

shown on the Government plan of survey as River Lot 8, and had been so for some years previously. McDougall's rights as a "squatter" under The Dominion Lands Act, R. S. C. (1886) c. 54, s. 33, were recognized by the Government, and he was given a right to purchase the lot outright at \$1 an acre. He exercised this right and a patent was eventually issued to him on the 30th September, 1889. It appeared that at the date of the survey there were two well defined trails crossing the lot, and that both had been used as public roads for a period of more than twenty years previous to the attempted closing by McDougall's successor in title of the trail in question, in this action—the southerly trail of the two above mentioned. Per Scott, J.:—The fact that the patentee before the issue of patent never interfered with the user by the public of the trails crossing the lot, or that he permitted such user, would not constitute an implied dedication by him of such trails as highways. Having no legal right or title of occupation, he was not in a position to prevent such user, and it would be unreasonable to hold that a dedication should be implied as against him merely because he permitted an act to be done which he was powerless to prevent. The patent contained the following words: "Reserving thereout the public road or trail one chain in width crossing the said lot." Scott, J., held, that this reservation was not void for uncertainty, but that the defendants, upon whom the onus of proof lay, had failed to show that the trail in question was one of the two trails which was intended by the reservation. In the year 1894 the defendant municipality expropriated a part of River Lot 8. McDougall was then the owner of the por-

tion expropriated. The plaintiff represented McDougall on the arbitration proceedings. Upon the arbitration it was material that the arbitrators in order to arrive at the amount of the compensation should ascertain whether the trail in question was a highway. His counsel contended that it was a highway. The award found that it was a highway. Scott J., held, that the plaintiff was estopped from denying that the trail in question was a highway. On appeal, Richardson and Wetmore, JJ., held, that taking into account all the facts, and applying the principles laid down in *Turner v. Walsh*, 50 L. J. P. C. 55; 6 App. Cas. 636; 45 L. T. 50, a dedication of the trail in question ought to be presumed and on this ground agreed in dismissing the appeal. Reversed on appeal to the S. C. of Canada, 28 S. C. R. 501. Rouleau, J., dissented, and was of opinion that the appeal should be allowed. Section 509 of the Judicature Ordinance, 1893, provides, amongst other things, that the Court on appeal "shall have power to draw inferences of fact, and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require." Per Wetmore, J.:—The exercise of these powers I conceive to be discretionary with the Court, and possibly the Court ought not to find facts not found by the trial Judge, unless they are clearly established by the evidence or the weight of testimony is manifestly in favour of the finding. Where such is the case, however, I am of opinion that the Legislature intends that this Court shall dispose of the case without sending it back for a new trial. *Heinmick v. The Town of Edmonton*. (Ct. 1897), p. 462.