

a troublesome matter. The Canadian Pacific R.W. then of its own motion took down the gates, and constructed fences and cattle guards as shewn upon the plan, Exhibit 2.

G. F. Macdonnell, for the plaintiff.

D. J. McDougal, for the defendants.

HON. MR. JUSTICE MIDDLETON:—It may be that the travelled road encroached slightly upon lot 16; but the material question to be determined in the first place is whether any portion of the 15 feet in question still remains the private property of the defendant. An encroachment of one or two feet does not seem to me to be material.

Charles Billings, Sr., died on the 29th of November, 1906, and he left to his son, Charles M. Billings, all of lot 16, between the railway and the Rideau river, save and except a strip of land 15 feet in width, along the southern boundary, "which I hereby reserve for a public highway." He also gave to the present defendant all the remainder of lot 16. The residue of his estate is given to his two sons, share and share alike. This will is dated August 29th, 1904, prior to the location of the Canadian Northern R.W.; so that the railway referred to as constituting the division between the defendant and his brother is the Canadian Pacific R.W. line.

Upon this will, I think, it is clear that Charles M. Billings only took the land west of the railway and north of the 15-foot road in question. I think it is equally clear that it was not the testator's intention to give the road west of the railway to the defendant, as the "remainder of lot 16," means, I think, that which remains, not only after the devise to Charles of his portion, but after excepting from the lot the 15-foot strip to the south of Charles', which is reserved for a public highway.

It was conceded by counsel for both parties that this reservation was quite insufficient to amount by itself to a dedication, and, therefore, the road west of the Canadian Pacific R.W. would pass to the defendant and his brother, as residuary devisees.

It would have been more satisfactory if Charles M. Billings had been a party to this litigation, so that the matter might now be determined once for all; but, as it is plain