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SEPTEMBER 22ND, 1903.

DIVISIONAL COURT.

TODD v. TOWN OF MEAFORD.

*Railway—Municipal Corporation—Expropriation of Land—  
Agreement with Land Owner—"Without Prejudice"—  
Possession—Compensation—Damages—Action—Arbitration—Costs.*

Appeal by the plaintiff from the judgment of FALCONBRIDGE, C.J., ante 12, in so far as it was in favour of defendants in an action against the town corporation and the Grand Trunk Railway Company for compensation for lands taken and for injury to lands.

It was proved that the provisions of sec. 121 of the Railway Act, 1888, empowering the construction of branch lines by existing railway companies had been complied with by the deposit of plan, profile, and book of reference of the lands intended to be taken, in the registry office of the county, and that the same had been approved by the Railway Committee. After this, and pursuant to the provisions of the special Act 63 Vict. ch. 77 (O.), the defendants negotiated with the plaintiff for the acquisition of the land he owned, which was depicted on the plan, with the result that an agreement was entered into on the 3rd October, 1900, between the plaintiff and the railway company, by which he agreed to sell and convey to the company the piece of land required for the work, for \$500. Those acting for the town corporation were not willing to give more than \$200, and it was then stipulated in the agreement that "in the meantime (i.e., till this term of the agreement as to price was settled) the plaintiff consented to the company proceeding with their works on the land "without prejudice to the said Todd." The railway company forthwith entered upon the land and prosecuted