

BRITTON, J.

DECEMBER 6TH, 1902.

WEEKLY COURT.

## RE PELOT AND TOWNSHIP OF DOVER.

*Municipal Corporations—By-law — Diversion of Road — Interest of  
Individuals—Contrary to Public Interest.*

Motion by Emily Pelot, a ratepayer of the township and an owner of land affected by by-law No. 21 of 1901, for a summary order quashing clauses 1 and 2 of that by-law, which is intitled a by-law to divert part of the Given road in the township, which by-law was passed on the 21st October, 1901, and was confirmed by a by-law of the county council of Kent passed on the 7th June, 1902, as required by sec. 660 of the Municipal Act. The road was used for the purpose of an exit to Big Point road. The by-law provided for the closing up of a piece of the road and the opening up of a piece in substitution for it.

J. H. Moss, for the applicant, contended that the by-law was not passed in the interest of the public at large, but at the instance and for the benefit of Poissant and Gore, two land-owners, and also that the by-law was bad because the notices required by statute were not duly given.

M. Wilson, K.C., for the township corporation.

BRITTON, J. (after setting out the evidence at length) :— After a good deal of consideration and with some hesitation, I have come to the conclusion that this by-law was not passed in the public interest, but in the interest of Gore and Poissant, and therefore improperly passed, and cannot stand. It violates the rule, now so well established, that corporate powers must not be exercised for the benefit of one or two individuals at the cost of others, not necessarily at the pecuniary cost, but must not be so exercised as to put many to unnecessary inconvenience for the manifest advantage of one or two: *Pells v. Boswell*, 8 O. R. 680; *Peck v. Galt*, 46 U. C. R. 211; *Morton v. St. Thomas*, 6 A. R. 323; *Hewison v. Pembroke*, 6 O. R. 170; *Vashon v. East Hawkesbury*, 30 C. P. 194; *Romney v. Mersea*, 11 A. R. 712. The by-law is partial and unjust in its operation as between those of the township interested in the road.

In the view taken, it is not necessary to consider the question of notice and advertisement of the by-law. The evidence establishes that there was a formal adjournment of the consideration of the by-law from the 30th September to the next meeting of the council, which was held on 21st October, 1901.

Order made quashing clauses 1 and 2 of the by-law as asked, with costs against the township corporation.