

15. Has the railway company continued to occupy the same land since such construction or when if at all did it occupy less or more, and how much less or more, at the Bull property?

Answer. No more than the main line until 1892, and since then sufficient for two sidings.

16. Did the Woodstock Railway Company take a right-of-way through the said Bull homestead property at the time of the construction of the said railway?

Answer. There was a right-of-way taken through the Bull homestead property but we do not know by what company.

17. When was said railway built through said property by said company?

Answer. Railway was built through said property in 1871 but we do not know by what company.

February 15 and 16, 1912. *F. R. Taylor*, for the defendant moved to set aside the verdict for the plaintiff and to enter a verdict for the defendant or for a new trial. The railway has been in actual operation since 1871. The sidings were built in 1892. The Woodstock Railway Company took over this land under the Act 27 Viet. ch. 57. The New Brunswick Railway Company incorporated by 33 Viet. ch. 49, afterwards acquired this land, see Acts 36 Viet. ch. 37 and 40 Viet. ch. 15. The Act 54 Viet. ch. 14 confirms lease from the New Brunswick Railway Company to the Canadian Pacific Railway for 999 years. The expropriation clause in the Act 27 Viet. ch. 57 says that the owner is to be paid if he demands payment. A large part of the land taken by the railway was given to them, and there is no evidence of any demand for payment of this piece. We claim that, under the Act, the Woodstock Railway Company took an absolute title to a strip of land 99 feet in width. The statute vests the title in the railway and gives a right of action to the property holders. The only evidence as to the width of the right-of-way at this point is that it was 99 feet in width. We are only occupying 33 feet. The learned Judge charged that the railway had only an easement. I contend this was misdirection.

The verdict is excessive. The plaintiffs are not occupying the land and the only possible damage to them is decrease in rental value. They were getting about \$300 a year before we put in our sidings. Plaintiff's one witness said that an outside rent in Woodstock would be \$250 a year for a house like the plaintiff's. The jury found that the rental value was \$400, and over a period of six years the damage would be \$600. Instead of this, the jury have awarded \$1,200. The jury brought in a verdict on one question and although there was no dispute or misunderstanding, they were allowed to go out and change their verdict. I cite the Railway Act, R.S.C. 1906, ch. 37, sec. 306; *Kelly v. Ottawa Street R. Co.*, 3 A.R. (Ont.) 616; *McArthur v. Northern Pacific R. Co.*, 15 O.R. 733, 17 O.A.R. 86; *Levesque v.*

N.B.

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CARR

v.

CANADIAN

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R. Co.

Statement

Argument