

freight and that of plaintiffs, and made no objection, but acquiesced in its user. I am inclined to think that plaintiffs' letter of 16th February, 1905, explains their present action.

Mr. Armour urged further that in the present case the Board had no jurisdiction because, this being a branch line, the plans were not filed in the registry office pursuant to sec. 175, sub-sec. 2, and sec. 122, of the Act.

There are, I think, two answers to this objection. The order made in this case, in so far as it affects plaintiffs, is governed by secs. 137 and 177. The sections say nothing about the filing of plans in the registry office, but do expressly refer to the "profile and book of reference on file" and "the recommendation of the chief engineer of the Board approving of the said plan, profile, and book of reference," etc.

It may be that the want of a plan filed in the registry office could be taken advantage of by a private owner: see *West v. Parkdale*, 12 App. Cas. 605; *Hendrie v. Toronto, Hamilton, and Buffalo R. W. Co.*, 26 O. R. 667, 27 A. R. 46; but these cases do not apply, I think, where one railway crosses another.

The Board deals exclusively with cases that come under secs. 137 and 177. The question of jurisdiction, however, should be raised by appeal to the Supreme Court. Section 44 provides that, subject to the provisions of that section, every decision of the Board shall be final. It expressly provides that an appeal shall lie from decisions of the Board to the Supreme Court of Canada upon questions of jurisdiction, but such appeal shall not lie unless the same is allowed by a Judge of the said Court upon application, and hearing the parties and the Board. An appeal shall also lie from the Board to that Court on any question which, in the opinion of the Board, is a question of law, upon leave therefor having been first obtained from the Board, which leave is in the discretion of the Board. It is, I think, the plain intentment of the statute that the Board shall deal with all questions of the kind involved in this suit—that the question of jurisdiction shall not be disposed of without the Board being heard. In the present case plaintiffs, having appealed to the Board and being dissatisfied with their decision, now seek to open up the matter *de novo*, on a question of jurisdiction, which they might have had disposed of by