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I. Proceedings of the Education Department.

1. ADMISSION TO HIGH SCHOOLS.

COPY OF AN ORDER IN COUNCIL, APPROVED BY HIS HONOUR THE LIEUTENANT-GOVERNOR, THE 15TH DAY OF FEBRUARY, A.D. 1877.

The Committee of Council have had under consideration, the annexed Report of the Honourable the Minister of Education, dated the 12th day of February, 1877, recommending that certain modifications set forth in the said Report should be made in the Collegiate Institutes and High Schools, and that the same should come into effect at the examination to be held in June next.

The Committee advise that the recommendation of the Honourable the Minister be acted upon.

Certified. (Signed) J. G. SCOTT,
Clerk Executive Council,
Ontario.

The Honourable
The Minister of Education.

The undersigned has the honour to recommend to His Honour the Lieutenant-Governor in Council, that, in accordance with the suggestion of the Central Committee of Examiners, the following modifications shall be made in the subjects prescribed for candidates for entrance into the Collegiate Institutes and High Schools, and that the same shall come into effect at the examination to be held in June next, viz. :—

1. Candidates will be examined in the leading facts of English History. The questions set will not demand a minute knowledge of details, but will be strictly limited to the outlines of the subject.

2. Candidates will be examined, as heretofore, in reading from the Fourth Reader, pp. 1-246; but they will in addition be expected to show that they understand the meaning of these reading lessons. They will likewise be examined more minutely on the selections enumerated in the following list, and they will be required to reproduce the substance of one or more of them in their own language :—

1. The Norwegian Colonies in Greenland.—*Scoresby.*
2. The founding of the North American Colonies.—*Pedley.*
3. The Voyage of the "Golden Hind."—*British Enterprise.*
4. The Discovery of America.—*Robertson.*
5. The Death of Montcalm.—*Hawkins.*
6. Jacques Cartier at Hochelaga.—*Hawkins.*
7. Cortez in Mexico.—*Cassell's Paper.*
8. The Buccaneers.—*The Sea.*
9. The Earthquake of Caraccas.—*Humboldt.*
10. The Conquest of Peru.—*nnals of Romantic Adventures,*
11. The Conquest of Wales.—*White's Landmarks.*
12. Hermann, the Deliverer of Germany.—*Jerrer.*
13. The Burning of Moscow.—*Segur's Narrative.*
14. The Battle of Thermopylae.—*Raleigh.*
15. The Destruction of Pompeii.—*Magazine of Art.*
16. The Taking of Gibraltar.—*Overland Route.*

3. The local Boards are directed not to admit candidates that fail to obtain one of the marks given for the parsing question on the paper in grammar.

Respectfully submitted,
(Signed) ADAM CROOKS,
Minister of Education.

Education Department,
Toronto, February 12th, 1877.

2. COPYING AT EXAMINATIONS—COLLINGWOOD.

MEMORANDUM OF THE MINISTER OF EDUCATION, ONTARIO.

The Minister has had under consideration the reports of the High School Inspectors, on the Intermediate Examination, held at Collingwood, on the 18th, 19th, 20th, and 21st days of December last (in which they report that they had found conclusive evidence of copying in the arithmetic paper), and the communications with the Examiners and the Town Inspector, on the subject. It now appears to be clearly established, by the evidence taken on the 18th instant, on the investigation the Minister directed to be held, whereat there were present, Dr. Stephens, Chairman of the High School Board, Mr. John Hogg, Mr. Hall Telfer, members of the Board, ; also Mr. W. Williams, Head Master, and Mr. John Harvey, Second Master; also Mr. Henry Robertson, LL.B., Chairman Public School Board, the inquiry being conducted by the Inspector—that certain candidates were guilty of the charge, viz : [names omitted].

The Minister has accordingly to direct that the examination of such of the candidates named as passed be disallowed, and that their standing in the school remain as if they had not presented themselves for examination, and that no allowance to the High School be made in respect of these pupils.

The Minister has to regret that a want of vigilance on the part of the Inspector, in absenting himself from the Examination Hall, without a proper substitute in charge, furnished the opportunity for this violation of the rules.

It may be necessary for the Minister to go further with the punishment, in future cases, in order to effectually check a proceeding so fraudulent in its nature, and so injurious to the best interests of the school.

(Signed) ADAM CROOKS,
Minister of Education.

Education Department,
24th February, 1877.

3. TERMS AND VACATIONS IN PUBLIC AND HIGH SCHOOLS (PRESCRIBED BY THE AMENDED ACT OF LAST SESSION, NOW IN FORCE.)

1. *Public Schools in Rural Sections.*

"There shall be two vacations during the year for Public Schools. The Summer vacation shall be from the eighth day of July to the seventeenth day of August inclusive; the Winter vacation from the twenty-fourth day of December to the second day of January inclusive."

Good Friday is a Statutory holiday in Rural Schools.

2. *Public and High Schools in Cities and Towns, and in Incorporated Villages where High Schools exist.*

"There shall be three vacations for High Schools in the year; the Easter vacation to extend from Good Friday to Easter Monday inclusive; the Summer vacation shall begin on the fourteenth day

of July, and end on the thirty-first day of August, and the Christmas vacation shall begin on the twenty-third day of December and close on the sixth day of January."

4. TEACHERS RETIRED FROM THE PROFESSION.

Names of Teachers who have given notice of retirement from the profession, as provided by the School Law.

(List continued from Journal of September, 1876.)

No.	NAME.	COUNTY.	SUBSCRIPTIONS RETURNED.	
			$ c.	
601	Adair, Wm.	Durham	8 00	Sept. 1876
602	Armstrong, Samuel	Wellington	6 00	Oct. 1876
603	Aubin, Israel	Essex	4 00	Dec. 1876
604	Anderson, Peter	Northumberland	5 00	do 1876
605	Buckland, S. P.	York	4 00	Aug. 1876
606	Bruce, David	Prescott	6 00	do 1876
607	Bretz, Abram	Oxford	9 00	do 1876
608	Black, James C.	Elgin	8 00	Sept. 1876
609	Bartlett, W. E.	Northumberland	9 00	do 1876
610	Boehmer, Val.	Waterloo	7 00	do 1876
611	Brady, Thomas *(by Elizabeth Brady)*	Kent	7 00	do 1876
612	Brown, John	Durham	11 00	do 1876
613	Broadway, Augustine	Elgin	4 00	do 1876
614	Bridgman, T. R. E.	Norfolk	7 00	Oct. 1876
615	Benner, A. S.	Grey	6 00	do 1876
616	Brandon, W. J.	Huron	4 00	Nov. 1876
617	Berry, Francis R.	Norfolk	7 00	Dec. 1876
618	Bristow, John	Wellington	10 00	do 1876
619	Clinton, George	Prince Edward	7 00	July 1876
620	Clapp, Robert	Wellington	7 00	Sept. 1876
621	Cornell, Werner	Lambton	9 00	Oct. 1876
622	Campbell, Rev. W. F.	Wentworth	4 00	do 1876
623	Campbell, Amos W.	York	7 00	do 1876
624	Clapp, David P.	do	2 00	Nov. 1876
625	Cheffey, C. H.	Simcoe	5 00	do 1876
626	Cunnings, W. R.	Durham	10 00	oo 1876
627	Craig, Robert M.	Northumberland	10 00	do 1876
628	Cummings, James B.	Huron	10 00	Dec. 1876
629	Dafoe, W. A	York	11 00	Nov. 1876
630	Esmond, John J	do	4 00	Oct. 1876
631	Fenner, Samuel	Norfolk	2 00	July 1876
632	Fear, Ezra A.	Huron	4 00	Nov. 1876
633	Gray, Thomas	do	7 00	July 1876
634	Gilray, Robert	York	9 00	Aug. 1876
635	Groves, George H.	Carleton	10 00	Sept. 1876
636	Huggins, William O.	Wellington	6 00	July 1876
637	Hamacher, Aaron C.	Waterloo	10 00	Sept. 1876
638	Hooper, John	Halton	11 00	do 1876
639	Hodges, John	Perth	5 00	Nov. 1876
640	Henderson, James	Bruce	8 00	do 1876
641	Henry, T. M.	Lennox	6 00	do 1876
642	Hanna, Richard S.	Peel	4 00	Dec. 1876
643	Irvine, Charles R.	York	6 00	Nov. 1876
644	Johnston, James V.	Bruce	6 00	July 1876
645	Kirby, Nathaniel	Victoria	6 00	do 1876
646	Leyes, George	Waterloo	6 00	Aug. 1876
647	Laroy, Samuel J.	Prince Edward	6 00	Sept. 1876
648	Marven, Amos C.	Northumberland	5 00	Aug. 1876
649	Markle, V. A.	Wentworth	3 00	Oct. 1876
650	Millar, James	Lincoln	5 00	do 1876
651	McKellar, Archibald R.	Middlesex	5 00	July 1876
652	McGregor, Miss M.	Oxford	43 50	Aug. 1876
653	McIntyre, Hector	Victoria	8 00	do 1876
654	McKillop, James	Middlesex	7 00	do 1876
655	McPhail, Neil	Elgin	6 00	Sept. 1876
656	McRae, Roderick	Bruce	6 00	do 1886
657	McKay, Donald	York	5 00	Oct. 1876
658	McKay, Angus	Oxford	5 00	do 1876
659	McTavish, Daniel	do	5 00	Dec. 1876
660	Osborne, T. H. C	Victoria	3 00	Aug. 1876
661	Piette, F.	Grey	3 00	July 1876
662	Pruner, W. R.	Dundas	5 00	Oct. 1876
663	Rittenhouse, W. B.	Lincoln	2 00	Aug. 1876
664	Robson, Thomas C.	Haliburton	2 00	Sept. 1876
665	Redick, J. W.	Belleville	10 00	Oct. 1876
666	Scott, Adam	York	5 00	July 1876
667	Standish, Joseph	Halton	9 00	Aug. 1876
668	Sibbald, Andrew *(by Thomas Brunskill, M.D)*	Simcoe	9 00	do 1876
669	Steele, Andrew C.	Perth	10 00	do 1876
670	Sherry, G. J.	Northumberland	9 00	Sept. 1876
671	Sinclair, P. A.	Elgin	6 00	do 1876
672	Sifton, James W.	Northumberland	5 00	do 1876
673	Sinclair, James A.	York	7 00	Oct. 1876
674	Scott, H. S. *(by Clement Dyer)*.	do	11 00	Nov. 1876
675	Walls, John W.	do	14 50	July 1876
676	Ward, George J.	Ontario	4 00	Sept. 1860
677	Walls, Matthew	Huron	4 00	do 1876
678	Wilson, John	Durham	6 00	Oct. 1876
679	Williams, C. McD.	Simcoe	8 00	do 1876
680	Wilson, Jasper	Northumberland	5 60	Nov. 1876
681	Yarnold, F. M.	Ontario	4 00	Sept. 1876

STATEMENT SHEWING MONEYS RETURNED TO REPRESENTATIVES OF DECEASED TEACHERS.

682	Brown, James, sen., representative of James Brown, jun.	Renfrew	16 55	Nov. 1876
683	McIntyre, Mrs. Isabella, representative of W. B. McIntyre	Middlesex	17 15	Oct. 1876
684	Reynolds, Edwin R., representative of William J. Reynolds	Grey	7 50	do 1876
685	Smyth, George, representative of George M. Smyth	Dundas	7 60	Aug. 1876

5. ROMAN CATHOLIC SEPARATE SCHOOLS—UNIONS.

MEMORANDUM respecting Roman Catholic Separate Schools.

The following questions have been submitted for my opinion :—

1. Can a city, and one or more incorporated villages contiguous thereto, become united under one Board of Trustees?

2. Can a town and parts of an adjacent township become united in a like manner?

3. If these unions cannot be effected, can those who propose to become supporters, and reside within the limits of the municipality contiguous to the city or town in which there is a Board of Separate School Trustees, become supporters of the last-mentioned schools, and so as to be exempt from liability in their own municipality for rates for Public School purposes?

4. Are Roman Catholic owners of property, situate within the jurisdiction of the Boards of Trustees of Roman Catholic Schools, or within three miles thereof, exempt from liability for Public School rates when such owners are resident in distant places?

5. On the incorporation of a village into a town, what is then the position of the Board of Trustees of Roman Catholic Separate Schools?

My opinion is as follows :

As to question one : The provisions in the Roman Catholic Separate School Act of 1863, under which a union can be effected, are under sections 5 and 6. The union provided for under section 5 is of the several wards of a city or town ; while the union under section 6 is confined to school sections in the same or adjoining municipalities, which I think must be interpreted, under the Act, to mean any townships. A union with a city would therefore be excluded, and this would be in conformity with the law applicable to Public Schools in the like case.

2. From the foregoing answer and the terms of the 6th section of the Act of 1863, it will appear that a union can only be constituted between school sections in rural municipalities, just as unions of wards in cities and towns can be formed under section 5.

3 Where unions are not formed, then the Trustees of the Separate School can, under section 12, allow children from other school sections, whose parents or guardians are Roman Catholics, and who request the same, to attend their school. Under section 14, the parent or guardian in such case, if living in a municipality contiguous to that in which the child is attending the Separate School, can become exempt from Public School rates in the section in which he resides ; and from section 19, it would further appear that this privilege cannot be claimed where the residence of the parent or guardian is beyond three miles in a direct line from the site of the Separate School house. Hence, within this limit the benefits of a union are practically secured to a supporter of the Separate Schools.

4. The exemptions only apply to the cases mentioned in the last answer, and to the case where the supporter is resident in the municipality in which the Separate School is situate, and within three miles, in a direct line, of the site of the Separate School house.

5. Under sections 5, 10, and 11, the same result would follow in the case of Separate School Trustees, as in that of Public School Trustees under sections 69 to 79.

(Signed) ADAM CROOKS,
Minister.

EDUCATION OFFICE,

II. Decisions of the Courts.

1. ROMAN CATHOLIC SEPARATE SCHOOL CASE.

We publish in this issue the judgment of Judge McDonald in a case tried in Kitley, in which the plaintiff Anthony Healy as the collector of the Roman Catholic Separate School tax, sued the defendant, John Carey, for the amount of his assessment. Mr. Carey admitted that he was a supporter of the Roman Catholic Separate School, but, inasmuch as he had leased his farm to his son who was a supporter of the Public School, and who was to pay the taxes,

contended he was not, as far as the assessment upon that farm was concerned, liable for the Separate School tax. The judge reserved his decision. The judgment is as follows :—

"This cause was tried before me at the last sitting at Frankville, and I then reserved judgment.

"I have given the matter most careful consideration, and the principal difficulty with which I have been met is this : That if the defendant is compelled to pay this tax, the farm upon which the assessment was made, will have been taxed for the support of two schools. Out of this also arises a possible question of the tenant having to pay taxes towards the support of a public school and of a Roman Catholic Separate School, as he is under the terms of his lease, obliged to pay taxes.

