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No. 9.

SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION.

JUNE 8TH, 1914.

MASSIE v. CAMPBELLFORD, LAKE ERIE & WEST-
ERN R.W. CO.

6 O. W. N. 457.

Arbitration and Award—Valuators.

Certain provisions in an agreement for an award were that if either of the valuers appointed by the parties respectively, should die, refuse, or become incapable to act as valuer, another valuer should be appointed in his place by the party who had previously appointed such valuer; and there was a similar right of appointment by a Judge of the High Court Division in case the third valuer should die, refuse, or become incapable to act; but before this new appointment could be made by a Judge the two valuers appointed by the parties were to have the opportunity of agreeing upon the amount to be paid as compensation, and if they failed to agree, they might themselves appoint a third valuer, in which case the decision of any two was to be conclusive and binding without appeal. And by another provision "The decision of the said valuers shall be faithfully kept and observed, and shall be binding and conclusive upon the Railway Company and owner, and shall not be subject to appeal from the decision of said valuers or any two of them."

SUP. CT. ONT. (1st App. Div.) held, that the agreement in express terms contemplated an award by two valuers in two events, and that the agreement must be construed as it stands; "this being a determination in a private reference, not the performance of a public duty."

Grindley v. Barker (1798), 1 B. & P. 229; *Re O'Connor v. Fielding* (1894), 25 O. R. 568, followed. *Thirkell v. Strachan* (1848), 4 U. C. R. 136; and *Re Kemp & Henderson* (1863), 10 Gr. 54, distinguished.

Appeal by the plaintiff from a judgment of HON. MR. JUSTICE MIDDLETON, 26 O. W. R. 180.

The appeal to the Supreme Court of Ontario (First Appellate Division) was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE, and HON. MR. JUSTICE HODGINS.

H. Cassels, K.C., for plaintiffs, appellants.

S. Denison, K.C., for defendants, respondents.