

That it cannot be used by the defendants as incident to their ownership of lot 2 is, I think, established by authority: *Purdom v. Robinson*, 30 S.C.R. 64, and cases there cited.

Entertaining this view, I have not thought it necessary to consider the proposition put forward, that Lamb, the assignee of Hill, was a necessary party to any conveyance by Hill made after the time of his assignment.

Judgment will be in favour of the plaintiffs in accordance with the above findings, and for \$5 damages and costs.

KELLY, J.

FEBRUARY 12TH, 1914.

TOWNSHIP OF NIAGARA v. FISHER.

Highway—Municipal By-law Opening up Road Allowance—12 Vict. ch. 81, sec. 31—18 Vict. ch. 156—New or Existing Highway—Intention to Continue—Rights of Persons in Possession—Railway—Injunction.

Action for an injunction restraining the defendants from obstructing what the plaintiffs asserted was a road allowance running between lots 8 and 9 in the township of Niagara, extending from the Queenston and Niagara road to the west limit of the road allowance between the 1st and 2nd concessions; for delivery of possession of the locus by the defendants the Fishers; for an injunction restraining the defendants the Michigan Central Railroad Company from continuing to maintain their fences across the alleged road allowance; for a mandatory order requiring them to remove their fences; and for a declaration that the road allowance was a public highway.

A. C. Kingstone, for the plaintiffs.

E. D. Armour, K.C., and F. C. McBurney, for the defendants the Fishers.

D. W. Saunders, K.C., for the defendant company.

KELLY, J. (after stating the facts and the history of the locus):—On the 10th March, 1913, the plaintiffs passed a by-law declaring that certain lands in the township of Niagara, "being composed of the road allowance between lots numbers 8 and 9 in the 1st concession of the said township," describing the