

the arbitrator to make definite findings of fact and have the questions of law clearly formulated. Upon the reference back, the case was re-stated, and the learned judge to whom the questions were submitted found they were questions of fact and referred the matter back to the arbitrator to "proceed with the arbitration."

Held, on appeal, that there was jurisdiction for such an order; that the arbitrator had not finished his work, and that he is not functus officio until the award is made.

Sir C. H. Tupper, K.C., for appellant. *L. G. McPhillips*, K.C., for respondent.

Full Court.]

SCOTT v. MILNE.

[April 7.

Agreement for sale of land—Time of the essence—Rescission—Laches.

In an agreement for the purchase of land with possession; purchaser covenanted, inter alia, giving vendor power to enter and determine tenancy on default, and that notice of default, addressed to purchaser at Vancouver, B.C., should be sufficient. Purchaser having become in default, and his address changeable, vendor wrote to a firm of brokers who were in communication with him, after two demands for payment of the moneys in arrear, desiring them to instruct purchaser of the cancellation of the agreement.

Held, on appeal (affirming the judgment of CLEMENT, J.) that the time allowed purchaser was not a waiver of the right of rescission under the agreement.

L. G. McPhillips, K.C., for appellant (plaintiff). *Bird*, for respondent (defendant).

SUPREME COURT.

Clement, J.]

REX v. GARVIN.

[March 28.

Constitutional law—B. N. A. Act, s. 91—Adulteration Act—Provincial Health Regulations—Ultra vires.

On a motion to quash conviction by the acting police magistrate of Vancouver who fined defendant for having in his possession milk intended for sale which did not have the minimum