WILLIAM LEAK.....APPELLANT, 1900

AND *April 21.

THE CORPORATION OF THE CITY OF TORONTO.....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Expropriation of land—Lands injuriously affected—Damages—Interest—Award.

If in the construction of a public work land of a private owner is injuriously affected and the compensation therefor is determined by arbitration, interest cannot be allowed by the arbitrator on the amount of damages awarded.

APPEAL from a decision of the Court of Appeal for Ontario (1) reversing the judgment of the Divisional Court (2) in favour of the appellant.

In 1891 the City of Toronto passed a by-law authorising the construction of iron and steel bridges over the railway track crossing, Dundas street. For the purposes of such construction certain lands were expropriated, and the land of the appellant, Leak, affected by his being deprived of access thereto. A County Court Judge was appointed arbitrator between the city and land owners, and by his award he allowed Leak over $8,000 for injury to his land, with interest from the date on which the by-law was passed. The city appealed to a judge in chambers who sent the award back to the arbitrator with a direction that it should state whether or not any land of Leak's had been taken, and if not that he was not entitled to interest. The arbitrator then amended his award by

*PRESENT:—Sir Henry Strong C. J., and Taschereau, Gwynne, Sedgewick and King JJ.

(1) 26 Ont. App. R. 351. (2) 29 O. R. 685.

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striking out the interest. The claimant appealed to the Chancellor who affirmed the amended award, and he then appealed to the Divisional Court which overruled the arbitrator's amendment and allowed interest. This judgment in its turn was reversed by the Court of Appeal and the Chancellor's judgment restored. The claimant then appealed to this court.

Du Vernet for the appellant. There is no statutory provision prohibiting the granting of interest in a case like this, and without it the appellant will not be fully compensated. See *North Shore Railway Co.* v. *Pion* (1); *Corporation of Parkdale* v. *West* (2); *Bell* v. *Corporation of Quebec* (3); Lewis on Eminent Domain, sec. 499.

Fullerton Q.C. and *Chisholm* for the respondent, were not called upon.

The judgment of the court was delivered by:

THE CHIEF JUSTICE: (Oral).—We need not call upon counsel for the respondents, as we are all of opinion that this claim for interest cannot be maintained. The question has been very ably and forcibly argued by the appellant's counsel, who has said everything which could possibly be said bearing on the point, but we think there is no ground whatever for the appeal. Interest is not given by any statute, and the whole analogy of the common law is against it. Nobody ever heard of a jury, in an action claiming damages for a tort, being told that after ascertaining the amount of the damages suffered they should calculate the interest thereon. Such a direction would be not only wrong but grossly wrong.

(1) 14 App. Cas. 612. (2) 12 App. Cas. 602.
(3) 5 App. Cas. 84.

The judges of the Court of Appeal have gone very fully into this question, and we agree with what they have said.

The appeal must, therefore, be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Du Vernet & Jones.*

Solicitor for the respondent: *Thomas Caswell.*