money to an intervening proprietor to open a public road across his lot. After this had been done, and the road established as a legal highway, the council might interpose and shut it up, telling the sufferer that he might still enjoy ingress and egress to his property, to mill or market, by going one, two, or three miles round.

In view of this possible injustice, I desire to construe the clause as strictly as I can against the power of the council.

The legislature says, in effect, "You must not stop any road whereby any person will be excluded from ingress and egress to and from his lands or place of residence *over such road.*" If, then, such a road be stopped, most certainly all persons must be excluded from ingress and egress to or from their lands *over that road.* There can be no ingress or egress over a stopped up road. Therefore, I presume all persons who came into their lands directly from that road, or passed from their lands directly on to that road, are to be protected. This would leave all persons who merely used the road as a convenience, but had no lands abutting thereon from or to which ingress or egress would be effected, without the protection of the clause.

The stopped road extended westward to the north-east angle of the Moore's lot, and the south-east angle of Lachlan McMillan's lot. According to the plan before us, either of these proprietors could pass directly from this corner of his lot to the road. In this way are they not within the letter of the protection? They undoubtedly have ingress and egress to and from their lots without this road, but they also had it *over this road.* It may be mathematically inexact to speak of substantial ingress and egress between two figures whose only point of contact is at the apex of a right angle of each. Practically, we know that, in a case like this, there may be such passage, especially as McCoy gave two rods off his lot, which would leave the road one rod at least north of the north line of the road given by Bedford and Walker.

The law undoubtedly needs amendment, as any construction of this clause may produce most unlooked-for results. If this construction of the clause be correct, the by-law cannot be supported, at all events as against the rights of the parties referred to.

Therefore, as far as the municipality was concerned, there was no just ground whatever for closing this road, laid out as it was and dedicated to the public by the owners of the land. It seems to have been passed solely to serve the interests of Mr. Cummings. It is not necessary for us to discuss the possible distinction between the rights of individuals whose ingress and egress may be affected, and that of the general public: it is enough to decide that this by-law, in its present shape at least, cannot be supported.

The council evidently acted under a mistaken idea as to Mr. Cummings' rights. Even if we did not feel ourselves at liberty to quash the by-law, I will give the council the credit of assuming that they would gladly repeal it on being pointed to the absolute injustice done by its enactment.

GWYNNE, J.—The persons who originally, in 1836, gave land off their respective lots for the purpose of the road in question, and dedicated it to the public, did so, in my opinion, not merely for a dedication to public uses but for the special and peculiar accommodation and benefit of themselves and the owners, for the time being, of the respective lots; and if no public labor or money had ever been laid out upon the road, I am of opinion that each proprietor of the lots 31 and 32, after more than twenty years user of such road, would have acquired the right and easement of insisting, as against each other, upon the road being kept and maintained open, and the municipality in such a case would have had no control over the road or power to close it to the prejudice of any of the parties who had dedicated it for their own special benefit.

For the purpose of the Municipal Institutions Act, that is, for the purpose of bringing the road within the character and description of a common and public highway, it was necessary that statute labor should be usually performed upon it within the 315th section of 29 & 30 Vic., ch. 51, or that a by-law of the municipality should be passed assuming the road within the 339th section. Now in this case no by-law has been passed assuming the road, but statute labor sufficiently appears to have been usually performed upon it Whether or not, under these circumstances, the municipality is liable to keep the road in repair, notwithstanding the 339th section, is a question we are not called upon to consider. The question we have to consider is merely whether the by-law passed for the purpose of stopping it up is valid. If the parties who originally laid out the road have, as I think they have, a peculiar interest in maintaining it open for the special accommodation of the owners of the lots through which the road is laid down, whether it had been assumed by the municipality or not, the municipality could not, in my opinion, even if they had assumed the road by by-law, afterwards shut it up by by-law to the prejudice of those peculiar rights of the owners of the lots who originally dedicated the road In so far as the general public might have a right to the road, the municipality may perhaps be able by by-law to divest those rights; but I do not see how, even independently of sec. 320 of the act, a by-law of the municipality could divest parties of peculiar private rights which they had acquired *inter se* by contract or conduct and prescription. The 320th section, as it appears to me, but expresses what would be law in the circumstances of this case without that section. Upon the facts of this case, I am of opinion that the municipality in passing the by-law in question, have exceeded their jurisdiction.

GALT, J., concurred.

Rule absolute.

JENKINS v. THE CORPORATION OF THE COUNTY OF ELGIN.

By-law—Sealing of—Notice—22 Vic. ch. 66, secs. 75 & 76—29 & 30 Vic. ch. 51, sec. 196, sub-sec. 6—"Majority"—Construction.

Held, that a "majority" of the electors referred to in the Railway Act of 1859 (22 Vic. ch. 16, secs. 75 & 76) and the Municipal Institutions Act of 1866 (29 & 30 Vic. ch. 51, sec. 196, sub-sec. 6), required to assent to a by-law, is not an absolute majority of all the existing qualified electors, but a majority of those coming forward to vote for the same.

Held, also, that the notice of a by-law for the granting of aid by a municipality to a Railway Company, should be