

of the merits, as disclosed in the evidence. The learned Chief Justice found that there was sufficient evidence of negligence, and that the plaintiff had not been guilty of contributory negligence. A perusal of the judgment shews that, at least to some extent, the learned Chief Justice was influenced by considerations of the credibility of certain of the witnesses. And a perusal of the evidence in the light of his criticism, while it does not disclose what could be called a strong case, seems to shew enough to justify the result.

The defendant's counsel, before us, contended that the girder was unlawfully upon the highway, and a by-law of the city council was put in. But even if I agreed with that contention—which at present I do not—I should still be unable to see how it affords any justification for the act complained of.

The appeal should be dismissed with costs.

OCTOBER 22ND, 1913.

RE COOPER.

*Will—Construction—Residuary Bequest to Nephews and Nieces
—Supplying Word to Render Language of Will Intelligible
—Proof of Contents of Will—Probate Copy Certified by
Surrogate Court—Conclusiveness—Original Will Produced
to Aid Interpretation.*

Appeal by Barry S. Cooper and his adult children from the order of KELLY, J., 4 O.W.N. 1360, upon an originating notice, determining questions of construction of the will of Francis Cooper, deceased.

The appeal was confined to the question of the proper construction of the residuary clause.

The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

H. T. Beck, for the appellants.

J. R. Meredith, for the Official Guardian, representing the infant child of Barry S. Cooper.

J. R. Code, for the executors.

J. Tytler, K.C., for Margaret J. Fulton and others, the respondents.