

QUEEN v. VEZINA.

Expropriation of land—Damages—Injurious affecting land taken—R.S.C., c. 39, sec. 3, subsec. E—Farm crossings—R.S.C., c. 38, s. 16.

A certain quantity of land belonging to V. was expropriated for the purposes of the Intercolonial Railway; 448 arpents for the track, and 277 $\frac{1}{2}$ arpents for a borrowing pit whence gravel for ballast is taken. V. made a claim before the Exchequer Court for the land taken and for injury by the severance of his farm, and damages. The judge in the Exchequer allowed \$100 per arpent for all the land taken.

On appeal to the Supreme Court,

Held, affirming the judgment of the Exchequer, that the land taken for the gravel, as ballast, there being no other market for the gravel, had been properly estimated at \$100 per arpent as farm land.

In addition to the value of the land taken, the learned judge of the Exchequer Court allowed for depreciation of the remainder one-third of its value, excluding the damages resulting to a portion of the land from the operation of the railway. On appeal it was

Held, reversing the judgment of the Exchequer Court, GWYNNE, J., dissenting, (1) that the words "compensation to be paid for any damages sustained by reason of anything done under and by authority of R.S.C., c. 39, sec. 3, subsec. E., or any other Act respecting public works or government railways," include damages resulting to the land from the operation as well as from the building of the railway.

(2) That the right to have a farm crossing over government railways is not a statutory right, and that in awarding the damages the learned judge should have granted full compensation for the future as well as for the past for the want of a farm crossing. R.S.C., c. 38, sec. 16.

GWYNNE, JJ., dissenting.

Appeal allowed with costs.

Belleau for appellant.

Angers for respondent.

[April 30.

KEARNEY v. THE QUEEN.

Expropriation of land—Severance—Damages.

On the hearing of a claim referred to the Exchequer Court by the Minister of Railways, for compensation to the claimant for land taken

by the Crown for railway purposes, the learned judge awarded a certain sum for the value of the land so taken, and a further amount as damages for the severance from land not taken in lieu of a crossing. There was evidence that the claimant made money by selling ballast and seaweed for manure and collecting driftwood for fuel on the remaining land.

Held, GWYNNE, J., dissenting, that as the sum allowed for the severance did not include future damage, and the evidence showed that the consequences of the severance would remain even if a crossing was made, the amount of compensation should be increased.

Appeal allowed.

J. T. Wallace for appellant.

W. D. Hogg for the respondent.

GUAY v. THE QUEEN.

Appeal from the Exchequer Court—Expropriation for government railway purposes—Severance of land—Farm crossings—Compensation.

Where the land expropriated for Government railway purposes, severs a farm, although the owner is not entitled to a farm crossing apart from contract, he is entitled to full compensation covering the future as well as the past for the depreciation of his land by the want of such a crossing; and as it does not appear by the judgment appealed from that full compensation has been awarded, the damages assessed by the judge of the Exchequer Court should be increased by \$100.

GWYNNE, J., dissenting.

Appeal allowed with costs.

Belleau for appellant.

Angers for respondent.

SUPREME COURT OF JUDICATURE
FOR ONTARIO.

COURT OF APPEAL.

[June 29.

WEAVER v. SAWYER & CO.

Appeal—County Court—Action tried with jury—R.S.O., c. 47, secs. 41, 42.

When a case in the County Court has been tried by a jury, the only appeal given by R.S.O., c. 47, s. 41, direct to the Court of Appeal from