

LOUNT, J.

FEBRUARY 12TH, 1902.

TRIAL.

## LASJINSKI v. CAMPBELL.

*Contract—Foreigner—Fraud in Reducing Contract to Writing—  
Void not Voidable—Sale of Standing Timber—Interest in Land  
—Void if Wife of Patentee of Homestead not a Party—R. S. O.  
ch. 25, sec. 17.*

Handy v. Carruthers, 5 O. R. 280, and Anderson v. Anderson, [1895] 1 Q. B. 749, followed.

Action brought for an injunction to restrain defendants from trespassing upon lot 35, in the 8th concession of the township of Hagarty, in the County of Renfrew, and to recover \$700, the value of 637 cedar, ash, spruce, and basswood trees, cut and removed, and \$200 damages for trespass.

T. W. McGarry, Renfrew, for plaintiff.

W. B. Craig, Renfrew, and R. C. McNab, Renfrew, for defendants.

LOUNT, J.—The plaintiff is patentee of the land in question, under the Free Grant and Homestead Act. The patent issued to him in April, 1885. He and his wife are Poles, unable to speak English, and not able to read or write. The agreement, under which defendants claim the right to cut and remove timber, purports to have been made and registered in December, 1887. It was made by plaintiff and his wife with one R. White, and purports for \$80, \$5 in cash and balance before removal, to sell all the standing trees on the lot. The document was executed by mark, in the presence of J. C. Thompson, then an agent of White, but now employed by defendants. White, within 2 years, cut certain pine trees, paying one-half the price the first year, and the other half the second year. In 1889, White and his brother, who were then in partnership, assigned to O'Meara for benefit of creditors, and in January, 1890, O'Meara, by registered deed, conveyed to one Dunlop "all the red and white pine trees and timber" on the lot, and the defendants, by mesne conveyances, are assignees of Dunlop.

The plaintiff says he did not make the agreement in question; that he agreed to sell only the pine for the consideration mentioned; that the agreement was made at the house of one August Blanc, who acted as interpreter, but could not read or write; that Thompson wrote out the agreement after it was made, and said it was the one just made, and he, plaintiff, then put his mark to it. Blanc corroborated