

SEGUIN v. TOWN OF HAWKESBURY—BRITTON, J.—JUNE 7.

Municipal Corporation—Closing of Street—Authorisation of Council—Work Done by Railway Company—Powers of Dominion Railway Board—Illegal Act—Injury to Neighbouring Land-owners—Damages—Costs.]—Four actions brought respectively by Arsène Seguin, Raoul Seguin, Joseph Seguin, and Albert Treaud, against the Corporation of the Town of Hawkesbury, tried together at L'Original, without a jury. The plaintiffs were land-owners in the town, their lands being on or near St. David street, and not far from the right of way of the Canadian Northern Quebec Railway Company. The defendants' council, on the 27th September, 1911, passed a by-law for closing a portion of St. David street. That by-law was quashed by the order of a Divisional Court: *Re Seguin and Village of Hawkesbury* (1912), ante 521. The order gave the defendants the option of providing for compensation to the applicant, the now plaintiff, Arsène Seguin, or of having the by-law quashed; but the defendants did nothing. After the passing of the by-law, and before it was quashed, the railway company closed the street for its whole width at the place of crossing. These actions were commenced on the 8th March, 1913, and were brought under secs. 468 and 629 of the Consolidated Municipal Act, 1903, to recover damages for the injury to the plaintiffs by the closing of the street. BRITTON, J., found that all that was done was with the consent and aid of the defendants; and the defendants were liable to the plaintiffs for anything in connection with the closing of the street by the railway company with the consent of the defendants. In the learned Judge's opinion, the Dominion Railway Board has no authority to close any street within a municipality. Closing must be by the municipality, and in the manner prescribed by the Municipal Act. The learned Judge also found as a fact that the case was not one of a "deviation," as contended for by the defendants, which might bring it within the jurisdiction of the Board. Accordingly, the plaintiffs were held entitled to recover damages by reason of the defendants being wrong-doers, the work being an unauthorised and illegal work, and also to damages for any injury caused by the work which would have been caused had the work been authorised. The plaintiff Arsène's damages were assessed at \$250; the plaintiff Joseph's, at \$100; the plaintiff Raoul's, at \$75; and the plaintiff Treaud's, at \$75. Judgment accordingly with County Court costs and without any set-off of costs; costs of the trial to be as of one action. A. Lemieux, K.C., for the plaintiffs. H. W. Lawlor and George Macdonald, for the defendants.