

But, whatever divergency of view there may be as to arbitrators voluntarily chosen by parties, the authorities are uniform that an officer of the Court, upon whom judicial duties are imposed in the ordinary course and as the tribunal constituted by law for the purpose, cannot be permitted to discharge such functions in circumstances where the faintest breath of suspicion of bias or partiality might arise.

In *Race v. Anderson*, 14 A. R. 213, after an arbitrator had taken all the evidence and prepared a written statement of his findings, which only required his signature to complete it, one of the parties sent him a letter containing an affidavit bearing on some matters in question on the reference. The arbitrator swore that his award was what he had previously embodied in his written findings and was in no way affected by the letter or affidavit, which he would have returned immediately had he not thought it better to place them, without filing them or treating them as evidence, amongst the papers, so that it could not be said he had in any way concealed the fact of their having been sent to him. The good faith of the referee was not questioned, and the Court "fully believed the referee's statement that he was not influenced by this communication." Nevertheless, the award was set aside, the Court observing that "in this particular case it may be somewhat of a hardship, but the leading principles that govern references to arbitration must be preserved inviolate." The action had been tried with a jury and a verdict returned for the plaintiff, subject to the award of the local Master at Guelph. The resemblance to the present case is close. But that judicial duties are still to be discharged in this case by the Master at Berlin, is, I think, much clearer than that the Master at Guelph had such functions to perform in *Race v. Anderson* after receipt of the letter and affidavit.

As put by Rose, J., in *Conmee v. Canadian Pacific R. W. Co.*, 16 O. R. at p. 655, "It will never do to allow it to go abroad that one of two litigants may approach a judicial officer, pending the litigation, to open negotiations for any profit or advantage to such judge. It is better that they should know that such conduct, when complained of before the Court, will lead to the setting aside of the award 'as a lesson to all persons in future not to adopt that line of conduct.'"

The reference to the local Master at Berlin and all proceedings had before him must therefore be set aside, and this