

of Commissioners of Police had any power in the premises—the by-laws, etc., are to be made by the members, not the trustees, and the Commissioners are not mentioned in the application.

In September, 1910, the plaintiff applied for an allowance of \$1,000 under sec. 19. This was considered by the board of trustees, and “they regretfully came to the conclusion that they could not recommend him for a retiring allowance under the rules and regulations governing the benefit fund at the time of his leaving the force.” In this judgment the Board of Commissioners of Police concurred. In April, 1911, a demand was again made, and the board of trustees at a meeting decided that, “under the by-laws, Major de la Ronde is not entitled to a retiring allowance.” This action was then brought.

It would seem that the boards were, in deciding upon the application, of the impression that the last part of sec. 10 was in force. This is an error. This clause never was adopted, and I shall so declare. Even were it in force, the plaintiff does not come within its provisions. He did not claim the right to retire—he was forced out. The clause never was intended to cover such a case—nor does sec. 26 apply.

I do not at present give judgment; I retain the case in the hope that, with the above findings, the parties will be able to agree. If not, I shall give judgment.

KELLY, J.

MAY 1ST, 1912.

LAKE ERIE EXCURSION CO. v. TOWNSHIP OF BERTIE.

Highway—Boundaries of Lots—Allowance for Road—Encroachment—Failure to Prove—Erection of Fence—Removal—Injunction—Dedication—Estoppel.

Action to restrain the defendants from interfering with or removing a fence alleged by the plaintiffs to be the western boundary of part of lot 26 in the broken front concession on Lake Erie, in the township of Bertie, of which part of the lot the plaintiffs claimed to be the owners, and from entering on the plaintiffs' land, and for damages.

The defendants by their counterclaim asked that the plaintiffs should be ordered to remove the fence and should be restrained from incumbering or obstructing the roadway.