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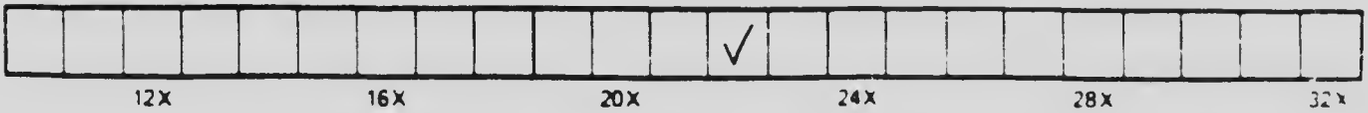

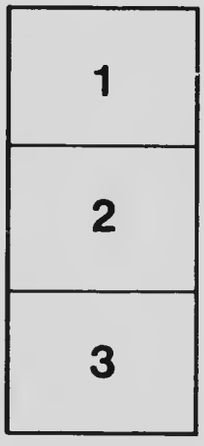

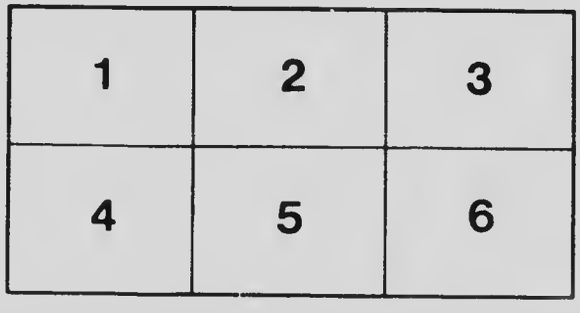

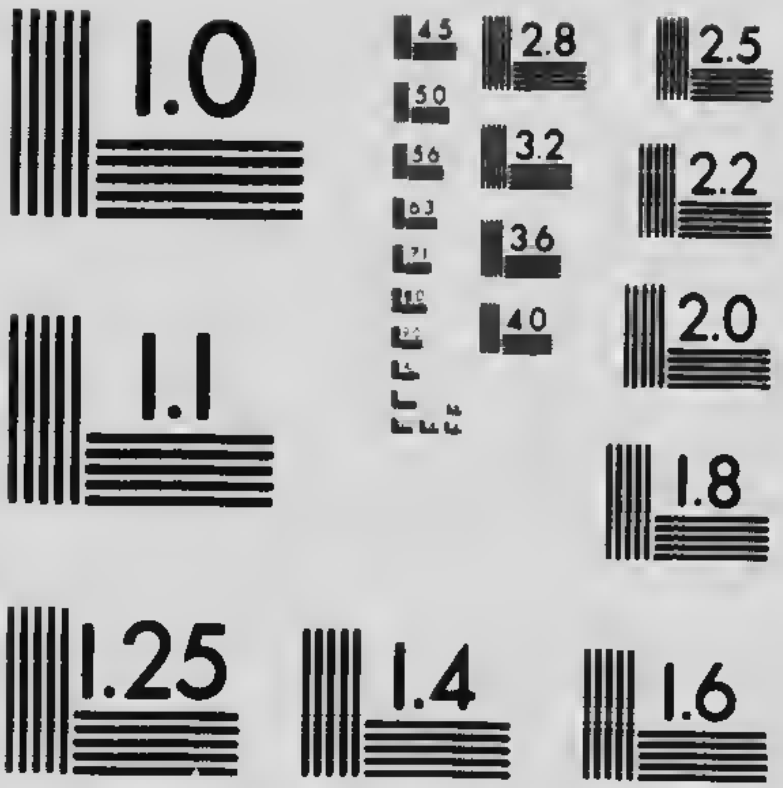

MICROCOPY RESOLUTION TEST CHART
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HIGH COURT OF JUSTICE.

In re

THE PUBLIC SCHOOL BOARD OF THE CITY OF TORONTO,

AND

THE CORPORATION OF THE CITY OF TORONTO.

