

HON. MR. JUSTICE MIDDLETON.

APRIL 4TH, 1914.

MASSIE v. CAMPBELLFORD, ETC., Rv. CO.

6 O. W. N. 161.

Arbitration and Award—Submission Agreement — Construction of Submission to Three Arbitrators — No Provision for Majority Award—Invalidity of Majority Award—Rectification of Agreement—Prior Agreement not Proven—Arbitration Act, Schedule sec. K—Action to Enforce Award—Dismissal of.

MIDDLETON, J., *held*, that where by a submission to arbitration, the matter is referred to three arbitrators, an award cannot be made by the majority unless the submission plainly so provides.
United Kingdom Assurance v. Houston, [1896] 1 Q. B. 567, referred to.

That before the submission agreement can be reformed by the Court, a concluded agreement binding on the parties with which the submission agreement is not in accord must be established.

Smith v. Raney, 25 O. W. R. 888, followed.

That sec. K. of the schedule to Arbitration Act only applies to a majority award, when under the submission the majority have power to award.

Action to enforce payment of fifteen thousand dollars and interest claimed under an award or valuation made by two of three arbitrators or valuers named in a submission bearing date 2nd July, 1913, and, if necessary, for the reformation of the agreement of submission so as to make plain that two of the arbitrators or valuers may make a valid award.

H. Cassels, K.C., for plaintiff.

S. Denison, K.C., and W. N. Tilley, for defendant.

HON. MR. JUSTICE MIDDLETON:—At the close of the plaintiff's case a motion was made for a non-suit; and, contrary to the practice which I deem proper in the great majority of cases, I thought it desirable to take this motion into consideration before calling on the defendants for their evidence. The defence sets up numerous issues, which promised a long and expensive trial, on which I thought it inadvisable to enter if the plaintiffs must in the end fail upon the grounds argued.

There is no doubt that where the submission is to three a binding award cannot be made by the majority—*United Kingdom Assurance v. Houston* (1896), 1 Q. B. 567—and I may adopt the language of Mathew, J., "The question is