

The defendants sought to escape liability on the ground that the statute authorized them to build as they were doing, but North, J., was of opinion that the statute did not authorize them to build so as to create a nuisance to adjoining proprietors, and he gave judgment for the plaintiff for the damages occasioned by the subsidence, and enjoined the defendants also from interfering with the plaintiff's lights.

ARBITRATION—TIME FOR MAKING AWARD—UMPIRE—JURISDICTION—ARBITRATORS "CALLED ON TO ACT"—ARBITRATION ACT (52 & 53 VICT., c. 49)—R.S.O. c. 62, sch. A (c).

In *Baring-Gould v. Sharpington* (1898) 2 Ch. 633, the construction of one of the implied provisions in submissions to arbitration under the Arbitration Act, 1889, is discussed. By this clause it is provided, that "The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, * * *". (See the same provision in R.S.O. c. 62, sch. A, clause (c).)

The proceedings were instituted to enforce an award made by an umpire, and the question was raised whether the time for the arbitrators to make an award under the above clause had elapsed. One of the parties to the submission on 11th January, 1898, gave notice to the arbitrators to appoint an umpire. On 15th February following the arbitrators appointed an umpire, who made his award on the 30th April following. The plaintiff contended that the arbitrators were "called on to act" when they were required to appoint an umpire, and that the three months ran from 11th January, 1898, and that the arbitrators, having neglected to make an award within that time, the umpire had consequently jurisdiction to make the award. North, J., however, was of opinion that the time for the arbitrators to make an award had not elapsed, and that consequently the jurisdiction of the umpire to make an award had not arisen. The words, "called on to act" he considered meant called on to enter on the substantial business of the reference, and not merely to do some subsidiary act, such as to appoint an umpire. The motion to enforce the award consequently failed.