

ORDE, J.

OCTOBER 1ST, 1920.

## \*McDOWELL v. TOWNSHIP OF ZONE.

*Highway—Disputed Boundary—Original Road-allowance—Township Corporation—Survey Confirmed by Minister of Lands Forests and Mines—Surveys Act, R.S.O. 1914 ch. 166, sec. 13—Estoppel—Municipal Act, sec. 478—Trespass—Injunction—Damages.*

Action by the owner of lots 4, 5, and 6 in the Gore concession of the township of Zone, in the county of Kent, for an injunction restraining the defendants, the municipal corporation of the township, from trespassing upon these lots and from tearing down and interfering with the plaintiff's fences thereon, for a mandatory order compelling the defendants to re-erect the fences torn down by them, for a declaration, and for other relief.

The action was tried without a jury at Chatham.

T. G. Meredith, K.C., for the plaintiff.

J. M. Pike, K.C., for the defendants.

ORDE, J., in a written judgment, said that the plaintiff took the position that, under the provisions of sec. 13 of the Surveys Act, R.S.O. 1914 ch. 166, a survey made by one McCubbin and its confirmation by the Minister of Lands Forests and Mines were final and binding and their effect was to fix the southern boundary of the road-allowance, and consequently the northern boundary of the plaintiff's land, on the line laid down by McCubbin.

The defendants said that a highway intended to be upon the original road-allowance, known as "the Base line," was laid out and opened up for public use more than 60 years ago, and had since been continuously used as a highway, and that statute labour had been performed and public money spent thereon; that the defendants were not aware that any part of the highway so laid out was upon the plaintiff's lands; but, if so, the defendants set up sec. 478 of the Municipal Act, R.S.O. 1914 ch. 192; that the plaintiff's lands were purchased with full knowledge of the existence of the highway as so laid out and opened; and that he and his predecessors in title had acquiesced in the location of the same, and the plaintiff was estopped.

The learned Judge said that the solution of the difficulty lay within a very narrow compass. The defendants, having set in motion the application for the survey, under sec. 13 of the Surveys Act, must be held to be bound by the result. If that result is to