

MEREDITH, C.J.—The main question argued was as to the power of the arbitrators to fix as the site any other place than that selected by the trustees, the contention of the applicants being that their only jurisdiction was to determine whether or not the site selected by the trustees was a suitable one.

I have reluctantly come to the conclusion that this contention is well founded.

It is no doubt the duty of rural school trustees to provide adequate accommodation for two-thirds of the children between the ages of five and sixteen years resident in the section (sec. 65 (3) ), and to purchase or rent school sites or premises and to build school houses (sec. 65 (4) ); and they may select a site for a new school house, but, according to the provisions of sub-sec. 1 of sec. 34, no site may be adopted, "except in the manner hereinafter provided," without the consent of the majority of the ratepayers present at a special meeting, which the trustees are required to call for the purpose of considering the site selected by them.

In case of a difference between the trustees and the majority of the ratepayers as to the suitability of the site selected by the trustees, provision is made by sub-sec. 2 of sec. 34 for an arbitration and award upon the matter submitted to the arbitrators.

Beyond this bald statement there is no provision as to what is to be the scope of the reference; but it appears to me that what is meant by the expression "the matter submitted" must be the question of the suitability of the site selected by the trustees. There is nothing in the language used to indicate that it was intended to confer upon the arbitrators power to fix the site, though the site determined on by them differed from that selected by the trustees. The scheme of the Act seems to be that the trustees must initiate the proceedings which are to result in the adoption of the site, by selecting what they deem to be a suitable one, but that they may not adopt it as the site without the consent of the ratepayers, unless, upon a difference and consequent reference to arbitration in manner provided by sec. 34 (2), an award has been made approving of the site which the trustees have selected.

If there were no provision for arbitration, it is clear that the site selected by the trustees may not be adopted by them without the consent of the majority of the special meeting, and all that the Legislature has done, as it appears to me, is to provide that where that consent cannot be obtained there may be substituted for it the approval of the arbitrators.

I should have much preferred to have come to a different conclusion, for it is obvious, I think, that the construction