be laid out in cities, towns, and villages, and fronting upon which lots have been sold, should become public highways. See sec. 62, R. S. O. 1887 ch. 152; Roche v. Ryan, 22 O. R. 107; Sklitzsky v. Cranston, ib. 590, 593; and Gooderham v. City of Toronto, 25 S. C. R. 246, 261, 262. I am disposed to hold also, if it were necessary, that the road in question laid out in 1873 has been so used and controlled by the municipality and so abandoned by the owner and his successors in title, as to entitle the defendants to deal with it as they have done. These matters I commented on at the close of the argument.

Judgment is to dismiss the action with one set of costs (and two counsel fees, senior and junior) to the defendants.

BOYD, C. OCTOBER 29TH, 1906.

TRIAL.

CANADIAN OIL FIELDS CO. v. TOWN OF OIL SPRINGS.

Assessment and Taxes—Mineral Lands—Principle of Assessment—Buildings and Plant—Scheme of Assessment Act, 1904—Valuation—Clerical Error.

Action for a declaration that an assessment made upon plaintiffs was illegal, and to restrain defendants from enforcing it.

BOYD, C.:—Sub-section 3 of sec. 36 of the Assessment Act of 1904 (4 Edw. VII. ch. 23 (O.)), is not a novel provision. It has been in force since 1869 (33 Vict. ch. 27, sec. 5), and was then introduced in order to encourage investors in mining and mineral propositions by keeping down the assessable value to that of farming lands. The evidence in this case is that if the actual value of the lands in question as mineral lands was to be the basis of taxation, the burden would be much more onerous than it now stands.

The contention here is briefly this, that it was in the power of the assessing body of the municipality to assess