

except as to the middle thread of the old channel in front of their land, 12 chains in length, and therefore plaintiffs should get \$100 and defendants \$6,000 of the money in Court. Costs to defendants, as they succeed substantially.

Watson, Smoke, & Smith, Toronto, solicitors for plaintiffs.

Brewster, Muirhead, & Heyd, Brantford, and A. E. Watts, Brantford, solicitors for respective defendants.

ROBERTSON, J.

JANUARY 22ND, 1902.

TRIAL.

SUTTON v. VILLAGE OF PORT CARLING.

Survey—Re-survey to settle Boundaries—Jurisdiction of Lieutenant-Governor-in-Council to Order—Requisites to Confer—Assessing Cost of re-survey on Owners not Interested.

Re Scott and Peterborough, 26 C. P. 36, applied and followed.

Reg. v. McGugan, 19 C. P. 69, distinguished.

Action brought by certain land-owners to have it declared that certain assessments under by-law No. 48 of defendants are illegal and void, and to quash the by-law, and to enjoin defendants from collecting the several amounts levied against plaintiffs under the by-law. The by-law authorizes the levying of \$290.77 to defray the cost of a Government survey of, and planting durable monuments on, certain parts of the Bailey estate, containing 137 acres, divided into 73 lots and parts of lots, to settle the boundaries. The survey was ordered by the Lieutenant-Governor in council at the request of defendants. The defendant Martin is defendants' tax collector.

R. D. Gunn, Orillia, and T. E. Godson, Bracebridge, for plaintiffs.

C. E. Hewson, Barrie, for defendants.

ROBERTSON, J.—There was not sufficient material sent by defendants' council to warrant the general re-survey that has been made. . . . The whole difficulty could have been gotten over by the surveyor establishing the proper line of Bailey street from Joseph street to the Indian River, at a cost of about \$40. . . . I find that no one of the plaintiffs, except Harris, is interested in the re-survey, which was not necessary to fix their respective boundaries. . . . The case comes within the principles laid down in Re Scott and Peterborough, 26 C. P. 36. . . . I am of opinion that the re-survey was not authorized, the requirements, as I