1894

*May 16.
*May 31.

OSCAR GUYON DIT LEMOINE *et al.* APPELLANTS;

AND

THE MAYOR &c., OF THE CITY OF MONTREAL..... RESPONDENTS;

ANDREW ALLAN *et al*.....APPELLANTS.

AND

THE MAYOR, &c., OF THE CITY OF MONTREAL..... RESPONDENTS.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE).

Expropriation—35 *Vic. ch.* 32, *sec.* 7 (*P.Q.*)—*Interference with award of arbitrators.*

In a matter of expropriation the decision of a majority of arbitrators, men of more than ordinary business experience, upon a question merely of value should not be interfered with on appeal.

APPEAL from the judgments of the Court of Queen's Bench for Lower Canada (appeal side).

The facts and pleadings are fully stated in the judgment of Mr. Justice Taschereau hereinafter given.

The following is the 7th section of 35 Vic. ch. 32, P.Q., upon which the award of the arbitrators was sought to be increased:

"Subsect. 12 of clause 13 of the act 27 & 28 Vic. c. 60, is amended by adding at the end of the said clause the following words, to wit: 'for the purposes of the expropriation;' but in case of error upon the amount of the indemnity only on the part of the com-

---

*PRESENT:—Sir Henry Strong C. J., and Fournier, Taschereau, Sedgewick and King JJ.

missioners, the party expropriated, his heirs and assigns, and the said corporation may proceed by direct action in the ordinary manner to obtain the augmentation or reduction of the indemnity, as the case may be, and the party expropriated shall institute such action within fifteen days after the homologation of the report of the said commissioners, and if upon such action the plaintiffs succeed the corporation shall deposit in court the amount of the condemnation, to be paid to the party or parties entitled thereto."

Robertson Q.C. and *Geoffrion* Q.C. for appellants, cited and relied on, *inter alia*, art. 1346 C.C.; *Rolland* v. *Cassidy* (1); *Cowper Essex* v. *The Local Board of Acton* (2); *Mayor, &c., of Montreal* v. *Brown* (3); *The Queen* v. *Brown* (4); Cripps on Compensation (5) and cases there cited; and *Owners of P. Caland and Freight* v. *Glamorgan S. S. Co.* (6).

Ethier Q.C. and *Greenshields* Q.C. for respondents, cited and relied on *Morrison* v. *Mayor, &c., of Montreal* (7); and *Canada Atlantic Railway Co.* v. *Norris* (8).

The judgment of the court was delivered by

TASCHEREAU J.—These two appeals were argued together.

In 1872 two actions were taken against the City of Montreal, one by Picault & Lamothe, now being represented by the appellants, Oscar Guyon dit Lemoine *et al.*, claiming $300,000, and the other by Sir Hugh Allan, now being represented by his testamentary executors, claiming $136,424. Both actions are based on sec. 7 of 35 Vic. ch. 32 (P.Q.), which allows proprietors of certain lands expropriated by the City of

(1) 13 App. Cas. 770.
(2) 14 App. Cas. 153.
(3) 2 App. Cas. 168.
(4) 36 L. J. Q. B. 322.
(5) Ed. (1892), pp. 127 and 128.
(6) [1893] A. C. 207.
(7) 3 App. Cas. 148.
(8) Q. R. 2 Q.B. 222.

1894

LEMOINE v. THE CITY OF MONTREAL.

ALLAN v. THE CITY OF MONTREAL.

Taschereau J.

Montreal for the opening of the Mountain Park, to claim by direct action an additional amount over and above that awarded by the commissioners appointed to fix the compensation due on account of the expropriation.

The award made to Messrs. Picault & Lamothe was fixed at $27,500 by Messrs. Atwater & Bulmer, two of the commissioners, the third, Mr. Barsalou, being of opinion that $100,000 should be awarded. The award made to Sir Hugh Allan was unanimously fixed by three commissioners at $13,576. In both cases, the awards of the commissioners were maintained by the Court of Queen's Bench; in the case of Picault & Lamothe, the City of Montreal being the appellants, the judgment of the Superior Court which had increased the award to $100,000 was reversed, and in the case of Sir Hugh Allan, Sir Hugh Allan being the appellant, the judgment of the Superior Court which had dismissed the plaintiff's action was affirmed. Both plaintiffs then appealed to this court.

As we intimated at the conclusion of the argument these appeals must be dismissed. We clearly could not interfere with the judgment appealed from, more especially in the Allan case where the arbitrators were unanimous and the action has been dismissed in the two courts below, without departing from a well settled jurisprudence.

