

appeal from an order in Chambers and granting a mandamus to the township corporation requiring them to pass a by-law for the issue of debentures for \$1,000 for the purchase of a school site and the erection of a school house thereon.

A. B. Aylesworth, K.C., for appellants.

W. R. Riddell, K.C., and Harold Fisher, for the trustees.

The judgment of the Court (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, JJ.A.) was delivered by

GARROW, J.A.—By sec. 62 of the Public Schools Act, R. S. O. 1897 ch. 292, it is the duty of the school trustees to provide adequate school accommodation, and for such purpose to purchase or rent school sites or premises, and to build, repair, furnish, and keep in order the school-houses, etc.

By sec. 31, sub-sec. 1, the trustees have power to select a site for a new school house or to agree upon a change of site for an existing school house, but they must forthwith call a special meeting of the ratepayers to consider the site so selected by them and no site is to be adopted or change of site made . . . without the consent of the majority of such official meeting. By sub-sec. 2 it is provided that in case a majority of the ratepayers present at such meeting differ as to the suitability of the site selected by the trustees this difference shall be determined by arbitration. From this language it is perfectly clear that the foundation of such an arbitration is a difference between the trustees, on the one hand, and a majority of the ratepayers at this special meeting, on the other, as to a school site selected by the trustees, whether such selection consists in choosing a site for a school house where there had been no school house before—or in choosing a new and different site for an existing school house. It is, I think, also reasonably clear that a site once chosen in the manner provided by the statute remains the school site of the section, and can only be changed or abandoned in the manner pointed out by the statute. Upon this site the trustees could repair, and, if necessary, under sec. 62, rebuild, the school house without calling a special meeting of the ratepayers, although under sec. 70 the ratepayers' consent is necessary if it is proposed to incur a debt for the purpose of building or rebuilding. No change of site was proposed in the case before us by the trustees prior to the so-called arbitration proceedings. What they then proposed to do was to rebuild on the old site. No special meeting of ratepayers was convened or could have lawfully been convened to consider a school site chosen by the trustees, for they had chosen none. There was, therefore, a total absence of the necessary foundation for an arbitration