

RIDDELL, J., delivering judgment, said that evidence was given of the amount by which the damages would be diminished or the present value of the farm increased by the addition thereto of the land expropriated but now useless to the company—the least sum being \$750.

The general principle followed by the arbitrators, as stated, was sound: *James v. Ontario and Quebec R.W. Co.* (1886-8), 12 O.R. 624, 15 A.R. 1.

In estimating the value of land, it is the pecuniary or commercial value that must be considered; and, in determining this, all potentialities must be considered and contingencies taken into account: *Re Macpherson and City of Toronto* (1895), 26 O.R. 558, 565; *In re Cavanagh and Canada Atlantic R.W. Co.* (1907), 14 O.L.R. 523; and there can be no reason why this should not be done in estimating the value after as well as before expropriation.

The Court does not decide that the railway company have the right to compel the owner to accept a reconveyance and take back the property—the effect of the readiness of the railway company to reconvey is considered only on the point of the value of the property being thereby increased commercially.

It was clear from the evidence that if a deed were accepted the land remaining to the owner would be worth \$750 (at least) more than it otherwise would be. This element had been disregarded by the arbitrators. The amount of the award should be diminished by \$750—the railway company to tender the deed again to the owner.

Success being divided, there should be no costs of the appeal.

FALCONBRIDGE, C.J.K.B., concurred.

LATCHFORD and KELLY, JJ., agreed in the result.

Appeal allowed in part; no costs.

NOVEMBER 16TH, 1915.

POWELL LUMBER AND DOOR CO. LIMITED v. GILDAY.

Mechanics' Liens—Claims of Wage-earners and Material-men—Building Contract—Amount Due by Owner to Contractor—Claim for Extras—Amount Required to Complete Building after Dismissal of Contractor—Report of Referee—Variation on Appeal—Costs.

Appeal by the defendant Graham from the report of an