

tion between the parts of the farm separated by the railway, and for injury by the bridge ultimately erected by the defendants.

The appeal was heard by MEREDITH, C.J.C.P., MACMAHON and TEETZEL, JJ.

D. L. McCarthy, K.C., for the defendants.

Grayson Smith, for the plaintiff.

MEREDITH, C.J.:—The trial Judge having properly found, as indeed was not disputed by the learned counsel for the appellants, that the bridge in question was erected in pursuance of an agreement between the predecessor in title of the appellants and the predecessors in title of the respondent, that the former would maintain it, it follows that the tearing down of it and thereby depriving the respondent of the means of access it afforded from one part of his land to the other, without lawful authority, was a breach of the agreement for which the appellants are answerable in damages to the respondent, and to an action for these damages the general Statute of Limitations, and not sec. 306 of the Railway Act, is, in my opinion, applicable.

Even if the section were applicable, it would not bar the cause of action, for there was a continuation of the damage, and one year from the ceasing of the damage had not elapsed when the action was begun, for the new means of crossing provided under the order of the Railway Commissioners was not completed until about the 1st May, 1908, and the writ was issued on the 7th of the following August.

Though I prefer to rest my judgment on these grounds, I do not desire to be understood as differing from the view of the learned trial Judge upon which he came to the conclusion that the respondent's cause of action was not barred.

The appeal should, in my opinion, be dismissed with costs.

MACMAHON, J., concurred.

TEETZEL, J.:—It was admitted by Mr. McCarthy on the argument that the defendants were under agreement with the plaintiff's predecessors in title to maintain a bridge over the railway. I think it must be assumed that under such agreement a bridge affording the accommodation provided by the one that was removed should be maintained.

The plaintiff's right to damages, therefore, against the defendants for not maintaining such a bridge would be based upon agreement independently of any common law or statutory right against the defendants.