

The statements in the affidavits filed being conflicting, oral evidence was taken at the Picton sittings (see Rule 606.)

E. G. Porter, K.C., for the applicant.

E. M. Young, for the township corporation.

MIDDLETON, J., in a written opinion, said that the sole question raised was, whether there had been any dedication of the way in question. He then discussed the evidence as to dedication, and said that for half a century or more the road had been freely used by the public, though there were isolated periods when it was obstructed. Quite recently, the applicant erected a framing for a shed, obstructing the use of the road. The council, asserting that there had been dedication, removed this framing on the authority of the resolution now attacked, which, being under seal, was equivalent to a by-law. The applicant, denying the right of the municipality, refused to participate in the removal, and the timbers placed upon the way were drawn to an adjacent lot. There was some evidence that statute-labour was performed upon this way; but it was insufficient to bring the case within sec. 432 of the Municipal Act, R.S.O. 1914 ch. 192, for it could not be said that statute-labour was usually performed upon the road.

However, the conduct of the owners from time to time amounted to a dedication, or intention to dedicate. "If the owner of the soil throws open a passage, and neither marks by any visible distinction, that he means to preserve all his rights over it, nor excludes persons from passing through it by positive prohibition, he shall be presumed to have dedicated it to the public." *Rex v. Lloyd* (1808), 1 Camp. 260, 262.

In Ontario, as the highway is vested in the municipality, it is necessary to find an assent on the part of the municipality to the dedication; that may be presumed from the expenditure of public money upon the road, but it may be shewn in other ways; and the resolution (under seal) amounts to an unqualified acceptance.

The situs of the road is sufficiently indicated by the grading done by the municipality.

Motion dismissed, and with costs, unless waived by the municipality.