

with A.M.'s monies when insolvent. *Sweeny v. Bank of Montreal*, 12 App. Cas. 617, followed.

2. That as the appellant in the case which was decided by the Privy Council had only claimed the dividends of other shares as forming part of an estate in which she was interested as substitute, and that she now claims the corpus and dividends of these 115 shares as her own property, the plea of *res judicata* was not available to the respondent. Art. 1241 C.C.

Appeal allowed with costs.

Laflamme, Q.C., and *Robertson, Q.C.*, for appellants.

H. Abbott, Q.C., for respondent.

SUPERIOR COURT, MONTREAL.*

Expropriation under Railway Act (R. S. C., cap. 109)—Requirements of arbitrators' award—Inadequate compensation amounting to fraud—Objections to arbitrators.

Held:—1. The Railway Act (cap. 109, R. S. C.) only requires that the award in expropriation proceedings should state clearly the sum awarded and the property for which such sum is to be the compensation; it does not require that the award should mention the person to whom the award is to be paid, nor what amount is to be paid for land, and what amount for buildings to be taken, nor what amount has been deducted for increased value to be given to the remnant of the property.

2. The Act in question does not require that the award should show on its face that a day had been fixed on or before which the award had to be made, or that it was made within the time so fixed; it is sufficient that it should be proved that as a matter of fact such time was fixed and that the award was made within the delay.

3. When the arbitrators in the record of their proceedings make a minute of the sum to be awarded as compensation, and agree that the award shall be in notarial form, and such award is afterwards drawn by a notary and signed by all three arbitrators, and duly served on the parties, such notarial award is the true award and is valid.

4. The party expropriated cannot object to the arbitrator named by the company on the ground of his relationship to the surveyor whose certificate accompanies the offer made by the company, nor on the ground of alleged inexperience, especially when these facts were known to the proprietors before the appointment of the third arbitrator.

5. The fact that the third arbitrator in the expropriation proceedings has, since the award, represented the company in other similar proceedings, forms no legal ground of objection to such third arbitrator.

6. When all the requirements of the law have been observed, the award made by the arbitrators, or any two of them, is final and conclusive; and the compensation awarded is entirely within the discretion of the arbitrators in the absence of fraud on their part, and is not in such case subject to review by the courts.

7. Inadequacy in the sum awarded may be such as in itself to constitute proof of fraud on the part of the arbitrators, and in such a case the Court may annul and set aside such award by reason of such fraud; but to justify such action by the Court, the sum awarded must be so grossly and scandalously inadequate as to shock one's sense of justice—which was not the case in this instance, the arbitrators having acted in good faith and with proper discrimination.

8. The principle to be followed by arbitrators in making such an award is that the proprietor shall be left in the same position, financially, as he was before his property was expropriated, without allowing any *prix d'affection*; and therefore, when, as in this case, the evidence of the proprietors' witnesses proves that the value of the remnant of the property, added to the sum awarded as compensation, is greater than the price for which the proprietors were willing to sell the whole property before the expropriation, the award must be held to be reasonable and adequate. *Benning et al. v. Atlantic & North West Ry. Co.*, Wurtel, J., June 22, 1889.

Farm crossings—Railway cutting—Damages—Prescription—Deed of discharge—Rev. Stat. Can., cap. 109, secs. 27 and 54.

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