

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

It is not sufficient for the party undertaking such a duty to furnish evidence of certain clauses which support his claim, but must set out the whole agreement so that the court may be able to give effect to all its provisions, and that by testimony of the clearest nature.

In this case the learned judge was of opinion that the defendant, the party setting the agreement, had failed to establish.

G. T. Blackstock, and Walsh, for the plaintiff.

Fletcher, for the defendant.

CHANCERY DIVISION.

Div'l Ct.]

[January 8.]

LAWRENCE V. THE CORPORATION OF THE VILLAGE OF LUCKNOW.

Corporation—By-law—Contract—Novation of—Meeting of councillors—Taking possession of building—Acceptance of work on executed contract—Liability of corporation.

The defendants passed a by-law, approved of by the ratepayers, reciting that there was "an urgent necessity for a building to be used by the municipal corporation as a lockup, firehall, council chamber and public hall," for the purpose of acquiring the land, and erecting such a building, at a cost of \$4,500, for the raising of which sum provision was therein made. B.'s tender for carpenter work, etc. (including a shingle roof), was accepted, but at a special meeting of the council, at which only three of the councillors, with B. and L., the plaintiff, were present, an arrangement was made by which B. threw off \$4 a square, and was relieved of the roof part of his contract, and L. agreed to put on a metallic roof at \$6 a square, and it was resolved by the council that "the iron shingles, instead of wooden shingles, be put on the roof of the new Town Hall." All this was done subject to the approval of the Reeve, who was not present, but who afterwards approved of it, and at whose instance L. ordered the material and did the work. L. received a payment on account, but on the discovery of some defects in B.'s work the defendants refused, although they

had taken possession of the building, to pay the balance on the ground that the roof was not properly done, and that L. was a sub-contractor under B., and that there was no contract under seal with them.

Held (affirming O'CONNOR, J.), that the legal effect of this was to consummate a tripartite agreement by which B. was to give up part of his contract, and L. was to do the work for a specified price. That, between the plaintiff L., the defendants and B., there was a novation of contract so far as the roof was concerned, and as to that L. became the principal and only contractor.

Held, also, that the taking possession, payment on account, etc., was sufficient evidence to justify a finding of an acceptance of the work as an executed contract, or a case "of an actual and *de facto* performance of the contract by one party, of which the other party has taken, received and enjoyed the benefit." *The Mayor, etc., of Kidderminster v. Hardwick*, L. R. 9 Ex. 18, cited. *Munro v. Butt*, 8 E. & B. 738, distinguished.

A municipal corporation is liable on an executed contract for work done by its order, on its behalf, and for its benefit, though there be no agreement under seal, if the thing done were urgently required for the purposes of the corporation, and especially so where the price to be paid is not of large amount. *Robins v. Brockton*, 7 O. R. 481, referred to.

Cassels, Q.C., for the plaintiff.

Garrow, Q.C., for the defendants.

Div'l Ct.]

[January 8.]

WELLS V. LINDOP.

Slander—Denial of, by pleading—Evidence of privileged occasion—Amendment.

W. was in the employ of a mining co., of which L. was president, and had been working in the mining district under an arrangement by which his wife was to draw half his wages at the headquarters of the co. (her home). After he ceased to be employed by the co., but while still in the mining district, and before he was settled with and paid up, his wife with a companion, went to L. to apply for some of her husband's wages, and he replied, "We do not owe him anything now, he