Held, also, that the words "otherwise dispose of," when read with the rest of the Act, covered the mode of using the property adopted, viz., as a cattle market, and the demurrer was allowed with costs.

C. Robinson, Q.C., and *McWilliams*, for the demurrer.

McCarthy, Q.C., and *Maclaren*, contra.

Johnson, for the Attorney-General of Ontario.

COMMON PLEAS DIVISION.

Divisional Court.] [June, 1886.

TOMLINSON v. MORRIS.

Sale of goods—Warranty—Written notice—Waiver.

By a written agreement the defendant sold a threshing machine to the plaintiff at a named price, the right of possession to be in the plaintiff until default, but until payment the right of property to be in the defendants, with a warranty by the defendants that, with good management, the machine would do good work, and was superior to any other machine made in Canada in its adaptation for separating and saving grain from straw with less waste, etc.; and that if, upon starting the machine, the plaintiff should intelligently follow the printed hints, rules and directions of the managers, and, if so doing, were unable to operate it well, written notice stating wherein it failed to satisfy the warranty was to be given by him to the defendants, and a reasonable time allowed to get to it and remedy the defect, unless of such a nature that the defendants could advise by letter; and if the defendants were not able to make it operate well, etc., and the fault was in the machine, they were to take it back and refund the payments made, or remedy the defective part. No printed hints, etc., were given. The defendants had, on the plaintiff's complaint, attended and made alterations in the machine, after which the plaintiff used the machine, but subsequently sent it back to the defendants, because, he said, it did not comply with the warranty, but, as defendants understood, to be repaired. No written notice, as required by the warranty, was given.

Held, that in the absence of the printed hints, etc., the parties must be deemed to have dispensed therewith; that to avail himself of the warranty the plaintiff should have given the written notice; and that the attendance to make the alterations was not, under the circumstances, a waiver of such notice; but, in any event, was a question for the jury.

Hardy, Q.C., for the plaintiff.

Robertson, Q.C., for the defendant.

CORPORATION OF ST. VINCENT v. GREENFIELD.

By-law to open road allowance—Necessity to show boundaries—Statute labour—Evidence of performance of.

A by-law to establish a road allowance must, on its face, show the boundaries of the road, or refer to some document wherein they are defined, and the intention of the framers of the by-law cannot be ascertained by the aid of extrinsic evidence.

The by-law in this case to establish a road on the blind line between two concessions in the defendant's township, was, by reason of such omission, held defective.

Held, also, that on the evidence set out in the case, the road in question had not become a public highway by reason of statute labour having been performed thereon.

Creasor, Q.C., for the plaintiffs.

A. Frost, for the defendant.

COSTELLO v. HUNTER.

Husband and wife—Breach of promise of marriage—Corroboratory evidence—Statute of limitations.

In an action for breach of promise of marriage, the plaintiff stated that the defendant promised to marry her in the fall of 1873, but that when that time arrived he excused his doing so because he said he had not his house built, and that he could not marry until he had a suitable house. The plaintiff told him she was willing to live in a shanty, and he then said he would not marry until he could keep plaintiff. The house was built in the summer of 1878. No definite promise was proved after the fall of 1873, but the plaintiff and defendant kept up friendly relations until 1884, when the defendant married another