"Again, on the other hand, if the collector of the public school tax applied to the owner for payment of that assessment the latter could refuse to pay it on the ground that he was a supporter of the Roman Catholic Separate School, and not liable to pay a public school tax.

"The seventh section of the Separate School Act of 1863, 26 Victoria, chap. 5, enacts that, 'The Trustees of Separate Schools forming a body corporate under this Act, shall have the power to impose, levy, and collect school rates or subscriptions upon and from persons sending children to or subscribing towards the support of such schools, and shall have all the powers in respect of Separate Schools, that the Trustees of Common Schools have and possess under the provisions of the Act relating to Common Schools.'

"The fourteenth section of the same Act of 1863, amongst other things, enacts that, 'Every person paying rates, whether as proprietor or tenant, who, by himself or his agent, on or before the first day af March in any year gives, or who, on or before the first day of March of the present year, has given to the Clerk of the Municipality notice in writing that he is a Roman Catholic, and a supporter of a Separate School, situated in the said Municipality, or in a Municipality contiguous thereto, shall be exempted from the payment of all rates imposed for the support of Common Schools, and of Common School Libraries, or for the purchase of land or erection of buildings for Common School purposes, within the city, town, incorporated village, or section in which he resides, for the then current year, and every subsequent year thereafter, while he continues a supporter of a Separate School ; and such notice shall not be required to be renewed annually.'

"In my humble judgment the defendant, being a Roman Catholic, and a supporter of the Separate School, under the provisions of the 14th section above mentioned, is wholly exempt from the payment of Public School rates, while under the provisions of the seventh section the Trustees of the Separate School had power to impose school rates or subscriptions upon him, and have power to collect the same. My judgment is therefore against the defendant.

"In my opinion the action should have been brought in the name of 'the Trustees of the Roman Catholic Separate School for the section number seven in the Township of Kitley,' and I direct that the summons, partiulars of claim, and other papers and proceedings be amended accordingly. No objection was taken by the defendant as to the action having been brought in the name of the wrong plaintiff, but I myself raised the question.

"Judgment for the plaintiff for the amount claimed, together with costs."—*Evening Recorder*, Feb. 6, 1877.

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2. IN THE MATTER OF THE BOARD OF EDUCATION OF THE TOWN OF PERTH AND THE CORPORATION OF THE TOWN OF PERTH.

Board of Education—Constitution and powers—37 Vic. chs. 27, 28 O—Mandamus to raise money for High School purposes—Demand.

Upon the affidavits and facts stated below, a mandamus *nisi* was ordered, on the application of the Joint Board of Education of the Town of Perth, commanding the Corporation of the Town to provide $16,000, as required by said Board, for the maintenance and accommodation of the High School, to pay for a school site and building of a school-house and premises connected therewith, as shewn by the estimates prepared and submitted by said Board to the Corporation.

It was *held* that the Joint Board of Education were the proper applicants, and not the Trustees of the High School Board.

The sections of the High School and Public School Acts, 37 Vic. chs. 27, 28, O., which confer on the joint board the powers of each board, mean the powers possessed by each board for the purpose for which such board was created, before the creation of the joint board.

Semble, that the demand here was not in form sufficient ; but the council having resisted the application on other grounds, effect was not given to the objection.

Hoyles, in the vacation after Hilary term last, April 28, 1876, obtained a rule, returnable before the full Court on the first day of Easter term last, calling on the Corporation of the Town of Perth to shew cause why a writ of mandamus should not issue out of this Court, commanding the Corporation of the Town of Perth to provide the sum of $16,000 for the Board of Education of the Town of Perth, as required and demanded by the said board, to pay for a school site and building of a school-house and premises connected therewith, and for school accommodation, as shewn upon and according to the estimates prepared by the said board, and furnished by them to the council of the Corporation of the Town of Perth ; or why the said corporation should not be commanded by the said writ to provide the sum shewn by the said estimates to be necessary for erecting said buildings and for maintenance and school accommodation, as shewn upon affidavits and papers filed ; and why such other order should not be made herein as to costs as to the Court may seem fit ; and on grounds disclosed in affidavits and papers filed.

The affidavits and papers filed disclosed the following, among other facts :—

The Board of Education of the Town of Perth was established in 1851, by the union of the then existing grammar school or high school, and the common or public school trustees.

The existing accommodation in the Town of Perth, for the schools under the control of the Board of Education, consists of lot 6, on the south side of Foster street, containing one quarter of an acre, on which is erected a two-story stone building, containing eight rooms, six of which are used for the public school, and two for the high school.

The board also hold what is known as the old grammar school lot, being a part of lot 6, on the north side of Craig street, and containing about one quarter of an acre of land, upon which no building is erected.

The number of pupils on the register of the public school is 437, and the number of pupils on the register of the high school is 91.

The last school census shews the number of children in the town between the ages of five and sixteen, to be 611, not including children attending, or supposed to attend, the Roman Catholic separate school in the town.

The population of the town is about 2,800, and the amount of the whole rateable property of the town, according to the last revised assessment roll, is $102,750.

The Board of Education and the School Inspector are of opinion that the existing school accommodation is altogether insufficient and unsuitable for the requirements of the town.

The board last year decided that it was necessary to obtain increased accommodation, both with regard to a school site and school building, and with that object treated with several parties as to the purchase of a site, obtained plans and specifications for a school building, and advertised for tenders for the erection of such a building.

The board during the present year purchased a school site at the price of $2,500, and entered into a contract for the erection of a suitable school building thereon, for the sum of $11,845.

The quantity of land purchased for the school site, is five acres ; the price agreed $2,500, to be paid at any time up to 1st of August, 1876, with interest at seven per cent. from 1st of November, 1875. The agreement for the sale, which was in writing, dated 1st of February, 1876, gave liberty to the board to enter upon the land and deposit thereon materials required for the erection of the new high school.

The agreement for the erection of the school-house was dated 12th January, 1876. It bound the contractors to have the building erected on or before the 15th of November, 1876. The price was $11,845, by instalments of $85 for every $100 worth of work done, and materials provided, the first instalment to be paid on the 15th April, 1876, and the remaining instalments to become due and payable every two weeks until the building should be fully completed. The balance of the price was payable on the completion of the work.

On the 21st January, 1876, the secretary of the Joint Board of Education, under the instructions of the board, addressed a letter to the corporation of the town, requesting that corporation "to raise and pay over to the said Board of Education the sum of $16,000, for the purchase of a site for, and the erection, completion and furnishing of a new high school building, for the said Town of Perth, pursuant to the statute in that behalf."

On the 21st February last, the following resolution was introduced by a member of the council and negatived on a tie vote : That in the opinion of this council the amount asked for by the Board of Education, namely, $16,000, is a very extraordinary one, it being more than the whole amount of taxes levied in the town for all purposes for two years. That whereas we have in the town two school sites (besides that of the separate school), one of which is an acre in extent, and has on it a two-story stone school-house, in which the high and public schools are at present held, but which,

owing to the number of scholars attending the said schools having gradually increased, does not afford quite adequate accommodation; this council is willing to take all proper steps for raising within a reasonable time such sum as may be necessary for enlarging the said school, so as to afford the accommodation required by law; but this council cannot comply with the request of the Board of Education for so very large a sum as $16,000, and consider any scheme involving the expenditure of anything like that sum as unwise in the extreme.

On the 20th February, 1876, the secretary of the Joint Board of Education, acting under the instructions of the board, wrote to the council of the town, giving a detailed estimate of the sums required. The estimate was made up as follows:—

Price of land	$ 2,500
Contract for building	11,845
Plans and cost of Inspector	500
Furnaces	400
Out-building	100
Slating	300
Fencing	500
Total	$16,145
	Say, $16,000

The letter concluded by stating, under the instructions of the board, that if the municipal corporation had not the money on hand out of which to pay the sum required, the board would be willing to accept debentures of the town, properly issued and payable at a period not exceeding twenty years, or notes of the town payable on the collection of the taxes of the town for the present year.

On the 6th of March, 1876, the introduction of a by-law for the purpose of raising the amount failed to carry in the council, there being five for the motion and five against it.

On the 20th March, 1876, a motion to introduce a by-law to raise the money met the same fate as the former motion, and on the same division—five to five.

The council, at the same meeting and on the same division negatived a motion for the appointment of a committee to consult with the Board of Education, as to whether they would not be willing to erect the building on a particular site named, and reduce the estimate to $15,000.

On the 10th April, 1876, the Board of Education again requested the council of the town to provide the $16,000, being the amount first required.

A resolution of the council, again introduced in reference thereto, was again negatived on the same division as before, the council again refusing to take any steps towards providing the sum required.

The Inspector of Schools reported the school accommodation in Perth quite inadequate, except for public school purposes, and in consequence the Chief Superintendent of Education, on the 27th of November, 1875, wrote, insisting upon further accommodation being provided for high school purposes.

The legislative grant for the last year (1875) was withheld until the board informed the Department of Public Instruction that they had purchased the site, and given out the contract for the erection of the school building.

Still the council of the town refused to provide the amount required, or to pass any by-law as to the same.

On the 24th March, 1876, the Board of Education instructed counsel to take the necessary legal proceedings to compel, if possible, the town to provide the amount required.

During this term, May 29, 1876, *Armour*, Q.C., (*J. K. Kerr*, Q.C., with him) shewed cause. The Board of Education are not the proper applicants, and the application should have been made at the instance of the trustees of the high school board: 16 Vic. ch. 186, sec. 11, sub-sec. 4; 16 Vic. ch. 185, sec. 8; Consol. Stat. U. C. ch. 63, sec. 25, sub-sec. 7; *Ib.* ch. 64, sec. 79, sub-sec. 9; 23 Vic. ch. 49, sec. 10; 29 Vic. ch. 23, sec. 5; 37 Vic. ch. 27, sec. 63 O.; 37 Vic. ch. 28, sec. 26, sub-sec. 10, O.; *Ib.* sec. 87, sub-sec. 6; *Ib.* sec. 151, sub-sec. 9; *Board of Trenton and Corporation of Trenton*, 26 U. C. R. 353; *Joint Board of Caledonia* v. *Farrell*, 27 U. C. R. 321; *Oliver* v. *The Union Board of Ingersoll*, 29 U. C. R. 409. And even if the applicants are the right applicants, there is no such duty cast on the town as contended: 37 Vic. ch. 27, secs. 44, 45; 34 Vic. ch. 33, secs. 33, 40; 37 Vic. ch. 27, sec. 47, sub-secs. 1, 2, 3; *Ib.* sec. 61, sub-sec. 5; Consol. Stat. U. C. ch. 63, sec. 25, sub-sec. 5; *Re Trustees of Weston Grammar School* v. *The Corporation of the United Counties of York and Peel*, 13 C. P. 423; 12 Vic. ch. 81, sec. 41, sub-sec. 3; 37 Vic. ch. 48, sec. 383, sub-secs. 5, 6; and no legal change of site was shewn: 37 Vic. ch. 27, sec. 36. The demand is extravagant, and the Court, on the merits, should refuse the writ: *Regina* v. *Garland*, L. R. 5 Q. B. 269; *School Trustees of Port Hope* v. *Town Council of Port Hope*, 4 C. P. 418.

The affidavits filed in shewing cause, disclose the following grounds of contention: It is wholly unnecessary to build a high school of the size and at the cost proposed; not more than $5,000 is necessary for such a purpose, if any change be really necessary. The average attendance at the high school, previous to the time when the present High School Act went into force, was about 53. In February last, the average attendance was 80, in March, 79, in April, 78. The increase of pupils during the last two years has not arisen from any increase of population, but from the circumstances that under the present school Acts, the standard for the qualification of teachers being raised, many of those intending to be teachers, have, during the last two years, attended the high schools at Perth and elsewhere, in order to have one or two years tuition, to qualify them for passing their examination; and this increase is nearly altogether from outside the limits of the high school district. There is no reason to believe there will be an increase in the future. A reason for believing that there will be a decrease rather than an increase, is the opening of the new normal school at Ottawa. The population of Perth is also decreasing of late years. The average attendance at the high school and the public schools is only 456. It is not true that in Perth, between the ages of five and sixteen, excluding separatists, the number of children is 611. The board possesses in the present school house, a large stone structure (of which a photograph was laid before the Court), with an acre of land attached thereto.

A new arrangement of the rooms is all that is necessary to give whatever additional accommodation is required. The situation of the new site was condemned as being neither pleasant nor convenient, and as being near what is known as the "long swamp." The proposed expenditure was characterized as a waste of public money. Facts were stated to shew that those who favoured it in the council and at the school board were not influenced by the most lofty motives. It was shewn that two out of the five of the members of the council were members of the high school board; that a third member of the council in favour of the expenditure had been appointed inspector, or clerk of the works, at a salary of $200 per annum, and the remaining two were shewn to be related to the three preceding. It was also stated that the motives of those on the high school board favourable to the expenditure, were not solely with a view to the public interest. It was insinuated that the necessities of a person in Perth having a large quantity of unsaleable bricks, and of another person having a large quantity of unsaleable lumber, had more to do with the proposition to build a new high school than the necessities of the public. Some affidavits were filed on the part of the applicants, shewing that the present school house was not healthy; but affidavits to the contrary were filed on the part of the town.

Bethune, Q. C., (*Osler* with him,) supported the rule. The 37 Vic. ch. 27, is to be read as a new law; and so reading it the joint board is a corporation, and not a mere committee of management: sec. 63, sub-sec. (*c*): and while it exists, the functions of the separate boards are suspended: *Ib.* The applicants therefore are the only corporation capable of applying, and it is the duty of the town council to comply with the request: 37 Vic. ch. 28, sec. 86, sub-sec. 5 *a.*; sub-sec. 11, *b. c. e.*; sub-secs. 20, 21; sec. 87, sec. 69, 70, sub-sec. 9; sec. 114; *Re School Trustees of the City of Toronto and Corporation of the City of Toronto*, 23 U. C. R. 203; *Re Trustees of Sandwich and Corporation of Sandwich*, *Ib.* 639. Before the Act the duty was obligatory in regard to public schools, and the joint board has now all the powers of both the separate boards. By the word accommodation is meant support and maintenance: 37 Vic. ch. 27, secs. 44, 45, 46, 47. The discretion as to the expenditure is vested in the joint board, and not in the town council: 37 Vic. ch. 28, sub-sec. 2, of sec. 48. The board is responsible to the ratepayers for their conduct, and the town council have no discretion whatever in the matter.

June 29, 1876, HARRISON, C. J.—This rule must be disposed of upon the interpretation to be placed upon different sections of 37 Vic. chs. 27 and 28, O.

