

person. It was not intended to operate by way of expropriation, but merely to give all the necessary control over the soil of the highway to the municipality. If it destroys all the rights to which the soil may be subject, then where the land is subject to an easement, the statute operates upon the dominant tenement, which is no part of the highway; a result not probably intended by the legislature. The decision will have a far-reaching effect. Highways being laid out in a mineral bearing county, now that minerals pass to the grantee of the crown unless reserved, would make it impossible for many owners to grant an effective mining lease, for wherever there was a highway, the statute would erect a subterranean wall more effective to interfere with mining than the loss of the lode. He will also affect the law as to public highways closed by a municipality under s. 472 of the Municipal Act. The case of *Johnson v. Boyle* (1853), 11 U.C.Q.B. 101, decided that where a private right was claimed, and the defendant pleaded that the land over which the way was claimed had been a public highway, and had been closed by the municipality, the court allowed a demurrer to the plea on the ground that the antecedent right of way might still be extant, notwithstanding the facts averred in the plea. Since that decision a provision has been enacted in the Municipal Act, which appears in R.S.O., c. 192, s. 473, as follows:—

"A by-law shall not be passed for stopping up, altering or diverting any highway or part of a highway if the effect of the by-law will be to deprive any person of the means of ingress and egress to and from his land or place of residence over such highway or part of it, unless in addition to making compensation to such person, as provided by this Act, another convenient road or way of access to his land or place of residence is provided."

And by s. 492 of the Act, the owner of the land which abuts on the closed highway shall have the right to purchase the soil and freehold. If the *Abell v. Woodbridge* decision is correct any private right of way over the closed highway would be extinguished, and the municipality would be bound to furnish another right of way. But as before pointed out, the owner of a private right of way over a highway need not justify his user as one of the public, *Allen v. Ormond*, *supra*. And Osler, J., in an *obiter dictum* in *Re Vashon & East Hawkesbury* (1879), 30 U.C.C.P. 194, 202, suggested that the private right survived the dedication of the highway and its closing by the municipality. If that is the law, when the owner of the private right purchased the closed highway, he would lose his right of way on the principle of merger, and the municipality would be bound to furnish another convenient way. But if he refused to purchase, or a stranger bought after his refusal, the municipality might refuse to provide another way on the ground that the private way still existed.

A. D. ARMOUR.