

The Mining Commissioner rightly refused to go into the merits.

Nor can we say that the Recorder was wrong in extending the time for doing the work.

And it is plain that the claims of the respondents being recorded, the Recorder was right in refusing to record those of the appellant.

All the appeals should be dismissed with costs.

We do not interfere with the proceedings said to have been taken under sec. 66 of the Act.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B., and
HON. MR. JUSTICE BRITTON, agreed.

DIVISIONAL COURT.

OCTOBER 9TH, 1912.

SANDWICH LAND IMPROVEMENT COMPANY v.
WINDSOR BOARD OF EDUCATION.

3 O. W. N. 1150; 4 O. W. N. 112.

Schools—Public—Expropriation of Land for Site—Action for Injunction Restraining Arbitrators from Proceeding—School Sites Act, 9 Edw. VII. c. 93—Remedy by Summary Application to County Judge—Action Dismissed—Costs.

Action by an improvement company and an individual against the board of education, Henry T. W. Ellis, John Curry and Samuel Stover, for an injunction restraining defendants from proceeding with an arbitration to fix the value of lands of plaintiffs which defendants desired to expropriate for a school site, and from taking possession of the lands, and for a declaration that defendants had no warrant nor right to arbitrate and that the arbitration proceedings and award were irregular and void, and to set aside the award and vacate the registration thereof.

KELLY, J., *held*, that the relief sought was included in sub-section 1 of sec. 20 of the School Sites Act, 9 Edw. VII. c. 93, which provides as follows: "Any question touching the validity of proceedings taken or an award made under this Act or in the case of arbitrations other than those provided for in sec. 7 as to the compensation awarded shall be raised, heard and determined upon a summary application by way of appeal to the County Judge and not otherwise" and that therefore the action was not maintainable.

Action dismissed with costs, such costs to be only those which would have been incurred if a motion for judgment had been made on the pleadings.

Divisional Court dismissed appeal from above judgment with costs.

An appeal by the plaintiffs from the following judgment of HON. MR. JUSTICE KELLY, who tried the action without a jury, at Windsor, on March 16th, 1912.