

by the statute, they were entitled to remove the bridge in question for that purpose, and, if ordered to build a higher bridge, that what they did was by virtue of the order of the Railway Commission, citing *Canadian Pacific R. W. Co. v. Roy*, [1902] A. C. 220; *Mayor and Councillors of East Fremantle v. Annois*, *ib.* 213; *Martin v. London County Council*, 80 L. T. R. 866; *Southwark and Vauxhall Water Co. v. Wadsworth District Board of Works*, [1898] 2 Ch. 603.

I do not think these authorities have any application to the present case. What was done here in removing the bridge was not done under or by virtue of any statute, but was wholly wrongful, and the plaintiff is entitled, in my opinion, to recover whatever damages naturally flowed from such wrongful act.

Nor can I give effect to the objection that the damages, if any, fall within the limitation expressed in sec. 306 of the Railway Act. This section provides that "all actions or suits for indemnity for any damages or injury sustained by reason of the construction or operation of the railway shall be commenced within one year next after the time when such supposed damage is sustained, or, if there is a continuation of damage, within one year next after the doing or committing of such damages ceases, and not afterwards."

The tearing down and removal of this bridge was not done in the construction or operation of the railway, and the damages which accrue do not fall within the meaning of the section: *Zimmer v. Grand Trunk R. W. Co.*, 19 A. R. 613; *Ryckman v. Hamilton Grimsby and Beamsville Electric R. W. Co.*, 10 O. L. R. 419, 6 O. W. R. 271.

It was argued that, the plaintiff having made application to the Railway Commission, he was limited to relief which might be afforded by the Commission, including damages; and reference was made to secs. 59 and 155 of the Railway Act. Sub-section 2 of sec. 59 provides, in reference to works ordered by the Commission, that "the Board may order by whom, in what proportion, and when, the cost and expense of providing, constructing, reconstructing, altering, installing, and executing such structures, equipment works, renewals, or repairs, or the supervision, if any, of the continued operations, use, or maintenance thereof, or of otherwise complying with such order, shall be paid."

This, I think it clear, has no application, at all events, to the damages suffered by reason of the bridge having been