

On the application for the interim order restraining the defendants, it was held that no proceedings to expropriate had been taken under the Railway Act at any time, and no effective proceedings had been taken to vest the plaintiff's land, or the right to enter into possession of it, in the town or in the defendants' company, under the Towns and Corporation Act; and further that the town could not be regarded in this connection as forming any part of the County of Annapolis, and therefore no proceedings by the latter could be called to the defendants' aid. Interim restraining order granted.

The defendants justified the entry under the statute and the plaintiffs joined issue. Subsequently the town of Bridgetown expropriated the plaintiff's land for the use of the defendants. The restraining order was thereupon discharged by consent and the defendants obtained leave to plead and pleaded that since the commencement of the action the town of Bridgetown had expropriated the plaintiff's land, etc., and had paid him the damages awarded, and that such award included all damages done to the plaintiff's land by the defendants' company as well as all the trespasses, acts and grievances complained of in the statement of claim.

The plaintiff confessed this defence and entered judgment for his costs to be taxed. Defendants then moved to set aside the judgment.

TOWNSHEND, J., *held*, that in this case the action was for trespass for the act of the defendants' company illegally entering upon plaintiff's land. The object of the action was damages, and the subsequent defence rested upon the payment of these damages by the town of Bridgetown after action brought which plaintiff confessed. From the nature of this defence it necessarily operated as a waiver of the previous grounds. Under these circumstances he would not set aside the judgment, or order the case to go to trial unless the defendants' company agreed to withdraw their subsequent defence. It would be futile to do so, as the only purpose of the action was to recover damages, which, as the defendants subsequently pleaded, had already been paid and accepted in full. There was no question remaining to be tried. He therefore refused the motion with costs.

Milner, for plaintiffs. *Daniels*, for defendant.

Chambers, Townshend, J., and Wetherbe, J.] [Nov. 11 and 23, 1902.
THE KING *v.* SHEPHERD.

Criminal Code, ss. 198, 785—Keeping a disorderly house—Statement of charge—Duty of magistrate before proceeding to try summarily—Renewing application before another judge.

Defendant was convicted before the stipendiary magistrate of the city of Halifax under *Crim. Code, ss. 198, 785*, "for that she, the said S.S., did in the city of Halifax, in or about the month of Sept., 1902, keep a disorderly house, that is to say, a common bawdy house, on Albermarle Street, in the city of Halifax."