

as to the nature of the claim of a person seeking to establish a *donatio mortis causâ*.]

Even if it should be held that the Surrogate Court has jurisdiction under sec. 69 to adjudicate upon claims of this nature, that jurisdiction was limited to \$500 when the proceedings began, and is now limited to \$800 by 1 Geo. V. ch. 18; and, in the absence of express statutory provision, consent of the parties would not confer jurisdiction upon the Judge to adjudicate upon the matter as a Judge of the Surrogate Court; and, if he did so adjudicate, his decision should be regarded not as a judgment of the Court, but as that of a private tribunal constituted by the parties—in other words, as that of a quasi-arbitrator—and would be appealable only as an award, where the right of appeal was reserved by the consent under which he acted, as provided in sec. 17 of the Arbitration Act, 9 Edw. VII. ch. 35.

[Reference to Canadian Pacific R.W. Co. v. Fleming, 22 S.C.R. 33, 36; Attorney-General for Nova Scotia v. Gregory, 11 App. Cas. 229; Burgess v. Morton, [1896] A.C. 136.]

I think, under the terms of the consent here, the parties have a right of appeal from the judgment as from an award to a Judge in the Weekly Court, under the Arbitration Act.

Now, upon the merits, while I might have come to a different conclusion from that arrived at by the learned Judge, had I heard and seen the witnesses, I cannot say that his finding is wrong. . . .

[Reference to Coghlan v. Cumberland, [1898] 1 Ch. 704, 705.]

As it does not appear from the judgment or from the evidence that the learned Judge has misapprehended the effect of the evidence or failed to consider a material part of it, this case cannot be brought within such cases as *Beal v. Michigan Central R.R. Co.*, 19 O.L.R. 502.

The appeal must, therefore, be dismissed with costs.

DIVISIONAL COURT.

NOVEMBER 4TH, 1911.

LYON v. BORLAND.

Nuisance—Lease of Part of Building—Agreement by Landlord with Tenant not to Allow Machinery in Building—Failure to Prove Agreement—Co-tenant Using Machinery in Building—Noise and Vibration—Locality of Premises—Manufacturing District—Necessity for Consideration—New Trial.

Appeal by the defendants from the judgment of the County