G. H. Kilmer, K.C., for the appellant.
W. H. Wright, for the defendants, respondents.

THE COURT was of opinion that there was error in law apparent on the face of the award. The arbitrator found that the plaintiff was not entitled to damages sustained before the service of his notice—and that was a finding on a question of law. In the notice two distinct classes of claim were set out: (1) original mal-construction; (2) negligent up-keep or non-repair. As to the second class, sec. 80(2) of the Municipal Drainage Act, R.S.O. 1914 ch. 198, provides that the municipality shall not be liable "by reason of the non-repair of such drainage work, unless and until after service . . . of notice. . ." There is no such provision respecting the first class; and that the first class is such as gives a right to complain is obvious. The damages, if any, accruing to the plaintiff before the service of the notice under sec. 80 must be determined.

THE COURT was also of opinion that the reasons of the arbitrator might be read as part of the award. Upon this point, the authorities, beginning with Kent v. Elstob (1802), 3 East 18, were reviewed.

The arbitrator having died, it was impossible to do anything but set aside the award.

The appeal was, therefore, allowed with costs, and the motion to set aside the award granted with costs.

(Written reasons were given by RIDDELL, MIDDLETON, and KELLY, JJ., respectively.)

MAY 20TH, 1915.

TAYLOR v. MULLEN COAL CO.

Nuisance—Smoke, Dust, and Noise from Industrial Works—Interference with Enjoyment of Neighbouring Dwelling-houses—Direct and Peculiar Injury to Individuals—Evidence—Sunday Work—Damages — Injunction — Appeal — Variation in Form of Judgment.

An appeal by the defendant company from the judgment of LENNOX, J., 7 O.W.N. 764.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.