HER MAJESTY THE QUEEN (DEFENDANT)..... } APPELLANT ;

AND

CHARLES WILLIAM CARRIER. (CLAIMANT)..... } RESPONDENT.

1889
Oct. 24.

*Appeal from an award of the Official Arbitrators—Expropriation of land —When court will not interfere with award.*

Where an award of the Official Arbitrators in an expropriation matter was not excessive in view of the evidence before them, the court declined to interfere with it.

APPEAL from an award of the Official Arbitrators.

This case came before the court by way of appeal from such award at a previous date, and, by order of court, was remitted to the Arbitrators by name as Official Referees of the court, which they had then become, for their re-consideration and re-determination.* The facts upon which the present motion by way of appeal is made are stated in the judgment.

May 6th, 1889.

*Hogg* for appellant ;

*Belleau*, Q.C., for respondent.

BURBIDGE, J., now (October 24th, 1889) delivered judgment.

In the notes of reasons for the order of October 22nd, 1888, which was made in this case after the first argument, I have given my view of the principles upon which compensation should be assessed in this case, and I need not repeat what I then stated. It was not, however, found convenient to give effect to that order

*REPORTER'S NOTE.—See the report of the case as it was then before the court at page 36.

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because of the difficulty of securing the attendance at one time of all, or even of a majority of the Official Referees, and, subsequently, on the 11th March, 1889, on the application of the respondent, and with the consent of Her Majesty's Attorney-General for Canada, that order was rescinded and discharged and the case referred to the Registrar of this court to take evidence with respect to :—

(*a*) The date of the expropriation ;

(*b*) The persons entitled to the compensation money at that date and their respective interests therein ; and

(*c*) The value of the whole property and of its depreciation.

Such further evidence having been taken, the case came on for argument on appeal and cross-appeal from the award of the Arbitrators.

The 15th July, 1882, has been determined to be the date of the expropriation.

With respect to the persons entitled to the compensation money at that date and their respective interests therein, it was agreed between counsel for the respondent and appellant that the compensation money awarded should be taken to be awarded in respect of the interests of all persons in both the Carrier and McKenzie properties, and should be paid to the respondent upon giving a good discharge to the Crown from all such persons.

The only question, therefore, remaining to be determined is as to whether the assessment made by the Arbitrators should, under the evidence, be sustained or not. It was admitted, and I think it is clear, that the evidence taken before the Registrar is as conflicting as that given before the Arbitrators, and, except so far as it shows what means have been adopted by the claimant to overcome the inconveniences resulting from the severance of his property and the construction and

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operation of the railway, does not place the case in a position differing substantially from that in which it came before the Official Arbitrators.

With reference, however, to that part of my reasons for the order of October 22nd, 1888, in which I have stated that the additional facilities afforded for receiving and shipping goods from the manufactory might greatly enhance the value of the property, I am bound to say that on a full consideration of all the evidence, and from personal observation of the property and the relation of the railway thereto, I am not satisfied that such has been the result in this case. The property was before the construction of the St. Charles Branch of the Intercolonial Railway situated at no considerable distance from a shipping point on the Grand Trunk Railway at Lévis, and though I think it would have been of great advantage to the property to have been brought by means of a branch line or siding into actual contact and connection with the Grand Trunk Railway and the Intercolonial Railway, I am not so clear that such actual connection is an advantage when it is secured by having the main line of the railway, at a point so close to a station, run through the premises. The constant passing and shunting of trains must, I think, constitute an inconvenience that greatly outweighs the advantages to be derived from such connection.

A few things in respect of the case are I think clear. First, the property affected by the expropriation and by the construction and operation of the railway was a very valuable one,—its value being estimated at sums varying from $100,000 to $300,000 and upwards. Secondly, the damage is substantial and considerable. Thirdly, the claim as made is grossly extravagant.

Mr. Hogg, in the course of his very exhaustive argument, deduced from the evidence and submitted to the court a statement from which he came to the con-

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clusion that a sum of about $35,000 expended on the property would make it as good and valuable a property as it was before it was affected by the railway. For some, possibly for many, purposes that might be the case, but yet, perhaps, such an expenditure would not entirely obviate the inconveniences, looking to the use made of the property, arising from the constant passing and shunting of trains through the property, to which I have already referred.

Assuming, however, that the property was at the time of the expropriation worth $200,000, which perhaps would be a reasonable estimate, the award represents a small excess over thirty per cent. of that amount. My own impression has been, and is, that the award was a liberal one, and that, too, I fancy was the view of the claimant himself, or, perhaps, I should say that he deemed it on the whole, not unfair ; for his counsel frankly admitted on the argument that there would have been no appeal by the respondent if the Crown had not first appealed from the award.

It is very clear, I think, that there is evidence to support the award, but that possibly is not in this case an absolutely reliable test, for there is in the very great mass of testimony that has been adduced evidence of estimates that to me, at least, appear extravagant. I am not, however, prepared to say that the award is excessive. It was made, too, it is to be observed, by persons having large experience, and who at the time constituted the tribunal charged with the responsibility of determining such matters.

Under these circumstances I think that I ought to dismiss the appeal, and with costs. It is hardly necessary to add that I am also of opinion to dismiss the cross-appeal with costs.

The amount of the award is to be paid to the legal representatives of the claimant upon their giving to

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the Crown a good discharge from all persons interested in either property, according to the agreement hereinbefore mentioned.

Leave is reserved to any person interested to apply for further directions.

*Appeal and cross-appeal dismissed with costs.*

Solicitors for appellant: *O'Connor & Hogg.*

Solicitors for respondent: *Belleau, Stafford & Belleau.*