

SECOND DIVISIONAL COURT.

JUNE 25TH, 1920.

*RE TORONTO SUBURBAN R.W. CO. AND ROGERS.

Railway—Expropriation of Land—Ontario Railway Act, 1906—Date of "Taking"—Deposit of Plan of Location—Service of Notice of Expropriation—Registry Act—Plan of Subdivision—Sale of Lots—Rights of Purchaser—"Owner"—True Owner at Time of "Taking"—Compensation—Arbitration.

Appeal by the railway company from the judgment of MIDDLETON, J., 46 O.L.R. 201, 17 O.W.N. 108.

The appeal was heard by MAGEE, J.A., CLUTE, RIDDELL, SUTHERLAND, and MASTEN, JJ.

R. B. Henderson, for the appellants.

D. J. Coffey, for Ford and Roome, respondents.

J. M. Bullen, for Rogers, respondent.

CLUTE, J., read a judgment in which, after stating the facts, quoting from the judgment of Middleton, J., and referring to the cases therein cited, he said that counsel for the appellants contended that the decision was wrong, and that Rogers, the prior owner of the block in which Ford and Roome's lots were contained, was the only person with whom arbitration proceedings could or should be had, and that the holding of distinct arbitrations with the persons who became owners prior to expropriation was not the proper course and practice under the Act; and, therefore, the order directing arbitration with these claimants was erroneous.

These two purchasers, Ford and Roome, were, as held by Middleton, J., entitled to have the arbitration proceed to determine the compensation to be paid to them respectively, on the footing that the railway company had offered to them respectively the amounts mentioned in the schedule to the order of the 30th May, 1913—the value to be determined as of the date of service of the notice of expropriation.

Here, as in *Toronto Suburban R.W. Co v. Everson* (1917), 54 Can. S.C.R. 395, the Act of 1906, as amended by an Act of 1908, was the Act to be looked to, for the reason that the Act of 1913 came into force on the 1st July, 1913, and notice of expropriation was given on the 5th May, 1913. It was perfectly plain from the judgment in the *Everson* case that the Act of 1906, as amended, contemplated a valuation as of the date of the notice.

The appeal should be dismissed with costs.

MAGEE, J.A., agreed with CLUTE, J.