

FALCONBRIDGE, C.J.

FEBRUARY 5TH, 1909.

TRIAL.

YOUNG v. BELYEA.

*Way — Private Way — Easement — Boundaries of Land —
Injunction—Buildings.*

Action for a declaration of plaintiffs' right to a way and for an injunction restraining the defendant from interfering with plaintiffs' user of it. Counterclaim for an injunction restraining plaintiffs from interfering with defendant's erections.

George Kerr, for plaintiffs.

G. C. Campbell, for defendant.

FALCONBRIDGE, C.J.:—The authorities cited by Mr. Kerr refer to cases where a lot or close has been granted by a certain name, and it can be clearly shewn what land the lot or close so named contains. Then the lot as named is the governing feature, notwithstanding any erroneous description which, if literally carried out, would narrow or extend the quantity of land. Here the grant to plaintiffs is of part of lot 51, according to a plan, and particularly described by metes and bounds. So, too, is the grant to the defendant, and this entirely distinguishes the cases cited. I am unable to see that the situation of affairs on the ground at the time of the grant has any bearing on the subject. No right has been gained by the plaintiffs as of an easement or otherwise, and so defendant had a right to build his fence out to the north to the 100-foot limit. As to the easterly boundary, it is proved beyond question that defendant put the posts for his new fence into the old post-holes, and, according to the plan produced by plaintiffs, defendant is within the metes and bounds of his description.

The action will be dismissed with costs.

Defendant will have judgment with costs on the counterclaim for an injunction restraining the plaintiffs, their servants, &c., from destroying or breaking or interfering with defendant's house and fences.