

are all founded upon the assumption that it is a by-law passed for raising money for services not belonging to the current year, or to pay debts not falling due within that year. But we do not see that we should be warranted in treating this by-law as one of that description. For all that appears on the face of it, it is open to no such objection. The interest and sinking fund spoken of may have no relation to any other than the current year, and the same may be said as to the improvement of roads and bridges, which required money to be laid out upon them. The Statutes do require that by-laws to be passed for certain purposes shall contain particular recitals and provisions, but from the absence of any such recitals and provisions, we are not at liberty to inter anything against the validity of the by-law, unless we can see clearly on the face of the by-law, or have otherwise shown to us, that the by-law was passed for a purpose which required them to be inserted. If, for all that appears, the by-law may be legal we are not to conjecture the existence of facts that would render it illegal. It is upon this principle that awards made by individuals are dealt with, and we should not be less considerate in upholding by-laws made by municipal councils, which are chosen by the people, and are intrusted by the legislature with extensive powers. It is difficult to foresee how much public inconvenience may be sometimes occasioned by quashing by-laws after they have been acted upon, and though this can never be admitted as a reason for sustaining what has been clearly shown to be illegal, it is a strong reason for declining to quash a by-law except on some clear grounds. We do not see any case of illegality clearly made out against the by-laws now moved against, and therefore discharge the rule for quashing them, with costs.

As to the application for a mandamus, we do not see the necessity for giving any such general directions to the Municipal Council as we are asked to give. We do not find that they have violated the statute in their mode of proceeding, or that they have left anything undone which they were required to do. The case cited of *The Queen v. The Commissioners of Land Tax Fund for the Tower Division of Middlesex*, 2 Ell. & Bl. 694, is only an authority for showing that the Court may issue a mandamus to compel a legal and just assessment, when they see a clear ground to interpose, but the reasoning in the case and the manner in which it was disposed of, shows that the Court will not interpose unless upon some specific and clear ground.

We think this rule also must be discharged with costs.

### COMMON PLEAS

Reported by E. C. JONES, Esq., Barrister-at-Law.

#### RETINGER V. MACDOUGALL

The plaintiff was employed by defendant as foreman in a printing office, and brought this action to recover wages due him, proving on the trial that the defendant was in the habit of settling the amount thereof weekly. The jury on this evidence found that the hiring was a weekly one, and the court refused to disturb the verdict. When the hiring is general, it is presumed by law to be by the year.

Declaration for work and labour, account stated, and for wages as the hired servant of defendant.

Plea, never indebted.

The case was tried at Guelph, in November, 1859, before Burns, J. The plaintiff went into defendant's employ, as foreman in a printing office, in March 1857, and received \$13 per week up to December, 1857; after that time he was to get \$10 per week. A statement had been made up of his wages on the 10th April, 1858, by one Macpherson, who was defendant's book-keeper, when the balance due to the plaintiff was stated to be \$399.99. Another statement was made up by Macpherson, up to 1st October, 1859, showing a balance due to the plaintiff of \$31.66. After which the plaintiff left the defendant's employ. The day before he told the defendant of his intention to leave. Defendant said he did not want the plaintiff to go; but if he wanted to go he might go; if determined to go he might go. Between April, 1856, and Oct., 1859, plaintiff had been paid \$638.32. No evidence was given as to any agreement between the plaintiff and the defendant of the term for which he was engaged; it was only shown that his wages were to be computed and allowed by the week. For the defendant it was

contended that on the evidence the hiring was a general hiring, which in law amounted to a yearly hiring, and therefore the plaintiff was not entitled to recover any wages for the year 1859, until that year was expired. The learned judge left it an open question to the jury to say whether it was a weekly hiring or no. They found it was a weekly hiring, and gave plaintiff a verdict for the full amount of his claim.

In Michaelmas term, *M. C. Cameron* obtained a rule nisi for a new trial, the verdict being contrary to law and evidence, and for misdirection in not directing that without evidence of a hiring for specified time, the law would presume a yearly hiring.

In the following term, *Boulbee* showed cause. He cited *Baxter v. Nurse*, 6 M. & G., 935; *Huttmann and Bulmer*, 2 C. & P. 510; and insisted also that if the hiring had been by the year, there was evidence that the defendant agreed that the plaintiff might leave when he did, citing *Fawcett v. Cash*, 5 B. & Ad. 304; *Lidley v. Elton*, 11 Q. B. 742.

DRAPER, C. J.—The first point, and indeed I think the only important one which we are called upon to determine, is the objection to the direction of the learned judge at the trial. It was insisted then, and has been again argued before us, that he should have told the jury that as the only evidence was that of a general hiring, they should therefore find that it was a hiring by the year, and that the plaintiff could not therefore recover for any part of the last year, as he quitted the defendant's service before that year expired. The judgment of *Tindal, C. J.*, in *Baxter v. Nurse* (6 M. & G. 935) appears to me to afford a complete answer to this objection. He remarks that in cases where a general rule with regard to questions of hiring have been established, it has been in conformity with some established usage to be gathered from evidence, and that the finding of a jury in such a case, in conformity with such general usage cannot be considered a rule of law, and after stating that in the case before him, he thought the evidence was of a weekly hiring, still even if it had shewn a general hiring, he thought the question ought to have been left to the jury whether, under the circumstances of the case, there had been a hiring by the year. And *Cresswell, J.*, said that though an indefinite hiring was a hiring for a year, if any other facts appeared, such as payment by the week, the presumption of a yearly hiring might be rebutted, and that he thought this was an open question for the jury. It appears to me unnecessary to go further to sustain the correctness of the mode in which this case went to the jury.

The doctrine that a general hiring is (in the absence of any thing to qualify it) a hiring for a year, is clearly settled by *Fawcett v. Cash*, 5 B. & Ad., 304, and *Berston v. Collyer*, 4 Bing., 309; and there is nothing in *Baxter v. Nurse* conflicting with that doctrine. If the jury had found a general hiring, they would have declared the plaintiff's engagement was by the year, and have given damages only in relation to such service. But the question was specially left to them, and they have found there was a particular hiring—a hiring by the week; and if they are right the plaintiff should retain this verdict.

If they had found that the hiring was general, I should not have thought the verdict contrary to evidence; but I cannot say there was not evidence to sustain the conclusion that the hiring was by the week, and it is on that ground that in my opinion this rule should be discharged. I do not think the evidence justified the conclusion that the defendants assented to the plaintiff's leaving his employment. If anything had turned upon that, I should have been inclined to grant a new trial.

### COUNTY COURTS.

In the County Court of the United Counties of Frontenac, Lennox & Addington, before his Honour JUDGE MACKENZIE.

#### THE CITY OF KINGSTON V. SHAW.

Held, that a Sheriff is not liable under Statute 8 Anne, cap. 14, for the removal of goods off premises in respect of which rent is due unless at the time of removal he either had notice or otherwise received knowledge of the rent being due, and afterwards removed the goods without paying the rent.

(October 18, 1860.)

This was an action under the Statute 8 Anne, chap. 14, against the defendant, as one of the Coroners of the United Counties of