

to withdraw his promise to pay the increased price, but renewed it on the sub-contractors threatening to stop. After completion of the work payment of the extra price was refused, and an action was brought therefor.

Held, affirming the judgment of the Court of Appeal, that the conversation between McC. and S., prior to the commencement of the work, as detailed in the evidence, justified the sub-contractors in believing that the standard of quality was to be that of the Loop line; that the promise to pay the increased price was in settlement of a *bond fide* dispute, which was a good consideration for such promise; and that B. & S. were entitled to recover.

Appeal dismissed with costs.

Bain, Q.C., and Laidlaw, Q.C., for appellants.

Osler, Q.C., for respondents.

GRAND TRUNK RY. CO. *v.* FITZGERALD.

Railway company—Construction of line under charter—Money advanced and control exercised by another company—Liability of latter as to it—Tort-feasor.

In an action by F. against the G.T. Ry. Co. for damages caused by the building of an embankment along a line of railway which cut off access to the highway from F.'s land, the company contended that the said line of railway was built by and under the charter of another company; that there was no statute authorizing the G.T.R. Co. to build it, and its construction by them would be *ultra vires*; and that though the officers of the G.T.R. Co. were also officials of the company constructing said line, and F. had sustained damage by its construction, the G.T.R. Co., as a corporation, could not be made liable therefor. On the trial, the evidence showed that the G.T.R. Co. had advanced the money to build the line; that its president and other directors owned nearly all the stock in the chartered company; and that the work was done under the control and direction of the G.T.R. Co.'s engineers.

Held, affirming the decision of the Court of Appeal, that the G.T.R. Co. were liable to F. as wrongdoers.

Appeal dismissed with costs.

W. Cassels, Q.C., for appellants.

Edwards for respondents.

BRANTFORD, WATERLOO, AND LAKE ERIE RY. CO. *v.* HUFFMAN.

Contract—Tender for—Acceptance—Bond—Condition of—Consideration.

H., in response to advertisement therefor, tendered for a contract to build a line of railway, and his tender was accepted by the board of directors of the railway company, subject to his furnishing satisfactory sureties for the performance of the work, and depositing in the Bank of Montreal a sum equal to five per cent. of the amount of his tender. H. subsequently executed a bond in favor of the railway company, which, after reciting the fact of the tender and its acceptance, contained the condition that if within four days of the date of execution H. should furnish the said sureties and deposit the said amount, the bond should be void. These conditions were not carried out, and the contract was eventually given to another person. In an action against H. on the bond,

Held, affirming the decision of the Court of Appeal (18 A.R. 415), that no contract having been entered into pursuant to the tender and acceptance, the bond was only an executory agreement for which there was no consideration, and H. was not liable on it.

Appeal dismissed with costs.

Lash, Q.C., and Wilson, Q.C., for appellants.

Osler, Q.C., and Harley, for respondent.

HEWARD *v.* O'DONOHUE.

Statute of Limitations—Possession—Caretaker—Acts of ownership.

F.H. was the acting owner of certain real estate for some years prior to 1865, and O. was in possession under him as caretaker. In 1865, in a suit between F.H. and the other members of his family, a decree was made declaring F.H. to hold as trustee for, and to convey certain proportions of the property to, the other members. O. continued in possession after this decree, and took proceedings at different times against trespassers and others, but always represented that he did so by authority from F.H., and he did not act as asserting ownership in himself until 1884, when he fenced a portion of the land. In an action against O. to recover possession of the land:

Held, reversing the judgment of the Court of Appeal (18 A.R. 529), that the effect of the de-