

An appeal from a decision of the Court of Appeal for Ontario, 19 O. W. R. 38; 2 O. W. N. 993, reversing a judgment of HON. MR. JUSTICE CLUTE, at the trial in favour of the plaintiffs.

The plaintiffs are patentees of mining locations in the Rainy River District under letters patent from the Ontario Government. By the "Ontario Mining Act," the pine timber on the location is excepted from the grant and remains Crown property subject to the right of the patentees to use it for certain specified purposes. Any licensee of the Crown may enter on the land and cut and remove it. The plaintiffs at the time this action was begun had not taken physical possession of the mining land.

The defendants, The Eastern Construction Co., had a license from the Crown to cut timber on lands adjacent to the locations and contracted with the defendants Miller and Dickson for a supply of railway ties to be delivered at the right-of-way of the National Transcontinental Railway. In carrying out this contract Miller and Dickson cut the pine and other trees on plaintiffs' location, had them made into ties and removed same from the land. The action was brought for the value of the trees so cut and damages for injury to the land thereby. The facts are more fully stated in the opinions of the Judges on this appeal.

The trial Judge gave judgment for the plaintiffs, which was reversed by the Court of Appeal in so far as the pine was concerned. The plaintiffs appealed to the Supreme Court of Canada.

The appeal to the Supreme Court of Canada was heard by HON. SIR CHARLES FITZPATRICK, C.J.C., HON. MR. JUSTICE IDINGTON, HON. MR. JUSTICE DUFF, HON. MR. JUSTICE ANGLIN and HON. MR. JUSTICE BRODEUR.

Anglin, K.C., and J. A. McIntosh, for the appellants. The patentees brought the statutory right to use the timber for the purposes specified. *Gordon v. Moose Mountain Mining Co.*, 22 O. L. R. 473, and see *McLean v. The King*, 38 Can. S. C. R. 542, at p. 546.

Miller and Dickson cannot rely on a subsequent license from the Crown which would be to permit a wrongdoer to set up in justification permission to deprive the injured