

street, in the doing of which the damages claimed by a land-owner arose, was under sec. 90 of the Dominion Railway Act, 1888, and the rights of the parties in an arbitration to ascertain such damages were governed by the provisions of that Act.

And where the arbitrator awarded that the land-owner had suffered no damage :

*Held*, that having regard to the provisions of sec. 161, s-s. 2, no appeal lay from the award.

*Held*, also, that the arbitrator had no power to allow the land-owner "structural damages" caused to his buildings, or damages for "personal inconvenience" by reason of his means of access being interfered with.

*Ford v. Metropolitan R. W. Co.*, 17 Q.B.D. 12, distinguished as to the former kind of damages, and followed as to the latter.

*Bruce*, Q.C., for John Kerner.

*D'Arcy Tate*, for the railway company.

FERGUSON, J.]

CLARK v. VIRGO.

[Sept. 14]

*Costs—Taxation—Two defendants appearing by same solicitor—Appeal—Extension of time—Solicitor's mistake—Objections to taxation—Question of principle—Rules 1230, 1231.*

An action against two defendants, who defended by the same solicitor, was dismissed as against one with costs, and judgment was given for the plaintiff against the other with costs.

*Held*, that the successful defendant should on taxation be allowed the costs of services (if any) appertaining wholly to his own defence, and at most only a proportionate part of the cost of services appertaining to both defences, as in *Heighington v. Grant*, 1 Beav. 228.

Time for appealing from taxation extended, as a matter of discretion, where, by the mistake of the solicitor, the appeal was at first brought on in due time in the wrong forum, and after that, but too late, in the proper forum.

Where the principle on which the taxing officer acts is objected to, that is to say, his mode or method of proceeding in taxing the bill, it is not necessary for the party proposing to appeal to carry in written objections before the officer, as provided for by Rule 1230, to enable him to review his taxation, under Rule 1231.

• *D. L. McCarthy*, for the plaintiff.

*W. H. P. Clement*, for the defendant E. E. Virgo.

FERGUSON, J.]

IN RE BRODERICHT v. MERNER.

[September 15]

*Division Court—Garnishee plaint—Application to remove into High Court—Judgment against primary debtor only—R.S.O. c. 51., sec. 79.*

An application under s. 79 of the Division Courts Act, R.S.O. c. 51, to remove an action from a Division Court into the High Court, will not lie after judgment in the Division Court ; and this rule will be applied where the action