arbitrators or of an admitted mistake by them in awarding compensation on an erroneous view as to the nature of the crossing by the appellant railway of the Whitby Port Perry and Lindsay branch of the Grand Trunk Railway.

I do not think that, even if what is provided for by the agreement is an arbitration, a case has been made for setting aside the award. It was argued that what took place at the meeting of the arbitrators on the land was in substance the giving of evidence by the respondent and his wife as to the matters to be determined, and that the arbitrators were guilty of legal misconduct in taking the evidence without the witnesses being sworn, as required by the Arbitration Act.

In my opinion, what was said by Laidlaw and his wife as to the value or cost to them of the land, the damage that would be done to it by the construction, operation, and maintenance of the railway, and the effect of the crossing by the appellant railway of the branch of the Grand Trunk Railway, was not at all in the nature of evidence in support of the respondent's claim, but was rather a statement made to the arbitrators as to the basis and nature of their claim, no different from such a statement by counsel acting upon his behalf of the nature of the claim and the case he intended to make before the arbitrators.

Notice of the meeting of the arbitrators had been given to the appellant, and it is expressly provided by the agreement that "either party shall have the right to have one representative present, if desired, at any meeting of the valuators, but failure of such representative to attend, whether through lack of notice or otherwise, shall not affect the validity of the decision."

There was, therefore, no impropriety in the respondent stating his case or in the arbitrators receiving his statement, notwithstanding the absence of the appellant or its representatives from the meeting.

Nor is the case brought within the authorities as to setting aside an award on the ground of an admitted mistake of the arbitrators in making their award. . . .

[Reference to McRae v. Lemay (1890), 18 S.C.R. 280, 294; Dinn v. Blake (1875), L.R. 10 C.P. 388, 390, where it is said that "the Court will not in case of a mistake send back the award without an assurance from the arbitrator himself that he is conscious of the mistake and desires to rectify it."]

There is no such assurance by Judge Morgan and none by