citor, before entering upon the defence, asked the plaintiff whether there was any agreement between him and the council, or any member thereof, that in the event of his award being set aside or not sustained that he was not to receive any remuneration for his services. He emphatically denied that there was any such conversation or agreement.

Upon opening the defence, it was proposed to call the defendants' reeve, to contradict the plaintiff. I rejected this evidence, and further reflection bids me believe, rightly, on the grounds: (1) That the defendants, having asked the plaintiff his version of the defence on a matter not arising out of his examination in chief, were bound by his answer, and could not call witnesses to contradict him in that respect. (2) That in any case it was parol evidence to vary or contradict the contract in writing. (3) That no agreement with any members of a corporation would bind the corporation itself; and (4) That such agreement, even if properly proved, would be void as against public policy.

I was and am of opinion that the plaintiff is entitled to recover the amount claimed. As a guide in future applications, I feel constrained to say that I do not agree with the learned senior judge that the Act does not apply to incorporated towns and villages. I have already otherwise ruled in former cases, without any doubt: where so much of the outlying territory of such municipalities consists of farming and cultivated land, to so construe the Act would manifestly circumscribe its intent and usefulness. Section 2 of the Act enacts that every municipality shall appoint by by-law an engineer. This would be meaningless if towns and villages are without its scope.

It seems to me, however, that its provisions and powers should be exercised with discretion, and should not be applied to cases where oppression or inequity would be the result. In fact, I doubt much whether the Act would apply to the circumstances under which this award was made, being a case in which the applicant sought and succeeded in charging upon the owners of a large number of vacant village lots the cost of his own house or cellar drain, which was of benefit to him alone. At the most, he should simply have been saved from the consequences of trespass in its construction.

Judgment for the plaintiff for $40 and costs.

The plaintiff, on taxation, claimed, and was allowed by the clerk, his professional fee as surveyor for attendance at court. The defendants appealed.

DARTNELL, J.:—He cannot be allowed the increased fee. He was at court not as a professional, skilled, or expert witness, but simply to prove his claim like any ordinary witness.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

[June 14.

KLOEPFER *v.* GARDNER.

Assignment for benefit of creditors—Creditor disputing deed—Right to dividend thereafter.

Where a trader had assigned all his goods in trust for the benefit of his creditors, one of the creditors having obtained judgment against such assignor, seized some of the goods so assigned, and on the trial of an interpleader issue attacked the validity of the assignment. The deed being sustained.

Held, affirming the judgment of the Court of Appeal (14 Ont. App. R. 60), that such creditor was not debarred by the said proceedings from participating in the benefits of said assignment and receiving his dividend thereunder.

Appeal dismissed with costs.

McClellan, Q.C., for the appellant.

McCarthy, Q.C., for the respondent.

[June 14.

C. A. R. *v.* TOWNSHIP OF CAMBRIDGE.

Municipal by-law—Voting on—Casting vote of returning officer—R. S. O. (1877) *c.* 174, *ss.* 152, 299.

Sec. 299 of c. 174 of the R. S. O. (1877), provides that in case of a vote being taken on a municipal by-law, the proceedings at the poll and for and incidental to the same and the purposes thereof, shall be the same, as nearly as may be, as at municipal elections, and all the provisions of secs. 116 to 169 inclusive of the Act, so far as the same are applicable, and except so far as is herein otherwise provided,