

Ont.]

[Feb. 6.]

TORONTO SUBURBAN RAILWAY CO. V. EVERSON.

Expropriation—Railways—Date of valuation of lands—Deposit of plan—Notice—Benefit to lands not taken—Set-off—Excessive compensation—Appeal—6 Edw. VII., c. 36 (Ont.)—3 & 4 Geo. V., c. 36 (Ont.)

Where the expropriation of land is governed by the provisions of the Ontario "Railway Act" of 1906, the date for valuation is that of the notice required by sec. 68 (1). It is the same under the Act of 1913, if the land has not been acquired by the railway company within one year from the date of filing the plan, etc. The compensation for the land expropriated should not be diminished by an allowance for benefit by reason of the railway to the lands not taken, the Ontario "Railway Acts" making no provision therefor.

On appeal in a matter of expropriation the award should be treated as the judgment of a subordinate Court subject to rehearing. The amount awarded should not be interfered with unless the Appeal Court is satisfied that it is clearly wrong, that it does not represent the honest opinion of the arbitrators, or that their basis of valuation was erroneous.

Where the land expropriated is an important and useful part of one holding and is so connected with the remainder that the owner is hampered in the use or disposal thereof by the severance, he is entitled to compensation for the consequential injury to the part not taken. *Holditch v. Canadian Northern Railway Co.* (50 Can. S.C.R. 265; (1915) A.C. 536) distinguished.

To estimate the compensation for lands expropriated, the arbitrators are justified in basing it on a subdivision of the property if its situation and the evidence respecting it shew that the same is probable.

Held, per Fitzpatrick, C.J., and Anglin, J., that to prove the value of the lands expropriated, evidence of sales between the date of filing the plans and that of the notice to the owner is admissible and also of sales subsequent to the latter date if it is proved that no material change has taken place in the interval.

Brodeur, J., dissenting, held that the damages should be reduced; that the arbitrators should have considered only the market value of the lands established by evidence of recent sales in the vicinity.

Appeal dismissed with costs.

R. B. Henderson and *O'Connor*, for appellants. *Tilley, K.C.*, for respondent. •