

MAY 8TH, 1906.

DIVISIONAL COURT.

McWILLIAMS v. DICKSON CO.

*Timber—Crown Lands—Issue of Patent—Consent of Timber Licensees—Agreement as to Timber—Ownership of Land—Estoppel.*

Appeal by plaintiff from judgment of STREET, J. (6 O. W. R. 702), dismissing action brought to replevy a quantity of basswood, ash, elm, maple, cedar, hemlock, and other saw logs cut by defendants upon lot 18 in the 5th concession of Cavendish, and removed by them to Burley Falls on Stoney Lake. STREET, J., held that plaintiff had failed to make out a right to the logs.

R. F. McWilliams, Peterborough, and A. R. Clute, for plaintiff.

G. H. Watson, K.C., and G. M. Roger, Peterborough, for defendants.

The judgment of the Court (BOYD, C., MAGEE, J., MABEE, J.), was delivered by

BOYD, C.:—The evidence of Cochrane, as patentee, leads very strongly to the conclusion that there was no real transaction on his part in procuring the patent for lot 18. There is no reason to disagree with the inference drawn by Street, J., that Cochrane was acting for the father McWilliams or the son, and that, as the intermediary in whose name the patent issued, it was competent for him to agree with defendants as to taking off the timber, in consideration of their facilitating or not objecting to the issue of the patent. The relation of the licensees, the defendants, to this land was, in the opinion of Cochrane, an obstacle to the getting of the patent, and it was considered desirable to have this removed by having defendants assent thereto on the footing of the agreement of 4th January, 1902. Cochrane obtained the patent subject to this concession to defendants, and plaintiff, who takes under Cochrane, apparently without any value being given, cannot recede from it.