

J. E. Caldwell, for the defendants the Corporation of the County of Carleton.

SUTHERLAND, J., set out the facts and referred to the pleadings in a written judgment. He was of opinion that extrinsic evidence was admissible for the purpose of determining the meaning or sense in which the words of the patent, "reserving nevertheless the line of road across the said island," were used, having regard to the circumstances at the time the patent was issued. According to the evidence, there was, at the date of the patent, an existing road across the island of about 23 feet in width; and, construing the patent in the light of the memorandum of sale above quoted, what was intended to be reserved was the existing road of 23 feet in width.

The plaintiff proved his title to the island, apart from the excepted public highway of 23 feet in width. The new bridge was at least 60 feet in width; and it was plain that it overlapped on each side a portion of the plaintiff's land, and that at the points where the piers were placed, definite portions of the plaintiff's land had been taken by the defendants.

The new bridge could not be considered a work of repair which could be undertaken by the corporations without a preliminary by-law.

The plaintiff's access to the highway was completely cut off.

In the absence of a by-law and expropriation proceedings initiated by the defendants, who had entered upon and taken the plaintiff's land, the plaintiff was entitled to maintain this action, and was not confined to the remedy under sec. 325 of the Municipal Act, as the defendants urged.

Both defendants joined in the construction of the bridge; and both were liable to the plaintiff.

Reference to Norton on Deeds, ed. of 1906, pp. 56, 117, 118, 119, 242, 246; Pratt v. City of Stratford (1887-8), 14 O.R. 260, 16 A.R. 5; Taylor v. Gage (1913), 30 O.L.R. 75, 84, 85; Twin City Ice Co. v. City of Ottawa (1915), 34 O.L.R. 358; Eastwood v. Ashton, [1915] A.C. 900, 906; Tweedie v. The King (1915), 52 S.C.R. 197, 212; and other cases.

Judgment for the plaintiff with costs. Reference to the Master at Ottawa to determine the damages, unless the parties agree upon some other course.