

Com. Pleas.]

NOTES OF CANADIAN CASES.

[Chan. Div]

Rose, J.]

BEGG V. THE CORPORATION OF THE
TOWNSHIP OF SOUTHWOLD.

Drain—By-law to clean, repair—Work done including deepening—Municipal Act 1873, secs. 570, 589—Alteration of amendment—Evidence.

A by-law passed for raising the unpaid portion of the expense of cleaning out and repairing a drain otherwise good on its face, was objected to, on the ground that, while the resolution and by-law authorizing the work to be done was for such cleaning and repairing only, the work actually done included deepening.

Held, that the objection being without merits, and the by-law good on its face, and as the work had been done and paid for, the municipalities only authorizing the cleaning and repairing, and, if deepened, which was not free from doubt, the evidence shewed it was done accidentally and not by design, and as much inconvenience would ensue if the by-law were quashed, the application was refused; but apart from this, *quære*, whether under secs. 570, 589 of the Municipal Act of 1883, and 45 Vict. ch. 26, sec. 17, O., the municipality had not power without petition to do such work, including deepening, as might be incidental to maintaining the drain in an efficient state.

A further objection that the assessment was altered without notice being given affording an opportunity to appeal was disallowed, the evidence failing to establish any such alteration.

F. Lefroy, for the applicant.

Cattanach, contra.

CHANCERY DIVISION.

Boyd, C.]

[April 30.]

MILL V. MILL.

Infant—Costs against next friend.

Where one commenced an action as next friend to an infant without any notice to the defendant, and without any investigation as to the good reasons which the defendant had for acting in the manner complained of,

Held, that the next friend should pay the costs.

Golds v. Kerr, W. N. 1884, p. 46 approved of *Gibbons*, for the plaintiff.
Magee, for the defendant.

Boyd, C.]

[June 19.]

NELSON V. WIGLE,

Registered owner of vessel—Goods supplied to vessel.

Where one brought action against the registered owner of a certain vessel for the value of goods and supplies furnished by him not on the order of the defendant, but on the order of one G. C., between whom and the defendant no relation of agency was proved,

Held, that the plaintiff could not recover against the defendant.

The fact that the vessel got the benefit of the supplies and necessities did not make the registered owner liable.

Boyd, C.]

[June 25.]

ELLIOT V. STANLEY.

Partners—Contract—Joint and several—Breach of contract not to trade.

The two defendants, trading in partnership as hardware merchants at C., sold out their business to the plaintiff under a written agreement, wherein they stated as follows:—

"The parties of the first part (the defendants) do hereby bind themselves to the plaintiffs under a penalty of \$2,000 that they will not do business in C. in hardware for the term of five years from this date."

Afterwards, and within the five years, one of them commenced business in connection with a third party as a hardware merchant at C.

Held, that this did not amount to a breach of the above agreement, though the matter was not free from doubt.

The undertaking as expressed was that they should not engage in a like business; it contemplated and provided against joint action. It was not merely that a rival trade should not be begun, but that they two would not be the parties to set up or enter upon such a business.