

In the Railway Act of 1888 two kinds of crossings and only two are provided for, viz., "highway crossings" and what are in the heading and side-note to sec. 191, though not in the section itself, termed "farm crossings." "Farm crossings" appears to be a term used in the statute in contradistinction to "highway crossings," and intended to cover all private rights of crossing to be enjoyed by "persons across whose lands the railway is carried," whatever may be the character of such lands or the use to which they are put. Having regard to all the circumstances in which the agreement here in question was made, as shewn by the evidence, it was intended, in my opinion, to confer upon the grantors to the railway company a right of crossing, in its nature and extent at least as great as that described under the caption "farm crossings" in sec. 191 of the Railway Act, the width of the crossing itself, and of the gates and its precise location, being defined by the agreement. The phrase "a farm crossing," if not used as the equivalent of "a private crossing," as I think it was, was employed as a convenient and well-understood phrase to describe the rights created by sec. 191 of the Railway Act, and these rights, at least, the agreement, upon its proper construction, in my opinion conferred on Noah and Charles Briggs.

For the plaintiffs it is contended that the right of crossing conferred by sec. 191 is restricted to such uses as are incident to the usual and ordinary requirements of a farmer. This question was mooted but not determined in *Plester v. Grand Trunk R. W. Co.*, 32 O. R. 55, where it was held by a Divisional Court that the hauling of gravel from a farm to a highway was "a farm purpose," and the Court suggested that the hauling of timber cut from the land might be within "farm purposes." Possibly conveying from the land brick made from clay found in it might also, upon a construction, liberal but not unreasonably so, of "farm purposes," be deemed to be covered by that phrase.

As already pointed out, sec. 191 made the only provision under the Act of 1888 for crossings over railways other than highway crossings. Railways are necessarily carried across many properties which are not farms in any sense of the word. The language of sec. 191 is that "every company shall make crossings for persons across whose lands the railway is carried, convenient and proper for the crossing of the railways by farmers' implements, carts and other vehicles." Unless these latter words are to be read as re-