Copy of Judgment of Divisional Court delivered 2nd December, 1901. F. E. Hodgins, for the Public School Board. Fullerton, K.C., for the City Corporation.

MEREDITH, C. J.—Both parties have appealed against the order of my learned brother Street made on the 19th day of October, 1901, on the application of the Public School Board for a peremptory mandamus to the Corporation to levy and collect a sufficient sum to pay in full the estimate of the Board of the expenses of the schools under its charge for the year 1901, amounting in the whole to $530,363.66, the Corporation having refused, improperly as the Board alleges, to levy and collect more than $461,151, for the levy and collection of which under the provisions of sub-section 1 of section 71 of the Public School Act (1 Edward VII, Cap. 39) the Municipal Council of the Corporation passed its by-law on the 10th June, 1901.

In the estimate of the School Board the expenses are classified under forty-two separate heads, to twenty-seven of which objection was taken on various grounds, two of them being objected to in toto and twenty-five in part, the whole sum objected to being $59,213, and my learned brother Street held the objections to be well founded except as to $18,768.59, and granted the mandamus as to that sum, but refused to grant it as to the residue of the $69,213, and, as I have said, both parties appeal, each complaining of the order in so far as it is unfavorable to him.

It will be convenient at this point to set out the items objected to and the result of my learned brother Street's judgment as to each of them:

1. Salaries	Objected to as to		$12841.	Objection disallowed as to		$8959 25
2. Water rates	"	"	1000.	"	" "	406 23
2. Rent	"	"	220.	"	" "	220 00
6. Gas	"	"	500.	"	" "	220 11
8. Miscellaneous	"	to in full,	1000.	"	in toto,	1000 00
12. Repairs	"	to as to	5000.	Allowed.		
13. Dais, etc.	"	to in toto,	6300.	"		
14. Printing and advertising	"	to as to	400.	disallowed in toto,		400 00
16. Fuel	"	"	2500.	Objection allowed.		
17. New furniture (new rooms)	"	"	2000	"	disallowed in toto,	2000 00
18. New furniture (present rooms)	"	"	2000.	"	" "	2000 00
19. Remodeling and repairing old furniture	"	"	250.	"	" "	250 00
20. Caretakers' supplies	"	"	300.	"	" "	300 00
21. Window shades	"	"	300.	"	" "	300 00
23. Cupboards	"	"	100.	"	" "	100 00
25. School supplies	"	"	410.	"	" "	410 00
27. Blank books	"	"	452.	"	" "	452 00
28. Business forms	"	"	263.	"	" "	263 00
29. Book-keeping blanks	"	"	65.	"	" "	65 00
30. Drawing material	"	"	142.	"	" "	142 00
31. Writing books	"	"	201.	"	" "	201 00
33. Book covers	"	"	130.	"	" "	130 00
35. Kindergarten supplies	"	"	350.	"	" "	350 00
37. Medals and certificates	"	"	50.	Objection allowed.		
39. Night schools	"	"	300.	Objection disallowed in toto,		300 00
40. Wall maps	"	"	300.	"	" "	300 00
42. To provide for overdraft from 1900	"	"	2139.	Objection allowed.		
			$69213.			$18768 59

My brother Street in coming to the conclusion that the School Board was not entitled to require the Municipal Council to raise the full amount of the Estimate for Salaries proceeded upon the ground that as to all of the $42,841 objected to except $8,959.25, the School Board was not entitled to require it to be raised by the Municipal Council because, as he determined, it was intended to provide for paying to the teachers in the employment of the School Board as for salaries sums which the Board was under no legal liability to pay, and therefore to make provision for an increase in their salaries "in the shape of a mere prospective voluntary payment which they (*i.e.* the School Board) might make or withhold at their pleasure." It was, according to the view expressed by my learned brother, "as if they had asked for this $41,000 in order that they might present it to the teachers as a bonus over and above the salaries for which they had agreed to do the work of their position."

