That as soon as the litigation should reach such a stage as to enable the parties to ascertain exactly the balance due from the purchaser, he should at once assume the mortgage, pay the balance, and accept the conveyance, and until that period arrived he was not bound to pay any interest nor to become liable to pay any taxes.

That the vendor was not liable to pay interest upon the deposit.

Hoyles, for plaintiff.

G. W. Marsh, for defendant.

Practice.

Ct. of Appeal.] [March 5.

LIVERNOIS v. BAILEY.

Costs, scale of—Setting off costs—R.S.O. (1877), *c.* 50, *s.* 347, *s.s.* 3—*Rule* 428, *O.J.A.*, 1881.

An appeal from the decision of the C.P.D., 12 P.R. 535, was dismissed, the members of this Court being divided in opinion.

Held, per HAGARTY, C.J.O., and BURTON, J.A., that the trial judge had the power to deal with the costs, and that power, having been exercised, was not reviewable, and the appeal should be allowed.

Per OSLER and MACLENNAN, JJ.A., that the appeal should be dismissed.

J. W. Nesbitt, for the appellant.

H. H. Collier, for the respondent.

Ct. of Appeal.] [March 5th.

In re CITIZENS' INSURANCE COMPANY AND HENDERSON.

Arbitration and award—Reference back to arbitrators—Time for moving—Delay—Discovery of new evidence—Fraud—Scope of reference back.

An application to remit case back to arbitrators for reconsideration need not be made within the time limited for moving to set aside an award, but it must be made within a reasonable time, and the delay must be satisfactorily accounted for.

Leicester v. *Grazebrook*, 40 L.T.N.S. 883 approved and followed.

In this case a reference of the claims upon certain insurance policies was made by submission to two arbitrators, who disagreed, and in pursuance of the submission chose an umpire, who made his award on the 25th July, 1887. On the 29th May, 1888, the insurers moved for a reference on the ground that they had then recently discovered evidence that a quantity of goods saved from the fire were not credited by the assured on their proofs of loss and were fraudulently concealed.

Held, that there should be a reference back to the arbitrators to consider the new evidence and determine its bearing on the questions originally submitted to them. The reference back should be general, and not limited to an inquiry as to what goods were not destroyed by fire.

Bain, Q.C., and *Kappele*, for the appellants.

Aylesworth and *Hellmuth*, for the respondents.

STREET, J.] [March 11.

REGINA *ex rel.* DOUGHERTY v. MCCLAY

Municipal elections—Quo warranto—Powers of County Judge—R.S.O., c. 184, *ss.* 187-208—*Rules* 41, 1038—*Motion to set aside proceedings.*

Notwithstanding the provisions of R.S.O., c. 184, ss. 187-208, a County Judge has now no authority, as such, to give leave under Rule 1038 to serve a notice of motion to initiate *quo warranto* proceedings under the Municipal Act; and he has no authority at all to act in proceedings of that nature as a local judge of the High Court, that power being expressly excepted from the powers conferred upon him as a local judge by Rule 41.

A County Judge assumed to act in such proceedings, which were styled in the High Court of Justice.

Held, that he must be taken to have acted in his capacity as local judge of the High Court, and objection to the proceedings was properly taken by motion to set them aside.

W. R. Meredith, for the respondent.

Aylesworth, for the relator.