

means of opening a trap-door in the sidewalk in front of the house. This was at night, and the trap-door being left open, and no light or guard being provided, the plaintiff fell into the opening and was injured.

*Held*, that this negligence of the servants was attributable to the master, who was liable for the injury.

No act of negligence was proved against the village corporation, nor was there evidence upon which notice to the corporation might be attributed; the construction of an opening in the sidewalk is authorized by the Municipal Act, s. 639, and no fault was alleged in its construction or maintenance; the corporation had no knowledge of the opening being left after dark without protection, and it was not shewn that they had means of guarding against it.

*Semble*, that, under these circumstances, the corporation were not liable.

*Homewood v. City of Hamilton*, 1 O.L.R. 266; ante p. 240, considered.

But, supposing the corporation is liable, it could only be for non-feasance, and not for mis-feasance, and the action failed because not brought within three months after the damages had been sustained.

*Watson*, K.C., and *T. Stewart*, for plaintiffs. *F. D. Moore*, for defendant corporation. *Stratton*, K.C., for defendant Graham.

Boyd, C.]

RE MOORE AND LANGMUIR.

[Nov. 6.

*Executors and administrators—Power to sell lands—Charge of legacies—Trustee Act—Devolution of Estates Act.*

Petition under the Vendors and Purchasers Act with regard to a question of title arising upon a contract for the sale of land. The vendors made title under the will of P., who died on the 11th September, 1886, leaving a will in which he appointed executors and gave all his estate, real and personal, to his wife for life subject to certain bequests, and should his brother survive the wife he was to have the life use of the residue of the property, which was afterwards to go to the brother's children. In several places in the will (which was not skilfully drawn), the testator used the expressions "from the time Humewood is sold," "after the sale of Humewood," and "so soon as Humewood is sold," but there was no devise to the executors in trust, and no express power of sale. The lands in question, which were a portion of what is called "Humewood" in the will, were sold and conveyed by the executors, and the vendors made title under such conveyance. The sale was not made in any way under the Devolution of Estates Act. The sale was not for the payment of debts. The question was whether the executors had power to sell. The Devolution of Estates Act, 1886, came into force on the first July, 1886, shortly before the death of the testator.