

# Legal Aspect of Timber Titles

**History of Timber Legislation and Form of Timber Titles Held in British Columbia, and Opinion as to Their Validity, by R. T. Elliott, K.C., Victoria.**

The starting point of timber legislation was the Act of 1888, which made explicit provision for the leasing of Crown timber land, a matter that previously had been dealt with to a small extent. By action of the Executive Council, a number of twenty-one-year and thirty-year leases were issued under this Act in subsequent years, and many of them are in existence today.

In 1901 the Legislature recognized the necessity of protecting the extensive investment, often necessary in opening up a logging berth, by giving such holders as should apply for the privilege the right of exchanging existing leases for leases renewable in perpetuity; renewal being made every twenty-one years, subject to the rental, royalty and the other conditions contained in the Act at the time of renewal. The majority of lease holders made use of the opportunity thus afforded to secure certainty of title, and others did so in 1908, when the provision in question was re-enacted, so that today some acres of timber land are held under perpetual leases of this character. A number of leases, however, were not dealt with under the Acts of 1901 and 1908. In the aggregate, these cover an area of 146,613 acres. The interpretation of the Act of 1901, in so far as it affects these, is a matter of sub judice, the lessees laying claim to the right of perpetual renewal, and an Executive decision not having been yet rendered.

In order to provide the small operator with his annual supply of standing timber, the Act of 1888 provided that cutting rights covering a certain area could be obtained upon payment of a small fee for a temporary license. In the beginning this license was good only for twelve months. The system proved so popular, however, that it was made possible for the operator to obtain a license covering a five-year period. This, however, was insufficient security of tenure to justify the large expenditure that modern logging methods rendered necessary, and representations were therefore made by the lumbermen of the Province to the Government, asking that some definite title covering a reasonable period of years should be furnished. The necessity of this was obvious, and in 1905 the Government consequently introduced a new licensing system. Existing licenses were made renewable from year to year for sixteen years, providing that the annual rental was duly paid and the other conditions of tenure were complied with. It was provided also that all future licenses taken up should be renewable for twenty-one years on similar terms. The fact that the cutting rights covering all these licenses were made transferable stimulated the demand for them to a very considerable extent, and between 1905 and the end of 1907 the total number in existence rose to fifteen thousand. It then became evident that a period of twenty-one years would not allow for the marketing of the immense body of timber effected, and in 1910 the Government consequently gave the licensee, who wished to avail himself of the privilege, the right to exchange this license for one that would be perpetually renewable from year to year as long as merchantable timber should remain on the ground. The essential matter of tenure was thus disposed of in a very satisfactory manner, and the annual rental per acre and the royalty to be charged when timber was cut was still, however, subject to change, since it was understood that the Government retained its right to share in any future increase in stumpage values.

At the beginning of 1913 the question of defining what the Government's share in increased values should be was taken up by the Hon. W. R. Ross, Minister of Lands. Committees of the lumbermen and license holders' associations

were appointed to confer with the Government, and after an exhaustive enquiry the sound and practical solution of the question was embodied in the Royalty Act, which passed at the last session of the Legislature. By this Act the annual rental on licenses has been fixed for forty years, while Government stumpage has been definitely established for the same period of time on the sliding scale, which guarantees that after an initial increase, which takes place on the first of next January, no subsequent increase shall be made until the average wholesale selling price of lumber in the Province rises above \$18.00. When that figure is past, Government royalty is automatically increased on a percentage basis. All elements of insecurity have thus been eliminated from the tenure of British Columbia timber licenses under an enactment which safeguards in an equitable manner both the rights of the public and the rights of the investor on Crown timber.

The licensees' position is, if anything, more stable than that of the owner in fee simple, since he is not subject to the arbitrary changes in taxation. The great majority of timber licenses have already been made perpetual, that is to say renewable annually, as long as merchantable timber remains on the ground.

At the present time there are 12,548 perpetual licenses, 1,216 licenses renewable from year to year for a maximum of twenty-one years from the original date of issue, 76 licenses renewable for the sixteen years ending 1921. Owing to their favorable conditions of tenure which require the holder to pay stumpage only when the timber included in the license is cut—and so avoids the necessity of sinking capital in purchasing the timber outright—there has existed for years past an active market for the buying and selling of timber licenses. The official records for 1913, for instance, show that more than two thousand licenses were transferred during the year, and this, moreover, was at the very time when the future rates of rental and royalty were under consideration by the Government. Now that the Royalty Act has put an end to such uncertainty as existed in these matters, the market value of properly located licenses will be considerably increased by the annual rental of twenty-two cents an acre on the Coast, and less than sixteen cents in the Interior, which represents a charge varying only from less than a cent to less than three cents per thousand feet per annum. The present royalty of fifty cents per thousand paid on cut timber on the Coast will be increased at the end of the present year, as far as upper grades are concerned, and will average about seventy-five cents. In the Southern Interior a corresponding change will be made by the substitution of the B. C. for the Doyle rule; and in the Northern Country the rate will be sixty-five cents.

## TIMBER TITLES IN BRITISH COLUMBIA.

By R. T. Elliott, K.C.

A course of legislation, extending throughout the years since 1875, has placed timber titles (apart from the ownership of the land) in British Columbia upon a basis of stability and value. While two nominal titles and tenures are retained in use, one being called a timber lease, and the other a special timber license, the practical effect of a holding under either tenure, is to vest in the holder an absolute ownership in the timber, just as definite, as stable, and as beneficial as the ownership of land in fee simple.

In 1888 the Legislature passed an Act relating to Crown lands, containing provisions relating to timber which it was hoped would form a practical and permanent code for dealing with the timber resources of the Province.