

"And whereas Joseph Zuber appointed J. Scully his arbitrator, and E. Hollinger appointed P. J. Mulqueen his arbitrator, and E. J. Beaumont appointed William Hassard third arbitrator.

"Now we, the undersigned, do award and fully determine as follows, that Joseph Zuber shall pay to E. Hollinger the sum of \$14,000 as a just and proper amount to be paid by Joseph Zuber to E. Hollinger for all the interests of E. Hollinger arising in any manner whatsoever in connection with the assets of the Walper House. . . ."

Before the arbitration began, the solicitor for Hollinger had prepared a draft form for the award and had handed it to Mulqueen, telling him that he did so in order that he (Mulqueen) might know in what form to draw the award; but the amount was left blank, and no suggestion made to Mulqueen as to the amount. . . .

A motion was made to set aside the award, and the motion succeeded, my brother Teetzel setting aside the award with costs, on the 26th October, 1911, upon the sole ground that the arbitrators had allowed something for goodwill. . . .

The first ground of misconduct is the alleged impropriety of the appointment of William Hassard. What is said about that is, that, when the solicitors were discussing the terms of the agreement, Hollinger's solicitor suggested to Zuber's that G. G. . . . would be a proper person to appoint, but Zuber strongly objected, and so it was left to Mr. Beaumont to appoint; that, notwithstanding this, Beaumont had telegraphed G. G. asking him if he would act; G. G. declined, but suggested William Hassard instead; that the solicitors had agreed that "neither of us should in any way interest ourselves in the arbitration or in any of the proceedings;" and that Hollinger's solicitor "directly violated" this agreement by suggesting G. G., Hassard, or R. H. G. Surely this was no worse than Zuber suggesting a Berlin merchant ("the party complaining ought to be free from blame"—per Lord Eldon in *Fetherstone v. Cooper*, 9 Ves. 67, 69). And, in any case, the parties knew all about the circumstances connected with the appointment of Hassard and went on and took their chance of a favourable award. It is now too late to object.

The second alleged impropriety . . . is, that Hollinger's solicitor prepared a blank award and handed it to Mulqueen. . . . This does not seem to me more objectionable than Mulqueen procuring a blank from a law stationer. . . . The cases do not decide that an award shall be set aside simply on this ground. . . .