

Under this most extraordinary state of affairs I must hold that an agreement by which the churchwardens were enabled without litigation or further injury to the well-being of the parish to obtain possession of the church and rectory and secure the incumbent they desired, must be treated as an agreement highly beneficial to the parish, and therefore an agreement the making of which was incidental to the corporate duties and powers of churchwardens, within the above authorities, and binding upon the churchwardens and their successors.

Let the award therefore be enforced under sec. 13 of the Arbitration Act, except as to the item of \$50 for interest.

There will be no costs of this motion.

CARTWRIGHT, MASTER.

SEPTEMBER 7TH, 1904.

CHAMBERS.

BANK OF HAMILTON v. ANDERSON.

Dismissal of Action—Default of Election under Order—Appeal—Extension of Time for Election after Default.

By order of 9th March, 1904 (3 O. W. R. 301), the plaintiffs (the bank and E. R. C. Clarkson) were directed to elect within one month which of the two should proceed with this action, making all necessary amendments consequent on such election; and that in default of such election and amendment "within one month from the date hereof this action be dismissed with costs."

On 28th March an appeal from this order was dismissed by MACMAHON, J. (ib. 389), whose decision was affirmed by a Divisional Court (ib. 709) on 3rd June. The month limited by the first order expired on 8th April. No extension of time was granted by either of the subsequent orders.

On June 29th H. E. Rose, for plaintiffs, moved to extend time for making their election.

G. H. Kilmer shewed cause and objected that the Master had no power to grant the motion, relying on the decision in *Crown Corundum and Mica Co. v. Logan*, 3 O. L. R. 434, 1 O. W. R. 107, 174.