

Mr. Justice Archibald, Acting Chief Justice of the Superior Court sitting in appeal in the Circuit Court [after having disposed of the questions of facts.] :—

It was urged upon me that the Circuit Court, under the school act, was in the same position and having the same jurisdiction as is referred to in the Code of Civil Procedure for the Superior Court, where that Court is given a certain surveillance over municipal affairs, but where, according to the jurisprudence, its interference is limited to cases where municipal action appears to have violated some principles of law, or else to have been so unfair and unreasonable as to indicate bad faith or fraud on the part of the municipal authorities.

On the other hand, it is urged on the part of the appellants that this appeal is substituted in place of the appeal given by the R. S., [1888], Article 2055, which reads as follows:—

“When a site for a school-house is chosen by school commissioners or trustees....the rate-payers interested may at all times appeal to the superintendent by summary petition. The words between brackets were repealed before the present law was enacted (“but such appeal shall not be allowed unless with the approval, in writing, of three visitors other than the school commissioners or trustees of the municipality). By the decision given by the superintendent, which shall be final, he may order the school commissioners or trustees to do that which they have been required or which he orders them to do, or abstain from doing, or to do in whole or only in part and upon the conditions required by such decision.”

This provision came from the 40th Vict. ch. 22, art. 11, which, in its turn, was an amendment of section 64 of ch. 15 the C. S., for Lower Canada, [1861], sub-section