notice thereof to the corporation, but they refused to appoint one. The company, therefore, acting under R. S. O. 1897 ch. 62, sec. 8, appointed their arbitrator sole arbitrator. By sec. 8, where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention, if either party fails after notice from the other to appoint his arbitrator the other may appoint a sole arbitrator. STREET, J., held that the submission was within the terms of the section, and that the insurance company were entitled to appoint their arbitrator as sole arbitrator.

A. B. Aylesworth, K.C., for appellants.

R. McKay, for respondents.

Judgment was delivered on January 30th, 1902.

MEREDITH, C.J.—The case is reported in 2 O. L. R. 301, and the facts are sufficiently set forth there. The question for decision is whether the submission is one providing for a reference "to two arbitrators, one to be appointed by each party," within the meaning of sec. 8 of the Arbitration Act, R. S. O. 1897 ch. 62. The submission provides . . . for "arbitration of two disinterested persons, one to be chosen by each party, and if the arbitrators are unable to agree, they shall choose a third, and the award of the majority shall be sufficient." . . . The appellants relied on Gumm v. Hallett, L. R. 14 Eq. 555, deciding a question under sec. 13 of the C. L. P. Act, 1854, the same practically as sec. 8; Re Smith and Service and Nelson & Sons, 25 Q. B. D. 545; Manchester Ship Canal Co. v. Pearson, [1900] 2 Q. B. 606; and Re Sturgeon Falls E. L. & P. Co. and Town of Sturgeon Falls, 21 C. L. T. Occ. N. 595: as conclusive against the right of the respondent to appoint a sole arbitrator under the provisions of sec. 8. . . . We should have preferred not to decide this important question on a summary application, but, as appellants insist, we decide it without conceding that the matter is one, as to which the Court or a Judge may not exercise a discretion as to granting or refusing the application. . . . In the English cases, *supra*, the reference was in terms to three arbitrators, one to be appointed by each party, and the third by the two appointed, though a majority award was to be sufficient. Under such a submission, it is probably *necessary* that the third arbitrator be appointed before the reference begins: Peterson v. Ayre, 14 C. B. 665: while here the reference is to