

for farm or orchard land, and the \$30 seems a sufficient allowance to bring the old road into a state fit for cultivation. Upon a consideration of the whole evidence, the average value of the land of Mr. Fowler is not more than \$500 an acre. At that value, he would be entitled for the 0.94 acres to \$470. Less at the same value 0.75 acres amounting to \$375. Leaving \$95.

At the \$400 rate, the difference in value is \$76. So that upon the point of the value of the land as land, there is in question only the difference between \$76 and \$95, or \$19—too little to warrant the interference of the Court.

The other matters in issue are much more serious, and have not been, in my opinion, properly appreciated by the arbitrators signing the award.

The evidence is contradictory as to the value of the apple trees actually comprised within the bounds of the new road. Mr. Hall thinks them worth but \$300, Ryckman goes up to \$396, Emery to \$440, David to \$450, and Fisher to \$500. These are all witnesses called on behalf of the municipality. Mr. Fowler thinks the trees worth \$1,200. Snook, an experienced fruit grower, places their value at \$1,165, while others speak of amounts varying from \$1,200 to \$1,700 and even \$2,500.

Fowler's books shew that the average net return for the five years—1909-1913—from 400 trees, after allowing \$300 a year for his own labour, is \$892, or \$89.20 for 40 trees. The net return for 1913, again deducting the owner's labour, was \$1,262—\$126.20 for 40 trees, or \$3.13 per tree. Yet Mr. Ryckman would not, he says, pay more than fifty cents a tree for the fruit, and his examination was made on the 18th July, 1913, when all the fruit of the season was apparent. I think it clear that too much reliance was placed on Mr. Ryckman's evidence and too little on the fixtures produced from Fowler's books.

Quite apart from any question of severance, the orchard will undoubtedly be damaged by the construction through it of the road. That wind and dust will injuriously affect the trees and fruit is satisfactorily established by credible testimony. It is difficult to estimate the amount of such damages; but, from the best consideration I have been able to give to the whole evidence, I am satisfied that the damages