

made, and a copy of the letter should have been furnished if the original was lost.

Dr. Powell alone seems to have fully realised the judicial character of the duties imposed by the submission; and the arbitrator for the plaintiff, I should say, not at all.

It is true that the arbitrators have not the right to say what evidence shall be given; but they have not the right to reject competent evidence offered by either counsel. They came to the conclusion that the evidence of a specialist was necessary to a proper understanding of the matters in issue; and, one of the counsel having adopted this view, they should not have rejected it at the instance of the other.

I need not take up other grounds of objection. The first two are, I think, fatal to the validity of the award. Subject to the question of physical examination—a question which, I think, the plaintiff's counsel was hardly in a position to raise—the exclusion of Dr. Beemer's evidence is an equally strong objection to the award. The defendants were to pay the costs of the arbitration. The attitude of the defendants' counsel in the early stages of the inquiry and his omission to insist directly upon the Board admitting the evidence contributed, I think, to the conspicuous irregularity of the proceedings in this case; and the costs now incurred in straightening the matter out may well be added to the costs covered by the agreement.

The award will be set aside, but, in the circumstances, the defendants will pay the plaintiff's costs of and incidental to the motion.

References: *Livingstone v. Livingstone*, 13 O.L.R. 604, and *Campbell v. Irwin*, 5 O.W.N. 957, where the cases are collected.

BOYD, C.

MARCH 25TH, 1914.

RE McLAUGHLIN.

*Will—Construction—Devise of Life Estate to Wife for Benefit of Family—Direction to Executors to Sell at Death of Wife and Divide Proceeds among Children—Vested Estates of Children—Share of Daughter Dying after Death of Testator and Leaving Issue since Deceased—Right of Surviving Husband.*

Motion by the executors of the will of Robert McLaughlin, deceased, for an order declaring the true construction of the will