

cost of the construction of a railway, to prepare the plans and specifications and act as a consulting-engineer, is a contract of hire of personal services, which the contractors cannot set aside without paying the agreed commission.

The judgment of the Superior Court, which is affirmed, was rendered by M. Justice MacLennan, on November 20, 1917.

On the 12th of July 1916, by an agreement made, at Montreal, the plaintiff undertook to prepare, for the defendant, the plans and specifications for a railway of about 12 miles, in the township of Greenville, and to act as consulting-engineer. He was to be paid by a commission of 2 p. c. on the total cost of the railway. On September 7, 1916, the defendant notified the plaintiff that it had resiliated the contract and refuses plaintiff's services. The plaintiff made in vain several protests.

The plaintiff then brought suit against defendant, and alleges that the construction of the railway was terminated about November 8, 1916, at the cost of \$160,000; that according to his contract with the company-defendant, he was entitled to be paid \$3,200; that having already received \$300, he was entitled to a balance of \$2,900.

The defendant pleaded that it had the right, in law, to annul to said contract at any time, and moreover that it was justified to set aside the agreement with plaintiff on the grounds. (a) of incompetency; (b) of insubordination and diffamation.

The Superior Court maintained the action for \$2,400 for the following reasons:

"Considérant que le contrat intervenu entre les parties en cette cause était de sa nature un contrat de loua-