

The road, from the time it was opened, was regularly travelled and used as the highway to and from grist and saw mills in the township of Percy to the south-west of the lot in question, and at Campbellford to the north-east. John Fraser, the locatee of the Crown, and his descendants, have lived upon the lot in question from 1835 to the present time, clearing and cultivating it. They, as well as their neighbours, have done statute labour on the road for upwards of 40 years; the mails have for many years been carried to and from Campbellford along it; money has been granted by the township for its improvement during 1900, 1902, and 1903. In 1900 or 1901 the road through the lot in question was regularly graded, ditched, and partly gravelled, the Frasers assisting in the work.

During all this time the title remained in the Crown. On 23rd June, 1904, however, plaintiff, Charles Fraser, claiming as the successor in title to John Fraser, the original locatee, established his right, to the satisfaction of the Crown, and a patent was issued to him, in which no reservation or mention of any road is made.

Shortly after receiving his patent, plaintiff put a fence across the road at each extremity of his lot, and put up notices forbidding the public to use it, and claiming it as his private property.

The township council passed a resolution thereupon authorizing defendant, the reeve of the township, to remove the fences, which he did, and the present action is brought against him for the alleged trespass committed by him in doing so.

In my opinion, the road in question had become established as a public highway, plaintiff had no right to close it, and defendant, as one of the public, had a right to remove the obstructions and travel upon the road, and is not liable in trespass for having done so.

Plaintiff's contention was that defendant had shewn no dedication by the Crown, and that the acts of the locatee before the patent were not binding upon him after the issue of the patent; that the origin of the road being shewn to be under the order of the Sessions, evidence of user of the public could not be received as evidence of dedication: and that the order of the Sessions was not binding upon the Crown.

I think that the road as laid out by the Sessions appears to have been found unsuitable; at all events, that order was not acted upon; but the present road was laid out upon a different line The whole neighbourhood seems to have concurred in the change, and from the time it was laid out, between 60 and 70 years ago, it has been a recognized, well travelled public highway, connecting locally important