

by declaring that neither party shall build a fence on the centre line north and south of lot 180 further north than a point 11 ft. 2 in. north-westerly from the corner of the plaintiff's house; and also (by consent) declaring that no part of the plaintiff's house is on the defendant's land, and directing that the plaintiff shall, within one month, re-erect and maintain the fence that formerly extended from the north-west corner of her house. In other respects appeal dismissed. No costs of appeal. *Mulholland v. Barlow* (1914), 25 O. W. R. 938; 6 O. W. N. 72.

TIMBER.

Manufacture and sale of lumber

—Refusal to accept—Defects—Evidence—Time of delivery—Damages—Resale of lumber by vendors—Mode of selling—Reference. *Owen Sound Lumber Co. v. Seaman, Kent Co. Limited* (1913), 25 O. W. R. 883; 5 O. W. N. 861.

Mining Act—Grants of mining land

—Reservation of pine timber—Right of grantee to cut for special purposes—Trespass—Cutting of pine—Right to bring action—Transfer by Crown to trespasser—*Jus tertii*—Possession—Independent contractor—Act of — Ratification—Essentials—Crown agent—Authority of—Evidence—Appeal—Costs.]—Action by holders of mining locations for damages for trespass on their mining lands for cutting of pine and tamarack timber thereon. The Ontario Mining Act, R. S. O. (1897), c. 36, as amended by 62 Vict. c. 10, s. 10, provides in s. 39, s.s. 1, that "the patents for all Crown lands sold or granted as mining lands shall contain a reservation of all pine trees standing or being on the lands which pine trees shall continue to be the property of Her Majesty, and any person holding a license to cut timber or saw logs on such lands may at all times, during the continuance of the license, enter upon the lands and cut and remove such trees and make all necessary roads for that purpose." By the other provisions of the section the patentee may cut and use pine necessary for building, fencing and fuel, and remove and dispose of what is required to clear the land for cultivation and for any cut for other purposes he shall pay Crown dues. The trespass of defendants Dickson and Miller upon the lands of plaintiff was clearly proven but they claimed that subsequently the Crown conferred upon them the title to the timber so taken from plaintiffs' lands.—Clute, J., gave judgment for plaintiffs for \$3,157

and \$1,053 respectively with costs, finding that the timber upon the mining locations in question while not sufficient for mining needs was more valuable to plaintiffs for this purpose than for the purposes of railroad ties.—Ont. C. A., 19 O. W. R. 38, reversed above judgment and directed judgment to be entered for defendants.—Sup. Ct. Can., *Idington and Duff, J.J., dissenting* (46 S. C. R. 45) held, that a patentee of mining land has, notwithstanding the reservation of pine trees in the patent, such possession thereof or interest therein as would enable him to maintain an action against a trespasser cutting and removing them from the land.—Judgment of Court of Appeal for Ontario reversed and judgment of Clute, J., restored. — Privy Council, held, that the property in the pine timber remained in the Crown, and while plaintiffs as possessors or bailees for the Crown might possibly have brought an action for its value against defendants prior to the transfer of the ownership in the same from the Crown to the defendants, they could not do so thereafter.—*The Winkfield*, [1902] p. 42; *Greenwood Lumber Co. v. Phillips*, [1904] A. C. 405, referred to.—That it is essential to constitute an agency by ratification, that the agent in doing the act to be ratified shall not be acting for himself but should intend to bind a principal actually named or ascertainable.—*Keightley Marted & Co. v. Durant*, 1901 A. C. 240, and *Wilson v. Barker*, 4 B. and Ad. 614, referred to. — Appeal allowed with costs and actions dismissed. *Eastern Construction Co. v. National Trust Co.* (1913), 25 O. W. R. 756.

Purchase of timber limits—Action for purchase-price—Misrepresentations—Executed contract—Absence of fraud—Breach of warranty—Evidence—*Res judicata*—*Estoppel*—Findings of trial Judge confirmed.]—Action to recover for purchase price of timber limits: defendants counterclaimed for damages for deceit or for breach of warranty arising on the contract.—Boyd, C., gave plaintiff judgment on his claim and dismissed defendants' counterclaim with costs.—Sup. Ct. (2nd App. Div.) affirmed above judgment, holding that defendants had not established the charge of fraudulent misrepresentation. *Vaughan-Rhys v. Clarry et al* (1913), 25 O. W. R. 885; 5 O. W. N. 929.

TRIAL.

Admission by counsel—Mortgage action.—Right to redeem—Settlement of