MIDDLETON, J., in a written judgment, said that the by-law was based upon the provision of sec. 483, sub-sec. 10, of the Municipal Act, which authorised a by-law for "entering upon and searching for and taking from land . . . such timber, gravel, stone or other material as may be necessary for constructing, maintaining and keeping in repair the highways and bridges" of the municipality. The compensation to be paid must be agreed upon or ascertained by arbitration before the power to take is exercised, and may be a lump-sum or a sum determined by the quantity taken, or a price by the cubic yard for what may be taken.

This by-law authorised the entry upon the applicant's lands and the taking from the gravel-pit now open, and the gravel-beds adjoining, such gravel as might be necessary for constructing, maintaining, and keeping in repair the highways and bridges under the jurisdiction of the council. Provision then followed for the payment of the price to be agreed upon or determined by arbitration.

The objection upon which most reliance was placed was that the by-law should in some way define that which was to be taken. This might be done by limiting the time or by limiting the amount. It was said that the statute contemplated that there should be one arbitration, and that the arbitrator should fix a price to be paid for that which was to be taken, and that it was essential that the thing for which the price was to be fixed should be certain, or injustice must result.

In this the learned Judge agreed. He did not think that the statute contemplated conferring upon the municipality the power to designate the applicant's gravel-deposit as a source of supply for all time for the repair and construction of roads, and that the price should be then fixed by an arbitration for all time. This would be unfair to the owner and might be unfair to the municipality.

In all cases of expropriation the particular thing to be taken under a general power to take should be clearly defined. The arbitrator has no power or duty save to fix the price of the precise thing defined by the by-law. It may be 1,000 cubic yards of gravel, or it may be such gravel as may be required during the year, or it may be defined in any other way—the essential thing is that the council which has the power to take what it wants should say clearly what it intends to take.

As stated in Cook v. North Vancouver (1911), 16 B.C.R. 129, a case of taking material for road repairs under a similar statute, the municipality expropriating should "shew what is intended to be taken and the extent of the operation to be carried on."