

not what the parties might reasonably be assumed to have intended, but what they have said they intended," adding, as he did, "If the parties desire to have an effective arbitration they should have framed their rule differently."

I have studied this submission with care to see whether it is possible to find in it any intention that the majority should govern. The operative clause is "the amount of compensation . . . is hereby referred to the determination of," then follow three names. This, as I have said, if standing alone, clearly makes it necessary for all to join. Then follow provisions relating to the death of any of the valuers, as they are called. If the valuer appointed by either party dies, he may substitute a new valuer. If the third valuer dies, the other valuers may agree upon a third valuer in his stead, "and in that case the decision of any two of the valuers shall be conclusive and binding, without appeal." There is then a covenant that the decision of the valuers shall be observed, "and shall not be subject to appeal from the decision of the said valuers or any two of them." There is then a covenant to convey on receipt of the amount payable "as such compensation by the said valuers." In this I think there is nothing which is sufficient to modify the main and controlling clause of the agreement.

On the claim for reformation I much regret that I find myself unable to assist the plaintiffs. The only evidence given was that of Mr. R. S. Cassels, who conducted the negotiations with Mr. Spence representing the railway company. His evidence I accept unhesitatingly, but it does not appear to me to carry the matter far enough. There were negotiations looking to valuation rather than an arbitration. This was assented to. A draft submission was prepared and submitted. Mr. Cassels objected to the provisions contained in it. It provided for the appointment of two valuers, and then the appointment of an umpire in the event of their disagreement. If the umpire could not be agreed upon by the two valuers then the County Judge was to appoint him. Mr. Cassels knew from what had taken place that a disagreement was certain, and insisted that the umpire should be selected in the first instance. This was assented to, and the umpire was finally agreed upon.

A new draft submission, in the form ultimately adopted, was then propounded by the railway solicitors. Mr. Cassels