

In the face of the clear language of the Act, it cannot be maintained that, if the property at the prescribed date had a fair market value, such value could be reduced by proof of facts which, had they been known, would have made it then less valuable or by proof of subsequent depreciation.

The question remains, what was its fair market value at the date fixed by the Act? And that question must be solved by evidence of what could then have been procured had it been offered for sale. . . .

Difficult though it may be to form an accurate estimate, the evidence seems to me, taken as a whole, sufficient to warrant us in saying what is not too large a sum to fix as the fair market value if the testator had been really minded to sell. I think it reasonably clear that he might have got at least \$20,000, though it is also clear that he was not disposed to sell for so small a sum. The executor valued it at \$20,000. It is true that this was only an estimate, and that he was not estopped from shewing that it was wrong, but that, considering that it was his sworn valuation, would have to be very clearly made out, and, in my opinion, it has not been done.

The appeal must, therefore, be allowed, and the Surrogate Court Judge's valuation set aside, and that of the executor restored. . . .

A further objection was made to the Judge's order in respect to the allowance of \$50 each to the solicitor for the executors and the agent of the Official Guardian. Looking at sec. 10, sub sec. (2), of the Act, which provides that the costs of all proceedings before the Judge shall be on the County Court scale, and at item 153 of the County Court tariff, it would appear that there was no jurisdiction to direct payment of higher counsel fees than \$25, and the learned Judge's order in this respect must be varied accordingly.

In other respects the order as to the costs below will stand; and success on the appeal being divided, there will be no order as to the costs of the appeal.

The other members of the Court concurred; MEREDITH, J.A., expressing his opinion in writing.