issuing out of the land. Giving the word its strict legal significance therefore, easements and licenses would not come within the Act. It seems to have been taken for granted, however, that the words "rights reserved" extended to easements, and licenses as well as *profits à prendre.** If this is so, the statute merely vested the soil of the highway in the municipality, and affirmed the common law rule as to rights acquired in the soil prior to dedication. That enactment has been substantially altered in form in the Ontario Municipal Act of 1913 (3 & 4 Geo. V., c. 43, s. 433), which provides that "the soil and freehold of every highway shall be vested in the corporation or corporations of the municipality or municipalities, the council or councils of which for the time being have jurisdiction over it under the provisions of the Act"; and by s. 432, all roads dedicated by the owners of land to public use are declared to be common and public highways. It will be noticed that the affirmation of the common law rule saving antecedent rights has been omitted from this enactment. But the mere silence of an Act of Parliament is not sufficient to take away a common law right, very clear words are needed to have such an effect, and any interference with a common law right is strictly construed by the courts. The words "subject to any rights reserved by the person who laid out the highway" in the former Act, being only an affirmation of a part of the common law rule, it is submitted that their omission in the Act of 3 & 4 Geo. V. and the general repeal of the Act of 3 Edw. VII., do not destroy the common law right. The judgment in the *Abell* v. *Woodbridge* case states in part, however, that "there is no escape from the conclusion that the effect of this legislation and of the repeal of 3 Edw. VII., c. 19, which was concurrent with it, is to remove the qualification to which under that Act the vesting of highways was subject, and to vest absolutely and without qualification the soil and freehold of them in the municipal corporation." If this decision is correct, once land becomes a highway, it can be subject to no other rights than those of the municipality as owner in fee. If the statute acted by way of expropriation of the lands that would be a fair statement of the law. But it is submitted that the statute does not create the highway. The public right of travel is gained either by dedication or by prescription. In the former case, the owner cannot dedicate more than he has, and the public right must be subject to the rights already existing. In the case of prescription, a grant must be presumed, and the public cannot acquire a greater right than the owner could have granted. The acquisition of such a public right to travel is a necessary condition precedent before the statute can operate. It is only when that condition has been fulfilled that the Act vests the soil and freehold in the municipality. But the ownership of the soil and the right to travel are two different things, the one being in the municipality, and the other being a public right. Nothing in the statute enlarges the public right. Nor is there anything more inconsistent in the vesting taking place under the statute subject to existing rights than there was in the case of a dedication at common law. Moreover, the necessary condition precedent being the generosity, neglect or indifference of the owner of the land, the statute cannot operate as a confiscation of the property of another

*See annotation, 40 D.L.R. 144.