Nothing, it has been said by a great authority, is so difficult as to construe properly an Act of Parliament, and nothing so easy as to pull it to pieces: per Lord St. Leonards, in *O'Flaherty* v. *McDowell*, 6 H. L. 142, 179.

If his Lordship had ever been called upon to interpret one of our school Acts, he would not have found any occasion to alter the opinion which he above so tersely expressed.

If there were more skill in the first instance employed in the framing of public Acts of Parliament, there would be much less need of frequent amendments, much less perplexity, and much less litigation than at present exists in this Province.

The statute 37 Vic. ch. 27, is intituled "An Act to amend and consolidate the law relating to the council of public instruction, the normal schools, collegiate institutes, and high schools."

The statute 37 Vic. ch. 28, is intituled "An Act to amend and consolidate the public school law."

Both of these Acts profess not only to be consolidations of preceding Acts, but to be amending Acts, and so far as inconsistent with preceding Acts are to be deemed new laws.

The intention of the Legislature can be collected from no other evidence than its own declaration, that is, from the Act itself: per Tindal, C. J., in *Salkeld* v. *Johnson*, 2 C. B. 757.

The first question is, as to the constitution of the joint board of education and its powers when constituted.

It is by sec. 63, of 37 Vic. ch. 27 declared that:—

"In all cases of the union of high school or collegiate institute and public trustee corporations now existing, all the members of both corporations shall constitute a joint board, and shall, as long as the union exists, be a corporation under the name of the board of education for the city, town, or incorporated village of————, or in school section No. —, in the township of ————, as the case may be;

(*a.*) Seven members of the board shall form a quorum, *and such board shall have the powers of the trustees of both the public and high schools;* * *

(*b.*) The union may be dissolved at the end of any year by resolution of a majority present at any lawful meeting of the said board of education called for that purpose;

(*c.*) On the dissolution of such union, the school property *held* or *possesssd* by the board of education at the time, shall be divided or applied to school purposes, as may be agreed upon by a majority of the public school trustees and of the high school or collegiate institute trustees respectively, present at meetings called for that purpose; * *

(*d.*) After the 1st day of July, 1874, no public school or department thereof, shall be united with a high school or collegiate institute."

A similar provision will be found in sec. 151 of the public school Act, 37 Vic. ch. 28.

These provisions are inconsistent with the idea that the joint board is a mere committee of management, representing the two boards, such as was the joint board under former Acts of Parliament and the decisions thereunder. See 16 Vic. ch. 186, sec. 11, sub-sec. 4; Consol. Stat. U. C. ch. 63, sec. 25, sub-sec. 7; *Ib.* ch. 64, sec. 79, sub-sec. 9. See also *The board of Trenton and the Corporation of Trenton*, 26 U. C. R. 353; *The United Joint Board of Caledonia* v. *Farrell*, 27 U. C. R. 321; *Oliver* v. *The Union Board of Ingersoll*, 29 U. C. R. 409.

While the union exists there is but one Board composed of the members of the two separate boards. That board is a corporation, and possessed of all the powers of each of the separate boards.

The application, therefore, for the mandamus is rightly made in the name of the joint board, and not in the name of the trustees of the high school.

It is now necessary to examine the powers of the separate boards, which powers are, as it were, under the operation of the Act, transferred to the joint board.

First, as to the high school board.

The trustees of every high school or collegiate institute is a corporation by the name of "The High School" (or collegiate institute) "Board," prefixing to the high or collegiate institute, the name of the city, town, or incorporated village, within which such high school or collegiate institute is situated, and shall have and possess all the powers usually employed by corporations, so far as the same are necessary for carrying out the purposes of this Act: 37 Vic. ch. 27, sec. 60.

All property heretofore given or acquired in any municipality, and vested in any person or persons, or corporation for high school or collegiate institute purposes, or which hereafter may be so given or acquired, vests absolutely in the corporation of high school or collegiate institute trustees having the care of the same, subject to such trusts as may be declared in the deed or instrument under which the property is held: *Ib.* sec. 87.

It is the duty of the trustees of every high school or collegiate institute board to take charge of the high school or collegiate institute for which they have been appointed trustees, and the buildings and lands appertaining to it: sec. 61, sub-sec. 4. And to do whatsoever *they may deem expedient* with regard to erecting, repairing, warming, furnishing and keeping in order the buildings of such school or institute, and its appendages, lands and enclosures belonging thereto: sub-sec. 5. And to apply (as the case may be) to the municipal council of the city, or of the town *separated from the county* for municipal purposes, for such sum or sums *which said board may require* for the support, management, and school accommodation, and other necessary expenses of the high school or collegiate institute, and which said council is *required* by this Act to raise by local assessment for such purposes: sub-sec. 6.

The school board, and not the municipal council, is to judge of the expediency of the expenditure intended by the preceding sub-section.

The words "support, management, and school accommodation," as used in that sub-section, manifestly embrace "erecting, repairing, warming, furnishing, and keeping in order the buildings" mentioned in the fifth sub-section.

An obligation to provide proper school accommodation, necessarily involves maintenance and repair. See per Hagarty, C. J., in *Regina* v. *Law Society*, 20 C. P., 390, 494, and per Gwynne, J., *Ib.* 512.

In the case of a high school in a town *not withdrawn from the county*, or in an incorporated village or township, one half of the amount paid by the Government is to be paid by the municipal council of the county in which the high school or collegiate institute is situated, upon the application of the high school board, and "such *other* sums as may be required for the *maintenance and school accommodation* of the said high school" *shall* be raised by the council of the municipality in which the high school is situated, upon the application of the high school board, or in the event of the county council forming the whole or part of a county into one or more high school districts, then "such *other* sums as may be required for the *maintenance* (*quære*, and accommodation) of the said high school, *shall* be provided by the high school district, upon the application of the high school board: sec. 45. See *In Re Niagara High School Board, and Corporation of Niagara*, 37 U. C. R. 529.

The manifest object of the section is to provide for "the maintenance and school accommodation of the high school." That object is to be attained by a fund, of which part shall be by the government, part by the municipal council of the county in which the high school is situate, and

1. If the county council have not formed the county or part of the county into one or more high school districts, the remaining money required for maintenance and school accommodation "*shall* be raised by the council of the municipality in which the high school is situate," &c., upon the application of the high school board.

2. Or if the county council have formed the whole or part of the county into one or more high school districts, then the remaining money required for the maintenance, (*quære*, and school accommodation)—*shall* be provided by the high school district, upon the application of the high school board. See *Re Tyrrell and Corporation of York*, 35 U. C. R. 247.

It is not shewn that the county council formed the county or part of the county into one or more high school districts, and I assume the contrary for the purpose of the present decision.

The word "shall," as used in the last quoted section, is obligatory: *Regina* v. *Court of Revision of the Town of Cornwall*, 25 U. C. R. 286: and in this respect a change has been made in the law for the support of grammar and high schools since 1863, when *Re Trustees Weston Grammar School and Corporation of United Counties of York and Peel*, 13 C. P. 423, was decided.

The change was first made by 34 Vic. ch. 33, sec. 36, under which *Re Trustees Port Rowan High School and Corporation of Walsingham*, 23 C. P. 11, was decided.

The council of any municipality, or the councils of the respective municipalities, out of which the *whole* or *part* of a high school district is formed, *shall*, upon the application of the high school board, raise the *proportion* required to be paid by such municipality or part of a municipality from the whole or part of a municipality, as the case may be.

The foregoing enactments, sec. 44 to 46, inclusive, are in the Act, under the heading of "Obligatory municipal assessment for high schools." Then follows, under the heading "Voluntary municipal assessments": sec. 47. It is as follows:—

The council of every county, city, and town, separated from the county for municipal purposes, *may* pass by-laws for municipal purposes:—

1. For making provision by local assessment (in addition to that *required* to be made by this Act) for procuring sites for high schools, for erecting buildings, repairing, furnishing, warming, and keeping in order high school houses and their appendages.

2. For obtaining within the county, or in any city or town separated from the county, as the wants of the people may require, the real property requisite for erecting high school houses thereon, and for other high school purposes, and for preserving, improving, and repairing such high school houses, and of disposing of such property when no longer required.

5. For making provision (additional to that *required* to be made by this Act) in aid of such high schools *as may be deemed expedient by the Council, &c.*

The Town of Perth is not, I believe, a town separated from the county for municipal purposes, within the meaning of this section, and therefore the section is inapplicable.

But I do not read the section as containing the *only* provision in the Act for procuring sites, or for building school houses, any more than for repairing, furnishing, warming, and keeping in order high school houses.

A certain amount of money, being the residuum, may, I think, under the operation of the preceding sections, be *required* by the board for all or any of these purposes, and it is for the council to which the section applies, if they deem it expedient, to make further provision beyond what is required.

The providing of school accommodation involves the procurement of a site and the building of a school house, and where the latter is from any cause insufficient for the purpose, also involves the acquirement of a new site or building of a new school house, in the discretion of the school board.

The distinction between what is obligatory and what permissive, is further carried out in sub-sec. *a.* of sub-sec. 6 of sec. 61, and sub-sec. 7 of the same section.

Section 36 of the Act 37 Vic. ch. 27, which declares that the *place of holding* any high school in a county may be changed at the end of the then civil year, by the council of the county within which it is established by by-law or resolution passed for that purpose, at or before the June session, and approved of by the Lieutenant-Governor on the report and recommendation of the chief superintendent, applies, I think, rather to the change from one place to another in the county, than from one site to another in the same town or village, and this view is strengthened by a reference to sec. 37, which in like manner provides for the discontinuance of an existing high school in any part of the county within the jurisdiction of the county council.

So much for the powers of the high school board.

Second, as to the public school board.

The school trustees for each city, town, incorporated village, or division, shall be a corporation under the name of "the public school board of the city, (town, village or division,) of ————, in the county of ————, and shall succeed to all the corporate property, rights and powers, and be subject to all the corporate obligations and liabilities of the preceding trustees": 37 Vic. ch. 28, sec. 85.

It is the duty of the public school board to take possession of all public school property: sec. 86, sub-sec. 4: and by sub-sec. 5 to do whatever *they may judge expedient* with regard:

(*a.*) To purchasing or renting school sites and premises.

(*b.*) To building, repairing, furnishing, warming, and keeping in order the school houses and appendages, lands, enclosures, and movable property; and, by sub-sec. 7,

To determine

(*a*) The number of sites, and grades, and description of schools, &c.: and by sec. 11: to prepare from time to time, and lay before the municipal council of the city, town, or village, an estimate of the houses which they think requisite.

(*c*) For building, renting, repairing, warming, furnishing, and keeping in order the public and industrial school houses and their appendages and grounds.

Every public school board also has authority to select land for a school site on which to erect a school house or school houses and necessary buildings, or for enlarging school premises already held: sec. 87, sub-sec. 9.

The right to decide as to the expediency of increased school accommodation under either Act, whether for high schools or public schools, appears to rest with the several boards, or where united with the joint board, and not with the municipal council within which in whole or in part the high school or public school is situate.

High school trustees are appointed by the municipal bodies: 37 Vic. ch. 27, sec. 50 *et seq.*; and public school trustees by the ratepayers: 37 Vic. ch. 28, sec. 19, *et seq.* For abuse of these powers or the exercise of unsound discretion they are responsible to their constituents in the same manner as members of municipal councils to their constituents.

Therefore, where the board of education has the right to *require* money for school purposes from any municipal body, the municipal body has no right to refuse.

It is, under sec. 86 sub-sec. 11 of the 37 Vic. ch. 28, made the duty of the trustees of public schools to prepare from time to time and lay before the city, town or village council an estimate of the sums which they, the trustees, think requisite:

(*a*) For paying the whole or part of the salaries of the inspectors.

(*b*) For purchasing or renting public and industrial school premises.

(*c*) For building, renting, and repairing it, &c.

(*d*) For procuring suitable apparatus.

(*e*) For the establishment and maintenance of school libraries.

(*f*) And for all *other* necessary expenses of the schools under their charge.

And it is expressly provided that "the council of the city, town, or village, *shall* provide such sums *in the manner* desired by the public school board."

This authorizes the trustees to direct at what time the money shall be paid, but not how it is to be procured: See *Re Board of Trustees of Toronto and the Corporation of the City of Toronto*, 23 U. C. R. 203; *Re Board of School Trustees of Sandwich and the Corporation of Sandwich*, *Ib.* 639.

It has been held that in the case of a demand by the trustees of a public school it is necessary to give the estimates on which the sums required were based, to the municipal council: *Trustees of Port Hope* v. *Town Council of the Town of Port Hope*, 4 C. P. 418; *Re Board of Trustees of Toronto and City of Toronto:* 20 U. C. R. 302; S. C. 23 U. C. R. 203; *Re Trustees of Mount Forest and Corporation of Mount Forest*, 29 U. C. R. 422; *In Re Public School Trustees of South Fredericksburg and Lennox and Addington*, 37 U. C. Q. B. 534. But not so in the case of a demand by the trustees of a grammar school: *Re Trustees of Port Rowan High School and the Corporation of the Township of Walsingham*, 23 C. P. 11.

In the case of a demand by a joint board, especially if the demand be for public school purposes, the estimates should certainly be given to the council.

Here, although for high school purposes, whether an estimate be necessary or not, an estimate was given.

It is under sec. 36, sub-sec. 5, as extended by sec. 67 of 37 Vic. ch. 28, the duty of the city, township, town, or incorporated village (as the case may be) to levy, by assessment, upon the taxable property in any school section, such sum as may be required by the trustees thereof, for the purchase of the school site, the erection, repairs, furniture and fittings of a school house, &c., as may be determined by the trustees.

So under section 48, sub-sec. 52 and sec. 67, every city, town, township, and village council, has authority to pass by-laws for the following purposes:—

"To grant to the trustees of any school section, on their application, authority to borrow any sums of money which they may think necessary for the purchase of school sites, for the erection or repair of a school house or school houses, or their appendages, or for the purchase or erection of a teacher's residence."

So under section 46, sub-secs. 6 and 7 and sec. 67, every town, township, and village council, has authority to pass by-laws for the following purposes:—

To issue a debenture or debentures in the form given in schedule A to the Act, for the amount made to the school trustees of any section (should the council, under the authority of sub-sec. 2 of sec. 48, grant to the trustees authority to borrow money), any loan which the council may authorize the trustees of such school section to make, together with a sufficient sum for the payment of the interest of the sum so borrowed, and a proportionate sum sufficient to form a sinking fund to pay off the principal at any time within ten years.

To cause to be levied in each year upon the taxable property in the school concerned (and upon such other property as is herein made liable in the case of an alteration in the boundaries of the section or division), a sum sufficient to pay the interest on the amount borrowed by the trustees on the authority of the council, and also a sum sufficient to pay off the principal during any period not exceeding ten years, as may be agreed upon by the trustees and the lender of the money.

