

matters mentioned in the clause in question I should make the appointment. I am satisfied that it has been shewn that there is such a question.

The arbitrator whom I name will then be precisely in the same position as if named in the articles themselves, and upon his shoulders will be the responsibility of determining his course.

I have used the word "arbitrator" because it is used in the articles. I do not assume to determine whether the one appointed is in truth an arbitrator within the technical meaning of that term.

It was intimated that, if I thought it my duty to act, the parties could probably agree upon a person to be named. Unless I am notified within a week of the selection of a name agreeable to both parties, I shall, at the instance of either, make a selection of an arbitrator of my own nomination.

MIDDLETON, J., IN CHAMBERS

FEBRUARY 18TH, 1915.

McCOWAN v. CITY OF TORONTO.

Summary Judgment—Mortgage Action—Facts and Circumstances Entitling Defendants to Defend—Marshalling of Assets—Judgment for Sale of Part of Mortgaged Land—Reservation of Right to Apply for Sale of Part Taken by Municipal Corporation for Street.

Appeal by the plaintiff from an order of the Master in Chambers dismissing a motion for summary judgment.

C. W. Plaxton, for the plaintiff.

B. W. Essery, for the defendants the Corporation of the City of Toronto.

The defendant Murch did not appear.

MIDDLETON, J.:—Lands were mortgaged by one Murch to McCowan to secure \$2,000. Part of the lands were taken by the defendants the city corporation, and, after negotiation with Mr. Lobb, solicitor for Murch, the sum to be paid was fixed at \$7,000, the building to be moved from the land taken to the remaining parcel. The \$7,000 was paid to Lobb, who undertook to procure a deed from Murch and a discharge of the McCowan mortgage.