

through; and there are yet indications, in broken posts, of a fence which enclosed the place in question and the adjoining property from all use as a way. And for a great many years past the plaintiffs and those through whom they claim, have had the whole piece of property enclosed by a wire fence, built in the line of the old posts, and taking the place of the old fence. Such few acts of user as were proved afforded no evidence of a highway; they were but such acts as are common upon, and evidence of, vacant land being passed over without objection by the owner.

If one have regard to such plans as were produced at the trial, and of what would have been probable in laying out land ordinarily, no peculiar circumstances intervening, it might well be held that the place in question was originally laid out as an allowance for road. But there are some special circumstances: the low lying character of the place, and the fact that from early days it was looked upon as the place of a shipyard and harbour; things of vastly greater importance, then, than another of the several ways to the river in that locality.

If obliged to determine this question in this action, my ruling would be that the onus of proof is on the defendants, and that they have not satisfied it.

But on the other ground my ruling must also be in favour of the plaintiffs; and upon this question there are not so many difficulties arising from lack of evidence, though little was adduced directly respecting it.

The great importance of a dock, and a shipyard, at the head of the great lake Ontario, at the river, is made very evident by the fact that an Act of Parliament was passed, conferring large rights in, and powers over, the locality in question, upon individuals undertaking the work.

Assuming that the place in question had been laid out as, or had, in any manner, become a road allowance in which the public had acquired a right, then under the enactment before mentioned there was power to appropriate it for harbour and shipyard purposes; and it was, as I find, so appropriated, and title to it was acquired under the Act.

It is true that the harbour basin does not include all of it; but it is equally true that a large part of it is actually covered by the waters of the dredged and wholly artificially made harbour; so much so that, judging by the maps alone in the absence of any other evidence on the subject, it seems