ANDRE VANDEKERCKHOVE and YVONNE VANDEKERCKHOVE, on behalf of themselves and all other Roman Catholic Ratepayers desiring to be assessed as Separate School Supporters residing within three miles in a direct line of the site of the schoolhouse known as Roman Catholic School Section Union 6, Middleton, and THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC UNION SEPARATE SCHOOL FOR THE UNITED SECTIONS NUMBERS 6 IN THE TOWNSHIP OF MIDDLETON AND 22 IN THE TOWNSHIP OF NORTH WALSINGHAM (*Plaintiffs*) .....APPELLANTS;

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*Nov. 22, 23
Dec. 15

AND

THE CORPORATION OF THE TOWNSHIP OF MIDDLETON (*Defendant*) } RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Schools—One of two schoolhouses operated by union separate school board closed in interests of efficiency—Pupils transported to remaining schoolhouse—Whether pupils' parents residing beyond three mile radius of remaining schoolhouse entitled to be assessed as Roman Catholic separate school supporters—The Separate Schools Act, R.S.O. 1950, c. 356, ss. 33(1), 57.

The plaintiff board of trustees of the union separate school, formed in 1944, for the United Sections numbers 6 in the Township of Middleton and 22 in the Township of North Walsingham operated a school in each section until 1959, but in that year, for reasons of more efficient operation, closed the school in Middleton and provided transportation for the pupils who had been attending that school to the school in North Walsingham. The individual plaintiffs were all Roman Catholics who resided within three miles of the school in Middleton but at a greater distance than three miles from the school in North Walsingham. They were all assessed by the defendant township as Roman Catholic separate school supporters until 1959, when they were assessed as public school supporters on the basis of s. 57 of *The Separate Schools Act,* R.S.O. 1950, c. 356, which provides that "subject to the other provisions of this Part, no person shall be deemed a supporter of a separate school unless he resides within three miles in a direct line of the site of the schoolhouse". An appeal to the township Court of Revision against this assessment was dismissed. The plaintiffs appealed to this Court, pursuant to leave granted by the Court of Appeal for Ontario, from a judgment of that Court whereby an appeal from a judgment of the trial judge was allowed and it was declared that the plaintiffs were not entitled to be assessed as Roman Catholic separate school supporters.

*PRESENT: Kerwin C.J. and Cartwright, Fauteux, Judson and Ritchie JJ.

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VANDEKERCKHOVE *et al.* v. TWP. OF MIDDLETON

Held: The appeal should be allowed.

Following the union which took place in 1944, the schools in Middleton and in North Walsingham became in the eyes of the law one school, not merely for purposes of administration, but in the words of subs. (1) of s. 33 of the Act "for *all* Roman Catholic separate school purposes". Once that happened, the board was free to decide in the interests of efficiency to transport the pupils who were in attendance at one of the schoolhouses forming part of the one school resulting from the union to the other schoolhouse. It would be a startling result if on doing this they must suffer the loss of revenue from the assessment of the parents of the children so transported. Such a construction would fail to give effect to the word "all" in s. 33(1) of the Act. This result should be avoided by limiting the effect of s. 57 to disabling from being a separate school supporter a person whose residence is not within three miles of the site of either of the two schoolhouses which on the union became parts of one school, regardless of whether both or one only of the schoolhouses continued to be used.

When the language used by the legislature admits of two constructions one of which would lead to obvious injustice or absurdity the courts act on the view that such a result could not have been intended.

APPEAL from a judgment of the Court of Appeal for Ontario[1], allowing an appeal from a judgment of Landreville J. Appeal allowed.

Hon. Arthur M. Lebel, Q.C., and *F. G. Carter*, for the plaintiffs, appellants.

W. G. Burke-Robertson, Q.C., for the defendant, respondent.

The judgment of the Court was delivered by

CARTWRIGHT J.:—This is an appeal brought by the individual appellants, pursuant to leave granted by the Court of Appeal for Ontario, from a judgment of that Court[1] whereby an appeal from a judgment of Landreville J. was allowed and it was declared that the appellants are not entitled to be assessed as Roman Catholic separate school supporters.

The plaintiff board is the Board of Trustees of the Roman Catholic Union Separate School for the United Sections number 6 in the Township of Middleton and number 22 in the Township of North Walsingham. The union was formed in 1944. Until 1959 the board operated a school in each section but in that year closed the school in Middleton and

[1] [1961] O.R. 449, 28 D.L.R. (2d) 162.

provided transportation for the pupils who had been attending that school to the school in North Walsingham. The only question of fact in dispute is whether the school in Middleton was closed permanently or temporarily.

