

MACMAHON, J. (after stating the facts and the effect of the affidavits at length).—There is no doubt that the by-law closing up Jex street was passed at the instance of the Waterous Engine Works Company to enable the company to acquire it for the purpose of its business. And the affidavits filed by the repondents, stating that the closing of Jex street and diverting it will be in the interest of the city, no doubt refer to the benefits likely to result from the addition proposed to be made by the company to the manufacturing interests of the city. In the letter of Mr. Watts (solicitor for the company) it is not suggested that it would be expensive to maintain Jex street in a fit state of repair if the company were to build on the north side of that street, although that is alleged in the third recital of the by-law. The Waterous Company had its shops on the south side of Jex street, and the applicant has nail works on the north side of the same street; and there is no pretence that by reason of these two factories being on opposite sides of the street it has been difficult and expensive to maintain.

The request to the city council to close Jex street came from the Waterous Company as being solely interested in having it closed and conveyed to the company, offering, if the city did that, to give the requisite land for a street in substitution therefor.

It appears to me, therefore, that Jex street was being closed by the by-law for the benefit of that private corporation, and not in the interest of the public: *In re Morton and City of St Thomas*, 6 A. R. 323; *Pells v. Boswell*, 8 O. R. 681.

Notice was given of the intention of the council to consider the by-law on the 17th August, and it is sworn that the by-law was published in the "Expositor" newspaper at Brantford on the 15th, 22nd, and 29th July, and the 5th August, 1903. And there is a declaration filed shewing that six notices were put up on the 15th July, 1903, in the most public places in the vicinity of such portions of Jex street as were intended to be closed and such portions of lots 11 and 12 Hulbert Flats as it was intended to open. The statute was, therefore, fully complied with.

Compensation to the applicant need not be provided for in the by-law: *In re McArthur and Township of Southwold*, 3 A. R. 295; *In re Vashon and Township of East Hawkesbury*, 30 C. P. 194.

The by-law must be quashed with costs.