

to all stages of preparation in Latin, Greek, and mathematics, and even in some cases allowed to take up the instruction of these subjects from the beginning, secondary schools will be placed at a disadvantage which they have no right to encounter. For the laxer discipline and freedom of the universities will always prove an attraction to a certain class of youths; and even their parents are tempted by the idea of combining university and secondary instruction, and passing their sons, as it is said, through college, instead of leaving them in the hands of the schoolmaster.* This evil habit has become so inveterate in Scotland that it can only be arrested, it is feared, by very stringent measures—by, in short, shutting the university door in the face of all who have not reached a definite measure of attainment in these subjects.

But some public authority is not only necessary to institute a course of inquiry into the actual need of secondary education and its best local distribution, but also to deal with such funds as may be made applicable to secondary instruction throughout the country.

The main result of our remarks is to demonstrate the necessity of some educational authority for deliberately and effectually dealing with the still unsolved problem of secondary education in Scotland. Even should no public money in the shape of taxes or rates or grants be given for the institution and maintenance of secondary schools, it seems absolutely necessary that the subject should be dealt with on public grounds and by some public authority, with power to make adequate inquiry, and to apply in the best manner such funds as are at this moment truly applicable to the object.

If it is absolutely necessary to have recourse to some direct supply of public money for the support of our secondary schools, we confess to a preference for a rate-support rather than any other. It is, upon the whole, the least liable to abuse. A very slight increment, which, of course, would only be laid on the richer districts or towns, would meet the whole exigency of the demand. Even as the Education Act at present stands, the secondary schools are partly rate-supported. Higher-class schools may be built or enlarged from the rates, and the cost of the annual examination is defrayed, as we have seen, from the same source. There would therefore be no introduction of a new principle, even if rates were made available for the direct support of these schools.

IV. Decisions of the Superior Courts.

1. IN RE STORMS AND THE CORPORATION OF THE TOWNSHIP OF ERNESTOWN.

Public Schools—Distribution of School Funds—37 Vic. ch. 28, sec. 48, sub-sec. 4; sec. 153, O.

A township by-law enacted that the interest arising on the invested funds for schools in a township should be apportioned on and according to the number of days the schools had been open or taught in each half year. It was objected that the by-law was one made under the 37 Vic. ch. 28, sec. 48, sub-sec. 4, O., which did not authorize this method of apportionment. The Court refused to quash the by-law, as the effect of so doing, under the facts stated in the case, would be to place the apportionment as provided by earlier by-laws and resolution, and in effect produce no change, and moreover the municipality, under sec. 153, could by another mode do what the by-law purported to do.

Quære, whether the money in question, having been specially appropriated by by-laws under the 20 Vic. ch. 71, was within the section 48, sub-sec. 4, above referred to.

The question raised being doubtful, the rule was discharged without costs.

In Easter term, May 22, 1875, *Harrison*, Q. C., obtained a rule *nisi* herein, calling on the Corporation to shew cause why the second clause of by-law No. 1 of the year 1875, should not be quashed with costs for illegality, and on grounds disclosed in affidavits and papers filed.

The by-law in question recited that by-law No. 8 of 1874, apportioning the interest money arising on the invested funds for public schools in Ernestown, was not approved of by a majority of the ratepayers, and by the first section, enacted that the said by-law No. 8 of the year 1874 should be, and that the same was thereby repealed.

The second section, the one now in question, was as follows:—“And be it enacted further, that the interest fund arising on the said invested money for schools in Ernestown, be apportioned to the

public schools in Ernestown Corporation, on and according to the number of days the said schools have been open or taught in each and every half of any and every year. Said apportionments are hereby required to be made in and during the months of July and January, for the last preceding half year.” The by-law contained no other provision.

By-law No. 8 referred to and repealed, was as follows:—“Be it enacted, &c., that the interest received on the funds invested for public schools in Ernestown, shall be in any and every half year of every year apportioned according to the number of days taught by each and every authorized teacher who has taught in Ernestown Corporation, and a just proportion to union sections; provided always, that not more than two teachers be allowed a dividend in any one school section in the Corporation.”

