Judgment of the Lords of the Judicial Committee of the Privy Council on the consolidated Appeals of The Eastern Construction Company, Limited, v. (1) *The National Trust Company, Limited, and others; and* (2) *Therese Schmidt and others, and The Attorney-General for the Province of Ontario (Intervenant), from the Supreme Court of Canada (Privy Council Appeal No.* 88 *of* 1912); *delivered the* 21*st October* 1913.

PRESENT AT THE HEARING:

LORD ATKINSON.
LORD MOULTON.
LORD PARKER OF WADDINGTON.

[DELIVERED BY LORD ATKINSON.]

The Respondent Company, the National Trust Company, for convenience styled the National Company, brought jointly with John Shilton and William Hollaway Wallbridge, on the 26th June 1909, an action against the Appellant Company, the Eastern Construction Company, for convenience styled the Construction Company, William Miller and William Dimmie Dickson, to recover damages for trespassing on their land, cutting down and carrying away certain pine and tamarack trees growing thereon, and injuring the land. The precise relief claimed was (1) damages for the trespasses and wrongs complained of; (2) the costs of the action; (3) an injunction restraining the Defendants from a repetition of the acts complained of; and (4) further relief. The Respondents, Therese Schmidt and John Shilton, brought a similar action against the same Defendants to recover damages for similar trespasses and

wrongful acts alleged to have been committed on their lands, claiming similar relief. A third party action was instituted by notice by Miller and Dickson against the Construction Company, claiming to be indemnified. Before the trial a notice was served by the Plaintiffs in both of the two main actions to the effect that an application would be made at the trial to the presiding judge to amend the statements of claim by alleging that the Defendants after felling this timber manufactured it into ties or railway sleepers, and wrongfully converted those ties to their own use. Some discussion took place at the commencement of the trial as to the propriety of making this amendment. No serious objection appears to have been taken to it by the Defendants, but the matter was deferred, and no such amendment was, in fact, ever made.

The actions were tried before Mr. Justice Clute without a jury on the pleadings as they stood, and as the evidence in the two main actions was practically identical, and the relief prayed for in the third party action, in a great degree, consequential upon the findings in the others, all three were tried together, and resulted in judgment being recovered in the first action against the Defendants for the sum of $3,157.00, and in the second for the sum of $1,053.00, with costs in each case, and in the third party action being dismissed; but it having appeared during the course of the proceedings that the Construction Company were indebted to Miller and Dickson in two sums of $1,259.28 and $629.65, it was directed that the first of these sums should be paid into court in the first action, and the second in the second action in satisfaction *pro tanto* of the sums recovered in these actions respectively.

The trial judge found on other issues of fact to be hereafter referred to.

The Defendants appealed in both cases to the Court of Appeal of Ontario. That Court, by its judgment and order dated the 1st of April 1911, reversed, with some modifications to be hereafter mentioned, the judgments and orders made by the trial judge in both cases. On appeal by the Plaintiffs in both suits to the Supreme Court of Canada, that Court, by its orders of the 21st of March 1912 reversed the decision of the Court of Appeal of Ontario, and held that the two sets of Defendants, the Construction Company and Miller and Dickson, were equally liable to the respective Plaintiffs for the sums awarded against them by the trial judge in each case for damages, not, however, on the statement of claim as it originally stood, nor yet as it was proposed to be amended, but in detinue in respect of certain pine and tamarack timber cut and removed by Miller and Dickson from the mining locations of the respective Plaintiffs. From these two judgments, the two appeals, now consolidated, have by special leave been brought to this Board. The facts so far as material for the decision of this case are as follows:

By Patent No. 3212, the Crown granted to Herbert Carlyle Hammond, William Hollaway Wallbridge and John Shilton, all of the city of Toronto, the fee simple of a certain parcel of land, described as Mining Locations, situated south of Vermilion River, and north of Minnietakie Lake, in the Rainy River district, to hold to them in undivided thirds, subject, however, amongst other things, "to all the reservations, "provisos, and conditions of the Mines Act" (R.S.O., 1897, c. 36), and saving and excepting the reservations and exceptions contained in section 39 of the said statute, namely, all pine

trees standing or being on the said lands as by the said section provided.

