plaintiff in the sum of $2,000 on his stock of dry goods, groceries, hardware, crockery, wines, liquors, ready-made clothing, boots and shoes, contained in a rough-cast frame building in the village of Elora, until the 30th of November, 1866, subject to conditions endorsed on the policy. Averment, that the said goods, &c, were destroyed by fire, whereby the plaintiff suffered loss to the amount of $4,000, yet the defendants have no paid. Common money counts were added.

Pleas.—1. *Non est factum.* 2. The said goods were not destroyed by fire. 3. Setting out a condition, that the plaintiff, on suffering loss by fire, should forthwith give notice, and within thirty days deliver a particular account, &c.: that the plaintiff did not forthwith give notice, and within thirty days after his loss deliver in a particular account of such loss or damage, signed by his own hand, and verified by his oath or affirmation, and by his books of account or other proper vouchers. 4. That the policy was obtained by the fraud and misrepresentation of the plaintiff, in representing that his general stock of dry goods, &c., were worth $6,000, whereas in truth they were worth only $4,000, and in making and causing to be made statements to the defendants as to the number of stoves kept upon the premises and the partitions through which they passed, and how they were protected, and that the plaintiff would not deviate therefrom without first giving notice to the defendants' Secretary, and obtaining the defendants' consent. Averment, that the plaintiff did wilfully deviate, and did make false statements, and concealed the fact that the building was heated by a hot air apparatus, and concealed the risk arising therefrom, whereby the policy became void. 5. That after the making of the policy the plaintiff materially altered the premises mentioned in the application, and in which the goods, &c., were kept, so as to vary and increase the risk, by erecting thereon a stove and apparatus for heating the premises with hot air. These five pleas were pleaded to the first count.

6. To the common counts, never indebted. Issue.

The trial took place at Guelph, in March, 1866, before *Richards*, C. J. After the plaintiff had examined one witness, the learned Chief Justice referred the whole case to the Judge of the County Court of the County of Wellington, under the 160th section of C. L. P. Act, Consol. Stat. U. C, ch. 22.

James Miller obtained a rule in the Practice Court, calling on the plaintiff to shew cause why the verdict and award should not be set aside and a new trial granted, or why the case should not be referred back to the arbitrator, if the court should be of opinion that it is a cause which can be referred by compulsory reference, on the following grounds: 1. That the arbitrator, as appears by his certificate and the award, held "that the notice of loss by fire had been given by plaintiff to the defendants, and had within thirty days after said loss delivered in a particular account of such loss or damage, signed by the plaintiff's own hand, and verified by his oath or affirmation, and by his books of account or other proper vouchers—whereas it was established by the plaintiff's own evidence that he had not done so, as required by the condition of the policy."

This rule was drawn up on reading the award made herein, the affidavit attached thereto, and the certificate of the arbitrator, and was moved absolute in the full court, though not on the face of it returnable therein.

The affidavit stated that this cause was at the last Guelph assizes referred to the award of the Judge of the Court of the County of Wellington, against the will of the counsel for the plaintiff and defendants: that the annexed papers, marked A1 and A2, were award and certificate of the said judge herein.

The award annexed to this affidavit bore date the 30th of April, 1866. Its execution was not otherwise proved than by this affidavit. It recited that by an order made at the sittings of *Nisi Prius* held at Guelph on the 22nd of March, before the Chief Justice of the Common Pleas, it was ordered that the jury should find a verdict for the plaintiff for $1,961.10 damages, subject to a reference to the said arbitrator, the award to be binding, with power to increase or reduce the verdict, or order a verdict for the defendants, with power to enlarge the time for making the award, costs of the cause and of the arbitration to abide the event, the award to be made on or before the first day of the then next term, the arbitrator to have the same power as a Judge at *Nisi Prius*. The award contained a finding upon all the issues, and ordered that the verdict entered for the plaintiff should stand on the issues on the first count for the sum of $1,697, and that a verdict be entered for the defendants on the issue on the second count.

Annexed to this award was a statement of the evidence and proceedings had before the arbitrator, with the exhibits produced; and it concluded, "I certify the same and my conclusions thereupon, to enable the defendants to move against my award if so advised."

S. Richards, Q. C., shewed cause. He objected to the sufficiency of the materials on which the rule appeared to have been granted, and to the reception of the certificate, as being a document made or signed by the arbitrator after the award was made; citing *Legge* v. *Young*, 16 C. B. 626; Russell on Awards, 470–1, 298, 626. *Holgate* v *Killick*, 7 H. & N. 418; *The London Dock Co.*, and *The Trustees of Shadwell*, 32 L. J. Q. B. 30. He also argued on the questions raised by the rule.

James Miller, contra, cited *Kent* v. *Elstob*, 3 East 18; *Jones* v. *Corry*, 5 Bing. N. C. 187; *Hodgkinson* v. *Fernie*, 3 C. B. N. S. 189; *In re Hall and Hinds*, 2 M. & G. 847; *Caswell* v. *Grou_cutt*, 31 L. J. Ex. 361; *McDonald* v. *McDonald* 7 U. C. L. J. 297; Russell on Awards, 295, 669.

Draper, C. J., delivered the judgment of the court.

The first question that arises is, are we properly in possession of this case? It is not shewn that the order of *Nisi Prius* has been made a rule of court. The 163rd sec. Consol. Stat. U. C. ch. 22, enacts that the proceedings upon *any such arbitration* shall, unless otherwise directed by this act or by the submission or document authorizing the reference, be conducted in like manner and be subject to the same rules and enactments as to the power of the arbitrator and of the court, the