

## SUPREME COURT OF CANADA.

OTTAWA, 9th Dec., 1895.

Quebec.]

KERR v. ATLANTIC &amp; NORTH-WEST RY. Co.

*Prescription—Action for damages—Injury to property—Continuance of damage—Art. 2261 C. C.—Railway Company—Construction of road—Wrongful act of contractor—Liability for.*

K. brought an action against a railway company for damages by reason of a right of way (which he claimed) having been closed up by the building of a portion of the road through the city of Montreal, and claimed that he suffered an annual loss of \$450 by being deprived of the right of way. The company pleaded, *inter alia*, that the action, not having been brought within two years from the time the alleged wrong was committed, was prescribed by Art. 2261, C. C., and also, that the injury was done by the contractor for building the road, and they were not liable therefor.

*Held*, affirming the decision of the Court of Queen's Bench, that the injury complained of having been committed by one act, the consequences of which might have been foreseen and claimed for at the time, the fact that the damage continued did not prevent the prescription running against K., and his action was barred by Art. 2261, C. C.

*Held*, also, that the company were not liable for the wrongful act of the contractor in borrowing earth for embankments from a place, and in a manner, not authorized by his contract, and so committing the injury complained of.

Appeal dismissed with costs.

*Taylor* for the appellant.

*Abbott, Q.C.*, for the respondents.

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9 December, 1895.

Quebec.]

LA COMPAGNIE POUR L'ECLAIRAGE AU GAZ DE ST. HYACINTHE v.  
LA COMPAGNIE DES POUVOIRS HYDRAULIQUES DE ST. HYACINTHE.

*Construction of statute—By-law—Exclusive right granted by—Statute confirming—Extension of privilege—45 Vic. c. 79, s. 5 (P. Q.)—C. S. C. c. 65.*

In 1881 a municipal by-law of St. Hyacinthe granted to a com-