There does not appear to be any obligation on the municipality to grant the authority to borrow. It appears to be in the discretion of the council to refuse the authority; and, when granted, it can only be on the terms and in the manner pointed out in the statute: See *Re Doherty and Corporation of the Township of Toronto*, 25 U. C. R. 409.

I am not aware of any such power in the case of high school trustees requiring money for high school purposes.

The powers conferred on high school trustees are not identical with the powers conferred on public school trustees. Much confusion has arisen in this case, and will arise in every similar case, from the attempt to unite diverse powers for different purposes in one and the same governing body.

The sections of the High School and Public School Acts which confer on the joint board the powers of each board, must mean the powers possessed by each board for the purpose for which such board was created before the creation of the joint board: 37 Vic. ch. 27, sub-sec. *a.*; 38 Vic. ch. 28, sec. 151.

Any other reading would lead to great confusion.

Supporters of Roman Catholic separate schools are under certain circumstances exempt from taxation for public schools, but not from

taxation for high school purposes, there would not therefore appear to be exemption from taxation.

If the demand here were for public school purposes, there would be no doubt as to the duty of the town to comply, and as to the exemption of the separatists from the rate: 37 Vic. ch. 28, sec. 46, sub-sec. 5, and sec. 67.

But where the demand is for high school purposes it must, by whomsoever demanded, *i.e.*, whether by joint or separate boards, be shewn to be such a demand as is obligatory upon the municipal corporation in the case of a high school.

The demand here, if obligatory at all, can *only* be so held as coming under the operation of sec. 45, and not under sec. 47, of the High School Act.

The board has no power, under sec. 45, to demand the money otherwise than as money required "for the maintenance and school accommodation" of the high school. The board has no power in any year to demand the whole of the money required for these purposes from the municipal council, but only the residue, after deducting the amount paid by Government and the amount paid by the council of the county.

It is under section 46 made the duty of the council of any municipality, or the councils of the respective municipalities, out of which the whole or part of which the high school district is formed, upon the application of the high school board, to raise the *proportion* required to be paid by such municipality or part of the municipality from the whole or part of the municipality, as the case may be.

The mode, division, or proportion, was clearly shewn in the affidavit for the writ of mandamus in *Re Trustees of Port Rowan High School, and the Corporation of the Township of Walsingham*, 23 C.P. 11.

It was there shewn that the whole amount needed for the maintenance and school accommodation of the high school for the year 1871, was $658 43

Of which was received from Government.....	$400 00	
From the County Council	200 00	
		600 00
Leaving		$58 43
required from the municipality.		
So for the year 1872, the amount received was.....		$484 83
Of which was received from Government	$171 00	
From the County Council.....	85 50	
		256 50
Leaving.....		$228 33
required from the municipality.		

The demand here is, not in form for the balance necessary after crediting the amount received from the Government and from the county council, but from what we know of the amount of the Government grant, and the amount of the county council grant, in all probability the balance necessary to be provided by the municipal council is not much, if anything, short of $16,000.

If the Council had resisted the application on the ground that the demand was not in form sufficient, we might have felt bound to have given effect to the contention, and discharged the rule: *Re School Trustees of Port Hope* v. *Town Council of the Town of Port Hope*, 4 C. P. 418, but as the resistance is on a wholly different ground, we should not now, according to the authorities, give effect to the objection. See *Board of School Trustees of the Town of Brockville* v. *The Town Council of Brockville*, 9, U. C. R. 302; *The School Trustees of the City of Toronto* v. *The Corporation of the City of Toronto*, 20 U.C.R. 302.

The rule must be absolute for the issue of a mandamus in the words of the statute, for the raising by the Council of the Town of Perth, in which municipality the high school is situate, of such sum, naming it, as during the present year is required for the maintenance and accommodation of the high school, after deducting the amounts paid or payable by the Government and county council respectively.

The statute does not direct in what manner the money is to be raised.

It is not for the trustees or for the Court to dictate to the council in what manner the money shall be raised: *School Trustees of Toronto* v. *The Corporation of the City of Toronto*, 20 U. C. R. 302, 305.

The joint board do not press for the payment of the whole amount in one year, provided the amount be in some manner legally secured, so that the securities shall be made available for the purpose of discharging the obligations contracted by the joint board.

Instead of making the rule absolute for a mandamus, we think it better, under the circumstances, as in *Re Board of School Trustees of Toronto* v. *Toronto*, 23 U. C. R. 203, to make it absolute for a mandamus *nisi*: in the hope that the parties will come to an understanding which will meet the demand of the joint board without being oppressive to the ratepayers; and if not, that the legal questions involved may be formally raised by demurrer or plea—See *Regina* v. *Vestry of St. Luke's, Chelsea*, 5 L.T.N.S. 744; and in the event of the joint board being ultimately successful, a peremptory writ shall be issued, which the council must obey under pain of attachment.

The rule will be made absolute. Costs to abide the event.

MORRISON, J., and WILSON, J., concurred.

Rule accordingly.

3. UNION SECTIONS—ASKEW *VS.* MANNING ET AL.

Replevin—Formation of Union School Sections—Existence of Corporations—Mode of testing.

Replevin. Plea justifying under distress for school rate for a union school section No. 2, Raleigh and Tilbury E. alleged to have been duly formed by the reeves of said townships and the local superintendent, of which section defendants were trustees, and averring that the rate was imposed by defendants to raise the necessary sum to purchase a school site, and that the plaintiff was rated in respect thereof. Replications, 1. That the said section was not formed as alleged. 2. That the alleged union school section was on or about 24th December, 1873, pretended to be formed by the reeves of the said townships and the superintendent by uniting section 6 of Tilbury with parts of sections in Raleigh: that the plaintiff resided and was a ratepayer within one of the sections affected by the proposed formation of said section: that no notice was given to him and others intended to be effected by such formation, or of any alteration in the sections in said townships: that the inspector of the county has not transmitted to the clerks of said townships any copy of the resolution to form said section, or have the reeves of the said townships, with the inspector or otherwise, equalized the assessment with said section.

Held, on demurrer, replications bad, for that it was not open to the plaintiff in this suit to contest the validity of the formation of the school section on the grounds taken, his proper course being by information in the nature of *quo warranto* to determine the defendants' right to the office of trustee.

The plaintiff replied also that the defendants were not on the 24th of December, 1873, a corporation duly formed as alleged. Upon the trial it appeared that the union section for which the defendants assumed to be trustees had been formed by adding to a section in one township parts of two sections in another township: *Held*, that a union school section can be formed only of two sections, not of parts of sections; and that the objection therefore being not to the regular exercise, but to the existence, of the power to form such sections, and the facts being undisputed, the validity of the formation might be questioned in this action.

DEMURRER: Declaration in replevin for three cows, &c.

Second plea, by defendant Manning: That the defendants were, before the time of the alleged taking, to wit, on the 24th December, 1873, a corporation under the name of the Trustees Union School Section No. 2, Raleigh and Tilbury East, duly formed by the reeves of the said respective townships and the local superintendent; and that the plaintiff was liable to be rated for school purposes in the said section: that a rate was imposed by the said trustees to raise the sum necessary to purchase a school site for the said section, and the plaintiff was thereby duly rated for the sum of $33.32: that a proper warrant was delivered by the said trustees to this defendant Manning, who was duly appointed collector of school rates for the said school section, whereby he was authorized and required to collect from the plaintiff the said sum of $33.32, for which the plaintiff was duly rated, and by the said warrant the said Manning was further authorized and required, in case the plaintiff should make default in payment of the said sum, to levy the same from the plaintiff by distress of his goods and chattels; and thereafter, and whilst this defendant was such collector, he duly demanded the said sum, being the amount of the said rate, from the plaintiff, which he refused to pay, and so made default in payment of the same: therefore this defendant took the same within the limits of the said school section as a distress for goods the said rate, which are the alleged grievances; and the said Manning well acknowledges the taking of the said goods and unjustly detaining the same as a distress for the said rate, which still remains due and unpaid.

Third plea, by the other two defendants, in effect similar to the second plea by Manning, alleging that they and defendant Manning were the trustees of the section, and gave a warrant to Manning to levy the rate.

Fifth replication to the second and third pleas: that the said Union School Section was not formed as alleged.

Sixth replication to the same pleas: that the alleged Union School Section was, on or about the 24th December, 1873, pretended to be formed by the reeves of the said townships of Raleigh and Tilbury and the local superintendent, by uniting section No. 6 of Tilbury with parts of sections in Raleigh: that the plaintiff was a resident within the boundaries of one of the school sections affected by the proposed formation of the said Union School Section, and was a ratepayer within such boundaries: that no notice

was given to the plaintiff and other parties intended to be affected by the formation of the Union School Section, of the intended formation thereof, or of any alteration in the boundaries of existing school sections in the said townships or either of them: that the inspector of public schools of the said county of Kent has not transmitted to the respective clerks of the said municipalities of Raleigh and Tilbury East any copy of the resolution for the formation of the alleged Union School Section, nor have the reeves of the said townships, with the inspector or otherwise, equalized the assessment on the rateable property within the said Union School Section.

Demurrer to the fifth and sixth replications: that in an action of this nature the plaintiff cannot contest the validty of the formation of the said Union School Section.

November 22, 1875, the case was argued before Wilson, J., sitting for the full Court.

J. K. Kerr, for the demurrer. The statutes relating to the subject are Consol. Stat. U. C. ch. 64, secs. 40—45; 23 Vic. ch. 49; 34 Vic. ch. 33, O. The acts of the trustees are to be maintained. If the school section be not rightly established it may be remedied by special proceedings. Sec. 16 of the last named Act shows the remedy was by appeal to the County Court Judge. It does not appear the plaintiff was a resident of the School Section at the time of the formation of the Union. He referred to *Re Gill and Jackson*, 14 U. C. R. 119; *Coleman* v. *Kerr*, 27 U. C. R. 5, 10; *Patterson and the Corporation of the Township of Hope*, 30 U. C. R. 484; *Craig* v. *Rankin*, 10 C. P. 186; *Gillies* v. *Wood*, 13 U. C. R. 367; *McGregor* v *Pratt*, 6 C. P. 173; *Forbes* v. *School Trustees of Plympton*, 8 C. P. 73.

F. Osler, contra. The last objection, if it had been relied upon, could have been amended in chambers. The plaintiff's liability depends on whether the union section has been duly formed. The 34 Vic. ch. 33 sec. 16, O., does not apply to the union of school sections from parts of different townships: *Re Proper and the Corporation of the Township of Oakland*, 34 U. C. R. 266. The following cases shew that the legality of the formation of the union section may be disputed in an action: *Williams* v. *School Trustees of section 8 of Plympton*, 7 C. P. 559; *Harling* v. *Mayville*, 21 C. P. 499; *Free* v. *McHugh*, 24 C. P. 13, 19; *Coleman* v. *Kerr*, 27 U. C. R. 5; *Haacke* v. *Marr*, 8 C. P. 441; *Re Hart and Municipality of Vespra and Sunnidale*, 16 U. C. R. 32; *Re Ley and the Municipality of the Township of Clarke*, 13 U. C. R. 433; *Griffiths* v. *The Municipality of Graham*, 6 C. P. 274; *Malone* v *Faulkner*, 11 U. C. R. 116.

The want of notice to the clerk is a material defect, because without it no rate can be made or levied. The assessments must first be equalized.

J. K. Kerr, in reply, referred to 23 Vic. ch. 49, secs. 13, 14; *Re Ness and the Municipality of the Township of Saltfleet*, 13 U. C. R 108.

February 15, 1876. WILSON, J.—It is necessary to see what the legislation on the subject has been, for it is by it the rights of the parties must be determined.

The Consol. Stat. U. C. ch. 64, enacts: Sec. 40: In case it clearly appears that all parties to be effected by a proposed alteration in the boundaries of a school section have been duly notified of the intended step or application, the township council may alter such boundaries, to take effect on the 25th of December next after the alteration has been made.

Section 45, as amended by 23 Vic. ch. 49, sec. 5: Under the conditions prescribed in the 40th section in respect to alterations of other school sections, union school sections consisting of parts of two or more townships or parts of a township, * * may be formed and altered by the reeves and local superintendent or superintendents of the townships out of parts of which such sections are proposed to be formed * * at a meeting appointed for that purpose by any two of such reeves * * of which meeting the other parties authorized to act with them shall be duly notified.

34 Vic. ch. 33, sec. 18, declares that on the formation or alteration of a union school section or division under 23 Vic. ch. 49, sec. 5, the county inspector concerned shall forthwith transmit a copy of the resolution by which the formation or alteration was made, to the clerk of the municipality affected by such resolution.

It shall be competent for the county inspector to call a meeting of the parties authorized to form and alter union school sections, and it shall be the duty of the reeves of the townships out of which the section is formed, with the county inspector, to equalize the assessment.

The plaintiff says the union of school sections which he says was pretended to be formed on the 24th December, 1873, he had no notice of; nor had other parties, all of whom were affected by the intended formation of the union, notice of such intended formation.

And the defendants say that may have been or may be a cause for rescinding the resolution adopted for forming the union and for dissolving the union, but it is no answer to a levy made for a rate which has been imposed under and by virtue of the resolution by the corporation which has been created under it, so long as the corporation is in existence.

The first and main question then is, whether the want of a notice to the plaintiff and the other parties intended to be affected by the formation of the union school section of the intended formation thereof, can be shewn in this action for the purpose of avoiding and invalidating the proceedings taken to effect the union, and of putting an end to the existence of the corporation which was formed.

The 40th sec. of the Consol. Stat. ch. 64, to which the 5th sec. of the 23 Vic. ch. 49 refers, is very plainly worded "In case it clearly appears that all parties to be affected * * have been duly notified of the intended step or application," the reeves and local superintendent of the townships out of parts of which the section is to be formed may, at a meeting appointed for the purpose, by resolution be formed: 34 Vic. ch. 33 sec. 18.

The notice is a condition precedent to be given before the change can be made. If it be not given the action of the parties taken to alter the old sectional boundaries, and to form a new school section, must be voidable and remediable.

I do not say the proceedings would be absolutely void, because if that were so they could not be confirmed. And I am of opinion that either by subsequent ratification or by acquiescence they could be adopted and become binding. But they were at least voidable for the purpose of enabling any one to apply to have them vacated: *Regina* v. *Thomas*, 8 A. & E. 183: *Rex* v. *Harris*, 1 B. & Ad. 936; *Regina* v. *Grimshaw*, 10 Q. B. 747.

In *Penney* v. *Slade*, 5 Bing. N. C. 319, an overseer was appointed by a minority of magistrates present at the meeting—the majority not observing at the time what was being done. When they discovered it they attempted to undo what had been done. The overseer appointed by the minority distrained on a warrant signed by two of the minority as justices of the peace, on the plaintiff for a rate. The plaintiff brought trespass against two of the magistrates and it was left to the jury to say whether the appointment by the minority was fraudulent or not. They found it not fraudulent.

