

*Lion Brewery Co. v. Mackie* (1913), 25 O. W. R. 90; 5 O. W. N. 107.

**Change of—County Court action—Transfer to District Court—Application of one defendant—Judgment in County Court against the other defendant — Effect of—Practice.]** — Middleton, J., held, that the fact that judgment has been signed against one defendant does not deprive the other defendants of the right to have the trial at the place which is most convenient. *Berthold v. Holton*, 23 O. W. R. 839, distinguished. *Martin v. McLeod* (1913), 25 O. W. R. 66; 5 O. W. N. 79.

## VETERINARY SURGEON.

**Counterclaim for malpractice—Jury notice struck out.]**—Roger, Co.C.J., held, that in malpractice actions against surgeons it is now a well established practice to strike out the jury notice, and the same practice should apply to actions against veterinary surgeons, and that as the case was set down for trial before the Judge who heard the motion, it was better to dispose of the application in Chambers, rather than to wait for the trial. *Dickinson v. Austin* (1913), 25 O. W. R. 739.

## WATER AND WATERCOURSES.

**Drainage—Improper construction of drainage works — Evidence—Continuing damage—Effect of statutory limitation on—Non-repair—Necessity of notice to municipality—Municipal Drainage Act, s. 80 (a)—Damages — Quantum of — Costs.]**—Henderson, K.C., Drainage Referee, held, that a municipality is not liable for damages caused by the non-repair of drainage works unless and until a notice specifying the non-repair is served upon it.—That an action can be brought upon a continuing damage, even though two years have elapsed from the inception thereof.—*Wigle v. Gosfield*, 7 O. L. R. 32, followed.—*Thackeray v. Raleigh*, 25 A. R. 226, distinguished. *Cullerton v. Township of Logan* (1913), 25 O. W. R. 254.

## WAY.

**Highway—By-law closing same — Dedication—No acceptance by municipality—Surveys Act, 1 Geo. V. c. 42, s. 44—Registry Act, 10 Edw. VII. c. 60, s.**

**44, s-s. 6—Quashing of by-law.]**—Middleton, J., 25 O. W. R. 680; 5 O. W. N. 750, held, that where a highway had been dedicated but never accepted by the municipality the latter could not by by-law assume to close the same and sell it. Sup. Ct. Ont. (2nd App. Div.) set aside the order quashing the by-law, and referred the matters in question upon the appeal and motion to quash to the Judge assigned for the trial of the action of *Jones v. Township of Tuckersmith*, and directed that the Judge should not be bound by the decision of Middleton, J., upon the motion to quash. Costs of the motion to quash and of this appeal to be in the discretion for the trial Judge. *Re Jones & Tuckersmith* (1914), 25 O. W. R. 944; 6 O. W. N. 71.

**Highway—Claim of municipal corporation that certain lands were—Dedication—Evidence as to unsatisfactory—Statutory appropriation as harbour — Trespass—Damages — Costs.]**—Meredith, C.J.C.P., held, in an action for trespass upon lands claimed by defendants to be a public highway that there was no sufficient evidence of dedication as such and that in any case the lands in question had been appropriated for harbour purposes by statute. *Niagara Navigation Co. v. Niagara* (1913), 25 O. W. R. 42; 5 O. W. N. 46.

**Highway—County road in township —Judgment against county for non-repair of—Highway Improvement Act, 2 Geo. V. c. 11, s. 7, 13—Requisition under—Right of county to charge amount of judgment against township or "good roads fund"—Minister of public works —Jurisdiction of.]**—Kelly, J., held, that where a township council had made application to the county under 2 Geo. V. c. 11, s. 13, to levy a special rate upon the township for the construction, improvement and maintenance of county roads with the township and a by-law passed and moneys raised for such purposes, that the county could not divert any part of such moneys to the payment of a judgment against the county arising from the negligence of the county in allowing a county road in the said township to fall into disrepair. *Township of Toronto v. County of Peel* (1913), 25 O. W. R. 561; 5 O. W. N. 632.

**Highway—Non-repair—Liability of municipal corporation—Automobile upset—Death of occupant—Damages.]**—Lennox, J., in an action for damages for non-repair of a highway causing the death of plaintiff's husband, found want of repair as a fact and awarded plaintiff