

Following that case, I must hold that plaintiff was entitled, of right, to the overhead bridge and way and the under-pass which are in question, and that defendants were wrong-doers in removing them or altering their condition without the authority of the Dominion Board of Railway Commissioners.

The existence of the unsigned agreement in the Dickie case, and the absence of that feature in this case, do not seem to me to make less applicable what I understand to be the principle of the decision in the Dickie case, viz., that after the lapse of the very long period during which the plaintiff had enjoyed as of right the overhead crossing, and the circumstances under which it was dealt with during that period, the presumption arose that the enjoyment of the right was a part of the arrangement under which the predecessors in title of defendants acquired their right of way through the lands of plaintiff.

The result of this conclusion is, that plaintiff is entitled to damages for the injury done to him by the acts of defendants which I have held to be wrongful. These damages are not to be confined to the loss sustained up to the present time, but, if plaintiff is in a position to shew that the value of his land is lessened by the substitution of the means of crossing which defendants have provided, for the means to which he was entitled, that will be one of the elements making up the damages which are to be awarded to him, and there will be a reference to the Master at London to assess the damages.

Defendants must pay the costs of the action, including those of the motion for injunction.

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MAY 16TH, 1906.

DIVISIONAL COURT.

HAVERSTOCK v. EMORY.

*Negligence—Injury to Bicyclist by Motor Car—Evidence for Jury—Setting aside Nonsuit—New Trial.*

Motion by plaintiffs to set aside judgment of nonsuit pronounced by ANGLIN, J., at the trial, in an action for