

when built. While the negotiations were pending, B. went to California, and the agents who looked after the affairs of the E. & H. railway in his absence applied to the manager of the C. S. R. for some rolling stock to assist in its construction. The manager of the C. S. R. was willing to supply the rolling stock on execution of the agreement for sale of the road which was communicated to B., who wrote a letter to the manager in which the following passage occurred: "If from any cause our plan of handing over the road to your company should necessarily fail, you may equally depend on being paid full rates for the use of engine and cars and any other assistance or advantage you may have given Mr. Farquier (the agent)."

The negotiations for the purchase of B.'s railway by the C. S. R. having fallen through, an action was brought by the latter company against B. and the E. & H. railway for the hire of the rolling stock, which was resisted by B. on two grounds, one that the rolling stock was supplied in pursuance of the negotiations for the sale of his road to the plaintiffs, which had fallen through by no fault of B., and the other that if the plaintiffs had any right of action, it was only against the E. & H. railway and not against him.

By consent of the parties the matter was referred to the arbitration of a County Court judge, with a provision in the submission that the proceedings should be the same as on a reference by order of the Court, and that there should be a right of appeal from the award as under R. S. O. c. 50, s. 189.

The arbitrator gave an award in favor of the plaintiffs; the Queen's Bench Divisional Court held that there was no appeal from the award on the merits, and as it was regular on its face, refused to disturb it; the Court of Appeal held that there was an appeal on the merits, but upheld the award. The defendants then appealed to the Supreme Court of Canada.

Held, Affirming the judgment of the Court of Appeal, that the arbitrator was justified in awarding the amount he did to the plaintiffs, and that B., as well as the company, was liable therefor.

Appeal dismissed with costs.

McCarthy, Q.C., and *Nesbitt* for the appellants.
Cattanach for respondents.

Ontario.]

KLOEPFER v. GARDNER.

Assignment for benefit of creditors—Creditor disputing deed—Right to dividend thereafter.

Where a trader had assigned all his goods in trust for the benefit of his creditors, one of the creditors, having obtained judgment against such assignor, seized some of the goods so assigned, and on the trial of an interpleader issue, attacked the validity of the assignment. The deed being sustained:

Held,—Affirming the judgment of the Court of Appeal (14 Ont. App. R. 60), that such creditor was not debarred by the said proceedings from participating in the benefits of said assignment, and receiving his dividend thereunder.

Appeal dismissed with costs.

McClellan, Q.C., for the appellant.

McCarthy, Q.C., for the respondent.

Ontario.]

C. A. R. v. TOWNSHIP OF CAMBRIDGE.

Municipal by-law—Voting on—Casting vote of Returning Officer—R. S. O. (1877), c. 174, ss. 152, 299.

Sec. 299 of c. 174 of the R. S. O. (1877) provides that in case of a vote being taken on a municipal by-law, the proceedings at the poll and for and incidental to the same and the purposes thereof, shall be the same, as nearly as may be, as at municipal elections, and all the provisions of sec. 116 to 169, inclusive, of the Act, so far as the same are applicable, and except so far as is herein otherwise provided, shall apply to the taking of votes at such poll and to all matters incidental thereto.

And sec. 152, one of the sections relating to municipal elections so made applicable to the voting on a by-law, provides that "In case it appears, upon the casting up of the votes as aforesaid, that two or more candidates have an equal number of votes, the Clerk of the municipality, whether otherwise qualified or not, shall, at the time he declares the result of the poll, give a vote for one or more of such candidates, so as to decide the election."

Held,—Affirming the judgment of the Court of Appeal for Ontario (14 Ont. App. R. 299) that this sec. 152 is not applicable to