

it was assumed to be in the heir of the testator—see however the notes to Fearné, loc. cit.

The order will, therefore, declare that, notwithstanding the objection taken to her title, the vendor can convey in fee. No costs.

MIDDLETON, J.

SEPTEMBER 29TH, 1910.

MCLEAN v. TOWN OF SAULT STE. MARIE.

*Municipal Corporations—Local Improvements — Construction of Sidewalks—Necessity of By-law—Municipal Act, 1903, secs. 664-679.*

Motion by the plaintiffs to continue an interim injunction, by consent turned into a motion for judgment, restraining the defendants from constructing any granolithic sidewalk on the west side of Spring street, between Queen and Albert streets, in the town of Sault Ste. Marie.

Grayson Smith, for the plaintiffs.

W. E. Raney, K.C., for the defendants.

MIDDLETON, J.:—Assuming, in favour of the municipality, the validity of by-laws 592 and 600, there is yet lacking a by-law authorising the construction of the works in question.

By-law 592 is general in its terms, and provides: (1) that the municipality shall pay one-third of the cost of granolithic sidewalks constructed as local improvements; (2) that two-thirds of the cost—less the cost of street intersections, which is to be borne by the general funds—shall be borne by the property fronting upon the improvement; (3) a mode of assessing corner lots.

The first of these provisions is passed under sec. 678 of the Municipal Act and its sub-clauses. The second under secs. 667, 664 (4), and 665, and, so far as it relates to intersections, under 679. The third under sec. 673 (4).

By-law 600 is a by-law passed by the council, after having been submitted to the ratepayers and approved by them, authorising the issue of debentures for payment of one-third of the cost of certain local improvements (viz., 33 sidewalks), including the sidewalk in question.

No by-law has been passed by the council authorising the construction of the works, and I can find no authority in the municipality to construct the works without a by-law.

There are three ways by which the municipal machinery for the doing of work as a local improvement can be set in motion.