

structing, maintaining, etc., of any new or existing highway, road, street, sidewalk, crossing, alley, lane, bridge, or other communication within the township, etc.

It cannot be said, however, that the 50-foot road established by the plaintiffs is an original road allowance, or that it was an "existing highway" prior to the passing of the by-law. What the Act of 1855 (18 Vict. ch. 156) declared was, that the allowances for roads as laid out and established by the original survey (that made by Jones) should be and were thereby declared to be the true and unalterable allowances for roads. It did not give authority to establish roads not laid out or established by the original survey. DeCew was unable to say where the road allowance through lot 9 was to be found (if, indeed, such allowance was really made by the original survey), and the uncertainty which existed in that respect prior to the passing of the Act was not removed by his exhaustive and careful survey and report. The location of this roadway along the south side of the lot rests, therefore, not on the original survey, but on the action of the plaintiffs under their general statutory powers to pass by-laws to open any new or existing road. The evident intention of the council was, that, such a roadway being necessary, and provision having been made for it in some part of the lot, and Durham, the owner of part of the lot, having petitioned to that effect, the southerly 50 feet of the lot should, so far as they were concerned, be established as a public highway and thereafter be recognised as such. Subsequent action of the plaintiffs in requiring persons occupying the land comprised in this roadway to vacate, and in refusing Durham's request in 1860 to have the road placed at the north side instead of the south side of the lot, and the recognition of the roadway by Durham, implied from his making that request, are all consistent with an intention to continue this as a roadway. The time that the brush fence was built a short distance to the north of the south limit of the lot (4 or 5 years after the survey) coincides generally with the time of the plaintiff's refusal to allow the location of the road to be changed from the south to the north.

The plaintiffs' by-law of the 10th March, 1913, in express terms declared the lands therein described (that is, the southerly 66 feet in width for the whole length of the lot) to be a public highway, and that it should be opened for the use of the public. It was not a case of establishing a new road—the by-law does not mean that—but of declaring that a public highway did already exist, and that it should then be opened. It operated only