

that time the County of York had ceased to be the municipality having jurisdiction over the road at the place in question, and therefore it would never at any time have been entitled to the soil and freehold. Whether Yonge Street was or was not an exception to the general rule we are not prepared to say; the learned Judge says that the history of that street is curious, and possibly its legal status may have differed from other streets. Until the change above referred to was made, the municipalities, as a general rule had merely a possessory and controlling right over public highways laid out by the Crown.

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### WHEN IS A ROCK NOT A ROCK.

In the case of *Mills v. Continental Bag and Paper Co.* certain contractors agreed "to do all the excavating, and remove all material, except rock, from the site of the factory building of the owners in Ottawa, remove same from the premises, and dispose of same as they may see fit;" the price being \$1 per cubic yard for all material so removed. During the work the contractors encountered some large boulders, and removed them. Their claim was for payment of the extra cost thereof, upon the ground that their contract did not include removing them. The County Court Judge held that boulders were not "rock" within the meaning of the contract. He discarded evidence given as to the practice or custom in Ottawa. The Court of Appeal held that boulders were "rock," and, that being so, the contractors' contention was correct, and allowed the appeal.

The writer was interested in this judgment in that he was a railway engineer, before going to law, and lived in a boulder country, in what was supposed to be the track of a wandering glacier in the Ice Age. He ventures to dissent from the above finding of the Court of Appeal. A "boulder" may be a pebble, or it may be a mass as big as a house. It is a foreigner wherever it is found. It would be ridiculous for a contractor to claim extra payment for the removal of a stone a few inches in circumference or even a yard square, but it would be equally unfair to ask him