

NOTES OF CASES

IN THE ONTARIO COURTS, PUBLISHED
IN ADVANCE, BY ORDER OF THE
LAW SOCIETY.

COURT OF APPEAL.

[December 1, 1879.

MAXWELL V. THE CORPORATION OF THE
TOWNSHIP OF CLARKE.

Contributory negligence.

On one side of a travelled road, which the defendants were bound to keep in repair, was a declivity, down which a pile of wood, composed of blocks cut in two-foot lengths, had been thrown by a person living near the highway, and allowed to remain for about three weeks. Some of the wood was upon the bed of the road, but a portion, estimated at from 21 to 26 feet, was free from obstruction. The road itself was not defective.

In passing this pile of wood, on his way to a neighbouring village, the plaintiff's horse, which was a quiet one, shied, but no accident occurred. Returning, a short time after, at a canter, but holding a close rein, the plaintiff was thrown off by his horse, which again shied at the wood. The plaintiff swore that the wood had "interfered with his travelling when riding another beast."

Held, on appeal from the County Court of the United Counties of Northumberland and Durham, that the defendants were not guilty of a breach of the statutory duty to "keep in repair" the road; and a nonsuit was therefore directed to be entered in the Court below.

Per PATTERSON, J.A., that the findings (i.) that this place was a place of danger, and (ii.) that the plaintiff was not guilty of contributory negligence in allowing his horse to canter past were inconsistent.

J. K. Kerr, Q.C., and D. B. Simpson, for plaintiff.

E. Douglas Armour, for defendants.

QUEEN'S BENCH.

IN BANCO, MICHAELMAS TERM,
DECEMBER 27, 1879.

IN RE GILCHRIST AND THE CORPORATION OF
THE TOWNSHIP OF SULLIVAN.

By-law—Defects on face of—Validity—Practice.

Held, that although it appeared on the face of the by-law that the last instalment of principal and interest due under certain debentures issued by a municipal corporation would be payable beyond twenty years from the date at which the by-law was to come into force, the by-law was, nevertheless, good, as the provision in question must be considered as controlled by the preceding one, which made the debentures payable in twenty years at furthest from the day appointed for the by-law to take effect.

The by-law showed the whole ratable value of the property of the municipality to be \$668,293, and directed a rate of three and nine-tenth mills in the dollar, which it appeared would produce about \$150 less than the total amount of the debt to be incurred. *Held*, no objection to the by-law.

The Court refused to receive affidavits in support of the rule produced by counsel for the first time on the return thereof.

MacLennan, Q.C., and Moss in support of the rule.

J. K. Kerr, Q.C., contra.

MARY ARMSTRONG, ARCHIBALD LITTLE, and
JAMES ROBINSON, EXECUTORS, v. ROBERT
G. ARMSTRONG, EXECUTOR.

Executor de son tort—Action against—Administrator.

An action will not lie against a party as executor de son tort when there is a legally appointed administrator of the estate, even though the latter may have conveyed the estate to the former on condition of his paying the debts of the deceased.

Ritchie for plaintiff.

Delamere contra.