

NOVEMBER 27TH, 1914.

RE NEAL AND TOWN OF PORT HOPE.

Municipal Corporation—Closing of Street—Injury to Neighbouring Lands—Compensation—Award—Amount of—Appeal—Value of Property Dependent upon Existence of Access by Closed Street.

Appeal by the Corporation of the Town of Port Hope from the order of KELLY, J., 6 O.W.N. 701, dismissing the corporation's appeal from an award of two of three arbitrators appointed to fix the amount of money to be paid by the corporation as compensation for injury to the lands of E. B. Neal and Eliza Jane Neal by the closing of Hope street, in the town of Port Hope. The two arbitrators awarded the respondents \$900. The arbitration and award were under the Municipal Act.

The appeal was heard by MEREDITH, C.J.O., FALCONBRIDGE, C.J.K.B., MAGEE and HODGINS, J.J.A.

Grayson Smith, for the appellant corporation.

W. F. Kerr, for the respondents.

The judgment of the Court was delivered by HODGINS, J.A.:—Since the argument, there has been filed a statement by the arbitrators who joined in making the award, that they fixed the compensation awarded, not on the basis of the depreciation of the lots for the purpose for which they were used, but on the basis of the value of the property, irrespective of the particular use which may be made of it, being so dependent upon the existence of access by Hope street as to be substantially diminished by its obstruction.

It was determined upon the argument that the amount awarded was not excessive, provided the arbitrators had arrived at it upon a proper basis. The above memorandum shews that no exception can be taken to the principle adopted.

In *re Tate and City of Toronto* (1905), 10 O.L.R. 651, and *Re Taylor and Village of Belle River* (1910), 1 O.W.N. 608, 15 O.W.R. 733, decide that the closing of a portion of the street at a distance from where the property in question actually abuts upon it, may give rise to damages when the value of the property is affected.

It was argued that *The King v. MacArthur* (1904), 34 S.C.R.