

FULLER v. STORMS—KELLY, J.—MAY 12.

Contract—Sale of Farm, Implements, and Stock—Claim of Purchaser that all Chattels not Delivered—Items of Claim—Success as to one only—Counterclaim—Mortgage—Waste—Injunction—Removal of Timber—Damages—Account—Reference—Costs.]—The plaintiff's claim arose out of a contract of the 26th March, 1919, for the sale to him by the defendant of a farm, at the price of \$5,800, and certain implements, live stock, and other goods and chattels, at the price of \$2,349. The action was brought to recover the value of certain of the articles agreed to be sold, which, the plaintiff alleged, were not delivered. The defendant, being mortgagee of the farm, counterclaimed for an injunction restraining the plaintiff from committing waste and for damages for waste already committed and payment to the defendant of all moneys received by the plaintiff from the sale of wood and timber cut on or removed from the lands and for an account. The action and counterclaim were tried without a jury at Belleville. KELLY, J., in a written judgment, made a careful examination of the evidence, and decided against the plaintiff upon all the items of his claim except one, viz., a claim for an allowance for the removal of a tree, the value of which was admitted to be \$8. The learned Judge was of opinion that the defendant was entitled to succeed upon his counterclaim: that there should be an injunction as prayed; and judgment for payment over to the defendant, to be applied on his mortgage, of all moneys received by the plaintiff from the sale of wood and timber cut or removed from the lands and not already accounted for, and payment also of the market-value of the timber so cut and removed for which the plaintiff had not yet received payment, against which the plaintiff should receive a credit of \$8 in respect of the tree above mentioned, and for an account to ascertain the amount to which the defendant was entitled and a reference to the Local Master at Picton for that purpose and to ascertain the damages. The defendant should have the costs of the action and counterclaim. Further directions and subsequent costs reserved until after report. E. G. Porter, K.C., for the plaintiff. Gideon Grant and M.L. Allison, for the defendant.