

&c." The Court held that in the absence of any ground for exceeding or coming short of the *eight chains*, the road was to commence at a point *eight chains* south, &c., and that the objection of the uncertainty of the point of departure of the road was not an objection sufficiently strong to warrant them in setting aside the by-law; but

Held, That the by-law was bad for not assigning *any width* to the new road, and it was therefore set aside, but without costs.

In re Smith and Municipal Council of Euphemia. 8 U.C. B.R. Rep. 222.

II. Municipal Corporation Act; Power of Court to Quash By-Laws—Notices—Orchards. 12 Vic. ch. 81, secs. 155, 192.

Under the 155th and 192nd clauses of the 12 Vic. ch. 81, this Court has the power of quashing a by-law, not only for some illegality appearing upon the face of it, but also where as a matter of fact the by-law has been made in such a manner as, it is enacted by sec. 192, it shall not be lawful for any Municipal Corporations to make it.

In this case, under the facts mentioned in the affidavits, as stated below, the Court refused to quash a by-law for changing a road, on the ground, 1st, That notices had not been put up as the Act requires; and 2ndly, That the applicant had not given his consent to the road passing through his orchard.

Corporations should be careful to preserve proof of regular notices, by affidavit of persons employed to put them up.

Semble, That the trees constituting the orchard were planted there merely to obstruct the change of the road, which would bring the case fairly under the prohibition contained in the 41st clause.

In re Lafferty v. Municipal Council of Wentworth and Halton. 8 U.C.B.R. Rep. 232.

III. Quashing of By-Law of Municipal Council for the Appropriation of Money for Roads—Entitling of rule nisi. 12 Vic. c. 81. sec. 41.

A by-law passed by the Peterboro' Municipal Council, under the provisions of our Act 12 Vic. ch. 81, sec. 41, 11th and 16th heads, appropriating £600 from the county funds of the county of Peterborough, to be expended on certain roads within the said county, in such manner as may be deemed most proper by the commissioners appointed for that purpose, &c., is illegal, as exceeding the authority given to the council, and the rule nisi for quashing it must be made absolute.

The entitling of the rule to quash the by-law of a Municipal Council need not be *The Queen v. The Council*, but as "in the matter of A.B. and the Municipal Council of the County of —."

Per Cur. It would be attended with great public inconvenience if the Courts, in exercising their legal control over the powers given to Municipal bodies, were to look in a captious spirit at the by-laws of the several municipal bodies, and were to require that everything necessary to establish their validity should appear upon the face of them.

In re Conger and the Peterboro' Municipal Council. 8 U. C.B.R. Rep. 349.

IV. Right of Township or County Councils to sue for a Local Debt due to old District Councils. 12 Vic. ch. 81, secs 175 and 176.

Under the 175th and 176th clauses of the 12 Vic. ch. 81, the Township Councils, and not the County Councils, are entitled to receive monies due to the old District Councils,

where the debt is due to the *locality*, as for making roads in a township, &c., and

Held, per Cur.: That in this action the money sued for, belonging to the Township Council, and not to the County Council, the plaintiff's (the County Council) must be non-suited.

Municipal Council of the U. C. of Northumberland and Durham v. Bull and Meyers. 8 U.C.B.R. Rep. 375.

V. Trespass—Pleading—Justification under By-Law of Municipal Council—Demurrer. 12 Vic. chap. 81; 13 & 14 Vic. ch. 64.

Trespass *quare clausum fregit*.—The dfts. justified under a by-law passed by the Municipal Council of the township of King, under the authority of which they alleged that they entered for the purpose of opening a new road, laid out on plt's land.

The 3rd and 4th pleas, which are set out in substance in the statement of the case below, were demurred to—among other causes: *Because* the Municipal Council had no power to establish a public road or highway. *Because* the plea did not aver any notice by the said Corporation before making the said by-law, as required by the Statute. *Because* the plea did not aver the laying out of the said road by a road surveyor, nor sufficiently describe the said road where it ran, or at what point it commenced and where it terminated; and *because* there is no averment that any by-law was made under which the said surveyor assumed to survey, lay out, &c. *Because* the plea did not aver that the said road did not run through any garden, &c., of the plt., and for want of averment of consent of owner in writing. *And because* there is no averment of a reasonable time having been allowed plt. to open the said road, after the passing of the said by-law before the dfts committed the said trespass.

Held per Cur: That the Municipal Corporation had power to open new roads through any person's land, under the restrictions in the Statute.

Held also, that no notice of such road was necessary, the word opening being omitted in 12 Vic. ch. 81, sec. 192; and that 13 & 14 Vic. ch. 64, could not apply to this by-law.

Held also, that the plea was bad in not directly averring that the surveyor had laid out a road through the plt's land, which he reported on 27th July, and that such road went through and over the *locus in quo*, and that the council confirmed that road.

And semble that it would not be sufficient for a surveyor to lay out a road through a man's land of his own accord, and then to report it to the council to entitle the council to establish it as a road, but that the surveyor must first act in consequence of a proper application or order.—*Semble also* that a by-law cannot be good which authorizes a road through a man's land without stating where it enters or what course it takes: and that the reference to the surveyor's report, without annexing it to the by-law, nor even averring that it is remaining among the records of the council, is not sufficient.—*Semble also*, that the plea should have averred that the road was so laid out as not to run through or encroach upon any dwelling-house, &c., though it is not necessary that this should appear on the face of the by-law.—*Semble also*, that the mere passing of a by-law should not be considered as *ipso facto* the opening of a road, but merely as authority to open it in a proper manner and after reasonable time given to all parties. That the plea is defective for neither stating that this was wholly a new road, nor, (supposing it not to be so) that notice was given as would then be requisite.

But *quare*, whether averment of notice would be necessary in any case. *Held also*, that the by-law was bad for referring proprietors to private parties for compensation, which they