

although plaintiff is not liable to defendant), plaintiff may have a cause of action against defendant for the loss he has sustained by Gallagher withholding the \$500. . . .

Costs of the last trial and of the appeal in the cause unless the trial Judge otherwise orders.

JULY 2ND, 1904.

DIVISIONAL COURT.

RE ARTHUR AND MINTO UNION SCHOOL SECTION 17.

Public Schools—Formation of Union School Section—Award—Appointment of Arbitrators—Amendment of Public Schools Act—Effect on Pending Appeal—Stay of Proceedings.

Appeal by the trustees of school sections Nos. 12 and 13 of Minto from order of MEREDITH, C.J., 2 O. W. R. 930, referring back the award of the arbitrators appointed under sec. 46 of the Public Schools Act, 1901, but confirming the proceedings in so far as regards the formation of union school No. 17 Arthur and Minto.

W. Kingston, K.C., for appellants.

A. Spotten, Harriston, for petitioners.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.) was delivered by

STREET, J.—After the argument an Act was passed by the Ontario Legislature amending sec. 45 of the Public Schools Act by altering “1901” therein to “1904,” and declaring that an award by a majority of the arbitrators appointed under sec. 46 should be good. . . .

In my opinion, school section No. 17 of Arthur and Minto had been formed and existed in fact before 1st April, 1904, and any defects in its formation were cured by the amendment made. . . . An award had been made by de facto arbitrators; they had been declared by the judgment appealed from to have been duly appointed; their award had been confirmed upon all points but one, and, being referred back to them on that point, had been made good by a supplementary award; and all this had taken place before the passing of the amending Act. The Act is expressly made applicable to pending proceedings, so that the fact that an appeal was pending at the time the Act was passed does not prevent it from applying.