

operations of the defendants, they filed affidavits to shew the benefit derived by the public from the use of the river sand and the loss to contractors and the public if it could not be procured.

*Held*, that inconvenience to the public cannot be set up as against private rights and that, as plaintiff had made out a fair *prima facie* case, he was entitled to a continuance of the injunction.

*Aikins*, K.C., and *Blackwood*, for plaintiff. *Hillyard Leech* and *O'Connor*, for defendants.

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Macdonald, J.]

[Dec. 19, 1906.]

WICHER v. CANADIAN PACIFIC RY. CO.

*Railway company—Lands entered upon by company before expropriation proceedings taken.*

The statement of claim alleged that the defendants by their servants, agents and workmen wrongfully and unlawfully entered upon the plaintiff's land and laid down a line of railway over it without any notice to or the permission of the plaintiff. Defendants claimed that, having filed a plan, profile and book of reference as required by the Railway Act, 1903, shewing that the land in question was taken by them for the railway, the plaintiff's remedy was limited to an arbitration to determine the compensation to be paid, and moved to dismiss the action on that ground. Defendants had not served any notice on the plaintiff in pursuance of sec. 54 of the Act, or taken any further steps for expropriation of the land required from the plaintiff.

*Held*, that defendants were mere trespassers, that the plaintiff was not limited to the remedy provided by the Act, and that the motion should be dismissed with costs.

*Elliott*, for plaintiff. *Blackwood*, for defendants.

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Mathers, J.]

FRASER v. DOUGLAS.

[Dec. 22, 1906.]

*Guaranty—Offer and acceptance—Right of guarantor to recover from debtor the amount paid to creditor under guaranty.*

This was an action to recover money paid by plaintiff upon a guaranty given by him at defendant's request for the price of a quantity of goods ordered by defendant from G. and Co., of Mon-