

highway or compel defendant corporation to provide access to plaintiff's land.

J. A. Allan, Perth, and J. E. Thompson, Arnprior, for plaintiff.

J. T. Kirkland, Almonte, and W. H. Stafford, Almonte, for defendant corporation.

A. M. Greig, Almonte, and J. M. Rogers, Perth, for defendant Adam Andrews.

BRITTON, J.—Plaintiff owns lot 15 and the south half of lot 16 in the 5th concession of Pakenham; and the original road allowances leading up to and giving access to this land are not now, and never have been, open to the public for travel. The physical difficulties are so great, owing to the country in the vicinity of this land being rocky and swampy, that to open the original road allowances is practically impossible.

The defendant Adam Andrews owns lots 15 and 16 in the 6th concession of the same township.

As long ago as 2nd October, 1875, the defendant corporation passed a by-law to establish a road across lots 12, 13, and 14 in the 7th concession, 14, 15, and 16 in the 6th concession, and lot 16 in the 5th concession, and the township opened and established a road, if not upon, near to, and apparently intended to be upon, the line across lots 12, 13, and 14 in the 7th concession and lot 14 in the 6th concession, but the question now is as to any public highway across 15 and 16 in the 6th concession. These lots belong to the defendant Andrews, and he has erected fences and gates at certain points on what plaintiff calls the highway.

The defendants say the by-law is bad. If the council had acted upon the by-law as to this part of what is called the highway, and if it had been travelled as such, the council and ratepayers regarding it as a highway, I would at this distance of time be very loth to pronounce the by-law bad merely because formalities required for its passing had not been complied with. The clerk says the notices required were not correctly given. There were four publications of the notice in one newspaper in the county, viz., 23rd and 30th July, and 6th and 13th August, but the notice was of a by-law to be passed on the 7th August, so there were only 3 publications of this notice before the date named. The by-law was not in fact passed until 2nd October, 1875, and there was another newspaper published in the county during that period. There is evidence that persons interested appeared before and were heard by the council—so, as to