

tributed, the widow may, although more than twelve months have elapsed since the death of her husband, elect to take in lieu of dower her distributive share under the Devolution of estates Act.

Judgment of BOYD, C. 33 C. L. J. 431, 29 O.R. 388 affirmed.

J. H. Moss, for appellants. *Armour*, Q.C., for the respondent.

From Street, J.]

[Nov. 15.

CITY OF KINGSTON *v.* KINGSTON ELECTRIC R. W. CO.

Street railways—Contract—Running cars—Specific performance—Injunction—Mandamus.

The court will not order specific performance of an agreement by an electric railway company to run its cars on certain streets at certain hours and with certain officers, as the court cannot oversee the carrying out of the judgment if granted. Nor will the court grant an injunction restraining the company from carrying out such an agreement to the extent to which they are willing to carry it out unless and until they carry it out in toto, as this would also involve the same minute supervision. Nor will the court direct in an action the issue of a writ of mandamus, where the duty to be fulfilled arises out of an agreement of this kind, the performance of which in specie is not deemed enforceable by the court.

Semble. A prerogative writ of mandamus cannot be granted in an action, only on motion, but even if it can be granted in an action it will not be granted to enforce such an agreement which, though ratified by an Act of the legislature, remains a private contract.

Judgment of STREET, J., 33 C.L.J. 395; 28 O.R. 399, affirmed, MACLENNAN, J.A., dissenting.

Robinson, Q.C., and *D. M. McIntyre*, for appellants. *Aylesworth*, Q.C., and *W. F. Nickle*, for respondents.

HIGH COURT OF JUSTICE.

Ferguson, J.]

[Sept. 26.

TOWNSHIP OF STAMFORD *v.* VILLAGE OF NIAGARA FALLS.

Municipal Act—Original road allowance between village and township—Joint liability to keep in repair—R.S.O. (1897), c. 223, s. 622—Damages.

The centre line of an original road allowance constituted the dividing line between a village and a township. Each municipality at first kept in repair the half within its limits. Resolutions were then passed by each municipality whereby it was agreed that the whole road should be kept in repair by the village, which it did, the township undertaking and keeping in repair other roads similarly situated; but no by-laws were passed for the purpose. In order to repair and widen the road, the village entered upon and took sand from the half of the road within the township limits.

Held, that the village was acting within its powers, for it had the right to enter and repair the road regardless of the half thereof upon which the