The duty of the defendant was not to pay the order out of his own money, but from money of the school fund, if he had it, and if not, then from any money he might have in his hands, from which the county council had authorized him to pay it.

If the treasurer or sub-treasurer has the money and refuses to pay a lawful order of the local superintendent, a mandamus would lie; but if he has not, no duty lies on him, and therefore no mandamus ought to be granted.

The plaintiff, in the second count, on the same statement of facts as on the first count, claims damages against the defendant for not paying the local superintendent's order, and a mandamus. For reasons already given, we think he cannot maintain his claim to damages on the second count, nor to have the mandamus prayed for. Assume for the moment, that the defendent had money of the county school fund in his hands, or other moneys from which he was authorized to pay it; was the order set out, a lawful order, which the defendant, as sub-treasurer, was bound to pay?

The declaration avers that the defendant was sub-treasurer of school moneys for the Township of Douro. He could, as such, only have so much of the county school fund as had been apportioned to the common schools of that township, or an authority to advance other moneys in anticipation of it. The order, to be lawful, ought to have been drawn upon that fund, and drawn in accordance with the 2nd sub-sec. of sec. 91 of the Act. The duty of the local superintendent was to give to any qualified teacher, but to no other, on the order of the trustees of any school section, a check upon the county treasurer or sub-treasurer for any sum of money apportioned and due to such section.

The local superintendent cannot give a check for the payment of money to a teacher without the order of the trustees of the school section, nor for any money which has not been apportioned and due to such section. But it is not averred in the declaration, nor does it appear on the face of the check set out, that it was given on the order of the trustees; nor that it was drawn upon the money due and apportioned to that section. It is in these words, "Douro, January 22nd, 1867: To sub-treasurer school moneys, Douro; Pay to Mr. Michael Welsh, or order, twenty-seven $\frac{80}{100}$ dollars, and charge to account of county assessment for 1866. ROBERT CASEMENT, Local Superintendent Common Schools, Douro, $27\frac{80}{100}$." We can understand why a check should not be given, unless on the order of the trustees. They themselves may have advanced to the teacher his salary from moneys levied by their authority, and may desire to leave the school fund for a subsequent period.

We can see no reason why this order was not drawn properly, both in form and substance, for the chief superintendent has taken great pains to furnish local superintendents with forms and directions in the School Manual. The local superintendent had only authority to draw an order on the sub-treasurer for money apportioned and due the section where the teacher had taught. He did not draw it from money so apportioned, or from any specific money, but directed the sub-treasurer to charge it to the account of county assessment for 1866. The order of the trustees, if any such existed in this case, was his authority for drawing the check, and to the form now in use there might be added, "in accordance with the order of the trustees, dated the day of "

We are, therefore, of opinion that this order, as it is called in the declaration, is not a legal check in accordance with the Statute, and cannot be enforced, and both counts are bad, in not showing that the check was drawn on the order of the trustees, and in setting out a check void on its face, because drawn on a fund, over which the local superintendent had no control, and bad in not showing that the sub-treasurer had money in his hands belonging to the school section, or that the county council had made provision to enable him to pay the amount. This disposes of the case, so that we need not allude to the other questions raised on these pleadings.

Judgment for Defendant on demurrer.

ASSESSMENT—AUTHORITY OF COLLECTOR—FORM OF ROLL.

Digest of the Case:—A Board of School Trustees in a town passed a resolution stating the sum required for school purposes, of which their Treasurer gave notice to the Town Clerk, verbally or in writing, but not under the corporate seal. The corporation, however, made no objection, and acted upon it as an estimate. *Held*, that though it would have been insufficient on application to compel the town to levy the money, yet an individual ratepayer could not object.

Sec. 24 of the Assessment Act, C. S. U. C. ch. 55, applies to the assessor's roll only, not the collector's.

