The latest judicial discussion of this section to which my attention has been called is to be found in Hickey v. Town of Orillia, 17 O. L. R. 317, at pp. 331, 332, 342.

The by-law must, therefore, be quashed with costs.

DIVISIONAL COURT.   OCTOBER 16TH, 1909.

YOUNG v. CASHION.

Bills of Exchange—Drafts on Bank—Death of Payee before Presentation—Rights of Foreign Administrator—Foreign Domicile of Deceased—Holder of Drafts—Rights of Ontario Administrator—Money in Court—Retention of Part to be Paid out in Ontario—Costs.

Appeal by the plaintiff from the judgment of MAGEE, J., deciding in favour of the defendant an issue directed by an order of the Court.

The plaintiff in the issue was the California administrator of the estate of James Young, deceased, and the defendant the Ontario administratrix. In 1904 James Young came to Ontario from California, being then domiciled in California, and sold a farm in Ontario. Before returning to California he bought from the Bank of Montreal at Cornwall, Ontario, two drafts upon the National City Bank, New York, each for $1,000, and carried them with him to California. On the 8th March, 1905, he died there without having cashed them.

The plaintiff was on the 5th September, 1905, by a California Court appointed administrator, and, having indorsed the drafts as administrator, sent them to New York for collection. The New York bank refused payment, the Bank of Montreal having in May, 1905, stopped payment of the drafts, and a demand was then made on the Bank of Montreal, who required evidence of identity, etc. Before that was furnished, and on the 23rd November, 1905, the defendant, next of kin of the deceased, residing near Cornwall, obtained from the Surrogate Court of the united counties of Stormont, Dundas, and Glengarry, letters of administration to the estate of the deceased, and on the 21st February, 1906, began an action against the Bank of Montreal to recover $2,021, being the amount paid by the deceased to that bank when he obtained the drafts, and interest.