

as amended, Alexander Wellesley Robb, Warden of the county of Bruce, one of the arbitrators, refusing to join in the award.

H. J. Scott, K.C., and D. Robertson, Walkerton, for the appellants.

W. H. Blake, K.C., for the corporation of the township of Normanby.

CLUTE, J.:—The principal grounds argued were that the arbitrators had no authority or jurisdiction to act in the premises; that the road in question was not in fact a deviation road; that the road in question had never been adopted by the council of either municipality; that no by-law was passed declaring it impracticable to construct the road along the county boundary line between the township of Normanby and the township of Carrick; that after the passing of 6 Edw. VII. ch. 34, sec. 35, no application was made, by the corporation of Carrick to agree to the respective shares of money to be paid or the work to be done in opening up and maintaining such alleged deviation road, and therefore that there was no refusal and no inability to agree, which was necessary, under sec. 656, to give such arbitrators jurisdiction; that the real object of the proceedings was to compel the erection of a new bridge on the road, at the joint expense of the corporations of the county of Bruce and county of Grey, under the provisions of sec. 617 of the Municipal Act.

It does not appear that any by-law in respect of this matter was passed by either township council. It does appear by the affidavit of Mr. McKay, which was not disputed, that in or about the month of August, 1904, at a special meeting of the township council of Normanby, after viewing the ground, the council passed a resolution declaring it impracticable to construct a way along the county boundary line over a portion of the county boundary line between the township of Normanby and the township of Carrick, and being that portion of the boundary line dealt with by the arbitrators in the award now sought to be set aside. The affidavit further states that the minutes of the council shew that the resolution was passed on 27th June, 1905, by the township council of Normanby, declaring that it is imprac-