

north by Albert street, and the committee appear to have intended to recommend that the prayers of both petitions should be granted, and the county council adopted their report. The by-law, however, through some misconception on the part of the person who drew the description of the land to be detached, had the effect of detaching from the village of Southampton a very considerable piece of land, approximately about three-quarters of a mile long and 12 to 15 chains wide, lying west of Norfolk street and bounded by Anglesea street on the west, which no petitioner had asked the county council to detach, and which they never intended to detach. It is plain from the recital in the by-law and from the evidence of the persons concerned, that the insertion in the by-law of a description covering this piece of land was simply a mistake.

The by-law recites that the petitions included all the land detached; upon this by-law being laid before the council of Southampton they passed a by-law appointing an arbitrator to act for them under it. They afterwards discovered that there was no petition covering the portion of the land to which I have referred, and they protested, when the arbitrators met, against the validity of the by-law, and, although they did not withdraw from the arbitration proceedings, which seem to have lasted for the remainder of the day, after their protest had been overruled, they launched the present motion.

The by-law of the county council, in my opinion, was bad when passed because it altered the limits of the village of Southampton without intending to alter them to the extent actually affected, and without considering the expediency of so altering them; and the objection was not waived by the act of the Southampton council in passing a by-law appointing their arbitrator, because they were misled by the untrue recitals in the county council's by-law that the petitioners covered the whole of the lands detached. They should not be held to have waived an objection going to the root of the by-law, of which they were not aware: in the face of the recital, they were not obliged to verify it before acting as they did.

It is contended, however, that the matter being before the arbitrators, who have power to make any alterations they think proper in the boundaries fixed by the by-law, the error in the description contained in the by-law is immaterial, and may properly be left to the arbitrators to correct. That, however, would be taking an extremely loose view of the spec-