

derive any benefit from the scrip; but he was entitled to the actual possession of the document, the right to which was the only point in issue in this action.

Bradshaw, for plaintiff. *Potts*, for defendant.

Full Court.]

KING v. NUNN.

[July 14.

RE ROGERS AND NUNN.

Municipality—By-law as to repairing buildings within fire limits
—Ultra vires—Validation of by-laws by subsequent legis-
lation.

In *King v. Nunn* the rule nisi asked for a writ of certiorari to bring before the Court a conviction, dated March 8, 1905, made by the Police Magistrate of Winnipeg, whereby the defendant was convicted of having unlawfully commenced the repair of a building without first having submitted the plans and specifications of the proposed repairs to the Inspector of Buildings for inspection, and without obtaining the said inspector's written certificate that the proposed repairs were in compliance with the provisions of By-law No. 1615.

In *Re Rogers and Nunn* the rule nisi asked to restrain the same magistrate from hearing and adjudicating upon a charge laid by the same inspector against the defendant for having unlawfully re-erected the same building contrary to the provisions of the same by-law, which was enacted on 8th May, 1899. The alleged re-erection consisted of certain repairs to a frame building which was within the first-class fire limits and had been damaged by fire. The cost of the repairs made by the defendant was only about \$50, although other repairs and fixtures were put in by a tenant. A clause of the by-law provided that, if repairs should cost as much as 40 per cent. of the actual value of a building, they should be considered a re-erection thereof and subject to the by-law, and the prosecution relied on this provision in pressing the charge of unlawful re-erection of the building. Both rules were argued together and dealt with in one judgment.

The provisions of the Municipal Act, with its amendments to the date of the by-law, under which such by-law might be claimed to have been authorized, are found in sub-ss. (a) and (b) of s. 607 of R.S.M. (1892), c. 100, and give the City of Winnipeg power to pass by-laws for regulating the erection in specified parts of the city of wooden buildings or additions thereto or alterations thereof, and for prohibiting the erection