

provisions contemplate action by a majority or a decision by two. That which is the most important, reads: "The decision of the said valuers shall be faithfully kept and observed and shall be binding and conclusive upon the railway company and owner, and shall not be subject to appeal from the decision of said valuers or any two of them."

It is said that the words "subject to appeal" are not appropriate to the situation, as, if this is a valuation, there is no appeal. But the sentence may be fairly paraphrased thus: "Shall be final and conclusive and shall not be subject to appeal," which is a perfectly proper mode of expressing the finality of an award or of a decision. But for the other provisions of the agreement, it would not be unreasonable to construe that clause as meaning that the decision of any two valuers was to be kept and observed and was to be final and without appeal, for, apart from two provisions to which reference will be made, there would be nothing to which the words "decision . . . of any two of them" could apply except in such a case as exists in the present action.

Then do the other contingencies contemplated in the paragraphs to which reference has been made account for the provision in this clause regarding the decision of any two so as to require it to be confined to those other situations alone? These are (1) the case of the two valuers appointed by the parties agreeing as to amount, if the third arbitrator has died, refused or become incapable to act, and (2) where the said two valuers, having failed to agree on the amount, appoint a third arbitrator.

Dealing with No. 1, the expression "any two of them" would be inaccurate, as there are only two left and to apply the words "any two" requires more than two specified persons. The finality clause cannot, therefore, have reference to that.

As to No. 2, while the words "any two of them" are apt, yet in the provision itself it is said that the "decision of any two of the valuers shall be conclusive and binding without appeal." The further provision in the finality clause cannot, therefore, have been intended to refer merely by way of repetition to this event. Besides this the expression "any two of them" while appropriate to the case dealt with in (2) is equally so in the event which happened. i.e., "any two" may well include two of those originally appointed.