

*animus dedicandi* of which the user by the public is evidence and no more; and a single act of interruption by the owner is of much more weight upon a question of intention than many acts of enjoyment."

There was for many years a line of road running through private property; the road ran from Dundas street to Weston, as does the road established by the by-law of the Township of York, but unlike the road established by the township, the whole of which runs through the township, this old road ran partly in the township and partly (the greater part) in the township of Etobicoke. The old road as well as the new ran across lots 6, 7, 8, & 9, in York; lots 7 & 8 are those comprised in the plaintiff's mortgage. The whole line of the old road ran through the property of Mr. John Scarlett, the father of the mortgagor, with the exception of one lot adjoining the village of Weston. This old road was in existence some forty years ago, and has been used by the public ever since, unless discontinued upon the opening of the new road; but though used by the public it is evident that such user was permissive only and with a continuous claim of ownership by Mr. Scarlett. Mr. Scarlett had several sons, four at any rate, and appears to have apportioned the greater part of his large property among those sons from time to time; without, however, at first giving them title; and retaining the control of the road throughout the whole of the property until at all events, he gave them title. He placed his son, the mortgagor, upon lots 7 & 8 some twenty years ago, and afterwards did considerable work in planking and in excavation upon the part of the road running through those lots. When he gave him a title to them does not appear. The mortgage was made in November, 1860, and it may be assumed to have been before that time. According to the evidence of Mr. Wm. Gamble, who knew the road intimately from 1835 to 1859 a toll-gate was placed upon the road by Mr. Scarlett, the father, about 1854 or 1855; before that Mr. Gamble says the road was always a private road for Mr. Scarlett, the father, and for his sons; and that the public were absolutely excluded as Mr. Gamble explains, for he says that when he first knew it it was travelled by the public, but he adds that Mr. Scarlett would not let them go through unless it served his purposes; and he says, "I know of my own knowledge that he stopped people on it and sometimes turned them back;" and he adds that there were gates across the road as far back as he can remember to prevent cattle from straying along the road, and that these gates also prevented people from travelling along the road. Another gentleman speaks of the toll-gate as put up at a much earlier date, he thinks about 1843, and and he is probably right, as he compounded with Mr. Scarlett for the toll.

The date of the erection of the toll-gate is not material. The first gate in York was on lot 8, it was afterwards removed to lot 9. Several witnesses were examined: they differ somewhat as to dates, and as to some minor circumstances. They certainly do not prove any dedication by Mr. Scarlett, the father; their evidence upon the whole is quite against it, and I hardly think it can be seriously contended that there was any dedication by him. But it is contended that

ever since the removal of the toll-gate from lot 8 some fifteen or twenty years ago, the son, the mortgagor, has allowed the public the undisturbed use of a line of road through his property; and that this is evidence of an intention to dedicate. What would be the proper view, if this were not part of a line upon which toll was being actually collected, it is not necessary to say; but the fact of its being a part of such line makes it impossible to regard it as dedicated. As long as the title remained in the father, and as long as he retained control over the line, he took toll for passing along the whole line, and he certainly dedicated no part of it. When the mortgagor acquired title is not shewn. It may have been any time before November, 1860; but suppose it to have been at an earlier date, and that he had a right to close the line; and allowed its use by the public, still the character of his conduct would be not that of a dedication to the public, but of permitting the line to continue to run through his land as a feeder to the rest of the line. There is no room to infer an *animus dedicandi* from such a course of conduct.

As further evidence against dedication, is the fact that this line of road had been kept in repair by the proprietors of the road and that no public money or labor was expended upon it, a fact that was commented upon as against the fact of dedication by Lord Denman in *Davies v. Stephens*, 7 C. & P. 571.

I may add that in a new country like Canada it would never do to admit user by the public too readily as evidence of an intention to dedicate. Such user is very generally permissive, and allowed in a neighbourly spirit, by reason of access to market or from one part of a township to another, being more easy than by the regular line of road. Such user may go on for a number of years with nothing further from the mind of the owner of the land, or the minds of those using it as a line of road, than that the rights of the owner should be thereby affected.

I have dealt with the question of dedication, though I doubt very much whether it was open to the township to raise it. If upon the award being made the sum awarded was impressed with a trust in favor of the mortgagee, I should incline to think that the township could not go behind the award; but this point was not raised by the plaintiff's counsel: and I have thought it better to dispose of the question of dedication as well as of the question of title to the money awarded.

A question was made as to the *quantum* to which the plaintiff is entitled, supposing him to be entitled to something. The sum awarded appears to have been, partly in respect of the value of the land taken, simply as so much land at so much per acre, and partly by way of compensation for road work, excavation and planking done upon the line of road; and it is contended that the mortgagee is only entitled to the former. I do not agree in this. In the first place, the evidence leads me to think that the planking and excavation were the work of Scarlett, the father, and consequently upon the land at the date of the plaintiff's mortgage; but if not so, the mortgagee is entitled not to the bare land merely, or to the land as it stood at the date of the mortgage, but also to any improvements made by the mortgagor since; to the