

portioned as between land and buildings. The readjustment proposed will respect the evident intention of the Court of Revision and District Court Judge, while bringing the assessment into harmony with the Board's holding as to the devolution of the value created by the development of this water power."

This seems to me, with great respect, to involve a complete misunderstanding of the situation. The District Court Judge did not assess the value of the land and buildings in a lump at \$800,000 and then divide the amount between land and buildings. He valued the land at \$95,000 and the buildings at \$705,000. It is precisely such a case as though the plaintiff had sued for damages in a collision and obtained a verdict for a certain sum for personal injuries and another sum for injury to property. In an appeal on the ground of excessive damages the defendant would succeed if he proved an excessive amount on one head; it would not be necessary for him to prove that, taken altogether, the amount was excessive. If the plaintiff desired to hold the verdict for the full amount, i.e., for the sum of the two assessments, he must prove affirmatively that the other amount should be increased. This is a question of onus, and therefore a question of law, and is properly appealable to this Court.

I think the Board erred in holding, as they did, that, having proved that the amount assessed for buildings was excessive, the appellants were bound to go on and prove that the total was excessive, that is, that the assessment on the other head should not be increased by the same amount as the former was diminished.

If we could see that the value was arrived at by the inspection of the Board, the case might be different; but nothing of the kind appears. The whole decision is based upon the supposed onus on the appellants. I do not express any opinion on the true method of arriving at the "actual value" of the land; but I am not to be taken as acceding in the least of Mr. Osler's argument. The appeal should be allowed on this head.

The other branch of the appeal depends on a pure question of fact. That fact is to be determined upon the evidence, and the evidence is at least ambiguous. The Board have taken one view of the evidence, and the appellants press another view. The Board saw and heard the witnesses, and I am unable to say that their view is clearly wrong. If any error has crept in, it is the fault of the appellants in not making their evidence quite clear, and they cannot complain. I think this branch of the appeal fails.

Success being divided, there should be no costs.