

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

The appointment by the creditors cast no additional or increased risk upon the sureties beyond what they would have incurred without the appointment. The official assignee, in case of no appointment by the creditors, has all the powers of a creditors' assignee, and is liable to be removed by the creditors. He did not owe a divided duty, nor was he subject to another's control. The appointment by the creditors made no change in these respects, and it must have been in the contemplation of the sureties that he might have the whole administration of the estate; and it does not matter whether he performed that duty under the one or the other appointment.

Gibbons for the demurrer.

Jacob, contra.

Proudfoot, J.]

[Nov. 7.]

MCFARREN V. JOHNSON.

Specific performance — Contract contained in letters — "Coming to accept."

Action for specific performance of an alleged contract for the purchase of land.

On May 30th, 1883, the plaintiff wrote, offering to give \$1500 for the land in question, which contained frontage of about 50 feet.

On June 19th the defendant replied that he was willing to take the \$1500 for 35 feet of the frontage. On June 25th the defendant telegraphed: "Coming Monday to accept \$1500. Waiting immediate reply."

On same day plaintiff telegraphed, "Come at once."

Held, that the above did not constitute a completed contract for the sale of the 50 feet frontage for \$1500. It was ambiguous which proposal of \$1500 the telegram from the defendant of June 25th referred to, and the words "waiting immediate reply" seemed to shew the reference was to the offer made by himself. But apart from this, the words "coming to accept" did not show an acceptance; it only showed an intention to do something.

McMichael, Q.C., for the plaintiff.

Rose, Q.C., for the defendant.

Proudfoot, J.]

[Nov. 14.]

RE LEA AND THE ONTARIO AND QUEBEC
RY. CO.

Dominion Railway Act, 1879—Appeal from award—Constitutional law—Jurisdiction—Changing petition into action—Practice—R. S. O. c. 165.

This was a petition by way of appeal from the award of arbitrators appointed under the Dominion Railway Act, 1879. The submission had not been made a rule of court. No special mode is provided under the said Dominion Railway Act for appealing from such an award.

Held, under these circumstances, that the only mode of impeaching the award was by an action to set it aside, or to make the submission a rule of court and then move to set it aside, and the petition must be dismissed, though without costs.

The appeal given by R. S. O. c. 165, s. 20, ss. 19, only applies to railways over which the Provincial Legislature has jurisdiction, and is not available in such a case as this; and it is not correct to say that an appeal from an award of this nature is simply a matter of procedure in a civil matter, and so within the powers of the Local Legislature under B. N. A. Act, s. 92, and that R. S. O. c. 165, s. 20, ss. 19, gives a summary appeal applicable to all cases of awards under the Railway Acts, whether of the Dominion or the Province, R. S. O. c. 165, all its provisions are expressly limited to railways under local jurisdiction, and assuming that the appeal in such cases as the present is a matter of procedure, and within the jurisdiction of the local legislature, the power to legislate upon it has not been exercised so as to apply to any other than local roads.

Semble, the Court has no power to turn such a petition as the present into an action.

Rose, Q.C., for the petition.

Cameron, Q.C., contra.

PRACTICE.

Wilson, C. J. C. P. D.]

[Oct. 10.]

MORTON V. GRAND TRUNK RY. CO.

Cost—Entry and record—Clerk's fees.

Held, on appeal from the taxing office at Toronto, that Clerks of Assize, when the trial of