

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Dame Georgiana Musson and others v. The Canada Atlantic Railway Company from the Court of Queen's Bench for Lower Canada, Province of Quebec ; delivered 26th April, 1894.

Present :

LORD HOBHOUSE.
LORD ASHBOURNE.
LORD MACNAGHTEN.
SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

THE Respondents in this Appeal, the Canada Atlantic Railway Company, were enabled by certain statutory powers to make a line of railway running through the District of Montreal. Amongst other lands required by them for the purposes of their railway was certain land in the said district, the property of one William Norris. The Company made an offer to Norris of the sum of \$1,600 as damages and compensation for the land intended to be taken, and in the event of the offer not being accepted, they named their arbitrator. Norris declined the offer and named his arbitrator. The arbitrators were unable to agree upon a third arbitrator, and the Company applied to the Superior Court, according to the provisions of the Railway Act (51 Vict. c. 29), to name one. This the Court did. Hibbard was the Company's arbitrator, Ross was Norris's arbitrator, and Rielle was the arbitrator named by the Court. The arbitrators met and took a large body of evidence on both sides. The evidence was of a most contradictory character both as to the value of the land taken and the

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originally of a majority of arbitrators, who were said in the judgment of the Court of Queen's Bench to have been "experts," and to have been "men of more than ordinary business experience," and looking further to the fact that the arbitrators had the advantage of seeing and hearing the witnesses who were examined before them—that an appeal from a decision given in such circumstances, upon a question which was merely one of value, is one which should be discouraged. Their Lordships will therefore humbly advise Her Majesty to affirm the judgment of the Court of Queen's Bench, and to dismiss this Appeal, and the Appellants will pay the costs of it.

