

The question asked by the arbitrators was: "Can evidence be given before us that a railway siding may be put in which will increase the value of the land and the rental?"

The case was heard by MEREDITH, C.J.O., GARROW, MACLAREN, and MAGEE, J.J.A.

H. E. Rose, K.C., for the trustees.

W. Laidlaw, K.C., for the lessee.

GARROW, J.A., delivering the judgment of the Court, said that the question of the jurisdiction of a Divisional Court to hear and determine such a case as a Court of first instance was not raised, and would not be passed upon.

The point upon which the opinion of the Court was asked arose upon the examination by counsel for the lessors of one Hoidge, a dealer in real estate, who had made a valuation of the property in question, who was asked, what was the basis of his valuation, to which he replied, "I think the property is especially adapted for a wholesale or a factory site." "Q. Now, why is it specially adapted for either of these? A. Well, it has easy access to the up-town centre, and it has the possibility of getting in a siding into the property, which is very valuable." Upon this, objection was made by counsel for the lessee, in this form: "I object to any evidence upon the question of a renewal of a lease and the amount of rent payable on a renewal, based on contingencies. The land . . . must be dealt with as it stands, and not upon any contingencies which may happen." The objection was upheld by the arbitrators.

The substantial question to be determined by the arbitrators was the fair annual market value of the premises, to be paid by way of rental by the tenant during the ensuing renewal term of 20 years, as provided in the lease. The objection was taken, not to the witness's statement, which was of course a perfectly proper statement, that the premises were suitable for a wholesale or a factory site, but to one of the reasons which he gave for his opinion, namely, the possibility of getting in a railway siding.

The rental value was not, of course, to be ascertained as if the suggested siding was already an accomplished fact; but the fact, if it was the fact, that such a siding could reasonably be obtained, seemed to be a perfectly legitimate element bearing upon the question of the annual value of the property. The whole evidence, when received, might shew that a siding was not reasonably practicable, and that, therefore, the question of siding as an element of value should be wholly excluded; but that was one