

and declared thereby to be a company incorporated for the general advantage of Canada.

Decision of a Divisional Court, 13 C.L.R. 169, affirmed.

*E. L. Dickenson, E. D. Armour, K.C., and A. M. Stewart*, for various parties.

Full Court.]

[April 22.

MCKENZIE v. GRAND TRUNK RY. CO.

*Railway—Farm crossings—Agreement—Maintenance—Rights of land owners—Application to Board of Railway Commissioners.*

A railway constructed by the defendants' predecessors in title crossed the plaintiffs' respective farms. In 1854, when the line of railway was being laid down, bridges and an under-pass were constructed by the railway company to enable the owners of the farms to pass from one side of the railway to the other, and were for more than 50 years maintained and used in connection with the plaintiffs' farms, with the knowledge of the defendants and their predecessors in title, without any objection on their part.

*Held*, on the evidence, that the bridges and under-pass were provided for and enjoyed by the plaintiffs' predecessors in title as part of the agreements or arrangements under which the defendants' predecessors in title acquired their right of way through the lands in question, and the defendants were bound by them. There could be no question of ultra vires; the subject matter of the agreements was within the powers and authority of the railway company in dealing for the acquisition of a right of way. The defendants were in the wrong in assuming to alter or reconstruct the bridges and under-pass without the sanction of the Board of Railway Commissioners; and it was for them, and not for the plaintiffs, to apply to the Board.

Judgments of Boyd, C., and Meredith, C.J.C.P., affirmed.

*Wallace Nesbitt, K.C.*, for defendants, appellants. *T. G. Meredith, K.C.*, and *D. A. McDonald*, for plaintiffs.