The action was tried without a jury at Welland.

L. B. Spencer, for the plaintiff.

J. S. Davis, for the defendant.

CLUTE, J., in a written judgment, said that the lease was dated the 23rd July, 1917; the lease was of a farm for 2 years, with right of renewal for 3 years more; and the first complaint was that the house upon the farm was injured and damaged and not kept in repair, but that complaint was not pressed. The second claim was for breach of the covenant to work the farm in a husbandlike manner, the plaintiff alleging that the ploughing was not 6 inches deep, as required by the lease. As to this, the learned Judge said that a small quantity of land was not in fact ploughed 6 inches deep, but the evidence did not satisfy him that there was any injury to the reversion. These two claims should be dismissed.

The third claim was for breach of the covenant "not to cut down timber." The lease purported to be made under the Short Forms of Leases Act, R.S.O. 1914 ch. 116, and by the Act (sched. B., col. 2) that covenant is expanded into: "And also will not at any time during the said term hew, fell, cut down or destroy, or cause or knowingly permit or suffer to be hewn, felled, cut down or destroyed, without the consent in writing of the lessor, any timber or timber trees, except for necessary repairs or firewood, or for the purposes of clearing as herein set forth." The exception includes "repairs" or "firewood" or "clearing," and the words "herein set forth" evidently have reference to the exception.

Reference to Craies' Statute Law, 2nd ed., pp. 198, 549; In re Cambrian R.W. Co. (1868), L.R. 3 Ch. 297; Stephenson v. Taylor (1861), 1 B. & S. 101, 106; Duke of Devonshire v. O'Connor (1890), 24 Q.B.D. 468, 478.

The defendant did in fact cut down, in the centre of the bush, 51 trees, 48 of which were timber trees; and he thus committed waste, unless protected under the exception. He cut these trees for firewood. The plaintiff never gave the defendant leave to cut the timber, but simply obtained leave for himself to take some wood off the place for his own use. The cutting was reckless and negligent, and depreciated the value of the reversion at the expiration of the lease by at least $350.

The defendant could not justify his acts under the exception in the covenant. There was other timber upon the farm suitable for firewood, and the defendant's act in cutting from the middle of a sugar bush appeared to be wilfully destructive.

Reference to Drake v. Wigle (1874), 24 U.C.C.P. 405, and Campbell v. Shields (1879), 44 U.C.R. 449.

In any case more timber was cut than was necessary for fire-