

Suppose that in this case the town had appealed from the decision of the Court of Revision under sec. 68, with a view to restoring the amount fixed by the assessor, ought the applicants to be deprived of the opportunity of obtaining the judgment of the Board, instead of that of the County Court Judge, as to whether \$21,475 or \$17,700 was the proper amount?

I think the words of sec. 76, "a person desiring to appeal has been assessed . . ." are capable of and should receive this construction.

It is possible that, as was argued, this view will give rise to some anomalies, but anomalies are likely to arise, whichever view be taken, and the view of the Board seems to me to be freer than the opposite from that danger.

As regards the merits of the application, the conclusion to which we have come in the case of *Re Bruce Mines Limited and Town of Bruce Mines*, ante, govern this case.

Buildings upon the lands in question, whether they are to be treated as "mineral lands" or otherwise, are subject to be valued and assessed against the owners, and the question of the value is simply a question of fact, as to which no appeal lies to this Court under sec. 51 of the Ontario Railway and Municipal Board Act, 1906, or otherwise.

The application must therefore be refused.

OSLER, GARROW, MACLAREN, and MEREDITH, JJ.A., concurred; MEREDITH J.A. stating reasons in writing.

JANUARY 17TH, 1910.

#### KIMBALL v. BUTLER.

*Master and Servant—Injury to and Consequent Death of Servant—Negligence—Servant not Acting in Course of Duty—Voluntary Incurring of Risk—No Duty Owing by Master—Contributory Negligence.*

Appeal by the plaintiff from the order of a Divisional Court, 14 O. W. R. 360, dismissing an appeal by the plaintiff from the judgment of TEETZEL, J., at the trial, dismissing the action, which was brought by the widow of Wallace Kimball deceased, to recover damages for the death of her husband while in the employment of the defendants, under circumstances of alleged negligence on the part of the defendants.