

MACMAHON, J.

AUGUST 2ND, 1902.

WEEKLY COURT.

RE MEDLER AND CITY OF TORONTO.

Arbitration and Award—Appeal from—Costs—Closing of Street—Railways—55 Vict. ch. 90, sec. 2 — 56 Vict. ch. 48.

Appeal by Medler and Arnot from an award of arbitrators and cross-appeal by the city of Toronto as to allowance of \$100 damages. Appellants allege that their lands on Berkeley street, Toronto, have been injured by the laying of tracks for shunting purposes, and by the closing of Berkeley street pursuant to tripartite agreement between the city, the Grand Trunk and Canadian Pacific Railway Companies, and ratified by 55 Vict. ch. 90, sec. 2.

J. M. Reeve, K.C., for plaintiff.

J. S. Fullerton, K.C., for defendants.

MACMAHON, J., held that the city cannot be held liable in damages, because prior to the tripartite agreement the Railway Committee of the Privy Council had granted, February 23rd, 1892, leave to the railway companies to construct their lines along Mill, Parliament, and Berkeley streets, and permitted a deviation of Berkeley street, and this leave had been ratified by 56 Vict. ch. 48; nor does sec. 2 of the former Act make the city liable because the injury complained of is not within the meaning, as a liability could only arise where some person's lands are injuriously affected, and here they are not, the injury not being to the land but consisting in personal inconvenience to the owners: *Caledonian v. Ogilvie*, 2 Macq. 229; *Beckett's case*, L. R. 3 C. P. at p. 94; *Powell v. Toronto H. & B. R. W. Co.*, 25 A. R. 209. Appellants are not entitled to damages by reason of loss from filling in the lots south of the new windmill line, because they have no title to the water lots in question; they are not entitled to damages for the closing of Berkeley street because their lands do not abut thereon: *Falls v. Tilsonburg*, 23 C. P. 167. Held, also, that the arbitrator had no discretion to direct the costs, including stenographer's fees, to be paid by the city. Appeal dismissed with costs and cross-appeal allowed.

AUGUST 6TH, 1902.

DIVISIONAL COURT.

CROSBY v. BALL.

Life Insurance—Disposition of Moneys between Two Wives both Living—"Dependent"—Judgment ex Aequo et Bono.

Appeal by plaintiff from judgment of BOYD, C., in defendant's favour as to who, as between plaintiff and defendant,