

and between the respective gores of the townships, and that such allowance is upon the boundary line between the townships.

The questions upon the appeal were, whether there is a common and public highway between the townships, and if there is, where located.

These questions arise now more than a century after the supposed erection of the highway, and when no proof of any work on the ground can be obtained to aid in their determination.

The appeal was heard before ARMOUR, C.J.O., OSLER, MACLENNAN, MOSS, JJ.A.

D. B. Maclellan, K.C., and E. H. Tiffany, Alexandria, for plaintiffs.

J. Leitch, K.C., and C. G. O'Brian, L'Original, for defendants.

MOSS, J.A. :—There are now no traces of the actual work upon the ground in the course of the original surveys. The finding as to the existence or not of an original allowance for road on the boundary between East Hawkesbury and Lochiel must depend upon the records in the department of Crown lands, and the proper inferences to be drawn from what is to be there found, taken in connection with the dealings of the department with the lands affected by them. And I think that it ought to be assumed, in the absence of evidence to the contrary, that in providing for and directing the survey of the townships in question, the department did not intend to depart from the usual practice in regard to surveys or to introduce any special or extraordinary features into it. So far as the instructions to Wm. Fortune to survey Hawkesbury can be gathered from the records, it appears that he was directed to conform to the general instructions already in his possession.

There is little reason for doubting that these embraced copies of such of the rules and regulations for the conduct of the land office department as pertained to the form and dimensions of townships, and that Fortune was well aware of the requirements applicable to laying out a township, whether situate on a river, as Hawkesbury was, or otherwise.

It seems clear that the invariable practice of the department, and of surveyors making surveys under the direction of the department, was to leave an allowance for a road between adjoining townships.