

to what would take place in the future not being a ground for an action of deceit. Leave to amend given on payment of the costs of the appeal and costs up to the hearing to be costs to defendant in any event in case plaintiff amended.

*Knott*, for plaintiff. *Burbidge*, for defendant.

Full Court.]

[Feb. 29.

CANADIAN NORTHERN RY. CO. v. ROBINSON.

*Compulsory taking of land—Appeal from award of arbitrators—Interest on amount awarded.*

*Held*, 1. Upon an appeal under section 209 of the Railway Act, R.S.C. 1906, c. 37, from an award of arbitrators determining the compensation to be paid to an owner for the compulsory taking of his lands by a railway company, the Court will not assume the function of the arbitrators and make an independent award, but will rather treat the matter as it would an appeal from the decision or verdict of a judge, and the award will not be disturbed, unless the arbitrators manifestly erred in some principle in arriving at their conclusion.

2. Interest on the amount awarded should not be added by the arbitrators, especially in a case where the claimant remains in possession of the property until after the date of the award.

3. It is proper that the claimant should be allowed the actual value of the property to him, and not merely the market value as on a sale.

4. The arbitrators are not bound to allow ten per cent. extra on the amount of the compensation for the compulsory taking, although that is frequently done, and the Court will not interfere with their refusal to allow such percentage.

*Munson*, K.C., and *Clark*, K.C., for the company. *Pitblado*, and *A. B. Hudson*, for Robinson.

Full Court.]

SIMON v. SINCLAIR.

[Feb. 29.

*Estoppel—Forgery—Failure to defend action on prior note forged by same person.*

*Held*, on appeal from *PERDUE*, J., that a person whose indorsement on a promissory note has been forged is not estopped from denying his signature by the fact that he had allowed judgment to go against him by default in a previous action by