ity of the decision, would be an unlikely one if a judicial inquiry and the examination of witnesses had been intended.

It is also significant as pointing to the same conclusion that witnesses were not called by either of the parties.

I would dismiss the appeal with costs.

MACLAREN, J.A., agreed.

MAGEE, J.A., also agreed, for reasons briefly stated in writing.

HODGINS, J.A., in a written opinion, cited Dinn v. Blake, L.R. 10 C.P. at p. 391; Flynn v. Robertson (1869), L.R. 4 C.P. 324; Allan v. Greenslade (1875), 33 L.T.R. 567; In re Keighley Maxsted & Co., [1893] 1 Q.B. 405; Lancaster v. Hemmington (1835), 4 A. & E. 345; Phillips v. Evans (1843), 12 M. & W. 309; and agreed that if an award had been made, there was no ground for setting aside or remitting the case to the arbitrators. He concluded as follows:—

I think, however, that the case may be decided upon the ground that the parties have chosen to deal with the matter under sec. 191 of the Dominion Railway Act, R.S.C. 1906 ch. 37.

That enables them to contract touching the lands or the compensation to be paid for the same, or for the damages, or as to the mode in which such compensation shall be ascertained. The parties have chosen valuation, and not arbitration. Valuation by agreement is just as much within the Railway Act as arbitration, if the parties choose to agree to leave the question of compensation under that Act to be ascertained by valuation as a mode of settling it. I think they have so expressed themselves here; and this disposes of the argument of Mr. Tilley that the expression "the amount of compensation payable under the Railway Act" points only to an arbitration under that Act.

The expression "valuer," the provision that there is no appeal, the arrangement for crossings, and other matters, all point to an agreement other than an arbitration under the Railway Act.

The appeal should be dismissed.

Appeal dismissed.