I am, with great respect, unable to agree with this view. It is in my opinion by no means clear that upon the facts and circumstances appearing in the documentary and other evidence before us the School Board after the passing of the resolution of the 6th March, 1901, to which I shall refer, was not under a legal obligation to pay the larger salaries for the payment of which the estimate for salaries was intended to make provision.

The material provisions of the agreement between the teachers and the School Board, by which they were re-engaged for the year 1901, as far as they affect the question under consideration, are stated by my learned brother, and it is unnecessary for me to repeat them. It will suffice to point out that the agreement of the teachers is not simply to serve during the year in the school and at the salary set opposite to his name in the schedule, but that he will serve in that school and at that salary "or at such salary and in such school and division of the same as they (*i.e.* the School Board) may from time to time appoint," and that the contract of the School Board, as I read it, is to pay either the salary named in the schedule or that, whether it be higher or lower, which the Board should from time to time fix as the salary which the teacher was to be entitled to receive.

The object of framing the contract in this way was, as appears from the evidence of Mr. Wilkinson, Secretary-Treasurer of the School Board, to secure the re-engagement of the teachers so that their services might be available when the schools were opened at the beginning of January, after the Christmas holidays and at the same time to leave to the incoming Board the fixing of the salaries for the ensuing year; instead of having them fixed by a board, the term of office of one half of the members of which, was on the eve of expiring.

The duty of making provision for re-engaging the teachers devolves on the Board's Management Committee, and by its report made on the 29th day of November, 1900, and adopted by the School Board, it recommended "that all teachers now on the regular staff be re-engaged except those who are marked 3 or worse in their teaching or discipline by both inspector and principal."

"That all teachers who are marked 3 or fair or worse in both teaching and discipline by the inspector and principal be notified that if there is not some improvement within three months from the date of the notice, they will be notified that their services will be dispensed with at the end of June, 1901."

It was in pursuance of this resolution that the agreement to which I have referred was entered into, and agreements in the like form had been entered into between the School Board and the teachers in the years 1897, 1898, 1899, and 1900.

According also to the evidence of Mr. Wilkinson, the Management Committee had no power to fix the salaries to be paid to the teachers who were engaged on their recommendation, and did not assume to do so, the practice of the Board being, as I have mentioned, to leave that to be done by the new Board.

For many years it had been the policy and practice of the Board to make yearly increases in the salaries of the teachers who were re-engaged; the amount of these increases was not the same in every year; and there was, no doubt, no legal obligation resting on the School Board to make them in all cases or indeed in any case.

The making of these increases was also not dealt with by the outgoing Board, but by the Board of the year for which the teacher was re-engaged.

On the 1st February, 1900, the Board adopted, with some amendments, the report of its Finance Committee of the 29th of the previous January recommending a scale of salaries for its teachers, including principals of schools, and for its officers and servants. According to this scale provisions was made as to certain classes of teachers for a minimum and maximum salary, and for an annual increase of salary from the minimum until the maximum was reached; in some classes the annual increase was to be $50, in others $24, $20, and $12, respectively.

Although, as I have said, an agreement similar in form to that for 1901 was made with the teachers for 1900, the salaries paid in 1900 were not, save perhaps in a few exceptional cases, those set opposite the names of teachers in the schedule to the agreement, but the [illegible] fixed by the Board of 1900, which included the increase according to the scale adopted by the resolution of the [illegible] January, 1900, and for the payment of these salaries provision was made in the estimate submitted by the Board to the Municipal Council for 1900, without any question being raised as to the propriety of the course which was adopted.

The increases which the teachers who were [illegible] engaged had, therefore, when they signed the agreement [illegible] 1901 some reason to expect would be made in 1901 to their salaries they had received in 1900, they will not receive if my brother Street's order stands.

In 1901 the question of salaries was again considered by the Board, and a new scale was adopted by resolution passed on the 6th March 1901.

Acting upon the view that, as had been the practice, as I have said, it was for the Board of 1901 to fix the salaries of the teachers for that year, the salary of each teacher was fixed by the Finance Committee in preparing the estimates

for the year 1901, and upon the adoption of these estimates by the Board with the appendix containing the names of the teachers and the salaries to which they were to be respectively entitled for the year, it was assumed on all hands that the salaries so fixed were those which the teachers were to be entitled to receive and the Board was to be bound to pay.

