

The argument, addressed to us, which maintained it was only licences existent at the date of the grant that the statute had in view, does not meet the possibility I have adverted to.

Nor do I think it meets the point in any aspect. The mining might fail to be of any value to any one and the last possibility of the miners resorting to the timber might disappear; are we to assume that the Crown could not then issue a license to cut these trees reserved as its property?

Surely no such absurd result was ever contemplated by any one.

And unless we can maintain it was so, this pine timber was liable to be cut at any time by licensees of the Crown.

But why labour with it? How can trespass as to these pine trees ever lie on such a title?

No case cited, when examined closely, has in truth any but an illusory resemblance to this case, save the case of *Casselman v. Hersey*, 32 U. C. Q. B. 333, which is distinguishable, but I may add, no more binds us than the finding of the learned trial Judge which is sought to be restored by virtue of a finding of possession.

I think the appeal ought to be dismissed with costs.

The appeal in the case of Schmidt against the same parties must also fail.

They were argued together being so much alike. I have not found them identical by any means, but the case of the grant is so much stronger in some aspects needless to dwell upon, that having fully examined it I need not say more than that the weaker one fails also.

HON. MR. JUSTICE DUFF (*dissenting*):—This appeal arises out of two actions which were tried together, in which the appellants claimed reparation from the respondents for damages alleged to be suffered by them in consequence of the cutting and taking away of timber from certain mineral locations. These locations consisted of two sets (each comprising four) one of which, throughout the proceedings referred to under the head of the "National," was held by the plaintiffs in the action of the National Trust Co. against Miller, under Crown grants issued pursuant to the "Mines Act" of Ontario, sections 26 to 34. The other set, referred to in the proceedings as the "Schmidt" locations, was held by the plaintiffs in the action of Schmidt against Miller under leases granted under the authority of section 35 of the same Act. Of the timber in question all