

The easement is comparable to the right in question in *Dolan v. Baker* (1905), 10 O.L.R. 259.

What is to be valued is the property, in the owner's hands, subject to the restrictions or easements by which it is affected, though their discharge or the unlikelihood of their use or enforcement must be considered in ease of the loss: *Re Gibson and City of Toronto* (1913), 28 O.L.R. 20; *Corrie v. McDermott*, [1914] A.C. 1056.

By the combined effect of secs. 12 and 21 (c.) of the Act of incorporation and the provisions of the Dominion Railway Act of 1888 made part thereof by sec. 21, the company had power to take the appellant's land or to acquire an easement to carry its wires etc. across it. Upon giving a notice under sec. 146 of the general Act and securing an award, the company became entitled to possession of that which its notice covered and to exercise the consequent rights for which compensation must be given. The company had no power to bind itself and its successors not to exercise powers vested in it: *Ayr Harbour Trustees v. Oswald* (1883), 8 App. Cas. 623; *In re South Eastern R. W. Co. and Wiffin's Contract*, [1907] 2 Ch. 366.

The Court is not called on to determine what would be the effect of desistment and a new notice.

The award should not be interfered with on the ground that the arbitrators had no right to deal with the costs of the former arbitration, the award in which was set aside. The costs of the reference back were made by the order of the Court "costs in the arbitration." It must be understood that the statute, where applicable, must govern.

Order made setting aside the last award and referring the matter back again to be considered by the arbitrators upon the basis and from the standpoint now indicated. The evidence used before them on the two previous occasions may be used and supplemented in any way by the parties.

No costs of the appeal, the terms of the former order (as issued) referring the matter back having been misleading. Costs of the reference back now ordered to be in the discretion of the arbitrators in so far as they may not be governed by the statutory provision.