

The motion was heard in the Weekly Court, Toronto.  
H. D. Gamble, K.C., for the plaintiffs.  
William Laidlaw, K.C., for the defendant.

MIDDLETON, J., in a written judgment, said that the lands in question were demised for 21 years from the 1st February, 1892, by a lease of the 16th October, 1893. The title of the lessee became vested in the defendant.

The lease contained covenants entitling the lessee to a new and further lease for a further term of 21 years, at a rental to be fixed by the award of three arbitrators, to be made before the expiration of the term.

Arbitrators were duly appointed, but an award was not made within the time limited, as proceedings against the Corporation of the City of Toronto for damages caused to the lands by the high level bridge across the Don were pending, and it was agreed by a formal document that the arbitration should stand till these proceedings should be ended, and the rights of the parties should not be prejudiced by this delay.

When the award was made, on the 30th December, 1916, the rental was increased from \$200 per annum to \$1,400 per annum; the tenant in each case paying the taxes.

The defendant thought this award excessive and refused to pay. Hence this action.

In the meantime the property had been in possession of sub-tenants, and a statement had now been put in shewing that the defendant had received \$2,248 rental, and his mortgagee, the Toronto General Trusts Corporation, had collected \$1,601.16, a total of \$3,849.16, and taxes had been allowed to fall into arrear to the amount of \$2,658.51.

The Referee had dismissed with costs the claim of the plaintiffs, holding that they had no claim of any kind against the defendant, and that the defendant might retain for his own use all that he had received.

Counsel for the defendant did not admit the accuracy of these figures, and desired time to look into them; and time should readily be granted if the figures could be regarded as material.

There being an agreement for a lease, at a rental to be fixed by arbitration, as soon as the rental was fixed the defendant became liable to pay the fixed rental, and ceased to be liable only when the lease was forfeited: *Walsh v. Lonsdale* (1882), 21 Ch. D. 9.

Counsel for the plaintiffs recognised the fact that the rental was fixed for the whole 21 years, probably in the view that the property might increase in value during the term, and assented to any abatement from the plaintiffs' strict right which the Court might regard as fair.