

That by-law, upon the application of Arsene Seguin, the plaintiff in the first of the four actions, was quashed. See 4 O. W. N. p. 521.

The judgment of the Divisional Court gave to the defendants the option of providing for compensation to the applicant for damages, if any, sustained by him; the amount to be ascertained by arbitration, or of having the by-law quashed.

The defendants would do nothing.

The plaintiff's solicitor gave to the defendants notice of action in each case; but the defendants would take no steps towards arriving at a settlement.

After the passing of the by-law, and before it was quashed, the railway company proceeded with the work and actually closed the street for its whole width at the place of crossing.

These actions were commenced on the 8th of March, 1913, and they are brought under secs. 468 and 629 of Con. Mun. Act, 1903, the plaintiffs having done all that they could to have their claims settled by the defendants, or by arbitration.

The defendants seek to escape liability because: 1st. there was no work actually done by the municipality. The work was done by the railway company.

2nd. The railway company was authorised by an order of the Dominion Railway Board to close the street; and

3rd. By a further order of the Railway Board, the railway company was authorized to cause a deviation in St. David street, and the work, as it is alleged, was not, in fact, an actual stopping up of St. David street, but was only deviation, as any of the public desiring to do so, can, notwithstanding what was done, go south from St. David street on the westerly side of the railway, upon a roadway constructed by the railway company to Union street, then easterly to a lane and then northerly along the lane to St. David street, but reaching that street at a point considerably east of the line of railway.

The closing of the street intended to be done under the by-law, was never authorized, and neither the defendants nor the railway company can justify under that by-law.

The by-law recites an agreement between the town and the railway company for the purposes of the line, through the