low, that an action did not lie against the appellant for these particular sums apart from and distinct from an action for an account of his administration of the rest of the estate.

The plaintiff in his action alleged that he represented S.D., one of the substitutes, in virtue of a deed of release and subrogation, by which it appeared he had paid to S.D.'s attorney, for and on behalf of the defendant, a sum of £437 7s. 6½d., the defendant having in an action of reddition of account settled by a notarial deed of settlement with the said S.D. for the sum of $4000, which he agreed to pay and for which amount the plaintiff became surety.

Held, that as the notarial deed of settlement gave the defendant a full and complete discharge of all redditions of account as curator or administrator of the estate, the plaintiff could not claim a further reddition of account of these particular sums.

The plaintiff also claimed that he represented F.D and E.D., two other institutes under the will, in virtue of two assignments made to him by them on 21st January, 1869, and 15th November, 1869, respectively. In 1865, after the defendant had been sued in an action of reddition of account, by a deed of settlement the said F.D. and E.D. agreed to accept as their share in the estate the sum of $4000 each, and gave the defendant a complete and full discharge of all further redditions of account.

Held, affirming the judgment of the Court of Queen's Bench, that the defendant could not be sued for a new account, but could only be sued for the specific performance of the obligations he had contracted under the deed of settlement.

In 1871 C.Z.D., another of the institutes, died without issue, and by his will made the defendant his universal legatee. Plaintiff claimed his share in the estate under a deed of assignment made by defendant to plaintiff, in 1862, of all right, title, and interest in the estate.

Held, that the plaintiff did not acquire by the deed of 1862 the defendant's title or interest in any portion of C.Z.D.'s share under the will of 1871.

Held, further, that under the will of the late J.D., C.Z.D.'s share reverted to the surviving institutes and substitutes, and that all defendant took under the will of C.Z.D. was the accrued interest on the capital of the share at the time of his death.

By the judgment appealed from the defendant was condemned to render an account of his own share in the estate which he transferred to plaintiff by notarial deed in 1862, and also an account of C.D.'s share, another institute, who in 1882 transferred his rights to the plaintiff. The transfer made by defendant was in his capacity of co-legatee of such rights and interests as he had at the time of the transfer, and he had at that time received the sixth of the sums for which he was sued to account.

Held (1), reversing the judgment of the court below, that the plaintiff took nothing as regards these sums under the transfer, and even if he was entitled to anything, the defendant would not be liable in an action to account as the mandatary or *negotiorum gestor* of the plaintiff.

(2) That F.D. and E.D. having acquired an interest in C.Z.D.'s share after they had transferred their shares to the plaintiff in 1869, the plaintiff could not maintain his action without making them parties to the suit. Art. 920, C.P.C.

Per TASCHEREAU, J.: Was not the transfer made by the institutes E.D. and F.D. to the plaintiff while he was acting as curator to the substitution null and void under Art. 1484 C.C.?

Appeal allowed with costs.

Lacoste, Q.C., and *Bonni*, Q.C., for appellant.

Madore for respondent.

British Columbia.] [April 4.

HOGGAN *v.* ESQUIMAULT & NANAIMO R.W. CO.

WADDINGTON *v.* THE ESQUIMAULT & NANAIMO R.W. CO.

Government lands — Pre-emption — Statutory right to — Lands reserved.

By 47 Vict., c. 14 (B.C.), The Settlement Act, certain lands in the Province previously withdrawn from settlement, purchase, or pre-emption were thrown open to settlers, and it was provided that for four years from the date of the Act "they should be open to" actual settlers for agricultural purposes "at the rate of $1 per acre," except coal and timber lands which were expressly reserved. A part of these lands, which had been reserved for a town site many years previously, had been granted to the defendant company as part consideration for the construction by them of a railway from Es-