

*Quære*, as to the jurisdiction of the Master in Chambers, under Rule 42, to make an order for service out of the jurisdiction of such a petition.

*Joseph Montgomery*, for the petitioners.

Mabee, J.]

[April 6,

RE RUTTAN AND DREIFUS AND CANADIAN NORTHERN R.W. Co.

*Railway—Expropriation of land—Valuation by arbitrators—Improvements—Fixtures placed on land by company before filing plan—Compensation for—Irregular entry—Railway Act.*

A railway company in 1900 entered upon lands and made valuable improvements intending to take and use the lands for the purpose of their railway. In 1905 they obtained authority to take the lands, and filed their plan under the Railway Act on the 23rd March, 1905. Arbitrators, in awarding compensation to be paid by the company for the lands, allowed to the claimants a sum for the improvements actually made by the company.

*Held*, that the company did not stand in the same position as an ordinary trespasser going upon lands; they had a statutory right to acquire a title, and entered after negotiation with the true owners, and with the permission of one who claimed to be but turned out not to be the true owner; although, the improvements were fixtures, dedication to the land owners was not to be presumed, but the contrary; and the amount of the award should be reduced by the sum allowed for the improvements.

Section 153 of the Railway Act, which provides that the date of the deposit of the plan shall be the date with reference to which the compensation or damages shall be ascertained, does not mean that all the company's improvements made before depositing the plan go to the land owner; the lands dealt with in this section are the lands as the company obtained them, in the condition they were at the time they entered, valued as of the date of filing the plan; the claimants' right to compensation accrued at the date the lands were taken, and stood "in the stead of the lands" by virtue of s. 173; and so the improvements were not put upon the lands of the claimants at all.

*W. H. Blake*, K.C., for railway company. *Ritchie*, K.C., for claimants.