LATCHFORD, J., read a judgment in which he set out the facts. He then said that the plaintiff's claim against the municipalities was based partly on a change of the grade of the highway, made in 1915, and partly on the contention that the municipalities permitted the railway company to place their railway-embankment, sleepers, and rails—in a position which constituted a nuisance to the plaintiff, by impairing, if not destroying, the access to and from Yonge street afforded by a viaduct or ramp extending easterly from the via trita of Yonge street across the railway.

It was for such damages only as were wrongfully caused to the property after his purchase of it in 1911 that the plaintiff had any right to compensation, in this action.

So far as the plaintiff's claim was for damages resulting from the raising in 1915 of the travelled part of the highway, the action must fail. The county corporation were acting in the exercise of their statutory powers; and if, acting without negligence, they caused damage to the plaintiff, his only remedy was by the proceedings prescribed by the provision of the Municipal Act which is now R.S.O. 1914 ch. 192, sec. 325: Pratt v. City of Stratford (1888), 16 A.R. 5.

It was urged that liability attached to the township municipalities, and to the county after the date on which they assumed the highway (24th February, 1911), for permitting the railway company to obstruct the access to the plaintiff's lands. Reliance was placed on the principles stated in Castor v. Township of Uxbridge (1876), 39 U.C.R. 113; McKelvin v. City of London (1892), 22 O.R. 70; Huffman v. Township of Bayham (1899), 26 A.R. 514; Homewood v. City of Hamilton (1901), 1 O.L.R. 266. The learned Judge referred also to Corporation of Parkdale v. West (1887), 12 App. Cas. 602, and North Shore R. W. Co. v. Pion (1889), 14 App. Cas. 612; and to the statute 60 Vict. ch. 92, secs. 2, 7 (9), authorising the defendant company's predecessors to maintain and operate their line, and providing that all tracks laid on any portion of the street should "so far as is practicable and where directed by the County Engineer conform to the grade of the street or road."

There was no evidence that the line of railway did not, as far as was practicable, conform to the grade of the highway; there was evidence that it did.

There was no breach of any duty on the part of the municipalities in permitting the railway company to construct their line opposite the plaintiff's land on the grade which it followed when he purchased.

On all grounds, the action failed as against the municipalities;