

the plaintiff's land and without previously giving notice to the plaintiff. The plaintiff brought an action for an injunction and damages. Kekewich, J., held that the cutting without notice was not justifiable except in a case of emergency, and he gave judgment for the plaintiff for 5*l.* and costs.

The defendant appealed.

Their Lordships allowed the appeal. The law was thus laid down by Lindley, L.J.: "The owner of a tree has no right to prevent a person lawfully in possession of land into or over which its roots or branches have grown from cutting away so much of them as projects into or over his land, and the owner of a tree is not entitled to notice unless his land is entered in order to effect such cutting. However old the roots or branches may be, they may be cut without notice, subject to the same condition. The right of an owner or occupier of land to free it from such obstructions is not restricted by the necessity of giving notice so long as he confines himself and his operations to his own land, including the space vertically above and below the surface."

CHANCERY DIVISION.

LONDON, April 27, 1894.

Before KEKEWICH, J.

In re BIRD. BIRD *v.* CROSS.

Will—Condition—Non-fulfilment—Lunacy—Act of God.

A testator bequeathed to his son John one fifth of his residuary estate, "but in case my said son John shall not within three years of the date of my death return to England and personally appear before the trustees of this my will, and identify himself to them to their satisfaction," then the testator gave the said share to other persons. At the date of the death of the testator his son John was a lunatic, with occasional lucid intervals, and confined in a lunatic asylum in Sydney, New South Wales; and in consequence of his lunacy he had failed to perform the condition.

Kekewich, J., held that the lunacy was an act of God, rendering the performance of the condition impossible by the lunatic, and that, the condition being subsequent, he was entitled to the one-fifth share of the testator's estate.