

The operations which led to this suit were commenced by the defendants on the 15th October, 1886. A few days later a new license, dated the 23rd October, was granted to the defendants over the same tract of land, but with the condition that all lots sold or located by the authority of the Commissioners of Crown Lands prior to that date are to be held as exempted from the license.

The defendants contend that the plaintiff's lots do not fall within the description of "lots sold or located by the authority of the "Commissioner of Crown Lands," because, though they were so sold or located ostensibly, and by the District Agent, and apparently in the course of official business, yet the Commissioner had no legal authority to make such a grant. The Forest Act of 1883, which enables the Crown to set apart ungranted lands as forest, prohibits the sale of them till after a period of ten years. The plaintiff's lots are within the ambit of a large territory set apart as forest reserve by a Proclamation dated 23rd August, 1883; therefore, say the defendants, the Crown was incapable of granting them in 1886.

The plaintiff met this objection to his title by contending first that the Proclamation was itself invalid, and then that his lots fell within certain exceptions from the forest reserve which the Proclamation specifies. On these points there has been much controversy. The Superior Court rested its decision partly on the ground that the Proclamation was invalid. The Court of Queen's Bench do not either in the motives of their judgment, nor in the reasons assigned by the majority of the Judges, take any such ground. They pronounce no opinion on the matter. And it appears to their Lordships also that the controversy is immaterial for the decision of the present question.

That question is whether the plaintiff is a person who as against the defendants has a right to be protected by injunction within the terms of the Injunction Act of 1878. The Act provides that the Court may grant a writ of injunction ordering the suspension of any act, proceeding, operation, work of construction or demolition, in the following case amongst others:—"Whenever any per-

son who has not acquired the possession of "one year, and who has no valid title to the "property, causes work to be carried on upon "any land whereof another is proprietor "through a valid title, and of which he is in "lawful possession."

The defendants have certainly never had the possession contemplated by the Act, and their Lordships agree with the holding of the Queen's Bench, that all lots for which a location ticket had previously been granted were excluded from the operation of the timber license granted to the defendants in October, 1886. The defendants therefore had neither possession nor title.

The plaintiff is in possession for valuable consideration given by him to the Crown, in the course of dealings with the official agent of the Crown, and ostensibly by the authority of that agent. Even supposing that the Crown can annul the instrument which gives him title, it could not treat him as a trespasser. Nor whatever may be the legal powers of the Crown, as to which their Lordships say nothing, can we consider as a mere nullity the possession of land by one who has paid money for it, and has made improvements on it, and who can hardly be expected to know of legal infirmities in the Crown's title. Their Lordships consider that this is a title sufficiently valid and a possession sufficiently lawful to carry with it the right of protection by injunction; and that the Injunction Act does not open to a defendant a door of escape merely because he may be able to show that the plaintiff's title is one which cannot be made good against all other persons.

From the statement of reasons by the learned Chief Justice, their Lordships collect that the Court will not, as a general rule, decide a question of title on this kind of proceeding, especially when a third party is interested as the Crown is here, but that they are in the habit of granting interim protection. It appears to their Lordships that such a practice is in accordance with the provisions of the Act, and has been properly applied in the present instance.

Their Lordships think that the appeal ought to be dismissed with costs.