By a lease from the Crown bearing date the 11th of May 1903, styled a Mining Lease, certain tracts of land therein described, composed of four so-called mining locations, each containing 40 acres, situate south of the same river and north of the Minnietakie Lake, were demised to one Carl Schmidt, his Executors and Assigns, to hold for a period of ten years, with all mines and minerals, on or under the same, together with all easements, advantages and appurtenances, for the purpose of mining upon and under the said lands, at the yearly rent thereby reserved. The lease contained several covenants, conditions and reservations which, with one exception, are immaterial for the purpose of these Appeals. That exception was to the effect that the lease was subject to all the provisions of the Mines Act and any amendments thereof which had been or should be made, and that all pine trees standing or being on the lands were, as provided by the 39 and 40 sections of the Mines Act, reserved to the Crown.

No mines have ever been sunk on the lands granted or demised, and no portion of them has been cleared for cultivation. Enough work has simply been done in each location to save the grant and lease respectively from forfeiture.

The lessee, Carl Schmidt, died, and the Plaintiffs, Therese Schmidt and John Shilton are his administratrix and administrator respectively.

Herbert Hammond also died and the National Company is his executor.

The 39 and 40 sections of the Mines Act (R.S.O., 1897, c. 36) run as follows:—

"39.—(1) The patents for all Crown lands sold or granted as mining lands shall contain a reservation of all

pine trees standing or being on the lands, which pine trees shall continue to be the property of Her Majesty, and any person holding a license to cut timber or sawlogs on such lands may at all times during the continuance of the license enter upon the lands and cut and remove such trees and make all necessary roads for that purpose.

"(2) The patentees or those claiming under them (except patentees of mining rights hereinafter mentioned) may cut and use such trees as may be necessary for the purpose of building, fencing, and fuel, on the land so patented, or for any other purpose essential to the working of the mines thereon, and may also cut and dispose of all trees required to be removed in actually clearing the land for cultivation.

"(3) No pine trees, except for the said necessary building, fencing and fuel, or other purpose essential to the working of the mine, shall be cut beyond the limit of such actual clearing; and all pine trees so cut and disposed of, except for the said necessary building, fencing and fuel, or other purpose aforesaid, shall be subject to the payment of the same dues as are at the time payable by the holders of licenses to cut timber or sawlogs. 55 V. c. 9, s. 17.

"40. The preceding section shall apply to all leases issued under this Act, other than leases of mining rights hereinafter mentioned, with the following limitations and variations, that is to say:—

"(1) No pine trees shall be used for fuel other than dry pine trees, and (except for domestic or household purposes) only after the sanction of the timber licensee or the Department of Crown Lands is obtained."

The Crown, by permit dated the 12th of October 1908, granted permission to the Construction Company to cut from thence to the 30th April 1909, subject to withdrawal if deemed expedient, 200,000 ties or timber railway sleepers on certain lands therein described lying to the north of the Vermilion River, and also permission to remove them when cut, paying to the Crown therefor dues or charges at the rate of 10 cents per tie, with a proviso that no timber below 8 inches in diameter was to be cut.

On the 31st December 1908 the Construction Company entered into a contract with Miller and Dickson who carry on, in partner-

ship, in the town of Port Arthur, the business of cutters and manufacturers of railway ties, to cut from off a certain defined area, portion of the lands described in this permit, timber to be manufactured into railway ties. A copy of this contract is printed at page 165 of the Record.

Previous to making this contract the Construction Company had entered into a contract with the firm of O'Brien, Fowler, and McDougall Brothers, railway contractors, to supply them at a commission with ties to be so manufactured.

