

Com. Pleas Div.]

NOTES OF CANADIAN CASES.

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he together and contiguous, so long as such is done in good faith for clearing and cultivation, as was found as a fact here; and that the locatee may cut such pine trees as may be necessary for the purpose of building an' fencing wherever he choses on the land; but they can only be used for such purpose; but when the trees are cut in the actual process of clearing for the purpose of cultivation they may be sold and disposed of.

Trees so cut by the locatee in the actual process of cultivation, etc., were sold to the plaintiff, a mill owner, but were seized by defendants, the timber licensees, who also had a mill, and were taken by them thereto, and cut up into lumber. It was proved that the plaintiff could not get other logs at this season of the year.

Held, CAMERON, C.J., dissenting, that the plaintiff was entitled to the loss of profits sustained by him by being deprived of cutting the lumber into logs at his mill.

Pepier, for the plaintiff.

Robinson, Q.C., and *J. H. Mayne Campbell*, for the defendants.

REGINA V. MCFEE.

Criminal law—Forgery—Uttering—Promissory note.

W., a Division Court bailiff, who had an execution against P. M. and H. M., arranged to accept a note to be made by A. M., payable to the order of A. D. M. The note was drawn up by W., and handed to the prisoner to obtain A. D. F.'s endorsement. The prisoner took it away, and shortly afterwards returned with the name A. D. F. endorsed to it. The prisoner then handed the note to A. F., who signed his name as maker, and A. F. then delivered the note to W., who subsequently negotiated it. The name A. D. F. was a forgery.

Held, that an indictment for forgery would not lie, for at the time when A. D. F.'s name was signed to the note it was not a promissory note, by reason of the maker's name not being then signed to it; and neither would a count for uttering lie, for after it was signed by A. F. it was never in the prisoner's possession, but was delivered by A. F. to W.

McMahon, Q.C., for the Crown.

John Dickinson, contra.

JAMES V. CLEMENT.

Party-wall—Evidence of—Injunction—Damages.

The plaintiff claimed that the foundation of the dividing or partition wall between his and defendant's building was his and on his premises, and that the upper part thereof had always been used as a party-wall; that the defendant, without his consent, raised the said wall a foot above plaintiff's premises, and altered the roof from a flat roof to a slanting one, whereby water, etc., was thrown on plaintiff's premises, and plaintiff asked for a declaration that the wall was a party-wall and that defendant be restrained from preventing plaintiff from using same, together with the new part in continuation thereof, on payment by plaintiff of half the costs thereof, and that defendant be also restrained from permitting the water, etc., to be discharged on the plaintiff's premises.

The jury found that the plaintiff had sustained damage to the extent of \$35, and also that the wall was a party-wall. The learned Judge thereupon entered judgment for the plaintiff, and made the decree as asked for.

Held, on motion to set aside the declaration that there was no evidence to sustain the finding, that the wall was a party-wall, for the evidence showed that the wall was wholly built on the defendant's land, and there was no agreement to show that it was to be deemed a party-wall. The decree was therefore set aside; but as regards the damages, as these were not moved against, they were not interfered with.

Hardy, Q.C., for the plaintiff.

Robertson, Q.C., for the defendant.

GRAHAM V. LONDON MUTUAL INS. CO.

Insurance—Further insurance—Assent thereto—Mutual company.

To an action on a fire insurance policy in a mutual company, the company set up as a defence the eighth statutory condition endorsed on the policy, whereby the company were not to be liable for any loss "if any subsequent insurance is effected in any other company, unless and until the company assent by writing, signed by a duly authorized agent."