company.

*G. W. R. W. Co.—Obligation to fence.*

The declaration averred that it was defendant's duty to keep up sufficient fences along their line of railway, and that by the neglect of such duty the plaintiff's mare, which was lawfully depasturing on the adjoining land, got upon the track and was killed. No negligence was charged against defendants in the management of their train. It was proved that the mare had escaped from her stable on another farm, and was trespassing on the lot from which she got upon the railway.

*Held*, (confirming Dolrey v. Ontario, Simcoe & Huron R. R. Co., 11 U. C. R. 600,) that the plaintiff could not recover; the defendants being bound to fence only as against the owner of the adjoining lands. [12 U. C. R. 427.]

Case for driving defendants' locomotive over a mare belonging to the plaintiff and killing her. The declaration averred that it was the duty of defendants to keep sufficient fences upon the line of their railway, and that they neglected that duty, and that by reason of such neglect the mare of the plaintiff, which was at the time "depasturing and lawfully being in and upon certain land situate in the township of Mosa, and adjoining and abutting upon the said railway of the defendants, and to and upon the land taken and found necessary for the uses and convenience thereof, strayed and escaped out of the said adjoining land upon the defendants' railway, and was killed," &c.

The defendants pleaded that the plaintiff's mare was wrongfully and unlawfully depasturing and being upon certain lands adjoining to the said lands of the defendants, and to the said railway, which lands were not the lands of the plaintiff, but of one Richard Roe, who had not given license for the said mare to be there; that she strayed from them upon the defendants' land adjoining, and thence, at the said time when, &c., on the said railway, and then being so upon the said railway, was accidentally, without any design on the part of the defendants or their servants, killed, in manner and form, &c.

The plaintiff replied *de injuria*.

At the trial at London, before *Macaulay, C. J. C. P.*, it was proved that the plaintiff's mare had been kept in a stable on the farm of the plaintiff's father, and that she escaped out of the stable on the 8th of February last, and got upon the railway through a gap in the fence, upon a farm two lots off from that from which she escaped.

The learned Chief Justice told the jury that if the mare was