

the road, but at the commencement most of the roads were Indian trails, and this was one of them. The other witness said that he had known the road in question for over 50 years, and it was always a travelled highway until closed as above. He could not say whether it was an old Indian trail or not.

I think the evidence offered on behalf of the plaintiffs is inadequate to establish the highway in question as an original allowance for road. . . .

[Reference to the plans put in at the trial.]

It seems that the Corporation of the City of Brantford secured a grant of lot A., comprising territory which included the portion of the Onondaga road in question. Subsequently they laid out on a plan the Onondaga road as a highway or road. The city corporation could not lay it out as an original road allowance; they would have no power to do so.

Counsel for the plaintiffs said that nowhere in the Act could he find any definition of an original allowance for road. I think what is meant by an original allowance for road is one based on a government survey. No proof was offered before me that the Onondaga road is based on such a survey.

I have come to the conclusion, therefore, that this is not an original allowance for road, and that, therefore, sec. 660, sub-sec. 2, does not apply; and no confirmation by a by-law of the county council is necessary.

I cannot see either, upon the evidence here, that sec. 32, sub-sec. 2, has any application. The Onondaga road does not run along the bank of the Grand river. . . . I cannot, upon the evidence, hold that this road runs along the bank of a river or stream. No approval of the Lieutenant-Governor in council was, therefore, requisite.

Exhibit No. 3 is a plan of the locality in question. It shews a road known as the London and Hamilton stone road, lying to the north of all the properties in question, namely, lots 18, 19, 20, and 21, which lots, before the passing of the by-law, extended from north to south between the London and Hamilton stone road and the Onondaga road. . . . The Campbells were the owners of lots 18 and 20 before the passing of the by-law; the plaintiff Daniel Hanley, the owner of lot 21 and part of lot 35 adjoining to the east; and the plaintiff Hannah B. Hanley, the owner of lot 19. Upon lot 18 were a hotel and barns, and it was important in connection therewith to continue to have access to the latter from the Onondaga road.

It appears that the southerly bank of the Onondaga road had been crumbling away, was difficult to maintain, and expen-