

after the original expropriation by-law, and almost a fortnight before the amending by-law.

There is no foundation whatever for the assumption that this entry constitutes the municipality purchasers of the land at the price named in the claim put in.

The more serious contention is that there was no right to repeal the existing by-law and that the municipality is now bound to proceed with the expropriation proceedings under it.

Grimshaw v. Toronto, 28 O. L. R. 512, deals with a somewhat similar situation. Section 463 of the Municipal Act of 1903, in force when the original by-law was passed, does not preclude the repeal of the expropriating by-law or compel the municipality to take up the award if "the by-law did not authorize or profess to authorize any entry or use to be made of the property before the award has been made."

This by-law contained no such provision. It may be that the entry for the purpose of constructing the twenty feet of ditch was entirely unauthorized, and that the municipality may be rendered liable for what was then done. That is not a matter of moment, as the municipality is now and always has been ready to proceed with the arbitration respecting the smaller parcel, which covers the land upon which the ditch is.

No claim was made for damages sustained by the plaintiff by reason of the passing of the by-law. His counsel did not contend that sec. 347 of the Act of 1913 applied, nor would this action be the proper remedy if any such claim exists; as in the absence of an agreement, damages are to be dealt with upon arbitration.

The action fails, and must be dismissed with costs.

SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION.

NOVEMBER 15TH, 1913.

GORDON v. GOWLING.

5 O. W. N. 269.

Contract—Purchase of Hay—Delivery—Purchaser's Duty to Notify Vendor of his Readiness to Receive—Counterclaim—Account—Appeal—Costs.

SUP. CT. ONT. (2nd App. Div.) varied judgment of Co. Ct. Welland by reducing the damage awarded defendant upon his counterclaim by \$50, proven to have been paid by plaintiff and as to which he was not given credit at the trial.