the case of a vote on a by-law, and the Returning Officer, in case of a tie on such voting, cannot give his vote in favour of the by-law.

Appeal dismissed with costs.

Chrysler for the appellant.

O'Gara, Q.C., for the respondents.

Ontario.]

HARVEY v. BANK OF HAMILTON.

Promissory note—Non-negotiable—Liability of maker.

H., a director of a joint stock company, signed, with other directors, a joint and several promissory note in favour of the company, and took security on a steamer of the company. The note was, in form, non-negotiable, but that fact was not observed by the officials of the Bank of Hamilton, who discounted it and paid over the proceeds to the company. H. knew that the note was discounted, and before it fell due, he had in writing acknowledged his liability on it. In an action on the note by the Bank of Hamilton against H.:

Held,—Affirming the judgment of the Court of Appeal, that although, in fact, the note was not negotiable, the bank, in equity, was entitled to recover, it being shown that the note was intended by the makers to have been made negotiable, and was issued by them as such, but by mistake or inadvertence it was not expressed to be payable to the order of the payees.

Appeal dismissed with costs.

McCarthy, Q.C., and *Muir* for the appellants.

Robinson, Q.C., and *E. Martin* for the respondents.

Quebec.]

DOWNIE v. THE QUEEN.

Criminal appeal—Indictment for perjury—Evidence of special facts—Admissibility of.

D., in answering *faits et articles*, on the contestation of a *saisie-arrêt*, or attachment, stated, among other things:—

1st. "That he, D., owed nothing for his board; 2ndly. That he, D., from about the beginning of 1880 to towards the end of the year 1881 had paid the board of one Francis, the rent of his room, and furnished him with all the necessaries of life, with scarcely any exception; 3rd. That he, Francis, during all that time (1880 and 1881) had no means of support whatever."

Being charged with perjury, in the assignments of perjury, and in the negative averments, the words used by D. in his answers were distinctly negatived, in the terms in which they were made.

At the trial, evidence was adduced, and not objected to at the time by D., to prove that he, Francis, had paid to D., in May or June, 1880, $42 for having boarded at his house in the month of May, 1880—that he had paid his board to Madame Duperroussel and part of his board to Francis Larin, and was held liable by the latter for part of his board during the months of September and October, 1880; that he was also held liable for part of his board at Mrs. Radford's during the months of January, February and March, 1881, and by Britain, for having boarded at the Victoria Hotel in the months of April, May, June, July and August, 1881; and also that he, D., had received from Francis an order on Benjamin Clements for $15, on account of which Clements had paid him, D., $7.50 in November, 1880.

Held:—That under the general terms of the negative averments of the assignment, it was competent for the prosecution to prove such special facts to establish the falsity of the answers given by D. in his answers on *faits et articles*, and therefore the conviction could not be set aside.

Appeal dismissed with costs.

McCarthy, Q.C., for appellant.

Hall, Q.C., for respondent.

Quebec.]

THE CANADIAN PACIFIC RAILWAY CO. v. CHALIFOUX.

Railway companies—As carriers of passengers—Measure of obligation as to latent defects—Arts. 1053, 1675, *C. C. P.*

Held:—Reversing the judgment of the Court below (M. L. R., 3 Q. B. 324), that where the breaking of a rail is shewn to be due to the severity of the climate and the sudden great variation of the degrees of temperature, and not to any want of care or skill upon the part of the railway company in the