MEREDITH, J.—The widow is put to her election between the provisions of the will in her favour and her dower. See Hill v. Hill, 1 Dr. & War. 94, Thompson v. Burris, L. R. 16 Eq. 592, Amsden v. Kyle, 9 O. R. 439, Leys v. Toronto General Trusts Co., 22 O. R. 603. There is no authority for the contention that because the first annuitant died in the testator's lifetime, those who were to take at her death take nothing. The annuity is payable to them from the testator's death, but only $150 a year. See Hardwick v. Thurston, 4 Russ. 383, Edwards v. Saloway, 4 DeG. & Sm. 248. There is no intestacy as to the additional $50. Upon the facts, as found by the Judge, with regard to the money on deposit, there are no reasons impelling the conclusion that therei s an intestacy as to the interest thereon, in the face of the testator's declaration that he disposes of all his property. There is no intestacy as to the corpus or any part of it. By the word "balance," the testator meant the rest or residue of the whole of his property. There is no intestacy as to the fuaniture and chattels, after the expiration of the interest therein given to the widow; this property is included also in the "balance."

Order made declaring accordingly, unless the findings as to the material facts are disputed, in which case an action or issue must be tried, and there will be no order upon this motion as to costs or otherwise. If order goes, costs of all parties out of the estate, those of the administrators as between solicitor and client.

FEBRUARY 15TH, 1902.

DIVISIONAL COURT.

BELLING v. CITY OF HAMILTON.

Municipal Corporation—Highway—Non-repair—Carriage-way—Foot-way—Different Standard of Repair—Finding of Fact by Trial Judge—Review of.

Boss v. Litton, 5 Car. & P. per Lord Denham, at p. 408, explained.

Appeal by defendants from judgment of County Court of Wentworth in action for damages. The plaintiff was crossing, in a diagonal direction, McNab street, at a point 30 feet distant from a crossing, when she slipped on the edge of a hole, about 2 feet square by 2 inches deep, in the asphalt pavement, and fell, sustaining injury. The evidence conflicted as to whether there was another hole in the pavement 90 feet away. The hold in question was 19 feet from