

Plaintiff J. L. Murphy, in person.

No one appeared for the other plaintiff.

A. R. Bartlett and W. G. Bartlett, for the defendants.

HON. MR. JUSTICE KELLY (25th April, 1912):—Plaintiffs, claiming to be the owners of or interested in certain lands in the city of Windsor, on October 20th, 1911, brought this action for an injunction restraining the defendants from proceeding with an arbitration then pending to fix the value of these lands, which the defendants, the Board of Education, wished to expropriate for a school site, and from registering the award, and from taking possession of the lands; and for an order that the defendants have no warrant or right to arbitrate, that the arbitration proceedings and award are irregular and void, and to set aside the award and vacate the registration thereof.

The writ of summons was served on defendants prior to October 25th, and on that date the arbitrators considered the questions submitted to them and made their award.

Plaintiffs took no part in the arbitration, or in the proceedings leading up thereto.

On the opening of the trial, defendants moved that the action be dismissed on the ground that under sec. 20 of the School Sites Act, 9 Edw. VII. ch. 93, the action is not maintainable.

Sub-section 1 of section 20 is as follows:—

“Any question touching the validity of proceedings taken, or an award made under this Act, or, in the case of arbitrations other than those provided for in sec. 7, as to the compensation awarded, shall be raised, heard and determined upon a summary application by way of appeal to the County Judge and not otherwise.”

I think the questions raised in this action are intended by this section to be heard and determined on summary application in the manner therein provided, and not by this Court. For that reason, I dismiss the plaintiffs' action.

I allow defendants such costs only as they would have been entitled to had they specially pleaded this sec. 20 and then brought on the matter by way of motion for judgment on the pleadings.

Plaintiffs' appeal to Divisional Court from above judgment was heard by HON. SIR WM. MULOCK, C.J.Ex.D., HON.