

be determined by lot that his bond was entitled to a larger sum than the principal, interest and premium, which he was sure to get in any event. While this latter privilege depended upon chance, it did not convert the bonds into lottery tickets.

IMMUNITY OF ARBITRATORS.

The question of immunity of judges came up in a new form in the recent case of *Hoosac, etc., Co. v. O'Brien*, before the Supreme Judicial Court of Massachusetts. The plaintiffs alleged that their own physician Sprague, a lawyer named O'Brien and one Hogan conspired to defraud the company. Hogan was injured by an accident and placed under the care of Sprague who, it was alleged, fraudulently induced Hogan to pretend that he was much more severely injured than in truth he was, and to refuse suitable nursing and food to prevent his rapid recovery. An action of damages which had been instituted by Hogan against the company was referred under a rule of court to Sprague and two others. The referees united in an award against the company of \$3,600, on the ground that Hogan was permanently injured. The award was paid and it was alleged that Sprague and O'Brien (the plaintiff's lawyer) retained to themselves \$1,600. The company averred a conspiracy to defraud, and sued Sprague and O'Brien to recover the amount. Sprague demurred and the Court sustained the demurrer on the ground that he acted as arbitrator. Chief Justice Morton said:—"The principle is too well settled to require discussion, that every judge, whether of a higher or a lower court, is exempt from liability to an action for any judgment given by him in the due course of the administration of justice. *Yates v. Lansing*, 5 Johns. 282, and 9 Johns. 395; *Pratt v. Gardner*, 2 Cush. 63, cited. A similar immunity extends to jurors. The question whether a like immunity extends to arbitrators seems never to have arisen in this Commonwealth. An arbitrator is a quasi-judicial officer under our laws exercising judicial functions. There is as much reason for protecting and insuring his impartiality, independence and freedom from undue influences as in the case of a

judge or juror. The same considerations of public policy apply, and we are of opinion that the same immunity extends to him. *Jones v. Brown*, 54 Iowa, 74. It follows that this suit cannot be maintained against the defendant Sprague, and his demurrer must be sustained."

O'Brien also demurred, but his demurrer was overruled. The Chief Justice said:—"The demurrer of the defendant O'Brien presents a different question. The immunity from actions extended to Sprague on grounds of public policy does not protect O'Brien. If a lawyer who brings a suit, by suborning witnesses, by bribing the judge, jury or arbitrators, or by other corrupt and illegal practices, procures an unjust judgment against his adversary, we know of no legal reason why he should not be responsible for his illegal acts to the party injured. He is not exonerated because, for reasons which do not apply to him, a joint tortfeasor cannot be reached. *Rice v. Coolidge*, 121 Mass. 393. The defendant contends that the judgment founded on the award cannot be impeached, and that it is conclusive on the plaintiff, and while unreversed prevents him from maintaining this action. This argument is founded upon a misapprehension of the effect of the former judgment. The parties in this suit are not the same as in the former suit. The plaintiff in this suit does not impeach the former judgment; on the contrary, the plaintiff relies upon it and the fact that it is conclusive as between it and Hogan, is the foundation of its claim against O'Brien. The plaintiff may have to try in this suit, one of the issues involved in the former suit, viz: the extent to which Hogan was injured, but this furnishes no reason against maintaining this suit."

CONSOLIDATION OF STATUTES.

To the Editor of the LEGAL NEWS:

May I, through the columns of your paper, suggest to the commissioners appointed to consolidate and revise the statutes of Canada, a change in their mode of redaction, which I am sure would be a great benefit both to the bar and the bench and which would