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Sept. 24.

MARY MATILDA OTLEY LYON FELLOWES..... } APPELLANT;

AND

HER MAJESTY THE QUEEN..... .....RESPONDENT.

Appeal from award of Official Arbitrators—Expropriation of land for Experimental Farm—Grounds upon which court will not interfere with award.

Where the Official Arbitrators in making their award have not proceeded upon a wrong principle, nor arrived at an estimate of value not warranted by the evidence, the court ought not to disturb such award. *Re Macklem and Niagara Falls Park* (14 Ont. App. 20), and *Re Bush* (14 Ont. App. 73) followed.

APPEAL from an award of the Official Arbitrators. The facts of the case are sufficiently stated in the judgment.

May 28th, 1888.

Scott, Q.C. and *Wylde* for the appellant;

Christie, Q.C. and *Ferguson* for the respondent.

BURBIDGE, J. now (September 24th, 1888) delivered judgment.

This is an appeal from an award made by Messieurs Muma, Simard and Compton, on January 20th, 1887, allowing the claimant $10,839 with interest from the date of the expropriation for $89\frac{35}{100}$ acres of land situated in the township of Nepean, near the city of Ottawa, and expropriated for the purposes of the Central Experimental Farm. From this award Mr. Cowan, chairman of the board, dissented; but whether on the ground of the amount awarded being in his opinion insufficient or excessive, does not appear.

The amount of the award has, it appears, been paid into the Chancery Division of the High Court of Justice

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for Ontario for distribution; and the only question to be decided is as to whether or not the appeal should be allowed, either because the Arbitrators in assessing the value of the property proceeded upon a wrong principle, or made an estimate not warranted by the evidence. If these lands had, at the date of expropriation, been valuable for farming purposes only, no great difficulty would, I think, have been experienced under the evidence in arriving at a just conclusion as to their value. But it is clear that their proximity to the city, and their situation, gave them an additional value because of the probability of their being, at some time, salable in villa or building lots; and in examining the evidence one will find, I think, that the estimates of value given by the witnesses called were high or low according to their views of the probability of the city of Ottawa, in the near future, extending in the direction of this property, so as to render its sale in small lots probable.

Mrs. Fellowes claimed compensation at the rate of $350 per acre. The Arbitrators allowed about $121 per acre, taking the property as a whole, and including the portion—some 35 acres—which was described as being covered with brush.

The estimates of value given by the witnesses for the claimant varied from $150 to $400 or $500 per acre, and for the portions of it most advantageously situated a higher value (viz., $600, $800 and $1,000 per acre) was given by some witnesses.

Speaking generally, the witnesses called by the respondent valued the uncleared land at about $60 per acre, and the cleared at sums ranging from $75 to $100. A sale to the crown, for the purposes of the Experimental Farm, of adjoining lands was proved at $100 per acre.

It was contended by counsel for the crown that this

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court, should, in cases of appeal from the Official Arbitrators, be guided by the principles adopted by the Court of Appeal for Ontario in appeals under 49 Vic. (Ontario) chapter 9 s. 1 (1), and although the Act mentioned, and section 192 of the *Common Law Procedure Act* therewith incorporated, differ from the corresponding provisions of the Act (R.S.C. c. 40) under which the appeal comes before this court, the contention is in the main, I think, correct.

The award is, I think, considerably more than under the evidence the Arbitrators would have allowed had they considered the property as available for farming purposes only, and not as having value in addition thereto by reason of the chances of its being salable at some date in villa or building lots. I believe that they have, in making their award, given such effect to this consideration as from the whole evidence and their inspection of the premises they thought it entitled to.

I am satisfied, therefore, that they have not proceeded upon a wrong principle. While it is clear that there is evidence in regard to what I may call the speculative value of the property which would sustain an award considerably larger than that made, I am not able to say that the award is not warranted by the facts presented to the Arbitrators. On the contrary, I think there is ample evidence to support their finding, and I ought not, in view of the principles which should guide my action on this appeal, to disturb the award made.

Appeal dismissed with costs.

Solicitors for appellant: *Scott, MacTavish & MacCraken.*

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

(1) *In re Macklem*, 14 Ont. App. 20; and *In re Bush*, 14 Ont. App. 73.