

respect thereof against the land, and, being so subrogated, the land was an insufficient security for her claim against it, and she had a right to cut down the timber; and further that the timber was cut down for the purpose of clearing the land for cultivation, and no waste was committed.

J. A. Robinson, St. Thomas, for defendants.

D. J. Donahue, K.C. for plaintiffs.

The judgment of the Court (STREET, J., BRITTON, J.) was delivered by

STREET, J.—I think *Yates v. Yates*, 28 Beav. 637, is not distinguishable in principle from the present case. There it was held that the periodical payments of an annuity charged on land by the testator in favour of his widow should be apportioned between the value of the life estate and the value of the reversion. . . . Re Muffett, *Jones v. Mason*, 39 Ch. D. 534. We have not before us a basis upon which to work this calculation out exactly, for the purpose of ascertaining the share of the debt for which defendant Reece is entitled to a charge. . . . Taking the value of the land at the testator's death at \$2,500, which is the value placed on it by many witnesses, the security for the sums paid by defendant Reece beyond her proportionate share cannot be said to be inadequate so as to entitle her to cut down the timber, under the authority of *Brethour v. Brooke*, 23 O. R. 658. I find no reason therefore, to dissent from the conclusion at which the Chief Justice arrived as to the liability of defendant Reece for the acts complained of. I quite concur in the finding that these acts were not done for the purpose of clearing the land for cultivation, and the result of them has been undoubtedly greatly to diminish the value of the property. The amount found payable in respect of the damage is not excessive. . . . Instead of the payment into Court of \$400 to remain there during the life of defendant Reece, she receiving the interest meantime, she should at once pay to plaintiffs the present value of that sum, viz., \$180, and judgment varied to that extent. Any rights defendant Reece may have to recover the sums, if any, which she has paid upon the annuity beyond her due proportion must be enforced in another action. They form no defence to the claim of plaintiffs here, and no relief by way of counterclaim in respect of them has been sought.

Appeal dismissed with costs.