

The owner of a servient tenement taking water under such circumstances is not "a person claiming right thereto" within R. S. O. ch. 111, sec. 35.

Ennor v. Barwell, 2 Giff. 410, distinguished. *Oliver v. Lockie*, 28.

2. *Navigable Waters—Ice—Right of Free Passage Over—Action for Declaration of Right—Damages—Loss of Business.*—The defendant, the owner of certain water lots upon the lake front, subject to the usual reservation in favour of the Crown of free passage over all navigable waters thereon, refused to allow the plaintiff to haul ice cut from the lake over such lots, when frozen, to the wharf from which the plaintiff desired to ship the ice for the purposes of his business, unless the plaintiff paid toll, which he refused to do:—

Held, that the water over the defendant's lot was a highway, and the plaintiff had the right without payment to cross the lot, whether the water upon it was fluid or frozen; and, having a cause of complaint, and a right of action for his personal loss, he was entitled to come to the Court for a declaration of right.

Gooderham v. City of Toronto, 21 O. R. 120, 19 A. R. 64, and *City of Toronto v. Lorsch*, 24 O. R. 229, followed:—

Held, also, that the defendant was liable for such reasonable damages as flowed directly from the wrong done by his refusal; but, as he had acted without malice and under a *bond fide* mistake as to his rights, and as the plaintiff might have paid the toll under protest, the defendant was not liable for the plaintiff's loss of business consequent on his failure to ship the ice. *Cullerton v. Miller*, 36.

104—VOL. XXVI. O.R.

WAY.

1. *Toll Roads—Toll Chargeable on Intersected Road—Mandamus—R. S. O. ch. 159, secs. 2, 37, 157, 52 Vict. ch. 27 (O.).*—Section 87 of R. S. O. ch. 159, as extended by section 157 of that Act, and by 52 Vict. ch. 27 (O.) applies not only to toll roads owned or held by private companies, or municipal councils, but also to all toll roads purchased from the late Province of Canada, so that where one of such roads is intersected by another of them, a person travelling on the latter road, shall not be charged for the distance travelled from such intersection, to either of the termini of the intersected road, any higher rate of toll than the rate per mile charged by the company for travelling along the entire length of its road from such intersection, but subject to the production of a ticket, which he is entitled to receive from the last toll gate on the intersecting road, as evidence of his having travelled only from such intersection.

Mandamus granted to compel the issue of such tickets:—*Smith v. The Corporation of the County of Wentworth*, 209.

2. *Road Companies—Negligence—“Done in Pursuance of this Act”—Limitation of Actions—“Within Six Months after the Fact Committed”—R. S. O. ch. 159, sec. 145.*—Where the defendants, a road company, incorporated under the General Road Companies' Act R. S. O. ch. 159, sec. 99 of which requires them to, keep their road in repair, constructed a culvert across it with a post and rail guard at the mouth thereof in such an improper manner that the wheel of the plaintiff's carriage striking the post he was