

MEREDITH, C.J.:—Defendants, acting in good faith and in the exercise of what they claim to be the discretion vested in them by the will, have thought it expedient to pay to plaintiff, though he is of age, only a small part of the \$1,000; and, in my opinion, they have acted wisely if they have the discretion. It was, however, argued that, being of age, the plaintiff is now entitled to payment of the whole \$1,000 and interest, and that the direction of the will as to the time and manner of payment is to be disregarded: *Saunders v. Vautier*, 4 Beav. 115; *Wharton v. Masterman*, [1895] A. C. 186. . . . The persons who would at the death of plaintiff be entitled, if this contention is not upheld, to so much of the fund as the executors do not in the exercise of their discretion pay to plaintiff, should have an opportunity of being heard in opposition to plaintiff's claim, and the case should stand over, with leave to plaintiff to amend by adding the necessary parties. If he desires to amend, he must do so on or before 15th September next; if he elects not to avail himself of the leave, the action will be dismissed with costs. The official guardian to intervene and make inquiry into the mental condition of plaintiff, and report as to his capacity to act for himself, and all proceedings to be stayed on and from 15th September next until further order.

ROSE, J.

AUGUST, 23RD, 1898.

WEEKLY COURT.

RE McQUESTEN AND TORONTO, HAMILTON, AND
BUFFALO R. W. CO.

Railway—Lands Injuriouslly Affected—Right to Compensation—Operation of Railway—Sentimental Grievance.

An appeal by the land owner, under the Railway Act of Canada, from an award of arbitrators in respect of compensation for land injuriously affected.

W. A. Logie, Hamilton, for the appellant.

D'Arcy Tate, Hamilton, for the company.

ROSE, J.—It was apparent upon the argument that I could not interfere with the finding of fact by the majority of the arbitrators to the effect that the property had its greatest value in being used as a whole, without a row of lots being taken off to face on Hunter street, and that taking off such a row of lots would lessen the value far more than any sum which could be obtained from the sale of the lots.