It is the difference between the salaries named in the schedule to the agreement and the salaries thus fixed by the Board that my learned brother Street has treated as a bonus to the teachers beyond the sums which the Board was legally entitled to pay them for their services.

It is, I think, unnecessary to decide whether the view of my learned brother as to the strict legal right of the teachers on this state of facts is correct (though my inclination of my opinion is the other way), for, in my opinion, it is only when it is made to appear that an expenditure for which provision is made in the estimate of the School Board submitted to the Municipal Council would be clearly an illegal one, that the Municipal Council is justified in refusing to raise the sum required by the Board to be provided to meet that expenditure, unless the purpose for which it is intended to be made is one ultra vires the School Board, in the sense that it is a purpose for which in no circumstances would it be lawful for the School Board by its own authority to apply the money of the ratepayers, in which latter case the Municipal Council, I do not doubt, would not only be justified in refusing, but bound to refuse, to raise the money.

The impracticability of working out the provisions of the Act which are under consideration and which afford the only means by which the money required for enabling school trustees to perform the statutory duties imposed upon them of providing for the public school education of all the children of school age, not being those of supporters of separate schools, can be raised, if the view insisted on by the Corporation as to the powers of municipal councils is to be adopted, is manifest, I think, when the effect of it is considered.

What is claimed by the Corporation is that the Municipal Council has the right to call for the production of all contracts and agreements between the School Board and its teachers and employees, and to require it to be shewn that the sums included in the estimates to provide for the payment of these salaries are payable under the terms of contracts entered into with all the formalities required by law to make them binding on the School Board, notwithstanding that, though not so entered into, they are being treated and acted on by teachers and employees and by the School Board as valid contracts, and services provided for are being faithfully rendered under them. It was not, in my opinion, intended that any such enquiry should be entered upon by the Municipal Council. Such enquiries might and probably would involve the consideration of difficult questions of law and fact in order to reach a conclusion, and if, as it is not unreasonable to assume might happen, it were wrongly concluded that with regard to all the teachers and employees, or as to particular ones, the contracts were not binding, and the Municipal Council had, therefore refused to provide for payment of the salaries, the result would necessarily be either that the School Board would be under a legal obligation without the means of discharging it, or be forced to apply for a mandamus to compel the Municipal Council to provide what it had estimated to be necessary, with the possibility that a final decision might not be reached as to its rights until after the year for which the estimate is made had expired.

It would seem to me, therefore, a much more reasonable construction to give to the Act to hold, as I think we should hold, that all that the Municipal Council has a right to ask is that which the Legislature has termed an "estimate" shall shew that that the School Board has estimated the amounts required to meet the expenses of the schools for the current year, and the purposes for which the sums are required, in such a way as to indicate that they are purposes for which the School Board has the right to expend the money of the ratepayers, and that when that has been done the duty is imposed upon the Municipal Council of raising by taxation (except in the special cases for which provision is made by sec. 74), the sums required according to the estimate to meet the expenses of the schools for the current year.

A school board, like the corporation, is a corporate body, and the members of which it is composed are, like the members of the council, elected by the ratepayers, though the electing body is different, and are answerable to their constituents for the manner in which they execute the important trusts which have been reposed in them. Upon the school board is imposed the duty of Making provision for the public school education of the children, and to it is given the right to determine, subject to no statutory limitation such as is by the Municipal Act imposed upon municipal councils as to the amount which may be raised by taxation within the year, the amount proper to be expended for school purposes and within the scope of their powers.

The discretion exercised by the School Board as to these matters the Municipal Council has no authority to question, still less has it any right to substitute for the judgment of the School Board, acting within the scope of its powers, its own judgment, even though it may be apparent that the School Board has not exercised its discretion wisely, for the action it has taken and for an unwise discretion it may have exercised, the members of the School Board are answerable, not to the Municipal Council, but to their constituents.

