

but a very small percentage (less than eight per cent.) consisted of pine which was the property of the Crown, being expressly excepted from the grants and leases referred to. The learned trial Judge held the respondents accountable to the appellants for the full value of the pine timber taken from the locations; but on this point his judgment was reversed by the Court of Appeal. The substantial question is whether on this point the judgment of the Court of Appeal is right.

The material facts are either undisputed or are decided by the findings of the learned trial Judge; but in the view I take of the questions arising on the appeal, more especially of some points not raised by the parties themselves, it is necessary to dwell with a little care upon these facts as well as upon the course of the trial and the nature of the case made by the parties there.

The trespasses complained of took place in the month of February, 1909. They were actually committed by the defendants Miller and Dickson, who had entered into a contract with the respondents, the Eastern Construction Co., to cut, from a defined area, timber for railway ties, to manufacture this timber into ties, and to deliver the ties at certain places designated on the line of the Northern Transcontinental R. Co., then in course of construction. The Eastern Construction Co. had a permit, issued by the Ontario Government under the authority of the Crown Timber Act, to cut timber from Crown lands within an area described in the permit, which will be sufficiently designated for my present purpose by saying that the southern boundary of it was Vermillion river—which it may be mentioned is a short river connecting two lakes north-west of Lake Superior, in Rainy River District, at a distance of about 200 miles from Port Arthur. The Eastern Construction Co. had entered into an arrangement with the firm of O'Brien, Fowler & McDougall (who were engaged in constructing part of the Transcontinental Railway under a contract with the Dominion Government), by which the Eastern Construction Co. (who were not themselves engaged in railway building) were to give to the O'Brien firm the use of their permit for a commission of one cent for each tie manufactured from timber cut under the permit; and the method by which the arrangement was carried out was that the Eastern Construction Co. engaged Miller and Dickson as contractors to cut the ties required from the area affected