

ANGLIN, J.:—This injunction was originally granted because of defects in expropriation proceedings instituted by defendants. They now allege that by fresh proceedings they have cured these defects, and they claim . . . a warrant for immediate possession under sec. 170 of the Dominion Railway Act of 1903.

When the present motion was launched, it seems clear that the defendants were not in a position to sustain it. They have since filed plans and given the requisite notice by newspaper advertisement, under sec. 152 of the Railway Act, as is shewn by material filed by leave upon the argument.

The Chief Justice of the King's Bench has held in *Davidson v. Toronto and Niagara Power Co.* (17th January, 1906), that the provisions of the Railway Act of 1903 corresponding to the sections of the Railway Act of 1888, which are in the special Act of the defendants (2 Edw. VII. ch. 107 (D.)) must now be deemed to be incorporated in this special Act in lieu of the repealed provisions of the former Railway Act. This decision precludes any consideration of Mr. McKay's able argument in support of his contention that the enumerated sections of the Railway Act of 1888 still apply to the defendants.

But Mr. McKay objects to the new notices of expropriation given by the defendants, on the ground that they do not define the interests in the plaintiffs' lands which the defendants seek to acquire. He also contends that, the notices prescribed by sec. 171 of the Railway Act of 1903 not having been given, defendants are not entitled to a warrant under sec. 170.

While it may be held, in the case of a railway company not enjoying such special powers as are conferred on defendants by sec. 21 of 2 Edw. VII. ch. 107, that under a notice for the expropriation of lands, without definition of the interest to be taken, the owner should understand that the acquisition of the fee simple is intended, it by no means follows that a like notice given by a company having power to acquire "any privilege or easement required by the company for constructing the works authorized by this Act, or any portion thereof, over and along any land, without the necessity of acquiring a title in fee simple thereto," and whose special Act defines the word "land" as including