

It was also argued by Mr. Raymond that the issue was equitable, and that the question to be determined was one within the jurisdiction of the Court of Chancery. In this he is probably correct. But I have not fully considered that point, as I think the motion should be refused on the other ground.

The costs will be in the cause.

FERGUSON, J.

SEPTEMBER 9TH, 1903.

TRIAL.

BRIDGE v. JOHNSTON.

Indian Lands—Assignment of Right to Cut Timber—Subsequent Conveyance of Land—Registration in Department of Indian Affairs—Priorities—Actual Notice—Document Incapable of Registration—Conditional Assignment.

Action for damages for cutting and removing timber from land and for an injunction to restrain defendant from further cutting and removing.

David Robertson, Walkerton, for plaintiff,

C. S. Cameron, Owen Sound, for defendant.

FERGUSON, J.—The lands in question are lot 8 in the 8th concession east of the Bury road in the township of Eastnor in the county of Bruce, and are lands originally surrendered by and set apart for the use of the Chippewas of Saugeen, Owen Sound Indians, and held, sold, and administered by the Department of Indian Affairs for Canada, under the provisions of the Indian Act, R. S. C. ch. 43. The lands are unpatented. It was freely admitted by counsel at the trial that on the 27th November, 1899, James W. Freckleton was the owner of and had a good title to these lands. On that day the said James W. Freckleton made a sale of certain timber on these lands to one Jamieson Johnston, and duly executed an assignment or transfer of this timber. The operative parts of the assignment are in the words and figures following, that is to say:—

“The party of the first part (Freckleton) agrees to sell, and the party of the second part (Jamieson Johnston) agrees to purchase all the timber 10 inches and over in size on lot 8,