

Q. B. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div

Held, further, that it was not intended that the Court should interfere at the instance of the corporation but at the instance of some party claiming the money or part thereof.

But, *semble*, that the Court might so interfere at the instance of the corporation, but that the facts in this case were not sufficient ground for such interference.

E. Eddis, for the city of Toronto.

George Morphy, for Mary Ann Beckett.

Henderson, for McNeil and Sinclair.

Alan Cassels, for execution creditors of Mrs. McNeil.

RE FENTON AND THE COUNTY OF SIMCOE.

Municipal law—Incorporation of village—46 Vict. c. 18 s. 9 (O.)—Census—By-law—Illegality—Matters not appearing on face of by-law—Power to quash—Estoppel—Laches.

On an application to quash a by-law incorporating a portion of township territory as a village,

Held, that the power of the Court to quash an illegal by-law is not limited to cases where illegality appears upon the face of the by-law, but extends to cases where the illegality shown is entirely extraneous.

Enquiry may in every case be had upon affidavits as to the existence of the facts constituting the statutory conditions precedent to the passing of the by-law, and as to any illegality in the manner of its being passed

The applicants in this case had all voted at the municipal elections holden for the village as incorporated by the by-law in question; one of them had been a candidate for the office of reeve, and another had been elected to the school board, but none of them had in any way promoted the passing of the by-law, or had any part in the taking of the census objected to.

Held, that the applicants were not estopped from moving to quash the by-law.

Semble, that the by-law incorporating the village was not necessarily illegal by reason of the mere fact that the census was in reality taken before the by-law authorizing the enumeration of the people had been passed by the county council.

But where the census was shown to be wholly unreliable, and untrue in fact, effect was given to this objection.

Semble, that although a motion to quash a by-law cannot be entertained unless made within a year from the passing of the by-law, it does not follow that an application made within the year may not be successfully answered by showing laches of the applicant, though in this case no such laches existed.

Aylesworth, for motion.

McCarthy, Q.C., and *Pepler*, contra.

Wilson, C.J.]

Municipal law—Railway—Illegal by-law.

RE SCOTT AND TILSONBURG.

Where the municipality of a town agreed with T., if he would take their place with a railway company to pay the latter \$1,800 and find them a free roadway, upon the company building a switch from their station into the town, to exempt from taxation for ten years two of T.'s mills,

Held, not within sec. 388 of Consol. Mun. Act, 1883, amended by the Act of 1884, and that there was not a proper public consideration from T. for the exemption. A by-law passed by the municipality for the purpose, but not passed upon by the ratepayers, was therefore quashed, with costs.

Norris, for motion.

Osler, Q.C., contra.

CHANCERY DIVISION.

Proudfoot, J.]

[Sept. 3.

MCARTHUR V. THE QUEEN.

Application for timber license—Notice of acceptance—Assessment for value—Petition for issue of same—Demurrer—Rule as between subjects and as between Crown and subject.

McA. filed an application with the proper Government official for a license to cut timber upon two berths, and complied with the usual regulations, one of which was the payment of