

the township of Medonte, in the county of Simcoe; and for an injunction restraining the defendant, his agents and servants, from entering upon and removing or cutting timber on said land; also for an order setting aside an assignment, or transfer, by William E. Irish to the defendant, dated the 24th October, 1902, of all timber, wood, and trees standing upon the said lot; and also for a direction that the registration of the said assignment be vacated.

H. Lennox, Barrie, for plaintiff.

E. F. B. Johnstone, K.C., and F. C. Jarvis, for defendant.

MACMAHON, J.—The plaintiff became owner of the lot forty-five years ago, and said that in August, 1871, when the lot was in a state of nature and wooded with pine, oak, elm, basswood, whitewood, spruce, tamarac, and cedar, he sold the pine and the oak timber on the lot to Zachariah Casselman for \$1,000, \$200 being paid in cash, and the balance—\$800—being payable when Casselman had removed the pine and oak. There was no time mentioned within which the timber was to be removed. At that time the pine and oak comprised the only timber of any value; and Casselman cut all that he considered suitable for his purpose during the winter of 1871-2, and then paid Kent the balance of the purchase money, \$800. The plaintiff stated that after Casselman paid the \$800 he wanted to sell the timber then remaining on the land to him (Kent), but he would not purchase, and Casselman then sold to Gregoire Yon.

The plaintiff and Casselman both said that there was no written agreement between them when the sale took place, and that only the pine and oak were sold. Casselman sold his interest in the timber remaining on the land to Yon, in 1872, for \$250. Yon (whose evidence was taken under commission) said that Casselman at the time of the sale produced and read to him an agreement purporting to be between Kent and Casselman for the sale to the latter of all the timber on the lot, and that the agreement as read by Casselman purported to be signed by Casselman and Kent; and that there were receipts sent by Kent for the \$200 and the \$800 on the paper produced. He said Casselman wrote—at the foot of the agreement between Kent and Casselman—an assignment of his interest in the timber to him (Yon). Yon, who could not read, said that after he had purchased his son read the agreement over to him several times. Yon took pine and oak off the property during the winters of 1874-5 and 1875-6. In 1878 or 1879 Yon sold and assigned his interest in the timber remaining on the lot to Thomas Blaney, the consideration being a set of harness and \$15. Yon said he gave to Blaney