

SECOND DIVISIONAL COURT.

NOVEMBER 17TH, 1916.

BILLINGS v. CITY OF OTTAWA AND COUNTY OF
CARLETON.

Municipal Corporations—Erection of Bridge—Trespass upon Land of Private Owner—Onus—Evidence — Failure to Establish Title as to any Part of 66 Feet Strip—Extension of Pier beyond Strip — Encroachment — Compensation — Deprivation of Access to Highway—Absence of Expropriation Proceedings—Right of Action—Remedy under sec. 325 of Municipal Act, R.S.O. 1914 ch. 192—Arbitration—Costs—Appeal.

Appeals by the defendants from the judgment of SUTHERLAND, J., 10 O.W.N. 450.

The appeals were heard by MEREDITH, C.J.C.P., RIDDELL, MIDDLETON, and MASTEN, JJ.

F. B. Proctor, for the appellants the city corporation.

J. E. Caldwell, for the appellants the county corporation.

D. J. McDougal, for the plaintiff, respondent.

MEREDITH, C.J.C.P., in a written judgment, said that the action was one substantially for trespass to lands—the act complained of was the building of a bridge as part of a public highway. It was admitted that the bridge was built in part upon the highway; but the plaintiff contended that its piers were about three times the width of the highway, and that to the extent of that excessive width it was upon his land; the defendants' contention being that the highway was really one of the usual width of 66 feet, and that the bridge was in all respects well within the highway except to the extent of a few feet of one of its piers admittedly extending beyond the 66 feet line.

The onus of proof was upon the plaintiff: he must prove that his land had been invaded; and it was enough to defeat the substantial part of his claim to say that he had not proved title to any part of the 66 feet strip—nor to anything but land out of which was excepted the highway in question.

The defendants must pay for the land taken by them beyond the 66 feet line: this they could have expropriated; if the parties cannot agree upon a sum as compensation, it may be fixed by the proper local officer.

A minor claim was made by the plaintiff for compensation for the deprivation of some right of access from the highway to