

LENNOX, J.

MARCH 24TH, 1914.

WRIGHT v. TORONTO R.W. CO.

Arbitration and Award—Motion to Set aside Award—Misconduct of Arbitrators—Reception of Testimony not on Oath—Unfounded Reference to Offer of Settlement—Rejection of Competent Evidence—Irregularities in Procedure—Costs.

The plaintiff was injured in a collision between two cars of the defendant company, and brought this action to recover damages for her injuries.

While the action was pending an agreement was made between the parties for the submission of the plaintiff's claim to arbitration. The plaintiff appointed Dr. W. T. Stuart her arbitrator; the defendants appointed Dr. N. A. Powell; and these two chose Dr. Harley Smith as the arbitrator.

Dr. Stuart and Dr. Smith agreed upon \$9,095 as the amount to be paid the plaintiff by the defendants for her injuries, and awarded that sum; Dr. Powell not joining in the award.

The defendants moved to set aside the award, on the ground of the misconduct of the arbitrators.

D. L. McCarthy, K.C., for the defendants.

R. McKay, K.C., for the plaintiff.

LENNOX, J.:—This was clearly an arbitration and the plaintiff has neither law nor equity to support her contention to the contrary.

But upon the other question—whether the manner in which the inquiry was conducted is ground for setting aside the award—I regret the conclusion I feel compelled to come to, and shall be better pleased should an appellate Court determine that I am in error.

Communication with Dr. St. Charles, the attendant physician, for the purpose of getting the history of the case, is not, I think, complained of, but, beyond this, unsworn statements by Dr. St. Charles should not have been listened to; and even the history of the case, if given piecemeal to the arbitrators individually, would be distinctly improper. The communications made by Dr. St. Charles to the arbitrators who made the award, including as they did his unsworn opinion, practically an argu-