In disposing of the rule *nisi* for a new trial Tindal, C. J., said, at p. 331, "Here is a judicial act performed without fraud, at a meeting which was competent in point of jurisdiction to perform it, and that act verified by a sufficient number of signatures to satisfy the requisitions of the statute which directs the appointment to be made. We think, therefore, that it cannot be questioned in this collateral way on the ground of an irregularity or miscarriage in ascertaining the sentiments of the meeting. We have the less hesitation in coming to this conclusion, because the law has provided appropriate methods of settling such a question * * * It is obviously a much more convenient course that the validity of the appointment should be brought into controversy in a direct way immediately upon the appointment, than that a party should lie by until a rate had been made and levied, and should then be allowed to revert back to some miscarriage in the appointment. No objection arising in such a way ought to prevail, unless it rests on the most solid ground, which in our judgment the present objection does not.

A rate levied by the churchwardens *de facto*, although not duly elected, is valid: *Scadding* v. *Lorant*, 13 Q. B. 687, in Ex. Ch. *Ib.* 706, in H. L. 15 Jur. 955.

The validity of a charter of incorporation was not allowed to be raised on a *certiorari*, to quash a rate which had been levied, on the ground that there had been no petition for incorporation by the whole or by the majority of the inhabitant householders; or that the grant of Quarter Sessions had been made on a representation to the Crown that there was a gaol in Birmingham when in fact there was not one: *Regina* v. *Boucher*, 3 Q. B. 641. See also *The Company of Proprietors of the Monmouthshire Canal Navigation* v. *Kendall*, 4 B & A. 453; *Re Gill and Jackson*, 14 U. C. R. 119; *Regina* v. *Taylor*, 11 A. & E. 949; *The Attorney-General v. The Port-reeve, Aldermen, and Burgesses of Avon*, 9 Jur. N. S. 1117.

In *Regina* v. *Jones*, 8 L. T. N. S. 503, the Court refused to grant a *quo warranto* information against an individual to try the legality of a character of a municipal corporation.

Cockburn, C. J., said: "You are seeking to repeal a charter not in a question directed to the charter, but in a proceeding against an individual." And when *Lloyd* v. *The Queen*, 31 L. J. Q. B. 207 was cited, Cockburn, C. J. said, "There was no pretence for saying that there was any existing corporation."

In *The Attorney-General* v. *The Corporation of Avon*, 33 Beav. 67, it was held that the Court of Chancery will not, in a suit relating to the property of a corporation, determine on the validity of a charter of corporation.

The cases of *Hart and the Municipality of Vespra and Sunnidale*,

16 U. C. R. 32; *Griffith and Municipality of Grantham*, 6 C. P. 274; *Re Ness and Municipality of the Township of Saltfleet*, 13 U. C. R. 408; *Re Ley and the Municipality of the Township of Clarke*, 13 U. C. R. 433; and *Patterson and the Corporation of the Township of Hope*, 30 U. C. R. 484, do not apply here because they were cases founded on motions to quash the by-laws complained of, and were not therefore in any way proceedings which affected the formation or existence of a corporation.

The cases of *Haacke* v. *Marr*, 8 C. P. 441; *Coleman* v. *Kerr*, 27 U. C. R. 5; *Harling* v. *Mayville*, 21 C. P. 499, and *Free* v. *McHugh*, 24 C. P. 13, were none of them impeaching the validity of the corporation. They each showed some defect in the making of the by-law.

Williams v. *School Trustees of Section 8, Plympton*, 7 C. P. 559, was an action for levying a rate to pay for expenses attending the wrongful change of the school site; and *Craig* v. *Rankin*, 10 C. P. 186, does not apply.

The plaintiff does not complain that the defendants had power to pass the by-law if they were duly incorporated. He desires to defeat the incorporation of the trustees in a collateral proceeding, which he certainly cannot do.

Then he alleges that the inspector of public schools of the county did not transmit to the respective clerks of the municipalities of Raleigh and Tilbury East any copy of the resolution of the formation of the alleged union school section, under 34 Vic. ch. 33 sec. 18. No doubt that was an omission of the inspector, for it is made expressly his duty to do it.

It is not said for what purpose the notice is required to be given, but very likely in order that the township municipal authorities may have formal notice of the change made, in order that the township councils may respectively undo such change if they please, and that the clerks may be able to give the necessary information to the local superintendent, and that they may also prepare the maps of the townships respectively, showing the different school sections, under Consol. Stat. U. C. ch. 64 secs. 47, 48, 49, and 34 Vic. ch. 33, sec. 19. The notice of the resolution does not seem to be required as a condition precedent, or as an essential act, to enable the trustees to levy the rate now in question.

Then the plaintiff says that the reeves of the two townships, with the inspector or otherwise, did not equalize the assessment on the ratable property within the union school section, under the 34 Vic. ch. 43, sec. 18.

That enactment is, "That it shall be competent for any county inspector to a call a meeting of the parties authorized to form and alter union school sections, and it shall be lawful for, and the duty of, the reeves of the townships out of which the section is formed with the county inspector, to equalize the assessment."

The plea of the plaintiff does not allege that the county inspector did not call the meeting just mentioned; it merely states that the assessment was not equalized. If there was a meeting called, and the proper parties attended, it may be that no equalization was necessary, and that the assessments were permitted to remain as they were as and in place of the best equalization that could have been made.

The whole system of equalization of the assessments of different municipalities for a common or joint purpose is based upon an examination of the rolls of the respective municipalities for the purpose of ascertaining whether the valuation in each municipality bears a just relation to the valuation made in all the municipalies so joined for the common purpose: 32 Vic. ch. 36, sec. 71.

And in the case of counties in which there are towns and villages, there must of necessity be an equalization between the assessments in them and in the townships of the county.

But here it is two townships which compose the union school section, and there may be no equalization required. Whether the objection could be sustained even if it was alleged that an equaliztion was necessary without the plaintiff alleging that the want of it had made any, and if so what difference in his assessment, I need not enquire. I am disposed to think it could not, for by-laws are not even to be quashed on technical or fanciful grounds, far less to be impeached in this collateral and incidental manner.

I give judgment for the defendants on demurrer.

Judgment for defendants.

February 21, 1876. The case was brought on for re-hearing before the full Court.

F. Osler, for plaintiff. *J. K. Kerr*, contra. The arguments and cases cited were in substance those used on the hearing before the single Judge.

March 17, 1876, HARRISON, C. J.—I agree in the decision of the learned Judge who determined this case and in the reasons which he gives for his decision.

The replications admit that the defendants, before and at the time of the alleged taking of the plaintiff's goods, were trustees *de facto* of the Union School Section No. 2, Raleigh and Tilbury East: that the rate was imposed by the said trustees to raise the sum necessary to purchase a school site for the union school section, and that the plaintiff was rated in respect thereof.

It is not shown by the replications that any proceedings have ever been had or taken for the purpose of testing the validity of the formation of the union school section, and I do not think it is open to the plaintiff in the present suit on a mere question of irregularity to raise any such contention.

The reasoning of Tindal, C. J., in *Penney* v *Slade*, 5 Bing. N. C. 331, is directly opposed to any such course.

The language of Sir J. B. Robinson, C. J., in *Gill* v. *Jackson et al.*, 14 U. C. R., 119, 127, where he says, "The learned Judge left out of view that the trustees who imposed and received the rate were the trustees *de facto*, and that until they are removed the acts which they do in the ordinary current business of trustees must of necessity be upheld, or everything will fall into confusion," is equally opposed to any such course.

A similar rule prevails in the United States.

In the *Trustees of Vernon Society* v. *Hills*, 6 Cowen 23, 27, Savage, C. J., is reported to have said: "The plaintiffs have acted as trustees upon the matter in question, and in bringing their suit *colore officii*, and before an objection to their right can be sustained by the defendant on the ground that they were not regularly elected, he must show that proceedings have been instituted against them by the Government, and carried on to the judgment of ouster." See further *Williams* v. *The Inhabitants of School District No. 1 in Lunenburg*, 21 Pick. 72; *Cahill et al.* v. *Kalamazoo Mutual Insurance Co.*, 2 Doug. Mich. 124; *Eaton et al.* v. *Harris*, 42 Ala. 491.

In *High's* Extraordinary Legal Remedies, sec. 629, it is assumed as settled law in the United States that, as to officers *de facto*, the Court will not enquire into their title in collateral proceedings.

It is, to use the language of Tindal, C. J., in *Penney* v. *Slade*, 5 Bing. N. C. 331, obviously a much more convenient course that the validity of the formation of the section should be brought into controversy in a direct way, rather than that a party should lie by till a rate has been made, and then attempt to contest in a suit by or against him in respect of the rate. Besides, if such a course were permitted there would be no certainty or finality in the proceedings. In one suit it might be held that the union was properly constituted; in another, the reverse. And so there might be no end to the trouble and litigation.

Mr. Osler, however, while admitting the soundness of the reasoning on which the foregoing cases proceeded, argued that in this particular case the reasoning is inapplicable. He argued that in the case of school trustees there can be no remedy by *quo warranto*, or otherwise than by suits between parties for the purpose of deciding the controversy.

If his proposition be well founded, his conclusion properly follows.

But I am not satisfied that it is well founded. On the contrary, I believe it is without real foundation.

It is a maxim of corporation law that if a municipal officer is *bona fide* in possession of the office his title shall not be tried otherwise than by information in the nature of *quo warranto:* Per Campbell, C. J., in *Regina* v. *The Mayor, &c., of Chester*, 2. Jur. N. S 114, 116. See further *Regina* v. *Reynolds*, 1 Ir. C. L. R. 158,161; *Regina* v. *The Town Commissioners of Tuam*, 4 Ir. Jur. N. S. Q. B. 48; *Regina* v. *Finnegan*, 10 Ir. C. L. R. 299; *In Re-election of Members of the Board of Police, Brockville*, 3 O. S. 173; *In re Biggar*, 3 U. C. R. 144; *In re Moore and Port Bruce Harbour Co.*, 14 U. C. R. 365.

While Mr. Osler admitted that in the case of a municipal office, properly so called, the remedy would be by *quo warranto*, he argued that in the case of the office of school trustee the remedy is inapplicable, for that the statute 9 Anne, ch. 30, is inapplicable to such an office.

"The mode of proceeding by information in the nature of *quo wavranto* came no doubt in the place of the ancient writ of *quo warranto*. This writ was brought for property of, or franchises derived from, the Crown. The earliest is to be found in the 9 Richard, *Abbreviatio Placitorium*, p. 21, and is against the incumbent of a church, calling on him to show *quo warranto* he holds the church. Then follow many others, in the time of John, Henry II., and Edward I., for lands, for view of frank-pledge, for return of writs, holding of pleas, free warren, plein-age and prisage (*Abbreviatio Brevium*, p. 219; 14 Ed. I.,) emendation of assize of bread and beer, pillory and tumbril, and gallows. Some of these are offices, or in the nature of offices, as in the instance of returns of writs, holding of Courts. The practice of filing informations of this sort by the Attorney-General, in lieu of these writs, is very ancient;

and in *Coke's* Entries are many precedents of such informations against persons for usurping the same sort of franchises, as claiming to be a corporation to have waifs, strays, holding a Court leet, Court baron, pillory and tumbril, markets, prison, or for usurping a public office, as conservator of the Thames, and coal and corn meter. It is only in more modern times that informations have been filed by the King's coroner and attorney. The first reported case is that of *Rex* v. *The Mayor, &c., of Hertford*, 1 Ld. Raym. 426. And it is a mistake to suppose that these informations were founded on the statute of 9 Anne, ch. 20: *Rex* v. *Gregory*, 4 T. R. 340*n.*; and *Rex* v. *Williams*, 1 Burr. 402, where the right to file an information at common law, by the coroner and attorney, against a person for holding a Criminal Court of Record was recognized. After the Statutes 4 & 5 W. & M. ch. 18, which restrained the filing of informations by the coroner and attorney, the sanction of the Court was required, and after that statute and the 9 Anne, ch. 20, it exercised a discretion to grant or refuse them to private prosecutors according to the nature of the case:" Per Tindal, C. J., in *Darley* v. *The Queen*, 12 Cl. & Fin. 520, 537.

It is also a mistake to suppose that at common law the information in the nature of a *quo warranto* is restricted to offices conferred by the Crown or in which the rights of the Crown are directly concerned.

In 1795, on an information *quo warranto* against several persons acting as trustees under a private Act of Parliament for enlarging and regulating the port of Whithaven, it was argued that the Court never grants these informations, but in cases where there is an usurpation on some franchise of the Crown, but it was resolved by the Court, "that the rule was laid down too general, for that informations have been constantly granted where any new jurisdiction or a public trust is exercised without authority": *Rex* v. *Nicholson et al.*, 1 Str. 299.

In some later cases, such as *Rex* v. *Ramsden et al.*, 3 A. & E. 456; *Rex* v. *Beedle et al.*, Ib., 467; and *In re Aston Union*, 6 A. & E. 784, there were contradictory decisions and great differences of opinion among the Judges.

But since *Darley* v. *The Queen*, 12 Cl. & Fin. 520, it must be taken that the law as to *quo warranto* is settled, and settled on a basis quite in accordance with the expanding wants of society and the demands of law considered as a progressive and expansive science.

In that case, Tindal, C. J., who delivered not only his own opinion but the opinions of the eminent Judges, Patteson, Williams, Coleridge Coltman, Maule, Wightman, Cresswell, Parke, Alderson, and Platt, said, at p. 541, "After the consideration of all the cases and dicta on this subject, the result appears to be, that this proceeding by information in the nature of *quo warranto* will lie for usurping any office whether created by charter alone, or by the Crown, with the consent of Parliament, provided the office be of a *public nature*, and a substantive office, not merely the function or employment of a deputy or servant held at the will or pleasure of others."

In the same case Lord Brougham in affirming the opinions of the Judges, said: "I do not think it necessary now-a-days to show, that because a *quo warranto* was formerly only held to lie where there was a usurpation of a franchise or of a matter proceeding from the prerogative of the Crown, therefore an information in the nature of a *quo warranto*, which, generally speaking, follows the same rule, is to be confined within the same strict rules. I think if you take the whole weight of the authorities, the balance is much in favour of the extension which this appears to be beyond that limit."

In *Regina* v. *The Guardians of the poor of St. Martin's in the fields*, 17 Q. B. 149, 163, Mr. Justice, afterwards, Chief Justice, Erle, said: "Three tests of the applicability of a *quo warranto* are given by *Darley* v. *The Queen* Cl. Fin. 520, the *source of the office*, the *tenure*, and *the duties*. The source here is a statute; the tenure, secure enough to satisfy the rule; as to the duties, no definition of public duties has been given. All we can do is, to follow such guidance as we have from the last cited case. If the execution of an office secures the proper distribution of a fund in which a body of the public (the contributors to a parish rate) have an interest, the office may be deemed public."

