

1920

*Oct. 13, 14.

*Nov. 2.

THE CORPORATION OF THE DISTRICT OF
SURREY *v.* CAINE.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH
COLUMBIA.

Municipal law—Right to “resume”—Injunction—“The Municipal Act” (B.C.) S. 1914, c. 52, s. 325.

APPEAL from the judgment of the Court of Appeal for British Columbia (1), affirming the judgment of the trial judge, Clement J. (1) and granting a perpetual injunction restraining the appellant from proceeding to “resume”-land.

The trial court and the Court of Appeal held that certain land proposed to be taken by the municipality from the respondent for part of a public road under a “resumption” by-law pursuant to section 325 of the “Municipal Act” came within the exception of this section as being land “in use as gardens or otherwise for the more convenient occupation of” the respondent’s buildings, and granted with costs a perpetual injunction restraining the municipality from proceeding to “resume” the land.

The Supreme Court of Canada, after hearing counsel and reserving judgment, dismissed the appeal; but the injunction was modified so as to make it clear that the defendant was not thereby precluded from instituting expropriation proceedings as to all the land in question or from asserting a right of resumption in a fresh proceeding as to certain portions of the respondent’s land.

Appeal dismissed with costs.

W. N. Tilley K.C. for the appellant.

S. S. Taylor K.C. for the respondent.

*PRESENT:—Sir Louis Davies C.J. and Idington, Duff, Anglin, Brodeur and Mignault JJ.