

Practice Court.] IN RE TOWNSHIP OF HOWICK & VILLAGE OF WROXETER. [Ontario.

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ONTARIO.

PRACTICE COURT.

IN THE MATTER OF THE AWARD BETWEEN THE TOWNSHIP OF HOWICK AND THE VILLAGE OF WROXETER.

Municipal Act 1873, sections 25, 295—Arbitration—Power of Arbitrators—Reference back.

Two Municipalities having failed to agree as to the disposition of certain property and liabilities between them, an arbitration was had pursuant to sub-sec. 5 of sec. 25 of Municipal Act of 1873. The Arbitrators decided that the principle expressed in sub-sec. 4 of sec. 25, that the amount to be paid by one corporation to the other should be "such sum of money as may be just" had reference only to a fair equalization of the assessment of the Municipalities and that no other consideration should be regarded.

Held, 1. That although by the general law this award could not be impeached, as there was nothing wrong either of fact or of law on the face of the award, the Court must, nevertheless, when its interference is invoked under sec. 295, enter into the merits of the matters submitted.

2. That the arbitrators should have taken into consideration such other circumstances as they might have thought just, so as to arrive at an equitable settlement between the Municipalities. The award was therefore remitted to the arbitrators to award what they might find to be under all the circumstances just between the parties, upon a liberal and comprehensive interpretation of the statute.

[Practice Court.—Mich. Term, 1875, and Jan. 7, 1876.—WILSON, J.]

In Michaelmas Term Francis obtained a rule calling on the Township of Howick to show cause why the award made between the above corporations should not be set aside, or why the matters in question between the parties should not be referred back to the arbitrators named in said award, on the ground that the arbitrators, according to their admissions in writing filed on this application, assumed to determine the respective rights and liabilities of the respective corporations with reference to the real and personal property and debts of the union, having regard only to the relative populations as to the asset assignment of the provincial surplus distribution and to the relative assessment as to the railway liabilities mentioned in the award, whereas the arbitrators were bound under the provisions of the Municipal Act to take into consideration all such material matters as would enable them to make a just award between the parties in the premises.

The arbitrators were Alexander Shaw, Barrister, elected by the Township of Howick, David Davidson Hay, M.P.P., elected by the Village of Wroxeter, and these two elected Isaac Francis Toms, Junior Judge of Huron, as the third arbitrator.

The award was made by Mr. Toms and Mr. Shaw—Mr. Hay not concurring in it.

The two arbitrators found

(1.) That the personal property of the Township at the time of the separation of Wroxeter from it consisted of

(a) The amount coming to it from the Province on account of the Municipal Loan Fund surplus distribution \$5,372 80

(b) The amount coming to it from the Province on account of the Land Improvement Fund, which fund is payable from time to time upon the sale of the Government lands in the Township, and which fund is capitalized by the award at \$7,500 00

\$12,872 80

(2.) That Howick owed at the time of the separation

(a) The amount due on account of debentures issued in aid of the Toronto, Grey and Bruce Ry. Co. \$15,000 00

(b) The amount due on debentures issued in favour of the Wellington, Grey and Bruce Ry. Co. \$11,000 00

\$26,000 00

(3) That of the above sum of \$5,372 80 they apportioned to Wroxeter,

\$646 44 being a sum made on the basis of population of the two Municipalities. (The remainder of \$4,726 36 goes, of course, to Howick.)

\$5,372 80

And of the above sum of..... \$7,500 00 they apportioned to Wroxeter

\$50 00 being a sum made on the basis of the acreage of the two Municipalities, (and, of course, giving to Howick the residue or

\$7,450 00

\$7,500 00