

by reason of his remaining lands being injuriously affected by the contestants taking and using the  $4\frac{1}{2}$  acres . . .

I am unable to discover any principle upon which such a large amount has been arrived at . . .

It would have been more satisfactory if, in making their award, the arbitrators had adopted the convenient, if not the usual, course of stating on its face the amount allowed as the value of the lands actually taken, and the amount awarded as compensation for damage to the residue of the claimant's lands. Section 198 of the Railway Act defines the elements to be considered. . . .

The principle on which the inquiry as to the compensation, when some land is taken and some injuriously affected, should be proceeded with, is, to ascertain the value to the claimant of his property before the taking . . . and its value after the part has been taken, having regard, of course, to all the directions of sec. 198 of the Railway Act, and deduct the one sum from the other: *James v. Ontario and Quebec R. W. Co.*, 12 O. R. 624, 15 A. R. 1. . . .

In my opinion, a sum of \$20,000 as compensation for the value of the land and buildings and trees, and for all the inconveniences and damages by reason of the taking thereof, is an ample and sufficient, if not liberal, allowance. And I think the award should be reduced to that sum. . . .

The remaining question is as to the allowance of interest upon the amount awarded. The point was not mooted until the argument of the appeal. It appears . . . that the contestants took possession of the land . . . on or about the 13th October, 1905; and the arbitrators have awarded interest from that day. It was urged that the effect of sec. 153 (2) of 3 Edw. VII. ch. 58, now sec. 192 (2) of the Railway Act, is to restrict the jurisdiction of the arbitrators to the allowance of interest, if any, to the date of depositing the plan, profile, and book of reference.

My view of the object of the sub-section is, that it was enacted for the purpose of fixing the time as of which the value and damage are to be ascertained. The question of interest is not dealt with in terms, and there is nothing in the words to interfere with the operation of the general law which, as between vendor and purchaser, fixes the time at which interest commences as that at which the purchaser takes or may safely take possession. The contestants having served a notice of intention to take the land, the parties thereafter stood to one another in the position of quasi vendor and purchaser. The taking of possession, whether by consent or otherwise, should, in the absence of anything further,