ing the right if they think fit (*Vooght* v. *Winch*, 2 B. & A. 662); and, secondly, that the public have a *prima facie* right to the entire space between the two hedges, provided it be not of an extraordinary width (*Groove* v. *Wist*, 7 Taunt. 29), and are not confined to the metalled road in actual use by the public, and as such kept in repair (*Rex* v. *Wright*, 3 B. & Ad. 681).

As regards underground profits, the owner of the soil of a road is of course entitled to the mines and minerals thereunder, and must support the surface. No more need be said as to this. As regards profits above ground, his rights are necessarily very restricted. Of all trees, for instance, growing on the side of the highway, he is legally the owner (*Goodtitle* v. *Alken*, 1 Burr. 133); yet if such trees be, in the opinion of the surveyor, an obstruction, he may fell and remove them, although when felled they belong to the owner of the soil. In a singular case (*Turner* v. *Ringwood Highway Board*, 18 W. R. 424, sec. 14 Sol. Jour. 976), it appeared that a public road had been set out in 1811 by Inclosure Commissioners, with a width of fifty feet. About twenty-five feet only of the fifty feet thus allotted had been used as the actual road; the sides had become covered with heath and furze, through which fir trees had grown up of themselves. In 1858 the Highway Board cut down some of these fir trees, and advertised them for sale; and on bill by the owner of the adjoining land to restrain such cutting, it was held, on the authority of *Reg.* v. *Wright* (*sup.*), that the right of the public was to have the whole width of the road, and not merely that part which had become used as the *via trita* preserved from obstructions; and that such right had not become extinguished by the fact that the trees had been allowed to grow up for the period of twenty-five years; it being the right of the public to have such trees removed on the ground that their growth by the side of the highway was a nuisance. Yet it seems that the adjoining owner had a right to the timber of the trees when so cut down. In *Reg.* v. *United Kingdom Telegraph Co.* (10 W. R. 583), which was an indictment against the defendant company for setting up telegraph posts so as to obstruct the highway, it was distinctly laid down by the Court of Queen's Bench, that where there is a road running between fences, the public have a right to the whole space lying between the fences, and are not confined to the metalled road. No doubt, as Crompton, J., who delivered the judgment of the court, observed, part of the land lying between the fences may be a rock, or from some other cause inaccessible to the public; but such a piece of land would be excluded by those very circumstances, as it could not be called a road or part of a road in any sense. In a case under the 59th section of the 5 & 6 Will. IV. cap. 50, a road was nine feet wide; and there being a piece of uninclosed land at the side of it, also nine feet wide, which land was so rough and uneven that no carriage ever did or could go over it, the owner of the adjoining field took it into his field and put a fence round it. The surveyor of the highway having taken down this fence, it was held that he was not justified in so doing, inasmuch as the fence was not on the road (*Evans* v. *Oakley*, 1 C. & K. 125).

It only remains to add, that the owner of the soil of the highway is entitled to the herbage on the roadside, and may maintain an action of trespass against a stranger who suffers his cattle to depasture along the road (*Devaston* v. *Payne*, 2 H. B. C 527). It has been held, in a singular case, that there may be trespass in pursuit of game, within the meaning of 1 & 2 Will. IV. cap. 31, where the person charged has never quitted the highway (*Reg.* v. *Pratt*, 3 W. R. 372, 24 L. J. Mag. Cas. 113).

For an instance of a bill to restrain parties from attempting to obtain proprietary rights in the soil of a highway in derogation of the plaintiff's proprietary right in such soil, see *Attorney-General* v. *The United Kingdom Electric Telegraph Co.* (10 W. S. 167), where the alleged injury consisted in the defendant company having laid down telegraph wires in a trench along the greater part of the plaintiff's frontage to the highway.—*Solicitors' Journal.*

MAGISTRATES, MUNICIPAL, INSOLVENCY & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

ASSESSMENT FOR STREET WATERING.

There must be a *by-law* for the necessary assessment, for the watering of a street, passed *subsequent to, and consequent upon*, the presentation of the required petition therefor, and after the fullest opportunity given to any ratepayer to object to its passage, and a *resolution* for that purpose, passed by a municipal corporation, under a by-law antecedently made, and which authorized this mode of proceeding, instead of by by-law, was therefore quashed, but without costs, as the applicant had been one of the petitioners, was well aware of its object, had enjoyed the benefit of the resolution, and had been dilatory in complaining.—*In re Morell* v. *City of Toronto*, 22 C. P. 323.

COUNTY JUDGE DRAWING PAPERS.

The Consol. Stat. U. C. ch. 15, sec 5, as amended by 29 Vic. ch. 30, enacts, that no County Court Judge shall directly or indirectly practice in the profession of the law as counsel, attorney, solicitor, or notary public, or as a conveyancer, or do any manner of conveyancing, or prepare any papers or documents to be used in any Court of this Province, under the penalty of forfeiture of office and of $400.

The declaration alleged that defendant, being such Judge, did in certain proceedings in the