

this whole matter as he did; and, consequently, the finding stands.

This Court has decided that the proceedings under the leases are by way of valuation, not arbitration.* It is, therefore, unnecessary to follow the learned trial Judge in his examination of the effect of Mr. Tilley's argument before him.

Upon the question of statements not under oath being received by the valuers and the respondent's interview with them in the absence of the appellant, I think the course taken by the parties prevents any difficulty arising on this particular score. If it be conceded that the valuers are to seek information as best they can, then it seems necessarily to follow that *ex parte* statements may be accepted and individual inquiries made. That this was the position is made clear by the evidence. . . .

However improper an interview with one of the parties in the absence of the other might be in the case of an arbitration, I am unable to understand why it was wrong in case of a valuation conducted upon the above basis to obtain from a party interested the information which is admitted . . . to be necessary. . . .

Mr. Hudson in his work on Building Contracts, 3rd ed., p. 713, expresses the opinion that there is no restriction as to what a valuator may do for the purpose of making his valuation—a view that I think must be taken with some limitation.

I am reluctant to say anything that would in any way weaken the salutary rule on the subject that obtains in cases of an arbitration, and do not intend to indicate that the principle may not be equally applicable in the ordinary case of valuation. But I think that the doors were left so wide open as not to justify the present objection in this particular case, which must be decided upon its peculiar and unusual circumstances.

It is not necessary to ascertain the exact difference between an arbitration and a valuation. Generally speaking, a valuation is committed to a person who has skill and knowledge on the subject, so that he may apply both to the subject-matter in hand without hearing witnesses. But this definition is not exhaustive, for the exercising of skill and knowledge may constitute the person acting a quasi-arbitrator. See *Pappa v. Rose* (1871-2), L.R. 7 C.P. 32, 525; *Tharsis Sulphur and Copper Co. v. Loftus* (1872), L.R. 8 C.P. 1. Nor is an arbitration always to settle a disputed question. But a valuation is generally for the purpose of completing the contract engagement between two parties by

*See *Re Irwin and Campbell* (1913), 5 O.W.N. 229.