

HON. MR. JUSTICE BRITTON.

JUNE 7TH, 1913.

## SEGUIN v. HAWKESBURY.

4 O. W. N. 1409.

*Municipal Corporations—Closing of Street—Illegal By-law—Liability for—Order of Dom. Ry. Board—Work Done by Railway—Liability of Town—Closing or "Deviation"—Damages—Permanent Injury—Costs.*

BRITTON, J., *held*, that an order of the Dominion Railway Board did not justify the closing of a public street and where a town co-operated with the railway and passed an illegal by-law for such closing in pursuance of which the work was done they were liable in damages to those injured by such work, despite the fact that the actual work was done by the railway company.

Action by Arsene Seguin, tried with three other actions brought by Raoul Seguin, Joseph Seguin, and Albert Tread, in respect of the same cause of action at L'Original without a jury. The actions were brought in respect of an alleged illegal closing of a certain highway in the town of Hawkesbury, with the defendants' authority or consent, which caused injury to plaintiff's lands. (See 23 O. W. R. 257, 857).

Auguste Lemieux, for plaintiff.

H. W. Lawlor and Geo. Macdonald, for defendants.

HON. MR. JUSTICE BRITTON:—The plaintiff, Arsene Seguin, is the owner of lands in the town of Hawkesbury, 1st part of lot 38, block 1, as marked on Exhibit No. 3. This parcel contains about  $6\frac{1}{4}$  acres, and is upon an island, and for convenience I will call it simply, his island property.

The plaintiff does not reside upon this land, but cultivates it and brings some part or all of his crop to the residence part of the town.

2nd. Plaintiff also owns lots 8 and 9, on the northerly side of St. David street to the west of, and not far from the right of way of the Canadian Northern Quebec Railway Company line.

The defendants' council on the 27th day of September, 1911, passed by-law No. 179, for closing a portion of St. David street.