

4. *Appeal from award—Review of facts.*

The appellate court, on an appeal from an award in eminent domain proceedings, should come to its own conclusion upon all the evidence, paying due regard to the award and findings and reviewing them as it would those of a subordinate court: *James Bay R. Co. v. Armstrong*, [1909] A.C. 624, referred to.

On an appeal from an award, the latter will not be set aside merely because the appellate court disagrees with the reasoning of the arbitrators, but will stand if it can be supported on any ground sufficient in law.

5. *Evidence—Relevancy—Similar facts.*

Evidence of settlements made by the railway with other persons for parts of other farms taken for the right-of-way is not relevant in expropriation proceedings under the Railway Act (Can.).

6. *Evidence—Declarations and acts of party—Payments in other cases of expropriation—Fixing values.*

The fact that one party to the issue presented on an arbitration is allowed to give evidence of a class which is not relevant, does not entitle the opposing party to answer with the same kind of irrelevant testimony; and the opposing party, although successful in the issue is properly refused costs of his irrelevant evidence: *R. v. Cargill*, [1913] 2 K.B. 271, applied.

W. C. Vikel, K.C., for company. *I. F. Hellmuth*, K.C., and *E. G. Porter*, K.C., for claimants.

Meredith, C.J.O., MacLaren, Magee,
Hodgins, J.J.A.]

[13 D.L.R. 884.

EGAN v. TOWNSHIP OF SALTFLEET.

Highways—Defects—Injury to traveller—Liability—Notice of injury.

In the absence of a reasonable excuse for the plaintiff's failure to give to a municipality notice of injuries sustained on a defective highway, in the manner required by sec. 606 (3) of the Ontario Consolidated Municipal Act, 1903, R.S.O. 1914, ch. 192, the want of notice, although not prejudicial to the municipality, is a full defence to an action for damages.