

anything actually done under this by-law, I should hold the by-law good, and, in the absence of the clearest proof to the contrary, the presumption that the necessary formalities were complied with should prevail.

The plaintiff's difficulty is that, even if by-law good, the road, as now contended for, was not in fact established.

No land above lots 14 and 15 in the 6th concession was taken by the council, nor was there compensation paid, or arbitration in reference to any land north of these lots. It has not been proved that any highway, as now claimed, was established under the by-law mentioned or otherwise. No dedication to the public of this land for a highway.

The road as now claimed is not in fact either in the line as laid down in the by-law, nor is it now as travelled and used when, or shortly after, the by-law was passed.

A very little statute labour was done on a piece still further north on defendant Andrews's land, which, it is contended, is a continuation of the road—but no statute labour has been done upon or near the place where the obstructions have been placed.

The statute labour actually permitted by the council was so insignificant in amount and performed under such circumstances as would not, in my opinion, weigh in establishing a highway.

No useful purpose will be served by my reviewing the evidence, which was given at considerable length, or by reference to the many cases cited. The case was very fully presented and very ably argued. I have come to the conclusion that a highway has not been established across defendant's land. It certainly would not be a matter of regret if I could see my way, upon the law and evidence, to give to plaintiff a road to his land, tilled and used under great disadvantage in a remote and rough part of the country. Plaintiff and defendant Adam Andrews are brothers. The land required from defendant to give to plaintiff the much needed road is of comparatively little value, and yet, because of an unfortunate bad feeling between these brothers, this expensive litigation resulted. I am of opinion that an attempt by the council to settle this difficulty would have been successful, and that it could have been settled at comparatively little expense, and that, in view of the previous action of the council, an attempt under the circumstances would have been justifiable.

Considering all the circumstances, the action should be dismissed without costs, and there should be no costs to either defendant from the other, or from plaintiff, upon the third party notice or proceeding.