

stated that he had no specific instructions to attend on the 15th. But he had been retained on the 8th to defend the accused, and this retainer covered and was intended to cover the subsequent charge for the same offence if and when laid. Mr. B., under his retainer, appeared for the defendant on the 15th, and, although objecting to the sufficiency of the service, took part in the trial.

There was absolutely nothing to shew that the defendant was in any way prejudiced by his absence or that his defence (if any) was not as fully made out by his counsel as if he had been there in person. If there was any irregularity at the hearing, it did not appear that any substantial wrong was occasioned thereby.

Motion dismissed with costs.

ORDE, J.

SEPTEMBER 7TH, 1920.

RE CUNNINGHAM AND POWLESS.

Arbitration and Award—Motion to Set aside Award—Arbitration Proceeding in Absence of Party—Denial and Explanation by Arbitrators—Acquiescence of Absent Party in Proceedings—Order for Enforcement of Award.

Motion by William and Austin Powless to set aside an award of arbitrators, and motion by J. R. Cunningham for leave to enforce the award.

The motions were heard in the Weekly Court, Toronto.
Daniel O'Connell, for the Powlesses.
H. J. Smith, for Cunningham.

ORDE, J., in a written judgment, said that the award was made by two arbitrators under a written submission, upon the dissolution of the partnership between the Powlesses and Cunningham.

The award was attacked upon the grounds: (1) that the arbitrators shewed partiality to Cunningham; (2) that they proceeded in the absence of William Powless; and (3) that the award was improperly procured by Cunningham. But, in substance, there was but one ground, viz., that the arbitrators had proceeded with the arbitration in the absence of William Powless, with the result that the award was not fair to him. Except in so far as there was any substance in the charge that the arbitrators had proceeded improperly and unfairly with the reference, there was no ground for the suggestion that they shewed any partiality to Cunningham or that Cunningham in any way improperly procured the award.