

Full Court.]

[Dec. 31, 1907.]

LUMSDEN v. TEMISKAMING, ETC., RAILWAY COMMISSION.

Railway—Damages “sustained by reason of the railway”—Timber cut for construction—Trespass—Limitation of actions—Plans not filed.

The defendants were incorporated by 2 Edw. VII. c. 9 (O.), which provides that they shall have in respect of the railway all the powers, rights, remedies and immunities conferred upon any railway company by the Railway Act of Ontario. The latter Act, R.S.O. 1897, c. 207, s. 42, provides that “all actions for indemnity for damages or injury sustained by reason of the railway, shall be instituted within six months next after the time of the supposed damage sustained.” The defendants (the railway commission and a contractor under them), before the filing of the plans of the railway, and in the course of constructing it, entered upon the timber limits of the plaintiffs and cut timber for construction purposes. These acts ceased much more than six months before the commencement of this action, brought to recover damages for the trespass and for the value of the timber.

Held, following *McArthur v. Northern and Pacific Junction R.W. Co.* (1888-90) 15 O.R. 733, 17 A.R. 86, that the plaintiffs' claim was for damages sustained by reason of the railway, and was barred by the statute; and it made no difference that the commission had not filed the plans of their railway or taken the necessary steps to compensate those whose lands or interests they entered upon or affected.

Judgment of RIDDELL, J., affirmed.

G. F. Henderson, for plaintiffs, appellants. D. E. Thomson, K.C., for Railway Commission. J. H. Moss, for defendant Macdonnell.

HIGH COURT OF JUSTICE.

Meredith, C.J.C.P., MacMahon, J., Anglin, J.]

[Jan. 2.]

LABELLE v. O'CONNOR.

Vendor and purchaser—Contract—Purchase money payable by instalments—Time of essence—Default—Waiver—Rescission—Notice—Specific performance—Return of money paid—Deposit—Forfeiture.

By an agreement in writing made between the parties on the