

W. E. Middleton, for the applicants.

H. M. Mowat, K.C., for the respondents.

RIDDELL, J.:—About 1860 the township council of the township of Clarence, in the county of Russell, set apart a portion of that township as school section No. 2, Clarence. In 1885 a portion of this territory was set apart and erected into an incorporated village, Rockland by name, and thereafter the school number 2 seems to have been known as Rockland public school. In 1905, under the provisions of 1 Edw. VII. ch. 40 (O.), the village of Rockland became a high school district, and a high school has been established accordingly.

In January, 1907, the Rockland public school board, purporting to act under the provisions of sec. 13 (7) of the said Act, appointed Mr. P. as their representative upon the high school board. The high school board refused to allow Mr. P. to take his seat, and the public school board now apply for a mandamus.

No technical difficulties are thrown in the way; and both boards desire a decision on the merits.

The statutory provision to be interpreted is, as mentioned, to be found in 1 Edw. VII. ch. 40, sec. 13 (7)—“Except in the case of a board of education, the public school trustees of every city, town, or incorporated village, in which a high school board is situated, may appoint annually one trustee of and for the high school board,” etc.

Here the high school board contend that the public school board are not, in the sense contemplated by the statute, “the public school trustees of” an “incorporated village;” that their jurisdiction is over a portion of the adjacent township; and that it would not be just that ratepayers quite outside the village should have any part in directing the policy of the high school, as they might if trustees selected by them should nominate a high school trustee who might sway that board or determine its policy. On the other hand, it is contended that the fact that the school section of an incorporated village takes in more territory and includes more ratepayers than those in the village does not make the board any less the board of that village, and should not take away the right of the ratepayers in the village itself.