

Section 891 of the Code is as follows: "If an application is made to quash a conviction or order made by a justice, on the ground that such justice has exceeded his jurisdiction, the Court or Judge to which or whom the application is made may, as a condition of quashing the same, if the Court or Judge thinks fit so to do, provide that no action shall be brought against the justice who made the conviction, or any officer acting under any warrant issued to enforce such conviction or order."

Exercising the jurisdiction thus conferred, while quashing the order attacked, we do so upon the terms and condition that no action shall be brought against the justice who made it or against any officer who may have acted under it or under any warrant issued to enforce it. If these terms are not accepted, the present motion will be dismissed with costs. If they are accepted, the circumstances of this case above alluded to are such that, in the opinion of the Court, costs of this application should be withheld. The \$5.50, the tender of which we are told was rejected, should now be repaid to defendant.

TEETZEL, J.

FEBRUARY 2ND, 1906.

WEEKLY COURT.

RE McLEAN AND TOWN OF NORTH BAY.

Municipal Corporations—By-Law Closing Street—Public Interest—Discrimination—Substitution of Convenient Way—Compensation to Land Owner—Providing Access to Land—Construction of Statute—Costs.

Motion by one McLean to quash by-law 192 of the town of North Bay, providing for closing a portion of Regina street in that town.

I. F. Hellmuth, K.C., for applicant.

H. E. Rose, for town corporation.

TEETZEL, J.:—The by-law was passed pursuant to an agreement between the town corporation and the Canadian Pacific Railway Company, providing that, in return for certain expenditures by the company in the town, the parts of certain streets, including Regina street, crossed by the railway, should be closed, and the part so closed conveyed to the company.