

Appeal by the defendant from the judgment of LENNOX, J., 18 O.W.N. 192.

The appeal was heard by MEREDITH, C.J.O., MAGEE, HODGINS, and FERGUSON, J.J.A.

W. A. Boys, K.C., for the appellant.

F. W. Denton, for the plaintiff, respondent.

MEREDITH, C.J.O., reading the judgment of the Court, said that the dispute between the parties out of which the litigation had arisen was as to the extent of the reservation of the timber growing on a 200-acre farm, sold by the appellant to the respondent, which the parties had agreed and intended to make by the conveyance of the farm to the respondent. The deed of conveyance was dated the 20th May, 1918. The contention of the appellant was that the reservation which it was intended to provide for was of the timber on that part of the lot lying north of a road running in part diagonally through the lot, having the whole of the north half and part of the south half of the lot on the north of it. The contention of the respondent was that, as the deed stated, the reservation was to be of the timber on the north half and on that only.

Prior to the sale, the appellant had, by deed bearing date the 29th April, 1918, granted to one Chew all the trees and timber standing on the part of the lot lying to the north and northerly of the side road running through the lot, containing 60 acres more or less, subject to the condition that all trees and timber not removed by Chew within 4 years should revert to and become the property of the appellant.

The conveyance to the respondent was registered on the 12th June, 1918, and that to Chew on the 18th of that month. The latter conveyance was, therefore, by virtue of the Registry Act, fraudulent and void against the respondent unless before the registry of his conveyance he had notice of it.

The reservation in the conveyance to the respondent was, "And subject also to a certain agreement of sale of all the standing timber situate on the north half . . . made between the grantor herein and one Frederick Chew."

Chew had cut timber on that part of the south half of the lot the timber on which was conveyed to him; and the action was brought to recover damages for the cutting, which was alleged to be a breach of the covenant for quiet enjoyment contained in the conveyance to the respondent. That covenant followed the provision above-quoted, and was in the statutory form, with the words "save as aforesaid" added at the end.

The bargain between the parties was made orally on the 20th April, 1918. The respondent, before agreeing to buy, saw the