

KILLAM, J.]

WARD v. BRAUN.

Set-off of costs—Certificate to prevent.

Motion for certificate to prevent a set-off of costs. See Administration of Justice Act, 48 Vict., c. 17, s. 133, s-s. 2, as amended by 49 Vict., c. 25, s. 17, as to taxing costs in case an action of the proper competence of the County Court be brought in the Court of Queen's Bench.

Plaintiff sued in the Q.B. and recovered a verdict for \$116.15.

Held, that the onus was upon the plaintiff to bring out in evidence any facts upon which the certificate might be based. Placing upon plaintiff's services nearly the full value claimed, and allowing credits admitted by him, the case was within the jurisdiction of the County Court. Certificate refused.

J. S. Ewart, Q.C., and C. P. Wilson, for plaintiff.

N. F. Hagel, Q.C., and G. Davis, for defendant.

TAYLOR, C.J.]

Jan. 8.

WHITE v. THE MUNICIPALITY OF LOUISE.

By-law stopping up road allowance—Application to quash—Notice insufficient—Estoppel—Question of compensation.

W. applied under section 258 of the Municipal Institutions Act, 53 Vict., c. 51, Man., 1890, to quash a by-law passed by defendant municipality, stopping up an original road allowance and selling the same to an adjoining owner.

The notice given was not dated; it was to the effect that the Council at their next meeting, "on the first day of September next," intended to pass a by-law to close a portion of the original road allowance.

The by-law passed not only closed the road, but provided for selling same to an adjoining owner. Section 435 of the Municipal Institutions Act provides that "No Council shall pass a by-law . . . for selling any original allowance for road, until written or printed notices have been posted up," etc.

Held, that notice being given was a condition precedent to the right to pass the by-law. That applicant, by attending the meeting of the Council, and opposing the passing of the by-law, was not estopped from taking exception to the want of notice of the by-law actually passed.

That providing compensation is not a condition precedent to the passing of a by-law to close a road.

Section 440 of the Act provides, "No Council shall close up any public road . . . whereby any person will be excluded from ingress or egress . . . unless the Council, in addition to compensation, also provide some other convenient road," etc. The applicant had another means of access than the road closed up.

Under such circumstances, to hold that another road must be provided would be most unreasonable. It is only where a person would be, by the closing of the road, excluded from all ingress and egress to or from his land, that he can demand some other convenient road or way of access. If he had access otherwise than by the closed road, but not so convenient, it is a case for compensation.

By-law quashed, with costs.

F. C. Wade and A. Whealler for applicant.

J. Campbell, Q.C., for municipality.

KILLAM, J.]

[Jan. 19.

RE STARK & STEPHENSON.

Trial of issue under Real Property Act—Assignment and conveyance from same grantor—Notice—Question of priorities.

On Nov. 16, 1889, McKay, who was entitled to a conveyance in fee simple from trustees of a town site, on payment of certain monies, executed an assignment of his interest to Stark and Isbister; they filed the assignment with the trustees on Nov. 20th, 1889, and received from the trustees a deed bearing date Nov. 20th, 1889, which was registered on Jan. 27th, 1890. On Nov. 20th, 1889, McKay executed a conveyance to Stephenson, which was registered on Nov. 21st, 1889.

On Stark and Isbister applying to bring the land under the Real Property Act, Stephenson entered a caveat, and an issue was directed to determine whether Stark and Isbister, the plaintiffs in the issue, acquired the interest of McKay in the land as against Stephenson, the defendant in the issue.

On the trial it was shown that defendant had some notice of the negotiations with plaintiffs prior to the execution of the transfer to them, and that there was some verbal arrangement for the transfer. Defendant forbore to make any enquiry of plaintiffs, but went to McKay