Under the Company's permit, Miller and Dickson commenced early in January 1909, to fell and manufacture into ties timber of the size specified, grown on the land mentioned in their contract, and when manufactured to haul them off the land. They continued to do this up to the beginning of the following month. They then, on their own initiative, and without the authority or knowledge of the Construction Company, crossed over to the south of the Vermilion River, and from thence till the 24th of that month felled upon certain Crown lands, and also upon the lands of both the Plaintiffs, certain pine and tamarack trees, manufactured them where they fell into ties, and hauled the ties when manufactured from out of the wood or forest where they were lying. Only a few remained on the lands of the Plaintiffs after the 24th February 1909. When hauled out the ties were delivered, on behalf of the Construction Company, to the railway contractors by the side of the portion or branch of the transcontinental railway the latter were in the course of constructing. The ties were then counted and stamped by the employees of the railway, and piled up with others brought from elsewhere. On that day, the 24th of

February 1909, Messrs. Shilton, Wallbridge & Co., the legal advisers of the Plaintiffs, wrote to Dickson and Miller a letter complaining of these undoubted trespasses on the land of their clients.

On the same day, one, J. D. C. Smith, Crown Timber Ranger, acting under the instructions of Mr. William Margach, Crown Timber Agent for the Rainy River District, wrote to Messrs. Dickson and Miller a letter informing them that the permit issued to the Construction Company did not authorise the cutting of timber south or east of the Vermilion River, and requiring them to desist from cutting it.

On the same day, also, Dickson and Miller sent to Mr. Margach an application for a permit to make 15,000 ties on territory lying east of Vermilion River and on the G. T. P. Block No. 9, south of Pelican Lake. This application was ultimately refused. Mr. Margach visited the lands, in company with Smith, and, as it clearly appears from his cross-examination at R., pp. 150, 151, was on the 26th of February, fully informed that Dickson and Miller had not only cut timber on the Crown lands, but had also cut it on the locations of the Plaintiffs. He wrote to the Construction Company the following letter:—

"Kenora,

"DEAR SIRS, "6th March 1909.

"YOUR contractors, Dickson and Miller, applied for a permit to cut timber south of Vermilion River, being territory lying to the south of your permit. Dickson and Miller cut quite a quantity of jack-pine and tamarack, and when I visited their camp I stopped them cutting; they then made application for a permit, but the Department has refused the permit. You will please see that they do no more cutting. They are at liberty to remove what they have cut and make a separate return of it.

"Yours truly,

"Eastern Construction Co., WM. MARGACH."

"Fort William, Ont."

He stated in his evidence that the Government made no claim against Miller and Dickson in respect of the timber cut either on the Crown lands or on the locations, but that the Government did make a claim against the Construction Company for the ordinary dues in respect of all the timber so cut.

At page 149 of the Record he said he made the return to the Government of the amount of timber cut by Dickson and Miller, both on the Crown lands and on the mining locations, that upon this return the accounts against the Construction Company were made up in Toronto and sent to him for collection, and that the ordinary dues alone were demanded.

This letter of the 6th of March was the first intimation the Construction Company received of the trespasses committed by Miller and Dickson, and it is, in their Lordships' view, perfectly clear that the Crown by that letter consented to the appropriation by the company for their own purposes of all the ties so cut and manufactured on the two mining locations of the Plaintiffs.

The statement of claim contained a paragraph to the effect that it was the intention of each of the Plaintiffs to open, work, and develop mines on these locations, that the timber cut was necessary for use in these mining operations, and that by the cutting and removal of it the locations were depreciated in value.

In reference to this paragraph, the learned trial judge found as a fact, that the timber growing on each of the mining locations of the Plaintiffs before the trespasses complained of were committed, would not have been sufficient for the requirements of any mines, properly so called, which might thereafter be made and worked upon the respective locations, and that the timber would be more valuable for the

purposes of the mines than for ties. The loss alleged to be thus sustained by the Plaintiffs was apparently taken into account in measuring the damages awarded for trespass.