I venture to think that the object of the Legislature in providing as it has done for the raising of the money required for public school purposes was simply to avoid the expense and inconvenience to the ratepayers of a double system for the imposition and collection of the rates, one by the municipal councils of municipal rates, and the other by the school board of public school rates, and in confirmation of this view I may point out that by the Public Schools Act, 1885, (48 Vict. ch. 49, sec. 40, sub-sec. 3) the same system was applied to rural school sections, the trustees of which before then had the option of levying and collecting their own rate or of requiring the municipal council to collect it.

What I have indicated as my opinion has of course no application where bad faith on the part of the school board is shewn, such as an attempt under cover of a general estimate to provide for an illegal expenditure, and I have no

doubt that in a case of that kind the Court would not permit the extraordinary remedy of a mandamus to be used to compel the levying of a rate to provide money which it was proved was intended to be used for such a purpose.

There is still another ground upon which I think the position taken by the Corporation is untenable.

Assuming than an action brought by a school teacher against the School Board to recover salary on the basis of the scale fixed by the resolution of the 6th March, 1901, to which the provisions of sub-sec. 1 of sec. 81 were pleaded as a defence, must fail because the agreement sought to be enforced was not in writing signed by the parties to it and under the seal of the corporation, it by no means follows that, at all events in the circumstances of such a case as this, a school board would not be justified in not setting up such a defence and in paying the teacher the salary which it had deliberately resolved to pay him and had by resolution fixed as the remuneration he was to receive and on the faith of receiving which he had, it might be, continued to serve.

In my opinion, the board would be justified in refusing to set up the technical defence which the statute, on the assumption I have mentioned, has armed it with, and in paying the salary claimed, and in my view no Court ought to or would at the instance of a ratepayer, if the board had determined to take that course, restrain it from taking it, and it follows, if this be the correct view, that the municipal council would not be justified in refusing to provide the money to enable the school board to pay the salary fixed by its resolution.

If, as was the opinion of my learned brother, it was still open to the School Board to put itself under a legal obligation to pay the salaries according to the scale of remuneration which it had adopted by the resolution of the 6th March, 1901, I do not understand upon what principal, having, as its estimates shewed, determined to pay according to that scale, the Board should have been denied the right to require the Municipal Council to levy a rate sufficient to enable it to carry out its intention, even if the entering into of a

formal contract with the teacher were necessary to justify the payment being made, for it is not to be assumed that the School Board would not before expending the money of the ratepayers, enter into the formal contract which upon that hypothesis must be entered into.

By my learned brother's order the Corporation has been required to provide the salaries, amounting to $9,100, of sixteen teachers, whose salaries were fixed in precisely the same way as the increases which are in question were provided for, the only agreement with these teachers being that they were to receive such salaries as the Board might from time to time appoint. I am, with respect, unable to see why, if it was proper to give effect to the resolution and estimate as to the one, effect should not have been given to them as to the other.

Upon the whole, for the reasons I have given, I am of opinion that it was the duty of the Municipal Council to levy and collect the full sum which is shown by the estimate of the School Board to be required for the payment of salaries for the year 1901, and that my learned brother's order should be varied by substituting for the sum $8,929.25 the sum of $42,841.

The next item to be considered is number 12, "ordinary yearly repairs and alterations to school property under the Act based on expenditure of the past ten years, $25,000." Of this sum $20,000 only was provided for by the Municipal Council, and my learned brother Street has held that no proper estimate was made of the expenses under this head, and that the Municipal Council for that reason would have been justified in refusing to levy and collect any part of it, and therefore cannot be compelled to raise the $5,000 in dispute.

It follows from what, in dealing with the item of salaries, I have stated to be my opinion, that this estimate (subject to an observation which I shall afterwards make as to it) was a sufficient estimate to cast upon the Municipal Council the duty of levying and collecting the whole $25,000, and I should be of the same opinion even if, as was contended, the estimate ought to show the basis upon which it was made.

