
REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

N.S.]

BURT v. CITY OF SYDNEY.

[May 18.]

Right of action—Protection of railway crossings—Construction of subway—Order in council—Apportionment of cost—Land damages—Injurious affection—Nova Scotia Railway Act, R.S.N.S. (1900), ss. 178 and 179.

In the City of Sydney the Dominion Iron & Steel Co. and the Dominion Coal Co. owned railways passing along a public highway and intersected by the tracks of the Cape Breton Electric Ry. Co. Under the provisions of secs. 178 and 179 of the Railway Act (R.S.N.S. (1900), ch. 99) an order in council was passed directing that the highway be carried under the said railway tracks, the Dominion Iron & Steel Co. to execute the work and the cost to be paid in a specific proportion by the city and the three companies and "that all the land damages be paid by the City of Sydney." B. owned land opposite the railway tracks and by the construction of the subway the sidewalk in front thereof was narrowed and altered and access to it changed. Claiming that his property was greatly depreciated in value thereby he brought an action against the City of Sydney for compensation therefor.

Held, that the "land damages" which the city was to pay would include damages for injurious affection such as B. claimed. But

Held, Fitzpatrick, C.J., and Idington, J., dissenting, that the city was not liable for such damages, B.'s only recourse being against the company which executed the work.

Judgment of the Supreme Court of Nova Scotia (47 N.S. Rep. 480) affirmed, Fitzpatrick, C.J., and Idington, J., dissenting.

Appeal dismissed with costs.

Mellish, K.C., for appellant. Findlay McDonald, for respondent.