

E. D. Armour, K.C., and Angus MacMurchy, for plaintiffs.

W. M. Douglas, K.C., and A. W. Ballantyne, for defendants.

CLUTE, J.:—Plaintiffs are lessees of the lands of the Ontario and Quebec Railway, including the right of way over lot 13 in the 2nd concession of the township and county of York, subject to certain reservations.

The Don valley is bridged by a viaduct built on and over the said lot.

Defendants are lessees of the Toronto Belt Line Railway Company, incorporated by 52 Vict. ch. 82 (O.) Section 2 of this Act empowers the Belt Line Railway Company to construct their railway from some point on the line of the Grand Trunk Railway in the eastern part of the city of Toronto, passing to the north of the city, and connecting with the Grand Trunk to the north-west of the city.

The Grand Trunk constructed a branch line about 1892 from the Belt Line Railway easterly to Taylor's brickyard, under agreement with the owner of the land over which it passed. This line approached but did not cross plaintiffs' right of way.

In 1901 the branch on this line was slightly changed, and in order to get more room was extended on to plaintiffs' right of way, under the viaduct.

In 1902 it was extended through the viaduct. This branch line was used by the Grand Trunk Railway Company for conveying freight for the owners of the brickyard and paper mills further north.

Defendants from time to time received plaintiffs' cars for delivery at defendants' siding, and the same passed over the lands in question, and were unloaded sometimes under the viaduct, and, later, on land across the viaduct owned by one Davies, the present owner of lot 13, whose predecessor in title originally owned the lot and conveyed the right of way to the Ontario and Quebec Railway Company.

On 30th December, 1904, the solicitor for defendants sent the following application to the Dominion Board of Railway Commissioners:— " . . . I inclose two blue prints of plan, profile, and book of reference, which this company, under agreement with Robert Davies, Toronto, desire to