

MIDDLETON, J.

MARCH 20th, 1918.

*RE McCONKEY ARBITRATION.

Landlord and Tenant—Ground Lease—Buildings of Tenant—Covenants and Provisoes in Lease—Determination by Arbitration of Value of “Buildings and Improvements” at Expiry of Lease—Construction of Lease—Laxity in Language Used—“Buildings Fixtures or Things”—“Buildings Erections or Improvements”—Mode of Valuation—“Abstractedly”—Use and Value of “Improvements” to Landlord—“Fixtures” Forming Integral Part of Premises—Case Stated by Arbitrators—Forum—Single Judge in Court—Judicature Act, sec. 43.

Stated case submitted by arbitrators upon an arbitration to determine the value of buildings upon demised premises.

See *Re Toronto General Trusts Corporation and McConkey* (1917), 13 O.W.N. 281.

The motion was heard in the Weekly Court, Toronto.

E. T. Malone, K.C., for the landlord.

M. H. Ludwig, K.C., and A. W. Ballantyne, for the tenant.

MIDDLETON, J., in a written judgment, said that a preliminary objection was made to the case being heard by a single Judge in Court: *Re Geddes and Cochrane* (1901), 2 O.L.R. 145. But, when that case was determined, sec. 67 (1) (a) of the Judicature Act, R.S.O. 1897 ch. 51, governed; it provided that, when a proceeding was directed to be taken before the Court in which the decision of the Court was final, it should be heard by a Divisional Court of the High Court. Sec. 67 (1) (a) having been repealed, the only statutory provision applicable is sec. 43 of the present Judicature Act, R.S.O. 1914 ch. 56, which requires all proceedings in the High Court Division to be disposed of by a Judge, who shall constitute the Court.

The arbitration was under a lease dated the 1st November, 1896, made by Richardson to Wilson, containing a covenant by the lessor to pay, after the expiration of the term, “the just and proper value at that time . . . of such buildings and improvements as may then be erected and standing on the said hereby demised premises”—such value to be determined by arbitration—or to grant a new lease, at a rental to be determined by arbitration.

The arbitration was to fix the value of the buildings.

There was a proviso in the lease that “in determining the value of any buildings erections or improvements standing and being on the said demised premises at the end of any 21 years