

No land was taken by the company; no way of access was interfered with; no evidence of injury to the land itself by vibration or the like, was offered.

The ground of complaint in respect of which damages were sought, is put by Mr. Bell, the dissenting arbitrator, as follows: "Though the owner made no use of the Hunter street front before the railway, she was at liberty to do so at any time, and a high class residence such as the owner's would be depreciated by the disfigurement of any of the three streets. In this case there was a verandah on the Hunter street front for the use of the occupants of the dwelling."

Mr. Snider, Judge of the County Court of the county of Wentworth, one of the arbitrators, states the facts, and says: "It is, therefore, not the cutting they have done that does injury, but the cutting they have not done; the fact that they have left the south side, some eighteen feet of it in width, at or near the old and higher level, makes the street unsightly, though the rise from one level to the other is so well-sloped as to do away with any real danger or inconvenience. If the lots at the rear of the property in question were fronting on Hunter street, the unusual appearance of this structural peculiarity would injure their selling value, in my opinion."

Upon this state of facts, I cannot distinguish the case in question in principle from that of *Powell v. Toronto, Hamilton and Buffalo R. W. Co.*, 25 A. R. 209.

It was urged upon me that the decision in that case did not overrule the case of *Re Birely and Toronto, Hamilton and Buffalo R. W. Co.*, 28 O. R. 468. That case is referred to by Mr. Justice Osler as follows: "I do not dwell upon the decision in the case of *Birely v. Toronto, Hamilton and Buffalo R. W. Co.*, 28 O. R. 468, because although damages appear to have been awarded there in respect of the operation of the railway, the nature of such damages is not disclosed by the report."

That learned Judge was apparently of the opinion that damage might arise from the operation of the railway which would cause actual injury or damage to the land, and be the subject of compensation; but the case before him did not call for any decision of that question, nor does this case now before me, the claim, as I have pointed out, for compensation being for injury to the land arising from what may be called a sentimental grievance, namely, an unsightly road or way adjoining the land on Hunter street.

However hard the case may be for the land owner here, I am unable to find any principle of law upon which I can interfere, and the appeal must be dismissed with costs.