

Notice was served upon the owners and occupants of the lots between Spencer and Wellington streets; none but McLaughlin objected upon any weighty ground.

McLaughlin's opposition was based upon the ground that the result of closing a part of Hinton avenue would be a reduction in the value of his lots. The evidence as to a possible depreciation was his own testimony only and was of a very meagre kind.

The County Court Judge came to the conclusion that the part of the street-allowance proposed to be closed never was a road within the meaning of sub-sec. 4 of sec. 86. The Judge had jurisdiction to hear and determine the application; but the Court could not agree with his finding that there was no road.

It was contended, however, by the appellant, that no part of the street could be closed without his consent. It was obvious that the part of Hinton avenue on which his lots front was not being closed, and that he had access to cross-streets on the north and south. The part of the street immediately in front of his lots, or any part of the street the closing of which would interfere with his ingress and egress, could not be closed without his consent. But the closing of this part of the street did not require his consent.

But the question arose whether he should not be compensated for the closing of any part of the street, if, upon the evidence offered, his property was depreciated in value. That was a question to be determined by the Judge hearing the application, "upon such terms and conditions as to costs and otherwise as may be deemed just" (sub-sec. 1).

The County Court Judge found that the appellant's property was not depreciated, but the learned Judge sitting in appeal could not agree with that. There was some evidence of depreciation, and it would appear almost obvious that there must be depreciation. There was no evidence at all to the contrary. In these circumstances, the Court was justified in coming to the conclusion that the County Court Judge should have fixed some sum as compensation.

As he had not done so, the Court must fix it, and \$400 appeared to be a reasonable sum.

The order should be varied by directing that compensation to the amount of \$400 be paid by the applicants to the appellant, and that, upon payment of that sum, the order below be affirmed; costs of the appeal to be paid by the respondents to the appellant.

MULOCK, C.J.Ex., and FERGUSON, J.A., agreed with SUTHERLAND, J.