

it is claimed rests upon it to divide the whole township into school sections, as provided by sec. 12 of the Act, but a demand that the council should pass a particular by-law. . . .

It was clearly not the duty of the council to pass any such by-law; it was for the council and not the applicants to determine how the division should be made.

There was, therefore, in my opinion, no such demand and refusal as was necessary to be shewn to entitle the appellants to the mandamus they seek to obtain.

It may be open to grave question whether, assuming that sec. 12 is mandatory in its character, as I am inclined to think it is, it does not leave to the discretion of the township council the time when the division of the township into school sections shall be completed. . . . I have found and express no opinion upon the question.

There are other difficulties in the way of the construction contended for by defendants.

It is difficult to see how the directions of the section are to be worked out in a new township. . . .

There is the further difficulty . . . that it is impossible for the council to divide the whole township into school sections, because of the fact . . . that part of it is now by law not under its jurisdiction for school purposes.

The difficulties of construction which sec. 12 presents, and the consequences of the adoption of the construction for which appellants contend, demand that there should be legislation making clear what was intended by sec. 12, and that, if that intention is declared to be what appellants contend the section now means, that may not be done without full consideration of the difficulties in applying such a provision to the conditions existing in such townships. . . .

In all the circumstances, having regard especially to the undoubted hardship upon some at all events of the rate-payers of having no school facilities provided for their children, and the difficulty of construing the legislation I have been considering, the appeal should be dismissed without costs. . . . The dismissal of the action which was brought by appellants for the purpose of obtaining the relief which they sought to obtain by their motion, should also be without costs. It was dismissed with costs at the trial, subject to any direction as to the costs of it which might be made on this appeal, and we have therefore, I think, jurisdiction to deal with these costs.

MACMAHON, J., concurred.

IDINGTON, J., also concurred, giving reasons in writing.