

TEETZEL, J.

JULY 7TH, 1906.

TRIAL.

CANADIAN PACIFIC R. W. CO. v. GRAND TRUNK
R. W. CO.

Specific Performance—Contract to Divide Specified Land to be Acquired by Defendants — Acquisition by Defendants of Part only—Claim of Plaintiffs to Half of Land Actually Acquired—Right to Less than Half with Abatement in Price.

Action for specific performance of an agreement to divide certain lands.

E. D. Armour, K.C., for plaintiffs.

M. K. Cowan, K.C., for defendants.

TEETZEL, J.:—In 1901 the Ontario government was proposing to sell a tract of land lying between the tracks of plaintiffs' and defendants' railways and east of Pacific avenue in the city of Toronto. The situation of the property made it of special value to each of the two companies for shunting and storage grounds, and the officers of both companies were desirous of acquiring the whole or a portion of the property.

With a view of preventing competition between the two companies as purchasers, an arrangement was entered into as set forth in a letter from Mr. McNichol, vice-president of plaintiff company, to Mr. Wainwright, . . . comptroller of defendant company, dated 1st June, 1901, as follows:—"As per conversation to-day, we will make no attempt to acquire the land in question, the understanding being, however, that we will have the right to purchase from you the half of such land surrounded green on the enclosed blue print which I have initialled, any time within 5 years from this