The School Board has under its charge upwards of forty-five school houses, of various ages and descriptions, and it has been its practice in the past to defer until the summer holidays the making of necessary repairs to them. The necessity for some of the repairs which it might then be found to be required might not be known or indeed have arisen at the time when the estimate for the year is required to be submitted. The Finance Committee of the Board had considered the question of what sum would probably be needed during the year, more than nine months of which had yet to run, and the Board had considered and adopted the estimate which the Committee had made. The Committee and the Board had the experience of many past years to guide them in making their estimate as to the probable requirements of the year, and the estimate which they submitted was based, as it shewed on its face, on the experience of the latter ten of those years, and beyond all this they procured and furnished to the Municipal Council, when called on by its Board of Control to give further information, a detailed statement of repairs which it had been determined should be made, shewing the nature of the repairs to be made on each building which was to be repaired, and covering thirty-eight printed pages, and yet because the probable costs of these repairs was not given separately, it was contended by the learned counsel for the Corporation that an estimate such as as the Act required had not been submitted.

Had the word "alterations" not been used in the estimate under consideration, I should have been prepared to hold that as submitted it was sufficient, but it may be that the use of that word made it uncertain whether provision was not being made for additions to school houses, and therefore for a class of expenditure as to which the Council had, under sub-sec. 1 of sec. 76, the right to refuse to raise the sum required. It is unnecessary, however, to consider this point further, because, by the detailed statement to which I have referred, shewing as it did that repairs only were intended, all difficulty on that score was removed.

It is difficult to see what more satisfactory basis could have been adopted for this estimate, when one considers the

circumstances under and the purposes for which the estimate was made, and especially the fact to which I have referred that it was extremely difficult, if not practically impossible, to determine in advance with any degree of exactness, what the requirements of the year would be. The basis on which the estimate was made was besides one, the materials for verifying which were in the possession of the Municipal Council, all the accounts, books, and vouchers of the School Board having been in the previous years (since 1885) audited and reported on by the municipality's own auditor: sec. 65, sub-sec. 11.

I am of opinion, therefore, that it was the duty of the Municipal Council to levy and collect the whole $25,000, and that my learned brother's order should be varied by adding the $5,000 in dispute to the sums directed by it to be levied and collected.

The next item to be dealt with is number 13, "dais and railing in board rooms and counters, partitions, screens, etc., in office, see appendix E, $6,000."

Appendix E gives the further particulars as to this item, that "it is to carry out plans approved by the City Council of last year, for which they included the item in a money by-law."

The School Board has rented from the Corporation a part of the new municipal building for use as a board room and for offices, for which its pays a rental of $1,800 per annum, and it is to provide for the furnishing and fitting up of it for these uses that it is proposed to expend the sum of $6,000.

Having regard to the fact, which is not in dispute, that plans and an estimate of the cost of what is proposed to be done were approved by the Municipal Council of 1900, and that a by-law was in that year provisionally passed and submitted to the vote of the electors for borrowing $6,000 to defray that cost, it is not, I think, open to the Corporation to complain that the estimate as to this item of proposed expenditure is not a sufficient estimate, within the meaning of the Act, if indeed it would otherwise have been open to that objection.

Nor is the estimate open to objection as being for purposes coming within the provisions of sub-sec. 1 of sec. 76, for it clearly does not provide for expenditure of the class with which that sub-section deals. The ground upon which my learned brother refused to direct this sum to be raised appears to have been that there is no direct authority in the School Act for the expenditure of money in furnishing board rooms.

It is true that in terms no such authority is conferred by sec. 65 of the School Act, but that I venture to think, with all respect, is not sufficient to justify the conclusion that a school board has no authority to make such an expenditure.

