his employment, and is entitled to all the privileges of every resident of his age.

Right of Pupils to attend School.—It is the duty of the Trustees to admit, and the duty of the Teacher to teach, all residents (whether servants or children) of the Section between five and twenty-one years of age.

2. But the Trustees are under no obligations to admit, nor the Teacher to teach, any non-residents, whose parents or guardians have not land or property on which they pay rates in the section. If the Teacher teaches non-residents, others than those above mentioned, he should be remunerated for so doing, as the Trustees can charge what rate bills they please for non-resident children, even though the school be free to the children of the section; as the agreement between the Trustees and Teacher is for teaching the school of the section, and not for the benefit of those not residing or not having property in the section; unless indeed a special clause has been introduced into the agreement for that purpose.

Admission of Persons over Twenty-one Years of Age.—Sometimes, I regret to say, so narrow a view is taken of the provisions of the School Act, as to prevent a person from going to school because he happens to be a few months over twenty-one years of age, when he wishes to improve his education, and even when he pays taxes for the support of the school. Some of the greatest men in Europe had but little education when they were twenty-one years of age, and made all their acquirements afterwards. Humanity and patriotism dictate to us to afford, as well as improve every possible opportunity to acquire education and knowledge, whatever be our age or circumstances. As for myself, I am as diligent in studies yet as I was when I was at school.

2. Though the letter of the law does not *require* the common school to be opened to persons over twenty-one years of age, yet the Trustees of every school ought to be glad to encourage any person however old, who wishes to remedy in some degree the defects of his early education by coming to the school, complying with its requirements, and becoming a pupil in it.

DUTY OF CITY, TOWN, AND VILLAGE COUNCILS, TO RAISE THE NECESSARY SCHOOL RATE ACCORDING TO THE TRUSTEES' ESTIMATE.

IMPORTANT DECISIONS OF THE COURT OF QUEEN'S BENCH.

The School Trustees of the City of Toronto vs. the Municipal Corporation of Toronto.

Mr. Cameron, Q.C., obtained a rule in this term on the Municipal Council of the Corporation of Toronto to show cause why a peremptory mandamus should not issue, commanding them to assess and levy $30,000 ordered by the Board of School Trustees of the city to meet the expenditure of the Common Schools of the city for 1860, according to the estimate furnished by the Board to the Municipal Corporation, by levying such a rate upon the rateable property in the said city as shall be sufficient to raise the same sum of $30,000.

This rule was obtained upon an affidavit made by one of the School Trustees that the annual value of the whole rateable property in the city for the current year (1860) as finally settled by the Court of Revision, is $1,644,888.

That the School Trustees adopted the $30,000 as the expenditure required for the Common Schools for 1860.

That an estimate was accordingly furnished by the Trustees to the Corporation of the city, and that the City Council passed a by-law to assess and levy 1 cent and 6 mills in the dollar on the above named value for such Common School expenditure, and no more; but that such rate is not sufficient to raise $30,000—that it will require a rate of two cents on the dollar.

The City Council did pass a by-law which would have imposed a larger rate for school purposes, the particulars of which by-law are not shown to us; but afterwards, on the 24th October, 1860, they repealed that by-law, which had fixed the rate for the year, and appropriated the proceeds of it to various purposes, including school purposes, and they passed another by-law as a substitute for the first, and to this latter by-law they provide that of the proceeds of a rate of 15 cents in the dollar, imposed for all purposes mentioned in the by-law, the proportion of 1 cent and 6 mills shall be applied to "defray part of expense of Common School Education."

No affidavits have been filed in answer to the rule.

It is sworn that the City Council have been called upon by the School Trustees to impose the necessary rate of two cents in the dollar upon the whole value of rateable property, and have declined to do so.

In showing cause against the issuing of a peremptory mandamus, they take the ground that the School Trustees have no right to insist that the city shall impose a rate for school purposes because they may have the means in their hands of defraying the expense, or part of it, without such rate, or they may choose to raise the sum by a loan.

And they object further that, as the School Act enabled School Trustees to raise the money themselves by rate, they are not in want of the extraordinary remedy by mandamus, and on legal principles have therefore no right to it.

Chief Justice Robinson delivered the Judgment of the Court.

In the case cited of the Brockville School Trustees *vs.* the Town Council of Brockville, 4 U. C. R. 302, this Court had granted a mandamus nisi to which a return was made, and that return brought up a particular question, whether the Trustees had or had not proceeded irregularly in an important step which they had taken in substituting one general school for four local schools, and incurring without reference to the ratepayers a large expense in creating the new school. The Town Council rested their opposition to raising the money by rate on the ground that the measure of the Trustees was illegal.

This was an important question, which both parties desired should be determined by the Court, and it was raised in that formal manner on the return to the mandamus. The Court were bound to give judgment on the sufficiency of the return made by the Town Council, and finding it to be insufficient they decided accordingly, and the writ was ordered. The ground taken here, that the School Trustees had power by law to raise the rate themselves, and therefore could not call upon the Court to command the Council, does not seem to have been taken, and it is not likely that it would be, because the objection went to the right to raise the rate either by their own means or the other, on account of the alleged illegality of the expenditure in putting up the new school-house. That case, therefore, can not be relied on as an authority for maintaining that the Trustees can, as a matter of right, insist in all cases on the Municipality raising the money by rate. Then, looking at the other case of the School Trustees of Port Hope *vs.* the Town Council of Port Hope, 4 C. P. U. C. 418, and School Trustees of Galt *vs.* the Municipality of Galt, 13 U. C. Rep. 511, and looking at the existing School Act, ch. 14, Consolidated Statutes Upper Canada, I think it results from the whole that the Court may, if it shall seem to them to be manifestly proper in any case in the facts before them, order the Municipality of a city to raise a rate, notwithstanding the School Trustees might, under the Act, impose and collect the necessary rate themselves. I take this case to come expressly undar the 79th sec, of ch. 64. Here the School Trustees have laid before the Council their estimate of the sum required for the year for school purposes, whereupon the statue says, p. 757, Subn 11 (f.), "And the Council of the city, town or village, *shall* provide such sum in the manner desired by the said Board of School Trustees."

I am not sure what may be meant by the words "in the manner desired." It can hardly mean that they are to determine for the Council whether the money shall be paid out of city funds that may be had, or borrowed on debentures, or raised by rate, and if by rate the manner of levying. It means rather, I suppose, that the City Council are to take care and provide at such periods and in such sums as it may be called for.

The sub-section 12 of this clause is all that I find in the existing School Act which gives power to the Board of School Trustees in a city to levy school rates, and that seems to be a mere discretionary power that may be exercised in aid of the power of the city to collect school moneys; and when the Trustees levy money under that provision, it would not be on ratepayers generally, but on the parents or guardians of the children attending any school under their charge. These at least are not co-extensive powers.

It is very reasonable for the City Council to say that the Trustees cannot dictate to them, neither should the Court order by what means they are to provide money, whether by rate or loan, and in the case from Port Hope, 13 T. C., Rep. 511, that objection was answered by the Court to have much force.

But in all that is before us in this case we see—