The 30th and 31st clauses seem rather inconsistent as regards this point, unless we take "*in the same manner*" in the 30th clause, to mean only as to the process of collecting, and not the principle of imposing the rate; and I think we must so interpret it to avoid the repugnancy.

And at any rate the statute clearly says that the sum to be levied on the proprietors is to be in proportion to the *quantity* of land held by them respectively, and this is departed from in the manner of levying this rate.

It is sworn that part of this concession forms a village, in which valuable houses are built on small lots, and the effect of a rate on the *assessed value of the land*, if it includes buildings, as I suppose it must, would be to make the proprietor of one-fourth of an acre with a house on it to pay more perhaps than the owner of 100 acres. If that would be fair, still it is not making them contribute according to their respective quantities of land.

We see difficulties in the way of such an assessment as the statute seems to require, but we cannot help that.

We are of opinion that the rule for quashing the by-law must be made absolute, with costs.

Rule absolute.

In re Tiernan and The Municipality of Nepean.

School trustees—Cost of defence—Rate—Separate schools.

A rate may be levied to reimburse school trustees for the costs of defending a groundless action brought against them.

Where such charge was incurred before the establishment of a separate Roman Catholic school: *Held*, that the supporters of that school were not exempt from the rate.

(15 Q. B. R. 87.)

Fellowes, Q. C., obtained a rule on the Municipality of Nepean to show cause why their by-law No. 74, passed on the 23rd of October, should not be quashed.

First—Because the assessment, or amount directed by it to be levied, is not legal, not being authorsed by any statute.

Second—Because part, viz., £45, of the amount authorised to be levied, is for paying certain costs of defence of an action brought by one Ann Tiernan against the trustees of common school section No. 13, in which the defence failed; and it is not shown by the by-law that the school trustees endeavoured to obtain the amount from Ann Tiernan.

Third—Because this £45 was not expended or to be expended for any purpose for which the school trustees are authorised by law to levy money, but was levied in order to pay costs for which the trustees were liable to the attorney they employed.

Fourth—Because it is not shown that the by-law was passed with the assent of a majority of the freeholders or householders in the school section as required by law.

Fifth—Because it is not shown that the by-law was passed at the request of the trustees under that part of the 13 and 14 Vic., cap. 48, which enables them to levy an additional rate to pay teacher's salary, and other expenses of the common schools, &c.

Sixth—Because the by-law authorizes £75, which includes the above £45, to be levied on the subscribers to or members of the Roman Catholic separate school established in section 13, which is contrary to law, and especially to the statute 18 Vic., cap. 131, sec. 12.

Ann Tiernan, in 1854, brought an action in this court against the school trustees of this section, to recover from them an arrear of wages which she claimed to be due to her as a school teacher.

At the trial, she obtained a verdict, notwithstanding the defence pleaded, that by the statute 13 & 14 Vic., cap. 48, and 16 Vic., cap. 185, sec. 15, there could be no action sustained in a court of law upon such a claim, the party being confined to the remedy given by those acts.

The verdict was moved against as being contrary to law, and a new trial was granted without costs, in Michaelmas Term, 1856.(*a*)

No attempt was made by Ann Tiernan to proceed further in the action, as it was clear she could not recover; and the defendants, the school trustees, being satisfied that they would not be able to obtain any costs from her, thought it useless to to increase them by forcing the case again to trial.

They applied in a formal manner under their corporate seal to the municipality of Nepean, to levy a rate in order to reimburse them in their costs, and on that application this by-law was passed.

Richards showed cause. *Nanton* supported the rule.

Robinson, C.J.—The questions are, first, whether the amount of these costs could legally be levied under the school acts; secondly, whether the by-law could legally direct the money to be levied on all the ratepayers.

The Roman Catholics had a separate school established there in August, 1855, and they claim to be in consequence exempt under the statute from contributing to any rate of this kind for general school purposes.

The Municipality, on the other hand, considered that as the action was brought in 1854, and was pending in 1855, when the Roman Catholics obtained their separate school, it was their duty to make this a charge upon them as well as other ratepayers.

Upon the first point, whether the costs of the trustees in defending themselves against the action of Ann Tiernan could properly be reimbursed by a rate levied for that purpose, I think it could, for that it comes fairly under the terms "expenses of the school" and "for common school purposes," used in the school act 13 & 14 Vic., cap. 48. Law expenses, however unavoidably incurred by the trustees in execution of their trust, do not seem to be specially provided for in any of the acts; but considering the burdensome duties thrown upon the trustees, and the importance of their being faithfully discharged, it can never have been intended by the legislature to leave them to bear out of their own means the charge of defending themselves against actions brought against them without good ground, for any alleged cause of action connected with their conduct in their office.

They are not by law liable to any action by a teacher for his wages, for the act of parliament protects them, but all they could do was to set up that protection when the action was improperly brought, and they did so and with success. The cost they were put to, it seems to me, may reasonably be classed as an expense attending that part of the common school system with which they were charged, as much as if a groundless action were brought against them upon some contract of theirs for building or repairing a school-house, which they had faithfully observed. As to the trustees being left to obtain payment of their costs from the party who had sued them, we must presume, till the contrary is shown, that the trustees have done nothing wrong in that respect. It is sworn that Ann Tiernan is not in circumstances to pay, and at any rate, we could not hold that they were under any legal necessity to wait upon their chance of obtaining the costs from her.

Then the remaining objection is as to the rate being general, that is, upon all the ratepayers, without giving to the Roman Catholic inhabitants who support a separate school, the benefit of the exemption which the statute 18 Vic., capr 131, sec. 12, secures to them.

We think that exemption does not extend to rates necessary to be levied for meeting charges incurred before the separate school was established.

(*a*) Tiernan v. School Trustees of Nepean, 14 U. C. R. 15.