

[Jan. 15.]

CLARKSON v. MCMASTER.

Bills of sale and chattel mortgages—Possession—Creditors—Assignments and preferences—55 Vict., c. 26, s. 4 (O.).

The "creditors" against whom, by s. 4 of 55 Vict., c. 26 (O.), taking possession under a defective chattel mortgage is declared to be of no avail are creditors having executions in the sheriff's hands at the time possession is taken, or simple contract creditors who, at that time, have commenced proceedings on behalf of themselves and other creditors to set aside the mortgage.

An assignee for the general benefit of creditors stands in no better position, and possession taken before the assignment cures all formal defects.

Judgment of MACMAHON, J., reversed.

Johnston, Q.C., and W. H. Cullen for the appellants.

Cassels, Q.C., and W. S. McBrayne for the respondents.

[Jan. 15.]

IN RE CHRISTIE AND TORONTO JUNCTION.

Municipal corporations—Arbitration and award—Increasing award—Evidence—55 Vict., c. 42, ss. 401-404 (O.).

Held, per HAGARTY, C.J.O., and MACLENNAN, J.A.: In an arbitration within sections 401 and 404 of the Consolidated Municipal Act, 55 Vict., c. 42 (O.), a judge to whom an appeal is taken against the award cannot, merely on his own understanding of the evidence and on a view of the premises, increase the amount awarded.

Per BURTON and OSLER, JJ.A.: The judge can deal with the award on the merits, and can increase or reduce the amount or vary the decision as to costs.

In the result the judgment of ROSE, J., was affirmed.

Aylesworth, Q.C., and C. Going for the appellants.

W. R. Riddell, Q.C., and A. C. Gibson for the respondent.

[Jan. 15.]

LAND SECURITY COMPANY v. WILSON.

Principal and surety—Novation—Sale of land.

An agreement for sale and purchase of several lots entered into between the plaintiffs and defendant described the lots by their plan number, and after providing for payment of the purchase money part in cash and part at times fixed therein with a right of prepayment contained the words: "Company will discharge any of said lots on payment of the proportion of the purchase price applicable on each." The defendant sold and assigned his interest in the agreement to a third person, who made sales of lots and parts of lots, conveyances being made to the purchasers by the plaintiffs, who also gave time to the third person for payment of interest;

Held, on the evidence, that there was no novation.

Held, also, that the proportion of the purchase price applicable to each lot was to be ascertained by dividing the balance of purchase money, after deducting the cash payment, by the number of lots.