

of a valuation previously determined upon and made known; and signed without variation.

In *Goodman v. Sayers*, above referred to, one of the arbitrators, Hobbs, was not present when the award was signed, or notified of the meeting. Sir Thomas Plummer, in delivering the judgment of the Court said "Here, however, all the evidence was heard, and all the substance of the business was settled in his presence; the rest, the signing of the award, was a mere form; this they thought they were at liberty to do by themselves; they did not however, act secretly but determined on the manner in which they had previously informed them that they should. Then should the Court set aside the award on account of the absence of one arbitrator? The cases have never gone that length."

But it is not true—as I find—that these parties were actuated by improper motives, or were acting in collusion or bad faith. The fact is that Nicholas Garland has no financial interest in the subdivision in question as mortgagee or otherwise, and it made no difference to him, nor to any member of his family, so far as I can see, whether the plaintiff did or did not purchase lots from the company. The mention of the lots at all was occasioned by a purely casual remark of the plaintiff, as he describes.

So far I have dealt with this action without reference to whether the plaintiff's rights are dependent upon an arbitration or valuation, but I am not at liberty to consider the question as an open one.

Upon an appeal from an order of Mr. Justice Middleton dismissing the defendant's motion to set aside the valuation or award now in question, the Court of Appeal declared that the leases set out in the statement of claim provide for "a valuation and not an arbitration." *Re Irwin & Campbell*, 24 O. W. R. 896; 25 O. W. R. 172.

It is not, and could not—in so many words—be contended that I am not bound by this judgment, and yet if I correctly apprehend Mr. Tilley's very able argument, many of his propositions are in direct conflict with the interpretation referred to. It is argued for the defendant that:—

1. The leases provide for an arbitration, though not for an arbitration within the provisions of the Arbitration Act.