

The fact that there was no provision in the judgment in the action for the executor's costs was nihil ad rem. It is doubtful whether a direction in the judgment that the executor's costs should be paid out of the estate would be valid: see sec. 19 of the Surrogate Courts Act—but, in any case, these are not costs in the action. When allowed by the Surrogate Court Judge, they are allowed as "charges and expenses."

Appeal dismissed with costs.

CLUTE, J.

DECEMBER 10TH, 1915.

TOWNSHIP OF EUPHRASIA v. TOWNSHIP OF ST.
VINCENT.

Highway—Township-line—Deviation—Municipal Act, secs. 455, 458—Evidence—Liability for Maintenance—Arrears—Demand—Future Maintenance—Joint Liability—Settlement of Proportions—Declaratory Judgment—Costs.

Action by the Corporation of the Township of Euphrasia for a declaration that a deviation road had been opened through the township, in lieu of the town-line between it and St. Vincent, within the meaning of sec. 458 of the Municipal Act, R.S.O. 1914 ch. 192, and that the defendant corporation was equally responsible with the plaintiff corporation for the maintenance of the said road, and to recover the sum of \$721.74, being half the amount expended by the plaintiff corporation in the maintenance and repair of the road from 1891 to 1914 inclusive.

The action was tried without a jury at Owen Sound.

W. D. Henry, for the plaintiff corporation.

W. H. Wright, for the defendant corporation.

CLUTE, J., read a judgment in which he reviewed the evidence, and said that no by-law appeared to have been passed formally assuming the deviation road, but in its improvement two slight deviations from where it was originally laid out were made, and for that purpose the Euphrasia council passed by-laws and procured deeds of conveyance, so that in the plainest possible way they had assumed the road as an existing highway.

The county council had also recognised it as a deviation under