The individual plaintiffs and the other ratepayers on whose behalf the action is brought are all Roman Catholics who reside within three miles of the schoolhouse in Middleton but at a greater distance than three miles from the schoolhouse in North Walsingham. They were all assessed by the defendant township as Roman Catholic separate school supporters until 1959 when they were assessed as public school supporters. They appealed to the Court of Revision against this assessment. The appeal of Andre Vandekerckhove, one of the present appellants, was dismissed and decisions upon the appeals of the other ratepayers were reserved to await the final outcome of the present action.

The reason for closing the schoolhouse in Middleton and transporting the pupils who had been attending there to the school in North Walsingham was explained by Mr. Causyn, the chairman of the board. At the Middleton school there were about 23 pupils in attendance; there was only one class-room and one teacher who had the task of teaching eight grades. At the North Walsingham school there were four class-rooms with two grades to a room. Mr. Causyn testified that it was the view of the board that better education could be given with one teacher for every two grades than with one teacher for eight grades. In contemplation of the new arrangement the schoolhouse in North Walsingham was somewhat enlarged.

The question to be decided depends primarily on the true construction of ss. 33 and 57 of *The Separate Schools Act*, R.S.O. 1950, c. 356. These read as follows:

33.(1) The majority of the supporters of each of the separate schools situate in two or more public school sections, whether in the same or in adjoining municipalities, at a public meeting duly called by the board of each separate school may form a union separate school of which union the trustees shall give notice within 15 days to the clerk or clerks of the municipality or municipalities and to the Minister, and every union separate school thus formed shall be deemed one school for all Roman Catholic separate school purposes, and shall every year thereafter be represented by three trustees to be elected by the supporters of the union separate school as provided by section 26.

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(2) The trustees shall be a body corporate under the name of 'The Board of Trustees of the Roman Catholic Union Separate School for the United Sections numbers.....in the.....'.

57. Subject to the other provisions of this Part, no person shall be deemed a supporter of a separate school unless he resides within three miles in a direct line of the site of the schoolhouse.

It is not questioned that the appellants have all the qualifications and have taken all the steps necessary to entitle them to be assessed as Roman Catholic separate school supporters, unless they are prevented from being so dealt with by the terms of s. 57. The prohibition in that section is expressly made subject to the other provisions of the Part in which it is found. If therefore, as counsel for the appellants contends, the terms of s. 33 are effective to give the appellants the right to be assessed as separate school supporters that right will not be destroyed by the terms of s. 57.

Following the union which took place in 1944, the schools in Middleton and in North Walsingham became in the eyes of the law one school, not merely, as was suggested in argument, for purposes of administration, but in the words of subs. (1) of s. 33, "for *all* Roman Catholic separte school purposes". Once that happened, if the board in the interests of efficiency decided to transport the pupils who were in attendance at one of the schoolhouses forming part of the one school resulting from the union to the other schoolhouse they were in our opinion free to do so. It would be a startling result if on doing this they must suffer the loss of the revenue from the assessment of the parents of the children so transported. Such a construction would fail to give effect to the word "all" which is italicized above. This result can, and, in our opinion, should be avoided by limiting the effect of s. 57 to disabling from being a separate school supporter a person whose residence is not within three miles of the site of either of the two schoolhouses which on the union became component parts of one school, regardless of whether both or one only of the schoolhouses continues to be used.

There is ample authority for the proposition that when the language used by the legislature admits of two constructions one of which would lead to obvious injustice or

absurdity the courts act on the view that such a result could not have been intended. A number of cases on this point are collected in Maxwell on Interpretation of Statutes, 10th ed., at page 201.

That the construction adopted by the Court of Appeal results in grave hardship was fully recognized by that Court and by counsel for the respondent, who argued however that the words used by the legislature did not permit of any other construction.

We have reached the conclusion that the words of subs. (1) of s. 33 should be construed as we have indicated above and that the wording of s. 57 is not effective to prevent this construction.

In view of our conclusion as to the true construction of the sections mentioned it becomes unnecessary to decide the question of fact, on which the Court of Appeal differed from the learned trial judge, as to whether the schoolhouse in Middleton was closed temporarily or permanently.

The appeal should be allowed, the judgment of the Court of Appeal set aside and the judgment at trial restored including the order therein as to costs. The appellants are entitled to their costs in this Court and in the Court of Appeal.

Appeal allowed, judgment at trial restored, with costs.

Solicitors for the plaintiffs, appellants: Nelligan & Carter, London.

Solicitors for the defendant, respondent: Mackay & Innes, Simcoe.