

Section 41 of R. S. O. 1897 ch. 62 provides that an arbitrator may at any stage of the proceedings under a reference, and shall if so directed by the Court or a Judge, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference; but it appears to be well settled that if the arbitrator, when applied to, refuses to state a special case, and proceeds to execute his award, the Court will not, while the award stands, remit to the arbitrator to state his award in the form of a case: see Redman's Arbitrations and Awards, 4th ed., p. 255. His refusal to state a special case, however, may be a ground for setting the award aside: *Re Palmer and Hosken*, [1898] 1 Q. B. 131, 137. . . .

In my view of the facts of this case, the award should, on the authority of *Re Palmer and Hosken*, be remitted to the arbitrator for reconsideration under sec. 11 of R. S. O. 1897 ch. 62.

The agreement of reference contains the following clause: "And it is further agreed that if motion is made to set aside or otherwise respecting the award, the Court may, whether the award be insufficient in law or not, remit the award from time to time to the reconsideration and re-determination of the arbitrator."

I further think that the arbitrator did not comply with the terms of the order of 22nd June, 1904. That order required him to find and award as to the ownership of the property included in the instrument of 5th January, 1901; and, without determining whether he has the power to vest the property in one party or the other, I am of the opinion that he does not satisfy the terms of the order by awarding that the property "be hereby vested in the Lake Superior Power Company as the owner thereof;" and, for this additional reason, I think the award should be remitted to the arbitrator for reconsideration.

I express no view upon the other grounds set forth in the notice of motion.

There will be no costs to either party. The award to be made on or before the first Monday in April next.

BRITTON, J.

JANUARY 10TH, 1905.

TRIAL.

BURTON v. LOCKERIDGE.

Promissory Note—Forgery—Conflicting Evidence—Collateral Circumstances—Comparison of Handwriting.

Action against William Lockeridge, John Lockeridge, and Mary J. Campbell, upon a promissory note, alleged to