

stances, be located or allotted at one or the other end of the block. In the present case the southern boundary of the block was a known and definite street line from which all but a few of the lots, each 25 feet in width and rectangular in shape, were numbered off in the original survey until near the southerly boundary of another street which ran obliquely along the north end of the block, leaving an area whose east and west boundaries were 88 and 132 feet in length respectively and which was subdivided into four lots of different sizes.

Held, that, in this case, the excess in question should be attributed or located to or amongst this last mentioned area, thus leaving all the rectangular lots as in the original survey.

Barry v. Desrosiers, 9 W.L.R. 633, followed.

Anderson, K.C., and *Garland*, for plaintiff. *Rothwell* and *Bergman*, for defendant.

Province of British Columbia.

COURT OF APPEAL.

Full Court.]

[Oct. 17.

McDONALD v. VANCOUVER, VICTORIA AND EASTERN RY. CO.

Railways—Right of way—Land acquired for or actually taken—Obligation of company to take lands—Railway Act (Dominion), secs. 158, 159, 160.

A railway company, in its acquirement of right of way, included inter alia land in which the plaintiff had a leasehold interest, but the right of way was at no time wholly upon the plaintiff's property, the greater portion being upon adjoining lands. The company, without proceeding to arbitration acquired the interest of the plaintiff's lessor, and built its road clear of but adjoining that portion of the indicated right of way over the land in which the plaintiff was interested. In an action to compel the company to acquire and pay for the right of way as indicated, the company contended that it could be compelled to pay for only that portion of the right of way which it actually took possession of, and Irving, H., at the trial dismissed that contention and held that the plaintiff was injuriously affected by the construction and operation of the railway.

Held, on appeal (MARTIN, J.A., dissenting), that the trial judge was right.