

W. M. German, K.C., and H. R. Morwood, for the plaintiffs.  
E. D. Armour, K.C., and G. H. Pettit, for the defendants.

KELLY, J.:—The part of lot 26 owned and occupied by the plaintiffs fronts on Lake Erie.

For at least thirty years prior to June, 1899, there was open for travel a road running southerly, between lot 26 and lot 27, from the concession road, which runs easterly and westwardly, to another road running easterly, known as the Haun road, and which is a considerable distance north of the north line of the plaintiffs' property.

On the 1st June, 1899, the Crystal Beach Steamboat and Ferry Company, the plaintiffs' predecessors in title . . . and a large number of other property-owners and residents in that locality, presented a petition to the defendants, setting forth that "a portion of the Government allowance for road between lots 26 and 27 in the broken front concession, Lake Erie, has not yet been declared open for public travel;" that the petitioners believed "it to be in the public interest to have said road opened from the Haun road to the lake shore;" and the petitioners asked the defendants "to take the steps necessary according to law to make this road allowance a highway." The petition was signed by the Crystal Beach Steamboat and Ferry Company, by their general manager, J. E. Rebstock; and he and the president of the company, with others, attended at a meeting of the defendants' council and urged the granting of the petition. J. E. Rebstock is, and was as early as 1902, a director of the plaintiff company; who acquired their property in June, 1902.

On the 9th September, 1899, the defendants passed a by-law declaring open for public travel "the Government allowance for road from the road known as the Haun road south between lots 26 and 27 broken front, Lake Erie, to the shore of Lake Erie." The land which was so opened for roadway at or adjoining the plaintiffs' land is 25 feet on each side of a fence then existing, which was thought by some to be the boundary line between lots 26 and 27, and which was the dividing line between the property then occupied by the plaintiffs' predecessors . . . and the property to the west thereof. This is the line which the plaintiffs now allege to be the westerly boundary of their property.

The defendants, when opening the road, did not employ a surveyor to fix its location.

Soon after the passing of the by-law, work was commenced