

KELLY, J.

MARCH 15TH, 1918.

SAWYER v. TOWNSHIP OF SHERBORNE.

Highway—Township By-law Authorising the Taking of Land for Road—Validity—Presumption—Title to Land in Crown—Subsequent Crown Grant not Recognising Land Indicated by By-law as Road-allowance—By-law Ineffective also because Requirements of Municipal Act not Complied with—Dedication—User—Acquiescence—Evidence—Title of Plaintiff—Action for Trespass—Damages—Injunction.

Action for damages and an injunction in respect of trespass upon the plaintiff's land in the township of Sherborne.

The action was tried without a jury at Bracebridge.

A. B. McBride, for the plaintiff.

A. M. Fulton, for the defendants.

KELLY, J., in a written judgment, said that the trespass complained of was the entry upon the plaintiff's land of workmen and servants of the defendants, the township corporation, breaking down fences, cutting timber, etc., for the purpose of constructing a road through the land.

The defendants asserted a right to enter and open a road, on the strength of a by-law passed by their council on the 31st August 1898, and upon dedication and user; and also set up want of title in the plaintiff by reason of defects in his registered title.

The learned Judge was of opinion that the by-law was ineffective because, when it was passed, and for several years afterwards, the title to the lots said to be now vested in the plaintiff was in the Crown; and, when the Crown grant was made, in 1907, it did not recognise the road alleged to have been laid out and established by the defendants, but reserved, for the purpose of a roadway, other parts of the same lots, and also because the requirements of the Municipal Act in force in 1898, with reference to the passing of such by-laws, were not complied with.

On the ground of dedication and user, the defendants also failed. The learned Judge was unable to say from the evidence that the land which the defendants, in 1916 and 1917, attempted to take possession of and open up as a road, through the lands occupied by the plaintiff, was the same part of the lots which they intended to include in their by-law of 1898, or the land which, same witnesses said, was marked out as a roadway soon after the by-law was passed.