

the 11 weeks before the level crossing was made; secondly, for the 2 years and 6 months before the bridge was erected; and, thirdly, for the deterioration in the value of the property owing to the bridge and approaches having been raised and for any loss by reason thereof which the plaintiff may have suffered.

The jury assessed \$100 for the first period; \$460 for the second period; and \$240 for the third period.

It would appear from the evidence, and I find as a fact, that the plaintiff's predecessor in title and the plaintiff used the old bridge down from about 1854 to 1904, for the purpose of a farm crossing, with the knowledge of the defendants and their predecessors in title; and from the evidence I think it may properly be inferred, and I find as a fact, that the bridge was built and maintained by the defendants and their predecessors in title under an agreement with the plaintiff and his predecessor in title. I find that it was the agreement and intention of the parties that the said bridge should be properly maintained for the use of the farm by the defendants.

I find that the said bridge was removed by the defendants without the authority of the Railway Commission, and that it was wrongfully and improperly removed.

I further find that it was the duty of the defendants to have applied to the Railway Commission to remove the said bridge, if they so desired, and to construct another in place thereof to meet the requirements of the plaintiff.

I further find that the plaintiff is entitled to damages which naturally flowed from the wrongful act of the defendants in removing the bridge: *McKenzie v. Grand Trunk R. W. Co.*, *Dickie v. Grand Trunk R. W. Co.*, 14 O. L. R. 671, 9 O. W. R. 778; *Jacob's Railway Law of Canada*, pp. 45, 46; R. S. C. 1906 ch. 37, sec. 155; *Toronto Hamilton and Buffalo R. W. Co. v. Simpson Brick Co.*, 17 O. L. R. 632, 13 O. W. R. 215. See also *McArthur v. Northern and Pacific Junction R. W. Co.*, 15 O. R. 733, 17 A. R. 86.

It was urged by Mr. McCarthy that what was done was by authority of the statute which requires bridges to be of a certain height, R. S. C. 1906 ch. 37, sec. 256; that, inasmuch as the defendants were about to construct a double track, which they had the right to do, and as they were obliged to have the bridge over the double track of the height required