

thereupon state such question in the form of a special case, setting out the facts in evidence relative thereto, and his decision of the same as well as his decision of the whole matter:" sec. 6 (3).

The "special case" now before the Court did not comply with the definite directions of the statute; the Court was left to gather from other papers and from counsel what the matters for decision were.

One matter was clear from the papers. The company advertised their rights in the lands in question for sale to the public at the price of 50 cents per acre; and the County Court Judge held that this was not evidence for the company as to "actual value."

The opinion of RIDDELL, J., was that a bona fide offer on the part of the owner (and there was here no attack on the good faith of the company) to sell anything is some evidence of its actual value: what weight should be given to it by a Judge is for him to decide, but he must consider it.

It appeared that the Court had no power under the statute to send the case back to the County Court Judge. Sub-section 6 indicates that any change to be made in the assessment roll must be made to appear "by the judgment of the Divisional Court upon the case stated."

As a matter of law, the advertisement was evidence against the company that the mineral rights had some value, and was evidence for the company, in the absence of other evidence of value—the fact that no sale had been made being proved—that the actual value did not exceed 50 cents per acre. The County Court Judge, therefore, should have found that the mineral rights were not worth more than 50 cents per acre.

The Court was also asked to decide that, of mineral rights, only petroleum mineral rights were assessable. It was admitted, however, that only petroleum mineral rights were really assessed; and the Court should decline to answer a merely academic question.

Alterations should be made in the several assessment rolls reducing the assessments to 50 cents per acre. There should be no costs.

MEREDITH, C.J.C.P., and MASTEN, J., agreed in the result, each giving written reasons.

MIDDLETON, J., dissented. He was of opinion, for reasons stated in writing, that the question as to evidence passed upon by the other members of the Court was not properly before the Court, and could not be considered.

*Appeal allowed with costs; MIDDLETON, J., dissenting.*