

called upon to consider the effect which should be given to the valuation made by commissioners, appointed to make partition of the real estate among the parties entitled; and upon full argument and deliberation it was decided, that though such valuation was not conclusive, and might be rejected if clearly shown to be erroneous, yet still it was entitled to great respect, and would not be disturbed unless the weight of evidence in opposition to it was decidedly preponderating.

The commissioners were regarded as occupying the double capacity of arbitrators and witnesses, and it was thought that the court would not be justified in reversing their judgment, unless upon evidence of error as strong or stronger than would induce a court of law to reject the verdict of a jury, and order a new trial. Such was the view taken by this court of the principle which should govern it, when dealing with the valuation of commissioners in cases of partition, and no reason is seen why the same rule should not be observed on this occasion, when the judgment of persons selected by the parties interested, is under review.

Supposing, then, that these petitioners, Crouch and Lazenby, had impeached the valuation of the commissioners in this case, upon the ground of its being excessive, (which, however, they have not done,) it certainly would be incumbent upon them to make out a strong case to induce the court to reject it.

This they have not only failed to do, but the case is wholly destitute of proof upon the point. Not a single witness has said that the valuation is too high, and the petitioners attempt to make out their case upon the hypothesis, that the commissioners in forming their judgment, did not take into consideration the clause in the codicil to the will, by which another source of supply of wood and timber was provided for Mr. Smith. And this course of reasoning is adopted, although one of the commissioners says, expressly, in his evidence, that the will and codicil was before them, and that they were aware of the rights of Smith under them. In view of these circumstances, and looking to the evidence of Henry W. Tomlin, one of the parties in interest, identical with the petitioners, and that of George