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 section 152 is not applicable to the case of a vote on a by-law, and the returning officer in case of a tie on such voting cannot give his vote in favour of the by-law.

Appeal dismissed with costs.

Chrysler, for the appellant.

O'Gara, Q.C., for the respondents.

[June 14.

BICKFORD *v.* CANADA SOUTHERN RAILWAY.

Contract for hire—Rolling stock—Agreement to purchase railway—Appeal.

B., the contractor for building the E. & H. Railway, and, practically, the owner thereof, negotiated with the solicitor of the C. S. R. for the sale to the latter of the E. & H. Railway when built. While the negotiations were pending, B. went to California, and the agent, 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. and 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 favour 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 appellants.

Cattanach, for respondents.

[June 14.

HARVEY *v.* BANK OF HAMILTON.

Promissory note—Non-negotiable—Liability of maker.

H., a director of a joint stock company, signed, with other directors, a joint and several promissory note in favour of the company, and took security on a steamer of the company. The note was, in form, non-negotiable, but that fact was not observed by the officials of the Hamilton Bank, who discounted it and paid over the proceeds to the company. H. knew that the note was discounted, and before it fell due, he had, in writing, acknowledged his liability on it. In an action on the note by the Hamilton Bank against H.,

Held, affirming the judgment of the Court of Appeal, that although, in fact, the note was not negotiable, the bank, in equity, was entitled