

## WALL.

*Erection on plaintiff's land—Damages—Trustee—Parties.]—*The plaintiff was the surviving trustee under the will of one J. B. of certain land, on which was erected a two storey brick house, the westerly wall of which formed the boundary of one L.'s land, immediately adjoining the plaintiff's on the west. L. leased to F., who erected thereon a large brick building, using the plaintiff's westerly wall as a party wall, inserting joists therein, and building thereon so as to raise it two stories higher, thereby weakening the plaintiff's wall. F. mortgaged to a building society, who, on default, sold to the defendant.

*Held*, that the plaintiff under the O. J. Act, Rule 95, was entitled to maintain an action as representing the estate, without making the *cestui qui trusent* parties; and that he was entitled to a decree that the defendant should desist from further using the wall built on the plaintiff's wall, or the ends of the joists which he had placed therein, but not to a direction that the defendant should pull down such wall, which the defendant had not erected.

*Held*, also, that the plaintiff was entitled to recover as damages the expense of removing such wall, so erected on his wall, and the damages occasioned by his wall being weakened, but not damages for the loss of a sale of the property by reason of the erection. *Brooke v. McLean*, 209.

## WASTE.

See WILL, 4.

## WAY.

*1. Municipal corporations—Drain—Accident—Negligence—Notice.]—*After a block pavement had been laid down on Queen street, one of the most travelled streets in the city of Toronto, a drain about two and half feet wide was opened out across the street to the street railway track, and then tunnelled under the track. It was filled in with loose earth not rammed down. On Sunday it rained, in consequence of which the earth was washed down and sunk, leaving a very dangerous hole. On Tuesday or Wednesday some residents in the neighbourhood, seeing its dangerous condition, took some cedar posts and placed them lengthwise in the hole. On Thursday night, about nine o'clock, it being very dark and no light at the drain, and the street lamps not being sufficient to shew it, the plaintiff, his wife, and another person, were driving along the road, and on reaching the drain the horse stumbled and fell, whereby the plaintiffs were pitched out of the waggon and injured. The jury found that the accident was caused by the wheels of the waggon coming in contact with the drain. The defendants contended that it was caused by the waggon coming in contact with the posts, and as they had not put them there they were not liable. It was agreed on the argument in the Divisional Court that the Court might draw inferences of fact as a jury, and give such judgment as in its view the evidence might warrant.

*Held*, that on the evidence the defendants must be deemed to have had notice of the condition in which the drain was at the time of the accident; and therefore it was immaterial whether the accident was caused by the drain or posts.