

at its meaning. All that the Court can do is to construe the agreement as it stands, bearing in mind that the parties had failed, through their representatives Hickson and Garland, to agree.

Dealing with it then in that way, its contents may be summarised as follows:—

There is by it a reference of the question of the amount of compensation to the “determination of Joseph Hickson, as valuer appointed by the railway company, and Nicholas Garland, as valuer appointed on behalf of the said owner, and His Honour Edward Morgan, as third valuer.”

Then follows a provision that if either of the valuers appointed by the parties respectively, i.e., Hickson and Garland, die, refuse or become incapable to act as valuer, another valuer shall be appointed in his place by the party who had previously appointed such valuer. Then follows a similar right of appointment by a Judge of the High Court Division in case the third valuer shall die, refuse or become incapable to act. But before this new appointment can be made by a Judge the two valuers appointed by the parties are to have the opportunity of agreeing upon the amount to be paid as compensation, and if they fail to agree they may themselves appoint a third valuer, in which case the decision of any two is to be conclusive and binding without appeal.”

The further clauses provide for the payment of the fees of all the valuers by the railway company and for the finality of the decision of “the said valuers” and that that decision “shall not be subject to appeal from the decision of said valuers or any two of them.”

The covenant is that “upon tender of the amount payable . . . as such compensation by the said valuers (*sic*) with interest” the owner will convey in fee simple.

There is also a paragraph providing for a view by the valuers and for the calling of such witnesses and the taking of such evidence or statements on oath or otherwise as the valuers “or a majority of them may think proper,” and for the giving of “such weight, if any, to such evidence as they in their discretion think proper.”

If the agreement in question had contained merely the appointment of three valuers and the clause dealing with procedure which I have just quoted, and that providing for the finality of the decision, it could hardly be said that two valuers could not make a valid award. For both these two latter