

MIDDLETON, J.

MARCH 22ND, 1913.

PEAKE v. MITCHELL.

MITCHELL v. PEAKE.

*Highway—Dedication—Unregistered Plan—Lots Sold or Leased according to Plan—Registry Act—Substitution and Registration of New Plan—Consent—Location of Fences—Lands inside and outside of Town Limits—Access to Lands—Obstruction—Injunction.*

The first action was brought by Margaret Peake, the owner of lot 162 on plan 73A, for a declaration with respect to her rights upon Victoria Terrace and with respect to certain other streets shewn upon the plan, and for a mandatory order directing the removal of certain fences, and for an injunction.

The second action was brought by the defendant in the first action against L. C. Peake, husband of Margaret Peake, for damages for trespassing upon the lands claimed by the plaintiff and for an injunction.

In 1887, certain lots in the town of Niagara-on-the-Lake, and a large parcel, of irregular shape, immediately west thereof, were conveyed to the Niagara Assembly. This parcel had an extensive frontage on the south shore of Lake Ontario, and was intersected by an inlet, called Lansdowne Lake, and by a ravine. The whole tract of land was subdivided into small lots. An amphitheatre was located in the centre of the western portion, and was surrounded by a circular street called the Chatauqua Amphitheatre. From this circle radiated a number of avenues on which sites for cottages fronted; and along the entire lake front, both east and west of Lansdowne Lake, Victoria Terrace was laid out.

The plan was not registered; but a number of lots, fronting on different avenues, were leased for 99 years; none of the leases were registered.

J. A. Paterson, K.C., for the plaintiff in the first action and the defendant in the second.

E. D. Armour, K.C., and C. P. Smith, for the defendant in the first action and the plaintiff in the second.

MIDDLETON, J. (after setting out the facts and the dealings with the property by mortgagees and a purchasing syndicate):  
—The first and most important question is the right of Mrs.