

From Assessment Court.]

[June 30.]

IN RE BELL TELEPHONE COMPANY AND CITY OF HAMILTON.

Assessment and taxes—Telephone company—Poles, wires, conduits and cables.

In assessing for purposes of taxation the poles, wires, conduits and cables of a telephone company the cost of construction or the value as part of a going concern is not the test; they must be valued, in the assessment division in which they happen to be, just as so much dead material to be taken in payment of a just debt from a solvent debtor. Judgment of the Assessment Court reversed.

Staunton and Ambrose, for appellants. Mackelcan, Q.C., for respondents.

Armour, C.J., Falconbridge, J.,
Street, J. }

[June 27.]

KENNEDY v. BEAL.

Arbitration Act—Rule 652—Arbitrator selected by the parties.

Upon a proper construction of R.S.O., c. 62, ss. 12 and 35, Rule 652 does not apply in the case of an arbitration ordered by consent in Court, to an arbitrator selected and agreed on by the parties.

Robinson, Q.C., and Ryckman, for plaintiff. Aylesworth, Q.C., for defendants.

MacMahon, J.]

LEGGATT v. BROWN.

[June 27.]

Contract—Consideration in part illegal—Stifling prosecution.

The manager of the business of an insolvent firm was arrested and imprisoned on a charge of having procured the firm, while in insolvent circumstances, to transfer certain of its property to another person with intent to defraud the creditors of the firm. After he had been released on bail an offer was made in writing by his wife and her son, to the creditors of the firm, to pay a certain percentage of their claims, in addition to the dividend to be paid by the estate of the firm, and to withdraw certain actions and procure the abandonment of certain claims, upon certain conditions set out in the offer, one of which was that any creditor accepting the offer, should not thereafter, directly or indirectly, institute or be a party to any action or proceeding against the husband in respect of any matter or thing in any wise connected with the affairs or business of the firm. This offer was accepted by the plaintiff and a number of the other creditors. After it was made, the husband was discharged from custody, the informant, one of the creditors, not appearing, and no evidence being offered in support of the charge. Promissory notes were afterwards made by the wife and her son in favour of the creditors for the stipulated percentage. In an action by one of the creditors upon some of the notes,

Held, that although not stated in express terms, one object of the defendants in making their offer was to procure the stifling of the prosecution of the charge made against the husband; that it was in accordance with the concluded agreement made by the defendants with the plaintiff and the other