

C.P. 133, 144; Scammell v. China Mutual Insurance Co., 164 Mass. 341; Thompson v. Adams, 23 Q.B.D. 361.

MOSS, C.J.O., MACLAREN and MAGEE, JJ.A., also concurred.

Appeal dismissed with costs.

FEBRUARY 15TH, 1912.

BRITISH NORTH AMERICAN MINING CO. v. PIGEON
RIVER LUMBER CO.

Company—Contract for Sale of Timber—Absence of Corporate Seal—Authority of Agent—Absence of Ratification—Right to Return of Timber Taken—Damages—Improvements and Moneys Expended—Set-off.

Appeal by the defendants (the lumber company and one Smith) from the judgment of SUTHERLAND, J., 2 O.W.N. 303.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

I. F. Hellmuth, K.C., and C. A. Moss, for the defendants.

L. G. McCarthy, K.C., and Frank McCarthy, for the plaintiffs.

GARROW, J.A. :—The plaintiffs are a mining company, incorporated by special Act in the year 1847, amended by 9 & 10 Edw. VII. ch. 69(D.), having their head-office at the city of Montreal, and owned a parcel of land, about ten square miles in extent, known as Prince location, in the district of Thunder Bay. Upon this land, the statement of claim alleges, the defendants had trespassed and cut therefrom a large quantity of pulp-wood amounting to about 2,500 cords, which they had removed from the land and caused to be floated in the Jarvis river, where it was when the action commenced; that the plaintiffs on the 16th June, 1910, demanded possession of and the return of such pulp-wood; and that the defendants deny the title of the plaintiffs thereto, and refuse to give up possession thereof or to return the same. And the plaintiffs claimed a declaration as to the title to such pulp-wood, an account, damages, a return of the pulp-wood, and an injunction. . . .