

made to Messrs. Dennis and Cumberland, on Saturday, the 17th, by Mr. Dalton, earnestly asking that the amount found on the different heads of claim might appear on the face of the award, so as to enable his clients to take the opinion of a court thereon. This was some days before the award was made. Manning swears that he did not know of this letter being written till after the award was made, nor was he ever consulted thereon, nor was the form of the award ever discussed between him and his co-referees, though had he known of this letter he should have desired to discuss it. As they parted at their final meeting, he says Mr. Dennis remarked "they would take care to draw the award so that it could not be set aside." Manning further states that he never had notice of any meeting to sign the award, or that it was ready for signature, nor was he ever asked to sign it. The affidavits of Messrs. Dennis and Cumberland admit that they did not think it necessary to consult Manning about Dalton's request. Mr. Dennis swears that he adopted this form "*advisedly, and from frequent experience in arbitrations.*"

The award bears date October 19th, and professes to be by all three referees, though signed by two only, and it awards one sum in bulk to Leak.

It is to be remarked that the very fact of the two arbitrators refusing to particularise the amounts on the face of the award, as requested, has created the chief difficulty in dealing with this application, and I can hardly look upon it as a matter of so little moment as not to require a discussion as to its adoption or rejection between the three referees. It was emphatically a case to which, to apply the words of *Wightman, J.*, in *Wade v. Dowling*, (4 E. & B. 44,) "The parties referring their differences have a right to the joint judgment of the arbitrators exercised upon consideration up to the last moment." See also *Helps v. Roblin*, (6 C. P. 52 :) *Martin v. Kergan*, (2 P. R. 371.)

I look upon it as a matter of equal importance with that of a request from one of the parties in difference to state a case for the opinion of the court under the common submission. I hardly think an award could be supported that was made by two arbitrators to whom such a request was made,