

east of the railway, and running from Union Street to the Main street. No provision was contained in the by-law for compensation to those injured. Seguin moved to quash the by-law; my brother Middleton refused the application (November 7th, 1912), and this is an appeal from that decision, reported ante 239.

In the Municipal Act, sec. 632 (1), provides for notice of proposed by-laws for closing roads—it cannot be successfully contended that notice of an "intended by-law" to close a road is given by publishing a notice of an intended by-law to sell it. And after a great deal of backing and filling, counsel opposing the appeal admitted that the by-law was irregular.

The next argument in support of the by-law was that it was unnecessary. This argument seems to be based upon a misunderstanding of a remark of my learned brother in the course of his judgment. Mr. Justice Middleton, of course, did not state that the by-law was or might be unnecessary, making that fact a ground for refusing to quash it.

And my mind is wholly unable to understand why the fact of a by-law being unnecessary can help to support the by-law. If a by-law is necessary, there might be ground for sustaining it, but not the converse.

The contention that the by-law was unnecessary was pricked when, on counsel, (nominally for the town, in fact for the railway company), being asked if he would consent to the by-law being quashed—he at once answered in the negative.

Then we were told that Seguin was not in fact injured by the closing of the road, even if the town did close it. This is the usual contention of municipal lawyers and officers—but that is a question of fact which a court does not decide either on affidavit or on statement of counsel.

The next contention is that any harm that can accrue to the applicant, will not be due to the town closing the road, but to the railway filling it in with its embankment. I do not agree. As soon as the by-law was passed and became effective, Seguin had no right on the closed part of the street; he might, indeed, probably without interruption go along the street if and so long as this was physically possible, but it would not be as of right. If he sued the railway company the company would say that they had not interfered with any right he had—and their answer might well be considered perfect.

In *Canadian Pacific Railway v. Brown* (1908), 18 O.L.R. 85, I thought that when a person was in possession of land belonging to another, and with some kind of expectation that a lease formerly held would be renewed, he might claim damages from