Privy Council Appeal No. 158 of 1915.

Ernest L. Ruddy - - - - - - *Appellant,*

v.

The Toronto Eastern Railway Company - - *Respondents,*

FROM

THE SUPREME COURT OF CANADA.

REASONS FOR THE REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23RD JANUARY, 1917.

Present at the Hearing:

LORD BUCKMASTER.
LORD DUNEDIN.
LORD PARKER OF WADDINGTON.
LORD PARMOOR.
LORD WRENBURY.

[*Delivered by* LORD BUCKMASTER.]

On the 27th November, 1914, an award was made, in pursuance of the provisions of the Dominion Railway Act of Canada, assessing at the sum of 3,500 dollars the amount to be paid by the respondents—the Toronto Eastern Railway Company—for the compulsory expropriation of land necessary to enable the respondents to run a railway across the appellant's property on the west of the City of Toronto.

This award was the award of the majority of three arbitrators and was subject to appeal by virtue of Section 209 of the Railway Act. This section is in the following terms :—

> "Whenever the award exceeds 600 dollars, any party to the arbitration may, within one month after receiving a written notice from any one of the arbitrators or the sole arbitrator, as the case may be, of the making of the award, appeal therefrom upon any question of law or fact to a superior Court; and upon the hearing of the appeal, such Court shall decide any question of fact upon the evidence taken before the arbitrators, as in a case of original jurisdiction."

The appellant availed himself of these provisions and appealed to the Supreme Court of Ontario, by whom the appeal

was allowed. This judgment was, however, reversed by a majority of three to two in the Supreme Court of Canada, and from this latter judgment the present appeal proceeds.

Before considering the facts and the merits of the case, it is well to examine what is the real nature of the appeal covered by Section 209. In their Lordships' opinion, it places the awards of arbitrators under the statute in a position similar to that of the judgment of a Trial Judge. From such a judgment an appeal is always open, both upon fact and law. But upon questions of fact an Appeal Court will not interfere with the decision of the Judge who has seen the witnesses and has been able, with the impression thus formed fresh in his mind, to decide between their contending evidence, unless there is some good and special reason to throw doubt upon the soundness of his conclusions.

The facts which led up to the making of the award in the present case can be shortly stated. In 1911 the respondent railway were proposing to make their track along a line which cut through, from west to east, the property in question. They filed plans showing this proposed extension of their system on the 24th February, 1911. Between the 1st July and the 9th September of that year the appellant purchased practically the whole of the property which he now holds, a small piece of the value of 500 dollars only having been bought at a later date, namely, the 16th July, 1913. The notice of expropriation was served on the 23rd September, 1912.

The property so purchased was, it is said, a property exceptionally well situated, commanding beautiful views of the surrounding country, and having many advantages rendering it capable of adaptation and development for the purpose of a private residential estate. The total price for the land and buildings as they originally stood was 11,485 dollars, and in the improvements which the appellant made he had, at the date of the arbitration, expended a sum which raised the total cost of the property to 34,917 dollars. The award of the majority of the arbitrators assessed the damage to this property at a total sum of 3,500 dollars. The dissentient arbitrator fixed it at 13,850 dollars; and the question is whether the award of the majority can be maintained.

Now, so far as the question of fact is concerned, their Lordships see no reason whatever to justify interference with the award. The arbitrators appear to have scrutinised and examined the evidence on both sides with great care, and, in addition, they paid at least two visits to the property and made a careful inspection for themselves. It would be in a high degree unreasonable to interfere with such a finding of fact, based on such materials, and, indeed, the Supreme Court of Ontario, whose judgment set aside the award of the arbitrators, did not attempt to do so, but rested their judgment upon the ground which really constitutes the only foundation for the appellant's case, namely, that the arbitrators proceeded upon a wrong

principle in their valuation, and that, in fact, the property was valued on the footing of its being a farm property, rather than a private estate. Their Lordships have carefully examined the reasons given by the majority of the arbitrators, and they cannot find anything whatever in these reasons to justify this conclusion. Indeed, his Honour Judge MacIntyre clearly shows, in more than one passage in his award, that he did regard the property as a private residential estate, and he objected to the witnesses for the respondent railway company for not sufficiently appreciating the picturesque and unusual character of the spot.

In their Lordships' opinion the learned arbitrator did not exclude any matter material for consideration, nor did he introduce into his calculations matter irrelevant or calculated unduly or unfairly to lower the amount of damage he was called upon to assess. And the same thing is true of the reasons given by Mr. Macdonnell, who arrived at the same sum total for his award by slightly different methods. It is admitted by counsel for the appellant that the items, under which his Honour Judge MacIntyre groups the heads of damage, are exhaustive and complete, but he says that the small amounts assessed in respect of each of these heads show, notwithstanding the passages in his reasons to which reference has been made, that he did in fact disregard the true nature of the property.

Their Lordships cannot accept this view, and they think that the award must be confirmed, and this appeal dismissed with costs, and they have so advised His Majesty.

In the Privy Council.

ERNEST L. RUDDY

v.

THE TORONTO EASTERN RAILWAY COMPANY.

DELIVERED BY

LORD BUCKMASTER.

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