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MUNSIE V. LINDSAY.

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for it. He gave his evidence as if he was trying to state his case in a fair manner. Other witnesses stated that their opinion, at the time the purchase was made, was that the defendant had given too much for the farm, and on cross-examination they gave the names of several of their neighbours who expressed similar opinions at that time. Five witnesses swore that \$3,000 to \$3,500 was the value of the farm when the defendant purchased; one placed the value at \$3,700. The general effect of their evidence was that the farm at that time had been run down by reason of its having been badly farmed by tenants, and that as to its unimproved value it would not bring as much as it would in 1864, if now in the state it was then. These six witnesses placed the present value of the farm without the defendant's improvements, some at \$3,000 and others at \$3,500. They also swore that all the defendant's improvements had enhanced the value of the farm to the amount of \$3,500. The actual value or cost of the improvements was placed by the defendant at \$3,676.56.

In determining the compensation to which the defendant is entitled, I think I am bound to find, as one of the factors, what the present value of the farm would be without the defendant's improvements: (see Mr. Justice Story's decree in *Bright v. Boyd*, 2 Story's Rep. 605). The enhanced value can only be arrived at by a comparison of the present value of the farm as improved, with what its present value would be in the unimproved state. To take the value of the farm at the time of the purchase and compare it with the present improved value would obviously be unfair; for a farm may increase or decrease in value as years go on from various extrinsic causes, such as proximity to, or distance from, railroads, high or low prices of grain, nearness or remoteness from markets, general improvements in localities, speculation or other causes. In this case there was evidence that the farms in the township had increased in value since 1865, by reason of certain railroads. The evidence on this latter point was very general, and it is difficult to arrive at a fair estimate of such increased value. I think on the whole it will be more accurate, and therefore safer, to base such increased value upon actual calculations rather than the random guesses of witnesses. Several witnesses showed that the opening of the railroads in the locality had the

effect of reducing the cost of transporting grain to market by about two cents per bushel, and that the farms in the neighbourhood produced about 1,400 bushels a year. This would give a profit of about \$28 per year. From this should be deducted the annual railway tax, at present about \$10 a year, which would leave a net annual profit of \$18 representing the annual interest on a capital of \$300.

The case is eminently one for the consideration of a jury; and although juries are bound to give their verdict "according to the evidence," it is well known to both judges and the profession that their verdicts are sometimes compromises on the conflict of evidence, than findings according to the weight of evidence. It is not proper in a case of this kind to seek to effect a compromise between the divergent opinions of the two sets of witnesses examined on this reference. The decision should rest upon the question which of the two sets of opinions given in the evidence is correct. I have already expressed an opinion in respect of some of the plaintiff's witnesses, and intimated that only two of them could safely be relied upon in forming a just judgment on the facts affecting this case. Against their opinions are the opinions of six others equally competent and equally reliable. In this conflict of opinion it is proper that the weight of evidence should govern, and such weight of evidence is in favour of the values sworn to by the defendant's witnesses. Excluding the defendant's own testimony I find that five of the witnesses say that the defendant's improvements have increased the value of the farm by \$3,500, one that they have increased it by \$3,000 to \$3,500. But I prefer to find the value by the rules above referred to; and giving effect to the weight of evidence I find that the value of this farm, without the defendant's improvements, was \$3,500 in 1864, and that if in the same state it would be worth the same now, but with a further value caused by the railways, which I find to be \$300. These two values together make the present value of the farm, without the defendant's improvements, \$3,800. The present value with the defendant's improvements is \$7,000, and deducting from it the \$3,800, leaves \$3,200 as the amount by which the lands and premises, in the pleadings mentioned, have been enhanced in value by the lasting improvements made thereon by the defendant Lindsay