

STREET, J. . . . The county council had no power to authorize the arbitrators to do more than to sit in appeal from the refusal of the township council to grant the prayer of the petition, and either to allow or disallow what the petitioners asked for, and the arbitrators had no power to do more than that. . . . The award is not the determination of an appeal from the township council, but the promulgation of the views of the arbitrators as to the proper boundaries of a new section which they had no authority to create. . . . Re Southwold School Sections, 3 O.L.R. 81, followed.

The power of a township council to deal with portions of the township which have never been attached to any school section seems to be conferred by sec. 12 of the Act; the power to readjust existing boundaries is dealt with by sec. 41. The Sydenham council passed a by-law, No. 10, on 26th May, 1903, pending the appeal to the county council, distributing their new territory amongst certain existing school sections. There is doubt as to the validity of this by-law, but it is not necessary to pronounce upon the question. The by-law is defective in not fully describing certain "parts" of lots mentioned in it, leaving an uncertainty as to what "parts" are intended.

Order made setting aside the award with costs to be paid by the petitioners represented by counsel opposing the motion.

STREET, J.

OCTOBER 8TH, 1903.

TRIAL.

FALVEY v. FALVEY.

Husband and Wife—Alimony—Justification of Wife for Leaving Husband—Violence—Adultery—Misconduct of Wife.

Action for alimony, tried at Toronto.

J. M. Godfrey, for plaintiff.

L. V. McBrady, K.C., for defendant.

STREET, J.—If plaintiff had brought her action for alimony as soon as she left defendant, there would have been no sufficient answer to her claim, because the defendant had been guilty of violence in choking her upon the night before she left him, and this violence was the immediate cause of her leaving him, coupled as it was with the suspicion that he was carrying on improper relations with another woman. It is