

estate might be appointed and an order to continue the proceedings obtained. Thereupon, the learned Judge said, he would deal with and dispose of the motions, either with or without further argument, if requested so to do. Unless the parties agreed to some such course, there was no alternative but to dismiss the two motions, and, in the circumstances, without costs. In this latter event, the dismissal would be without prejudice to a renewal of either motion in the future, after representation and revivor.

BRITTON, J.

JULY 20TH, 1916.

ROYAL BANK OF CANADA v. JACKSON.

Contract—Sale of Standing Timber—Bona Fides—Part Performance—Rights of Creditors of Vendor—Abandonment—Waiver—Injunction—Dissolution of Interim Injunction—Undertaking as to Damages—Assessment of Damages.

Action by creditors of Jacob Hallowell, on behalf of themselves and all other creditors, to restrain the defendant from cutting and removing any trees or timber from a parcel of land in the township of Clarke.

The action was tried without a jury at Cobourg.
D. H. Chisholm and E. H. McLean, for the plaintiffs.
D. B. Simpson, K.C., for the defendant.

BRITTON, J., in a written judgment, set out the facts. On the 17th December, 1910, Jacob Hallowell mortgaged the land to one Clemesha to secure payment of \$2,200 and interest. On the 27th November, 1911, Hallowell, with the knowledge and consent of Clemesha, entered into an agreement with the defendant to sell him all the timber and trees, fit for milling purposes, then upon the land, for \$650. The agreement provided for the removal of the trees when cut and for the right of the defendant to enter upon the land; and it was stated in the agreement that the timber was to be removed by the 1st April, 1914. The defendant paid the \$650, and, during the winter of 1911-12, cut and removed about one-half of the timber. The defendant had no intention of abandoning the remainder, and there was no rescission of the contract of sale. Clemesha received the \$650 and applied it in reduction of the principal and interest of his mortgage. The