

tiff, certain timber was cut and removed from the lots without any colour of right. The parties who had committed this trespass sold some of the timber to the defendants to this issue, who purchased bona fide, and subsequently sold the same to another bona fide purchaser. The plaintiff thereupon brought an action against these two purchasers for damages for cutting and taking the timber and for a declaration that as against them she was entitled to the proceeds of the timber. The second purchaser obtained leave to pay the purchase money into Court, and the issue was directed to determine the rights to it as between the plaintiff and the first of the above purchasers.

*Held*, that the plaintiff was entitled to recover only so much of the said purchase money as represented the value of the timber taken to the plaintiff as standing on the land, and she was not entitled "to fasten upon any increment of value which from exceptional circumstances might be found to attach" to the timber, as for example, by reason of the transportation of the timber to the place where it was ultimately sold. The balance of the said purchase money must be paid out to the defendants in the issue.

*W. Blake*, K.C., for defendants, appellants. *C. A. Moss*, for plaintiff.

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Divisional Court.]

[May 6.

MORRIS v. CAIRNCROSS.

*Landlord and tenant—Tenant for years—Liability for permissive waste—Covenants in lease—Construction.*

*Held*, after detailed review of the cases, that *Yellowly v. Gower* (1855) 11 Exch. 274, which decided that a tenant for years is liable for permissive waste, was rightly decided, and that this authority has not been impugned or affected by any subsequent case or displaced by the provisions of the Judicature Act.

*Held*, also, that the provisions in the lease in question in this case, whereby the covenants to repair and to repair according to notice were qualified by the exceptions in the covenant to leave the premises in good repair, namely: "reasonable wear and tear and damage by fire or tempest"—did not have the effect of relieving the tenant from any liability which but for this he would have been subject to for permissive waste.

*Raney* and *A. Mills*, for plaintiff. *C. A. Moss*, for defendant.