

erroneous; the interests of the James Bay Railway Company, whose main line would be crossed, was affected by this order, and plaintiffs assert that their interests were also affected.

On 16th February, 1905, plaintiffs wrote defendants complaining of the trespass from October, 1902, and claiming compensation at the rate of \$100 a year, explaining that the rate was high, but that the defendants "have been guided in making this charge by what your company forced us to pay for right of way across your tracks at St. Constant and St. Johns."

A correspondence ensued, and in a letter to plaintiffs, dated 15th April, 1905, defendants state that "the track referred to was put in under an agreement with Mr. Robert Davies. Mr. Davies, successor of the Taylors, claims the privilege of using the land under a reservation in the deed from J. F. Taylor and others to the Ontario and Quebec Railway Company, in view of which we must decline to accept your bill for the use of the land upon which the track is located."

To this plaintiffs replied on 21st April that "the reservation in the deed from Taylor, which is dated 1st March, 1890, is of the right of way under the said bridge as now enjoyed by the vendors." At that time (1890) the only use made of the reservation was by persons on foot or with horses, carts, etc. It is quite clear that such right of way could not extend to a use for railway purposes, and the track was not laid on our land until 1902, almost 12 years later. We shall have to insist upon payment being made for past occupation, and the track being removed forthwith, unless a satisfactory agreement is made with us for it to remain."

The James Bay Railway Company and plaintiffs applied to the Board for an order under sub-sec. 4 of sec. 25 and sec. 32 of the Railway Act, 1903, to rescind the order of 5th January, 1905. In support of the application it was stated: "1. The rails of the said siding are laid across the lands and under the railway of the applicants, known as the Don branch of the Ontario and Quebec Railway. The railway of the applicants has been carried over the said lands by means of a steel bridge or viaduct. 2. The said siding was constructed across the said lands of the applicants without their permission and without any authority obtained under sec. 137 or sec. 177 of the Railway Act, 1903. 3. The