other two judges could have gone on? put it that *Grindley v. Barker* certainly has laid down that the whole must be present. I am willing to take what my learned friend says and to ask your Lordships what must have been the intention of this Act of Parliament. Can it be conceived that when an express proviso is made that the three arbitrators should not even have to live in the same Province as either of the other two. When a tribunal of this kind is constituted, the characters of the different arbitrators having been defined by Act of Parliament, can it have been contended that any two should be able to proceed although the third was kept away by a mere headache, although he received notice and happened to be busy, can it be said that that was a decision of the tribunal? May we not read it, "shall be referred to the arbitrament of three arbitrators." Is it not the same as "shall be decided by the three persons," and as this has been decided by the three persons, I apprehend it has been decided by two of them that the first part of the question as to what their principles should be was decided by the three, because where three people talk over and discuss a thing the decision which they come to through the majority is the decision; but I humbly submit to your Lordships, it is an abuse of language to say that the latter part of the award has been decided by these three arbitrators merely because if that has been the case a notice has been given to one who betayed away. It has been a decision come to in the absence of the third without hearing what he has had to say. Your Lordships his having had an opportunity of considering the matter. Still "Well, he might have sat anyhow." Still misconduct on his part and would in that if he had done so that would void as much as if he had kept away altogether. all probability have made the award which was cited, of *Harcourt v. Ramsbottom* in which the question was notice to the party. Notice to the party undoubtedly is equivalent to the party being present, because that is a question of equity of the party, but where it is a question of whether or not the tribunal is constituted, there I apprehend it is a very different thing, and mere notice is not equivalent to presence, and I humbly submit to your Lordships that in this case there was not at the latter part of the a tribunal constituted of three arbitrators to whose arbitrament and whose decision alone the parties are bound to submit.

I do again humbly submit to your Lordships that if Judge Day kept away, the right course was not to proceed in his absence and enforce upon the parties an award by two instead of by three, but to take means of compelling his presence. If the Lord Chancellor will permit me humbly to say so, I have vainly endeavoured since your Lordships last sat to understand what was the objection felt by his Lordship to a Writ of Mandamus to compel Judge Day to take part in these proceedings. As I understand, it is a matter of daily procedure to grant a mandamus in the Court of Queen's Bench to Justices to hear and determine a cause, which, from a mistake in law, they may have refused to hear. It is a form of mandamus granted by the Queen's Bench, I suppose as commonly as any form.

THE LORD CHANCELLOR:—The Court of Queen's Bench is the head of all magistrates, and can issue orders which the magistrates are bound to obey, but is that so with reference to Referees appointed under an Act of Parliament?

MR BOMPAS:—Yes, in the case of any statutable Referees, the Court of Queen's Bench may at once grant a mandamus to them to hear and try.

SIR MONTAGUE E. SMITH:—Your argument now assumes that they are arbitrators.

MR BOMPAS:—That they are statutable arbitrators. The rule as to a mandamus is that it should be a statutable duty. I am only anxious to bring your Lordships to this difficulty. If they are private arbitrators then I succeed, because admittedly they must be unanimous; if they are public arbitrators, then I submit I am equally entitled to succeed, because then the wrong course has been taken.