

CITY OF TORONTO AND LEAK.

and who declined to accede to it, and made their award without ever informing their co-referee of any thing connected therewith.

I think, for the reasons already stated, this award must be set aside.

DRAPER, C. J.—The submission in this case was made under the statute 16 Vic., ch. 219, sec. 3., which first provides that the city surveyor shall declare by instrument under seal the amount which the owners of water lots shall pay the city for the construction of the esplanade across such lots, a copy of which instrument is to be served on the owner.

If the owner gives notice of refusal to pay the sum, three arbitrators are to be named, and their award, or that of any two of them, shall be final as to the amount chargeable on the said water lots respectively, and the owners thereof, for such improvement. The act does not provide for making the submission thus authorised a rule of court. The submission in the present instance however includes other subjects besides that above mentioned, and contains a condition that it may be made a rule of court; and even if it did not, the provisions of the 176th section of the Common Law Procedure Act seems to give either party power to apply to have it made a rule of court, as it contains no words purporting that the parties intended that it should not be made a rule of court. The *Great Western Railway Co. v. Light*, (1 P. R. 378,) was referred to as an authority to shew we had no jurisdiction, but in that case there was no agreement that the submission should be made a rule of court, and it was entered into before the passing of the Common Law Procedure Act.

The submission also involves matters arising under the statute 20 Vic., ch. 80, by which extended powers are given to the corporation of the city of Toronto to enter upon and take lands for the esplanade to the width of one hundred feet. Authority is also given to fill up and grade to the level of the esplanade the whole space lying between the northern limit thereof and the shore of the bay of Toronto; "and