

May 2, 1892.

British Columbia.]

NEW WESTMINSTER V. BRIGHOUSE.

Municipal corporation—Repair of streets—Excavation—Injury to adjoining land—By-law—Expropriation—Land injuriously affected—51 V., c. 42, s. 190 (B. C.)

A by-law authorised the corporation of the city of New Westminster, B. C., to raise money for the purpose of making repairs on certain streets, but there was no by-law expressly authorising such repairs, which were, however, proceeded with. One of the streets named in said by-law was excavated to lower the grade, in the execution of which work the soil of an adjoining lot fell into the excavation and the supports of the buildings thereon became weakened. The owner of such adjoining lot brought an action against the corporation for the damages occasioned to his land by such excavation.

By the act of incorporation of the city, 51 V., c. 42 (B. C.), s. 190, the council may, by by-law, order the opening or extending of streets, etc., and purchase, acquire, take and enter into any lands required therefor, either by private contract or by complying with certain formalities prescribed by said sec. 190. The said formalities are set out in subsecs. 3 and 4 of that section, providing for the appointment of commissioners to value the land to be taken. By subsec. 14, the report of the commissioners is to be submitted to the Supreme Court or a judge thereof, or a County Court judge, for confirmation, and by subsec. 15 the council of the city is to deposit with the registrar or clerk of the Court the value fixed by such report, such deposit constituting a legal title in the city to the land.

Subsec. 17 of said sec. 190 extends subsecs. 3 and 4 to all cases in which it shall become necessary to ascertain the amount of compensation to be paid to any owner of land for damage sustained by reason of any alteration made by order of the council in the line of level of any street, etc., and the amount of such compensation is to be paid at once without further formality.

Held, affirming the decision of the Supreme Court of British Columbia, Ritchie, C. J., and Taschereau J., dissenting, that subsec. 17 of sec. 190 only applies to lands injuriously affected by work on the streets and not to land taken or used for the purposes of such work; and that in order to acquire, take or use lands for such purpose, the council must be authorised by by-law