

being located at the points mentioned in the second agreement, and provided further that it should not be incumbent on the defendants to erect stations at the places mentioned in the former agreement, "but that the places herein defined for stations shall be taken to be in substitution for the places mentioned in such former agreement."

The defendants erected stations at the points specified, three of these stations being respectively called A. G. and N. Trains commenced to run on the line in the year 1878.

In 1880, the plaintiffs being dissatisfied with the mode in which the stations at G. and N. were being maintained, brought an action against the defendants for specific performance of the agreements. In this action a consent decree was pronounced and an injunction granted, restraining the defendants from ceasing to maintain the stations except in a certain manner in the decree specified. The decree contained no limitation or other provision as to the time during which the stations were to be maintained, though this question had been raised at the hearing of the action.

In 1885, after the expiration of the seven years, the defendants make changes in their mode of maintaining the station at A. The plaintiffs were dissatisfied, and this action was thereupon brought by them to compel specific performance.

*Held*, reversing the judgment of ROBERTSON, J., that the word "establish" does not in itself mean "maintain and use for ever"; that the seven years limitation applied to the substituted stations, and that the defendants were not bound to maintain them after the expiration of that time.

*Bickford v. The Town of Chatham*, 14 A.R. 32, and in the Supreme Court (not reported), *Jessup v. Grand Trunk Railway*, 7 A.R. 128, and *Geauyeau v. The Great Western Railway*, 3 A.R. 412, considered. *Wallace v. Great Western Railway*, 3 A.R. 44, distinguished.

*Held*, also, that the decree in the former action did not constitute the question of the seven years' limitation *res adjudicata*, there being no adjudication on that question, and in any event an adjudication on that question being unnecessary at the date of the former action. *Concha v. Concha* 11 App. Cas. 541 considered and followed.

At the trial evidence was admitted on behalf of the plaintiffs of representations made by directors of the defendant company, at meetings held to consider the question of granting the second bonus, to the effect that by the second agreement the defendants would be bound to maintain the stations for all time.]

*Held*, that this evidence was clearly inadmissible.

*W. Cassels, Q.C., and R. S. Cassels*, for the appellants.

*McCarthy Q.C., and Pepler*, for the respondents.

[Dec. 22, 1888.]

JONES v. THE GRAND TRUNK RAILWAY COMPANY OF CANADA.

*Negligence—Carelessness contributing to accident—Railways—Approach to station.*

To reach, from the highway, the station of the defendants at Point Edward, it is necessary to go through the railway yard and cross eleven railway tracks, and a planked way runs across these tracks, extending from the street to the east end of the station platform. The planked way is unfenced and unguarded. J., the husband of the plaintiff, who was familiar with the locality, while hurrying to the station before daylight, left this planked way upon reaching the track nearest the platform, in order to walk around the rear of a train that was coming in from the east on that track and was still in motion. While some twenty feet from the planked way, walking between the tracks and near the rails of the track second from the platform, J. was struck by the buffer beam of a shunting engine and killed. This shunting engine had been standing some 150 feet to the west of the planked way and was passing slowly to the east for the purpose of being switched on to the track nearest the platform, and then aiding in placing in the ferry boat the cars of the train that had just come in. The shunting engine had been standing to the west of the planked way for the purpose of convenience in giving orders to the engineer; its head-light was burning and as it moved its bell was ringing. There was ample space between the two tracks for a person to stand in safety, and the approach of the shunting engine could easily be noticed.]