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DIVISIONAL COURT.

RE EMPLOYERS' LIABILITY ASSURANCE CORPORATION AND EXCELSIOR LIFE INSURANCE CO.

Arbitration and Award—Submission to Two Arbitrators—Summary Proceeding—Discretion of Court or Judge—Practice—R. S. O. 1897 ch. 62, sec. 8.

An agreement, that a sum is to be "ascertained by the arbitration of two disinterested persons, one to be chosen by each party to the agreement, and if the arbitrators are unable to agree they shall choose a third, and the award of the majority shall be sufficient," is within R. S. O. 1897 ch. 62, sec. 8, and if one party fails to appoint after notice, then the other may appoint his arbitrator to act as sole arbitrator.

Semle:—The Court or a Judge may, in the exercise of discretion, decide such a question in a summary proceeding.

Appeal by the corporation from order of STREET, J., in Chambers (2 O. L. R. 301), dismissing their application for an order setting aside the appointment by the insurance company of a sole arbitrator. A guarantee policy of insurance made by the corporation in favour of the company contained a provision that, if any difference should arise in the adjustment of a loss, an award should be made by two disinterested persons, one to be chosen by each party, and on their disagreement the two should choose a third, the award of the majority to be sufficient. Differences having arisen, the company appointed their arbitrator, and gave