

the Board who heard the evidence and made the award allowed a member who had not heard the evidence nor taken part in the inquiry to read the evidence and to express to them some of his views regarding the case. Whether the Board was within its powers under the 9th or other section of the Ontario Railway and Municipal Board Act need not be considered, and so should not be. If every Judge's judgment were vitiated because he discussed the case with some other Judge, a good many judgments existing as valid and unimpeachable ought to fall.

The motion for leave to cross-appeal, it was understood, was not to be pressed unless the other motion was successful. Both motions must accordingly be dismissed; but the dismissal should be only on the Commission carrying out, if the applicant desired it, their offer to connect the tile drains on each side of the new road by means of water-tight pipes under or through the road.

MAGEE, J.A., agreed in the result.

HODGINS, J.A., also agreed in the result, for reasons stated in writing.

LENNOX, J., said that he agreed in the conclusion reached by the learned Chief Justice; but, with respect, he was not at present able to agree that the action of the two members of the Board in submitting the evidence to the third and consulting with him was proper or justifiable.

Both motions dismissed.

SECOND DIVISIONAL COURT.

OCTOBER 6TH, 1916.

*RE J. McCARTHY & SONS CO. OF PRESCOTT
LIMITED.

Company—Winding-up—Order Delegating Powers of Court to Master under sec. 110 of Winding-up Act, R.S.C. 1906 ch. 144—Order of Judge Allowing Claimants to Bring an Action, instead of Proving Claim before Master—Appeal from—Leave of Judge—Jurisdiction of Appellate Division—Sec. 101 of Act.

Appeal by the liquidator of the company from an order of KELLY, J., giving leave to the British Columbia Hop Company Limited to begin an action instead of proving their claim in the