In *Hill and The Queen*, 8 Moo. P. C. 138, where the office was that of surgeon of the district prison of St. Catharine, in the island of Jamaica, (created by acts of the Local Legislature), it was intimated that a *quo warranto* was the proper remedy to try the right to office.

In *Regina* v. *The Bank of Upper Canada*, 5 U. C. R., 335, it was doubted if a trading corporation, such as a bank, would be the proper object of a proceeding by *quo warranto*.

In *Regina* v. *Hespeler et al.*, 11 U. C. R. 222, it was held that the office of director in a railway company was not an office for which an information in the nature of *quo warranto* would lie.

In *Regina* v. *Acason*, 2 B. & S 795, the right of the defendant to the office of superintendent registrar, under stat. 7 Wm. IV., and 1 Vic. ch. 22, was tried by *quo warranto* without objection.

In *Regina* v. *Hampton et al.*, 6 B. & S. 923, it was held, applying the tests given in *Darley* v. *Regina*, that *quo warranto* lies for the office of guardian of the poor, elected under 4 & 5 Wm. IV., ch. 76, sec. 28; but in a subsequent case the Court refused to grant a *quo warranto* to enquire into the election of an assistant overseer: *Regina* v. *Simpson*, 19 W. R. 73 Q. B.

In *Bradely* v. *Sylvester*, 25 L. T. N. S. 459, the Court of Queen's Bench, on an application for a *quo warranto* against the clerk of the school board, refused the rule, considering that the majority of the board might, without assistance, remedy the impropriety, if any, and that the office was one during the pleasure of the board.

In *Regina* v. *The Poor Law Commissioners*, 3 Ir. C. L. R. 147, it was decided that *quo warranto* does not lie in any case for an office held during pleasure; and in *Rex* v. *Cousins*, 28 L. T. N. S. 116, it was held that, before the Court will grant the information, it must be satisfied that there is a substantial grievance.

In *Ex parte Smith*, 8 L. T. N. S. 458, leave was refused in the case of a committeeman of the Licensed Victuallers Association, the Court saying, "Here the office is one in a society of a purely eleemosynary kind."

If the tests suggested in *Darley* v. *The Queen*, and applied in *Regina* v. *The Guardians of the Poor of St. Martin in the Fields*, 17 Q. B. 149, and following cases, be applied to the office of school trustee as known in this Province, it will be found to stand the tests. The source here is a statute, the tenure is secure enough to satisfy the rule, and the duties are of a *public*, not of a mere private or eleemosynary character.

There is no instance of any information in the nature of a *quo warranto* being brought against a corporation *as a corporation* for a usurpation of the Crown, but by and in the name of the Attorney-General on behalf of the Crown: *Rex Corporation of Carmarthen*, 2 Burr. 869. If any number of individuals claim to be a corporation without any right so to be, that is an usurpation of a franchise, and an information against the whole corporation as a body, to shew by what authority they claim to be a corporation, can be brought only by and in the name of the Attorney-General: *Rex* v. *Ogden et al.*, 10 B. & C. 230; *Regina* v. *Taylor*, 11 A. & E. 949. But the Court will grant a *quo warranto* at the instance of a private relator against a member of an alleged corporation on grounds affecting his individual title, although it be suggested that the same objections apply to every member, and, therefore, that the application is in effect against the whole corporate body: *Rex* v. *White*, 5 A. & E. 613. It cannot be stated as a proposition of law or as a settled practice of the Court, that leave to file an information will not be granted *merely* because the effect may or even will be to dissolve the corporation: *Rex* v. *Parry*, 6 A. & E. 810, 820. See also *Regina ex. rel. Lawrence* v. *Woodruff*, 1 C. L. cham. R. 119.

Whenever the information comes from the Attorney-General on the part of the Crown, no leave of the Court is required; but when filed on behalf of some individual, the master of the Crown office is the proper person to represent the Crown. The statute 4 & 5 W. & M. ch. 18, was passed to restrict the last-mentioned informations being filed without the leave of the Court first obtained for the purpose. The statute 9 Anne ch. 20, rendered the proceeding more easy in respect of annual elections to corporate offices: *Regina ex rel. Hart* v. *Lindsay*, 18 U. C. R. 51.

Upon the whole, I feel no doubt that an information in the nature of *quo warranto* will lie in the case of school trustees in this Province: that it may either be filed by the Attorney-General against the Corporation, or by a relator, with the leave of the Court, against all or any of the individual trustees; and that this is the direct and appropriate remedy for settling a controversy such as presented by the pleadings now before us in this case.

In my opinion, the decision appealed against must be affirmed with costs.

MORRISON, J., and WILSON, J., concurred.

Judgment accordingly.

The cause was subsequently taken to trial, and the issues in fact were tried at the last Spring Assizes for the county of Kent, before Morrison, J., without a jury.

The defendants, besides the second and third pleas involved in the demurrer, which are set out ante p. 345, 346, pleaded:

1. That they did not take the said goods or any of them, as alleged.

4. That the grievances were committed by the defendants after the passing of the Consol. Statutes U. C. ch. 64, and the 28 Vic. ch. 49, and under and in pursuance of the duties imposed upon de-

fendants by said statutes, and that no notice of action had been given to them.

5. Not guilty.

The plaintiff, in addition to the fifth and sixth replications demurred to, which will be found on pp. 346-7, took issue on all the pleas, and replied :

2. To the second and third pleas : that the defendants were not, on the said 24th December, 1873, a corporation duly formed in manner and form as alleged.

3. To the same pleas : that the plaintiff was not liable to be rated for school purposes in the said school section as alleged.

4. To the same pleas : that the said rate was not imposed by the said trustees as alleged.

The defendants joined issue on all the replications, besides demurring to the fifth and sixth.

It appeared that the school section No. 2 of Raleigh and Tilbury East, called a Union School Section, was formed on 24th December, 1873. The boundaries were as laid down in the by-law forming the section, of which the following is a copy :—

"A by-law to form a Union School Section for the Township of Raleigh and Tilbury East (passed this 24th December, 1873.) Whereas it is necessary to form a Union School Section for the Townships of Raleigh and Tilbury East. We, Stephen White, Reeve of Raleigh ; Alexander Coulter, Reeve of Tilbury East ; and Edmund B. Harrison, Inspector of Public Schools for the County of Kent, do hereby, by virtue of and under the authority of the Public School Act of the Province of Ontario now in force, enact : that the whole of Public School Section number six in the Township of Tilbury East, and the south-east half of lot number one in concession number thirteen, lots numbers one and two in concession fourteen, and lots numbers one hundred and sixty-two, one hundred and sixty-three, and one hundred and sixty-four on the Talbot Road, in the Township of Raleigh, be united for the purpose of forming one school section, and be hereafter known as Union School Section No. 2, Raleigh and Tilbury East ; and that John McDonald, of Tilbury East, is hereby authorized to call the first meeting for the election of public school trustees.

(Signed) "Stephen White, Reeve of Raleigh.
"Alexander Coulter, Reeve of Tilbury East.
"Edmund B. Harrison, I P. S., Kent."

The proceedings at the first meeting for the election of school trustees were quashed by the inspector, at the instance of a ratepayer, because the proceedings were brought to an end before the expiration of an hour.

The inspector ordered a second meeting, which was afterwards held, and at which the defendants were elected trustees for the new school section.

The ratepayers afterwards, on 17th March, 1874, at a special meeting for the purpose of arranging to build a school house, authorized the building of a new school house, and authorized the trustees to raise money in the section for the purpose.

At a meeting held on 13th July, 1874, two of the trustees only being present, the third having been notified and not attending, it was resolved, "that for the purpose of levying the rate to defray the expenses of building the school-house, that the total valuation of property in the section was $22,894, and that it will require a rate of five cents in the dollar to raise $1,150, the sum required to defray the expense of building the school house and its belongings." And the secretary was directed to make out the rate for the amount required from each township in proportion to their assessment, and to apply to the respective councils of Tilbury East and Raleigh for the loan.

On 31st July, 1874, two of the trustees, under the corporate seal of the section, made application in writing to the council of the township of Tilbury East for authority to borrow $583, being the proportion of the Township of Tilbury East of the sum of $1,144.70, and required the said sum to be paid, with interest thereon, in three equal annual payments.

On 25th November, 1874, a similar application was made by the same trustees, under the corporate seal of the section, to the council of the Township of Raleigh, for the sum of $130, for the same purpose.

The council of Tilbury East took no notice of the application, but the council of Raleigh on 25th November, 1874, passed a by-law for the raising of the $130 in the terms of the application.

The apparent inequality of the sums required from the two townships, and the apparent deficiency in the whole amount required, was explained as follows :—

Prior to the union, the Tilbury East part of the section (then section No. 6 in Tilbury East) had on hand $322.04 for building purposes (their school house having been burned down.) After the passing of the resolution of 13th July, 1874, directing a rate of five cents in the dollar to be imposed, applications were, as already mentioned, made by the trustees to the municipal councils of Raleigh and Tilbury East to pass by-laws to enable them to borrow money. The Raleigh Council passed a by-law, under which a debenture was issued, and the proceeds of this debenture, $130, were paid to the trustees of the union section. The application to the Tilbury East council not having been acted upon, the whole sum required from Tilbury had therefore to be raised by rate. The Tilbury East part of the section was credited with the $322.04 on hand as above mentioned. The Raleigh part was credited with the $130 paid to the trustees by the Raleigh council, as above mentioned ; and to realize the sum required from each part of the Union section required a rate of 3¼ cents to be imposed on that part of the section in Tilbury, and a rate of two cents and one fifty-third of a cent on that part of the section in Raleigh, which was done,

Besides, there was a difference of values between the two townships. On a value of $800 in Tilbury East, $24.05 was authorized to be levied, while on the same value in Raleigh only $20 was authorized to be levied.

On this basis a rate bill was, on 7th January, 1875, made out for the section. On the same day, there being only two trustees present (the third although notified, not attending), the defendant Manning, who was one of the two trustees present, was authorized to collect the rate without compensation of any kind.

A warrant under the hands of the same two trustees (of whom Manning was one), and under the corporate seal of the section was made out, directed to the defendant Manning, and placed in his hands.

The name of Thomas Askew and his farm within the section appeared on the schedule annexed to the warrant, for $33.32.

Manning called upon him and demanded the taxes, but he refused to pay. Hence the distress.

Counsel for the plaintiff asked the inspector if he gave notice of the intended alteration of the section. Counsel for the defendant objected to the question about notice in this action after the existence of the corporation had been proved.

The learned Judge rejected the evidence, holding that the corporation had been properly formed for the purposes of the present action.

At the close of the case, *Robinson*, Q.C., for the plaintiff, mentioned that there was an objection going to the formation of the school section not determined by the demurrer, viz., that there was no power under any circumstances to form a union section by adding to one section *parts* of other sections ; and here they had assumed to form such a section by adding to section six in Tilbury, parts of two sections in Raleigh, thus altering the boundaries of those two sections. He contended that the judgment on demurrer decides only that where there is power to form a section on giving a specified notice or complying with other formalities, and it is done without the proper notice, or some other formality is omitted, the constitution of the section is not open to inquiry in an action. That, he argued, may well be, but it might not follow that such inquiry was precluded when the section neither had nor could have been formed, and the trustees of it, therefore, never were or could have become a corporation.

It was also objected that the rate was unequal, and that the warrant could not be made by two of the trustees to one of the two signing it.

The learned Judge, without deciding any of the questions raised, found a verdict for the defendants' reserving leave to the plaintiff's counsel to move to enter a verdict for the plaintiff upon any ground he saw fit.

During Easter term, May 27, 1876, *C. Robinson*, Q.C., obtained a rule *nisi* calling on the defendants to shew cause why the verdict should not be set aside and a verdict entered for the plaintiff, on the ground that on the law and evidence the plaintiff was entitled to recover ; the taking and detention of the plaintiff's goods by the defendants not having been justified, and the defendants' pleas of justification not having been proved ; that the school section for which defendants assumed to act as trustees was not shewn to have been legally formed or to exist, and it was shewn that the said section was illegally formed ; nor was it shewn that the plaintiff was liable to be rated or levied upon for school purposes in any section for which defendants were trustees ; that the taking of plaintiff's goods was illegal and unauthorized, the rate for which the goods were seized being unequal, and the warrant under which said distress was made being insufficient and illegal ; or for a new trial for rejection of evidence offered to shew that the section was not legally formed.

During Trinity term, September 8, 1876, *J. K. Kerr*, Q.C., shewed cause. The section was properly constituted, and, whether it was or not, the question was not one which could, according to

the decision of the Court on the demurrers, be tried in this action: Con. Stat. U. C., ch. 64. secs. 40-41, 45-46: The trustees having applied to the townships for authority to borrow the money necessary to build a school house, and, not having obtained the necessary authority, might afterwards use their own lawful authority: Con. Stat. U. C., ch. 64, sec. 27, sub-sec. 12; 37 Vic., ch. 28, sec. 26, sub-sec. 14. As it was not contemplated or intended that the collector should receive remuneration for his services, there was nothing to prevent his being one of the two trustees who appointed him: Con. Stat. U. C., ch. 64, sec. 27, sub-sec. 2; 23 Vic., ch. 49, sec. 6; 37 Vic., ch. 28 O., secs. 24-25, 28, sub-sec. 1; sec. 29, sec. 86, sub-sec. 1*a*, and the rate was not unequal: *Harling* v. *Mayville*, 21 C. P. 499.

C. Robinson, Q. C., contra. The addition of a portion of one section to another is not a union, but an alteration of sections: Con. Stat. U. C., ch. 64, secs. 41, 45-46; 23 Vic., ch. 49, sec. 55. Here there was no union of sections: *In re Proper and the Corporation of the Township of Oakland*, 34 U. C. R. 273. The plaintiff may be precluded from shewing in this action that the defendants were not duly elected trustees, but ought not to be precluded from shewing that there is no section for which they can be trustees. The warrant not being signed by a majority of the trustees, excluding the collector, is not a valid warrant: 37 Vic., ch. 28, secs. 25, 28-29. The rate is an unequal one: Con. Stat. U. C. ch. 64, sec. 46; 37 Vic. ch. 28, sec. 51; *Harling* v. *Mayville*, 21 C. P. 499, 508. The trustees, after applying to the township councils for authority to borrow the money, have no power themselves to levy the rate: Con. Stat. U. C. ch. 64, sec. 27, sub-sec. 12.

September 26, 1876. HARRISON, C. J.—The Common or Public School Acts for the past twenty years have made a plain distinction between the alteration of the boundaries of a section and the union of two or more school sections.

