

Boyd, C.]

IN RE MAPLE LEAF DAIRY CO.

[Nov. 15.]

Company — Winding-up — Application for order — Previous voluntary assignment — Creditors — Discretion.

The Court has a discretion to grant or withhold a winding-up order under s. 9 of R.S.C. c. 129. *Re William Lamb Manufacturing Co. of Ottawa*, 32 O.R. 243, dissented from.

Where the assets of the company were small, and the creditors had almost unanimously entered upon a voluntary liquidation under the Ontario Assignments Act, a petition for a compulsory winding-up order was refused.

H. A. Burbidge, for petitioning creditor. *A. Haydon*, for the company, the assignee, and other creditors.

Boyd C.]

[Nov. 15.]

IN RE STURGEON FALLS ELECTRIC LIGHT CO. AND TOWN OF
STURGEON FALLS.

Arbitration — Municipal corporation — Purchase of electric light plant — Appointment of sole arbitrator — Notice.

By an agreement between the town corporation and the assignor of the company for the establishment and operation for ten years of an electric light plant in the town, it was provided that the town might at any time during the ten years purchase the plant at a valuation fixed by three arbitrators, appointed by each party choosing an arbitrator and they two a third in case of dispute, or by a majority of them.

Where a submission provides that the reference shall be to two arbitrators, the Act, R.S.O. 1897, c. 62, s. 8 (b), gives power to the party who has appointed an arbitrator (if the other makes default as specified) to appoint that arbitrator as sole arbitrator; and it is provided that the Court or Judge may set aside any such appointment.

Held, that notice of the appointment of the sole arbitrator should be given to the party in default, who, if not notified, is not called upon to move against the appointment.

Held, also, that the agreement was not to be read as suspending the choice of a third arbitrator till there should be a dispute, but it imported that the three arbitrators should act from the outset, and therefore s. 8 (b) did not apply. *Exce for Life Ins. Co. v. Employers' Liability Assurance Corporation*, 2 O.L.R. 301, and *Gumm v. Hallett*, 1 L.R. 14 Eq. 555, considered.

Semle, that the arbitration was under the Municipal Act, and s. 8 of the Arbitration Act was not applicable; R.S.O. 1897, c. 223, s. 467.

L. G. McCarthy, for the company. *R. A. Grant*, for the town corporation.