

The action was tried without a jury at Toronto.

C. W. Bell and W. Morrison, for the plaintiff corporation.

B. N. Davis, for the defendant.

MIDDLETON, J., in a written judgment, set out the facts and referred to surveys, plans, and conveyances. Plan 47, registered on the 28th October, 1869, shewed the street now known as Maple avenue as running to the water's edge. Statute labour was done, not only upon the Lake Shore road and Maple avenue, but upon the road where it ran down the bank and to the water's edge. This road had, long before the plan was made, been used by the public as a means of access to the beach and to the water. The land was laid out by the owner as part of Maple avenue, upon registered plan 47; and, as the evidence disclosed sales according to this plan, the land in question became a public highway.

The original enactment, which is now sec. 44 of the Surveys Act, R.S.O. 1914 ch. 166, did not apply to townships at the date of the plan; but, when the statute was amended so as to apply to townships, the amendment was retroactive in its effect—all roads which had been laid out in the way described were declared to be public highways; and, under sec. 433 of the Municipal Act, R.S.O. 1914 ch. 192, had become vested in the municipality.

Judgment for the plaintiff corporation, with costs, declaring that the land in question is a highway and directing the defendant to remove his building therefrom.

MIDDLETON, J.

MAY 15TH, 1917.

TOWN OF BURLINGTON v. COLEMAN (No. 2).

Vendor and Purchaser—Agreement for Sale of Land to Municipal Corporation—Action by Corporation for Specific Performance—Defence—Representation as to Formation of Public Park—Resolution of Municipal Council—Costs.

Action for specific performance of an agreement under seal, dated the 14th June, 1912, whereby the defendant covenanted and agreed to convey to the Municipal Corporation of the Town of Burlington, the plaintiff, land in the town fronting upon the lake and lying between Water street and the lake, to enable the plaintiff corporation to complete arrangements with the Dominion Government for the construction of a sea-wall.