receiving the benefit and is objecting to pay the equivalent. I think the principle underlying the decision in In re Lucas and Chesterfield Gas and Water Board, [1909] 1 K.B. 16, and Re Gibson and City of Toronto (1913), 28 O.L.R. 20, may reasonably be followed here. The appellant is not, it is true, expropriating, but is only enforcing private rights, yet she is asking the Court to say that the valuators are entitled to exclude as an element a most important item of benefit to the respondent, which they admittedly are receiving, and which forms indeed the chief value of this individual property. She seeks to exclude their acquisition of the other half and to secure a valuation upon a basis that is incorrect in fact, and, as I venture to think, in law as well. The words of the leases "the amount proper to be paid" are large enough, in my judgment, to cover an award such as had been made here, and are singularly appropriate to this peculiar situation.

The principle to which I have alluded is, that the party seeking to take property cannot rely on a depreciation caused by his own act, or on the assumption that he can take an attitude which will injure the value to the owner. And in this case I do not think the appellant can, in dealing with the 14 feet, exclude from consideration the fact that she is acquiring the other half of the building, and require the valuators to arrive at a value upon the assumption that she is only receiving part of it.

If the appellant is only to pay for each half as severed, the respondent must have the right to give the property to her in that condition, and I do not think that the judgment of Solomon is what the appellant really wants.

I am not impressed with the idea, only faintly developed in the evidence, that this severance really destroys the usefulness of the building. It is admitted that the store can be reconstructed at a reasonable cost, and an examination of the plans filed shew that 14 feet is sufficient to provide for a store and an independent entrance as well.

I have not dealt with the consent said to have been given. It is explicitly denied by Mr. Millar, solicitor for the appellant, though there is a quantity of testimony opposed to his recollection. . . . A verbal consent, if proved, could not alter the terms of the leases under which the valuations were proceeding. Unless the view I entertain is to prevail, I think that there would be some question as to whether a misapprehension of the facts or a mistake in law by the valuators can be reviewed in an action upon the covenants in the leases, such as this is, as it