

water as damages, and obtained a judgment for \$2,810.50. The judgment creditor attached this judgment debt, and the bank claimed the money under the assignment. The Judge of the County Court of Carleton, before whom the garnishee proceedings were had, held that the debt did not pass to the bank under the assignment, and ordered payment to be made by the corporation, the garnishees, to the judgment creditor. The bank appealed.

W. E. Middleton, for the bank.

J. H. Moss, for the judgment creditor.

STREET, J.—In my opinion the Bank of Ottawa are entitled under the assignment from Bourque to receive from the city the moneys in dispute here. The language of the assignment extends to all moneys which may become payable "in respect of the contract." The contract between Bourque and the city gave rise to a duty or to an implied contract, no matter which, binding the city to do nothing to impede Bourque in the execution of the work and to a liability to compensate him if they should do anything to impede him. If this had been set forth in the contract, it is clear that the compensation would have passed to the bank under the assignment; but the same duty on the part of the bank to pay, and the same right to the contractor to receive, compensation, although not set forth in express language in the contract, arise out of the mere fact that such a contract has been made; and therefore the compensation should be held to be moneys payable "in respect of the contract."

Appeal allowed with costs to the bank here and below.

MEREDITH, C.J.

NOVEMBER 2ND, 1903.

WEEKLY COURT.

### RE SOMBRA PUBLIC SCHOOL SECTION 26.

*Public Schools—Selection of School Site—Difference Between Trustees and Ratepayers—Power of Arbitrators as to Selection—Award—Setting Aside—Reference Back.*

Application by the trustees of public school section No. 26 of the township of Sombra to set aside an award of arbitrators appointed under the provisions of sec. 34 of the Public Schools Act (1 Edw. VII. ch. 39), in consequence of a difference of opinion between the trustees and the ratepayers as to the suitability of the site which the trustees had selected for the school house of the section, which had been recently formed.

W. E. Middleton, for the applicants.

W. R. Riddell, K.C., and A. B. Carscallen, Wallaceburg, for the respondents.