Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Gilmour and others v. Mauroit and Gilmour and others v. Allaire, from the Court of Queen's Bench for Lower Canada, Province of Quebec; delivered 27th July 1889.

Present:

THE LORD CHANCELLOR.
LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

Gilmour and others *v.* Mauroit.

In this case the Superior Court issued an order enjoining the Defendants, who are the now Appellants, to discontinue and cease all lumbering and other works in connection therewith on certain lots of land in the possession of the Complainant, who is the now Respondent.

The Defendants appealed to the Court of Queen's Bench, who issued the order now appealed from. It is in the following terms:—

"Considering that the Respondent has established that on the twenty-first day of April one thousand eight hundred and eighty-six he has obtained from the Crown Lands Agent, acting for and on behalf of the Government of the Province of Quebec, a location ticket for lots numbers sixty-two and sixty-three in the sixth range of the township of Egan, in the District of Ottawa, and had possession of the said lots of land when the act of trespass complained of by him was committed by the Appellants;

"And considering that, by the license granted by the Appellants to cut timber on the lands therein described, all lots

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or parts of lots for which a patent or a location ticket had previously been granted were excluded from the operation of the said license ;

"And considering that the Respondent has established that he had a *primâ facie* title to the possession and property of the said lots of land, such a location ticket being a promise of sale from the Government of the Province of Quebec, on the conditions determined by law, with possession, which entitled the said Respondent to claim and obtain an injunction enjoining the Appellants, who having no title to cut timber on the said lots of land are by law considered as having cut by trespass the timber mentioned in the Respondent's petition, until the said Appellants had established in the regular course of law the insufficiency of the Respondents' title and their right to cut the timber on the said lots of land ;

"And considering that there is no error in the judgment rendered on the twenty-fourth day of February one thousand eight hundred and eighty-seven by the Superior Court for the District of Ottawa, sitting at Aylmer, except in the expression that the writ of injunction issued in this cause was declared to be perpetual, which might exclude the Appellants from hereafter asserting in due course of law their right to cut the timber on the said lots of lands ;

"This Court, for the above reasons, doth maintain the said writ of injunction, and doth enjoin the said Allan Gilmour, John Gilmour, David Gilmour, and John David Gilmour, Defendants below, now Appellants, to discontinue and cease all lumbering and all operations and works in connection therewith on said lots numbers sixty-two and sixty-three of the sixth range of the township of Egan, in the District of Ottawa, now in possession of the Respondent, under and in virtue of a location ticket granted to him, and bearing date twenty-first day of April one thousand eight hundred and eighty-six, under the penalties ordained and prescribed by law."

The Defendants complain, first, that the injunction, though not intended to be perpetual, is in fact made so, and that they are excluded from hereafter asserting any right to cut timber on the land in question. It is true that the mandatory part of the order is indefinite in point of time, and if unexplained might be read as being perpetual, but taken in connection with the expressed motives it is plain enough that if the Defendants have a better title to assert they may do so in a proper suit.

The principal contention of the Defendants is that the Plaintiff has not shown any valid

title to the land, and in order to show the precise bearing of this contention the positions of the parties must be stated.

The Plaintiff claims title under a license of occupation, commonly called a location ticket, granted to him on the 21st April 1886 by the Agent of Crown Lands. The license states that the Plaintiff has paid 12 dollars, being one fifth of the purchase money of 200 acres of land contained in lots Nos. 62–63, in the township of Egan, the balance being payable in four equal annual instalments. The grantee is bound to take possession within six months, to continue residence and occupation for two years at least, to clear or cultivate at least 10 acres in the 100, and to build a habitable house of a certain size. Before his patent is issued he is not to cut wood except for clearance, fuel, building, or fences. The sale is expressly made subject to all timber licenses actually in force.

By Sec. 16 of the Public Lands Act of 1869, 32 Vict., cap. 11, such a license gives to the grantee a right to take possession of and occupy the land therein comprised, and to maintain suits in law or equity against any wrongdoer or trespasser, as effectually as he could do under a patent from the Crown, and such license is to be *primâ facie* evidence of possession in any such suit, but is to have no force against a license to cut timber existing at the time of the granting thereof.

From the 4th December 1885 to the 30th April 1886 the Defendants held a license to cut timber over a tract of land, roughly speaking about 50 square miles in extent, which embraced lots 62-63, in the township of Egan. This license contained a proviso that all lots sold or located by the authority of the Commissioners of Town Lands should cease to be subject to it after the 30th April following. Probably the

reason for inserting a clause exempting located lots at a date after the expiry of the license was that such licensees had claims to renewal of their licenses which were recognized by the Crown officers.

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 Com- "missioner 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 person 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.

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This appeal is subject to the same considerations, the only difference being that the Plaintiff's location ticket was granted before the Proclamation of September 1883, and before the Defendants obtained any timber license at all. Therefore the arguments used to prove the invalidity of Mauroit's title do not apply to Allaire's. This appeal also should be dismissed with costs.

Both appeals.

Their Lordships will humbly advise Her Majesty in accordance with the foregoing opinions.