formed for them by plaintiff. The trial Judge found that defendants were anxious to have the drive finished, and agreed with McCrea, and also with plaintiff, to take over from McCrea the several contracts he had with defendants and other owners of saw logs and to pay plaintiff what was due him at the time from McCrea, and also for continuing the drive.

W. M. Douglas, K.C., for appellants.

A. B. Aylesworth, K.C., for respondent.

The judgment of the Court (MEREDITH, C.J., LOUNT, J.) was delivered by

MEREDITH, C.J.—The facts and the findings of the learned Judge are fully set forth in his considered judgment, which was delivered on the 11th June, 1901, and it is unnecessary to repeat them.

I should have had some difficulty in coming to the conclusion that the judgment of my learned brother could be supported merely upon the ground that a new and substantial consideration passed from the respondent to the appellants for the promise made by them to pay what was owing to the respondent for the work done by him for McCrea on the drive, and that sec. 4 of the Statute of Frauds did not, therefore, apply.

Tumblay v. Meyers, 16 U. C. R. 143, and the observations of my brother Street with regard to that case in Beattie v. Dinnick, 27 O. R. at p. 295, are referred to by my brother Robertson, and were relied on by the respondent's counsel as establishing that proposition; but, looking at the whole of my brother Street's judgment and the cases referred to by him, it is plain, I think, that he did not intend to express his assent to it.

Expressions of opinion in some of the English cases, no doubt, lend support to the contention, but, as Mr. De Colyar points out (3rd ed., p. 130 et seq.), the law is otherwise, and so it was decided to be by the Court of Appeal in James v. Balfour, 7 A. R. 461. See also Barburg India Rubber Comb Co. v. Martin, 18 Times L. R. 428.

The judgment may, however, be supported upon one or other of two grounds:—

(1) That the result of the transactions between the appellants and McCrea and the respondent was that, upon the taking over by the appellants of the drive from McCrea, the appellants assumed the liability of McCrea to the respondent, and the respondent accepted the appellants as his debtors in place of McCrea, whose liability to the respondent was put an end to; in other words, on the ground of novation.