

town . . . and that that part of St. David street (describing it) *should be closed*.

Then the by-law enacts that it is subject to the railway company opening and conveying to the town a street 30 feet wide across 23 and 24, and a similar street on the west side of the railway, traversing lot 1 in block 1 C. in the town.

The by-law also provides that the railway company shall pay the costs of carrying that by-law into effect.

In short, all that was done was with the consent and aid of the corporation, and without that aid and consent, the street would not have been, in fact, closed; so the defendants are liable to the plaintiff for anything in connection with the closing done by the railway company with the consent of the defendants.

The defendants intended to authorize by by-law, just what the railway company did, and they did stand by and sanction the doing of what was done.

The Dominion Railway Board has, in my opinion, no authority to close any street within a municipality.

This must be done by the municipality; and such closing or consent to closing must be in the manner prescribed by the Municipal Act.

I find as a fact that this is not a case of "deviation" as contended for by the defendants' counsel, and so within the jurisdiction of the Dominion Railway Board.

In the agreement recited there is no pretence that there was to be a deviation.

The agreement was that "that portion of St. David street (describing it fully) should be closed."

That is what was done. The contention that it was only deviation cannot prevail. It was not deviation within the fair meaning of that term.

St. David Street runs east and west. The line of railway is north and south. The line of railway was carried on trestles northerly to St. David street, and on, further, northerly, beyond that street.

At St. David street the rails were at a considerable height, say 40 feet above the street.

The closing of the street was by filling in, principally with sand, making a solid roadbed across what had been the street.