

the same, but neglected and refused so to do, whereby the plaintiff was deprived of his salary as such teacher.

In the sixth and seventh counts the plaintiff complained in the same manner of the defendants, for neglecting and refusing to impose or collect a rate for paying the sums due to the plaintiff, for which they had given the other two orders on their treasurer, which were declared on in the second and third counts.

The defendants pleaded to the first count, that they did not accept the order mentioned in that count; and payment.

To the second and third counts, that they did not accept.

To the fifth count, that they did provide the money, and collect and impose a rate.

To the sixth and seventh counts, the same plea.

And to the sixth count defendants also pleaded, that they did impose the rate, and delivered the roll for collecting it, and the other assessments for the town of Collingwood for the year 1859, but that the day fixed for the return of such collector's roll had not yet expired, and that they had not yet received the said sum for the school trustees.

Issue was joined on all the pleas.

There was a case tried at the same assizes, at Barrie, before Robinson, C. J., brought in the Court of Common Pleas, in which Munson, another school teacher, sued the same corporation of Collingwood upon similar causes of action, the declaration and the pleadings being substantially the same as in this case. And it was agreed that the evidence given in that case should be submitted to the jury as evidence given in the present case, in order to shew the grounds upon which the corporation was sought to be charged, and what they relied upon as their defence.*

The evidence shewed that the orders were in each case signed by the chairman of the board of school trustees, and were sealed with their seal, and that they were accepted by the treasurer under his signature merely as treasurer.

The clerk of the corporation produced and proved an estimate that had been furnished by the school trustees of the money that would be required to be raised for school purposes in 1858, which estimate included the plaintiff's salary. A by-law was afterwards passed to raise money for certain school purposes; to wit, for school house, library and apparatus. The money required for teachers' salaries in that year was raised by a rate imposed by resolution, and the whole money required for that year seemed to have been levied.

The corporation received in like manner from the school trustees an estimate of the money required for school purposes for 1859. That also included the teachers' salaries, including the plaintiff's. A by-law was introduced to raise that money by assessment, but it was not passed. It was read a second time on the 25th July, 1859, but was neither passed nor rejected; nothing was afterwards done upon it.

The clerk of the corporation explained that the salary of the plaintiff should have been paid: that the government contributed a portion of the school money, and that the school trustees had power to make up the deficiency by rate, and so also had the corporation of Collingwood. He swore that a small portion only of the taxes of 1858 had been collected; and that he thought, but was not sure, that enough of money had been collected on the roll generally to cover teachers' salaries.

The chairman of the board of school trustees, who was at the same time a member of the town council, swore that in 1858, which was the first year of the existence of the corporation, the municipal council paid people whom they employed to make and improve their streets by giving them orders on their treasurer: that these orders got into circulation, and many persons paid their taxes with them, so that there was not enough actually collected in money to pay the school teachers: that the government grant would in common course be received by the end of June in each year, and the residue of school moneys required for the year had to be raised by rate; but that for some reason which he was not aware of, the government grant for school purposes for Collingwood for the first half of 1859 had not yet been received when he gave his evidence.

It was objected in each case, on the part of the defendants, that

there could be no action against the corporation upon their alleged acceptance of the orders, and that at any rate the acceptance to bind them must be under the corporate seal; and that the corporation was not liable to be sued upon such causes of action as were stated in the special counts.

The learned Chief Justice said, that as to the objections to the sufficiency of the several counts they should be taken upon demurrer, or might yet be urged in arrest of judgment, but could not be gone into at *nisi prius*, where the only matter to be considered was the application of the evidence to the different issues of fact that had been joined.

The jury found for the defendants on the fourth count, and for the plaintiff on the others, with £69 8s. 2d. damages.

R. A. Harrison obtained a rule *nisi* to arrest judgment on the six counts on which the plaintiff recovered; or for a new trial on the law and evidence, on the ground that the treasurer of the corporation was the only party liable on the orders, and not the defendants, who had not bound themselves under their seal, and who could not be made liable on the treasurer's acceptance of such orders; and because on the matters stated in the fifth, sixth, and seventh counts, there was no remedy by action. He cited *Quin v. The School Trustees of Seymour*, 7 U. C. Q. B. 130; *Tapping on Mandamus*, 33, 347.

McMichael shewed cause.

The statutes bearing on the question are referred to in the judgment.

ROBINSON, C. J.—The same points precisely being before the Court of Common Pleas and this court upon the same evidence, the judges have communicated together upon the points involved, and agree in the same conclusions, upon grounds which need not be gone into at length in each count. I will therefore only shortly state, that as regards the orders of the school trustees accepted by the treasurer of the corporation of Collingwood, they must be looked upon as given in pursuance of the statute 13 & 14 Vic., ch. 48, sec. 24, sub sec. 8, and sec. 26, which makes it the duty of the school trustees of incorporated villages to give orders to teachers and other school officers, and creators, upon the treasurer of each incorporated village for the sums which shall be due them. It appeared to me at the trial, that if we could in consequence of this provision look upon the incorporated village as in the light of a trading corporation authorised to make notes, or draw and accept bills, it might be found that it would follow as a consequence that they might transact such business in the same manner as it would be transacted by individuals; that is through their proper officers, by whose signatures merely the corporation might for such purposes be held bound; and it would not be necessary that the corporate seal should be applied on such occasions. I ruled therefore for the time, that the acceptance by the treasurer of orders authorised by statute to be drawn upon him might be taken to be the acceptance of such orders for the corporation, and that if there was any thing in the school acts or the municipal acts which would affect the question, it would be open to the defendants to move in term on any verdict that might be given for the plaintiff. It was understood at the trial that as the cases were new in their nature, the question on which they must turn would be discussed in term in both courts, and in order to ascertain the amount for which the plaintiff might recover if found entitled to support any of the causes of action, a verdict was given for the amount which was shewn or rather omitted to be due in each case. We have now to consider the two classes of counts, and the answers given so far as may be necessary.

As to the three counts upon the orders, we think that we cannot look upon the provision in the School Act under which they were given, and which I have recited, as meant to serve any other purpose than as a voucher from the school trustees, which should shew the treasurer of the municipality that the person in whose favour it was given had a claim upon the school funds as a teacher, whose services and the amount due for them had been ascertained by the trustees.

The order when complied with would of course acquit the corporation as to so much of the school fund as the treasurer should have paid upon it; but I do not think that the acceptance of the order under the hand of the treasurer had the effect of giving a right of action to the trustees against the corporation, in the same