

W. Hilleary, one of the commissioners, who testifies that Crouch said that the valuation was lower than he anticipated, it would seem impossible that this ground of complaint can be maintained.

The only objection urged in the petition is, that Walter Smith had removed from the land, after the sale, certain parcels of wood and rail stuff, which he had previously cut down in the exercise of the right given him by the will. This, it is said, was not known to the persons selected to make the valuation, and if known would have had an influence upon their judgment, and reduce the amount allowed by them to Mr. Smith.

It is very certain that as this wood and timber had been cut down prior to the sale, it did not pass to the purchasers of the land; it was severed from the inheritance and became, and was, personal property, and having been cut by Smith in the fair exercise of the right given him by the will, was his property; and no reservation was required to authorize him to remove it.

The commissioners made their valuation on the 25th of September, 1848, after the wood and rails had been removed, and it is to be presumed, their estimate was a prospective one, having reference exclusively to the future. Two of the commissioners say, that the right claimed, and exercised by Smith, to remove the wood and rails, if known to them would have had no influence upon their judgment; and I can see nothing in the statement of the other which would induce me, under all the circumstances of this case, to reject the return.

If Mr. Tomlin is to be believed, and there is not certainly the slightest ground to impugn his credit, which is entitled to the more weight, because he is swearing against his interest, Crouch knew, and consented that Smith should take the wood and rails away, and it is clearly shown by the evidence of Mr. Hilleary, that the valuation was less than Crouch expected.

The petition must, therefore, be dismissed, and the return of the commissioners ratified.

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[No appeal was taken from this order.]