

the plaintiff's evidence, as did Mary Blanc, then a girl of 9 years. Thompson merely says that the agreement was made at Blanc's house, but does not give further explanation, and does not deny the evidence of plaintiff, Blanc, or his daughter. Plaintiff's wife says that she never put her mark to the agreement, and that she was not present when it is said to have been made. I think the agreement set up by defendant is not the true agreement. *McNeill v. Haines*, 17 O. R. 479, is not the same as this case. . . . I think the alleged agreement is void, not voidable, and that defendants did not acquire any rights under it, to the trees in question; nor is there any equity in defendants' favour, certainly none as against earlier equity of plaintiff. Sec. 98 of the Registry Act cannot help defendants. I do not think the agreement can be upheld, owing to R. S. O. ch. 25, sec. 17. It is undoubtedly a sale of an interest in land: *Handy v. Caruthers*, 25 O. R. 280, citing *Summers v. Cook*, 28 Gr. 179, *McNeill v. Haines*, 17 O. R. 479, and *Lavery v. Purcell*, 39 Ch. D. 50. While I recognize that the evidence of the plaintiff and his wife, parties interested, should be scrutinized and accepted with great caution, I see, under all the circumstances of the case, no good reason for doubting their evidence, and, as the wife did not execute the agreement, it is void under sec. 17 of the Homestead Act. . . . Moreover the words "and timber" are *ejusdem generis*, and mean red and white pine timber, whether growing, standing or being on the lot: *Anderson v. Anderson*, [1895] 1 Q. B. 749. Judgment for plaintiff for \$78 in addition to the \$150 paid into Court, and injunction granted with costs. Counter-claim dismissed without costs.

McGarry & Devine, Renfrew, solicitors for plaintiffs.

Craig & McNab, Renfrew, solicitors for defendants.

FEBRUARY 12TH, 1902.

DIVISIONAL COURT.

CHEVALIER v. ROSS.

Amendment—Pleading—Diligence in Moving—Rule 312.

An appeal from the order of LOUNT, J., *ante* p. 12, was heard before a Divisional Court (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.) and argued by the same counsel.

The judgment of the Court was delivered by

FALCONBRIDGE, C.J.—The filing of the memorandum according to form 53 (Rule 423) was a mistake, and a motion to rectify was made with all reasonable promptness. Emery