

that Mr. Leburn was interested in building up the fortunes of Mr. Drew, and so disqualified, does not appear to have been seriously entertained by the Lord Chancellor. At p. 7 his Lordship says: "Mr. Peter Drew has certain trust moneys in his hands, of which Mr. Leburn, the arbitrator, is one of the trustees, and Mr. Peter Drew, if this award goes against him, will be less solvent or more insolvent than if it goes in his favour. If it goes in his favour, it will be more likely that he will be able to pay Mr. Leburn, the arbitrator, his debt than if it goes against him. My Lords I do not hesitate to say, that this is a sort of interest, if you call it an interest, with which it is quite impossible for your Lordships to deal." As was said in *Halliday v. Hamilton Trustees*, 5 F. 800, Ct. of Sess., there is nothing in such a case to suggest that the arbitrator has not still "an open mind."

But if all that is suggested were true another difficulty confronts the defendant. The valuation and all questions referred to Mr. Garland and his associates, had been determined upon, the result had become known and the preparation and signing of the valuation paper had been arranged for before the land transaction was initiated or even spoken of. In *Re Underwood & Bedford & Cambridge Rv. Co.*, 11 C. B. N. S. 442, the arbitrator consulted with Underwood's solicitor as to the form of the award, and he was allowed to draw it up, but Chief Justice Erle, being satisfied that "the arbitrator had made up his mind as to the substances of the award," before he consulted the solicitor, refused to set it aside. In *Re Hopper (supra)*, the distinction between the judicial and merely formal acts come up in two ways, namely, as to acceptance of hospitality before the award was executed, and the validity of the umpire's appointment. The first point turned, perhaps, chiefly upon the absence of evidence of a corrupt intention as already referred to, but the other distinctly involved the question I am now dealing with; and it was decided that the choice of an umpire having been made at a formal meeting of the two arbitrators, their judicial functions in this regard were then completed, and the endorsement of the appointment upon the submission and the signing of it was merely a formal record of their joint judicial act; and it was valid although each signed in the absence of the other. I can see no difference in principle between this and the signing