

was not a judgment binding on the parties; and, in that the award embodied and followed an erroneous opinion, error appeared on the face of the award; and the award could and should be set aside.

Section 29 of the Arbitration Act is in the same words as sec. 19 of the English Arbitration Act, 1889. The English cases establish that an appeal lies from an award following an opinion expressed under sec. 19: see *British Westinghouse Electric and Manufacturing Co. v. Underground Electric Railways Co. of London*, [1912] 3 K.B. 128, affirmed in [1912] A.C. 673; also cases collected in *White & Stringer's Annual Practice*, 1920, p. 2220.

It was not contended for the respondent that the opinion of Middleton, J., was binding upon the parties or that the practice established in England should not be followed.

The appeal was confined to the value of certain articles which the award required the lessors to pay for as "buildings and improvements" under the terms of a covenant in the lease—articles in the nature of fixtures used in the business of a restaurant, such as dumb waiters, refrigerators, sinks, etc.

All of the articles in dispute were attached to the building and were such as would, on a sale of the land, pass to a purchaser: see *Stack v. T. Eaton Co.* (1902), 4 O.L.R. 335; *In re Bedson's Trusts* (1885), 28 Ch. D. 523, 525.

The words "buildings and improvements" are wide enough to include tenant's fixtures; and such a meaning is not inconsistent with or repugnant to the other provisions of the lease wherein the word "fixtures" instead of "improvements" is used. "Fixtures" is clearly wide enough to include tenant's as well as landlord's fixtures; and there is nothing in the context or in the circumstances in which the words were used, or in the object for which they were used, which would lead one to think that the parties intended to modify the ordinary meaning and effect of either of the words "improvements" or "fixtures".

The lease was a renewal of a prior long term lease. Such buildings as were on the property had been built by the tenant pursuant to the covenant to build and to maintain upon the premises buildings of a certain value, and the object of the parties was to provide for payment to the tenant of the value of these or such other buildings and improvements as might be erected and "standing" at the expiration of the term.

There was no proviso in the lease requiring the tenant to exercise his right or privilege, if any, to sever from the freehold what would be his fixtures. Even if the lessee had the right under this lease to remove his fixtures, it was a privilege which he could