

HON. MR. JUSTICE LENNOX:—The land in dispute in this action is part of the west half of lot 4 in the 4th concession of the township of McKim in the District of Nipissing. This half lot, 160 acres, was patented to Samuel Robillard on the 19th of May, 1893, and is now within the limits of the town of Sudbury. Robillard was in rightful possession as locatee from 1887 or 1888 and made his final payment to the Crown on the 15th of April, 1893. A man named Lavoie contributed one-half of the purchase money and it is said that he got one-half of the 160 acres. Before the patent Robillard determined to subdivide and in selling to Edward Dubreuel and Edward Dubreuel, junior, he agreed to open a public road, where the road in dispute is now, connecting what is now Murray street with the portion of said half lot lying north and east of the Junction Creek. Thereupon the Dubreuels entered into possession of their respective parcels, the road was opened, a bridge built by Robillard and Edward Dubreuel the younger, and the elder Dubreuel, as owner of the land now owned by the plaintiff, defined the limit of the roadway and of his own land, as the same is now contended for by the defendants, by erecting a brush fence between his property and the roadway as it was then recognized by all parties interested, from near the south-easterly corner of the bridge and curving south-westerly until it intersected the westerly boundary of Murray street as it now is. It has been satisfactorily established that this brush fence was replaced by a better one and this again by a post and wire fence; all built by Dubreuel the elder. These posts are there yet, and they marked an undisputed easterly boundary of the defendants' alleged highway until the plaintiff attempted to extend his boundary westward by building a fence along the eastern side of Murray street and cutting off access to the road and bridge in question. This road and the road beyond the bridge was laid out and formed and a connecting bridge built just where the present bridge stands, fully a quarter of a century ago.

The plot of land owned by Dubreuel the elder became the property of Mr. J. H. Clary. He subdivided and filed a plan. That portion of it affecting the issues in this action are lots 6, 8, 7 and 9 now owned by the plaintiff. This plan shewed no road except Murray street touching upon or crossing these lots. It bears this certificate: "Sudbury, July 20th, 1906. The council of the town of Sudbury, three-quarters