

The substantial question to be determined in this appeal, therefore, is whether the evidence adduced in the action was sufficient to prove that there was error on the part of the Commissioners as regards the amount of the indemnity awarded by them. In determining that question, their Lordships are of opinion that the prospective capabilities of the land ought to be taken into account, and that for the purpose of this appeal, it may be assumed that some enhancement of price ought to be made upon the ground of the proprietors being obliged to part with their land compulsorily.

It was urged that at the time when the Commissioners made their award it had been determined by the Superior Court that, in valuing land for the purpose of expropriation, the prospective capabilities were not to be taken into consideration; and that, although that decision was reversed on appeal to Her Majesty in Council, the appeal had not been decided at the time when the Commissioners made their reports, and that it must be assumed that the Commissioners did not take into consideration the prospective capabilities.

The Commissioners in their report are silent as to their reasons; but their Lordships, having regard to the evidence adduced before the Commissioners and to the amount awarded by them, viz., \$210,000, cannot suppose that the Commissioners excluded from their consideration the prospective capabilities, or the fact that the expropriation was compulsory. Calculating the dollar at 4s., the sum awarded was equal to £42,000, which for 81 acres was at the rate of nearly £520 an acre for the land, which at the time of the expropriation was producing but little, if any, profit.

The \$245,000 awarded by the learned Judge in addition to the \$210,000 awarded by the Commissioners make a total of \$455,000, which at 4s. a dollar is equal to £91,000, or upwards of £1,120 an acre for each of the 81 acres, of which some of the witnesses stated that not more than one-half was fit for building purposes.

The learned Judge held very properly that the only question before him was one of fact, which must be determined by the evidence given in his presence.

The real issue, as it appears to their Lordships, was, was there error on the part of the Commissioners in awarding only the sum of

\$210,000, and, if so, to what extent were the plaintiffs entitled to an augmentation of it?

The report of the Commissioners, which under the former law would have been final, must, notwithstanding the alteration of the law, be considered correct until it is proved to be erroneous. The onus of proving error on the part of the Commissioners lay upon the plaintiffs. The judgment of the Commissioners, as expressed in their report, was entitled to great weight. It is not in this case merely the judgment of a majority. The report was unanimous, and was one in which the Commissioner appointed by the appellants themselves concurred. Their Lordships are of opinion that it should not be lightly overturned, and that the learned Judge did not give sufficient weight to it. He treated the question before him as he would have done if he had had to assess the amount of compensation in the first instance. He said he must determine it according to the evidence which he had heard, and by which he considered himself to be bound, as absolutely as he would be by evidence proving the items of a tradesman's bill.

Treating the subject in that manner, the opinion of the Commissioners had no more weight attached to it than if they had made no report at all. In another part of his judgment the learned Judge remarked:—"I have to judge according to the evidence. As I view the case, the law no more makes me judge of the value of real estate, apart from the sworn evidence before me, than it makes me judge of the value of pork, or flour, or any other thing of which the value is in question before me. In the one case, as in the other, I can only know what is proved. If this evidence is untrue, it was the business of the defendants to contradict it, which they have not done. If it is true, I have done no injustice in acting upon it."

The learned Judge seems to have taken too narrow a view of his functions. It was his duty to make use of his own judgment and experience in deciding whether the opinions of the witnesses were sufficient to outweigh the judgment of the Commissioners. In their Lordships' opinion the learned Judge attached too much importance to the opinions of witnesses, which were chiefly of a speculative character; and they have to observe that the