

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

IN RE CANADA, ATLANTIC, &C., R. CO. AND
TOWNSHIP OF CAMBRIDGE.

Municipal Corporation—Railway aid—Debentures—Mandamus.

Held, following the decision of the Supreme Court of Canada in *Re Grand Junction Railway and Peterborough* (not yet reported), that a writ of mandamus to compel the issue of debentures by a Municipal Corporation under a by-law in aid of a railway, will not be granted upon motion, but the applicant must bring his action.

CHANCERY DIVISION.

Divisional Court.]

Sept. 12.

CAMPBELL V. MCKERRICKER.

Promise to make a will—Representation—Part performance.

In this case the plaintiff claimed to be entitled to certain land on the ground that his father in his lifetime owned the land, and that in sundry ways his father became indebted to him, and in 1870, in a settlement of accounts between them was found to owe him \$540, and that his father then induced him to abstain from enforcing his claim for the said sum, and further, to go on working on the land with him, by representing that he would devise the land to him, the plaintiff, and that after coming to this agreement, his father represented to him that he had devised the land to him (as, indeed, he had), and so induced him to abstain from enforcing his claim for the \$540 until now the period of limitations was gone, and also to remain and work on the farm for several years, but that his father had, nevertheless, revoked the former will, by a subsequent one devising the land to the defendant.

Held (reversing the decision of Proudfoot, J.), that the plaintiff was entitled to the land in question, for there was no sufficient part performance to take the case out of the Statute of Frauds. Such acts of part performance must be done by the party seeking to enforce the contract, and they must be such as to manifest from their nature that there is some contract between the parties touching the land in question. But here the only act of part performance was the execution of the prior will, but that was the act of the person whose estate is sought to be charged, and, moreover, the mere execution of the will does

not import a contract, but only indicates a benevolent intention displayed by the testator in the execution of an instrument essentially of a revocable nature.

The statement that the father had represented that he had devised the land to the plaintiff, so as to induce him not to enforce his claim for \$540, was not proved, and *quære* whether if it had been it would have entitled the plaintiff to succeed. But different considerations would have arisen if the frame of the action had been on a representation by the father that he had made a will, which being in satisfaction for the wages, he agreed should be irrevocable.

The doctrine of part performance exempting a case from the statute is not encouraged by the trend of modern decisions. The strict boundaries of the law on the subject are fixed by the House of Lords in *Alderson v. Maddison*, L. R. 8 App. 467, and the decision in this case only adopts the principles laid down in that one.

B. B. Osler, Q.C., C. Moss, Q.C., and N. Mills, for the appellants.

M. Wilson for the respondent.

Full Court.]

[Sept. 15.]

WETHERELL V. JONES.

*Constitutional law—B. N. A. Act, s. 92, subs. 14
31 Vic., c. 76 Dom.*

Held, the Act 31 Vict. c. 76 (Dom.) being an Act to provide for taking evidence in Canada in relation to civil and commercial matters pending before Courts of Justice in any other of Her Majesty's Dominions, or before Foreign Tribunals, is not *ultra vires*, and an order made by Proudfoot, J., under the above statute, for the examination of certain witnesses resident in Ontario under a commission and letters rogatory from the circuit Court of Cook County, Illinois, upheld an appeal.

The provisions of the above statute do not affect the administration of justice in this province within the meaning of B. N. A. Act, sec. 92, subs. 14, by which exclusive jurisdiction as to the latter is vested in the Provincial Government. For the taking of evidence in this province to be used in civil actions pending in foreign tribunals is of *extra-provincial* pertinence, and not a matter relating to civil rights in the province. The observations of Lord Selborne in *Valin v. Langlois*, L. R. 5 App. 120, answer