

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Quebec.]

[Nov. 27, 1905.]

QUEBEC SOUTHERN RY. CO. v. CITY OF SOBEL.

Municipal by-law—Railway aid—Condition precedent—Part performance—Assignment of obligation—Notice—Signification—Art. 1571 C.C.

An action for the annulment of a municipal by-law will lie, although the obligation thereby incurred be conditional and the condition has not been and may never be fulfilled.

Where a resolatory condition precedent to payment of a bonus to a railway, under a municipal by-law in aid of construction and operation of works, has not been fulfilled within the time limited on pain of forfeiture, an action will lie for the annulment of the by-law at any time after default notwithstanding that there may have been part performance of the obligation undertaken by the railway company and that a portion of the bonus has been advanced to the company by the municipality.

In an action against an assignee for a declaration that an obligation has lapsed and ceased to be exigible on account of default in the fulfillment of a resolatory condition exception cannot be taken on the grounds that there has been no signification of the assignment as provided by art. 1571 of the Civil Code of Lower Canada. The debtor may accept the assignee as creditor and the institution of the action is sufficient notice of such acceptance. The *Bank of Toronto v. St. Lawrence Fire Ins. Co.* (1903) A.C. 59 followed. Appeal allowed with costs.

Beaudin, K.C., and Belcourt, K.C., for appellants. Beique, K.C., and Robertson, for respondents.

Quebec.]

[Nov. 27, 1905.]

HUARD v. GRAND TRUNK RY. CO.

Negligence—Railways—Collision—Traffic agreement—Negligence of employee—Joint employ.

Where injuries resulted from a collision between two Intercolonial Railway trains negligently permitted to run in opposite directions on a single track of a portion of the Grand Trunk