The enumeration of powers of trustees which sec. 65 contains is plainly not intended to be exhaustive. The section, as its heading shows, deals, primarily at all events, with "duties of trustees." No direct authority is given by the section to pay its secretary and treasurer, its officers and servants, though the duty is imposed and the power conferred to appoint them. So with regard to the important duties dealt with in sub-sections 3, 4, and 5, no direct authority is given to expend the money required for performing those duties, and none was, in these cases, necessary, because, taken in connection with the provisions of sub-sec. 9, the requisite authority is to be implied, for only by implying it can the duties imposed be performed.

In like manner, where, as in sub-sec. 2, it is made the duty of the trustees to fix the place of meetings of the board, there is to be implied, I think, the power to make provision for securing a place of meeting and to make such expenditures as may be necessary for that purpose.

There would, in the case of a public school board such as that of the City of Toronto, be no difficulty in implying a power to rent premises for this purpose, while in the case of a rural school section it is possible that no such implied power might be held to exist.

Section 56 may also be referred to in support of the right of the School Board to incur this expenditure. By that section every board in urban municipalities is made a corporation, and is invested with all the powers usually possessed by corporations so far as the same are necessary for carrying out the purposes of the Act; see also the Interpretation Act, R. S. O. ch. 1, sec. 8 (25).

The School Board must also, I think, for a like reason and on the same principle, be held to have authority to provide a place or places where the duties of the secretary-treasurer, the inspectors, and the other officers in its employment are to be performed.

It may be that the scale of magnificence upon which this is proposed to be done in the present case is greater than the ratepayers may approve of, or it may be that it is only in keeping with that of the new building in which the board and its officials have found accommodation, and with the surroundings, but that question is not for the Municipal Council or for the Court to deal with.

Assuming good faith on the part of the School Board (and its good faith is not questioned), neither to the Municipal Council nor to the Court is it called upon to give reasons for the manner in which it has chosen to exercise the discretionary power which the legislature has vested in it, and still less to justify or defend the action which it has taken.

There is, in my opinion, therefore, no ground upon which the action of the Municipal Council in refusing to raise this sum of $6,000 can be sustained, and the order appealed from should therefore be varied by adding this sum also to the amount which is by the order directed to be levied and collected.

The small item of $50 deducted from item 37, medals and certificates, should not, I think, have been disallowed, for similar reasons to those which I have given for holding that the expenditure of the $6,000 with which I have just dealt, may be justified.

It appears to have been taken for granted that the $50 deduction was in respect of medals, though what ground there is for that assumption I have not been able to discover. It would seem that the medals and certificates are in the nature of prizes for the pupils, or in lieu of prizes. Authority is given by the Act to provide prize books, and it was under the idea, perhaps a mistaken one, that this authority was a justification for giving medals and certificates, that the practice of giving that kind of reward of merit has been adopted. However that may be, I do not see why such recognitions of the standing and merit of pupils may not, under the general powers of schools boards, be provided at the expense of the ratepayers. If, as appears to have been conceded, it was lawful to provide certificates printed or graven on paper, I do not see why so moderate an expenditure as is provided for testifying on the more enduring substance of a medal to the standing or merit of a pupil may not be justified.

There remain, in order to dispose of the appeal of the School Board, to be considered the items intended to provide for liabilities incurred in 1900, the payment of which was deliberately held over until the present year. My learned brother Street decided that these payments do not form part of the expenses of the schools under the charge of the Board for the current year, and should not therefore have been included in the estimate, and with that view I agree. The Act makes no express provision for cases which must sometimes occur, where it has become necessary owing to too small an estimate having been made to cover the necessary expenses of the year, to incur liabilities beyond the amount provided for in the estimate of the year, and I desire to leave open, as far as I am concerned, until it comes up for decision, the question whether in such circumstances the Act may not be so construed as to justify the amount of the over-expenditure being treated as an expense of the following year, at all events where the payment has been made in that year, but, as far as the present case is concerned, I do not see how the Act can be interpreted so as to bring the expenditure in question within its terms.

I also agree with the conclusion of my learned brother Street as to the items in question on the cross-appeal, and would only add for myself to the reasons he has given for coming to that conclusion, that, in my opinion, the estimate as to those items was a sufficient estimate.

