

pation of any such buildings. The orchard which the plaintiff sought to bring within the words of s. 266 was 250 yards from the plaintiff's dwelling-house, and separated from it by one or two fences.

*Held*, that the orchard would not be within the Act and would not be exempted from expropriation for a public road.

DAVIE, C.J.]

MUNICIPALITY OF LANGLEY *v.* OAKES.

[Feb. 26.

*Municipal law—Opening road—Acquiescence of party affected—Dedication.*

This was an action for obstructing a roadway running between lots 16 and 17, at the upper part of section 16. Section 16 was the property of the defendant, and he counter-claimed for the price of the land taken by the municipality for the purposes of the road. The highway in question was gazetted as a public road on February 4th, 1886, and has since been used as such. The corporation has on several occasions expended money in opening and repairing the roadway, and statute labor had been performed thereon, both by the defendant himself and the other settlers. The land whereon the road in question runs is part of what is known as the Hudson's Bay Farm at Langley, and the township and section lines intersecting the municipality are not produced through the farm. Latimer, the former owner of lot 17, in 1885, had a conversation with Oakes with a view to opening a highway, so that a settler named Norris might obtain an outlet to the trunk road, which he could only do by the opening of a road, either along where the section line would run, if produced through the farm, or by a roadway opened at the upper part of section 16, and carried through the boundary between lots 16 and 17. Norris then asked Oakes whether, if he, Norris, got out a petition to the council to this effect, he, Oakes, would sign it, and Oakes said he would, and afterwards did so. The petition was laid before the council in the year 1885, asking that the section line be cancelled, and that the roadway be opened where it now runs. The by-law was passed in accordance with the terms of the petition, but reduced the width of the roadway, and was afterwards published in the *Gazette*. Oakes voluntarily moved his fence back so as to give the fifteen feet between lots 16 and 17, and Latimer did the like, so as to contribute his twenty-five feet; and Oakes also put back his fence at the top so as to give the forty feet there. He also contracted with the corporation, and performed certain ditch work upon the road, for which he was paid. He was well aware that the corporation had given other contracts for works of construction and repair upon the roadway. The roadway had been in use as an outlet for several settlers for many years.

*Held*, that the publication in the *Gazette* was express notice to defendant, at the time, of what had happened, and he is barred by his acquiescence.

*Held*, that Oakes' defence failed, as he must be taken to have dedicated the road to the public, and his counter-claim for compensation was dismissed.