

## McGIRR v. STANDEVEN—MIDDLETON, J.—FEB. 16.

*Injunction—Interim Order—Cutting and Removal of Timber—Motion to Continue—Order Confined to Removal—Balance of Convenience—Preservation of Rights until the Trial.*]—Motion by the plaintiff to continue till the trial an interim injunction restraining the defendant from cutting and removing timber from the plaintiff's land. The motion was heard in the Weekly Court, London. MIDDLETON, J., in a written judgment, said that the plaintiff, on the 29th November, 1917, agreed to sell the standing timber on his farm to one Gregory for \$1,000; part of the price, \$100, was paid in cash; the remainder was to be paid in two equal instalments, the first on the 15th January and the second on the 15th March, 1918. Nothing in the agreement called for tender before removal; the timber was to be removed before the 1st December, 1919. On the 14th December, 1917, Gregory sold the timber to the defendant for \$780. The defendant paid Gregory \$380, but that was not paid over to the plaintiff. The plaintiff was apprehensive that, if the timber was removed, he might not be able to recover. The rights of the parties could not be tried upon this motion; what could be done was to devise some means of enabling the trial Judge to grant an effective judgment, whichever way he determined the case. There was a dispute as to the meaning and effect of a subsequent agreement for the sale of the farm by the plaintiff to Gregory. No harm would be done by the cutting of the timber, so long as it was not taken from the land; and the injunction should be varied by confining its operation to the removal. The defendant should be allowed to remove also, upon giving security for payment of the value of the timber removed (up to the balance due the plaintiff) in the event of the plaintiff succeeding in the action. When the plaintiff can get the timber on giving security, the balance of convenience is in favour of continuing the injunction, modified as indicated—which means only delay to the defendant, as against complete loss to the plaintiff if the defendant can get away with the timber without paying. Costs should be disposed of by the Judge at the trial. T. G. Meredith, K.C., for the plaintiff. J. M. McEvoy, for the defendant.