

be entitled to compensation under the statute commensurate with his injury, but, if not, that will be the fault of the law and not of the by-law in question. . . .

The by-law was passed under sec. 637 of the Municipal Act, 1903. The general power given by this section to pass by-laws to stop up roads, etc., is qualified by sec. 629. . . .

Sub-section 1 of sec. 629 has been in force in its present form since 1873, but sub-sec. 2 was not added until 49 Vict. ch. 37, sec. 15. Prior to the amendment it had been held in several cases that making provision for compensation was not a condition precedent to the validity of a by-law closing a road. . . .

[Reference to *In re Thurston and Corporation of Verulam*, 25 C. P. 593; *In re McArthur and Corporation of Southwold*, 3 A. R. 295, 303, 305.]

It was contended by Mr. Hellmuth that the effect of sub-sec. 2 was to make both an offer of compensation and the provision of another convenient road conditions precedent to the right of the council to pass a by-law to close a road. I do not think it was intended by this sub-section to change the law as laid down in the *McArthur* case. I think the purpose and effect of the sub-section was to expressly confer by statute what the Courts had already held to be the interpretation of sub-sec. 1 as to the method of fixing the compensation, and, in addition, to provide for an arbitration upon the question of the road provided for the owner, in lieu of the original road, in the event of no agreement as to it.

Prior to this enactment there was no express provision for an arbitration in regard to the substituted road, though its disadvantages as compared with the original road would, no doubt, be a proper question to consider in fixing the compensation for the lands injuriously affected: see the *McArthur* case, 3 A. R. at p. 302.

What would be the proper scope of such an arbitration it is not necessary for me to decide on this motion, but I am clearly of opinion that the words "compensation offered" in sub-sec. 2 must be read in the light of the decisions upon sub-sec. 1, and therefore not necessarily before the by-law is passed.

Therefore, while I think the by-law is not voidable by reason of no compensation having been first offered or fixed,