

and taken away by a trespasser, the department has precisely the same discretionary powers of dealing with the trespass as it would have in the case of timber cut from any other part of the Crown domain.

If it is necessary in order to make my view of the case clearly understood, to observe, before proceeding to examine the validity of the grounds upon which the learned trial Judge proceeded, that the appellants did not at the trial rest their claim upon any contention that there had been any interruption of, or interference with, the exercise of their rights to take pine timber for mining purposes.

It was not alleged that the appellants were engaged in any mining operations upon any of the locations which required the use of the timber, or that they had any intention of undertaking such operations. As to the locations held in fee, the evidence is perfectly clear; it is admitted by Mr. Shilton himself, explicitly, that at the time of the trial there never had been "any actual sinking of the shaft or penetration to the rock;" nor any "straight attempt to develop them and find out what quantity of ore can be found in the place." It is also admitted that there was no intention of working or developing these locations within the near future.

With regard to the locations held under lease, it appears that some work was at one time done upon one of them; a cross cut had been made 20 or 30 feet long, 15 deep at one end, and about 8 feet wide at the top. But at the time of the trial no mining operations were in progress or in contemplation. No timber had ever been cut on any of the eight locations for mining purposes.

There is another ground upon which one might have expected, if the facts had justified it, the appellants to attempt to base their claim to relief. The appellants' right to take the pine timber for mining purposes is a right annexed by the statute to their ownership or other interest held by them in the locations. The acts of the respondents Miller & Dickson have, of course, deprived them of all possibility of exercising this right in respect of the timber which has been removed; and if, as the appellants contend, this was done without lawful justification or excuse, by means of and in the course of trespass upon the land, for the benefit of which the right of exercisable, then I should have thought the appellants entitled to reparation to the extent of the loss suffered by them by reason of these wrongful acts. But the measure of that loss is not the value of the trees; obviously