

pine necessary for building, fencing and fuel and remove and dispose of what is required to clear the land for cultivation and for any cut for other purposes he shall pay Crown dues.

Held, IDINGTON and DUFF, JJ., dissenting, that, notwithstanding such reservation, or exception, a patentee of mining land has such possession of the pine trees, or such an interest therein, as would entitle him to maintain an action against a trespasser cutting and removing them from the land.

In this case the defendants cut and removed the pine timber from the plaintiffs' mining lands without license from the Crown, but claimed that they subsequently acquired the Crown's title to it and should be regarded as licensees from the beginning.

Held, IDINGTON and DUFF, JJ., dissenting, that even if the Crown could, after the trees had been cut and removed, take away by its Act the plaintiffs' vested right of action, the evidence showed that defendants were cutting on adjoining land as well as on plaintiffs' location and did not clearly establish that the title acquired by defendants included what was cut on the latter.

Appeal allowed with costs.

Anglin, K.C., and *McIntosh*, for appellants. *J. H. Moss*, K.C., for respondents.

Province of Ontario.

HIGH COURT OF JUSTICE.

Riddell, J.] REX EX REL. MORTON *v.* ROBERTS. [April 16.

REX EX REL MORTON *v.* RYMAL.

Municipal elections—Sale of qualifying property after election but before declaration of qualification—Qualification as mortgage—Defect in declaration—Municipal Act, 1903.

Appeals by defendants from orders of the Junior Judge of the County Court of Wentworth declaring defendants to have lost their seats as councillor and deputy reeve for the township of Barton on the ground of having become disqualified since their election. The defendants were admittedly "qualified" at the time of election. Prior to making the declaration they con-