

Held, that subject to the right of appeal to the Governor-General or of reference to the Supreme Court, the decision of the Railway Committee was under s. 21 of the Railway Act of 1888, 51 Vict., c. 29, D., final, for ss. 306 and 307 of that Act brought the defendants' line under the legislative authority of Parliament so soon as they proposed to cross the plaintiff's line.

Osler, Q.C., and *W. M. Douglas*, for the plaintiffs.

Shepley, Q.C., for the defendants.

MEREDITH, C.J.]

[May 5.

THE QUEEN EX REL. FERRIS v. SPECK.

Municipal elections—Incorporated village—Qualification for councillor—Con. Mun. Act, 1892, s. 73.

Quo warranto proceedings to remove the respondent from the office of councillor for the village of Niagara Falls, on the ground of want of qualification.

The respondent was rated on the proper assessment roll as tenant of land assessed for \$800, and the land with other land owned by the same landlord of the value of at least \$1,100 was encumbered by a mortgage for \$800, having priority to the respondent's lease.

The Consolidated Municipal Act, 1892, s. 73, requires a candidate for the office of councillor of incorporated villages, qualifying on leasehold property, to be proprietor or tenant of such property to at least the value, as assessed upon the last assessment roll, of \$400, over and above all charges, liens and incumbrances.

Held, on appeal from the Judge of the County Court of the County of Welland, that on the proper construction of the above section the mortgage on the lands in question was not to be taken into account in diminution of the value, not being on the leasehold interest of the respondent.

Held, also, that even if the mortgage had to be taken into account the respondent would be entitled to have it marshalled so that recourse should be first had to the other lands included in it; and at any rate the mortgage should be apportioned according to the respective values of the properties included in it, so that in either case the respondent was qualified.

Douglas, for relator.

DuVernet, for respondent.

BOYD, C.]

[May 6.

TURNER v. DREW.

Costs—Damages—Set-off—Solicitor's lien—Rule 1205.

There can be no set-off of damages or costs between the same parties in different actions, to the prejudice of the solicitor's lien; that is the effect of Rule 1205.

The lien is simply a right to the equitable interference of the Court not to leave the solicitor unpaid for his services, and it exists if it is made to appear that the solicitor has not been paid his costs.

Hislop, for the plaintiff.

Delamere, Q.C., for the defendant.