

determined by referees to three named persons called "valuers" in the submission; their decision was to be binding and conclusive on both parties and not subject to appeal; they could view the property and call such witnesses and take such evidence, on oath or otherwise, as they, or a majority of them, might think proper; and either party could have a representative present at the view or taking of evidence, but his failure to attend for any reason would not affect the validity of the decision.

*Held*, FITZPATRICK, C.J., and DUFF, J., dissenting, that this agreement did not provide for a judicial arbitration but for a valuation merely by the parties to whom the matter was referred, of the land expropriated.

The agreement provided that a valuator should be appointed by each party and a County Court Judge should be the third; if one of those appointed would or could not act the party who appointed him could name a substitute; if it was the third the parties could agree on a substitute, in which case the decision of any two would be binding and conclusive without appeal; if they could not so agree a High Court Judge could appoint. There was no necessity for substitution.

*Held*, that the decision of any two of the valutors was valid and binding on the parties.

Appeal dismissed with costs.

W. N. Tilley, for appellants. H. Cassels, K.C., for respondent.

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Ont.] HALTON BRICK CO. v. McNALLY. [Dec. 29, 1914.

*Negligence—Industrial company—Defective system—Knowledge of managing director—Liability of company.*

M., an employee of the defendant company, was engaged in wheeling bricks into a kiln where he had to hand or throw them to men engaged in piling. When the pile became high a quantity of the bricks fell on M., who was killed. In an action by his widow against the company, it was proved that the floor of the kiln was very uneven, and that planks used to brace the pile when it was high were not in place when the accident occurred.

*Held*, that as it was shewn that the managing director of the company was aware of the condition of the floor his knowledge was that of the company; on which ground, and because he had not directed the prop to be maintained which the jury found as negligence, the company was liable.

Appeal dismissed with costs.

DuVernet, K.C., for appellants. Guthrie, K.C., and Dick, for respondents.