

\$2,500 damages. *Connor v. Township of Brant* (1913), 25 O. W. R. 479; 5 O. W. N. 438.

Highway—Original road allowance—Impossibility of ascertainment—By-law defining and accepting highway—12 Vict. c. 81, s. 31—18 Vict. c. 156—Subsequent declaratory by-law—Railway—Trespass—Injunction—Costs.]—Kelly, J., held, that plaintiffs, a municipal corporation, were entitled to restrain the obstruction of a 50-foot strip of land accepted as a public highway by by-law of the corporation, but not a further 16 feet which had not become a public highway as aforesaid. *Township of Niagara v. Fisher* (1913), 25 O. W. R. 821; 5 O. W. N. 881.

Highway—Tolls Road Expropriation Act, 1 Edw. VII. c. 33—Amendment 2 Edw. VII. c. 35—Expropriation of road—Award of arbitrators—Road not taken or paid for in year—Action for costs of arbitration—Parties to arbitration—Liability of county—Liability of township—Tolls Road Act, 2 Geo. V. c. 50, secs. 76, 80—Application of—Retractivity—Construction of statutes.]—Lennox, J., held, that under the former Tolls Road Expropriation Act, 1 Edw. VII. c. 33, as amended by 2 Edw. VII. c. 35, where a toll road is expropriated the county is a necessary party to the arbitration proceedings and is liable to the owners of the road for the costs thereof in case the road is not taken and paid for within one year.—*United Counties of Northumberland and Durham v. Township of Hamilton and Hal-dimand*, 10 O. L. R. 680, approved. *Brockville & Prescott Road Co. v. Counties of Leeds & Grenville* (1913), 25 O. W. R. 371; 5 O. W. N. 362.

Right of way—Prescriptive right proven—Definite termini—No deviation from—Expropriation by railway company—Damages.]—Britton, J., held, that the plaintiff had established a right of way by user over certain lands taken by a railway for the purposes of their line and that consequently plaintiffs were entitled to damages for their deprivation of such right of way. *Mothersill et al. v. Toronto Eastern Ry. Co.* (1913), 25 O. W. R. 553; 5 O. W. N. 635.

Right of way—Reservation of—Specific purpose—No right to grant for extraneous purpose—Action of trespass—Ascertainment of boundary line—Evidence—Ancient surveys—Descriptions in deeds—Possession—Mortgage—Foreclosure—Damages.]—Kelly, J., held, that the benefit of a right of way re-

served by a grantor to be used by him as the owner of certain lands could not be granted by him to an owner of other adjoining lands.—*Purdon v. Robinson*, 30 S. C. R. 64, followed. *Epstein v. Lyons* (1913), 25 O. W. R. 807; 5 O. W. N. 875.

WILLS.

CONSTRUCTION OF.

Bequest in favour of possible future temperance hotel—Charitable bequest—Conditions—Approval of bishop—Uncertainty of fulfilment—Vagueness—Invalidity.]—Litchford, J., held, that a bequest to trustees to pay the income to any future hotel to be established in Guelph, where no intoxicating liquor should be sold, subject to the approval of a certain bishop, was too uncertain to be valid, as no such hotel might ever be established and in any case such approval might never be given.—*Re Swain* [1905] 1 Ch. 669, and *Re Jarman*, 8 Ch. D. 584, referred to.—That a trust for the promotion of temperance or abstinence from liquor might be considered charitable.—*Farewell v. Farewell*, 22 O. R. 573, referred to. *Re Doyle Estate* (1913), 25 O. W. R. 837; 5 O. W. N. 911.

Bequest of interest on specific sum for lives of three legatees—Interest after death of two falling into residue—Period of distribution of estate—Construction by Britton, J.]—*Re Campbell* (1913), 25 O. W. R. 110; 5 O. W. N. 154.

Codicils—Gift of income to widow—Remainder to others—Trust for sale—Subsequent permission to encroach on capital for maintenance—Estate taken by widow not fee simple—No repugnance.]—Lennox, J., held, that where a will and certain codicils had given the testator's widow the income of certain property during her widowhood with remainder to named persons, that a subsequent codicil reciting that whereas the widow has been up to that time restricted to the use of the income alone, but thereafter she shall have "the right in addition thereto to use the principal or so much thereof as she may require according to her own judgment, for her support and maintenance," did not confer upon the widow an estate in fee simple but only gave her a power of encroachment on the capital.—*Re Davey*, 17 O. W. R. 1034, followed.—*Re Jones, Richards v. Jones* [1898] 1 Ch. 438, dis-