

MULOCK, C.J.

JANUARY 18TH, 1909.

TRIAL.

NORTH AMERICAN TELEGRAPH CO. v. BAY OF
QUINTE R. W. CO.

Contract — Construction — Telegraph Company — Railway Company—Free Carriage of Servants, Tools, and Stores of Telegraph Company—Limitation to Purposes of Construction and Maintenance along Railway Line—Recovery of Moneys Paid for Fares—Voluntary Payments—Mistake of Law—Counterclaim—Damages—Failure to Maintain Telegraph Line in Working Order—Breach of Covenant—Telegraph Service—Maintenance and Repair of Poles—Property in Poles—Declaration—Costs.

In this action the plaintiffs claimed, under the terms of two certain agreements, referred to in the judgment, the right to free transportation by all the ordinary passenger trains running over the defendants' railway, for their inspectors, linesmen, and repairers, when travelling for any purposes whatsoever, and they alleged that such transportation was refused them, whereby they were obliged to pay a large sum of money for railway fares for these employees, and this action was brought for its recovery.

The defendants denied the plaintiffs' right to such unlimited transportation; admitted a limited right which they said they were at all times ready and willing to grant; and counterclaimed for certain relief.

A. B. Cunningham, Kingston, for plaintiffs.

G. F. Shepley, K.C., and C. A. Masten, K.C., for defendants.

MULOCK, C.J.:—Dealing first with plaintiffs' claim, its determination depends upon the effect to be given to the terms of these agreements, each dated 11th June, 1888, and made, one between the plaintiffs and the Bay of Quinte Railway and Navigation Company, and the other between the plaintiffs and the Napanee, Tamworth, and Quebec Railway Company.

It was admitted at the trial that, by reason of certain legislation, the defendants were liable for all the obligations