

it is the value of the contingent right to take the trees. In estimating the value of that right, two elements must, of course, be taken into account, first, the probability of the timber ever being required for the purposes for which the statute permits it to be taken, and, second, the probability of the timber being permitted by the Department of Crown Lands to remain until it should be so required. In estimating the amount of the loss to the appellants which can fairly be said to have been the "natural and probable consequence" of the acts complained of, these two elements must necessarily be considered. We are not at liberty, however, to consider the appellants' case from this point of view. The appellants in the most-explicit way refused to put their claim as a claim to the value of a contingent right; and the learned trial Judge refused to consider the points I have just indicated as in any way affecting either the appellants' right to recover or the extent of the damages to which they should be entitled. Evidence was tendered by the respondents of the practice of the Department in granting licenses to cut timber on locations such as the appellants' with a view to shewing the precariousness of the appellants' rights. This evidence was, on the objection of the appellants, rejected as irrelevant. It was, I think, irrelevant in view of the proposition of law on which the appellants based their case. The learned trial Judge also treated the probability of the locations being developed to such an extent as to require the use of the timber taken, as irrelevant. I repeat, the appellants' claim is not, and has not at any stage of the proceedings, been based upon an allegation that they have been interrupted in the exercise of their timber rights, nor have they asked to be compensated for the actual loss they have suffered by reason of being deprived of the possibility of exercising those rights in future in respect of the timber removed.

The mode in which the appellants put their case at the trial as well as in the Court of Appeal and in this Court was this. They were, they said, in possession of the soil on which the pine timber stood, and consequently in possession of the timber; that notwithstanding the fact that the timber was owned by the Crown and delivered by the Crown officers into the possession of the respondents after it was cut, the respondents are, under the authority of *The Winkfield*, [1902] p. 42, responsible for the full value of what they took