

a railway company who took the land; but the Court of Appeal did not agree, nor the Supreme Court. All the railway company will do here, they will do with the consent of the municipality, which now may exclude Seguin from the street. At all events, Seguin should have the right to test the question if so advised.

The town refused to agree that if Seguin should sue them for damages, they will not set up or rely upon sec. 468 of the Municipal Act—the by-law standing, he could not succeed in an action at law. No provision is made for compensation to him, as there should have been under sec. 629—and it would be grossly unjust to deprive him of all relief.

I do not think that the municipality can complain if we place them in the position they would have been in had they proceeded regularly—had they proceeded regularly, compensation would have been provided for. If this were done, the applicant will be in as good a position as if the by-law were quashed—his damages would be assessed by arbitration and not by a jury, that is all the difference. If then the town will undertake to proceed at once to determine the compensation which should be paid to Seguin, and to pay for it when determined, the by-law need not be set aside. In this case, as the applicant has been fought on all grounds and at every point, the town should pay the costs here and below.

If this undertaking be not given in 14 days, the by-law will be quashed with costs here and below.

We give no opinion whatever on the validity of the order of the Railway Board. If the by-law is quashed, the applicant must take his chances as to any defence based on that order.

FALCONBRIDGE, C.J.K.B.:—I agree in the result.

BRITTON, J.:—I agree in the result.

BERTHOLD & JENNINGS LUMBER CO. v. HOLTON LUMBER CO.—
RIDDELL, J., IN CHAMBERS—DEC. 26.

County Court Action—Judgment in—Counterclaim—Transfer to Another County—Con. Rule 255.—Appeal by the defendants from the judgment of the Master in Chambers, noted ante 458, where the facts are set out. The defendants appealed, a counterclaim for a very substantial sum having been filed by