

affected. The arbitrators had the added advantage of having the witnesses before them.

The gist of the objection to the award on the part of the other arbitrator is, that the two arbitrators refused to take into consideration any advantage which the owners might have derived from the construction of the railway, which, he stated his opinion to be, "was the work for the purpose of or in connection with which the land was injuriously affected." That, as I have said, does not, in my opinion, enter into the merits of the case.

In *Re Brown and Town of Owen Sound*, *supra*, the closing of the road which injuriously affected the property of the owner was part of a scheme for granting facilities to a lumber company, and the owner was held entitled to compensation without any diminution because the erection of the company's mill enhanced the value of his lands. It is seldom that any two cases, in their facts and circumstances, so nearly resemble each other as the *Owen Sound* case and the present case.

The question which the arbitrators had to consider was, whether there was a diminution in the value of the respondents' lands consequent upon the closing of Hope street. Evidence was practically directed to that very fact—evidence which established that the owners suffered in their property, not as part of the public, but in a special way because of their ownership of these lands. Mr. McGill, who for several years held the position of assessor for the appellants, and was engaged by them to prepare their case in these proceedings, and gave evidence on their behalf, puts it this way:—

"Q. You do consider the closing of Hope street was a distinct disadvantage to the people on it? A. No—if no benefit.

"Q. The closing of Hope street itself, distinct? A. Without any countervailing elements.

"Q. I am eliminating countervailing elements. A. I can't separate them. I have to associate them together. If that street was closed, there was no railway and the canning factory down here; certainly it would be a damage."

As touching upon the loss to the particular owner, as distinguished from the injury to the public, the statement of Lord Penzance in *Metropolitan Board of Works v. McCarthy* (1874), L.R. 7 H.L. 243, is in point: "The question then is, whether, when a highway is obstructed, the owners of those lands which are situated in a sufficient degree of proximity to it to be depreciated in value by the loss of that access along the highway which they previously enjoyed suffered especial damage 'more than'