

## Reports and Notes of Cases.

### Dominion of Canada.

#### SUPREME COURT OF CANADA.

Exch. Ct.]

TWEEDIE v. THE KING.

[Nov. 2, 1915.]

*Title to land—Foreshore—Title by possession—Nature of possession—Disclaimer—Evidence of title—Nullum tempus Act.*

In proceedings by the Dominion Government for expropriation of land on the Miramichi River, the owner T. claimed compensation for the part of the adjoining foreshore of which he had no documentary title. It was proved that in 1818 the original grantee had leased a part of the land and the privilege of erecting a boom for securing timber on the river in front of it; that his successors in title had, by leasing and devising it, dealt with the foreshore as owners; that for over 40 years from about 1840, the boom in front of it was maintained and used by the owners of the land; and that at low tide the logs in the boom would rest on the solum.

*Held*, reversing the judgment of the Exchequer Court (15 Ex. C.R. 177), Davies, and Idington, JJ., dissenting, that there was sufficient evidence of adverse possession of the foreshore by the owners of the adjoining land for more than sixty years to give the present owner title thereto.

*Per* Anglin, J.—From a continuous user for more than forty years, which is proved, a prior like user may be inferred. Moreover, from the evidence of assertion of ownership and possession since 1818, a lost grant might, if necessary, be presumed.

*Per* Davies, and Idington, JJ.—The placing and use of the boom was only incidental to the lumber business carried on at this place, and the consent of the riparian owners thereto cannot be regarded as a claim of adverse possession. The presumption of lost grant was not pleaded and cannot be relied on; moreover, a lost grant could not be presumed in the circumstances.

On application by the Minister of Justice for a disclaimer of damages for the taking of the foreshore, the Government of