

propelled along the road by its own steam power—the bridge in either case should be sufficient to safely carry an ordinary and reasonable load. I think the Legislature, in ch. 242, R. S. O., intended by “traction engine,” something very different in weight from the one owned by plaintiff.

The traction engine in that Act is an engine entirely different in construction and for a wholly different purpose from plaintiff's.

The whole Act is to protect the public and public highways where traction engines are to be employed “for the conveyance of freight and passengers, or both, on any public highway in this Province,” and it does not apply to this case.

Appeal dismissed with costs.

Lancaster & Campbell, St. Catharines, solicitors for plaintiff.

Raymond & Cohoe, Welland, solicitors for defendants.

JUNE 2ND, 1902.

DIVISIONAL COURT.

TAYLOR V. DELANEY.

*Will—Testamentary Capacity—Unsustained Charges of
Fraud—Costs.*

Appeal by defendant from judgment of Surrogate Court of Essex, admitting to probate the will of R. Taylor, deceased, on the ground that he was of unsound mind, and incapable of making a will.

The appeal was heard before a Divisional Court, STREET, J., BRITTON, J.

F. A. Anglin, for defendant.

A. H. Clarke, Windsor, for plaintiff.

STREET, J. (after reviewing the evidence)—In my opinion, the judgment appealed from is right and should not be disturbed, and the present appeal must be dismissed with costs. I observe that the learned Judge gave no costs against Delaney at the trial. No reasons are given for this, or any other part of the judgment, and I cannot avoid calling attention to the rule which has been repeatedly laid down and followed, that in testamentary cases, where charges of fraud are made, as here, without any evidence being offered to support them, costs should be given against the person making them.

BRITTON, J.—It is the duty of an appellate Court, as was decided in *Russell v. Lefrançois*, 8 S. C. R. 335, “to review the conclusion arrived at by Courts whose judgments are