

jurisdiction with a notice of motion, under Rule 773 of the King's Bench Act, to have the award made a judgment of the Court.

Held, that the service was authorized both by Rule 773 and also by Rule 201, and the court had jurisdiction to make the order asked for. *Rasch v. Wulford* (1904), 1 K.B. 118, distinguished.

In making his award, the arbitrator found against the respondent in respect of his claim to be credited with the amount of a cheque for \$800, but reserved the right to allow that claim provided the respondent would produce proof of same satisfactory to the arbitrator within thirty days. The respondent made no attempt to avail himself of the opportunity thus given.

Held, that this reservation, being for the respondent's benefit, could properly be separated from the rest of the award without requiring a re-adjustment of the position of the parties, and that the whole award was not thereby vitiated, but should be enforced disregarding such reservation. *Johnson v. Latham*, 19 L.J.Q.B. 329; and *Tomlin v. Mayor of Fordwich*, 5 A. & E. 147, referred to.

Foley, for applicant. *Kemp*, for respondent.

Robson, J.]

[Jan. 30.

DALZIEL v. HOMESEEEKERS LAND AND COLONIZATION CO.

Vendors and purchasers—Specific performance—Cancellation of agreement of sale—Forfeiture—Repayment of moneys paid on account—Damages for breach of agreement to purchase.

A purchaser of land under an agreement who has paid some of the instalments provided for, but whose rights the vendor has unsuccessfully attempted to put an end to by notice of cancellation for default in payment of a subsequent instalment, may, in an action against the vendor claiming relief from the forfeiture of the money paid, be entitled to a return of such money; but, if the value of the land has diminished in the meantime, he should have his claim reduced by the amount of the damages caused to the vendor by his breach of the contract; that is, the amount by which the price agreed on exceeds the reduced value of the land.

Hansford, for plaintiff. *Sproule*, for defendants.