

Practice Court.] IN RE TOWNSHIP OF HOWICK &amp; VILLAGE OF WROXETER.

[Ontario]

within that section, for it is an award under the Act, which does not require adoption by the Council), the Court shall consider not only the legality of the award, but the merits as they appear from the proceedings so filed as aforesaid (that is, filed under the 293rd section with the clerk of the Council), and may call for additional evidence to be taken in any manner the Court directs, and may, either without taking such evidence or after taking such evidence, set aside the award or remit the matters referred, or any of them, from time to time, to the consideration and determination of the same arbitrators, or to any other person or persons whom the Court may appoint, as provided in the C. L. P. Act, and fix the time within which such further or new award shall be made, or the Court may itself increase or diminish the amount awarded or otherwise modify the award as the justice of the case may seem to the Court to require.

I think it is my duty under that enactment to enter into the merits of the matters submitted, and that I must deal with "the award as the justice of the case may seem to the Court to require," and, as I have power to "call for additional evidence," I may act upon the written statements of the arbitrators, although they are not part of nor contemporaneous with the award.

Then what should the arbitrators have done under sec. 25, sub-sec. 4, which directs in the case of these two municipalities which were separating, that "the one shall pay or allow to the other in respect of the said disposition of the real and personal property of the union and in respect to the debts of the union, such sum or sums of money as may be just?"

Were they bound to apportion the debts and assets of the union according to the value of the property, real and personal, liable to assessment in the two municipalities, and according to population and acreage, as they have done? Or could they not take into consideration other circumstances which they might think just between the two bodies in order to make an equitable settlement between them? I certainly think they could have done so, and that they were not, nor are bound down so rigidly as they thought they were. And the Court may deal in the like manner with the rights and liabilities of the respective bodies upon a review of the merits of the case after the award has been made.

The claim of the village to a share of the sum of \$5,372 80 has been decided upon the basis of

population, which is, I suppose, sanctioned by the 37 Vict., c. 47, sec. 2.

The claim to a share of the \$7,500 is based on the extent of acreage in the two municipalities. That may or may not be a fair way of apportioning it. I have not the means of determining it before me, and I do not think it has been complained of.

A village might happen to require a larger allowance from such a fund than mere farms or wood land. And it might happen that the site of the village might be especially in want of drainage, while most of the other parts of the township might not require it. These are special and purely local matters with which I cannot now deal.

Then the liabilities for the railway debentures, amounting in all to \$26,000, have been apportioned according to the respective assessments of real and personal property in the two localities, and it is against that adjudication which the village chiefly, if not altogether, complains.

The village says the debentures given to the Wellington, Grey & Bruce Railway Company of \$11,000, and for which the village is charged \$715, should be struck off altogether from the village as a debt because the construction of that railway has been a serious injury to the village. And the arbitrators say they would have so struck it off, if they had felt at liberty under their rights, powers and duties as arbitrators to have done so.

As I have already said, I think they had the power to deal with these debts and assets in a different manner and in a more liberal spirit than they have done, and that they could, if they were of opinion the facts and evidence justified them, have disallowed that charge against the village on the ground that it was *just* to do so.

I can form no opinion at present whether the portion of the \$26,000, or of either of the sums composing that amount, now debited to Wroxeter, should or should not—or one or the other of them—in whole or in part, be struck off from the liabilities of the village. It is not a matter of abstract reasoning in any respect that can determine such a question.

It does not follow that the village should be relieved from such a claim because it has not been benefited by the grant made or by the road established.

It may be the township would not have granted the bonuses if the village, as a part of the township, had not been looked upon by the