

Sup Ct.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

that the arbitrators took the matter of the crossing into consideration in making their award. The amount of the award was less than the sum offered by the company, and both parties claimed to be entitled to the costs of the arbitration, the company because the award was less than their offer, and the owner because the value of the crossing was included in the sum awarded, which would make it greater than the offer.

Held, affirming the judgment of the Court of Appeal (GWYNNE, J., dissenting), that under the circumstances neither party was entitled to costs.

Appeal dismissed with costs.

Blackstock, for appellant.

McMichael, Q.C., for respondent.

HOBBS ET AL. (Plaintiffs), Appellants, AND
NORTHERN ASSURANCE COMPANY (De-
fendants), Respondents.

SAME (Plaintiffs) Appellants, AND GUARD-
IAN FIRE AND LIFE ASSURANCE COM-
PANY (Defendants), Respondents.

*Fire Insurance—Condition in policy—Loss by
explosion—Loss by fire caused by explosion—
Exemption from liability.*

Appeal from the Court of Appeal for Ontario.

A policy of insurance against fire contained a condition that "the company will make good loss caused by the explosion of coal gas in a building not forming part of gas works, and loss by fire caused by any other explosion or by lightning."

A loss occurred by the dropping of a match into a keg of gunpowder on the premises insured, the damage being partly occasioned by the explosion of the gunpowder, and partly by the gunpowder setting fire to the stock insured. The company admitted their liability for the damage caused by fire, but not for that caused by the explosion.

Held, reversing the decision of the Court of Appeal, 11 Ont. App. R. 741, TASCHEREAU, J., *debuitante*, that the company were not exempt by the condition in the policy from liability for damage caused by the explosion.

Appeal allowed with costs.

Gibbons, for the appellants.

Marsh, for the respondents.

CHANCERY DIVISION.

Boyd, C.]

[January 20.]

RE TRENT VALLEY CANAL.

RE WATER STREET AND THE ROAD TO
THE WHARF.

*Public works—Expropriation—Compensation—
Ownership of roads—Soil vested in Crown—
Parties.*

Certain lands on which were two roads called "Water Street" and "The Road to the Wharf," being required for public works, were expropriated by the Dominion Government, and the compensation therefor was claimed by the corporation of the village in which the roads were and by one R. C. S., through or over whose lands the roads ran. It appeared that roads were established as public highways by the municipal authorities by by-law in the years 1842 and 1845 respectively, under 4 & 5 Vict. c. 10, ss. 39 & 51, although no compensation was paid to the owners therefor.

Held, that although originally the soil and freehold of the roads or streets may have remained in the private owner subject to the public easement (the right of user) since the year 1858 at all events it became vested in the Crown by virtue of 22 Vict. c. 99, s. 301, and that the Attorney General of Ontario should be added as a party to give protection to the Dominion in expropriating the land.

The Master's findings were therefore overruled.

McCarthy, Q.C., and *Barron*, for R. C. Smith.

G. T. Blackstock, and *Moore*, for the corporation of Fenelon Falls.

C. Robinson, Q.C., and *Nelson*, for the Dominion Government.

McMichael, and *Creskman*, for mortgagees.

Proudfoot, J.]

[March 6.]

IN RE MELVILLE.

*Sale subject to a condition—Breach of condition—
Will—Devise—Possibility—R. S. O. c. 106, s. 2
Right of entry for condition broken—Valid con-
dition of re-entry—Heirs-at-law—Devise.*

On Sept. 26, 1844, J. LeB. by deed bargained and sold, etc., to the municipal council of D. District, in consideration of five shillings, a