The Courts, in several cases, have recognized this distinction, and endeavoured to give effect to it: See *Re Gill and Jackson et al.*, 14 U. C. R. 119; *School Trustees of School Section No. 2, in the Township of Moore and McRae*, 12 U. C. R. 525; *In re Morrison and the Municipality of the Township of Arthur*, 13 U. C. R. 279: *In re Ness and the Corporation of the Township of Saltfleet*, Ibid. 408; *In re Ley and the Municipality of the Township of Clarke*, Ibid. 433; *School Trustees of School Section No. 4, in the Township of Haldowell and Storm*, 14 U. C. R. 541; *In re Hart and the Municipality of Vespra and Sunnidale*, 16 U. C. R. 32; *In re Isaac and the Municipality of Euphrasia*, 17 U. C. R. 205; *In re Proper and the Corporation of the Township of Oakland*, 34 U. C. R. 266, 273.

The power to form and alter school sections at discretion was at one time vested in the council of each district: 9 Vic. ch. 20, sec. 9; and when this was the case there was no difficulty arising from the circumstance that the section proposed to be formed or altered consisted in parts of two or more townships. See *In re Ness and the Municipality of the Township of Saltfleet*, 13 U. C. R. 408.

When the population of the Province increased, when the number of school sections was correspondingly increased, and when the sections themselves became less in size, the power to form or alter sections was divided and attempted to be conferred on smaller bodies than district councils, such as township councils, &c.

The power to take from or to add to the boundaries of a school section, or to form two or more sections in a union, is a legislative power which can only be exercised by the Legislature of the Province, or those to whom the power has been delegated by the Legislature.

On 24th December, 1873, the reeves of the Townships of Tilbury East and Raleigh, in conjunction with the Inspector of Public Schools for the County of Kent, assumed by by-law to form a new school section, formed, in part, of the whole of school section No. 6, in Tilbury East, with the addition of some lots and parts of lots from the Township of Raleigh, and called it "Union School Section No. 2, Raleigh and Tilbury East."

Although called a union school section, it was not a union of school sections, but the addition to an existing section in Tilbury East of some parcels of land situate in the Township of Raleigh,—in other words, an alteration of the boundaries of an existing school section in Tilbury East by an increase of territory from an adjoining township.

But the question is not so much as to the name of the new section, as to the power of those who assumed to exercise it to form the new section in the manner and at the time they passed the by-law of 24th December, 1873.

The statute in force at that time from which the power, if existing, could only be derived, was Con. Stat. U. C. ch. 64, with amendments thereto.

Sec. 39. "Each township council shall form portions of the township where no school sections have been established into school sections; and shall appoint a person in each new school section to call the first school meeting."

Sec. 40. "In case it clearly appears that all parties to be affected by a proposed alteration in the boundaries of a school section have been duly notified of the intended step or application, *the* (not *any*) township council may alter such boundaries. But no such alteration * * shall take effect before 25th December next after the alteration has been made."

"Sec. 41. "In case, at a public meeting of each of two or more sections called by the trustees for that purpose, a majority of the freeholders and householders of *each* of the sections to be affected, *request to be united*, then *the* council shall unite such school sections into one."

Sec. 43. "The several parts of any *altered* or *united* school sections shall have respectively the same right to a share of the common school fund for the year of the alteration or union, as if they had not been altered or united."

Sec. 44. "In case a school site, school house, or other school property be no longer required in consequence of the alteration or the union of school sections, the same shall be disposed of * * in such manner as a majority of the freeholders and householders in the altered or united sections decide at a public meeting called for that purpose, and the inhabitants transferred from one section to another shall be entitled, for the common school purposes of the section to which they are attached, to such a proportion of the proceeds of the sale of such school house or other common school property as the assessed value of their property bears to that of the other inhabitants of the common school section from which they have been so separated, and the residue of such proceeds shall be applied to the erection of a new school house, or to other common school purposes of such altered or united sections."

So far no provision is made for exercise of power by any other body than township councils, and can only be held to extend to school sections situate wholly *within* the particular township.

The 23 Vic. ch. 49, sec. 5, which repealed sections 45 and 46 of Con. Stat. U C., ch. 64, provided that, "Under the conditions prescribed in the 40th. section in respect to alterations of *other* school sections, *union school sections*, consisting of parts of two or more townships or parts of a township, and any town or incorporated village, may be *formed* and *altered* by the reeves and local superintendent or superintendents of the townships out of part of which such sections are proposed to be formed, * * and each *union school section composed* of portions of adjoining townships, or portions of a township or townships, and a town or incorporated village, shall, for the purposes of the election of trustees under their control, be deemed one school section, and shall be considered, in respect to superintendence and taxation for the erection of a school house, as belonging to the township * * in which the same is situated."

These powers are in effect continued in the existing Public School Act: 37 Vic. ch. 28, sec. 48, sub-sec. 10, secs. 49, 50, 51.

Provision so far is made for:—

1. The alteration of the boundaries of a school section *within* a township by the council of that township.

2. The union of two or more sections within a township by the council of that township, after a meeting of the freeholders and householders of each section requesting to be united.

3. The alteration of the boundaries of a *union school section*, although consisting of parts of two or more townships, by the reeves and local superintendents of the townships.

But no provision is made for the alteration of the boundaries of a school section (not being a union school section), consisting of parts of two or more townships.

Sec. 47 of Con. Stat. U. C. ch. 64, enacts that "Each township council may, under the restrictions imposed by law in regard to the alteration of school sections, *separate* such part of any *union school section* as is situated *within* the limits of its jurisdiction from the union of the sections, and may form the part so separated into a distinct school section, or attach it to one or more existing school sections or parts of sections within its jurisdiction, as such council shall judge expedient."

Sec. 92 enacts, that "The local superintendent of adjoining townships shall determine the sums to be paid from the common school fund of each township in support of the schools of *union school sections* consisting of portions of such townships; and shall also determine the manner in which sums shall be paid."

Sec. 93 enacts, that "In the event of the local superintendents of the townships thus concerned not being able to agree as to the sum to be paid to each such township, the matter shall be referred to the warden of the county for final decision."

We can only judge of the intention of the Legislature from the language which the Legislature has used.

The Legislature has provided for the formation and alteration of

boundaries of school sections *within* a township, and for the formation and alteration of boundaries of *union school sections;* but has not provided for the alteration of the boundaries of a school section by the addition to that section of land in an adjoining township, unless we read the words "union school sections" as meaning not only a union of school sections, but a union of parts of different sections in different townships to form *one* school section.

We cannot do so without giving to the language used a forced construction, and one which the words do not naturally bear.

The only provision in the Act for the formation of a union school section is that contained in sec. 41. which speaks of it as the union of "two or more sections."

There cannot be a union of sections unless there be at least two sections to form the union. There may be a union of parts of two sections; but where the result is only one section, it cannot, with any propriety of language, in a School Act, or any other Act, be denominated "a union school section."

It is safer that we should allow the Legislature to supply its own omissions, or correct its own errors, than that we should, under the guise of interpretation, assume to legislate.

The conclusion at which we have arrived is, that the Legislature have omitted to provide for the formation or alteration of a section consisting of parts of two or more townships, &c., and this is what the Reeves of Tilbury East and Raleigh, in conjunction with the County Inspector of Schools, have, without legislative authority, attempted to do.

Where there is power to do a thing, and the only question is, whether the power has been regularly exercised, and the inquiry is into a matter of fact, which may be differently found by different tribunals, and the right to office depends on the finding, it is only proper to hold, as we did in this case, that the inquiry can only be properly made in some proceeding where the question will be once for all so decided as to bind the rights of all parties concerned.

When this case was before us on demurrer, it was assumed that the reeves and county superintendent had power *after notice* to alter the boundaries of a school section in one township by adding to it a portion of a school section in an adjoining township, and the Court, on that assumption, held that the plaintiff could not in this action, as against the defendants in office, dispute that—the fact as to notice, but must try it in another proceeding, where the finding would be final and bind all parties concerned.

If the law on this point were otherwise, the effect might be that, in a suit by one ratepayer, a jury would find a sufficient notice, and in a suit by another ratepayer, a jury might find no sufficient notice, so that in the one case it would be held that the alteration was properly made, and in the other the reverse.

Such procedure, if permitted, could manifestly only end in confusion.

But where the question is, not merely the regular exercise of power, but the possible exercise of power, and there is no dispute, and can be no dispute, as to the facts, there is no reason why the question of *law* should not be determined in any suit where it properly arises for decision.

Our decision of the demurrers proceeded chiefly on the authority of *Penney et al.* v. *Slade*, 5 Bing. N.C. 319; and *Re Gill and Jackson*, 14 U.C.R. 119.

In *Penney et al.* v. *Slade*, 5 Bing. N. C. 319, there was power to appoint overseers, and the only question was, whether the person assuming to hold that office had been duly appointed.

Tindal, C. J., on delivering judgment said, at p. 331, "It is obviously a much more convenient course that *the validity of the appointment* should be brought into controversy in a direct way immediately upon the appointment, than that a party should lie by till a rate has been made and levied, and should then be allowed to revert back to *some miscarriage* in the appointment. No objection arising in such a way ought to prevail, *unless it rests on the most solid ground*, which, in our judgment, the present objection does not."

In *Re Gill and Jackson*, 14 U. C. R. 119, the question was, whether the trustees claiming to act, or a different body of trustees, were entitled to the office.

Sir John B. Robinson, in delivering judgment, said, at pp. 126, 127: "However, there was an *unfortunate irregularity* to this case, the resolution (if that alone would have sufficed in making the alteration), not specifying with any distinctness what was thereafter to form sec. No. 7, and what to form sec. 11. * * But, independently of the question whether the local superintendent's decision upon the point can thus be incidentally overruled in an action, the learned Judge left out of view that the trustees who imposed and received this rate were the trustees *de facto*, and that, until *they are removed*, the acts which they do in the ordinary current business of trustees must of necessity be upheld, or everything would fall into confusion."

In our former decision we meant to follow these authorities; we did not intend to go any further.

We are not concluded by our former decision, or by these authorities, where the objection, so far from being a mere question of irregularity, rests on the broad foundation of entire want of power, from deciding the question where it properly arises between parties interested in the result.

It is impossible in any Act of Parliament intended to regulate the conduct of men in the transactions of life, to provide for all possible cases. Experience shews that the best framed Acts of Parliament are imperfect. Further legislation is required where unforeseen difficulties present themselves.

The present School Act is still imperfect. It not only omits to provide for the addition to a section in one township of land in an adjoining township, but also omits to provide for the equalization of the assessments as between the persons residing in the two municipalities affected by the change. It also omits to provide for the adiustments of assets, other than an existing school house property, &c., as between the ratepayers residing in the different municipalities.

In the absence of legislative light on these different points, the trustees of this school section have endeavoured to be a light unto themselves. Each step they have taken from the first is only a further and a further plunge into darkness. The sooner their career is stopped, the better for themselves, and the better for the distracted ratepayers.

The by-law of 24th December, 1873, was, in our opinion, passed without any legislative authority, and must, on that ground, fall; and with it falls all that was afterwards done resting on the foundation of its validity.

The rule will be absolute to enter a verdict for the plaintiff for $5 [a].

Rule accordingly.

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4. SYNOPSIS OF AMENDED SCHOOL ACT OF 1877.

The following is a synopsis of the amended School Act, which was recently passed by the Legislature of Ontario, and is now in force:—

Section 1, *Sub-section* 1. 37 V., c. 27, s. 27 (5), amended. Further powers to the Department to grant equivalents for passing High School Examinations.

Sub-section 2. 37 V. c. 27, s. 27 (11), amended. Arrangement with Trustees for County Model Schools.

Sub-section 3. 37 V. c. 27, s. 27 (17), amended. Examination of Normal School Students.

Sub-section 4. 37 V. c. 27, s. 27 (19), amended. Regulations as to Elementary Teaching.

Sub-section 5. 37 V. c. 27, s. 27 (22), amended. Condition for Teachers' Certificates.

Sub-section 6. 37 V. c. 27, s. 27 (23), amended. Power to grant Second Class Certificates.

Sub-section 7. 37 V. c. 27, s. 31 (34), amended. Minister to see that Examinations are duly held.

Sub-section 8. 37 V. c. 27, s. 31, amended. As to Second Class Certificates.

Sub-section 9. 37 V. c. 27, s. 31 (12*a*), amended. After Examination.

Sub-section 10. 37 V. c. 27, s. 31 (15*a*) and 16, amended. Encouragement to Teachers' Associations, &c.

Sub-section 11. 37 V. c. 27, s. 31 (15*b*), amended. Power to Commissioners appointed by Minister to administer Oaths.

Sub-section 12. 37 V. c. 27, s. 31, sub-sec. 29*a* added. Payment of costs of Maps, &c., not purchased from Education Department, authorized.

Sub-section 13. 37 V. c. 27, s. 31 (31), amended. Minister's Report to be for Calendar Year.

Sub-Section 14. 37 V. c. 27, s. 33, amended. Payment for travelling and other expenses of Normal School students authorized.

Sub-section 15. 37 V. c. 27, s. 70, amended. Equal amount payable by county.

Sub-section 16. 37 V. c. 27, s. 71.

Section 2, *Sub-section* 1. 37 V. c. 28, s. 129, amended. Encouragement of Teachers' Associations.

Sub-section 2. 37 V. c. 28, s. 130. Amended.

Section 3, *Sub-section* 1. 37 V. c. 28, s. 149*a*, repealed, and new section substituted. Terms and vacations in Public Schools. In cities, towns, and villages.

Sub-section 2. 37 V. c. 28, s. 71 (*a*). Mode of rating to be open, not ballot.

Sub-section 3. 37 V. c. 28, s. 72, amended. Close of Poll.

(*a*) See also *Halpin* v. *Calder*, 26 C. P. 501.

Sub-section 4. 37 V. c. 28, new section, 32*a*, inserted. Definition of "site" and "owner."
Sub-section 5. 37 V. c. 28, s. 48, amended. Imperative on Township Council to pass by-law about loans.
Sub-section 6. 37 V. c. 28, s. 153, amended. Verbal.
Sub-section 7. 37 V. c. 28, s. 89, repealed. Repeal of Act authorizing Board of Examiners in cities.
Sub-section 8. 37 V. c. 28, s. 92 (8), amended. Teachers and Teachers' rural Reports.
Sub-section 9. 37 V. c. 28, s 85, amended. To extend superannuation to Public and High School Inspectors.
Sub-section 10. 37 V. c. 28, s. 108, amended. County Council to arrange for inspection in remote parts.
Sub-section 11. Inquiries on complaints to Inspectors, Minister, or Department.

Section 4. 29, 30 V. c. 51, s. 276, amended. Verbal.

Section 5. Declaratory clause. Quorum of Trustees and Board. Vote of electors unnecessary for school debts, school site, charges, and functions of arbitrators.

