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APPELLATE DIVISION.

MAY 26TH, 1914.

RE JONES AND TOWNSHIP OF TUCKERSMITH.

Highway—Closing and Sale of Unopened Portion of Street as Shewn on Plan—By-law of Council—Order Quashing—Appeal—Order Set aside—Motion to be Renewed before Judge at Trial of Pending Action—Terms—Costs.

Appeal by the Corporation of the Township of Tuckersmith from the order of MIDDLETON, J., 5 O.W.N. 759, quashing a by-law of the township for the closing and disposal of part of Mill street in the village of Egmondville.

The appeal was heard by MULOCK, C.J.Ex., RIDDELL, SUTHERLAND, and LEITCH, JJ.

R. S. Robertson and R. S. Hays, for the appellants.

W. Proudfoot, K.C., for certain ratepayers, the respondents.

PER CURIAM:—Order set aside; the motion may be renewed before the Judge at the trial of the action of Jones v. Township of Tuckersmith; on such motion the Judge is not to be bound by the judgment of Middleton, J. Costs of motion to quash and of this appeal to be in discretion of the trial Judge.

If the said trial be not proceeded with at the first sittings at which it can be heard, the motion may be renewed before a single Judge, on such additional material as the applicants may be advised to bring before the Court. Costs of the motion and of this appeal to be in the discretion of the Judge.

If the application be not proceeded with, the appeal is allowed with costs here and below.

[The above is the order of the Court as finally settled: see ante 71.]