

same; and in this instance they were not the same, because the questions raised by the defendants upon their defences of fraud and misrepresentation would necessarily be different in each case, the negotiations for each agreement being distinct; and the order made in Chambers was set aside.

C. J. Holman for the plaintiffs.

W. M. Douglas for the defendants.

Q.B. Div'l Ct.]

[June 22.]

IN *re* CITY OF TORONTO LEADER LANE
ARBITRATION.

Arbitration and award—Municipal by-law and appointment of arbitrators—R.S.O., c. 53, s. 13—Submission—Necessity for making rule of court—R.S.O., c. 184, s. 404—Ex parte order—Rule 526—Disclosure of matters in dispute.

In the case of an arbitration under the Municipal Act, R.S.O., c. 184, a municipal by-law and appointments in writing by the parties of the arbitrators constitute such a submission to arbitration by consent as may be made a rule of court under s. 13.

R.S.O., c. 184, s. 404, provides that every award made thereunder shall be subject to the jurisdiction of the High Court as if made on a submission by a bond containing an agreement for making the submission a rule or order of such court.

Held, upon the language of this section, that the submission should be made a rule of court before the award is moved upon.

Held, also, that any party to the submission has *prima facie* a right to have it made a rule of court; and according to the practice existing when the consolidated rules came into force no person other than the applicant was entitled to be heard upon a motion for such an order; and therefore by rule 526 there is no necessity for serving notice of motion, and an order can be made *ex parte*.

Such an order is merely a necessary form in order to give the court jurisdiction over the award; it binds no one and concedes nothing; the granting of it is compulsory on the court upon the production of the proper affidavits; and the court can enquire into and adjudicate upon all matters of substance when the award itself is sought to be attacked or enforced. Therefore, it was immaterial that upon an

ex parte application for such an order it was not disclosed that there were certain matters in controversy between the parties as to enlargements of the time for making the award.

D. E. Thomson for city.

Bain, Q.C., for land-owners.

Q.B. Div'l Ct.]

[June 22.]

BANK OF LONDON *v.* WALLACE.

Parties—Action to set aside fraudulent conveyance—Assignee for benefit of creditors—Adding a new plaintiff—Consent—Rule 324 (b.)—R.S.O., c. 124, s. 7, s.s. 2.

The action was brought to set aside a conveyance as fraudulent against creditors. The plaintiffs sued on behalf of themselves and all other creditors of the defendant R.W., and began this action in July, 1888. The statement of defence filed in December, 1888, alleged that in August, 1888, R.W. executed an assignment for the benefit of his creditors under 48 Vict., c. 26, whereby the exclusive right of action became vested in the assignee.

In February, 1889, the plaintiffs obtained an order under R.S.O., c. 124, s. 7, s.s. 2, giving them leave to take proceedings in the name of the assignee but for their own exclusive benefit to set aside the conveyance in question; and then applied for an order adding or substituting the assignee as plaintiff in this action. The consent of the assignee was not filed.

Held, that the assignee could not be added as a plaintiff without his consent in writing being filed, under Rule 324 (b.); but that the plaintiffs had the right to proceed under the order they had obtained by bringing a new action in the name of the assignee, to which his consent would not be necessary.

Aylesworth for plaintiffs.

C. J. Holman for defendants.

Q.B. Div'l Ct.]

[June 22.]

IN *re* LEWIS *v.* OLD.

Prohibition—Division Court—Jury trial Judge withdrawing case from jury.

In a Division Court suit a jury was demanded and called, but the presiding judge withdrew from their consideration everything but the amount of damages to be awarded, saying that there were no facts in the case disputed, the plaintiff's evidence being uncontradicted. The