

November. To such a claim the statute forms no defence, the action resting on the continued parl license or consent of plaintiff to the use of his invention, and the sum awarded being in the nature of a quantum meruit ascertained by what had been agreed upon and accepted for the previous year.

For what defendants did in the years 1897, 1898, and 1899, plaintiff's remedy is by an action for the infringement of his patent, the issues in which have not been tried in the present action.

The appeal will be allowed with costs, and the judgment below varied by reducing it to the sum of \$300, with full costs (of an action in the High Court).

SEPTEMBER 19TH, 1904.

C.A.

HOEFFLER v. IRWIN.

Partnership—Oral Contract—Purchase and Sale of Timber Limits — Interest in Land — Statute of Frauds — Part Performance—Findings of Jury.

Appeal by defendant from judgment of TEETZEL, J. (2 O. W. R. 714), in favour of plaintiff upon the findings of a jury.

Plaintiff sought for an account and payment of one-sixth of the profits arising from the sale of a certain timber limit in the township of Merritt, in pursuance of an alleged agreement between the parties by which plaintiff acquired from defendant a one-sixth interest in the said limit, in consideration of his transferring to defendant one-half of his own interest in certain contracts for driving logs and lumber on the Spanish river, in the spring of 1902. Defendant denied the alleged agreement, and further pleaded as a defence the 4th section of the Statute of Frauds.

At the trial it was proved that defendant and one William Irwin and one Thomas H. Sheppard were the joint owners of a timber limit covering the township of Merritt, under a license in the usual form, dated 13th September, 1901.

The case made for plaintiff was that he being equally interested with William Irwin in two contracts dated 29th March, 1902, for driving logs and lumber on the Spanish river in the spring of that year, defendant proposed that he should give him an interest in these contracts in exchange for which defendant would give him an interest in the Merritt limit.

The agreement was an oral one, and its terms were proved by the testimony of plaintiff alone, though there was