

could be found. After tracing the history of toll road legislation down to the present time he decided against the contention of the road companies that the width of side roads crossing the toll roads should not be computed in arriving at the assessable area, but that, on the other hand, these gravel roads do not "occupy" and are not assessable for the whole of the width of the original highways upon which they are constructed. That there is nothing in any of the Acts of incorporation which vests in the road company the whole or any part of the original highways upon and over which the gravel roads were constructed; the soil and freehold of the highways remain in the Crown, and are exempt from taxation; the right of the public to use the original highways remains as it was before the gravel roads were made, subject to the privileges granted to the road companies: *Reg. v. Davis*, 35 U.C.R. 107; *Reg. v. Davis*, 24 U.C.C.P. 575; and see also *In re Hamilton and Court of Revision of Biddulph*, 13 C.L.J. 18; also ss. 147, 148, 149 of the present Road Companies' Act (R.S.O. c. 193). What is vested in each of these companies is the road that such company was authorized to construct; in ascertaining the width, the ditches on each side of the gravel should be included. As to the value of the materials, the case of *Bell Telephone Company and City of Hamilton*, 25 A.R. 351, applies, and the materials must be valued not as forming part of a going concern, in which the franchise would be a material element, but as materials to be separate and removed from the road, for sale in the state and condition in which they now are, without considering the cost of the labor involved in the construction of the road.

Frank M. Field, for Hamilton township and the assessor. *W. F. Kerr*, for the road companies.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] *MCLEOD v. THE INSURANCE COMPANIES.* [Feb. 7.

Practice and procedure—Commission to take evidence abroad—Setting aside—Discretion of judge reviewed.

The granting of a commission to take evidence is in the discretion of the judge to whom the application is made, but where strong reasons are shown to the Court of Appeal why the commission should not have been granted, such as failure to exercise due diligence on the part of the party applying, or unreasonable delay caused to the opposite party, the discretion will be reviewed.

In a case which had been twice tried, and was coming on for a third trial, where it appeared that two commissions had already been obtained,