The learned judge stated the grounds upon which he held the Construction Company liable for these damages in the following passage of his judgment:—

"I think Miller and Dickson crossed the line and cut those ties, and that that cutting was afterwards brought to the attention of the Eastern Construction Company, and they deliberately received and accepted those ties from their contractors, and paid part upon them, and sold them and received the payment therefor, and I can draw no distinction between their liability therefor and the liability of Miller and Dickson for the trespasses that have been committed."

The construction he put upon the 39th and 40th sections of the Mines Act, coupled with the contents of the patent grant and lease is stated in the following passage of his judgment:—

"The meaning of the statute is that, while the property remained in the Crown, so that if this timber was in fact required for mining purposes, or for building purposes, or for other uses to which the patentee or lessee had a right to apply the timber, that then the Crown, in case the timber were taken off the place, either under a permit by the Crown or sold by the authority of the patentee, would have no difficulty in recovering the proper dues for the timber."

Mr. Ewart, who appeared for the Respondents, did not defend the judgment appealed from as a judgment in detinue. He urged that the decision was right but the grounds on which it was based were erroneous, and contended that it was open to him to insist that the decision of the trial judge was right and should have been upheld by the Supreme Court of Canada, either on the pleadings as they stood, or as amended in the way proposed in the notice of the 17th of June already

referred to, and should now be upheld by their Lordships. It is better for the purpose of this Appeal to assume that the pleadings were amended in the manner proposed.

Under these circumstances the primary question for consideration appears to their Lordships to be the nature and extent of the right of the Crown to the pine trees growing, or to grow on the mining locations of the Plaintiffs under the patent and lease respectively granted to them. When one turns to the 39th and 40th sections of the Mines Act, one finds that by subsection (1) of the first section, made applicable to leases by the second section, it is expressly enacted that patents for all Crown lands sold or granted shall contain a reservation of all pine trees standing or being thereon, and that these pine trees shall continue to be the property of Her Majesty. Mr. Justice Duff, in his able and convincing judgment, cited the three following cases, namely, Herlakenden's case (4 Coke, 62), in which it was held that if trees be excepted in a feoffment to a man and his heirs, the trees in property are divided from the land, though in fact they remain annexed to it, and that if one should cut them down and carry them away it would not be felony. Secondly, Liford's case (11 Coke, 46*b*) in which it was decided, amongst other things, that where a lease is made of land for a term of years, the lessee has but a special interest in the trees, as to "have the mast and fruit of the trees and shade " for his cattle," &c., but that the inheritance of the trees was in the lessor; and thirdly, Raymond *v.* Fitch (2 C.M. & R., 588), in which it was decided that a covenant by the lessee not to cut timber excepted from the demise was collateral and did not run with the land, no

more than would a covenant not to cut trees on land of the lessor other than that demised.

It appears to their Lordships that according to the only construction of which these instruments are reasonably susceptible, the property in the pine trees growing on these locations remained in the Crown. Indeed, this point was scarcely contested by Mr. Ewart. He did contend, however, that the proprietary right of the Crown was limited in two directions, first, by the provisions of section 2 of the Crown Timber Act (R.S.O., 1897, c. 32), passed in the same session of Parliament as the Mines Act; and, secondly, by the provisions of the latter Act itself conferring as they do on the patentee and lessee respectively the right to cut timber for mines, &c., and amounting when coupled with the finding of the trial judge as to the bare sufficiency of the supply for these last-named purposes, to a prohibition against the giving by the Crown of any licence or authority to cut for other purposes any of the pine trees growing on these locations. As to the first point, this section of the Timber Act plainly applies only to licences about to be granted to cut timber on land which are not at that time the subject of a grant to anyone, but which are in the possession of the Crown. As to the second, it may well be that, having regard to the finding of the learned trial judge, if licences were granted by the Crown to cut this timber, the patentee or lessee, as the case might be, might have a right to recover by petition of right from the Crown damages in respect of the injury thus done to their respective mining locations. It is not necessary in this case to decide that point. But even if the effect on the rights and powers of the Crown were such as it is contended for, it is a wholly different proposition that the property in the

