

FIRST DIVISIONAL COURT.

JANUARY 27TH, 1919.

*ABELL v. VILLAGE OF WOODBRIDGE AND COUNTY OF YORK.

Highway—Dedication of Land as Public Highway Subject to Right of Land-owner to Maintain Raceway under it—Municipal Act, 1913, secs. 432, 433—Repeal of sec. 601 of Municipal Act, 1903—Effect of—Removal of Qualification—Soil and Freehold of Highways Vested absolutely in Municipal Corporations.

An appeal by the defendants from the judgment of MASTEN, J., 39 O.L.R. 382, 12 O.W.N. 146.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A., and MIDDLETON, J.

O. L. Lewis, K.C., and C. W. Plaxton, for the appellants the Corporation of the County of York.

W. A. Skeans, for the appellants the Corporation of the Village of Woodbridge.

J. H. Moss, K.C., and W. Lawr, for the plaintiff, the respondent.

MEREDITH, C.J.O., read a judgment in which he said that the contest was as to the right of the respondent to maintain a raceway, in connection with his mill-property, under the surface of a highway called Pine street, in the village of Woodbridge.

At the trial there was nothing to shew the origin of the highway; and Masten, J., presumed a lost grant of an easement to which the highway was subject.

Since the argument, the Court had been put in possession of documentary evidence from which the origin of the highway was satisfactorily shewn.

The inference to be drawn from these documents was, that what is now Pine street was originally a road leading to the mill of one Burr, a predecessor in title of the respondent, and that the raceway crossed this road. In the progress of time, the road became, by reason of its use by the public, with the permission of the owner of the mill-property, a public highway by dedication, and the road as dedicated was subject to the right of the mill-owner to maintain the raceway. It was unnecessary to determine whether this right was an easement or whether the land occupied by the raceway was the property of the mill-owner subject to the public right of passage over it.

* This case and all others so marked to be reported in the Ontario Law Reports.