Held, that the offer originally vague and indefinite could not be made certain in that way, for any other person as well as McM. could have with as much reason appended a similar acceptance.

Held, also, that from the frame of the offer one could not know to whom it was made without parol evidence to supplement the writing, which could not be given to supply information in that regard.

Aytoun Finlay and *Schoff* for the plaintiff.

Bain, Q.C., and *Beynon*, Q.C., for the defendant.

Div'l Ct.] [June 9.

PHELPS & CO. *v.* THE ST. CATHARINES AND NIAGARA CENTRAL R. W. CO.

Railways and Railway Companies—Bondholders rights in respect to property of Railway Companies—Judgment creditors right to attach the Company's money on deposit in a Bank—Appointment of Receiver—Remedy.

On an appeal from the judgment of BOYD, C., reported 18 O. R. 581, it was

Held, (reversing BOYD, C.), that so long as a Railway Company is a going concern, bondholders have no right, even though interest on their bonds be overdue and unpaid, to seize or take or sell or foreclose any part of the property of the Company by virtue of their mortgage bonds, and that their remedy is the appointment of a receiver, and that the bondholders in this case were not entitled to the money in question.

Collier for the judgment creditors.

Hoyles, Q.C., and *Ingersoll* for the bondholders.

Practice.

STREET, J.] [Dec. 23, 1889.

IN RE. SWEETMAN AND TOWNSHIP OF GOSFIELD.

Municipal drainage by-law—Motion to quash—R.S.O., c. 184, ss. 571, 572, construction of—Time—Service of notice of motion and filing affidavits.

A municipal drainage by-law was passed on the 1st November, 1889, and on the 12th December, 1889, notice of a motion to the Court for an order quashing it, was served upon the municipal corporation, and affidavits in support of the motion were filed. The notice was for Friday, the 20th Dec.

Held, that the meaning of s. 572 of R.S.O., c. 184, is that in case the application to quash is not made within six weeks, prescribed by s. 571; the by-law shall be valid; and that the service of the notice and the filing of the affidavits within the six weeks was a sufficient making of the application.

Langton for the applicant.

W. H. Blake for the township.

FERGUSON, J.] [May 31.

WALLBRIDGE *v.* GAUJOT.

Costs—Third party—Defending action.

In an action for rent or royalties upon iron received by the defendants, the defendants served a notice upon a third party, claiming contribution from him. The third party appeared; and an order was made that he should be at liberty to defend the action as regarded the questions between the plaintiff and the defendants only, and to appear at the trial, call witnesses cross-examine the witnesses called by the plaintiff and defendants, and be bound by the findings. The third party delivered a statement of defence, which was directly against the plaintiff's statement of claim, except a portion thereof, which stated that he was not a proper party, and that no right of contribution existed against him, but this portion was struck out at the trial upon his own application. The plaintiff was successful in the action.

Held, that the third party had adopted the position of one who was called upon by his own interest to defend the action, and that he should not recover from the defendants who brought him in his costs of so defending it.

W. Cassels, Q.C., for the defendant, Palmer.

W. M. Douglas for the third party.

Chy. Div'l Ct.] [June 16.

LEACH *v.* GRAND TRUNK R.W. CO.

Discovery—Examination of officer of railway company—Driver of "light engine"—New evidence on appeal—Rule 585—Leave to appeal—Delay.

A rule of the defendant company provided that the driver in charge of a "light engine"