felled they belong to the owner of the soil. In a singular case (*Turner* v. *Ringwood Highway Board*, 18 W. R. 424, sec. 14 Sol. Jour. 976), it appeared that a public road had been set out in 1811 by Inclosure Commissioners, with a width of fifty feet. About twenty-five feet only of the fifty feet thus allotted had been used as the actual road; the sides had become covered with heath and furze, through which fir trees had grown up of themselves. In 1858 the Highway Board cut down some of these fir trees, and advertised them for sale; and on bill by the owner of the adjoining land to restrain such cutting, it was held, on the authority of *Reg.* v. *Wright* (*sup.*), that the right of the public was to have the whole width of the road, and not merely that part which had become used as the *via trita* preserved from obstructions; and that such right had not become extinguished by the fact that the trees had been allowed to grow up for the period of twenty-five years; it being the right of the public to have such trees removed on the ground that their growth by the side of the highway was a nuisance. Yet it seems that the adjoining owner had a right to the timber of the trees when so cut down. In *Reg.* v. *United Kingdom Telegraph Co.* (10 W. R. 583), which was an indictment against the defendant company for setting up telegraph posts so as to obstruct the highway, it was distinctly laid down by the Court of Queen's Bench, that where there is a road running between fences, the public have a right to the whole space lying between the fences, and are not confined to the metalled road. No doubt, as Crompton, J., who delivered the judgment of the court, observed, part of the land lying between the fences may be a rock, or from some other cause inaccessible to the public; but such a piece of land would be excluded by those very circumstances, as it could not be called a road or part of a road in any sense. In a case under the 59th section of the 5 & 6 Will. IV. cap. 50, a road was nine feet wide; and there being a piece of uninclosed land at the side of it, also nine feet wide, which land was so rough and uneven that no carriage ever did or could go over it, the owner of the adjoining field took it into his field and put a fence round it. The surveyor of the highway having taken down this fence, it was held that he was not justified in so doing, inasmuch as the fence was not on the road (*Evans* v. *Oakley*, 1 C. & K. 125).

It only remains to add, that the owner of the soil of the highway is entitled to the herbage on the roadside, and may maintain an action of trespass against a stranger who suffers his cattle to depasture along the road (*Devaston* v. *Payne*, 2 H. B. C. 527). It has been held, in a singular case, that there may be trespass in pursuit of game, within the meaning of 1 & 2 Will. IV. cap. 31, where the person charged has never quitted the highway (*Reg.* v. *Pratt*, 3 W. R. 372, 24 L. J. Mag. Cas. 113).

For an instance of a bill to restrain parties from attempting to obtain proprietary rights in the soil of a highway in derogation of the plaintiff's proprietary right in such soil, see *Attorney-General* v. *The United Kingdom Electric Telegraph Co.* (10 W. S. 167), where the alleged injury consisted in the defendant company having laid down telegraph wires in a trench along the greater part of the plaintiff's frontage to the highway.—*Solicitors' Journal.*

LIABILITY OF AN EXECUTOR *DE SON TORT* AND HIS REPRESENTATIVES.

If a person who is neither executor nor administrator intermeddles with the goods of of the deceased, or does any other act characteristic of the office of executor, he thereby makes himself what, in our law, is called an executor of his own wrong, or more usually an executor *de son tort*. It is not intended to enumerate the acts which will make a person executor *de son tort*; they may be referred to in Williams' Executors, p. 247, *et seq.*, and the tendency of modern cases will perhaps appear to be to depart from the strictness of some of the old cases which prohibited the exercise of many acts, trivial in themselves, and attributable often to motives of kindness, by a stranger, in reference to the preservation of the property of a deceased person without risk of incurring the responsibilities of a personal representative (see *Serle* v. *Waterworth*, 4 M. & W. 9). It will be seen, however that there is still need for great caution in intermeddling with the affairs or property of a defunct, in order to avoid the unpleasant consequences of finding oneself clothed with this undesirable character. It is well to bear in mind, however, the general rule, that the question whether certain acts were done, is a question of fact for the jury; but whether those acts, if done, make the person doing them an executor *de son tort* is a question of law for the Court (*Padgett* v. *Preist*, 2 T. R. 99).

The unenviable position of an executor *de son tort* has been described by Lord Cottenham as one in which he has all the liabilities but none of the privileges of an executor (*Carmichael* v. *Carmichael*, 2 Phill. 103). This is strikingly illustrated in the matter of the important privilege which a lawful executor has of retaining his own debt against others of equal degree, and even although the debt may be barred by the Statute of Limitations (*Hill* v. *Walker*, 4 K. & J. 166, 6 W. R. Ch. Dig. 25). On the contrary, an executor *de son tort* can not only not retain for his own debt, but he cannot, as against the rightful executor, plead in mitigation of damages payments made in due course of administration, unless the assets be sufficient to satisfy all the debts; for otherwise the rightful executor would be precluded, not only from his undoubted right of giving preference to one creditor over others of equal rank, but also from his equally clear privilege of retain-