

A.C. 493; *Regina v. Wright*, 3 B. & Ad. 681; *Regina v. Leake*, 5 B. & Ad. 469; *Roberts v. Hunt*, 15 Q.B. 17; *Regina v. Inhabitants of East Mark* (1848), 11 Q.B. 877, 882; *Rae v. Trim*, 27 Gr. 374; *Baxter v. Taylor* (1832), 4 B. & Ad. 72; *Rex v. Barr* (1814), 4 Camp. 16; *Rugby Charity Trustees v. Merryweather* (1790), 11 East 375 (n.)]

Applying the principles laid down in these cases to the present case, I am of opinion that there was evidence upon which a jury might and ought to find, as the trial Judge did find, a dedication of the road in question. This view is strengthened by the fact that the Municipalities of the Townships of Chatham and Wallaceburg considered it necessary to take proceedings to close portions of this road by by-laws. These were public acts, and shew how the question was regarded by the public, acting through their official representatives.

That this would be admissible as evidence of reputation would appear from the *Barracough* case, *supra*, where it was held that action taken at a public meeting was evidence of reputation, upon an issue as to whether or not certain land was a common highway. The fact that the mail was carried over this road for many years is also cogent evidence.

What also weighs with me in the disposition of this case is the nature of the land through which the road passed. The question should be considered as it existed down to the time when action was taken to drain the lands. The policy of the Legislature was first evidenced by the Drainage Act; and dedication, if it took place at all, was long prior thereto. The case differs, I think, from that of a partially settled country, where roads are used across private property until the authorised public roads are opened; for, in that case, even long user does not always raise a presumption of intention to dedicate on the part of the owner of the lots. Every one knows that, as soon as the roads on the side-lines and between the concessions are opened, the ways of convenience across the lots may be abandoned.

But here, from the condition of the lands, the case is different. The presumption is, I think, the other way. It can scarcely be supposed that the owners of the lots had in mind a possible future policy of the Legislature, and only intended to permit the road being used for a temporary purpose.

Upon the facts of this case, I agree with the trial Judge that the road in question became a public highway by dedication.

This being so, the subsequent opening of the concessions and side-lines, and the gradual diversion of the traffic to these better roads, did not, in my opinion, have the effect of destroying the