

## STEPHENS V. GORDON.

Ontario.]

*Agreement, Construction of—Way—Timber—Removal of.*

The plaintiff was the owner of a farm of about a mile in breadth and five-sixths of a mile in length. About two-thirds of the farm was heavily wooded, and the rest of it was cleared and cultivated. The defendant became the purchaser of the trees and timber upon the land, under an agreement, which provided among other things, that the purchaser should have "full liberty to enter into and upon the said lands for the purpose of removing the trees and timber at such times and in such manner as he may think proper," but reserved to the plaintiff the full enjoyment of the land, "save and in so far as may be necessary for the cutting and removing of the trees and timber." To have removed the timber through the wooded land at the time it was removed would have involved an expenditure which would have probably amounted to a sacrifice of the greater portion of the timber.

*Held*, affirming the judgment of the court below, that the defendants had a right to remove the timber by the most direct and available route, provided they acted in good faith and not unreasonably, and the reservation in favour of the plaintiff did not minimize or modify the defendant's right under the general grant of the trees, to remove the trees across the cleared land. Gwynne, J., dissenting.

Appeal dismissed with costs.

*M. Wilson, Q.C.*, for appellant.*D. McCarthy, Q.C.*, for respondent.

## CORBETT V. SMITH.

Nova Scotia.]

*Deed—Action to set aside—Undue influence—Evidence.*

C., executrix under a will, brought an action to have a deed executed by testator some two months before the date of the will, set aside and cancelled for undue influence by the grantees, and incompetence of the grantor to execute it. C. alleged in her statement of claim that testator was eighty years old and a man of childlike simplicity; that defendants, grantees under the deed, had kept him under their control and several times assaulted him when he wished to leave their house; and that he