

HON. MR. JUSTICE LENNOX.

MARCH 24TH, 1914.

WRIGHT v. TORONTO R.W. CO.

6 O. W. N. 119.

Arbitration and Award—Misconduct of Arbitrators—Reception of Unsworn Evidence and Ex Parte Statements—Evidence of Offer of Settlement—Rejection of Proper Evidence—Irregular and Non-judicial Conduct—Motion to Set Aside Award—Award Set Aside.

LENNOX, J., *held*, that unsworn communications to a board of arbitrators, or some of them, in piecemeal fashion by a witness were improper.

That a reference in an arbitration to an offer of settlement is improper.

Award of a board of arbitrators set aside on the above grounds and on the ground of the lax and non-judicial conduct of the proceedings.

The plaintiff was injured in a collision between two cars of the defendant company, and brought this action to recover damages for her injuries.

While the action was pending an agreement was made between the parties for the submission of the plaintiff's claim to arbitration. The plaintiff appointed Dr. W. T. Stuart her arbitrator, the defendants appointed Dr. N. A. Powell, and these two chose Dr. Harley Smith as the third arbitrator.

Dr. Stuart and Dr. Smith agreed upon \$9,095 as the amount to be paid the plaintiff for her injuries and awarded that sum, Dr. Powell not joining in the award.

The defendants moved to set aside the award on the ground of the misconduct of the arbitrators.

D. L. McCarthy, K.C., for defendant.

R. McKay, K.C., for plaintiff.

HON. MR. JUSTICE LENNOX:—This was clearly an arbitration and the plaintiff has neither law nor equity to support her contention to the contrary.

But upon the other question—whether the manner in which the enquiry was conducted is ground for setting aside the award—I regret the conclusion I feel compelled to come to, and will be better pleased should an Appellate Court determine that I am in error.

Communication with Dr. St. Charles, the attendant physician, for the purpose of getting the history of the case,