

1891 THE GREAT NORTH-WESTERN }
 *May 18, 19. TELEGRAPH CO. (PLAINTIFFS) } APPELLANTS ;
 *Nov. 17. AND
 THE MONTREAL TELEGRAPH }
 COMPANY (DEFENDANTS)..... } RESPONDENTS.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH
 FOR LOWER CANADA (APPEAL SIDE.)

*Lessor and lessee—Art. 1612, 1614, 1618 C. C.—Disturbance of lessee's use
 —Claim for reduction of rent—Trespass—Trouble de droit.*

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side) confirming a judgment of the Superior Court which dismissed appellant's action and incidental demand.

The action was instituted for reduction of rent and damages under the lessors and lessees articles of the Code of Civil Procedure and article 1612 and following of the Civil Code.

On the 17th of August, 1881, by deed or instrument executed under private signature an agreement was entered into between the appellants and the respondents in this cause, by which the appellants undertook for a period of ninety-seven years from the 1st of July, 1881, to work, manage and operate the system of telegraph lines then owned and operated by the respondents, including the telegraph lines erected along the South-eastern Railway line and other railways under certain agreements, and to pay the respondents quarterly during the continuance of the arrangement a sum equal to the dividend at 8 per centum upon the respondents' capital stock of \$2,000,000, with the further

*PRESENT :—Sir W. J. Ritchie C.J., and Strong, Fournier, Tasche-
 reau and Patterson JJ.

yearly sum of \$5,000 to meet office expenses. In accordance with this agreement the appellants took possession of the respondents' system of telegraph lines and have since managed and operated the same. By their action the appellants averred that since the 17th of September they had been troubled in their enjoyment of the respondents' system of telegraph lines by the Canadian Pacific Railway Company, which now possesses and controls the South-eastern Railway and other railways and have constructed lines of telegraph along the same, by which in contravention to the agreements above mentioned, the company transmits for remuneration messages for the general public, thus causing a diminution of business and thereby great loss to the appellants, and concluded by their action and incidental demand by asking an annual reduction of \$80,000 rent.

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Upon the pleadings and evidence the Superior Court (1) whose judgment was affirmed by the Court of Queen's Bench for Lower Canada (appeal side) (2), dismissed the appellants' action and incidental demand on the ground that the alleged interference by the Canadian Pacific Railway with the rights and privileges acquired by the respondents under agreements with the South-eastern Railway Company and other companies referred to in the agreement of the 17th August, 1881, was a mere trespass which did not constitute a *trouble de droit*, and did not authorize an action for a reduction of rent under arts. 1616 and 1618 C.C.

On appeal to the Supreme Court of Canada.

Irvine Q.C., *Girouard* Q.C. and *H. Cameron* Q.C. appeared for the appellants.

Geoffrion Q.C., *Lacoste* Q.C. and *H. Abbott* Q.C. appeared on behalf of the respondents.

(1) M.L.R. 6 S.C. 74.

(2) M.L.R. 6 Q.B. 257.

1891 The Supreme Court dismissed the appeal, agreeing
 with and adopting the reasons for judgment of Mr.
 Justice Wurtele of the Superior Court, which are
 reported in M. L. R. 6 S.C. 94.

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Justices Strong, Fournier, Taschereau and Patterson
 were also of opinion that as by the agreement of
 the 17th of August, 1881, the appellants had assumed
 all risk of diminished income in the working of the
 telegraph lines transferred by respondent and had
 entered into this agreement after the Canadian Pacific
 Railway Company had obtained authority from Parlia-
 ment to establish telegraph lines for the transmission
 of messages for the public, the action should be dis-
 missed on the merits, adopting the view of the case
 taken by Sir A. A. Dorion in the Court of Queen's
 Bench for Lower Canada (appeal side), whose judg-
 ment is reported at length in M.L.R. 6 Q.B. p. 258.

Appeal dismissed with costs.

Solicitors for appellants: *Girouard & DeLorimier.*

Solicitors for respondents: *Geoffrion, Dorion & Allan.*