

municipal election upon the ground of bribery or undue influence, as defined in ss. 245 and 246 of the Municipal Act, R.S.O. c. 223, all the evidence both pro and con, and not merely the evidence adduced by the relator in support of the charge, is to be taken viva voce; this is the true construction of s. 248, to aid which the heading, "evidence as to corrupt practices to be taken viva voce," may be read into the section; and affidavits in answer to oral evidence cannot be received.

F. A. Anglin, for relator. *J. G. Wallace*, for respondent.

Falconbridge, C.J.] IN RE DREW AND MCGOWAN.

[March 4.

Will—Life estate with power to devise in fee—Covenant against exercise of power—Vendor and purchaser—Petition.

A testator devised to his widow for life, and then to D. for life, with the power to D. to devise in fee.

Held, that the widow and D. and the heirs of the testator, ascertained at the time of his death, could make a good title in fee simple to a purchaser, who should be assured against exercise of the power, by D.'s covenant.

Held, also, that subsequent words in the will referring to "that part I have directed not to be sold;" did not import a restriction on the sale, no direction not to sell being found in the will.

J. J. Drew, for vendor. *Watson, K.C.* and *Osborne*, for purchaser.

MacMahon, J.]

[March 5.

IN RE BRENNAN AND OTTAWA ELECTRIC R.W. CO.

Railway—Expropriation—Arbitration—Appeal from award—51 Vict., c. 29, s. 161 (D)—Evidence—Reasons for award—Value of lands taken—Injury to lands not taken—Mode of estimating amounts.

The railway company, in February, 1900, gave notice of their intention to expropriate 2.57 acres of land in the Township of Nepean, near the City of Ottawa, consisting of a parallelogram 131 feet in length by 99 feet in width, the middle of such parallelogram being the centre line of the railway, and offered to pay \$2,124.60 as compensation for the lands and all damages which might be caused by the exercise of their corporate powers in respect of such lands. This offer being refused, an arbitration took place, and a majority of the three arbitrators appointed awarded the claimants \$2,856 for the lands expropriated and the damages occasioned to the remaining portion. The claimants appealed from the award upon the ground that the amount awarded was insufficient, and the railway company appealed upon the ground that such amount was excessive.

Held, that written reasons for the award which had, before the award was made, been prepared by the third arbitrator and signed by him, and which formed the basis of the award made by him and one of the others, was admissible as evidence upon the appeal.