

cannot be compelled to do against its will. It may waive many things that would be an answer to a motion for a mandamus.

It might be that the demands were not so identical as to preclude consideration as upon a new and different application, when this was the voluntary action of the council—even if there was no right to reconsider a precisely similar application.

In either aspect, the motion failed.

*Motion dismissed with costs.*

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LENNOX, J.

MAY 9TH, 1918.

RE STINSON AND TOWN OF FORT FRANCES.

*Municipal Corporations—By-law Authorising Occupation of Street by Tramway—Agreement with Companies—By-law not Submitted to Electors—Municipal Franchises Act, R.S.O. 1914 ch. 197, sec. 3 (1)—Quashing By-law—Discretion—Costs—Service of Notice of Motion on Companies.*

Motion by Juro Stinson to quash by-law 557 of the Town of Fort Frances, or such parts of it as granted to certain companies rights in or upon a street in the town, known as Front street.

The motion was heard in the Weekly Court, Toronto.

R. T. Harding, for the applicant.

G. F. Henderson, K.C., for the town corporation and for the companies referred to.

LENNOX, J., in a written judgment, said that notice of the motion had been served upon the three companies mentioned in the proceedings, who were parties to the agreement authorised by the by-law, and these companies were represented by counsel.

The substantial objection to the by-law was, that, by sanctioning the agreement, it provided in effect that the town corporation would permit the three companies to construct a dyke and standard gauge steam tramway on such portions of Front street as might be required to construct the same, according to a plan of location attached to the agreement between the town corporation and the companies, and thus gave the companies an easement and right of way over such portions of Front street as might be occupied by the tramway, for so long as it should be so occupied, and