

SECOND DIVISIONAL COURT.

DECEMBER 21ST, 1917.

*RE CITY OF TORONTO AND GROSVENOR STREET
PRESBYTERIAN CHURCH TRUSTEES.

Municipal Corporations—Expropriation of Land—By-law—Declaration that Land Forms Part of Highway—Authorisation of Use of Land before Award of Compensation—Municipal Act, sec. 347—Application of—Repeal of Expropriating By-law after Award—Right to Repeal—Right of Land-owner to Enforce Award—Municipal Arbitrations Act—Remitting Award to Arbitrator—Arbitration Act, secs. 10, 11, 12—Reasons for Award—Authorisation not Acted upon—Right of Public User as Highway of Land Expropriated.

Appeal by the Corporation of the City of Toronto from the order of MASTEN, J., ante 142.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and ROSE, JJ.

Irving S. Fairty and C. M. Colquhoun, for the appellants.

J. A. Paterson, K.C., and I. F. Hellmuth, K.C., for the trustees, respondents.

MEREDITH, C.J.C.P., read a judgment, in which he stated that he was in favour of allowing the appeal upon four grounds:—

(1) That the respondents had failed to point to anything or to give any good reason for depriving the appellants of their right to repeal the by-laws in question. They had such a right; and, the right having been exercised, there was an end of the matter, except that leave might be given to enforce the award as to costs only; but that was unnecessary, as the appellants had always been ready and willing to pay the costs.

(2) That the appellants were within the provisions of sec. 347 of the Municipal Act, and by virtue of it the by-laws in question were repealed. It was contended that one of the by-laws authorised or professed to authorise an entry on or use of the respondents' lands, before the award. The words relied on were, that the lands are "hereby expropriated and taken," and that "the same are hereby declared to form part of the highway." Probably, the enactment related only to an expressed authorisation. But, if an authority might be implied from other words and from surrounding circumstances, there was nothing from which it could be implied in this case. The public were not