

and mixed, wherever situated, to his trustees, to promote, aid and protect citizens of the United States of African descent in the enjoyment of their civil rights, or in case of such trust becoming inoperative, to his heirs-at-law.

*Held*, that the devise of lands, so far as Ontario was concerned, was void and inoperative.

2. That the trustees held the lands to the use of the heir-at-law until satisfaction should be made thereout for the charges thereon of debts and testamentary expenses, and the heir-at-law was entitled to a conveyance thereafter.

3. That the Ontario lands were liable to contribute *pari passu* with the other lands for the payment of debts and testamentary expenses.

4. That the proportion chargeable on Ontario lands might be raised by sale of an adequate part, or the rents might be applied therefor.

*W. Cassels*, Q.C., for the plaintiff.

*Moss*, Q.C., for the defendants.

STREET, J.]

[April 21.

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

*Contract—Enforcement of—Municipal corporations—Street railways—Running cars—Specific performance—Mandamus—Action—Injunction—Declaration of right.*

The plaintiffs wished to force the defendants to keep their cars running over the whole of their line of railway, during the whole of each year, in accordance with the terms of the agreement between them, set out in the schedule to 56 Vict., c. 91 (O.).

*Held*, that the agreement was one of which the Court would not decree specific performance, because such a decree would necessarily direct and enforce the working of the defendants' railway under the agreement in question, in all its minutiae, for all time to come.

*Bickford v. Chatham*, 16 S.C.R. 235, followed.

*Fortescue v. Lostwithiel and Fowey R. W. Co.*, (1894) 3 Ch. 621, not followed.

2. Nor would it be expedient to grant a judgment of mandamus for the performance of a long series of continual acts involving personal service and extending over an indefinite period.

3. The prerogative writ of mandamus is not obtainable by action, but only by motion.

*Smith v. Chorley District Council*, (1897) 1 Q.B. 532, followed.

4. To grant an injunction restraining the defendants from ceasing to operate the part of their line in question, would be to grant a judgment for specific performance in an indirect form.

*Davis v. Forman*, (1894) 3 Ch. 654, followed.

5. Nor was there any object in making a declaration of right under s. 52, sub-sec. 5, of the Judicature Act, 1895, where the terms of the contract were plain and were confirmed by statute, and the only difficulty was that of enforcing them.

*John McIntyre*, Q.C., for the plaintiffs.

*Whiting*, for the defendants.