

Ass. App.]

MCCREA V. EASTON.

[Div. Ct.]

The Midland Railway Company appealed on various grounds against their assessment. In all their appeals they contended (1) that the value of the buildings upon the lands in the locality should be deducted from the total value before ascertaining the average value of the lands in the locality; (2) that the "lands in the locality" means the lands through which the railway actually passes; and (3) that the fences are part of the superstructure, and, as such, exempt.

*Biggar*, for the company.

*J. E. Farewell*, for the township of Thorah.

*E. C. Campbell*, for the township of Uxbridge.

DARTNELL, J.J.—Many such appeals as these in question must have come before the County Judges, but, as far as I am aware, there are but few reported cases, and these are all noted in a judgment of His Honor Judge Daniel in *Re The Canadian Pacific Ry.*, 18 C. L. J. 285.

I am asked to interpret the meaning of the words, "average value of land in the locality." I think the safest and best course, as well as the fairest for both Municipality and Company, will be to hold that these lands are those through which the Railway *actually* passes, and I will take the average value of these lands, "as rated on the assessment roll of the previous year," as forming a basis upon which the value of the roadway shall be determined. I cannot accede to the contention of the Company that the value of the buildings upon these lands is to be deducted from the assessed value as appears upon the roll. The words of the Act are, "as rated upon the Assessment Roll of the previous year." Now, there is no separate assessment of the lands, apart from the buildings, but both are assessed together as "lands." Without the material at hand upon the face of the Assessment Roll to determine the value of the land apart from the buildings erected thereon, an enquiry on this head in respect of every lot of land through which the Railway passes would be necessary. This would be, if not impracticable, at least interminable. I take it, under the Assessment Act, "land" includes all buildings erected thereon.

In the township of Uxbridge, the roadway, according to my view, is properly assessed, but the Court of Revision have separately assessed the Railway fences at the sum of \$2,884.

The Road-bed of the Railway occupies about 80 acres of land in the township. The Court of Revision assumes that a *farm* of this size would have on the average about 800 or 900 rods of fencing, whereas the Company have erected about 5,000 rods, and they are assessed for the excess.

I think they are improperly assessed, and that the fences are as much part of the superstructure as is the iron, ties, ballast, &c., which have been held to be exempt. The Company is bound to maintain these fences for all time to come. Unlike other adjoining owners, the Company is solely bound to erect and maintain their fences, and the owners of the adjacent lands have no interest therein, or any obligations in respect of their maintenance and repair. Being of opinion that the Railway is not assessable in respect of their fences. I allow the appeal in respect of the sum they have been assessed therefor.

#### FIFTH DIVISION COURT, LEEDS AND GRENVILLE.

MCCREA V. EASTON.

##### *Line Fences Act.*

In an appeal from the award of fence viewers to the County Judge in a case in which part of the land in one county, and the remaining part in another, *Held*, a case not provided for and no jurisdiction.

The facts were as follows:—The land of the appellant, McCrea, was lot 7 in Concession A, of the Township of Montague, in the County of Lanark; and that of the respondent, Easton, was the south-east quarter of lot 8 in the same concession, but was within the limits of the incorporated village of Merrickville, in the County of Grenville, one of the United Counties of Leeds and Grenville. The parties not being agreed as to a fence or fences, the respondent notified appellant that three fence viewers of Merrickville would arbitrate in the premises, and also notified the fence viewers. All parties attended, and an award was made. From such award the appellant appealed to the Judge of the County Court of said United Counties, who appointed the 28th of September, at Merrickville, for the hearing of the appeal; on which day, (day of sitting of Division Court),