

Dec. 1, 1883.]

Co. Ct.]

IN RE O'BOYLE AND THE O. AND Q. RY.—HUNTER V. SAUNDERS.

[Div. Ct.]

In my opinion the defendant refused to perform an obligation required of him by the Election Act.

Judgment is for the plaintiff with full costs, the statement of claim to be amended as aforesaid.

RAILWAY CASES.

IN RE O'BOYLE AND THE ONTARIO AND QUEBEC RAILWAY.

Dominion Railway Act of 1879, 42 Vic. ch. 9.

The notification of the non-acceptance of the sum offered by the railway company, and the appointment of an arbitrator on behalf of the owner of the land, under sub-sections 15 and 16 of sec. 9 of the Dominion Railway Act of 1879, need not be in writing when the facts sufficiently show that the owner was aware of the Company's offer, and verbally refused to accept it, and named his arbitrator.

[Whitby, Sept. 25.]

This was an application to the County Judge to appoint a sworn surveyor, to act as sole arbitrator under sub-sec. 15 of sec. 9 of the Dominion Railway Act of 1879. The application was opposed on the part of the claimant. Affidavits on both sides were put in, from which it appeared the owner was duly served with the notice required by sub-sec. 12 of sec. 9, but, being illiterate did not read it, and lost it some time before the expiration of the ten days from its service. They further show that he was aware of its material contents and the offer made, and that he had an interview with the company's secretary and solicitors before the expiration of the ten days after service, at which he, *ore tenus*, refused acceptance of the offer and named his arbitrator.

DARTNELL, J.J.—I strongly urged upon the owner to accept the arbitrament of a sworn surveyor, as just as likely to do full justice between him and the company as any other tribunal, and being much less expensive to him should the award be against him—but without avail. He has a right to the tribunal given by the Act, unless his own conduct has deprived him of it.

When the words of a statute have the effect of depriving any one of a right they must be construed strictly, and as the words of the statute in question do not require the notification of the non-acceptance of the offer and of the name of the owner's arbitrator to be in writing, and the evidence showing such notification to have

actually taken place, although not reduced to writing, I think I should decline to make the appointment of a sole arbitrator.

Application refused.

SECOND DIVISION COURT OF THE COUNTY OF YORK.

HUNTER V. SAUNDERS.

Joint tortfeasors—No contribution.

In a *qui tam* action judgment was recovered against four justices. One paid the amount of the judgment and sued one of his co-defendants in the Division Court to recover a contribution of one-fourth of the judgment and costs.

Held, that they were joint *tortfeasors*, and that no contribution could be enforced.

[Toronto, Nov. 16.]

The facts of the case sufficiently appear in the judgment of

MCDUGALL, J.J.—In this action the plaintiff seeks to recover from the defendant the sum of \$26 as a contribution, being one-fourth share of a judgment obtained against the plaintiff, the defendant and two others, and which the plaintiff in this action, under the pressure of execution issued against his goods, was compelled to pay.

The plaintiff and defendant are Justices of the Peace for the County of York. The plaintiff, defendant and two other justices of the county tried one Lloyd for an offence committed by him, and convicted him. The plaintiff was requested by his associates to see to a proper return being made of the conviction in due time to the Clerk of the Peace, and he undertook the duty. The conviction not being returned in proper time, Lloyd brought a *qui tam* action against all four justices, and recovered a judgment against them in default of a plea for the penalty \$80, and \$24.71 costs. The amount of the said judgment was paid under pressure by the plaintiff.

The general principle of law no doubt is very clear that there is no contribution between joint *tortfeasors*. It is contended that there are exceptions to the general rule, and that this action can be sustained under some of the cases.

In *Merryweather v. Nixan*, 8 T. R. 186, Lord Kenyon laid down broadly the principle that no contribution could be claimed at law as between wrong doers. He made this qualification—that contribution might sometimes be enforced in