

given to trustees in 1904 by 4 Edw. VII. ch. 30, sec. 16. This latter section is now repealed, 9 Edw. VII. ch. 89, sec. 133. It is argued from sec. 31 of the Act now in force that a second school can be established in a school section only by order of the Minister, and in the circumstances stated in sec. 31. I cannot see the force of this contention. The provision quoted merely gives power to the Minister to compel the trustees to provide a second school, and to my mind implies, not an inability, but a duty, on the part of the trustees, to establish a second school wherever the circumstances render a second school necessary. The topography of school section No. 4 Medora, as shewn by the sketch map filed, makes it impossible for many of the children resident in the section to attend the existing school. The trustees of their own motion may, in my opinion, do what the Minister has power to compel them to do.

In addition to sec. 72(*g*), sec. 126 clearly contemplates that there may be several schools in a rural school section. It imposes a penalty upon every member of the board of trustees of "any rural school section" neglecting to transmit to the Inspector a verified statement "of the attendance of pupils"—not in the school, but "in each of the schools under its charge." A similar provision first appeared in the Public Schools Act of 1874, 37 Vict. ch. 28, sec. 179, thirty years before the enactment was passed providing for a second temporary school in a school section. It has been in every consolidation of the Act since made; R.S.O. 1877 ch. 204, sec. 240; 48 Vict. ch. 49, sec. 263; R.S.O. 1887 ch. 225, sec. 262; 54 Vict. ch. 55, sec. 206; 59 Vict. ch. 70, sec. 209; R.S.O. 1897 ch. 292, sec. 111, and 1 Edw. VII. ch. 39, sec. 117. It has undergone slight modifications in the thirty-seven years of its existence, but in every case it is made to apply to "the trustees of any rural school section" and to "each of the schools under their charge."

I think this disposes of the argument that there can be but one school in each public school section. The appeal should, in my opinion, be dismissed with costs.

FALCONBRIDGE, C.J.K.B.:—I concur.

BRITTON, J.:— . . . Assuming that there was jurisdiction to make the mandatory order mentioned, I am of opinion, with all respect, that this is a case in which the judicial discretion should have been exercised against the board of trustees of that school section, upon their application for the order.

The public school supporters are comparatively few—there