

QUEEN'S BENCH.

VACATION COURT.

Harrison, C. J.]

[January 15.

NASMITH V. DICKEY ET AL.

Demurrer—Sci. fa.—R. W. Co.—Shareholders.

Demurrer—Sci. fa. on a judgment recovered by the plaintiff against the T. G. & B. Ry. Co., on the 15th August, 1877, for \$5,582, which was unpaid, and alleging that defendants (J. J. D., N. D., and J. W.) held 30 shares in said Company, on which \$1,800 remained due.

Third plea: That no sum remains due on said 30 shares, inasmuch as one G. H. had recovered a judgment against the R. W. Co., on the 17th February, 1876, for \$1,800, and a *fi. fa.* had been issued and returned *nulla bona*, and thereupon G. H. sued defendants as shareholders of the said Company, and recovered judgment against them for \$1,800, and thereupon defendants paid said G. H. the sum of \$1,800 in full of said judgment, and the amount remaining due on said shares, and that the said 30 shares are wholly paid up.

Replication that G. H. in said action was only trustee for defendant N. D., and had no beneficial interest in said action, of which defendant had notice.

Held, that the replication was good; that the claim of N. D. as a creditor of the Company, he being also a shareholder of the Company, could not be set up to defeat the claim of an outside creditor.

J. K. Kerr, Q. C., for the demurrer.

Richards, Q. C., *contra*.

Harrison, C. J.]

[January 15.

RE COLLINS & WATER COMMISSIONERS OF OTTAWA.

35 *Vict.*, cap. 80. *O. Award—Excessive damages—Extra vires.*

Two arbitrators (out of three, the third dissenting), appointed under 35 *Vict.*, cap. 80. *O.*, by the County Court Judge, awarded the plaintiff, for land taken for the purposes of the Commissioners, and for damages caused by such taking and otherwise, \$2,000, and interest on that sum at 6 per cent from the date

of a by-law of the Commissioners appropriating the land.

Held, that under the statute named, the arbitrators had power to award damages beyond the value of the land.

Held, also, that the value of the land found by the arbitrators could not be interfered with by the Court, where the sum was not so excessive as to cause an inference of legal misconduct.

Held, also, that interest was properly charged as stated above.

And, *held*, that the award of two out of three arbitrators was valid.

J. K. Kerr, Q. C., for the applicants, the Water Commissioners.

T. Langton, for Collins.

COMMON PLEAS.

VACATION COURT.

Harrison, C. J.]

[January 11.

BANK OF TORONTO V. McDougall.

Bill of exchange—Consideration—Foreign law.

Action against defendant as acceptor of a bill of exchange drawn on him by McC. and McK., and payable with plaintiffs.

Plea, in substance, that the bill was drawn, accepted, &c., to raise money for the purpose of carrying on gambling contracts and speculations on the rise and fall of pork in Chicago, in the State of Illinois, which said contracts, by the law of the said State, are illegal and void; and that there never was any other consideration for the said bill than the said illegal consideration as aforesaid, of all of which, McC. and McK., at the time they drew, and the plaintiffs, at the time they became the holders, had notice. There was another plea similar to the fifth, except that it alleged that McC. and McK. paid the bill at maturity, and that the plaintiffs are suing for and on behalf of the said McC. and McK.

HARRISON, C. J., *held* both pleas bad, as the alleged gambling contract was not illegal by the law of this country; and it was no defence that it was illegal by the law of a foreign country.