

BRANT V. CANADIAN PACIFIC R.W. CO.—FALCONBRIDGE, C.J.K.B.
—FEB. 4.

Railway—Damage to Neighbouring Land from Closing of Street in City—Remedy—Right of Action—Forum—Assessment of Damages—Evidence—Operation of Railway—Vibration.]—Action to recover damages for injury sustained by the plaintiff by reason of the closing of Albany avenue, in the City of Toronto, just north of the plaintiff's house and lot, and by reason of the operation of the railway. The action was tried without a jury at Toronto. The learned Chief Justice said that this was at most a comparatively trivial matter, and he would not, if he could help it, after the parties had come down to issue and trial, send the plaintiff to another forum. He thought that he was properly seized of the case, and ruled against the defendants' contentions on that point. The defendants were admittedly liable in some tribunal for some amount—the question was for how much? Two of the plaintiff's experts put his damages at \$1,000 and \$1,025 respectively. The defendants' two experts (and they were among the best-known in the community) said that he suffered practically no damage whatever. The property was residential, not of a very high class, say the 4th or 5th. Sitting as a jurymen, the learned Chief Justice said, he was probably giving the plaintiff at least all that he was entitled to, if not more, when he struck a rough average and awarded him \$525. He was not much impressed with the vibration theory as an element of damage—he could not see how there could be more vibration from a train running over a well-built embankment, 7 or 8 feet high, than from one running over a level crossing. However, to prevent all question hereafter, he awarded the plaintiff \$25 on this head. Judgment for the plaintiff for \$550 and costs. The defendants the Canadian Pacific Railway Company undertaking to hold the defendants the Canadian Northern Railway Company indemnified, judgment would go against both defendants. G. H. Watson, K.C., for the plaintiff. W. N. Tilley, K.C., for the defendants.