

The judgment of the Court (MULOCK, C.J., ANGLIN, J., CLUTE, J.), was delivered by

CLUTE, J.:—The Municipal Waterworks Act, R. S. O. 1897 ch. 225, sec. 6, provides, in case of any disagreement between the corporation and the owner, that the same shall be decided by arbitration in accordance with the provisions of the Municipal Act. An arbitration under the Municipal Act is subject to review on the merits (secs. 463, 464), and Mr. Lynch-Staunton contends that the present appeal falls within the Act.

The first question on this appeal, therefore, is, whether the parties, by the terms of the submission, have incorporated matters not within the above mentioned Acts.

After proceedings had been commenced under the Municipal Act and the arbitrators appointed, the parties entered into an agreement under seal defining the scope of the arbitration.

It is clear, I think, that matters were included in the agreement and dealt with by the award which are not within the purview of the Acts; for, whatever may be said with reference to the alleged trespass for which an action for an injunction was pending, it cannot be successfully contended that the claim for breach of contract is within the Acts. The award assumes to deal with both of these claims, and awards one sum both for the claim "under the Acts and in respect of the matters referred to in the said submission." The result is, that there is a finding as to matters not within the Act, and, as the agreement does not provide for an appeal under sec. 14 of the Arbitration Act, there can be no appeal in respect of this portion of the award. And, as these matters not under the Acts cannot be distinguished in the amount found from the questions referred under the Acts, the award being one and indivisible in its present form, it follows that no appeal upon the merits lies in this case.

It was urged, however, that it was the duty of the arbitrators to assess a separate sum for each subject matter referred, and that on that ground the award is bad upon its face. If that be so, the relief sought may be had under sec. 12 of the Arbitration Act. But, even assuming it to be so, that does not enable the Court to hear the appeal on the merits. Indeed, it seems to be impossible, having regard to the form of the reference and award, to deal with the case on the merits. For all we know to the contrary, a large part