

Likewise in the case of lessor and lessee, the latter being liable for waste is responsible therefor, and being answerable to the lessor is the proper party to sue for trespass and to recover full damages.

The Crown might sue the trespassers for and recover the value of these trees taken notwithstanding the appellants' recovery. But how can the trespasser answer the Crown by any such recovery as sought herein?

It seems an extraordinary thing, if, because, the appellants have a grant which may terminate, indeed, be abandoned, by reason of necessity for an expenditure upon it far beyond its commensurate value in order to comply with the terms of the grant, they can thus indirectly strip the land of its pine timber and carry away that which may far exceed the minerals in value.

This would be to convert that which was intended to convey minerals and preserve timber into a grant to convey timber.

The possession of the appellant was, it is said, found by the learned trial Judge. Such possession as he had evidence of must be attributable to the title disclosed.

What rights of recovery the bare possessor owing no duty, in relation to the thing trespassed upon, to any one else may have as against a mere trespasser and the measure of damages in such a case are beyond the present inquiry.

This is a case where the actual or physical possession clearly goes no further than the legal, and that does not entitle appellants to claim as alleged in the statement of claim that the trees were their property. Nor does it entitle them to follow the trees when cut and converted into a something else.

Again, the right of the appellants was subject to be divested by any licensee of the Crown cutting by virtue of his license.

How do we know there has not been outstanding such a license?

The parties hereto argued as if none existed, but when a something happened in the Crown Lands office of which we only know part, the appellants say with force, we do not know it all.

Assume a renewable license outstanding at the date of the grant, what possible right is left in the appellants to claim those ties or their value?