

Com. Pleas.]

NOTES OF CANADIAN CASES.

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waste—a mere breach of covenant, not amounting to waste, not being sufficient, but to maintain such action the plaintiff must have a vested interest in the reversion at the time waste is committed, so that the claim, if any, must be for waste committed after she acquired the reversion, and up to J. B.'s assignment; but there would be no liability here, for, as to J. B., it appeared his assignment was made more than a year prior to his decease; and the R. S. O. cap. 107, sec. 9, only applies to breaches committed by testator within six months prior to his decease; and that it was not necessary for the defendant to set this up as a defence, the onus being on the plaintiff to show that she came within the statute; and as to the executors, it appeared that they had no interest in the term, nor had they ever intermeddled with the property.

*Held*, also, that there was no breach of the covenant to repair according to notice, for here the notice was given to J. B. after he had parted with his interest in the term.

*Held*, also, that the evidence failed to disclose the date when the breaches, if any, occurred, and therefore, whether they were prior or subsequent to the assignment to J. B.; at all events they were such as came within the terms "reasonable wear and tear."

*S. Richards, Q.C., and Nelson, for the plaintiff.*  
*W. Macdonald, for the defendants.*

IN RE SMITH AND CORPORATION OF  
PLYMPTON.

*Arbitration and award—Consolidated Municipal Act, 1883—Arbitration Clauses—By-law appointing arbitrator—Arbitrator refusing to act—Award by other two—Revoking arbitrators' authority—Appointment of third arbitrator by judge—Meeting of arbitrators within twenty days—Oath.*

A township by-law, after reciting that there was a difficulty with S. "from alleged damage from water flowing from local drains known as the H. and S. drains," enacted that F. was appointed arbitrator for the township. The notice given by the reeve to S. was that "the corporation had elected that the claims made by you for damages to the east half of lot 11," etc., "on account of the construction of the drain from P. to the S. drain, or consequent

thereon, shall be referred to arbitration." Before the parties had been heard on the merits, the plaintiff's arbitrator withdrew from the arbitration and refused to act; but the other two arbitrators, notwithstanding, proceeded with the reference and made an award.

*Held*, that the reference was wholly informal, the subject thereof not being properly defined; and though the notice given by the reeve to do so, would make the matter sufficiently clear, it did not affect S., for he never entered upon the arbitration, but repudiated the arbitrators authority at the first meeting of which he had notice; but, even if the reference was sufficient, the award was bad by reason of the two arbitrators proceeding alone, the Municipal Act requiring (in the absence of a special agreement to refer) that there shall be three arbitrators continuing to act from the time of their appointment until the award has been made, and enabling the County Court Judge to appoint another arbitrator in the place of one refusing or neglecting to act.

*Quære*, whether it is in the power of either party to the reference to revoke the authority of the arbitrators.

*Semble*, that the provision in the statute that the arbitrators must hold their first meeting within twenty days from the appointment of the last arbitrator is not imperative, but directory merely; and therefore an omission to hold such meeting within such time would not invalidate an award made within the month, as required by the Act.

*Semble*, also, that the County Judge may appoint the third arbitrator *ex parte*; although this is not desirable; and that the power to appoint does not depend on the disagreement of the two arbitrators, but on their failure to agree within the seven days limited therefor.

It was objected that the arbitrators had not taken oath required by the statute; but,

*Semble*, this objection was not tenable, as the oath they took was substantially the same as that required.

*Aylesworth, for the plaintiff.*

*Lash, Q.C., for the defendants.*