

ONTARIO.

FIRST DIVISION COURT, COUNTY OF
SIMCOE.

(Reported for THE CANADA LAW JOURNAL.)

GORDON v. PLAXTON.

Right of tax purchaser to timber cut and removed during period allowed for redemption—Statute of Limitations.

Held, that under R.S.O., c. 193, s. 174, the holder of a tax certificate during the period for redemption has a qualified ownership in the land and timber thereon, which title becomes absolute upon the tax deed being duly given and registered, and that such tax purchaser, upon receiving his deed, is entitled to exercise his remedy of reclamation and sustain an action for conversion even as against a third party, who has innocently purchased, from the original owner of the land, timber cut and removed off the land during the twelve months allowed for redemption. Under the circumstances the Statute of Limitations would be no defence as against such tax purchaser.

(BARRE, April 16, 1892.)

The defendant bought land at a tax sale on 5th Dec., 1883. The land was not redeemed, and on 26th Dec., 1884, the defendant obtained his tax deed, which was duly registered. During the period allowed for redemption a large number of cedar posts were cut and removed from the land by the original owner thereof and placed on neighbouring railway grounds, where, after the lapse of several years, they were sold by him or his agent to the plaintiff, who did not immediately remove them. In the fall of 1891 the defendant, having learned for the first time that the posts were cut on the land during the time he held the tax certificate, laid claim to the posts and removed a few of them, whereupon plaintiff interposed and took the balance of them, and brought this action of trover to recover damages for those the defendant had taken. The defendant counter-claimed for all the plaintiff had taken.

C. E. Hewson for the plaintiff: The right of the tax purchaser is to prevent timber being cut and removed during the year; not to recover for timber taken. The Statute of Limitations bars the defendant.

C. W. Plaxton, for defendant, relied on the wording of the statute referred to, *Brown v. Sage*, 11 Ch. 239; *Spackman v. Foster*, 11 Q.B.D. 99; *Keiff v. McMurray*, 27 C.P. 438.

BOYS, JJ.: When the defendant purchased

the land at sale for taxes and obtained the usual certificate of sale, he became, in the words of the statute, "the owner of the land so far as to have all necessary rights of action and powers of protecting the same from spoliation or waste, until the expiration of the term during which the land may be redeemed" (R.S.O., c. 193, s. 174). He was entitled to possession of the land, and could successfully resist an action of ejectment by the owner, and he could maintain an action of ejectment against the owner (*Cotter v. Sutherland et al.*, 18 U.C.C.P. 357). Under these rights it seems clear the defendant was entitled to prevent the cutting of the posts in question at the time they were cut, and after they were cut he would have had the right to bring them back to the land and keep them there until the time for redemption expired. When that time did expire and the land was not redeemed, the conclusion, to my mind, is irresistible; the posts would then be absolutely the property of the defendant. Not knowing the posts had been cut and taken away until after the defendant got his deed, nothing was done by him regarding them during the time he only held the certificate, but his having received a more complete title can hardly lessen his rights. He must then, it seems to me, have become absolute owner of the posts, and has always been entitled to them.

The Statute of Limitations has not been pleaded, but if it had been I do not see that it would avail the plaintiff, for the defendant is not suing for damages for the trespass. He is merely, in my view, taking his own property, which has been legally, although doubtless not morally, stolen away from him, and against his doing so I see no objection. He could take it at any time as against the owner of the land who cut the posts, and the plaintiff can derive from the owner no better title than the owner had himself.

I think the action of the plaintiff must fail, and that the defendant is entitled to be paid for the posts recently taken by the plaintiff. Their value is not clearly shown, but, as far as I can see, \$25 would be sufficient.

The plaintiff's action is therefore dismissed, with costs, and there will be judgment for the defendant on his counterclaim for \$25 with costs.