In cases of this nature the court, as in reviewing the verdict of a jury, or a report of referees, upon questions of fact cannot reverse unless there is such a plain and decided preponderance of evidence against the finding of the arbitrators or commissioners as to border strongly on the conclusive. And that rule should perhaps be still more strictly adhered to on an arbitrators' award than on a verdict of a jury, as the arbitrators are generally chosen not only because of

their well known integrity, but also because of their experience in such matters, and previous local knowledge. They also view and review the premises as often as they may think it necessary to enable them to form a correct estimate, and must surely be in a better position to determine the exact amount than any court can be, and than were any of the witnesses who gave their opinions in this case.

The diversity of opinions as to value to be met with in every such case is not wanting in this one; 36 out of the 37 witnesses of Lemoine fix the value of his property at prices ranging from $191,699 to $655,870; and for the city, 38 witnesses fix the same value at prices all the way from $8,000 to $53,000. As regards the Sir Hugh Allan property, 43 of his witnesses say that his land was worth from $132,480 up to $662,400, while for the city 37 witnesses reduce that value to an amount commencing at $8,400 and ending at $39,740, and no doubt each party could have found in the City of Montreal hundreds more of witnesses who would have valued this property either on the maximum or the minimum basis as required.

Now it is obvious to any mind that from the very circumstance that a fact is open to such difference of opinion we must conclude that the decision of arbitrators on such questions can rarely be bettered by a reversal founded on the partial and refracted light of an appellate tribunal, nay, of any court. See *In the matter of Pearl Street* (1); and *In the matter of John Street* (2).

This court has already held in *The Queen* v. *Paradis* (3) that to warrant an interference with an award of value necessarily largely speculative an appellate

(1) 19 Wend. 651.
(2) 19 Wend. 659.
(3) 16 Can. S.C.R. 716.

1894

LEMOINE v. THE CITY OF MONTREAL.

ALLAN v. THE CITY OF MONTREAL.

Taschereau J.

court must be satisfied beyond all reasonable doubt that some wrong principle has been acted on, or something overlooked which ought to have been considered by the arbitrators.

On the same principle Chief Justice Hagarty, in an analogous case, *In re Macklem and The Niagara Falls Park*, (1) had previously said: "Fully granting the perfect integrity of the referees and their desire to act with fairness, we must at once admit that in arriving at an estimate of amount they possess enormous advantages over any to which we can lay claim."

"To warrant an interference, we must be satisfied beyond reasonable doubt that there has been this error, that an award of value necessarily largely speculative is either too much or too little. I cannot possibly see my way to naming any sum, on my own opinion of the evidence, which would be a more just and reasonable compensation than that awarded. If I ventured to do so I would have the very unpleasant idea in my mind that I was interfering, to the prejudice of justice, with the opinion of those who had far better opportunities of ascertaining the truth than I enjoy. I am unable therefore to see my way to interfere."

This was concurred in by Burton, Patterson and Osler JJ.

And Mr. Justice Patterson, in another case of the same nature, *re Bush* (2) said in the same sense: "An appeal lies, it is true, on questions of fact as well on questions of law. But when the fact for decision is a matter so peculiarly depending upon estimates and opinions of values, as it is in this case, and when the award represents the conclusions of the persons who have had means of forming an estimate of the reliance that ought to be placed on the testimony adduced which we do not possess, as well as of exercising their

(1) 14 Ont. App. R. 26. (2) 14 Ont. App. R. 81.

own judgment, which they have a perfect right to do, bringing to the task whatever knowledge they may have of the locality and the properties, and their general acquaintance with the subject, as to which we are not expected to deal as experts and are not likely to be better informed than they, or more capable of forming a correct judgment, it is obvious that we cannot interfere unless we find that some wrong principle has been acted on, or something overlooked that ought to have been considered."

The case of *Morrison* v. *Mayor, &c., of Montreal* (1) is precisely in point. The appeal there before their Lordships arose from the very same expropriation as the one in question here, and the fact that in the Lemoine case the arbitrators were not unanimous cannot by itself justify an increase of the award. The two cases of the owners of the *Caland & Freight* v. *The Glamorgan SS. Co.* (2); and *McIntyre & McGavin* (3); are recent authorities from the highest tribunal in the Empire against the appellant's contentions here. The case of *Mussen* v. *Canada Atlantic Railway Co.* determined a few weeks ago in the Privy Council (4), though not yet reported, is also, I understand, one where the award of the arbitrators, at first set aside by the judgment of the Superior Court, was restored to the original amount awarded.

Appeals dismissed with costs.

Solicitors for appellants: *Robertson, Fleet & Falconer.*

Solicitors for respondents: *Roy & Ethier.*

---

(1) 3 App. Cas. 148.
(2) [1893] A.C. 207.
(3) [1893] A.C. 268.
(4) See 23 Canadian Gazette p. 111.