

[1910] 1 K. B. 327 C. A.; *Walker v. Frobisher* (1801), 6 Ves. 70; *Re Brien v. Brien*, [1910] 2 Ir. R. 84 K. B. D.; *Plews v. Middleton*, 6 Q. B. 845; and *Dobson v. Groves* (1844), 6 Q. B. (A. & E. N. S.) 637; and this is exactly the kind of procedure demanded by the terms of the leases, says Mr. Tilley. Is not this simply another way of arguing back again that the appointees were to be arbitrators, and the proceeding an arbitration, the Court of Appeal to the contrary, notwithstanding?

On the other hand no such rule applies to provisions for valuation, in case a question of valuation or compensation should arise. I have examined all the cases and authorities referred to by counsel on both sides, and scores of others, and the cases all go to shew that it is invariably arbitration, on the one hand, with its judicial functions, or valuation in its primary ordinary meaning on the other—the arbitration for the most part, but not quite invariably, being based upon an actual dispute or difference existing at the time of the agreement or submission. *Laidlaw v. Campbellford & Lake Ontario Western Rw. Co.*, 5 O. W. N. 534; *Bottomley v. Ambler* (1878), 38 L. T. N. S. 545; *Re Hamond & Waterton* (1890), 62 L. T. 808; Hudson on Building Contracts, 3rd ed. p. 713; *Collins v. Collins* (1858), 26 Beav. 306; *Re Dawdy* (1885), 15 Q. B. D. 426; *Leeds v. Burrows*, 12 East 1; Fletcher on Arbitration, 3rd ed. p. 4; Slater on Arbitration and Awards, 5th ed., p. 4, and “Valuation” at p. 205; *Hickman v. Roberts*, [1913] A. C. 229; *Bristol v. Aird*, [1913] A. C. 241; *Chambers v. Goldthorpe*, [1901] 1 K. B. 264; and *Re Carus-Wilson & Greene* (1886), 18 Q. B. D. 7; and this last case contrary to a suggestion thrown out by Lord Esher in the *Dawdy Case*, and by Mr. Justice Brett in *Turner v. Goulden*, shews that the character of the proceeding is finally determined by the terms of submission, and a proceeding which opens as a valuation is not converted into an arbitration by the introduction or action of a third valuer or even an umpire.

But even if Mr. Tilley is right that there is an intermediate domestic tribunal “of a judicial character” somewhere in between an arbitration and a valuation, the defendant is not in a position to complain of what was done.

It was Mr. Hunter and Mr. Millar who prevented a quasi judicial enquiry and insisted upon a valuation merely,