

did, and for this he received the paid-up stock. The company never was in a position to require the services of a manager, and plaintiff knew this. Until the company was ready to buy, sell, and deal in milk, there was to be no actual hiring of plaintiff.

Appeal allowed with costs and action dismissed with costs.

BOYD, C.

NOVEMBER 17TH, 1902.

TRIAL.

FARLEY v. SANSON.

*Landlord and Tenant—Lease—Renewal—Arbitration—Lessee—Naming Arbitrator under Protest—Landlord Appointing Sole Arbitrator.*

Action by the lessee under a lease from defendants, the Rector and Wardens of Trinity Church, Toronto, for a declaration that plaintiff is not obliged to take a renewal of the lease, and to restrain defendants from proceeding with an arbitration by a sole arbitrator.

Delamere, K.C., for plaintiff.

A. E. O'Meara, for defendants.

BOYD, C.:—The plaintiff contended that there was no right to arbitrate as to the new lease on account of the conduct of the lessors, and was unwilling to arbitrate till this was determined. The defendants, however, urged on the preliminaries for the purpose of having arbitrators appointed, and to this plaintiff responded by naming an arbitrator under protest so as to save his rights in regard to his contention. This nomination defendants refused to accept and proceeded to appoint a sole arbitrator, proceeding as if plaintiff had made no appointment. In my opinion the defendants had no power to appoint a sole arbitrator, and the Court had jurisdiction to restrain the prosecution of the matter by the sole arbitrator. The arbitration might have proceeded in the ordinary form of three arbitrators, notwithstanding the protest of the plaintiff, who might at the end have had the benefit of his legal objection: *Ringland v. Lowndes*, 17 C. B. N. S. 514; *Direct Cable Co. v. Dominion Telegraph Co.*, 28 Gr. 648; *Kills v. Moore*, [1895] 1 Q. B. 252; *North London v. Great Northern R. W. Co.*, 11 Q. B. D. 30; *Beddow v. Beddow*, 9 Ch. D. 89; *Farrar v. Cooper*, 44 Ch. D. at p. 327.

Judgment declaring that plaintiff is obliged to take a renewal of the lease and restraining defendants from proceeding before the sole arbitrator. No costs.