pine trees when felled even by a trespasser would not belong to the Crown. In the opinion of their Lordships it is perfectly clear that the pine trees when felled were, in this case, the property of the Crown. It may well be doubted if in truth and fact the timber felled ever passed out of the possession of the servants of Miller and Dickson into that of the Plaintiffs. Taking the view, however, of the facts most favourable to the Plaintiffs, namely, that it did so pass, the Plaintiffs could only have had possession of it as the bailees of the Crown. No doubt in that position of things, if nothing more had occurred, they would have been entitled to have recovered from Miller and Dickson, and possibly from the Construction Company, the full value of the timber felled, as well as any special damage they might themselves have sustained by reason of being deprived of the possession of the felled trees, not because they had in truth and fact any proprietary right in, or title to the property in the trees or in the ties into which they were manufactured, but because to use the words of Lord Campbell in Jeffries *v.* Great Western Railway Company, 5 E. & B. 802, p. 806, as "against a wrong-doer possession is title." That is no new doctrine. It was decided in 1796 in Armory *v.* Delamirie, 1 Strange 505. "That the finder of a jewell though he does "not by such finding acquire an absolute pro- "perty or ownership yet he has such a property "as will enable him to keep it against all but "the rightful owner, and consequently may "maintain trover." That principle was affirmed as applicable to a bailee by the case of "The Winkfield," 1902, P., p. 42. Both this case and the case of Jeffries *v.* Great Western Railway Company were approved of by Lord Davey in

giving the judgment of the Judicial Committee of the Privy Council in Glenwood Lumber *v.* Philips (1904), A.C. 405–410, and it must be now taken as conclusively established. But it would be against all notions of justice that the bailee who recovers the full value of the goods wrongfully taken out of his possession, should be able to retain it for himself. The goods were not his, they belonged to the bailor. The money recovered under the judgment represents, and is substituted for the goods themselves. To allow the bailee to keep it for himself would be to compensate him in damages for a loss he has never suffered; and accordingly it was decided in Turner *v.* Hardcastle (11 C.B. (N.S.), 683), and approved of in the judgment in the Winkfield case, that the bailee who in such circumstances recovers the full value of the goods must account to the bailor for the sum recovered. In Nicholls *v.* Bastard (2 C.M. and R., at p. 660), Parke, B., said no doubt the bailor may recover as well as the bailee, "and "whichever first obtains damages is a full satis- "faction." These being the rights and obligation of the bailee it is obvious that if, before action brought by him against the wrongdoer, the bailor has clothed that wrongdoer with the ownership of the goods, the bailee cannot recover from the wrongdoer, thus converted into the true owner, the full value of the goods, no more than he could recover their full value from the bailor himself. In such an action the Defendant would not be setting up a jus tertii, but, as donee or assignee of the tertius, a jus sui. Lord Collins, the Master of the Rolls, as he then was, was careful to point out this qualification of the bailee's rights in his judgment in the Winkfield case. At p. 54 he says, "It seems "to me that the position that possession is

" good against a wrongdoer, and that the latter " cannot set up a jus tertii unless he claims " under it is well established in our law," but the Appellants in the present case contend that they claim under the jus tertii. If that contention be sustained there is an end to the Plaintiffs' right to recover in trover or detinue. It was insisted by Mr. Ewart that this point is not raised in the defence. This is a strange objection to make since the statement of claim as it stood at the trial did not contain any claim in trover or detinue. It was framed solely in trespass, to which a plea that the Plaintiffs were only bailees of the felled timber, and that before action brought the Construction Company had acquired from the bailor, by donation or assignment, the full ownership of and property in the timber would have been no answer whatever. The proper time to put in such a defence was when the statement of claim was amended by the addition of a claim in trover or detinue. The matter was fully dealt with at the trial. A large body of evidence was given on the very point, necessarily on the assumption that the statement of claim had been amended as required by the notice of the 7th of June 1910. It seems rather unreasonable upon the part of Respondents, while they contend that the statement of claim should be taken as amended in the manner proposed, to insist that the statement of defence should not be taken as having been amended, by the insertion of a plea to new cause of action, to which in effect, at the trial, much of the evidence was directed. Their Lordships do not think there is anything in this point.

