

road west, in the said township, together with all the woods and waters thereon lying and being, under the reservations, limitations, and conditions hereinafter expressed, which said one hundred acres are butted and bounded or may be otherwise known as follows, that is to say: Commencing at the north-westerly side of the said road in the limit between lots Nos. 177 and 178, at the easterly angle of the said lot 178; thence on a course about sixty degrees west along the north-westerly side of the said road 20 chains, 71 links, more or less to the limit between lots Nos. 178 and 179; thence north 45 degrees west 60 chains more or less to the allowance for road between the townships of Romney and Tilbury East; thence east 29 chains more or less to the limit between lots Nos. 178 and 177; thence south 45 degrees east, 47 chains more or less to the place of beginning."

Plaintiffs claim that the original Talbot road which formed the south-westerly boundary of the lands included in the above patent ran near the bank of Lake Erie, which at this point is many feet above the beach, and rises perpendicularly therefrom, having a clay front facing the waters of the lake. Plaintiffs further allege that along the shore of Lake Erie in that locality the waters of the lake have been encroaching upon the lands, undermining the bank, causing it to subside and then gradually washing it away; that by reason of this encroachment of the lake, Talbot road at an early period grew dangerous and unsafe for public travel until about the year 1838, it was abandoned as a means of public travel and a new road, which has for many years been known as the Talbot road, was opened up and dedicated to the public travel; that this road still continues to be the travelled road known as Talbot road, but the original Talbot road across the lake front has long since been washed away by the waters of the lake, and now those waters have advanced beyond where they were at the time of the original Talbot road survey; so that they have washed away the reserve left in front of the Talbot road, also the Talbot road itself and some rods of the front of the surveyed lots; so that now so much of the lands patented to Carr's predecessor and now owned by him as are now above the waters of Lake Erie border on the waters of the lake and not on the original Talbot road.

The above statements are denied by defendants, but I find them to have been proved, as I shall hereinafter state.