

The
Ontario Weekly Notes

Vol. II.

TORONTO, APRIL 19, 1911.

No. 30.

COURT OF APPEAL.

APRIL 1ST, 1911.

NATIONAL TRUST CO. v. MILLER.

Trespass on Lands—Cutting and Removing Timber—Rights Reserved by Crown—Possession, Actual and Constructive—Acquisition of Crown Rights—License to Patentee—Title to Pine Trees.

Appeal by defendants, the Eastern Construction Co., and by Miller and Dickson, from the judgment of CLUTE, J., of June 17th, 1910, whereby he gave judgment for the plaintiffs for \$3,157 damages and costs, and dismissed the claim of Miller and Dickson by third party notice against the Eastern Construction Co., and gave judgment for plaintiffs in the action of Schmidt v. Miller for \$1,053 damages and costs. The action was for alleged trespass of the defendants in entering on plaintiffs' lands and cutting and removing timber.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

I. F. Hellmuth, K.C., and F. Aylesworth, for the Eastern Construction Co.

W. M. Douglas, K.C., for Miller and Dickson.

J. R. Cartwright, K.C., for the Ontario Government.

J. A. Macintosh, and W. H. Wallbridge, for the plaintiffs.

The judgment of the Court was delivered by MEREDITH, J.A.:—I am obliged to differ from the learned trial Judge in one important matter; but, generally, agree with him in his findings of fact, as well as in his conclusions in the other matters involved in the action.

I am unable to understand why the plaintiffs should be considered to have been in possession of the rights reserved by the Crown, any more than that the Crown should be considered to have been in possession of the rights granted to the plaintiffs.