

For some years prior to 1917, the plaintiffs had been, and still were, engaged in prosecuting active and extensive mining operations on R.L. 403, and had thus been visibly occupying, using, developing, and working this location by the same acts and in the same manner and to the same extent as they would have occupied, worked, and developed it had they had, as they believed, the paper-title as far east as the line indicated.

These acts and claims, done and made with the intention of asserting a right and title, and in consequence of a bona fide belief in the rights claimed, amounted to a taking of possession: *Lord Advocate v. Lord Lovat* (1880), 5 App. Cas. 273, 288; *Kirby v. Cowderoy*, [1912] A.C. 599; *Davis v. Henderson* (1869), 29 U.C.R. 344; *Humphreys v. Holmes* (1861), 10 N.B.R. 59.

While the plaintiffs had not established a paper-title to any of the lands in dispute, they had established possession of part of the lands at the time the defendants planted the iron post; and the plaintiffs, on the authority of *Glenwood Lumber Co. v. Phillips*, [1904] A. C. 405, 410, and *Jeffries v. Great Western R.W. Co.* (1856), 5 E. & B. 802, 805, were entitled to be protected in their possession until the Crown, or a person shewing legal right or title under it, should make entry; and, consequently, to a declaration that they were, as against the defendants, entitled to possession of the part of the disputed lands lying west of a straight line drawn from the "Shaw" post to the "Colonial No. 4;" to an injunction restraining the defendants, their servants, workmen, and agents, from trespassing thereon until they should have established a right thereto, or a right to enter under the person having the title; and to the damages, if any, which they had suffered by reason of any trespass committed, to be ascertained by the Local Master at Haileybury if the parties could not agree.

The defendants did not counterclaim, and there should, therefore, be no declaration as to the rights of the parties in the disputed lands east of the aforesaid line.

The plaintiffs claimed much more than they were now awarded; their effort at the trial and on the hearing of the appeal was directed to establishing a paper-title to the whole of the lands in dispute; and so justice would be done by making no order as to costs here or below.

The appeal should be allowed, and judgment should be entered for the plaintiffs to the extent indicated.

*Appeal allowed.*