

be ascertained with reference to the date of the deposit of the map or plan and book of reference, under s-s. 14 (or in this case with reference to the date of the notice or decision to expropriate), and therefore such value should include any increase which may have been caused by, or is owing to, the contemplated construction of the railway.

Semble, per Burton, J. A., that what is intended by s-s. 21 is a direct or peculiar benefit accruing to the particular land in question, and not the general benefit resulting to all land-owners from the construction of the railway.

Per Osler, J. A., that the land in question not having been taken strictly for the purposes of the railway, but after the laying down of the railway, for the purpose of deviating a street, to allow the railway to run along the original street, there was no right to set off the increased value of the land not taken caused by the construction of the railway.—*James v. Ontario & Quebec Ry. Co.*, Court of Appeal, Jan. 10, 1888.

Elections—R. S. C. c. 9, ss. 32 and 33, construction of—Time for trial of petition—*Extending time.*

The petition was presented on the 6th of May, 1887, during a session of Parliament which ended on 23rd June, and issue was joined on 3rd June; no application was made or step taken after that until the 6th December, 1887, when the petitioner applied to have a time and place appointed for the trial, and to have the time for the commencement of the trial enlarged.

The first part of s. 32 of the Controverted Elections Act, R. S. C. c. 9, is as follows:

“The trial of every election petition shall be commenced within six months from the time when such petition has been presented, and shall be proceeded with from day to day until such trial is over; but if at any time it appears to the Court or Judge that the respondent's presence at the trial is necessary, such trial shall not be commenced during any session of Parliament: and in the computation of any time or delay allowed for any step or proceeding in respect of any such trial, or for the commencement thereof as aforesaid, the time occupied by such session of Parliament shall not be included.”

Held, Patterson, J. A., dissenting, that the exception in the last clause is confined to a case in which the Court is satisfied that the respondent's presence is necessary; such trial refers to a trial at which the respondent's presence has been declared to be necessary; and no such declaration having been made in this case, the time of the session of Parliament was not to be excluded from the six months within which the trial was to be commenced.

It was not incumbent upon the respondent to move to dismiss the petition for default.

The Court could not *nunc pro tunc* declare that the respondent's presence at the trial was necessary.

Per Curiam, that the time for the commencement of the trial may be enlarged under s. 33, notwithstanding the expiration of the six months; but it had not been established in this case that the requirements of justice rendered such enlargement necessary; and the Court refused to appoint a time and place for trial or to enlarge the time.—*In re Algoma Dominion Election Petition, Burk v. Dawson*, Court of Appeal, Jan. 10, 1888.

Railway Company—*Expropriation of lands*—*Dominion Railway Act or Provincial Railway Act*—*Work for general advantage of Canada*—*Notice.*

On an application for an injunction to restrain the defendants, who were incorporated by Statutes of the Ontario Legislature, from applying to a County Judge for a warrant for possession of certain lands required by them, and being expropriated by them under the provisions of the Ontario Railway Act, on the ground that the defendants' railway had been declared a work for the general advantage of Canada, and that no notice of expropriation had been served, as required by the provisions of the Ontario Railway Act;

Held, under the circumstances of this case, and following *Clegg v. Grand Trunk R. W. Co.*, 10 O. R. p. 713, and *Darling v. Midland R. W. Co.*, 11 P. R. 321, that the defendants were no longer within the operation of the Ontario Statutes.

Held, also, that a notice requiring the lands, given under the Dominion Railway Act, was not a sufficient notice under the Ontario