

tion. The arbitration proceedings as to the water-lots, however, had not been completed.

The plaintiff contended that the arbitration could not be further proceeded with; that by-law 5755 was inoperative and invalid; that the defendants were wrongfully in possession; and that neither this by-law, the proceedings taken under it, nor a payment made to the plaintiff, barred his right to recover possession.

The main questions for decision were:—

(1) Was by-law 5755 passed in the bona fide exercise of powers conferred by sec. 576 of the Municipal Act, 1903, or was it merely a colourable scheme or device adopted for the purpose of acquiring the land for and vesting it in the defendants for harbour development and commercial and utilitarian purposes only, and with the object of determining the compensation to be paid therefor by a method not open to the defendants?

(2) Was by-law 5755 invalid or inoperative by reason of a defect in the Proclamation of the Lieutenant-Governor, defining the extended area of the city, made in 1903; and, if so, has this been remedied by the Ontario Act 6 Geo. V. ch. 96, sec. 2?

(3) If the defect existed in the Proclamation and had not been cured, was the plaintiff—having actual knowledge of the defect—estopped or precluded from objecting, by failure to give notice before entering upon the reference, or by express waiver after the reference was commenced, or by applying for and obtaining a payment on account of the total compensation to be awarded, or by any other act or circumstance?

The learned Judge, after a review of the evidence, stated his findings as follows:—

By-law 5755 was passed in pursuance of a well-considered, definite plan for park extension and construction, upon the lines, generally, set out in the report of Mr. Wilson (10th January, 1910), in the bona fide exercise of the powers conferred by sec. 576, and with the intention of administering and permanently using this and other land embraced in the park area for the purposes in that section defined.

The council did not abandon its purpose or lose its control by the conveyance to the defendants, and is morally and legally bound to make good the title it purported to convey in pursuance of a combined scheme of park and harbour improvements.

The lots in question and lands in the neighbourhood of the Humber generally are not required for or adapted to and cannot be utilised for harbour development or improvement in a commercial sense.

Before and at the time of the execution of the deed to the defendants, it was intended by the parties thereto that the city