

shewed that part of each log was sawn into lumber and the balance made into a railroad tie of the size required.

In *Baxter v. Kennedy*, 35 N.B. 179, it was held that "logs and timber" were not intended to include deals or other manufactured lumber.

In *Rogers v. Dinsmore* (Canada Law Journal, Vol. 43, at page 627), Judge O'Connor, of the district of Algoma, decided that "no lien attaches on 'lumber' that is 'logs or timber' sawn into boards, scantlings, etc., under the Woodmen's Lien Act."

Now, while neither of these cases deal directly with "railroad ties" still, in my opinion, logs partly sawn into lumber and ties differ very slightly from logs sawn into lumber and deals or scantlings, etc. And the judgment of Chief Justice Hunter of British Columbia in *Davidson v. Frayne*, 9 B.C. 369, makes it much clearer that labour performed in a sawmill is not intended to come within the Act. He held in that case that "a lien is not given to sawmill men by the Woodmen's Lien for Wages Act, but only to those engaged in getting the timber out of the forest."

While none of the decisions I have referred to may be binding upon me, still they are of great assistance in arriving at a conclusion that it was the intention of the Act to make a distinction as to a lien attaching on "logs or timber" before being sawn and after being sawn.

Sec. 17, sub-s. (c) gives rights of attachment on "logs or timber about to be cut into lumber or other timber so that the same cannot be identified," thereby inferring that the right of a lien will cease when so cut, and also the "labour" to be done is interpreted by s. 3, sub-s. (b) of the Act to mean and include "cutting, skidding, felling, hauling, scaling, banking, driving, running, rafting or booming any logs or timber," being work which is done by parties engaged in getting the timber out of the forest and before the logs arrive at the sawmill.

I am, therefore, of the opinion that the plaintiff is not entitled to a lien upon the logs or timber sawn in the mill either into lumber or ties and none attaches and cannot be enforced against the "railroad ties" now in the possession of the Imperial Bank. He, however, will be entitled to judgment against the defendants for \$259.24 and costs of signing judgment as if by default of appearance, but not to include costs occasioned by making claim for lien, which he must vacate, and I also find that said lien was not filed within the time required by s. 8,