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 Sept. 11.  
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THE QUEEN, ON THE INFORMATION OF }  
 THE ATTORNEY-GENERAL FOR THE DO- } PLAINTIFF;  
 MINION OF CANADA..... }

AND

DANIEL SIGSWORTH.....DEFENDANT.

*Expropriation of lands for P.E.I. Railway—34 Vic. (P.E.I.) c. 4—  
 Construction of—Effect of non-entry of Commissioners on land taken.*

Under an Act of the Legislature of Prince Edward Island (34 Vic. c. 4 s. 13) the Commissioners who had charge of the construction of the Prince Edward Island Railway were authorized to enter upon and take possession of any lands required for the tracks of the railway, and, to the end that such taking should operate as a dedication to the public of such lands, they were required to lay off the same by metes and bounds and record a description and plan thereof in the office of the Registrar of Deeds and Keeper of Plans for the Island.

By arrangement between the Commissioners and the defendant the boundary line between the railway and the latter's premises was deflected from the course originally intended, so that the same might not interfere with his buildings, and the land damages were paid and boundary fences erected and maintained in accordance with such arrangement. Commissioners subsequently appointed recorded in the office of such Registrar a description and plan which covered the land that their predecessors had by such arrangement left in the possession of the defendant, but they never laid off the same by metes and bounds, nor were in possession thereof.

*Held* :—That they had not complied with the statute, and that the Crown had not acquired title to such land.

**I**NFORMATION of intrusion to remove the defendant from certain property situate at Cardigan, King's County, Prince Edward Island, to which the Crown claimed title as forming part of the right of way of the Prince Edward Island Railway.

This railway was constructed under the provisions of an Act of the Legislature of the Province of Prince

Edward Island, 34 Vic. c. 4. By section 13 of that Act it was enacted that :—

“ The Commissioners or contractors are authorized to enter upon and take possession of any lands required for the track of the railways, or for stations, and they shall lay off the same by metes and bounds, and record a description and plan thereof in the office of the Registrar of Deeds and Keeper of Plans for this Island, and the same shall operate as a dedication to the public of such lands, &c.”

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The Commissioners who were first appointed under the said Act caused a survey to be made with a view to running the right of way through the defendant's property at Cardigan ; and a part of the line of the track so surveyed would have run through the centre of the defendant's dwelling-house. The defendant thereupon claimed a large sum for damages if that location were adhered to, and the Commissioners had the line of the track altered so that it ran around the defendant's house and left him a sufficient right of way between his house and the track. In consideration of this fact the defendant agreed to accept a much smaller sum than that originally claimed by him, and gave a receipt in full of all claim for damages or compensation on account of the railway running through his property. The line as laid off by metes and bounds was then altered in accordance with the agreement.

Subsequently, when the contractors proceeded to construct the railway, they ran that portion of the line in the immediate vicinity of the defendant's house differently from the course so settled upon ; and, after some time, defendant agreed, without consideration, to the track being constructed with such alteration, leaving himself in possession of one hundred and twenty-three one-thousandths of an acre of land between his house and the railway track, which is the portion of

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land claimed by the Crown in the information. No plan and description of the land taken was recorded by the Commissioners first appointed, as required by the statute.

The original Commissioners having resigned office, they were succeeded by others, who, in December, 1874, recorded a description and plan in the office of the Registrar of Deeds, by which they purported to expropriate the land in question together with that which was covered by the right of way. These Commissioners did not enter upon and take possession of such land, nor did they cause it to be laid off by metes and bounds.

In the year 1885, after the defendant had been in undisputed possession of the property in question some twelve years since the date of his agreement with the first Commissioners, and had erected thereon certain buildings for use in connection with his business, a demand was made upon him to remove such buildings and vacate possession of the property mentioned, as belonging to the Crown.

The defendant not complying with such demand, an information of intrusion was filed. To the Crown's allegations in such information the defendant pleaded a specific denial.

Issue joined.

September 11th, 1890.

*Hodgson*, Q.C. for the plaintiff ;

*Peters* for the defendant.

The facts appearing upon the evidence are substantially the same as those above stated.

BURBIDGE, J : It is clear that the Commissioners first appointed did not acquire the lands in question for the Prince Edward Island Railway. They did not take the necessary steps to divest the defendant's title by per-

fecting their own, but by an arrangement with him left him in possession. They settled the land damages on the basis of such arrangement, and the boundary fences between the railway and defendant's property were erected and have since been maintained in accordance therewith. Then, in reference to the proceedings taken by their successors, we find that they never laid off the land in dispute by metes and bounds, and that they never entered upon or were in possession of the same. They have recorded a plan and description covering such land, but that alone, even if it were not unintentionally done, is not a sufficient compliance with the statute. There will be judgment for the defendant with costs.

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*Judgment for defendant with costs.*

Solicitor for plaintiff: *E. J. Hodgson.*

Solicitor for defendant: *L. H. Davies.*

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