

spect of the expropriation by the city corporation of the southerly seventeen feet of block A, plan 1307, on the north side of St. Clair avenue, Toronto, whereby he allowed the appellant \$1,328.50 as compensation for the land taken and for injury to the rest of the appellant's land.

The appeal was heard by GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

G. F. Shepley, K.C., and J. S. Fullerton, K.C., for the appellant.

G. R. Geary, K.C., for the city corporation.

MACLAREN, J.A.:—This is an appeal by the owner of a certain lot on the north side of St. Clair avenue, in Toronto, from the award of the Official Arbitrator as to the compensation to which the owner is entitled for the taking of the southerly 17 feet of his lot for the widening of St. Clair avenue by a by-law passed on the 23rd June, 1911.

The owner claimed that the arbitrator should take into account the damage suffered by him by being deprived of the advantage of erecting commercial buildings on these 17 feet in connection with the adjoining land south of the dwelling-house erected on the lot in question.

The arbitrator held that he was precluded from taking this into consideration by the fact that the city council had, on the 18th August, 1910, passed a by-law declaring that part of St. Clair avenue to be a residential street, and prohibiting the erection of any building within 17 feet of the north or south lines of the street.

In the reasons for his award he says: "The real reason for the passing of this by-law is found in the evidence of Mr. Foreman (the City Assessment Commissioner) given in these proceedings, viz., that, it being the intention of the city at a later date to expropriate 17 feet for the purpose of widening St. Clair avenue, it was deemed expedient to prevent buildings in the meantime being placed on this 17 feet, thereby increasing the amount of compensation which would have to be paid to the owners when their land was taken under the expropriating by-law. There is no doubt that the by-law must be repealed and will be." As a matter of fact the by-law was repealed on the 24th June, 1912.

The arbitrator bases his conclusion, as to the above effect of this by-law, upon a dictum of Meredith, C.J., in a case of Toronto R. W. Co. v. City of Toronto, 12 O.L.R. 532. I am unable,