

Ass. Case.]

ONTARIO REPORTS.

[Ass. Case.]

man cannot do two men's work ; and some of the witnesses said that what the petitioner did was usually one man's work.

The remarks I have made in the last suit on the subject of mortgages I might refer to here, and inasmuch as this intervenor Moore has sold the vessel, subject to the claims of this petitioner and of Alexander McNabb, the purchase money may be said to be in such a position as to be dealt with without this intervenor asking a reference. The proper decree, therefore, to be pronounced, would be this : Declare that the petitioner is entitled to be paid the sum of \$78 on account of his claim herein, together with the sum of ten dollars as and for his costs, by the said David Moore. Declare that if upon reference to the Deputy Registrar, which the petitioner is hereby allowed to take, it is found that there remains any surplus from the sale of the said vessel after payment of : (1) the judgment of Alexander McNabb, with his taxed costs ; (2) the above mentioned sums of \$78 and \$10 ; (3) the moneys secured by all the outstanding mortgages made to the said David Moore by any of the said McNabbs, as owners, together with the costs of exercising the powers of sale contained in the said mortgages ; then that there shall be paid to the said petitioner herein, a further sum of \$32, together with the residue of his costs of suit beyond the sum of \$10 already allowed, or so much of the said surplus as shall be available for such purpose ; any balance to be paid over to the owners at time of sale.

Both these causes might, I think, have been consolidated under rule 265. If it would be of any benefit now to any party, an order for such consolidation would be made if asked for.

Birnie, for petitioner.

O'Connor, for intervenor.

ASSESSMENT CASE.

RE CANADA PACIFIC RAILWAY COMPANY.

Assessment of Railway Lands.

On an appeal from the assessment of the property of the Canada Pacific Railway Company at Ottawa, the following judgment was delivered by

DANIELL, Co.J.:—The notice in this matter contains ten grounds of appeal, but most of

these being for irregularities which we have the power to amend, it is unnecessary to refer to them in detail. I will therefore deal with the real grounds of complaint, which are as follows :

1st. What portion of the land occupied by the railway should have been assessed as roadway and at the average value of land in the locality as stated upon the assessment roll of the previous year ?

2nd. What part of the land other than the roadway should be assessed as lands in the actual occupation of the company ?

3rd. What the residue of the company's lands is which should have been assessed as vacant lands not in the actual use of the company ?

4th. Whether the buildings upon the land, such as stations, offices and other buildings, should have been included in the value of the lands of the company, or should be excluded on the ground that they are superstructure, as iron rails, fences bridges, etc., are so considered and held to be exempt ?

Section 26 of chap. 180 of the Revised Statutes of Ontario is the governing enactment on the subject, and it reads as follows :—" Every railway company shall annually transmit, on or before the 1st day of February, to the clerk of every municipality in which any part of the roadway or other real property of the company is situated, a statement showing :—

1st. The quantity of land occupied by the roadway and the actual value thereof according to the actual value of land in the locality, as stated in the assessment roll of the previous year ?

2nd. That real property other than the roadway in actual use and occupation by the company and its value.

3rd. The vacant land not in actual use by the company, and the value thereof as if held for farming or gardening purposes. And the clerk of the municipality shall communicate such statements to the assessor, who shall deliver at or transmit by post to any station or officer of the company, or notice addressed to the company, of the total amount at which he assessed the real property of the company in his municipality or ward, showing the amount for each description of property mentioned in the above statement, and such statement and notice respectively shall be held to be the statement and notice required by the 37th and 41st sections of the Act."