

HON. SIR G. FALCONBRIDGE, C.J.K.B. JUNE 24TH, 1913.

RE IRWIN, HAWKEN AND RAMSAY.

4 O. W. N. 1562.

Arbitration and Award—Appeal—Award or Valuation—No Appeal—Construction of Lease.

FALCONBRIDGE, C.J.K.B., *held*, that the decision of three valuers under a clause in a lease was a valuation not an award, and no appeal lay therefrom.

Re Carus, Wilson & Greene, 18 Q. B. D. 7, followed.

Motion by Hawken by way of appeal from an alleged award of a board of three arbitrators or valuers. In answer it was contended that no appeal lay, the decision being a valuation and not an award.

L. F. Heyd, K.C., for Hawken.

C. A. Moss, for Ramsay.

J. T. White, for Irwin estate.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—I am clearly of opinion that what the documents contemplated and what the valuers did, was a valuation and not in the nature of an award or an arbitration.

Therefore this application cannot be entertained. *Re Carus, Wilson and Greene*, 18 Q. B. D. 7.

No costs except that as the Irwin estate seems to have been unnecessarily brought before me, Hawken must pay their costs which I fix at \$5.

SUPREME COURT OF ONTARIO.

1ST APPELLATE DIVISION.

JUNE 26TH, 1913.

GOLDFIELDS v. MASON.

4 O. W. N. 1530.

Company—Action for Breach of Agreement—Plaintiff Company not in Existence at Date of Agreement, nor Assignee of—Right to Maintain Action.

SUP. CT. ONT. (1st App. Div.) *held* that a company were not entitled to sue upon an agreement who were not parties thereto or assignees thereof.

Judgment of CLUTE, J., affirmed.

Appeal by the plaintiff company from judgment of HON. MR. JUSTICE CLUTE, of November 14th, 1912, dismissing an action, for a declaration that defendant was not and never