Next it is contended that the letter of the 6th of March 1909, from Mr. Margach to the Construction Company upon which this question

turns, did not refer to the timber cut on the Plaintiffs' locations, further, that Margach had no authority to write it, and, lastly, that his action was not adopted by the officers of State acting on behalf of the Crown whose agent the writer was, and on behalf of whom he obviously professed to act. The writer was examined at the trial and deposed that he was and had for 21 years been in the employ of the Government of Ontario as Crown timber agent for the Rainy River District, then called the Kenora District; that his duties were to exercise a general supervision over "lumbering" operations throughout his district; that on instructions from the Department, *i.e.*, the Government Department, he issues permits; that he first heard of the trespass complained of on the 22nd of February 1909; that he was going on a tour of inspection with a Crown timber ranger named James Smith; that he came upon the ground and saw the men of Dickson and Miller cutting on the south side of the river; that he advised Smith that on his return from his beat (they were going eastward at the time) he should inform the person in charge of the works that they had no right to cut timber where they were cutting it; but might remove what they had cut; that a very short time after (fixed on cross-examination as the 26th of February) he knew that Miller and Dicksons' men had cut timber on Plaintiffs' locations; that he communicated by letter with his Department on the subject; that his duty is to make the returns to the Department in Toronto of the timber cut; that the accounts in respect of the dues are prepared by the Department on this return and forwarded to him for collection; and that he had nothing to do with the question whether the Construc-

tion Company should be charged, as in fact they were, only 10 cents per tie for the ties cut, the ordinary rate, and that he made no recommendation to that effect. He produced the accounts received from the Department dealing with this matter, in which the number of ties cut on the mining locations of the Plaintiffs is specifically set out and charged for, and payment for which, by cheque payable to the Hon. Treasurer of the Province on Ontario is, by his letter dated the 13th November 1909, addressed from the Ontario Crown Timber Agency, Kenora, specifically demanded.

Smith, the timber ranger, was also examined. He proved that he was in the employ of the Ontario Government; that his duties were to visit all operation in the timber land throughout his district; to advise as to anything done without permission, and put a stop to it; that he visited the mining locations on the 24th of February 1909; saw timber there that had been cut, and was being cut by Dickson and Miller's men; saw Mr. Dickson, told him that the permit given to the Construction Company did not extend to this territory, that he had no right to cut there, and would have to stop doing so, and gave to him the written notice marked Exhibit 10. That in the following September he, accompanied by a Mr. McKenzie, visited these mining locations; took down in his book the particulars of the timber cut on them, as best he could; compiled from this and forwarded to his Department a return of the timber ties cut, and which he believed to be accurate. A copy of this return was received in evidence and marked No. 11. It showed in detail that the amounts cut on J. Shilton's location were in all 9,020, and on Schmidt's location, 3,009.

This return was obviously used by the Department in Ontario in framing the account, the payment of which was demanded from the Construction Company by Margach in his letter of the 13th of November 1909. It appears to their Lordships that upon this evidence it is clear to demonstration that Margach's letter of the 6th of March 1909 referred to the timber cut on the Plaintiffs' locations, and that the proper Department of the Ontario Government, charged, on behalf of the Crown, with the duty of the granting of permits, the exercise of lumber rights under them, and the general supervision and administration of such affairs, either expressly authorised beforehand the writing of this letter by their accredited officer purporting to act in his official capacity on their behalf, or adopted and acted upon it in every respect. The legal result is this, that no demand having been made by the Plaintiffs for a return of the timber, there necessarily was no refusal by the Defendants to return it—(an important matter, Clayton *v.* Leroy, 1911, 2 K.B., 1031)—the conversion, must therefore, necessarily, have taken place, if it took place at all, when the timber was taken from the location in its manufactured state, and immediately after if not before it took place, the Crown, the bailor, had consented to the Construction Company's retaining the timber as their own, and appropriating it, as its owners, to their own purposes.

