

placing the caps where they were found could fairly be attributed to the workmen, who alone were shown to have had the right to handle them; that it was incumbent on defendants to exercise a high degree of caution to prevent them falling into the hands of strangers; that the act of M., in exploding the cap as he did, did not necessarily import want of due caution, and if his negligence contributed to the accident the jury should have so found; and that whether or not M. was a trespasser was also a question for the jury who did not pass upon it. Appeal allowed with costs.

*Nesbitt and Gauld* for appellant. *Osler, Q.C.*, for respondents.

Ont.]

[Dec. 14, 1898.

HARDY LUMBER CO. v. PICKEREL RIVER IMPROVEMENT CO.

*Company—Action against—Forfeiture of charter—Estoppel—Compliance with statute—Res judicata.*

In an action against a River Improvement Co. for repayment of tolls alleged to have been unlawfully collected, it was alleged that the dams, slides, etc., for which tolls were claimed were not placed on the properties mentioned in the letters patent of the company; that the company did not comply with the statutory requirement that the works should be completed within two years from the date of incorporation, whereby the corporate powers were forfeited; that false returns were made to the Commissioner of Crown Lands upon which the schedule of tolls was fixed; that the company by its works and improvements obstructed navigable waters contrary to the provisions of the Timber Slide Co.'s Act, and could not exact toll in respect of such works. By a consent judgment in a former action between the same parties it had been agreed that a valuator should be appointed by the Commissioner of Crown Lands, whose report was to be accepted in place of that provided for by the Timber Slide Co.'s Act, and to be acted upon by the Commissioner in fixing the schedule of tolls.

*Held*, affirming the judgment of the Court of Appeal that the above grounds of impeachment were covered by the consent judgment and were *res judicata*.

*Held*, that plaintiffs having treated the company as a corporation, using the works and paying the tolls fixed by the Commissioner, and having in the present action sued the company as a corporation, were precluded from impugning its legal existence by claiming that its corporate powers were forfeited.

"R.S.O. (1887) c. 160, s. 54, it was provided that if a company such as this did not complete its works within two years from the date of incorporation, it should forfeit all its corporate and other powers, "unless further time is granted by the county or counties, district or districts, in or adjoining which the work is situate, or by the Commissioner of Public Works."