I have not found it necessary to discuss the cases cited by Mr. Fullerton in support of his argument as to what are the requisites of an estimate such as the School Board is required to submit according to the provisions of sub-sec. 9, sec. 65.

I have been unable to deduce from the cases any principle of general application to be acted upon in determining the requisites of such an estimate. If the observations of a general character made by the Judges in dealing with the particular facts upon which they were called upon to decide in the cases cited are to be taken to enunciate a principle to be applied generally to the construction of the sub-section, we are of course bound, as far as we understand that principle, to apply it in this case. I am, however, of opinion that no such principle is enunciated, and that the observations referred to are applicable only to the facts of the cases then under consideration, and have no application to estimates for such expenditures as are dealt with in the items in dispute in this case. It is not unimportant to observe that the language used would seem to indicate that in the view taken by those learned Judges there is vested in municipal councils some discretion as to the amount of the expenditure to be made by the school board, and as to the propriety or expediency of a proposed expenditure, but it is now clear that the Council has no such discretion, and that, as was said by Mr. Justice Sedgewick, in delivering the judgment of the Supreme Court in Canadian Pacific R. W. Co. v. City of Winnipeg (1900), 30 S. C. R. at p. 563, referring to the effect of Manitoba legislation corresponding with our own; "The school trustees had the right of determining without question the amount which was to be raised for public school purposes within the city limits and of authoritatively calling upon the city authorities to collect and hand over that

amount, while the latter authorities were under an absolute obligation to obey the behests, in that regard, of the school trustees."

See also *Re* Board of Education of Napanee and Town of Napanee (1881), 29 Gr. at p. 396.

And it may well be that expressions of opinion as to the requisites of an estimate based upon the view that there was vested in municipal councils such a discretion as it is now clear is not vested in them, are not to be taken as a guide in determining what those requisites are.

Assuming, however, that the expressions of opinion to which I have referred were the *rationes decidendi* of the cases cited by Mr. Fullerton, and are binding on us, my conclusion as to the proper disposition to be made of these appeals would be the same, for, in my opinion, the estimate in question, supplemented as it was by the additional information furnished by the School Board, satisfied all the requirements of an estimate such as, according to these expressions of opinion, the statute makes provision for.

I have dealt with the case on the assumption that the provisions of the statute of 1901 are those applicable, and not those of the corresponding sections of R.S.O. 1897 ch. 292. The argument of counsel was based on that assumption, and rightly so, I think, because, though the estimate was first submitted before the Act of 1901 came into force, it was after it came into force that the additional particulars were furnished, and the two (the estimate and the additional particulars) together constituted the estimate of the School Board, and the estimate was, therefore, submitted after the new Act became operative.

The result is that, in my opinion, the appeal of the School Board should be allowed and the order appealed varied to the extent I have indicated, and that the cross-appeal should be dismissed, and the Corporation should pay the costs of the motion and of the appeal and cross-appeal.

MacMahon, J.:—During the argument I entertained the opinion that the increase in the salaries of the teachers, after the formal contracts entered in December, 1900, by them with the School Board, was, as expressed by Mr. Justice Street, in the nature of a bonus over and above the salaries for which they had agreed to do the work of their position, but, having regard to the provisions of the contract, it is clear that the salary is not absolutely fixed by the amount placed in the schedule opposite the contracting teacher's name, but is to be at that salary "or at such salary and in such school and division of the same as the School Board may from time to time appoint," so that what may be called a provisional contract was entered into by the teacher, and the incoming School Board could increase or reduce the salary mentioned in the schedule according to the school or division in which such teacher was placed.

When one speaks of an "estimate" for work to be performed, that usually includes a somewhat detailed description of the work and materials to be employed in its construction and the cost thereof. But, as pointed out in the judgment of his Lordship the Chief Justice, where estimates are furnished by the School Board, that particularity is not required.

I agree with the disposition of the appeal and cross-appeal made in the judgment of the Chief Justice.

Lount, J.:—I agree.