

1912

CANADIAN PACIFIC RAILWAY CO. v. CARR.

*Oct. 24.

1913

ON APPEAL FROM THE SUPREME COURT OF NEW
BRUNSWICK.

*Feb. 18.

*Trespass—Railway company—Occupation of lands—Side tracks—
Continuous trespass—Damages.*

APPEAL from a decision of the Supreme Court of New Brunswick(1), affirming the verdict at the trial in favour of the plaintiffs (respondents).

The Woodstock Railway Co. was, by its charter, authorized to expropriate land ninety-nine feet in width for its right-of-way and provision was made for compensation to the owners. In 1871 it built its right-of-way fourteen feet wide. In 1892 the Canadian Pacific Railway Co., having acquired the rights of the Woodstock Railway Co., built side tracks adjoining the right-of-way and within the ninety-nine feet. In 1911 the plaintiffs (respondents) brought action for trespass by laying such side tracks on their land.

The court below held that there was no presumption that the Woodstock Railway Co. by occupying fourteen feet took possession of the whole ninety-nine feet allowed by its charter; that the injury to plaintiffs' land was not "sustained by reason of the construction or operation of the railway" and therefore the limitation of one year for bringing action in sec.

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.

306 of the "Railway Act" (R.S.C. [1906] ch. 37) did not apply; and if it did the damage was continuous and plaintiffs could recover damages for six years, which were assessed at \$1,200.

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In the Supreme Court of Canada the appeal was dismissed, unanimously as to the merits but with an equal division on the question of damages, three of their Lordships being of opinion that they were excessive and the case should be sent back for a re-assessment.

Appeal dismissed with costs.

Hellmuth K.C. and *F. R. Taylor* for the appellants.

Currey K.C. for the respondents.
