

that one should be appointed by the Corporation, one by the party whose property should be expropriated, and the third by a Judge of the Superior Court.

Such being the state of the law, the Corporation on the 14th March, 1873, gave notice of their intention to take an estate of which the appellants were the owners, called "The Mount Tranquil Estate." The estate contained 3,543, 104 superficial feet, equal to about 96 arpents and 28-100, and Commissioners were appointed to fix the price or compensation to be paid for the same. The Commissioners were Alexander McGibbon, Esq., on behalf of the Corporation; John McLennan, Esq., appointed by the appellants, and Robert W. Shepherd, Esq., appointed by a Judge of the Superior Court.

There may be a slight difference between a superficial foot in Canada and a superficial foot in England; but it will be sufficiently accurate for the purpose of this case to consider a superficial foot in Canada as equal to a superficial foot in England, and to treat the total quantity of land to be expropriated as amounting to about 81 English acres and a fraction.

On the 26th June, 1873, the Commissioners made a unanimous report by which they fixed \$210,000 as the amount to be paid as compensation. On the 5th July, 1873, the report was homologated, and confirmed by the Hon. Mr. Justice Torrance, one of the Judges of the Superior Court, after due proof adduced of the observance of all the formalities and proceedings required by the 27 and 28 Vict., cap. 60, and the 32 Vict., cap. 70.

On the 18th July, 1873, the plaintiffs commenced an action against the respondents in the Superior Court for Lower Canada, alleging in their declaration that, in awarding the sum of \$210,000, the Commissioners had fallen into error upon the amount of indemnity, and that they ought to have awarded the sum of \$539,920, which was the true value of the property for purposes of expropriation.

The defendants, by their plea, denied that there was any error so far as the plaintiffs were concerned or interested, and alleged that the sum of \$210,000 was, and is, in excess of the real value of the property.

The case was tried in the Superior Court by the Hon. Mr. Justice Johnson, who awarded to the plaintiffs the sum of \$245,000, in addition

to the amount of \$210,000 previously paid under the award of the Commissioners. From that judgment the defendants, the present respondents, appealed to the Court of Queen's Bench for the Province of Quebec, and the plaintiffs, the present appellants, presented a cross appeal, seeking to augment the sum awarded to them by the Superior Court by the sum of \$429,000, making the total amount \$100,000 in excess of the amount claimed by them in their action.

The appeal and cross appeal were heard together, and on the 22nd June, 1876, the Court of Queen's Bench reversed the judgment of the Superior Court and dismissed the action of the plaintiffs. The Hon. Mr. Justice Monk and the Hon. Mr. Justice Ramsay, two of the Judges of the Court of Queen's Bench, dissented from the judgment of the majority of the Judges of that Court.

It was contended on behalf of the respondents that, in order to maintain an action upon the ground of error on the part of the Commissioners in respect of the amount of the indemnity, it must be shown that the award of the Commissioners was erroneous with reference to the evidence which was adduced before them. It has, however, been held in the Court of Appeal in Canada, in the case of *Montreal v. Bagg*, 19 Lower Canada Jurist, 136, and also in the present case, one learned Judge only dissenting, that whenever it can be shown that the Commissioners have arrived at a wrong conclusion with respect to the value of the property or the amount of compensation, the party expropriated is entitled to maintain an action to obtain an augmentation of the indemnity. Their Lordships are clearly of opinion that that is the proper construction of the Statute. The construction contended for is wholly inconsistent with the 27 and 28 Vict., cap. 60, sec. 13, cl. 7, by which it was enacted that the examination of the witnesses should not form part of the report of the Commissioners, and also with the 7th section of the 35 Vict., cap. 32, by which the party expropriated is authorized, in the case of error on the part of the Commissioners, to proceed "by direct action in the ordinary manner" to obtain an augmentation of the indemnity, which necessarily includes the right to adduce evidence in support of the action.