Spurgeon Vidito, says:—

"Q. When did you tell Mrs. Drew about Armstrong logging this lot? A. In November 1910,"

And Miss Drew, his sister, says:—

"Q. You knew of Mr. Armstrong logging on this land in the fall of 1910? A. We heard of it.

"Q. You advised your brother? A. I think we probably mentioned it in writing to my brother that Mr. Armstrong was cutting off the land—I might say I know we did."

The plaintiff himself says:

"My recollection is that sometime in November I was written to by my brother that Mr. Armstrong was operating on the land."

The defendant cut down timber during those months, but when he proceeded to remove it in January, 1911, the restraining order I had mentioned was obtained.

I think that the defendant never receded from his right to the extension over the year 1911. When he found the plaintiff repudiating the agreement and he had not even a receipt for his money he did offer him a higher price per year for an extension over 1911 and 1912, but this does not shake his evidence in my opinion or detract from the agreement made with Solomon Drew. That the defendant should lose the trees cut down during 1910 paid for and the extension of time paid for is something any Court would struggle against.

Coming to the law of the case I shall not discuss the question whether the agreement to extend the time of performance comes within the section of the Statute of Frauds relating to the sale of goods or the section relating to contracts for the sale of land, &c. Marshall v. Green, 1 C. P. D. 35, is a case for the former view, and Scorell v. Boxall, 1 Y. & J. 396 a case for the latter. Of course, if the trees were chattels the plaintiff cannot succeed. But I shall assume that it is an interest in land. I think that in equity the plaintiff cannot set up the want of a writing under the Statute of Frauds. I first refer to the case of McManus v. Cook, 35 Ch. D. 681; Way, J., at page 695, says:

"Hewlins v. Shippam, 5 B. & C. 221; Wood v. Ledbetter, 13 M. & W. 838 and other authorities at common law were cited, and it was argued that the right claimed could only be granted by deed, and that, therefore, the license was revocable, but this common law doctrine was not allowed to prevail in equity."