

## REPORTS AND NOTES OF CASES.

## Dominion of Canada.

## SUPREME COURT.

Ont.]

[Nov. 8, 1906.]

CITY OF HAMILTON v. HAMILTON DISTILLERY CO.

*Appeal—Action for declaration and injunction.*

The Act 60 & 61 Vict. 34 (d), relating to appeals from the Court of Appeal for Ontario does not authorize an appeal in an action claiming only a declaration that a municipal by-law is illegal and an injunction to restrain its enforcement.

A by-law providing for a special water rate from certain industries does not bring in question the taking of an annual or other rent, custom or other duty or fee under s. (d) of the Act.

*Blackstock, K.C., and Rose, for appellants. Shepley, K.C., and Bell, for respondents.*

Ex. Ct.]

DODGE v. THE KING.

[Nov. 15, 1906.]

*Expropriation of land—Payment—Market value—Potential value—Evidence.*

D. purchased at different times and in sixteen different parcels 623 acres of land, paying for the whole nearly \$7,000, or about \$11 per acre. The Crown, on expropriating the land, offered him \$20 per acre, which he refused, claiming \$22,000, which on a reference to ascertain the value was increased to \$45,000. The Referee allowed \$38,000, which the Exchequer Court reduced to the sum first claimed.

*Held*, reversing the judgment of the Exchequer Court, 10 Ex. C.R. 208, Girouard, J., dissenting, that there was no user of the land nor any special circumstances to make it worth more than the market value, which was established by the price for which it was sold shortly before expropriation.

D. claimed the larger price as potential value of the land for orchard purposes, to which he had intended to devote it.

*Held*, that as he had not proved the land to be fit for such