

that the by-law was passed without being assented to by the municipal electors of the town, as required by sec. 3 (1) of the Municipal Franchises Act, R.S.O. 1914 ch. 197.

This by-law was not submitted nor assented to, and the portions of it referred to were consequently invalid. There was no limit of time in the by-law or agreement.

It was urged that the action of the Court is discretionary; that the companies, as a matter of fact, do not contemplate using any part of Front street; and that the by-law should be allowed to stand, as it was proposed to obtain Dominion legislation to empower the Dominion Board of Railway Commissioners to exercise jurisdiction not now possessed; and that, when jurisdiction is obtained, the by-law will be available as evidence of the assent of the municipality.

The learned Judge said that he did not think the by-law, in any legal or proper sense, evidence of consent—the only consent was the assent provided for by the Act; and it would not be right to allow the by-law to stand for such a purpose. The council might pass a resolution expressing an opinion as to what action should be taken. The discretion as to quashing or not quashing the by-law would be best exercised by acting so that the rights of the electors shall not be ignored.

Order quashing so much of the by-law as purports to confer upon the companies the right to construct the tramway upon or along Front street or to occupy it or exercise a right of way thereon, with costs against the municipality, including the costs of serving notice upon the companies, which was a reasonable and prudent thing to do.

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MIDDLETON, J.

MAY 10TH, 1918.

CROMPTON CORSET CO. v. CITY OF TORONTO.

*Municipal Corporations—Drains and Sewers—Claim for Flooding of Premises—Failure to Prove that Flood Came from Municipal Sewer—Foundation of Liability—Sewer Becoming Inadequate by Reason of Growth of City—Damages—Remoteness.*

Action for damages for injury said to have resulted from the flooding of the plaintiffs' premises by water backing from the defendants' sewer through the plaintiffs' drain connected with the sewer.