of time since to give the defendants a right under the statute or by prescription. Judgment of Falconbridge, C.J., reversed.

Douglas, K. C., and *W. T. McMullen*, for plaintiff, appellant. *Armour*, K.C., and *G.F. Mahon*, for defendants.

From Boyd, C.] GRAND TRUNK R.W. Co. *v.* VALLIEAR. [Jan. 25.

Way—Private way—Easement—Prescription—Railway—Station grounds—Implied grant—Powers of railway company—Benefit of railway—Superfluous lands—Way of necessity.

The defendant claimed a right of way through the plaintiffs' station grounds at M. by virtue of open, continuous, and uninterrupted user for more than 30 years.

Held, that the right must rest upon the presumption of a grant, and if an actual grant would have been illegal and void, a grant implied from 20 years' user could not be valid.

The use on which the defendant relied began in 1872. At that time the Northern Railway Company of Canada, through whom the plaintiffs derived title, had no power to make a sale or grant of any of their property otherwise than for the benefit and account of the railway: 12 Vict. c. 196 (C). In 1868 the Northern Railway was declared to be a work for the general advantage of Canada, but none of the general Railway Acts passed by the Dominion Parliament were made applicable to it until the passing of the Railway Act, 1888, ss. 3 and 5; and by s. 90 (D) the power of a railway company to sell and dispose of lands and other property was limited to so much thereof as was not necessary for the purposes of the railway. The land in question was acquired for use by the company as a railway station, and the area was within the quantity which they were authorized to acquire for the purpose.

Held, that neither at the time when the user on which the defendant relied began, nor since, was there power in the railway company to make a grant of such a right; it was not for the benefit of the railway; neither was it of lands not required for its purposes; and the defendant had, therefore, failed to establish his right.

Between the lot owned by the defendant and the station grounds there was a strip of land laid out as a street which he was occupying as part of his premises.

Held, that, even assuming that he had acquired title to the strip by possession, that did not carry with it any right to a way, of necessity or otherwise, over the plaintiffs' lands in order to give him an outlet.

Judgment of Boyd, C., reversed; Osler, J.A., dissenting.

Riddell, K.C., and *Rose*, for plaintiffs, appellants. *McCullough*, and *McKeown*, for defendant, respondent.