

SEPTEMBER 25TH, 1913.

RE KETCHESON AND CANADIAN NORTHERN
ONTARIO R.W. CO.

Railway—Expropriation of Land—Compensation—Award—Basis of—Loss by Inconvenience—Capitalisation—General Evidence as to Amount of Loss—Opinions of Witnesses—Substantial Agreement—Doubt as to Independence of Testimony—Interest—Costs—Irrelevant Evidence.

Appeal by the railway company from an award of arbitrators fixing the compensation of the claimants in respect of parts of a farm taken for the railway at \$3,328.

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

W. C. Mikel, K.C., for the company.

I. F. Hellmuth, K.C., and E. G. Porter, K.C., for the claimants.

The judgment of the Court was delivered by HODGINS, J.A.:—A great deal of strong, and, to my mind, justifiable, criticism was directed by Mr. Mikel against the basis of the award, shewn in the reasons given by a majority of the arbitrators. In several cases the estimated time lost and the amounts fixed are excessive, and no allowance appears to have been made for the fact that the work of the farm will, after a time, get back into more or less normal channels, and the present inconvenience will be largely minimised. Even the cattle-passes and the drainage can and will inevitably be put right by a comparatively small capital expenditure which will prevent the danger and difficulty sworn to. Apart from that, the method of the capitalisation of the yearly loss is hard to take seriously, if it is an endeavour to ascertain the present value of items distributed over many years to come and subject to many contingencies.

A majority of the arbitrators have taken the total loss by inconvenience, etc., at \$151.85 per annum, and have allowed a sum as damages which will produce for all time that annual amount. If the award had to be dealt with in these aspects alone, it could not, in my judgment, be supported. Most of the elements which these items represent have been held to be proper to be considered in arriving at compensation in similar cases (e.g., *Re Davies and James Bay R.W. Co.*, 20 O.L.R. 534),