

*Held*, that the City of Hamilton did not, as a consequence of the annexation of county territory, become the "successor" of the county under said agreement and by-law so as to be entitled to a proportion of the payments to be made by the railway company thereunder.

Judgment of the Appellate Division (35 Ont. L.R. 434), reversed and that of the trial Judge (31 Ont. L.R. 659), restored. *Lynch-Staunton*, K.C., and *Counsell*, for the appellants.

*Rose*, K.C., and *Waddell*, K.C., for the City of Hamilton, respondent.

*Leighton McCarthy*, K.C., and *Gibson*, for the Hamilton Radial Railway Co., respondents.

Ont.]

[Feb. 6.]

MACEWAN V. TORONTO GENERAL TRUSTS CORPORATION.

*Contract—Consideration—Settlement of action—Statute of Frauds—Trade agreement—Restraint of trade—Criminal Code, sec. 498.*

In 1905, M. and his two brothers entered into a contract with R. by which they gave him exclusive control of their salt works with some reservations as to local trade. R. assigned the contract to the Dominion Salt Agency, a partnership consisting of his firm and two salt manufacturing companies, which agency thereafter controlled about ninety per cent. of the output of manufacturers in Canada.

*Held*, that, as the output was exceeded by the quantity imported which may have competed with it, and as the price was not enhanced by reason of this control by the agency, the contract had not the effect of unduly restraining the trade in salt and did not contravene the provisions of sec. 498 of the Criminal Code.

In 1914, M., as administrator of his father's estate, brought action against the estate of C. who, in his lifetime, had been president of the Dominion Salt Agency and president of and largest shareholder in one of the companies comprising it. This action was based on an alleged agreement by C., in connection with the settlement of a prior action against the three partners in the agency, by which he promised to pay five-sixteenths of the difference between the amount claimed and that paid on settlement. Evidence of the agreement was given by the plaintiff's solicitor in the former action and by defendant's solicitor also.

*Held*, reversing the judgment of the Appellate Division (36 Ont. L.R. 244), *Fitzpatrick*, C.J., and *Duff*, J., dissenting, that the settlement of the action was good consideration for C's contract; that his agreement was not a promise to answer for the