The Plaintiffs' claim for damages in trover or detinue cannot, in their Lordships' opinion, be sustained.

The guarded letter of Mr. Aubrey White, Deputy Minister, dated the 18th of March 1909, addressed to Messrs. Shilton, Wallbridge & Co. in no way conflicts with this conclusion.

Then there remains the question as to the adoption by the Construction Company of the

action of Miller and Dickson in trespassing on the Plaintiffs' location. There are many answers to the Plaintiffs' contention on this point. In the first place Miller and Dickson were not the servants or agents of the Construction Company. They were independent contractors. That point was relied upon in the letter of the Construction Company to the solicitors of the Plaintiffs, dated the 11th June 1909, and it is quite clear from the terms of the agreement in writing entered into between the Construction Company and these gentlemen, that this was the true relation between them. Next it is essential to constitute an agency by ratification, that the agent in doing the act to be ratified shall not be acting for himself, but should intend to bind a principal actually named or ascertainable, Keighley, Maxted & Co. *v.* Durant (1901), A.C. 240. In Wilson *v.* Barker and Mitchell, 4 B. and Ad., 614, it was held by Littledale, Parke, and Patterson, JJ., in effect, that if A wrongfully seizes a chattel for his own use B cannot ratify the act. No doubt, ultimately, the severed timber, when manufactured and delivered by Miller and Dickson for the use of the Construction Company, would come to the Company as a consequence of the tortious acts of the former, but they would be entitled to hold it, not by virtue of those tortious acts, but by virtue of the assignment or donation of the Crown. The doing of the acts furnished no doubt the occasion for the exercise by the Crown of its bounty, but in the absence of evidence to the contrary it is not to be presumed that in using this timber as their own, the Company were taking advantage of these tortious acts rather than taking advantage of the bounty of the Crown, or, in other words, that they had elected to rely on a wrongful rather than a rightful title. Again, ratification must

be evidenced by clear adoptive acts, which must be accompanied by full knowledge of all the essential facts. It is quite clear from the correspondence, that down to the 11th of June 1909 the Construction Company had not full knowledge of the precise place where these logs were cut, or of the details of the alleged trespasses. And upon that date, as already pointed out, they informed the Plaintiffs that Miller and Dickson were sub-contractors for whose actions they were in no way responsible. Their Lordships are therefore of opinion that there was no evidence before the trial judge upon which it could be reasonably or justly held that the Construction Company had adopted the trespasses which Miller and Dickson are alleged to have committed, or were in any way responsible for them. There is some difficulty about the tamarack trees. Those felled upon the patentees' locations were not reserved to the Crown, and on severance did not become the property of the Crown, and in respect of these the Construction Company would be answerable in trover. With those felled upon the lessees' location it may be different, but it is not easy to distinguish the one case from the other. The money paid into court is, however, ample to meet the claim in respect of these trees. Their Lordships are of opinion that the decision appealed from, and the Judgment and order of the trial judge are both erroneous, and, save as to the tamarack trees, should be reversed, and this appeal should be allowed with costs. They think, however, that, having regard to what took place on the motion for special leave to appeal, the Plaintiffs should pay the Defendants' costs of the Appeal to the Court of Appeal of Ontario, but should be declared to be entitled to recover the costs of the trial on the terms that they do not make any further claim against the Construction Company in reference to the tamarack trees, and they will humbly advise His Majesty accordingly.

In the Privy Council.

THE EASTERN CONSTRUCTION COMPANY, LIMITED,

v.

(1) THE NATIONAL TRUST COMPANY, LIMITED, AND OTHERS,

AND

(2) THERESE SCHMIDT AND OTHERS;

AND THE ATTORNEY-GENERAL FOR THE PROVINCE OF ONTARIO (INTERVENANT).

DELIVERED BY LORD ATKINSON.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1913.