under the belief that the lands and premises were his own.

The judgment charges the defendant Lindsay with a proper occupation rent since the death of the tenant for life in 1874. The defendant is one of the tenants in common of this property, and has occupied it for his own use and benefit. Ordinarily a tenant in common occuping the joint property, without excluding his co-tenants, is not liable to them for an occupation rent or for profits; but the Court has not applied that rule to this case. The statute, 4th Anne c. 16, s. 27, enables a tenant in common to bring an action of account against his co-tenant "for receiving more than comes to his just share or proportion." Prior to the statute there was no such right of action at common law: *Wheeler* v. *Home*, Willes 208; for says Co. Litt. 199 b., "one tenant in common taking the whole profits, the other hath no remedy in law against him, for the taking of the whole profits is no ejectment." The only remedy therefore is the action given by the statute: *Henderson* v. *Eason*, 2 Phil. 308; and such action will lie only for a share of the rents actually received by such tenant in common, and not for the profits or produce derived from his sole enjoyment of the joint property: *McMahon* v. *Burchell*, 2 Ha, 97, 5 Ha. 322, 2 Phil. 127; *Henderson* v. *Eason*, 15 Sim. 303, 2 Phil. 308, 12 Q. B. 986, 17 Q. B. 701; *Sturton* v. *Richardson*, 13 M. & W. 17; *Nash* v. *McKay*, 15 Gr. 247. And then not more than six years arrears of rent are recoverable: *Reade* v. *Reade*, 5 Ves. 749; *Drummond* v. *Duke of St. Albans*, *Ib.* 439; *Tarlton* v. *Goldthwaite*, 6 Ala 346.

This occupation rent should be based upon the rental value of the farm in its unimproved state: *Morley* v. *Matthews*, 14 Gr. 551; *Carroll* v. *Robertson*, 15 Gr. 173; *Bright* v. *Boyd*, 2 Storey's Rep. 605; unless when interest is allowed on the expenditure for improvements: *Fawcett* v. *Burwell*, 27 Gr. 445; and it may be regulated by the amount of interest allowed to the defendant on the purchase money and on the value of his improvements, but should not exceed such allowance of interest: *Morton* v. *Ridgway*, 3 J. J. Marshall, 257; *Witherspoon* v. *McCalla*, 3 Dessaur 245. And this seems consistent with the rule that a vendor receiving interest on the purchase money is liable to the purchaser for the rents he has received: Sugden, V. & P. 493; see also *Stevenson* v. *Maxwell*, 2 Sandford Ch. 302.

On the rental value of the farm unimproved, the weight of evidence is with the defendant's witnesses, and though they vary in their estimate from $100 to $150, I think the latter sum is the fair value; and as the judgment determines the period of liability, I find that a proper occupation rent to charge the defendant since the death of the tenant for life in September, 1874, is the sum of $150 per annum. The judgment allows the defendant his taxes paid on the property, and as a tenant in common I assume he will be entitled to a share of the $150 rent with which he is chargeable.

The plaintiffs seek to charge the defendant for cutting and removing timber and other trees. The evidence shows that the defendant used the farm in a husbandlike manner, and that he considered the farm his own, and used only the fallen timber for fences and firewood. Besides, as a matter of law a tenant in common is not liable to his co-tenants for cutting timber on the joint property: *Martin* v. *Knollys*, 8 T. R. 146; *Rice* v. *George*, 20 Gr. 221. This portion of the plaintiff's claim cannot be allowed.

Brough, for plaintiffs.

Hoyles and *Barwick*, for defendant Lindsay.

SECOND DIVISION COURT, COUNTY OF ONTARIO.

Commented Quirk v Thompson, 17 N. W. Rep. 89.

STEWART v. BROCK.

Chattel mortgage—Re-filing.

A chattel mortgage was filed on the 19th September, 1881, at 2 o'clock p.m., and re-filed on the 19th September, 1882, at 11 o'clock a.m.

Held, too late.

[Whitby—Dartnell, JJ.

Upon the facts above stated the following judgment was delivered by

DARTNEL, J.J.—As far as I know the point raised in this case has not been expressly decided.

Armstrong v. *Ausman*, 11 U.C.R. 498, is the nearest in point, it being there held that where the first filing was on the 15th of May, a re-filing on the 14th of May following was clearly in time, In that case DRAPER, J., says, p. 503: "The year must commence generally on the day of filing, *i. e.*, at the commencement of that day, or on the hour of the particular day on which it is marked as received by the clerk."