

it which was occupied by the original shack or hut which he built, sufficient to extinguish the title of the plaintiff. Such use as he made of the strip of land between the road allowance and the water's edge was as a mere trespasser; it was necessary for him to shew pedal possession. The strip was not enclosed. His possession was not actual, continuous, and visible, and indeed was not a possession at all; his acts were but a series of successive trespasses, with long periods of time between them.

Piper v. Stevenson (1903), 28 O.L.R. 379; Nattress v. Goodchild (1914), 6 O.W.N. 156, 482, and Cowley v. Simpson (1914), 31 O.L.R. 200, distinguished.

The County Court Judge rightly decided against the contention that the defendant had established a right by prescription to an easement in the nature of a right to pass and repass to and from the shack to the lake and over the strip of land lying between the road allowance and the water's edge, in order to reach the side road. The testimony of the defendant shewed that there was no one way by which he came and went, but that he did so at one time by one route and at other times by other routes. A similar user is not sufficient to establish dedication.

Regina v. Plunkett (1862), 21 U.C.R. 536, and Regina v. Ouellette (1865), 15 U.C.C.P. 260, applied.

The judgment, as entered, not defining the part of the lot as to which the defendant succeeded (that upon which his shack is built), there should, if the defendant wished, be a reference to ascertain and fix its boundaries; if the parties should agree as to the proper description of it, the judgment might be amended by inserting in it the description.

Subject to this variation, the judgment should be affirmed, and the appeal dismissed with costs.

FIRST DIVISIONAL COURT.

APRIL 19TH, 1916.

\*BRANT v. CANADIAN PACIFIC R.W. CO.

*Railway—Damage to Neighbouring Land from Closing of Street in City—Order of Board of Railway Commissioners—Jurisdiction—Municipal By-law—Railway Act, R.S.C. 1906 ch. 37, secs. 237, 238, 238A, 239A—Remedy for Injurious Affection of Property—Compensation—Arbitration—Costs.*

Appeal by the defendants from the judgment of FALCONBRIDGE, C.J.K.B., 9 O.W.N. 432.