

Trial.—Meredith, C.J.C.P.]

[March 2.]

HOLLAND v. TOWNSHIP OF YORK.

*Way—Highway laid out by private person—Assumption for public user—Expenditure by township corporation on sidewalk—Non-repair—Negligence—Act of wrongdoers—Relief over.*

A highway in the township of York laid out by a private person had been used as such for many years, and a sidewalk had been built upon it by the defendants under the supervision of their pathmaster, and the council had by by-law appropriated money to pay for the construction of it, and payment has been duly made to the persons who built it.

*Held*, that this was sufficient to establish that the highway had been assumed for public user by the corporation within the meaning of s. 607 of the Municipal Act, 3 Edw. VII, c. 19 (O.) The purpose of s. 598 is to declare that certain classes of roads are public highways; and it has no bearing on the question whether an actual highway laid out by a private person who has been assumed for public user.

The highway had been for a long time in a very bad state of repair, so covered with water at certain seasons that it was impossible for a pedestrian to pass from one side to the other without wading through mud and water. The plaintiff was injured by reason of cinders which the third parties had, about a week before the accident, spread upon the road, in order to afford a passage across it.

*Held*, that the defendants ought to have anticipated that some such means of passing from one side to the other would be adopted by the third parties, and were liable for negligence in the performance of their statutory duty to keep the highway in repair, but the third parties were liable over to the defendants.

*Geary*, for plaintiff. *Shepley*, K.C., and *Kyles*, for defendants. *Lawrence*, for third parties.

Boyd, C.]

IN RE DUNN.

[March 10.]

*Will—Construction—Legacies—Abatement—Devastavit.*

Testator died in 1878, having made a will and a codicil. By the will he gave to his wife certain chattels for her life, and all the rest of his estate to his two executors upon trust to sell, and out of the proceeds to pay funeral and testamentary expenses and the legacies bequeathed by the will or any codicil thereto, and to invest the residue in their own names and pay the annual income to the wife for life, and after her death to divide the estate between themselves (the executors) in the proportion of two-thirds to one and one-third to the other. By the codicil the testator gave certain specific legacies and directed that they should be paid by the executors after the decease of the wife from out of the two-thirds given to one of the executors. That executor died in 1885. After his death the other