

As the law stood down to the passing of the Municipal Act of 1913, 3 & 4 Geo. V. ch. 43, Pine street was vested in the Corporation of Woodbridge subject to the right of the mill-owner to maintain the raceway. The law previously applicable was contained in sec. 601 of the Municipal Act of 1903, 3 Edw. VII. ch. 19, which provided that "every public road, street, bridge or other highway in a city, township, town or village, except . . . shall be vested in the municipality, subject to any rights in the soil reserved by the person who laid out such road, street, bridge or highway." The effect of this section was to vest not merely the surface but the freehold as well, subject to any rights reserved by the person who laid out the highway: *Roche v. Ryan* (1892), 22 O.R. 107; *Cotton v. City of Vancouver* (1906), 12 B.C.R. 497.

But sec. 433 of the Act of 1913 provides that the soil and freehold of every highway shall be vested in the corporation or corporations of the municipality or municipalities the council or councils of which for the time being have jurisdiction over it under the provisions of the Act (sec. 433); and, by sec. 432, all roads dedicated by the owner of land to public use are declared to be common and public highways.

There is no escape from the conclusion that the effect of this legislation and of the repeal of 3 Edw. VII. ch. 19, which was concurrent with it, is to remove the qualification to which under that Act the vesting of the highways was subject, and to vest absolutely and without qualification the soil and freehold of them in the municipal corporations. The respondent's action therefore failed.

The appeal should be allowed without costs, and the action dismissed without costs.

MACLAREN, MAGEE, and HODGINS, J.J.A., concurred.

MIDDLETON, J., read a dissenting judgment. He was of opinion that full effect could be given to the words of the statute as it now stands by confining their operation to vesting in the municipality the title which had been conveyed subject to all existing reservations.

*Appeal allowed (MIDDLETON, J., dissenting)*