

Q. B. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

ferent whether when counsel, being duly authorized, have given a consent, there being no mistake or surprise in the case, the party can arbitrarily withdraw that consent. . . . There being no authority which is binding on us to the contrary, we must decide according to what we think the right course, and it must be understood henceforth to be the rule that a consent given by the authority of the client cannot be arbitrarily withdrawn.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE
LAW SOCIETY.

QUEEN'S BENCH DIVISION.

RE MUSKOKA AND GRAVENHURST.

Municipal Act—Arbitrators—Award, etc.

An award by arbitrators under Municipal Act, R. S. O. cap. 174, not invalid though made more than a month after appointment of third arbitrator, notwithstanding sec. 377 of Act.

By sec. 378, no member, officer or person in a corporation's employment, interested in any arbitration, nor any person so interested shall act as an arbitrator under Act.

Held, that the disqualification of interested persons is absolute, and waiver of or acquiescence in the appointment of an interested person will not validate it. By sec. 383, arbitrators are to file with the clerk of the Council, the notes of the evidence taken. There being two councils interested in this arbitration, the arbitrators did not know with which clerk to file the evidence and did not file it.

Held, award not thereby invalidated.

The award having been directed to be made within a year by an order of the Chancery Division, where the parties were litigating concerning it, the Court refused to entertain the merits, but held that for that purpose, the motion should be transferred to that Division.

RE ONTARIO AND QUEBEC RAILWAY CO. AND TAYLOR.

Railway Co.—Expropriation—Award—Compensation for possible damage by falling trees, etc.

The right of a railway company to cut down trees for six rods on each side of the railway under Consolidated Railway Act, 1879, sec. 7,

sub-sec. 14, is entirely distinct from their right to expropriate land for the road, and has nothing to do with the compensation to the owner for land so expropriated, and forms a distinct subject of arbitration.

Held, therefore, that an award was bad in allowing compensation to the owner of land expropriated by a railway company for the damage that might accrue to the owner by the possible exercise of the right to fell trees adjacent to the expropriated lands.

Quere, whether under above Act more than the value of the land actually taken can be allowed as the Act does not contain a section equivalent to sec. 7 of R. S. O. cap. 165, which includes compensation for damages to lands injuriously affected.

Held, that the possible damage to land from greater exposure to winds and storms, and the greater liability to injury by fire by reason of the working of the railway were contingencies too remote to be considered in estimating the amount of compensation where there were no buildings to be endangered.

The notice by the railway company, included compensation "for such damages as you may sustain by reason or in consequence of the powers above mentioned."

Held, sufficient to allow the arbitrators to award damages resulting to the owner from the expropriation.

CHANCERY DIVISION.

Osler, J.]
Full Court.]

[March 29.
[Sept. 8.

JOHNSON V. KRÆMER.

Will—Construction—Express trust—Executors and trustees—Statute of limitations—R. S. O. c. 108.

A testator, J., after ordering all his past debts and funeral expenses to be paid out of his estate, devised to his wife, H. J., all his real estate in L., "during her natural life for the use and support of herself and family, and in case my said wife should at any time think proper to sell my said estate, it shall be the duty of my executors to sell the same with her consent to the best advantage, and the proceeds thereof to be distributed as follows: One-third to be given to my said wife for her use and support; one-third to be appropriated