for an order of mandamus commanding the respondents to subdivide the township into school sections.

*Held*, that there must be some discretion left to a township council as to when the township shall be subdivided; and that even where the majority of the council may be mistaken as to what would be best, which did not appear to be the case here, the Court will be slow to interfere if the duly constituted governing body has honestly attempted to do their duty; and upon the facts as proved in the evidence here, this did not appear a case in which it would be just or convenient that an order of mandamus should be made.

*Du Vernet*, for applicants. *Browning*, for respondents.

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Britton, J.] STROUD *v.* SUN OIL COMPANY. [June 21.

*Partition or sale—No common title—Easement.*

When on an application for partition or sale of lands it was alleged by the defendant and prima facie evidence given that he had acquired as to part of the land title by possession, and as to the residue, had only an easement or right of way over it, and no title to the land itself.

*Held*, that there being no common title, no interest in common, no order for partition or sale should be made. It was not open to the plaintiff by admitting an ownership in the land in the defendants, which the latter did not assert, to get a sale by partition proceedings and thus force the defendants to protect their easement by purchasing, or permit it to be destroyed by sale.

*I. Dickson*, for plaintiff. *McClemont*, for defendant.

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# Province of New Brunswick.

## SUPREME COURT.

Gregory, J.] [April 18.

MARYSVILLE BOARD OF HEALTH *v.* MCNALLY.

*Summary conviction—Offences against Health Act—Conviction charging two offences.*

Defendant was convicted by the police magistrate of Fredericton for that he did "unlawfully and wilfully obstruct and interfere with a person employed under the authority of the local board of health of the said town in preventing any person entering into a district there situate and placed under quarantine by said local board of health, and did force an