notice to the arbitrators, but the opposite party to the reference, who was out of the jurisdiction, was not notified. One of the arbitrators objected that he was not a proper party and that the other party to the reference was a necessary party to the application. The Judge in Chambers who heard the motion made an order appointing an umpire, with liberty to the party not before the Court to apply to discharge the order within a given time after notice thereof, the costs to be in the arbitration, which order was affirmed by the Court of Appeal (1912) 2 K.B. 542; (noted ante vol. 48, p. 500). The House of Lords (Lord Haldane, L.C., and Lords Halsbury, Ashbourne, Macnaghten, and Atkinson) held that the arbitrators were the proper parties to be notified of the application, and that the application was right in form and the appeal consequently failed.

DAMAGES—BREACH OF CONTRACT—SALE OF GOODS—GOODS NOT ACCORDING TO CONTRACT—PURCHASE OF OTHER GOODS TO MITIGATE DAMAGES—PROFIT ARISING FROM ACT DONE IN MITIGATION OF DAMAGES—APPEAL—JURISDICTION—AWARD INCORPORATING OPINION OF COURT ON CASE STATED BY ARBITRATORS—ERROR ON FACE OF AWARD.

British Westinghouse Elec. M. Co. v. *Underground Electric Railways* (1912) A.C. 673, is one of those cases in which if the suitors adopted the celebrated opinion of Mr. Bumble concerning the law, one would think they did so with some shew of reason. The way the case has been bandied about from Court to Court, though affording excellent entertainment to those in the game, must, one should think, prove highly exasperating to those who are looking for a speedy adjudication of their rights. The question at issue was simply the measure of damages for breach of a contract—and this is how it has worked out—the contract was for the supply of machines to an electric railway; the machines supplied were not according to contract, and, in order to mitigate the damages from the breach, the railway company purchased greatly improved machines from another firm. The cost of these machines the railway company claimed as part of its damages. The arbitrators to whom the fixing of the damages had been referred, submitted that question to the Court; and the Divisional Court (Lord Alverston, C.J., and Hamilton and Avery, JJ.) held that the railway were entitled to recover the cost of the substituted machines. The case t[h]
went back to the arbitrators, who, as in duty bound, adopted t