

THEIR LORDSHIPS' judgment was delivered by

HON. MR. JUSTICE HODGINS:—I was under the impression during the argument that Mr. R. S. Cassels had given evidence of an agreement that an award by a majority of the valuers would bind both parties. I find, however, that, in words at all events, his evidence only goes this far, that he was satisfied with the draft form submitted (exhibit 4) provided the referee was agreed upon first.

This position was accepted by the respondents and accordingly the name of Edward Morgan as third valuator appears in the agreement, exhibit 1. But there is nothing which states or even inferentially suggests that a definite agreement upon the point so fully argued before this Court was made in so many words.

Mr. Cassels, at p. 25, says: "I said that (exhibit 4) will be satisfactory subject to the referee or whatever you choose to call him, being agreed on first, because we are sure to have a disagreement, that is the whole essence of the thing."

Q. Then the whole bargain you had was, we accept exhibit 4 subject to agreeing on the third man first? A. Yes.

Q. And you say that is all that appears in this document exhibit 1? A. That was the vital matter in my mind.

Q. I am not asking about vitals? A. I do not remember more than that.

Q. That is all you remember? A. That was substantially a satisfactory agreement, provided, instead of going through the form they had here of disagreeing and then going to the County Judge, we, recognising the fact there was disagreement any way from the point of view from which we were approaching the matter, we wanted a third man adopted first."

This completely disposes of the claim for reformation and reduces the dispute to this question, is the effect of the agreement arrived at and in which the third valuer is named as desired by Mr. R. S. Cassels to allow an award by the two valuers to govern?

I think it is quite clear that in dealing with the construction of the document in question evidence of the intention of one of the parties, or indeed of both, cannot be given. The Court cannot look at the draft, exhibit 4, in order to see whether Mr. R. S. Cassels' view as to its effect when the third valuer's name was inserted in it is correct or not and then compare it with the agreement in question in order to arrive