

SECOND DIVISIONAL COURT.

OCTOBER 6TH, 1916.

*RE TORONTO AND HAMILTON HIGHWAY COMMISSION AND CRABB.

Highway—Expropriation of Land for, by Highway Commission—Compensation—Award of Ontario Railway and Municipal Board—Motion for Leave to Appeal in Order to Increase Amount Awarded to Land-owner—Value of Land Taken—Fair Estimate by Board—Irregularity in Award—Consultation by Members of Board who Heard Appeal with one who did not.

Motion by a land-owner for leave to appeal under sec. 32 of the Ontario Public Works Act, R.S.O. 1914 ch. 35, from an award or decision of the Ontario Railway and Municipal Board; and motion on behalf of the Commission for leave to cross-appeal.

The motion was heard by MEREDITH, C.J.C.P., MAGEE and HODGINS, JJ.A., and LENNOX, J.

W. Laidlaw, K.C., for the applicant.

H. E. Rose, K.C., for the Commission.

MEREDITH, C.J.C.P., read a judgment in which he said that the one substantial purpose of this motion was, that the compensation awarded to the applicant in respect of land taken for the new highway between Toronto and Hamilton might be increased, counsel contending that there had been an under-estimation of the applicant's losses upon all the items of his claim. Leave to appeal ought not to be given unless the Court was convinced that there was good ground for thinking that some substantial injustice might have been done to the applicant in the amount awarded.

The learned Chief Justice was fully convinced that the Board dealt with the applicant's claim, in all its particulars, in not only a fair but a generous manner.

No injustice having been done to the applicant in the amount awarded, it was unnecessary to consider any question of irregularity in the making of the award; but, the Chief Justice added, he was not able to agree with the argument of counsel for the applicant in regard to the course taken by the Board. The Board was composed of persons occupying positions analogous to those of Judges rather than of arbitrators merely; and it was not suggested that they heard any evidence behind the back of either party; the most that could be said was that the members of