

registrar an appointment to cross-examine the deponents, proceeding under Con. Rules 490, 492:—

*Held*, having regard to the provisions of section 232 of Mun. Act, 1903, that, notwithstanding the broad language of Rule 490, it should not be held applicable to proceedings to contest the validity of municipal electors. Section 232 contemplates that whatever oral testimony is taken, whether it be evidence of witnesses who have not made affidavits, or cross-examination of affiants, it should be taken before the judicial officer who is to determine the validity of the election. There was no right on the part of the relators to issue an appointment for this cross-examination without leave of the Master in Chambers first obtained; and the Master had no authority to direct cross-examination of affiants to be taken before any officer other than himself.

Appeal allowed.

*T. J. Blain*, for appellant. *W. E. Middleton*, K.C., for the relators.

Boyd, C., Anglin, J., Mabee, J.]

[Jan 31.

WILLIAMS v. CRAWFORD TUG CO.

*Company—Power of to give guarantee—Implied powers.*

The owner of a tug employed by the defendants requiring a new boiler obtained one from the plaintiffs on the faith of a guarantee given by the defendants for the price of the boiler. An action being brought upon the guarantee in the 8th Division Court of the County of Bruce the county judge held that the contract was ultra vires of the company and dismissed the action.

*Held*, per *Boyd, C.*:—"Giving a guarantee by a joint stock company incorporated to do defined things, to answer for the debt of a person who does work for them, if not within the general or special powers of the company, must be justified on the ground that it is incidental to the main purposes—that there is a potential necessity for entering into the guarantee, and that therefore there is a reasonable implication of power to do it. I use expressions drawn from the language of Lord Selborne in *Small v. Smith*, 10 App. Cas. pp. 123. See also *Brettel v. Williams*, 4 Ex. 632."

*Middleton*, for plaintiffs. *Jennings*, for defendant.