

Q.B.]

NOTE OF CASES.

[Q.B.]

had informed him of the facts stated in their affidavits.

A rule *nisi* to set aside the order for such alleged insufficiency in the plaintiff's affidavit must point out the objection specifically.

H. Cameron, Q.C., for plaintiff.

Watson for defendant.

McBRIAN ET AL. V. WATER COMMISSIONERS OF  
THE CITY OF OTTAWA.

[Sept. 16]

35 Vict., cap. 80, sec. 41—Construction of.

The 35 Vict. cap. 80, sec. 41, incorporating the defendants, as amended in 36 Vict. cap. 104, sec. 17, O., provides that "all work under the said companies shall be performed by contract, excepting the laying of the water pipes, and such other works as in the opinion of the engineer of the said companies can be more profitably performed by day work." *Held*, that the words "by contract" did not necessarily mean by contract under seal, so as to relieve the defendant from liability for work done upon an executed parol contract.

Osler for plaintiff.

S. Richards, Q.C., for defendant.

RUPERT ET AL. V. JOHNSTON, ET AL.

[Sept. 26.]

*Donatio mortis causa—Gift inter vivos—Delivery.*

B., who died in 1874, had made a will in which there was a devise to the plaintiff, his illegitimate daughter; but this having given offence to his family he destroyed it and made another, and at the same time signed a promissory note, payable to the plaintiff, for \$2,000. He placed this note in a pocket book, where it remained till after his death, but shortly before his death he shewed it to a witness, and said it was to be paid after his death, and then handed it with the pocket book to the witness, but afterwards took them back. He told this witness that he would talk more about it to her another time, and asked her to tell P., his legitimate daughter and his executrix, that he had shown the witness the note, which the witness did, and told the testator that she had done so. It was proved also that he said he had made provision for the plaintiff.

*Held*, that the plaintiff could not recover, for the note could not be claimed by her either as a *donatio mortis causa* or as a gift *inter vivos*, there

having been no delivery of it by the testator.

*Quære*, whether such a note may, by manual delivery, be the subject of a gift.

Wallbridge, Q.C., for plaintiff.

Britton, Q.C., for defendant.

GEARING V. NORDHEIMER.

[Sept. 26.]

*Building agreement—Omission to sign specifications—Right to sue on quantum meruit.*

The plaintiff agreed in writing, on the 19th February, to build a house for the defendant according to the plans and specifications of one R., with alterations made by I., for \$25,000. Afterwards some alterations were agreed upon, and on the 30th April a contract was executed by plaintiff and defendant by which the plaintiff was to build the house for \$26,596, and this contract recited that the plaintiff had agreed to do all the work required according to certain plans and specifications prepared by R., with certain suggestions and amendments made by I., and signed by the plaintiff, subject to the various stipulations and conditions mentioned in the contract. The plans were signed by the plaintiff, but not the specifications; but he finished the building according to the specifications prepared, and from time to time obtained certificates for payment from the architect for the work executed as under the contract, in accordance with its provisions, by which the money was to be paid on such certificates, no extra work was to be paid for without a written order, and in the event of any dispute the architect was to be the sole and final judge.

*Held*, that the plaintiff's omission to sign the specifications could not entitle him to set aside the contract as not complete, and to claim for the work done as upon a *quantum meruit*, without the architect's certificates.

C. Robinson, Q.C., for plaintiff.

H. Cameron, Q.C., for defendant.

CHAFFEY V. SCHOOLKY.

[Nov. 29.]

*Vessel—Unseaworthiness—General average.*

The defendant's schooner was engaged to carry a cargo of timber from Spanish River to Chippawa. She left Spanish River with the timber on the 15th October, and anchored on that day at Bayfield Sound, leaking badly, where she remained till the 10th of November, and was then towed by a tug to Sarnia. There she got a steam pump, and with it on board was towed to the Welland canal, where she arrived on the 25th November, and being broken up the cargo