

BRITTON, J.

NOVEMBER 22ND, 1915.

GRATTON v. LAVOIE AND OTTAWA COBALT MINING
AND LUMBER CO. LIMITED.*Malicious Prosecution—Reasonable and Probable Cause—Finding of Trial Judge—Malice—Verdict of Jury—Damages—Costs.*

Action for malicious prosecution, tried with a jury at Haileybury.

George Mitchell, for the plaintiff.

C. A. Seguin, for the defendants.

BRITTON, J., said that the defendant Lavoie, who was the general manager and president of the defendant company, caused an information to be laid on the 10th March, 1913, charging the plaintiff with having stolen on the 6th March, 1913, certain trees of a value of at least 25 cents, the property of the defendant company. On this information a summons was issued by a magistrate; the plaintiff was served with the summons, and appeared before the magistrate on two or three occasions; he was finally discharged, although evidence was given against him, and the charge was pressed.

The plaintiff claimed the right to cut small pieces of timber called "laggins" upon the defendant company's lands, by virtue of permission given by the defendant company.

There was no doubt, in the learned Judge's opinion, that the plaintiff honestly believed that he had the right to cut "laggins," and that the defendants had no right to prevent him doing so, so long as they were cut and taken off within a reasonable time. The defendant Lavoie did not think that the plaintiff was stealing the timber; the defendant Lavoie laid the information and prosecuted the charge as a short cut, as he thought, to prevent the plaintiff from going on cutting.

Upon the evidence, there was an entire absence of reasonable and probable cause for the prosecution. This was found by the Judge at the trial; and the question of maliciously laying the information and putting the criminal law in motion was left to the jury, who found a verdict for the plaintiff with \$200 damages.