and failure to comply with it is fatal to the award.

The award in this case was set aside, as the Court could not from what was before it, understand why the arbitrators had so found.

There had been two previous awards, and references back, and much expense having been incurred, consisting largely of the arbitrators' own fees, the Court refused a further reference back, but ordered the matters to be taken before the County Court Judge, unless such facts could be agreed on as would facilitate the Court's deciding the matter.

Aylesworth, for applicant.

H. J. Scott, contra.

COMMON PLEAS.

IN BANCO—JUNE 24.

REGINA EX REL. DWYER V. LEWIS.

Quo Warranto—Municipal elections—County Court usage—Jurisdiction.

A County Court judge directed the issue of a writ of *Quo warranto* returnable before himself to test the validity of the election of an alderman of the city of Ottawa. Before appearance he set aside all proceedings with costs, on certain exception to the writs being taken before him.

An application to a judge of the Superior Court for a mandamus to compel the county judge to try the case was refused on the ground that the county judge had power to set aside the writ, and that his powers under the Municipal Act being co-extensive with those of a Superior Court judge, in such case there was no ground for interference.

On appeal to the full court.

Per WILSON, C. J., That the County Court judge had such power, and that the mandamus was properly refused.

Per OSLER, J., That he had no such power, and that the mandumas should have been granted.

GALT, J., took no part in the judgment.

The Court being equally divided, the case dropped.

Cogden, for the plaintiff.

Aylesworth, for the defendant.

SUTTON V. ARMSTRONG.

Chattel mortgage—Assignment—Intent of parties—Regulation of bills—Evidence—Trespass.

Action of trespass for seizing a quantity of grain. The seizure was made under powers therefor contained in one or both of two chattel mortgages, for the mortgagors default in selling certain of the goods without the mortgagee's consent. Both of the mortgages were executed on the 26th May, 1880, by the plaintiff to one J. G., and comprised the same goods and chattels, namely: a quantity of farming implements and stock, and all the grain in hand or in the ground upon certain land named, twenty-six acres of spring wheat, etc. One of its mortgages being to secure $215 and interest. The other being, as it recited, security for certain promissory notes of the mortgagor for $520 endorsed by the mortgagee. These notes had been discounted by the defendant who was the holder thereof. On the 26th July both these mortgages, together with the goods and chattels comprised therein, were severally assigned to the defendants by assignments executed by R. G., under a power of attorney from J. G., on 22nd July, or two days previously. R. G. and J. G., who had been trading in partnership, assigned to two persons, O. and K., upon certain trusts for the benefit of creditors, amongst other things, all the grain from stock, crops, whether growing or cut, and all other chattels and effects of the said assignor, or either of them, upon the said land, or otherwise, wheresoever situate, as also all mortgages, and all other personal estate wheresoever situate of the said assignors, or either of them, or in which any or them had any right or interest.

Held, that the terms of the deed of assignment were sufficient to include the mortgages and the goods comprised in them; and, therefore, as regarded the first-named mortgage, their being no contrary intention, it passed under the deed, so that the subsequent assignment of that mortgage to defendant was of no avail; but as regarded the other mortgage, the defendant being the beneficial owner thereof, and the mortgagee having no interest therein, there was an intention that it was to pass under the deed, and therefore the mortgage passed to defendant under the assignment to him.