

Appraisal Company "to make an appraisal of the buildings erections and improvements placed on the lands;" and, without any notice to the tenant or taking any evidence, that company made an appraisal "that the present value of such building as of August, 1915, based upon the cost of reproducing same new, after deducting all depreciations for wear and tear and other reasons, is \$7,787.82 . . . which figures represent a true and correct appraisal of said buildings as a going concern on said date."

On receipt of this appraisal, the landlord's solicitor drew attention to the fact that a "going concern" valuation was not fair; and the appraisal company, then deeming that the property was to be valued as an asset of a concern in liquidation, reviewed the valuation, reducing it to \$4,890 (31st December, 1915).

The defendant, the tenant, sought to uphold the first valuation.

The action was tried without a jury at Toronto.

G. H. Kilmer, K.C., for the plaintiff.

R. U. McPherson, for the defendant.

MIDDLETON, J., in a written judgment, said, after setting out the facts, that the price to be paid by the landlord to the tenant under the lease had never been considered; and the evidence made it clear that this was a matter of substance. The award did not follow the terms of the submission, and the valuator had not in any sense made any finding upon the matter submitted. There is a wide difference between a mere valuation and the determination of a price to be paid. And quære whether the valuation could be made ex parte and without evidence or argument, and whether a company can act as a valuator or arbitrator.

The only thing open was to declare that the appraisal company had not yet determined the price to be paid by the landlord to the tenant under the lease, and that none of the valuations made precluded the company from now determining that question.

It would be better to have a new agreement as to the mode of determining the sum to be paid.

No costs.