

in that case the trustees are empowered to agree upon a change of site, but it cannot be made without the consent of a majority of the ratepayers present at a special meeting called for the purpose of considering the site selected by the trustees, unless where the majority of the ratepayers present at the meeting differ from the trustees as to the suitability of the site selected by the trustees, the result of the arbitration provided for is an award in favour of the decision come to by the trustees.

If this be so, a determination of the trustees not to change the site, but to erect a new school house on the existing site, is not within the section.

It was at one time expressly provided that, if the ratepayers did not assent to a change of site proposed by the trustees, the change could not be made, but the more recent legislation modified this provision so that the change may be made though the majority of the ratepayers are opposed to it, if the result of the arbitration is a determination in favour of the view of the trustees.

In every one of the forms in which the subject of the selection of a site for a new school house or the change of site is dealt with, provision is made for a decision being first come to by the trustees, and I find nowhere in any legislation on the subject, including the section (59 Vict. ch. 70, sec. 31) under consideration, any ground for the view that the ratepayers may initiate proceedings for either purpose. Their intervention is to take place after, and only after, the trustees have come to a decision, and, subject to the provision as to the effect of the award of the arbitrators, it is to control the action which the trustees have determined upon and to prevent effect being given to the decision of the trustees if it is opposed to their (i.e., the ratepayers') view as to what ought to be done.

This distinction is not one of mere form, but of substance, and the provision as to the meeting of the ratepayers is, in effect, the application of the principle of the referendum, with a provision for arbitration if the vote of the ratepayers is in the negative on the proposition submitted to their vote.

I am of opinion, for the reasons I have given, that the position taken by the appellants that the arbitration and award set up by the respondents were unauthorized and nugatory, is well taken.

The learned Chief Justice was of the opinion that, the award being on the face of it a valid award, it was not proper to determine the questions raised as to it on the motion of the appellants for a mandamus.