

could have no right to do it in an offensive or insulting manner, no right to wound as they did, and plainly intended to do. Judgment for \$10 damages, and to erase within 15 days from judgment the resolution of the 9th October, 1880, and to pay the costs of this action.

J. B. Lafleur for plaintiff.

R. & L. Laflamme for defendants.

COURT OF QUEEN'S BENCH.

MONTREAL, NOV. 29, 1881.

DORION, C.J., RAMSAY, TESSIER, CROSS & BABY, JJ.
WHITMAN (plff. below), Appellant, and THE CORPORATION OF THE TOWNSHIP OF STANBRIDGE (def. below), Respondent.

Municipal Code—Front Road—Obligation to fence.

The fences separating a front road from adjacent lands are not part of the road, to be constructed at the cost of the municipality.

The action was brought by the appellant in the Circuit Court for the district of Bedford, alleging that the respondents had illegally opened a road across appellant's land and had neglected to fence it, whereby the appellant was injured, and put to expense in fencing his land.

The respondents pleaded that the road opened was a front road, and that they were under no obligation to make the fences.

The final judgment in the Court below was rendered by Dunkin, J., dismissing the action for the following reasons:

"Considering that it is sufficiently established in evidence that the road in the declaration mentioned, and by reason of the making of which the plaintiff was put to the expense of fences, which by this suit he seeks to recover from the municipality defendant, was duly established as a front road in respect of the lots thereby traversed, and notably of the land of the plaintiff here in question, and that at the time here in question the same was, and that it is such front road;

"And considering that the fences along such front road upon the said plaintiff's land were, and are consequently by law, a charge, not upon the municipality defendant, but altogether upon the plaintiff, and that the municipality defendant has in the premises in no wise wronged him the plaintiff."

The majority of the Court held that the judg-

ment should be affirmed. The following dissentient opinion was delivered by

RAMSAY, J. This case brings up a question which, so far as I know, is novel, and it is in contradiction to opinions generally received, which, however, seem to me to be unfounded. It will, therefore, be necessary for me to explain, with some precision, the grounds of my dissent from the judgment about to be rendered.

The appellant sued the respondent for the cost of fences which he had been obliged to put up owing to the opening of a front road across his land, and for damages arising from the failure of respondent to put up such fences. By the Municipal Code, the local municipalities (save three) in five counties support all the cost of municipal roads and bridges in the municipality. Art. 1080. "In the municipality of the town of Sherbrooke, in the local municipalities of the counties of Compton, Stanstead, Brome, Missisquoi, Huntingdon and Richmond, excluding therefrom the municipality of St. George of Windsor, and in those of the county of Shefford, excluding the municipalities of Milton and Roxton, all works on municipal roads and bridges are executed at the expense of the corporation, in the same manner as if a by-law was passed to that end under Art. 535." This is, in effect, to establish for these places a system of road-making diametrically the reverse, in every particular, of the general law on the subject. I understand that this is not denied by the majority of the Court; but that it is contended the fences are not a part of the road. And here, it seems to me, the error begins. It is perfectly true that the common law of the Custom of Paris, in rural parts, did not oblige the construction of fences, and if that law had remained unchanged I should have concurred in the judgment of the Court. But this rule has been totally changed. The change began, in the first place, by the usages of the country, owing, probably, in great measure, to the abundance of wood. The deeds of concession made the construction of fences a contractual obligation, and one so general as to be a common, if not a common law obligation. So much was this the case that the Agricultural Act treated fencing as a common law obligation, similar to boundaries. Without question or hesitation, the Civil Code adopted this, Art. 506: "Every proprietor may