

the work is substituted, the effect of the later agreement is to discharge the obligation created by the bond.

*T. McViety*, for plaintiffs. *Ferguson*, K.C., and *Wallace Nesbitt*, K.C., for defendants.

MacMahon, J.]

PALMER v. JONES.

[Jan. 5.

*Easement—Street—Right of ingress and egress—Covenant of indemnity—Breach of—Statute of limitations—R.S.O. 1897 c. 133, s. 41.*

By 52 Vict., c. 53 (O.), an agreement entered into between the Crown on behalf of the University of Toronto and the City of Toronto, for the purpose of restoring a lease for 999 years of a block of land made to the City for a public park, which had been declared forfeited, was validated, under the circumstances set out in the report, and a street, which constituted one of the avenues under the lease, made a public street; but such dedication was not of itself to confer on adjacent property owners any right of ingress or egress thereto; and any owner, who had not, prior to said agreement, acquired rights of access, was required to pay such sum therefor as might be awarded under arbitration proceedings, or settled between the parties. The plaintiff subsequently purchased from the defendant lands on said street, the deed containing a covenant by the defendant to indemnify plaintiff against the payment of any money, and all loss, costs or damages he might be obliged to pay for access to said street. The plaintiff's right of access being objected to by the University, and use of the same forbidden, a settlement was effected by plaintiff agreeing to pay a named sum, part of which was paid down and an undertaking given to pay the balance by yearly instalments:

*Held*, that the dedication of the street was a limited one, and that the plaintiff was entitled to recover the amount he agreed to pay, and that his remedy was not limited to what he had actually paid.

*Held* also, assuming that the predecessors in title had, for nearly thirty years before the passing of the Act, enjoyed access to and from the avenue, that no right had been acquired under the statute of limitations, for the effect of the 52 Vict., c. 53 (O.), was to create a new beginning for the statute; and also by s. 41 of R.S.O. c. 133 the statute could not commence to run until three years after the expiration of the original lease to the city.

*Paterson*, K.C., and *Donald MacDonald*, for plaintiffs. *Du Vernet* and *J. E. Jones*, for defendants.