[Reference to Fetherstone v. Cooper, 9 Ves. 67, 68; In re Underwood, 11 C.B.N.S. 442; Galloway v. Keyworth, 15 C.B. 228; Behren v. Bremer, 3 C.L.R. 40, 41; In re Manley and Anderson, 2 P.R. 354, 355, 367; Re Armstrong and Moyes, 6 O.W.R. 104.]

I am wholly unable to see any indelicacy or impropriety in the solicitor furnishing such a form; and no case has been brought to our notice deciding or indicating that there is—whatever may be the case where the award itself is prepared and not a mere blank.

Then, as to the merits, it seems to me that too much has been made of the alleged agreement that nothing should be allowed for goodwill, in view of what the arbitrators who made the award say. Whether anything should be allowed for goodwill under the general wording, "all the interest of E. Hollinger arising in any manner whatsoever in connection with the assets of the Walper House property at present belonging to E. Hollinger," we need not consider. And we could not, on the present motion to set aside the award, set aside the submission, even if obtained by fraud or mistake: Doe d. Lord Carlisle v. Morpeth, 3 Taunt. 374; Sackett v. Owen, 2 Chit. R. 39. That Zuber would be allowed to revoke his submission under R.S.O. 1897 ch. 62, sec. 3, may perhaps be doubtful after award made, even if he established fraud or mistake. But it could not, in any event, be done simply upon affidavits which are squarely contradicted. Even the fact that six persons swear one way to only two the other, is not conclusive—*penderantur non numerantur.*

In my judgment, too, the question whether the arbitrators did allow anything for goodwill should not be tried on affidavits—and the award should not be set aside on the ground that they have done so, when only one arbitrator swears to that effect and is contradicted by the others—I mean, without allowing the party in whose favour the award is an opportunity of shewing that the attack is not well-founded. . . .

The award being allowed to stand, the party in whose favour it is may enforce it by two methods—the award being nothing in itself: . . . (1) under R.S.O. 1897 ch. 62, sec. 13, enforcing it as a judgment by leave of the Court or a Judge; and (2) by action.

The Court or a Judge, on an application made under the Act, would be in no better position than we are in the endeavour to discover the truth. In a case like the present, redolent with suspicion, no doubt the practice would be followed usual when the validity of an award is doubtful, and the Court would leave