

SECOND DIVISIONAL COURT.

NOVEMBER 28TH, 1919.

McKENZIE v. BLUE.

Building—Erection upon Land of Stranger—Right of Builder to Remove within Reasonable Time—Failure to Remove—Building Becoming Property of Owner of Land—Assertion of Title by Plaintiff—Action for Trespass—Removal of Building.

Appeal by the defendant from the judgment of the County Court of the County of Hastings in favour of the plaintiff for the recovery of \$75 and costs in an action for trespass in tearing down a dilapidated driving-shed and in carrying away the wooden materials of which it was composed.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LATCHFORD, and MIDDLETON, JJ.

W. C. Mikel, K.C., for the appellant.

W. Carnew, for the plaintiff, respondent.

RIDDELL, J., read a judgment in which he said that the plaintiff and defendant were tenants in common of premises in the village of Madoc, known as Moon's Hotel, with the lot upon which the hotel stood. On one adjoining lot there was a shed used with the hotel, but on land to which the parties had no paper-title.

In 1917, the defendant, by an indenture in pursuance of the Short Forms of Conveyances Act, granted to the plaintiff in fee simple his undivided half-interest in the hotel premises and lot. Thereafter the defendant took away the shed for his own use. The plaintiff sued in the County Court of the County of Hastings and got judgment for \$75 and costs; and the defendant appealed.

The defendant set up in his pleading a claim of ownership of the shed, but he did not support that claim by sufficient evidence, and he made no such claim in the appellate Court. He relied—as he had every legal right to do—upon the weakness of the plaintiff's case. It was necessary to examine into the title to the shed to see if the plaintiff could make out his case.

The lot upon which the shed was built was the property of one Wilson, who in 1894 leased it until the 3rd October, 1899, to Mrs. Moon, by an indenture which “provided that the lessee may at the expiration of the term hereby granted remove any buildings erected thereon by the said lessee.” Mrs. Moon erected this shed, and in December, 1900, conveyed the hotel to the plaintiff and one Coe, whose interest the defendant subsequently acquired.

On the determination of the lease, the tenant, Mrs. Moon, had a reasonable time to remove the shed: Gray v. McLennan