

THE
ONTARIO WEEKLY REPORTER

VOL. 25

TORONTO, MARCH 26, 1914.

No. 16

HON. MR. JUSTICE LENNOX.

FEBRUARY 23RD, 1914.

CAMPBELL v. IRWIN.

5 O. W. N. 957.

Arbitration and Award — Valuation of Buildings of Lessee at Termination of Lease — Distinction between Valuation and Arbitration—Conduct of Valuator—Bias—Disqualification—Interest—Valuation as Entire Building — Non-Concurrence of Three Valuators in Formalities of Award—Joint Action—Estoppel—Action to Enforce Award.

LENNOX, J., *held*, that where corruption, fraud, partiality or wrongdoing is charged against arbitrators it must be distinctly established, the presumption being in favour of the award.

Goodman v. Sayers, 2 J. & W. 249, referred to.

That an arbitrator is not disqualified by reason of being a mortgagee of property purchased by one of the parties.

Distinction between valuation and arbitration examined and authorities reviewed at length.

Action to recover \$35,000, being the amount awarded by three arbitrators or valuers to be paid by the defendant (lessor) to the plaintiff (lessee) for the buildings erected by the lessee on the demised land upon termination of the leases by the lessor.

N. W. Rowell, K.C., and G. Kerr, for plaintiff.

W. N. Tilley and W. N. Ferguson, K.C., for defendant.

HON. MR. JUSTICE LENNOX:—Whether the proceeding under the leases was an arbitration or a valuation, and whether the valuers were bound to act judicially or not, the document sought to be enforced in this action, or the plaintiff's right to recover, is not in any way affected by anything done by Mr. Garland or the plaintiff in connection with North Toronto lots. Yet the suspicion engendered by Mr. Garland's endorsement of the plaintiff's promissory note (for the accommodation of Mr. Dinnick) has been a potent factor in this litigation, and but for this, I have no doubt