

involves taking the minerals, the right to compensation then and there arises. . . . I think . . . that the items of damage Nos. 2 and 6—\$73,886 and \$36,113—for minerals under the railway, must be struck out. . . .

As to the two remaining items under this head—No. 3, \$7,905, and No. 7, \$5,152—which are given for the shale in the slopes necessary to support the forty yards strip, but outside and beyond that strip and the railway line—these stand upon a different footing. For the reasons given in *London and North Western R.W. Co. v. Evans*, [1893] 1 Ch. 16, and *Howley Park Coal Co. v. London and North Western R.W. Co.*, [1911] 2 Ch. 97 (see particularly p. 130), *London and North Western R.W. Co. v. Howley Park Coal Co.*, [1913] A.C. 11, 107 L.T.R. 625, these should be allowed. These slopes are outside the area to which the statutory provisions which have been discussed apply, and as to these the railway company and the owners are relegated to their common law rights, which include a right to support, and that right must be paid for.

Upon item No. 1, \$53,870 for the taking of the 287 acres lying south of the present brickyard plant, there is, to my mind, great difficulty in arriving at the proper amount of damages. Two arbitrators concur in awarding this amount as the present value of \$100,000, while the other allows \$18,000. There is no doubt that this land is the natural outlet for the expansion of the works, and that its absorption by the railway company is a serious drawback to the owner's business. It has a peculiar value to him. . . . The majority of the arbitrators compute the value of this acreage by estimating how much the respondent could make out of the $2\frac{4}{5}$ acres used in connection with his main holding, the whole considered as one block of property, and allowing him the amount of such estimated profits of which he has suffered deprivation by the taking.

The allowance for loss of profits of trade appears to be entirely proper as coming within the proposition laid down as deducible from the cases cited in *Caledonian R.W. Co. v. Walker's Trustees*, by Lord Selborne, L.C., 7 App. Cas. 259, at p. 276, by reason of the taking directly affecting the land on which a trade has been carried on. It is justified by *Ripley v. Great Western R.W. Co.*, L.R. 10 Ch. 435; *Bailey v. Isle of Thanet R.W. Co.*, [1900] 1 Q.B. 722; *In re Mayor of Tynemouth and Duke of Northumberland*, 19 Times L.R. 603; *Paint v. The Queen*, 2 Ex. C.R. 149; *Marson v. Grand Trunk Pacific R.W. Co.*, 14 Can. Ry. Cas. 26; *Ford v. Metropolitan R.W. Co.*, 17 Q.B.D. 12; and by the cases of which *In re Gough and Aspatria*,