

Action tried at Hamilton on 21st October, 1913.

Counsell, for the plaintiff.

Waddell, for the defendant.

HON. MR. JUSTICE MIDDLETON:—The plaintiff owns a block of land at the corner of Valley and Hunt streets, in the city of Hamilton. On the 29th January, 1912, by by-law 1242, the corporation passed an expropriation by-law purporting to take the greater portion of the plaintiff's land for municipal purposes, in connection with certain sewage works. In pursuance of this by-law, notice of expropriation was served on 8th July, 1912. On the 12th July, Guest served notice claiming compensation at the rate of \$5,000 per acre for lands taken and injuriously affected. A year later, on the 15th July, 1913, an amending by-law was passed, number 1492, providing for the expropriation of a much smaller portion of the plaintiff's lands; and pursuant to this a notice of expropriation was served on July 30th, along with a notice abandoning and withdrawing the former notice of expropriation. In the meantime, on the 20th June, 1913, Mr. Guest had obtained an appointment from the official arbitrator to proceed with the arbitration, returnable on the 7th July, which was enlarged until the 30th July; when the arbitrator refused to proceed with the arbitration under the earlier and cancelled notice.

The plaintiff in this action sues to recover \$29,250, being the value of the lands proposed to be taken under the original notice: 5.85 acres, at \$5,000 per acre; setting out the expropriation by-law, a notice given by the corporation contemporaneously offering \$2,040.50, as damages and compensation, his claim, \$5,000 per acre; and then alleging that the defendants proceeded with the construction of the work in question on or about the 3rd July, 1913, and entered upon and took possession of the plaintiff's property in the carrying out of the work.

At the trial it was proved that certain officers of the defendant corporation went upon the lands and constructed a small ditch a few yards long across the corner for the purpose of draining water which accumulated in an excavation being made on other lands in connection with the sewage disposal plant, to watercourse flowing from the lands in question. This work was done on the 3rd July, 1913, a year