

I am at a loss to see how I can give effect to this contention, and to the judgment referred to; and counsel for the defendant has not pointed the way. The judgment of the Court is not that the leases do not provide for an arbitration under the statute, but that they provide "for a valuation and not for an arbitration" at all; and I am not only bound by this declaration, but, if I may say so, with the very greatest respect, it is the conclusion I would have reached in any case.

2. Even if a valuation was the proceeding provided for by the leases the proceedings taken were in fact arbitration proceedings, nevertheless; and of consequence, I presume, to be governed by the rules and principles of procedure in such cases.

I have not been directed to evidence supporting this proposition, and I have not found any. On the contrary, both Mr. Miller and Mr. Hunter repudiated the idea of an arbitration or the taking of evidence and insisted upon a valuation, and Mr. Miller specifically objected to evidence upon oath and directed the valuers to inspect the property and get information where and how they could. With this as to what actually occurred, and with the leases, the notices and the formal agreement, executed concurrently with the valuation itself all providing for a valuation—it is impossible to find that the proceedings were in fact arbitration proceedings, or that anybody connected with the matter had any idea that they were.

3. The leases provided for proceedings of a judicial character, or; the valuers, although valuers only, were bound to exercise their functions judicially. That "a valuation and not an arbitration" is provided for is a settled point. A starting point for this argument would be gained were it shewn that a valuation "of a judicial character" is distinguishable from an arbitration. I know of no case in which such a contention was established. In providing for a future valuation the parties to the contract can, of course, have guaranteed to them substantially all the formalities and safeguards of a trial in Court, but if they are relying upon quasi judicial procedure they must say so, or clearly indicate it, in their contract.

No one will dispute that contracting parties may agree that questions which may arise in the future, including questions of value or compensation, will be investigated or