The judgment of the Court was read by MEREDITH, C.J.O., who said that as to the claim of the appellant for compensation for the part of the quarry taken and for the damage caused to the remainder, the arbitrators said in their award that, if they had jurisdiction to award compensation in that respect, the amount of their award should be increased by $4,860 and interest. The respondent company contended that the "quarry" consisted of minerals within the meaning of sec. 133 of the Ontario Railway Act, R.S.O. 1914 ch. 185, and the arbitrators had no jurisdiction to award compensation in respect of it, that jurisdiction being, by sec. 135, vested in the Ontario Railway and Municipal Board; and, if that contention was not well-founded, that the rock, being the ordinary rock of the district, had been fully compensated for in the allowance made by the award.

The learned Chief Justice said that he agreed that, if the rock of which the quarry was composed was a mineral within sec. 133, the respondent company had not expropriated it; and he would assume that, if it was a mineral, the arbitrators had no jurisdiction to award compensation in respect of it.

Reference to Great Western R.W. Co. v. Carpalla United China Clay Co. Limited, [1910] A.C. 83; North British R.W. Co. v. Budhill Coal and Sandstone Co., [1910] A.C. 116; Caledonian R.W. Co. v. Glenboig Union Fireclay Co., [1911] A.C. 290; Symington v. Caledonian R.W. Co., [1912] A.C. 87.

Section 133 of the Ontario Act is substantially the same as the corresponding provisions of the English and Scottish Acts; and the decisions in the cases cited are applicable to the interpretation of the Ontario enactment.

There was evidence before the arbitrators to shew that the stone in the quarry was a mineral within the meaning of the Act, and evidence to shew that it was not. The result of the evidence, and in effect the finding of the arbitrators who joined in the award, was that the McAllister quarry, so far as the rock composing it was concerned, was the same as others in the neighbourhood. It was a part of a geological formation which was widely spread at Guelph and in the surrounding district. This amounted to a finding that the evidence established that the rock in question was the ordinary rock of the district, and was therefore not a mineral within the meaning of the Act. The further findings of the arbitrators did not warrant the conclusion that the rock was a mineral.

The arbitrators did not assume to decide the question whether the rock was a mineral. They should have decided it; and the question now was, what course should be taken by the Court in