

In each of these affidavits was a statement that no attention was paid to Mr. Dalton's letter.

*M. R. Vankoughnet* shewed cause, and cited 16 Vic., ch. 219; 20 Vic., ch. 80; Great Western R. W. Co. and Light, 1 P. R. 378; Lancaster v. Hemington, 4 A. & E. 345; Miller v. Shuttleworth, 7 C. B. 105; Phillips v. Evans, 12 M. & W. 309; Boutillier v. Thick, 1 D. & R. 366; Scobell v. Gilmour, 5 U. C. R. 48; Corporation of Kingston v. Day, 1 P. R. 142; Aitcheson v. Cargey, 2 Bing. 199; Rees v. Waters, 16 M. & W. 270; Faulkner v. Saulter, 1 P. R. 48; Hobdell v. Miller, 6 Bing. N. C. 292; Russ. on Arb. 62, 316, 656; Rex v. Shillibeer, 5 Dowl. 238; Watson v. McCullum, 8 T. R. 520; Rex v. Bardell, 5 A. & E. 619; Jackson v. Clarke, McCl. & Y. 200; Martin v. Kergan, 2 P. R. 370; Helps v. Roblin, 6 C. P. 52; *In re* Pering and Keymer, 3 A. & E. 245; Goodman v. Sayers, 2 Jac. & W. 249; Fuller v. Fenwick, 3 C. B. 705; Little v. Newton, 2 M. & G. 351.

*Dalton*, contra, cited *In re* Lee and Hemingway, 3 N. & M. 860; Harries v. Thomas, 2 M. & W. 32; Emery v. Wase, 8 Ves. 505.

The court differing in opinion delivered their judgments *seriatim*.

MORRISON, J.—The rule *nisi* on this application was moved on four grounds, but as my judgment turns solely upon the fourth, it becomes unnecessary for me to consider or express any opinion upon the other objections.

The fourth ground of objection is, that the two arbitrators made their award without duly consulting their co-arbitrator, Manning, and had meetings at which he was not present, and of which he had no notice, and had no opportunity of being present, and in particular did not consult him as to the form of the award, nor as to the matters contained in the letter of Mr. Dalton, nor give him notice of that letter, nor of any meeting for executing the award.

After the best consideration I have been able to give the subject, I am opinion that the rule should be made absolute for setting aside the award.

It appears from the affidavits filed, that on the 17th of