

FIRST DIVISIONAL COURT.

JUNE 12TH, 1917.

*RE COLEMAN AND TORONTO AND NIAGARA POWER CO.

Easement—Expropriation of Right to Place Poles, Wires, and Conduits for Conveyance of Electric Current upon Land—Compensation to Land-owner—Award—Notice of Expropriation—Acquisition of Larger Powers than actually Used—Damage or Depreciation Caused by—Act Incorporating Toronto and Niagara Power Company, 2 Edw. VII. (D.) ch. 107, secs. 12, 21 (c.)—Power of Company to Bind itself and Successors not to Exercise Powers Vested in it—Reference back to Arbitrators—Costs.

Appeal by A. B. Coleman, the land-owner, from a majority award of \$2,500, being an increase of \$137.50 over a former award, the matter in question being the compensation to be paid to the appellant by the company in respect of an easement expropriated by the company under the powers conferred by its Act of incorporation, 2 Edw. VII. (D.) ch. 107, sec. 21 (c.)

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, J.J.A.

I. F. Hellmuth, K.C., for the appellant.

D. L. McCarthy, K.C., for the respondent company.

The judgment of the Court was read by HODGINS, J.A., who said that the amount originally allowed was based upon the damage by the then existing state of affairs; but it was, on appeal from the first award, decided that the land-owner could urge before the arbitrators that he was to be paid in addition for all the damage caused to him by the power given to the company, whether it had in fact exercised it or not, provided the company's notice covered the user. An order was made referring the matter back to the arbitrators. Upon the reference back, the majority of the arbitrators fell into the error of deciding that what they had to determine was, what additional detriment was caused to the appellant's property by the possible, though improbable, exercise of the unused powers of the company to string wires lower down than at present. What was really in issue was the damage or depreciation caused by reason of the possession and potential use by the company of that and its other powers.