

livered by Miller & Dickson, in performance of a contract therefor made by the construction company. On February 24th, Miller & Dickson were notified by the Crown timber agent to desist, but they had then removed all but a very few ties. On March 6, 1909, the Crown gave the construction company permission to remove the remaining ties and they were charged the usual dues in respect of all timber cut by Miller & Dickson, including that cut on the plaintiffs' land. The plaintiffs did not demand the return of the ties. By the Mines Act the property in all pine trees on the lands subject of a patent or lease, is reserved to the Crown who may grant licenses to cut them, the patentee or lessee, however, having the right to cut them for mining purposes or for clearing the land for cultivation. The judge at the trial found that the timber on the mining location of the plaintiff would not have been sufficient for the requirements of any mines which might thereafter be made or worked on such location, and that the construction company when informed of the taking of the timber had adopted the act and had the benefit of the timber so taken, and were therefore liable to the plaintiffs. The Court of Appeal reversed his decision and the Supreme Court of Canada restored it. The Judicial Committee (Lords Atkinson, Moulton and Parker) now reverse the Supreme Court and restore the judgment of the Court of Appeal, their Lordships holding that the property in the timber in question was under the Mines Act vested in the Crown, both before and after it was felled, that if the plaintiffs had any right of action it would be merely as bailees of the Crown and would be accountable to the Crown for the damages, if any, recovered; but here, before action, the Crown had clothed the wrongdoer with the ownership and therefore the plaintiffs could not recover in respect of the pine trees; but as to tamarack trees cut on the plaintiffs' location their Lordships thought the plaintiffs might have some claim, and ordered the defendants to pay the costs of the trial, provided the plaintiffs made no further claim in respect of such tamarack trees.