benefit of anything done that has enhanced the value of the land. The compensation under the statute is for damages resulting from the taking of the land: the award therefor must be taken to be for so much as the property of the claimant was thereby reduced in value: to apply it to the case of a mortgagee, so much as his security was impaired.

It appears, however, that some deductions were made from the gross sum awarded; the award being that each party should pay one half of the costs of the arbitration and award. The whole cost of this was $160. The sum payable, therefore, was $520; and that, the plaintiff is in my judgment entitled to claim from the township, with interest from the date of the award, or whenever it was made payable. The award is not among the papers put in. The decree will be for the plaintiff, with costs, to be paid by the township.

ELECTION CASE.

(Reported by HENRY O'BRIEN, ESQ., *Barrister-at-Law.)*

REG. EX REL. MCGOUVERIN V. LAWLOR.

Quo warranto summons—Forfeiture of seat.

A summons in the nature of a *quo warranto*, under the Municipal Act, is not an appropriate proceeding to unseat a defendant who has forfeited his seat by an act subsequent to the election, the election having been legal.

[Chambers, March 8, 1870, *Mr. Dalton.*]

This was a summons in the nature of a *quo warranto* under the Municipal Act, complaining of the election of the defendant, as Reeve of the Municipality of the Township of Alfred, in the County of Prescott.

The facts appeared to be, that the defendant filled the office of Reeve for the year 1869: that at the election which took place on the 3rd January last, the defendant was again elected, and accepted office, and afterwards, on the 24th January last, was convicted before two justices "for that he the said George Lawlor, did on the 21st day of December, 1869, at the Township of Alfred aforesaid, sell and barter spirituous liquors without the license required by law," and he was fined $20 with $5 costs.

Mr. Clarke (Cameron & Smart) for the relator, claimed that the defendant should be unseated, the defendant having forfeited his seat under 32 Vic. (Ont.) cap 32, secs. 17, 22, 25.

W. S. Smith shewed cause, contending that the act did not cover a case where the election or qualification of the defendant was not called in question, but only matters subsequent thereto; and he alleged matters against the conviction not necessary to be noticed here.

MR. DALTON—The only cause alleged by the relator for unseating the defendant is the above conviction.

This proceeding, in the nature of a *quo warranto* summons, is entirely statutory. Section 130 of the Municipal Act contemplates the case of the *validity of the election* being contested, and sec. 131, which prescribes the proceeding for the trial, enacts, that if the relator shows by affidavit to the judge reasonable grounds for supposing that the election *was not legal*, or, *was not conducted according to law*, or, *that the person declared elected thereat was not duly elected*, the judge shall direct a writ of summons in the nature of a *quo warranto* to be issued to try the matters contested; and, throughout the subsections of sec. 131, the language is consistent. It is said in subsec. 9: *The judge shall in a summary manner upon statement and answer, without formal pleadings, hear and determine the validity of the election.*

Now from the time of his election and acceptance of office to the 24th January, the defendant properly filled the office, because, 1st, the election was legal; 2nd, it was conducted according to law, and 3rd, the defendant declared elected thereat was duly elected. The election was therefore valid, but by his conviction on that day it is alleged that the defendant forfeited his office, which till then he had rightly held. By the 17th sec. (Statutes of Ontario), 32 Vic. cap. 32, it is provided "If any member of any municipal council shall be convicted of any offence under this Act, (which this conviction is), he shall *thereby* forfeit and vacate his seat, and shall be ineligible to be elected to, or to sit or to vote in any municipal council for two years thereafter, &c."

Whether such a case would, or would not, be within secs 120, 124 & 125 of the Municipal Act, no doubt the law affords an appropriate remedy, but the present proceeding is, by express language of the Act, as it seems to me, confined to cases which exclude the cause now alleged, as an objection against the defendant's election.

Judgment should therefore be for the defendant, with costs.

Judgment for defendant with costs.

PRACTICE REPORTS.

IN RE POTTER AND KNAPP.

Arbitration — Notice of meetings — Proceeding ex parte — Duty of Arbitrator and dominus litis.—Costs.

Held, 1.—That before an arbitrator undertakes to proceed *ex parte*, he should satisfy himself by proper evidence that necessary notice of the appointment has been served, so as to enable the party notified to appear, and in case of non-appearance, it should clearly be shewn that such absence is wilful.

2. That the party acting in the prosecution of the arbitration ought to take care that all proper notices are served on the opposite party and should be able to shew, if he desires to proceed *ex parte*, that the other party has been properly notified, and that he wilfully absents himself; nor should the arbitrator proceed *ex parte* unless the notice conveys the information, that the arbitrator will proceed *ex parte* if the party served does not attend, nor should he so proceed, if a reasonable excuse for his inability to attend is given.

A party, therefore, who had not fulfilled his duty in this respect was ordered to pay costs, and the case was referred back.

[Practice Court, Hil. Term, 1870, *Gwynne, J.*]

O'Brien for Knapp, hereafter called the defendant, obtained a rule *nisi* calling upon Potter, hereafter called the plaintiff to shew cause why the award made in this cause should not be set aside, and vacated upon the following, among other grounds, viz:—On the ground of misconduct of the arbitrator: 1st. In having proceeded with the said reference and heard evidence on behalf of the plaintiff in the absence of the defendant and without notice to him, and without giving notice to the defendant of the time, if any, fixed for proceeding with the said reference, and without giving said defendant an opportunity of examining the remainder of his witnesses, or being heard