ables the Court to quash in whole or in part. But, in view of the general exemption already dealt with, whatever discretion the Court may have should not, I think, be so exercised. . . .

Notwithstanding what is said in Re Grant and City of Toronto, 12 U. C. R. at p. 358 . . . I doubt whether the applicant is called upon to prove non-promulgation. The statutory limitation is set up by respondents. Should they not put in evidence the facts necessary to support such a plea, one of which is the date of the third publication of the promulgating notice and the by-law? How otherwise can the Court determine whether three months had elapsed between such third publication and the launching of the motion to quash?

But, in the present instance, promulgation, if assumed, could not help respondents. A by-law which the municipal council is only competent to pass after the assent of the electors has been obtained, if passed without such assent would not be validated under the curative provisions of sec. 377—by promulgation: Canada Atlantic R. W. Co. v. Township of Cambridge, 15 S. C. R. 219, at p. 226, 14 A. R. 299.

Although in Re McKinnon and Village of Caladonia, 33 U. C. R. 502, a large expenditure made by a railway company in reliance upon an impeached by-law seems to have been deemed a matter which the Court might consider in determining whether it should exercise its discretionary power to quash, a similar change of their position by persons interested in maintaining the by-law was not deemed of paramount importance in Re Village of Markham and Town of Aurora, 3 O. L. R. 609. It is true that in the latter case application to quash was made within three months after registration. . . . The Legislature has expressly enacted that "in the case of a by-law requiring the assent of electors or ratepayers . . . an application to quash the by-law may be made at any time:" sec. 379 of the Municipal Act, 1903. It has thus emphasized the supreme importance of this limitation upon the powers of municipal councils. . .

Assuming that the applicant is seeking by the present motion to subserve his private purposes rather than to promote the general interests of the municipality, I should not on that account decline to interfere, and thus in effect uphold, as a valid by-law, a document which appears to be "utterly void and in fact no by-law:" per Gwynne, J., in Canada Atlantic R. W. Co. v. Township of Cambridge, 15 S. C. R. at p. 226.

Order made quashing by-law with costs.