pass it not having been improperly exercised, and the by-law itself being in substantial compliance with the provisions of the Act, it would not be proper to declare it invalid for non-registration under a section which does not declare that a non-compliance with its provisions shall have that effect.

3. That the object of s.s. 1 of s. 342 of R.S.O., c. 184, is to prevent the burthen of the debt incurred by borrowing money to pay the bonus from being irregularly distributed or unduly postponed to later years; and that the by-law in question, which provided for the raising of $25,000 by the issue of twenty debentures for $2,006.10, to fall due one in each year for twenty years, "it being estimated that the sale of such debentures will realize the said sum of $25,000," and for levying $2,006.10 in each year by a special rate, substantially complied with s.s. 1 of s. 342.

*J. B. Clarke*, for applicants.

*S. H. Blake*, Q.C., and *Fullerton*, for village.

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Div'l C't.] [March 7.

*Re* CRAWFORD *v.* SENEY.

*Prohibition—Division Court—Title to land.*

The plaintiff agreed to sell to the defendant a parcel of land for $1,750, of which $10 was paid on the execution of the written agreement. The agreement contained no provision as to possession, but the defendant went into possession as the purchaser. The plaintiff was unable to make title, and the defendant continued in possession for a considerable time.

The plaintiff brought a Division Court action for use and occupation. The defendant set up that the contract had not been rescinded when he gave up possession, and that he never became tenant to the plaintiff nor liable to pay rent.

*Held*, that the plaintiff was bound to prove a contract, express or implied, to pay compensation for the use and occupation, and in order to do so it may have been necessary to show when the contract of sale went off; but that was not a bringing of the title into question so as to oust the jurisdiction of the Division Court.

2. That in prohibition the Court must be satisfied that the title really comes in question; it is not enough that some question is raised by the defendant's notice.

*Purser* v. *Bradburn*, 7 P.R. 18, distinguished.

Order of STREET, J., striking out jury notice, reversed.

*Watson*, for appeal.

*McSweyn*, *contra*.

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STREET, J.] Feb. 19.

*In re* PRYCE AND CITY OF TORONTO.

*Municipal corporations—Damages to land by construction of pavement—Method of estimating—Increase in value—Set-off.*

In an arbitration under the arbitration clauses of the Municipal Act a land-owner claimed that certain lands had been injuriously affected by the construction of a block pavement.

*Held*, that in estimating the land-owner's compensation the arbitrator should set off against the land-owner's claim for damages sustained, the increase in the value of the land arising from the construction of the pavement in which this land shared in common with all the other lands benefited, and not merely such direct and peculiar benefit as accrued to this particular land.

*Re Ontario & Quebec R.W. Co.* and *Taylor*, 6 O.R. at p. 348, and *James* v. *Ontario & Quebec R.W. Co.*, 12 O.R. at p. 630, followed.

*J. E. Robertson*, for land-owner.

*C. R. W. Biggar*, for city.

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Div'l C't.] [March 8, 1886.

PURDOM *v.* NICHOL.

*Principal and surety—Promissory note—Novation—Partnership.*

The plaintiff in 1875 indorsed a promissory note for the accommodation of the defendant, Nichol, and the latter delivered it as collateral security to mortgagees of his freehold.

The mortgagees procured the defendant, Baechler, to enter into partnership with Nichol, and threw off $1,000 of their mortgage debt, releasing their original securities and taking a new mortgage from both defendants for $1,000 less than the amount of their claim. This was in 1876. In 1879, when the note fell due, the plaintiff paid the amount to the