

sub-sec. 4 of sec. 25 and sec. 32 of the Railway Act, and having raised on that application all the objections that are now raised to it, it stands affirmed and must be taken to be as effective in its scope and bearing as if notice had been given and plaintiffs heard when it was first obtained.

It was argued by Mr. Armour that the effect of the order obtained by the James Bay Railway Company rescinding the order of 5th January as to that company, annulled the sanction given by the Board under the first order. But this view cannot, I think, be supported. The order of rescission is effective only so far as it affects the James Bay Railway Company, and plaintiffs' application having been dismissed, it is affirmed as to them.

It is further urged that assuming the order to stand, defendants never obtained what is called a "crossing order" under sec. 177 of the Act.

Section 177 provides for one railway crossing another, by leave of the Board, when a plan or profile of such crossing must be submitted, and the Board may make such order as may be deemed expedient. It was argued that the order as made only authorized the line of location from one point to the other, and was not intended to provide for a crossing nor impose terms in respect thereof; that this was the subject-matter for another application, which had not been made; and that until such order was made defendants were trespassers; and that the parties even cannot waive this provision; citing *Credit Valley R. W. Co. v. Great Western R. W. Co.*, 25 Gr. 507. . . . That case is distinguishable.

By sec. 8 of the Railway Act the Board of Railway Commissioners is constituted and made a court of record, and invested with the powers and duties of the Railway Committee of the Privy Council, which is thereby abolished.

Section 23 declares that the Board shall have full jurisdiction to inquire, hear, and determine any application by or on behalf of any party interested, in respect of the matters therein defined, with power to make mandatory and injunction orders, to hear and determine all matters of law and fact, and to have within its jurisdiction all the powers, rights, and privileges which are vested in a superior court.

Sub-section 2 declares that its decisions upon questions of fact, or whether the party is interested, shall be binding