

Q. B. Div.]

NOTES OF CANADIAN CASES.

[Q. B. Div.]

31st May, 1881, as compared with the price at which defendant contracted to sell. Such being the fact, the law is well settled that the plaintiff cannot recover: *Melchert v. Am. Un. Tel. Co.* 11 Fed. Rep. 193; *Gregory v. Wendell*, 39 Mich. 337; *Pickering v. Cease*, 76 Ill. 328; *Barnard v. Backhans*, *supra*.

Judgment for defendant.

NOTES OF CANADIAN CASES.

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QUEEN'S BENCH DIVISION.

In Banco.]

[Nov. 24.]

HENDRIE V. NEELON.

Sale of timber—Non-delivery—Profits—Damages.

Plaintiff agreed to deliver timber to defendant at S. for carriage to O., to be sold there. There was no market nearer place of delivery than O. Delivery was not made. Defendant counter-claimed for non-delivery.

Held, [CAMERON, J., dissenting,] that the measure of damages was what timber was worth at O., minus what the carriage there from the place of delivery cost.

Osler, Q.C., for motion.

E. Martin, Q.C., contra.

Full Court.]

[Nov. 24.]

MCCLUNG V. MCCracken.

Statute of frauds—Sale of lands—Evidence—Specific performance—Deed executed but not delivered.

When A., whose wife owned a certain freehold property on St. George street, wrote to B., the owner of a certain freehold property on King street, with reference to the said properties as follows:—"If you will assume my mortgage and pay me in cash \$3,750, I will assume your mortgage of \$5,000 on the leasehold." And B. replied:—"Your offer of this date for the exchange of my property on King street for your property on St. George, I will accept on your terms."

Held, [affirming the judgment of FERGUSON, J., 2 Ont. R. 609,] not a sufficient memorandum of the contract to satisfy the Statute of Frauds.

Held also, in an action for specific performance of the above contract by B., correspondence between the solicitors of the parties of date subsequent to the date of the above letters, as also the requisitions respecting title which passed between the solicitors, were inadmissible in evidence.

Held also, that the fact that A.'s wife had signed a conveyance of the land in question to B., which conveyance had never been delivered, and did not by recital or otherwise set forth the contract relied on, could not assist B. in the action for specific performance.

Rose, Q.C., for motion.

MacLennan, Q.C., contra.

FOOT V. PRICE.

Deficiency from false survey—Compensation—Trusts declared of original lot—Disclaimer by cestui que trust—Improvement under mistake of title.

G. W. F. being the patentee of a certain lot described as of 200 acres, but in which there was a deficiency, conveyed half of the lot to J. B. P., who conveyed it to trustees to hold in trust for E. F., wife of G. W. F., upon certain trusts contained in the deed, and without power to her to anticipate. It was subsequently discovered that there was a deficiency in the lot, and upon the application to the government in the name of the trustees by G. W. F., whom they appointed their agent for that purpose, a grant of land as compensation for the deficiency was made to the trustees of E. F., describing them as such. Subsequently an instrument under seal, expressed to be made between J. B. P. of the first part; E. F., wife of G. W. F., of the second part; and the trustees of the third part, which recited the facts, and also that the trustees had no real interest therein, but were named as grantees merely as being the legal owners of the original half lot, was executed by J. B. P. and E. F. whereby they declared that the parties of the first and second parts were not in any way interested in the lands granted as compensation, and that the trustees held them as trustees for G. W. F., the patentee of the original lot. Subsequently the trustees, under the direction