

There was no actual possession by the plaintiffs, and their constructive possession was of that only to which they acquired title under the grant.

Therefore I can see no more reason for permitting the plaintiffs to recover for an invasion of Crown rights than for the Crown to recover for trespass upon the property of the plaintiffs. In so far as the plaintiffs have sustained injury to any of their rights, caused by the defendants, they are entitled to compensation; but not for injuries done to the rights of the Crown.

But, if this were not so, how could the plaintiffs rightly recover for injuries sustained by the Crown? It is not a case of setting up the *jus tertii*; the defendants have acquired the rights of the Crown, and are setting up their own rights so acquired.

So that the main question in the action really comes down to this: To what extent have the rights of the plaintiffs been encroached upon, and what sum will reasonably compensate them for the injury done?

The Crown excepted from the grant, "all pine trees standing and being on the land, which pine trees shall continue to be the property of Her Majesty" . . . .; giving leave, however, to the patentee, to cut such of them as might be necessary for certain specified purposes; but this leave did not vest in the plaintiffs the title to any pine trees, or hamper the right of the Crown to sell them; so long as they remained, the patentee might use them to the extent of the leave given, but he acquired no title to them until so appropriated, nor any right to prevent the removal of them by the Crown, or by anyone who had acquired any right to them from the Crown; all this was made very plain on the face of the patent, which contained this provision: "Any person holding a license to cut timber or saw logs may, at all times during the continuance of the license, enter upon the lands and cut and remove such trees, and make all necessary roads for that purpose."

The defendants Miller and Dickson cut other than pine trees, and are said to have done unnecessary injury to the plaintiffs' rights in cutting and removing them, as well as in cutting and removing the pine trees; therefore, unless the parties can agree as to these things, there ought to be the usual reference, reserving further directions and all questions of costs throughout, except of this appeal.

Agreeing with the learned Judge in his findings of the facts affecting the claim of the defendants Miller and Dickson over against their co-defendants, this claim fails, and the appeal, in respect of it, should be dismissed with costs to such co-defendants.