

Q. B.]

NOTES OF CASES.

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protest. D. did not protest or notify defendants of its dishonour, but delivered it to them, adding that he had paid it. About three months after its maturity D. absconded in insolvent circumstances, and after that defendants were for the first time notified of the non-payment of the note.

In an action against defendants on the note they pleaded, on equitable grounds, the above facts and that, by the laches of the plaintiffs, they were prevented from obtaining indemnity from D., and that if compelled to pay the note, they would be defrauded out of the amount.

*Held*, a good defence, and that the defendants were discharged.

IN RE BROCK AND THE CORPORATION OF THE CITY OF TORONTO.

*Assessment for sewers—Statutes—Revised Statutes—Repeal—Construction.*

Sec. 464, sub-sec. 2, of 36 Vict. c. 48, enacts that the council of every city, town, and incorporated village, shall have power to pass by-laws for assessing upon the real property to be immediately benefited by the making, &c., of any common sewer, &c., "on the petition of at least two-thirds in number and one-half in value of the owners of such real property, a special rate," &c. This sub-sec. is amended, so far as the same relates to the City of Toronto, by 40 Vict. c. 39, sec. 2, by inserting after the words "owners of such real property" the words "or where the same is in the opinion of the said council necessary for sanitary or drainage purposes." 40 Vict. c. 6, respecting the Revised Statutes, passed in the same Session, repealed 36 Vict. c. 48; and R. S. O. c. 74, sec. 551, sub-sec. 2, corresponds with the repealed sec. 464, sub-sec. 2.

*Held*, ARMOUR, J., doubting and CAMERON, J., dissenting, 1. That under 40 Vict. c. 6, sec. 10, the R. S. O. was substituted for the repealed Acts, and the amending Act was applied to the R. S. O. c. 174. 2. The amendment in 40 Vict. ch. 39, was a reference in a former Act remaining in force to an enactment repealed, and so a reference to the enactment in the Revised Statutes,

corresponding to the sec. 464, sub-sec. 2, within sec. 11 of 40 Vict. c. 6. 3. That the City of Toronto, therefore, could pass a by-law in 1879 to construct a sewer, when necessary in their opinion for sanitary or drainage purposes, without any petition therefor.

MYKEL V. DOYLE.

*Easement—Obstruction—Limitation—R. S. O., c. 108.*

*Held*, ARMOUR, J., dissenting, that the Ontario Act (R. S. O., c. 108), reducing the period of limitation to ten years, does not apply to the interruption of an easement, such as a right to a way, *in alieno solo*, in this case a lane, which the defendant had occupied and obstructed for ten years, but which the plaintiff had used prior to such obstruction.

SULLIVAN V. THE CORPORATION OF THE TOWN OF BARRIE.

*Municipal Corporations—Defective drainage—R. S. O., c. 174, sec. 491—Limitation of action.*

To a declaration charging negligence in the construction and maintenance of drains, in order to drain the streets of a town, whereby the drains were choked and the sewage matter overflowed into the plaintiff's premises, defendants pleaded that the cause of action did not accrue within three months: *Held*, bad, as sec. 491 of the Municipal Act, R. S. O., c. 174, did not apply.

COSGRAVE ET AL. V. BOYLE, EXECUTOR OF JAMES STEWART.

*Promissory note—Death of endorser—Notice of dishonour.*

S. endorsed a note to the plaintiffs for the accommodation of the maker, and the plaintiffs discounted it at a bank. S. died before it fell due, and at its maturity on the 8th of March, 1879, it was protested at the bank for non-payment, where the death of S. was unknown, and notice was sent addressed to S. at the place where the note was dated. The defendant, executor of