to such per centage as to the lands stated in the declaration, was a competent witness for the plaintiffs, the learned Judge having received his testimony.

It seemed (though this part of the case was not very clearly made out in evidence), that the township of Burleigh was intended to contain twelve concessions, and thirty-two lots of 200 acres each in each concession, the lots numbering from south to north. From lot No. 1 to the line between lots Nos. 15 and 16, the survey seemed to have been sufficiently well marked to enable a surveyor in 1864, to trace and re-mark the lines, &c. But from the south boundary of No. 16, although there were some traces of the surveyor having been there, the marks of survey, if ever there, were almost wholly lost; and on the application of the Council of the County of Peterborough, D. P. S. Fitzgerald was instructed in January, 1864, to commence at the southern end of the township and trace up the old lines as far as the side road between the fifteenth and sixteenth lots, and post them according to the original plan of survey, while from the northerly limit of No. 16, to the north boundary of the township he was to survey the lots twenty chains wide by fifty chains deep, with a road allowance of one chain at every fifth lot and at every alternate concession. These instructions created sixteen concessions with twenty-six lots in each, all lying north of No. 15, with allowances for roads, differing from such as would have been reserved on the original plan of survey; and in addition Mr. Fitzgerald reserved allowances for roads round the waters and streams in the new survey, for which he stated he had the authority of the Commissioner of Crown Lands, such reservations being more for the convenience of landing than for use as roads. Owing, probably, to the different plans of survey, the part surveyed on the original plan was thenceforth called the southern division, and the other part the northern division of the township.

It was proved that prior to Mr Fitzgerald's survey, the Crown had issued letters patent granting several lots or parts of lots in what is now called the southern division, and one grant dated since 1864 was put in for a lot in the northern division. Upon a question being raised, the learned Judge ruled that the Crown was bound by the adoption evinced in granting lots according to the old survey in the southern division, but that there was no proof of any survey before that made by Fitzgerald in the northern division.

It was objected for the defendants that the property in trees growing in spaces reserved in the original survey as allowances for roads, which had never been cleared, opened and travelled, was not in the municipality of the township, and that they could not maintain trespass for cutting such trees. The learned Judge overruled this objection, and reserved leave to the defendants to move to enter a nonsuit upon it.

The plaintiffs then gave evidence to establish that the defendants had cut trees of considerable value on some of the reservations for road, and chiefly in the northern division, and the jury found a verdict for the plaintiffs.

In Easter Term, *Hector Cameron* obtained a rule calling upon the plaintiffs to shew cause why a nonsuit should not be entered (leave having been reserved to move), on the ground that the plaintiffs had no such right or interest in the property in question as to enable them to sue in trespass or trover, and that no by-law was proved to have been made by the plaintiffs in relation thereto; or for a new trial, there being no evidence of trespass to, or conversion of, any property of the plaintiffs; and for improper admission of the evidence of a party in whose direct and immediate behalf the action was brought.

In this term *C. S. Patterson* shewed cause, citing *Cochran* v. *Hislop*, 3 C. P. 440; *Corporation of Wellington* v. *Wilson*, 14 C. P. 299, 16 C. P. 124; *Corporation of Thurlow* v. *Bogart*, 15 C. P. 8; *Municipality of Sarnia* v. *Great Western Railway Co.*, 17 U. C. R. 65; Consol. Stat. U. C. ch. 54, secs. 314, 315, 323, 324, 325, 331, 336, 337, 339.

Hector Cameron, contra, cited *Corporation of Sarnia* v. *Great Western Railway Co.*, 21 U. C. R. 64; *Cochran* v. *Hislop*, 3 C. P. 440.

DRAPER, C. J., delivered the judgment of the Court.

The first question is as to the general right of the plaintiffs.

We think that, upon the evidence given in this case, we are warranted in assuming that the survey made by Mr. Fitzgerald was the original survey of the northern division of the township; as to the southern division, he simply retraced and restored the work done in the original survey.

We do not consider the question as to the right to the soil and freehold of original allowances for road to be open for argument in this Court. In the *Corporation of Sarnia* v. *Great Western Railway Co.*(21 U. C. R 64), Burns, J., said "Wherever the Crown has laid out a road or street without any reservation, I take it the soil and freehold remains in the Crown, subject to the easement which the public enjoys over it." And in the judgment of this Court in *Mytton* v. *Duck* (26 U. C. R. 61) in order to construe sections 314 and 336 of Consol. Stat. U. C., ch. 54, so as not to conflict, we adopted the suggestion of Burns, J., in the above cited case, by limiting the operation of the latter to cases where individuals have laid out streets or roads for the public, and they have by user or otherwise become public highways. The present case relates to the construction of section 314, the language of which leaves no room for doubt, if it be not limited by section 336. We conclude, therefore, that the soil and freehold of the roads in question was in the Crown.

But section 331 gave to Township Councils the power to pass by-laws both for opening roads, and (sub-section 5), for preserving or selling timber trees, &c., on any allowance or appropriation for a public road, and the effect of this enactment and the absence of any by-law on the subject are to be considered.

If there was no such provision, the property in trees growing on the road allowances would, undoubtedly, be in the Crown.

The leading object of the reservation of road allowances however, was not to grow timber trees upon them, but that that they should be subservient to the advantage of settlers upon land adjoining or near thereto, as well as of the general public. We are not prepared to hold that a settler who cut down timber trees on an allowance for road *bona fide*, for the purpose of access