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JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

JANUARY 23RD, 1917.

RUDDY v. TORONTO EASTERN R.W. CO.

Railway—Expropriation of Land—Compensation—Arbitration—Award—Appeal—Railway Act, R.S.C. 1906 ch. 37, sec. 209.

Appeal by Ernest L. Ruddy, by special leave, from the judgment of the Supreme Court of Canada reversing the judgment of the Second Divisional Court of the Appellate Division, Re Ruddy and Toronto Eastern R.W. Co. (1915), 7 O.W.N. 796.

The respondents took for the purposes of their railway part of the appellant's land near Toronto. An arbitration to assess the compensation payable to the appellant was held by three arbitrators under the Railway Act, R.S.C. 1906 ch. 37, under which Act a valid award may be made by any two of the arbitrators. By an award of two of the arbitrators the compensation was assessed at \$3,500. The appellant appealed, under sec. 209 of the Act, to the Supreme Court of Ontario (Appellate Division), which increased the award to \$13,850, the amount found by the dissenting arbitrator. Upon a further appeal to the Supreme Court of Canada, the original award was restored, by a majority of three Judges to two.

The appeal was heard by a Board composed of LORD BUCKMASTER, LORD DUNEDIN, LORD PARKER OF WADDINGTON, LORD PARMOOR, and LORD WRENBURY.

D. L. McCarthy, K.C., and T. L. Monahan, for the appellant.

Clauson, K.C., and J. A. McEvoy, for the respondents.

LORD BUCKMASTER, in delivering the judgment of the Board, said that in an appeal under sec. 209 of the Railway Act the award