

CITY OF TORONTO AND LEAK.

fact of the filling in being done by one or the other, beyond the fair cost thereof. But the result of the two calculations given above shew a widely different result. They should not vary beyond the £500 cost of filling on either side. If done by the owner, he has not to pay the city for it; if done by the city, he is justly chargeable therewith.

In the one case above, where he does his own filling, he gets £700 from the city. In the other case, where the city spends the same amount in filling, and he spends nothing, the city gets only £300.

It seems to me that the right course is—the 100 feet of each lot being worth £500, the owner of each is credited with £200, the excess in value of the land taken over the land received. When he has done his own filling the city has no claim on him therefor. When he has not so done it, he is chargeable with the cost, less the £200 credit.

To adopt a different course would place the owner who had done his own filling at a vast advantage over his neighbour who had let the city do it for him. I am at a loss to understand the principle on which this can be allowed.

It is worthy of remark that in this fourth section, which directs what the arbitrators may find, the language used only provides for two events, one a general award in favour of the city, the other an assessment of the amount payable to the city for filling in.

The objection taken to the manner of execution of this award appears to me to be very serious. It is strongly urged on behalf of Leak that at the last meeting of the three arbitrators, on Friday, October 16th, they finally agreed (as it were) to disagree: that all items were discussed: that Manning, the dissenting arbitrator, was distinctly told of the amounts of compensation determined on by the other two, and that he expressed his clear dissent therefrom; and they parted on an understanding that they need not further discuss the matter.

Had this been so, and all the sums then discussed and agreed upon, and no substantial matter remaining undetermined, I think the authorities would uphold an award so made.

But after this meeting a formal request in writing was