

C. of A.]

NOTES OF CASES.

[C. of A.]

Held, reversing the judgment of the Queen's Bench, that the plaintiffs had not precluded themselves from enforcing the claim by having proved it in the ordinary way, and not as a debt contracted by fraud; or by having taken composition notes and accepting payment of one of them.

W. Macdonald for the appellant.

Geo. Kerr, Jr., with him *Akers*, for the respondent.

Appeal allowed.

From Chy.]

[June 25th.]

WALLACE V. GREAT WESTERN RY. CO.

Railway Company—Specific performance—Covenant to keep a station.

In consideration of a bonus granted by the municipality, the Wellington, Grey and Bruce Railway Company covenanted to "erect and maintain a permanent freight and passenger station" at Gowanstown. Shortly afterwards he road was leased, with notice of the agreement, to the T. G. & B. Ry. Co., who discontinued the use of the station as a regular station, merely stopping there when there were any passengers to be let down or taken up.

Held, affirming the judgment of Spragge, C., that the mere erection of the station was not a fulfilment of the covenant; *Held*, also, that the covenant was binding on the T. G. & B. Ry. Co., and that the municipality was entitled to have it specifically performed.

The decree which enjoined the defendants from allowing any of their ordinary freight, accommodation, express or mail trains, other than special trains, to pass Gowanstown without stopping for the purpose of setting down and taking up passengers was varied by limiting it to such trains as are usually stopped at ordinary stations.

Boyd, Q.C., and *W. G. P. Cassels* for the appellants.

Bethune, Q.C., and *C. Moss* for the respondents.

Appeal dismissed without costs.

From Q.B.]

[June 25th.]

MCDougALL V. CAMPBELL.

Counsel fees—Action for.

Held, affirming the judgment of the Queen's Bench, that when a Barrister who is also an Attorney deals directly with a client, he can recover for his services, even though a part of the service rendered may be for advocacy; but

where a counsel is retained by an attorney he cannot bring an action for his fee.

Bethune, Q.C., for the appellant.

Dr. Spencer and *J. McDougall* for the respondent.

Appeal dismissed.

From Q.B.]

[June 25th.]

IN RE BROOKS AND THE CORPORATION OF THE COUNTY OF HALDIMAND.

County Council—Obligation to build a bridge—Mandamus—36 Vict., c. 48, sec. 413.

Section 413 of the Municipal Act of 1873, as amended by 37 Vict. c. 16, sec. 19, enacts that "it shall be the duty of County Councils to erect and maintain bridges over rivers forming or crossing boundary lines between two municipalities within the county."

A bridge over the Grand River, which runs between the townships of Oneida and Seneca, erected at the village of York by a private company, having become out of repair, was abandoned by the company. A distance of twelve miles, from Caledonia to Cayuga, was thus left without any bridge, and a mandamus was applied for to compel the county council to build a bridge at or near the village of York.

Held, reversing the judgment of the Queen's Bench, that as there were other bridges over the river, the question whether a bridge should be erected at this particular spot was a matter within the discretion of the county council.

C. Robinson, Q.C., for the appellant.

M. C. Cameron, Q.C., for the respondent.

Appeal allowed.

From Q.B.]

[June 25th.]

BURGESS V. BANK OF MONTREAL.

Tax Sale—Description of land sold.

The Sheriff, on a sale of land for taxes, in 1860, gave to the purchaser a certificate describing the land sold as "five acres of land to be taken from the south-west corner of the south-west quarter of lot 3, in the 11th concession of the Township of Zorra."

Six years afterwards the successor of this sheriff gave a deed describing the land particularly by metes and bounds.

Held, affirming the judgment of the Queen's Bench, that the sale was invalid.

Bethune, Q.C., for the appellant.

Becher, Q.C., with him *Streeb*, for the respondent.

Appeal dismissed.