of the propensity of the animal, and I accompanied that statement with the strong observation mentioned in that case, although the admission in the present case appears to be much stronger than that in *Thomas* v. *Morgan*. I thought, therefore, the jury having found for the plaintiff, he was entitled to retain his verdict on the second count.

As to the third point, the plaintiff's property in the mare, the defendant relied on the expressions of the father of the plaintiff, who was called as witness. He said he gave the mare to plaintiff, and in cross-examination he said, "when the mare was foaled, he had said he would give her if she turned out well, and that was all that took place." This might be equivocal, and so I thought it a proper question for the jury. They appeared to think that as the plaintiff had the mare at three years old in his own field, the expressions used had reference to a promise to give, made when the mare was a colt, which had been subsequently carried into effect; and having found for the plaintiff on this point, I had no reason to be dissatisfied with the finding.

On the fourth point, whether the plaintiff was bound to elect one of the two counts, if my conclusions be correct, he had a good cause of action on both, and technically they were distinct, the one for an injury to his close, with a damage to his personal property, and the other for a distinct injury to the latter. Substantially, perhaps, there was only one wrong complained of, but then the plaintiff only got damage in respect of that, and so I could see no objection to the finding a general verdict on both counts, as would have been the case if either of the two counts had not been for any cause maintainable, in which case, of course, there should have been a new trial.

I therefore, upon the whole case, discharged the rule *nisi* for a new trial.

From this judgment the defendant appealed, on the following grounds:

(To be continued.)

COMMON PLEAS.

(Reported by S. J. VanKoughnet, Esq., M.A., *Barrister-at Law, Reporter to the Court.)*

The Chief Superintendant of Education in re Hogg v. Rogers.

School Trustees—Power to levy school rate at any time.

Under the acts relating to common schools, school trustees may *at any time* impose and levy a rate for school purposes: they are not bound to wait until a copy of the revised assessment roll for the particular year has been transmitted to the clerk of the municipality, but may and can only use the existing revised assessment roll.

[C. P., E. T., 1865.]

This was an appeal from a judgment of the Judge of the Fourth Division Court of the county of Grey. The action was trespass against the defendant, a collector of school rates for Union school section number one, in the township of St. Vincent, for unlawfully seizing and detaining a horse, the property of the plaintiff. The warrant under which the seizure took place was under the seal of the corporation of the school trustees of Union school section number one, in the said township of St. Vincent. It was dated February 22, 1864. Annexed to the warrant was a rate bill or list taken from the assessment roll of St. Vincent for the year 1863, dated February 20, 1864, but endorsed, Rate bill 1863. Plaintiff refused to pay the rate, whereupon defendant seized the horse upon the premises assessed. About four or five days afterwards, plaintiff paid the amount for which he had been assessed, and the horse was restored to him. The learned judge held that the trustees ought to have waited for the making and completion of the assessment roll for 1864, before issuing their warrant to the collector to levy the rate, and that the collector receiving in February a warrant for the collection of such a rate based upon the assessment roll for 1863, the year preceding, was not legally authorized to execute such warrant; that the only roll which a township collector is authorized to receive and act upon is the roll made up, finally revised and certified, and delivered to him on or before the 1st October in the year in and for which the taxes mentioned in the roll are to be collected, and the collector's power under his roll ceases on the 14th December following, unless prolonged by express by-law or resolution of the county council; and that a school collector has no greater power than a township collector, and must proceed under the same restrictions as to time and authority in the exercise of his duties. He therefore directed a verdict for plaintiff.

From this judgment the Chief Superintendent of Education in Upper Canada appealed. The case was first set down in the paper in Michaelmas term last, when *Hodgins* appeared for the appellant, and cited Con. Stats. U. C., ch. 64, sec. 27, sub-secs. 2, 11, 20; secs. 83, 109, 125; *Craig* v. *Rankin*, 18 U. C. C. P. 186; *Vence* v. *King*, 21 U. C. Q. B. 187; *McMillan* v. *Rankin*, 19 U. C. Q. B. 356, *Gillies* v. *Wood*, 13 U. C. Q. B. 357; *Chief Superintendent of Schools re McLean* v. *Farrell*, 21 U. C. Q. B. 441; *Doe* v. *McRae*, 12 U. C. Q. B. 525; *Doe re McGill & Jackson*, 14 U. C. Q. B. 113; *Spry* v. *Mumby*, 11 U. C. C. P. 285.

On a subsequent day during the same term, *D. A. Sampson* appeared for the respondent, and the case was on his application allowed to stand over till the following (Hilary) term when he again appeared, and cited *Timon* v. *Stubbs*, 1 U. C. Q. B. 347; Rob. & H's. Dig. "Notice of Action." *Haight* v. *Ballard*, 2 U. C. Q. B. 29; *Donaldson* v. *Haley*, 13 U. C. C. P. 81; *Bross* v. *Huber*, 18 U. C. Q. B. 282; *Dunwich* v. *McBeth*, 4 U. C. C. P. 228; *Wilson* v. *Thompson*, 9 U. C. C. P. 364; Con. Stats. U. C., ch. 64, secs. 10, 16, sub-secs. 4, 34; ch. 49, sec. 13.

Hodgins, contra, cited *Newbury* v. *Stevens*, 16 U. C. Q. B. 65.

J. Wilson, J., delivered the judgment of the court.

The sole question in this case is, whether school trustees have authority in any year, before a copy of the revised assessment roll of that year has been transmitted to the clerk of the municipality, to impose and levy a rate for school purposes, upon the assessment roll of the preceding year.

The learned judge in the court below has taken great pains to review the common school acts in his judgment, but with great deference to his opinion, we have been unable to adopt his conclusions.