

tion of the municipality to close a part of the road in question, there is no doubt. These by-laws do not either assist the plaintiff or prejudice him in his contention.

As to the part of the road in which the plaintiff is particularly interested, no action has been taken in any way by the township corporation; and, so far as appears, no person, other than the defendant, has interfered with the plaintiff or those desiring to use the road.

The case of *Dunlop v. Township of York*, 16 Gr. 216 (1869), does not conflict with *Mytton v. Duck*, 26 U.C.R. 61.

It must be accepted as sound reasoning, as stated in *Dunlop v. Township of York*, that in a new part of the country, or over an area of low land where persons would naturally look for the high places over which to travel, user of a road is not to be too readily accepted as evidence of an intention on the part of an owner to dedicate.

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*Frank v. Township of Harwich*, 18 O.R. 344, is in favour of the plaintiff's contention.

Intention to dedicate may be presumed: see Lord Halsbury's *Laws of England*, vol. 6, p. 33.

The Canada Company, grantors of the lands of the defendant, had other lands in the vicinity. The inference is warranted that they knew of this road, and of its user by the public, if not before, very soon after, the grant to them.

If the plaintiff is entitled to maintain this action at all, he is entitled to a declaration that the travelled road across lot 7 is a public highway. The defendant pleads that the plaintiff cannot maintain this action without either the Attorney-General or the Municipal Corporation of the Township of Chatham and North Gore being a party thereto. The plaintiff simply joins issue upon this statement.

The question is, upon the evidence in this case, as laid down in *Drake v. Sault Ste. Marie Pulp and Paper Co.*, 25 A.R. 251, at p. 256, "Can the plaintiff be said to have suffered damage peculiar to himself beyond that suffered by the rest of the public who were also entitled to use the road for any purpose?" I am met at once with the absence of evidence that the plaintiff has suffered damage peculiar to himself beyond that suffered by the