

said Grand Trunk Railway did not comply with the provisions of sec. 75 of the Railway Act, 1903, before commencing the construction of the said siding or at any time since. 4. The said order was made *ex parte* and without notice to the applicants. 5. The said Grand Trunk Company did not at any time prior to 12th December, 1905, disclose to the applicants the fact that the said order of 5th January, 1905, had been made. On 14th December, 1905, the applicants, through their solicitors at Toronto, received . . . a copy of the said order, and then for the first time became aware of its contents. 6. The applicants thereupon examined the proceedings before the Board which led to the said order being made, and ascertained the facts as above stated. The applicants ask that, if necessary, the time for making this application be extended by the Board. 7. The applicants also rely upon and repeat the grounds taken in a similar application made by the James Bay Railway Company to the Board, dated 16th December, 1905, in so far as the same are relevant to their position. The applicants, therefore, ask that the said order should be rescinded in so far as it affects the applicants' lands and railway, and that the said Grand Trunk Railway Company be ordered to remove its tracks or other obstructions laid by it upon the said lands."

Both applications were heard on 31st January, 1906, and, after hearing counsel for all parties, the Board allowed the application of the James Bay Railway Company, and rescinded the order in so far as it affected that company, but dismissed the application of plaintiffs.

The Chief Commissioner in his judgment says: "As this order was made without the notice required by sec. 175 of the Railway Act and without the filing of the plans; as it was also made on a misrepresentation, which I have not the least doubt was unintentional, but which was, nevertheless, a misrepresentation in fact, that the consent of all parties had been obtained; and the James Bay Railway Company having applied within the time limited in sec. 32 to have the order rescinded, and limiting their application to so much of it as affect their location—I think an order should be made setting aside the order authorizing the siding to be built, to the extent that it affects that portion of the line of the James Bay Co. But that is as far as we will go at the present time. Let the James Bay Co. take such steps as