

and conclusive upon all companies and persons and in all the courts.

Section 25, sub-sec. 4, provides that the Board may review, rescind, change, alter, or vary any rule, regulation, or order, and all decisions made by it, whether previously published or not.

Section 32 provides that the Board may make an order notwithstanding the want of notice, and such order shall be valid and take effect in all respects as if made on due notice, but any person entitled to notice may, within 10 days after becoming aware of such order, or within such further time as the Board may allow, apply to vary, amend, or rescind such order, and the Board may on the hearing either amend, alter, or rescind such order, or dismiss the application.

I am of opinion that the subject matter of this action is within the jurisdiction of the Board; that the order of 5th January, 1905, was a valid order, notwithstanding the want of notice; that under sec. 25, sub-sec. 4, and sec. 32, of the Act, the plaintiffs had the right to apply to vary or amend the order; that in applying they submitted to the jurisdiction of that Court, and are concluded by its judgment; that, whether the application may be considered as one made under sec. 177 of the Act or sec. 137, in either case the essential thing is that the crossing should have the sanction of the Board. In the present case it has that sanction—not obtained in the usual way—but that is the effect—in my judgment—of the two applications.

The Chief Commissioner points out as a reason for not disturbing the order that the line has been there for 3 years, that it does not affect the track of the plaintiffs; that it goes under it; and “so far as we have any reason to believe, it cannot affect it in any way.” . . .

On their application to rescind, plaintiffs might, if they would, have had all questions of compensation for the past and future occupation of their lands determined by the Board. If they desire the order to be more specific in this regard, they may still apply to that Court to amend the order, and for such relief as they may be entitled to. That Court is the proper forum, and, in my judgment, the only forum to which application should be made for redress.

For years plaintiffs must have known that defendants were using their right of way for the delivery of their own