

From Rose, J.] CALDWELL v. TOWN OF GALT. [March 27.

*Municipal corporations—Highways—Obstruction—By-Law—Injunction.*

In an action to restrain the defendants from enforcing a by-law to compel the plaintiff to remove a verandah projecting some distance over one of the streets of the town, it was held, on the evidence, that the verandah had been built after the street had been dedicated and laid out, and that it was therefore an unlawful obstruction; but as it had been in existence for a great many years and as no special necessity for its removal was made out, the Court refused to grant the defendants a mandatory injunction against the plaintiff for its removal, leaving them to enforce their by-law in such way as they should be advised. Judgment in 35 C. L. J. 232 varied.

*James Bicknell*, for appellant. *Du Vernet*, and *Card*, for respondents.

From Divisional Court.] RYAN v. WILLOUGHBY. [March 27.

*Contract—Breach—Condition precedent—Inability to perform—Municipal corporations—Resignation of councillor.*

The defendant, who was a municipal councillor, entered into a sub-contract with the plaintiff to do the brick and mason work under the plaintiff's contract with the municipality to build a town hall, that contract providing that the contractor should not sub-let the work or any part thereof without the consent in writing of the architect and municipality, and this consent the plaintiff was to obtain. The municipality refused to consent to the sub-contract on the ground that the defendant's services would be of value in the oversight of the contract:—

*Held*, that there could not be imported into the defendant's sub-contract an agreement to resign his seat, as such an agreement to resign a public trust for private gain would be contrary to public policy and illegal, and that the defendant was not liable in damages because of the breach of an implied obligation to resign, though his resignation might, as the plaintiff contended, have enabled the plaintiff to fulfil the condition precedent on his part of obtaining the municipality's consent. Judgment of a Divisional Court, 30 O. R. 411, reversed.

*Watson*, Q. C., and *J. A. Allan*, for appellant. *Shepley*, Q. C., for respondent.

From Divisional Court.] [March 27.

McMILLAN v. McMILLAN.

*Will—Construction—Inconsistent clauses—Executory devise—Failure of issue.*

A testator, by the third clause of his will, devised a lot of land to a son, "his heirs and assigns forever," and in the fourth clause stated it to be