

time to time suit their convenience. They could not change it to, or make an additional opening at the place where the plaintiff Johnston now has his opening, and successfully claim a right-of-way from this new opening to the public road. If the Mothersills, before the sale to Johnston could not, Johnston cannot, so the action by Johnston fails.

The owner of the land, of this private lane, is not a party to this action, and he is not complaining of any assertion of a right-of-way by either plaintiff.

The defendants, without claiming under the owners, but by an alleged paramount right under their charter, proceeded to expropriate a part of this lane for their road.

On the 24th February, 1911, the defendants obtained from the Board of Railway Commissioners for Canada an order approving of the defendants' location of their line through the townships of Whitby and Whitby East, as shewn by the plan and profile as described in file No. 15881.4. No doubt the line as it is laid down upon the lane is, as upon the plan. On the 30th September, 1913, the defendants published in a Whitby newspaper notice of expropriation of part of the lane, and they described this part as "a strip of land used as a road," and further described it by metes and bounds, and "as running along the northerly boundaries of the properties of White, T. B. Mothersill and Johnston." No mention is made of any easement of plaintiffs, nor was any land of the plaintiffs required.

The notice of expropriation stated that a warrant for immediate possession would be applied for. It did not appear that a warrant of possession was actually obtained. That is of no importance as defendants went into possession and constructed their line. No special notice was given to either plaintiffs and no notice to them or to anyone as to interfering with right-of-way. The defendants by notice offered \$50—apparently for the strip—but nothing for the right-of-way over the strip, if any existed in favour of one not owner of the strip.

I find that the defendants have interfered with and obstructed the Mothersill right-of-way as set out in the statement of claim. The right-of-way was of very considerable value to the Mothersill property, and I assess their damages occasioned by the interference with their right-of-way, by the defendants' construction of their line of railway, at the sum of \$500. This does not include anything for loss or