

in the absence of any such authority, the learned Judge was of opinion that nothing less than a by-law of the township deliberately abandoning or authorising the abandonment of its right to the exemption could be invoked to support any such arrangement as was alleged here.

*Action dismissed with costs.*

ORDE, J.

SEPTEMBER 15TH, 1920.

LUSK v. PERRIN.

*Mortgage—Application of Payments Made by Mortgagor—Principal—Interest—Mortgagors and Purchasers Relief Act, 1915, 5 Geo. V. ch. 22—Order of Local Judge Made on Application of Mortgagor—Irregularity—Default in Payment of Interest—Entry by Mortgagee upon Vacant Possession—Forcible Entry of Dwelling House—Remedy—Criminal Code, secs. 102, 103—Cutting Timber—Right of Mortgagee in Possession to Profits of Land—Mortgagee not Chargeable with Waste—Possession Restored to Mortgagor—Dismissal of Action—Costs.*

Action by Lusk, mortgagor, against Perrin, mortgagee, and Runnett, Perrin's agent, to recover possession of the mortgaged premises, which the defendant had entered in the plaintiff's absence; for an injunction to restrain the defendants from entering and cutting wood and timber; and for damages for trespass and for forcible and illegal entry.

The action was tried without a jury at Haileybury.

M. F. Pumaville, for the plaintiff.

W. A. Gordon, for the defendants.

ORDE, J., in a written judgment, said that, as the defendants almost immediately after the commencement of the action went out of possession and desisted from any further acts of trespass, the only question which remained for adjudication was that of the damages, if any, which the plaintiff had sustained by the alleged wrongful acts of the defendant; and, assuming that the plaintiff was not entitled to exemplary damages, the actual damage done was within the jurisdiction of a Division Court.

In April, 1913, the plaintiff mortgaged to Perrin the north half of lot 8 in the 3rd concession of Harley to secure payment of