Section 6, *Sub-sections* 1 and 2. Provisions for establishing Township Boards of Education.
Sub-section 3. Management of Schools by Board.
Sub-section 4. Qualifications of Members of Board.
Sub-section 5. Time and manner of election of members.
Sub-section 6. Powers of Township Board.
Sub-section 7. Effect as to parts of township united.
Sub-section 8. Adjustment of all claims consequent on Board being established.
Sub-section 9. Adjustment of claims in cases of parts of township becoming disunited.
Sub-section 10. Repeal of By-law, and for reforming school sections.
Sub-section 11. Application to Board now existing.

Section 7. 37 V. c. 28, s. 48; sub-secs. 10 and 10*a*, amended.
Sub-section 10. Alteration, &c., of school sections.
Sub-section 10*a*. Appeal to County Council from alteration, &c.

Section 8. 37 V. c. 28, s. 27, amended. Verbal.

Section 9. 37 V. c. 28, s. 28, amended. Payment of teachers' salaries.

Section 10. Adjustment of claims between unions in same townships.

Section 11. Provisions as to Unions and Dissolution between parts of two or more municipalities.
Sub-section 1. Unions between parts of two or more townships, and of part of a township with a union or village.
Sub-section 2. Union to be one School Section.
Sub-section 3. No power to alter boundaries, except on petition, &c.
Sub-section 4. Existing unions confirmed.

Section 12. Towns may place schools under County Inspector.
Sub-section 105*a*. Lieut.-Governor to form remote districts for inspection,
Sub-section 3. Permits to Teachers, Subject to Regulations.

Section 13, *Sub-section* 1. Verbal connection.
Sub-section 4 (*a*). Provisions for ascertaining Public and Separate Supporters for Assessment. Assessment Roll, further Columns.
Sub-section 4 (*b*). Collection Roll, further Columns.
Sub-section 4 (*c*). Collection of School Rates.
Sub-section 4 (*d*). Provisions Permissive, not to impair any Provisions of C. S. U. C. c. 65, or 65 or 26 V. c. 5.
Sub section 4 (*e*). To apply also to Cities, Towns, and Villages.

Section 14. Quarterly Payment of Teachers' Salaries.

Section 17. County Payment.
Sub-section (*a*). To County Model Schools.
Sub-section (*b*). To Teachers' Associations.
Sub-section 2. Extent of Accommodation.
Sub-section 3. Third-class Certificates to be awarded by County Board.
Sub-section 4. Vacancy in, of Trustee, when caused.
Sub-section 5. Compulsory Attendance, Excuses.

Section 18, *Sub-section* 1. High School under County Jurisdiction.
Sub-section 2. As to High School Districts.
Sub-section 4. Power to County and City or Towns separated to agree as to High School.

Section 19. Terms and Vacations.

Section 20. 36 V. c. 29, s. 24, amended. Convocation only to discuss Terms of Affiliation.

Section 21. 36. V. c. 29, s. 26, amended. Authority to admit persons to examination, with subjects.

III. Proceedings of Teachers' Associations.*

1. WATERLOO TEACHERS' ASSOCIATION.

The Semi-Annual Meeting of the Waterloo County Teachers' Association was held in Berlin on the 5th and 6th days of January, 1877. The President, Mr. Thos. Pearce, P.S.I., occupied the Chair during the whole of the proceedings. A communication from the Hon. Adam Crooks was read by the Secretary, stating his inability to be present at this meeting, but expressing his willingness to attend any subsequent meeting. Mr. Suddaby, delegate to the Prov. Teachers' Assoc., gave a review of its proceedings, and was afterwards tendered a hearty vote of thanks for his action in that capacity. Many practical addresses were delivered: a brief synopsis might be given as follows:—Mr. Suddaby, on the subject of "Gram. Changes of Construction," pointed out carefully his method of teaching the subject, particularly with Participles and Infinitives, and urged upon the teachers the necessity of giving many examples in contracting and expanding. Mr. Bergey read an able essay on "How to teach Spelling." He dwelt particularly on the fact of the eye being the best avenue in learning to spell, and gave carefully his method of conducting dictation exercises. Miss Hutchison read an essay on "Music in our Schools." It abounded in practical ideas, and was well received by the Association. Mr. Connor, High School Master, next took up the subject of "Etymology," and showed its great use in explaining words. He illustrated, by means of the black board, how to teach prefixes, affixes, and roots. He showed himself master of his subject by keeping the attention of the Association for about an hour in showing the peculiarities existing in many of our English words and their origin. The opening address on the second day was given by Mr. Linton, on "How to teach Writing." He pointed out his method of teaching principles, and the various lengths of the different letters. He showed that great watchfulness was needed in teaching this subject in order to produce satisfactory results. Miss Tilt next read an essay on "Teachers' Habits." She showed how largely the power of imitation was developed in children, and urged upon teachers to remember that they teach by their actions as well as by precept. Mr. McRae next gave a humorous description of "What he saw at the Centennial." This was the most mirth-provoking address that was given, the speaker being several times greeted with applause. Before adjourning, many resolutions were carried, only three of which may be considered of any interest to those outside of the county. These were as follows:—

1. That this Association considers that a cash bonus should be annually given by Government to Teachers holding Provincial certificates, while remaining in the profession.
2. That an intermediate grade of certificates between the present third and second should be established.
3. That the mid-summer holidays of the Public Schools should be made the same as those for the High Schools; but this is not to be done by curtailing the Easter holidays. Also, that a copy of these resolutions be sent to the Minister of Education.—*Communicated by the Secretary.*

2. TEACHERS' ASSOCIATION, EAST BRUCE.

Summary of the exercises of the East Bruce Teachers' Association, 1876

There were three meetings held in the months of January, May, and November: one was at Walkerton and two at Paisley.

There were 40 names on the roll of membership at the beginning of the year, and 22 entered during the year. Two of the forty were not present at any meeting during 1876, excluding them, we had 60 members at the close of the year—20 female and 40 male.

The average attendance of teachers and inspectors at each meeting was 41, of which 13 were lady members. The least attendance was 30 and the greatest 60. The average attendance from each of the municipalities was as follows:—

Brant, 8; Carrick, 7; Walkerton, 6; Elderslie, 5; Paisley, 4; Arran, 3; Amabel, 2; Greenock, 2; outside of the District, 4.

The Association was favoured with seven addresses: by Dr. Bell, upon the progress of our Country, and Culture; Rev. Mr. Tindal, upon the History and Philosophy of Language; Mr. Miller, the requisites of a good Teacher, and an account of his visit to the Centennial; Mr. McKellar, a report of the proceedings of the Provincial Teachers' Association, to which he had been sent as delegate; and by the Minister of Education upon School Law. Four essays were read upon the ventilation of the School-room, by Mr. Coles; School Government, by Miss Case; the School and the World, by Miss Adair; and Philosophy of History, by Mr. Chambers.

* Secretaries of Teachers' Associations should send *condensed* reports of their proceedings for insertion in the Journal.—[ED. *J. of E.*]

Seven discussions were engaged in, viz: Approved method of teaching Dictation and Long Division, Teachers' Certificates, Home-work required by the Pupils, the use of Monitors, Tattling among Scholars, and the Examination Papers of 1876.

Two lessons were taught upon Notation, by Mr. McKellar, and Parsing, by Mr. McGill. A reading was given by Miss Laidlaw.

There was a question drawer in connection with each meeting, and an aggregate of 31 questions were propounded and answered.

The year was made memorable in the history of the Association by the honour of a visit from the Hon. Mr. Crooks, Minister of Education. The Association at that time held a two days' session, the Department having kindly granted authority to consider Friday a holiday, and money has been apportioned to the Sections accordingly.

His Honour gave a public address on Friday evening, and visited and addressed the Teachers on Saturday. The Minister's presence and expressions were highly appreciated by the Teachers of this district, and his visit has added new life to the Association.

ANNUAL MEETING, FEB. 3RD, 1877.

President in the chair. Minutes of last meeting read and adopted. A revised constitution was read and laid over to next meeting for consideration.

John Eckford, Esq., late local superintendent of Schools, gave an address upon Education, Progress, and the necessary qualifications of a Teacher. The soul-stirring and practical thoughts of the address, delivered in that gentleman's usually earnest manner, received the hearty appreciation of the Association.

Mr. Gorsline exhibited his method of teaching Map Geography to an advanced class, and Mr. Colles, his method of introducing decimals. An essay upon Mary, Queen of Scots, was read by Miss Boulton.

There were two discussions: The Awarding of Prizes, and Punishment of Pupils. The former was introduced by Mr. Todd, followed by Messrs. Gorsline, McGillivray, McKellar, Mitchell, Dr. Bell, and Clendening; and the latter was introduced by Mr. McGillivray, followed by Messrs. McKellar, Miller, and Clendening. Messrs. McGillivray and McKellar made admirable addresses.

Reports were read by the Secretary and Treasurer for 1876, and on motion were adopted.

Mr. Miller, the President, gave a valedictory address, noting particularly the increasing influence of Teachers' Associations, and the progress of our own, and recommending the itinerant principle in selection of officers. The following officers were appointed for 1877:

Mr. Hugh McKellar, President; Rev. Dr. Bell, 1st Vice-President; Mr. John McBride, 2nd Vice-President; Mr. Arnoldus Miller, Treasurer; Mr. W. S. Clendening, Secretary.

Votes of thanks were presented to Mr. Eckford and Miss Boulton, and the retiring officers of 1876.

There were twenty-eight teachers and inspectors present, which, considering the almost impassible condition of many of the roads, occasioned by the thaw, was very encouraging. Five new names were added to the roll of membership.

The following are the names of those who were present:—

Walkerton—Boulton, Ross, Visser, Wallace, Miller, Mitchell, Dr. Bell, Clendening.

Brant—Bacon, Elder, Graham, Chislitt, J. McBride, Todd, Gorsline.

Carrick—Chisholm, Thornton, Fletcher, Peterson, Reddon, McPherson.

Greenock—McNaughton, Armstrong, McIntosh.

Arran—McGillivray.

Elderslie—R. McBride.

Teeswater—McKellar.

Hanover—Colles.

W. S. CLENDENING,
Secretary.

IV. Miscellaneous.

1. EDUCATION IN THE PROVINCE OF QUEBEC.

A work which we had occasion to notice a few days ago, of which the Hon. Mr. Chauveau is the author, furnishes remarkable evidence of the progress of education in this Province during the last quarter of a century. It is satisfactory to know that this progress is continuous, and it is even more rapid than the increase of the population itself. According to the recently published report of the Superintendent, we find during the five years from 1871 to 1876 inclusive, there was an augmentation in the number of pupils attending our various schools, of more than 11 per cent.—the increase of the population being only 8 per cent. The actual number last year was 247,696. The number of schools under the direction of commissioners or trustees, has increased from 3,790 to 4,030 in the last two years. In the same time the average attendance rose from 171,226 to 193,714. The progress made during the last twenty years, may be seen in the statement that in 1857 there were 2,573 commissioners' schools in operation, against (as already mentioned), 4,030 in 1876.

It must not be supposed that we have reached perfection. On the contrary there is still need for a great deal of improvement in many respects. In the autumn of 1874, the inspectors received instructions to pay a special visit to all the academies and model schools, so as to ascertain how these institutions discharged their obligations to the public. The result was that several of them were found deficient, and were removed from the list of subventions. One chief cause of their failure, was a kind of foolish ambition on the part of the founders which burdened them with a name to which they had no right, and which imposed duties which they could not fulfil. We have ourselves known schools, virtually elementary, which were complimented by the name of model, model schools, which were known as academies, and academies which were dubbed colleges. Such a system of nomenclature places the institutions in question in a false, and sometimes ridiculous, position; though in some cases it may lead to such laudable efforts as may entitle them to the name. But nothing tends so much to bring the cause of education into contempt, as to place a cheap, and therefore inferior, teacher in charge of one of these high-sounding establishments. The beggarly remuneration which teachers receive for their work in some parts of the Province, is one of the great drawbacks to sound education. Some of the salaries paid are so low that, if the fact were not stated in black and white, we could hardly believe that trustees could be found to offer or teachers to receive them. There are in the Province 115 male teachers, and 1,722 female teachers, who labour for an annual stipend of less than $100! There are 374 males, and 2,544 females, who receive less than $200 a year. Salaries of from $200 to $400 are given to 480 male and 345 female teachers; and those who receive the prizes of the profession, salaries exceeding $400 a year, number 219 gentlemen and 50 ladies. It ought to be mentioned, however, that of the 1,722 female teachers who receive less than $100 a year, 787 belong to religious communities. This still leaves 935 lay female teachers who obtain only that sum. Of the whole number of male teachers, moreover, 536 are religious by profession, which reduces the number of male lay teachers who receive less than $400 to 318. This is certainly quite enough to suggest the necessity of more ample remuneration for a class of persons who, by courtesy at least, are ranked among educated people. It may be remarked that the ill-paid teachers are found almost invariably in the country districts. Any one who glances at these figures, need not wonder if he sometimes hears complaints from inspectors and others, of the want of knowledge and skill by which such teachers are characterized. The wonder is rather that, for such rewards, persons should be found at all to undertake such laborious and responsible duties. The first requisite for any marked improvement in the rural education of this Province is to rectify this absurd injustice.

As to higher education, we see that there are 21 Roman Catholic industrial colleges, attended by 3,461 pupils; and one Protestant institution of the same kind, with 160 pupils. Protestants, it must be remembered, obtain their commercial education in our high schools. The progress which has been made in this branch of education in late years, is very marked. In 1867, there were only 6,713 pupils learning book-keeping; in 1876, this number had grown to 13,383. In most of the schools and colleges it is now customary for a commercial course to precede the classical course, and this innovation has been found to work well. English and French are taught with equal care in almost all the schools. General and Canadian history and geography, also receive more attention than formerly. The ordinary branches of education,—arithmetic, grammar, dictation, etc., are taught in all the schools. As to the higher branches, the reports of the inspectors are, in the main, favourable. An impetus has been given to the teaching of design, and the Hon. Mr. Ouimet quotes largely from the report published by the committee appointed by the Council of Arts and Manufactures. It is now a part of the regular course in all the schools of the Christian Brothers, and there is hope that, before long, the example will be generally followed.

Among the reforms suggested by the Superintendent, are the augmentation of teachers' salaries, already referred to; the establishment of a depot for books, maps, and other school appliances, and of a scholastic museum; the construction of school buildings according to the principles of hygiene and the demands of comfort; the adoption of the savings bank system in connection with schools; the general use of a text-book on agriculture, with some instructions, when needed, in horticulture and apiculture; the continuous pre-

servation of the school archives; and, in the education of girls, a more practical preparation for their mission in life, than which at present prevails even in the best seminaries. Every one of these subjects is well worthy of consideration, but just now we can do no more than make mention of them.—*Montreal Gazette.*

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