

lands taken and to lands injuriously affected, is defined so as to enable the land-owner, as well as the company, to take, or to cause to be taken, in all cases, the necessary steps for that purpose. But in the Quebec Act of 1880, this is not so.

That Act throws upon the company, in all cases, the obligation of depositing maps and plans, and, till these are deposited, the railway is not to be proceeded with. Of this, when it is done, notice must be given in certain newspapers, and then, after one month, the company (under sect. 9, sub-sect. 11) may apply to the owners of lands or to parties empowered to sell lands, "or interested in lands which may suffer damage from the taking of materials or the exercise of any of the powers granted to the railway;" and thereupon agreements may be made between them "touching the said lands, or the compensation to be paid for the same, or for the damages, or as to the mode in which such compensation shall be ascertained;" and if the parties differ, then all questions which arise between them shall be settled, as provided in the following sub-sections of clause 9.

Of these, it is only necessary to refer to four: the first of which (sub-sec. 12) provides, that the deposit of the map and plans shall be deemed a general notice to all parties of the lands which will be required for the railway and works; the second (sub-sec. 13), that a special notice, to be served upon the land owner, shall contain an offer on the part of the company of what they deem a fair compensation "for such lands, or for such damages," and the nomination of an arbitrator to act for the company, if the offer is not accepted; and such notice is to be accompanied by the certificate of a sworn surveyor of the Province that the sum offered is, in his opinion, a fair remuneration for the land and for the damages caused. Then follow clauses regulating the procedure by arbitration, when the company's offer has been made and is not accepted, and enabling the arbitrators to award a sum of money or annual rent. Then comes sub-sec. 28; providing that "upon payment or legal tender of the compensation or annual rent awarded or agreed upon to the party en-

"titled to receive the same, or upon the deposit in Court of the amount of such compensation in the manner after mentioned, the award or agreement shall vest in the company the power forthwith to take possession of the lands, or to exercise the right, or to do the thing, for which such compensation or annual rent has been awarded or agreed upon;" with power for a Judge to give effect to the right so vested in the company, in case of resistance or forcible opposition.

These provisions all depend upon the original notice required to be given by the company; and the landowner is not expressly authorized to take any step himself in default of the proper procedure by the company, except (by sub-sec. 37) in three specified cases, which do not include the simple case of damage to land not taken or used, by the exercise of the powers granted to the company. That sub-section is in these words:—"If the company has taken possession of any land, or performs any work thereon, or has removed materials therefrom, without the amount of compensation having been agreed upon or determined by arbitration, the owner of the land, or his representative, may himself cause the valuation of the land, or of the materials taken, to be made, without prejudice to other legal recourse, if possession has been taken without his consent."

Upon consideration of these provisions, their Lordships think it clear that no authority was given, or intended to be given, to the Railway Company to exercise its powers in such a manner as to inflict substantial damage upon land not taken, without compensation.

The appellant company, although its maps and plans were duly deposited, never made the application to the respondents contemplated and authorized by section 9, sub-section 11, and never gave them any notice, or made them any offer, or named an arbitrator, as required by sub-section 13. No compensation for the damage done to the respondents' land was awarded or agreed upon, and (of course) no payment, tender, or deposit of such compensation was made.

The effect of provisions similar to those of