

W. Laidlaw, K.C., for plaintiffs.

H. L. Drayton and W. Johnston, for defendants

BOYD, C.:—The relief sought in this action is to restrain defendants from proceeding to expropriate property belonging to plaintiffs. . . . It is alleged . . . that the proceedings to expropriate are ultra vires because the land in question has been purchased or acquired under the terms of an agreement made with the defendants and incorporated in the statutory charter, 55 Vict. ch. 90 (O.)

The ground relied on is that the property is now held by plaintiffs for public or quasi-public use, and is necessary for the use and accommodation of the plaintiffs as a site for car-barns; and that expropriatory powers cannot be legally employed to divert this land from this necessary use as contemplated by the plaintiffs.

The question has resolved itself into a merely academic one, as the proposal to expropriate the land has not been prosecuted, and it may be enough for the purposes of the argument to say that there appears to be no incompatibility in the legitimate expropriation by defendants of land owned by plaintiffs, when that land is not essential to the purposes of the undertaking. That the land may be convenient for plaintiffs' purposes would not be, I conceive, an answer to the bona fide action of the defendants in employing their expropriatory powers.

Re Brown, 1 O. R. 415, relied on by defendants, does not support their contention in its absolute form; many expressions in it go to shew that quasi-public property may be the subject of expropriatory and paramount powers exercised by municipal corporations, in pursuance of a policy for bettering or improving the city or other municipality.

If plaintiffs obtained their property by the exercise of a power of expropriation, a graver question would arise if defendants sought afterwards to further expropriate for their uses property already expropriated by plaintiffs for their uses. There might arise in such case a conflict of paramount powers not contemplated by the Courts or the legislature; but no such difficulty exists when the contest is between a corporate body not possessed of compulsory