

The submission was signed on the 11th December, 1919. On the 13th December, 1919, the arbitrators met, in the presence of all parties, for the purpose of proceeding with the reference. William Powless swore that he had business that day at Deseronto, and, before going there, told the arbitrators so, and that he would return the next day; that he left with them what documents and vouchers he had, and told them they might look over them in his absence, and that he would be ready to give his explanations upon his return; that Matthews, one of the arbitrators, told him that he would be in plenty of time; that he left for Deseronto, and, on his return the same evening, he met Matthews, and was handed the award; and that he then protested. These statements were denied by both arbitrators. They said that, before leaving for Deseronto, William Powless gave his evidence and handed to them what he said were all the vouchers and papers he had in regard to the partnership; that they told him not to go, and he said he had to go, and they knew as much about the matter as he did; that William Powless was present during part of the time while they were examining the accounts and hearing Cunningham's evidence. Matthews also denied that Powless protested when the award was handed to him. Cunningham's affidavit also substantially confirmed the arbitrators' statements.

On the evidence, the learned Judge felt bound to accept the statements of the arbitrators. Upon a reference to arbitration it usually lies entirely with the arbitrator to appoint the time and place of meeting for proceeding in the reference, and it is the duty of the parties to attend: Russell on Awards, 10th ed., pp. 375, 376. If, in fixing the date or in proceeding with the reference, due regard is not given to the reasonable convenience of the parties, the proceedings may be reviewed by the Courts. But what took place here would not justify the Court in setting aside the award. If the facts were as stated by the arbitrators, William Powless acquiesced in their proceeding in his absence, and had himself to blame if in the result the award was unsatisfactory to him.

In view of the foregoing, it was not necessary to come to any conclusion on the contention that the Powlesses had acquiesced in and adopted the award.

The motion to set aside the award should be dismissed with costs, and there should be an order for leave to enforce the award with costs.