

*by defendant on his own account.*—

After the death of one maker of a joint and several promissory note signed by two, the deceased being a surety only, a payment upon it out of his own moneys and on his own account was made by the surviving maker who was also the sole executor of his deceased co-maker.

*Held*, that such payment did not take the debt out of the Statute of Limitations as regards the estate of the latter. *Paxton v. Smith*, 178.

2. *Acknowledgment—Depositions in another action*—21 Jac. 1, c. 16—*R. S. O., c. 123 s. 1.*—In an action for a debt, to which the defendant pleaded the Statute of Limitations, the plaintiff gave in evidence, as constituting acknowledgments, (1) a letter from the defendant in which he said: "I am of the opinion that it will be impossible for me to pay you anything until my son's estate is wound up;" (2) portions of the examination of the defendant, signed by him and taken in a certain other action brought for the administration of the son's estate, having reference to a claim set up by the defendant against the estate, in which he admitted the receipt of the money for which the present action was brought, and stated that he was responsible to the testator of the present plaintiff, who was an executor, for it. There was evidence, also, that the son's estate was wound up, and that the defendant received more than sufficient to pay the plaintiff's claim.

*Held*, affirming the decision of FALCONBRIDGE, J., that the letter was a sufficient acknowledgment under the statute, and meant that on the son's estate being wound up, the defendant would pay, and the estate having been wound up, anything conditional in the letter had been ascertained:

*Held*, also, that the statute was satisfied by an acknowledgment made and signed as in the testimony of the defendant in the administration action.

*Smith v. Poole*, 12 Sim. 17, followed. *Roblin v. McMahon*, 219.

See EXECUTORS AND ADMINISTRATORS—MUNICIPAL CORPORATIONS, 5.

### LIQUORS.

See CANADA TEMPERANCE ACT.

### LOCAL IMPROVEMENTS.

See COVENANTS FOR TITLE.

### MAGISTRATE.

See JUSTICE OF THE PEACE.

### MALICE.

See CORPORATIONS, 2.

### MALICIOUS PROSECUTION.

1. *Reasonable and probable cause*—*Information for assault—Justification of assault—Misdirection—New trial.*—Where a man has been prosecuted for an assault, and brings an action for malicious prosecution, the finding that there was in fact an assault is not decisive of the question whether there was a reasonable and probable cause for the prosecution; the plaintiff is entitled to have the circumstances relied on as justification for the assault submitted to the jury, and to have their finding as to whether the defendant was