
REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

Ont.]

[February 22.

TOWN OF BERLIN v. BERLIN & WATERLOO STREET RY. CO.

Street railway—Franchise—Assumption by municipality—Valuation—Operation in two municipalities—Compulsory taking
—R.S.O. (1897), c. 208, s. 41.

By s. 41 of R.S.O. (1897), c. 208, a municipal corporation which has given a franchise to a street railway company, may, at the expiration thereof, on giving six months' previous notice, assume the ownership of the railway, and all its real and personal property on payment of the value thereof to be determined by arbitration.

The town of Berlin assumed the ownership of the Berlin & Waterloo Street Railway Co., and the latter appealed from the award of arbitrators fixing the value of their railway.

Held, reversing the judgment of the Court of Appeal (19 Ont. L.R. 57), that the proper mode of determining the value of the "railway and all real and personal property in connection therewith," was not by capitalizing its net permanent revenue, but by estimating its value as a railway in use and capable of being operated, excluding compensation for loss of its franchise.

Held, also, that the company was not entitled to compensation for loss of its privilege of operating the railway in the municipality of Waterloo.

On the expiration of the franchise the company executed an agreement extending for two months, the time for assumption by the municipality, but did not relinquish possession until six months more had expired. Shortly before it was taken over by the municipality an Act of the legislature was passed reciting all the circumstances, ratifying and confirming the agreement for extension of time, and authorizing the municipality to take possession on payment of the award subject to any variation in the amount by the courts.

Held, that though this Act did not expressly provide for taking possession on the same footing as if it had been done immedi-