

his mill in 1905, and on Oct. 10, 1906, sold the mill, including the machinery, to M., who on March 19, 1907, sold the same to the plaintiffs. On Feb. 18, 1908, the defendants took the machinery out of plaintiffs' possession in the mill, money being then still due to the defendants under the contract. Before taking possession, the defendants recovered judgment against B. for the amount due under the contract. The plaintiffs, asserting that they were purchasers for value without notice of the defendants' rights, brought this action for wrongful removal.

Held, 1. The original indebtedness was not merged in the judgment quoad the security provided by the contract, and the defendants were entitled to retain that security until payment.

2. By suing for and obtaining judgment for the purchase money the defendants had not elected to treat the transaction as an absolute sale so as to waive their security. *McEntire v. Crossley* [1895] A.C. 457, 464 explained and distinguished.

3. That the defendants' rights were preserved and their title to the machinery continuously asserted by having affixed thereto a stamp bearing their name and address, in compliance with the Conditional Sales Act, R.S.O. 1897, c. 49, s. 1, and there was no evidence of laches, but the contrary.

Judgment of District Court of Muskoka affirmed.

Raney, K.C., for plaintiffs. *Rose*, K.C., for defendants.

Latchford, J.] *BEARDMORE v. CITY OF TORONTO.* [Jan. 6.

Striking out statement of claim as shewing no cause of action—
Staying proceedings to add party defendant—Con. Rule 261
—Hydro-Electric Commission—7 Edw. VII. c. 19, s. 23—No
action to be brought against the Commission without the
consent of the Attorney-General—Refusal of fiat—Ultra
vires—Refusal of Commission to become a party to suit—
Contract—Abortive attempt of plaintiff to bring all parties
before the court—Right of plaintiff to relief—Con. Rule 262.

Motion by defendant under Con. Rule 261 to strike out the statement of claim on the ground that it disclosed no reasonable cause of action and to stay all proceedings until the Hydro-Electric Commission be added as a party defendant. The action was brought by a freeholder and ratepayer of the city for a declaration that a contract for the supply of electric energy