

pasturing, and were of trifling value, and notwithstanding that the lands had never been used by the plaintiff and that he had not shewn actual pecuniary loss, yet, having regard to the facts that he owned the lands in fee simple and access to them by land was interfered with, he came within the decided cases, and must succeed. See *O'Neil v. Harper* (1913), 28 O.L.R. 635.

The defendant asserted a right to put a fence and bars across the road allowance, and refused to remove them. The plaintiff was entitled to free and uninterrupted passage over this highway which had never been closed. That it had never been opened up, cleared, and improved by the municipality did not make it any the less a legal highway: see the *Surveys Act*, R.S.O. 1914 ch. 166, sec. 19.

There should be judgment for the plaintiff ordering the defendant to remove all obstructions placed by him or his predecessors in title on the highway or road allowance; enjoining him from hereafter placing any obstruction thereon; and directing the defendant to pay the plaintiff his costs, fixed at \$50.

LATCHFORD, J., IN CHAMBERS.

NOVEMBER 5TH, 1918

**REX v. NAZZARENO.*

Ontario Temperance Act—Magistrate's Conviction for Offence against sec. 40—Having or Keeping Intoxicating Liquor on Premises for Sale, Barter, or Other Disposal—Evidence—Entries in Books of Express Company—Record of Sales—Letter Written by License Inspector—Admissibility—Analysis of Native Wine Found on Premises—Purchaser of Native Wine—Onus—Sec. 88 of Act—"Other Disposal"—Amendment.

Motion to quash the conviction of the defendant by the Police Magistrate for the City of Hamilton for having or keeping intoxicating liquor on his premises for the purpose of sale, barter, or other disposal, contrary to the *Ontario Temperance Act*, 6 Geo. V. ch. 50, sec. 40.

M. J. O'Reilly, K.C., for the defendant.

J. R. Cartwright, K.C., for the Corwn.

LATCHFORD, J., in a written judgment, said that it was objected that evidence of entries in the books of an express company,