

there has been a discontinuance of the possession of it by the true owner would be simply to overrule decision after decision in this Court on that subject, which I have no power or inclination to do.

*Rule discharged.*

[QUEEN'S BENCH DIVISION]

BATES ET AL. V. MACKEY.

*Replevin bond—Action on—Staying proceedings on equitable grounds.*

The defendant's timber limits adjoined those of B. & C., but from uncertainty of description in their respective licenses the division line was not defined. The defendant replevied 216 pieces of timber cut within a line run under instructions of the Crown timber agent as the boundary of the defendant's limits, but on account of the infirmity in his license, he failed in the action as to 175 pieces, for a return of which B. & C. were entitled to judgment. The latter procured an assignment of the replevin bond to themselves, and assigned it to the plaintiff, who brought this action thereon. The Court was of opinion that the timber in question was cut upon lands intended by the Crown to be within the limits of the defendant's license, though B. & C. had some grounds for asserting title thereto.

*Held*, that, there having been a breach of the condition of the bond, B. & C. became entitled to recover such damages as they had sustained by replevin proceedings; that the bond, after it was assigned by the sheriff to B. & C., was a debt and chose in action assignable pursuant to the statute; and that the plaintiff having the beneficial interest therein by assignment was entitled to recover; but, it being a case for the equitable interference of the Court, it was directed that, upon payment by the defendant of the cost incurred by B. & C., in cutting and transporting the timber up to time it was replevied, less a set-off found for the defendant in this action, (the amount to be ascertained by a reference if the defendant should so elect) further proceedings should be stayed.

ACTION on a replevin bond to the sheriff of Renfrew, conditioned that if said Mackey should prosecute his suit with effect against Benjamin Batson and Joseph Merrill Currier, for the seizure of 216 pieces of timber, &c., the said bond should be void: that said Mackey did not prosecute with effect; but that in a suit by him against said Batson and Currier, a verdict was rendered in favour of said Mackey only as to 41 pieces of timber, and in favour of said Batson and Currier as to the residue, or 175 pieces, which it was found belonged to said Batson and Currier: