

The appellants are closing a road running through the respondent's farm and expropriating from his lands a new road running about parallel to the old one.

Upon the new road are about 40 to 45 apple trees, the land taken being slightly less than an acre. The arbitrators allowed \$600 for the trees taken and those damaged. . . .

The dispute appears to resolve itself into a valuation of the trees, having regard to their production and probable life. . . . The allowance made by the learned Judge is not so excessive that this Court can say that he is clearly wrong. . . . I think that no sufficient case has been made for disturbing the amount fixed by the order appealed from.

Nothing has been allowed by the arbitrators for damage by severance, their view apparently being that the value gained by the closing of the old road and the opening of the new one equalled or exceeded the damage. The damage to the owner, in this case a farmer, is very clearly detailed in the judgment appealed from.

The appellants' by-law No. 591, dated the 2nd June, 1913, recites the reason for closing the old Lake Shore Road through eight properties, and the expediency of stopping it up and selling it to the various property-owners in exchange for conveyances of the portions required for the new road, and payment of varying sums to each, and the taking of the necessary steps under the Municipal Act of 1903 for these purposes. The by-law then enacts the stopping up of the old road, the sale and conveyance of its various portions to the proprietors on each side of it for the aforesaid prices, together with the conveyances from them of the lands required for the new road.

By-law No. 593 was passed on the 23rd August, 1913, providing for taking the necessary lands, for arbitration in case of disagreement as to the purchase-money, and compensation for the damages suffered, the deposit of plans, and in the case of the respondent for the payment of \$400 and the conveyance to him of the old road. Notice pursuant thereto was duly served on him.

The Municipal Act of 1913 was assented to on the 6th May, 1913, and came into force in July, 1913; so that it applies to these arbitration proceedings. The provision for setting off the benefit against the damage and the injurious affection caused by the exercise of the powers of the corporation is in these words: "The corporation shall make due compensation . . . for the damages necessarily resulting therefrom, beyond any ad-