

The Court of Appeal cannot impose upon a suitor conditions upon which he shall be allowed to appeal to this Court.

Appeal dismissed with costs.

*Foy, Q.C.*, for the appellant.

*Aylesworth* for the respondent.

OTTAWA, June 12, 1890.

British Columbia.]

TURNER V. PREVOST.

*Statute of frauds—Contract relating to interest in land—Part performance.*

B., a resident of British Columbia, wrote to his sister in England that he would like one of her children to come out to him, and in a second letter he said, "I want to get some relation here, for what property I have, in case of sudden death, would be eat up by outsiders and my relations would get nothing." On hearing the contents of these letters T., a son of B.'s sister, and a coal miner in England, came to British Columbia and lived with B. for six years. All that time he worked on B.'s farm and received a share of the profits. After that he went to work in a coal mine, in Idaho. While there he received a letter from B. containing the following:—"I want you to come at once as I am very bad. I really do not know if I shall get over it or not, and you had better hurry up and come to me at once, for I want you, and I dare say you will guess the reason why. If anything should happen to me you are the person who should be here." On receipt of this letter T. immediately started for the farm, but B. had died and was buried before he reached it. After his return he received the following telegram, which had not reached him before he left for home:—"Come at once if you wish to see me alive, property is yours, answer immediately. (sgd) B." Under these circumstances T. claimed the farm and stock of B., and brought an action for specific performance of an alleged agreement by B., that the same should belong to him at B.'s death.

*Held*, affirming the judgment of the Court below, that as there was no agreement in writing for the transfer of the property to T.

and the facts shown were not sufficient to constitute a part performance of such agreement, the fourth section of the statute of frauds was not complied with, and no performance of the contract could be decreed.

Appeal dismissed with costs.

*S. H. Blake, Q.C.*, for the appellant.

*Moss, Q.C.*, for respondent Power.

*McCarthy, Q.C.*, and *A. F. McIntyre* for other respondents.

OTTAWA, June 12, 1890.

Ontario.]

CANADA SOUTHERN RAILWAY CO. V. JACKSON.

*Railway company—Negligence—Accident to employee—Performance of duty—Contributory negligence.*

J., a switch-tender of the C. S. Ry. Co., was obliged to cross a track in the station yard to get to a switch, and he walked along the ends of the ties which projected some sixteen inches beyond the rails. While doing so an engine came behind him and knocked him down with his arm under the wheels, and it was cut off near the shoulder. On the trial of an action against the company in consequence of such injury, the jury found that there was negligence in the management of the engine in not ringing the bell, and going faster than the law allowed. They also found that J. could not have avoided the accident by the exercise of reasonable care.

*Held*, affirming the judgment of the Court below, Gwynne and Patterson, JJ., dissenting, that there was no such negligence on J.'s part as would relieve the company from liability for the injury caused by improper conduct of their servants.

*Held*, per Taschereau and Patterson, JJ., that the Workmen's Compensation for Injuries Act of Ontario, 49 Vic., c. 28, applies to the C. S. Ry. Co. notwithstanding it has been brought under the operation of the Government Railways Act of the Dominion.

Appeal dismissed with costs.

*Symons* for the appellants.

*S. H. Blake, Q.C.*, for the respondent.