

The appeal should be allowed on this point, with costs throughout.

The plaintiff was entitled to recover any balance of wages due to him after the contract for wages was definitely made. Should counsel not be able to agree upon the amount, there should be a reference to the Local Registrar to take the accounts and determine what amount, if any, was due; the costs of the reference, if had, should be in the discretion of the Registrar; there should be no other costs on this branch of the case.

*Judgment accordingly.*

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SECOND DIVISIONAL COURT.

MARCH 26TH, 1920.

HOSTETTER v. TOWNSHIP OF GRANTHAM.

*Highway—Road Laid out and Opened in Place of Original Road-allowance—Municipal Act, R.S.O. 1914 ch. 192, sec. 493—Land-owner—Private Way—Removal of Gate by Township Corporation — Public Highway — Evidence — Counterclaim — Striking out, with Leave to Bring Action for Relief Claimed.*

Appeal by the defendants from the judgment of FALCONBRIDGE, C.J.K.B., 17 O.W.N. 218.

The appeal was heard by MULOCK, C.J. Ex., CLUTE, RIDDELL, and MASTEN, JJ.

A. C. Kingstone, for the appellants.

H. H. Collier, K.C., for the plaintiff, respondent.

RIDDELL, J., reading the judgment of the Court, said that the township of Grantham was surveyed and laid out before the end of the 18th century; the usual reservations for roads were made, amongst them a side-road between lots 22 and 23, concession 10, running across the township from north to south, and a concession-road between concessions 9 and 10. The original road-allowance between the two lots would cost a large sum to open, and it had in fact not been opened through, and the concession-road at this point was in the same case. For many years the Pelham road had been used; it was not on the original road-allowances, but answered the same purposes as would be answered by them if they were opened and passable.

The plaintiff, the owner of lots 22 and 23 or parts thereof, and her predecessors in title, had sometimes kept a gate at the point E.