therefore the appellant company were entitled to set up against the insured a non-compliance with the provisions of 36 Vic. c. 44.

Ballagh v. *Royal Mutual F. In. Co.* approved of.

Canada Southern Railway Co. v. Norvell, Duff, Cunningham and Gatfield (4 cases).

Award.

Appeals by the Canada Southern Railway Company from the order of the Court of Appeal of the Province of Ontario, dated the 14th day of January, 1880, which dismissed the appeal of the Canada Southern Railway Company to that Court from the decrees pronounced in four cases in the Court of Chancery, wherein Norvell and other respondents were plaintiffs, and the Company defendants, by the Hon. Vice-Chancellor Proudfoot in favour of the said Norvell and others. The decrees, after making The Canada Permanent Loan and Savings Company, and the Molsons Bank, parties, plaintiffs, in the Norvell suit, as encumbrancers upon Norvell's interest in the lands in question, declared that the said Norvell and others were entitled to enforce against the Company the specific performance of the awards set out in the bills of complaint, and that the Company should pay to Norvell the sum of $9,294 92, being the amount of his award with interest and costs; and to Cunningham $2,480; to Duff, $2,500; and to Gatfield, $1,680; and upon payment that they should release to the Company the lands which had been expropriated by the Company for their line of railway.

Before the Supreme Court of Canada the Counsel for the appellants for the first time contended, 1st. That the award in Norvell's case was bad, because the arbitrators had dealt only with the equity of redemption interest of the amount. 2nd. In all the cases that the awards were bad on their face, as being signed by only two arbitrators without notice to the third, and that the awards should show that the third arbitrator was notified, as a condition precedent to its validity—and it was

Held, Per Curiam—That Norvell should be at liberty to amend his answer to raise the point that the award is invalid as being in terms confined to the limited interest of the land owner as mortgagor instead of embracing the whole fee simple of the estate, and when answer so amended, the judgment to go without costs that the award is void for that reason.

In the cases of Duff, Cunningham, and Gatfield, appellants, to be at liberty to amend answers by raising the points as to the award being made in the presence of two arbitrators only, in the absence of the third, and without notice to the third. If the land-owner in each case before the tenth day of September, 1880, files a signification signed by counsel that he desires a new trial, judgment to go therefor without costs to either party; but if he declines a new trial, then judgment in answer may go for the Company without costs.

Cattanach, counsel for appellants.

J. A. Boyd, Q. C., for respondents.

COURT OF APPEAL.

From C. C. York.] [June 2.

Campbell v. Prince.

County Court—New trial—Matter of discretion—Costs.

Although the jurisdiction of the Court of Appeal is not limited in appeals from the County Court as it is in appeals from the Superior Courts under sec. 18, s-s. 3 of the Appeal Act, it will not in ordinary cases interfere where a new trial has been refused in the Court below upon a matter of discretion only. In this case, however, where the new trial was asked for on the ground that the verdict was against evidence, the Court of Appeal granted a new trial as the evidence strongly preponderated in the defendant's favour, and the learned Judge had misdirected the jury. No costs of appeal—Costs of former trial to abide the event.

Ferguson, Q. C., for the appellant.

Delamere for the respondent.

Appeal allowed.