

the special acts, either the legislature have made the award final, or it is embraced within the same general rule.

The second objection is untenable, as all charges of fraud or corruption are expressly disclaimed. If it was intended to complain of more than is involved in moving against the verdict of a jury for excessive damages, the objection should have been so expressed: that is, if the value adopted by the arbitrators in favour of Leak is so extravagant as to afford evidence of corruption or partiality, the award should have been attacked on that ground.

The third objection is not, I think, sustainable to the extent of setting the award aside. The arbitrators have clearly exceeded their authority, according to section 5 of the act 20 Vic., by ordering the city to pay the sum awarded forthwith; but this direction may be set aside. To this extent the award is bad, but the objectionable part appears to me separable from the residue.

As to the last objection, I think that the affidavits of the three arbitrators establish that they had discussed all the matters on which they were or believed themselves to be called on to award, and that each was aware of the judgment formed by the others on the several points; and that when Manning parted from the other two, the disagreement between him and them was fully and finally understood. I think, therefore, the foundation for this objection is taken away. I refer to *White v. Sharp*, (12 M. & W. 712,) *In re Pering and Keymer* (3 A. & E. 245) *In re Templeman and Reed*, (9 Dowl. 962.)

A letter written by a counsel for either party is not more than if he had found the two arbitrators together, and had just before the execution of the award addressed them to the same effect. It advanced no new fact or evidence.

On the whole, I am of opinion that so much of the award as directs the payment to Leak "forthwith" must be set aside, and that the rule must be discharged as to the residue.

It is not without reluctance that I have arrived at this conclusion. The disregard of the request contained in Mr. Dalton's letter was strictly speaking a matter within the discretion of the arbitrators, though a compliance with it