

HON. MR. JUSTICE MIDDLETON. NOVEMBER 17TH, 1913.

PIGOTT v. BELL.

5 O. W. N. 314.

*Contract — Opening of Highway — Agreement between Adjoining Owners—Refusal of Municipality to Accept—Agreement at End —No Cloud on Title.*

MIDDLETON, J., held, that where owners of adjoining lands agreed with each other to open up a street across the end of their lands and the municipal corporation in which the said lands were situate refused to accept the same, the agreement was at an end and constituted no cloud upon the title of either owner.

Action tried at Hamilton on the 1st of November, 1913.

G. Lynch-Staunton, K.C., for the plaintiff.

C. W. Bell, for the defendant.

HON. MR. JUSTICE MIDDLETON:—The facts in this case were not disputed. The plaintiff owned a block of land at the corner of Wentworth street and what is now known as Rutherford avenue; having a frontage on Wentworth street of 275 feet by a depth of 320. The defendant owns a parcel of similar dimensions immediately to the north, having its northern boundary on Delaware avenue. South of the plaintiff's land is a tract formerly owned by the Bank of Hamilton, which has been subdivided and sold to numerous persons. This last-named block included Rutherford avenue.

By an agreement of the 9th January, 1909, between the bank, the plaintiff, and the defendant, it was agreed that the bank would, on or before the 1st April, 1909, consent to the strip of land now constituting Rutherford avenue being laid out as a street running easterly from Wentworth street and would make the usual application to the city of Hamilton for its consent; consent being necessary not only as to acceptance of the proposed dedication but because of the narrow width of the street.

The plaintiff then agreed that within two years from the 1st of April, 1909, he would consent to the opening of a street, 50 feet wide, along the easterly side of his parcel of land, extending northerly from the proposed Rutherford avenue across the rear of his parcel, and that he would make the usual application to the city for that purpose; he having the right to a foot reserve on the east side of the proposed