3. That the patents might be granted for the purpose of working one large mine, and they are in effect unified by the nature of the operatiions.

The Mines Act under which the patents . . . were issued was repealed by 6 Edw. VII. ch. 11, sec. 222, with the proviso that such repeal "shall not affect any rights acquired . . . or any act or thing done" under the said Act.

A new provision appears therein as to "reservation of timber," in terms embodying the same enactment as sub-sec. 1 of R.S.O. 1897 ch. 36, sec. 39. But, as to sub-sec. 2, there is an amendment . . . 6 Edw. VII. ch. 11, sec. 175.

The Act of 1906 is again altogether repealed by the present Act of 8 Edw. VII. ch. 21, sec. 193, which contains, as sec. 112, provisions similar to . . . sec. 175 of the Act of 1906 . . . [Reference to the Interpretation Act, R.S.O. 1897 ch. 1, sec. 8, sub-sec. 50 . . . 7 Edw. VII. ch. 2, sec. 7, sub-sec. 46.]

The upshot is that the patentee, under the statute, sec. 39, had legal permission to take such of the trees as were necessary and essential for the buildings and operations in mining, without let or charge, so long as the limits of the permission were not exceeded. That is, to my mind, a right or privilege which is saved under the general repeal of the first Act. It is a specific right or privilege, part of the consideration of his purchase, which is secured to him by statute, and was subsisting at the time of its repeal. To use the phrase of the Lord Chancellor in Blackwood v. London Chartered Bank of Australia, L.R. 5 P.C. 92, at p. 110, "it was a statutory right, and there is nothing higher among legal rights than a right created by statute." I regard the terms of the contract and grant as not in the nature of an inchoate or potential right or privilege, but one which had been established, which had accrued, and was to be acted upon as occasion arose in the mining operations. I have consulted the following authorities, which mark the distinction and support the conclusion: In re Chaffers, 15 Q.B.D. 467, 470; Prince v. Prince, L.R. 1 Eq. 490, 494; Starey v. Graham, 16 Rep Pat. Cas. 106, 111; Abbott v. Minister for Lands, [1895] A.C. 425; Reynolds v. Attorney-General for Nova Scotia, [1896] A.C. 240; . . . Falvey v. Tregoweth, 16 N.Z.L.R. 341.

The result is, that the plaintiff has a cause of action as to any excess in cutting which he may establish on the reference to the Master.

Enough was admitted to ground a reference as to one class of cutting which I think was unauthorised. That is, the defendants cut on one patented lot pine trees to be used and which