

LENNOX, J.

MAY 13TH, 1913.

LARCHER v. TOWN OF SUDBURY.

*Highway—Establishment of—Dedication—Acceptance — Municipal Action—Subsequent Registration of Plan not Shewing Highway—Approval of Council—Estoppel—Surrender or Closing of Street—Land Titles Act, R.S.O. 1897 ch. 138, secs. 26, 109, 110—Municipal Act, 1903, secs. 29, 630, 632—Costs.*

Action for trespass to land claimed by the plaintiff as his, but asserted by the defendants to be part of a highway.

A. Lemieux, K.C., for the plaintiff.

G. E. Buchanan, for the defendants.

LENNOX, J.:—The land in dispute in this action is part of the west half of lot 4 in the 4th concession of the township of McKim, in the district of Nipissing. This half lot, 160 acres, was patented to Samuel Robillard on the 19th May, 1893, and is now within the limits of the town of Sudbury. Robillard was in rightful possession as locatee from 1887 or 1888, and made his final payment to the Crown on the 15th April, 1893. . . . Before the patent, Robillard determined to subdivide; and, in selling to Edward Dubreuel and Edward Dubreuel junior, he agreed to open a public road, where the road in dispute is now, connecting what is now Murray street with the portion of the said half lot lying north and east of the Junction creek. Thereupon the Dubreuels entered into possession of their respective parcels, the road was opened, a bridge built by Robillard and Edward Dubreuel the younger; and the elder Dubreuel, as owner of the land now owned by the plaintiff, defined the limit of the roadway and of his own land, as the same is now contended for by the defendants, by erecting a brush fence between his property and the roadway as it was then recognised by all parties interested, from near the south-easterly corner of the bridge, curving south-westerly until it intersected the easterly boundary of Murray street as it now is. It has been satisfactorily established that this brush fence was replaced by a better one, and this again by a post and wire fence; all built by Dubreuel the elder. These posts are there yet, and they marked an undisputed easterly boundary of the defendants' alleged highway until the plaintiff attempted to extend his boundary westward by building a fence along the eastern