

which makes invalid any security not given for the purchase price of seed grain, which assumes to bind or affect a crop. There was a lawful seizure, therefore, of all the grain grown on the two farms.

*Per* Idington, J. The security taken by the bank was a violation of the provisions of sec. 76 ss. 2 (e) of The Bank Act.

*Per* Davies and Duff, JJ., dissenting. The appeal should be dismissed.

Judgment of the Appellate Division (10 Alta. L.R. 304), reversed in part.

Appeal allowed in part.

*Nesbitt*, K.C., for appellants; *Geo. H. Montgomery*, K.C., and *R. A. Smith*, for respondent.

Ont.]

[March 5, 1918.]

ACTON TANNING CO. v. TORONTO SUBURBAN RY. CO.

*Railway—Permission to enter land—Oral agreement—Statute of Frauds—Compensation—Company—Authority of president.*

A railway company, without expropriating, ran its line through the yards of a tanning company, and did work improving the yards and other work beyond the ordinary scope of a railway project. Four years later the tanning company applied to a judge for the appointment of arbitrators under the Railway Act to determine the compensation for the right of way which the railway company, opposing the application, claimed to be entitled to without payment under an oral agreement with the president of the tanning company since deceased. The judge ordered the trial of an issue, with the railway company as plaintiff, to determine the rights of the parties and on appeal from the judgment of the Appellate Division in such action:—

*Held*, that the evidence established that such an agreement was entered into.

*Held* also, Idington and Duff, JJ., dissenting, that the agreement was binding on the tanning company; that said company was owned and controlled by commercial firm of which the president was the head and the partnership articles and evidence at the trial shewed that he had authority to bind the company; and that the Statute of Frauds could not be relied on to defeat the action as it was not brought to charge the defendants on a contract for the sale of land or of an interest in land. If it was applicable it is taken out of the statute by part performance.

Appeal dismissed with costs.

*H. J. Scott*, K.C., for appellant; *Nesbitt*, K.C., and *Christopher Robinson*, for respondent.