

of injury to the property, but the amount to be paid to the owner, which was to be determined.

For lots 62 and 63 there were two claimants, and it was the duty of the arbitrator to find to which of them the money should be paid. It was idle to award damages to the "owner" if the owner was not ascertained. The award should be for the payment of a certain specified sum of money to some person named (unless there was no dispute as to the ownership).

On a motion to enforce an award such a question should not be determined. The matter should be referred back to the District Court Judge to make an award which could be enforced.

Young should have his costs.

RIDDELL, J., IN CHAMBERS.

NOVEMBER 26TH, 1919.

*HAMILTON v. QUAKER OATS CO.

Discovery—Examination of Officer of Defendant Company—Action for Nuisance—Questions Directed to Acts of Defendant Company since Action Brought—Irrelevance—Rules 260, 327, 339.

Appeal by the defendant company from an order of the Local Judge at Peterborough requiring Robert W. Cormack, an officer of the defendant company, to attend for re-examination and to answer certain questions which he refused to answer when examined for discovery by the plaintiff.

F. D. Kerr, for the defendant company.
Daniel O'Connell, for the plaintiff.

RIDDELL, J., in a written judgment, said that the action was for damages for injury to the health and property of the plaintiff occasioned by smoke, smells, dust, and noise from the defendant company's factory in Peterborough; the defendants pleaded that they had the right by prescription to operate their factory as they did, and that they were operating it in a reasonable and proper manner, in the ordinary course of business, and that they did not cause such damage to the plaintiff or her property as to amount to a nuisance. They pleaded specially that they had employed all the modern methods, and were taking all reasonable and proper precautions, to prevent noise and the escape of dust, smoke, or smell; and the plaintiff replied with what was in substance a joinder of issue.

The superintendent of the defendant company's plant was examined for discovery, and was asked certain questions as to the