

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULOCK, C.J. EX., HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE SUTHERLAND and HON. MR. JUSTICE LEITCH.

A. McLean Macdonnell, K.C., and W. I. Dick, for the appellants.

George Bell, K.C., for the plaintiffs, respondents.

THEIR LORDSHIPS (v.v.) dismissed the appeal, with costs.

HON. MR. JUSTICE LATCHFORD.

JUNE 1ST, 1914.

FOWLER v. NELSON.

6 O. W. N. 409.

Expropriation by Municipality—For Road—Across Fruit Farm—Award by Majority of Arbitrators under Municipal Act, R. S. O. (1914) c. 192 s. 332 et seq.—Determining Compensation—Set Aside by

LATCHFORD, J. Damages increased from \$856 to \$2,256. *Held*, that where amount of award exceeded amount offered costs should be paid by party expropriating.

Appeal from an award of a majority of three arbitrators appointed under the Municipal Act, R. S. O. (1914), ch. 192, sec. 332, *et seq.*, to determine the compensation properly payable to Robert C. Fowler, a farmer, the owner of part of lot 6, concession 4, Nelson Township, Halton County, for part of his lands expropriated by the said township in the construction of a road across his farm in substitution for the present Lake Shore Road, which, by reason of the encroachment upon it of the waters of Lake Ontario, has, in places, become unsuitable for travel and costly to maintain.

C. A. Moss, for R. C. Fowler.

Evans, Hamilton, for the township of Nelson.

HON. MR. JUSTICE LATCHFORD:—That two of three arbitrators may make a valid award is clear from sec. 28 (c) of the Interpretation Act, R. S. O. ch. 1.

The present road runs east and west in front of the residence of Mr. Fowler, dividing the farm into two parts, one