

land for any purpose of the city, but the land has not been entered upon or used by the city, it is not bound by any award the arbitrators may make as to the value of the land proposed to be taken unless the award is, within three months thereafter, adopted by another by-law; but, if the city exercises its power of entering upon or using the land before the making of the award, it would be bound to carry out the purchase.

*Held*, that, in the former case, the arbitrators should assess the value of the land as at the time of making the award and not as at the date of the by-law, if values have changed in the meantime. *Pretty v. Toronto*, 19 A.R. 503, distinguished.

Order referring the matter back to the arbitrators to assess the value as at the date of their previous award.

*Wilson*, K.C., and *A. M. S. Ross*, for applicant. *T. A. Hant*, for City of Winnipeg.

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Macdonald, J.]

[March 21.

NEWTON v. FOLEY BROS., LARSON CO.

*Assignment f.b.o.c.—Money paid to sheriff by assignor before assignment—Priority as between assignee and execution creditor—Assignments Act.*

*Held*, 1. Moneys paid to the sheriff by an execution debtor whose goods have been seized under the execution, but have not been sold thereunder, are the property of the execution creditor, and the sheriff is not required by s. 9 of the Assignments Act R.S.M. 1902, c. 8, to pay them over to the assignee under an assignment by the execution debtor for the benefit of his creditors, unless such moneys are the proceeds of an actual sale by the sheriff.

2. The words "completely executed by payment" in s. 8 of the Act, giving precedence to an assignment for the general benefit of creditors over all executions not completely executed by payment, mean executed by payment to the sheriff, not to the execution creditor, so that the assignee has no right, under that section, to any moneys collected by sheriff under an execution against the assignor.

*Clarkson v. Nevers*, 17 O.R. 592, followed.

*Richards* and *Kemp*, for plaintiff. *F. M. Burbidge*, for defendants.