

Trial Court.

CITY OF KINGSTON v. KINGSTON,
PORTSMOUTH AND CATARA-
QUI ELECTRIC RAILWAY CO.

[STREET, J., APRIL 22.]

Action to compel electric cars to run in winter months—Impossible to enforce personal service—Specific performance—Mandamus—Inability of Court to direct and superintend working of railway—Actual damage—Reference.

Judgment in action tried without a jury at Kingston. The action was brought to compel the defendants to run their cars during the winter months, as well as the rest of the year, over the portion of the railway from Alfred Street along Princess Street westward to the city limits, in accordance with the terms of the agreement between the plaintiffs and defendants set out in the schedule to 56 V. c. 91 (O). Held, that, in the face of the line of authorities referred to in the judgment of Ritchie, C.J., in *Bickford v. Chatham*, 16 S. C. R. 235, a judgment for specific performance could not be pronounced, because such a judgment would necessarily direct and enforce the working of the defendants' railway under the agreement, in all its minutiae, for all time to come. *Fortescue v. Lostwithiel and Towey Railway Co.*, (1894) 3 Chy. 621, not followed. Held, also that the enforcement of a judgment for the performance of a long series of continued acts involving personal service, and extending over an indefinite period, would be equally difficult if the judgment were in the form of mandamus. The plaintiffs were not entitled to the prerogative writ of mandamus, because that

writ is not obtainable by action but only by motion: *Smith v. Chorley District Council* (1897), Q. B. 532. Held, also, that to grant an injunction restraining the defendants from ceasing to operate their cars on the part of the line in question would be to grant a judgment for specific performance in an indirect form: *Davis v. Forman*, (1894) 3 Chy. 654. Held, also, that a declaration of right under s. 52, s.s. 5, of the Judicature Act should not be made, as the terms of the contract were plain, and were confirmed by statute, and the only difficulty was that of enforcing them. Held, lastly, that no evidence of any actual damage having been offered, a reference could not be directed. Action dismissed with costs, but without prejudice to any future action in respect of further breaches of the agreement in question, or any motion for mandamus in respect to past or future breaches. J. McIntyre, Q.C., for plaintiffs. J. L. Whiting (Kingston), for defendants.

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THE TAXATION OF COSTS.

Mr. J. A. McAndrew, one of the taxing officers of the Supreme Court of Judicature for Ontario, has issued from the press of Goodwin & Company, law publishers, Toronto, a most useful book, entitled "Tariffs of Costs Under the Judicature Act, with Index to Tariff A., Practical Directions, and Precedents of Bills of Costs." The title sufficiently indicates the nature of the contents, and the book, to use a trite, but in this case a most appropriate phrase, "supplies a long felt want." It is hardly necessary to add that the work of both author and publisher is excellent.