

the owner and chargee of lot 40. But many arguments in favour of benefit could undoubtedly be advanced; and consents in such a case may very fairly be regarded as equivalent to requests. The persons in a position to consent or oppose are the best judges in this instance as to whether it is beneficial or not; and the zone of interest had been very amply covered in the area taken in.

The order taken out should recite all the documents referred to, and they should be left on file.

There should be an order modifying conditions 7 and 9 as set out in registered transfer 54066 to the extent of permitting the buildings now upon lot 40 to be maintained as they now are upon that lot.

O'CONNOR V. FITZGERALD—FALCONBRIDGE, C.J.K.B.—
MARCH 18.

Amendment—Action for Dower against Executors—Application of Plaintiff at Close of Trial for Leave to Amend by Adding a New Claim—Amendment Allowed on Terms—Directions for Trial.—Action by a widow against her deceased husband's executors for dower out of his lands. The action was tried without a jury at Peterborough. FALCONBRIDGE, C.J.K.B., in a written judgment, said that at the close of the case the plaintiff's counsel asked to be allowed to amend by claiming the proceeds of certain insurance policies which the plaintiff transferred to her late husband, in consideration of his making a will in the manner agreed on between them, which will did not prove to be the last will of the husband. It was plain that the defendants would have had no proper opportunity then to make their defence. But it was equally plain that the executors, the defendants, ought not to be exposed to another action. The learned Chief Justice had, therefore, determined to allow the amendment on such terms as to costs and otherwise as he should impose when giving final judgment on all matters in question. The plaintiff should deliver her proposed amendment, and the defendants should amend their pleadings accordingly—all as promptly as possible. Any further evidence forthcoming should be adduced before the Chief Justice during the week commencing the 31st instant, either in Toronto or Peterborough—preferably Peterborough. H. H. Davis, for the plaintiff. J. H. Corkery, for the defendants.