

fault, the contractor is delayed in commencing the work, the parties are at large, so far as the penalty is concerned, the purchaser, if the work be not completed by the time fixed, being entitled only to such damages as he has actually suffered.

*Holme v. Guppy*, 3 M. & W. 387, followed.

Judgment of the Queen's Bench Division reversed.

*McCarthy*, Q.C., for the appellants.

*Moss*, Q.C., and *O. E. Fleming* for the respondents.

From BOYD, C.]

[April 4.

BRETHOUR *v.* BROOK ET AL.

*Mortgage—Power of sale—Lease—Possession—Timber—R.S.O., c. 107, clauses 7, 17.*

This was an appeal by the plaintiff from the judgment of BOYD, C., reported 23 O.R. 658, and was argued before HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A., on the 2nd of April, 1894.

*G. Lynch-Staunton* and *S. Livingston* for the appellant.

*W. Cassels*, Q.C., and *C. E. Oles* for the respondents.

At the conclusion of the argument the appeal was dismissed with costs, the court agreeing with the judgment of the learned Chancellor.

From Q.B.D.]

[April 4.

STOVEL *v.* GREGORY.

*Statute of Limitations—Possession—Trespass—Fencing—"State of nature"—R.S.O., c. III, s. 5, s-s 4.*

The expression "state of nature" in s-s. 4 of section 5 of R.S.O., c. III, is used in contradistinction to the preceding expression, "residing upon or cultivating"; and unless the patentee of wild lands, or some one claiming under him, has resided upon the land, or has cultivated or improved it, or actually used it, the twenty years' limitation applies. Clearing or cultivating by trespassers will not avail to shorten this limit.

*Per* BURTON and MACLENNAN, JJ.A.: Merely fencing in a lot without putting it to some actual continuous use is not sufficient to make the statute run.

Judgment of the Queen's Bench Division affirmed.

*H. J. Scott*, Q.C., and *William Kingston*, Q.C., for the appellant.

*W. R. Meredith*, Q.C., and *H. Elliott* for the respondent.

[May 8.

DEROCHIE *v.* TOWN OF CORNWALL.

*Municipal corporation—Highway—Repair—Sidewalk—Ice—Negligence.*

Allowing, for a fortnight, water to collect and alternately freeze and thaw in a depression in a sidewalk in a frequented street is non-repair for which the municipality is liable.