

of Normanby prior to the passing of the Act, it might have been willing to negotiate after the passing of the Act. However this may be, I do not think that the necessary preliminary action was taken on the part of the township of Normanby after the passing of the Act and prior to the proceedings to arbitrate, to enable it to take such proceedings. It is true the reeve of Carrick wrote the letter above referred to, but he denied expressly that he had authority from the council of Carrick to write the letter. He states further that it was not discussed at any meeting of the council. This statement is again contradicted, so that the matter is left in that uncertain state.

As the township of Carrick have protested throughout these proceedings, I do not think they were bound, although they attended under protest during the taking of the evidence. There should, I think, have been clear and distinct action taken by the township of Normanby, communicating as a council with the township of Carrick, to endeavour to mutually agree before proceedings were taken. In a matter of so much importance as the present, it ought not to be left to the Court to gather from contradictory evidence whether or not any such attempt was ever really made, or whether, although an attempt was not made, the intention, in fact, was to disagree to any proposed arrangement. So that upon this ground the appeal should be allowed and the award set aside.

The Court was asked, however, by counsel for the township of Normanby to express an opinion as to whether, assuming that the preliminaries had been properly taken, the Act was broad enough to cover a case of this kind. It certainly is somewhat obscure. It was insisted that there was no power to arbitrate with the view of adopting a road or highway already constructed, and that the Act only extended to the case of the expenditure of money when the road was adopted, and that if the municipalities concerned did not see fit mutually to adopt a road as a deviation road the Act did not cover such a case and there was no remedy. The Act provides "that whenever the several townships interested in the whole or any part of any county boundary line road are unable mutually to agree as to their respective shares of money to be paid or work to be done or both in opening or maintaining such boundary line road, or a portion thereof, or of making a deviation of a portion of such