

Mun. Case.]

CORPORATION OF BROCKTON V. DENISON—NOTES OF CANADIAN CASES.

[Sup. Ct.]

the Municipal Act, for the purpose of fixing the amount of compensation to be paid Mr. Mallon for the land required for the proposed new street. The arbitrators so appointed met and duly appointed the defendant herein as the third arbitrator, pursuant to sec. 390 of Municipal Act. The three arbitrators met a number of times, but early in their proceedings doubts appear to have been cast upon the legality of the by-laws, under which they were acting, and they never actually took any evidence or made any award in the matter referred to them. It appears that counsel was consulted, and the arbitrators were told that they had no power to do anything under the by-law or under the submission made to them. The council of Brockton, it is sworn, (though not established by strictly legal evidence,) subsequently repealed by-law No. 39, which was the by-law opening the street, and steps are now being taken, it is alleged, to pass a valid by-law by petitioning the County Council for leave to open a sixty foot street as contemplated by the invalid by law. It is also proved that the plaintiffs have paid their own arbitrator his fees for his lost time and attendance in connection with the abortive reference. The defendant contends that the plaintiffs are liable to him also for his arbitration fees for like services in the same matter, as third arbitrator duly appointed, the failure of the proceedings being caused by their not complying with the plain statutory directions.

At Common Law an arbitrator had no right of action for his fees. His remuneration, it is said, like that of a physician or barrister, is to be left to the option of his employers, and could not be enforced by action (Russell on Awards, 2nd ed. 450). Where, however, there is an express promise to pay he may maintain an action, for the taking upon himself the burthen of the reference is quite a sufficient consideration (*Hoggins v. Good* 3 Q. B. 466). The only protection that an arbitrator would appear to have for his costs was his lien upon the award, and this was the only security upon which he could rely for the satisfaction of his claim; and it is well known that the practice is not to deliver up an award until payment of the arbitration charges.

Under our statute, however, in reference to the costs of arbitration (R. S. O. cap. 64), an arbitrator is given a right of action for his fees, but this is only under certain conditions, and upon his observing certain formalities. Section 12 of that Act is as follows: "In all cases where an award has heretofore been or is hereafter made the arbitrator making the same may maintain an action for his fees upon such award, after the same have been

taxed, which taxation may be made at the instance of the arbitrator, upon notice to any party to the reference against whom he may afterwards bring such action; and in the absence of an express agreement in respect thereof the arbitrator may maintain such action after such taxation against all the parties to such reference jointly and severally."

Now, in this case, there are three or four insuperable difficulties in the way of the defendant succeeding upon his contention:

1st. The by-law under which he was to act was invalid, and all proceedings thereunder were therefore clearly irregular.

2nd. An award was never, in fact, made.

3rd. No express promise to pay these fees was alleged or proved; hence no action lies at Common Law.

4th. Even if there had been an award there has been no taxation of his fees, which is a condition precedent to his right to recover under our statute.

I must, in view of these facts, and for the foregoing reasons, disallow the defendant's set-off, and direct judgment to be entered in favour of the plaintiffs for the sum of \$68 and costs.

NOTES OF CANADIAN CASES.

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LAW SOCIETY.

SUPREME COURT.

Quebec.]

ELECTION PETITION.

MAGNAN ET AL. V. DUGAS.

*Election Petition — Bribery — Corrupt intent —
Appeal on matters of fact.*

Among other charges of bribery and treating which were decided on this appeal was the following:—

One Mireau, a blacksmith, who was a neighbour of the respondents, had, in his possession for two years several pieces of broken saws, which the respondent had left with him for the purpose of making scrapers out of them on shares. A few days prior to nomination the respondent went into Mireau's shop with a scraper he wanted to be sharpened, and told