

that the logical result of my view as to these findings is that the action should be dismissed, I am inclined to think that that is not so, necessarily. The jury, having found the acts of negligence specified in their answers, may have thought it unnecessary to go further; and in any case the ends of justice will, I think, be best served by sending the case back to be tried again.

I would, therefore, set aside the findings of the jury, and the judgment pronounced upon them, and direct that a new trial be had between the parties, and that there should be no costs of the last trial or of the appeal to either party.

JANUARY 7TH, 1905.

DIVISIONAL COURT.

RE ELLIS AND TOWNSHIP OF WIDDIFIELD.

Public Schools—Division of Township into Sections—Mandamus—Demand—Particular By-law—Duty of Council—Discretion—Newly Organized Township—Public Schools Act, sec. 12—Construction—Costs.

Appeal by applicants from order of BRITTON, J., 3 O. W. R. 802, dismissing their motion for an order of mandamus commanding the township corporation, under the Public Schools Act, 1 Edw. VII. ch. 39 (O.), to subdivide the township into school sections.

The appeal was heard by MEREDITH, C.J., MACMAHON, J., IDINGTON, J.

E. E. A. DuVernet, for appellants.

A. G. Browning, North Bay, for township corporation.

MEREDITH, C.J.—The township of Widdifield is an organized township in the district of Nipissing. It has been organized but a few years, and school sections have since been formed from time to time as, in the opinion of the council of the township, the requirements of the inhabitants demanded. Small parts of the township are not now embraced within any school section, and the parts not within a school section do not all lie contiguous to one another. These parts are but sparsely settled, and the township as a whole is a rough and somewhat poor one, with swamps and rocky land in many parts of it. Part of the township for public school purposes forms part of the incorporated town of North Bay. . . .

The application made to the council the denial of which was the ground upon which the mandamus is asked for, was not a demand that the council should perform the duty which