Defendant was duly appointed collector of the municipality for the years 1865 and 1866. *Held*,—following Newberry v. Stephens, 16 U. C. R. 441, Chief Superintendent of Schools v. Farrell, 21 U. C. R. 441, and McBride v. Gardham, 8 C. P. 296—that he had authority in 1866 to distrain for the taxes of 1865 upon the owner of premises duly assessed. Defendant held two rolls, each headed "Collector's Roll for the Town of Belleville," one being also headed "Town Purposes," the other "School Purposes." In the first, the column headed "Town or Village Rate" contained nothing, but in that headed "Total Taxes. Amount," $40 was inserted. In the other that column had nothing, but $16 was in the column headed "General School Rate." *Held*, insufficient, for there was nothing to shew for what purpose the sum not specified to be for school rate was charged.

Spry v. McKenzie, 18 U. C. R. 165, distinguished.

The omission to set down the name in full of the person assessed was treated as immaterial.

Appeal from the County Court of the County of Hastings. Replevin for chattels taken in a dwelling house, occupied by the plaintiff, in Samson Ward, in the Town of Belleville, on the 2nd of May, 1866.

Avowry, setting forth that the Corporation of Belleville passed a by-law to levy a tax for municipal purposes for the year 1865, and enacted that a certain sum in the dollar should be levied on the whole ratable property, and thereby also appointed the defendant collector of Ketcheson Ward, in the said town. The 174th section of the Municipal Act was stated, and that this by-law continued in force until after the said time, when, &c., that—after the assessment roll was finally revised and completed, and all due adjustments and equalizations had been made, and after the Board of School Trustees of the said town had, as a corporation, struck a rate on all the assessable property for common school purposes, and had made a return of the amount thereof to the Clerk of the municipality of Belleville, and after the School Trustees had duly appointed the defendant collector of common school rates for Ketcheson Ward for that year (1865), and after the Clerk of the municipality had made out a collector's roll for Belleville, in which (among other particulars set forth), in a column headed "town rates," the amount with which each party was chargeable, in respect of real and personal property, in respect to the sums ordered to be levied for town purposes, was set down, and after the said Clerk had, opposite to the property of each party named therein chargeable by the assessment, set down in a column named "school rate," the amount with which such party was chargeable in respect to the sum ordered to be collected for common school purposes, and after a simllar collector's roll duly certified had been made for the collector of the common school tax of Ketcheson Ward, and the proper sum according to such school rate had been set opposite each parcel of land and the name of each party—the town clerk, within the time required by law, delivered the collector's roll to the defendant, and the common school rate roll was also duly delivered to him. And because the plaintiff was, at the time when the assessments for the said ward and the said town were made, the owner of certain freehold premises situate within Ketcheson ward, and was named and rated in the collector's roll for that ward as owner thereof, for $40, in respect to his assessable real property in that ward, as a town rate, and on the school rate roll in that ward for $16, in respect to the same real property, the plaintiff not being liable to any separate school rate. And defendant further says that one Blacklock was assessed on the said rolls as tenant of the said real property under the plaintiff, and the said sums at the said times, when, &c., were in arrear and unpaid by the plaintiff or Blacklock in respect of the said premises, and Blacklock had removed therefrom, and a stranger to the assessment was in possession. And because the plaintiff at the said time when, &c., and for a long time before, was domiciled within the town of Belleville, and the defendant after he had received the said rolls, and while they continued in his hands, he never having been removed from the office of collector by the municipality, nor by the school trustees; and while the by-laws of the municipality and the resolution of the trustees were in full force, and before the return of the rolls, and not being able to make oath before the Treasurer in respect of the sums due by the plaintiff, pursuant to sec. 106 of the Assessment Act, and after the plainaiff and Blacklock had neglected and refused to pay the said sums, and after the defendant had called at least three times on them and demanded those sums, the plaintiff being the person who ought to pay, the defendant took the said goods, then in the plaintiff's possession, for the purpose of levying the said moneys, &c.

The plaintiff joined issue on this avowry, and also pleaded to it that he was not the person who ought to pay the taxes. He also demurred to the avowry, and the defendant demurred to the plea thereto. Both demurrers were decided in the defendant's favor.

Upon the trial of the issue in fact, it was at the close of the plaintiff's case objected:

1. That it was not proved that the school trustees duly struck a rate, or made any requisition, return or request, in accordance with law, on the Clerk or the Town Council of Belleville, to collect a school rate.

2. That the plaintiff and Blacklock were not duly assessed, accord-