

Com. Pleas.]

NOTES OF CANADIAN CASES.

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should state the number of inhabitants of the city, so as to show on its face that the number of licenses fixed is within the statutory limit.

*Held*, also, that a provision in the by-law for limiting the number of licenses "for the ensuing license year beginning on the first day of May, 1884, or for any further license until this by-law is altered or repealed" was valid.

*Held*, also, that a provision in the by-law that it should remain in force until altered or repealed was unobjectionable, being merely harmless, as it was merely a statement of what the statute provided.

An objection that the by-law was invalid because in addition to the other matters therein it provided for a duty in excess of \$200 which required the assent of the electors, and therefore should have been by separate by-law, was over-ruled, because the by-law as a fact contained no such provision; but *quære*, whether the fact of a by-law containing provisions, some of which require the assent of the electors, would necessarily invalidate the by-law.

*Held*, also, that when a by-law states no particular power as its basis it must be judicially regarded as emanating from that power which could authorize its passage, and, therefore, the by-law here being silent on this point it must be deemed to have been passed by proper authority.

It was also objected that sec. 34 of the License Act of 1884 in effect repealed the by-law as it made the duty more than \$200, and the council had not submitted the question to the electors; but, *held*, that if repealed, it could not be quashed; but, *semble*, that the effect of the section was to add the increased duty to the amount already provided for by the by-laws previously passed, unless the council saw fit, prior to 18th April, 1884, to amend the by-law as to the license duty payable thereunder.

*V. Mackenzie, Q.C.*, for the applicant.

*Hardy, Q.C.*, contra.

Rose, J.]

#### NORTH V. FISHER.

*Foreign judgment—Action on—Limitation of action.*

To an action on a foreign judgment recovered in the Supreme Court of Albany, N.Y., the defendant set up on a defence that

the cause of action occurred more than six years before the commencement thereof.

*Held*, on demurrer, that under our law the foreign judgment is only deemed to constitute a simple contract debt, and the period of limitation being governed by the law of the country when the action is brought, and not by the *lex loci contractus*, the period of limitation as set up constituted a good defence.

*Carscallen* (of Hamilton), for the plaintiff.

*Fitzgerald* (of Hamilton), for the defendant.

Rose, J.]

#### HEWISON V. TOWNSHIP OF PEMBROKE.

*Municipal corporations—Closing up road—Road running through several municipalities—Power to close—Rule nisi.*

An application to quash a by-law must be by rule *nisi*, and not by notice of motion.

A road, originally a trespass road, running from Ottawa to Prescott through more than one county, following the course of the Ottawa River, had been used for upwards of forty years and had become a public highway. The road in its course intersected diagonally lots 1 and 2, owned respectively by the applicant and D., running from the town line on the south of lot 1 to the concession line on the west of both lots. In October, 1883, D., who was then and had been for three previous years, a member of the township council, petitioned the council to pass a by-law closing up this portion of the road, and procured E. and M., two of the council, to pledge themselves to support the by-law, in the belief that it was for the public benefit; but on thus discovering the contrary, and asking D. to release them, he refused to do so. He, however, pretended that he was not anxious for the by-law to pass, and petitioned the council that his lands might be injuriously affected thereby, asking to be heard by counsel; but, as he wished, as he said, "to be let down easy," he arranged that E. should support the by-law, which he said would be defeated. E. accordingly voted for it, as also did M. and another councillor, D. being absent, and the Reeve not voting, and in consequence the by-law carried. It appeared that D.'s counsel, who was also the township counsel, appeared at the council meeting and spoke in favour of the by-law, and that D. guaranteed