

NOVEMBER 14TH, 1904.

C.A.

## RE WATEROUS AND CITY OF BRANTFORD.

*Municipal Corporations—By-law—Closing Highway—Private Interests—Notice to Person Affected—Increased Expense of Maintenance.*

Appeal by city corporation from order of MACMAHON, J., 2 O. W. R. 897, quashing by-law No. 770 of the corporation, providing for the closing up of a portion of a public street called Jex street, in the city, and diverting the original course of the highway.

W. T. Henderson, Brantford, for appellants.

W. S. Brewster, K.C., for Julius E. Waterous, the applicant.

The judgment of the Court (MOSS, C.J.O., OSLER, MACLENNAN, MACLAREN, J.J.A.) was delivered by

MOSS, C.J.O.—. . . Notwithstanding the opposing affidavits, the applicant has succeeded in shewing that the proposed change in the street will seriously affect and depreciate his property. His access to and from his factory with teams and vehicles will be rendered more difficult. The direct route from his factory to the Toronto, Hamilton, and Buffalo Railway station, from which and to which he is constantly receiving and sending freight, will be cut off, and he will be obliged to go some considerable distance further if he wishes to get to the station by way of Market street. His fire protection will be rendered less effective, and in other respects the changed conditions will result to his disadvantage.

In view of these consequences to the applicant, it ought to appear clearly that the public interests imperatively called for the proposed change, or at all events that sufficient did appear to justify the council, acting in good faith, in coming to that conclusion.

If it appeared that in the public interest there was a pressing need for the change, if in the view of those acting on behalf of the city there had arisen a condition of affairs prejudicial to the general public, calling for intervention and remedy, and if, acting upon such considerations, and without reference to individuals or individual interests, it had been determined that the change must be made, the public interests should prevail, and the applicant must submit.