

[Reference to *In re Woods Estate* (1886), 31 Ch.D. 607, 615.]

See also as to this, and as to the effect of the repeal of an enactment which has been incorporated in a subsequent Act, *Regina v. Stock* (1838), 8 A. & E. 405; *Regina v. Inhabitants of Merionethshire* (1844), 6 Q.B. 343; and *Regina v. Smith* (1873), L.R. 8 Q.B. 146.

Chapter 66, C.S.C., except sec. 155 and secs. 158 to 161 inclusive, was repealed in the revision of 1877; but, apart from the effect of the Acts respecting the Revised Statutes of Ontario and of the Interpretation Act of 1897, to which I shall afterwards refer, its repeal had no effect on the respondent's special Act—the rule of construction being that “where a statute is incorporated by reference into a second statute the repeal of the first statute by a third does not affect the second:” per Brett, L.J., in *Clark v. Bradlaugh* (1881), 8 Q.B.D. 63, 69.

Unless, therefore, the provisions of the special Act as to actions for indemnity have been repealed or so amended as to extend the period of limitation to one year, the ruling of the trial Judge was right, and the action was properly dismissed.

It was argued by counsel for the appellants that the provision of the respondent's special Act which is in question was superseded by sec. 223 of the Ontario Railway Act, 1906, the provisions of which are that “all actions or suits for any damages or injury sustained by reason of the construction or operation of the railway shall be commenced within one year next after the time when such supposed damage is sustained, or, if there is continuation of damage, within one year next after the doing or committing of such damage ceases, and not afterwards.”

It was answered by the respondent's counsel that not only does the rule of construction that a special Act is not repealed by a subsequent general Act dealing with the same subject-matter, unless by express reference or necessary implication (Beal's *Cardinal Rules of Legal Interpretation*, 2nd ed., pp. 460-470, and cases there cited), prevent the repeal of ch. 66 and the enactment of sec. 223 from operating so as to repeal the limitation provision of the respondent's special Act, but the Act itself expressly provides that where the provisions of the special Act and its provisions are inconsistent the special Act shall be taken to override the provisions of the Act of 1906, and in support of that contention secs. 3 and 5 are relied upon.

That the limitation provision of the special Act is inconsistent with sec. 223 of the Act of 1906 is not open to question, the