

should be allowed to amend by adding a prayer that the award should be set aside and declared void, the costs of the demurrer to be costs to the defendant in any event of the cause.

Under the former practice the plaintiffs could not reply matter attacking or impeaching the award where it was pleaded. They would have first to move against and get the award set aside before suing on the original cause of action.

Rules 773-775 of the King's Bench Act, by a strange oversight, provide no procedure for setting aside an award at the instance of a party dissatisfied with it. Such party may attack the award if it is sought to be enforced against him, but it is not open to him, under Rule 773, to make a substantive motion to have it declared invalid.

In respect to cases not within the statute of William III., a bill in equity always lay to set aside an award for fraud or misconduct on the part of the arbitrator, and the Court of King's Bench has the same jurisdiction over awards as the Court of Chancery in England formerly had: King's Bench Act, s. 26, s.-s. (b).

Even if the case is within the statute of Wm. III. the effect of Rule 774 of the King's Bench Act, forbidding a resort to the old procedure relating to awards without leave of the Court or a judge, should be held to be such that a party may attack the award directly in an action, although the time has expired within which it could be moved against under that statute, since there is no procedure provided in the Rules for such an attack.

*Wilson and Johnson*, for plaintiffs. *Potts*, for defendant.

Dubuc, C.J.]

[June 20.

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FISHER v. VILLAGE OF CARMAN.

*Constitutional law—Ultra vires—By-law requiring pool rooms to be closed on Sundays—Powers of Provincial Legislatures.*

Application to quash By-law No. 87 of the Village of Carman requiring all pool rooms and billiard rooms to be closed from 8.30 p.m. of every Saturday until 7 a.m. of the following Monday, and from 10 p.m. of every other day until 6 a.m. of the next day, and that all screens or other devices for obscuring the view from the outside into such pool room or billiard room should be removed during such prohibited hours. The by-law was passed under the powers conferred by s. 640 (a) of the Municipal Act, R.S.M. 1902, c. 116, enabling the council of every municipality to pass by-laws: "For licensing, regulating and governing all persons who, for hire or gain, directly or indirectly, keep or have in their possession or on their premises any billiard,