

case, nor by the Henderson case, in which the question of the effect of impact was also not considered; and, finding no precedent where damages resulting from mental shock in cases where impact has been present, have been disallowed, I decline to establish such a precedent in this case . . .

[Reference to The Bywell Castle, 4 P. D. 219.]

Judgment for plaintiff Christian Geiger for \$700 damages and for plaintiff Emma Marie Geiger for \$300 damages, together with their costs of action.

STREET, J.

MARCH 15TH, 1904.

TRIAL.

FRASER v. DIAMOND.

Way—Dedication by Public User—Crown Lands—Acquiescence of Locatee and Equitable Owner—Subsequent Grant without Reservation of Way—Rights of Public—Continuous User for 70 years.

Action for trespass to land.

E. D. Armour, K.C., and A. B. Colville, Campbellford, for plaintiff.

S. C. Smoke and G. A. Payne, Campbellford, for defendant.

STREET, J.—In 1834 an order of the Quarter Sessions was made under 50 Geo. III. for the opening of a highway from the township of Percy through several lots and across several concessions in the township of Seymour. One of the lots crossed by the description of the highway was the north half of lot 3 in the 4th concession of Seymour, the title to which was still in the Crown, although it had been recently occupied under a location ticket or license from the Crown. The road described in the order of the Sessions was never opened, as I find upon the evidence, but another road, following the same general direction but at a distance varying, upon this lot, from 60 rods to 2 or 3 rods, was opened across this lot and across the other lots mentioned in the order in or about the year 1835 or 1836. This road was cut out and opened across the north half of lot 3 by John Fraser, the locatee of the lot under the Crown, and members of his family. It was fenced on the south side shortly after it was opened, and upon the north side about 1865, by members of the family of the locatee, assisted by their tenant, Benjamin Clute.