

party of his vested rights. See *Lamb v. Kincaid*, 38 Can. S. C. R. 516.

The Eastern Construction Co. by accepting and paying for the ties became liable for the trespass.

J. H. Moss, K.C., for the respondents, referred to *Freeman v. Roscher*, 13 Q. B. 780; *Lewis v. Read*, 13 M. & W. 834.

THE CHIEF JUSTICE:—On the whole, I concur in the opinion of Mr. Justice Anglin.

HON. MR. JUSTICE IDINGTON (*dissenting*):—The question raised herein is reduced to the narrow point of whether or not the grantee of lands under the Mines Act, R. S. O. 1897, has such possession in the pine timber on such lands so granted him by the Crown, that he can recover the value thereof when cut and removed from the lands, not only from the actual trespasser, but from those taking under him the fruits of the trespass after the removal, and without the purchaser having any notice or knowledge of such trespass until after the removal.

I think the question must be answered by the interpretation of sec. 39, sub-sec. 1, of the said Act, which is as follows:—

(1) The patents for all Crown lands sold as mining lands shall contain a reservation of all pine trees standing or being on the lands, which pine trees shall continue to be the property of Her Majesty, and any person holding a license to cut timber or saw logs on such land 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 grant is made expressly subject thereto and then the title declared to be qualified, in this that it is subject to the conditions imposed by the Act for the purpose of securing the carrying out of mining operations in and upon the said land.

When we turn to sec. 34 of the Act, we find the title thus qualified is in truth dependent for seven years from the grant upon certain mining developments taking place at the in-