

A. Lemieux, K.C., for the applicant.

H. W. Lawlor and A. J. Reid, for the respondent.

HON. MR. JUSTICE MIDDLETON:—Under the Railway Act, sec. 238, (see amendment of 1909), the Board has authority to order that a highway may be permanently diverted. No authority is given to close a highway. In October, 1911, the Canadian Northern Railway, desiring to make some changes in its line through Hawkesbury, made an application to the Board which involved the closing of St. David street. Some negotiation took place looking to the closing of the street at the intersection by the municipality and the sale of this portion to the railway. With this in view, notices were given which led up to the by-law in question.

When the matter came before the Board an order was made, quite in conformity with the statute, by which St. David street was diverted at each side of the railway allowance so as to turn at right angles and so connect with Union street; the portion of the original road allowance crossing the railway allowance being closed and an embankment constructed thereon.

Owing to the greater facility given by these diversions to those driving upon St. David street and desiring to reach Main street, the change may be beneficial. Those who desire to make a continuous passage along St. David street are put to some inconvenience, as they must go 178 feet from St. David street to Union street and after passing under the railway bridge must return the same distance.

With this I am in no way concerned, as the whole matter was entirely within the jurisdiction of the Board.

The municipal proceedings were initiated under some misapprehension as to the true situation; but there is no ground whatever for the suggestion that there was any abuse of the municipal power or anything other than an endeavour to come to some satisfactory arrangement with the railway.

The by-law was unnecessary, and was not acted on so far as any conveyance is concerned. It affords no answer to any claim the applicant might have. The order of the Board is a conclusive and final answer to his claims. This motion is an entirely unnecessary and useless piece of litigation, and I think I have discretion to refuse the