

issuing of a patent, has purchased, constructed or acquired any invention for which a patent is afterwards obtained under this Act, shall have the right of using and vending to others the specific article, machine manufacture or composition of matter patented and so purchased, constructed or acquired before the issue of the patent therefor, without being liable to the patentee or his legal representatives for so doing'; and it made no difference that the defendants had done what they did without the consent and allowance of the inventor.

E. Bayly and Eric Armour, for defendants, appellants. *J.W. Nesbitt, K.C.*, for plaintiffs, respondents.

From Meredith, J.] *PATCHELL v. RAIKES.* [April 18.
*Municipal corporations—Bonus—Interest—Illegal payment—Liability of
councillors—Arbitration and award.*

In the year 1899 by special Act an agreement between the corporation of a town and a company was confirmed, by which, on completion of certain works, the company was to be paid a bonus. The works were proceeded with but alterations became necessary and a new agreement was entered into, in accordance with which the works were completed in January, 1900. In April of that year another special Act was obtained authorizing the payment of the bonus notwithstanding the alterations, nothing being said as to interest. The bonus was thereupon paid, and the company claimed payment of interest on the amount from the date of completion of the works. After some negotiation the town and the company agreed to obtain the opinion of counsel, who, on an incomplete (as was found) statement of facts advised the payment of the claim, and payment was made in spite of the protest of the plaintiff.

Held, in an action by the plaintiff on behalf of himself and all other ratepayers, that there was no right to interest; that the payment was illegal and a breach of trust; that there had not been an award by an arbitrator but merely an expression of opinion which was no protection and that the councillors who had authorized the payment, and the company who had received it, were bound to make good the amount to the corporation, which was made a party to the action to receive payment.

Semble, the council of a municipal corporation may perhaps refer to arbitration a question of fact falling within their ordinary administrative duties, but cannot refer a question of law.

Judgment of MEREDITH, J., reversed.

Kappele, for appellant. *Finlayson*, for respondents.

From Falconbridge, C. J. K. B.] [April 18.
CANADA COMPANY v. TOWN OF MITCHELL.

Assessment and taxes—Local improvements—General by-law.

The defendant corporation provided by a by-law under section 667 of the Municipal Act, that every petition for or against the construction of a sidewalk as a local improvement should be left with the clerk of the council