

FEBRUARY 8TH, 1905.

DIVISIONAL COURT.

McDERMOTT v. TRAVERS.

Trespass to Land—Conversion of Timber—Assignment of Claim for Wrongful Act—Dispute of Title—Licensee—Estoppel—Admissions—Husband and Wife—Demand of Price instead of Return of Goods.

Appeal by plaintiff and cross-appeal by defendant John Travers from judgment of junior Judge of County Court of Simcoe in favour of plaintiff against defendant John Travers for \$20 and costs, and in favour of defendant Catherine Travers without costs, in an action to recover \$100 damages for trespass to land and wrongful cutting and conversion of timber. The action was tried without a jury.

Plaintiff sued as owner and assignee of the land and timber and all rights of action therefor under deed and assignment under seal from prior owner, D. C. Smith, both dated 13th September, 1904, but relating back so as to give plaintiff all rights in respect thereof, the cutting and conversion having taken place in the spring of that year.

The claim was that defendant John Travers, acting as agent or co-principal of his wife, had taken advantage of a license, obtained from the prior owner Smith, to wrongfully cut and remove timber instead of shade trees, which timber was used in the building of a barn on the land of defendant Catherine Travers.

Defendant John Travers admitted the ownership of D. C. Smith, but alleged that what he did was in accordance with the bargain made with him. He also denied plaintiff's title.

There was a general denial of plaintiff's claim and title by defendant Catherine Travers. There was evidence that she knew of the bargain and of the wrongful acts of her husband, also that a written demand had been made upon her for the value of the timber, before it was used in the barn.

At the trial it was contended for defendants that plaintiff was bound to prove by actual survey that the timber was taken off his land, and evidence was taken as to boundaries.

Plaintiff replied that defendants were estopped by their pleading and the admissions of the husband, and also in law, from disputing that timber came off plaintiff's land.