

Chan. Div.]

NOTES OF CANADIAN CASES.

[Prac.]

debtor, (which railway was now represented by the defendants) was not a "creditor" of the B. & O. Railway, holding a *bond fide* claim against them within 27 Vic., c. 57, s. 10.

A copy of an order and of a writ of execution issued pursuant thereto admitted in evidence, a witness testifying that he had made the copies from the originals, which were satisfactorily proved to be lost.

A memorandum or entry found in a book in the office of a sheriff, appearing to be a memorandum or entry of the receipt of a certain writ by the sheriff, admitted in evidence, the sheriff and the then deputy sheriff being dead, and the existing deputy sheriff having proved the handwriting, and the place from which the book was produced.

*J. MacLennan*, Q.C., and *Francis*, for the plaintiff.

*T. Lash*, Q.C., and *Walker*, for the defendants.

Ferguson, J.]

[March 24.]

### ST. THOMAS V. CREDIT VALLEY R. W. CO.

*Specific performance against railway—Agreement to run trains.*

By deed of September 6th, 1881, the defendants covenanted with the plaintiffs, for valuable consideration, that all their passenger trains should run to and from a small station on Church street in the City of St. Thomas, for the purpose of checking baggage, and of accommodating passengers.

Subsequently, about August, 1882, the defendants ceased to run any of their passenger trains to or from the station in Church street.

The plaintiffs now brought this action, claiming that the defendants should be ordered to run all their passenger trains from this station, as agreed, seeking specific performance of the agreement.

*Held*, that specific performance could not be granted, and the plaintiffs must be left to their remedy in damages; for it appeared beyond doubt that in order to perform what the plaintiff asked either running powers would have to be obtained from the C. P. R. Co., who were owners of the station in Church street, or a new line of road built by the defendants for a considerable distance, at great expense and difficulty; servants would have to be kept, and there would be

involved the doing of continuous daily acts, such as the providing and selling of tickets, providing checks for baggage, and the doing continuously of all those things that are usually done at a passenger railway station, and under such circumstances the Court would not order specific performance.

*Lord Lytton v. Great Western Railway Co.*, 2 K. & J. 394, and *Wallace v. Great Western Railway Co.*, 3 O. A. 44, distinguished.

*D. McCarthy*, Q.C., and *T. S. Plumb*, for the plaintiffs.

*C. Robinson*, Q.C., *J. Bethune*, Q.C., and *Blackstock*, for the defendants.

### PRACTICE.

Mr. Dalton, Q.C.]

[January.]

### GAGE V. CANADA PUBLISHING CO. ET AL.

*Security for costs—Insolvent surety—Right to new surety.*

When one of the sureties in a bond given to secure the costs in the Court below became worthless the Master in Chambers held that the respondent was entitled to a new one.

*Holman*, for plaintiff.

*Davidson*, for Publishing Co'y.

*Barwick*, for defendant Beatty.

Mr. Dalton, Q.C.]

[January.]

### LOVELACE V. HARRINGTON.

*Examination—Notice of appointment—Rule 455.*

Rule 455 O. J. A. applies to the Chancery Division of the High Court of Justice.

A copy of appointment to examine was served on the plaintiff's solicitor on a Saturday for a Monday.

*Held*, insufficient notice.

*Holman*, for plaintiff.

*Hoyles*, for defendant.