

Province of Ontario

SUPREME COURT, APPELLATE DIVISION.

ABELL V. VILLAGE OF WOODBRIDGE AND COUNTY OF YORK.

Highways—Dedicated by owner—Private rights—Common and public—Easements.

Section 433 of the Ontario Municipal Act (1913, 3 & 4 Geo. V., c. 43, Ont.), provides that "the soil and freehold of every highway shall be vested in the corporation of the municipality or municipalities," and by s. 432, "all roads dedicated by the owner of the land to public use" are declared to "be common and public highways." The effect of this legislation and of the repeal of 3 Edw. VII. c. 19, which was concurrent with it, is to remove any easement or reservation to which the vesting of the highway was subject, and to vest absolutely and without qualification the soil and freehold in the municipal corporations.

Abell v. Village of Woodbridge, 37 D.L.R. 352, 39 O.L.R. 382, reversed.

O. L. Lewis, K.C., and *C. W. Plaxton*, for the County of York; *W. A. Skeans*, for the Village of Woodbridge and *J. H. Moss*, K.C., and *W. Laur*, for plaintiff, respondent.

ANNOTATION FROM D.L.R. P. 513

Private rights in Highways antecedent to Dedication.

By A. D. ARMOUR.

Highways under English law were of two kinds, those in which the title to the soil remained in the Crown, subject to the public right of travel on the "King's Highway," and others, in which the ownership of the soil remained in some private owner who had, or was presumed to have, dedicated the land as a public highway. But this was never a dedication of all the soil, but a setting aside of the land as it were for a particular and paramount purpose. And it is to be observed that in neither of these cases did the public acquire anything more than a right to travel; subject to that right the ownership in the soil remained untouched. This being so, the owner of the soil could use it in any way he pleased, provided that he did not interfere with the public right. Such a freedom on the part of the owner could clearly result in the acquisition of private rights by others, either by grant or prescription, and many cases of private rights in highways, either antecedent to dedication, or subsequent and subject to the private right, are to be found in the reports.