

tanto, and the balance paid by the party found liable therefor to the other. In case the Master finds that defendant cannot make a good title, the Master is to inquire and state what damages plaintiff has sustained by reason of the breach of contract by defendant, and defendant is to pay to plaintiff what shall be found due with costs of action and reference.

MACMAHON, J.

JUNE 21ST, 1907.

TRIAL.

GARSIDE v. WEBB.

Arbitration and Award—Voluntary Submission to Arbitration—Subsequent Agreement Varying Submission not Equivalent to New Submission—Arbitration Act—Award made after Time Expired—Failure of Arbitrators to Extend—Invalidity of Award—Dismissal of Action to Enforce.

Action upon an award made on 26th July, 1906.

A. C. McMaster, for plaintiffs.

W. N. Tilley, for defendant.

MACMAHON, J.:—The plaintiffs are wholesale merchants in Toronto, and the defendant is a builder and contractor in Toronto.

The defendant had contracted to build for the plaintiffs a warehouse on York street, in the city of Toronto, which was erected according to the terms of the contract.

The plaintiffs alleged that the defendant had been overpaid, while the defendant alleged that the plaintiffs still remained indebted to him.

On 11th November, 1905, the parties entered into an agreement to refer to C. Acton Bond and Charles J. Gibson, architects, all matters involved in the erection of the warehouse, who were by the submission "to find the exact cash cost of everything entering into the construction of the above mentioned building, both as to material and labour, it being understood that the actual cash cost is to be the basis of calculation, with no profit whatever included, and upon that actual cash an addition of 10 per cent. is to be made, as the agreed contractor's profit, the said 10 per cent.