

Armour, C.J.] IN RE PATULLO AND TOWN OF ORANGEVILLE. [Oct. 9.

Municipal corporations—Arbitrations—Award—Costs—Legal discretion
—R.S.O., c. 223, sec. 460.

An arbitrator appointed to determine a subject directed by section 437 of the Municipal Act, R.S.O. c. 223, to be determined by arbitration, is given power by section 460 "to award the payment by any of the parties to the other of the costs of the arbitration or of any portion thereof," such costs being thus placed in the discretion of the arbitrator.

Held, that this discretion must be a legal discretion, and the arbitrator should be governed by the rule laid down in many cases with respect to a like discretion, namely, that where a plaintiff comes to suppress a legal right, and there has been no misconduct on his part, the court cannot take away his right to costs. And there being nothing in this to warrant any departure from the rule that the unsuccessful party should bear the whole costs of the litigation, the award was modified accordingly.

Meyers, O.C., for the action. *Hughson contra*.

Boyd, C., Ferguson, J.]

[Oct. 14

RONDOT v. MONETARY TIMES PRINTING CO.

Interpleader—Refusal of application by sheriff—Claimant—Appeal—Summary decision—Question of fact—Rule 1111—Abandonment of seizure—Issue—Re-seizure.

Where an application was made by a sheriff for an interpleader order in respect of goods seized by him under an execution against the plaintiff for costs, and claimed by a brother of the plaintiff as purchaser of the goods, the Judge, assuming to act under Rule 1111, decided the question in favour of the claimant, without directing the trial of an issue, and made an order refusing the application, directing the sheriff to withdraw from possession of the goods, ordering the execution creditors to pay the sheriff's costs and possession money and the claimant's costs, and directing that no action should be brought by the claimant against the sheriff in respect of the seizure.

Held, that the execution creditors had the right to appeal against this order.

The execution creditors did not dispute the claimant's title to the goods by purchase from one to whom they were sold by the plaintiff's assignee for creditors, but contended that the claimant's present professed ownership was a mere sham and a fraud contrived to enable the plaintiff to carry on business independently of the demands of his creditors.

Held, that the question presented was not one of law, but of fact, and an issue should have been directed.