

two distinct and separate causes of action, one against the Massey-Harris Co., as originally stated, and the other against the added parties, and that the latter were neither necessary nor proper parties to the original action.

2. Under "The Patent Act," R.S.C., c. 61, as amended by 53 Vict., c. 13, this Court has no jurisdiction to impeach Vansickle's patent, but could only, on the application of a defendant sued for an infringement, declare it to be void as against him, leaving it *prima facie* valid as against everyone else. Appeal dismissed with costs.

Phippen, and *Minty*, for plaintiffs. *Aikens*, K.C., and *Robson*, for defendants.

Richards, J.]

BLAKESTON v. WILSON.

[Nov. 19, 1902.

Arbitration and award—Building contract—Making award a judgment—Arbitrators delegating their duty to third person.

Plaintiff's action was to recover a balance on a building contract, alleging completion. Defendant denied completion and counter-claimed against plaintiff on several grounds. After the record had been entered for trial the parties entered into an agreement to refer to two named arbitrators and a third one to be appointed by the latter "all matters whatsoever in dispute" between them. The arbitrators thus appointed made their award, finding the defendant indebted to the plaintiff under his contract in the sum of \$362.35, but that defendant was entitled to retain \$110.00 of this amount for thirty days "for the said James Blakeston to complete his contract in a workmanlike manner, subject to the judgment of a competent man, to be chosen by the said Blakeston and Wilson. Should Blakeston decline to complete the work, the \$110 is forfeited to Wilson. Should Wilson decline to allow Blakeston to complete the building, Wilson shall pay the \$110 at the expiration of thirty days from date of this judgment." Plaintiff moved, under Rules 754-764 of the King's Bench Act, to have the award made a judgment of the Court.

Held, dismissing the motion with costs, that the award was bad on the following grounds:—

1. It shewed on its face that the work under the plaintiff's contract had not been completed, so that the plaintiff was not entitled to recover anything at all in this action.

2. From evidence taken on the hearing of the motion it was clear that the arbitrators had not taken into consideration "all matters whatsoever in dispute," but had failed to deal with a number of such matters which had been brought to their attention. *Bowes v. Fernie*, 4 My. & Cr. 150; *Wilkinson v. Page*, 1 Hare 276; and *Russell on Arbitration*, 8th ed. p. 172, followed.

3. The arbitrators attempted to delegate to another person (unascertained) their authority to decide whether the \$110, part of the amount awarded, should or should not be paid. See *Tandy v. Tandy*, 9 Dowl. 1044. *Andrews*, for plaintiff. *Johnson*, for defendant.