

71028
764T6

CITY OF TORONTO AND LEAK.

IN THE MATTER OF THE ARBITRATION BETWEEN THE CORPORATION OF THE CITY OF TORONTO AND JOHN LEAK.

Toronto esplanade—Arbitration under 16 Vic., ch. 219, and 20 Vic., ch. 80—Right of water lot owners to be re-paid for expense of esplanade if made by them—Objection taken to award not apparent on its face—Award by two arbitrators, without consulting third as to letter from attorney for the city.

Per *Hagarty, J., and Morrison, J.*—Under the acts relating to the Toronto esplanade, the owners of land taken by the city have no right to claim the expense incurred by them in constructing the esplanade as an addition to the value of such land. *Draper, C. J.*, expressed no opinion on this point.

Per *Draper, C. J.*—On a reference under these acts the award cannot be set aside on affidavits showing that such a claim has been allowed, where this does not appear on the face of the award. Per *Hagarty, J.*, in a case like this the objection might be entertained, though not on an ordinary reference by consent.

The three arbitrators, C., D., and M., having met and discussed all the matters referred, separated, unable to agree, M. expressing his dissent as final. On the next day the attorney for the city wrote to D. requesting that the amounts found on the different heads of claim might appear on the face of the award, so that they might be able to obtain the opinion of the court, stating that the letter was intended for D.'s colleagues as well as himself, and desiring that the claimant's attorney should be made aware of it. C. and D. considered this communication and determined to disregard it, but no notice of it was given to M., and an award was made two days afterwards by C. and D., without further consulting him in any way.

Per *Hagarty, J., and Morrison, J.*—It was the duty of the other two arbitrators to notify M. of this letter, and of their intention to settle and execute the award.

Per *Draper, C. J.*—They were not bound to do so, for their disagreement was fully and finally understood when they separated, and the letter disclosed no new facts or evidence.

The award was therefore set aside on this ground, *Draper, C. J.*, dissenting. The sum awarded was directed to be paid forthwith, whereas the statute allows a year from the award, or from any rule of court ordering payment: but, *held*, that this part of the award, which was clearly bad, might be separated from the rest.

The submission in this case contained an agreement that it should be made a rule of court, and the jurisdiction over the award was therefore held to be clear.

Dalton obtained a rule *nisi*—on reading the rule of court containing the submission in this matter, a copy of the evidence taken by the arbitrators thereon, and a copy of the award, and certain affidavits and other papers—calling upon John Leak to shew cause why the said award should not be set aside with costs, on the following grounds:—

1st. That the arbitrators have included in their award, in their valuation of the land taken from the said John Leak for the purposes of the esplanade in the city of Toronto, the assumed expense incurred by the said Leak in partially constructing the esplanade, contrary to the statute 20 Vic., ch. 80.