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 \*Oct. 8.

McCUTCHEON v. LIGHTFOOT

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

*Conversion, action for damages for—Chattels left by plaintiff on defendant's land—Failure to remove—Circumstances justifying assumption of abandonment—Extent of onus of proof as to plaintiff's title.*

APPEAL by the plaintiff from the judgment of the Court of Appeal for Manitoba (1) which allowed the defendant's appeal from the judgment of Dysart J. (2) in favour of the plaintiff for damages for alleged conversion of certain chattels, and directed that the plaintiff's action be dismissed.

On the appeal to the Supreme Court of Canada, on the conclusion of the argument, the judgment of the Court was orally delivered by the Chief Justice, dismissing the appeal with costs. The Court expressed the view that the litigation lacked merit (remarking also that it might well be that the pallets, the sole matter in controversy on the appeal, were worth less than \$2,000) and agreed substantially with Trueman J. (who delivered the judgment of the Court of Appeal) where he said that "His (McCutcheon's) failure to notice the letters, and the derelict condition of the plant after the Gunns had removed, in 1924, the additions they made to it in 1921, could well lead the defendant to believe that it was abandoned." This Court was of opinion that the plant was really abandoned by the plaintiff.

While dismissing the appeal on the above ground, this Court stated that it was not prepared to concur with the view expressed in the judgment of the Court of Appeal that the plaintiff's title in the property would have to be strictly proved.

*Appeal dismissed with costs.*

*B. L. Deacon* for the appellant.

*H. A. Robson K.C.* for the respondent.

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\*PRESENT:—Anglin C.J.C. and Duff, Newcombe, Rinfret and Smith JJ.

(1) 38 Man. R. 160; [1929] 1 (2) [1928] 2 W.W.R. 240.  
 W.W.R. 694.