

1894

BROWN v. TOWN OF EDMONTON

*Mar. 17.

*May 1.

Public street—Dedication—Obstruction—Right of owner or occupier to compensation.

APPEAL from a decision of the Supreme Court of the North-west Territories (1) affirming the verdict at the trial for the plaintiffs, the town of Edmonton.

The action was brought by the town of Edmonton to compel the defendant to remove a log-house alleged to be an obstruction to a public street and a nuisance. The defences set up were that the alleged obstruction was upon the street when it was dedicated to the public and the dedication should be held to have been accepted subject to such obstruction; also that the defendant, if the building had to be removed, was entitled to compensation as owner or occupier under the Municipal Act and the plaintiffs had not paid nor offered such compensation nor referred the matter to arbitration.

*PRESENT :—Fournier, Taschereau, Gwynne, Sedgewick and King JJ.

(1) 1 N. W. T. Rep. Pt. 4 p. 39.

The Supreme Court of the North-west Territories affirmed the decision at the trial in favour of the town holding that the defendant was not entitled to compensation as the land had not been "entered upon, taken or used by the corporation in the exercise of its powers of appropriation" which forms the only ground for compensation provided by the Municipal Act. As to the dedication being accepted subject to the obstruction the court held that such ground had not been taken at the trial and could not be entertained by the full court.

1894
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The Supreme Court of Canada also affirmed the decision in favour of the town, holding that the right of the public to the free and unobstructed use of a street could not be taken away by the existence of an obstruction when the street was dedicated.

Appeal dismissed with costs.

Ferguson Q.C. for the appellant.

Latchford for the respondents.