A great number of affidavits were filed on both sides.

During Hilary term, February 24, 1876, *Bethune* shewed cause.

And *Robinson*, Q. C., supported the rule.

The arguments sufficiently appear in the judgment.

June 29, 1876. *MORRISON*, J.—After carefully reading over the many affidavits filed on both sides, apart from any legal question, it appears to me that on the merits the defendants would be entitled to succeed, as I think it appears very clearly that the action of the municipality is in accord with the majority of the ratepayers, and that they have adopted a system of distribution recognised by the Legislature.

The question, however, is, whether we are compelled to quash the second section of the by-law. The rule *nisi* does not shew or set forth any grounds of illegality, and during the argument the ground taken was, that it was a by-law intended or supposed to be made under the authority of sec. 48, sub-sec. 4, of the School Act of 1874, 37 Vic. ch. 28, O., which section, it was contended, only authorized the distribution of the money in question among all the public schools ratably and proportionate to each according to the amount of the salaries paid in each school section.

Sub-sec. 4 is as follows:—“To apportion at its (the Council's) discretion either out of moneys raised by rate, or out of any other moneys at its disposal and not otherwise specifically appropriated, a sum to all of the public schools in the township equal to such proportion as the Council may see fit, of the actual salaries paid in the respective school sections during the year then last past to the public school teachers of such sections.”

Now the moneys in question were derived from the Upper Canada Municipalities fund, proceeds of the Clergy reserves, and it appears from the affidavits filed that such moneys were appropriated in 1856 by a resolution of the Council, and specifically ordered to be invested, and the interest thereof to be applied to the school fund half yearly on the scale of the average time the schools were kept open; and after the passing of the Act of the 20 Vic. ch. 71, sec. 2, (Consol. C. ch. 25, sec. 11), assented to 10th June, 1857, which section provided, that the Municipality might by by-law set apart for any special purpose, which special purpose shall be mentioned in such by-law, the whole or any part of the funds derived from the “Upper Canada Municipalities Fund,” and to invest the same, &c., for the purposes mentioned in such by-law, and from time to time to sell, &c., such securities and re-invest the proceeds in other like securities, or otherwise appropriate the same in the manner mentioned in and directed by the same by-law or other by-law passed for that purpose.

This municipality on the 5th Oct., 1857, passed a by-law reciting the 20 Vic. ch. 71, providing that these moneys then amounting to \$7,200, and all other of such moneys received in future years, should be continued invested for the same purposes mentioned in resolution of 1856, and that the interest arising from the fund should also be apportioned as therein mentioned, and that from 1857 to 1860, the interest of such moneys was so apportioned.

In the latter year a new by-law was passed re-investing the moneys to the like effect as that of 1857, which also contained the provision that it should not be altered or repealed but by a by-law passed by the Council before the 1st November of any year, and approved of by the vote of the majority of the municipal electors of the township; and under that by-law, the interest of the fund was appropriated according to the original resolution on the scale of the average time the schools were open.

In June, 1874, a by-law was passed (No. 8), a copy of which was filed by the applicant, which by-law did not alter the apportionment, but it provided in addition “for a just proportion to union sections, and that not more than two teachers be allowed a dividend in any one school section in the Corporation.”

This by-law in that respect was considered illegal by the council elected in January, 1875, and they on the 19th January passed the by-law the second section of which is now asked to be quashed, the first section repealing by-law No. 8: in other words, if we made the rule absolute, it would place the apportionment and distribution of the

* This is the clear impression made upon a stranger, Mr. Fearon, who, in his Report on Scottish Education to the Schools Inquiry Commission, says, in reference to the practice of the Scottish universities instructing lads of fifteen or sixteen years old in the rudiments of the dead languages, mathematics, &c.,—“There is indeed no reason why lads should stay on at the burgh schools, when they can go to those great finishing schools the universities, and learn the same subjects from more distinguished teachers, with greater freedom and often at less expense.”