

further clearing up of the title, the defendant fell back on his rights under the contract and treated the matter as at an end.

I do not see how the plaintiff can succeed, under the conditions which present themselves here; and my finding is against him. Had my conclusion been otherwise, the most he could hope to obtain by way of judgment would be—not a decree for specific performance—but the profit which he and Turkel lost by reason of not being in a position to carry out the resale to Mrs. Levi. That amount was such that, even had he so far succeeded, he could not have hoped to be awarded costs except on the lower scale, with the probability of a set-off against him of costs on the higher scale.

The action must be dismissed with costs.

BRITTON, J.

JANUARY 8TH, 1914.

McGREGOR v. WHALEN.

Contract—Sale of Timber—Unilateral Agreement—Consideration—Construction—Conditions Precedent—Removal of Timber and Payment of Price—Subsequent Sale of same Timber—Notice—Action for Trover—Conversion—Third Party—Costs.

Action for the conversion of timber, tried with a jury at Port Arthur.

D. R. Byers, for the plaintiff.

A. J. McComber, for the defendant Whalen.

W. D. B. Turville, for one Niemi, brought in as a third party.

BRITTON, J.:—The action is one of trover, brought by the plaintiff against the defendants Whalen and the Burrill Construction Company, for the wrongful conversion of 91 pieces of timber, of which the plaintiff claimed to be the owner in possession.

The trial was commenced with a jury; but, after proceeding a little way, I withdrew the case from the jury except as to two questions, which I submitted to them, and which, with their answers, I will mention later. The facts as found are as follows.