

[Reference to the Railway Act, R. S. C. ch. 109, sec. 8, sub-sec. 19, and *Ross v. Grand Trunk R. W. Co.*, 10 O. R. 447.]

Although there is no such provision in the special Act 41 Vict. ch. 26, as is contained in the Railway Act, sec. 8, yet any claim by the land owner for compensation must be founded on the special Act, and could be enforced by the owner of the land at any time within 20 years.

Nearly 23 years had elapsed between the time the town of Brampton took possession of the lands mentioned and the death of Mrs. Gardner, and neither she nor the applicant had in that time made any claim for compensation. The claim of the applicant to compensation in regard to lot 16, and of the Gardner estate to compensation in respect of lots 14 and 15, were each barred on 1st January, 1899.

Had Marietta Gardner recovered compensation, she would have had only a life interest in the compensation money, and those entitled to the inheritance in the land would have been entitled to the remainder in fee in the compensation money: *Young v. Midland R. W. Co.*, 16 O. R. 738, 19 A. R. 265.

Then, as to the point that the assignment from the executors of Marietta Gardner has a champertous taint.

What the applicant received from the executors of Marietta Gardner was the mere right to litigate a claim which he himself desired to set up, but which Marietta Gardner, up to the time it was barred by the statute, considered to be of such an insignificant character that she refused even to put it forward, much less to litigate the claim.

The solicitor for the applicant in his affidavit states that when he first approached Mr. Duggan, one of the executors of Marietta Gardner, with the object of obtaining an assignment, he told Duggan that the estate would be put to no costs and would get 50 per cent. of what was received by the applicant. This statement, the solicitor says, was made before he had consulted counsel, but after consulting counsel he concluded that the assignment would require to be absolute in every respect, and without any agreement to compensate the Marietta Gardner estate in any way out of what might be recovered from the town of Brampton. The solicitor thereupon drew the assignment, and again saw Mr. Duggan and explained to him that the applicant could not make