

This order I make—to strike the counterclaim from off the record.

The parties agreed that, if this were my decision, there should be no costs, because of earlier proceedings herein, all of which, as to the varying incidence of costs, will be hereby adjusted.

DIVISIONAL COURT.

DECEMBER 22ND, 1911.

***RE ZUBER AND HOLLINGER.**

Arbitration and Award—Sale of Hotel Property—Valuation of Assets—Appointment of Third Arbitrator—Interference by Parties—Proceeding with Arbitration and Taking Chances—Award Drafted by Solicitor for one Party—Amount Left Blank—Allowance for Goodwill of Hotel Business—Motion to Set aside Award—Matter not to be Determined on Affidavits—Undertaking to Bring Action on Award—Motion to be Made in Action—R.S.O. 1897 ch. 62, sec. 45—Extension of Time for Moving—Special Circumstances—Terms—Cost—Estoppel—Contradictory Affidavits—Perjury—Investigation.

Appeal by E. Hollinger from an order of TEETZEL, J., made upon the application of Joseph Zuber, setting aside an award of arbitrators.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL and LATCHFORD, JJ.

M. A Secord, K.C., for Hollinger.

G. H. Watson, K.C., for Zuber.

RIDDELL, J.:— . . . Hollinger, in and before April, 1911, occupied the Walper House, Berlin, under a lease expiring on the 8th May. Zuber, in April, 1910, procured a lease from the landlord for one year, beginning at the termination of Hollinger's term. He made an arrangement with Hollinger to take over and pay for his property. . . . Not being able to agree as to the price to be paid, it was agreed to leave that to arbitration. The solicitor for Hollinger drew up, in pencil, an informal

*To be reported in the Ontario Law Reports.